



## Minutes of Panel Meeting 37

26 November 2019 | 10:30 – 15:00

ETC Venues, County Hall, Belvedere Road, London, SE1 7PB

Conference Call: 0203 321 5238, Access Code: 54889721#

Status of the Minutes: Final

### THE PANEL

Jim Keohane	JK	Chair	Elsa Wye	EW	Panel Member (Independent)
Mike Brindle	MB	Panel Member (Associated Retailer)	Helyn Mensah	HM	Panel Member (Independent)
Chris Williams	CW	Panel Member (Associated Retailer)	Nigel Sisman	NS	Panel Member (Independent)
Clair Yeates	CY	Panel Member (Unassociated Retailer)	Mike Kiel	MK	Panel Member (Customer Representative)
Trevor Nelson	TN	Panel Member (Unassociated Retailer)	Julian Tranter	JT	Alternate for Mark Holloway (Wholesaler)
Nicola Smith	NS	Panel Member (Unassociated Retailer) T-Con	Sarah McMath	SM	Affiliated Panel Member (MOSL CEO)
Martin Mavin	MM	Panel Member (Wholesaler)	Dan Mason	DM	Affiliated Panel Member (Ofwat)
Ian Dearnley	ID	Panel Member (Wholesaler)	Adam Richardson	AR	Panel Secretary (MOSL)

### OTHER ATTENDEES

Steve Arthur	SA	Presenter (MOSL)	Charles Unvala	CU	Presenter (MOSL)
John Vinson	JV	Observer (Independent)	Christina Blackwell	CB	Customer Representative (CCWater)
Emma Kelso	EK	Observer (Ofwat)	Oliver Robins	OR	Observer (MOSL)

Antoine Schmidt	ASc	Observer (Thames)	Oliver Farrell	OF	Minute Taker/Presenter (MOSL)
Ray Porter	RP	Presenter (Castle Water)	Ivy Mandinyenya	IM	Minute Taker (MOSL)
Christopher Wright	CWr	Presenter (Castle Water)	James Wilson	JW	Observer (Yorkshire Water)
Stuart Boyle	SB	Presenter (MOSL)	Dylan Freeman	DF	Observer (Southern Water)

## APOLOGIES

Mark Holloway	Wholesale Panel Member
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## OPEN SESSION

### 1. Welcome and Introductions

- 1.1. The Chair welcomed attendees to Panel Meeting 37. The Chair welcomed Ray Porter (RP) and Chris Wright (CW) from Castle Water and Antoine Schmidt (AS) from Thames Water as observers. The Chair also welcomed Julian Tranter as alternate for Mark Holloway. The Chair further welcomed James Wilson from Yorkshire Water and Dylan Freeman from Southern Water.
- 1.2. The Chair notified the Panel that due to the election period, Ofwat and CCWater are in purdah so there would be no Ofwat Report.

### 2. Minutes and Outstanding Actions

- 2.1. AR presented the Panel Outstanding Actions to the Panel and closed A36\_02 and A36\_03.
- 2.2. In relation to A35\_05 (*Develop an operational plan showing how the Market Audit, Panel Plan and the work of the Market Performance Committee (MPC) fits together*) SA stated the approach to the market audit was under review as outlined in the recently published draft Business Plan. A Panel Member suggested whether a review action should be set in relation to A35\_05. The Panel agreed that this was not needed as this could be picked up as an agenda item for the strategy day. The Panel agreed this A35\_05 could be closed. A Panel Member noted that action A36\_02 had been completed but encouraged Panel Members to read the exchange of correspondence circulated which provided legal response to questions raised in respect of legal uncertainty of the CPM018 drafting.

### 3. MOSL Update

- 3.1. SM presented the MOSL Update to the Panel.
- 3.2. The Panel agreed that three volunteer Panel Members would help produce a first draft Panel response to the MOSL business plan ahead of the Panel approving the response ex-committee and appointed Ian Dearnley, John Vincent and Elsa Wye to this group.

#### **Action A37\_01**

- 3.3. SA provided a detailed update on the market performance improvement activity being undertaken by MOSL and the MPC, including the progression of Initial Rectification Plans and the resulting changes in performance of the market. Panel Members acknowledged there appeared to be progress in some areas and among some Trading Parties but that further work was needed by other Trading Parties to realise cross-market improvement. Panel Members also encouraged MOSL and the MPC to take timely action and make use of escalation provisions where needed to help drive this improvement and requested a further detailed update in March 2020.

#### **Action A37\_02**

- 3.4. The Panel noted that the trigger for a Trading Party coming off an Initial Performance Rectification Plan (IPRP) was 3 months of sustained target level performance around the market mean. A Panel Member questioned whether the market mean would be skewed by performance levels. SA stated that whilst such skewing would be seen to an extent, the use of absolute thresholds for IPRPs was being looked at to reduce this issue.
- 3.5. The Panel observed there were certain factors that were considered when determining when an IPRP should be requested. These included a dialogue with a Portfolio Manager and a conversation with the Trading Party to understand why they were performing at their current level.
- 3.6. A Panel Member questioned if any Trading Party had been de-escalated and then put back on an IPRP. SA stated that to his knowledge there had not been any cases.
- 3.7. A Panel Member stated that performance measures (and any Additional Performance Indicators) should not disincentivise good performance.
- 3.8. The Panel agreed that issues related to metering (including long unread meters) and issues relating to the identification and maintenance of vacant properties remained priorities but the performance of the market has not yet turned the corner.
- 3.9. A Panel Member suggested that it would be a cause of great concern if Trading Parties' performance in relation to these issues was not heading in the right direction in 3 months' time.

### 4. Committee Reports

- 4.1. EW, as Chair of the Trading Disputes Committee (TDC), gave an update on the TDC and stated this was on track.

- 4.2. AR, as Chair of the Trade Effluent Issues Committee (TEIC), gave an update to the TEIC Committee and stated this was on track.
- 4.3. HM, as Chair of the General Data Protection Regulation (GDPR) Committee, gave an update on the GDPR Committee. HM stated that there was a need to clarify the types of company that might indicate CMOS data that could be personal data, therefore guidance will be published to cover the spectrum of companies to ensure the right provisions are applied in relation to personal data. HM stated that the Committee also looked at data sharing arrangements in the market. HM stated that the previous GDPR code of practice published by the information commissioners office (ICO) was based on the previous data protection act and now are preparing for the new 2019 code of practice. HM also stated that a security expert had identified some security standards are not compliant with GDPR if followed alone and additional controls would be needed. HM stated that each Trading Party should do its own due diligence but the market code should not be citing a standard that, on it's own did not provide for GDPR compliance and the Committee was considering a change to ensure this was the case.
- 4.4. NS, as Chair of the Market Performance Committee (MPC), gave an update on the MPC. NS stated that at the next Panel in December there will be a paper containing significant performance regime changes alongside meter reading and Retailer standards. NS stated that there will be a change in the size of the charge paid for a performance failure.
- 4.5. SB stated that the code advisory group had been appointed, comprising of Mike Brindle, Chris Williams and Mark Holloway. AR thanked those who had reviewed the applications and nominations.

## 5. Final Recommendation Reports Update

- 5.1. SB noted that MOSL had reviewed the Final Recommendation Reports that had been sent back by Ofwat over the past few months and had engaged with Ofwat on the reasons for these send-back decisions.
- 5.2. The Panel noted that Ofwat was preparing guidance on its expectations when considering changes and that this would be available following purdah. In the meantime, MOSL was taking account of discussions to date when preparing change documentation. This included the need for reports to contain:
  - A clearly articulated issue;
  - A clear description of the solution (or any alternatives) and how these address the issue;
  - Clear articulation of the impacts of the change and evidence and rationale to support the case for change, the benefits to the customer and how the change better facilitates the relevant code objectives and principles.
- 5.3. SB confirmed that, based on these discussions, MOSL would be setting change assessment plans with a view to ensuring appropriate time was allowed for the impacts of changes to be reviewed, for analysis to be undertaken and evidence to be gathered. He also re-iterated that all code drafting was subject to review by MOSL's legal advisors.
- 5.4. SB also noted that MOSL would be looking for very clear rationale to be provided from the Panel for any recommendation to approve or reject a change proposal. In addition, MOSL would also look to

record the minority views of Panel Members where these were contrary to the overall view and decision. Likewise, MOSL would look to record the reason for any Panel Members abstaining when voting on a decision.

## 6. Change Report

- 6.1. SB presented the Change Report to the Panel.
- 6.2. Some Panel Members questioned whether new change proposal CPW081 should be issued for consultation. Other Panel Members agreed with MOSL's initial view that consultation was not needed in this case. The Panel agreed that the approach to considering CPW081 should remain unchanged.
- 6.3. MOSL agreed to provide the Panel with a reminder of the approach to setting change plans, assessing changes, developing alternative solutions and preparing the Final Recommendation Report from the Panel to Ofwat.

**Action A37\_03**

- 6.4. The Panel observed that the Non-Trading disputes pipeline change was likely to also encompass Trading Disputes and requested that this was reflected in future change reports.

## 7. CPW067 "Bulk Submission" Sub-Group Nominations

- 7.1. The Panel queried whether more Retailers were needed on the Sub-Group. RP stated that there did not need to be more Retailers but offered more resources from Castle Water.

### CLOSED SESSION

- 7.2. The Panel noted that Retailers in the market had been given a chance to put forward nominations but had chosen not to do so. The Panel concluded that, since RP was on the Sub-group as proposer no further Retailer members were needed.
- 7.3. The Panel appointed Christina Blackwell from CC Water as a voting member for Bulk Submission Subgroup and agreed that Ray Porter will be on the subgroup as a voting member as well as being the proposer.
- 7.4. The Panel appointed 5 voting members which are as listed Matt Garfield (Anglian Water), Julie Scallon (Severn Trent), Emma Elmes (South East), Robert Redding (South West) and David Seymour (Thames Water).
- 7.5. The Panel:
  - **AGREED** to appoint the following to the CPW067 'Bulk submissions of service requests via MS Excel' Sub-Group:
    - Matt Garfield (Wholesaler)
    - Emma Elmes (Wholesaler)
    - Robert Redding (Wholesaler)
    - David Seymour (Wholesaler)
    - Julie Scallon (Wholesaler)
    - Christina Blackwell (CC Water)

- Ray Porter (Proposer, Retailer)

## OPEN SESSION

### 8. Draft Recommendation Report: CPW079 Protection for Credit Support Security

- 8.1. The Panel considered the Draft Recommendation Report for Change Proposal CPW079 Protection for Credit Support Security and the two issues raised in it relating to (A) Wholesalers drawing Credit Support in excess of the amount due or owing; and (B) Wholesalers not having investment grade credit rating.
- 8.2. CWr suggested that the breadth of views in the consultation responses received indicated that clarity was needed in the rules regarding the provisions for drawing of more credit than payments owed.
- 8.3. CWr stated that, in his view, this is not a matter of non-compliance, but that letters of credit are issued by banks who do not question drawings and there is no approach to dispute on whether the letter of credit should be drawn or not.
- 8.4. CWr continued that the sector was under considerable financial pressure and, contrary to MOSLs view, both Moody's and Fitch had stated that a multi-notch downgrade is a possibility and that there were a range of macro-economic and political factors that might impact a Wholesaler's credit rating, including the potential for re-nationalisation.
- 8.5. A Panel Member questioned the recommended implementation date of CPW079, noting that it may be unlikely that Ofwat could make a decision on this change in the timescales recommended due to purdah. AR stated that the Panel is obliged to recommend an implementation date to Ofwat. If the Panel made a recommendation at the meeting, it would have to make recommendation on an implementation date. It was suggested that, since there was no guarantee on the exact date on which purdah will end, one possible recommendation could be along the lines of "as soon as its practicable for the Authority to make a decision and before final determinations on PR19 are made".
- 8.6. The Proposer observed their concerns may not necessarily apply from day 1 of the final determinations being published by Ofwat.
- 8.7. A Panel Member stated the whole change is premised on Wholesalers being downgraded and that downgrade triggering bad behaviour.
- 8.8. A Panel Member asked how a wholesaler can draw down excess credit without bad intent. The Proposer confirmed that letters of credit are not challenged when drawn on. He also reflected that changing the operating practice pertaining to letters of credit was a matter outside the scope of the Panel.
- 8.9. A Panel member confirmed they struggled to see the urgency of this matter and felt that there was not enough evidence to support urgency. Another Panel Member was in support of this. They stated in terms of Part B of the solution, they did not see a clear argument for what imminent risk is faced.

- 8.10. A Panel Member agreed that a Wholesaler could draw on the letter of credit and banks wouldn't ask questions. Consequently, they could see a case for tightening the code to address this circumstance and that this aspect might be considered appropriate for urgent resolution. The Panel Member stated that this is not about insolvency, but about financial stress and what happens to the Retailer's security deposit.
- 8.11. Another Panel Member supported this view. The Panel Member continued that there is no evidence, at this point in the history of the market, to suggest there has been any behaviour like that from a Wholesaler where they draw more than owed. The Panel Member agreed that behaviour may change and that the impending PR19 Final Determinations was one of the catalysts for the case for urgency.
- 8.12. A Panel Member stated that they strongly supported the principle behind Part A of the solution, but that Part B was less clear. The Panel Member was not convinced by the arguments in the proposal that suggested the cataclysmic result and therefore didn't see the case for urgency in this regard.
- 8.13. Another Panel Member suggested the consultation had proven that further clarity was needed to make it clear that Wholesalers cannot draw more than owed.
- 8.14. A Panel Member felt that there may be other ways to address the issue that merited investigation in addition to the proposal on the table but that if this was considered an urgent matter to resolve, it limited the chance to explore such options.
- 8.15. A Panel Member stated they were sympathetic to Part A of the change proposal but struggled with Part B. Another Panel Member indicated support for the principle of Part A but requested further clarification on what is meant by "sums owed and due" indicating that this should be consistent with the credit risk default attribution agreed prior to market opening.
- 8.16. Ofwat reminded the Panel that, in making a recommendation to Ofwat for urgent consideration and implementation on any change, the case and rationale for such urgency must be clearly articulated and evidenced in the Panel's recommendation report.
- 8.17. The Chair reflected that it would have been beneficial had Part A and Part B been considered as separate change proposals. Panel members agreed and expressed frustration that the two issues had not been separated by the proposer.
- 8.18. The Proposer acknowledged the Panel's concerns and indicated that, in light of the comments around the table regarding the perceived urgency associated with Part A of the solution, they would consider amending their Change Proposal to comprise only this element.
- 8.19. Panel Members agreed that this was a helpful suggestion and asked MOSL to work on the legal drafting for a solution that addressed only Part A and to return to the December Panel with this revised approach as the solution. Panel Members also requested that the matters raised in relation to Part B be remitted to the Credit Committee for further consideration.
- 9.16 The Panel:
- **AGREED** that MOSL re-present the Draft Recommendation Report at the December Panel Meeting including a new solution to address issue (A) only. MOSL will work with the Proposer to determine if they wish to modify their existing solution or if the new solution should be included as an alternative; and

- **AGREED** that MOSL would outline terms of reference for the Credit Committee to consider and, if appropriate identify potential solutions to, the matters raised in CPW079 under issue (B).

## 9. Draft Recommendation Report – CPW073 GDPR Data Items Updates to CSD0301

- 9.1. The Panel considered Change Proposal CPW073 ‘GDPR Data Items Updates to CSD0301’ which sought to update the Personal Data warnings in CSD 0301 ‘Data Catalogue’. If implemented, this change would align with the GDPR Issue Committee’s recommended list of data items which may contain or lead to the identification of Personal Data and so facilitate industry compliance with the General Data Protection Regulation EU 2016/679 and the Data Protection Act 2018.
- 9.2. A Panel member stated that the Panel must keep an eye on GDPR data items for the future due to potential future changes to the Water Act.
- 9.3. The Panel reviewed the information, evidence and consultation responses set out in the CPW073 Draft Recommendation Report.
- 9.4. The Panel agreed with the rationale and the case for change presented in the Draft Recommendation Report and with the views set out in relation to the code objectives and principles.

The Panel:

- **AGREED** unanimously to recommend implementation of CPW073 to the Authority for approval; and
- **AGREED** unanimously the recommended implementation date of;
  - 14 February 2020, if Authority approval is received by 22 January 2020; or
  - 1 April 2020, if Authority approval is received by 9 March 2020.

## 10. Any Other Business

- 10.1. The chairman confirmed that Nigel Sisman was stepping down from his role as an Independent Panel Member and chair of the MPC at the end of December.
- 10.2. To provide continuity while the recruitment of Independent Panel Members concludes, the Panel noted and endorsed the following interim appointments. These appointments will apply from 1 January 2020 until 31 March 2020:
  - John Vinson (currently an Alternate Independent Panel Member) will be appointed by the Panel Chairman as a full Panel Member for this period;
  - Elsa Wye (currently chair of the Trading Disputes Committee) will chair the Market Performance Committee; and
  - John Vinson will chair the Trading Disputes Committee in place of Elsa and will attend the MPC in a non-voting capacity.



10.3. The Chair stated that the process for appointing the 2 new independents has been launched. AR stated that if a Panel Member had a recommendation these should be sent to MOSL or should contact MOSL's recruitment agent (contact details to be circulated after the Panel meeting).

**Action A37\_04**

10.4. The Chair closed the meeting.

## Actions

<b>Action A37_01</b>	Secretariat to collate Panel response to MOSL Business plan
<b>Action A37_02</b>	MOSL to provide an update on escalations to MPC to March Panel
<b>Action A37_03</b>	MOSL to provide the Panel with a reminder of the approach to setting change plans, assessing changes, developing alternative solutions and preparing the Final Recommendation Report from the Panel to Ofwat.
<b>Action A37_04</b>	Panel members to inform MOSL of likely Independent Panel Member candidates.