

Minutes of the Governance Sub-Group

Meeting 4

20 May 2021 | 11:00 – 13:00

Held via Videoconference (Microsoft Teams)

Status of the Minutes: **Final**

MEMBERS PRESENT

Adam Richardson (Chair)	AR	Neil Pendle	NP	Rupert Redesdale	RR
Christopher Wright	CW	Julian Tranter	JT	Christina Blackwell (CCW)	CB
Elsa Wye	EW	Dan Mason (Ofwat)	DM		

OTHER ATTENDEES

Florentina Monea (MOSL)	FM	Huw Comerford (MOSL)	HC	Tom Daborn (MOSL)	TD
Ethan Fleming (MOSL - Secretariat)	EF	Stuart Boyle (MOSL)	SB		

APOLOGIES

Angela Day (Chair)	AD	John Vinson	JV
--------------------	----	-------------	----

1. Welcome

- 1.1. AD had sent their apologies and asked AR to Chair the meeting. The meeting would focus on ensuring the documentation adequately explained '[CPM039: Revisions to Panel Composition](#)', '[CPM021: Panel Membership and Voting Rights](#)' and '[CPM040/CPW121: MAC and WRC Principles](#)' with the appropriate themes covered with questions that would draw out useful information and encourage discussion.

2. Consultation Overview

- 2.1. SB introduced the item, which attempted to provide background, the reasoning and timeline of the consultation. The target audience was customers and customer groups not necessarily for Trading Parties.
- 2.2. A Sub-Group Member noted that the links to the Panel purpose document should be strengthened and it should be clarified that the Panel purpose had not yet been set. Additionally, as CPM021 had evolved from its original form the open voting forum mentioned in the Panel purpose document should be amended to prevent confusion.

- 2.3. It was agreed that the wording should be adjusted to remove the mutual exclusivity of picking between CPM039 and CPM021 and to gain feedback on positive and negative elements of both. This would encourage open thinking and possible hybrid models.
- 2.4. A Sub-Group Member recommended that page references and links being included to assist with navigation and direct readers to read the Panel purpose document first. Stakeholders should be encouraged to respond to all of the consultations however at a minimum to respond on the Panel purpose consultation as this underpinned the other changes.
- 2.5. It was agreed that the questions should be consolidated and summarised in one location within the consultation overview with links to the sections they were derived from.
- 2.6. A Sub-Group Member noted that it may be useful to readers to remove from the consultation overview items that were repeated in the Panel purpose document.
- 2.7. A Sub-Group Member asked if the composition of the Panel should include a water efficiency specialist which could be from Waterwise or elsewhere. DM noted that the skills of the independent members had not been prescribed as these may change over time. It would be included in the consultation that water efficiency may be one of the skills. A Sub-Group Member noted that people often had multiple skills and may bring water efficiency along with other skills.
- 2.8. DM asked for an executive summary of one page with a visual representation if possible be included.
- 2.9. A Sub-Group Member noted that discussions had focussed on benefits to the customer which typically could only be delivered with increased costs and if consideration should also include if the Panel was focussed on the long-term development of the marketplace and ensuring it was sustainable. The Water Industry Act included the term resilience which could be seen as comparable to sustainability. DM confirmed that a redrafted principle proposed by Ofwat included resilience to provide a link to Ofwat's statutory duties.

RR left the meeting.

- 2.10. A Sub-Group Member asked if CPM021 could be included in CPM039 as an alternative solution as the changes were no longer materially different apart from composition and where authority was derived from. AR responded that although the solutions were now similar the mechanism allowed the proposers to retain their own changes. Consultation via a single document would assist with simplicity.
- 2.11. A Sub-Group Member asked that the need for diversity and diverse groups of people be included.

3. Panel Composition Consultation

- 3.1. DM requested that the mention of RISE be moved from the CPM039 composition section to the strategic section.

JT entered the meeting.

- 3.2. A Sub-Group Member noted the main difference appeared to be the Trading Party forum in CPM021 and where the bodies derived sovereignty from which appeared split/ambiguous in CPM021. In comparison CPM039 clearly laid out sovereignty and delegations. It could be of assistance to highlight the differences in the proposals to help those responding to the consultation. Another Sub-Group Member noted that this could be in diagram form with colour coding.
- 3.3. There was considerable confusion between the naming conventions for the different groups used in each solution. DM agreed that the groups in CPM039 should refer to Strategic Panel and Code Change Committee as he viewed that the Strategic Panel's responsibility went further than the codes and so should not include "Code" in the title as this may narrow the scope.

- 3.4. CW agreed that the groups in CPM021 should refer to a Strategic Code Panel or Strategic Code Review Panel and a Code Change Committee as he believed it was important to include code in both titles as this was the main role of the groups. The groups had a responsibility to ensure the codes were fit for purpose and avoid regulatory creep into other areas and that any Panel as a “creature of the codes” should only act in relation to the Codes.
- 3.5. It was clarified that the Code Change Committee would be at the same level in the hierarchy as the Market Performance Committee and Disputes Committee.
- 3.6. A Sub-Group Member noted that CPM021 did not appear to contain costs for independent Panel members which made it appear a much cheaper solution. MOSL would investigate this discrepancy as the solution did require independent Panel members.
- 3.7. A Sub-Group Member noted that paragraph five on page three mentioned the current version of the Panel but should refer to the Panel “as then concerned” and that things had moved on.
- 3.8. CW noted that the Strategic User Forum (SUF) mentioned in CPM021 was not the current SUF as it would be expected to operate and be composed in a different manner. Neither was the current SUF a code mandated body. It should also be clear that the SUF in the solution was not the Strategic Panel either. This forum could be titled Trading Party Forum or Market Participants Forum depending on how wide the membership was. A Sub-Group Member noted that she felt its composition should not just be Trading Parties but other stakeholders such as customer representatives, potential new entrants to the market and trade bodies.
- 3.9. A Sub-Group Member expressed that the ratios of voting members comparing industry and non-industry were not helpful as it overlooked non-voting affiliates who attended the Panel and had an impact on the Panel’s decision making. NP disagreed and felt that the ratios were important as the code change related to Panel membership and voting rights.
- 3.10. A Sub-Group Member recommended that CPM039 be adjusted from “requiring” the Strategic Panel to delegate to the Code Change Committee to “expected to” as required was too strong a term. MOSL would investigate the correct wording to be inserted.
- 3.11. A Sub-Group Member asked how these changes would affect committees in the short term and if they required the committees to have adjusted terms of reference. HC explained that the current expectation was for the committee responsibilities to not immediately change but the Strategic Panel would review the existing committees once formed.
- 3.12. A Sub-Group Member noted that they had seen little evidence to support the assertion that people were unlikely to have the right skills to serve on the Strategic Panel and Code Change Committee. As the Code Change Committee was only bound by principles and delegated responsibilities from the Strategic Panel there did not appear to be an enforcement or accountability mechanism to ensure the will of the Strategic Panel was taken forward by the Code Change Committee. The inability for members to sit on both groups would also exacerbate this.
- 3.13. A Sub-Group Member commented that they viewed the separation between the Strategic Panel and Code Change Committee membership as a positive to prevent the Strategic Panel focussing on the details of changes. Panel Members populating Panel committees had been critiqued by Satori.
- 3.14. TD explained that the illustrative terms of reference for the Code Change Committee included a requirement for them to take into account directives from the Strategic Panel. AR noted that although a mechanism may not be codified this issue could be covered within the working practices and behaviours of the group. If the Code Change Committee was required to make recommendations to a Strategic Panel that was only meeting quarterly this would implement delays.
- 3.15. A Sub-Group Member asked that the composition of each group in the solutions be clarified and made easy for comparison.

- 3.16. A Sub-Group Member noted that there may be important lessons to learnt from how the Scottish Market operated between making links between the different market groups and how they were staffed and operated.
- 3.17. A Sub-Group Member commented that the terms of reference for the Code Change Committee did not include a requirement for them to manage the operation of the code change process and ensure it was fit for purpose and drive improvements to it. AR explained that Satori had made recommendations on improving the code change process which were covered by the tactical roadmap. These would be referenced for the consultation process. However, while reworking of the change process itself was outside the scope of these change proposals, the tactical roadmap indicated that revisions to the change process would be considered in the second half of this financial year.
- 3.18. It was noted in CPM021 that the same individual would be chair of the Strategic Code Panel and the Code Change Committee. The Chair would only have a vote in the event of a tied vote. CPM039 allowed for different chairs between the groups.
- 3.19. A Sub-Group Member expressed concern that removing the distinctions between associated and un-associated retailers may lead to one group of market participants dominating proceedings. The distinctions between Trading Party definitions should be applied consistency across Panels and committees.
- 3.20. DM explained that the rationale for the appointment mechanism in CPM039 was to provide a check and balance to certain Trading Parties potentially dominating decision making. It would also assist in ensuring the right mix of skills, experience and behaviours was present. The Chair's between the groups had been identified as separate individuals as they were likely to require to different skills.
- 3.21. A Sub-Group Member noted that the current practice was for Independent Panel Members to Chair committees and this should be allowed for in the appointment of them. AR noted that this was not a code requirement and was a working practice.
- 3.22. CW explained that they felt it was important for the Strategic Code Panel to have an open nominations and election process, but this was less important in the Code Change Committee. By making the process open and publishing biographies of nominations this this would allow informed voting by Trading Parties to match the skills identified.
- 3.23. A Sub-Group Member asked that a question on the effects of downgrading the number of Trading Parties on the Strategic Panel be included.
- 3.24. There was general agreement that the questions should be less leading and should be more open and encourage answers beyond "yes" or "no". This may involve asking respondents what aspects of the changes they did and didn't like to make the choice less binary.
- 3.25. The same or similar questions should be asked for CPM039 as they were for CPM021.
- 3.26. DM asked that a question on if the models' proposals would help to achieve strategic market objectives be included. JT asked that this be extended to would the changes support what they felt the Panel purpose should be.
- 3.27. It was agreed that more questions should deal with customer benefits and not be restricted to current or individual Trading Parties customers but customers overall. A Sub-Group Member recommended that a question on if the solutions would deliver a Panel focussed on outcomes for customers.

4. Code Principle Consultation

- 4.1. DM apologised for not recirculating Ofwat's amended proposed principles. These were currently being reviewed by Ofwat's legal advisers to ensure they were robust enough to allow consultation

on and if they were compliant with the Water Industry Act. The amended proposals incorporated some of a Sub-Group Member's amendments.

- 4.2. A Sub-Group Member offered to further refine their proposals for code principles if it would assist in determining in an alternative solution to CPM040.
- 4.3. It was agreed that the revised principles from Ofwat would be compared against the suggestions from the Sub-Group Member and if a gap was identified the Sub-Group Member's proposed principles would be raised as an alternative solution.
- 4.4. A Sub-Group Member asked if the principles consultation should be delayed allowing for further clarity.
- 4.5. Governance Sub-Group Members expressed support for issuing the consultation as one package and not delaying issuing the principles.
- 4.6. A Sub-Group Member noted that the principles should contain a requirement to ensure that decisions encouraged improved or effective competition within the market.
- 4.7. A Sub-Group Member asked if it was possible to allow a longer feedback period. AR confirmed this would be kept under review.
- 4.8. It was agreed to remove the implementation timelines from all changes as they did not help in adding clarity.

5. Terms of Reference

- 5.1. A Sub-Group Member suggested that the order of priorities in the proposed terms of reference be re-ordered to show a change of emphasis. The terms of reference should also include the power to establish sub-groups as well as committees. Neither did they include clear deliverables and the policy on observers.
- 5.2. Several Governance Sub-Group Members expressed support for not including the terms of reference in the consultation as they would require amendment after the decision-making process was confirmed and may just lead to confusion and the consultation should be kept simple.
- 5.3. Other Members expressed support of including the terms of reference in the consultation to help show the roles and responsibilities of the groups.
- 5.4. AR proposed that the terms of reference would be included but would be clearly marked as illustrative only.

6. Panel Purpose Consultation

- 6.1. A Sub-Group Member noted that to consider the Panel purpose was not within the Terms of Reference of the Governance Sub-Group, however, feedback from that consultation should inform the final shape of the changes.
- 6.2. A Sub-Group Member noted that they did not view that the Governance Sub-Group had extensively reviewed the solutions and "extensively" should be removed.

7. Actions for Next Meeting

- 7.1. Dates would be set for a webinar during the consultation to encourage feedback and the dates for the Governance Sub-Group to consider the results of the consultation.