

Minutes of Panel Meeting 54

27 April 2021 | 10:30 – 18:00

Videoconference

Status of the Minutes: **FINAL**

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|--------------------|----|--------------------------------------|---------------------|----|--|
| 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 4 | Ethan Fleming | EF | MOSL Secretariat |
| Evan Joannette | EJ | MOSL Presenter item 5 | Kerry Spencer | KS | MOSL Observer |
| John Gilbert | JG | MOSL Presenter item 5 | Ivy Mandinyenya | IM | MOSL Presenter item |
| Steve Formoy | SF | MOSL Presenter item 9 | Christopher Wright | CW | Castle Water Observer |
| Julian Tranter | JT | Thames Water Observer | Gerard Lyden | GL | Thames Water Observer |
| Lisa-Ann Lott | LL | MOSL Observer | Huw Comerford | HC | MOSL Observer |
| Abu Rashid | ARu | MOSL Presenter item 8 | Martin Hall | MHa | MOSL Presented item 14 |
| Markus Lloyd | ML | MOSL Presenter item 12 | | | |

APOLOGIES

| | | |
|-----------|----|--|
| Mike Keil | MK | Panel Member (Customer Representative) |
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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 Panel noted that CB would recuse themselves from the closed session due to being nominated to the Governance Sub-Group and as a member of the Metering Committee.
- 1.4. The Panel noted that EW would recuse themselves from the decision on the Governance Sub-Group due to being nominated as a member.
- 1.5. A Panel Member noted that a nominee for the Governance Sub-Group was from the same Trading Party as themselves. The Panel considered that this was not a direct conflict.
- 1.6. A Panel Member noted that the Change Report contained details of a change raised by their Trading Party. The Panel considered that this was not a direct conflict.

2. Minutes and Outstanding Actions

- 2.1. The Panel approved the minutes for the Panel meeting 53.
- 2.2. The Panel agreed that the following actions could be closed as they had been completed:
 - 2.2.1.A47_03, A52_02.
- 2.3. The Panel further agreed that the following actions would remain open:
 - 2.3.1.A26b_04; A39_05; A45_10.
- 2.4. Several actions did not have due dates as they were dependant on Ofwat decision. MOSL would include an indication of when the actions would be completed post Ofwat decisions.

3. Ofwat Update

- 3.1. DM reported that Ofwat had approved '[CPW112: Clarifications to CSD0102 and CSD0105](#)' and returned '[CPW67: Bulk Submission of Service Request via Microsoft Excel](#)' and '[CPW105: Provisions of Information Obligation](#)' for further analysis. A decision on '[CPW111: Housekeeping change to align the code with CMOS](#)' would be published shortly.
- 3.2. Ofwat had commissioned European Economics to produce a report on BMEX which had now been [published](#) with a conclusion that it could provide benefits to the customer and fill gaps in the performance framework. The focus should be on qualitative aspects and on those who had interacted with customers. The report was not designed to provide detailed recommendations on implementation but did recommend an industry working group to undertake the steps required to implement it by April 2022, with financial incentives to follow.

- 3.3. Ofwat was exploring a follow up report to [RISE](#) to keep up the momentum generated. This would not be as broad as RISE but more targeted and focus on main market frictions and areas that Wholesalers needed to show improvement on.
- 3.4. Ofwat would be publishing a consultation on the treatment of un-invoiced revenue in the event of a Retailer failure and exit from the market. This consultation would primarily relate to changes to the price control framework, which would be implemented via changes to appointed companies' licences, and was outside the scope of the Panel. However, as part of this consultation Ofwat would also be proposing a change to the Wholesale Retail Code that seeks to remove the risk of unintended consequences that resulted from the implementation of '[CPW:79: Protections for Credit Support Security](#)' in February 2020 concerning Protections for Credit Support Security. This consultation was intended to act as the formal consultation mechanism for this proposed code change to the WRC that will be then be considered by the Panel.
- 3.5. A Panel Member asked Ofwat to note that on occasions Retailers were inadvertently not fully communicated with by Ofwat and some consultations were issued via the UK Water Council instead of directly to Retailers.

4. Change Assessment and Implementation Report

- 4.1. The Panel considered the proposed assessment approaches and assessment timetables for new change proposals: '[CPW119: Dormant Trading Party Provision](#)', '[CPW121/CPM040: MAC and WRC Principles](#)', '[CPW118: Minimum Meter Read Frequency](#)', '[CPM039: Revisions to Panel Composition](#)' and '[CPW120: Final read when a visual read is not available](#)'.
- 4.2. SB reported that '[CPW115: Amending and updating the definition of an insolvency event to remove 'negative net assets' criterion](#)' had been rejected by Ofwat.
- 4.3. As a result of the Panel purpose work '[CPM040/CPW121: MAC and WRC Principles](#)', '[CPM39: Revisions to Panel Composition](#)' had been raised and would be submitted to the Governance Sub-Group along with '[CPM21: Panel Membership and Voting Rights](#)'. The consultation would take place in May in time for a recommendation at the June Panel meeting.
- 4.4. SB noted that '[CPW120: Final Meter Reads where no Visual Read is available](#)' had been raised following a dispute. However, implementation would not be until November and not applied retrospectively. It was expected to be consulted on in June.
- 4.5. A Panel Member asked why two change proposals that would be informed by the Panel purpose consultation were being raised now as they may not be needed.
- 4.6. A Panel Member asked how the Panel purpose consultation would feed into the changes and if the Panel purpose consultation should take place first before raising the changes. The Panel Member believed that the current proposal risked causing confusion and reducing stakeholder engagement.
- 4.7. AR reported that the raising of the changes supported the strategic roadmap had already been approved by the Panel. The Panel was required to make a recommendation to Ofwat at the June Panel to allow time for Ofwat to consider the changes and make a decision in time for the Autumn Panel elections. MOSL would be taking an agile approach to how the Panel purpose work informed the code changes to be considered by the governance sub-group. The dates for the sub-group would be kept under review and adjusted as required.

- 4.8. DM reported that Ofwat were supportive of the industry inputting into the Panel purpose as much as possible.
- 4.9. Multiple Panel Members noted that the timeline was tight but should be achievable with the correct sequencing of work. The Panel was aware of the timelines when the strategic roadmap was approved.
- 4.10. A Panel Member expressed concern that reduced timescales for the Panel purpose work would risk the quality of the outcomes and that contingency plans should be created as an alternative to the June recommendation. AR advised that the timetable would be kept closely under review throughout the process.
- 4.11. A Panel Member expressed concern that there were a lot of consultations scheduled in May and June along with additional consultations from Ofwat. This may harm engagement levels with respondents only being able to respond to some consultations. Another Panel Member agreed and asked if the MO changes could be deferred.
- 4.12. SB reported that the MO raised changes had been raised to either be approved in time for the CMOS April 2022 release or the vote on the MO business plan at the end of the calendar year by Trading Parties. The most flexibility was in the change raised by Thames (CPW120).
- 4.13. A Panel Member expressed support for the consultations as proposed. The Panel had a duty to keep the pace of change appropriate and not induce delays.
- 4.14. A Panel Member recommended issuing a communication to Trading Parties warning them of the upcoming consultations and the reasons for multiple consultations to allow prioritisation.

ACTION: A54_01

- 4.15. MOSL was asked to consider including an executive summary into the report in the future explaining the interdependencies between changes or hard deadlines.
- 4.16. A Panel Member expressed caution against the Panel micromanaging the programme of changes.
- 4.17. A Panel Member suggested that, as part of the consultation into '[CPW118: Minimum Meter Read Frequency](#)' the MOSL report in relation to meters that should be read monthly and those actually being read monthly should be recirculated.
- 4.18. A Panel Member asked that more consideration be given in CPW118 on the customer impact of the change and the impact of customers providing meter reads.
- 4.19. The Panel noted that '[CPW119: Dormant Trading Party Provision](#)' would be recommended by the Panel in August 2021, not July as reported in the paper to avoid an interaction in legal drafting with the CPW070a Bilaterals phase 2 change proposal. A Panel Member expressed concern that CPW119 suggested there were no customer impacts and asked that this be reconsidered along with possible data issues.
- 4.20. SB advised that '[CPW116/CPM038 Clarification and removal of redundant clauses in the Unified disputed Process](#)' would be presented to the May Panel following modifications by the Proposer and review by the Disputes committee. The recommendation of '[CPW070a: Bilaterals phase 2](#)' had also been replanned for the June Panel meeting.

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 three of the amended documentation under Change Proposal '[CPW070a: Bilaterals Interface Solution](#)'. This change sought endorsement for Code Subsidiary Document 0002 (Market Performance Framework), Code Subsidiary Document 0302 (Standing Reports and Data Extracts), Schedule 1, Part 1: Objectives, Principles and Definitions and Schedule 1, Part 2: Business Terms.
- 5.2. JG reported that the documents were being presented to the Panel for early sight to provide assurance to the industry on systems development and make final Panel approval easier. So far MOSL had completed eight of the 21 expected documents (two are non-code documents) that are required to implement CPW070a. Good progress continued and the governance structure was working well. A summary document had been issued to Trading Parties containing all known expected changes in relation to the bilateral project with a request for any significant or material issues to be submitted to MOSL. No material concerns had been raised.
- 5.3. A special meeting of the Bilaterals Steering Group had been held to discuss the implementation plan with agreement that, due to the compressed timescales and to allow adequate time for testing and training, the mandatory adoption date should be extended from the 31st July by four to six weeks. This had been communicated to contract managers and response was supportive for this appreciating the pragmatic approach. This did not impact on the Panel's timescales for considering code changes and the Panel would still be asked to formally recommend CPW070a in June, within its current timescale. Delaying mandatory adoption date did not require Panel approval.
- 5.4. EJ thanked Panel Members who had submitted specific comments and positive messages to him since the last meeting.
- 5.5. EJ asked the Panel to note that a non-material change whereby new documents related to the Operational Terms would be Operational Subsidiary Documents (OSDs) rather than Code Subsidiary Documents (CSDs). This would provide practical and legal clarity about their purpose and followed legal advice from MOSL and Ofwat.
- 5.6. CCW input had been useful in identifying customer frictions and increasing the customer impact sections with discussion ongoing. Ofwat engagement also remained strong and was appreciated by MOSL, a statutory consultation did not appear to be currently needed.
- 5.7. The CAG had increased its meeting frequency to weekly to review the volume of documents. Most document reviews had now been started. Though even now, some additional documents had been identified as requiring minor changes such as to the Wholesale Retail Code that had previously not been expected. Document drafting has been an iterative approach with the more complex documents tackled at the beginning. The scale and number of changes within code documents was now generally decreasing.
- 5.8. DM reported that the deadline of the 31st July had been set to drive momentum in the project and Ofwat were comfortable with a short delay to this to ensure the quality was appropriate. Ofwat remained impressed by Trading Party engagement.

- 5.9. A Panel Member noted that response to summary packs, communications and process changes may increase as the deadline for implementation came closer. EJ confirmed that this was the case within the OAG and was addressed through a ticketing system implemented by the Bilaterals team to properly manage queries. Some feedback highlighted items that would have to be considered post-implementation but would all be logged.
- 5.10. A Panel Member asked if the delay to the mandatory adoption date would add to the costs and if this could be recovered in some way. Several Panel Members expressed support for viewing the costs as code changes had to be considered on the basis of costs to the market. MOSL would prepare a response for circulation out of committee.

ACTION: A54_02

- 5.11. A Panel Member noted that a Dispute Committee member was also on the CAG which would be useful for any changes to the Business Terms that may impact disputes. EJ confirmed that the CAG had considered this and did not intend to amend the disputes procedure for the implementation of the bilaterals project any more than was needed. This way, it would be less disruptive to the Disputes Committee and any changes it was planning separately.

HM left the meeting

- 5.12. A Panel Member asked when the Panel would have sight of what performance reporting may look like. EJ confirmed that the planned centralised reporting and market data sets were part of a couple of the documents in the work package, CSD 0002 and CSD 0302. Once published, Trading Parties could look to see which data items they'd be able to access to monitor their data performance. Strategically the project was looking to implement the minimum viable product with enhanced reporting to come later. However, all of the data would be captured for reports to be implemented retrospectively. All proposals thus far for performance reporting had been shared with members of the Market Performance Committee.

The Panel:

- **AGREED** (unanimous) it was minded to support Code Subsidiary Document 0002 (Market Performance Framework), Code Subsidiary Document 0302 (Standing Reports and Data Extracts), Schedule 1, Part 1: Objectives, Principles and Definitions and Schedule 1, Part 2: Business Terms (13 in favour).

6. Change Withdrawal Policy

- 6.1. The Panel considered the revised change withdrawal policy.

The Panel:

- **AGREED** (unanimous) the change withdrawal policy (13 in favour)

7. Panel Purpose Discussion

- 7.1. The Panel considered an initial draft of a Panel Purpose discussion document setting out provisional questions and a spectrum of straw-models to be used as the basis for a consultation on the future of the Panel and its purpose. Panel Members provided comments to be taken into account in finalising the document.

HM re-entered the meeting

- 7.2. The Panel was invited to send minor or typographical corrections via email.
- 7.3. DM noted that Ofwat was supportive of the direction of travel and keen to see the momentum behind the work continue.
- 7.4. The Chair noted that delegation to sub-committees for pieces of work such as this was standard governance practice and would ensure the timely engagement with trading parties that was in line with their expectations.
- 7.5. An observer noted that the paper mentioned a strategic gap in the market however a distinction was needed between a strategy for the market and a strategy for the Panel and how it provided stewardship to the codes. It did not appear obvious if the Panel should fill the gap as it was a creature of the codes rather than it be undertaken by another body. Market strategy required the widest possible input from a variety of stakeholders which implied a very different Panel composition. There was a strong need to triage, prioritise and discard changes as required. They also noted that it did not appear possible to separate discussion on the role of the Panel and discussion on the role of MOSL. The obligations in the code were often lacking with the Panel taking on a role as a quasi-regulator which did not appear correct. The questions and models were too leading and prescriptive and did not encourage discussion or alternate solutions, ideas or hybrid approaches.
- 7.6. Several Panel Members expressed concern that the questions included in the document were too closed and should invite more open views and how strategic market issues might be defined and addressed.
- 7.7. A Panel Member was uncomfortable with the assertion that Panel should not re-explore documents drafted by MOSL or sub-committees as Panel should be able to do this if it was best for the market.
- 7.8. A Panel Member noted that they felt overall it was a good document that captured discussions to date and gave insights to focus discussions. Although the questions were closed there were opportunities to give fuller responses.
- 7.9. A Panel Member noted that closed questions were better for gaining more focused responses to extract themes from instead of open questions which risked very broad responses which were difficult to analyse. The risk of closed questions preventing discussions could be addressed by including wording in the opening of the document that alternative views on all aspects were welcome.
- 7.10. A Panel Member asked that more clarity be provided on the strategic gap and what the gap was and how it could be addressed. Consideration was also needed to properly align with the code changes required as the timescale was extremely short.
- 7.11. A Panel Member noted that the three models for possible composition may stifle discussion as they were too prescriptive.
- 7.12. A Panel Member noted that there were not enough questions that encourage ranking or numeric data to help analysis.
- 7.13. A Panel Member felt that the models presented were helpful and it should just be clearer that they were indicative for discussion. Consulting on code changes in parallel may lead to confusion and the reasoning should be made clear in the consultation.

- 7.14. Two Panel Members reported that they did not currently think responsibility for approving the discussion document should be delegated to the Steering Group.
- 7.15. A Panel Member expressed that ideally there would be two consultations run sequentially with the first consultation involving open questions and a second based on the first survey involving closed questions. However, due to timescales they recognised that this was not possible. The document was designed to describe the big issues discussed and the priority should be on issuing it to the market. Continuing to present it to the Panel would introduce delays and damage stakeholder perceptions. The Satori review had also identified that the Panel should be better at delegation.
- 7.16. AR reported that the Strategic User Forum session would be a facilitated workshop with SUF Members to provide feedback to be included in the consultation. Committee discussions would be expected to focus on their specific areas.
- 7.17. A Panel Member expressed concern that the feedback would be disparate and would need careful consolidation into draft form in time for the sub-group which risked the quality of the code changes due to the short timescales between the consultation ending and the sub-group meeting.
- 7.18. DM noted that the changes were authority timetabled and the feedback should not be preempted as it may lead to clear conclusions.
- 7.19. Several Panel Members continued to express support to continue to the timetable previously agreed and to keep it closely under review and be flexible where possible.
- 7.20. AR confirmed that sharing feedback would be incumbent upon MOSL to undertake it in a sensible way. The Governance Sub-Group would consider the consultation responses to CMP021 and CPM39.
- 7.21. A Panel Member supported the questions of why to have a Panel and the role of a Panel. However, they felt that some tangible examples to demonstrate processes and a description for dealing with broader market strategy and the process for code approvals. The process of developing code changes required improving as code changes were sometimes returned by Ofwat with little explanation.
- 7.22. Panel Members asked that the consultation included explicitly if the Panel should be more strategic and the difference between strategic policy making, fulfilling Ofwat's strategic vision and acting strategically.
- 7.23. A Panel Member noted that the focus of the Panel should always relate to the purpose of improving an end result for customers.
- 7.24. It should be made clear that the current responsibilities were not assumed to be the correct responsibilities. These may vary depending on if the Panel took a strategic or technical approach. A Panel Member felt that the risks and benefits of adjusting them should be explored.
- 7.25. It was important to define what good looked like for monitoring against the eventual purpose and seeking early views from stakeholders on how they would want it monitored and reported.
- 7.26. Lower materiality changes being dealt with differently required a benefits and risk assessment.

- 7.27. A Panel Member noted that Panel did have a responsibility under the MAC for reviewing Market Operator compliance with the market codes and this should be appropriately reflected in the paper without creating a reassessment of the relationship between the Panel and MOSL.
- 7.28. A Panel Member proposed reframing the potential composition models as principles relating to weighting and balance between Trading and non-trading parties. As a minimum it should be expanded that they were potential compositions and feedback and amendments were welcome. This should also include how the composition would interact with wider stakeholders.
- 7.29. Panel Members supported the compositions as presented but expanding that these were just for guidance and other views were welcome and important and they were not exclusive options to choose from.
- 7.30. A Panel Member noted that customer engagement could be part of the change process and not the decision making.

CB left the meeting

The Panel:

- **AGREED** (unanimous) the straw model document to be used to be used as the basis for consultation (13 in favour);¹
- **AGREED** (unanimous) to delegate responsibility to the Panel's Governance Steering Group for approving any updates to the document prior to publication for consultation in light of the Panel discussion on the 27th April 2021 (13 in favour).

8. Working Practices for CMOS Technical Reviews

- 8.1. The Panel considered the paper outlining the working practices that the Market Operator would adhere to when reviewing four CMOS parameters and presenting a recommendation to the Panel.
- 8.2. A Panel Member asked if this was creating just as onerous process as a full review and although noting the indicators were useful asked that if there were other concerns that could be used to raise the need for a review with the Panel. ARa confirmed that the values for the indicators could be found a lot quicker than a full review so the process would represent an improvement.

The Panel:

- **COMMENTED** on the Working Practices for CMOS Technical Reviews document.

9. Committee Reports

- 9.1. A Panel Member reported that the Disputes Committee had noted the minor changes to ['CPW116/CPM38: Clarification and removal of redundant clauses in the Unified Disputes procedure'](#) and also provided input into the terms of reference to reflect the change. A

¹ One Panel Member was temporarily unavailable during the vote

procedures document would shortly be published as an operational guide to complement the code. The committee had not discussed any new disputes.

- 9.2. A Wholesaler member of the Disputes Committee had notified the Disputes Committee Chair of their intention to resign. The Panel agreed for MOSL to seek a Wholesaler nomination from the market.
- 9.3. SF reported that the Metering Committee had met for the first time and MOSL had bought the committee up to date on work so far and also considered ways of working to ensure the committee provided the best value. Committee input into the QuickStart Programme and the next priorities for metering had been sought.

CB re-entered the meeting

The Panel:

- **NOTED** the committee report.

10. MOSL Business Update

- 10.1. SM asked the Panel to note the launch of the new MOSL website and asked for Panel Members to provide any feedback they may have.

The Panel:

- **NOTED** the MOSL Business Update.

11. MOSL Market Update

- 11.1. The Panel considered the MOSL Market Update which showed that Market Performance Standards and Operational Performance Standards were showing high performance. Charging against all the standards had now resumed. Settlement was currently based on a high number of estimates at R1. Initial data from R2 and R3 was beginning to show a return to pre-COVID performance.
- 11.2. A Panel Member asked if the management and unwinding of Yearly Volume Estimates (YVE's) was being monitored. ML confirmed they were being monitored by the COVID Transition group which was expecting some Trading Parties to make retrospective changes.
- 11.3. A Panel Member asked if consumption could be considered monthly independent of settlement to show the behaviour of the economic environment and the size of the market. ML confirmed that this was being looked at on a year on year comparison of both settlement and consumption.
- 11.4. A Panel Member noted that most Retailers were not aggressively pursuing customers for payment which would change as restrictions continued to ease and overdue bills were pursued.

The Panel:

- **NOTED** the MOSL Market Update.

12. AOB

- 12.1. The Panel noted that a Panel nomination meeting was scheduled for the 9th June 2021 to fill the upcoming Wholesaler vacancy.
- 12.2. A Panel Member asked if consideration was being given to physical meetings in the future. SM confirmed that MOSL was not planning to return to physical office attendance until the end of June. The Chair would discuss the resumption of physical meetings with MOSL.

13. Closed Session

14. Appointment of Governance Sub-Group Members²

- 14.1. The Panel considered the six nominations that were received for the governance sub-group.

The Panel:

- **AGREED** (majority) to appoint Neil Pendle, Rupert Redesdale, Christopher Wright, Julian Tranter, John Vinson and Else Wye as sub-group members (10 in favour, two against).

15. Metering Committee Nominations

- 15.1. The Panel noted that a recently appointed member of the new Metering Committee had stood down, prior to the first meeting. The Panel noted the strong field of nominees received for the committee and that it would be appropriate to consider appointing from these nominees subject to confirming their continued interest.

The Panel:

- **DEFERRED** making an appointment decision in favour of a vote ex-committee.

² Two Panel Members recused themselves due to a conflict in relation to the appointments