

Minutes of Panel Meeting 43

26 May 2020 | 10:30 – 15:30

Telecon Only

Status of the Minutes: **Final**

MEMBERS PRESENT

Jim Keohane	JK	Chair	Helyn Mensah	HM	Panel Member (Independent)
Mike Brindle	MBr	Panel Member (Associated Retailer)	Elsa Wye	EW	Alternate Panel Member (Independent) – afternoon only
Barry Hayward	BH	Panel Member (Associated Retailer)	John Vinson	JV	Alternate Panel Member (Independent) – morning only
Trevor Nelson	TN	Panel Member (Unassociated Retailer)	Pamela Taylor	PT	Panel Member (Independent)
Nicola Smith	NS	Panel Member (Unassociated Retailer)	Christina Blackwell	MK	Alternate 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
Mike Rathbone	MR	Panel Member (Wholesaler)			

OTHER ATTENDEES

Steve Arthur	SA	MOSL (Presenter)	Ivy Mandinyenya	IM	MOSL (Minute Taker)
Evan Joannette	EJ	MOSL (Presenter)	Lisa-Ann Lott	LC	MOSL (Observer)
Stuart Boyle	SB	MOSL (Presenter)	Emily Bulman	EB	Ofwat (Presenter)
Charles Unvala	CU	MOSL (Presenter)	Neil Pendle	NP	Waterscan (Presenter)
Chris Dawson	CD	MOSL (Presenter)	Michelle Burns	MB	Water-Plus (Observer)
Abu Rashid	AR	MOSL (Presenter)	Antoine Schmidt	AS	Thames Water (Observer)
Huw Comerford	HC	MOSL (Secretariat)	Christopher Wright	CW	Castle Water (Observer)
Oliver Robins	OR	MOSL (Minute Taker)	George Kelly	GK	MOSL (Observer)
Florentina Monea	FM	MOSL (Observer)	John Vinson	JV	Independent (Observer) – afternoon only

APOLOGIES



Mike Kiel	MK	Panel Member (Customer Representative)
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1. Welcome and Introductions

- 1.1 The Chair welcomed the Panel Members and all other attendees to Panel Meeting 43.
- 1.2 The Chair noted apologies from Mike Kiel (MK) and welcomed Christina Blackwell (CB) as the Alternate Customer Representative. It was explained that Elsa Wye (EW) would seek to join the Panel Meeting for the afternoon session, and the Panel welcomed John Vinson (JV) who would be acting as the Alternate for the morning session only.
- 1.3 The Panel noted that this would be the last Panel Meeting to be attended by Mike Brindle (MB).

2. Minutes and Outstanding Actions

- 2.1 Adam Richardson (AR) thanked Panel Members for their feedback on the minutes for Ad-hoc Panel Meeting 40b (20 March), Ad-hoc Panel Meeting 40c (27 March), Panel Meeting 41 (31 March) and Ad-hoc Panel Meeting 41a (15 April), which had all been taken as approved on 20 May 2020.
- 2.2 It was noted that the minutes from Panel Meeting 42 (28 April) had only received some minor comments from Panel Members. The Panel subsequently approved the minutes for Panel Meeting 42.
- 2.3 The Panel agreed to close the following actions; A33_07, A38_03, A37_02, A40_02, A40_03, A40_05, A40_06, A40_07, A40b-01, A40b_02, A40c_01, A40c_02, A40c_03, A41_01, A41_02, A41_03, A41_04, A41_05, A41_06, A41_07, A42_01, and A42_02.
- 2.4 A Panel Member requested clarification on how customer representation would be included within the Panel Innovation workstream following the closure of A33_07. AR explained that these discussions would be picked up in the Panel Huddle Team Meetings regarding the Panel Plan workstreams over the course of the next few weeks and agreed that the Huddle Teams would report back to the Panel in June with an update of the approach going forward.

A43_01
- 2.5 The Panel agreed that A42_03 should remain open and be revisited after the presentation provided by Steve Arthur (SA) in the MOSL update. The Panel agreed to carry over all other outstanding actions; A29_06, A26b_04, A33_08, A36_04, A39_05, A40_11, A41_08, A42_03 and A42_04.
- 2.6 A Panel Member raised a query with regards to the tracking of actions that had arisen out of the Panel Workshop on 27 April 2020. AR explained that these actions are typically wrapped up and covered in the monthly Panel discussions and are therefore inherently tracked within the main Panel action log, but agreed to check that there were no unaccounted actions from the Panel Workshop in advance of the June Panel Meeting.

A43_02

3. Ofwat Update

- 3.1 AR explained that Ofwat would not be providing an update at Panel Meeting 43 and invited Panel Members to consider the information provided in Ofwat's recent industry communications as indicative of its current focus and workstreams.

4. MOSL Update

- 4.1 SA provided a brief MOSL update, and pointed the Panel towards the May edition of MOSL's [Market Focus](#) for a more detailed monthly account of MOSL activities.

- 4.2 The Panel noted that Andrew Stoneman had hosted two webinars earlier in May to give an overview of the deferral mechanism set out in [CPW096 Urgent: Payment Deferral Medium Term](#) and the associated reporting requirements. SA pointed out that over 120 industry representatives had participated and thanked Trading Parties for their high levels of attendance and feedback. The Panel asked MOSL to establish how updates on Wholesaler and Retailer reports provided on the back of CPW096 could be shared with the Panel. MOSL agreed to consider what information obtained through CPW096 reporting could be shared with the Panel.

Action A43_03

- 4.3 MOSL also agreed to provide an update on the findings of the first audit undertaken on CPW096 reporting.

Action A43_04

- 4.4 SA highlighted that consultation on the 2020/2021 Market Performance Operating Plan (MPOP) had opened and thanked the Market Performance Committee and sub-group members for their support and involvement, particularly where the 2020/21 MPOP had needed adjustment to better recognise prevailing industry circumstances in light of COVID-19.

- 4.5 The Panel considered an update on vacancy in the market. SA explained that vacancy rates had doubled since before the COVID-19 pandemic to cover 34% of premises as of 18 May 2020. Whilst the rate of transitioning from occupied to vacant had slowed recently, MOSL would monitor if another peak occurred prior to the next settlement run.

- 4.6 SA explained the importance of obtaining Temporary Vacancy assurance statements from Trading Parties and ensuring that Trading Parties made proper use of the COVID-19 flag to facilitate the eventual unwinding of this temporary measure. The Panel noted that 92% of premises marked vacant since 16 March 2020 had included the vacant flag and MOSL was chasing up on any outliers.

- 4.7 BH commented that whilst much of the market had focussed on utilising industry classifications to trigger vacancy changes, Water2Business' approach had focussed on contacting customers proactively, explaining their low numbers of vacancies compared to their peers. BH acknowledged further work to be done to ensure that premises changed as a result of COVID had the COVID flag updated accordingly.

- 4.8 The Panel sought clarification on why only 13 Trading Parties had submitted Temporary Vacancy assurance statements. SA confirmed that MOSL had received more Temporary Vacancy assurance statements since the MOSL update had been published. As of 22 May, these

statements covered 25 out of 37 Retailers, which in turn covered 99.4% of vacancy changes made since 16 March. SA highlighted that 10 out of the 25 Retailers (covering 96.3% of vacancy changes) had provided detailed accounts of their use of the mechanism, and explained that MOSL would be analysing this information to differentiate between applications based on government guidelines and industry classifications, and those involving more direct customer contact – whether it be proactive or reactive.

- 4.9 SA clarified that MOSL was still chasing up on some outstanding assurance statements from some Retailers (predominantly NAVs) to cover the remaining 0.6% of vacancy changes made since 16 March and was keeping Ofwat informed of the situation. This issue of sanction or penalty for inappropriate vacancy changes was raised. SA outlined that whilst these sanctions were unclear in the change proposal and associated guidance, one route could involve Ofwat requiring premises in question to have their status changed back to occupied.
- 4.10 A Panel Member queried whether the Market Auditor had started auditing both vacancy changes, and financial positions with regards to COVID-19. SA explained that the audit for CPW096 would focus on the reporting of customer revenues collected rather than the use of the temporary vacancy flag (although this would not preclude MOSL from conducting its own investigation in the future), and confirmed that MOSL was finalising the details of the financial auditing with the Market Auditor.
- 4.11 A Panel Member felt that timely assurance regarding the use of vacant flags was important and that these should be the focus of an audit process. They suggested that an update be provided before the June Panel Meeting regarding a vacancy auditing process, and that assurance should be provided as soon as possible to confirm the resilience of the market, protect customers, and mitigate against the accumulate of problems in the future. Another Panel Member noted that a major focus of the 2020/2021 MPOP would be to ensure that the transition out of COVID-19 vacancy flag process is performed correctly, but that this was not the immediate, tactical action that the first Panel Member had requested.
- 4.12 SA explained the importance of striking a balance between quick action and retrospective adjustment and highlighted that the MPC would be discussing transition planning at its next meeting on 27 May. However, SA confirmed that MOSL would take away the sense of urgency from Panel Members and look at the scope for requesting the market auditor to review outlier parties in relation to temporary vacancy changes and to give a progress report on an auditing process before the June Panel Meeting.

A43_05

- 4.13 Christopher Wright (CW) sought clarification on whether the assurance statements provided by Trading Parties could be shared more widely, highlighting that Castle Water had offered to provide a redacted version but had been informed that this was unnecessary. SA suggested that such statements could be published where they did not include any confidential or commercially sensitive information and confirmed that MOSL would consider the publication of redacted versions after the meeting.

A43_06

- 4.14 The Panel considered an update on Market Performance and Settlement and discussed the importance of differentiating between poor Trading Party performance in general and COVID-

19 performance. One Panel Member asked how MOSL was looking to capture and publish the impact of COVID-19 on OPS and MPS performance.

- 4.15 SA explained that MOSL would first need to establish the transition phase and clarify the impacts in more detail before looking to construct a suitable narrative for public consumption. With regards to the discrimination of true Trading Party performance from apparent performance, SA highlighted that MOSL was already capturing information through its portfolio managers, e.g. staffing levels, to help assess the extent of poor operational performance accountable to issues outside of Trading Party control.

5. Committee Reports

Trading Disputes Committee (TDC)

- 5.1 JV provided an update from the TDC which last met on 20 May. JV confirmed that no new disputes had been raised and discussed at that meeting.
- 5.2 The TDC was continuing to refine [CPW092 'Unified Disputes Process and Committee'](#) in preparation for consultation and had been keen to ensure that the bar for disputes was kept relatively low when considering the appropriate validation criteria for Trading Parties to raise a dispute. The TDC had also sought confirmation from MOSL how it would ensure transparency and compliance with the dispute process when it came to disputes involving the Market Operator.
- 5.3 The TDC had agreed to retain the 28-month backstop date for raising disputes as currently set out in the code, but only in relation to Trading Disputes. However, the Committee would add the possibility of extending the scope of the backstop to its risk register for future consideration.
- 5.4 The TDC had considered various actions that could be taken in the event of non-compliance of a Trading Party with a decision made by the Disputes Committee, with the ultimate sanction being referral to the Regulator. Ofwat had provided a statement on the matter to clarify that any non-compliance with the code would be treated in the normal way and would expect these instances to be the exceptional
- 5.5 The TDC had discussed a request from the GDPR Committee to consider an urgent dispute process and had unanimously agreed to maintain the current flexibility in the change proposal that would allow the TDC to call meetings at short notice for any type of dispute. The need for a separate urgent dispute process for specific disputes, for example relating to Credit Committee and GDPR matters, would be kept under review.
- 5.6 HM clarified that the GDPR Committee's request of the TDC had been for it to recognise that a unified dispute process would need to cover all disputes under the codes (including GDPR disputes that will require efficient resolution due to the tight timeframes when dealing with Data Subject Requests). HM confirmed that the GDPR Committee would consider a watching brief following the culmination of the TDC work on CPW092 to assess whether it would wish to make any further recommendations.
- 5.7 The Panel noted that the consultation for CPW092 would be delayed whilst the consultation questions were finalised by the TDC and would most likely be circulated in early June. JV



confirmed that CPW092 was still on track to be presented to the Panel in August, with a targeted implementation date in November pending approval.

- 5.8 MOSL would assist the TDC in publishing its working procedures as obligated in the code and highlighted that EW would be resuming the role of TDC Chair from 1 June 2020.

General Data Protection Regulation (GDPR) Issues Committee

- 5.9 Helyn Mensah (HM) provided an update from the GDPR Committee which last met on 30 April.
- 5.10 The GDPR Committee had finished its assessment work into dealing with Data Subject Requests and confirmed that the solution had now entered its drafting phase. The solution would then be subjected to legal review and feedback from Committee Members in late June/early July, before being circulated for consultation.

Credit Committee

- 5.11 AR provided a brief update from the Credit Committee and noted that the committee had not met since 24 March. AR explained that MOSL was in the process of producing further background work on the issue of security of credit provision which had arisen out of the Panel deliberations on [CPW079 'Protections for Credit Support Security'](#). It was anticipated that this would be presented to the committee in the Summer of 2020. The Credit Committee would also look to review [CPW057 'Improving Transparency of Credit Guarantee Arrangements'](#) in the Autumn of 2020.

Market Performance Committee¹

- 5.12 EW provided an update from the Market Performance Committee (MPC) which last met on 29 April.
- 5.13 EW noted a typo on part b of the Committee Report, where the word "all" should be "but".
- 5.14 One Panel member stated that it was essential to not lose sight of the audit subgroup due to its importance. SA stated that he would be re-instating the Panel Sub-group, and to have a review at the end of the third year of the Sub-Group being active as (i) a 'lessons learned' document and (ii) to fulfil the forward-looking piece of the Business plan. SA noted that he would send out calendar invitations for a meeting to improve market auditing going forward.

A43_07

- 5.15 One Panel Member questioned why one Retailer accounted for 47% of all vacancy requests, which Retailer that was, and why this was a problem. EW stated that this information was from the presentation given to the MPC by MOSL in April. SA stated that it was simply an observation that the YVE estimates were skewed by one Trading Party.
- 5.16 The Panel discussed the concerns of Committee Members over MOSL's compliance update, namely the failure to publish Board minutes in full (but with redactions where appropriate), and the failure to back up key CMOS information in escrow.

¹ The Market Performance Report was discussed in the afternoon session once EW had joined the meeting. It has been recorded here alongside all other Committee updates.

- 5.17 On the latter, EW stated that as the codes were written, it was essentially impossible for MOSL to comply. EW noted there was an issue for MOSL to manage this going forward and this may require a change proposal. EW also noted the board minutes publication was an obligation in the MAC. She noted that there were no summaries of board minutes after January, and that there was a request for a summary of minutes to be issues rather than a redacted set of minutes.
- 5.18 SM stated that regarding the escrow arrangements, even if this obligation could be followed, it would not provide any additional protection over the current arrangements. One member suggested that SM reach out to those companies with software agreements similar to that with CGI to determine what other companies are doing with respect to their escrow obligations. Panel Members agreed that it would be sensible to amend these provisions based on these factors.
- 5.19 SM acknowledged that MOSL had an obligation to publish board minutes, but the board had agreed this was inappropriate due to confidentiality, and the board had moved to publishing summaries. SM noted the gap between the obligation and summary minutes being provided. SM stated that Andrew Johnson, MOSL Company Secretary, had compared practices of MOSL to those of other industry bodies (including Ofwat and ELEXON – the electricity market operator). SM noted that most, if not all, of these organisations provide summary, or quarterly minutes. She noted the summary minutes of MOSL are more comprehensive when compared to these industry groups. It was therefore proposed that the clause be altered via a code change to support this practice, as redacted minutes may cause further confusion when the readers are trying to work out what lies behind the redactions.
- 5.20 A Panel member questioned whether a code change was necessary for simplicity.
- 5.21 HM noted that everything which was said was pragmatic and sensible, but the distinction which was being made by the Market Auditor was that if there are actual board minutes which are being reduced into a second round of summary minutes, and both of these exist, it could be argued that the summary minutes are not the actual minutes.
- 5.22 The Chair noted that, based on the Panel’s discussions, these potential Change Proposals (non-compliance issues) could be grouped into appropriate housekeeping Change Proposals.
- 5.23 EW reminded the Panel that John Gilbert would be taking over as Chair of the MPC from June.

6. Change Report

- 6.1 Stuart Boyle (SB) highlighted that MOSL had coordinated two code releases since the April Panel Meeting, the first to accommodate the authority timetabled [CPW096 ‘Payment deferral medium term measures’](#) on 1 May, with the second being the regular release on 15 May for [CPW065 ‘Retailer Notification’](#) and [CPW083 ‘Vacancy Incentive Scheme’](#).
- 6.2 SB explained that the consultation for [CPW089 ‘T101 Adding Billing Address Fields’](#) was due to close on 28 May and highlighted that this was the only proposal currently out for consultation. Meanwhile consultations for [‘CPW075 Settlement Estimation’](#), [CPW092 ‘Unified Disputes Process and Committee’](#), and [CPW067 ‘Bulk Submission of Service Requests via MS Excel’](#) were planned to commence in June.

- 6.3 The two authority timetabled change proposals due for discussion on the agenda for Panel Meeting 43, [CPM027/CPW098](#) and [CPM025/CPW097](#), were the only new changes received by MOSL. The Panel noted that these changes were Authority Timetabled Change Proposals with release dates of 1 June and 1 July respectively.
- 6.4 SB observed that there were a large number of changes expected for the August 2020 code release. The Panel noted that MOSL was in dialogue with Ofwat regarding the implementation dates for these code changes and that this regular release could be split into two, smaller releases.
- 6.5 EW provided an update on [CPM026 'Panel Chair and Alternate'](#) under AOB.

7. Draft Recommendation Report: CPM027/CPW098 Extending Suspension of Performance Standard Charges due to Covid 19

- 7.1 The Panel considered the Draft Recommendation Report for [CPM027/CPW098](#). This Authority Timetabled Change Proposal sought to extend the suspension of levy and collection of charges for Market Performance Standards (MPS) and Operational Performance Standards (OPS) – following the implementation of [CPM023/CPW090 'Suspension of Performance Standard Charges'](#) on 23 March 2020 - to also apply to charges in June and July 2020.
- 7.2 EJ explained that CPM027/CPW098 would extend the suspension to accommodate the reduced business presence and activity at customer sites, and the restricted ability for Trading Parties to meet business as usual performance standards. EJ invited the Panel to consider whether it was appropriate for the market to revert to the normal application of performance charges at this time.
- 7.3 The change included facility for Ofwat to vary the length of the suspension. Dan Mason (DM) clarified that Ofwat was not looking to unilaterally suspend performance charges indefinitely. The change was simple and pragmatic and would be considered within Ofwat's wider review of market liquidity as different customer sectors began to come back online in the future.
- 7.4 A Panel Member noted that some minor amendments were necessary in the legal drafting. EJ confirmed that an incorrect reference to Market Performance Standards would be addressed. The drafting had been made to align with [CPM025/CPW097](#) (to be discussed later).
- 7.5 A Panel Member queried whether Ofwat could be obliged to inform the Panel, as well as MOSL, of any decision to amend the suspension, and sought further clarification on where this decision would be published. DM agreed that Ofwat had already assumed that this would be the working practice.
- 7.6 Another Panel Member questioned how MOSL was looking to report OPS and MPS across this period. SA explained that MOSL considered reporting requirements should remain business as usual during COVID-19. SA confirmed that MOSL would continue to publish OPS and MPS information on its website, whilst seeking to improve the visibility of this information (and inferences from it) to the Panel and Market.
- 7.7 The Panel discussed the importance of providing data that detailed real performance in the market due to COVID19 (rather than excluding Covid-19 effects to indicate relatively higher levels of performance) and being flexible and reactive to maintain the incentive for Trading

Parties to perform in line with performance targets where and when it is appropriate. One Panel Member highlighted that the removal and unwinding of the temporary changes under discussion demanded careful consideration.

- 7.8 Panel Members suggested that it would be important for Trading Parties to have sufficient notice should Ofwat seek to vary the suspension. DM stated that Ofwat would pick up on this point when conducting its wider review into liquidity.
- 7.9 The Customer Representative Panel Member aired concerns that the change could potentially result in a continued reduction in service levels. She sought evidence for the suitability of the 2-month timeframe, how the change aligned to the Customer Protection Code of Practice, and why a blanket approach to suspension was considered most appropriate.
- 7.10 DM explained that Ofwat had considered a focussed approach but had favoured simplicity and certainty in the short term. He noted the timescale was based on it being pragmatic and proportionate to provisions implemented elsewhere. Should a suspension be required beyond July 2020, then Ofwat would assess this further as part of its wider review.
- 7.11 DM also highlighted that Ofwat did not foresee a significant risk with regard to reduced service levels and added that MOSL would continue to monitor the process to mitigate customer risk. The Customer Representative Panel Member explained that they remained supportive of the principle behind CPM027/CPW098 but given concerns, would suggest that the suspension should be kept under close review to enable Ofwat to respond to changes in the market as soon as possible.
- 7.12 The Panel discussed the issue of customer interest and the basis on which it was supporting the change. It was noted that the rationale for the first suspension ([CPM023/CPW090](#)), which had been customer orientated through the recognition of Trading Parties struggling to access customer premises closed due to COVID-19, remained strongly relevant in the current context. Fundamentally, Trading Parties should not be penalised for elements outside their control. It was also highlighted that the change would allow the water industry to focus on the essential continuation of services.
- 7.13 One Panel Member suggested that the issue of performance standards being currently unattainable was a broader point for discussion, rather than the mere consideration of the associated charges. They explained that there needed to be greater depth of rationale behind the suspension of performance standards so that the market did not appear to be favouring the avoidance of charges rather than seeking to address the underlying problems.
- 7.14 The Chair explained that the MPC and MOSL understood the importance for transparency of monitoring under the current industry circumstances. Another Panel Member reiterated that it was important for the Panel to understand and endorse any approach to reporting the true extent of Trading Party performance in the current context.
- 7.15 The Panel:
- **AGREED** to recommend CPM027/CPW098 to the Authority for approval (unanimous); and
 - **AGREED** to recommend an implementation date of 1 June 2020.

8. Draft Recommendation Report: CPM025/CPW097 Suspension of Performance Standard Charges Following Interim Supply Allocation

- 8.1 The Panel considered the Draft Recommendation Report for [CPM025/CPW097](#). This Authority Timetabled Change Proposal sought to suspend the requirement for the Market Operator to issue invoices on, and Retailers to pay, Market Performance Standard (MPS) Charges for any Interim Duty Supply Points allocated to them for the three months following an Interim Supply event (or other period that the Authority deemed appropriate).
- 8.2 EJ explained that CPM025/CPW097 would also protect Retailers from an increase in the charges cap resulting from taking on Interim Duty Supply Points and would provide allocated Retailers more certainty and time to forward plan, establish customer relationships, and raise necessary market transactions without incurring any financial penalties.
- 8.3 EJ explained that the change had taken account of a range of experiences from the two instances of Retailer exit and was seeking to improve incentives, coverage, allocation, and simplicity with regards to Interim Supply.
- 8.4 Emily Bulman (EB) stated that Ofwat considered the solution to be a “quick win” rather than a “silver bullet” and invited the Panel to consider CPM025/CPW097 as indicative of Ofwat’s direction in assessing and improving the Interim Supply process more broadly beyond this code change.
- 8.5 A couple of Panel Members sought clarification on whether Ofwat would seek to vary the time period periodically or in relation to specific Interim Supply events on a case by case basis. EJ explained that the timescale would be varied by event in order to account for the specific size, nature, impact and underlying circumstances.
- 8.6 The Panel discussed the proportionality of CPM025/CPW097. Several Panel Members questioned the necessity of the blanket approach to suspend all SLAs, however several other Panel Members agreed that simplicity was the best course of action at this current time. It was suggested that the possibility of selectivity could be revisited in the future.
- 8.7 The Panel discussed the evidence base for CPM025/CPW097, with several members requesting clarification on the rationale for the change (specifically the significance of the problem - e.g. the number of customers at risk - that it sought to address) and its apparent urgency. Several others requested confirmation that the solution would address concerns faced by Retailers and encourage them to opt into the process.
- 8.8 EB reiterated that Ofwat would be looking at the Interim Supply Allocation process more widely, and explained that the change and its associated details had had been motivated by the need to improve customer outcomes, with Ofwat being cognisant of the need for flexibility in the process to accommodate different circumstances.
- 8.9 EB stated that the evidence mostly stemmed from the two previous interim supply events, which whilst being relatively small, had proved burdensome for all parties involved. It was important to incentivise more Retailers to opt into the scheme to reduce the risk to customers of having no Retailer. With regard to proportionality, Ofwat considered it better to carry out an early and simple code modification rather than examine in detail the technical complexities of alternative arrangements that looked beyond performance charges.

- 8.10 A Panel Member suggested that the removal of associated charges, rather than the suspension of the standards themselves, inherently assumed that charges were the sole barrier preventing other Retailers from picking up customers. However, there could be other factors, such as the reputational element associated with MPS, that incentivise against opting in.
- 8.11 EB explained that Ofwat had considered dropping measurement of standards but concluded this approach would be too technically complicated for implementation at this time. EJ noted that feedback from Trading Parties had suggested that the performance charges acted as a significant disincentive.
- 8.12 The Panel noted that CPM025/CPW097 would maintain the ability, and opportunity, for the market to learn how performance was affected by an interim supply event. Rather than changing the underlying rules to measuring performance, MOSL could ensure that appropriate flags are placed to ensure the relevance of ensuing analysis and interpretation.
- 8.13 SA added that this provision would better serve customers and enable the industry to react and accommodate larger interim supply events. Should such an event occur, a review could then be carried out to assess the potential for changing the standards themselves.
- 8.14 Another Panel Member stated that it was important for MOSL to have the reporting capability in place to help mitigate against detrimental drops in service levels to existing customers where a Retailer has opted into the process. They also questioned whether timetables and information on such event could be published more widely. EB confirmed that Ofwat would be as transparent as possible and seek comprehensive publication.
- 8.15 A Panel Member stated that supporting statements should be provided where charges have not been applied to explain the reason for not doing so. They suggested that the change could go further and increase the flexibility of how performance standards are applied to better incentivise Trading Parties to do the right thing at the right time for the benefit of customers. However, several Panel Members felt this introduced additional complexity outside the scope of the current change. They felt that the change as proposed would pose a genuine customer benefit, with one Panel Member highlighting their support was based on personal experience in other markets.
- 8.16 EJ highlighted a terminology change from Designation to Designated in the proposed drafting for CSD 0002 and confirmed that a small number of clarifications in the drafting would be addressed offline.
- 8.17 The Panel:
- **AGREED** to recommend CPM025/CPW097 to the Authority for approval (unanimous); and
 - **AGREED** to recommend an implementation date of 1 July 2020.

9. Draft Recommendation Report: CPW080 Simplification of Default and Termination Process

EW joined the meeting.

- 9.1 The Panel considered the Draft Recommendation Report for [CPW080](#). This change sought to simplify and clarify the Default and Termination Process for Wholesalers and Retailers.
- 9.2 The Chair noted that consultation feedback on the proposal was positive response overall, but a lot of detailed points were made. The Chair invited Panel Members to consider the broader view.
- 9.3 The Proposer confirmed that a number of issues had been raised and the Committee had sought to find a balanced view for the benefit of all parties. Practical experience could always mean that these changes could be revisited.
- 9.4 Some Panel Members were supportive and commented that the paper was well written and gave a balanced view.
- 9.5 Concern was expressed by some Panel Members about the proposed removal of the 'Defaulting Trading Party under another Wholesale Contract' default event (Section 10.1.15), which they felt made those Retailers in financial difficulty less visible. Other Panel Members noted that the provisions relating to the disclosure of Defaulting Trading Parties to Contracting Wholesalers would not be amended under the proposed change.
- 9.6 A Panel Member questioned whether any material changes had been made to the number of days in the default and termination process beyond the purpose of reducing ambiguity. The Proposer highlighted that simplification had formed an important part of the rationale. They confirmed that, in clarifying the process a small number of days had been added primarily in the termination process. A termination notice could only be served on a Business Day and the day after a Retailer became a Defaulting Trading Party as well as specifying that the ten Business Day notice period was from the receipt of notice. The Proposer noted that these clarifications struck a balance between notifying the Retailer and ensuring that the split of credit risk was not fundamentally impacted and avoided any ambiguity. With regards to the default process, CU stated that, other than the changes to the credit-related default events where under the Failure to provide and maintain Credit Support Amount default event a Retailer had ten Business Days' notice, rather than it being immediate, in line with the default events that had been removed, only the clarification on the Persistent failure to pay impacted the number of days' notice.
- 9.7 One Panel Member was not in favour of the proposal for a number of reasons. They thanked the Credit Committee, Neil Pendle and MOSL for the work done, however in their view the code change needed further thought and assessment in the context of end customer interest and market resilience, particularly in the light of their COVID experience. They felt the change was not in end customers' interest as it extended the amount of time a distressed retailer can operate in the market prior to their exit. The end customer was impacted because they may have paid a distressed retailer longer than they would otherwise have had to do so if the existing code rules prevailed, it also meant that the level of market debt incurred increased which is also to the ultimate detriment of the end customer. The Panel Member felt the

market's resilience would be reduced because the change would lower the financial robustness requirements of retailers as their credit terms have been extended.

- 9.8 The Proposer observed that the committee did observe the issue. They reported that it was the considered view of the majority of the committee that the change proposal had either no or little impact on customers.
- 9.9 The Panel Member considered that the change represented a gradual erosion of the credit arrangements which was not in the end customer's interest. They noted that the change had been developed and considered over the last six months. In their view, the change needed considering in the perspective of overall resilience in the market, particularly with regards to the current COVID-19 market conditions. The Panel Member felt the consultation contained mixed views, some of which weren't addressed in the Report. They also felt it was unclear from a process perspective if a Retailer defaulted, how that would not be in the public domain.
- 9.10 A Panel member stated the ability for Wholesalers to intervene where a Retailer was in default were provided for under Section 10.1.15 of Schedule 1 Part 2 Business Terms.
- 9.11 A Panel Member felt customers could continue to pay Retailers with no knowledge of their situation and would potentially pick up the costs if a Retailer failed. The Panel member continued that every additional day's delay to the termination of a Retailer, including non-business days due to only being able to serve a termination notice on a Business Day, increased customer exposure at roughly £5 million per day for the whole market. A Retailer could default with one wholesaler and continue in the market with other wholesalers without market intervention. They also questioned why default was different to any other reporting from a competition act perspective. They felt that current circumstances could mean an increase in the risk of default, given the precarious state of the market.
- 9.12 Panel Members questioned MOSL's discretion in passing default information on to other Wholesalers and were concerned customers interests would not be served by this. CU confirmed that discretion would be on a case by case basis and was an existing provision. A Panel Member noted one aspect of the concerns raised in relation to the Competition Act, related to Wholesalers passing on information to their Associated Retailers.
- 9.13 AR reminded Panel Members that the provisions relating to the disclosure of Defaulting Trading Parties would not be amended under the proposed change and that the Panel was being asked to compare this change against the existing baseline. Panel Members noted that in this regard, the Change Proposal was neither better nor worse than the current rules.
- 9.14 The Customer Representative Panel Member expressed support for removing the proposal to switch Retailers to Pre-Payment but was concerned about the potential impact of the change on customers. They continued that the consultation was unclear on overall impact to customers and should be looked into further before they could put their views forward on the proposal.
- 9.15 Another Panel Member believed that the change was customer neutral apart from situations where the customers was paying upfront and arguably that needed some thought on how material this risk was? The Panel Member continued that the timing was rather difficult. The

implementation date was based on business as usual but given the current Covid-19 situation they wanted to flag to Ofwat support for the second implementation date.

- 9.16 The Proposer stated that customers were not best served under the current default termination arrangements as they were not clear. CPW080 would benefit customers and provide clarity between Trading Parties.
- 9.17 The Proposer stated that the report was reflective of constructive debate by the Credit Committee. The overall view should be providing clear routes and pathways to Trading Parties entering into default processes and it was important that they existed and were clear. The proposed change would help Retailers understand what they needed to do and when they needed to do it. Further, it should not discourage constructive and timely bilateral communication between a Wholesaler and a Retailer and did not stop Trading Parties working proactively through their issues.
- 9.18 **The Panel:**
- **AGREED** to recommend CPW080 to the Authority for approval (10 in favour and 1 against, with 1 abstention); and
 - **AGREED** to recommend an implementation date of:
 - 28 August 2020, if Ofwat approval was received by 5 August 2020; or
 - 6 November 2020, if Ofwat approval was received by 14 October 2020.
- 9.19 The Panel Member that voted against stated that the change needed further work and assessment, did not improve the code, was not in customer interest, increased customer exposure, and reduced resilience of the market.
- 9.20 Some Panel Members were concerned about the timing and asked that, given the temporary measures recently implemented to address covid19, Ofwat consider a later implementation date.

10. Draft Recommendation Report: CPW087 Ability for Wholesalers to add meter reads

- 10.1 The Panel considered the Draft Recommendation Report for [CPW087](#). This change sought to allow (not oblige) Wholesalers to submit non settlement affecting meter reads into CMOS in order to facilitate Retailers in gathering readings, improve the market dataset and reduce the number of Long Unread Meters.
- 10.2 Panel Members were supportive of this change overall.
- 10.3 A Panel Member questioned why Retailers would choose not to use a Wholesaler Read and why Wholesalers were not mandated to add reads for the benefit of the market.
- 10.4 Some Panel members questioned why the change didn't go further. A Panel Member stated that this could be taken further in the future but going further would change fundamental principles associated with read ownership.

- 10.5 Another Panel Member stated that throughout the paper/presentation there was reference to the long unread position and questioned that if these Reads weren't being used for settlement would they actually make a difference to the long unread position. Would MOSL stop reporting a long unread meter if a wholesaler read went into CMOS if it wasn't a retailer read used for settlement? The Panel member also required clarification on the justification given the costs of the change and lack of obligation in relation to ownership of reads both Retailers and Wholesaler. They also queried if the Wholesaler could pick and choose when to use this mechanism for their own objectives rather than for the benefit of the market.
- 10.6 Another Panel Member commented that there was no estimation of the benefit of the change. The Panel member continued that there were some fundamental questions about the value of this change.
- 10.7 CD explained that the proposed scheme was not mandatory. It sought to encourage Wholesalers to pass on their reads to Retailers, and it was in the interest of all Trading Parties to seek to improve the Long Unread Meter situation. This change should be considered as a first step. Mandating the provision, or use of such reads, would take the responsibility of cyclic reads away from the Retailer. However, this could be examined as a next step.
- 10.8 AR explained that the Panel Metering huddle team would examine the provision of reads and responsibilities and the change should be considered in the wider metering strategy. SM added that this element also formed an important part of MOSL's business plan.
- 10.9 Another Panel Member stated they had some comments to be discussed offline. Short term the change was a step-in right direction however more work needed to be considered for the long term.
- 10.10 A Panel Member felt that the change did provide a balanced view however questioned why Wholesalers were not being mandated to add customer reads data into the market if they have them? It would promote transparency and would be beneficial to customers if those reads were put into the market for all parties to view.
- 10.11 Another Panel Member observed that it would be very helpful for Retailers to see Wholesaler reads but that they would have had significant concerns if Wholesalers were able to submit their reads directly into settlement without reference to the Retailer.
- 10.12 CD explained that this change was trying to appeal to all the Parties best interests and trying to encourage the short term and the medium term. The reason why Wholesalers are not being mandated to add customer reads is that by doing so it would change data ownership and that needs to be considered at a greater length. It was noted that MOSL would be able to bring back analysis on the extent to which these provisions (if implemented) were used by Trading Parties.
- 10.13 The Panel:
- **AGREED** to recommend CPW087 to the Authority for approval (unanimous); and
 - **AGREED** to recommend an implementation date of:
 - 6 November 2020, if Ofwat approval was received by 19 June 2020; or
 - 14 May 2021, if Ofwat approval was received by 12 November 2020.



11. Review of Industry Level Estimates

- 11.1 The Panel considered a review of the Industry Level Estimates (ILEs) in accordance with the obligation to perform an annual review of ILEs as set out in CSD 0207.
- 11.2 The Panel noted that it was a well written paper and Panel Members had no questions.
- 11.3 One Panel member requested a breakdown of meters using ILE into those that are Long Unread and those due to new connections.

A44_08

11.4 The Panel:

- **NOTED** the contents of the paper;
- **AGREED** that no changes to the ILEs were required (unanimous); and
- **AGREED** to review the ILEs in the first quarter of the financial year 2021/22 (unanimous).

12. Any other Business

- 12.1 EW provided an update as Chair of the Panel Chair nomination sub-committee. The three documents had been sent out to the Panel, but no comments had been received. The Policy Document required some amendments to reflect conversations about independence and conflict of interest. EW also noted that the sub-group had fed into the associated Change Proposal (CPM026 Panel Chair and Alternate) and that the Panel would be invited to consider this change in June.
- 12.2 The Chair noted that an equivalent MOSL-sponsored paper would be presented to outline the changes for the MOSL board chair.
- 12.3 EW noted that provisional interview days had been planned for 13 and 14 July 2020. The Sub-group was also liaising with Andrew Johnson, MOSL Company Secretary, on how to advise the MOSL board.
- 12.4 The Chair thanked EW and JV for their work chairing their respective committees.
- 12.5 The Chair noted that it was Mike Brindle’s last meeting and thanked him for all of his work on the Panel, its committees and sub-groups.
- 12.6 The Chair closed the meeting.

13. Actions

Action Number	Action
A43_01	MOSL to provide an update of the approach with regards to how customer representation will be included within the Panel Innovation workstream.



A43_02	AR to confirm that there are no unaccounted actions from the Panel Workshop in advance of the June Panel Meeting.
A43_03	MOSL to consider what information obtained through CPW096 reporting can be shared with the Panel.
A43_04	MOSL to provide an update on the findings of the first audit undertaken on CPW096 reporting.
A43_05	MOSL to provide a progress report on the auditing process for vacancy before the June Panel Meeting.
A43_06	MOSL to consider the publication of redacted temporary vacancy assurance statements.
A43_07	SA to send out invitations for auditing meeting.
A44_08	MOSL to provide a breakdown of meters using ILE into those that are Long Unread and those due to new connections.