

Minutes of Panel Meeting 10

07 September 2017 | 13:30 – 15:00

Held via Teleconference

Status of the Minutes: Final

MEMBERS PRESENT

Margaret Beels	MBe	Chair of the Panel (MOSL)	Nicola Smith	NSm	Unassociated Retailer Panel Member
Mike Brindle	MBr	Associated Retailer Panel Member	Dylan Freeman	DF	Wholesaler Panel Member
Wendy Monk	WM	Associated Retailer Panel Member	Mark Holloway	MH	Wholesaler Panel Member
Simon Wilshire	SW	Associated Retailer Panel Member	Howard Smith	HS	Wholesaler Panel Member
Helyn Mensah	HM	Independent Panel Member	John Vinson	JV	Alternate Independent Panel Member
Nigel Sisman	NSi	Independent Panel Member	Adam Richardson	AR	Panel Secretary (MOSL)
Elsa Wye	EW	Independent Panel Member	Dan Mason	DM	Affiliated Panel Member (Ofwat)
Richard Moore	RMo	Unassociated Retailer Panel Member			

OTHER ATTENDEES

Elliot Bird	EB	Meeting Secretary (MOSL)	Gerard Lyden	GL	Observer (Thames Water)
Oscar McLaughlin	OM	Presenter (MOSL)	Hugh Laurie	HL	Observer (Thames Water)
Rebecca Mottram	RMt	Observer (MOSL)	Julian Tranter	JT	Observer (Thames Water)
Jessica Collinge	JC	Observer (Yorkshire Water)	Priya Sinha	PS	Observer (Ofwat)

APOLOGIES

Chris Scoggins	Affiliated Panel Member (MOSL)
Trevor Nelson	Unassociated Retailer Panel Member
Christina Blackwell	Affiliated Panel Member (CCWater)

1. Welcome and Introductions

Purpose: For Information

- 1.1. The Chair began by welcoming the Committee to the additional Panel meeting, which had been convened to reach a Panel view on the progression of Change Proposal CPW019.
- 1.2. Panel Members were reminded that the purpose of the meeting was to indicate what evidence would be required to make a decision at the Panel meeting on 26th September 2017.

2. Assessment Report: CPW019 – Alternative Eligible Credit Support

Purpose: For Decision

- 2.1. MOSL provided a summary of the changes that had been made to the Change Proposal, noting that the proposer had developed the solution to clarify the existing ambiguity.
- 2.2. The amended solution introduced a dispute resolution process. MOSL highlighted that the current proposal was developed in a tight timeframe, and as such, there may be alternative solutions available that could be more appropriate.
- 2.3. The Panel was informed that the Assessment Report for CPW019 would be provided in advance of 26th September 2017 Panel meeting, to support the Panel in making a decision. In addition, it was highlighted that the Proposer had made request that the next Panel meeting to be brought forward in order to aid in the resolution of this issue.
- 2.4. MOSL invited the Panel to consider whether to send this Change Proposal to Industry Consultation.
- 2.5. A Panel Member agreed that there was some merit to the proposal, noting that the current procedure in resolving a dispute currently is not timely enough. However, they disagreed with other aspects of the solution, such as including descriptions of alternative credit provisions, which could obscure the potential for other innovative options that Trading Parties might develop.
- 2.6. Panel Members highlighted that the amended Change Proposal was considerably different to the original solution, and questioned whether it was correct to consider this as the same Change Proposal.
- 2.7. The Ofwat representative raised 3 issues:
 - The level of evidence provided was not sufficient, and they were not confident the evidence provided would give them sufficient basis to make a decision on the Change;
 - The negotiation period of 10 Business Day before a dispute can be escalated to the Authority may not be sufficient for Trading Parties to make a reasonable judgement; and
 - the Change Proposal appears to be very different from the original, therefore the Panel may want to think about whether this should be submitted as a new Change Proposal.
- 2.8. A Panel Member suggested that it would be difficult to determine how the proposed disputes process for credit terms negotiation would be triggered, in terms of defining failure to agree the criteria of an appropriate credit support method. In addition, the 10 Business Day period before a dispute can be

raised was too short, and a negotiation of this kind would not be concluded in this timeframe. These negotiations involves parties taking different positions and then exploring how they might resolve these, premature evocation of the disputes process would interfere with this normal commercial negotiation.

- 2.9. Panel Members asked Ofwat whether it had been consulted on the suggested change, and whether it had the regulatory power to carry out this function. The Ofwat representative confirmed that it had been shown the proposal by MOSL but not consulted, although the opportunity to discuss this had been limited by the time constraints. It further noted that legal advice would be sought to determine the Authority's powers on this matter.
- 2.10. A Panel Member raised a concern on the criteria required to raise a dispute as described in the proposal. Particularly, in a case where a Retailer raises inappropriate credit support, and could subvert the negotiation and go to a disputes process in 10 Business Days.
- 2.11. A Panel Member felt that the solution set out in the Change Proposal did not seem to be solving the underlying issue and instead, sought to create a dispute resolution mechanism, to address a symptom of the underlying problem.
- 2.12. Panel Members raised concerns with the Change Proposal documentation provided, in that it appears to be inconsistent. It seems to suggest in one point that the Retailer can negotiate to provide something less than the full Credit Support Amount, which is in direct conflict with what is already in the codes.
- 2.13. The Chair requested that the Panel provide direction on what extra information it would require in order to come to a decision on this change on the 26th September 2017 meeting. The Chair also noted the Panel's concerns that this Change Proposal looked significantly different from the original proposal, and suggested that the Secretariat provides advice on the Change Process and how best to progress the change forward.
- 2.14. A Panel Member requested information on whether there were any examples of credit support negotiations not being resolved with the current credit provisions in the market codes. It was also highlighted that there was a lack of evidence on why this Change Proposal was an urgent issue, given the time that had now passed since the change was first raised.
- 2.15. The Panel noted a confidential update from MOSL which the Panel. The Chair asked the observers on the call to leave the meeting prior to the information being discussed.

CLOSED SESSION

- 2.16. Following the confidential update, the Panel remained concerned that the underlying issue with the code rules was not well defined
- 2.17. In response to the concerns of the Panel, the Secretariat explained the thought process that led to the Change Proposal encompassing a dispute process, and noted that the revised solution had been developed following Panel Members feedback at the August 2017 meeting that the Proposer rethinks the intention and purpose of the change.

- 2.18. The Panel agreed that the revised Change Proposal should not be progressed to Industry Consultation, and requested that the Assessment Report for the September 2017 Panel meeting should detail the issue the change seeks to address, the rationale behind the solution and any supporting evidence.
- 2.19. The request to have an emergency Panel meeting earlier than the next scheduled Panel meeting on the 26th September 2017 was not agreed, on the basis that Panel Members felt more time was needed to ensure the proposed solution aligned with the perceived issue and the required evidence to support the Change Proposal be collated. It was noted that coming to an earlier decision would have a limited impact on timing given that the change would still be subject to the Authority making its decision.

3. Any Other Business (AOB)

Purpose: For Information

- 3.1. There was no further business and the Chair closed the meeting.

The next Panel meeting is scheduled for: **26th September 2017, 10:30 – 15:30, at:**
Holborn Bars
138-142 High Holborn
London
EC1N 2NQ

The nearest tube stations are Chancery Lane, Farringdon and Holborn