

Minutes of Urgent Panel Meeting 43a

15 June 2020 | 15:00 – 14:00 | Teleconference

Status of the Minutes: **Final**

MEMBERS PRESENT

Jim Keohane	JK	Chair	Christina Blackwell	CB	Alternate Customer Representative Panel Member
Michelle Burns	MB	Panel Member (Associated Retailer)	Michael Rathbone	MR	Panel Member (Wholesaler)
Trevor Nelson	TN	Panel Member (Unassociated Retailer)	Helyn Mensah	HM	Panel Member (Independent)
Nicola Smith	NS	Panel Member (Unassociated Retailer)	Elsa Wye	EW	Panel Member (Independent)
Claire Yeates	CY	Panel Member (Unassociated Retailer)	John Vinson	JV	Alternate for Pamela Taylor (Independent)
Mark Holloway	MH	Panel Member (Wholesaler)	Dan Mason	DM	Affiliated Panel Member (Ofwat)
Martin Marvin	MM	Panel Member (Wholesaler)	Adam Richardson	AR	Panel Secretary

OTHER ATTENDEES

Stuart Boyle	SB	MOSL (Observer)	Charles Unvala	CU	MOSL (Presenter)
Huw Comerford	HC	MOSL (Observer)	Chris Wright	CW	Castle Water (Presenter)
Steve Arthur	SA	MOSL (Observer)	Ray Porter	RP	Castle Water (Observer)
Amanda Hinde	AH	MOSL (Observer)	Florentina Monea	FM	MOSL (Observer)
George Kelly	GK	MOSL (Minute Taker)	Georgina Mills	GM	Ofwat (Observer)
Antoine Schmidt	AS	Thames Water (Observer)			

APOLOGIES

Mike Keil	CC Water
Barry Haywood	Water2Buisness
Sarah McMath	Affiliated Panel Member (MOSL)

1. Welcome and Introductions

- 1.1 The Chair welcomed the Panel Members and all other attendees to Urgent Panel Meeting 43a. The Chair expressed his gratitude towards all attendees for making themselves available at short notice.
- 1.2 The Chair welcomed MB to her first meeting and noted apologies from Mike Keil, Barry Haywood and Sarah McMath.
- 1.3 The Chair confirmed that this meeting had been called as an Urgent meeting of the Panel following the receipt of Change Proposal CPW100, submitted by Castle Water on Friday 12 June. Consequently, as required under the provisions of the market codes, the Panel Secretary had convened this urgent meeting. The Chair noted the rules relating to urgent Panel meetings therefore prevailed, including the reduced quorum requirement associated with meetings convened to consider potentially urgent changes.
- 1.4 The Chair noted that the first decision would be on the matter of urgency of the change, before moving onto the substance of, and recommendation of the proposal and implementation date.

2. DRR: CPW100 – Revision to Credit Support Requirements Under CPW095

- 2.1 The Panel considered the Draft Recommendation Report for the potentially urgent change proposal CPW100 'Revision to Credit Support Requirement under CPW095'.
- 2.2 This change sought to remove the requirement on a Retailer to maintain Credit Support Amount at the same level as in the Credit Support Notices issued following publication of March 2020 P1 Settlement Reports if the Retailer has chosen not to participate in CPW096 'Payment Deferral (Medium Term)'.
- 2.3 The Proposer had requested this change be treated as urgent so that it could apply to the Credit Support Notices due to be issued by 16 June 2020.
- 2.4 CU first thanked the Panel Members for their consideration of the Change Proposal at such short notice.
- 2.5 CW provided a brief overview of the change proposal, highlighting the history of and decisions on Covid19 related changes until this point, referring to CPW095 and CPW096 specifically. CW believed that the higher Credit Support Requirement (CSR) due to these two changes was an unintended effect. Panel Members noted that Ofwat had previously confirmed this was an intended effect. The view of CW was that these effects, whether intended or not, were unexpected. Retailers were required to maintain support at the pre-COVID 19 levels despite increased levels of vacancy, and would therefore be more inclined to defer charges. He further noted that this defied economic and regulatory logic.
- 2.6 CW outlined five points for the Panel Members to consider with regards to this change:
 - 2.2.1. He first noted that when the Office of National Statistics (ONS) announced the 20% reduction in GDP due to COVID-19, it did not seem logical to perpetuate credit security at Pre-COVID levels. He noted that artificially mandating a level of credit

support for a volume of Wholesale charges which doesn't reflect current consumption, ignores the consumption lost to COVID-19 and changes in the Market which were not entirely temporary. CW also called Panel Members' attention to the mechanism that existed under the market codes that permitted Wholesalers to challenge any incorrect temporary closure (vacancy) flag. He further noted that the CSR would increase with re-openings, in line with revised P1 settlement reports. For this reason, he noted a gradual transition is more likely, rather than a step change.

- 2.2.2. CW believed the idea of the temporary closure (vacancy) flag was that Wholesale charges should reflect consumption. He noted that CPW091 reflected government policy, regulation and legislation which had affected the economy and forced some Non-household customers to close.
 - 2.2.3. CW further noted that it was against the consumer interest to maintain excessive CSR's as this would increase Retailer cost, thus increasing cost to customers.
 - 2.2.4. He noted as smaller Retailers have lower costs of provision of credit security, maintaining high levels of credit security resulted in differential costs for Retailers in different Wholesale areas. He noted that, in his view, this distorted competition, contrary to the Objectives and Principles of the market codes.
 - 2.2.5. Lastly, CW noted CPW095 fixed credit security at a level which pre-dated COVID-19 and PR19. This created a construct which required deliberation and consultation which hadn't occurred. CW therefore invited the Panel to review the economic and regulatory basis of this change in current circumstances.
- 2.7 CW noted that when the Panel considered CPW095 six members abstained from the recommendation. Abstention was largely due to their concerns surrounding the level of supporting information, due to the lack of consultation. CW noted that now the level of materiality of the impact on Customers in the Market was known, the Panel could consider against these new factors and the points made previously.
- 2.8 CW then made reference to the urgency of this change. He noted the first credit support notice was about to be issued after deferred amounts under the previous scheme. He confirmed this was why the issue was only now coming into light. It was further noted that this was likely to affect more than one Retailer, and this materiality lends weight to urgency. CW noted the additional credit requirement on Castle Water was in the region of £11 million.
- 2.9 CU drew the Panel's attention to the factors considered in the draft Recommendation Report. He referred to the Ofwat intent to maintain credit support to pre-COVID levels due to the significant use of vacancy flags. He also noted that MOSL had received assurance statements from 95% of parties. Lastly, CU noted that it was difficult for MOSL to assess impacts on Trading Parties, as the report made clear, as MOSL did not have sight of Retailers' credit arrangements, what their view was, and how rapidly they drew down and adjusted arrangements in light of changes in CSR.
- 2.10 DM confirmed that Ofwat had signalled their intent clearly when the decision on CPW096 was published on 30 April 2020. He questioned the urgency, noting that this decision was implemented on 1 May 2020. He requested clarity in order to understand why the proposer thought this to be urgent given the six-week timeframe between CPW096 implementation

and raising the CPW100 Change Proposal. He noted the change was subject to limited consultation and that where the Panel were working at pace it had been recognised that there may be some unintended consequences of CPW091 and CPW093. He disagreed that CPW096 was not subject to consultation, noting that the change was raised following [Ofwat's consultation on liquidity and bad debt](#).

- 2.11 DM made reference to the vacancy flags. He noted that it was unlikely the number of businesses reopening would go back to levels pre-COVID, yet consumption would likely go up, and therefore Ofwat were expecting a spike in credit requirements. This was why they previously set out in their report their views on the importance for Retailers to maintain credit levels at the March 2020 P1 value.
- 2.12 He lastly noted that Ofwat were concerned about the undermining of credit support. He noted some Retailers may be unable to manage and finance a rapid increase in charges and credit when Ofwat unwound the COVID mechanisms. This presented a risk to customers of systemic failure of Retailers, as well as Retailer stability. He stated all measures put in place over the previous months were only temporary, and Ofwat's plan was to consult in July 2020 on long term liquidity.
- 2.13 A Panel Member noted that CCW sought to understand what the impact would be for customers, where they have always been concerned what would happen once the use of the vacancy flag was unwound, and the complaints they would receive during this period. She wished to explore the overall impact on customers before commenting on the change.
- 2.14 Panel members sought to clarify the reason for raising the change now and the rationale for urgency. They also requested views of other Retailers how this change would affect them.
- 2.15 One member noted that CPW096 did not increase credit levels just maintained them at current levels.
- 2.16 Another member noted the previous change was about maintaining the robustness of the market and ensuring customers didn't pick up costs of defaulting Retailers.
- 2.17 Another member noted there was a reduction of charges calculated in the P1 settlement run between the P1 run for the March Settlement Period and the P1 run for the June Settlement Period, reiterating the point that this change was simply about maintaining current credit levels.
- 2.18 Another Member sought feedback on where the gap was between the previous code change coming into place and this proposal being raised, i.e. what had changed? They also requested confirmation of the effect on the retailer of the quoted £11 million additional credit posed by the proposer.
- 2.19 The Chair noted that impacts on other Retailers were unavailable and reminded Panel Members that MOSL did not have access to this information.
- 2.20 Some members questioned DM that if there were critical adverse effects, would there be a reaction from Ofwat.
- 2.21 CW noted that since the 30 April implementation date, various decisions had been made. He felt that consumption was likely to go up, but not in a spike, and therefore there was unlikely to be a spike in credit requirements. It was also noted that in terms of this measure being

designed to enhance Retailer stability, the opposite was more likely true. CW stated that Castle Water specifically were able to repay the amounts owed, without deferral. He noted that the cost of maintaining the credit requirements was similar to the cost of cash.

- 2.22 The Chair noted that the Panel had to make a judgement based on 'imperfect' information at a high level, which was not a new situation for Panel Members to be in. One Panel member echoed this point.
- 2.23 One member noted that requested confirmation from DM as to whether the credit requirements were what they were expecting to see.
- 2.24 One member questioned CW regarding the impact on Cashflow and how it could be used elsewhere. They questioned why Castle Water did not opt into the deferral scheme. CW noted that the decision not to opt in to the deferral scheme was made on a commercial basis, and not a consequence of CPW095. He confirmed the cost of the quoted £11 million was material but could not provide its impact. He stated the effect of the previous change had only emerged over the past month as their situation became clearer. He noted Retailers were reliable for charges falling to occupiers. He noted this was a relevant jury point, where charges to customers had to be taken into account.
- 2.25 Panel Members noted the information presented and considered whether sufficient information was available to determine if the change was Urgent. Many Panel Members observed that the rules regarding credit provisions were clear in Ofwat's determinations on both CPW095 and CPW096 which had been implemented on 16 April 2020 and 1 May 2020 respectively. Panel Members recognised the interaction of this proposed change with the forthcoming issuing of Credit Support Notices but were not convinced that the change met the required Urgency Criteria.
- 2.26 The Panel:
- **AGREED** that CPW100 had not met the Urgent Change Proposal Criteria (4 votes in favour, 3 votes against, 4 abstentions)¹
- 2.26.1 those who abstained did so due to lack of information on the impact of the cost of credit and evidence of the effects on customers required to support this proposal.
- 2.27 The Panel noted that since the change was not considered urgent, while the Panel could continue to make a recommendation to Ofwat at this meeting, the requirement to make a decision and recommendation in the meeting fell away.
- 2.28 A timetable was proposed for further assessment of the change, for Panel Members to make a recommendation in July 2020 after consultation. The Panel noted that this timetable would mean that, if this change was approved, it was likely to be implemented in time for the September 2020 settlement period.
- 2.29 CW confirmed that he wished to proceed with the change as per the timetable presented.

¹ The required qualifying majority vote for this proposal to be deemed urgent was not reached in this case (a simple majority plus one).

- 2.30 One member questioned the consultation timescale, where the panel had to make a recommendation at the end of July. They noted it would likely end up running a 'side show' on a subset of the forthcoming Ofwat consultation. They suggested this was an inefficient use of resource.
- 2.31 The Chair noted that there was a Panel meeting in two weeks'-time, and whether this ought to be discussed with the proposer before that meeting so as not to rush the proposal through.
- 2.32 AR responded and noted there was a question with timing. He echoed the point made by DM that the extent of information available to the Panel could be restricted, making it difficult for members to make a decision at the July Panel. He noted if a consultation ran in conjunction with Ofwat's consultation, it may be possible to take a view at the ad-hoc meeting at the end of July.
- 2.33 The Panel considered three options: to continue with the change and consulting with industry in the normal way, running the change in conjunction with Ofwat's consultation, or to putting the Change on hold which would be the least favourable of options.
- 2.34 One member noted a key point was whether a Trading Party that had decided not to opt in to the deferral scheme should be treated the same as one which did. This was to be included in the consultation questions.

ACTION: P43a_01

- 2.35 The Chair noted the difficulty in running two consultations simultaneously which may overlap in timing and content, trying to meet a variety of circumstances and how these may interact.
- 2.36 The Panel noted that delaying the decision on consultation to the next meeting would push the change back by around a month. AR noted MOSL needed the agreement of Panel members to consult. Which was the most efficient way of doing this could be deduced post meeting. He was happy with a decision in principle, leaving open the exact timetable, questions and how it integrated with the wider Ofwat consultation.
- 2.37 AR confirmed the consultation would be integrated with the Ofwat consultation. The details would be fleshed out offline to come up with a way to minimise the impact on Trading Parties.
- 2.38 The Panel:
- **AGREED** that MOSL and Ofwat would coordinate consultation in July to bring a recommendation report to Panel at the end of July.

3. AOB

- 3.1 The Chair noted that there was no other AOB, and extended thanks to all members for joining.
- 3.2 The Chair then closed the meeting.

4. Actions



P43a_01: MOSL to include whether a Trading Party that had decided not to use the payment defer scheme should be treated the same as one which does not within the CPW100 consultation.