

Market Performance Committee Terms of Reference v4.0

The Market Performance Committee (MPC) has been established in accordance with Schedule 10 of the Market Arrangements Code (MAC).

Unless otherwise stated, words and expressions that are used in the Terms of Reference (ToR) shall have the meanings and application attributed to them under the MAC.

Changes to the ToR can be proposed to the Panel at any time. All changes to the ToR will be voted on, in line with the Panel operating procedures.

1. Overview

The MPC has been established to support the Panel in fulfilling its obligations in relation to Market Performance. The Panel may choose to delegate any functions related to Market Performance to the Committee.

The Panel will establish metrics to track the success of the MPC and the MPC will provide updates and progress reports to the Panel.

2. Objectives and Principles

The purpose of the MPC is to provide governance over the performance of the market and Trading Parties as provided for in the Market Arrangements Code and [CSD002: Market Performance Framework](#). The objectives of the committee are to:

- Monitor overall performance of the market;
- Assist with the creation and ongoing development of the Market Performance Operating Plan;
- Monitoring Market Entry Assurance and Reassurance;
- Ensure rectification of Trading Party underperformance;
- Evolve the Market Performance Framework¹.

As set out in Section 1 of Schedule 10 of the MAC, the rationale for establishing the MPC in addition to the Panel are:

- To increase overall focus on market performance;
- To develop a specialised expertise in market performance;
- To increase the level of detail, frequency and workload in relation to market performance; and

¹ Where the MPC might seek to make changes the current Market Performance Framework, the MPC should have regard to the work being undertaken by the Market Performance Framework Reform Programme and act in alignment with this work.

- To allow for different/wider membership and attendance including possible involvement of the Market Auditor.

3. Role and Functions

3.1 The role of the MPC

The Panel has delegated the following workload to the MPC, as set out in Section 2.2 of CSD 0002 and Section 10.2 of the MAC:

- Provide expert input to the annual Market Performance Operating Plan;
- Receive reports on the administration and implementation of the Market Performance Framework;
- Provide expert input to the Annual Market Performance Report;
- Review and provide recommendations to the Panel on the scope and level of the Market Performance Standards and Operational Performance Standards and recommend potential Change Proposals to the Panel in respect of changes identified pursuant to such review;
- Make recommendations to the Panel on the appropriate format for the Market Performance Standards Peer Comparison Report and the Operational Performance Standards Peer Comparison Report;
- Make a recommendation to the Panel on a Performance Rectification Plan for a Trading Party to remedy any performance issue escalated to the MPC and monitoring the Trading Party's progress against such plan;
- Any functions delegated by the Panel in relation to the Market Entry Assurance and Market Reassurance processes;
- Work with the Market Operator to develop the scope and audit plan for each market audit;
- Review and comment on any Market Audit Reports;
- Receive reports from the Market Operator regarding its compliance with the Market Operator's obligations as set out in the Market Terms and monitoring any remediation plan or other steps to be undertaken by the Market Operator to rectify its underperformance;
- Make recommendations to the Panel for changes to the Wholesale-Retail Code (including any Code Subsidiary Document) in order to enhance the Market Performance Framework;
- Such other role and functions as the Panel may delegate to it from time to time, in line with the Panel Delegation Policy;
- Reporting to the Panel on progress delivering agreed strategic priorities.

The MPC, supported by MOSL's Performance Team (and which shall include other MOSL resources as necessary from time to time), shall ensure that its activities are managed and planned to ensure efficient and comprehensive delivery of the above activities. The MPC shall advise Panel at least quarterly of progress and any material delay or shortcoming against MPC's delegated role and implied activities.

3.2 The Powers of the MPC

In association with the MPC workload, the MPC will also have certain decision making and/or enforcement powers. These powers shall include:

- Making recommendations to the Panel on the appropriate format for the Market Performance Standards Peer Comparison Report and the Operational Performance Standards Peer Comparison Report with the Market Operator;
- If a performance issue is escalated by the Market Operator, recommending to the Panel an approach to determining a Performance Rectification Plan setting out the remedial steps that the Trading Party shall be required to take in order to address the escalated performance issue;
- Recommending to the Market Operator changes required to the Market Performance Operating Plan;
- Recommending to the Market Operator changes required to the Annual Market Performance Report;
- De-escalating performance issues back to the Market Operator for performance monitoring following escalation to the MPC;
- Recommending to the Panel the approval of Market Entry Assurance and Reassurance supporting documentation;
- Recommending to the Panel any amendments to Market Entry Assurance or Reassurance Plans which cannot be agreed by the Market Operator and a Trading Party;
- Recommending to the Panel any additional steps for an applicant to carry out in order to complete the Market Entry Assurance or Reassurance process; and
- Any other powers as the Panel may delegate from time to time, in line with the Panel Delegation Policy.

4. Membership

4.1 Chair and Secretary

The Market Operator shall appoint the independent Chair of the MPC, subject to prior consultation with the Panel. The Chair's role will be to chair meetings, facilitate discussions, and encourage consensus but shall have no casting vote.

The MPC shall have a secretary who shall be a person provided by the Market Operator. They will be responsible for taking the minutes, agreeing and circulating agendas, scheduling meetings and ensuring the production of the papers and reports, on behalf of the MPC. The secretary will also attend meetings to support the activities of the MPC and advise on the market codes and Market Performance matters.

The secretary will neither vote nor be a member of the Committee.

4.2 Voting Members

Voting Members of the MPC should be nominated by Trading Parties and agreed by the Panel, in accordance with Section 3 of Schedule 10 of the MAC.

The MPC shall be composed of the following members:

- Four (4) Wholesaler;
- Four (4) Retailers (Associated or Unassociated); and
- One (1) customer representative member appointed by CCW

MPC Members shall be appointed by the Panel for a term of office of up to two (2) years, which may be extended subject to the review of the Panel. If the MPC is not fulfilling its obligations as set out in the code and this ToR, the MPC Chair has the right to review membership and make a recommendation to the Panel. The Panel's appointment of MPC Members shall reflect a balance between ensuring continuity of participation as well as introducing new players. The appointments shall ensure an appropriate mix of skills and experience across the participants.

Members tenure shall normally be aligned to financial years (i.e. for the first MPC membership the second period of tenure would be expected to be April 19-March 21 inclusive). The Panel will aim to finalise appointments in the January preceding the period of tenure to enable an orderly transition. The Panel will encourage new members to join the MPC meetings following their appointment that take place before their period of tenure commences.

Where resignations occur during a Member's tenure the Panel shall decide upon a replacement for the remaining period until the re-appointment of the Committee.

Each MPC Member shall act impartially and independently of the interests of their employer and of any person or class of persons and, in exercising the functions under this Schedule 10 of the MAC.

Before being appointed as a MPC Member, each MPC Member shall provide a member confirmation to the Market Operator that they agree to being a MPC Member, and that they agree to remove themselves from any consideration of relevant matters in relation to its own employer or any affiliate, in accordance with Schedule 10 of the MAC. Members must also provide a letter from their employer agreeing that they may act as a MPC member, in accordance with Schedule 5.7.1 of the MAC.

4.3 Non-Voting Members

The following non-voting members are entitled to attend, to speak but not vote at any MPC:

- Independent Chair;
- The Market Operator;
- A representative of the Authority.

The MPC Chair may invite or approve the participation of any individual to attend a meeting of the MPC but they shall have no vote in the MPC.

4.4 Alternates

If a MPC Member cannot attend, the member may propose an Alternate. The Alternate can be any individual notified to the MPC secretary as soon as reasonably practical before the MPC meeting. Alternates should possess sufficient knowledge and expertise to act as a MPC Member.

Subject to the approval of the MPC Chair, the Alternate may attend the MPC Meeting and vote and speak as a MPC Member.

In accordance with Schedule 10 of the MAC, a person appointed as an Alternate, is bound by the provisions of the code. Alternates must act impartially, in the best interests of the market and should not be representative of or have regard to the interests of anybody or person, including the MPC Member that appointed them.

If an Alternate attends a meeting as well as their standing MPC Member, he or she attends only as an observer and will have no voting rights.

5. Quorum and Decision Making

No business is to occur at the meeting unless a quorum is present. A quorum is a minimum of at least four (4) Committee Members in total including:

- Two (2) Wholesaler members; and
- Two (2) Retailer members.

An MPC Member must inform the MPC Secretary if they or their Alternate is unable to attend, wherever possible, at least five (5) Working Days prior to the meeting.

If a Quorum of MPC Members has not confirmed attendance, the MPC Chair may determine that the meeting should be cancelled and a notification be issued to MPC Members no later than five (5) Working Days prior to the meeting. The meeting will be deemed as cancelled if no MPC Member has notified the MPC Secretary that he or she objects to the cancellation, not later than three (3) Working Days before the meeting.

In the event that a meeting of the MPC is convened and a quorum is not present within one hour, the meeting may be adjourned and re-scheduled by the MPC Secretary at the earliest convenience.

A meeting shall be quorate if the necessary members are physically present in person at the meeting or are simultaneously involved in the meeting (e.g. via telephone conference call).

The expectation is that the anticipated monthly meetings shall be virtual meetings with occasional physical meetings where there is an expected benefit to taking this approach. The location of meetings shall be determined by the MPC.

5.1 Voting Procedure

Votes will not be attributable to individual Members. Any decision made by the MPC shall be decided by a simple majority of voting Members.

When voting on any one decision, each MPC Member shall be entitled to exercise one (1) vote.

6. Secretariat

The Market Operator will provide the secretariat services and appoint the MPC secretary. The MPC secretary is the officer of the MPC that is responsible for its administration. The secretary must have integrity and must not only be, but also be seen to be, impartial and free from proximity to vested interests. The work of the secretary encompasses:

- Convening of MPC meetings, provision of relevant Market Performance papers and materials and taking minutes of meetings;
- Maintaining registers of MPC Members, interests, contracts and agreements;

- Communicating with the Panel, Market Participants and Ofwat on behalf of the Committee;
- Management and administration of the MPC Member appointment processes; and
- Supporting the MPC Chair in ensuring compliance with regulations and obligations by Committee and Panel Members (and the Committee and Panel as a whole).

7. Proceedings of the Meeting

7.1 Frequency of Meetings

A calendar of monthly meetings will be maintained by the MPC secretary and published at least six (6) months in advance of these meetings on the Market Operator website.

The MPC is expected to meet at least on a monthly basis with frequency and timings to be decided by the Committee. Planned meetings may be cancelled if there is insufficient business on the agreement of the MPC Chair. In such cases, the MPC secretary will notify MPC Members (and confirm on the website) that the meeting is cancelled not later than five (5) Working Days prior to the meeting, provided that the MPC meets at least once every three (3) months.

The meeting will be deemed as cancelled if no MPC Member has notified the MPC Secretary that he or she objects to the cancellation, not later than three (3) Working Days before the meeting.

Additional meetings may be held at such a time and place as notified to the MPC Members by the MPC Secretary in accordance with these ToR.

Unless otherwise decided by the Panel, the MPC Secretary shall convene MPC meetings by giving notice via email at least ten (10) Working Days prior to the proposed meeting, accompanied by publishing an agenda and, to the extent reasonably practical, any non-confidential papers on the website, as necessary. A copy of such notice and papers shall also be sent to any Alternate appointed.

The aspiration is that there will be no late papers issued outside of the agreed meeting notice period. From time to time, there may however be a need for additional matters to be placed on the agenda and/or late papers, and the approach will be agreed by the MPC Chair on a case by case basis. Where this occurs the MPC secretary will provide notice to MPC Members and the other persons entitled to receive notice, as soon as reasonably practical. Late papers will only be considered upon the agreement of MPC Members.

7.2 Urgent Meetings

Where the MPC Secretary, with the agreement of the MPC Chair, is of the opinion that an urgent meeting is required, the ten (10) Working Day notice period shall be waived.

The MPC secretary will notify MPC Members by email and/or telephone as soon as reasonably practical prior to the calling of an urgent meeting.

7.3 Papers

Papers will be circulated to all MPC Members in advance of meetings. The normal standard should be papers released at least 5 (five) days prior to the meeting. Papers may include, but shall not be limited to:

- Reports on overall performance of the market;
- Reports on Trading Parties subject to (Initial) Performance Rectification Plans;
- Details of an escalated performance issue, including evidence of the performance issue and reasons for the escalation;
- The Annual Market Performance Report;
- The Market Performance Operating Plan; and
- Market Entry Assurance and Reassurance documentation.

Procedures to ensure that all Members are aware of the publication and availability of papers and relevant materials to support MPC activities will be agreed in the MPC and enacted by the secretary.

7.4 Meetings via Teleconference

A meeting of the MPC may consist of a telephone or video-conference between Members. A MPC Member taking part in such a conference or telephone call is deemed to be present in person and is entitled to vote and be counted in the quorum accordingly.

7.5 Minutes of Meetings

The MPC secretary shall minute the proceedings and resolutions of all MPC meetings, including the names of those in attendance. Draft minutes will be circulated to all MPC Members as soon as reasonably practical after the meeting, where approval will be sought at the next MPC meeting. Following MPC approval, the minutes will be published on the Market Operator's website.

The secretary will also provide regular updates to the Panel on the activities of the MPC, in the form of a monthly (or otherwise agreed) Committee Report, as determined by the Panel and agreed by the MPC Chair.

The MPC secretary will also record and maintain a Committee Action Log of all the actions that arise from each meeting. The MPC secretary shall ensure the outcome of all MPC decisions are communicated to the Panel.

7.6 Recording and Broadcasting

For transparency, audio and/or video recording may be made of MPC meetings. Additionally, the MPC meetings may be broadcast by webinar. The agreed recording and broadcasting policy is as approved by the Panel and published on the Market Operator's website.

8. Code of Conduct

MPC Members and all other attendees must refrain from the use of inappropriate or offensive behaviour during the meetings. This includes, but is not limited to:

- Defamatory comments regarding another person or persons;
- Unsubstantiated statements that could be considered slanderous or subject to libel proceedings;
- Use of foul language; and
- Use of threatening language towards other persons whether present or not.

The MPC Chair reserves the right to remove any attendee in the event that they consider the guidelines set out above are breached, or to adjourn the meeting as appropriate.

9. Transparency and Confidentiality

The MPC meetings are open and public. While custom and practice will be to allow any person to attend the open session of MPC meetings, provided that the MPC secretary is notified and prior consent of the MPC Chair is secured (and that such approval will not be unreasonably withheld), exceptions may apply which call for a closed meeting session. Such exceptions include where confidential information will be considered (e.g. in relation to the performance of a Trading Party).

Any Panel Member is entitled to attend closed sessions of the MPC, subject to informing the MPC Chair first.

The MPC secretary will ensure that agendas, papers, minutes and presentation materials used in the meetings shall be made available on the public MPC area of the MOSL website in a timely manner save for material of a confidential nature. In the event of closed session papers or minutes, the necessary paperwork will be circulated to MPC Members and will not be published on the Market Operator's website.

The MPC may invite such Trading Party and/or the Market Operator to send a representative to attend the relevant part of such meeting. MPC Members shall not disclose confidential information received in that capacity, in accordance with Section 4 of Schedule 10 of the MAC.

10. Conflict of Interest

MPC Members shall declare in advance any actual or perceived conflict of interest.

In the event of any conflict of interest is declared by a MPC Member, the Member shall notify the secretary for the matter to be discussed at the next appropriate MPC meeting. At the meeting, the MPC Members shall decide the most appropriate course of action.

11. Expenses

Where the Panel agrees, any Committee member who is not employed by the Market Operator can claim reasonable costs and expenses incurred in attending meetings or otherwise conducting business. The agreed Panel and Committee Expenses Policy is published on the Market Operator's website.

12. External Communication

MPC Members may be approached by members of the press or requested to speak at public events either on behalf of the Committee or in personal capacity. The agreed Committee Communication Policy is as approved by the Panel and published on the Market Operator's website.