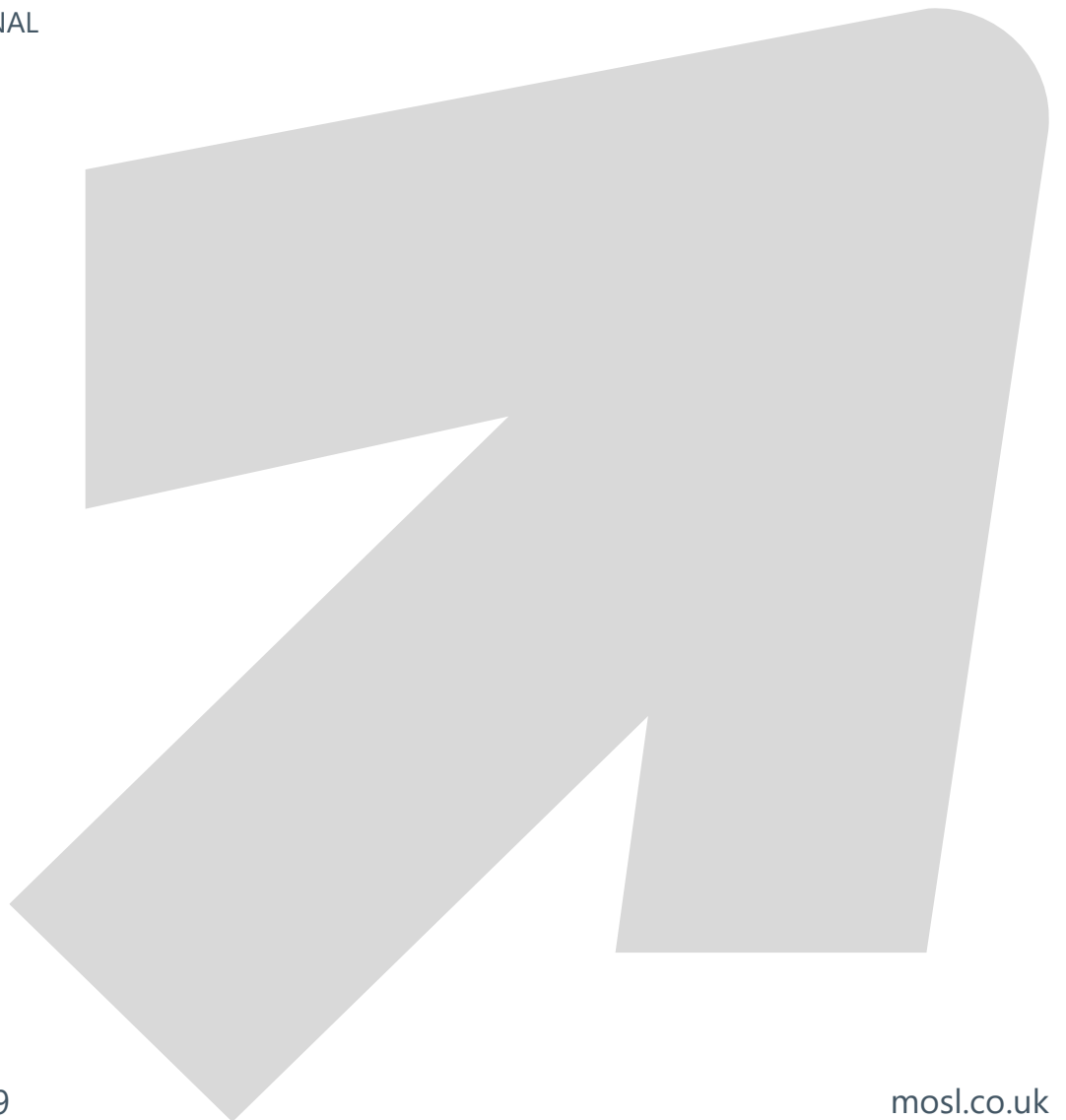


# Performance Advisory Group (PAG) 32

**Location:** MS Teams

**Date and time:** 29 February 2024, 1000 - 1200

**Status of minutes:** FINAL



# Meeting Minutes

## Market attendees

Name	(Initial)	Role/Organisation	Name	(Initial)	Role/Organisation
Adam Boyns	AB	CCW (O)	Jon Fuller	JF	Wessex (W)
Claire Stanness	CS	Wave (R)	Karina Soulynha	KS	Southern (W)
Clare Garland	CG	UU (W)	Mike Rathbone	MR	Severn Trent (W)
David Morris	DM	Waterplus (R)	Paul Baker	PB	Business Stream (R)
Emily Jerrome	EJ	Water2Business (R)	Rebecca Gale	RG	Waterscan (R)
Geoffrey Jones	GJ	Pennon (R)	Shaun Kent	SK	Ofwat (O)
Gerard Lyden	GL	Thames (W)	Syndiso Bango-Dube	SBD	Waterscan (R)
Gillian Bladen	GB	South West (W)	Wendy Monk	WM	Wave (R)
Jamie Davies	JD	Castle (R)			

## MOSL Attendees

Name	(Initial)	Role	Name	(Initial)	Role
Chris Dawson	CD	Chair	Nichola Sampford	NS	Observer
Abu Rashid	ARa	Presenter	Luke Coyle	LC	Observer
Janet Judge	JJ	Presenter	Nikita Bridle	NB	Observer
Evan Joanette	EJo	Programme Lead	Lisa-Ann Lott	LAL	Notes

<p><b>1.</b></p>	<p><b>Welcome &amp; update</b></p>
	<p>CD welcomed all members to the meeting, confirmed the agenda and the workshop format of the meeting including how the detailed design approval reaches sign off.</p> <p>CD ran through the high-level programme plan and the detailed plan for Part B Tools.</p> <p>CD also confirmed the key principles being applied to the programme and the reformed framework.</p>
<p><b>2.</b></p>	<p><b>Second review of Part B tools</b></p>
	<p>ARa ran through an overview of why the MPF tools are required noting the MPF is wider than any one party and MOSL, Strategic Panel (Panel) trading parties and the Performance Assurance Committee (PAC) all have a role.</p> <p>ARa noted tools are split into two types, standard tools, which are applied in an automated or semi-automate manner at defined times regardless of performance and discretionary tools which can be applied at discretion to understand particular parties performance in more detail.</p> <p>ARa highlighted the role of the PAG in creating the tools.</p> <p>ARa noted the MPF model was reviewed by the Steering Group and the Panel in December 2023 against the success criteria the key criteria including to facilitate improved customer outcomes.</p> <p>ARa highlighted the additional rationale for T01, Market Entry Assurance and T02, Assurance statements inclusion within the MPF noting it is important parties understand their roles and responsibilities on entering the market and the need to assure parties operating in the market align with the required performance.</p> <p><b><i>T01 Market Entry Assurance (MEA)</i></b></p> <p>ARa provided an overview of the tool noting the role of the PAC to provide advice and recommendations to MOSL as opposed to a decision-making role given the timescales involved.</p> <p>ARa requested attendees feedback on the proposals.</p> <p>GL acknowledged the rationale provided for inclusion of MEA in the MPF and noted can provide contribution on reassurance rather than market entry.</p>

EJ agreed with GL noting reinsurance takes a view of system changes or key staff changes not significant performance changes and enquired if it should be reviewed as a trading party could retain the same systems and personnel and have a drop in their performance and this would not trigger reinsurance.

JD agreed with other attendees however enquired if a risk had been identified which indicated MEA need to be addressed to safeguard the market.

**JD noted the forms for MEA are complex and the process not supportive thus standardisation for this process would be useful.**

JD enquired for further rationale as to MEA's inclusion in the framework

JJ noted MEA included to provide a complete view 'end-to-end' of a party's inclusion in the market and to mitigate any adverse impact a trading party could have on customers and the market if unable to operate appropriately.

JD noted not aware MEA currently causing a risk within the market and queried its inclusion.

JJ noted potential for risk and this does require monitoring and noted GL's feedback of less focus required from the PAC.

JD further noted all processes within the market could have risks assigned to them and MPF to address specific risks.

EJo noted challenges from PAG members regarding risk or activity which is being covered by this tool however overall model reviewed by industry and signed off by Panel.

**Ejo further noted the need to ensure all tools and metrics linked to the risks and issues identified and include details in the draft recommendation report (DRR).**

CD noted challenges will be highlighted in the DRRs attached to the code changes as they are brought forward.

AB agreed seeing value in MEA however difficult to see the role PAC would take within the process and what difference they would make. AB noted the role of PAC is more obvious for reinsurance as opposed to MEA.

GB noted MEA and reinsurance a prerequisite to be able to perform in the market however may need to sit outside the MPF as a standalone function given MPF evolving and these functions are likely to remain static.

**MR noted supportive of previous comments and sees PAC's role as overseeing MOSL's role in MEA and given PAC's cadence of meetings difficult to review on appropriate timescales.**

JJ highlighted PAC meetings principle that PAC will meet a minimum of quarterly however can meet more frequently if required to provide more flexibility if needed.

**MR noted difficult to stand-up a short notice meeting in between quarterly scheduled meetings and thus PAC not best placed to act within the MEA and therefore could be a role to provide assurance MOSL are conducting the process appropriately.**

CD noted the mixed views and confirmed will be reviewed.

### ***T02 Assurance Statements***

ARa provided an overview of T02 and noted feedback on the naming convention for the tool.

**No members raised objections to the naming of the tool.**

ARa noted a schedule for the assurance statements is planned and approved and the statements are issued and collected following which any required activities are planned.

ARa provided an overview of the template for the statements noting some fields will be prepopulated with data previously supplied by the party and the statements will be staggered throughout the year.

ARa ran through the questions and asked attendees for their views.

ARa provided an overview of the proposed items for inclusion within the assurance statements.

GL noted the value of identifying changes which lead to a consideration of reinsurance activities being required.

**GL noted transaction/SPID levels may be collecting commercially sensitive information from retailers, for testing methodology may need to be broader than CMOS as may need to include Bilaterals Hub, Compliance difficult to determine and resourcing given size of some organisations may need to be more specific.**

PB in agreement with GL and enquired of the usage by MOSL of holding the data and would need to be specific as to the usage of the information e.g., which information will trigger reinsurance.

PB noted T01 and T02 weaker tools in toolbox and less clear as to how they will be utilised.

CD noted feedback in particular in regard to MOSL being at greater risk dependent on data held.

**EJo noted most details proposed already included within requests from MOSL. MOSL to review to establish where risks have arisen as a result of information supplied.**

ARa noted past occurrences where if MOSL been aware of changes in advance would have prevented reassurance and risks. In respect of transaction/SPID levels whilst commercially sensitive if trading parties are looking to significantly increase their number of SPIDs may require support with CMOS entries to prevent impact to customers which would trigger reassurance.

CD noted need to ensure MOSL do not become big brother and dictate what systems trading parties should use e.g., HVI vs LVI.

EJo noted MOSL not seeking to dictate which system to use only ensuring if changing systems trading parties are still able to action all their responsibilities.

GL noted requests are in part a replacement for Portfolio Managers' conversations which, may have, previously triggered reassurance and should this be minimised would have a role to indicate if greater engagement required.

EJ noted MOSL are not the regulator and Ofwat require submissions annually of Certificate of adequacy which contains more detailed information including financial resilience and this may lead to duplication of effort.

CD noted the need to avoid duplication however highlighted Ofwat would not share the details with MOSL and thus would still be required separately.

WM noted only affects certain trading parties at certain times when going through change and thus blanket approach may not be appropriate and would have been mitigated previously through conversation and dialogue.

**WM recommended narrowing to core questions about change e.g., are you planning material changed that could impact performance.**

EJo highlighted where pre-existing answers provided trading parties would only have to indicate if those parameters had changed.

**CD summarised T02 has a role to play however PAG feedback indicates to keep simple and as light touch as possible.**

**T06 Additional Metric Monitoring**

JJ ran through an overview of T06 highlighting the process flow for developing and updating additional metrics if required and noting new metrics should reflect the key success criteria for the MPF.

JJ highlighted the options proposed in relation to how Additional metrics could work alongside T08 Rectification and Escalation and the considerations given to the options.

JJ provided a recap of the steps included within Rectification and Escalation.

**MR noted not all rectification options can be included as not all relate to the codes. MR further agreed minimum notice period in practice however should not be added to codes as would prevent prompt action in cases such as COVID as would require code change to remove/reduce notice period prior to taking action.**

**MR recommended including ToR for the PAC the minimum accepted notice period under normal circumstances with a proviso indicating could be changed if required.**

**MR further noted the ability of PAC to request audits based on trends in market indicators and additional metrics is a powerful tool and should be preserved as an option with clarity on its use added to the ToR.**

**JD noted if not included in the code it is not an obligation and thus PAC should limit the publication.**

**JD further noted if an additional metric is important enough to be made public as standard then it should be included in the code and become an obligation for all to follow.**

**GB agreed if not in code should not be subject to rectification plans and offered an Option four of if all trading parties or all of either retailers or wholesalers are not meeting a metric the PAC would need to review the metric as opposed to issuing letters of concern/rectification plans.**

AB noted for Option two if a trading party does not respond what would happen next. In regard to inclusion in codes current measures which are escalated are not all in the codes e.g. holistic reports.

AB highlighted the need for pace where required and principle to increase transparency within the new framework where possible.

AB further noted option one would be preferred however need to gain clarity on what would happen if things are not in the code.

CD enquired if AB recommended for those metrics not enshrined in code to be used for rectification escalation.

**JJ confirmed the feedback from attendees for rectification escalation to only be used in regard to metrics included within code and noted will be reviewed.**

**JJ noted need to review if an additional metric is based upon a code obligation should it be included for rectification escalation.**

EJo noted key principles of flexibility and transparency as highlighted by attendees and challenged if all additional metrics remain unpublished due to not being included in codes does this lessen the flexibility.

CD clarified following previous meeting feedback audit tools are proposed to be included in rectification escalation and these could be instigated or informed by additional metrics.

GL noted the need for governance as APIs developed over time to provide insight and understanding into non code obligated items and this risks dilution and moves away from principle of a focused MPF.

**GL recommended a period of shadow operation when items are not published and once fully established and linked to a code obligation can be published. This may ultimately lead to API turning into KPI if appropriate.**

SK agreed governance key to introducing anything new and raised concerns of a new API being subject to rectification escalation options as would create uncertainty for trading parties.

SK further noted the MPF's review programme and the option to transfer metrics via code changes from APIs if established to be informative.

**SK highlighted not all metrics can be used for rectification escalation if not in code as cannot be escalated to Ofwat and thus that escalation route would be ruled out from a legal perspective. MOSL to review with legal team and revert.**

***T07 Trading Party Audit (previously referred to as "Targeted Audit")***

JJ confirmed following feedback received, two proposed options for naming and definitions of T07 are offered: option one defined as trading party audit and option two defined as planned audits.



JJ noted audits will become a rectification activity under T08.

JJ ran through the revised process flow noting MOSL will present a schedule to the PAC each year to endorse which will be summarised in the PAC's Statement of Approach.

JJ highlighted specific statements of work will also be taken by MOSL to PAC to endorse if required. These will set out the specific rationale for the audit and selection criteria for trading parties, the proposed form and timing and where external resources are required.

JJ enquired of attendees as to their preference between the options presented and the role PAC should take within this tool.

**GL noted would choose option one to ensure flexibility and suggested naming targeted audits as opposed to trading party audits.**

CD noted scope of how T07 will work will be clearly defined in code but not the scope of the specific audits.

GB enquired how many audits would be scheduled for trading parties each year, or would only some trading parties be audited each year or only when issues need to be addressed, would the audit be for the trading party or for the MPF or both.

JJ highlighted will use similar process to the current position to determine which audits to undertake and when to schedule. JJ noted maybe triggered when reviewing risks and issues in the market.

GB noted includes assurance not simply rectification and would therefore include audit of a particular performance metric. **GB further noted preference for flexible option and suggested market performance audit as a name to indicate can target trading parties or a specific metric.**

**GL enquired what happens if a trading party does not cooperate with an audit noting his recommendation of rapid escalation. GL highlighted audits have reviewed best and worst performers and worked with poor performers thus non-cooperation is a serious issue.**

GL noted need to establish if there is non-cooperation in planning audits the audit team need to take into account the burden on individual trading parties however if parties continue not cooperating need to be escalated.

**MR noted need to establish different levels of failure to cooperate and agreed with GL where parties refuse to engage entirely should be escalated. Additionally, where serious underperformance exists this should be escalated as well.**

MR highlighted trading parties may not be able to provide information in the manner requested by the audit and thus may not be easy to consolidate and need therefore to review whether requests are realistic for trading parties to respond to .

MR also noted burden on individual trading parties and thus should not audit unless good reason too.

**T08 Rectification and Escalation**

JJ provided a recap noting rectification and escalation to be largely performed as per the recently revised process highlighting the PAC will replace the MPC in their role.

JJ ran through the process steps highlighting following previous PAG meeting where any breach of WRC occurs this would be escalated to Ofwat detailing concerning regarding customer harm or potential breach of licence.

**MR recommended phrasing the code requirement in regard to mandating a response to the escalation letter to note it should be a substantive response to prevent parties providing an acknowledgement style letter which would maintain their compliance.**

**GL noted new step of escalation to Ofwat on WRC breach and recommended inclusion of persistent failure/persistent poor performance to this step.**

SK noted Ofwat enforcement guidelines are published noting significance can be small scale and persistent or large scale and one off.

EJ noted need to be cautious to prevent unintended consequences in particular if indicating trading party can no longer trade due to poor performance in a particular area as will have customer impact especially in cases of supplier of last resort and cash flow impact for retailers and wholesalers.

SK noted Ofwat not constrained when this point is reached and can issues directions to comply or enforcements actions and these are wide ranging in principle.

SK further noted would not want escalations very often and MPF infrastructure designed to address and rectify performance prior to reaching Ofwat.

JJ ran through interactions between T08 and other tools.

JJ noted rectification escalation may identify new metrics for consideration.

CD noted two levels of rectification escalation; those related to metrics in the code and those related to metrics outside of the code.

	<p>GL noted in relation to using T07 to identify specific concerns on performance and compliance this should be able to go through the full rectification escalation process noting success of holistic reporting approach to move into rectification process of which some is code defined and other parts are not code defined.</p> <p>JJ ran through example PAC principles related to this tool noting PAC constitute a group of effective decision makers who will be independent of MOSL and they will not rely on arbitrary triggers to intervene on performance issues.</p> <p>JJ highlighted minimum time elapsed before rectification action will be at least one month.</p> <p>JJ noted the PAC meetings will be held in open forum unless confidential information will be considered for example in relation to the performance of a trading party or personnel privacy matters.</p> <p>AB broadly supportive noting need to retain discretion and prevent constraint to look broader before intervening.</p> <p>AB noted the value of intervening needs to be proportionate to the impacts performance is having on customers and this should inform everything PAC actions.</p> <p><b>SK enquired if PAC need other powers or levers to gain the information required to establish the impact of performance on customers.</b></p> <p><b>JJ noted elements of the process included within code such as the letter of concern and the obligation to respond whilst acknowledging MR’s earlier feedback on need to add ‘substantive response’ to ensure appropriate information provided. MOSL to review and revert.</b></p> <p>GL supported AB’s feedback on maintaining discretion and the PAC being formulated of effective decision makers.</p> <p><b>GL highlighted the terminology around value of intervention and noted could be viewed as to the overall value in the market which could lead to no intervention on smaller parties however where a smaller party is not reading or repairing meters would have a material impact on their customers.</b></p> <p>CD noted the feedback on the imbalance and need for proportionate response between size of companies.</p>
<p><b>4.</b></p>	<p><b>Upcoming PAG workshops &amp; AOB</b></p>

CD confirmed next meeting on 13 March will be providing third review of T01, T02, T06, T07, T08.

EJo highlighted Code Advisory Group (CAG) now reviewing code drafting relating to Part A governance.

EJo requested PAG attendees notify colleagues metrics reviews will begin in March should additional members wish to attend.