

A PANEL DEBATE

MOSL is consulting on creating a strategic market code Panel and a separate code change committee as part of a market governance overhaul.

Who governs the water retail market, how, to what end and according to what principles, are all up for grabs as MOSL and the Panel pose a series of questions about market governance fundamentals.

Late last month, the Panel published a discussion paper on its purpose and opened three consultations: two considering alternative ideas for how the Panel should be composed and one proposing a new set of principles to better reflect desired market outcomes. These are all part of an ongoing Market Governance Review which seeks to promote efficient self governance in customers' interests. In the box, MOSL's Adam Richardson explains why this is happening now and how we got to this point.

Panel purpose

The lynchpin of all the discussion is what is the Panel's purpose? Its composition and guiding principles are secondary considerations that will help ensure the de-

sired purpose is delivered, respectively by ensuring it has the requisite skills, knowledge, and resources, and that any changes align with strategic aims.

The Panel approved a discussion document on its purpose at its April 2021 meeting, which has now been published for feedback. Among the considerations are:

- Whether there is a need for the Panel to take strategic action to deliver Defra and Ofwat's policy direction, vision and strategy for the market as well as efficiently designing and developing technical solutions for market rule changes.

- Whether governance should be market-led rather than industry-led, encompassing stakeholder voices and needs beyond those of trading parties including end customers, regulators, government, the market operator and other groups.

- Whether the Panel should play a role in matters that stretch beyond the Codes.

Composition

How the Panel is composed will depend on what it is trying to achieve. Factors to consider include overall size; breadth of membership; balance of member types; and provision for the appointment/election of members.

The Panel is consulting on two mutually exclusive proposals (only one can ultimately be approved by Ofwat): CPM021 put forward by Castle Water (originally in November 2019 but put on hold while Ofwat was working on Project RISE); and CPM039 proposed by Ofwat in April 2021, both of which have been fleshed out by the Panel's Governance Subgroup.

Both are lower cost than current arrangements, and there is considerable commonality between the two plans. Importantly,

both propose the Panel has a strategic role while a dedicated sub-committee is set up to manage day to day changes.

A Strategic Panel, "freed from detailed assessment of individual code change proposals", would be accountable for translating Defra/Ofwat strategic outcomes into priorities, actions and programmes of work. Its responsibilities would include raising, prioritising, and recommending changes to market rules; holding participants to account by monitoring their performance against and/or compliance with market rules (and in some cases, deploying incentive or corrective mechanisms) to resolve issues arising; and resolving disagreements between participants.

A new Change Committee would be established to support the efficient processing and recommendation of changes. Housekeeping changes would be delegated to MOSL to reduce the bureaucracy associated with low-materiality changes being considered by a Panel or committee.

However there are several key differences between the two proposals, chiefly relating to composition (see tables) and appointments. In essence, the Castle plan is weighted in favour of trading parties. The original idea was that all trading parties would have the right to attend, speak and vote at Panel meetings. As part of the Governance Subgroup discussions, the approach was refined to give balanced representation "whilst attempting to retain a route by which trading parties generally could have a demonstrable input to the Code strategy and change process and have confidence that all trading parties' voices (notably including the independent and smaller trading parties) would be given a proper hearing".

Ofwat's plan is tipped in favour of non-industry members. It comes from the position that the current Panel composition is unlikely to be able to support delivery against a revised purpose which features: market- rather than industry-led governance delivered through broader stakeholder participation; increased focus on the delivery of good customer outcomes and a stronger customer voice; and more independence and impartiality.

Decisions on Panel composition need to be made by the end of July to allow procedural time before the Panel election in September. This was deferred by Ofwat from March via an extension, to ensure continuity of the existing Panel during the

VOTING MEMBERS IN THE TWO PROPOSALS		
	CPM021	CPM039
Strategic Panel	11 voting members, with the balance 6:5 in favour of industry members: <ul style="list-style-type: none"> One independent chair Three wholesalers Three retailers One customer representative Three independents 	9 voting members, with the balance 4:5 in favour of non-industry members: <ul style="list-style-type: none"> One independent chair Four trading parties (any) One customer representative Three independents
Change Committee	8 voting members, with the balance 6:2 in favour of industry members: <ul style="list-style-type: none"> One independent chair Three wholesalers Three retailers One customer representative 	9 voting members, with the balance 4:5 in favour of non-industry members: <ul style="list-style-type: none"> One independent chair Four trading parties One customer representative One alternative customer body Two independents

governance review and to avoid the need for two elections in quick succession.

A matter of principle

The final consultation, CPM040/CPW121 was proposed by Ofwat in April 2021 and developed with the Governance Sub-group. It seeks to review the principles in the Market Arrangements Code (MAC) and the Wholesale-Retail Code (WRC) that underlie Panel decision making.

Currently, there are eight principles in the MAC and ten principles in WRC. The eight are common to both. Concerns relate to the principles being insufficiently focussed or defined; to the inconsistency between the two codes; and to certain desired market outcomes not being captured by the current principles – notably customer benefits and innovation.

Ofwat has proposed instead introducing a primary principle that “The MAC

shall be maintained, operated and developed in a manner that best seeks to protect and promote the interests of, and participation by, existing and future non-household customers.” It then identifies eight supporting principles which include promoting competition and that the Codes be consistent with the resilience objective.

The closing date for all responses is 18 June. [TWR](#)

Q&A WITH ADAM RICHARDSON, MARKET DEVELOPMENT DIRECTOR, MOSL

Q What is the intention/purpose of the Market Governance Review?

Through the Panel and its committees and sub-groups, industry expertise is a cornerstone of market self-governance and decision-making.

Market governance is one of MOSL’s strategic priorities for 2021-24 and is focused on supporting the principle of self-governance. It is aimed at ensuring governance is efficient, effective and supports market improvement, enabling it to develop for the benefit of customers.

Last year, we commissioned an independent review of Panel effectiveness. The work included consultation with wholesalers and retailers on the performance of the Panel and industry governance. A key finding of the report identified differences of opinion on the role and purpose of the Panel, resulting in different assessments of overall Panel performance.

The findings posed some fundamental questions regarding the role of a Panel and how it provides value now and into the future. Clarifying the purpose of a market code Panel is the first step in a strategic programme of work to improve the efficiency and effectiveness of code governance.

To support this work, we are consulting with industry on the purpose of a Panel, the most appropriate Panel composition, and the principles that should underlie market changes, to ensure alignment with strategic aims.

Q Why now?

When the market opened in 2017 the Panel’s responsibilities, principles and objectives were set out in the market codes, but now in its fifth year, the needs of the market, as

well as our collective understanding of them, have evolved.

Ofwat’s Review of Incumbent Support for Effective Markets (project RISE) highlighted that the industry-led approach to market governance could be improved to further strengthen the customer voice and better facilitate innovation.

Some stakeholders believe the Panel should take a more strategic approach to its work, rather than the largely transactional responsibilities set out in the market codes. They also believe the Panel should facilitate innovation and customer benefit, neither of which are currently included in the code principles.

Building on our experiences of operating the market and those operating within it, now is an appropriate and important time to review whether current governance arrangements are fit to deliver stakeholder expectations.

Q How are you ensuring all voices are heard?

We are working hard to engage with as many stakeholders as possible. We recognise that the matters being considered are wide-ranging and will invariably prompt different views. To make it easier for stakeholders to get involved, we have published an overview document to open up the consultation and guide readers through the main document pack. The consultation is open for four weeks, closing on 18 June with all the information available on a dedicated Governance Review section on the new MOSL website.

The considerations that form the basis of the consultation have already taken account of discussions with Ofwat, Defra, CCW, as well as wholesaler and retailer input through a governance sub-group

established by the Panel.

Over the last few weeks, we have discussed the review and sought input from attendees at MOSL’s recent CEO Forum, the Strategic User Forum and through the UK Water Retailer Council.

The consultation itself is further being supported by a webinar on 7 June to answer any questions in real-time. We will also be engaging with business customers directly via the Major Energy Users Council and CCW.

The Panel chair Trisha McAuley and I welcome conversations with trading parties to understand their views outside of the consultation. We will also be posting a series of quick-response polls through our social media channels, focused on the main areas of the consultation.

If you want to respond, but are unsure how to get involved, we invite you to email us at comms@mosl.co.uk

Q What fundamental changes would you like to see?

We know that current market governance is seen as slow, opaque and lacking clear focus on delivering the best customer outcomes. Ofwat perceives a need for greater independence and customer insight in decision-making and trading parties desire greater agility and effective engagement in considering proposals for code change.

The options being considered both include variations of a strategic Panel and a separate code change committee. This arrangement would create space for consideration of strategic action and priorities distinct from the consideration of day-to-day changes to the market codes, which has been a challenge for the Panel in the past.

An effective code Panel may



support wider conversations about market issues and how, and where, these issues might be resolved. Some issues may fall squarely within the scope of the market codes, while others may only be partly resolved through market codes or need resolution elsewhere.

Such a Panel must be outward looking and engage effectively with a broad range of stakeholders. As well as wholesalers and retailers, a Panel should consider customers (who should be the ultimate beneficiaries of the market).

The proposed options also suggest a greater role for the market operator – moving closer to that of a proactive ‘code manager’ in supporting change and prioritising activity in partnership with the change committee. MOSL would take on responsibility for efficient development and assessment of certain changes that do not need to be scrutinised by committee – with MOSL, instead, recommending these directly to Ofwat.

The proposals outlined in the consultation will likely reduce costs compared to the current governance structures, while welcoming both industry and non-industry/customer voices in decision-making. Furthermore, they emphasise the need for greater transparency and engagement with stakeholders. And that feels like a good starting point for the conversation on the best way forward.