

Minutes of Ad-hoc Panel Meeting 40b

20 March 2020 | 16:30 – 17:30 | Teleconference

Status of the Minutes: **Final**

MEMBERS PRESENT

Jim Keohane	JK	Chair	Michael Rathbone	MR	Panel Member (Wholesaler)
Mike Brindle	MBr	Panel Member (Associated Retailer)	Helyn Mensah	HM	Panel Member (Independent)
Chris Williams	CW	Panel Member (Associated Retailer)	Elsa Wye	EW	Panel Member (Independent)
Rosalind Carey	TN	Alternate Panel Member for Trevor Nelson	John Vinson	JV	Panel Member (Independent)
Nicola Smith	NS	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

Stuart Boyle	SB	MOSL (Presenter)	Matthew Turner	MT	Affinity Water (Observer)
Huw Comerford	HC	MOSL (Presenter)	Pamela Taylor	PT	(Observer)
Steve Arthur	SA	MOSL (Presenter)	Emma Kelso	EK	Ofwat
Oliver Robins	OR	MOSL (Secretariat)			
Christopher Wright	CWr	Castle Water (Observer)			
Samantha Webb	SW	MOSL (Observer)			
David Garner	DG	MOSL (Observer)			
Amanda Hinde	AH	MOSL (Observer)			

APOLOGIES

Trevor Nelson	TN	Panel Member (Unassociated Retailer)
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1. Welcome and Introductions

- 1.1 The Chair welcomed the Panel Members and all other attendees to Ad-hoc Panel Meeting 40b. The Chair expressed his gratitude towards all attendees for making themselves available at short notice given the circumstances.

2. CPM023 & CPW090 Urgent: Suspension of Performance Standard Charges

- 2.1 The Panel considered [CPM023/CPW090 'Suspension of Performance Standard Charges'](#) which sought to suspend the requirement for the Market Operator to issue invoices on, and Trading Parties to pay, Market Performance Standard (MPS) Charges and Operational Performance Standard (OPS) Charges for the months of March 2020, April 2020 and May 2020.
- 2.2 Adam Richardson (AR) explained that it would be unreasonable to penalise Trading Parties that perform below these standards when their priority will be maintaining water and sewerage services during the coronavirus pandemic.
- 2.3 Dan Mason (DM) thanked MOSL for assisting Ofwat with the development of CPM023/CPW090 and stated that Ofwat would not be against waiving charges beyond May 2020 if necessary and that this would be subject to further review by Ofwat and MOSL.
- 2.4 A Panel Member queried whether, on the grounds of simplicity and efficiency, another change proposal would be necessary to extend or remove the waiving of charges. AR clarified that should a future extension or reversion be required, then a revising change proposal would be needed.
- 2.5 The Panel discussed how the change would interact with the Market Performance Committee (MPC) and more specifically Initial Performance Rectification Plans (IPRPs) and Performance Rectification Plans (PRPs). SA confirmed that MOSL and the MPC would continue to track Trading Party performance (without invoicing for charges) throughout the coronavirus outbreak and would assess the significance of any aftershock affect, ensuring that performance metrics and reports will still be produced to keep Trading Parties appropriately informed.
- 2.6 SA stated that MOSL would seek to notify Trading Parties on IPRPs and PRPs of the possible impact of this change. SA stated that he would discuss the issue with the Interim Chair of the MPC early the following week to formulate a policy approach. It was suggested the interaction of CPM023/CPW090 with the MPC could be discussed in greater detail offline.

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- 2.7 A Panel Member supported the solution but felt that the change itself was not material enough. They suggested that charges could have been set to zero indefinitely pending a later change proposal to revert the charges back to original levels. DM explained that Ofwat had considered the appropriateness of an open-ended waiving of charges but had decided against such a change on the grounds of providing certainty and clarity in the short term.

- 2.8 Another Panel Member suggested that long-term Trading Party performance could be significantly affected as a direct consequence of the short-term actions carried out during this uncertain time.
- 2.9 Christopher Wright (CWr) queried whether consideration had been given to lifting the cyclical meter reading requirements as part of this change. AR confirmed that this idea would need to be raised as a separate change.
- 2.10 The Panel discussed the materiality of the finances involved in the change. AR stated that, the aggregate charges for the next three months would total approximately £565,000, but this would increase to a monthly total of approximately £427,000 to £455,000¹ beyond July 2020 with the scheduled introduction of new and improved performance charge regimes.
- 2.11 The Panel considered whether the waiving of Performance Standard Charges would impact Non-Household customers. AR suggested that CPM023/CPW090 would not have a direct customer impact but highlighted that it would allow Trading Parties to focus on more important issues such as maintaining supply.
- 2.12 Panel Members noted it would be important to ensure performance recovered and improved once Business as usual resumed.
- 2.13 The Panel:
- **AGREED** (unanimous) to recommend to Ofwat the implementation of CPW023 and CPW090; and
 - **AGREED** (unanimous) to recommend implementation on 23 March 2020.

3. Performance Charge funded Market Improvement Projects

- 3.1 The Panel discussed whether market improvement projects funded by performance charges, as set out through the implementation of [CPM018 'Treatment of Market Performance Standard charges and Operational Performance Standard charges'](#) in January 2020, should be suspended until charges are reinstated for the 2020/2021 financial year.
- 3.2 The majority of Panel Members agreed that the suspension of improvement projects was a practical and necessary move, although one Panel Member stated that the materiality of the change was insufficient to adequately address the scale of the problem.
- 3.3 A Panel Member suggested that any move to increase cashflow in the market, and improve market stability, should take priority over arrangements for innovation (in the short term at

¹Assuming Trading Party performance does not alter, and the implementation of the new priority change, predicted MPS charges will be £318,488.92 for March 2020, £82,451.18 for April, May and June 2020, £455,083.15 for July and August 2020, and £427,314.00 for September 2020.

least). Another Panel Member also highlighted that, given the prevailing circumstances, a high number of requests would be extremely unlikely.

- 3.4 A Panel Member stated that the Panel needed to differentiate between money already accrued, and funds expected in the future, when making its decision. Another Panel Member queried whether the Panel should be able to call for projects using charges already accrued from the 2019/2020 financial year.
- 3.5 A Panel Member pointed out that in the communication issued by MOSL and Ofwat the intention to ensure performance charges already invoiced for 2019/2020 would be made available for redistribution had already been stated. The Panel Member queried whether a code change would be required to facilitate this redistribution. AR confirmed that a code change was unnecessary, and that Panel could decide whether the charges are redistributed or used to fund projects. AR also explained that a quick decision on this item would reduce any complexity and uncertainty in the suggested offsetting of Market Operator charges.
- 3.6 The Panel noted that funds relating to the performance charges from January and February 2020, totalling approximately £680,000² would be redistributed in the normal way. AR explained that should the Panel choose not to seek market improvement projects however, then the available charges from the entire 2019/2020 financial year would be redistributed as per the code rules.
- 3.7 A Panel Member stated that this proposal potentially sought to undo the significant work that had been put into CPM018 and suggested that whilst it was appropriate to delay the call for projects at this time, the decision on whether the 2019/20 MPS and OPS charges could be used for Market Improvement Projects could be deferred. Sarah McMath (SM) stated that there was no intention of undermining the provisions put in place by CPM018 and explained that resources needed to be reallocated to more pressing matters at this time. The Panel Member agreed that there was a clear need to prioritise resources but suggested that the Panel could still vote to defer a call for projects whilst leaving the redistribution issue to be discussed in the appropriate depth at a later date when time was less pressing.
- 3.8 Emma Kelso (EK) called for the Panel to consider that any changes being made at this time would not be without compromise but were necessary to support the market at this time.
- 3.9 The Panel:
- **AGREED** (11 votes in favour, one abstention) that 2019/20 MPS and OPS charges will not be used for Market Improvement Projects; and
 - **AGREED** (unanimous) to postpone calls for market improvement projects until Performance Standard Charges are re-instated.
- 3.10 The one abstaining Panel Member maintained their view that the decision to redistribute the 2019/20 MPS and OPS charges instead of using them for Market Improvement Projects should have been deferred to a later date.

² Sum of MPS charges from January and February 2020 (£468,370.59 from Retailers and £136,215.82 from Wholesalers) and OPS charges from January 2020 and February 2020 (£75,880.00 exclusively from Wholesalers) equals £680,466.41.

4. MOSL Update

- 4.1 SM explained that MOSL had been working proactively with DEFRA, OFWAT, UK Water Retail Council, and various Trading Parties in order to consider how best to address the impacts of the coronavirus outbreak on business customers and Trading Parties.
- 4.2 She explained that, in addition to the impacts on performance noted in CPM023 and CPW090 (above), these impacts included:
- Overstated settlement charges where consumption drops for sites that have been closed due to coronavirus (because estimation is based on historical water consumption).
 - The potential for an increase in deferred (late) payments of bills by business customers to retailers.
 - The potential increase in bad debt associated with failure of business customers and non-payment of bills to retailers.
- 4.3 SM stated that several Trading Parties are in near critical situations and highlighted that the issues are not solely limited to Retailers. She highlighted three key areas for examination where MOSL is currently focusing its resources:
- Revising payment terms***
- SM explained that the development of a fair, simple and proportional solution warranted the highest priority at present.
- Retailers entering administration***
- SM explained that in these exceptional circumstances, there was a need to ensure that customers were protected and that the market provisions did not lead to a snowball effect of customers being repeatedly passed onto Retailers who would subsequently fail.
- Establishing a new working group***
- SM explained that a high-level working group, constituting of representatives from MOSL, Ofwat, Defra, and the wider industry, would need to be established to work through and make decisions on the above, and other, emerging issues.
- 4.4 SM also confirmed that the letters referred to in the MOSL update³ would be circulated to the Panel after the meeting.

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- 4.5 The Panel noted that whilst the cashflow issue is significant, the market should prioritise maintaining its essential frontline services to critical and vulnerable business customers such as care homes and hospitals. It reiterated its support to all customers and Trading Parties in the industry.
- 4.6 SM explained that the market needed to be more responsive to the unprecedented circumstances caused by the coronavirus outbreak. The Panel noted that decisions on urgent

³ 'Letters to Members' from MOSL, 'Coronavirus and the impact on the business retail market' from MOSL and Ofwat, and 'Letter to all CEOs' from Ofwat.

issues would most likely be necessary before the upcoming Panel Meeting scheduled on March 31 2020, in order to secure the market and the industry past this event.

- 4.7 SA stated that in order for settlement to reflect consumption more accurately, MOSL was seeking to implement several Authority Timetabled Change Proposals ahead of the April 2020 settlement runs.
- 4.8 A Panel Member suggested that unless there was modelling to suggest that the finances involved were in the realms of £50-100 million, these steps would be unnecessary. SA confirmed that the figures are material enough to warrant this action.
- 4.9 A Panel Member stated that there is a significant opportunity for the non-household market to learn from the experiences of the household market, and vice versa, throughout this period.
- 4.10 CWr pointed out that what constituted a delayed or missed payment in the current context, in addition to how provisions for default and termination and credit support arrangements would work, required further examination.
- 4.11 Mathew Taylor (MT) queried whether an industry wide approach or bilateral agreements on revised payment terms should be the basis for moving the market through this period. DM stated that conversations between Trading Parties would be essential given the need for immediate action where not all the information and answers will be known.
- 4.12 EK explained the urgent need for Trading Parties to work bilaterally and support one another in the short term whilst substantial changes to take effect on an industry wide scale were developed in parallel.
- 4.13 SM stated that a common approach would be effective if feasible. She highlighted that any changes made at this time would need to be simple so to minimise the amount of work associated with unravelling any changes in the future.
- 4.14 The Chair highlighted the importance of Trading Parties responding to the Requests for Information that had been circulated by Ofwat that afternoon.

Actions

P40B_A01 – EW and SA to discuss and establish how CPM023/CPW090 will impact on performance monitoring, IPRPs, PRPs and the role of the MPC.

P40B_A02 – MOSL to circulate the letters referred to in the MOSL update with the Panel.