

## Minutes of Panel Meeting 56a

8 July 2021 | 09:30 – 13:00

Videoconference

Status of the Minutes: **Final**

### Attendees:

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)	Christina Blackwell	CB	Panel Member Alternate for Mike Keil (Customer Representative)
Charlotte Glass	CG	Panel Member (Associated Retailer)	Pamela Taylor	PT	Panel Member (Independent)
Claire Yeates	CY	Panel Member (Unassociated Retailer)	Nicola Smith	NS	Panel Member (Unassociated Retailer)
Martin Mavin	MM	Panel Member (Wholesaler)	Sarah McMath	SM	Affiliated Panel Member (MOSL)
Julian Tranter	JT	Panel Member Alternate for Mark Holloway (Wholesaler Member)	Dan Mason	DM	Affiliated Panel Member (Ofwat)
Fallon Wilkinson	FW	Panel Member (Associated Retailer)	Adam Richardson	AR	Panel Secretary

### Other Attendees:

Stuart Boyle	SB	MOSL Presenter item 2/5	Flo Monea	FM	MOSL Presenter item 6
Tom Daborn	TD	MOSL Presenter item 3	Sam Mawby	SMA	MOSL Secretariat
Huw Comerford	HC	MOSL Presenter item 4	Angela Day	AD	MOSL Observer
Heather-Fiona Egan?	HE	MOSL Observer	Christopher Wright	CW	Castle Water Observer
Jacqueline Doherty	JD	MOSL Observer	Aneesa Rahman	AR	MOSL Observer
Antoine Schmidt	AS	Thames Water Observer	John Vinson	JV	Observer

### Apologies:

Mark Holloway	MH	Panel Member (Wholesaler)
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Mike Keil	MK	Panel Member (Customer Representative)
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## 1. Welcome/Introductions and Declarations of Interest

- 1.1. The meeting was confirmed to be quorate.
- 1.2. Apologies had been received from MH and MK. CB and JT attended as their alternates respectively.
- 1.3. The Chair reminded Panel Members that, in line with section 5.7 of the MAC (Market Arrangements Code), they were to act impartially and not in the interest or as a representative of any organisation or individual. Items discussed in closed sessions were confidential and should not be discussed with individuals outside of the Panel or confidential papers shared.
- 1.4. The Chair outlined that in relation to the items for discussion each Panel member needed to recognise the potential conflict that impacted them all. This would need to be considered in their contributions to the discussion and the decisions made. The Panel agreed to proceed on that basis.

## 2. Panel Purpose Consultation Results

- 2.1 The Panel acknowledged the high number of consultation responses and the summary of themes in relation to Panel purpose which had also been shared with Ofwat. The Governance sub-group and the Panel had taken the consultation responses into account in their deliberations concerning Panel composition and code principles noting that these would be considered by Ofwat in its decision making on the proposed changes.
- 2.2 Subject to determinations in respect of the proposed changes to Panel composition, the outcomes of the Panel purpose consultation would inform any future Panel with respect to its work.
- 2.3 SB highlighted a general call from Trading Parties for further clarity and consultation regarding the strategic objectives for the market. There was also concern about the frequency of meetings, particularly regarding the strategic group, where quarterly meetings may not be sufficient initially. Concern was also raised regarding the potential for duplicating work between the different groups, the cost of administering each one and that other delivery mechanisms outside of the codes could be explored.
- 2.4 SB highlighted recognition by Trading Parties that the current arrangements could not deliver on strategy and that there was general support for a two-chamber approach, with a real focus on customer outcomes.
- 2.5 SB concluded that the consultation responses indicated that the hypothesis for the three change proposals appear to be aligned to Trading Party thinking.
- 2.6 A Panel member followed up with a request that a communication concerning Panel purpose goes out to the wider market to ensure that Trading Parties understood how their contribution had been utilised and the next steps in the process.

- 2.7 SB outlined the decision-making process for Panel members in relation to the change proposals tabled for consideration.

### 3. CPM039/CPW124: Revisions to Panel Composition

- 3.1 The Panel considered the change proposal '[CPM039/CPW124: Revisions to Panel Composition](#)' which sought to make amendments to the Panel composition and associated arrangements.
- 3.2 The change proposal had been raised by Ofwat to address a perceived gap in the consideration and development of programmes to deliver against the market strategy and insufficient consideration of the customer in developing such programmes or in assessing code change.
- 3.3 Following consultation and review by the Governance sub-group several recommendations were incorporated by the Proposer into a revised solution. The sub-group also devised an alternative solution.
- 3.4 The proposed solution outlined that the existing panel would be replaced with two separate bodies (a high-level strategic Panel and a Code Change committee). Member of both bodies would be appointed via a selection process.
- 3.5 An alternative solution was proposed by the subgroup, which mirrored CPM039 with the addition of two elements:
- The Panel nominations committee would not include MOSL and would include two elected Trading Party members of the sitting Strategic Panel. (During the transition period the two Trading Party members of the nominations committee would be two of the elected MOSL Board members.)
  - Regarding the Wholesaler/Retailer representation contingency for the Strategic Panel itself, in the event of insufficient suitable candidates, this was extended to enable any individual with the relevant skill set and expertise to be considered for a vacant Trading Party seat in addition to the use of the other Wholesaler/Retailer constituency.
- 3.6 DM (CPM039 Proposer) commented the proposal provided clarity regarding what Ofwat wanted to achieve in terms of customer outcomes and delivering that through, the revised composition outlined.
- 3.7 AD (Governance Sub-group Chair) noted the range of market representation within the group. All participants recognised the significance of the opportunity presented by the proposals and provided support and challenge to each, ensuring that the consultation responses received fair consideration.
- 3.8 A Panel member wished to clarify that the Governance Sub-group did not stipulate that the individual should be a former Trading Party to be eligible to fill a Trading Party vacancy. The Sub-group was completely open to that person being a water industry expert provided they had the relevant skill set to serve the Panel effectively.

- 3.9 A Panel member commented that the sub-group agreed unanimously that MOSL had an invaluable role to play in terms of input and guidance in the recruitment processes but as the provider of services to the market it wasn't appropriate for it to form part of the nomination committee. This approach was in line with other utilities markets.
- 3.10 CW (Governance Sub-group Member) observed the process of iteration that had taken place which had resulted in a high level of approximation between the two proposals. In line with the alternative proposal suggested by the Sub-group the proposer of CPM039 had included the requirement for stakeholder engagement to take place as part of the duties of the strategic Panel but the nature of this engagement was not specified in CPM039. This was an important element of both CPM039 and CPM021 considered later.
- 3.11 A Panel member noted that there had been a clear focus on customer outcomes in the Sub-group discussions.
- 3.12 A Panel Member asked whether the MOSL Board members were content with the alternative proposal in terms of the Panel nomination committee. SM responded that the MOSL Board understood the rationale but there was a concern around a potential conflict of interest and the view that MOSL should not be included in the Panel Nomination Committee.
- 3.13 A Panel member clarified that the discussion in the sub-group had centred on the principle of market participants being enfranchised in the process of setting up the first strategic panel. There had been unanimous support for this approach. Utilising MOSL Board members had been one possible solution, another had been representatives from the CEO Forum. The rationale for opting for MOSL Board members had been that the process for selecting these individuals would not need to be designed and the individuals would be independent and already have the trust of the market.
- 3.14 DM commented that providing a check and balance on industry self-interest was important. Trading Parties were included through the requirement to nominate suitable candidates. In moving from election to selection it was an attempt to ensure conflicts of interest were avoided.
- 3.15 A Panel member asked for clarity in relation to MOSL Board members availability to form part of the Panel nomination committee to avoid hard wiring a requirement into the decision that could not be met. AR commented that these MOSL Board members had been made aware of the alternative proposal but had not expressed a view at this stage.
- 3.16 A Panel member noted the similarity between the two proposals presented and was reassured that the consultation responses were also in alignment with what had been put forward. The Panel member was minded to support the alternative solution based on the rationale that they did not perceive the conflict of interest to be a significant issue.
- 3.17 A Panel member noted a preference for the original proposal and did not share the concern that MOSL should not form part of the Panel Nomination Committee.
- 3.18 A Panel member noted that the consultation had highlighted concerns about Trading Parties not being involved fully in the selection process.

- 3.19 A Panel member commented that having Trading Parties directly involved in the initial nominations committee, would improve engagement, strengthen collaboration, and enfranchise Trading Parties.
- 3.20 Other Panel members were minded to support the alternative solution as it enabled greater stakeholder engagement which would be more palatable to the market.
- 3.21 One Panel member also asked how the Panel purpose could be enfranchised and whether Ofwat had a view on this. The Panel member felt that it was important given the Satori Review and the outcomes of the consultation that this work was concluded with clear outcomes that would be recognisable to the market. DM responded that Ofwat would not anticipate determining the Panel purpose as this was outside of the scope of the proposal. This would be for any future Panel to determine depending on which, if any, of the change proposals being considered, were approved.
- 3.22 The Panel:
- **AGREED** (unanimous) that the CPM039/CPW124 proposed solution was better than the baseline;
  - **AGREED** (unanimous) that the CPM039/CPW124 alternative solution was better than the baseline;
  - **AGREED** (majority) that the CPM039/CPW124 alternative solution was better than the CPM039/CPW124 proposed solution (11 in favour, 2 against); and therefore:
    - **AGREED** (majority) to recommend that Ofwat approve the CPM039/CPW124 alternative solution for implementation (11 in favour, 2 against); and
    - **AGREED** (majority) to recommend that Ofwat reject the CPM039/CPW124 proposed solution (11 in favour, 2 against);
    - **AGREED** (unanimous) to recommend an implementation date of 1 September 2021, if Ofwat approval is received by 1 August 2021

#### 4. CPM021/CPW125: Panel Membership and Voting Rights

- 4.1. The Panel considered the change proposal '[CPM021/CPW125: Panel Membership and Voting Rights](#)' which sought to replace the current Panel with two bodies, one that focused on strategy and another on code changes.
- 4.2. HC presented an overview of the differences between the CPM021 proposed solution and CPM039. CPM021 included a requirement for the strategic Code Review Panel to be obliged in Code to engage with Trading Parties and stakeholders. This would be in line with an engagement policy that would be developed by the Code Change Panel. There would also be a Trading Party Forum that could replace the Strategic User Forum.
- 4.3. In relation to the transition period this would be a maximum of three months based on the election requirements.

- 4.4. CW (Proposer) commented that the consultation outcomes agreed that the Panel purpose needed to be articulated and that there was a clear need for leadership and defined strategic direction. There was agreement about the need for real engagement with Trading Parties but also a plea for clarity from Ofwat regarding their role and how it articulates that in the market. The proposal puts in place a codified obligation to engage with Trading Parties and stakeholders.
- 4.5. CW added that in relation to appointments, Trading Party members would be elected by Trading Parties. The views expressed within the sub-group on this were taken account of and the proposal was adapted considerably as a result. CW noted that if voting patterns and nominations were partisan it would become obvious very quickly. The idea that selection would produce a more skilled strategic Panel and compared to an election mechanism was a mistake in CW's view.
- 4.6. CW noted a further difference under CPM021 in that the strategic Code Review Panel and Code Change Panel would be set up in parallel, minimising any transition period and allowing for a clean break from the previous Panel structure.
- 4.7. AD commented that working on two change proposals simultaneously in the Sub-group had been challenging but positive. CW had contributed to the process with independence and a clear goal of achieving the right outcome for the market.
- 4.8. AD confirmed that the Sub-group had agreed that CPM021 was better than the baseline. The Sub-group had gone on to express a preference for the alternative solution for CPM039 over that of CPM021.
- 4.9. A Panel member clarified that the Sub-group had discussed stakeholder engagement in relation to both proposals and suggested that the newly formed strategic Panel may want to consider the development of engagement guidelines.

The Panel:

- **AGREED** (unanimous) that CPM021/CPW125 was better than the baseline;
- **AGREED** (unanimous) to recommend CPM021/CPW125 to Ofwat for approval; and
- **AGREED** (unanimous) to recommend an implementation date of 1 September 2021 if Ofwat approval is received by 1 August 2021

## 5 Panel Composition:

- 5.1 The Panel considered the relative merits of the recommended CPM039/CPW124: 'Revisions to Panel composition' alternative solution and the recommended CPM021/CPW125: 'Panel membership and voting rights' changes.
- 5.2 SB advised Panel members that there was no obligation to express a preference.
- 5.3 A Panel member queried under CPM039 whether it was correct that if you sat on the Strategic Panel it was not possible to also be part of the Code Change Committee. DM responded that this was the intent, but this could be specified for clarity.

- 5.4 A Panel member expressed a preference for CPM39 alternate based on the use of selection focussed on competencies and skills. The alternative solution also included a higher level of engagement.
- 5.5 A Panel member commented that CPM021 was stronger in relation to engagement however, they felt an election process might not generate the set of skills needed. The Panel member asked to hear the sub-group's rationale in the preference expressed. AD responded that a key element was the ability to recruit objectively based on defined competencies.
- 5.6 A Panel member noted that engagement was reflected in both proposals and that there were different mechanisms for doing that. In the Sub-group there was a collective view that the appointment mechanism in CPM039 was more independent and transparent.
- 5.7 DM commented that CPM039 had not prescribed the type of engagement working on the basis that the Strategic Panel would be afforded the flexibility to do that. Ofwat were keen to facilitate a governance structure that facilitated innovation.
- 5.8 A Panel member commented that participation does not necessarily mean good engagement and recognised that having an engagement policy could be a more effective mechanism for establishing stronger engagement with the market.
- 5.9 A Panel member commented that CPM021 incorporated greater Trading Party representation. A concern was raised that the selection approach outlined in CPM039 had the risk of leading to 'group think' which election was much less likely to generate.
- 5.10 A Panel member noted that in the consultation summary 17 Trading Parties had been in favour of election with 11 for selection.
- 5.11 A Panel member clarified that in terms of timescales the 6 months outlined in CPM039 was the maximum timescale and it was hoped that the process could be completed more swiftly.

The Panel expressed the following preferences:

- **12** Panel members expressed a preference for the CPM039/CPW124 alternate solution; and
- **1** Panel Member expressed a preference for the CPM021/CPW125 proposed solution.

## 6 CPM040/CPW121: MAC and WRC Principles

- 6.1 The Panel considered the change proposal '[CPM040/CPW121 – MAC and WRC Principles](#)' which sought to develop a more focussed set of code principles that reflected desired market outcomes.
- 6.2 FM highlighted that the key element of the change proposal had been in relation to strengthening the focus on the customer in decision making. The current principles were open to interpretation which led to a lack of clarity and inconsistency.

- 6.3 The proposed change would make the principles largely consistent across the MAC and the WRC. The proposed solution was to have one primary principle with eight supporting principles. In practice a proposal should not be detrimental to the primary principle. FM added that all consultation responses had been supportive of the proposed solution.
- 6.4 DM (Proposer) commented that the change had resulted from a suggestion made by CCW recognising the lack of focus on customers in decision.
- 6.5 A Panel member queried whether there was a consequence of implementing the proposed change. In terms of code changes, these would be the principles upon which future changes would be assessed. If the principles were updated would elements of the codes need revision if they no longer agreed with the new principles. AJ confirmed that the principles had been cross referenced with the codes and no substantive changes had been required.
- 6.6 A Panel member acknowledged the focus on the customer but commented that if the current codes satisfied the new principles was a change required at all.
- 6.7 A Panel member noted the importance of ensuring that the principles were clear and well-articulated to facilitate decision-making.

The Panel:

- **AGREED** (unanimous) to recommend CPM040/CPW121 to Ofwat for approval;
- **AGREED** (unanimous) to recommend an implementation date of 1 September 2021 if Ofwat approval was received by 1 August 2021; and
- **AGREED** (unanimous) to approve the updated Change Proposal Form (subject to CPM040/CPW121 Approval).

## 7 Any Other Business

- 7.1 The Chair expressed thanks to the Governance sub-group and all those Trading Parties who had taken the time to submit a consultation response.
- 7.2 AR outlined that the next steps would be to finalise the reports incorporating the decisions made by the Panel and submit them to Ofwat for a decision. If a decision is made by Ofwat in relation to the composition changes in line with the decision timetable outlined in the report then the implementation will start, and the transition period will begin. If a decision is not made in the timescales outlined, it would be a case of appointing a new Panel using the existing set of rules.
- 7.3 CW commented that it would be important to ensure that the legal drafting was in alignment with the decisions taken.
- 7.4 CW added that there were several areas discussed by the sub-group that would benefit from inclusion in the recommendation report. AR responded that these would be included e.g. development of an engagement policy.

7.5 The Chair confirmed that the Governance sub-group had concluded its work and would therefore be stood down once a decision to approve or reject the changes had been returned by Ofwat.

7.6 A Panel member asked for an update on progress at the July Panel meeting.

**ACTION: A56a\_02**