

Panel 02 - Minutes

15th March 2017 | 11:00 – 15:30
Held at 88 Kingsway Holborn, London,

Status of the Minutes: Final

MEMBERS PRESENT

Margaret Beels	(MB)	Chairman	Nicola Smith	(NSm)	Unassociated Retailer Panel Member
Dylan Freeman	(DF)	Wholesale Panel Member	Nigel Sisman	(NS)	Independent
Elsa Wye	(EW)	Independent	Richard Moore	(RM)	Unassociated Retailer Panel Member
Helyn Mensah	(HM)	Independent	Simon Wilshire	(SW)	Associated Retailer Panel Member
Howard Smith	(HS)	Wholesale Panel Member	Trevor Nelson	(TN)	Unassociated Retailer Panel Member
Mark Holloway	(MH)	Wholesale Panel Member	Adam Richardson	(AR)	Panel Secretary
Mike Brindle	(MB)	Associated Retailer Panel Member			

OTHER ATTENDEES

Ben Jeffs	(BJ)	MOSL	Adam Cooper	(AC)	Ofwat (part meeting)
Steve Hobbs	(SH)	CCWater	Elliot Bird	(EB)	MOSL
			Rebecca Mottram	(RM)	MOSL

APOLOGIES

Andrew Pinder	Chairman
Dan Mason	Ofwat

1. Welcome and Introductions

Purpose: For Information

- 1.1. The Chairman of the meeting welcomed participants and explained that the usual Chairman had a family matter that meant he would be unable to attend the meeting, so had delegated the Chairman role.
- 1.2. Adam Cooper from Ofwat also said a few words for the introduction stating that the market was at an interesting stage and it was clear we were all looking forward to its opening, especially considering how much has been invested in this venture. It was noted that the minutes of the first Panel meeting made it clear that the Panel had made some good progress.

2. Minutes and Outstanding Actions

Purpose: For Decision

- 2.1. Panel Members discussed the draft of the minutes from the previous meeting, and proposed several amendments.
- 2.2. A Panel Member raised that section 4.7 of the minutes did not adequately explain that the process for independent Panel Members electing Alternates was not decided and that this was an outstanding issue. An action was raised to further discuss whether Independent Panel Members could elect Alternates or not.
- 2.3. A Panel Member raised a suggested a change to section 4.19 that said "uncontrolled remote access should be resisted" which was agreed to be removed from the minutes.
- 2.4. Other than the aforementioned points the accuracy of the minutes was agreed and an action was taken to finalise them and publish them on the website.

ACTION 02_01

- 2.5. The Panel also discussed the summary notes of the workshop session from the previous meeting, where they reviewed what they considered the role and purpose of the Panel to be.
- 2.6. A Panel Member suggested that they used the terminology "to deliver" in the workshop instead of the term "facilitate" as was captured in the summary notes. Panel Members agreed to use the broadest terminology as possible, and as such this note should be amended. An action was placed on the Panel Secretariat to finalise the notes and publish them on the website.

ACTION 02_02

- 2.7. The Panel reviewed the actions from the previous meeting, and it was noted that most actions remained open part from actions **A01-03**, **A01-07** and **A01-08**, which had been completed and were now closed.
- 2.8. The Panel Secretary also advised actions **A01-06** and **A01-07** were linked and related to securing confirmation letters and employer release forms for each Panel Member. It has now been confirmed that Ofwat will not be able to provide these, and therefore action **A01-07** would be closed and action

A01-06 would remain open as the Panel Secretariat would be issuing a request to Panel Members to collect these documents.

3. Updated Panel Terms of Reference

Purpose: For Decision

- 3.1. The Panel were presented with an amended Terms of Reference (ToR) prepared by MOSL based on feedback that was provided in the last Panel meeting.
- 3.2. A Panel Member raised the question on whether the Panel's purpose should include promoting competition. Whilst the Panel realised that this was part of the principles of the Panel previously outlined, they felt it was important that consideration was given to the trade-off between efficiency and greater competition.
- 3.3. A Panel Member asked for guidance on how exactly the Panel will promote competition when their abilities to influence the market are limited to changing the codes. It was agreed that the purpose be amended to state "The Panel should promote an environment where competition can flourish, for the benefit of the end consumer".
- 3.4. A Panel Member noted that the Objectives and Principles of the codes had been lost from the purpose captured in the ToR, and would feel more comfortable if reference was added. The Panel agreed that this should be captured separately.
- 3.5. A Panel Member commented on the inconsistency of language on page 6, section 5.5, where the term "in good time" was used instead of "as soon as reasonably practical" used everywhere else in the document. It was agreed this would be changed for consistency.
- 3.6. In reference to Transparency and Confidentiality of section 11 of the ToR, a Panel Member highlighted that the term "exclusion" should be replaced with "exception". It was also noted that the section should be expanded to include any other invited attendees or individuals, who may on a case by case basis, attend closed sessions of the Panel meetings. This was agreed by Panel Members. A Panel Member felt that reference to Section 14 of the MAC did not refer to Panel Members and only described Trading Parties, so there was no need to include it in the ToR. The Panel agreed to this. An issue was raised where the CMA (Scotland) were not included in the list of Affiliated Members despite it specifically mentioning representatives from the CMA within the Scope section of the ToR. This was discussed by the Panel who felt that it was an accurate reflection because although we liaise with the CMA they have no listed as Affiliated Member under the Market Arrangements Code (MAC).
- 3.7. A Panel Member asked whether the Panel felt section 5 of the ToR should be amended to state that Affiliated Members are expected to attend rather than entitled to attend. It was decided that, because the Affiliated Members do not have a vote and are not legally obliged to attend, the wording should be amended to state that Affiliated Members are "entitled and encouraged to attend".
- 3.8. When discussing appointing Alternates in section 7 of the ToR, the first paragraph conflicts with amendments made in section 5. To accommodate an approach for Panel Members to appoint Alternates in the case of emergencies, section 7 should be amended to state that Panel Members

inform the Panel Secretary of their Alternate “wherever possible”, at least 10 Working Days prior to a meeting.

- 3.9. The Panel was unclear who had responsibility for providing the legal drafting of Change Proposals, whether it was the Proposer of the change or the Panel Secretariat. It was also felt that there was need to distinguish the role in section 8 of the ToR, specifically whether MOSL would be providing legal advice or legal drafting support, and whether they would be able to do this for both Proposers and the Panel in an unbiased and balanced way. The Secretariat responded by making it clear that legal drafting is the obligation of the proposer and MOSL's role is only to support them, with the degree of that support depending on what the change is and how developed the solution of the change is i.e. whether the change requires further work under a Working Group.
- 3.10. They discussed the Panel's role in deciding how much support the Secretariat should provide to a change on a case by case basis, particularly if the Proposer lacks resources to produce it themselves. It was agreed that a bullet should be added under section 8 to highlight that the Secretariat may procure legal drafting support.
- 3.11. A further point was raised in relation to section 3 of the ToR where its stated that Panel Members were responsible for all non-household customers in England. The Panel agreed that is was not quite what they wanted to say and should be reworded.
- 3.12. The Panel Secretary agreed to re-draft and finalise the ToR for the next Panel meeting.

ACTION 02_03

4. WRC070 – Clarification of Unsecured Credit Allowance

Purpose: For Decision

- 4.1. A Change Proposal was proposed to the Panel by Thames Water, relating to the ability of retailers to access unsecured credit allowance through a parent companies better credit rating, without necessarily having that parent company providing a guarantee for that Retailer. The Panel were asked to come to an agreement on whether this was an issue and to agree on what was the best course of action in resolving the issue, with the recommendation provided by the Proposer that the change be treated as urgent and sent for industry consultation.
- 4.2. An issue was outlined by a Panel Member that what has been proposed in the MAC may be interpreted to mean that a parent companies credit rating can be used to access a discount greater than that companies' riskiness would allow.
- 4.3. A Panel Member raised a concern that although this would not possess as large a risk to wholesalers as the Proposer may believe, it poses a larger risk to Retailers who don't have investment grade parents. These retailers are disadvantaged by not having an investment grade parent and this potentially damages the level playing field assumption of the market.
- 4.4. Panel Members discussed that there was a process to undertake because it was recognised that the code drafting on credit terms was unclear, because of the suggested clause this wording has become ambiguous.

- 4.5. The Panel voted on whether they felt they should send this issue out to an industry consultation or whether they should establish a Working Group to consider it further and report back to the Panel once they had discussed it. The two separate votes were held and neither managed to reach a Qualifying Majority.
- 4.6. Panel Members asked to revise the strawman consultation questions provided, with the purpose to make the questions less open and further direct the discussion of responders rather than increasing the scope of the consultation.
- 4.7. A Panel Member felt that the Working Group might be able to provide an alternative solution to what had been provided in the Change Proposal, and thus preferred this as the progression route rather than proceeding straight to the consultation.
- 4.8. Following the revision of the wording in the consultation, the Panel agreed that they recognised this was an issue but could not agree on how best to progress the Change Proposal. Based on this they the Panel would reconsider the way forward at its meeting on 28th March 2017.
- 4.9. The Panel Secretariat was asked to discuss the Change Proposal with the Proposer further and re-submit it for the next Panel Meeting

ACTION 02_04

5. Change Report

Purpose: For Information

- 5.1. The Panel Secretary began by outlining the intention of the Change Report, noting this to be a standing item for future meetings that outlines the status of current and pipeline changes. Based on the feedback a finalised version of the report will be taken to the next Panel meeting.
- 5.2. It was noted that the report provides an indication of the progress of changes, as well as looking at potential implementation dates. An exercise for a subsequent Panel meeting will be to review all the changes and prioritise the urgency and complexity of individual changes.
- 5.3. The Panel Secretary provided an overview of the report advising that the report will include all the changes that currently sit with the ICP and will provide a recommendation to the Panel on how the changes might be progressed, for example whether they be put to a Working Group, Industry Consultation or closed all together.
- 5.4. The Panel Secretary also advised that a release tracker would be included to illustrate where in-flight changes are going to drop in a release schedule.
- 5.5. A Panel Member asked what exactly is meant by the word release, and whether this applies to changes that are released into the codes or changes that are released into CMOS. The Secretary responded by saying that in theory going forward both should be aligned, and while this is unlikely to happen right away the Secretariat can still provide an estimation for both going forward.
- 5.6. A Panel Member asked where costs feature in the Change Process and the Secretary responded by saying that costs should be part of the assessment process for change and system costs should be

relatively easy to quantify. There was also a suggestion that the Panel Secretary use some form of "traffic light system" to indicate costs in future documents.

6. Market Performance Overview

Purpose: For Information

- 6.1. Due to the time constraints of the meeting, the overview of Market Performance was deferred until the next meeting.

7. Market Performance Committee Terms of Reference

Purpose: For Decision

- 7.1. As the Panel were unable to hear the overview, it was agreed to also defer the review of the Terms of Reference until the next meeting.

8. Trading Disputes Overview

Purpose: For Information

- 8.1. A MOSL employee provided a presentation to Panel Members on MOSL's work surrounding Trading Disputes and the potential responsibilities of the Trading Disputes Committee (TDC).
- 8.2. The presenter explained that Trading Disputes occur to resolve disputes between Trading Parties, that have not been resolved separately by the individual Trading Parties. An example of a Trading Dispute could be an error with a data item, and the TDC would have a role of investigating the dispute, before determining the dispute outcomes and publishing those outcomes externally to the Panel and Ofwat. It was also outlined that in the example of the Scottish Water Market there have been very few cases of Trading Disputes historically.
- 8.3. A Panel Member asked whether the Panel had a role in resolving these Trading Disputes, as the process explained seemed to be closed and only involve the TDC. In response, it was stated that the Panel does not have a direct role, other than establishing the Committee itself, but they may be called upon to assist the Committee if faced with a difficult dispute.
- 8.4. A Panel Member asked if there was potential for the Panel to act as a TDC, recognising the difficulty of finding volunteers for these Committees and the potentially low work load of such a Committee. The Secretary informed the Panel that the codes do specify that the Panel must create a separate TDC, but it does not specify that Panel Members cannot put themselves forward as members of the Committee.
- 8.5. A Panel Member asked whether MOSL engaged with other parties who might be affected by a Trading Dispute that it doesn't hear from originally. The MOSL representative responded that although there is no obligation for MOSL to do this it is likely to be the agreed approach as it will hopefully assist in the resolution of disputes.
- 8.6. The Panel suggested that quorum for the TDC should be at least 3 Wholesalers and 3 Retailers, as it was important to have a balance of representatives and that you have at least a majority of votes cast.
- 8.7. The Panel agreed to review the Terms of Reference for this committee at the next meeting.

8.8. The Secretariat agreed to circulate the slides used in this overview at the next Panel meeting.

ACTION 02_05

9. Trading Disputes Committee Terms of Reference

9.1. The Panel agreed to review this document at the next Panel meeting in the last agenda item.

10. Market Incident Management Plan Terms of Reference

Purpose: For Decision

- 10.1. The Panel Secretary explained briefly the purpose of the Market Incident Management Plan Committee (MIMPC) and invited discussion on the topic.
- 10.2. The Secretary felt that the requirement for the Contract Managers of Market Participants to be the members of the Committee was unworkable, and potentially meant the Panel could be around 50-60 members. The Panel agreed this was unworkable.
- 10.3. The Panel Secretariat agreed to contact Contract Managers of Market Participants and determine interest and availability of them to join the Committee.
- 10.4. Panel Members debated on whether the Chairman of the meeting should be independent, or whether they could be an employee of MOSL. They agreed that it was important to have an impartial chair, which would be provided by MOSL. and the easiest way of doing this is for MOSL to propose a recommendation to the Panel of the appointment of a chairman.
- 10.5. The Panel were also asked to note the Market Incident Management Plan (MIMP) itself will need to be put in place before the Committee can work, which will require some time to complete.
- 10.6. The Panel deferred making any decision on the MIMPC Terms of Reference and specified that they would need to hear more details on the MIMP and the response of Participants before they could make an educated decision.
- 10.7. The Panel Secretariat was asked to amend the MIMPC ToR for the Panel to review at the next meeting.

ACTION 02_06

11. Change Working Group Terms of Reference

Purpose: For Decision

- 11.1. The Panel agreed to defer the review of the Change Working Group Terms of Reference to the next meeting.

12. Panel and Committee Expenses Policy

Purpose: For Decision

- 12.1. Panel Members were asked to discuss the Expenses Policy for Panel Members and the Panel Committees, and provide any comments.

- 12.2. Panel Members at first disagreed with the Policy and asked how the baseline was first determined, whether it was based on other markets or the MOSL expense policy. A MOSL representative clarified that the Expenses Policy had been drafted in line with the MOSL employee policy.
- 12.3. A Panel Member asked a question specifically related to whether the allowance for hotels was sufficient, the MOSL representative confirmed that this allowance had previously proven to be sufficient.
- 12.4. Panel Members noted to seek best value for money but felt that the Policy should say “almost always second class” instead of “always second class”, for cases when first class is cheaper than second class for example.
- 12.5. The Panel agreed to the proposed Expenses Policy which will be published on the website.

ACTION 02_07

13. Delegation Policy

Purpose: For Decision

- 13.1. The Panel were presented with a Delegation Policy; this was developed in attempt to lay out how the Panel will work with its Committees and Working Groups. The Panel were invited to provide comments on the Policy they had been provided with in advance of the meeting.
- 13.2. A Panel Member mentioned that on the bottom of page 3 it mentioned that Panel Members can be voting members of Committees but later suggests that they should not. It was highlighted that the role of the Panel Sponsor was of a Panel Member to attend Committee or Working Group meetings as a non-voting ambassador of the Panel, however this did not prevent Panel Members from also apply to be voting Members of such groups.
- 13.3. Panel Members suggested that it would be helpful to have something about the formal reporting structures and requirements of each Committee, and that an effective monitoring process would be useful. They also felt the effectiveness of Panel delegation should be a subject covered in Panel reviews.
- 13.4. The Panel recommended that the current Policy did not seem clear on whether they are delegating work or delegating decision making, and it was asked what the role of the Panel was in regards to this. It was suggested that a section be added to the Policy to clarify this and include more specifics on timing, for example when Committee or Working Groups are created to resolve certain issues which are time permitted.
- 13.5. A Panel Member advised that it was first important to understand the role of each Committees before the Panel delegate work to them.
- 13.6. A recommendation was put forward to clarify the terminology of the Policy, as it was noted that they had to refer to the definitions table more than they would like. It was also noted that the Policy should be more explicit that the Secretariat will be providing information transfer from the Committees to the Panel, and that the roles of the Panel Secretariat should be clearly distinguishable from any action of the Market Operator.

13.7. The Panel provided some initial feedback on the policy on areas which required further clarification and deferred approval of this policy until the next Panel meeting on 28th March 2017.

ACTION 02_08

14. Panel and Committee External Communication Policy

Purpose: For Decision

14.1. The Panel deferred the review of this policy to the next Panel meeting due to time constraints.

15. Panel and Committee Recording and Broadcasting Policy

Purpose: For Decision

15.1. The Panel deferred the review of this policy to the next Panel meeting due to time constraints.

16. GDPR Issue Committee

Purpose: For Decision

- 16.1. The Panel were presented with proposal from the Panel Secretary to establish a Committee to deal with issues surrounding new requirements for General Data Protection Regulation (GDPR) requirements that will be coming in.
- 16.2. The Panel outlined the potential tasks and issues this Committee might have to deal with and issues and risks for them to consider. This raised the question with the Panel what the difference between Working Groups, sub groups and committees are. The Secretary responded and explained that each group deals with a different type of issue; working groups deal with changes; sub groups are established in response to issues not covered by the activities of committees and; committees deal with specific tasks on behalf of the Panel.
- 16.3. The Panel highlighted concerns that previous committees of this type have typically drawn on a lot of data expertise and led to very risk averse groups. It will be important to capture some more risk accepting business minded individuals too.
- 16.4. Panel Members felt there was a risk around the amount of work a committee can be expected to do by the Panel, which will be laid out in the Terms of Reference. They asked whether this Committee could consult with the industry. In response, the Secretary noted that there should not be anything stopping them from doing their own consultation.
- 16.5. A Panel Member noted that it was important to ensure that consultations engage with all parties whether it is coming from the Panel or the committee.
- 16.6. The Panel Secretary explained that specifically this Committee needs to assess the need for change and assess whether something is needed on top of the existing codes to cover any new data protection rules.
- 16.7. The Panel agreed to establish the GDPR Issue Committee and for a Terms of Reference and a timeline of their work agreed to be provided at the next Panel meeting on 28th March 2017.

17. Any Other Business (AOB)

Purpose: For Information

17.1. The Panel agreed to provide comments on the committee Terms of Reference by Monday, 20th March 2017 and this was captured as an action.

ACTION 02_10

17.2. A Panel Member asked if we would still need the 12th April 2017 Panel meeting. Other members felt that it was necessary for finalising committee membership and Terms of References depending on the results of the next meeting.

17.3. A Panel Member asked for a location for future meetings. The Panel Secretary confirmed that all meetings in future should occur in Holborn Bars, where the previous Panel meeting was held, and failing that they will be in the Holborn area.

18. Actions:

A02_01 MOSL to publish the finalised minutes from the previous meeting on the website.

A02_02 MOSL to publish the summary of the workshop from the previous meeting on the website.

A02_03 MOSL to update the Panel Terms of Reference in line with comments provided at the meeting and to bring back to the next Panel meeting.

A02_04 MOSL to further consider and evaluate the Change Proposal by Thames discussed at this meeting, for the Panel to re-visit at the next meeting.

A02_05 MOSL to circulate the slides presented on Trading Disputes to Panel Members, in advance of the next Panel meeting.

A02_06 MOSL to re-draft the Panel committee Terms of Reference in line with additions requested by the Panel in the most recent meeting and additions we receive by email from Panel Members.

A02_07 MOSL to publish the Panel and Committee Expenses Policy, agreed at the meeting, on the MOSL website.

A02_08 MOSL to redraft the Panel and Committee Delegation Policy, in line with comments at the meeting, for review at the next Panel meeting.

A02_09 MOSL to provide a Terms of Reference for the discussed GDPR Issues Committee to be reviewed by Panel Members at the next meeting.

A02_10 Panel Members to provide comments on the Terms of Reference on the Panel committees provided for the previous meeting by Monday, 20th March 2017.

The next Panel meeting is scheduled for: **28th March 2017, 10:30, at:**
Holborn Bars
Holborn
London
EC1N 2NQ

The nearest tube stations are Chancery Lane, Holborn and Farringdon.