

Minutes of Panel Meeting 59

28 September 2021 | 10:30 – 14:00

Videoconference

Status of the Minutes: **Final**

Attendees:

Trisha McAuley OBE	TM	Chair	Mike Kiel	MK	Panel Member (Customer Representative)
Fallon Wilkinson	FW	Panel Member from 12.15 pm (Associated Retailer)	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)	Pamela Taylor	PT	Panel Member (Independent)
Nicola Smith	NS	Panel Member (Unassociated Retailer)	Charlotte Glass	CG	Panel Member (Associated Retailer)
Claire Yeates	CY	Panel Member (Unassociated Retailer)	Adam Richardson	AR	Panel Secretary
Julian Tranter	JT	Panel Member Alternate (Wholesaler)	Sarah McMath	SM	Affiliated Panel Member (MOSL)
Martin Mavin	MM	Panel Member (Wholesaler)	Steve Williams	SW	Panel Member Alternate until 12.15pm (Associated Retailer)
Georgina Mills	GM	Affiliated Panel Member (Ofwat)			

Other Attendees:

Stuart Boyle	SB	MOSL Presenter item 4	Markus Lloyd	ML	MOSL Presenter item 10
John Vinson	JV	Observer	Abu Rashid	ARa	MOSL Presenter item 7
Antoine Schmidt	AS	Thames Water Observer	Christopher Wright	CW	Castle Water Observer
Huw Comerford	HC	MOSL Observer	Amanda Hinde	AH	MOSL Observer

Apologies:

Fallon Wilkinson	FW	Panel Member until 12:15pm (Associated Retailer)	Mark Holloway	MH	Panel Member (Wholesaler)
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Dan Mason	DM	Affiliated Panel Member (Ofwat)			
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OPEN SESSION

1. Welcome, Introductions and Declarations of Interest

- 1.1. The meeting was confirmed as quorate.
- 1.2. Apologies had been received from MH and FW (until 12pm). JT and SW attended as MH, FW's alternates respectively. Apologies were also received from DM with GM attending as his alternate.
- 1.3. The Chair reminded Panel members that, in line with section 5.7 of the Market Arrangements Code ("MAC"), they were to act impartially and not in the interest or as a representative of any organisation or individual. If Panel members believed they had an actual or perceived conflict they should declare this at the start of the meeting or before an agenda item. Items discussed in closed sessions were confidential and should not be discussed with individuals outside of the Panel or confidential papers shared.
- 1.4. No Panel members declared any conflicts in relation to the meeting agenda items.
- 1.5. The Chair advised that the agenda items had been re-ordered to take account of a Panel member needing to leave at 12 noon and to ensure that the items requiring a decision were quorate.

2. Minutes and Outstanding Actions

- 2.1. The Panel approved the minutes for Panel 59.
- 2.2. The Panel agreed that the following action could be closed as it had been completed:
A58_01
- 2.3. The Panel further agreed that the following actions would remain open:
A39_05, A45_10 and A55_05.

3. Change Report

- 3.1. SB introduced the Change Report, outlined one new change proposal and amendments to two existing change proposal plans and the rationale behind them.
- 3.2. The Panel considered the proposed assessment approaches and assessment timetables for new change proposal CPM046 '[Approved Codes of Practice](#)' and the revised change plans for CPW085 '[Premises Vacant Transaction link to DPID](#)' and CPW122 '[Introducing Direct Debit as a Payment Method](#)'.
- 3.3. SB confirmed that the substantial matters for assessment relating to CPM046 warranted the creation of a sub-group.

- 3.4. The Chair invited CW to make a comment in his capacity as an Observer. CW commended the measured approach taken to the assessment and timetable for CPM046 and noted that Panel members would need to consider the enforcement arrangements of the changes and their interaction with code enforcement.
- 3.5. Panel members considered CPM046 and noted that in principle the change appeared to be a sensible step to take. However, several observations were made, and queries raised which would need to be considered by a sub-group. These included:
- How CPM046 aligned with the proposed approach concerning code simplification.
 - Ensuring absolute clarity as to the status of the documents in relation to the codes, together with their contractual status, enforceability and the process around enforceability.
 - Exploration of alternative mechanisms to address the issue and reflect these in the programme of work.
 - Ensuring customer benefits were robustly assessed and clearly articulated with a demonstration of how those benefits outweighed the costs
 - Clarifying whether the work was a strategic priority for the NHH market at the current time.
- 3.6. A Panel member felt that the approach outlined could be an enabler for the code simplification work in that areas of friction in delivering customer benefits would be removed.
- 3.7. GM commented that the intention behind the work was commendable and that the Retailer Wholesaler Group (RWG) had been effective in developing collaboration and consensus within the industry around improving outcomes for customers. GM added that clarity was important but that it shouldn't come at the expense of improving the functioning of the market and outcomes for customers. This would be an important area for a sub-group to consider.
- 3.8. Panel members also noted this would be an area of consideration for the Strategic Panel in terms of the development of the codes. In the meantime, the work would be progressed by the current Panel and then passed to the Code Change Committee (CCC) at the end of the transition period.
- 3.9. In relation to the proposed timetable change to CPW122 a Panel member queried the proposed consultation and potential pilot. SB noted the Panel had requested this further work at its last meeting to establish the impact of the issue and establish if Trading Parties would be prepared to participate in a pilot.
- 3.10. A Panel member queried whether it was possible to establish if there was a barrier to entry by consultation. Would Trading Parties be in a position to answer the question given it had not been a barrier for them? The consultation needed to be appropriately positioned and formulated based on the entirety of the information that Panel requested at the August 2021 meeting with questions that Trading Parties were able to answer, with any gaps being addressed by other means.

The Panel:

- **AGREED** (unanimous) the sub-group and plan for CPM046 (13 in favour); and
- **AGREED** (unanimous) the revised change plans for CPW085 and CPW122 (13 in favour).

4. Provisions of Information

- 4.1. The Panel considered a paper which summarised the code obligated materials published by the Market Operator (MOSL), as required by the provisions of information obligation in Section 1.2.11 of the [Market Terms](#).
- 4.2. ARa commented that, following work undertaken on [CPW105: 'Provisions of Information Obligation'](#) the interpretation of the Provisions of Information obligation had been revised. The list now contained code obligated documents. ARa added that the list may form a subset of the baseline document that was proposed as an output of the Market Codes Review.
- 4.3. A Panel member asked how the provisions of information document was kept up to date and accurate. ARa responded that MOSL's compliance with code provisions is audited internally and reported via the Panel's Audit Committee.
- 4.4. The Panel noted the requirement and that their function was to ensure that appropriate checks were in place to ensure accuracy and that MOSL continues to review the range of information.

The Panel:

- **AGREED** (unanimous) to approve the published document list (13 in favour).

5. Code Simplification: Structural Outline and Solutions

- 5.1. The Panel considered the paper summarising how the findings of the Market Codes Review had fed into a Market Codes Structural Outline document reflecting the existing position, and a Market Codes Solutions document looking forward to the Code Simplification Improvement Programme.
- 5.2. CU outlined the background to the Code Review's objectives which included making "the rules" more easily navigable and easier to understand to encourage market entry and competition, ensuring rules are quicker and easier to change facilitating flexibility and innovation, to establish principles to guide the design of simple and clear code or non-code documents going forward and to identify areas of friction in the current market document set.
- 5.3. The work was instigated by the Panel and has utilised the expertise of the Code Advisory Group (CAG) to review and comment on findings and solutions. The feedback received has led to the creation of two documents:
 - the **Market Codes Review Solutions** (setting out the findings of the review and the way forward); and
 - a **Market Codes Structural Outline** (to assist Trading Parties to understand the structure of the market codes).

- 5.4. CU outlined that on the key issue of whether to undertake a full code rewrite, given the sizeable scope of the work, a full assessment would be completed by the end of the financial year. If the case was made the project would be implemented during 2023-24.
- 5.5. The Chair invited CW to make a comment in his capacity as an Observer. CW commented that as guidance the Market Codes Structural Outline was 'non-directional' and questioned its value. Regarding the solutions there was a need to make the codes work prior to 2023-24 and that a re-write and simplification of the market code documents could be carried out by external legal resource over a short period. CW suggested this might be approximately three months.
- 5.6. A member of the Code Review Steering Group commented that the papers set out the way forward including a business as usual (BAU) programme which would need to be considered by the Strategic Panel. At the invitation of the Chair, JV, another member of the Code Review Steering Group, additionally highlighted the potential spin off benefits of encouraging innovation and providing other ways to react to the market than through protracted Change Proposals but said that there was a balance between this and protection of customers.
- 5.7. GM asked whether the Panel had considered this in ranking its top priorities as, in hearing from Trading Parties, this had not been flagged as an urgent issue to address. GM also commented that she was to be persuaded that there were not better routes to foster innovation. Another Panel member pointed out that in terms of engagement with the Panel, the Panel's prioritisation and its mapping onto its Business Plan had been set out at its Panel Workshop in November 2020.
- 5.8. To provide context AR commented that this Code Simplification work was one of a range of areas in the Panel's priorities being taken forward along with Metering, Bilaterals and Governance. One of the key pieces of work undertaken was the Request for Information (RFI) to determine whether there was a "burning platform" around simplification. The RFI had received many varied and wide responses but the overall feedback had not suggested a need for wholesale re-working of the codes as a matter of urgency. The approach of addressing areas of complexity in terms of the processes that are captured in the codes had provided the rationale for the recommendations in the Solutions document to pick these up as BAU. It also had fed into the thought process for Bilaterals where simplifying and reducing complexity had underpinned the drafting of requirements into the codes for example placing the high-level obligations in the core code documents and the processes in the Operational Subsidiary Documents (OSDs).
- 5.9. AR added that there was a big question as to whether there was value in undertaking a full code re-write as a "big hit" compared to a BAU approach. One piece of learning from Bilaterals had been that simplifying processes was not straightforward and that extensive engagement was needed to balance different Trading Parties views while simplifying code drafting. A BAU approach would see identifying complexity and simplifying wherever possible as a theme that underpinned all code changes. It would also comprise housekeeping code changes that formed a regular programme to tidy up sections of the codes proactively without absorbing considerable amounts of time and resource across the industry.
- 5.10. A Panel member questioned the value of a full code re-write and preferred a tactical approach. While supportive of the direction, they made three points of constructive challenge. They wanted more focus on the purpose of Code documents, why they were there and what they were

intended to cover to avoid overlap between documents. They were sceptical about proposals leading to more guidance and supplementary documents. If there was a need for more guidance, then either the codes should be rewritten, or guidance might be provided in a separate realm of documents. Lastly, on Bilaterals they were supportive of the new structures and presentation of the codes but noted that problems arose due to the difference between operational reality and what was in the codes.

5.11. Another Panel member asked for more historical context on why the Code Review process was started, which could have been factors such as customer benefit or barriers to entry, what had been learnt to-date and for more on how the solutions addressed the original objectives. On the basis that a full code re-write would achieve these, they asked for further consideration of the extent to which the BAU approach would resolve the issues or whether their importance had changed over time. They added that any such assessment should consider the benefits as well as the costs.

5.12. Other Panel members also raised the point that the assessment of the case for a full code re-write needed be considered in the light of its priority across the industry and that it would have to be discussed with the Strategic Panel.

5.13. A further Panel member asked how the work would be funded. AR responded that ultimately this would come via Trading Parties. There had been engagement with the Panel on the Business Plan priorities which had included Code Simplification. Provision had been made for this work in the three-year MOSL business plan. There was currently provision for expenditure in the third year of the plan (2023/24). This aligned with the Solutions document's proposals.

JT left the meeting

5.14. The Chair summed up that there was general support for the direction of travel in relation to the documents presented. For the final iteration in the September Panel meeting, the Panel expected to see the incorporation of the points discussed during the meeting. However, any review of the case for a full re-write of the codes would need to be supported by a justification of the proposals in terms of costs and benefits.

The Panel:

- **NOTED** the papers presented and indicated their broad support of the proposed direction of travel.

SW left the meeting, FW joined the meeting

6. Ofwat Update

6.1. GM provided an update from Ofwat.

6.2. Regarding [RISE](#) (Reviewing Incumbent Company Support for Effective Markets), David Black (interim Ofwat CEO) had written an open letter on 16 September to incumbent company CEOs regarding their support for markets, including the business retail market. This highlighted a number of important market initiatives that Wholesalers are expected to fully support. The letter is available on the Ofwat website [here](#).

- 6.3. On 16 September Ofwat published [proposals](#) to deal with un-invoiced Wholesaler charges in the event of an unplanned Retailer exit. Regarding the proposed changes to wholesale price control arrangements set out in this consultation, subject to responses to this consultation Ofwat would then look to propose licence modifications and changes to the Reconciliation Rule Book to implement the proposed changes. Regarding the proposed change to the Wholesaler Retailer Code (WRC) (which aimed to rectify an un-intended consequence of [CPW079](#)), this document was the formal consultation mechanism under section 6.3.3 of the Market Arrangements Code (MAC) for the Authority Timetabled code change to the WRC. The consultation runs until 29th October.
- 6.4. The Panel noted that, with regard to the [Ofwat Innovation fund](#), the second round of its water breakthrough competition ("Breakthrough 2") would be launched on 11 October. This would comprise one competition with two streams:
- Through the Catalyst stream entrants can win a share of £5 million (or funding of between £100,000 – £1 million per project).
 - Through the Transform stream entrants can win a share of £30 million (or funding of between £1 million – £10 million per project).
- 6.5 The focus from Ofwat over the next few months was to commence the review of the Retail Exit Code (REC) with the publication of a method statement outlining the approach.

The Panel:

- **NOTED** the update given by Ofwat.

7. Panel Transition Update

- 7.1. AR confirmed that Ofwat had granted the extension to the current Panel member terms of office until the end of February 2022, in line with transition period.
- 7.2. Regarding the formation of the new Strategic Panel, the Panel Nomination Committee met in early September. The committee appointed the Strategic Panel Chair (Trisha McAuley), agreed the role descriptions for Trading Party and Independent Strategic Panel members and started the recruitment process.
- 7.3. The deadline for Trading Party nominations was 1st October with the deadline for applications for Independent members on the 5th October. Meetings of the PNC will take place to short list nominees and applicants and interviews will be held from mid-October. Appointments were anticipated to be made by early November and the Strategic Panel is likely to meet for the first time in mid-November.

The Panel:

- **NOTED** the update provided by AR.

8. Committee Reports

- 8.1. EW provided a short verbal update on the Disputes Committee (DC) in addition to the report submitted as DC had met following Panel paper day on 22 September.

8.2. EW made the Panel aware that DC members had reviewed a paper outlining potential improvements to the disputes process. Three to four 'quick wins' were identified and an initial programme of work will be developed for DC to monitor. The areas identified for improvement were unlikely to involve any code changes.

8.3. A Panel member asked whether it would be possible for the Panel to receive a high-level update regarding the Market Performance Framework review to gain a clearer understanding of timings and deliverables. A brief update had been included in the MOSL Market Update but a more detailed update could be provided at the next Panel meeting under that standing agenda item.

ACTION A59_01

The Panel:

- **NOTED** the Committee Reports.

9. MOSL Business Update

9.1. Panel members did not have any questions in relation to the MOSL Business Update.

The Panel:

NOTED the MOSL Business Update.

10. MOSL Market Update

10.1. A Panel member observed that as Additional Performance Indicators (APIs) had not been published to the market Trading Parties would not be aware that they were being assessed on these areas.

10.2. ML confirmed that Trading Parties had been updated on the approach at the most recent User Forum. Further work would be undertaken to share and discuss the APIs with Trading Parties through October to December. After this, a period of shadow reporting of the APIs would commence as part of the holistic reporting approach prior to the start of financial year 2022/23.

The Panel:

- **NOTED** the MOSL Market Update

11. Any Other Business

11.1. The Chair expressed her thanks to Panel for their contributions.

11.2. As there was no other business, the open session was closed.

CLOSED SESSION

12. Panel 59 Reflections

- 12.1. The Panel reflected on the meeting.
- 12.2. There being no further business, the Chair closed the meeting.