

## Minutes of Panel Meeting 49

24 November 2020 | 10:30 – 16:00

Videoconference

Status of the Minutes: **Draft**

### MEMBERS PRESENT

Trisha McAuley OBE	TM	Chair	Michael Rathbone	MR	Panel Member (Wholesaler)
Michelle Burns	MB	Panel Member (Associated Retailer)	Helyn Mensah	HM	Panel Member (Independent)
Richard Barton	RB	Panel Member (Associated Retailer)	Elsa Wye	EW	Panel Member (Independent)
Trevor Nelson	TN	Panel Member (Unassociated Retailer)	Pamela Taylor	PT	Panel Member (Independent)
John Vinson	JV	Alternate - Panel Member (Unassociated Retailer)	Mike Keil	MK	Panel Member (Customer Representative)
Claire Yeates	CY	Panel Member (Unassociated Retailer)	Shaun Kent	SK	Alternate - Affiliated Panel Member (Ofwat)
Mark Holloway	MH	Panel Member (Wholesaler)	Adam Richardson	AR	Panel Secretary
Martin Mavin	MM	Panel Member (Wholesaler)	Sarah McMath	SM	Affiliated Panel Member (MOSL)

### OTHER ATTENDEES

Carol Sgambaro	CS	MOSL Secretariat	Andrew Johnson	AJ	MOSL Observer
Steve Arthur	SA	MOSL Presenter item 5	Ethan Fleming	EF	MOSL Secretariat
Stuart Boyle	SB	MOSL Presenter items 7 & 9	Gary Lynn	GL	Southwest Water Observer
Abu Rashid	ARa	MOSL Presenter item 11	David Oliver	DO	Northumbrian Water Observer (GDPR Committee Member)
Amanda Hinde	AH	MOSL Presenter item 12	Antoine Schmidt	AS	Thames Water Observer
Huw Comerford	HC	MOSL Presenter item 13			
Steve Formoy	SF	MOSL Presenter item 14			

### APOLOGIES

Nicola Smith	NS	Panel Member (Unassociated Retailer)
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## 1. Welcome and Introductions

- 1.1 The Chair welcomed Panel Members and all other attendees to Panel Meeting 49.
- 1.2 It was noted that NS had sent her apologies for the meeting. JV was attending the meeting as alternate for NS.
- 1.3 It was further noted that notice of the meeting had been given, that the meeting had been properly convened and that a quorum was present. The Chair declared the meeting open.

## 2. Minutes and Outstanding Actions

- 2.1 After due consideration, the Panel Members approved the minutes for the Panel meeting 47a (21 October 2020) and Panel meeting 48 (27 October 2020).
- 2.2 The Panel agreed that the following actions could be closed as they had been completed:
  - A47\_02; A47\_04; A47\_05; A48\_01.
- 2.3 In relation to action A48\_01, the Panel would like to have regular visibility of the development of the Bilaterals Programme and requested that an update be provided, including the key milestones for delivering code changes, at the next Panel meeting.

**ACTION: A49\_01**

- 2.4 The Panel further agreed that the following actions would remain open:
  - A26b\_04; A39\_05; A45\_10, A47\_01; A47\_03; A48\_02.

## 3. Ofwat Update

- 3.1 SK noted that Ofwat and MOSL published a joint statement in relation to the second national lockdown (and what it meant for the industry) on 4 November. Within that communication, it was outlined that Ofwat would be taking steps in relation to the Market Performance Framework (MPF) charges and the extension of the suspension of charges, with the Operational Performance Standards/ Market Performance Standards (OPS/MPS) charges being suspended until the end of December 2020, noting that a letter had recently been published by Ofwat confirming this.
- 3.2 Ofwat had also been considering the implications for the Customer Protection Code of Practice, in particular in light of two proposed amendments put forward by a trading party and CCW in reaction to the second national lockdown and what it would mean for business customers. In relation to those, Ofwat and CCW published a joint statement on 13 November.
- 3.3 It was noted that Rachel Fletcher, in her speech at the November CEO Forum, had emphasised the vision for the water market as centered around the customer, in particular regarding the creation of value and having the right behaviours in the market to support better outcomes for customers.
- 3.4 The Retailer Wholesaler Group (“RWG”) water efficiencies sub-group was making good progress on developing its action plan. The action plan was expected to be published shortly.

- 3.5 It was noted that Ofwat was in the process of gathering information regarding its market monitoring programme in respect of the fourth year of the market which would be published in 2021.

#### 4. MOSL Business Update

- 4.1 SM noted that it would be helpful to discuss the specifics of the dormant licence review at a future Panel meeting, given that conversations on this subject were still ongoing with Ofwat. SM commented that Trading Parties were dormant for different reason and therefore, it was unlikely that there would be a single solution to the issue.
- 4.2 It was agreed that the Panel would establish a working group to undertake a lessons learned exercise in relation to Covid. It was noted that there was a need for MOSL and Panel to work more collaboratively in so far as the market strategy around Covid was concerned.
- 4.3 The Panel Secretary asked for volunteers from the Panel for this working group.

#### 5. MOSL Market Update

- 5.1 In relation to Market improvement, SA noted that the RMEX survey had been issued to Trading Parties. In addition, MOSL were currently reviewing the request for information (RFI) responses received from the Data Quality survey and would be providing feedback to the MPC at its meeting on 26 November.
- 5.2 One Panel Member asked if there was a timetable that could be shared with Trading Parties on the RFIs that were due to be issued. The Member also stated that it would be useful for such timetable to outline how time consuming RFIs and consultations were likely to be by, for instance, providing grades in relation to the level of input that would be required from Trading Parties when completing the RFI or consultation.
- 5.3 MOSL acknowledged that there had been a large amount of RFIs and consultation issued in recent weeks. It was explained that, outside the change report such a timetable of wider consultations did not exist at the moment and acknowledged that this was a gap which MOSL would address, noting that MOSL were aiming to create a forward looking timetable which would incorporate future RFI information not only from MOSL but also from Ofwat, CCW and Defra.
- 5.4 One Panel member requested that the headline results from the RMEX survey be shared with the Panel. SA agreed that this would be shared with the Panel following the MPC meeting on 26 November.

#### **ACTION: A49\_02**

- 5.5 In addition, the Panel member requested that the reports on Yearly volume Estimates (YVEs) which were being shared with MPC, to also be shared with Panel, so that it could have sight of the activities in the market. SA confirmed that these reports would be shared with Panel as the MPC continues to monitor developments on that area.
- 5.6 Another Panel member asked how MOSL were assessing the appropriateness of YVE changes. SA confirmed that this would ultimately be informed by the consumption data, as it becomes available, noting that the question of 'what a good YVE looks like' was a very challenging

question. MOSL confirmed that the assessment on the appropriateness of YVEs was being looked at using customer segmentation data where possible.

## 6. Committee Reports

### Disputes Committee (DC)

- 7.1 The DC Chair confirmed that the first DC meeting was held on 18 November; one of the key points discussed at that meeting was the process for non-trading disputes.
- 7.2 The Committee was still looking for a Retailer nomination. The Panel noted that it would be useful for the Market Governance Review to look at different models of representation for the Committees and consequently, the composition requirements under the Terms of Reference not only for the DC, but also for all Panel Committees.

### General Data Protection Regulation (GDPR) Issues Committee

- 7.3 It was noted that updates on the GDPR Issues Committee would be discussed under agenda items 10 and 11 below.

### Credit Committee (CC)

- 7.4 The CC had not met since the October Panel meeting. The Panel noted the CC update included in the Committee Reports.

### Market Performance Committee (MPC)

- 7.5 The Panel noted the MPC update within the Committee Reports which had been provided by John Gilbert, the MPC Interim Chair, in advance of today's meeting.
- 7.6 The Panel had no questions or comments in relation to the MPC update.

## 7. Change Report

- 7.1 SB presented the change report, noting that there had been five implemented code changes in November 2020, including:
  - CPM019 - GDPR Data Security Standards
  - CPW102/CPM030 - Gender Neutrality in the Market Codes
  - CPW077 - Establishing Trade Effluent Charging Strength Methodology
  - CPW087 - Ability for Wholesalers to add meter reads
  - CPW092/CPM029 - Unified Disputes Process and Committee
- 7.2 It was noted that the consultation window for responses on CPW108 (Agreement to Unplanned Settlement Runs) had recently been concluded and that CPW106 (De-registration of Long Term Vacants) was currently being consulted on.

## 8. Draft Recommendation Report: CPM036 - Provision to vary term of Panel Members

- 8.1 The Panel considered change proposal '[CPM036 - Provision to vary term of Panel Members](#)'.
- 8.2 This change proposal would allow for Panel Members' term of office to be extended (on request and subject to approval by Ofwat) in order to provide for efficiency in the timing of forthcoming elections where these may be impacted by the outcome of the Panel's Market Governance Review.
- 8.3 It was noted that a consultation had taken place in relation to this change proposal with 13 responses (9 wholesalers, 3 Retailer, CCW) generally in agreement.
- 8.4 In terms of justification for an extension, consultation responses stated that the request for an extension should not be used solely to extend tenure of existing panel members or to block new entrants and viewpoints. In terms of safeguards against these, SB explained that when the Panel proposes that an extension period takes place, it would ultimately be for Ofwat to accept or reject the Panel's request. It was noted that Ofwat would also have the ability to consult within the 20 Business Days' period if deemed appropriate.
- 8.5 Following a query from one Panel member on the legal drafting, SB undertook to check that this change proposal would not imply an obligation on the Regulator, noting that the expectation was that if Ofwat did not approve the request for an extension, the said extension would not take place.
- 8.6 One Panel Member stated that, in the interest of transparency, it would be useful for there to be step in the process whereby when the Panel makes a request for an extension to Ofwat that this is communicated to Trading Parties outlining the reasons for the Panel's request.
- 8.7 SB stated that when calling for nominees in 2021, it would be made clear if there was an outstanding request to Ofwat which could result in the election process being delayed.
- 8.8 The Panel:
- **AGREED** to recommend the implementation of CPM036 to Ofwat for approval (12 in favour)<sup>1</sup>;
  - **AGREED** to recommend an implementation date of;
    - 15 February 2021, if Ofwat approval is received by 21 January 2021.

## 9. Draft Recommendation Report: CPW105- Provisions of Information Obligation

- 9.1 The Panel considered Change Proposal '[CPW105 - Provisions of Information Obligation](#)'. This change proposal sought to address the ambiguity of the Panel's involvement in the Provisions of Information obligation set out in section 1.2.11 of the Market Terms. This section obliges

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<sup>1</sup> While the Panel Chair has a vote, the new Panel Chair has indicated that, for the time being, they would abstain during voting. Given this approach, the Chair's abstention has not been recorded 'for' or 'against' each decision in these minutes.

MOSL to establish a summary list of non-code obligated materials it publishes to certain groups and the Panel approves the information to be published.

- 9.2 ARa explained that the proposed solution would seek to remove the Panel’s involvement in the obligation, which was seen to be unclear, and it would provide additional clarificatory changes to section 1.2.11 (e.g. clarifying the inclusion of materials that are not necessarily published, i.e. which are circulated via email).
- 9.3 It was noted that the proposed solution would not limit the Panel’s ability to request sight of the list of non-code obligated materials, if it wished to do so. The Panel agreed that MOSL had the appropriate internal mechanisms in place, such as the compliance framework, which were subject to monitoring and which ensure that information is circulated to the correct recipients. The Panel noted that it should trust MOSL to handle and manage administrative issues of this nature.
- 9.4 The Panel:
- **AGREED** (unanimous) to recommend the implementation of CPW105 to Ofwat for approval (12 in favour).
  - **AGREED** to recommend an implementation date of;
    - 14 May 2021, if Ofwat approval is received by 22 April 2021; or
    - 27 August 2021, if Ofwat approval received by 6 August 2021.

## 10. Draft Recommendation Report: CPM033 – Improved process for managing Data Subject Rights Requests (DSRR)

- 10.1 The Panel considered change proposal ‘[CPM033 - Improved process for managing Data Subject Rights Requests](#)’. This change proposal sought to facilitate compliance with the obligations and timeframes set out in the General Data Protection Regulation (“GDPR”) and Data Protection Act 2018 in relation to Data Subject Rights Requests through improvement of the process for the handling and recording of such requests.
- 10.2 In response to a question from one Panel member, HM explained that while the Experience Review conducted by the Committee in 2019 did not indicate there was an issue with DSRRs involving multiple parties, the industry was obliged to put processes in place to facilitate compliance with statutory requirements.
- 10.3 Panel Members noted the Committee had debated and decided not to create a stand-alone dispute resolution process for DSRR or to allow attachments to DSRR Records. However, the Panel accepted the Committee’s recommendations that this be revisited in future in light of experience of this change, if implemented, and the Unified Disputes Process implemented under CPM029/CPW029.
- 10.4 One Panel member queried the reason why the GDPR Issues Committee (the “Committee”) decided that parties would not be allowed to add attachments to the DSRR Record in Kissflow. HM explained that, while the Committee acknowledged the convenience of being able to upload attachments to Kissflow, it felt that that the convenience aspect did not outweigh the risks which this would bring due to the unknown nature of the contents included within those

attachments, which could potentially include a broad array of personal data (including sensitive data), and the Committee would have no visibility over the documents uploaded.

#### 10.5 The Panel:

- **AGREED** (unanimous) to recommend the implementation of CPM033 to Ofwat for approval (12 in favour).
- **APPROVED** the contents of the DSRR Record, should this change be implemented.
- **AGREED** to recommend an implementation date of;
  - 15 February 2021, if Ofwat approval is received by 4 January 2021; or
  - 14 May 2021, if Ofwat approval received by 16 April 2021.

## 11. GDPR Issues Committee – Final Committee Report

11.1 The Panel reviewed the GDPR Issues Committee (“Committee”) final report, which outlined the Committee’s review of market data protection compliance arrangements under GDPR and the Data Protection Act 2018.

11.2 The Panel noted the proposed nine areas for future work and/or monitoring which had been recommended by the Committee, as outlined in detail in the Committees’ final report to Panel.

11.3 One of the recommendations within the report, was for the Panel to approve the issuing of a communication to be sent by the GDPR Issues Committee to the RWG, advising that particular items of information (referred to in the RWG Good Practice Guide) could be personal data and, therefore, would be subject to the GDPR. It was noted that there would be no further action for the Panel to take following the issuing of this communication, as it would be for the RWG to put in place whatever action(s) it deemed appropriate to deal with this.

**ACTION: A49\_03**

11.4 One Panel member asked who would be required to take forward the proposed areas for future work and/or monitoring as outlined within the report.

11.5 HC and HM explained that it would be for the Panel to decide how to deal with these recommendations at the appropriate time; some of the options could include, for instance (but not limited to), to re-convene the GDPR Committee (either in its original membership composition or holding an election to call for nominees) or to create a sub-group of the Panel.

11.6 HM highlighted that, if the Panel decided to reconstitute the GDPR Committee there would be advantages in retaining its original membership composition due to their accumulated knowledge of the specific issues of the Committee.

#### 11.7 The Panel:

- **APPROVED** (unanimous) the issuing of the communication, as drafted, to the RWG (12 in favour); and
- **APPROVED** (unanimous) the future work and monitoring of recommendations, as outlined in the Committee final report (12 in favour).

## 12. Market Improvement Fund

- 12.1 SF stated that the purpose of today's discussion was to obtain confirmation from the Panel that it was comfortable with the current proposed direction of travel for Market Improvement Fund project.
- 12.2 SF provided a brief background to the Market Improvement Fund project, explaining that the next steps of the project would be to agree its fundamental principles, before finalising a more detailed governance and fund mechanics.
- 12.3 SF noted that one of the fundamental principles of the Fund would be to provide a clear and tangible benefit to the market, whilst supporting innovation for the benefit of end customers.
- 12.4 Panel members also highlighted the importance of ensuring that the Fund would not be used to fund 'business as usual' type of activities, but that innovation was used for the benefit of the market more broadly. In addition, Panel members stated that it would be important to establish how Intellectual Property and consequent confidentiality of innovations would be protected throughout the process.
- 12.5 One Panel Member noted that it would be helpful for the organisations contending for the fund to be financially invested in their proposed project in some way as this was often seen as a driver for better quality proposals.
- 12.6 The Panel requested to have an early sight of the criteria by which businesses would be assessed in due course, with the aim to ensure that the fund would be used in a fair manner and to ultimately deliver a benefit for customers.
- 12.7 It was agreed that a summary update in relation to the gap on MOSL's capital position, which was discovered around 12 months ago, would be provided to Panel members as part of the MOSL Business Update, to reassure the Panel that this was no longer an issue as it had been addressed by MOSL.

### **ACTION: A49\_04**

- 12.8 The Panel discussed who would be responsible for the decision making for example, whether this should be delegated to a subgroup of Panel. SF noted that appropriate safeguards against conflicts of interest would need to be put in place.
- 12.9 the Panel confirmed that the working group of the Market Improvement Fund would report directly to the Panel.
- 12.10 SF thanked Panel members and confirmed that the feedback received would be incorporated in the Market Improvement Fund framework.

## 13. Any Other Business

- 13.1 The Panel Secretary noted two items of AOB.
- 13.2 One being in relation to the *Quarterly workstreams update*. As the Panel receives quarterly updates on the status of its workstreams (with the next update due at the 15 December

meeting), the Panel Secretary asked the Panel whether it would like to receive such updates in December (given that it was only a few weeks away and therefore, the updates would not be substantially different to the updates discussed at the Panel workshop held on 23 November) or whether it would prefer to defer it to January.

- 13.3 The Panel requested that an update be provided on the Metering workstream, including the reflections on prioritisation from Panel following the workshop session. The Panel was comfortable to receive an update on the remaining workstreams at its January meeting.
- 13.4 The second item of AOB related to the *Code Advisory Group* (“CAG”). The CAG has five members (3 Wholesalers; 2 Retailers), with a quorum of four members, and wishes to recruit one to two further members. It was suggested, therefore, that a call for nominations be issued.
- 13.5 The Panel agreed that a nominations process should be run. It was agreed that an update on the process (including any nominations) would be submitted the Panel as a late paper for the December meeting, due to the timescales on the election process.
- 13.6 There being no further business, the Chair closed the meeting.

## Closed Session

### 14. Confirm Decisions from November Workshop

14.1 The Panel reviewed the main points agreed at its Workshop held on 23 November. It was noted that the actions from the Workshop would be taken forward either as part of the Panel meetings or fed back into the work undertaken by one of the current Panel workstreams (e.g. the market governance review work), as appropriate.

14.2 The Panel:

- **AGREED** (unanimous) the actions and key points arising from its workshop of 23 November 2020.

### 15. Deputy Panel Chair

15.1 The Panel Chair confirmed their intention to appoint a Deputy Panel Chair, noting that an email to this effect had been circulated to Panel members in advance of the Panel meeting.

15.2 Panel Members were supportive of the proposed appointment.

15.3 The Panel:

- **NOTED** the appointment of PT as Panel Deputy Chair.

### 16. MPC Chair

16.1 The Panel Chair outlined MOSL’s preferred candidate for the role of the Market Performance Committee (MPC) Chair.

16.2 The Panel:

- **NOTED** the appointment of PT as MPC Chair.

## 17. Reflections on Meeting 49

17.1 The Panel reviewed the effectiveness of today's meeting.

17.2 It was noted that that these "wash up" sessions would become a standing item at the end of the agenda for every Panel meeting going forwards, as an opportunity for Panel members to reflect together on what went well and on what could be improved with the aim to continue to ensure the 'smooth' running of Panel meetings.

## 18. Actions

Action Number	Action
A49_01	the Panel would like to have regular visibility of the development of the Bilaterals Programme and requested that an update be provided, including the key milestones for delivering code changes, at the next Panel meeting.
A49_02	It was requested that the headline results from the RMEX survey be shared with the Panel. SA agreed that this would be shared with the Panel following the MPC meeting on 26 November.
A49_03	A communication would be sent by the GDPR Issues Committee to the RWG, advising that particular items of information (referred to in the RWG Good Practice Guide) could be personal data and, therefore, would be subject to the GDPR.
A49_04	It was agreed that a summary update in relation to the gap on MOSL's capital position, which was discovered around 12 months ago, would be provided to Panel members as part of the MOSL Business Update.