

Minutes of the Market Performance Committee Meeting 51

1 July 2021 | 09:30-15:45

Held via Videoconference (Microsoft Teams)

Status of the Minutes: Final

MEMBERS PRESENT

Pamela Taylor	PT	Chair	Adam Boyns	AB	Customer Representative Committee Member
Claire Yeates	CY	Retailer Committee Member	Wendy Monk	WM	Retailer Committee Member
Trevor Nelson	TN	Retailer Committee Member	Jesse Wright	JW	Wholesaler Committee Member
Gerard Lyden	GL	Wholesaler Committee Member	Michael Rathbone	MR	Wholesaler Committee Member

OTHER ATTENDEES

Samantha Webb	SW	MOSL Observer	Carol Sgamaro	CS	Secretariat
Markus Lloyd	ML	MOSL Observer	Sam Mawby	SM	Secretariat
Georgina Mills	GM	Ofwat Presenter	Alexandra Piper	AP	MOSL Observer
Darren Hayes	DH	Ofwat Presenter	Brett Conibere	BC	
Matt Labrum	MLA	MOSL Observer	Kerry Spencer	KS	MOSL Observer
Adam Richardson	AR	MOSL Presenter	Sarah McMath	SM	MOSL Observer

APOLOGIES

Jo Ecroyd	JE	Wholesaler Committee Member	Patrick McCart	PM	Retailer Committee Member
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CLOSED SESSION

1. Welcome and Introductions

1.1. Apologies had been received and accepted from JE and PM.

2. Roadmap to outline approach to review of performance

2.1 The Chair introduced the item which outlined a potential approach to the review of Retailer Trading Party performance, for MPC feedback.

- 2.2 ML confirmed that MPC51_01 positioned the approach to reviewing performance outlining MOSL's proposal to create a holistic view of Trading Party performance. This encompassed a range of activities including settlement, yearly volume estimates (YVEs), vacancies, long unread meters (LUMs) and data quality, putting the impact to the customer at the centre of measuring performance.
- 2.3 The MPC noted that Retailer performance had been clustered in three groups. Group one utilised established KPIs that existed with the MPS (Market Performance Standards). Group two used a range of APIs (Additional Performance Indicators) which had already been established by MOSL following consideration by the MPC. Group 3 used Candidate APIs relating to potential areas of focus called out in the draft MPOP (Market Performance Operating Plan) that was under consultation.
- 2.4 The range of performance measures were presented in a scorecard format.
- 2.5 The Chair asked the MPC to consider whether the approach outlined was useful in that did it enable the prioritisation of Trading Parties that might be a cause for concern and facilitate the identification of wider market issues. In addition, was the methodology clear and were the metrics appropriate and weighted accurately.
- 2.6 The Chair noted the MPC's consensus and reflections on the following areas:
- that the proposed holistic approach to performance review was effective
 - performance should be measured against defined standards or market quartiles
 - reporting should not be split between associated and unassociated Retailers
 - subjectivity should be removed where possible
 - the approach needed to clearly align with customer outcomes
 - use of trends to be taken into account to provide a more nuanced view of performance
 - need for fairness to ensure Trading Parties were not unduly penalised
 - weighting needed further consideration particularly in relation to customer data and aligning these to customer outcomes
 - customer complaint and Trust Pilot scores could be useful to overlay on to the scorecard to identify the most significant issues more clearly for customers
 - the performance of all Retailers should be reviewed
- 2.7 In terms of next steps, the methodology would be refined taking account of MPC feedback.
- 2.8 The MPC would also need to consider how the methodology would be introduced to the market, how the approach fitted with existing league tables, the best mechanism to transition to the new format and how this would drive IPRPs (Initial Performance Rectification Plans) and PRPs (Performance Rectification Plans).
- 2.9 The MPC
- **COMMENTED** on the outlined approach to the review of Retailer performance.

3. Initial Performance Rectification Plans Update

3.1 AP drew the attention of the MPC to several key points in the information paper presented. In relation to the holistic approach outlined earlier in the meeting, AP confirmed that only OPS, MPS or APIs could be utilised in relation to PRPs and IPRPs. The holistic measures outlined in group three would need to be turned into APIs to be utilised. A holistic view could inform decision making and multiple performance issues could be escalated together to the MPC for review.

3.2 The MPC expressed concern in relation to the performance of one Trading Party.

3.3 It was agreed that the MPC should receive an update on the IPRP in relation to that Trading Party in July with a more in-depth report to follow in September which would take account of the data lag.

ACTION A51_01

3.4 The MPC

- **NOTED** the IPRP Report.

3.5 The MPC considered MPC51_03 which looked at Capped Charges for Trading Parties.

3.6 An MPC member commented that there was good evidence that this had been successful. Most of the Trading Parties were operating underneath the cap which meant that they were in the 'active zone' of the regime where underperformance led to further charges because the cap had yet to be reached.

3.7 The MPC asked that the success of the Capped Charges initiative should be communicated to the market and asked for an update on this at the July MPC meeting.

ACTION A51_02

GM left the meeting.

OPEN SESSION

4. Minutes Signoff

4.1 Subject to the correction of a minor typographical error in paragraph 6.6 (i.e. the removal of the phrase "details of the reputational survey"), the minutes of the MPC 50 meeting were approved as an accurate record.

5. Actions

5.1 The following actions could be closed: A30_05; A31_05; A44_02; A49_01; A49_011; A49_12; A50_02; A50_04; A50_05.

5.2 It was noted that the following actions would remain open: A47_01; A47_13; A49_04; A49_06; A49_10; A50_01; A50_03.

6. Market Performance Framework Evolution Working Group Update

6.1 CY provided an update on the proposed high-level plan for reforming the Market Performance Framework (“MPF”), seeking the MPC’s views and input on the initial proposals relating to some of the building blocks that should feature in a new and improved MPF.

6.2 CY went through the proposed timeline for the project, confirming that the aim was to implement the new framework in April 2023, noting that reputational incentives may be implemented prior to this date and that some of these may have ‘soft’ reputational launch prior to financial incentive. She added that a transitional period was likely to take place to phase out the original incentives.

6.3 It was noted that, throughout the proposed timescales, the MPC would be kept informed and would be asked to confirm that it was comfortable with the direction of travel that the project was taking.

6.4 In addition, there would be a high (but appropriate) level of socialisation with the market, so that the market was engaged and fully aware of the direction taken throughout the journey.

6.5 CY went through the aims for the consultation due to be launched in the Autumn 2021; these included, for example, how the proposed framework would apply as a whole (e.g. any potential cap or the absence of one) and any issues with setting performance level and incentive rates. It was noted that specific standards would not be included at this point.

Standard Principles

6.6 Regarding standard principles, the MPF Review working group (the “working group”) were proposing that they should:

- Be outcome focussed. Currently these were very transactional with little to no assessment on customer impact. Therefore, two criteria were being proposed: customer impact; and the impact on the efficiency of the market.
- Apply to the Trading Party accountable for delivering the outcome.
- Have a clear line of sight to a customer impact and market impact (or clearly improve the operation of the market, which would indirectly benefit customers). The sub-group acknowledged that this may be very challenging to achieve, nevertheless it was important to ensure it was carefully assessed.

6.7 One member commented that it was positive to see ‘overarching’ principles such as customer impact (both direct and indirect) and efficiency being the driver and the focus for the Standard Principles.

6.8 CY noted that one of the challenges would be making sure that the evaluation criteria was set up appropriately, so that when direct and indirect impacts were assessed, there would be transparency as to why certain points were prioritised and this would ultimately drive the level of incentives going forward.

- 6.9 The Chair highlighted that the application of accountability to a Trading Party principle should not cause detriment to the customer benefit principle.
- 6.10 CY acknowledged the point made and confirmed the sub-group would ensure that this would not happen; she added that throughout the MPF review journey the question of whether any step in the process could or would prevent a good customer outcome would be asked, as customers would be at the forefront of this process.

Incentive Principles

- 6.11 CY sought the MPC's feedback in relation to the draft Incentive Principles and whether a penalty and reward incentive would be appropriate as these had not featured on MPF before.
- 6.12 Regarding incentive principle, CY noted that the working-group were keen to use different mechanisms in different levers and for these be applied on a standard by standard basis (i.e. recognising that some elements would work for certain parties but not for others).
- 6.13 It was noted that the incentive principles in relation to BMEX and RMEX still needed to be evolved and refined, therefore they would not be discussed at this stage.
- 6.14 One member expressed some concern in relation to the reward only principle, particularly if it could lead to any built-in unfairness or rough justice. CY reiterated that the incentive principles would be applied on a standard by standard basis, to ensure there was fairness in their application and to make sure no one would be penalised unnecessarily or conversely, rewarded inappropriately.
- 6.15 CY stated that the working group would seek to obtain support from an external economic expert on many aspects of the MPF review, including in relation to the incentive principles, to prevent distortions and/or unfairness.
- 6.16 The Chair noted that, if the reward only principle was deemed appropriate, it may be beneficial to establish a higher threshold for it compared to that of the reward and penalty principle. This was because, from a customer perspective, a reward only (with no penalty equivalent) may raise questions as to why a reward should be given for something that parties were already required to undertake anyway.
- 6.17 CY noted this point and commented that when developing the scope for the external economic expert, they would be asked to assess what principles would work and provide rationale as to why.

Cap Principles

- 6.18 CY explained that the sub-group agreed that a cap weakened incentives and that, provided the new framework was robust and designed appropriately, there was a question as to whether a cap would be needed at all. It was noted that a further assessment of relevance and appropriateness of the cap would be undertaken once the standards were more clearly defined and in the event a cap was appropriate it would only apply in exceptional circumstances.
- 6.19 One member expressed support for a cap, albeit set at a very high level. The rationale being that a cap was an important consideration for companies to be able to assess their maximum exposure to certain events, as an unlimited exposure could pose concerns and undue burden even when applied in exception circumstances only.

- 6.20 CY noted that, although a cap was generally seen as 'bad' from a customer perspective because it dampens incentives, companies should not be exposed to high levels of penalties which could severely impact their ability to trade.
- 6.21 In response to a question asked, GM confirmed that once there was a better understanding around the standards and incentives, it would be important to carry out some scenario testing and modelling to work out the likely levels of exposure and whether they could be problematic and requiring a cap.
- 6.22 A member mentioned some circumstance which could be potentially classed as exceptional for the purpose of a cap, these included for example a joint venture between Trading Parties and the data migration work which resulted from that.
- 6.23 The Chair noted that most penalty regimes do have a cap, but this was generally a percentage of a company's turnover.

Redistribution Principles

- 6.24 The sub-group acknowledged that redistribution was a challenging element of the MPF framework. Therefore, some initial principles to be explored were being proposed, including compensation to affected party; to fund rewards for outperformance; innovation fund; charity donation; and to plug gaps in customer protection.
- 6.25 One member commented that plugging gaps in customer protection was a sensible principle to include as there was currently a gap in this area. The same member noted that the name "innovation fund" was already being used by Ofwat and suggested a different name be used for this redistribution principle to avoid any confusion.
- 6.26 One member expressed some concerns regarding the charitable donation route as, unless it was directly related to a market charity (such as a customer protection pot), a decision would have to be made about where the customers' money would be redistributed to, which could cause further complexities.
- 6.27 The Chair noted that it would be beneficial to have a structure or hierarchy to be followed, so that for example customers which were directly impacted would be the first ones on the list for redistribution purposes. However, if it was not possible to ascertain exactly who those customers were, a charity could be selected as a proxy if it could demonstrate it was benefiting customers in some way. Members supported this approach.

Performance Principles

- 6.28 In terms of performance principles, the sub-group felt that measurement of good performance should be absolute. However, where an absolute measure was not possible a weighted mean may need to be utilised. However, this was still being further developed.
- 6.29 In addition, any rectification should be timely and swift, underpinned by a clear and transparent criterion, perhaps based on rules or discretion. CY noted that there was a wide range of levers which could potentially be utilised such as rectification plans, increased charges (e.g. where a Trading Party consistently failed to perform perhaps there could be a multiplication charge applied to them) and potentially limiting trade, which would be a more extreme option. It was further noted that these principles were still in draft and would continue to be worked through with the MPC.

General Comments

- 6.30 The Chair noted that it would be important to have a rolling review included within the new MPF to continue to evolve and consequently improve performance. CY confirmed that although a review cycle and what that would look like had not yet been designed, this would be incorporated into the project in due course to ensure the framework would remain appropriate and that it was driving the right behaviours.
- 6.31 The MPC noted that the paper for this agenda item did not make it clear that the new MPF framework would apply to both Wholesalers and Retailers, and that it seemed to have a focus on Wholesalers. CY and GM thanked the member for the feedback and confirmed that this would be amended within the paper, as the principles would apply equally to both Wholesalers and Retailers.
- 6.32 A member stated that it would be beneficial to obtain input from the external economic experts on how to deal with relative prioritisation including elements from both inside and outside the market control. GM agreed that this was an important point for consideration, as the different rules and incentives which companies would be faced with would need to be appropriately balanced in particular in terms of customer impact, so as to enable companies to appropriately prioritise what was most important to them.
- 6.33 CY noted the scope for the external consultant's work would be brought to the MPC for review and discussion in due course.
- 6.34 The MPC confirmed that it was comfortable with the direction of travel for the MPF review project so far, regarding the proposed standard principles, incentive principles, cap principles and redistribution principles, subject to the above comments and observations.
- 6.35 The Chair asked CY what further support the sub-group were likely to require from the MPC going forward. CY confirmed that it would be beneficial to have a standing agenda item at the MPC meetings which would be used only if there were valuable points to be considered and discussed. In addition, decisions may need to be made ex-committee by the MPC to expedite certain matters.
- 6.36 CY noted that additional support had already been put in place from MOSL and added that the support from the external consultant would be critical.
- 6.37 GM noted that the evaluation methodology was in an initial draft format and that once this had been refined, it would need to be discussed with the MPC. Such discussion with the MPC was likely to be needed at around August/September 2021 and it was likely to require circa 2 hours on the MPC agenda.
- 6.38 The Chair agreed that the MPF Review could become a standing agenda item. Secretariat would liaise with CY regarding creating a strawman of topics and when they would require to be tabled at the MPC meetings.

ACTION: A51_03

- 6.39 The Chair encouraged CY and the sub-group to continue discussions with the MPC regarding any further resources, should this be required, to ensure the MPC could efficiently and effectively support the project, which was a very important priority for the Committee.
- 6.40 The MPC:
- **COMMENTED** on the proposed high-level plan for reforming the MPF.

7 Market Participants Update

7.1 The Chair noted that in the future it would be beneficial for the presenters for this agenda item to submit a written update in advance of the meeting.

7.2 The MPC received an update from the following Market participants:

Ofwat

7.3 The Committee took the Ofwat written update as read.

CCW

7.4 Due to time constraints at the meeting, AB agreed to update the MPC via email after the meeting.

ACTION: A51_04

AB left the meeting.

Panel

7.5 AR noted the Panel Headline report was a useful source of information regarding the key events and decisions from Panel meetings, noting that these were published on the MOSL website within a few days following a Panel meeting. AR highlighted the main points from the 29 June Panel meeting.

7.6 He noted that meeting had covered a wide range of topics, including on the Bilaterals Interface Solution, with the Panel making its first recommendation to Ofwat regarding the updates and changes going through the Bilaterals Programme.

7.7 In addition, the Panel approved the governance document in relation to the Market Improvement Fund.

7.8 The Panel received an update on the Panel purpose and composition discussions which were ongoing. AR thanked all who provided feedback into the consultations that were run, noting that a very positive amount of responses had been received and were carefully scrutinised by the Governance Sub-group.

7.9 AR noted that there would be an ad-hoc Panel meeting on 8 July to discuss the recommendations to Ofwat in relation to the change proposals around Panel composition and Code principles.

7.10 The MPC:

- **NOTED** the update from the Market participants.

8 Any Other Business

8.1 There being no further business, the Chair closed the open session of the meeting.

GL left the meeting.

CLOSED SESSION

9. Meeting Reflections:

9.1 The MPC reflected on the meeting.

9.2 There being no further business, the Chair closed the meeting.