



## Minutes of Panel Meeting 36

29 October 2019 | 10:30 – 17:00

MOSL Offices, 5<sup>th</sup> Floor, White Building, 1-4 Cumberland Place, Southampton, SO15 2NP

Conference Call: 0203 321 5238, Access Code: 3746268#

Status of the Minutes: Final

### THE PANEL

Jim Keohane	JK	Chair	Mark Holloway	MH	Panel Member (Wholesaler)
Mike Brindle	MB	Panel Member (Associated Retailer)	Helyn Mensah	HM	Panel Member (Independent) T-con
Claire Yeates	CY	Panel Member (Unassociated Retailer)	Nigel Sisman	NS	Panel Member (Independent)
David Siddall	DS	Alternate Panel Member (Unassociated Retailer) T-Con	Elsa Wye	EW	Panel Member (Independent)
Trevor Nelson	TN	Panel Member (Unassociated Retailer)	Christina Blackwell	CB	Alternate Customer Representative Panel Member (CCWater)
Ian Dearnley	ID	Panel Member (Wholesaler)	Dan Mason	DM	Affiliated Panel Member (Ofwat)
Martin Mavin	MM	Panel Member (Wholesaler)	Sarah McMath	SM	Affiliated Panel Member (MOSL CEO)
Adam Richardson	AR	Panel Secretary	Chris Williams	CW	Panel Member (Associated Retailer)

### OTHER ATTENDEES

Oliver Farrell	OF	Observer (MOSL)	John Vinson	JV	Observer (Independent) T-con
Ivy Mandinyenya	IM	Observer (MOSL)	Steve Arthur	SA	Presenter (MOSL)
Evan Joanette	EJ	Observer (MOSL)	Chris Dawson	CD	Observer (MOSL)

Antoine Schmidt	ASc	Observer (Thames)	Stuart Boyle	SB	Presenter (MOSL)
Huw Comerford	HC	Observer (MOSL)	Andrew Stoneman	ASt	Presenter (MOSL)
Ray Porter	RP	Observer (Castle Water)	Christopher Wright	CW	Observer (Castle Water)
Rebecca Mottram	RM	Observer (Ofwat)	Emma Kelso	EK	Observer (Ofwat)

## APOLOGIES

Mike Keil	Customer Representative Panel Member (CCWater)
Nicola Smith	Unassociated Retailer Panel Member

## OPEN SESSION

### 1. Welcome and Introductions

- 1.1. The Chair welcomed attendees to Panel Meeting 36. The Chair informed the Panel that Christina Blackwell (CB) was attending in place of Mike Keil as the voting Customer Representative Panel Member and welcomed Ray Porter (RP) from Castle Water, Rebecca Mottram (RB) from Ofwat and Antoine Schmidt (AS) from Thames Water as observers.

### 2. Sub-Group Terms of Reference

- 2.1. The Panel considered Terms of Reference (ToR) for Sub-Groups used to progress change proposals. This paper proposed model Terms of Reference for these Panel Sub-Groups.
- 2.2. The Panel agreed minor amendments to the ToR at the suggestion of Panel Members to:
- indicate that Sub-Group working should be as transparent as possible;
  - confirm that, if the Chair is not present for the meeting, the members present can appoint a Chair to cover that meeting;
  - make it clear that assessments of the impact on affected stakeholders (including the end customer) should be based on evidence;
  - clarify that alternative solutions to change proposals should only be explored if necessary; and
  - simplify section 4.2 of the ToR by removing points (a) and (b) and making it clear that the Panel could change or add to the membership of the subgroup.
- 2.3. The Panel:
- **AGREED** unanimously to the Panel Sub-Group Terms of Reference with the proposed drafting changes.

### 3. Code Advisory Group Member Selection

- 3.1. The Panel considered the Code Advisory Sub-Group (CAG) Member Selection paper and decided that Panel Members from the same group who appointed members of the steering group would be used to appoint members of the CAG.
- 3.2. Panel Members noted that this group included Mike Brindle, Chris Williams, Mark Holloway and Helyn Mensah. Helyn Mensah (HM) requested not to be included.
- 3.3. The Chair questioned whether only having three members breached membership in the Terms of Reference in the previous item.
- 3.4. EJ clarified that the Panel was being invited to delegate authority for appointing CAG members to a sub-set of Panel Members. The Panel members did not themselves constitute an actual Panel Sub-Group, but rather the CAG did.
- 3.5. The Panel agreed that the appointment decision should be delegated to the three identified Panel Members and noted that the Panel Sub-Group Terms of Reference would apply to the CAG .
- 3.6. The Panel:
  - **AGREED** unanimously to appoint Mike Brindle, Chris Williams, Mark Holloway to appoint the CAG.

### 4. Developing Effective Markets Letter

- 4.1. The Panel considered the draft reply to Ofwat in relation to Developing Effective Markets.
- 4.2. Panel Members noted that the draft letter was based upon an original drafting by A Panel Member and revised by Panel Members comments received ex-committee.
- 4.3. The Panel:
  - **AGREED** unanimously the content of the Developing Effective Markets letter.

### 5. Change Report

- 5.1. SB presented the Change Report to the Panel which included 7 new changes, taking the total number of inflight changes to 20.
- 5.2. The Panel noted that Change Proposal CPW061 had been sent back by Ofwat requesting resubmission in January. Subject to agreement from Ofwat, the recommendation by the Panel would be moved to March/April to provide appropriate time to undertake the further assessment work that had been requested by Ofwat. Panel Members agreed that this further assessment work should be undertaken by the Credit Committee.
- 5.3. A Panel Member questioned why there were multiple changes returned by Ofwat for further assessment.
- 5.4. Another Panel Member felt that there should be greater independent analysis by MOSL to ensure there is a rounded market view and the impacts on the end customer can be seen. Rather than trying

to balance individual Trading Parties comments, there should be an independent view from the MO on the end customer and long-term impact on the market.

- 5.5. Dan Mason (DM) noted that from Ofwat's perspective there were a number of themes that had contributed to Ofwat sending back Change Proposals. One was around the quality of legal drafting and whether the legal drafting actually implemented change proposals and matched the objectives of the Change as intended. DM also stated that he agreed with the above Panel Member's point around the need for a clear evidence base and rationale and that there should be an independent objective assessment of any change.
- 5.6. AR confirmed that MOSL's approach to developing legal drafting had changed since the summer and that all legal text is reviewed by an external legal team. AR also noted and that MOSL was meeting with Ofwat on the 5<sup>th</sup> November to discuss working practices to support appropriate assessment and reporting for change proposals. AR stated that the Panel also has key role in how it goes about setting up changes in terms of sub-groups and time lines. AR suggested that the Panel should pick this up at either the November or December meeting.

**Action A36\_01**

- 5.7. The Panel also noted that Change Proposal CPW067 Bulk Submission of Service Requests via MS Excel had been returned to the Panel by Ofwat for further assessment. The Panel agreed that this further assessment be undertaken by a Sub-Group and requested that MOSL make arrangements to seek nominations for this Sub-Group to be appointed by the Panel.

**Action A36\_02**

- 5.8. A Panel Member stated that this assessment should consider issues related to OPS, therefore the MPC would need to be consulted. AR stated that MOSL would ensure the MPC is kept up to speed.
- 5.9. An observer questioned whether the first three non-code change costs were identical and whether they came out of the change budget. SB stated that these changes are priced together so costs had been allocated evenly across the three changes. SB continued that non-code and Panel changes are all funded from the change budget which is managed by MOSL.

## 6. Change Withdrawal CPW063 Chargeable Data-Fixed RTS

- 6.1. The Panel considered the rationale for the withdrawal of CPW063 Chargeable Data-Fixed RTS.
- 6.2. A Panel Member questioned why the assessment work associated with had not yet taken place and that, when this was initially presented, it was agreed a Sub-Group would be formed and timetable agreed.
- 6.3. CD noted that, prior to joining MOSL, he had originally raised this change on behalf of the RWG group. However, during discussions with MOSL in the early stages of assessing the change, the cost was found to be high and an easy work-around was identified which was endorsed by the RWG. In light of these considerations, the RWG had confirmed the case for change was no longer clear and agreed that the change should be withdrawn. As the named proposer, CD agreed with this course of action.

- 6.4. Another Panel Member stated that there was not enough interest in the issue and the pragmatic thing was to move on and deal with other important issues.
- 6.5. The Customer Representative questioned how much consideration had been given to the impact on customers, and whether the NFU had been approached as farmers were specifically mentioned in the report. CD stated that a workaround existed and this mitigated impacts on customers.
- 6.6. The Panel:
- **AGREED** the rationale provided for withdrawal,
  - **AGREED** to suspend this change proposal; and
  - **AGREED** that if no other Proposer came forward it would be withdrawn. (10 in favour – 1 abstention).

## 7. New Change Proposal CPW079 Protection for Credit Support Security

- 7.1. The Panel considered Change Proposal CPW079 raised by Castle Water to address circumstances in which a Wholesaler draws on Credit Security above the level of payment owed by a Retailer and to vary the level of Credit Support that a Retailer must provide to a Wholesaler whose credit rating is lower than the Minimum Credit Rating.
- 7.2. The Panel noted that the proposer had indicated the change was urgent. SB stated that such a wide-ranging change might usually go to a Panel Sub-Group (notionally the Credit Committee) for further assessment but as the proposer had indicated there were time constraints this change was being developed between MOSL and the proposer.
- 7.3. RP, as the proposer of CPW079, saw this as an urgent change as there is a gap in the codes. He referred to the imminent PR19 final determinations and public comments on these and that, in his view, the matters raised in CPW079 should be addressed now rather than wait until later.
- 7.4. Ofwat stated they have a statutory duty to ensure that efficient companies are able to finance their functions.
- 7.5. Some Panel Members questioned whether the two elements of the issue identified in the Change Proposal were related – i.e. whether the issue in relation to the risk that a Wholesaler drawdown excess credit amounts and the issue in relation to Wholesaler credit ratings was separate.
- 7.6. A Panel Member stated the 9.14 Business Terms (Sch1 Pt2) should make it clear that 'partial and multiple withdrawals' are possible and only apply in a default situation. The controls are implicit but arguably could be made clearer, but this is something that it is probably worth asking the Credit Committee to look at in detail to improve the clarity of position.
- 7.7. Christopher Wright (CW) stated that, in practice, partial calls on letters of credit don't happen because the beneficiary controls the amount of the call and the bank can't enquire as to whether the demand is valid. CW continued that this means it is possible for the withdrawal to be made to the extent of the line of credit including circumstances where the amount due is a small proportion of this. There is no requirement for these withdrawn funds to go into a secure form such as a credit security account. CW believed that in circumstances where a Wholesaler is under financial stress, this money is

automatically at risk as the Retailer becomes an unsecured creditor. Consequently, the proposer felt these matters were related and should be considered in a single Change Proposal.

- 7.8. A Panel Member felt the Credit Committee needed to look at the change in depth in relation to the implications for the end customer. Another Panel Member stated that the Credit Committee should consider the change proposal to ensure that any unforeseen or consequential impacts were identified and assessed.
- 7.9. DM observed that the proposal stated that the Authority would play a role in the resolution of disagreements between wholesalers and retailers. He reminded Panel Members that the rationale for adopting a different approach to that provided for in the existing architecture of the market to the usual consideration of disagreements via the existing disputes and arbitration provisions would need clear and strong rationale.
- 7.10. AR stated that if put to a Sub-Group, working on a standard, rather than expedited timetable, it could be anticipated that the Sub-Group would make a recommendation to the Panel in January/February. The Panel noted that there was only one credit committee meeting currently scheduled between the 31 October and the end of the year.
- 7.11. The Chair stated that there needs to be a preliminary assessment on the urgency of CPW079. AR stated MOSL understood the thought process around urgency and reminded the Panel that this was the start of the process and therefore wouldn't anticipate further evidence at this stage. A decision on urgency would have to be based on the views of the proposer in the paper. If further work was carried out and brought back to the Panel on whether or not it is urgent, it would not be possible for the Panel to make a recommendation to Ofwat in time to meet the proposer's desired implementation date of 10<sup>th</sup> December.
- 7.12. Ofwat stated that Final Determinations were due out on the 11<sup>th</sup> December 2019. This is a public domain process and TPs can appeal to CMA. A Panel Member pointed out Ofwat's Final Determinations on PR19 wouldn't come into effect until 1 April 2020. Another Panel Member stated that a credit rating agency downgrading on the basis of Final Determinations is not certain.
- 7.13. RP stated that there is a gap in the code and this presented a risk of market failure. He reflected that, while the likelihood of something happening on 11<sup>th</sup> December may appear low, if something were to happen that impacted financial standing, it could happen very quickly.
- 7.14. A Panel Member stated that the code is completely silent on what the process is for urgency or threshold standards but does say an urgent proposal can be raised. The Panel noted that, while the urgency criteria is being developed by the Governance as work in progress, MOSL analysis should nevertheless be undertaken by reference to the guidance issued by Ofwat in 2017 (which was largely aligned to criteria used by Ofgem).
- 7.15. The Panel felt unable to decide if CPW079 was urgent without further evidence.
- 7.16. AR stated that CPW079 was currently under consultation and the feedback gathered through this process will allow MOSL and the proposer to assess the impacts. AR also stated that this consultation timetable was intended to get the change proposal in front of the Panel in November.
- 7.17. The Panel asked MOSL to undertake an assessment of urgency and independent analysis of the issues and produce a recommendation report on CPW079 to be provided to the Panel at the November

meeting. . Panel Members noted that this report would be provided as a late paper and would consider the case for urgency, building on the evidence and impact information currently being gathered through the ongoing consultation. The Panel noted that, it would determine, based on the evidence presented in November, whether there was a case to make an urgent recommendation to Ofwat or whether to seek further assessment of the change via the Credit Committee.

7.18. A Panel Member stated that a precedent should not be set for other changes and that a pragmatic approach should be adopted.

7.19. The Panel:

- **AGREED** unanimously the approach to developing CPW079;
- **AGREED** unanimously to proceed with the timetable for developing CPW079 subject to a decision on urgency at the November Panel; and
- **AGREED** unanimously to focus on the rationale and evidence for urgency.

## 8. New Change Proposal CPW075 Remove estimation meter Readings when forward estimating.

8.1. The Panel considered CPW075 which sought to introduce functionality to remove estimated reads from the Central Systems when computing charges for settlement in the event of forward estimation.

8.2. DM questioned why the number of CMOS estimations were rising. A Panel Member stated that this was due to long unreads. DM also stated that the Sub-Group needed to bring out the impact on customers. Another Panel Member confirmed that the impact on billing was currently included but not that on customers.

8.3. A Panel Member stated that there is an assumption that estimates are bad and meter reading is good and that this needs to be thought through carefully.

8.4. The Panel agreed that this assessment be undertaken by a Sub-Group and requested that MOSL make arrangements to seek nominations for this Sub-Group to be appointed by the Panel.

8.5. The Panel:

- **AGREED** unanimously the approach to developing CPW075;
- **AGREED** unanimously the timetable for developing CPW075; and
- **AGREED** unanimously the areas for consideration by a Panel Sub-Group.
- **NOTED** nominations for the Sub-Group would be considered by the Panel

## CLOSED SESSION

### 9. GDPR Committee Nominations

- 9.1. The Panel considered the nominations received for the new member of the GDPR Issues Committee. There were 2 nominations to fill 1 vacancy.
- 9.2. The Panel:
  - **AGREED** unanimously to appoint John Heild to the GDPR Committee subject to satisfactory confirmation and employer release letters.

## OPEN SESSION

### 10. Draft Recommendation Report: CPM018 MPS & OPS Redistribution

- 10.1. The Panel considered the Draft Recommendation Report CPM018 in relation to MPS & OPS Redistribution.
- 10.2. As the proposer of the change and Chair of the Market Performance Committee, NS stated that monies from OPS charges would be available to fund market enhancing projects and that, if approved, the proposal would place significant responsibilities on the Panel. NS stated that the Panel would have the option to deploy the funds and make decisions about projects against a series of criteria, these being to: enhance the market function and be a benefit to non-household customers, additional to activities that already might be undertaken and that no project should confer a competitive advantage to an individual Trading Party or group of Trading Parties (this being embodied in the code).
- 10.3. NS continued that the Panel would have a responsibility to define, implement and monitor the process including the fact that it will have to establish a project selection and governance document, that will be referenced from the code and sit outside the code. NS stated that the key ideas have been defined, these being available in the documentation in the consultation (Appendix 1), but work needs to be done to formalise the project selection and governance document and for the Panel to approve it.
- 10.4. In relation to where money is not spent on projects, NS stated that the default mechanism will be to redistribute in an incentive neutral way. NS stated that this cleared the major issue that Ofwat felt needed to be addressed in relation to dilution of incentives. NS observed that, when redistribution occurs, the approach is unlikely to be acceptable to everyone and that there had been some feedback (set out in the paper) indicating concerns that future consolidation of actors could give rise to unacceptable transfer effects. However consultation respondents had indicated, and MPC agreed, the effects were currently acceptable but should the effects increase, and a competitive distortion result, then the approach would need to be revisited.
- 10.5. Ofwat stated that it would be strange if no applications came forward for projects given the known issues in the market. Ofwat continued that it is important that there are very clear and workable criteria for assessing projects and that systematic bias is taken into account by the MPC so that helpful projects are not inadvertently ruled out.



- 10.6. A Panel Member stated that market enhancing projects should be for activities beyond the scope of the normal MOSL business plan funding (i.e. worthy adjacencies) otherwise there will not be the appropriate level of checks and balances on overall funding.
- 10.7. A Panel Member stated that the Panel needed to be careful not to reject projects that benefit the end customer. In their opinion, all money should go to market improvement and not be redistributed and there may be a danger that projects are not backed due to redistribution concerns. Another Panel Member stated that MOSL's scope needs to be clear.
- 10.8. A Panel Member stated that they were unsure about the governance arrangements. The Chair confirmed that these details were available in the consultation document Appendix. NS stated that more detail could be put into the project selection and the governance document if needed however NS agreed that it was also important not to overcomplicate this.
- 10.9. The Customer Representative suggested that when money is returned via a redistribution mechanism, it should be directed towards rectifying the failure which incurred the performance charge to benefit the end customer. NS stated that it would be difficult to obligate Trading Parties for this and it would be hard to monitor and track at that level. SA stated this will be looked at through the Market Performance Framework.
- 10.10. A Panel Member stated that the framework would be key in terms of the decision-making process for the Panel but also potential to minimize the burden on MOSL in administering project selection and monitoring the progress of projects. SM stated that moving forward MOSL would want to be clear where it was spending money. NS observed that the Change identified some impacts on MOSL in this regard and suggested that, were this to grow outside the current operating capacity of MOSL, it could be funded as part of the costs of projects that were approved by the Panel and funded via this mechanism.
- 10.11. A Panel Member requested a formal annual marker for reviewing governance (watching brief).
- 10.12. The Panel Chair noted that there were two further aspects to the Change Proposal that had been raised and needed consideration:
- 1) An issue in relation to cash flow noted by the Market Operator; and
  - 2) A matter of whether to implement on 1<sup>st</sup> of April or 1<sup>st</sup> of January, raised by A Panel Member .

#### *MOSL Working Capital Concerns*

- 10.13. SM introduced MOSL's issue related to working capital and cash flows. MOSL had recognised this issue a few weeks ago and put it on the agenda as soon as it was aware.
- 10.14. ASt presented a summary of the working capital issue consistent with the options set out in a letter sent to Panel Members on 25 October 2019 (entitled CPM018 Treatment of MPS & OPS Charges). ASt stated that multiple Trading Parties had contacted MOSL to say that this was MOSL's problem, but as MOSL is funded by its members, it was in the best interest of members and the market to resolve the issue pragmatically.
- 10.15. A Panel Member stated that as a Panel Member they should not change their view on a Change Proposal due to the working capital issue and that this was an issue for the board and MOSL.

- 10.16. A Panel Member stated that if the codes are ambiguous then that is a Panel issue. ASt stated that the code is silent on what happens to monies and there is no requirement to ringfence those monies.
- 10.17. A Panel Member stated that MOSL could be open to criticism with a market performance operating plan that isn't hard hitting enough because it needs working capital (collected through market performance charges) to manage annual cashflow. ASt clarified that MOSL was not using this money to fund activity, but as working capital to cover time differences between income and outgoings.
- 10.18. Another Panel Member noted that the change proposal indicated that using collected charges for projects should not be considered the default option and questioned whether there was a real issue if funds remained in the pot to be redistributed to Trading Parties. In effect, was there a realistic chance that the Panel could justify spending £4 million on projects. SM stated that this is a theoretical risk that MOSL still needs to take account of. NS stated that there was £2 million in the MPS pot and another 3 months of charges which will not be redistributed until September next year with more charges accruing next year.
- 10.19. A Panel Member stated every other business must fund its own working capital and that money collected from performance charges was not intended for working capital. SM confirmed the proposed approach had been discussed at the board.
- 10.20. A Panel Member queried the period over which the proposed approach (incorporating the concept of a 'buffer' within the project governance framework introduced by CPM018 and the relevant sections of the code enacting this change) would operate.
- 10.21. A Panel Member suggested that a 12-month period starting 1<sup>st</sup> April 2020 in which the Panel should not decide to deplete the accumulated charges below the levels required by MOSL might be sufficient.
- 10.22. A Panel Member questioned whether legal aspects (fiscal) had been considered and ASt confirmed this was the case. Revised text was suggested, and this was further discussed under AOB.

#### *Implementation date considerations*

- 10.23. A Panel Member, suggested an alternative solution to that presented in the Draft Recommendation Report, this being an earlier implementation of 1<sup>st</sup> January. The Panel understood that this would mean the January-March 2020 MPS and OPS would be redistributed using the new incentive neutral approach and would be available for use in projects. However, the Panel understood this would mean the 1<sup>st</sup> January and 1<sup>st</sup> April legal text and solution would differ.
- 10.24. The Panel Member stated that MOSL felt that 1 month would be needed to implement the Proposal, therefore the MPC had favoured 1<sup>st</sup> April implementation. An advantage of this was that Trading Parties expect and have budgeted for redistribution and the CMP008 Ofwat decision supported this date. Additionally, another Panel Member indicated that changes affecting financials should be aligned with financial years. In relation to 1<sup>st</sup> January, A Panel Member stated that implementing earlier removes the dysfunctional redistribution approach to MPS earlier, provides a further complement to CPW072 (by removing the adverse performance based redistribution impact of making late submission of meter reads) and provides opportunity to also test the new process in relation to MPS monies.
- 10.25. Panel Members queried if a 1<sup>st</sup> January 2020 implementation date was possible.

10.26. MOSL noted that implementation activity usually took place between a change being approved and being given effect in revised market codes. In the case of CPM018, this implementation work would include development of the governance framework by the Panel and the development and testing of revised performance charges re-distribution calculations. Noting that Panel Members were content that this implementation activity could take place after the market rules had been implemented and that any redistribution of performance charges would not take place until after the year end, MOSL confirmed that a 1<sup>st</sup> January 2020 implementation date was possible if Ofwat were to confirm its decision by around 10<sup>th</sup> December.

10.27. The Panel agreed to delegate responsibility for approving the legal drafting associated with changes in implementation dates to NS and HM. The Panel also asked that HM and NS review the legal drafting to ensure it contained no typographical, grammatical or other quality-related issues. HM noted that the Panel is collectively responsible for approving legal drafting but agreed to the delegation in this case for expediency.

10.28. A Panel Member voted against CPM018 due to the earlier amended implementation date of 1 January 2020. The Panel Member stated that the Authority decision on Revised CPM008 in February 2019 gave Trading Parties a clear and reasonable expectation that the current method of full re-distribution back to Trading Parties would remain in place until 31 March 2020 and this would have been built into their budgets for the current year. The Panel Member also stated that the MPC had also agreed and recommended an implementation date of 1 April 2020 after full consideration of the industry consultation feedback.

### **ACTION A36\_03**

10.29. The Panel:

- **AGREED** to recommend the implementation of CPM018 to the Authority for approval (11 votes for; 1 vote against); and
- **AGREED** to recommend an earlier implementation date of 1<sup>st</sup> January 2020 (8 votes for; 4 votes against).

## **11. CPW069 Right of a Retailer to Appoint an Accredited Entity**

11.1. The Panel considered the Draft Recommendation Report CPM069 in relation to a Retailer having the right to appoint an Accredited Entity to undertake a meter rectification, where the Wholesaler has failed to repair or replace a faulty meter within the time prescribed in the Codes.

11.2. A Panel Member stated that they like the proposal however did not see how it incentivises Wholesaler efficiency. If the Wholesaler didn't do the work within the timescale would appointing an Accredited Entity take away the liability and responsibility for doing the job. The Panel Member liked the idea of getting the job done and putting pressure on the Wholesaler to achieve this but if they fail that then someone else can step in and complete the job.

11.3. The proposer of the change (RP) stated that an obligation would be introduced in the Change Proposal for each Wholesaler to accredit at least one entity to undertake meter repair and replacement within its area as soon as they identify they will fail their obligation. RP stated that the cost still sits with the Wholesaler and they are still paying for the service even if they can't deliver it.

- 11.4. A Panel Member questioned if there was evidence to confirm whether there was sufficient capacity in the industry to provide alternatives to the Wholesaler-provided service. They also felt that the Market Performance framework interactions were not clear. In their view, if the issue was with Wholesaler performance then the market rules and the Panel should incentives performance improvement rather than taking the problem away from Wholesalers.
- 11.5. A Panel Member questioned if there was a defined process for the Retailer to deal with an Accredited Entity.
- 11.6. A Panel Member raised the issue that it may be difficult for a Trading Party to obtain a local authority license to use an Accredited Entity and that these issues would be applicable to both Retailers and Wholesalers. The Panel Member also stated that this change was trying to solve a narrow problem and the Panel should be wary of granting a wider power that won't speed up the process of getting a meter fixed.
- 11.7. A Panel Member stated that water quality concerns highlighted could be addressed easily and that bringing market forces to bear was a good thing. A better service to Retailer or Wholesaler would improve performance.
- 11.8. Panel Members agreed that this change needed more work. There were concerns in understanding how the contractual relationship between Trading Parties would work and that it would be valuable to have an independent view on the Change Proposal. Wholesaler undertakers must go through OJEU (Official Journal of the European Union) to appoint contractors and if the code imposed a contract that would have gone through that process then there may be legal issues. A Panel Member stated that the fundamental issue is to improve Wholesaler performance for the end customer and focus should be on this rather than creating another industry.
- 11.9. A Panel Member stated that it was still unclear whether this is market wide issue and whether the consultation responses demonstrated a capacity issue limited to a relatively small number of Wholesalers. SA stated that the B5 process (Repair or replacement of a faulty meter performed by a Wholesaler) was the first OPS being focused on in relation to performance and outstanding tasks.
- 11.10. The Panel Members agreed to MOSL working with the Proposer to develop the proposal. The Panel noted the following issues that needed to be re-assessed before bringing the change back to the Panel:
- Procurement issues
  - Contractual issues
  - Cost implications
  - Performance incentives,
  - Impact on bulk submissions
  - Definition of what the problem is
  - Supply side issues
  - Barriers to entry

- The impact on customers
- Whether this is an industry wide issue
- The B6 route in the Operational Terms (Repair or replacement of a faulty meter performed by an Accredited Entity)

#### 11.11. The Panel:

- **AGREED** unanimously for MOSL and the Proposer to re-work CPW069 to incorporate their concerns.

## 12. Panel & MOSL Business Plans

- 12.1. The Panel considered the MOSL Business Plan, including the key themes on which the plan had been based. SM provided an overview of the process that MOSL had undertaken in developing the business plan, a recap on the work to review the strategy and capabilities, and a resourcing view. The Panel also considered key insights and findings from the process.
- 12.2. Panel Members noted that the Panel Plan had been integrated into the MOSL business plan and that delivery of the Panel Plan was tied to approval of the MOSL business plan.
- 12.3. A Panel Member questioned whether the water efficiency piece was still a part of the Panel Plan. SM confirmed it was.
- 12.4. Panel Members noted that many of the Panel Plan elements comprised workstreams that involved investigative work to explore issues and possible solutions. MOSL had incorporated these investigative stages into its business planning and separately identified where work may lead to change proposals. Resources had been planned for forecast change proposals. SM stated MOSL would look at a single technical secretariat across the Panel and MPC to improve connectivity across these.
- 12.5. A Panel Member stated that clarity needed to be given to Trading Parties how much money is used to drive change versus the Panel processes. AR stated that the Panel costs highlighted in the presentation included the cost of assessing changes and supporting panel and various groups but did not include the cost of implementing change. The Panel noted that the cost of implementing changes was considered and communicated as each change proposal was assessed and was shown in aggregate via the change budget and information set out in the change report each month. The costs of assessing and implementing changes were provided for in the draft business plan.
- 12.6. A Panel Member questioned the costing in relation to resource forecasting and experience levels. SM stated that these had been costed in accordingly.
- 12.7. A Panel Member questioned how MOSL would keep the budget as low as possible. SM stated that this was a balance between getting a budget that means MOSL can deliver effective service but also credibility in what has been delivered both from an efficiency and quality perspective.
- 12.8. A Panel Member questioned how the costs associated with the development and implementation of a bilaterals solution had been captured – particularly the potential costs associated with any IT development if this was required. SM confirmed that the draft plan incorporated project costs for delivering the bilaterals work and this project included investigation into the appropriate solution (including any IT component). Consequently, it was too early to know the cost for any IT solution and it was anticipated that this would not be available until after the business plan was issued for

consultation and approval by MOSL's members. The Chair reflected that this presented two options: 1) to forecast an amount for an IT build in the plan, knowing that this may need to be revised and, consequently, an estimate made now may need to err on the upper side of any forecast; or 2) to identify additional funding requirement for any IT build when the costs are known. SM confirmed that MOSL was considering which of these two (or any other) approaches was the best way forward.

- 12.9. A Panel Member stated that a 10% increase in the proposed budget was concerning in the current climate. SM acknowledged this and observed that it was important for MOSL to be transparent about the costs associated with the type of service and Market Operator that was being asked for by trading parties. She reflected that, while MOSL had originally been conceived as a transactional Market Operator, the requests placed on MOSL regarding market improvement indicated a need for a more intelligent and value-adding service. SM confirmed that MOSL's priority was to ensure it was set up to deliver its thirteen services brilliantly and to provide for further, value-adding work where this had been requested, for example through the Panel Plan. SM stated that MOSL will be really disciplined about what it can afford to deliver for Trading Parties and that it can't continue to stretch the team and capabilities.
- 12.10. A Panel Member stated it is not clear how to address meters that have been read and are now not been read and that this will be an issue for the Panel in the coming year. SA stated that one of the themes is meter reading in the Panel Plan and is certainly high up on the list of things that are part of the business plan.
- 12.11. A Panel Member expressed concern that any increase in MOSL's budget would result in cost to Trading Parties which might be passed on to customers. SM stated that it would be important to have more data on the difference between direct and indirect costs and reflected that delivering on the overall theme of making it easier to do business should drive improvements that ultimately benefit trading parties and customers.
- 12.12. Another Panel Member stated that it was a tough ask but there is a case for MOSL requiring more support if this led to an overall acceleration in market improvement.
- 12.13. The Chair noted that the board had discussed and endorsed the business plan development to date and supported the detailed and thorough process being taken by the leadership team. Panel Members agreed and welcomed MOSL's openness and transparency in its presentation of the work to date.
- 12.14. The Panel noted that MOSL was hosting a CEO forum at the beginning of November in which it would discuss its early thinking on the business plan and agreed that it was appropriate for MOSL to explain to the CEO forum what the thoughts of the Panel on this were at this early stage in the process.

## 13. Questions on MOSL Update

- 13.1. The Panel agreed this section would not be covered in the Panel Meeting and any questions should be forwarded to SA by the end of the week.

**ACTION 36\_04**

## 14. Minutes and Outstanding Actions

- 14.1. AR stated MOSL had issued minutes and had a number of comments back that were addressed.
- 14.2. A Panel Member requested section 3.5 be updated to reflect that a breakdown of billing and charges complaints would be shared ahead of the November meeting.
- 14.3. A Panel Member stated that in Section 4.5 should be modified to confirm that it change had been sent back to the Panel for further assessment by Ofwat.
- 14.4. AR took the Panel through the Panel Outstanding Actions and the Panel agreed to close actions A32\_03, A33\_03, A33\_04, A34\_02, A34\_03, A34\_04, A34\_08, A35\_02, A35\_03, A35\_04, A35\_06 and A35\_07.
- 14.5. SA stated A35\_01 should be kept open (*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*). SA stated that there was a productive session with NS and MM and this still in development and should be kept open to January.

## 15. Ofwat Update

- 15.1. DM presented an Ofwat update to the Panel.
- 15.2. There would be a workshop on Thursday 31<sup>st</sup> October in relation to protecting customer credit balances with Retailers and CC Water.
- 15.3. The Panel noted that responses from trading parties to Emma Kelso's letter to Wholesalers on developing effective markets should be sent to Ofwat by Thursday 31<sup>st</sup> October.
- 15.4. Ofwat had published its new strategy on 8<sup>th</sup> October and this applied to everyone in the sector regardless of their role and that the Panel has a key role to play. A Panel Member questioned whether any slides would be presented. Ofwat stated that some slides were going to be presented at the CEO forum. The Chair stated that this could be a separate item in the next Panel next to the Ofwat update.

**ACTION 36\_05**

## 16. Committee Updates

- 16.1. AR gave an update on the Trade Effluent Issues Committee and stated it was on track.
- 16.2. AR gave an update on the Credit Committee and stated the next meeting in November would consider Proposal 5 - Simplification of the Default and Termination Process and that the consultation for this change proposal has just been launched. AR stated that further work was needed to look at CPW061 'Payment Terms' which had been returned by Ofwat and the committee would consider the approach and timetable for this work at its next meeting.
- 16.3. NS gave an update on the Market Performance Committee and that they were going to talk about CPM018 20<sup>th</sup> October and there was a responsibility to go back to respondents of the consultation and say what was being done. NS stated that there was a priority change consultation going on involving

changes to MPS18 and that there will be a consultation soon. NS stated that there would be a discussion about guidance in relation to OPS and the bulk submission proposal interactions.

- 16.4. HC gave an update on Trading Disputes Committee (TDC) on behalf of EW and stated that a number of TDC disputes have been closed in line with new guidance document.
- 16.5. HM gave an update on the GDPR Committee and stated that CPW073 DRR was forecast to go to the November meeting but may go to December.

## 17. Any Other Business.

- 17.1. A Panel Member questioned whether there was work going on to look at meter reading and the long unread. Another Panel Member stated that, in his view, this was very fragmented and there was work currently being undertaken such as the MPOP, PWC audit and 3 Trading Parties that are on initial performance rectification plans for MPS 18. They stated that there are issues related to understanding how we get the knowledge to deliver the benefits. The Panel Member stated that we need to know whether meter reading itself is a challenge and what the associated problems are (technical challenges). The Panel Member stated that this was important so as to reduce the overall cost to serve. They observed that, there was the legacy issue but outside of this meters that were previously read appear to no longer be being read and this is potentially the underlying issue with meter reading. Furthermore the Panel Member highlighted the opportunity to understand via dialogue with the 2 or 3 Wholesalers that have delivered major recent performance improvements in relation to legacy long unread meters whether there was still scope to achieve a lot more.
- 17.2. An observer questioned whether there had been any comments on the Castle letter to Ofwat in relation to CPW066 – Estimation Review. AR confirmed that there hasn't been a request from Ofwat for the Panel or for MOSL to respond to the letter or to do further work. Ofwat stated the letter was for information only and circulation was good regulatory practice.

### *Independent Panel Member Appointment*

- 17.3. The Chair stated that he had spoken to 2 of the Independent Panel Members to confirm that MOSL's intention was to commence an open recruitment for these roles with appointments to be effective from 1<sup>st</sup> April 2020. This had the effect of creating a staggering between the terms of office across the Independent Panel Members which would support continuity going forward. MOSL was engaging a recruitment firm to support this process. The Panel noted that the MAC gives the Chair of the Panel powers to appoint and in order to ensure openness and trust between Panel and MOSL the Chair suggested he would contact one Wholesaler and one Retailer representative on the Panel to support this recruitment process. The Chair would make a point of not choosing people who served on Committees chaired by those that are up for nomination and that there would be a long listing, short listing and interview stage for these representatives to help with.

### *MOSL Working Capital continued*

- 17.4. ASt presented the Proposed Changes to remove 9.4.3(f) and add 9.4.6 to build up working capital.
- 17.5. A Panel Member stated that this was an 18-month provision not a 12-month provision as previously discussed. SM stated that this provision would give a transition period. AR observed that the text



related to the financial year and that this encompassed the redistribution of MPS and OPS charges associated with that year which occurred six months after the year end.

- 17.6. A Panel Member stated that the Panel hadn't consulted with members on how to solve this particular issue. The Chair stated that the board would consult all members on the enduring solution.
- 17.7. A Panel Member, while expressing support for the work of MOSL, raised concerns over the proposal from MOSL for the Panel to recommend an approach that would provide MOSL with working capital via performance charges. The Panel Member stated they could not support a proposal for charges made to and paid by Trading Parties, in relation to under performance of OPS and MPS, to be used to support the working capital requirements of MOSL as suggested in the letter sent to Panel Members dated the 25 October 2019 (entitled CPM018 Treatment of MPS & OPS Charges). The budgeting for the operational functioning of MOSL including working capital was a matter for the Board of MOSL and the Members of MOSL and, in their view, this was not within the vires of the Panel.
- 17.8. Another Panel Member observed that if the proposal by MOSL was adopted, a proportion of monies being used by MOSL as working capital would not have been provided in the proportions agreed in the MAC relating to MO Charges. As such there was potential that retailers would be providing some element of working capital in a greater proportion than the 50% defined by the MO charges rules.
- 17.9. ASt stated that this is money that MOSL hold anyway and is not funding by Trading Parties. A Panel Member in response stated that if there were no MPS charges, MOSL would have to go out to members to cover this aspect anyway.
- 17.10. Another Panel Member stated that the Panel would need to be mindful of MOSL's cash flow when agreeing projects.
- 17.11. ASt presented the Alternative wording for the time limited change, removing Section 9.4.3(f) and adding 9.4.6:
- 9.5 Market Performance Standard Charges and Operational Performance Standard Charges Reserve
  - 9.5.1 The arrangements set-out in 9.4 are subject to the Market Operator maintaining a combined reserve of at least £2m of Market Performance Standard Charges and Operational Performance Standard Charges in respect of the 2019/20 and 2020/21 financial years (such reserve reducing to £nil once the 2020/21 charges are redistributed in accordance with 9.3 above within six (6) Months following the end of the Year).
- 17.12. The Panel:
- **AGREED** to a MOSL amendment to the legal text in relation to working capital. (9 in favour, 1 against, 1 abstained)

## Actions

**Action A36\_01** MOSL to present finding on sent back change proposals

**Action A36\_02** MOSL to form Sub-Group to address CPW067

**Action A36\_03** MOSL to circulate final legal text for CPM018 to Helyn and Nigel for review

**Action A36\_04** Panel members to feedback comments on MOSL update to Steve Arthur

**Action A36\_05** Add Ofwat Strategy Overview to November agenda