

Panel Terms of Reference v4.0

The Panel has been established in accordance with Section 5 of the Market Arrangements Code (MAC).

These Terms of Reference (ToR) should be read in conjunction with the MAC. To the extent of any conflict or inconsistencies between the terms of the MAC and the ToR, the MAC will take priority.

Unless otherwise stated, words and expressions that are used in the ToR shall have the meanings and application attributed to them under the MAC.

Changes to the ToR can be proposed to the Panel at any time. All changes to the ToR will be voted on, in line with the Panel operating procedures.

1. Overview

The Panel was established to provide unbiased governance of the codes, in response to the Water Act 2014 (WA14).

The Panel's functions include, but are not limited to:

- Overseeing and making recommendations to the Authority on any changes required to the codes, specifically to the [Wholesale-Retail Code](#) ("WRC") and the [Market Arrangements Code](#) ("MAC");
- Reviewing and providing advice on Market Audit Reports, Market Performance, Market Entry Assurance and Reassurance and Trading Disputes; and
- Considering and inputting into the Market Operator Budget and Market Operator Charges.

2. Objectives and Principles

The MAC and WRC place obligations on the Panel to conduct its business with a view to achieving a number of Objectives consistent with specified Principles which can be found in Part 1 of the WRC and Schedule 1 of the MAC. The purpose of the Panel can be summarised as:

To promote, challenge and lead the operation and evolution of the market for the benefit of business water customers.

Panel Members will have regard to this overarching purpose when making decisions and conducting the business of the Panel. They should seek to maintain a strategic view and deliver a market that works for the customer, in which the rules evolve with the market and where regulatory intervention is a last resort.

The Panel may establish Panel Committees to carry out functions on its behalf. It is obliged to establish certain committees as set out in MAC 5.2.1. The Panel may establish Additional Panel Committees as required.

The Panel must report to the Authority on its activities and the activities of its Panel Committees. Like the Panel, Panel Committees must have regard to the Objectives and Principles set out in the WRC and MAC.

3. Scope

The Panel is required to consider the impacts on:

- All non-household customers in England;
- Customers in Wales over >50ML; and
- The Scottish business retail water market.

This includes ensuring any decisions made by the Panel, such as Change Proposal decisions, are coordinated with Scotland through the representatives for Water Industry Commission for Scotland (WICS) and Central Market Agency (CMA).

4. Role and Functions

The Panel shall carry out the following functions, in accordance with Section 5.2 of the MAC:

- Oversee, vote and make recommendations to the Authority on any changes required to the codes, specifically to the WRC and the MAC;
- Review and provide advice on Market Audit Reports, Market Performance, Market Entry Assurance and re-assurance processes and Trading Disputes;
- Work with the Market Operator to develop the scope and audit plan for each market audit;
- Provide advice in relation to any Market Entry Assurance Plan or Market Re-Assurance Plan;
- Oversee the administration of the Market Performance Framework in accordance with the provisions of Code Subsidiary Document (CSD) 0002 (Market Performance Framework);
- Consider and comment on the draft Market Operator Budget and Market Operator Charges;
- Approve all forms and supporting documents produced by the Market Operator, as set out in the CSDs;
- Establish and delegate its role and functions to Panel Committees, such as set out in MAC 5.2.1;
- Create Panel Sub-groups or Working Groups of industry experts and representatives to consider and develop Change Proposals; and
- Report to the Authority on its activities and those of its Committees.

5. Membership

Panel Members must be elected in line with Section 5.6 of the MAC. Independent Members are appointed in line with Section 5.7 of the MAC. The Panel shall comprise the following voting Members:

- the Panel Chair;
- three (3) Associated Retailer Panel Members;
- three (3) Unassociated Retailer Panel Members;
- three (3) Wholesaler Panel Members;
- three (3) Independent Panel Members; and
- one (1) Customer Representative Panel Member.

Where an insufficient number of nominees are received at a Panel Nomination Meeting to fill all Panel Member roles for a class of Retailer then any vacant roles may be filled by either an Associated or Unassociated Retailer.

The Panel Chair shall be appointed by the Panel, in accordance with Section 5.3.2 of the MAC.

The above Panel Members (except Independent Panel Members and the Customer Representative Panel Member), are elected for a fixed term period of up to 2 years, in accordance with Section 5.6 of the MAC. Under Section 5.6 of the MAC, an extension to any elected Panel Members term can be requested by way of a written request to Ofwat. This must be done with at least twenty (20) Business Days' notice of the expiry of the fixed term.

The Independent Panel Members are appointed by the Panel Chair, for a fixed term period of up to 3 years, as set out in Section 5.6 of the MAC.

The Customer Representative Panel Member will be nominated by CCWater, or its successor, and appointed by the Panel Chair for a fixed term period of up to 3 years, as set out in Section 5.6 of the MAC.

Both elected and appointed members are eligible for re-appointment following expiry of their initial or any subsequent term.

5.1 Affiliated Members

In accordance with Section 5.4 of the MAC, the following Affiliated Members are entitled to attend and speak, but not vote, at any Panel meeting:

- CEO of the Market Operator, or an alternate;
- Representative of the Authority; and
- Representative of the Water Industry Commission for Scotland.

5.2 Observers

The meetings of the Panel shall be open and public, in line with Section 5.4 of the MAC. Any individual (who is not a Panel Member) may attend a Panel meeting as an observer, by first notifying the Panel Secretary on Panel.secretariat@mosl.co.uk.

Prior consent of the Panel Chair is required but will not be unreasonably withheld for parts of the Panel meeting which are not being held in closed sessions. Observers can only speak at the invitation of the Panel Chair. Please refer to Section 11 of this ToR for further terms on Transparency and Confidentiality.

The Panel may, from time to time, invite individuals to attend all or part of a meeting of the Panel.

5.3 Panel Secretary

The Market Operator will appoint the Panel Secretary, who will be a non-voting member of the Panel, as stated in Section 5.5 of the MAC.

5.4 Deputy Panel Chair

If the Panel Chair is unable to be present at a meeting of the Panel he or she may appoint one of the current three (3) Independent Panel Members to act as Chair of that meeting, in accordance with Section 5.3.3 of the MAC.

5.5 Alternates

If an elected Panel Member cannot attend, the member may propose an Alternate. Alternates should possess sufficient knowledge and expertise to act as a Panel Member. The Alternate must be notified to the Panel Secretary as soon as reasonably practical before the Panel meeting, to ensure the Alternate Member has sufficient time to refer to any associated papers.

Subject to the approval of the Panel Chair, the Alternate may attend the Panel Meeting and vote and speak as a Panel Member.

In accordance with Section 5.7.2 of the MAC, a person appointed as an Alternate, is bound by the provisions of the code. Alternates must act impartially, in the best interests of the market as a whole and shall be guided by the Principles and Objectives, and should not be representative of or have regard to the interests of anybody or person, including the Panel Member that appointed them. Alternates will provide a letter confirming they will act as required by the MAC and a letter releasing them from representing their employer's interests.

In the event that an Alternate is also a Panel Member, he or she will cast one (1) vote for the Panel Member who appointed him or her, in addition to any vote which he or she holds as a Panel Member. For the avoidance of doubt, Panel Members agree that they shall not act as an Alternate for more than one other Panel Member at any given time.

If an Alternate attends a meeting as well as their standing Panel Member, he or she attends only as an Observer and will have no voting rights.

6. Role of Panel Members

In accordance with Section 5.7 of the MAC, a person appointed as a Panel Member:

- a) shall act impartially, in the best interests of the market as a whole and shall be guided by the Principles and Objectives, as described in Part 1 of the WRC; and
- b) shall not be representative of and shall act without regard to the particular interests of the body or person by whom he or she was nominated to be Panel Member.

Members must have integrity and must not only be, but also be seen to be, impartial and free from proximity to vested interests. Members will provide a letter confirming they will act as required by the MAC and a letter releasing them from representing their employer's interests. Members are responsible for:

- Exercising their own, independent judgement with reasonable care, skill and diligence;
- Making decisions (or recommendations) regarding the application, amendment and interpretation of the codes;
- Bringing the Panel's attention to external matters which may affect the MAC or WRC, or the work of the Panel;
- Initiating actions to address issues arising in respect of matters that impact (or have the potential to impact) the MAC or WRC;

- Ensuring that, wherever possible, the work of the Panel, the Panel Committees Panel Sub-groups or Working Groups aligns with the Panel’s strategic priorities;
- Following due process, thereby enabling Market Participants and Ofwat to place reliance on the work of the Panel, its Panel Committees, Panel Sub-groups and Working Groups; and
- Acting as ambassadors for the Panel, Panel Committees, Panel Sub-groups or Working Groups and inspiring stakeholder confidence.

Members should:

- Arrive at Panel meetings fully prepared, having read the paperwork ahead of the meeting;
- Make reasonable effort to attend meetings in person and in full;
- Operate within their powers in accordance with the relevant ToR as approved by the Panel;
- Actively contribute towards the robust, transparent and well-reasoned scrutiny of matters brought to the Panel, Panel Committees, Panel Sub-groups or Working Groups for its consideration;
- Engage in constructive debate which is based on good working practices with appropriate discussion and constructive challenge;
- Support the Panel Chair, Secretary and other Members by providing advice, support and feedback – including on a one to one and/or confidential basis as appropriate; and
- Act as critical friends by:
 - Ensuring that unsubstantiated assumptions or assertions do not go unchallenged;
 - Ensuring that all arguments for and against a proposal are adequately discussed and reflected in minutes, reports and other relevant Panel, Panel Committee, Panel Sub-group or Working Group products;
 - Ensuring that previous discussions or decisions that may be relevant to the proposal being considered are highlighted;
 - Ensuring that small market participant and Consumer representatives viewpoints (whether such parties are present or not) can be articulated and debated at Panel, Panel Committee, Panel Sub-group or Working Group meetings and that other Members do not seek to stifle or prevent such debate; and
 - Supporting the use of teleconference (or similar) facilities if this is more convenient for those that wish to participate, including smaller market participants.

7. Quorum and Decision Making

No business is to occur at the meeting unless a quorum is present. Panel Members must inform the Panel Secretary if they or their Alternate is unable to attend, wherever possible, at least 10 Working Days prior to the meeting.

If a Quorum of Panel Members has not confirmed attendance, the Panel Chair may determine that the meeting should be cancelled and a notification be issued to Panel Members no later than five (5) Working Days prior to the meeting. The meeting will be deemed as cancelled if no Panel Member has notified the Panel Secretary that he or she objects to the cancellation, not later than three (3) Working Days before the meeting.

A quorum is a minimum of the following Panel Members (or any of their Alternates entitled to be present):

- Panel Chair (or the Deputy Panel Chair);
- four (4) Retailer Panel Members (either Associated or Unassociated)
- two (2) Wholesaler Panel Members; and
- two (2) Independent Panel Members.

In the event that a meeting of the Panel is convened and a quorum is not present within one hour, the meeting will be adjourned and re-scheduled by the Panel Secretary at the earliest convenience.

7.1 Voting Procedure

The Panel will vote on matters in line with Section 5.10 of the MAC. At any meeting of the Panel, any matters to be decided shall be put to a vote of Panel Members upon the request of any Panel Member.

Any matter, other than removal of a Panel Member, shall be decided by a simple majority plus one vote of those votes cast (an abstention is not counted as a cast vote.). Removal of a Panel Member shall be decided by:

- A unanimous vote cast by the Panel Members (an abstention is not counted as a cast vote); or
- A Qualifying Majority of no less than ten (10) Panel Members.

The discharge of all the functions within the competence of the Panel shall be determined by a vote conducted on a show of hands or such other demonstration of affirmation or consent as may be appropriate.

8. Secretariat

The Market Operator will provide the secretariat services and appoint the Panel Secretary. The Panel Secretary shall not be a member of the Panel and shall not cast a vote as a Member.

The Market Operator will provide the administrative and other support required by:

- a) the Panel, in order to perform its role as set out in Section 5.2.1; and
- b) the Panel Committees, including the Trading Disputes Committee, Market Performance Committee and any Additional Panel Committee established in accordance with Section 5.2.1(p) of the MAC.

The Panel Secretary is the officer of the Panel that is responsible for its administration. Like Panel Members, the Panel Secretary must have integrity and must not only be, but also be seen to be, impartial and free from proximity to vested interests. The work of the Panel Secretary encompasses:

- Convening of Panel meetings, provision of relevant Panel papers and materials and taking minutes of meetings;
- Maintaining registers of Panel Members, Panel Member interests, Panel Member contracts and agreements;
- Communicating with Market Participants and Ofwat on behalf of the Panel;
- Management and administration of the Panel elections and Panel Member appointment processes;
- Supporting the Panel Chair in ensuring compliance with regulations and obligations by Panel Members (and the Panel as a whole); and
- Procuring legal drafting support when developing Change Proposals, on a case by case basis when requested by the Panel.

The Panel Secretary should:

- Act as advisor to the Panel Chair and Panel Members on matters of compliance and processes;
- Ensure that the Panel Chair, Panel Members and the Market Operator remain aware of the Panel's priorities and relevant requirements;
- Provide briefings to the Panel Committee Chair's and Secretaries after each Panel meeting;
- Ensure that clear and unambiguous decisions made by the Panel are captured and recorded in a timely and transparent manner;
- Provide, or facilitate the provision of, appropriate support to the Panel and Panel Members as required – including on a one to one and/or confidential basis as appropriate; and
- Act under delegated authority as the face of the Panel when liaising with stakeholders and reporting on Panel matters to others.

9. Proceedings of the Meeting

9.1 Frequency of Meetings

A calendar of monthly meetings will be maintained by the Panel Secretary and published six (6) months in advance in accordance with Section 5.8 of the MAC.

The Panel will meet on a monthly basis but meetings may be cancelled if there is insufficient business on the agreement of the Panel Chair. In such cases, the Panel Secretary will notify Panel Members (and confirm on the website) that the meeting is cancelled not later than five (5) Working Days prior to the meeting, provided that the Panel meets at least once every three (3) months. The meeting will be deemed as cancelled if no Panel Member has notified the Panel Secretary that he or she objects to the cancellation, not later than three (3) Working Days before the meeting.

Additional meetings may be held at such a time and place as notified to the Panel Members by the Panel Secretary in accordance with these ToR.

Unless otherwise decided by the Panel, the Panel Secretary shall convene Panel meetings by giving notice via email at least five (5) Working Days prior to the proposed meeting, accompanied by publishing an agenda and any non-confidential papers on the website, as necessary. A copy of such notice and papers shall also be sent to the Affiliated Members and any Alternate appointed.

The custom practice is that there will be no late papers issued outside of the agreed meeting notice period. From time to time, there may however be a need for additional matters or late papers, and the approach will be agreed by the Panel Chair on a case by case basis. The Panel Secretary will provide notice to Panel Members and the other persons entitled to receive notice, as soon as reasonably practical. Late papers will only be considered upon the agreement of a Qualifying Majority of Panel Members.

9.2 Urgent Meetings

Where the Panel Secretary, with the agreement of the Panel Chair, is of the opinion that an urgent meeting is required to consider any Code Change Proposal, the ten (10) Working Day notice period shall be waived, in accordance with Section 5.8.2(b) of the MAC.

The Panel Secretary will notify Panel Members by email and/or telephone as soon as reasonably practical prior to the calling of an urgent meeting.

9.3 Meetings via Teleconference

A meeting of the Panel may consist of a tele- or video-conference between Panel Members. A Panel Member taking part in such a conference or telephone call is deemed to be present in person and is entitled to vote and be counted in the quorum accordingly.

9.4 Minutes of Meetings

The Panel Secretary shall minute the proceedings and resolutions of all Panel meetings, including the names of those in attendance. Draft Minutes will be circulated to all Panel Members as soon as reasonably practical after the meeting, where any substantive comments should be submitted ahead of the next Panel meeting and approval will be sought at the next Panel meeting. Following Panel approval, the minutes will be published on the the Market Operator's website.

To facilitate transparency, the Panel Secretary will publish a Headline Report listing the Panel's decisions within three (3) Working Days of the meeting. The Panel has delegated authority to the Panel Chair to approve the Headline Report.

The Panel Secretary will also record and maintain a Panel Action Log of all the Panel actions that arise from each Panel meeting. This will be shared with Panel Members alongside the minutes.

The Market Operator shall communicate the outcome of all Panel decisions, including Code Change Proposals, to all Trading Parties by publishing the Minutes and Headline Report on the the Market Operator's website.

9.5 Communication of the Panel Vote on Change Proposals

When casting a vote to recommend a Code Change Proposal, each Panel Member must record the reason for their vote. The outcome of the Panel vote, including the reasons given by the Panel Members will be recorded in the Code Change Proposal Recommendation Report.

Where the Panel votes on whether to approve or reject a Code Change Proposal, the Panel Secretary shall communicate the outcome of the vote in the Code Change Proposal Recommendation Report, and issue to the Authority for decision five (5) Working Days after the Panel meeting.

9.6 Recording and Broadcasting

For transparency, audio and/or video recording may be made of Panel meetings. Additionally, the open session of Panel meetings may be broadcast by webinar. The agreed policy regarding recording and webinar broadcasting is as approved by the Panel and published on the Market Operator website.

10. Delegation

The Panel may delegate authority of action and decision to an individual Panel Member or an 'officer of the Panel' such as the Panel Chair, Panel Secretary or a Panel Committee. The Panel (or a Panel Member) may also, by their actions, give apparent authority, but ultimate responsibility remains theirs, collectively as the Panel.

The delegation of authority to a Panel Committee does not relieve the Panel of its general responsibility to ensure that such powers are exercised in accordance with the Code. The agreed policy regarding delegation is as approved by the Panel and published on the Market Operator website.

11. Transparency and Confidentiality

The Panel meetings are open and public, in accordance with Section 5.4 or the MAC. While custom practice will be to allow any person to attend the open session of Panel meetings, provided that the Panel Secretary is notified and prior consent of the Panel Chair is required (and that such approval will not be unreasonably withheld), exceptions may apply which call for a closed meeting session. Such exclusions include confidential and commercially sensitive business, such as some Trading Party Disputes and Market Performance matters.

For the avoidance of doubt, confidentiality applies to all Panel Members, Affiliated Members, the Panel Secretary, any attendees of the Market Operator and any other invited attendees or individuals, who may on a case by case basis, attend closed sessions of the Panel meetings.

There is a preference of all agenda items to be taken in open sessions where at all possible.

In the event of closed session papers, the necessary paperwork will be circulated to Panel Members and will not be published on the Market Operator's website.

12. Conflict of Interest

Panel Members shall declare in advance any actual or perceived conflict of interest.

In the event of any conflict of interest is declared by a Panel Member, in accordance with Section 5.7.1(a) of the MAC, the Panel Member shall notify the Panel Secretary for the matter to be discussed at the next appropriate Panel meeting. At the Panel meeting, the Panel shall decide the most appropriate course of action and in doing so, will be guided by the Code Principles set out in Schedule 1 of the MAC. This might

include the conflicted Panel Member absencing themselves from the Panel's deliberations and/or any vote in relation to the area of conflict.

13. Expenses

Panel Members can claim reasonable costs and expenses incurred in attending meetings or otherwise conducting Panel business. Where the Panel agrees, any Panel Committee member who is not employed by the Market Operator can also claim for costs and expenses. The agreed Panel and Committee Expenses Policy is published on the Market Operator's website.

14. External Communication

Panel Members may be approached by members of the press or requested to speak at public events either on behalf of the Panel or in personal capacity. The agreed Communication Policy is as approved by the Panel and published on the Market Operator's website.