

Minutes of Panel Meeting 14

12 December 2017 | 10:30 – 15:30
4th floor, 16-18 Monument Street, London, EC3R 8AJ

Status of the Minutes: Final

MEMBERS PRESENT

Margaret Beels	MBe	Chair	Nicola Smith	NS	Panel Member (Unassociated Retailer)
Mike Brindle	MBr	Panel Member (Associated Retailer)	Richard Moore	RM	Panel Member (Unassociated Retailer)
Simon Wilshire	SW	Panel Member (Associated Retailer)	Mark Holloway	MH	Panel Member (Wholesaler)
Wendy Monk	WM	Panel Member (Associated Retailer)	Howard Smith	HS	Panel Member (Wholesaler)
Helyn Mensah	HM	Panel Member (Independent)	John Vinson	JV	Alternate Panel Member (for Wholesaler)
Nigel Sisman	NS	Panel Member (Independent)	Steve Arthur	SA	Deputy Affiliated Panel Member (MOSL)
Elsa Wye	EW	Panel Member (Independent)	Dan Mason	DM	Affiliated Panel Member (Ofwat)
Trevor Nelson	TN	Panel Member (Unassociated Retailer)	Adam Richardson	ARI	Panel Secretary

OTHER ATTENDEES

Elliot Bird	Meeting Secretary	Roland George	Observer (MOSL)
Rebecca Mottram	Presenter (MOSL)	Antoine Schmidt	Observer (Thames Water)
Mike Robertson	Presenter (MOSL)	Jim Keohane	Observer (MOSL)

APOLOGIES

Dylan Freeman	Panel Member (Wholesaler)
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1. Welcome and Introductions

Purpose: For Information

- 1.1. The Chair welcomed the Panel to its 14th meeting.
- 1.2. The Chair welcomed John Vinson to the meeting, who would be acting as an alternate for Dylan Freeman.

2. Minutes and Outstanding Actions

Purpose: For Decision

2.1. Minutes

- 2.2. The Panel agreed to review the accuracy of the minutes of the Panel meeting on 28 November 2017 and the 21 November 2017 as an ex-committee decision, as there had not been sufficient time to review them since the previous meeting.

2.3. Actions

- 2.4. The Panel agreed to close 5 actions (**A01_01**, **A06_01**, **A08_10**, **A12_01** and **A12_02**) from the previous meetings, based on the update provided by the Panel Secretariat.
- 2.5. The Panel agreed to close actions **A01_01**, **A06_01** and **A08_10**, on the condition that a new action be raised to create an action plan following the Panel workshop review of how well the Panel was operating. A new action was also raised for the Chair of the Panel to work with the Panel Secretariat to develop the branding of the Panel. A Panel Member also volunteered to offer their support to contribute to this work. A Panel Member also suggested that a communication be circulated to Trading Parties when the new branding is launched, to explain the purpose of it and the role of the Panel.

ACTION 14_01

- 2.6. The Panel Secretariat provided an update on the action to investigate the possibility of having a third system release a year, as well as providing ad hoc system releases. It was highlighted that MOSL was intending to defer the release in March to later in May 2018. This would allow the inclusion of CPW027, that the Panel requested at the November 2017 should be implement before the next system release in September 2018.
- 2.7. A Panel Member requested clarity of the impacts of deferring this release, in terms of the monetary costs of delaying a release. MOSL confirmed that it was undertaking discussions with the systems service provider and an update would be provided to the Panel at the next meeting.

ACTION 14_02

- 2.8. Panel Members requested an update on the progress of the Change Proposal CPW019. The Panel Secretary highlighted that current work on the proposal was looking at whether the issues arising when the Retailer becomes insolvent could be resolved, and noted that this currently seemed unlikely. Panel Members discussed that it may not be an issue if the Wholesaler risk exposure from this form of credit support was sufficiently small.

- 2.9. A Panel Member requested clarity on whether the previously proposed cashflow modelling was being undertaken, which was confirmed by the Panel Secretary. It was also highlighted that a wider review of credit will be undertaken by the Panel, following a recommendation being made to the Authority on CPW019.

3. Update from Ofwat

Purpose: For Information

- 3.1. Dan Mason (DM) from Ofwat provided an update on the activities of Ofwat in the month since the previous Panel meeting.
- 3.2. DM highlighted that the Retail Exit Code consultation had closed with 12 responses, and a revised code would be published in early January 2018. It was noted that the responses were broadly supportive, but a number of small issues were identified which should be closed by early January 2018.
- 3.3. DM also announced that the methodology for Ofwat's 2019 Price Review (PR19) would be published on the 13 December 2017.
- 3.4. DM said that Ofwat had granted Water Supply Licenses to a new Retailer Yuwater in the previous week.
- 3.5. An update was provided on Ofwat's credit review, and it was confirmed that Ofwat was releasing a tender for external support and was keen to engage with MOSL and the Panel. A Panel Member requested clarity in how Ofwat's credit review will involve the Panel and MOSL. Ofwat indicated that it was keen to engage with MOSL and avoid any duplication of work where possible, as well as potentially identifying issues that each would be better placed to work on. Ofwat also highlighted that it intended for its review to be a high level strategic piece on credit in general.
- 3.6. A Panel Member asked whether Ofwat intended to review its policy position on credit as a result of this work. Ofwat confirmed that this piece of work would involve a review of the policy position, and a potential policy change depending on the findings.
- 3.7. A Panel Member requested a draft timeline on the credit review. DM confirmed that Ofwat intended to get a recommendation by the end of the financial year and was looking to begin the review in the new year, highlighting that this would need to be an intense period of engagement.
- 3.8. A separate question was raised on whether this review would also involve implications of self-supply licences and credit terms. Ofwat agreed that this would be an important feature to consider, and also highlighted that this could be covered by a review on self-supply if not credit.
- 3.9. A Panel Member raised a question on whether Ofwat was going to liaise with governmental departments on issues Trading Parties have highlighted with VAT. Ofwat indicated that this would not likely take place as part of the credit review.
- 3.10. A Panel Member asked whether Ofwat had any determined outcomes of the review. Ofwat indicated that it was open to what the outcomes were and it would depend on the conclusion of the review will be. Ofwat indicated that it would prefer not to make a code change if it could be avoided, and that this review would likely follow the normal policy development path.

3.11. It was announced that Rachel Fletcher had been appointed as the new Chief Executive of Ofwat and she starts on the 8 January 2018.

3.12. The Panel **NOTED** the presentation from Ofwat.

4. Update from MOSL

Purpose: For Information

4.1. Steve Arthur (SA) provided an update on the key activities at MOSL, including the members' meeting to approve the Business Plan which would be occurring on 15 December 2017. MOSL would appreciate Trading Parties sending their proxy votes ahead of time, and thanked those who already sent in a vote on behalf of their companies.

4.2. SA provided an update on market entry and exit, highlighting that First Business Water, Yuwater and Marstons Plc entering the market, and that MOSL was seeing a healthy pipeline of new entrants.

4.3. SA provided an update on discussions currently happening around data quality, highlighting that MOSL was using the User Forum as a key channel for this work.

4.4. A Panel Member requested clarity on whether there had been any updates on the changes to the tariff upload software, and when the proposed guidance will be provided. SA took an action to provide an update on the status of the guidance document and when it might be circulated.

ACTION 14_03

4.5. Another Panel Member highlighted that, because of the change in tariff upload software that Trading Parties have requested whether there could be an ad hoc tariff report in March. SA agreed to take this action away and investigate.

ACTION 14_04

4.6. The Panel **NOTED** the presentation from MOSL.

5. Change Report

Purpose: For Information

5.1. The Panel considered the monthly update on the status and progress of code Change Proposals, and the activity which occurred between 15 November 2017 and 28 November 2017.

5.2. The Panel Secretariat noted comments from Panel Members made at the Panel workshop held on the previous day where it was suggested the pipeline changes should be made public and not just visible to the Panel. This was agreed and the Panel Secretariat took an action to include a public version in the Change Report going forward.

ACTION 14_05

5.3. The Panel also suggested that it would be beneficial to have a pipeline from Ofwat, on what pieces of work it is planning to undertake in the future. This would also assist the Panel in creating its strategic level document which came out of an action from the Panel Workshop. DM agreed to circulate Ofwat's forward plan to Panel Members for information.

5.4. The Panel **NOTED** the contents of this paper.

6. Initial Written Assessment CPM007 & CPW029 – GDPR and Data Protection Provisions Update

Purpose: For Decision

- 6.1. The Panel considered the proposed changes that the GDPR Issues Committee had determined are required to align the market codes with GDPR, ahead of its entry into force in May 2018. The Recommendation Report proposed that two Change Proposals be progressed in order to implement these changes.
- 6.2. A Panel Member requested clarity on whether the provisions suggest that there is a joint liability across Trading Parties as Joint Data Controllers, and whether there needs to be more work done around indemnities. The Chair of the Committee highlighted that the proposed changes do not seek to set out joint liability and that the recommendation from the Committee was that a review of the general indemnity or liability provisions would be a wider piece of work that should be undertaken as a separate task.
- 6.3. The Panel Secretariat noted that the solution does not prescribe specific system solutions and therefore does not drive any change to CMOS. However, there is an action for MOSL to look at GDPR legislation separately and determine whether any system changes might be needed to facilitate compliance with the legislation.
- 6.4. It was also highlighted that there may be impacts on Trading Parties systems, depending on how they have chosen to implement the operational forms. In particular, the Panel noted that the Digital Strategy Committee (DSC) may consider ways in which MOSL might support the requirement for personal data to be transmitted in a secure manner.
- 6.5. A Panel Member raised concerns that, although the Committee recognised that the list of Personal Data items provided could only be illustrative, this change would make the illustrative list a requirement in the code. Therefore, the Panel Member felt that there needed to be an exercise in data mapping, possibly in a workshop in order to properly craft a representative list. Other Panel Members recognised this concern, but felt that the approach made by the Committee was satisfactory and that the optimal approach was to keep this list under review after the change is implemented.
- 6.6. It was also raised that the proposed Data Subject Request Process form (DSR form), prescribed by these provisions, was creating another potentially onerous requirement on Trading Parties and should not be required. The Panel Secretary highlighted that the form was only required in situations where the receiving party cannot deal with the request itself and that it was a standardised method of informing other Data Controllers that they need to take action. Use of the form and process also allows Trading Parties to pass on this information to Trading Parties who need to action the request that they may otherwise be unaware of. The Chair of the Committee also raised that the Committee suggested reviewing the requirement of this form, and potentially developing an alternative in future depending on the need.

- 6.7. A Panel Member raised concerns with a clause in the MAC schedule, which seemed to be enforcing a significant requirement on Trading Parties that was, in their view, above what the GDPR legislation itself required. The clause in question would require Trading Parties to implement appropriate technical and organisational security measures that meet the requirements of Data Protection legislation and are consistent with or equivalent to industry standards, best practices and frameworks. There were no agreed industry standards for the water industry.
- 6.8. Another Panel Member agreed that the requirement to be consistent with industry best practices and standards was excessive. They felt it was also unclear what best practices and standards were being referred to. There would be a disparity between what larger companies might adopt as good practice and the simpler arrangements followed by smaller companies. The Chair of the Committee highlighted that the wording was to clarify the obligation by pointing to a means of benchmarking.
- 6.9. A Panel Member highlighted that the clause on Notification of Breaches went beyond the requirement of GDPR. The GDPR only requires a report to the ICO if there is a material risk to an individual's rights and freedoms, whereas this clause requires the ICO to be informed within 72 hours in every instance of a breach. The Chair of the Committee explained that the intention of the clause was to manage the risk of Trading Parties conflicting in their assessments and being able to resolve these, and take necessary steps, within the tight timeframes prescribed. Some Panel Members were however still concerned that this requirement seemed more than necessary.
- 6.10. A Panel Member also raised concern that the drafting would prevent the use of data for marketing, including marketing that already occurs. However, it was highlighted that the drafting made no reference to marketing but limited the use of data to the Purpose as already set out in the market codes. This was deliberately agreed upon by the GDPR Issues Committee because it mirrors what exists currently and therefore does not prevent anything that is already happening that is permitted. This position was agreed by the Committee, and members agreed that to review or reframe the Purpose set out in the codes would be outside the scope of the GDPR Issues Committee.
- 6.11. One Panel Member highlighted their intention to recommend the rejection of CPW029 to the Authority, on the basis they did not support the amendments to CSD0301, the new DSR form or the operational forms and felt these items needed to go to an industry workshop for data mapping to be undertaken.
- 6.12. Another Panel Member suggested that it would be useful to investigate other similar industries for their approach to the issues raised, and be clear whether the position proposed would be elevating us above other similar sectors in terms of risk aversion.
- 6.13. The Panel requested clarity from Ofwat on whether the Authority would be able to give approval to this change, in the event it receives it on the 28 February 2018 and has to deliver a decision by the end of March. Ofwat agreed that this would be possible given that they are aware when they will be receiving the recommendation and the need for urgency.
- 6.14. The Chair of the Committee asked for an indication of the level of agreement for CPM007 & CPW029 in the form as recommended by the Committee.
- 6.15. The Chair invited the Panel to so indicate were 9 in favour and 3 against.

- 6.16. The Panel recognised that two very particular points of detail were preventing agreement on this change. The Panel therefore agreed to delegate to a sub-group of Panel Members the task of reviewing and, if so determined by the sub-group, amending the wording for clauses E1.2 and E2.1 in order that their concerns be addressed.
- 6.17. The Panel then voted on the proposals as they exist and on the basis that clauses E1.2 and E2.1 be reviewed and amended (as the case may be) by the Panel sub-group. The Panel voted to **ACCEPT** CPM007 & CPW029, subject to the review of the sub-group, with 11 votes in favour and 1 against.
- 6.18. Panel members agreed with the rationale for the change provided by the GDPR Issues, Committee. In particular, the Panel agreed that the change proposals better facilitated the Principles of efficiency; proportionality; transparency; simplicity, cost-effectiveness and security; and customer participation.
- 6.19. The Panel:
- **AGREED** to recommend the implementation of CPM007 and CPW029 to the Authority for approval subject to the resolution of two points of detail identified in the legal drafting;
 - **AGREED** to delegate responsibility to a group of Panel Members to resolve the detail issues identified during the Panel discussion; and
 - **AGREED** the recommended implementation date of:
 - 30 March 2018, if the Authority’s decision is received by 31 February 2018; or
 - 26 April 2018 (20 Business Days before 25 May 2018), if the Authority’s decision is received after 31 February 2018.

7. Initial Written Assessment CPM008 & CPW030 – Review of the Market Performance Standards and Operational Performance Standards

Purpose: For Decision

- 7.1. The Panel considered the Draft Recommendation Report of the Market Performance Committee’s (MPC) review of the Market Performance Standards and Operational Performance Standards established in CSD0002.
- 7.2. The Chair of the MPC explained that the MPC was asking for a mandate from the Panel to complete the final phases of the project, given the extremely difficult timeframes.
- 7.3. The Chair of the Committee highlighted that, the work of the MPC had identified that the present charging system, based on current evidence available, will not incentivise retail behaviours appropriately and therefore is unlikely to be effective at driving market improvement. The interaction between charging levels and the cap, with charges applying to all chargeable performance breaches, creates a narrow active range over which any incentive to improve performance would apply. To create meaningful incentives, and noting that there is little appetite to increase the cap, the level of charges for retailers should be reduced, a threshold should be introduced for Retailer missed meter reads and the redistribution mechanism for MPS Charges should be revisited.
- 7.4. The Chair of the Committee explained that MOSL has proposed a reporting solution which would be developed outside of CMOS to enable a more flexible and responsive approach to reporting. The Chair

of the Committee felt that although it was a great precedent this placed a lot of responsibility on MOSL. It was the view of the Chair of the MPC that the non-CMOS solution should be faster, easier and cheaper but also potentially an issue because you no longer have the assurance of the infrastructure and support in place from a system provider like CGI.

- 7.5. MOSL provided insight on its proposed MPS solution, which would involve querying data from CMOS to create reports, that will require MOSL to extract data from CMOS into a data warehouse. It is vital that this reporting aligns with the Central System at all times. There is a risk that the data in CMOS does not match that in the data warehouse exactly. Given this risk, MOSL will seek assurance from an independent assurance provider. MOSL highlighted that, alongside this, it will run pilot testing and shadow reporting with Trading Parties to enable them to gain their own assurances.
- 7.6. MOSL informed the Panel that currently 2 Wholesalers and 3 Retailers are already involved in pilot testing. Initial results from this testing were stated to be positive.
- 7.7. The Chair of the Committee noted that the MPC had identified issues with the definition of the Market Performance Standards as Trading Parties are currently not always clear on how each standard will be calculated. This will need to be explained in MOSL's assurance work, as well as making sure the systems and processes are robust with full validation of them.
- 7.8. The Chair of the Committee highlighted that alongside the recommendations made by the Committee on the MPS, there should also be consideration around OPS such as additional standards for de-registrations and Trade Effluent. The Chair informed the Panel that a proposal for OPS standards would be considered at the next Committee meeting. It was also highlighted that this would be presented as an update to the Panel for discussion in future.
- 7.9. A Panel Member asked whether the MPC had considered looking at historic levels of meter reading for integrated water companies, in order to inform the target level of meter reading for Retailers. The Chair of the Committee confirmed that this information had informed its previous decision to not target 100% levels for missing retailer meter reads for Retailer charging.
- 7.10. The Chair of the Committee requested a mandate to recommend the changes that exist in the draft, subject to further refinement by the MPC in light of the proposed industry consultation. The MPC was confident it would deliver its recommendation by February if given this mandate. The Panel agreed with this proposal.
- 7.11. The Chair of the Committee noted that if there was not sufficient assurance on the accuracy of MPS reporting prior to the commencement of charging, as a contingency, an urgent Change Proposal would be drafted to extend the initial suspension period for some or all of the MPS charges for consideration by the Panel at its February meeting.
- 7.12. The Panel:
 - **NOTED** the work of MPC and its interaction with the Trading Party community;
 - **AGREED** that the MPC should:
 - refine, where necessary, Change Proposals CPM008 and CPM030;

- consult on the refined Change Proposals; and
- report its post consultation recommendation (including finalised Change Proposals) for Panel decision in February 2018.

8. Initial Written Assessment CPW031 – Extending the New Connection Suspension Period

Purpose: For Decision

- 8.1. The Panel considered a proposal to extend the suspension of Part A of the Operational Terms, relating to provisions around New Connection Services. This follows previous agreement from the Interim Codes Panel (ICP) that the suspension be extended past the 01 October 2018 deadline. The proposed recommendation was that the current suspension be extended to April 2020.
- 8.2. A Panel Member requested clarity on whom this change would impact, more specifically on whom it might have a negative impact. Panel Members identified that this may negatively impact developers who otherwise would have a wider choice of more standardised services. However, it was highlighted that when this change was discussed previously developers did not express much interest in the provisions, and Retailers already have a route into this market just not through a standardised publish code process.
- 8.3. Another Panel Member suggested that this change might limit Retailers' ability to operate across both Scotland and England, if they are trying to provide new connections to large multi-site customers. However, it was also noted that the codes as they are currently do not prevent Retailers from providing these services, they are just not required to do so in any event in England.
- 8.4. Panel Members highlighted that when the ICP first considered this matter it was almost removed all together, but instead it was postponed to allow Wholesalers time to concentrate on other areas in the code.
- 8.5. The Chair invited Panel Members to vote on CPW031. The Panel voted to unanimously to **ACCEPT** CPW031 with 12 votes.
- 8.6. Panel members agreed with the rationale for the change provided by the Proposer. In particular, the Panel agreed that the change proposals better facilitated the Principles of transparency and the objectives of the Operational Terms.
- 8.7. The Panel unanimously:
 - **AGREED** to recommend the implementation of CPW031 to the Authority for approval; and
 - **AGREED** the recommended implementation date of 3rd March 2018.

9. Monthly Committee Updates

Purpose: For Information

- 9.1. The Panel was provided with a monthly update on the activities of the Panel Committees, which have met since the November 2017 Panel meeting. The updates from the MPC and the GDPR Issues Committee were reduced because of items earlier in the meeting.
- 9.2. The Chair of the Trading Disputes Committee (TDC) confirmed that there was no update from the Committee.
- 9.3. The Chair of the GDPR Issues indicated that they were minded to disband the Committee now that a recommendation had been provided to the Panel. Instead, the Panel suggested that it made sense to ask members who would be interested in remaining on the Committee, in the event that we need them in future for a similar issue.
- 9.4. The Panel Secretariat noted that a Retailer member would be stepping down from the Trade Effluent Issues Committee.
- 9.5. The Panel noted this resignation and agreed that all the previously interested parties should be contacted to see if they would still be interested.
- 9.6. The Panel agreed that it would appoint a new member from those interested nominees, as well as an employee from the same company as the resigning member that had expressed an interest, at the January Panel meeting.

10. Any Other Business (AOB)

Purpose: For Information

- 10.1. The Panel agreed that an item should be raised in the January meeting to discuss the workplan for delivering the actions that's came from the Panel workshop in December 2017.
- 10.2. Margaret Beels (MB) made a farewell speech to the Panel, as she will be stepping down as Chair of the Panel in the new year. MB thanked MOSL for its support, and the Panel for its tolerance and commitment. MB also thanked the independent Panel members who chaired the Panel Committees. In closing, MB highlighted that the outcomes of the Panel workshop in December should be a positive step forward for Panel Members, and, in particular, commended development of a strategy for the Panel.
- 10.3. The Panel formally thanked Margaret Beels for her work and commitment as the Panel Chair since her appointment in February 2017.

11. Market Incident Management Plan Committee Nominations and Approval

Purpose: For Decision

- 11.1. This paper set out a revised Terms of Reference (ToR) for the Market Incident Management Plan (MIMP) Committee and detailed the Retailer nominations received following the Panel meeting on 28 November 2017.
- 11.2. Panel Members agreed to appoint the Retailer nomination received, and proceed on the basis of looking for a new appointee and leave the nominations open.
- 11.3. The Panel:
 - **AGREED** the revised version of the Terms of Reference and publishing on the MOSL website;
 - **APPOINTED** Jonathan Anderson as a Retailer member from the nominations received.
- 11.4. There was no further business and the Chair closed the meeting.

Actions:

- ACTION 14_01** The Chair of the Panel to work with the Panel Secretariat to develop the branding of the Panel.
- ACTION 14_02** MOSL to provide an update at the upcoming Panel meeting of the discussions with their service provider on the impacts of deferring a CMOS release.
- ACTION 14_03** MOSL to provide an update on the status of the guidance document for new tariff upload software and when it might be circulated to the Panel.
- ACTION 14_04** MOSL to investigate whether it could provide an ad hoc tariff report in March 2018.
- ACTION 14_05** Panel Secretariat to include a public version of the change pipeline in the Change Report going forward.
- ACTION 14_06** Ofwat to circulate its Business Plan to Panel Members

The next Panel meeting is scheduled for: **30th January 2018, 10:30 – 15:30, at:**

**MOSL Offices
16-18 Monument Street
London
EC3R 8AJ**

The nearest tube stations are Monument, Bank and London Bridge.