

Minutes of Ad-hoc Panel Meeting 40c

27 March 2020 | 16:00 – 17:15 | Teleconference

Status of the Minutes: **Final**

MEMBERS PRESENT

Jim Keohane	JK	Chair	Michael Rathbone	MR	Panel Member (Wholesaler)
Mike Brindle	MBr	Panel Member (Associated Retailer)	Helyn Mensah	HM	Panel Member (Independent)
Chris Williams	CW	Panel Member (Associated Retailer)	Elsa Wye	EW	Panel Member (Independent)
Rosalind Carey	TN	Alternate Panel Member for Trevor Nelson	John Vinson	JV	Panel Member (Independent)
Nicola Smith	NS	Panel Member (Unassociated Retailer)	Mike Keil	MK	Panel Member (Customer Representative)
Claire Yeates	CY	Panel Member (Unassociated Retailer)	Dan Mason	DM	Affiliated Panel Member (Ofwat)
Mark Holloway	MH	Panel Member (Wholesaler)	Sarah McMath	SM	Affiliated Panel Member (MOSL)
Martin Marvin	MM	Panel Member (Wholesaler)	Adam Richardson	AR	Panel Secretary

OTHER ATTENDEES

Stuart Boyle	SB	MOSL (Presenter)	Georgina Mills	GM	Ofwat (Observer)
Chris Dawson	CD	MOSL (Presenter)	Christina Blackwell	CB	CC Water (Observer)
Charles Unvala	CU	MOSL (Presenter)	Christopher Wright	CWr	Castle Water (Observer)
Steve Arthur	SA	MOSL (Observer)	Julian Tranter	JT	Thames Water (Observer)
Amanda Hinde	AH	MOSL (Observer)	Gerrard Lyden	GL	Thames Water (Observer)
Ivy Mandinyenya	IM	MOSL (Observer)	Paul Stelfox	PS	United Utilities (Observer)
Lyvia Nabarro	LN	MOSL (Observer)	Matthew Rix	MR	Yorkshire Water (Observer)
Oliver Robins	OR	MOSL (Secretariat)	Howard Smith	HS	Yorkshire Water (Observer)
John Russell	JR	Ofwat (Observer)	Pamela Taylor	PT	(Observer)

APOLOGIES

Trevor Nelson	TN	Panel Member (Unassociated Retailer)
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1. Welcome and Introductions

- 1.1 The Chair welcomed Panel Members and all other attendees to Ad-hoc Panel Meeting 40c. The Chair expressed his gratitude towards all attendees for making themselves available at short notice given the circumstances and that he would be seeking comments from observers given the importance of the changes under discussion.
- 1.2 The Chair noted apologies from Trevor Nelson (TN) and explained that Sarah McMath (SM) would not be taking an active part in the teleconference due to illness.

2. CPW091 Urgent Change: Temporary Changes to Vacancy

- 2.1 The Panel considered [CPW091 'Temporary Changes to Vacancy'](#) which sought to relieve the market from the pressure of estimated primary charges during the 2020 Covid-19 pandemic. The change would allow Retailers to change a premises' Occupancy Status to 'Vacant' within CMOS where levels of water and sewerage usage have significantly reduced (95% or more), and therefore prevent the inappropriate estimation of volumes and settlement based on meter reads from the previous year.
- 2.2 AR explained that CPW091 had been developed in consideration of views provided in the Retailer Wholesaler Group (RWG) meeting on 26 March 2020 and those provided by Trading Parties in their responses to the Ofwat call for information.
- 2.3 Dan Mason (DM) thanked MOSL and the wider industry for the high level of engagement with this and other changes despite the challenging prevailing circumstances. He explained that both CPW091 and CPW093 sought primarily to protect customers and provide proportional relief to Retailers in the immediate term, whilst avoiding an unreasonable increase in the level of Wholesaler exposure and encouraged the Panel to recognise that the changes were interim in nature to provide assurance in the short-term whilst Ofwat developed more enduring solutions.

Agreement with the proposal

- 2.4 Whilst the majority of Panel Members agreed that CPW091 would be a suitable stop gap measure whilst a medium-term solution is developed, and should take effect before the next settlement run, several members raised concerns about its practicality going forward and sought clarification over key elements of the solution.
- 2.5 A Panel Member stated that the provision for Yearly Volume Estimates (YVEs) to be utilised where a premises is not completely or 95% closed was not set out in the draft code changes.
- 2.6 A Panel Member highlighted that the guidance document effectively reflected the feedback provided by the RWG group but requested clarification on the expectation of Retailers to amend sites that had been recently set to vacant but would not fit the new guidance criteria (and the penalty for not doing so). It was noted that Retailers would be expected to revert a vacancy change where a premise does not meet the new criteria.
- 2.7 A Panel Member suggested that there should be more emphasis on the need for consistency amongst Wholesalers with regards to how they apply charges for vacancy during this temporary period. Another Panel Member agreed and stated that consideration needed to be given to how the vacancy issues would be ringfenced, how this change would impact other

lines of work being conducted into vacancy, and the practicality of a mass reversion of these Vacant Premises in the future.

- 2.8 On this last point, another Panel Member added that because the guidance associated with CPW091 will sit outside of the code, there was a lack of clarity over what elements are mandatory. They suggested that if the guidance was not followed correctly, there could be an issue in distinguishing between “Business as Usual” vacant sites and Covid-19 vacant sites in the long term. It was also discussed that the reversion of the vacancy status in the future could cause a significant degree of confusion amongst customers.
- 2.9 One Panel Member expressed faith in MOSL’s ability to effectively monitor and audit the process but queried the requirement for a Retailer to revert the vacancy back to occupied whenever a meter read is obtained. This could disincentivise the submission of readings taken to check for leakage as part of general property inspections. AR stated that meter readings should be encouraged where possible given the current circumstances and confirmed that MOSL would look at rephrasing this part of the guidance.

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- 2.10 Another Panel Member did not think CPW091 benefited businesses that would remain open. AR explained that the existing YVE mechanism, specifically the capping concept which could suppress estimates going forward, provided an additional tool for these sites that would not fit the new vacancy criteria. He explained that whilst the detail of this mechanism may not be known to customers, Retailers will have a vital role to play in terms of ensuring that the customer experience of coming offline, and back online, is associated with minimal complexity and friction.
- 2.11 A Panel Member stated that the vacancy flag would provide a simple and effective short-term solution and would prevent customers from incurring charges where they have closed their business, and suggested that there would be ample opportunity in the future (once more meter reads can occur) to correct instances where customers have been erroneously marked as vacant in the short term.

Disagreement with the proposal

- 2.12 One Panel Member suggested that the consequences of granting a temporarily closed premise the full deferral of appropriately due charges for an indefinite period would introduce an unfounded risk to the market whereby Retailers can essentially force cashflow impacts onto Wholesalers in a largely uncontrolled unilateral way. They further explained that the desire or otherwise to grant a payment holiday to Covid-19 impacted customers exceeded the scope of CPW091 and should instead be the subject of a separate debate and clear policy.
- 2.13 Another Panel Member agreed with this statement and proposed that an alternative, more proportionate solution (such as Temporary Disconnection or the YVE Cap Mechanism) could be quickly developed in a couple of weeks to provide greater flexibility and benefit across the market going forwards. They also invited the Panel to consider that the cumulative effect of CPW091 with CPW093 could reduce cashflow throughout the market beyond the intended magnitude.
- 2.14 The Panel noted that consideration of the Temporary Disconnection approach was included in the CPW091 Draft Recommendation Report (DRR). In summary:

- the TDISC status is set at the SPID level and not the premises level (under which the Occupancy Status is defined) and so a Retailer would potentially need to submit two requests (one for the water SPID and one for the sewerage SPID) to temporarily disconnect a site within CMOS;
 - the process of temporary disconnection is lengthier and more time-consuming than the vacancy option;
 - where a Wholesaler cannot undertake a site visit to ascertain whether the site is operational, it is more efficient to allow the Retailer to directly impact primary charge calculation by amending the Occupancy Status data item (CPW091 solution); and
 - the reversion of sites back to their original status (once the issue of Covid-19 has passed) will be lengthier if the TDISC status is amended.
- 2.15 DM added that the industry could propose a code modification at any time should a party wish to consider an alternative mechanism further.
- 2.16 Another Panel Member, whilst recognising the need for quick action, felt that the solution set out in CPW091 might lead to unintended behaviours. They felt patterns of vacancy changes should be monitored and reported following its implementation. The Panel Member also sought comfort over the level of detail that a Retailer would need to provide to validate a vacancy change. AR explained that MOSL would be able to track the changes in vacancy resulting from this change and highlighted that the draft guidance requests Retailers add 'Covid-19' in the free text indicator field, which would ultimately aid the unwinding process.
- 2.17 The Panel Member also pointed out that the proposed drafting for Section 3.1.7 in CSD0104 should refer to Section 3.1.8 and therefore exclude changes in vacancy made before 23 March 2020. AR confirmed that Ofwat would re-examine the legal text to ensure that the relevant clauses are clear, concise, and delivered Ofwat's intended solution as set out in CPW091.

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- 2.18 Another Panel Member suggested that because the change would eliminate fixed charges as well as volumetric charges, there needed to be more analysis on the potential financial impact on Wholesalers
- 2.19 Another Panel Member sought clarification on what would happen to a Retailer who chose not to unwind premises that had been inappropriately marked as vacant and queried the necessity for a deferral paper (CPW093) if Retailers are using the vacancy flag mechanism to significantly reduce their settlement charges. DM confirmed that Ofwat would consider taking action if there was evidence that the process was misunderstood or being inappropriately gamed.
- 2.20 With regards to the necessity of both CPW091 and CPW093, DM explained that the changes were designed to bring interim relief only, given that Retailers will not be able to recover charges that have already been incurred but not paid for by customers. Georgina Mills (GM) added that most respondents to the Call for Information had supported the idea of the two initiatives being complementary, and noted that one Retailer had provided analysis suggesting that the vacancy flag would be insufficient on its own to make up the shortfall against Wholesaler charges going forward.

2.21 The Panel:

- **AGREED** (8 in favour, 2 against, with 2 abstentions) to recommend to Ofwat the implementation of CPW091; and
- **AGREED** (8 in favour, 2 against, with 2 abstentions) to recommend implementation on 30 March 2020.

2.22 The Panel Members that abstained from the vote explained that whilst wanting to see progress on the issue, they had fundamental concerns with the solution itself and the possible unintended consequences of it going forward.

2.23 One Panel Member that disagreed with the implementation of CPW091 considered that a more effective short-term solution could be developed in the upcoming weeks. The other Panel Member added that the change needed more assessment in terms of the specific benefits to customers, how the solution could be funded on an industry wide basis, the legal status of charges being levied in light the Government advice, the restrictions imposed by law, and the vacant premise definition within CSD010.

3. CPW093 Urgent Change: Payment deferral interim measures

- 3.1 The Panel considered [CPW093 'Payment deferral interim measures'](#) which sought to provide immediate relief to liquidity challenges in the market through a form of settlement deferral that would reflect the risk of some business customers failing to pay their Retailers in a timely manner during the 2020 Covid-19 pandemic.
- 3.2 The Panel noted that the change would defer a percentage of Retailers' charges (50% or otherwise determined by Ofwat) relating to settlement in April and May 2020 for a short period (to be determined by Ofwat). The change would also suspend a percentage of Retailers' charges (50% or otherwise determined by Ofwat) invoiced but not yet due in March 2020 for a period of two months from the due date.
- 3.3 It was noted that CPW093 had been developed on the back of positive and collaborative discussions at the high-level group meeting between Ofwat, DEFRA, MOSL, CC Water, Water UK, the UK Water Retail Council and various Trading Parties. Panel Members observed that CPW093 was an interim solution to address concerns regarding the impact of a potential increase in late payment from customers. DM highlighted that Ofwat had already circulated document that sets out how it would approach a longer-term solution to the problem.

Agreement with the proposal

- 3.4 The majority of Panel Members agreed that CPW093 was a necessary stop gap solution to help maintain cash flow as best as possible whilst allowing Retailers to be empathetic with customers experiencing difficulties. Several Panel Members raised concerns about its practicality going forward and sought clarification over several key elements of the solution, noting that their support relied upon the development of a fairer, more equitable, enduring solution as soon as possible to better protect the market.
- 3.5 The Panel sought clarification on the clause that set out for Retailers to pay more than 50% of settlement where they could afford it, with one Panel Member stating that this requirement for Retailers should not seek to penalise Retailers who have been more prudent and effective

in their operations. DM stated Ofwat had an expectation of Retailers to act in good faith and make settlement legitimately where they are receiving payment from customers.

- 3.6 Several Panel Members, whilst supportive of CPW093 being a short-term solution to a short-term issue with liquidity and therefore the proposed arrangement for March 2020, expressed a concern that Wholesalers could be exposed to an increasing amount of credit risk going forward into April and May 2020 and beyond. Wholesalers would need clarification over the recovery of these funds in the future.
- 3.7 Another Panel Member sought clarification on when the Authority would provide payment schedules to the Market Operator in relation to the deferred amounts for April and May. DM confirmed that Ofwat would seek to provide clarity over the payment schedule as soon as possible, possibly as part of work into a longer-term solution.

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- 3.8 A Panel Member explained that because the market was having to act expediently in unprecedented circumstances, consideration was needed how a Business-As-Usual scenario would be recovered given the possible cumulative effect of multiple imperfect changes.
- 3.9 A Panel Member queried how the benefits associated with the change from a Retailer's perspective would be experienced by the end customer, especially businesses that have not closed but are still struggling to pay invoices. They suggested that should CPW091 be implemented, there should be a commitment from Retailers to offer payment holidays and not to chase bad debt throughout this period of relief. DM confirmed that Ofwat would not expect Retailers to chase customers for non-payment in the current circumstances and highlighted that Ofwat would be issuing changes to the Customer Protection Code of Practice imminently to reflect this.

Disagreement with the proposal

- 3.10 One Panel Member, whilst supportive of the principles behind CPW093, stated that the solution had gone a step too far and that the Wholesaler community would need further assurance over the change. An observer suggested that the uncertainty associated with the combined implementation of both CPW091 and CPW093 could be avoided if only one proposal was passed.
- 3.11 Another Panel Member said that CPW093 only addressed the problem being experienced by Retailers rather than the entire market. They had a particular concern that the solution appeared to rest entirely on the ability of Wholesalers to absorb substantial amounts of risk where their ability to do so was unclear. In their view, the market fundamentally needed to avoid solutions that would see regulated industries becoming "lending banks". They invited Ofwat to comment on a) the suitability of providing 50% relief on what will ultimately be much smaller settlement invoices due to reduction in demand and the vacancy mechanism set out in CPW091, and b) whether Wholesalers were expected to become lenders or whether Ofwat would provide protection.
- 3.12 DM stated that there was a clear link between the proposals, hence why both had been raised simultaneously, and clarified that Ofwat did not view the reduction in demand as necessarily providing a benefit to Retailers. He explained that the combination of CPW091 and CPW093 provided a balanced approach to settlement based on what Retailers can be reasonably

expected to pay given a fair recoupment of cost from customers, rather than posing cumulative benefit.

- 3.13 The Panel noted that Ofwat was requesting a short period of forbearance from Wholesalers at a time where all parties were experiencing exceptional, unprecedented circumstances, and confirmed that Ofwat recognised the risk of bad debt materialising in the long term could necessitate future adjustments to the price control. It was reiterated that CPW093 was an interim solution to provide liquidity in the short term whilst Ofwat urgently pursued a longer-term solution given its recognition of the pressure being put on Wholesalers, Retailers and their customers as a result of Covid-19.
- 3.14 Ofwat confirmed it had examined the entire value chain (from customers to Retailers to Wholesalers) for a suitable short-term mechanism to manage financial pressure and was not seeking to rely on Wholesalers essentially becoming “lending banks” for the entire market. The Panel Member thanked Ofwat and explained that they would abstain based on this statement, rather than vote against the proposal as per their original intention.
- 3.15 The Panel:
- **AGREED** (9 in favour, 3 abstentions) to recommend to Ofwat the implementation of CPW093; and
 - **AGREED** (unanimous) to recommend implementation on 30 March 2020.
- 3.16 Whilst supportive of the intention to provide liquidity relief to Retailers via an extension to payment terms, those that abstained believed that the cumulative effect of CPW093 with CPW091 would simply transfer the liquidity problem to Wholesalers, the consequences of which could be far more damaging to the financial stability of the industry as a whole. However, recognising the need for urgent action to help Retailers, these Panel Members abstained from the vote instead of voting against the proposal.
- 3.17 One abstainer explained that although there still needed to be a significant amount of work undertaken to address the overall issue of liquidity in the market, Ofwat assurances to look into a longer-term solution had convinced them to not to vote against the proposal.

4. AOB

- 4.1 A Panel Member suggested that for the Panel to make fully informed and efficient decisions in the current circumstances, it should have access to any material stemming from wider discussions being conducted throughout the industry.
- 4.2 AR informed Panel Members that they should remain ready to reconvene at short notice should any more urgent changes need to be discussed before the Panel Meeting in April.
- 4.3 The Panel Members reiterated their thanks to Ofwat, MOSL, Trading Parties, and all other stakeholders for their high levels of productivity and engagement in the unprecedented circumstances of the Covid-19 pandemic.
- 4.4 There was no further AOB and the Chair closed the meeting.



Actions

P40C_A01 – MOSL to edit the CPW091 guidance following discussion at the Panel.

P40C_A02 – Ofwat to re-examine the legal texts for CPW091 and CPW093 to ensure that the relevant clauses are clear, concise, and will deliver the solution as set out in CPW091.

P40C_A03 - Ofwat to clarify the payment schedule associated with CPW093.