

## Minutes of Panel Meeting 38

10 December 2019 | 10:30 – 15:45

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

Status of the Minutes: **Final**

### MEMBERS PRESENT

Jim Keohane	JK	Chair	Ian Dearnley	ID	Panel Member (Wholesaler)
Mike Brindle	MBr	Panel Member (Associated Retailer)	Helyn Mensah	HM	Panel Member (Independent)
Chris Williams	CW	Panel Member (Associated Retailer)	Nigel Sisman	NS	Panel Member (Independent)
Trevor Nelson	TN	Panel Member (Unassociated Retailer)	Elsa Wye	EW	Panel Member (Independent)
Nicola Smith (teleconference)	NSm	Panel Member (Unassociated Retailer)	Mike Keil	MK	Panel Member (Customer Representative)
Claire Yeates	CY	Panel Member (Unassociated Retailer)	Dan Mason	DM	Affiliated Panel Member (Ofwat)
Mark Holloway	MH	Panel Member (Wholesaler)	Sarah McMath	SM	Affiliated Panel Member (MOSL)
Martin Marvin	MM	Panel Member (Wholesaler)	Adam Richardson	AR	Panel Secretary

### OTHER ATTENDEES

Antoine Schmidt	AS	Observer	Gerard Lyden	GL	Thames Water (Presenter)
Luke Austin	LA	MOSL (Presenter)	Evan Joannette	EJ	MOSL (Presenter)
Stuart Boyle	SB	MOSL (Presenter)	Ray Porter	RJ	Castle Water (Presenter)
Kate Davis (teleconference)	KD	MOSL (Presenter)	David Edward	DE	Meeting Secretary (MOSL)
Jesse Wright	JW	United Utilities (Presenter)	Ivy Mandinyenya	IM	Meeting Secretary (MOSL)
James Wilson	JrW	Yorkshire Water (Presenter)	Christina Blackwell	CB	Observer (CC Water)
Charles Unvala	CU	MOSL (Presenter)	Steve Arthur	SA	Observer (MOSL)
John Vinson (teleconference)	JV	Independent (Observer)	Chris Wright (teleconference)	CW	Castle Water (Observer)
Dylan Freeman	DF	Southern Water (Observer)			

## Open Session

### 1. Welcome and Introductions

- 1.1 The Chair welcomed the Panel Members and all other attendees to Panel Meeting 38.
- 1.2 The Chair stated that there were no apologies and Nicola Smith (NSm) was due to join the meeting via teleconference.

### 2. Minutes and Outstanding Actions

- 2.1 The Panel approved the minutes from the October Panel Meeting (36). Adam Richardson (AR), as Panel Secretary, confirmed that all amendments received from Panel Members have been included in these updated minutes.
- 2.2 The Panel noted that both Actions **A37\_04** and **A37\_01** were due to be completed in December 2019.

### 3. MOSL Update

- 3.1 Sarah McMath (SM) provided an update on the MOSL business plan consultation, which had received 2 responses from Trading Parties to date. The Panel noted that the closing date for the consultation was 20<sup>th</sup> December 2019.
- 3.2 SM confirmed that all consultation responses would be considered, whether these were submitted via the online consultation form or otherwise. SM noted that Ofwat had confirmed its intention to provide a response after purdah.
- 3.3 The Panel also noted the Trading Party survey issued to all contract managers. This survey sought feedback on MOSL's performance against its core services, additional services and progress of the bilateral project. A Panel Member enquired whether the results of this survey will be shared with the Panel. SM confirmed that this was the case.

### 4. Market Performance Framework (MPF) Roadmap

- 4.1 Luke Austin (LA) presented the Market Performance Framework (MPF) roadmap which outlined the proposed approach and timetable for conducting a strategic review and amending the current MPF.
- 4.2 The Panel noted that engagement from the Market Performance Committee (MPC) and Trading Parties had been greatly appreciated in designing the roadmap.
- 4.3 The Panel agreed that this work should promote the interest of the customer by ensuring that defined incentives were implemented to promote customer interests.
- 4.4 A Panel Member enquired about the process for identifying gaps in the codes, such as standards for meter readers and Wholesaler meter installation. LA responded that there was a need to establish better measures that incentivise the right behaviours around metering.
- 4.5 A Panel Member suggested the possibility of introducing meter reading standards to define meter reading capabilities and align with the wholesaler meter installation process. The Panel

discussed a range of market challenges related to metering, including the requirements of contracts for meter readings and the capabilities required for meter readers to access the meters. Panel Members noted that metering was a key area for consideration in its Panel Plan and that any changes to the rules relating to metering would need to be reflected in the MPF.

- 4.6 A Panel Member felt that the pace of the project seemed too slow, and work needed to be accelerated to resolve market issues. Another Panel Member stated that the pace of the delivery could imply a lack of ambition.
- 4.7 The Panel noted that work to address market issues and existing underperformance would continue while the proposed strategic review of the MPF took place. Panel Members observed that quick wins in the evolution of the MPF were being delivered through change proposals considered by the Panel (e.g. CPW072 Setting MPS15 Charges to Zero, CPW078 Priority Performance Regime Changes for April 2020 and CPW084 Introducing a Retailer Measure of Experience). These changes were intended to address immediate concerns over incentives in the existing MPF.
- 4.8 Panel Members agreed that the proposed MPF review was an opportunity to undertake a holistic consideration of the MPF, in a strategic fashion, so as to ensure it contained the most effective tools for driving performance and that objectives and incentives were aligned to good customer outcomes.
- 4.9 The Panel noted that the roadmap would be refined and shared with Ofwat. The next stage of this work would be to translate the roadmap into an operational delivery plan, assigned to different individuals and groups.

## 5. Committee Reports

- 5.1 The Panel noted that there were no further updates from the Trade Effluent Issues Committee (TEIC) and Credit Committee (CC). The Trading Disputes Committee was due to hold its meeting on 16 December 2019.

### **GDPR Issues Committee**

- 5.2 The Panel noted that the next meeting would be held on 19 December 2019. The GDPR Issues Committee Chair stated that one member had offered to resign due to confidential issues but instead had agreed to suspend their membership until they were available again in the new year.
- 5.3 The Panel also noted that the new appointee had failed to provide the required confirmation and waiver letters. The Panel therefore agreed that the GDPR Committee Chair should contact the appointee and withdraw the appointment.
- 5.4 The Panel noted that there might be a possibility of seeking and appointing another member in the new year.
- 5.5 The GDPR Issues Committee Chair expected the committee would be dissolved by March, assuming all work was completed in line with the schedule.

### **Market Performance Committee (MPC) Update**

- 5.6 At the request of a Panel Member the MPC Chair provided an update on Initial Performance Rectification Plan (IPRP) effectiveness and the reporting burden on MOSL to interpret and understand the data associated with these plans. The update also covered performance issues and questions regarding the robustness of IPRPs and the effectiveness of the monitoring channels.
- 5.7 The Panel noted that the MPC had published an escalation policy although to date MOSL has not made any formal escalation. It was also noted that a failing trading party was providing an update to the next MPC and, while this was not a formal escalation, this would provide evidence to MPC about the effectiveness of the IPRP process.
- 5.8 A Panel Member believed IPRPs were effective as they had generated improvement in performance. However, the Panel Member also believed that questions should be asked where performance has not improved and the subsequent level of escalation following poor performance.
- 5.9 The Panel noted that the MPC had a challenging agenda with much time taken up in reviewing the performance standards and charges and that this placed pressure on the time available to actively manage Trading Party performance. A Panel Member observed that there may be merit in considering changes to the Market Performance Framework via a separate group, to allow time for the MPC to focus on managing performance.
- 5.10 Additionally, at the request of a Panel Member the MPC Chair also provided observations on the challenges involved in occupying the role of a committee chair and an independent Panel Member. The observations covered expectations of Panel Members with significant committee responsibilities and how this could lead to invidious situations as recently evidenced in CPM018. The MPC Chair believed there was a tension between the positions of an independent Panel Member and the duty of care to the Panel Committee as its Chair and that this warranted consideration before new Independent Panel Member appointments and decisions about those appointees being appointed chairs of sub-committees.
- 5.11 Panel Members noted that the market operator currently provides the chair for some Panel Committees and some Panel Members believed this could be extended to all Panel Committees to avoid potential conflicts.
- 5.12 A Panel Member agreed that MOSL should chair committees as it would aid MOSL in understanding resource demands. Another Panel Member disagreed, stating that MOSL currently occupies the role as the Secretariat and therefore understands the resourcing requirement. Another Panel Member stated that they had felt no conflict in chairing a committee and occupying their role on the Panel.
- 5.13 Another Panel Member advised the Panel to not underestimate the value of Independent Panel Members chairing Committees, but also acknowledged the issue and tension. Panel Members suggested there could be value in defining the role and expectation of the Chair in relation to Panel Members.
- 5.14 AR acknowledged the benefit of discussion around the role of a Committee Chair, how the Panel delegates work to Panel Committees and governance of Panel Committees. The discussions around these issues had created a package of work to review the Panel's operating

practices. The Panel noted that MOSL would work with members of the Panel's governance Sub-Group to consider these matters further.

**Action A38\_01**

## 6. Panel Response to MOSL Business Plan

- 6.1 Stuart Boyle (SB) presented initial comments on MOSL's Business Plan from Panel Members and the next steps for preparing the Panel's response.
- 6.2 The Panel noted that SB would draft a response based on the comments received and the review group nominated by the Panel (CY, ID and JV) would consider and update this draft response on 12 December 2019. The Panel noted that the updated draft would be circulated to the Panel on 16 December 2019 (via SharePoint) with approval sought by correspondence by 20 December 2019. The Panel agreed that no response would be treated as tacit agreement.

**Action A38\_02**

- 6.3 The initial comments are stated below, and the response would be drafted along these themes:
- Service Excellence: support for updates to be made to the website and a requirement for different interaction routes for different Trading Party types;
  - Market Assurance: call for more detail on the proposed approach to the market audit and a call for evidence for the current areas highlighted for review;
  - Market Improvement: support for focussing on data quality issues and collaboration and desire for more information on how data quality would be assessed and monitored; A Panel member underlined how difficult it is to define "data quality" for the market, and that "collaboration" has to be carefully handled in market competition.
  - Governance: appropriate to plan for an increased volume of change proposals and support to ensure the change process was rigorous. There was also support for increasing quality in change proposal assessment with acknowledgement that this would impact on assessment timescales;
  - Building capability: supportive of MOSL increasing its capacity and capability to perform and contribute technically and strategically, in a cost-effective manner; and
  - Bilateral transactions project: support for the proposed approach and acknowledgement that the project needed to be managed and communicated effectively. There was also recognition of different levels of support from market participants.
- 6.4 SB also provided an insight into financial queries received from Panel Members such as contingency plans, clarification on the change budget and Panel/committee overheads, professional fees and legal support. Other queries included whether the projected savings on the move to Southampton would be delivered.

- 6.5 A Panel Member stated that the Panel should focus on strategic issues rather than the financial perspective. Other Panel Members shared this view and that there was no need to address these questions within the Panel meeting.
- 6.6 SM undertook to address any questions arising in the review group discussion on 12 December 2019 and to address these in the post-consultation Business Plan. The Panel welcomed this approach.

## 7. Change Report

- 7.1 SB provided the update on the change report. The Panel noted that minimal changes have been made since the previous meeting which was only two weeks prior to the meeting.
- 7.2 SB presented new change proposals [CPW082 Gap Site Incentive Scheme](#) and [CPW083 Vacancy Incentive Scheme](#). SB highlighted that it was likely that consultation dates across the holiday period would mean that a recommendation report could not be prepared in time for the January Panel meeting (paper day 14 January 2020). The Panel noted that deferring these changes to its February 2020 meeting could lead to implementation falling after 1 April 2020.
- 7.3 A Panel Member enquired whether the Retail-Wholesale Group (RWG) was comfortable with amending the timescale for CPW082 and CPW083. SB responded that the RWG was of the view that these changes should be implemented in April 2020. Panel Members observed that the primary driver behind the 1 April implementation date is to meet certain PR19 requirements for Trading Parties.
- 7.4 Panel Members enquired how this change could be returned for a Panel decision in January 2020 due to the amount of industry collaboration and momentum. The Panel noted that the intended implementation date of 1 April 2020, did not seem feasible unless the consultation period was reduced.
- 7.5 AR advised against reducing the consultation period across the holiday period and suggested that in order to meet the 1 April 2020 requirement, the Panel could agree to consider these changes as late papers.
- 7.6 A Panel Member enquired into the time of delivery of the late papers. AR informed that papers could be issued to members on 24 January 2020. This would mean that Panel Members only have 1 business day to review the papers before the Panel Meeting. The Panel agreed to consider the changes on these timescales and MOSL undertook to provide the change paperwork earlier than 24 January 2020 if this was possible.
- 7.7 The Panel also noted that the Panel recommendation date for [CPM015 and CPW071 Panel Self-governance](#) has been moved to January 2020 whilst MOSL and the Sub-group explored and further defined the proposed pre-approval process. The forecast implementation date would therefore move from April 2020 to May 2020.
- 7.8 The Panel noted that the GDPR committee has requested further advice from a data security expert on [CPM019 GDPR Data Security Standards](#), which has now been delivered. The Panel recommendation date was March 2020 but was expected to be delivered earlier.

- 7.9 The Panel also noted the TEIC had agreed to delay the consultation of [CPW074 Introduction of a Retailer SLA in relation submission of trade effluent market forms to Wholesalers](#) due to the number of ongoing consultations and this would impact on the recommendation date.

## 8. Draft Recommendation Report: CPW078 Priority Performance Regime Changes for April 2020

- 8.1 Luke Austin (LA) and Jesse Wright (JW), who had together written the Draft Recommendation Report, presented the CPM078 and CPM020 proposals
- 8.2 The Panel considered [CPM020 and CPW078 'Priority Performance Regime Changes for April 2020'](#) which sought to enhance the effectiveness of the Market Performance Standards (MPS) regime by increasing the level of the monthly cap applied to charges progressively and amending MPS 3, 4, 12, 15, 16, 17 and 18. The Panel noted that that CPW078 contained both a Proposed Solution and an Alternative Solution and that CPM020 was applicable to both the CPW078 Proposed and Alternative Solutions.
- 8.3 The Proposed Solution would increase the cap from 0.15% to 0.20 in April 2020 with a further increase to 0.25% in October 2020. Based upon observed performance in the January-June 2019 period these adjustments to the performance charges cap would move Trading Parties supplying 60% of supply points into an active zone (i.e. an area of financial incentive) from April 2020 and 80% to October 2020. The MPC had also provided an Alternative Solution which would increase the cap from 0.15% to 0.25% in April 2020.
- 8.4 The Proposed Solution had been unanimously supported by the MPC as better than the current position, The MPC had also voted on the Alternative Proposal but the outcome had been indeterminate with a tied (4 in favour, 4 against) vote and so the Panel's position on the Alternative Solution was also sought.
- 8.5 The Panel also noted that the original proposal was to increase the cap to 0.25% in April 2020 and a further increase to 0.30% in October 2020. Retailers had raised concerns that this was a significant risk to cashflow, the increase in charges were at too fast a pace and thus retailers rejected the proposal.
- 8.6 Consultation feedback was generally supportive, but retailers had challenged certain areas. The original proposal for the charge was a move from £20 to £15. The majority of retailers believed £10 was sufficient to create an incentive but hadn't provided empirical evidence. This led to the amendment of the MPS18 charge to £10.
- 8.7 MOSL's modelling had showed that amending the charge to £10 was sufficient to see 80% of market into an active zone with a 0.25% cap. Thus the desired incentive properties could be achieved without increasing the cap to 0.30%.
- 8.8 The Panel noted that based on historic performance, there would be a 10-20% decrease in charges recovered from retailers in the next financial year. The decrease in anticipated charges in 2020/21 compared to 2019/20 was because there would be no MPS 18 charges for 60 business days from 1<sup>st</sup> April 2020, thus excluding much of the first three months of 2020/21; and the one-off exclusion of legacy long unread meters from MPS 18 charges in July 2020. It was anticipated that the following financial year (2021/22) would see a rise in charges

collected assuming performance level remains the same as 2019/20 – although the Panel emphasised its expectation that performance must improve.

- 8.9 Some Panel Members felt that more Trading Parties being within the active zone would incentivise better customer service. Other Panel Members felt that a higher financial burden arising from performance charges, would adversely impact customer service.
- 8.10 The Panel also noted that, as a result of the changes to the charging regime and standards, there would be an impact on performance charges invoicing dates. This was because the change in submission window for MPS12 and MPS15 would extend the meter read submission period beyond the current performance charges invoicing date.
- 8.11 A Panel Member enquired whether the rationale for the cap change arose from consultation feedback. The presenters responded that it was partially due to the responses and also because the increased cap combined with reduced charges would yield similar incentive properties.
- 8.12 The Panel discussed the level of retailer engagement in responding to consultation. The proposer stated that retailers had provided less responses compared to wholesalers. SB stated that historic data showed that two thirds of all consultation responses are provided by wholesalers.
- 8.13 An observer, Ray Porter (RP), felt that the summary of consultation responses did not highlight any comments from Castle Water and felt ignored. The presenters stated that many elements in the report captured Castle Water responses and were in line with other retailer comments. RP disagreed and considered that Castle Water's response had been treated differently when compared to other change proposals. RP said he would be writing officially on this issue.
- 8.14 The Chair reminded the Panel of the verbatim responses from the consultation included within the papers.
- 8.15 Panel Members discussed the appropriate proportion of the market to be moved within the incentive range. The Proposer clarified that the proposed changes to the cap would bring 80% of the market into the incentive range. The remaining 20% was largely due to two Trading Parties whose performance would be better addressed by improvement plans.
- 8.16 A Panel Member voiced support for the Proposed Solution, stating that MOSL and Trading Parties were undertaking other performance improvement activities and the Proposed Solution will allow more time for these activities to take effect and so improve performance before the performance charges cap is raised.
- 8.17 A Panel Member enquired whether an improvement in market performance had been forecast following this change. It's often not clear, regarding meter reading, if it is the Wholesaler or the Retailer which is accountable.
- 8.18 A Panel Member highlighted that some responses had highlighted issues with meter reading accountability outside the scope of this change.
- 8.19 A Panel Member enquired whether an improvement in market performance had been forecast following this change. The presenters clarified that whilst the change was expected

to incentivise an improvement in performance, the forecast impact on overall charges had been based upon recent performance during the January-June 2019 period.

- 8.20 The Panel agreed that the underlying causes of poor performance needed to be addressed. Some Panel Members felt that there was insufficient evidence to support some of the changes and that market performance had not improved enough to justify a higher cap.
- 8.21 Panel Members considered the specific elements of both CPM020 and CPW078.
- 8.22 The Panel was unanimous that the CPW078 Proposed Solution was better than the current baseline.
- 8.23 A majority (8) of Panel Members agreed that the Alternative Solution for CPW078 was better than the current baseline. The four (4) Panel Members that disagreed felt that the state of the market did not warrant a harsher implementation (the Alternative Solution starts at a higher cap), and there was a lack of evidence in how the new MPS regime (moving more SPIDS into the active incentive range) would resolve market performance issues.
- 8.24 When comparing the CPW078 Proposed and Alternative Solutions, a minority (4) of Panel Members felt that the CPW078 Proposed Solution was better than CPW078 Alternative Solution with the majority (8) of Panel Members preferring the CPW078 Alternative Solution over the Proposed Solution.
- 8.25 The Panel was unanimous that the Proposed Solution for CPM020 should be approved and that the recommended implementation date for both CPW078 and CPM020 should be 1 April 2020 if Authority approval is received by 1 March 2020.
- 8.26 The Panel:
- 8.27 AGREED to recommend CPM020 Proposed Solution to the Authority for approval (Unanimous)
- 8.28 •AGREED to recommend CPM078 Proposed Solution to the Authority for rejection (8 in favour, 4 against)
- 8.29 •AGREED to recommend the CPM078 Alternative Solution to the Authority for approval (8 in favour,4 against)
- AGREED to recommend an implementation date of 1 April2020, if Authority approval is received by 1 March 2020(Unanimous).

## Closed Session

### 9. CPW075 Sub group nominations

- 9.1 At the October meeting the Panel approved the request for nominations for a Sub-Group to (P36\_07) to address the agreed scope of work provide a solution for CPW075 [Settlement Estimation](#).
- 9.2 The Panel considered the CPW075 'Forward Estimating' Sub-Group Nominations. The Chair invited the Panel to appoint the 5 nominees and enquired whether Panel Members had any concerns or objections.
- 9.3 No objections were raised.

#### 9.4 The Panel:

- **AGREED** (unanimously) to appoint the following to the CPW075 'Forward Estimating' Sub-Group:
  - Adam Boyns - CC Water (Customer Representative)
  - Collen Simcock - Water Plus (Retailer)
  - Lishan Zeng - Thames Water (Wholesaler)
  - John Brady - Castle Water (Retailer)
  - David Oliver Sheppard - Northumbrian Water (Wholesaler)

### Open Session

## 10. Draft Recommendation Report: CPW081 Improving the transparency of Alternative Payment Terms

- 10.1 The Panel considered Change Proposal [CPW081 'Improving transparency of Alternative Payment Terms'](#) which sought to improve the transparency of Alternative Payment Terms (APT) by creating a requirement for Wholesalers to notify the Authority (Ofwat) and the Market Operator (MOSL) of agreed APT arrangements, similar to that for Alternative Credit Arrangements.
- 10.2 The Panel noted that this change will place an obligation on wholesalers to notify MOSL and the Authority of all agreed APT arrangement and MOSL shall published these on its website.
- 10.3 The Panel also noted that no consultation was carried out for this change proposal as a similar obligation already exists under [CPW052 Improving the transparency of Alternative Credit Arrangements](#).
- 10.4 A Panel Member enquired into the difficulty in locating the arrangements on the website of wholesalers. The Panel noted that locating these arrangements can be onerous and the total number of APTs in the market remains unknown.
- 10.5 Another Panel Member enquired into the cost implication. SB responded that implementation costs are attributed to the development of the MOSL website and estimated around £1,000.
- 10.6 The Panel discussed the readiness of the arrangement for issuance and publication to MOSL. It was noted that wholesalers are already obligated to publish the information and thus the information should be available and ready upon implementation.
- 10.7 A Panel Member enquired into wholesaler visibility of the change proposal. SB responded that the change had been published on the MOSL website. Further, that, following the meeting, information on the Panel's decision would be available on the headline report and in the Panel's report to Ofwat published on the MOSL website. MOSL would also notify Trading Parties of Ofwat's decision on the change in the usual way.
- 10.8 The Panel:

- **AGREED** to recommend implementation of CPW081 to the Authority for approval (Unanimous); and
- **AGREED** to recommend an implementation date of:
  - 1 April 2020, if Authority approval is received by 28 February 2020; or
  - 15 May 2020, if Authority approval is received by 21 March 2020.

10.9 A Panel Member stated that MOSL could write to trading parties upon Authority approval to allow early upload of APT arrangements.

**Action A38\_03**

## 11. Draft Recommendation Report: CPW084 Retailer Measure of Experience (R-MeX)

- 11.1 The Panel considered Change Proposal [CPW084 'Retailer Measure of Experience \(R-MeX\)'](#). This change sought to further develop the Market Performance Framework to include a Retailer Measure of Experience (R-MeX) with Wholesaler services.
- 11.2 Gerard Lyden (GL) and Evan Joannette (EJ) presented the change proposal [CPW084 Retailer Measure of Experience \(R-MeX\)](#) developed by the RWG.
- 11.3 SM stated that this proposal will require additional resources from MOSL for reporting purposes in the context of the business planning.
- 11.4 Panel Members noted the legal text for the change identified that the proposed survey could not attract performance charges. Some Panel Members felt that this text was redundant since any charging regime (if needed) would have to be described in the market codes and this would have to be the subject of a future change proposal. The Proposer noted the Panel's observation and confirmed their intention that this text should remain in the solution to be considered by the Panel.
- 11.5 The Panel:
- **AGREED** unanimously to recommend the implementation of CPW084 to the Authority for approval; and
  - **AGREED** to recommend an implementation date of:
    - 1 April 2020, if Authority approval is received by 12 February 2020; or
    - 15 May 2020, if Authority Approval is received by 31 March 2020.

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

- 12.1 The Panel considered the Draft Recommendation Report for Change Proposal [CPW079 Protection for Credit Support Security](#) which sought to address circumstances in which a Wholesaler draws on Credit Security above the level of payment owed by a Retailer.

- 12.2 The Panel noted that, following the November Panel meeting, the Proposer had amended their change to focus only on 'Part A' of their original solution. As such, CPW079 was focused on concerns on Wholesalers potentially drawing down credit support lodged by the Retailers in excess of amounts owed.
- 12.3 Chris Wright (CW) stated that the Draft Recommendation Report sought a view on whether the change was urgent or not. However, in his view, he felt the Panel agreed in the last meeting that this wasn't a matter of urgency but of a gap missing in the Credit Arrangements which needs to be filled.
- 12.4 Many Panel Members felt that there was no need to consider a case for urgency with respect to this change proposal, although they acknowledged that implementation should be expedited following a decision by Ofwat.
- 12.5 The Panel noted that the draft recommendation report contained the full background and history of the change, outlining its development and evolution, including the original solution and the consultation responses which considered both Part A and Part B of the change.
- 12.6 CW emphasised that the proposal under consideration dealt only with Part A as presented. He observed that, as a result, the arguments about insolvency outlined in the report were less relevant to part A compared to Part B and he wanted to ensure that Ofwat's eye was not turned to that argument.
- 12.7 A Panel Member observed that, while they were in support of Wholesalers not being able to draw more than owed they were concerned that this change proposal created a mechanism enabling Retailers to avoid paying Wholesalers while they work on their cash position . Existing provisions of the Business Terms (section 9.7.2) meant that Retailers could dispute amounts owed, rather than pay them. This change would mean that in addition , the wholesaler would be unable to draw down credit in relation so such unpaid amounts as these would not be classed as amounts outstanding. The Panel Member suggested that CPW079 might encourage such poor behaviour which would not be in the interests of the customer, the Wholesaler or the overall market.
- 12.8 A Panel member was concerned that, if the Retailer questions an invoice, and if the Wholesaler needs to refer to Ofwat, then the whole settlement cycle is jammed. The Panel should focus on making clear the Wholesaler is not allowed to draw more credit than owned and assign the dispute mechanism to the Credit committee or the Trading Dispute Committee (TDC).
- 12.9 Other Panel Members noted that the interaction between disputes, and the classification of monies owed in section 9.7.2 of the Business Term would not be changed by CPW079. A Panel Member observed that the question appeared to be whether the risk of a Retailer acting in bad faith would be increased by the proposed change.
- 12.10 Chris Wright (CW) stated a dispute has to be a legitimate dispute and it wouldn't fit within that perimeter if the Retailer were raising frivolous or vexatious claims.
- 12.11 The Panel noted that, where there was a question over the legitimacy of the drawing of credit, the proposed change set out that this matter should be referred to Ofwat, rather than settled via the standard disputes process. However, the code could not (and the change did not seek to) place obligations on Ofwat for a specific timeline or process to make a determination on

matters that might be referred to it. A Panel Member observed that the assumption appeared to be that, by going through Ofwat, resolution would be swifter than the standard disputes provisions.

12.12 Panel Members noted that Ofwat can take enforcement action where a licensed entity (i.e. a Trading Party) is in breach of that license. Compliance with the market codes is a requirement of the licences and so if a party breaches the code and if Ofwat determines that the breach is material then Ofwat would take action. However, Ofwat would need to consider such matters in the round and in the context of any other regulatory matters. As such, there could be no guarantee of the timing or priority upon which Ofwat would consider matters of credit under the provisions introduced by CPW079.

12.13 Another Panel Member commented that the proposal merely changed the balance of risk from being in favour of the Wholesaler to being in favour of the Retailer. A further Panel Member asked why the problem could not be addressed by modifying the drafting to make it clear that the Wholesaler was not entitled to draw down more than it was owed. Another Panel Member enquired whether the application of “sums owed and due” when considered in the context of potential Wholesaler drawdown on credit security and the calculation of subsequent credit security was consistent with the Wholesaler/Retailer credit default risk attribution agreed as appropriate prior to market opening.

12.14 Other Panel Members felt that, on balance, the change proposal would improve the stability of the market and deliver benefits as outlined by the Proposer by providing clarity, and redressing imbalances in the financial exposures of market participants.

12.15 The Panel noted that if it sought an expedited decision from Ofwat, it would need to provide very clear rationale. A Panel Member said they did not consider that the case for urgency had been made.

12.16 The Panel chose not to determine on urgency. However, the Panel observed that the gap in the codes needed to be dealt with as quickly as possible given the potential impacts of a Wholesaler drawing down on excess credit amounts. The Panel agreed that an expedited implementation timetable should be recommended for this change such that, if approved by Ofwat, implementation in the market codes take place three (3) Business Days after that decision.

12.17 The Panel:

- **AGREED** that the change was not urgent but required an expediated timeline;
- **AGREED** to recommend that the Authority approve the Proposed Solution (9 in favour, 1 against, 1 abstention);
- **AGREED** to recommend implementation three (3) Business Days after Authority approval.

12.18 The Panel Members that abstained or were against the change felt that the case for change had not been made and that the delivery of customer benefit was unclear.

### 13. Credit Committee Workplan

- 13.1 The Panel discussed a proposed addition to the Credit Committee's terms of reference to include consideration of security of Retailers' credit support funds and methods of ring-fencing them.
- 13.2 The Panel noted that other minor amendments were proposed to replace references to 'working days' with 'business days'.
- 13.3 A Panel Member observed that procuring external advice may be costly.
- 13.4 AR informed the Panel all the spending will be kept under review and would keep the Panel involved throughout.
- 13.5 A Panel Member queried if Credit Committee members have the capacity to do the work.
- 13.6 AR noted that Credit Committee members have discussed the workload that might potentially arise from this expanded term of reference and they are aware of the potential timeline. The majority of Committee Members have indicated continued commitment to this work, however, AR noted that one member has confirmed their intention to step down and a second may consider doing so. The Panel noted that this may mean it would need to consider seeking nominations to the Committee in the new year.
- 13.7 The Panel:
  - **AGREED** unanimously to the addition to the Credit Committee's Terms of Reference.
- 13.8 The Panel Members s approved with unanimous vote.

### 14. Any Other Business

- 14.1 The Panel noted that, once purdah had ended, MOSL would be in a position to consolidate feedback from Ofwat on the Authority's expectations regarding the change process and the Panel. Panel Members agreed that it was appropriate to use the governance sub-group as a sounding board for developing Panel guidance on its approach to assessing change proposals in light of this feedback. This guidance should be prepared for consideration by the Panel early in 2020 (Action A36\_01 refers).
- 14.2 A Panel Member observed that there remained one Associated Retailer seat vacant and that, despite efforts to seek nominations, none had been forthcoming. They queried what the next steps should be and whether this meant there might need to be changes to the composition of the Panel since there may be Unassociated Retailers who were keen to take a more active participation in the Panel.
- 14.3 SM responded by informing the Panel Members she will discuss this with Emma Kelso from Ofwat.
- 14.4 The Panel noted that this was Nigel Sisman's last Panel Meeting before stepping down. The Panel thanked Nigel for all his work and wished him all the best for the future.
- 14.5 Nigel Sisman wished the Panel all the best and also wished SM good luck for her challenge ahead with MOSL.



Actions

- A38\_01** Review of Committee Chair role and panel operating practices
- A38\_02** Circulate Panel Response to MOSL BP for approval.
- A38\_03** Invite trading parties to provide Alternative payment Term information following Authority Decision on CPW081 advance of implementation date