

## Minutes of Panel Meeting 03

28<sup>th</sup> March 2017 | 10:30 – 15:30  
 Held at Holborn Bars, High 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	Elliot Bird	(EB)	MOSL
Dan Mason	(DM)	Owat	Rebecca Mottram	(RM)	MOSL
Steve Hobbs	(SH)	CCWater	Sarvesh Nair	(SN)	MOSL (in part)
Antoine Schmidt	-	Thames Water Utilities (Observer)	Chris Arnold	(CA)	MOSL (in part)

### APOLOGIES

N/A	N/A
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## 1. Welcome and Introductions

### **Purpose: For Information**

- 1.1. The Chairman began by welcoming the Panel and explaining that Andrew Pinder will be unable to chair future meetings and that Margaret Beels will be chairing the Panel for the foreseeable future.
- 1.2. The Chairman highlighted that she was available to chair all scheduled future Panel meetings, with one exception (25<sup>th</sup> April 2017), and this would be discussed under Any Other Business (AOB).

## 2. Minutes and Outstanding Actions

### **Purpose: For Decision**

#### 2.1. **Minutes**

- 2.2. Panel Members provided several comments on the minutes of the previous meeting and agreed to feedback any further minor amendments offline.
- 2.3. The Panel **AGREED** upon the accuracy of the minutes, subject to some minor amendments, and for the Final Minutes to be published on the MOSL website.

#### 2.4. **Headline Report**

- 2.5. A Panel Member proposed an amendment to the Headline Report from the previous meeting, noting that Section 3 should be reworded to state the Panel would reconsider Change Proposal CPW018 at the next Panel meeting. They also felt that the results of a vote should be recorded in the Headline. The Panel agreed that this better reflected the discussion.
- 2.6. The Panel also advised that they would like visibility of the Headline Report prior to it being published on the MOSL website. It was agreed that the Panel Secretary would issue the Headline Report to the Panel prior to publishing, but under the condition that there would be a strict deadline for comments.

#### 2.7. **Actions**

The Panel reviewed the outstanding actions and **AGREED** to close several actions from the previous meetings, based on an update from the Panel Secretary.

## 3. Overview of the Change Process and Principles

### **Purpose: For Information**

- 3.1. The Panel Secretary provided an overview of the Change Process described in Section 6 and 7 of the Market Arrangements Code (MAC), and the stages involved. It was highlighted that the MAC allows for considerable flexibility when considering a change, so there are several possible progression routes.
- 3.2. A Panel Member asked whether the codes could be interpreted to mean that the Panel could waive a consultation on a Change Proposal entirely, if it felt a change was sufficiently urgent. The Panel Secretary highlighted that the codes state the Panel is required to consult in such manner as the Panel decides is appropriate in the circumstances, which allows Panel some flexibility in this regard.

- 3.3. A Panel Member asked whether the Panel's views that are included in the recommendation report to Ofwat, as described in Section 6.3.5 of the MAC, refers to the individual Panel Members or the Panel as a whole. It was agreed that the best approach would be to report the consensus and then provide any dissenting or differing views by exception.
- 3.4. Panel Members asked for clarity on whether they would see the recommendation report before it is issued to Ofwat. The Panel Secretary explained that the Panel would have to sign off this report, and as such, it would receive a draft version of the recommendation report before it agreed upon its final recommendation.
- 3.5. The Panel agreed that the preferred way to progress a change would be to send it to an industry consultation, and based on this provide a final recommendation to Ofwat. However, it recognised that this would not always be the case, so it was noted that the default route on how to progress a change should be determined by the Lead Analyst on a case by case basis.
- 3.6. A Panel Member queried whether it was the responsibility of the Panel Secretary to procure expert advice on Change Proposals, when the Panel requested it. The Panel Secretary confirmed that it was their responsibility.
- 3.7. A Panel Member queried whether it was possible for Ofwat to bypass the Change Process in any way, such as when they raise their own changes. The Panel Secretary confirmed that whilst Ofwat would set the timetable for progressing the change, the Panel is required to make a recommendation on all Change Proposals and therefore the process cannot be bypassed completely.
- 3.8. The Panel **NOTED** the contents of the presentation and asked for the slides to be circulated to Panel Members following the meeting.

**ACTION 03\_01**

## 4. Updated Panel Terms of Reference

### **Purpose: For Decision**

- 4.1. The Chairman opened the discussion by requesting that Panel Members consider whether the updated Terms of Reference was fit for purpose. It was noted that the Terms of Reference would be revisited as part of the 6-month review.
- 4.2. Panel Members discussed that an issue that may need be addressed in the future was the Qualifying Majority of 10 Panel Members, and it was suggested this was reviewed in 3 months.
- 4.3. Panel Members agreed for the document to be published on the MOSL website as a draft working document.
- 4.4. In addressing the previous action of providing arrangements for Independent Panel Members to elect Alternates, Independent Panel Members were asked what their preferred method of electing Alternates would be.

- 4.5. Independent Panel Members agreed that they would prefer to appoint each other when they are required to provide Alternates, but recognised this was an issue if more than one Independent Panel Member were unavailable to attend a Panel meeting.
- 4.6. It was agreed that there should be provision for an Alternate who could observe Panel meetings and make comment when need. An action was raised for the Panel Secretary to appoint a fourth Independent Panel Member as an Alternate standby member.

#### **ACTION 03\_02**

- 4.7. A Panel Member suggested this Alternate Panel Member might have legal expertise to help the Panel in considering amendments to code drafting and wording of future documents.
- 4.8. The Panel **AGREED** the amendments that have been made to the Panel Terms of Reference and an approach to Independent Panel Members appointing Alternates.

## 5. Delegation Policy

### **Purpose: For Decision**

- 5.1. The Panel Secretary presented an updated Delegation Policy based on feedback and comments received from Panel Members. It outlined that the Panel will not delegate responsibility and decision making to committees, but the Panel would allocate work.
- 5.2. The Panel recommended that Section 3 regarding sub group members being impartial be removed. The Panel Secretary agreed to remove this section from the final version of the policy.
- 5.3. Panel agreed the change working group should seek to develop and assess solutions for the benefit of the market. It was noted that individual perspectives and expertise in Working Group Assessments were necessary but that the Chairman and secretary should ensure that the work groups strive to provide a balanced recommendation
- 5.4. The Panel agreed that MOSL should appoint the chairs of committees and subgroups after consulting with the Panel. It was noted that the Panel's first preference was an independent Panel Member to chair Panel Committees and, if not possible, for MOSL to chair these committees and sub groups.
- 5.5. The Panel **AGREED** the contents of the Delegation Policy, subject to some minor amendments and **NOTED** that MOSL will publish the Delegation Policy on the MOSL website.

## 6. Change Working Group

### **Purpose: For Decision**

- 6.1. The Panel Secretary presented an updated Terms of Reference for Change Working Groups based on comments received from Panel Members since the last meeting, and highlighted that it should be viewed as a template for Working Groups going forward.
- 6.2. A Panel Member noted that the requirement to be impartial should be removed in line with discussions in relation to the Delegation Policy.
- 6.3. A further comment was raised by a Panel Member, noting that the Terms of Reference should clarify that Working Group members are expected to attend every meeting, as previously this had not been the case.
- 6.4. A Panel Member raised a query on whether these Working Groups would have a budget, as they could foresee the need to have independent expert input. The Panel agreed that a paper should be brought to a future Panel meeting that's clarifies the arrangements for budget management, specifically in terms of delegation to Working Groups and committees, and raised this as an action.

### **ACTION 03\_03**

- 6.5. The Panel **AGREED** the final version of the Terms of Reference, subject to some minor amendments, as a template for future Change Working Groups.

## 7. WRC070 – Clarification of Unsecured Credit Allowance

### **Purpose: For Decision**

- 7.1. The Panel Secretary presented the updated Change Proposal from Thames Water, following comments on the legal drafting received at the previous Panel meeting. The Panel Secretary highlighted that the key changes to the Change Proposal were updated draft legal text, and a new recommendation for how the change could be progressed.
- 7.2. A Panel Member observed that the proposed solution would involve the Parent Company guaranteeing the unsecured portion of the charges, which are not supposed to be recovered by Wholesalers in the event of a default. They felt that this appeared to have the same effect as the Parent guarantee collateral option, and therefore is not required
- 7.3. The Ofwat representative noted that the confusion for all parties seems to be around the word guarantor.
- 7.4. Panel Members discussed the urgency of the change and highlighted that Trading Parties may struggle to make credit decisions around this while ambiguity exists, and it was therefore important to provide clarity. Another member queried if this could be considered as an anti-competitive arrangement, and therefore be open for Trading Parties who felt disadvantaged to take this to Ofwat directly.
- 7.5. Panel Members were invited to discuss the approach for progressing the change to consultation.

- 7.6. A Panel Member noted that if there are widely differing views received in a consultation, the Panel may require a Working Group Assessment followed by another Consultation.
- 7.7. A Panel Member highlighted it would be important to provide a suitable window to enable parties to respond, given that this consultation would coincide with market opening.
- 7.8. Panel Members agreed to the proposed consultation questions with some minor amendments.
- 7.9. The Panel unanimously **AGREED** to progress the Change Proposal to Industry Consultation stage with a fifteen (15) day Industry Consultation, and **AGREED** on the questions to be published in the Industry Consultation.

## 8. Change Report

### **Purpose: For Decision**

- 8.1. MOSL presented the Panel with the Change Report, which highlighted all the in-flight changes and recommendations for their progression.
- 8.2. A Panel Member asked whether the report would be published on the MOSL website, which the Panel Secretary confirmed was the case.
- 8.3. The Panel **NOTED** the contents of this paper and **AGREED** with the recommendations provided in sections 1.3 and 1.4, in terms of the progression of each In Flight Change Proposal.

## 9. GDPR Issue Committee Terms of Reference

### **Purpose: For Decision**

- 9.1. MOSL provided an overview of the Terms of Reference (ToR) for the General Data Protection Regulation (GDPR) Issues Committee, which has been developed based on comments received from the previous Panel meeting.
- 9.2. Panel Members highlighted that the timetable looked particularly challenging, especially given that the meetings would be taking place over the summer period. These concerns were noted by the Panel Secretary.
- 9.3. A Panel Member asked whether the meetings would be teleconferences or face to face. MOSL confirmed that the ToR provided for both. Panel Members agreed that the best arrangement would likely be for them to meet once face to face and then teleconference for subsequent meetings.
- 9.4. Panel Members requested clarity on the scale of work involved, but the presenter could not be certain of this as the GDPR had to be fully investigated.
- 9.5. A Panel Member requested that it should not be assumed that the membership of committees be a third for each class of Trading Party going forward, as they felt it should be equally weighted between Retailers and Wholesalers. Another Panel Member felt that there the current weighting would likely be more representative of the market. Other Panel Members felt that the balance between Wholesalers and Retailers was less important than the balance between business and data protection officers.

- 9.6. A Panel Member raised the question of whether MOSL will chair Panel committees. The presenter highlighted that the ToR requires an independent chairman to be appointed by MOSL. It was suggested this could be an Independent Panel Members or an employee of MOSL. The Panel indicated that the preferred method would be to appoint Independent Panel Members or, if this was not possible, MOSL employees and that any appointment should be made after consulting the Panel.
- 9.7. A Panel Member asked for clarity on why this was a committee and not a Working Group. The Panel Secretary informed the Panel that they can only create Working Groups when a change is raised, which is not the case here. A Panel Member asked whether this should be addressed in a Change Proposal and it was agreed that this be revisited as part of the 6-month review.
- 9.8. The Panel **AGREED** the Terms of Reference and workplan for the GDPR Issues Committee and **AGREED** MOSL commences with the nominations process for committee members. They also **NOTED** that the Terms of Reference will be published on the MOSL website.

## 10. Additional Services

### **Purpose: For Information**

- 10.1. The Panel considered the charges the Market Operator had identified for offering Additional Services, as set out in the MAC.
- 10.2. A Panel Member asked whether the MOSL Board had consulted with Trading Parties on these Additional Services as it might be helpful have their views. MOSL highlighted that the Additional Services paper was written based on principles that Trading Parties had already agreed to in the Business Plan, and that the paper should be considered as a working document. The Panel Member took the view that Trading Parties ought to be consulted on Additional Services.
- 10.3. A Panel Member queried whether the costs associated with performing Additional Settlement Runs would be cumulative, i.e. when a settlement runs over multiple months it incurs multiple charges. MOSL stated that these charges were not cumulative, but this was later found to be incorrect.
- 10.4. The Panel **COMMENTED** on the proposed schedule of additional charges and **NOTED** that any comments will be reflected to the MOSL Board when it is finalising these additional charges ahead of publication.

## 11. Panel Nominations Process

### **Purpose: For Information**

- 11.1. The Panel was presented with an outline of the election process set out in Section 5.6.1 of the MAC, for the final associate Retail Panel member.
- 11.2. The Chairman asked for the Panel to encourage nominations and it was agreed that the Chairman should send a letter to Associated Retailers to encourage participation.

**ACTION 03\_04**

- 11.3. The Panel **NOTED** the process and timeline for electing the final Panel Member.

## 12. Any Other Business (AOB)

12.1. The Panel Secretary asked Panel Members to confirm when they would provide their expenses to the Panel Secretary at their nearest convenience.

**ACTION 03\_05**

12.2. Panel Members asked if papers could in future be provided as Word documents. It was noted that papers were provided as links to those published on the MOSL website and that these should not be published as Word documents. The Panel Secretary agreed to explore other an alternative approach for the future.

**ACTION 03\_06**

12.3. The Chairman advised that the meeting on 25<sup>th</sup> April 2017 required rescheduling, as they would be unable to attend due to other commitments. The Chairman invited Panel Members to inform the Panel Secretary their preference of 3<sup>rd</sup> or 4<sup>th</sup> May 2017.

**ACTION 03\_07**

12.4. There was no further business and the Chairman closed the meeting.

## Actions:

**A03\_01** MOSL to circulate slides presented on the Change Process and Principles.

**A03\_02** MOSL to appoint a suitable fourth Independent Panel Member who can remain on standby and act as an Alternate.

**A03\_03** MOSL to produce a paper outlining budget management across the Panel and its committees.

**A03\_04** Panel Chairman to write a letter to Associated Retailers encouraging them to provide a nomination for the remaining Panel vacancy.

**A03\_05** Panel Members to provide the Secretariat information on when and how they plan to submit their invoices to MOSL for Panel Services and expenses.

**A03\_06** The Panel Secretary to explore an alternative approach for circulating Panel Papers.

**A03\_07** Panel Members to provide details on their availability for a meeting at the beginning of May.

The next Panel meeting is scheduled for: **12<sup>th</sup> April 2017, 10:30-15:30, at:**  
**Holborn Bars**  
**138-142 High Holborn**  
**London**  
**EC1N 2NQ**

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