

Minutes of Panel Meeting 29

26th March 2019 | 10:30 – 15:30

ETC. Venues, Riverside Building, County Hall, Westminster Bridge Road, London
SE1 7PB

Status of the Minutes: Approved

MEMBERS PRESENT

| | | | | | |
|----------------------------------------------|----|----------------------------------------------|---------------------|-----|--------------------------------------------|
| Jim Keohane | JK | Chair | Julian Tranter | JT | Panel Member Alternate (Wholesaler) |
| Steve Hervouet | SH | Panel Member Alternate (Associated Retailer) | Trevor Nelson | TN | Panel Member (Unassociated Retailer) |
| Wendy Monk | WM | Panel Member (Associated Retailer) | Nicola Smith | NSm | Panel Member (Unassociated Retailer) |
| Simon Wilshire (Telecon - Part Meeting Only) | SW | Panel Member (Associated Retailer) | Peter Strain | PS | Alternative Member (Unassociated Retailer) |
| Helyn Mensah | HM | Panel Member (Independent) | Christina Blackwell | CB | Affiliated Panel Member (CC Water) |
| Nigel Sisman | NS | Panel Member (Independent) | Des Burke | DB | Affiliated Panel Member (MOSL) |
| Elsa Wye | EW | Panel Member (Independent) | Emma Kelso | EK | Affiliated Panel Member (Ofwat) |
| Dylan Freeman | DF | Panel Member (Wholesaler) | Adam Richardson | AR | Panel Secretary |
| Howard Smith | HS | Panel Member (Wholesaler) | | | |

OTHER ATTENDEES

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|-----------------|-----|------------------|----------------|-----|------------------|
| Steve Arthur | SA | Presenter (MOSL) | Miles Robinson | MR | Presenter (MOSL) |
| Huw Comerford | HC | Presenter (MOSL) | Charles Unvala | CU | Presenter (MOSL) |
| Abu Rashid | ARa | Presenter (MOSL) | Stuart Boyle | SB | Presenter (MOSL) |
| Luke Austin | LA | Presenter (MOSL) | Oliver Farrell | N/A | Observer (MOSL) |
| Zainab Mohammed | ZM | Presenter (MOSL) | Amanda Hinde | N/A | Observer (MOSL) |

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|----------------|-----|-----------------------------------|----------------|-----|-----------------------------------|
| Stephen Winnie | SW | Presenter (MOSL) | Chris Williams | N/A | Observer (Panel Member Designate) |
| John Vinson | N/A | Observer (Independent) | Jacob Tompkins | JTo | Presenter (Water Retail Company) |
| Ian Dearnley | N/A | Observer (Panel Member Designate) | Claire Yeates | N/A | Observer (Panel Member Designate) |
| Martin Mavin | N/A | Observer (Panel Member Designate) | | | |

APOLOGIES

| | | | | | |
|---------------|----|----------------------------|-----------|----|---------------------------------|
| Mike Brindle | MB | Panel Member (Wholesaler) | Dan Mason | DM | Affiliated Panel Member (Ofwat) |
| Mark Holloway | MH | Panel Member (Wholesaler) | | | |

1. Welcome and Introductions

- 1.1. The Chair welcomed Panel Members to Panel Meeting 29.

2. Minutes and Outstanding Actions

- 2.1. The Panel agreed with the outstanding actions and closed actions_A27_04, A27_06, A27_07, A27_10, A27_13, A28_04, A28_05, A28_06, A28_07 and A28_08. Review of the previous minutes was deferred as some Panel members had not seen them. The Panel Secretary confirmed that the minutes would be re-circulated.

ACTION A29_01

3. Update from Ofwat

- 3.1. EK presented an update from Ofwat.
- 3.2. EK stated that decisions on CPW041, CPW050, CPW051, CPW052, CPW053 and CPW054 would be communicated that day and CPW056 (Cascade Erasure) would follow shortly.
- 3.3. EK advised of consultations on the Customer Protection Code of Practice and WSL license fees. South East Water has requested that its sewerage license be revoked.

4. Update from CC Water

- 4.1. CB presented an update on CC Water's research on SME awareness and its latest complaints data.

- 4.2. JK questioned whose job it was to raise awareness of the market. CB felt it was the job of the Retailers to do this, as they are best placed in terms of their direct relationship with business customers. This is backed up in research evidence. EK agreed that Retailers should be raising awareness of the market among business customers.
- 4.3. In response to questions raised CB would circulate a further breakdown of the data behind the survey.

ACTION A29_02

5. Update from MOSL

- 5.1. SA provided a general update from MOSL.
- 5.2. NS raised concerns regarding the apparently overstated £302M April 2017 RF. SA clarified that this was mainly down to 2 errors which have now been resolved. SA confirmed that the figures in the slides are pre-corrective RF and was illustrated as such to call out the errors. SA agreed to include the post corrective figures going forward.

ACTION A29_03

- 5.3. Panel members requested that an update on the progression of data improvement plans and their distribution across the market be included in the information pack, along with commentary on progress.

ACTION A29_04

- 5.4. A Panel Member queried whether there should be a one-hour information session at the end of the Panel Meeting focusing on the above issues. SA stated that in surfacing things to the Panel, a lot of these things have been delegated to the MPC to manage and it is the balance of keeping the panel informed and able to challenge and question aspects and knowing how these things have been picked up with the MPC. SA suggested that in this case we shouldn't have another session and that this may not be the best use of Panel Members' time.
- 5.5. Another Panel Member felt that the MPC should focus on market performance and suggested that the MOSL update should focus more on the Market Operator business and only update on the performance of market participants by exception.

6. Provisions of Information

- 6.1. ARa presented Provisions of Information to the Panel.
- 6.2. A Panel Member questioned the need for the Panel to approve a list of non-code obligated documents. ARa confirmed this is a summary of non-code documents published by MOSL and there is an obligation in the code for this list to be approved by Panel.
- 6.3. A Panel Member asked whether collating the list is something that MOSL should be doing, as it was more code orientated. DB advised that the list is ever-changing but that MOSL has this obligation that it needs to fulfil to make it compliant. DB further stated that once it is compliant, it will reassess the relevance of this obligation in the codes.

- 6.4. Panel Members agreed that this obligation should be considered for removal and suggested that such an amendment could be batched with other low materiality changes should any be identified.

ACTION A29_05

- 6.5. The Panel:

- **APPROVED** the list of published documents.
- **AGREED** that MOSL return with a change proposal to remove the obligation for Panel to review and approve the list of documents.

7. Consultation on releases

- 7.1. SW provided a background to the release schedule. SW outlined the recommendation that there be a major release planned for spring time, a minor release in summer time and a major release in autumn time.
- 7.2. A Panel Member asked if the costs of bringing releases forward against the industry benefits had been factored in. SW confirmed that, on balance, it could be expected that costs would lower for minor releases, compared to major releases but the benefits would vary depending upon the change.
- 7.3. A Panel member asked about the MOSL costs and CGI cost variance. SW confirmed that each change comes with its own cost and stated that the release cost varies depends on the complexity.
- 7.4. A Panel Member felt that the speed of change had been talked about a lot over the last year. They felt that business feedback was that the speed of change was too slow. The Panel Member observed that there was evidence to say CEOs say this but that the reality was different. They questioned whether there was now enough information to go back to those who talk down the rate of change and say this is the speed we want and capacity of the industry.
- 7.5. Another Panel members mentioned that feedback from Trading parties had highlighted the need to prioritise change and proposed a prioritisation piece assessing market benefits in advance of each gate closure.
- 7.6. A Panel Member stated it was interesting to look at the balance of responses. They noted that the majority of Retailers were in favour of the increased flexibility offered by more than two releases per year. The Panel Member also stated that it should be questioned why Retailers are more in favour than Wholesaler s and we need to look at responses and cost estimates. The Panel Member said we need to decide what is best for the market rather than what is feasible for the market and that a lower amount of releases may be limiting for changes.
- 7.7. Another Panel Member questioned if the Panel should override this recommendation. They felt there should be an education piece for Trading Parties so that it was clear what was involved in getting a change into a release and what the key deadlines were.
- 7.8. AR noted that the recommendation related to the standard release schedule for CMOS-affecting changes and that this did not preclude the implementation of any changes that were deemed truly urgent outside this schedule. The Panel noted that in such cases, there may be an impact on planned

CMOS-releases but this would need to be reviewed on a case by case basis in the event a truly urgent change was identified. Panel Members reflected it was important to understand what was a truly urgent change and that some criteria may need to be applied to identify such changes. AR stated that this has previously been discussed at the Panel and will be looked into again over the next few months.

- 7.9. A Panel Member said there should be time to see how companies cope with the proposed minor release.
- 7.10. A Panel member said that prioritisation of change was discussed a lot but said a focus should be on optimisation of change so that if we are making changes to a report, we look at other extra change requirements at the same time. SW said this was a good example and the challenge is not to delay the implementation and that if we look long enough down the chain we can see what is coming up.
- 7.11. The Panel Member said that extra ideas in the Change Report should be brought forward to meet the change that is already being locked in.
- 7.12. SW said that in terms of a practical perspective of adding another release into the year the next available point is the winter time. The winter time is often a phase where changes are not made until January due to technical code freezes.
- 7.13. DB mentioned there were many constraints that stop this from occurring with cost being one of these, especially when considering that some Retailers cannot afford the time to respond to change consultations. DB said there are very few windows for changes to be implemented.
- 7.14. A Panel Member questioned if the Panel should push change to drive benefits in the Market.
- 7.15. DB said our understanding as the market operator is that, on balance, what we are hearing is that Trading Parties would struggle to implement more than two major and one minor release per year and some may find this challenging. He clarified that this was not a constraint of MOSL or CGI.
- 7.16. JK stated that we should focus on prioritising change and how this is accommodated and if this recommendation is approved there could be a further review in a year's time.
- 7.17. The Panel agreed that twelve months was a suitable period.
- 7.18. The Panel:
 - **NOTED** the results of the industry consultation; and
 - **AGREED** to change from two major releases per year to two major and one minor release per year.

8. Changes to Technical Review Obligations

- 8.1. ARa presented Changes to Technical Review Obligations to the Panel.
- 8.2. Some Panel Members questioned whether the code should include any prescriptive timings for reviewing the four parameters identified in the paper.
- 8.3. A Panel Member questioned whether MOSL could retain the capability to meet the timeframes discussed and if timeframes are being modified, there is the opportunity to consult on the frame of reference for the analysis undertaken. There are lots of useful inputs around the industry.

- 8.4. AR observed that the Panel was bold in its discussions in January when the review on the Rollover Detection Algorithm (RDA) was presented. He noted that the paper had taken a conservative approach in proposing set timings but recognized that some Panel Members had felt that the Panel may not want to tie itself to timescales and that MOSL should keep a watching brief. AR continued to state that a detailed review can be undertaken at any time and the Panel should not be looking at what the individual parameters are at the moment but decide whether it ties itself to a specific timetable of reviews going forward.
- 8.5. A Panel Member stated that the Panel and MOSL had arrived at this situation because a lot of effort is undertaken on the reviews and analysis, but there is concern in relation to the prescriptive times. They also stated that a more general formulation is needed to understand the risks in these areas and the invoicing process. The Panel Member further stated there was an opportunity to widen these elements by risk assessing meter read validation. They felt that, in their view these reviews would be needed very infrequently (3/4 years) and it would be unlikely that major changes would be seen unless there were large changes in the market. The Panel Member continued to say that sensible parameters were needed. AR stated the concept of looking at risks is something MOSL can accommodate in the future.
- 8.6. DB stated MOSL could undertake a risk assessment now and lay the framework on the four cases, looking at the importance of these and the risks they pose to settlement or other aspects. A maintenance schedule can then be defined over the coming years.
- 8.7. A Panel Member questioned whether the timing was appropriate to change the ILE review period, as MOSL were currently undertaking an ILE review which was due to be presented to the Panel at the May meeting, further it was clear that ILE's were an area of concern in the market.
- 8.8. AR stated that MOSL will undertake a risk-based review following the ILE review and will raise a change to replace the prescribed timescales in the market codes to a “from time to time” review.

ACTION A29_06

- 8.9. The Panel:
- **AGREED** to undertake a risk-based review to assess the impact of amending the timescales of the technical reviews; and
 - **AGREED** that MOSL will raise a change proposal to replace the prescribed timescales in the market codes to a “time to time” review.

9. Change Report

- 9.1. AR provided an overview of MOSL's revised approach to progressing change. He noted that this revised approach built on feedback from the Panel over the last few months and, in particular, the workshop held in January.
- 9.2. AR confirmed that the Panel would see all changes as they were raised and that the higher impact or more complex changes would be put to the Panel for considerations as to the merits of assessment via a subgroup. It was noted that such a subgroup might be specially set up for a given change or it could be an existing committee. It was observed that this approach allows the Panel to intervene at an early

stage should it feel that changes that are being assessed by MOSL should be reprioritised or supported by a subgroup. AR indicated this way of working would allow the Panel to focus at an executive level on the priority and approach to assessing changes as they are raised. It will also enable the Panel to focus on the merits of the proposed solution and its rationale for recommending approval or rejection of changes after they have been fully assessed.

- 9.3. A Panel Member questioned in relation to decisions on assessed changes if this would include wider consultation under that part of the model. AR confirmed that the approach would mean that the Panel could see whether a consultation was anticipated when the change was initially presented.
- 9.4. A Panel Member asked whether we are moving away from the old approach to gaining information at the User Forums etc. AR clarified that this was not the intention. The User Forum and other groups were a valuable part of engaging on changes. He stated that MOSL would be progressing a separate piece on how it could make engaging with the change process easier for Trading Parties.
- 9.5. A Panel Member asked where CGI fit into the process. AR stated that, consistent with the Code Administration Code of Practice discussed in January, MOSL includes the cost associated with any CMOS-impact in consultations that are undertaken. This means that a CMOS impact assessment, based on a defined solution, is undertaken before the consultation.
- 9.6. A Panel Member asked if the new approach could be put into a decision tree or process chart.

ACTION A29_07

- 9.7. SB provided an update on MOSL's current and upcoming Changes.
- 9.8. AR confirmed that MOSL doesn't start implementing changes into CMOS until Ofwat have approved the change.
- 9.9. A Panel Member questioned whether the slides would be sent out. SB confirmed that MOSL would circulate the slides.

10. CPW058 – Removing Processes A1-A5 (Developer Services)

- 10.1. The Panel considered change proposal CPW058 raised by Thames Water. This change sought to remove Processes A1-A5 (arrangements to bring new connections activities in the market) in the Wholesale Retail Code.
- 10.2. A Panel member asked why complete removal was being proposed instead of suspension. GL responded that removal provided greater clarity for code users but the provisions could be re-introduced in future if benefit could be demonstrated.
- 10.3. Panel members observed that not many consultees have argued against the proposal and that it was difficult to argue a benefit from removing provisions that had never been implemented.
- 10.4. GL clarified that the change proposal did not impact the eligibility of Building Water.
- 10.5. The Panel:

- **AGREED** to recommend implementation of CPW058 to Ofwat for approval; and
- **AGREED** the recommended implementation date of:
 - 26 July 2019, if Authority approval is received by 31 May 2019; or
 - 30 September 2019, if Authority approval is received by 31 August 2019.

11. Lunch

12. CPM013 – Voting Customer Representative

- 12.1. The Panel considered change proposal CPM013 raised by MOSL. This change sought to amend the role of the Customer Representative from Affiliated Member to Panel Member.
- 12.2. CB confirmed CCWater’s general support for the change. However, before the recommendation is put forward the wording of the MAC and Panel ToR needs to change to carve out the obligation on the customer representative panel member to enable them to act in the best interests of consumers. She also believed that, in general, the Panel (and papers presented to it) needed to expand on the benefits and impacts on customers associated with changes to the market rules.
- 12.3. It was queried whether the general obligation on Panel Members to act in the interests of the market was aligned with acting in the best interests of the consumers and whether this might unduly constrain the voting of a Customer Representative Panel Member. AR observed that, in his view, a Panel Member’s obligation to act impartially in accordance with the code Objectives and Principles was compatible with taking account of customer impacts since these principles reference customer participation and promoting competition. It was therefore possible for a Panel Member to express the rationale for their vote in relation to customer impacts. Another Panel Member queried if all Panel Members should be required to consider customer impacts when considering changes.
- 12.4. A Panel Member asked if the change in question had gone for consultation. HC confirmed that it had not. Another Panel Member stated that this change should not need to go to consultation. They asked whether the drafting had been subject to review by a lawyer. HC confirmed that the change had gone for legal review with one alteration to add Customer Representative Panel Member as a defined term to match other defined terms. Another Panel member stated that as drafted, there were a number of issues with the change proposal documentation and potential unintended consequences but in principle felt that this was a positive change.
- 12.5. Many Panel Members supported the change but some expressed concerns over the appointment and nomination process outlined in the proposed solution.
- 12.6. Rather than recommend the change for rejection the Panel agreed that a subgroup be convened (comprising HM and EW, together with MOSL and CC Water) to review the nomination and appointment process and the obligation on the Customer Representative Panel Member and other Panel Members to consider market and customer impacts.
- 12.7. The Panel:

- **DEFERRED** recommending the implementation of CPM013 to the Authority for approval; and
- **AGREED** to form a sub-group to develop the changes to the role of the Customer Representative.

13. CPW057 – Improving transparency of Credit Guarantee Arrangements

- 13.1. The Panel considered change proposal CPW057 raised by The Water Retail Company. The Panel noted that this change proposal had been considered by the Credit Committee. The change sought to improve the transparency of guarantees provided under the Wholesale Retail Code (Part 2 Business Terms, Schedule 2B).
- 13.2. A Panel Member questioned whether this recommendation included the latest conclusion of Ofwat's Open letter to all Retailers on credit. JTo confirmed the Credit Committee was aware of it and did take account of Ofwat's Open letter.
- 13.3. JTo stated that Ofwat's Credit Review had concluded that there should be full transparency and costs of credit should be published. However, the Credit Committee was not proposing this level of transparency, but a Guarantee Register setting out the Guarantor, Counterparty (Wholesaler) and Obligor (Retailer) but not the value of the Guarantee. He also confirmed that the change would oblige the Retailer to provide a Declaration of Assurance for each Guarantee. This would be a declaration that the Retailer had provided information to Ofwat to enable Ofwat to determine the commercial consideration of the Guarantee including the cost and other relevant terms confirming that the Guarantee is on an arm's length basis.
- 13.4. A Panel Member asked whether the costs and details would be passed through to Ofwat. JTo confirmed these would be passed to Ofwat confidentially. JTo further stated that this information would not be held on the Guarantee Register which would be visible on the MOSL website.
- 13.5. A Panel Member questioned why the Committee had decided to go with this approach. JTo mentioned there was debate within Credit Committee regarding total transparency (all costs published), commercial confidentiality and simplicity. CU mentioned that with regards to Guarantees the Committee thought that a Guarantor would be happy for it to be known it had arrangements, but would not be happy for the value of these to be publicly known and disclosing full information might reduce the number of people willing to offer this form of credit to the market.
- 13.6. A Panel Member asked for clarification on the scope of this change. JTo confirmed that it was all Guarantees under Schedule 2B of the Business Terms.
- 13.7. A Panel Member stated that everything should be concluded on a commercial, arms length basis and they had concerns around transparency of arrangements with parent companies of Associated Retailers.
- 13.8. A Panel Member asked whether, from a level playing field and market perspective, consideration had been given to when arrangements are made outside the normal commercial terms or where there is a Wholesaler-Retailer relationship. JTo said this was discussed and that part of the problem was defining what an intra-group Guarantee was. Doing so would require significant re-working of the credit

schedules in the market codes to create a distinction between different types of Guarantee. JTo noted that the credit committee had concluded it was not appropriate to draw a distinction between different types of Guarantee and further, between those parent company guarantees (PCGs) which involved a group comprising the Wholesaler and Retailer compared to PCGs which did not. JTo stated that if all Schedule 2B Guarantees were covered, this would ensure consistency in the rules and avoid the problem of defining what was and what wasn't a PCG.

- 13.9. EK mentioned the Ofwat had a proportionate approach to enforcement and that the onus is on Trading Parties to comply with the law. She noted that Ofwat would not, as a matter of course, review in detail evidence provided in relation to Guarantees. She acknowledged that, if implemented, the change would mean such evidence was on hand should Ofwat become aware of a concern.
- 13.10. A Panel Member questioned whether the Credit Committee was aware of Ofwat's approach to enforcement. JTo said the Credit Committee was aware. The Panel Member further questioned how it would address the question of ensuring a level playing field. JTo explained that the Retailer self-declared to Ofwat that the Guarantee had been provided on an arm's length basis and provided the information to enable Ofwat to determine that was the case.
- 13.11. A Panel Member queried why KPMG felt the need to publish all the details of guarantees when it is already a legal requirement to arrange guarantees on commercial terms. Another Panel Member felt that the declaration of assurance was not enough and that there should be a minimum level of evidence.
- 13.12. A Panel Member stated that in principle this change was fine but the Registration and Guarantee Register terminology was confusing.
- 13.13. A Panel Member queried the drafting of Schedule 2B of the Business Terms, i.e. the release date should not be in square brackets, although it was explained that it would be replaced with the actual release date in the release version. They also stated that Personal Data is a defined term and should be capitalised and that the reference to the Data Protection Act 1998 should be replaced with Data Protection Laws. The Panel Member offered to send the Secretariat her changes, which CU said would be appreciated.
- 13.14. A significant minority of Panel Members felt the change should not be made. The Chair confirmed that, as a qualifying majority in favour of the change was not reached, this would indicate the Panel was minded to recommend to Ofwat that the change be rejected.
- 13.15. A Panel Member stated that the change was a step in the right direction but if Ofwat was not going to be monitoring compliance on an ongoing basis then it didn't provide the transparency for someone else in the market to be able to monitor compliance.
- 13.16. Another Panel Member stated that the information provided to Ofwat was enough even though the proposal wouldn't provide full transparency.
- 13.17. AR reminded the Panel that the threshold test was that a proposed change was, on balance, better than the existing code rules – i.e. that it better facilitated the Objectives and Principles set out in the market codes.
- 13.18. A Panel Member stated adjustments could be made to enhance transparency aspects such as ensuring Trading Parties have gone through due process to assess their associated Retailers on an arm's length

basis such as benchmarking against market rates. JTo stated that the Credit Committee did consider market rates but it was very difficult to establish what the market rate might be. Hence, the proposed solution: to require the Retailer to provide information to demonstrate the arrangement had been made on an arm's length basis.

- 13.19. The Panel Member stated that this proved the point that if a Trading Party couldn't provide commercial terms at market rates it shouldn't be providing a PCG to its retail arm.
- 13.20. AR stated that the questions raised had been considered by the Credit Committee and that the Panel should make a recommendation to Ofwat if it was agreed that the proposal better facilitated the Objectives and Principles. A separate change could be raised in the future to take transparency further should it be felt this change had not improved the situation.
- 13.21. Panel Members considered the merits of recommending the change be rejected and concluded that the change should go back to the Credit Committee to reassess the change based on comments from the Panel. Specifically the Credit Committee should:
- a) develop a definition for 'arms-length' in the context of the proposed drafting and consider whether this definition should be inserted into the code; and
 - b) consider the specific evidence that should be mandated in the codes as part of the pack that the Retailer is required to provide to the Authority, in particular, where a Wholesaler is providing the guarantee.
- 13.22. The Chair noted that a majority of Panel Members favoured referring the proposal back to the Credit Committee to consider whether it would be feasible to add an increased level of evidence to the existing proposal. The Panel voted 10-1 in favour of sending CPW057 back to the Credit Committee to consider the level of evidence required to demonstrate guarantees are on a commercial basis and to clarify terminology.
- 13.23. The Panel therefore:
- **DEFERRED** recommending the implementation of CPW057 to the Authority for approval; and
 - **AGREED** that the change should be returned to the Credit Committee for further assessment.

14. Monthly Committee Updates

- 14.1. EW provided an update on the TDC Committee and changes to the Terms of Reference to be discussed later in the agenda. EW also stated that a final status update on rectification activities had been presented by Castle and Thames to the TDC who has requested that the dispute be closed.
- 14.2. EW stated the Committee was inquorate and therefore unable to vote on closing this dispute, due to 2 members not being able to vote because of a conflict of interest. An ex-committee vote will be taken on this decision.
- 14.3. A Panel Member questioned whether there should be more Independent Panel Members to stop issues like this arising. EW stated that discussions could take place on whether this would be helpful.

14.4. NS provided an update on the MPC Committee and mentioned there had been a significant discussion about revisiting the redistribution of market performance charges. This and the appointment of an external consultant to support this review will be discussed at the MPC the following day. The Panel noted that the budget for this would come out of the change budget. NS welcomed any input on possible consultants to work with MPC.

15. Market Performance Escalation Process

- 15.1. LA provided an overview of the performance resolution process and highlighted that the process had been developed with feedback from MPC and Ofwat.
- 15.2. A Panel Member questioned whether there was any discretion involved when escalating a TP due to poor performance. LA confirmed the process allows for discretion and there are no automatic triggers leading to escalation. LA emphasised that the process implies a reporting-network between MOSL, MPC and the Panel, and that an important aspect of the process is an on-going sense-check.
- 15.3. A Panel Member asked for clarification on why specific timeframes have not been set between the escalation stages. LA said timeframes were deliberately designed to be flexible and would be determined on a case-by-case basis.
- 15.4. A Panel Member asked whether data issues were considered in performance. LA confirmed that in terms of performance, MOSL consider MPS, OPS and APIs and other improvement activities which may be a factor in underperformance against these standards.
- 15.5. A Panel Member questioned how Trading Parties would be treated equally under the process, particularly in relation to differences in size. SA responded that a one-size-fits-all approach is not possible, which is why this is a policy and not code-mandated. LA added that the point is to resolve the performance issue and achieving this may require different approaches for different Trading Parties .
- 15.6. A Panel Member questioned how this policy relates to the MAC. LA stated that the MO and MPC consider the document to be code compliant.
- 15.7. A Panel Member stated that performance plans are focused on a subset of the MPS and priority is given to those which are of significance to the market. The Panel Member further stated that there have been no performance rectification plans in relation to retailer cyclic readings. Whilst cyclic reads remain a significant concern these are currently being addressed via the industry wide application of Data Improvement Plans.
- 15.8. A Panel Member stated that this was a very thorough piece of work. The Panel Member questioned if when the Market Operator deals with first stage of performance and this is escalated, if this was the same group of people and whether Trading Parties would be aware of the escalation. A Panel Member responded that Trading Parties would be aware of the escalation and would receive communication from the MPC who they would be expected to respond to.
- 15.9. A Panel Member further questioned whether MOSL, the MPC and the Panel were getting to the crux of the data quality problems in the industry. SA responded that the escalation policy is not the right tool to address a market-wide issue but is meant for dealing with specific TP issues. SA added that performance resolution is a learning process.

15.10. A Panel Member stated that prior to the completion of the escalation policy document, MPC were faced with the prospect of dealing with escalated performance issues without a clear idea of how to proceed. The document gave a clear picture of the options but is a working document that will evolve based on experience.

15.11. A Panel Member queried which of the 7 stages were actually enshrined in the code. LA confirmed that all stages except stage 7, Panel escalation to Ofwat, were enshrined in the code.

16. Any Other Business

16.1. JK thanked Dylan Freeman, Howard Smith, Richard Moore, Wendy Monk and Simon Wilshire who were coming to the end of their term of office as Panel Members.

17. Closed Session: TDC Nominations and Terms of Reference

17.1. Dylan Freeman declared a conflict of interest and left the room.

17.2. MR presented the TDC nominations and Terms of Reference information and stated TDC is struggling to meet quorum requirements.

17.3. The Panel considered the nominations received for the vacant TDC Member seats.

17.4. The Panel:

- **AGREED** to the revisions in the TDC Terms of Reference; and
- **AGREED** to appoint Dylan Freeman to the TDC.

17.5. Dylan Freeman re-joined the Panel meeting.

18. Closed Session : TEIC Nominations

18.1. ZM presented the TEIC nominations.

18.2. The Panel:

- **AGREED** to appoint Daniel Rowes, Nick Butt and Carl Elsworth to the TDC.

18.3. The Chair closed meeting.

Actions:

- A29_01 MOSL to ensure minutes from P28 are circulated to Panel
- A29_02 MOSL to circulate further breakdown of market awareness survey
- A29_03 MOSL to add post corrective RF figures and progression of DIP to MOSL report
- A29_04 MOSL to add commentary to MOSL slides
- A29_05 MOSL to raise change proposal to remove obligation to list published documents
- A29_06 MOSL to undertake an annual risk assessment following the ILE review
- A29_07 MOSL to map out new change process