

# Minutes of Panel Meeting 53

30 March 2021 | 10:00 – 17:00

Videoconference

Status of the Minutes: **FINAL**

Trisha McAuley OBE	TM	Chair	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)	Nicola Smith	NS	Panel Member (Unassociated Retailer)
Charlotte Glass	CG	Panel Member (Associated Retailer)	Pamela Taylor	PT	Panel Member (Independent)
Claire Yeates	CY	Panel Member (Unassociated Retailer)	Christina Blackwell	CB	Alternate - Panel Member (Customer Representative)
Mark Holloway	MH	Panel Member (Wholesaler)	Sarah McMath	SM	Affiliated Panel Member (MOSL)
Martin Mavin	MM	Panel Member (Wholesaler)	Dan Mason	DM	Affiliated Panel Member (Ofwat)
Michael Rathbone	MR	Panel Member (Wholesaler)	Adam Richardson	AR	Panel Secretary
Fallon Wilkinson	FW	Panel Member (Associated Retailer)			

## OTHER ATTENDEES

Stuart Boyle	SB	MOSL Presenter item	Ethan Fleming	EF	MOSL Secretariat
Evan Joannette	EJ	MOSL Presenter item	Kerry Spencer	KS	MOSL Observer
John Gilbert	JG	MOSL Presenter item	Ivy Mandinyenya	IM	MOSL Presenter item
Steve Formoy	SF	MOSL Presenter item	Christopher Wright	CW	Castle Water Observer
Gary Lynn		South West Water			

## APOLOGIES

Mike Keil	MK	Panel Member (Customer Representative)
-----------	----	---

## 1. Welcome/Introductions and Declarations of Interest

1.1. Apologies had been received from MK who had nominated CB as their alternate.

- 1.2. The Chair reminded Panel Members that, in line with section 5.7 of the MAC, they were to act impartially and not act in the interest or as a representative of any particular body or individual. If Panel Members believed they had an actual or perceived conflict they should declare this at the start of the meeting or before an agenda item. Items discussed in closed sessions were confidential and should not be discussed with individuals outside of the Panel or confidential papers shared.
- 1.3. The Chair reminded Panel members to complete the register of interests.
- 1.4. The Chair asked Panel Members for any declarations of interest and none were advised.
- 1.5. An observer had given the Chair advance notice of a request to make comments against specific agenda items. This had been granted by the Chair.

## 2. Minutes and Outstanding Actions

- 2.1. The Panel approved the minutes for the Panel meeting 52 and Panel meeting 52a.
- 2.2. The Panel agreed that the following actions could be closed as they had been completed:
  - 2.2.1.A52\_01 and 52\_03
- 2.3. The Panel further agreed that the following actions would remain open:
  - 2.3.1.A26b\_04; A39\_05; A45\_10; A47\_03; A52\_02

## 3. Ofwat Update

- 3.1. DM reported that Ofwat had approved the following changes: '[CPW114/CPM037: Housekeeping Changes to Correct Typographical Errors and Enhance Standardisation](#)', '[CPW113: Housekeeping Changes to Correct Typographical Errors and Enhance Standardisation](#)' and '[CPM033: Improved process for managing Data Subject Rights Requests](#)'. The following changes were due an Ofwat decision before the next meeting: '[CPW115: Amending and updating the definition of Insolvency Event to remove the 'negative net assets' criterion](#)' and '[CPW57: Improving transparency of Credit Guarantee Arrangements](#)'.
- 3.2. Ofwat had published a decision on the Customer Code of Protection change on internal meter reads and would be issuing a communication on this shortly.
- 3.3. A call for information would be issued shortly to understand Retailer approaches where customers had credit balances with Retailers with a view on if additional protections should be introduced. This was a continuation of pre-COVID work that had had to be delayed.
- 3.4. A commitment had been made to publish guidance on an approach to alternative credit arrangements and this was likely to be issued after Easter.
- 3.5. The consultation on bad debt was due to close on the 6th April. The Q&As from an Ofwat hosted webinar were available [online](#).
- 3.6. A consultation on BMEX would take place in April. This may result in changes to the market codes, the code of practice for customers or the Market Performance Framework (MPF).

## 4. Change Assessment and Implementation Report

- 4.1. The Panel considered the proposed assessment approaches and assessment timetables for new change proposals: [‘CPM036/CPW116: Clarification and removal of redundant clauses in the Unified Disputes Process’](#) and [‘CPW117: Shortening the late payment default timeline for a credit support reduction’](#) and amended proposals: [‘CPW085: Premises Vacant transaction link to DPIP’](#) and [‘CPM021: Panel Membership and Voting Rights’](#).
- 4.2. An observer commented that the assessment for CPW117 would be complex and would represent a fundamental change to the payment terms which should not be made in isolation as it may have an effect on other credit arrangements. This may make the timetable proposed unfeasible and so progress should be carefully monitored.
- 4.3. A Panel Member asked that the consultation questions in CPW117 be sufficiently broad as to possibly identify other solutions.
- 4.4. A Panel Member noted that although the consultation should not be overly narrow the proposer had raised a change in relation to a particular point and it should not become a review of broader credit arrangements.
- 4.5. A Panel Member asked that a worked example with figures be included to help understanding. This did not have to be based on real figures and could be purely illustrative. SB confirmed the proposer had submitted some calculations and MOSL had some figures on which to make informed assumptions.
- 4.6. A Panel Member asked that the customer benefit be included in CPW117.
- 4.7. A Panel Member asked if the CPW117 solution could be modelled on the market since market opening to determine if it would have placed parties into default sooner. Another Panel Member commented that if CPW117 had been in place this would have driven different behaviours. SB reported that it may be possible to examine those who had exited the market, and if they would have exited sooner, due to this change but that MOSL had no direct visibility of the dates of payment by Retailers in respect of invoices issued by Wholesalers.
- 4.8. It was noted that CPW085 would be consulted on and would be presented to Panel in July following the Panel decision at the last meeting to return it to MOSL for further analysis. If approved, it would be included in the May 2022 CMOS release.
- 4.9. Several Panel Members noted that they were open to providing individual feedback to MOSL and the proposer on CPW085 to address concerns previously raised. MOSL confirmed that they were grateful for the offer and would be in contact shortly.
- 4.10. CPM021 had previously been on hold pending the result of the governance review and would now be progressed towards a Panel recommendation June.
- 4.11. A Panel Member commented that a consultation was due to run over easter and there were several consultations planned over April and May resulting in a busy period for Trading Parties. Panel Members agreed that [‘CPW110: Sharing Non-Household Emergency Contact Details’](#) should have a longer consultation period due to the Easter break.
- 4.12. SB explained that if responses to consultations were low then they could be extended. However, this was sometimes restricted due to the need to meet Panel dates. When multiple consultations were issued Trading Parties typically focussed on the ones with most impact.

- 4.13. A Panel member noted that they hoped the Governance Review would include how to engage more parties in consultations; in particular smaller or new entrants.

The Panel:

- **AGREED** (unanimous) the assessment plans for new change proposals (14 in favour)
- **AGREED** (unanimous) the amended change proposal plans (14 in favour).

## 5. CPW070a: Bilaterals Interface Solution

- 5.1. The Panel considered early sight of package two of the amended documentation under Change Proposal '[CPW070a: Bilaterals Interface Solution](#)'. This change sought endorsement for Code Subsidiary Documents 0701 (Bilateral Common Processes), 0704 (Bilateral Processes for Part C - Confirmation and verification of supply arrangements) and Schedule 1, Part 3: Operational Terms to give the industry confidence in their systems development ahead of formal code recommendation.
- 5.2. JG confirmed that the governance of code approvals had been discussed at the Bilaterals Steering Group and agreed that the process was appropriate and was being discharged appropriately. JG reminded the Panel of the governance groups involved and the number of Trading Parties that were engaged on the groups. The minutes of the groups were available on request.
- 5.3. The Panel noted that a survey seeking assurance that Trading Parties could log into the portal had a response rate of 100% of SPIDs in the Market.
- 5.4. MOSL did not believe a statutory consultation was needed due to the extensive engagement that had been undertaken and the strong support from the market for the project.
- 5.5. EJ confirmed that the documents being presented had received support from the governance groups.
- 5.6. EJ thanked Ofwat for their ongoing support and the strong collaboration between Ofwat, MOSL and the CAG.
- 5.7. DM confirmed that Ofwat was broadly supportive of the approach and were pleased at the gathering momentum in the project. Ofwat was reassured by the engagement with the market and the output from the governance groups and currently did not intend to consult.
- 5.8. A Panel member reported that, as a CAG member, they could confirm that the CAG took their responsibilities seriously and had spent a considerable amount of time reviewing documents in an iterative process. This would create solutions that were robust and more than fit for purpose.
- 5.9. A Panel Member reported that they were on a Pathfinder group and supported the comments from the CAG member as resulting in a solution that was more than fit for purpose.
- 5.10. A Panel Member asked that the customer impact be included more explicitly. EJ confirmed that the project team would work with CCW to capture this appropriately.
- 5.11. The Panel thanked MOSL for a comprehensive paper and presentation that gave a clear line of sight into the project governance and was producing high quality results.
- 5.12. A Panel Member commented that they hoped this presentation could be used as a learning point for presentations of complicated projects.

- 5.13. A Panel Member asked when the CAG would be undertaking a further review and when the documents would be consulted on. EJ confirmed that the detailed page by page review by the CAG had begun. The issuing of summary packs was to mitigate the need for large scale consultation. The CAG would issue a final recommendation when the final versions of the documents were presented.
- 5.14. DM requested that it be made clear where the CAG had requested a change and what changes had been made to reflect this.

The Panel:

- **AGREED** (unanimous) it was minded to support Code Subsidiary Documents 0701 (Bilateral Common Processes), 0704 (Bilateral Processes for Part C - Confirmation and verification of supply arrangements) and Schedule 1, Part 3: Operational Terms (14 in favour).

## 6. CPM38/CPW116 Clarification and removal of redundant clauses in the Unified Disputes Process

- 6.1. The Panel considered Change Proposal '[CPM036/CPW116: Clarification and removal of redundant clauses in the Unified Disputes Process](#)'. This Change Proposal sought to update section 11.2.1 and section 17 of WRC Schedule 1 Part 2 Business Terms, Process B2 of WRC Schedule 1 Part 3 Operational Terms and Schedule 9 ,section 17, 18 of the MAC in order to align with the changes made by CPW092 which was implemented on 13 November 2020.
- 6.2. An observer noted that the proposer of the change wished to raise some further amendments to them which would be of benefit to include.
- 6.3. A Panel Member noted that the Disputes Committee had discussed the change and the Terms of Reference (ToR) several times including collaboration outside of meetings and comments from the proposer had been made after the deadline. The deadline had been set to ensure it could be presented at the Panel meeting.
- 6.4. A Panel Member expressed concern that an observer was relaying comments from the proposer. Another Panel Member reflected that it was important for there to be clarity over the solution and that this observation, together with the late receipt of comments in relation to the Disputes Committee deadline, cast doubt on the proposer's view with respect to their preferred solution.
- 6.5. A Panel Member asked how the legal text was produced and approved. AR responded that legal text was generated in house by MOSL's general counsel.
- 6.6. A Panel Member expressed disappointment that the proposer had allowed this to occur.

The Panel:

- **AGREED** (unanimous) to return CPM036/CPW115 to MOSL for further assessment (14 in favour).

## 7. Governance Review Roadmaps

- 7.1. The Panel considered the Governance Review Roadmaps proposal, which outlined revisions to the plan for taking forward the recommendations of the independent review of Panel Effectiveness.

- 7.2. AR reported that the redrafted plans allowed for Panel feedback at an earlier stage. A communications plan to support this was being developed which included consultation with Trading Parties and use of the Strategic User Forum/webinar to seek feedback in a discussion environment.
- 7.3. A Panel Member asked if the Panel could be engaged earlier on the change triage and decision-making framework as this had always been a significant challenge since market opening and Panel Members may have useful insights.
- 7.4. A Panel Member suggested 360 feedback reviews of Panel Members as part of the options to support Panel Member development under the service roadmap.
- 7.5. A Panel Member asked if it was possible to see the detailed plan of activities that supported the roadmaps. AR confirmed that he would be happy to discuss the detailed project plan on an individual basis with any Panel Members that wished to run through this detail.
- 7.6. An observer noted that at the last meeting there had been support for engaging with the industry at an early stage possibly even before a strawman was produced and this plan did not appear to reflect that.
- 7.7. A Panel Member suggested that the governance review reporting may benefit from lessons learnt from the bilaterals paper. Another Panel Member suggested that Panel Members contact MOSL to confirm the information they wished to see in future iterations.

The Panel:

- **AGREED** (unanimous) the strategic roadmap (14 in favour);
- **AGREED** (unanimous) the service roadmap (14 in favour).

## 8. Market Improvement Fund

- 8.1. SF reported that the launch of the fund had been postponed due to full resumption of market performance charging not being until April. This created an indicative timetable of six months from the resumption of full charging to the first award of funds. This would allow time for funds to build and for the fund to be publicised.
- 8.2. MOSL was working closely with Ofwat to ensure there were synergies between the funds with similar application processes, terms and conditions and to guide Trading Parties to which fund they should apply to. Lessons could also be learnt from Ofwat's launch and applied to the launch of the Market Improvement Fund.
- 8.3. MOSL was proposing that two tiers of funds be launched. A smaller more agile fund with bids capped at £50,000 to be launched first. This would then inform the launching of a larger fund.
- 8.4. MOSL proposed some broad outlines for themes for bids which may help applicants in tailoring their bids. Bids outside of the themes would still be considered. However, the scoring rubric would probably include an award for meeting the themes. It was planned to consult with the SUF and RWG on the themes.
- 8.5. The MAC currently stated that the fund should not be used for business as usual activities or activities usually undertaken by the Market Operator. MOSL had a number of improvement programmes that were not currently funded but the market had indicated could be brought

forward if there was no overall impact on Market Operator charges. It might be that consideration should therefore be given as to whether such improvement programmes should be eligible for bids to be made to the fund in relation to them.

- 8.6. A Panel Member asked if it was appropriate for MOSL to make bids to a fund that they were administrating. SF confirmed that the governance would include appropriate vetting to ensure there were no conflicts of interest with appropriate separation and checks and balances in place and that MOSL's role in the fund was purely administrative. MOSL would need to demonstrate strong market support for any bid and would likely be held to a higher standard in its bids.
- 8.7. It was noted the default position if no awards were made was to return the funds to Trading Parties. Ofwat had previously expressed that it would not consider this a positive result.
- 8.8. A Panel Member commented that if the fund wished to attract innovators or start-up companies then a category or criteria could be established that required the bidder to be a start-up or linked to a start-up. Consideration should also be given to confidentiality and keeping the decision-making panel small. Another Panel Member endorsed this and expressed that the use of non-disclosure agreements or non-use agreements. This could be supported by a clear communication and disclosure plan to allow ideas to be discussed without divulging the IP.

*CB left the meeting*

## 9. Governance Sub-Group Formation

- 9.1. The Panel considered the creation of a Governance Sub-group with responsibility for considering code changes arising from the Governance Review.
- 9.2. Nominations would be opened following the Panel meeting with nominations presented at the April Panel meeting. The sub-group would be required to meet in early May to inform the consultations to be issued in late May.
- 9.3. A Panel Member asked for clarity on whether Panel Members appointed to the group would be conflicted when voting on composition changes for the Panel. MOSL responded that the group may require input from Panel Members. However, Panel Members could find themselves conflicted in relation to detailed considerations regarding composition. Panel Members need not be members of the sub-group in order to input and provide experience of how the Panel works. The sub-group could request this sort of insight and input from Panel Members as part of its considerations including requesting one or more Panel Members attend the sub-group (but not as voting members of the sub-group) to support discussion.
- 9.4. A Panel Member noted that they did not think Panel Members on the group would be conflicted. Panel Members had previously voted on changes to voting rules or composition changes.
- 9.5. A Panel Member noted that this was a key opportunity to bring other voices and perspectives into the detailed review of potential code changes. Another Panel Member felt it was important for transparency and for good governance to avoid the appearance of conflicts of interest as much as possible and ensure decision making was robust and would withstand external scrutiny. The Chair agreed and advised Panel Members to give this careful consideration.
- 9.6. It was noted that due to the timescales the group would report in parallel to the Market Governance Steering Group and the Panel.

The Panel:

- **AGREED** (unanimous) to establish a Governance Sub-group with the proposed Terms of Reference (13 in favour).
- **AGREED** (unanimous) for MOSL to seek nominations for Governance Sub-group members (13 in favour).

## 10. Market Audit Sub-Group

- 10.1. The Panel considered the Terms of Reference and proposed membership for the Market Audit Subgroup to provide oversight on behalf of the Panel on the market audit and Market Operator compliance.
- 10.2. SF reported that MOSL was re-organising internally to bring together all assurance and audit work which would support the formalising of the Market Audit Sub-Group. MO Compliance was currently reported on to the MPC and it was proposed that if the Panel approved the ToRs as presented an amendment would be made to the MPC ToRs to remove this responsibility.
- 10.3. It was proposed to appoint the existing members of the group until a Panel election was held later in the year to provide efficiency.
- 10.4. The communications plan was designed to engage throughout the year on the scope, purpose and results of the market audit. MOSL would host a number of webinars throughout the year and produce a yearly dedicated report to compliment the MOSL annual report.

The Panel:

- **AGREED** (unanimous) to the Terms of Reference (13 in favour);
- **AGREED** (unanimous) to appoint Elsa Wye, Helyn Mensah, Trevor Nelson and Mark Holloway as members (nine in favour, four abstain).

## 11. Additional Services Schedule

- 11.1. The Panel considered the proposed changes to Additional Services and associated charges MOSL provided to members that required consultation with the Panel on before setting.
- 11.2. SF asked the Panel to note that prices for the services were reducing and may continue to reduce in future years as more efficiencies were found.
- 11.3. A Panel Member commented that they thought this was a positive step and should assist smaller Trading Parties.
- 11.4. A Panel Member expressed support for the charges and asked MOSL to note looking at multiple periods for SPID pairings or lessons from the CMA to increase future reductions.

The Panel:

- **NOTED** the Additional Services Schedule;
- **COMMENTED** on the proposed Schedule of additional charges.



## 12. Committee Reports

- 12.1. The Panel noted the committee report.
- 12.2. It was noted that the MPC had established an MPF sub-group to examine the tools and mechanisms within the MPF and what made need to be changed or evolved. The sub-group had created draft timelines with which to undertake this work within and would present them to the MPC48 meeting and the Panel for information the following month.
- 12.3. An observer noted that the Disputes Committee section included a commitment to reviewing the disputes process after considering its first dispute and asked if the output from this would be made widely available. A Panel Member confirmed that a review of the process had taken place in open session with the minutes to be published on the website.
- 12.4. A Panel Member asked the Panel to note that a new dispute had been received since the report had been produced. It was noted that Dispute DIS0020 had been referred by Castle Water to arbitration.
- 12.5. The Panel thanked HM and Committee colleagues for their work on the GDPR committee which had now been dissolved following the completion of its work.

The Panel:

- **NOTED** the Committee Report.

## 13. MOSL Business Update

- 13.1. The Panel noted the MOSL business update.
- 13.2. A Panel Member asked for more details on the Retailer risk indicators activity. SM explained that this had been started following a Retailer leaving the market unexpectedly a year ago. MOSL was reviewing the scenario internally as good working practice to ensure it could continue to discharge its duties.
- 13.3. A Panel Member asked if this activity would include Wholesaler failure. SM confirmed that the risk of Wholesaler failure would be addressed separately as this work was concerned with examining how customers were moved to new Retailers in a timely manner and risk indicators that a Retailer failure might be imminent.
- 13.4. A Panel Member asked why MOSL was examining dormant and inactive Trading Parties. SM responded that many companies were dormant for different reasons and therefore presented different risks. Dormant parties held full voting rights and could also access MOSL and CMOS without paying anything as payment was based on SPID volumes. Due to the full access to CMOS there was also a risk in relation to data which they had full access too but had only received training on when they entered the market and not since.

The Panel:

- **NOTED** the MOSL Business Update.

## 14. MOSL Market Update

14.1. The Panel noted the MOSL Market Update.

14.2. A Panel Member queried whether activity and performance had increased due to the reintroduction of performance charges. MOSL noted that the reported performance improvement coincided with the re-introduction of charging but agreed that it was too early to conclude there was a direct link. The COVID Transition Group would be tracking the unwinding of YVE's as consumption was expected to increase as lockdown restrictions eased.

14.3. A Panel member noted the increased performance could be due to timing and could decrease as the 200-day window in May/June closed.

The Panel:

- **NOTED** the Market Update.

## 15. AOB

15.1. Three Panel Members asked the Panel to note that they would recuse themselves from the closed session when their nominations to the MPC were considered.

## Closed Session

## 16. Market Performance Committee Nominations

16.1. The Panel considered nominations received for the market performance committee.

The Panel:

- **AGREED** (unanimous) to appoint as Claire Yeates, Patrick McCart, Trevor Nelson and Wendy Monk as Retailer members (11 in favour);<sup>1</sup>
- **AGREED** (majority) to appoint Mike Rathbone, Gerard Lyden, Jesse Wright and Jo Ecroyd as Wholesaler members (nine in favour, two against, one abstain);<sup>2</sup>

## 17. E-Voting Demonstration

17.1. A demonstration of the e-voting software was undertaken.

---

<sup>1</sup> Two Panel Members who were conflicted in relation to the Retailer appointments recused themselves from the meeting whilst the voting and discussion took place in relation to Retailers

<sup>2</sup> One Panel Member who was conflicted in relation to the Wholesaler appointments recused themselves from the meeting whilst the voting and discussion took place in relation to Wholesalers