

# Minutes of Panel Meeting 12a

21<sup>st</sup> November 2017 | 13:00 – 17:30

Held at MOSL, 4th floor, 16-18 Monument Street, London, EC3R 8AJ

Status of the Minutes: Final

## MEMBERS PRESENT

Margaret Beels	MB	Chair	Trevor Nelson	TN	Panel Member (Unassociated Retailer) via teleconference
Simon Wilshire	SW	Panel Member (Associated Retailer) via teleconference	Nicola Smith	NS	Panel Member (Unassociated Retailer) via teleconference
Wendy Monk	WM	Panel Member (Associated Retailer) via teleconference	Ashley Marshman	AM	Alternate Panel Member (Wholesaler)
Jon Vinson	JV	Alternate Panel Member (for Associated Retailer)	Howard Smith	HS	Panel Member (Wholesaler)
Helyn Mensah	HM	Panel Member (Independent) via teleconference	Mark Holloway	MH	Panel Member (Wholesaler)
Nigel Sisman	NS	Panel Member (Independent) via teleconference	Chris Scoggins	CS	Affiliated Panel Member (MOSL) via teleconference
Elsa Wye	EW	Panel Member (Independent) via teleconference	Dan Mason	DM	Affiliated Panel Member (Ofwat)
Richard Moore	RM	Panel Member (Unassociated Retailer) via teleconference	Adam Richardson	AR	Panel Secretary

## OTHER ATTENDEES

Elliot Bird	Meeting Secretary	Jacob Tompkins	Observer (The Water Retail Company)
Oscar McLaughlin	Presenter (MOSL)	Jim Keohane	Observer (MOSL) via teleconference
Rebecca Mottram	Observer (MOSL)	Priya Sinha	Observer (Ofwat)
Lord Rupert Redesdale	Presenter (The Water Retail Company)		

## APOLOGIES

Mike Brindle	Panel Member (Associated Retailer)
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## 1. Welcome and Introductions

### **Purpose: For Information**

- 1.1. The Chair began the meeting by welcoming the Panel to the ad-hoc meeting to discuss Change Proposal CPW019, and highlighted the purpose of the meeting was to come to a decision on the recommendation to the Authority.
- 1.2. The Chair welcomed Ashley Marshman to the Panel meeting, who was attending as an Alternate Panel Member for Dylan Freeman.
- 1.3. The Chair provided Mike Brindle's apologies, and introduced Jon Vinson as his appointed Alternate for the meeting.

## 2. Draft Recommendation Report: CPW019 - Alternative Eligible Credit Arrangements

### **Purpose: For Decision**

- 2.1. MOSL highlighted to the Panel that the key purpose of the meeting was to review the draft Recommendation Report following the Industry Consultation for CPW019 (which closed on 17<sup>th</sup> November 2017).
- 2.2. Panel Members considered the Industry Consultation responses and subsequent changes the Proposer had made to the Change Proposal to address some of the issues from this Industry Consultation.
- 2.3. The Proposer highlighted that this proposal sought to provide a new form of Eligible Credit Support. They detailed that the intention of the proposed solution was to create an option for new entrants without a credit history. This solution therefore may lead to a modest increase in risk for Wholesalers, but it could potentially benefit market entry.
- 2.4. The Proposer provided an explanation of the need for a new Eligible Credit Support option. They explained that new entrants are limited to providing cash on deposit, due to a lack of trading history to make use of other possible credit options. The Proposer also suggested that current new entrants are having to pass this cost onto customers, which is detrimental to competition in the market.
- 2.5. A Panel Member requested further details of the insurance policy used in the arrangement. They noted that the current drafting provides significant detail on the requirements of the Escrow Agreement but not the insurance policy. A Panel Member suggested that the terms and conditions of the insurance policy should be published so that other Retailers can make use of this solution.
- 2.6. Panel Members raised concerns on how the Retailer could ensure that the customers would be paying into the Escrow Account, rather than directly to the Retailer. The Proposer confirmed that this would be reflected in the customer contracts, and new customers would have to be vetted by the insurance company and contracts would need to be agreed before that customer could be switched.

- 2.7. A Panel Member highlighted that the proposal stated that in the event of customer non-payment the insurance would provide payment in 3-6 months. This is considerably longer than the other credit support methods would and therefore presents more risk. The Proposer recognised the concerns but highlighted that it would be their role as a Retailer to manage their customers' bad debts, and the lack of the insurance payment does not remove their requirement to pay the Wholesaler invoice.
- 2.8. Panel Members raised a number of issues in the legal drafting. For example, it was highlighted that the drafting said the Escrow Account would be terminated if at any point there were no funds within it. The Proposer highlighted that this was not the intention of the drafting, and it was agreed that it should be amended to clarify a cash float would be required to ensure the account was not ever empty. MOSL and the Proposer noted other comments provided and agreed to reflect them in subsequent drafting.
- 2.9. A Panel Member suggested that the cap on the credit support amount, for any one Retailer to one Wholesaler, should be a proportionate to their portfolio, rather than the suggested cap of £500,000 per Wholesale area per invoice month. The Panel Member felt that for some smaller Wholesalers, the proposed cap could still represent significant risk exposure for their smaller portfolio. The Proposer agreed that this would be a positive change to the solution and agreed that this could be reflected in amendments to the proposed solution.
- 2.10. A Panel Member raised concerns that the proposal may create significant exposure for Wholesalers, despite the cap, if a large number of Retailers all employ this Eligible Credit Support option. Another Panel Member felt that it was unlikely that an insurance company would cover many smaller customers and that this option may therefore only be available to Retailers with customers that exhibited risk characteristics (including credit ratings) that an insurer had assessed as appropriate to insure.
- 2.11. A Panel member requested clarity on what the underlying issue in the market was that this change aimed to address. The Proposer confirmed that the credit terms available are creating a significant barrier to entry for the market and the Panel noted that this had been highlighted by some of the respondents to the Industry Consultation. This had also been supported by responses to MOSL's Request for Information on the wider credit issues.
- 2.12. There were concerns with how an administrator might act in an insolvency event in terms of how they would decide which debts are paid first and whether there will be any priority given to any outstanding Wholesale charges. It was highlighted that in the event of insolvency the administrator still cannot access funds in the Escrow Account. However, if the customers have not paid their invoices or the insurance policy has not paid out, the insolvency administrator is able to direct these payments to themselves.
- 2.13. It was highlighted by a Panel Member that there were a number of questions to be resolved within the proposed solution. The Panel noted that a credit review had not been confirmed and that they could commission a credit working group in the new year.

2.14. The Chair highlighted that the Proposer has requested a recommendation to accept or reject the change should be made today. The Proposer was asked to leave the room so that Panel Members could share their views in closed session.

#### **CLOSED SESSION**

2.15. While quorate, the Panel concluded that there was merit in the proposal put forward under CPW019 but expressed concern that a number of gaps and uncertainties remained that warranted further development.

2.16. Panel Members recognised that the solution required further work in its current state, and in other circumstances the change would not be given a recommendation and it would instead be returned to assessment to resolve the issues.

2.17. Recognising the support among some Panel Members for the underlying principles of the proposed change, Panel Members felt that CPW019 should remain in assessment and that further work be undertaken to refine the solution.

2.18. The Panel:

- **AGREED** to submit CPW019 for further Assessment.

2.19. The Panel also committed to undertaking a wider look at the credit arrangements in collaboration with Ofwat, and that the timescales of this would be discussed at the December 2017 Panel meeting.

2.20. Following this decision, a number of Panel Members left the meeting, due to it having overrun significantly.

2.21. The Chair invited the Proposer to re-join the meeting to share the Panel's decision.

#### **OPEN SESSION**

2.22. The Proposer expressed significant concern in relation to the Panel's conclusion to not provide a recommendation on the Change Proposal, and instead further assess the change to resolve the remaining issues. For commercial reasons, his company needed a decision.

2.23. The Proposer reiterated their request that the Panel make a recommendation to the Authority to either accept or reject the change, rather than seek further refinement of the solution. It was confirmed that if the Panel were to make a recommendation to the Authority based on the CPW019 in its current form, the Panel would likely recommend the Authority reject the proposal.

2.24. As the Panel was no longer quorate, it was noted that a determination could not be made to the Proposer's request. The Proposer was asked to leave the meeting so that the Panel could discuss the appropriate next steps.

## CLOSED SESSION

- 2.25. Panel Members noted that the Panel had previously agreed (at the request of the Proposer at its October 2017 Panel Meeting) that it was appropriate to expedite an Industry Consultation on CPW019 with a view to making a recommendation to the Authority in the week commencing 20<sup>th</sup> November 2017.
- 2.26. Some Panel Members felt that the Panel should not change its decision based on the request of a Proposer. However, a number of other Panel Members agreed that, in light of the Proposer's request, it was appropriate to make a recommendation to the Authority.
- 2.27. The Panel was not quorate and therefore was unable to make a recommendation to the Authority at the meeting. The Chair therefore requested that the matter be determined by Panel Members in writing following the meeting.

## POST MEETING NOTE

- 2.28. On the 22<sup>nd</sup> November 2017, the Chair contacted Panel Members to hold an urgent ex-committee Panel decision in light the Proposer's request for a recommendation to the Authority.
- 2.29. The Panel was invited to consider the following recommendations:
  - A. *Agree to recommend CPW019 to the Authority for rejection (with an implementation date of 10 Business Days following an Authority decision in the event that the change is approved by the Authority); or*
  - B. *Agree to re-affirm the decision to place CPW019 into an Assessment phase.*
- 2.30. It was noted by Panel Members that, they would require a quorum number of responses for option (A) in order to overturn the decision of the Panel to place CPW019 into further Assessment.
- 2.31. The Panel Secretariat received replies from all 12 Panel Members that had attended the meeting. 6 Panel Members chose option A and 6 Panel Members chose option B.
- 2.32. The Panel therefore:
  - **AGREED** to re-affirm its decision to place CPW019 into an Assessment phase.