



## Minutes of Panel Meeting 35

24 September 2019 | 10:30 – 14:20

America Square Conference Centre, One America Square, London, EC3N 2LB

Status of the Minutes: Final

### THE PANEL

Jim Keohane	JK	Chair	Mark Holloway	MH	Panel Member (Wholesaler)
Mike Brindle	MB	Panel Member (Associated Retailer) (T-Con)	Helyn Mensah	HM	Panel Member (Independent) (T-Con)
Janet Judge	JJ	Alternate Panel Member (Associated Retailer)	Nigel Sisman	NS	Panel Member (Independent)
Claire Yeates	CY	Panel Member (Unassociated Retailer)	Elsa Wye	EW	Panel Member (Independent) (T-Con)
Nicola Smith	NS	Panel Member (Unassociated Retailer)	Mike Keil	MK	Customer Representative Panel Member Designate (CCWater)
Trevor Nelson	TN	Panel Member (Unassociated Retailer)	Dan Mason	DM	Affiliated Panel Member (Ofwat)
Ian Dearnley	ID	Panel Member (Wholesaler)	Sarah McMath	SM	Affiliated Panel Member (MOSL CEO)
Martin Mavin	MM	Panel Member (Wholesaler)	Adam Richardson	AR	Panel Secretary

### OTHER ATTENDEES

Oliver Farrell	OF	Observer (MOSL)	John Vinson	JV	Observer (Independent)
Ivy Mandinyenya	IM	Observer (MOSL)	Steve Arthur	SA	Presenter (MOSL)
Antoine Schmidt	AS	Observer (Thames)	Stuart Boyle	SB	Presenter (MOSL)

Kelly Parker	KP	Observer (Yorkshire Water)	Christina Blackwell	CB	Observer (CC Water)
Dylan Freeman	DF	Observer (Southern) (T-con)			

## APOLOGIES

Chris Williams	Associated Retailer Panel Member
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## CLOSED SESSION

### 1. Customer Representative Panel Member (Closed Session)

- 1.1. The Panel noted that, following implementation of CPM013 'Adding the Customer Representative as a Voting Panel Member', CC Water had nominated Mike Keil as the Customer Representative Panel Member.
- 1.2. The Panel noted that the chair had invited comments on the nomination from Panel Members ahead of the meeting. No objections to the appointment were received.
- 1.3. The Panel:
  - **NOTED** that, having consulted Panel Members, in accordance with Section 5.6.11 of the Market Arrangements Code the Chair appointed Mike Keil as the Customer Representative Panel Member subject to receipt of confirmation and employer release letters.

## OPEN SESSION

### 2. Welcome and Introductions

- 2.1. The Chair welcomed attendees to Panel Meeting 35 and offered apologies from Sarah McMath, who expected to attend in person for the MOSL update. Chris Williams had offered apologies and Janet Judge was attending as an alternate.
- 2.2. The Chair reminded the Panel of the Competition Act workshop occurring after the meeting.

### 3. Minutes and Outstanding Actions

- 3.1. A Panel Member requested that the Panel 34 Minutes note that the August Change Report had erroneously recorded that CPM013 was recommended by the Panel for approval. They also requested that the minutes formally record the request made for MOSL to update the organogram published on its website.

- 3.2. SB took the Panel through the Panel Outstanding Actions and closed A29\_05, A32\_10, A31\_04, A26b\_03, A33\_01, A33\_05, A33\_06, A34\_05, A34\_06 and A34\_07.
- 3.3. A Panel Member questioned whether advice to the Panel on the PwC Audit action plan (Action A32\_03) should be included in the committee updates and noted that there are issues that Panel members need to discuss and be made aware of when moving forward.
- 3.4. SB stated that Actions A32\_01, A32\_02, A32\_04 and A34\_01 would be closed and merged into one single action to provide analysis on G-read removal and individual SPID re-runs. A Panel Member stated that following discussions at the Trading Disputes Committee (TDC), Changes to Corrective Settlement Runs for individual Supply Points proposed under CPW064 would be monitored on an ongoing basis by MOSL. SA stated there were 2 issues, these being the post-RF change and the wider impact of running individual SPID pairing and CPW064. SA stated that there would be ongoing surveillance and monitoring at the SPID level not in relation to RF.

#### **Action A35\_01**

- 3.5. SB confirmed CC Water's non-household complaints report had been circulated to Panel Members but a breakdown of billing and charges would be shared ahead of the November meeting.
- 3.6. A Panel Member queried the outcome of the letter to CEOs inviting nominations for an Associated Retailer Panel Member (Action A33\_01.) SB confirmed that no nominations were received.
- 3.7. A Panel Member noted that MOSL had been asked to share information relating to MPS Relative Performance and Charges Redistribution (Action A34\_03). Panel Members requested that MOSL ensure there were no competition implications associated with making this information available.
- 3.8. Action A34\_08 to monitor the use of bulk submission of service requests if CPW067 was approved, was clarified that the monitoring was to ensure the facility was not being misused rather than to assess its viability.

## **4. Ofwat Update**

- 4.1. DM provided an update from Ofwat.
- 4.2. DM stated that Emma Kelso had written a letter to Wholesalers on developing effective markets following Rachel Fletcher's recent letter. It invited views from stakeholders and CC water by the end of October. A Panel Member questioned whether the Panel wanted to respond to this and whether this should be discussed at the next Panel Meeting on 29<sup>th</sup> October 2019. Panel Members agreed that consideration should be given to a Panel response. MOSL undertook to provide a facility to gather Panel Member feedback via SharePoint and collate these into a draft response for review by the Governance Sub group prior to consideration by the Panel at its meeting in October.

#### **ACTION A35\_02**

- 4.3. DM stated that Ofwat were starting work on protecting customer credit balances (where a customer has pre-paid the Retailer and they have gone out of the market) and that the timelines were tight with project delivery forecast for the end of December. DM continued that Ofwat were working with Shepherd and Wedderburn who will lead a stakeholder workshop at the end of October in relation to the legal aspects.

- 4.4. DM stated that code modifications for a voting Customer Representative Panel Member (CPM013), to improve the transparency of credit guarantees (CPW057) and to amend credit score evaluation (CPW060) have been approved.
- 4.5. Code modifications for an urgent change process (CPM006) and for an unsecured credit allowance based on payment history (CPW061) have been sent back for further assessment by Ofwat. DM continued that common themes for items being sent back related to concerns over some Legal Drafting and lack of evidence and rationale not being substantial enough in the report.

## 5. Committee Reports

### *Market Performance Committee*

- 5.1. Nigel Sisman (NS) presented the MPC Committee report.
- 5.2. NS stated that in relation to the MPC treatment of performance standards charges, the consultation is live. MOSL noted that the communication advertising this consultation was issued on the day of the Panel meeting. NS stated that work was ongoing to finalise the legal drafting associated with the proposed change.
- 5.3. NS continued that at MPC Meeting 30 (taking place on 25<sup>th</sup> September) the priority would be performance standards charges from 2020 and that the MPC needed to be bold in its approach; with many people feeling there is a broken standards charging regime. NS stated that, while some proposals might be considered a softening of the regime, the MPC was committed to exploring an increased cap on charges to increase exposure and encourage greater effort to solve underlying issues.
- 5.4. In response to this, a Panel Member stated that all Trading Parties will need to change their reporting and monitoring systems if these standards are changed. The Panel Member continued that cost will need to be built into Trading Parties' work next year if this is due to start from 1<sup>st</sup> April 2020 and that there may be a budgeting issue in relation to this. NS accepted that this needed to be considered but felt that amendments were needed to ensure the performance framework was effective.

### *Trading Disputes Committee*

- 5.5. Elsa Wye (EW) presented an update on the Trading Disputes Committee (TDC).
- 5.6. EW stated that the working guidance document on the trading disputes process went out to Trading Parties last week and a presentation was given from Tom Daborn at the User Forum. The Panel noted there remained a number of open disputes which had not been progressed. The guidance document explained the process by which these would be escalated or closed. The Panel noted that the TDC was looking at whether there was merit in amending the Non-Trading Disputes rules so that they could be considered by TDC. The Panel noted with would require a change to the market codes.
- 5.7. The Panel:
  - **NOTED** the Committee Updates

## 6. Panel Terms of Reference

- 6.1. The Panel considered proposed revisions to the Panel Terms of Reference to align with recent code changes. Other amendments included an update the purpose statement and reference to the use of Panel Sub-groups.
- 6.2. An observer at the meeting noted that the third paragraph of Page 4 in relation to alternates did not refer to the signed letter. They also suggested the removal of the reference to go-live on Page 2 and queried why on Page 6 the Customer Representative Panel Member was not part of the quorum. AR confirmed that the Market Arrangements Code was clear that the Customer Representative was not part of the quorum.
- 6.3. The Panel:
  - Unanimously **AGREED** the updated Panel Terms of Reference.

## 7. TEIC Terms of Reference

- 7.1. The Panel considered proposed revisions to the Trade Effluent Issues Committee (TEIC)) Terms of Reference. The amendments included a clear service-level regarding the circulation of meeting minutes post committee and provisions relating to the use of Alternates.
- 7.2. A Panel Member questioned whether this was consistent with the Terms of Reference of other committees and if these were aligned. AR stated the provisions for use of Alternates were consistent with other committees, including the Panel whereas the service level for minutes was specific to TEIC.
- 7.3. The Panel:
  - Unanimously **AGREED** the updated TEIC Terms of Reference.

## 8. Sub Group Terms of Reference

- 8.1. The Panel considered new Terms of Reference for Panel Sub Groups.
- 8.2. A number of Panel Members stated they had a series of proposed amendments and comments on the draft Sub group Terms of Reference. Another Panel Member stated that detailed drafting comments regarding the Sub Group Terms of Reference should be uploaded to the Panel SharePoint site in advance of the Panel meeting.
- 8.3. The Panel:
  - **DEFERRED** a decision on Sub Group Terms of Reference pending inclusion of feedback by Panel Members.

**Action A35\_03**

## 9. Change Report

- 9.1. SB presented the Change Report to the Panel.

- 9.2. CPM018 regarding the treatment of Market Performance Standard charges and Operational Performance Charges had been raised and was being progressed by the MPC
- 9.3. CPW073 regarding updates to GDPR data items in CSD0301 had been raised and was being progressed by the GDPR Issues Committee.
- 9.4. Change proposals CPM015 and CPW017 to introduce Panel self-governance arrangements would require additional work to address compliance with the Water Industry Act and therefore the Panel recommendation would be delayed to the November Panel meeting.
- 9.5. Since the change report was published, the proposer for the fixed return to sewer change proposal (CPW063) had advised they intended to withdraw the Change as the costs appeared to outweigh the benefits. This would be confirmed at the October Panel meeting.
- 9.6. Ofwat had returned the change proposal for Urgent changes (CPM006) for further analysis. The Panel noted that this change would be returned to the Governance Sub-group.
- 9.7. Ofwat had also returned the change proposal for unsecured credit allowance reflecting payment history (CPW061) for further analysis. The Panel noted that this change would be returned to the Credit Committee.
- 9.8. In relation to the Bilaterals Interfaces Solution change proposal (CPW070), SB stated that the steering group had now been established.
- 9.9. The Panel:
  - **NOTED** the change report

## 10. Any Other Business

- 10.1. A Panel Member stated that an audit Sub-group had met the previous week to consider the market audit going forward. A member of the Sub-group noted that the market audit report for 2018/19 contained a range of issues identified by the market auditor (PwC). Panel Members observed that it was important to ensure the annual process provided for transparency of the audit report so that the Panel could consider its findings. A Panel Member questioned whether the Panel wanted to retain the Sub-group to look into this, including how the issues from PwC's work are appropriately dealt with and put into work flows.
- 10.2. Another Panel Member felt that the MPC would have done things differently if more detail on the issues identified by the market auditor had been available. SA noted that the main themes from the 18/19 audit of meter reading issues and data quality were used to inform the MPOP. The Panel Member stated they were surprised by some of the findings of the report, including where trading parties had been flagged as intentionally not meeting their obligations under code specifically around meter reading. The Panel Member questioned if this meant further action was needed to deal with non-compliant Trading Parties, or whether there were many obligations in the code that are not appropriate to the current state of the market.
- 10.3. SA noted that the Sub-group was convened last year and that there was merit in retaining it to scrutinise and challenge insight from the audit. SA also agreed that some elements of the audit had

not been surfaced to Panel or MPC to allow scrutiny, challenge and drive action. This had been exacerbated during MOSL's relocation and subsequent transition.

**Action A35\_04**

- 10.4. A Panel Member noted that the audit took a risk-based approach to focus on areas of potential concern. As such, it was unsurprising that the auditor's report was skewed towards identifying issues and may not offer a representative view of the market as a whole.
- 10.5. Another Panel Member stated that there was a need to ensure the timings of future audits and reports are right to feed into the Panel Plan/MPOP processes. The Panel requested an operational plan to set out these timings.

**Action A35\_05**

- 10.6. SB reminded the Panel that in relation to the GDPR Issues Committee, Rachel Skelton was to step down and the committee would be looking for nominations.

## 11. MOSL Update

11.1. SM relayed feedback she had received through her recent engagement with Trading Parties. She noted there were a set of common views from these meetings:

- Regarding the relationships between Wholesalers and Retailers
  - There were wide variations between Wholesalers with respect to credit and payment terms and Retailers were challenged by this on a day to day basis.
  - In relation to metering, at the self-supply forum there were concerns regarding accountability and the wide variation in costs associated with metering services (e.g. install fees).
  - SM observed that there appeared to be a general level of distrust amongst Trading Parties (e.g. Some parties felt Wholesalers offering free water efficiency services was undermining Retailer businesses).
  - In general, SM felt she had gained a greater understanding of why these relationships are difficult and the day to day challenges between Retailers and Wholesalers who want to provide a joint service to the customer.
- Regarding the Panel
  - Trading Parties shared the view that it takes a long time for items to get through the Panel and there were too many committees and working groups.
  - Trading Parties also questioned the value for money of the Panel and its committees alongside customer focus.
- In relation to performance standards

- Trading Parties had questioned whether they incentivised the right behaviour and asked what MOSL was doing to address this, noting that last year's market audit had brought out some of the challenges around this.
- 11.2. SM stated that positively every Trading Party wanted to do things better and had offered to help but the appropriate level of collaboration should be considered.
- 11.3. A Panel Member asked if SM could elaborate if the distrust from Trading Parties extended to the Panel.
- 11.4. SM stated this might be dependent on whether the Trading Party had engaged by releasing employees to serve on the Panel or its Committees. She also felt that there may be a lack of understanding in what the Panel is. Those Trading Parties who were highly engaged with MOSL and Panel processes have quite a different view than those that have not. SM stated that the Panel needs to be clearer on its role and how this role fits in with the role of MOSL.
- 11.5. SM observed that, as part of its business-planning for 2020/21 MOSL had to understand if it had the right resources to deliver the value-adding services that the Panel and Trading Parties were telling her they needed without taking focus and attention away from core, business as usual activities. SM also stated that MOSL was looking at the true indirect costs of the Panel.
- 11.6. The Chair asked when the business plan would be available. SM stated this would be available at the October Panel.

#### **Action A35\_06**

- 11.7. SA provided an update on Market Performance.
- 11.8. SA confirmed that MOSL had successfully completed outstanding final reconciliation (RF) settlement runs in line with the catch-up timetable agreed by the Panel following the deferral of these runs in 2018.
- 11.9. SA confirmed that two Trading Parties would be asked to provide initial performance rectification plans to MOSL for underperformance against MPS18 for cyclic meter reads
- 11.10. SA confirmed that the spike in G-read deletions from a single trading party which had been flagged as being done erroneously, had been escalated with the Trading Party in question.
- 11.11. The Panel noted the most recent market performance information and expressed frustration at there being no improvement of vacancy levels and unread meters. SA believed parties were able to deliver improvements but were not adequately incentivised to address the problem. NS noted that the 24% reduction since the start of the year in meters unread since market opening was an impressive figure and that the MPC wanted to get Wholesalers together to understand how this had been achieved. The Panel noted the 8000 erroneous g-reads in August could cause Trading Parties significant billing and invoicing issues.

## **12. Comments on Panel Plan**

- 12.1. The Panel considered the first draft of its Panel Plan for 2020/21.

12.2. Panel Members observed that the secretariat had accurately captured the outputs from the recent Panel workshops and that the draft plan represented an aspirational programme of work. The Panel considered areas for prioritisation and deferral into 2021/22 and noted the plan was feeding directly into MOSL's business planning for 2020/21.

12.3. In particular the Panel requested the following amendments to the draft Plan:

- Customer Engagement
  - Customer sub-stream 2 to 'engage with customers and increase awareness of the market' should be delivered out with the Panel – potentially through CCWater.
  - Customer sub-streams 3 'consider customer interface in bi-laterals solution' should be deferred to 2021/22 in light of considerations on access to open data.
  - Customer sub-stream 4 'development of a non-household market website' should be deferred to 2022/23 in light of considerations relating to open data.
- Data and Systems
  - Data sub-stream 1 'efficiencies from centralizing settlement and credit' should be deferred to at least 2021/22 as a lower priority as the benefits to the market were less clear than other initiatives.
  - Data sub-stream 2 'Review of meter reading responsibilities' would be broadened to reviewing meter reading.
  - Data sub-stream 4 'Investigate open data protocol across utilities' would be limited to just the Water sector with cross utility investigation delayed to 2021/22.
- Strategy sub-stream
  - The first issue of Strategy Sub-stream 2 was effectively being delivered by the other workstreams and therefore no additional work would be required for this in 2020/21.
- Innovation sub-stream
  - Innovation sub-stream 1 'Panel briefings by disruptive retailers' would be delayed to 2020/21 and widened to include other organisations.

12.4. The Panel agreed that MOSL should update the draft plan in light of feedback received for consideration at the October Panel meeting.

**Action A35\_07**

12.5. The Chair closed the meeting.

Actions:

A35_01	Provide analysis on impact of G-read removal and individual SPID re-runs in post RF settlement runs. Develop mechanism to give TPs visibility of G-read removal in settlement runs 2 years ago.
A35_02	Establish letter on sharepoint for comments on Emma Kelso letter to Wholesalers on developing effective markets. Submit combined letter to Governance group for review and then to Oct Panel for approval.
A35_03	Update Subgroup ToR and represent to Oct Panel
A35_04	Develop an operational plan showing how audit, panel plan and MPC work fit together
A35_05	Review visibility of audit information
A35_06	Include MOSL business plan on October agenda
A35_07	Update Panel plan and present to Oct Panel for approval