

Minutes of Panel Meeting 07a

10 July 2017 | 12:00 – 13:30

Held in Teleconference,

Status of the Minutes: Final

MEMBERS PRESENT

Margaret Beels	MB	Chair	Nicola Smith	NSm	Panel Member (Unassociated Retailer)
Mike Brindle	MB	Panel Member (Associated Retailer)	Dylan Freeman	DF	Panel Member (Wholesaler)
Simon Wilshire	SW	Panel Member (Associated Retailer)	Mark Holloway	MH	Panel Member (Wholesaler)
Helyn Mensah	HM	Panel Member (Independent)	Howard Smith	HS	Panel Member (Wholesaler)
Nigel Sisman	NSi	Panel Member (Independent)	Dan Mason	DM	Affiliated Panel Member (Ofwat)
John Vinson	JV	Panel Member (Independent, Alternate for Elsa Wye)	Chris Scoggins	CS	Affiliated Member (MOSL)
Richard Moore	RMr	Panel Member (Unassociated Retailer)	Adam Richardson	AR	Panel Secretary
Trevor Nelson	TN	Panel Member (Unassociated Retailer)			

OTHER ATTENDEES

Elliot Bird	EB	Meeting Secretary (MOSL)	Rebecca Mottram	RMt	Market Design Lead (MOSL)
Oscar McLaughlin	OM	Lead Analyst (MOSL)	Jane Jellis	JJ	Observer (Ofwat)

APOLOGIES

Wendy Monk		Panel Member (Associated Retailer)
Elsa Wye		Panel Member (Independent)
Steve Hobbs		Affiliated Panel Member (CCWater)

CLOSED SESSION

1. Authority Timetabled Change - CPW021 - Negotiating Alternative Eligible Credit Support reasonably and in good faith

Purpose: For Decision

- 1.1. The Authority requested that the Panel be convened urgently, to provide a recommendation to the Authority on an Authority Timetabled Change Proposal. This change sought to amend section 9.11.5 of and Schedule 3 to Part 2: Business Terms of the Wholesale-Retail Code to clarify the Wholesaler's and Retailer's obligations to one another to negotiate Alternative Eligible Credit Support reasonably and in good faith having due regard to the Principles of Non-Discrimination and No Barriers to Entry set out in Schedule 1 to the Wholesale Contract.
- 1.2. As part of the Authority Timetabled Change Process, The Market Operator was required to submit the change to an accelerated Industry Consultation which lasted 4 days. There were 18 responses to this consultation. Responses were received from 3 Retailers, 14 Wholesalers and CCWater. All responses were provided to Panel Members ahead of the Panel Meeting.
- 1.3. The Market Operator summarised the consultation responses received in relation to each of the 3 consultation questions.
- 1.4. The Panel noted that most respondents agreed with the change, although many felt that it would not solve the issues Trading Parties are currently seeing with credit arrangements. In addition, several Trading Parties highlighted that the change only clarified existing obligations in the code, rather than providing anything further.
- 1.5. Panel Members acknowledged that that a small number of Trading Parties felt that the proposed change should not be made, noting that it only emphasised two of the Principles in the code. Some parties felt the change risked de-emphasising the other Principles in favour of the two Principles referenced by the proposed wording.
- 1.6. The Panel observed that several respondents suggested that some other options should be considered, such as regularly reviewing schedule 3 and provide technical guidance on what additional options constitute acceptable alternative credit. It also noted that one respondent requested specifically that the change refer to normal insurance practices.
- 1.7. Following this summary, Panel Members were invited by the Chair to provide their comments on the change to help inform the Panel's decision.
- 1.8. A Panel Member sought clarification on how the consultation questions were determined. Specifically, in relation to question 3, they asked if the Panel should recommend the change to the Authority, and whether this style of question set a precedent for future consultations. It was confirmed that the questions were provided to The Market Operator by The Authority, and that there was no intention that these questions set a precedent for future consultations.

- 1.9. A Panel Member suggested that the proposal did not solve the problem that exists, however they would not want to oppose the change. Another Panel Member voiced their agreement with this point of view. They were concerned that the language used in the change, specifically the references to acting reasonably and negotiating in good faith, versus due and proper consideration, would be open to legal interpretation and may not provide the desired clarity.
- 1.10. A further Panel Member highlighted that the proposed change would not change the obligations in the code, as Wholesalers would still be required to discuss with Retailers the appropriate credit arrangements when agreeing Alternative Eligible Credit Support. They also highlighted that the change would not create an obligation for the Wholesaler to agree to any proposed Alternative Eligible Credit Support, citing the reference in the Change Proposal that such credit arrangements should respect a similar apportionment of credit risk to the options specified in section 9.11.4 of Part 2: Business Terms of the Wholesale-Retail Code. The Panel Member did however support the Change Proposal, but noted that the Panel needed to make sure whatever is put in place promotes a level playing field.
- 1.11. The Chair suggested that The Market Operator work with The Authority and the industry on the wider credit issues, and that any decisions from the Panel could be an interim step before this wider review of credit arrangements. As such, the Panel agreed to review the Change Proposal for CPW019 – *Alternative Eligible Credit Support* at its next meeting.
- 1.12. The Chair called for a vote from the Panel Members on whether to recommend to the Authority that Change Proposal CPW021 be approved. Ten (10) Panel Members supported the recommendation to approve the Change Proposal to the Authority and one (1) Panel Member voted against the recommendation. The Panel therefore reached a Qualifying Majority and the change was agreed to be recommended to the Authority.
- 1.13. Following the vote to recommend the change to the Authority, the Chair asked Panel Members to provide their rationale in terms of the Objectives and Principles of the WRC for why this change was recommended.
- 1.14. Panel Members noted the rationale provided by the Authority for why the change should be implemented, as detailed in the Change Proposal form.
- 1.15. The Panel agreed that CPW021 reinforced Wholesalers obligations to act reasonably, without delay and in good faith in relation to the terms for Alternative Eligible Credit Support. They acknowledged that the reinforcement of the obligations should address some of the inefficiencies in how Wholesalers and Retailers agree arrangements in Alternative Eligible Credit Support. Panel Members also agreed that the reinforcement of the Principles in Schedule 3 means that the approach to Wholesalers and Retailers agreeing terms is more clearly expressed. For these reasons, the Panel agreed that CPW021 would better facilitate the Principles of Efficiency and Transparency.
- 1.16. Several Panel Members agreed that the change did not alter the existing obligations to consider Alternative Eligible Credit Support, or amend the Principles of the code which should underpin all decisions. Consequently, the Panel believed that, on balance, CPW021 would not adversely cause a barrier to entry’.

1.17. The Chair confirmed that the Panel Secretariat would set out the Panel's rationale for its decision in the recommendation report to the Authority.

1.18. The Panel:

- **CONSIDERED** the Recommendation Report; and
- **AGREED** to recommend implementation of CPW021 – *Negotiating Alternative Eligible Credit Support reasonably and in good faith*, to the Authority for approval.

1.19. The representative from The Authority thanked all Panel Members for their constructive feedback and participation at such short notice.

1.20. There was no further business and the Chair closed the meeting.

Post Meeting Addendum: The Panel Member who voted against the change had encountered technical difficulties such that they had been unable to explain their rationale. They have since notified the Panel Secretariat and Chair and confirmed that, in view of the doubts about CPW021 expressed in the consultation feedback, including, from a Trading Party currently experiencing issues in relation to this area of credit, they felt an alternative approach involving rejection of the Change Proposal and another iteration to improve the drafting was their preferred position.

The Panel Member suggested that The Market Operator, The Authority and the impacted Trading Parties could work together to provide the Panel a better understanding of the issues concerned to inform any subsequent decision in relation to any further Change Proposals in this area.