

## Performance Resolution Process: Escalation Policy

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## Table of Contents

1. Background .....	4
2. Overview of the Performance Resolution Process .....	4
2.1 Process overview .....	4
2.2 Roles and responsibilities.....	6
2.2.1 Market Operator .....	6
2.2.2 Market Performance Committee.....	6
2.2.3 Panel.....	6
3. MO Escalation to MPC .....	7
3.1 Escalation and prioritisation criteria.....	7
3.2 MO escalation notification.....	8
3.3 Presentation of performance issue by MO .....	9
3.4 MPC invitation to TP and TP presentation.....	9
3.5 MPC escalation decision .....	10
3.6 Conflicts of interest.....	11
4. MPC Performance Rectification Plan .....	11
4.1 Performance Rectification Plan .....	11
4.2 Monitoring performance .....	13
4.3 Escalation and de-escalation decision .....	14
5. MO Escalation to Panel .....	14
5.1 Reasons for escalating to Panel .....	14
5.2 MO escalation notification to Panel .....	14
5.3 Presentation of performance issue to Panel .....	15
5.4 Invitation to TP by Panel .....	15
5.5 Panel escalation decision .....	15
6. Panel Review and Further Actions .....	16
6.1 Process review .....	16
6.2 Performance Rectification Plan .....	17
7. Escalation to Ofwat.....	17



7.1 Reasons for escalation to Ofwat .....	17
7.2 Final escalation notification .....	18
7.3 Escalation pipeline .....	19
Appendix I: Templates [TBD] .....	20
Appendix II: Process Flow Charts .....	21
A.II.i MO Escalation to MPC .....	21
Appendix III: Indicative Timeline.....	22
A.III.i Escalation from IPRP to PRP .....	22
Appendix IV: Performance Resolution Casefiles.....	23
A.IV.i Required contents .....	23
A.IV.ii Storage and availability .....	23



## 1. Background

The Market Operator (“MO”) is required to monitor and report the performance of each Trading Party (“TP”), and to identify any issues that should be addressed using the Performance Resolution Process (Section 7 of CSD 0002). The performance of a TP is determined in relation to its obligations in the Market Terms, Operation Terms and CSDs. In practice, performance refers primarily to the Market Performance Standards (“MPS”) and/or Operational Performance Standards (“OPS”). It may also include Additional Performance Indicators (“APIs”), as specified in Section 7.3.1 of CSD 0002 and the Market Performance Operating Plan (“MPOP”).

This document, in conjunction with MOSL’s “Performance Resolution Policy”, is intended to provide a clear path from the point at which a performance issue has been identified, through to its resolution. Following the process outlined in Section 7 of CSD 0002, this document describes in detail the process for the MO to escalate a performance issue to Market Performance Committee (“MPC”), Panel and Ofwat. In certain circumstances, escalation can also be directly from MO to Panel (see section 5 for further details).

The process is structured around the following: key decision points and actions; criteria used for escalation and prioritisation of performance issues; and required reporting, documentation and evidencing. Indicative timelines are included for guidance purposes (section 9), as well as a flow chart of the process (Appendix II).

## 2. Overview of the Performance Resolution Process

### 2.1 Process overview

The MO conducts regular data monitoring for the purposes of identifying performance issues that should be addressed by the Performance Resolution Process (7.3.1 CSD 0002). The process can be arranged into seven distinct stages by distinguishing key events and decisions:

- I. MO initiates preliminary discussions with the TP after identifying a performance issue
- II. MO agrees an Initial Performance Rectification Plan (“IPRP”) with the TP
- III. MO escalates performance issue to MPC
- IV. MPC agrees Performance Resolution Plan (“PRP”) with TP
- V. MO / MPC escalates performance issue to Panel
- VI. Panel reviews the performance issue and agrees further actions with TP
- VII. Panel escalates the performance issue to Ofwat

Note that an escalation event (stages III, V and VII) is itself a distinct event because MPC or Panel must make a decision as to whether escalation is appropriate before initiating a performance resolution action, such as a PRP.



Escalation occurs when a performance issue is moved from a lower stage of the Performance Resolution Process to a higher one, and de-escalation is from a higher stage to a lower one. Escalation is not necessarily sequential, for example the MO can escalate a performance issue directly to Panel (stage I to stage VI).

Details of stages I - II are provided in MOSL's "Performance Resolution Policy" document. Stages III - VII are covered in this document. It is intended that, in most cases, all options at a particular stage are exhausted before a performance issue is escalated to the next stage. Further, each stage is designed to increase the pressure on a TP to facilitate proactive engagement and efforts within the TP to rectify the performance issue. For this reason, there are options available for the PRP that are not available to the IPRP (for example, re-assurance), and it is conceived that the performance issue should be escalated if more advanced options would be required for its resolution. Where applicable, performance issues will be prioritised based on quantitative measures of relative size and performance (see section 3.1 for further details).

All decision points and evidencing should be clearly reported and recorded with reference to specific obligations to provide a clear narrative throughout the process. These should be recorded using the templates defined in this document and stored as part of a coherent casefile (see Appendix IV for further details of the casefiles). Any reference to a decision or action by MPC (or Panel, as appropriate) implies a majority vote by a quorate MPC (or Panel).

The timescales around escalation and key decision points are intended to be flexible to reflect the varying levels of complexity of different performance issues and TPs. There is the ability, for example, to escalate serious issues more quickly or to allow TPs more time where this is deemed appropriate by the MO, MPC or Panel. Additionally, this flexibility should ensure that all options have been properly considered before escalating to a higher stage.

Ofwat may involve themselves at any stage of the Performance Resolution Process at their own discretion. Otherwise, MO escalation to MPC is expected to be the main recourse for performance resolution, whereas escalation to Panel, and ultimately Ofwat, is expected to occur when: (i) the performance issue is causing severe detriment to other TPs or customers; (ii) the TP has failed to meaningfully participate in the process with either the MO or MPC and there is evidence that this will not change; and/or (iii) the TP has failed to make any progress against the requirements of an IPRP or a PRP.

The main role of Panel is to provide a final opportunity to the TP to resolve the performance issue. Panel should also formally review the entire Performance Resolution Process as applied to the performance issue up until that moment. This is to ensure that all options have been exhausted at every stage, and that the casefile has been correctly maintained. Panel may require additional actions to be taken as part of the Performance Resolution Process (including de-escalating back to MPC), or they may refer the performance issue to Ofwat for their consideration. Ofwat may initiate preliminary meetings with TPs prior to a final escalation to Ofwat. Panel, in conjunction with MPC, will maintain a



list of TPs that are at risk of being escalated (“Escalation Pipeline”). Ofwat may refer to the Escalation Pipeline when deciding to initiate a preliminary meeting, although it is important to note that they are not in any way limited by this list.

## 2.2 Roles and responsibilities

### 2.2.1 Market Operator

In accordance with CSD 0002, the MO shall use data available from the Central Systems to monitor and report on the performance of each TP and identify any issues that should be addressed using the Performance Resolution Process. The MO shall agree IPRPs with the relevant TPs to resolve performance issues in accordance with MOSL’s “Performance Resolution Policy”. The MO shall monitor performance against the IPRPs and report this to MPC and Panel. The MO shall identify instances where a performance issue should be escalated to MPC or Panel, as appropriate; and present a case for escalation with evidence and explanation. The MO shall update Ofwat as appropriate, which includes providing a list of TPs at risk of escalation. The MO shall act as the main point of contact for TPs throughout the Performance Resolution Process, including (and in conjunction with MPC and Panel) notifications of decisions and details of plans. The MO shall own and update the casefiles with input from MPC and Panel. As well as ensuring that the casefiles are up-to-date and relevant, the MO will also ensure that MPC, Panel and Ofwat can access the casefiles. The MO shall publish the names of any TPs that have been escalated to MPC or Panel and remove these names when they have been de-escalated.

### 2.2.2 Market Performance Committee

MPC may determine PRPs to resolve performance issues that have been escalated by the MO, following a presentation to MPC by the MO and (if invited by the MPC to do so) a presentation to MPC by the TP. The MPC’s PRP will be more detailed and granular than the MO’s IPRP. MPC can determine whether a performance issue should be escalated to Panel. MPC shall, in conjunction with the MO, ensure that the TP is informed of any decisions made by the MPC. MPC shall maintain a list of TPs at risk of escalation that the MO shall provide to Ofwat. In addition, MPC shall monitor performance of TPs based on the regular reporting from the MO, providing expert market knowledge and insight. MPC shall also ensure that the Performance Resolution Process is properly applied. MPC, in conjunction with Panel, shall have oversight of the casefiles, and shall ensure that the casefiles have been properly maintained by the MO.

### 2.2.3 Panel

Panel are responsible for overall oversight of the Performance Resolution Process. If a performance issue is escalated to Panel, then they will decide whether to conduct a formal review of the process. Panel can also determine a PRP, following a presentation by the MO and (if applicable) the TP, to identify root causes of performance issues and enduring solutions to avoid reoccurrence. Panel may determine any other actions that should be taken to resolve the issue and may de-escalate the issue



back to MPC or the MO to carry out these actions or retain escalation at the Panel stage. Panel, in conjunction with the MO and MPC, are responsible for identifying performance issues that should be escalated to Ofwat. Panel shall also ensure that the TP is informed of any decisions made by the Panel.

### 3. MO Escalation to MPC

#### 3.1 Escalation and prioritisation criteria

The MO is entitled to escalate a performance issue in the following circumstances (7.6.1 CSD 0002):

- a) A Trading Party has failed to submit a satisfactory IPRP to the MO in an appropriate timescale;
- b) A TP has not completed the actions set out in an IPRP or has failed to keep the MO informed of its progress against the milestones within the plan;
- c) A TP has failed to fulfil the requirements of a previous escalation; or
- d) The performance issue has a significant effect on the calculation of Wholesale Charges, and/or a significant impact on other TPs and/or customers.

More generally, the MO will escalate a performance issue wherever the TP does not meaningfully engage with the Performance Resolution Process; and/or the performance issue is having a detrimental impact on other TPs and/or customers.

The MO must specify one or more reasons when escalating a performance issue. Usually this will be one of the above. The MO may specify other reasons where it feels it is necessary to escalate the resolution of the performance issue to MPC and/or Panel.

The MO may also escalate a performance issue at the request of MPC or Panel. In this case, the process is the same, except that MPC or Panel must provide the reason(s) for escalation to be included in the escalation notification.

When escalating a performance issue, the MO shall have regard to the volume of tasks relative to the size of the TP, as well as the relative performance of the TP (7.3.2 CSD 0002). The MO may use its discretion when considering how the relative size of tasks can be measured. For example, it may be quantified according to:

- the number of tasks performed by the TP directly related to the performance issue per month over a relevant period divided by the total number of relevant tasks performed by all TPs per month over the same period; and/or
- the number of tasks performed by the TP directly related to the performance issue per month over a relevant period divided by the total number of supply points (SPIDs) held by the TP over the same period.



In addition, the MO will consider the total number of performance issues experienced by a TP. If a TP is found to have a persistently high number of performance issues, then the MO is entitled to simultaneously escalate all, or an appropriate group of, those performance issues.

### 3.2 MO escalation notification

If the MO decides to escalate one or more performance issues, then they shall notify both the TP and MPC by email (“Escalation Notification”). The MO is normally expected to make a decision regarding escalation on business day twelve (12), following the IPRP Review Process detailed in MOSL’s “Performance Resolution Policy”, and to send the Escalation Notification the same day.

In accordance with the “TP\_Escalation\_Notification” template (see Appendix I), the notification to the TP should include:

- reference to the performance issue(s) being escalated;
- a summary of the reasons for the escalation;
- details of what will happen next and when (including a notification that they could be invited to present a proposal to MPC);
- the options available to the TP at this stage; and
- a confirmation of receipt request.

The confirmation of receipt from the TP should be sent to the MO by email or letter within five (5) business days. The confirmation of receipt may be a standardised form prepared by the MO. It should include a statement that the TP understands the escalation notice and what will happen next; and confirm—should they be invited to do so—that the TP is prepared to present a proposal to resolve the performance issue to the MPC. The TP can also indicate if they require more time to prepare for the presentation. The TP shall be made aware that, if they request more time to prepare a proposal, they should be prepared to attend, and present to MPC, no later than one calendar month after the up-coming MPC meeting, although MPC have discretion on this timing. Further, the TP shall be made aware that, though unlikely, MPC may decide not to issue an invitation to the TP if they feel it is unnecessary.

The notification from the MO to MPC may include several TPs, and/or a TP with more than one performance issue. In accordance with the “MPC\_Escalation\_Notification” email template (see Appendix I), the notification to MPC should be organised by TP and include:

- reference to the performance issue(s) being escalated;
- a summary of the reasons for escalation;
- a summary of the actions taken so far and when; and
- a suggested timeframe for resolving the issue.



The MO shall ensure that the casefile(s) for the performance issue(s) shall be accessible to MPC so that MPC members have enough time to review them.

### 3.3 Presentation of performance issue by MO

Following the issuance of an Escalation Notification, the MO will be required to present to MPC details of the performance issue (“Presentation Meeting”). Representatives from the MO can include individual(s) who has acted as a regular point of contact for the TP, such as a Portfolio Manager. The presentation shall be done in a permanently scheduled escalation meeting to be held the week before the MPC meeting of that month. The mode of this meeting may be virtual or in person according to the discretion of MPC members. As many MPC as possible should attend the meeting. This can be a designated sub-group from the MPC (“Escalation Sub-Group”) with flexible membership, or MPC may simply agree in advance who shall attend. MPC may substitute members of the sub-group with another MPC member where there are conflicts of interest (see section 3.6 of this document).

Unless the performance issue has been escalated as soon as it has been identified by the MO (i.e. without initiating an IPRP), it is anticipated that MPC would already be aware of the main details of any escalated performance issue, as these would have been reported by the MO through the normal monthly reporting of progress against the IPRP(s). In most cases, therefore, the MO presentation of the performance issue will consist of:

- an update on the performance issue from any earlier reports made to MPC;
- justification and details of the actions taken so far;
- where applicable, and according to need, the MO shall provide evidence for the reasons given for escalation (for example, lack of engagement could be shown by poor or non-response to MO communications);
- recommendation for further actions; and
- demonstrate that the escalation has been properly and clearly documented in a case file.

The Performance Rectification Process allows MPC considerable discretion in what it can do. For example, following the presentation of the performance issue, MPC may decide to formally invite the TP to present their proposal to resolve the performance issue (see section 3.4 of this document); however, they are also entitled, at this point, to make a decision regarding the escalation of the performance issue (as described in section 3.5 of this document) without inviting the TP to present a proposal. See section 9 for further details on the flexibility of the timelines.

### 3.4 MPC invitation to TP and TP presentation

Following the presentation of the performance issue by the MO to MPC, MPC may invite the TP to send a suitable representative to present a proposal to resolve the performance issue. MPC may decide on a case-by-case basis to whom the invitation should be addressed and may allow the TP to decide who shall represent them. MPC may also request the TP to provide material in advance.



When setting a date for the TP to attend, the MPC must decide whether the TP has enough time to prepare a proposal for consideration in a closed session at the next MPC meeting in the current month. When determining a date, the MPC shall therefore factor the complexity of the performance issue and the time the TP has already had to prepare a proposal for the IPRP stage of Performance Resolution.

If MPC decides to give the TP more time to prepare a proposal beyond the up-coming MPC meeting, then MPC will normally schedule an extraordinary meeting (virtual or in person) no later than the following MPC meeting, or MPC may agree for the TP to present at the following MPC meeting. Ultimately, the MPC can decide how much time to give to the TP.

In accordance with the “MPC\_TP\_Invitation” template (see Appendix I), the invitation from MPC to the TP should include the following:

- date that the TP is expected to attend MPC;
- details of the purpose of the invitation; and
- details of an appropriate point of contact (typically the MO).

The point of contact shall be provided for the purpose of answering questions related to the escalation process, and to coordinate the TP’s attendance at the meeting. The TP may also contact the Chair of MPC directly should they seek advice about the meeting, but this should not include questions about logistical or technical information (for example, how to join a virtual meeting or how to find the location of a meeting), which should be directed to the point of contact.

The purpose of the invitation is to give the TP an opportunity to present a proposal to MPC to resolve the performance issue. The TP may directly reference an on-going or amended IPRP agreed with the MO or present a completely new plan; however, any submitted plan must be in the format of a PRP, rather than an IPRP. The TP is also expected to state whether or not they agree with the assessment of the performance issue by the MO (this includes whether the TP believes that escalation from an IPRP is necessary), and provide clear rationale, with evidence as necessary, where they disagree. If the TP presents a new plan, then the TP should explain why these actions were not agreed with the MO at an earlier date during the IPRP stage.

Any MPC member may ask questions during the TP’s presentation. MPC members may also provide questions to the TP prior to the presentation by submitting them to the MO prior to the meeting. The MO shall endeavor to forward the questions to the TP as a single list in a timely manner, where possible. The MO may also ask questions or provide their own view during the presentation; however, the main focus of the presentation shall be to form a dialogue between MPC and the TP.

### 3.5 MPC escalation decision

After having considered the presentation of the performance issue by the MO, and the proposal of the TP (should the TP be invited), the MPC must decide (“Escalation Decision”) whether the performance issue should be: (i) addressed through a PRP with the TP; or (ii) de-escalated back to the



MO (to agree an IPRP with the MO). This decision, in most cases, will be made immediately after the TP proposal has been presented and the TP has left the room; or, if the TP has not been invited to present, then after the MO presentation. The TP representative should not be present whilst MPC discuss the decision, nor any members of MPC that have recused themselves (see section 3.6 below).

The MPC may postpone the Escalation Decision to an agreed date in the following circumstances:

- the TP requests more time (for example, to answer MPC questions or provide further detail) and MPC agree that it is reasonable;
- MPC requests the MO or TP to provide more clarity or detail on a performance issue; or
- MPC believe it is reasonable to allow more time for a performance issue to develop.

If the MPC chooses to delay the decision it shall be obliged to inform the Panel of its reasons at the next Panel meeting.

MPC may informally notify the TP of its decision verbally at the MPC meeting following the TP presentation, but it shall also formally notify the TP of its decision by letter using the “MPC\_Escalation\_Decision” template (see Appendix I). In most cases, the MPC escalation letter will be accompanied by details of the PRP (see section 4 of this document).

### 3.6 Conflicts of interest

MPC membership requires an undertaking to act independently and in the interest of the market. There may however be occasions where an individual members’ TP is under considerations for escalation to the MPC and assignment of a PRP. In the interest of transparency, the MPC member will declare a conflict of interest or otherwise recuse themselves from the decisions regarding the performance of the TP. This includes the Escalation Decision and any decisions regarding what is included in a Performance Rectification Plan.

Unless agreed unanimously by the remaining MPC members, the recused will not be party to the discussion regarding their own TP (this does not include the TP presentation) but may participate in sessions regarding any other TPs.

## 4. MPC Performance Rectification Plan

### 4.1 Performance Rectification Plan

After considering the MO presentation (and any proposal from the TP) and having determined that a PRP is necessary to resolve the performance issue, MPC must determine a PRP that sets out the remedial steps that a TP shall be required to take to address the escalated performance issue (7.6.4 CSD 0002). If a TP is subject to a PRP then the MO will publish the name of the TP on a list of any TPs currently subject to a PRP on the MO website. The list should include a short summary of the performance issue, but without any details of the plan itself (7.2.3 CSD 0002).



The design and implementation of a PRP is different than an IPRP. It is agreed with, and reviewed by, MPC (rather than the MO). The PRP should be more detailed and granular than an IPRP and include a list of steps and initiatives to be taken. The MPC stage PRP can also include root-cause analysis to identify measures to avoid any reoccurrence of the performance issue, however if root-cause analysis is required then MPC shall consider whether the issue should be escalated to Panel.

There are additional options available to the PRP that are not available to the IPRP. The additional options include:

- requiring a TP representative attends further MPC meetings to report on progress against the PRP (7.6.4 CSD 0002);
- requiring the TP to undertake some level of Market Re-Assurance activity (7.6.4 CSD 0002); and
- to notify the Market Auditor to include the performance issue in the next audit.

The core of the PRP should include details of the steps required to resolve the performance issue, and the timescales for completion of those steps. The PRP can include milestones with a stated completion date at which the TP intends the issue to be resolved, or a review date at which new milestones will be added. The milestones can either be identifiable actions within the PRP or measurable targets associated with discernible actions that will be taken to achieve those targets (7.4.1 CSD 0002).

In most cases the PRP will be based on a proposal submitted by the TP. The TP can submit a new proposal, independent of any IPRP(s). Alternatively, the TP can base the proposal on a plan submitted during the IPRP stage, however, if this is the case, then the TP should: submit the plan in the form of a PRP, which is more detailed than an IPRP; provide clear rationale as to why the plan failed at the IPRP stage; and explain why the TP expects the plan to succeed at the PRP stage if it failed as an IPRP. The TP is responsible for providing the steps that are required to resolve the performance issue, and these should be agreed with MPC. The MPC must then determine whether these actions are reasonable and achievable, and that they are enough to fulfil the milestones and resolve the performance issue within a reasonable timeframe. If MPC feels that the actions are insufficient or inappropriate to resolve the performance issue in a reasonable timeframe, then MPC may determine new actions or amend the proposed actions (7.6.4 CSD 0002).

It is recognised that determining a PRP with a TP may involve several rounds of discussion with the TP, including the necessity for internal dialogue and governance within the TP itself. Therefore, MPC has discretion in how to manage the timeline of the process. The timelines for discussions are intended to be flexible to ensure that PRPs are robust, reasonable and achievable, and that TPs have had time to properly understand the PRPs. Further, the time can vary between the MPC determining a plan and the TP acknowledging the plan. In principle, MPC may determine a plan immediately after the MO presentation (and the TP proposal presentation, if the TP has been invited), otherwise, it is likely that the PRP will be agreed at a later date should MPC deem that to be more practical. The PRP may be



determined and informally agreed with the TP verbally at an initial stage in the same meeting as the presentation or during an unscheduled meeting. Any verbal agreement shall then be agreed formally in writing in accordance with the “MPC\_PRP\_Determination” letter template (“PRP Determination Letter”, see Appendix I). Verbal agreement is not always required, and MPC may simply issue the PRP Determination Letter; however, MPC shall not do this without considering the size and scope of any PRP, and the complexities of implementation for the TP, when deciding whether further input or discussion may be required with the TP.

If the TP refuses to accept a PRP determined by MPC, and will not engage further, then MPC are entitled to ask the MO to escalate the performance issue to Panel.

Included in an MPC PRP Determination letter should be the following:

- a summary timeline of key decisions and actions so far;
- relevant details of the PRP, including milestones; and
- confirmation of receipt request.

The TP should formally respond to the MPC PRP Determination within five (5) business days. The confirmation of receipt from the TP should include a statement that:

- the TP understands that the performance issue is now being managed under the PRP process by MPC;
- they acknowledge and accept the PRP that has been determined by MPC, and are prepared to carry out the actions prescribed therein;
- they understand what they need to do next in order to fulfil the requirements of the PRP; and
- confirm—should they be invited to do so—that the TP is prepared to attend a specified MPC meeting(s) at a future date(s) to provide an update on the progress of the TP against the milestones of the PRP.

The MO shall store all communications as part of the casefile for the resolution of the performance issue.

#### 4.2 Monitoring performance

MPC, in conjunction with the MO, shall monitor the progress of the TP against the PRP to ensure that the agreed actions are completed (7.6.5 CSD 0002). The TP will remain in escalation with the MPC until it is either escalated further or de-escalated.

The MO will provide updates to Panel and MPC on the progress of the TP against the milestones in the PRP (7.6.6 CSD 0002). Panel or MPC may request a closed session agenda item to discuss any specific elements of progress against the PRP. The MO may make a recommendation to MPC regarding an



escalation or de-escalation decision if appropriate. Each of these reports, or an updated version, can be added to the performance issue casefile as a record of progress as appropriate.

#### 4.3 Escalation and de-escalation decision

If no improvements, or inadequate improvements, to performance are made whilst in MPC escalation, and MPC feel that all options have been exhausted, then MPC can escalate the performance issue to Panel following the process detailed in section 5 of this document. MPC may also elect to escalate a TP to Panel if performance improvements have not been delivered, or are not expected to be delivered, within a credible timeline.

If performance improves to the satisfaction of MPC, then the performance issue can be de-escalated to whatever stage is deemed appropriate. This includes:

- de-escalation to regular MO performance monitoring; or
- de-escalation to IPRP stage, with plan agreed with, and monitored by, the MO.

If the TP is de-escalated from a PRP then the TP name should be removed from the list of TPs on a PRP. This should be accompanied by an appropriate announcement from the MO and MPC (for example, that MPC are satisfied that the performance issue has been resolved).

## 5. MO Escalation to Panel

### 5.1 Reasons for escalating to Panel

The MO, or MPC, will be entitled to escalate a performance issue, or group of performance issues, to Panel in the following circumstances:

- the TP refuses to agree with a PRP determined by MPC;
- no improvements are made whilst in MPC escalation (7.6.2 CSD 0002);
- all options available to the MO and MPC have failed; and/or
- the TP is non-responsive and has failed to fully and properly engage with the process, despite having had multiple opportunities to rectify this.

Note that “improvement” above refers to the performance issue level and not the TP level. A TP could demonstrate improvement on several performance issues, but one or more performance issues may still be escalated if there is no improvement on those issues.

### 5.2 MO escalation notification to Panel

The process for the MO or MPC to escalate to Panel is the same in most details as for MO escalation to MPC. The process differs in the timing and in the templates used. The MO “TP\_Panel\_Escalation\_Notification” (see Appendix I) will not be issued on business day 12, it will



instead be issued on the day that MPC decides to escalate. This will typically be on the day of an MPC meeting after the progress of the TP against the milestones of its PRP have been reviewed.

An email notification to Panel (“Panel\_Escalation\_Notification”, see Appendix I) will also be issued on the same day. The notification may include several TPs, and/or a TP with more than one performance issue, and shall be organised by TP. It will include the same details as the MPC Escalation Notification, but it shall additionally include a brief explanation as to why the MO and MPC have been unable to resolve the performance issue through the earlier stages of the Performance Resolution Process.

### 5.3 Presentation of performance issue to Panel

Following the issuance of an escalation notification, the MO will be required to present to Panel, or a sub-group of Panel, details of the performance issue (“Panel Presentation Meeting”). The process is the same as for the MO presentation to MPC, except it will be done in an unscheduled (as opposed to a regular, scheduled meeting) meeting prior to the up-coming Panel meeting. The mode of an unscheduled meeting may be virtual or in person according to the discretion of Panel members.

The MO presentation of the performance issue will consist of:

- an overview of the performance issue;
- justification and details of the actions taken so far;
- where applicable, and according to need, the MO shall provide evidence for the reasons given for escalation; and
- demonstrate that the escalation has been properly and clearly documented in a casefile.

Following the presentation of the performance issue, Panel may decide to invite the TP to the next possible Panel meeting. In principle, Panel may make a decision regarding the escalation of the performance issue at this point (as described in section 5.5 of this document) without inviting the TP to present a proposal. In practice this is unlikely, but could occur if Panel feel it is unnecessary to invite the TP.

### 5.4 Invitation to TP by Panel

Following the presentation of the performance issue by the MO to Panel, Panel may invite the TP to send a suitable representative to present a proposal to resolve the performance issue. The process for inviting a TP to present a proposal at a Panel meeting is the same as for the MPC invitation to TP (see section 3.4).

### 5.5 Panel escalation decision

The process for Panel to make an escalation decision is the same as for MPC (detailed in section 3.5). Panel are to decide whether the performance issue should be escalated to them or not in order to instigate a review of the Performance Resolution Process (“Panel Escalation Decision”). After having



considered the presentation of the performance issue by the MO, and the proposal of the TP (should the TP be invited to do), the Panel makes a decision as to whether the performance issue should be escalated to Panel or de-escalated back to MPC.

Panel may verbally notify the TP of its decision at the Panel meeting following the TP presentation, but this shall be followed by a formal letter notifying the TP of the decision using the "Panel\_Escalation\_Decision" template (see Appendix I). This letter shall include a deadline for the Panel Process Review (see section 6.1 in this document) to be concluded.

## 6. Panel Review and Further Actions

### 6.1 Process review

Escalation to Panel is conceived as a final opportunity for the TP to resolve the performance issue; and for the Panel to provide a formal review of the application of the Performance Resolution Process to the performance issue to date ("Process Review"). Prior to the Process Review, both the MO and MPC are expected to have made effort to review the process and ensure that all the proper steps have been taken, however Panel shall do this formerly.

The focus of the Panel at this stage of escalation is the following:

- to ensure that the MO and MPC have exhausted all options and actions available to them;
- determine new actions if any relevant actions have been missed, agree a new PRP and recommend the level of escalation (if different to Panel);
- to confirm that the issue is significant and warrants high level attention; and
- check the robustness and clarity of documentation and evidencing of the performance issue by the MO and MPC, including the casefile.

The Process Review is expected to take no more than one calendar month, although Panel may request more time if there are a large number of performance issues being reviewed at any one time. Panel may elect a third-party to assist and support the Process Review, but this should not be the MO or any member of MPC.

After concluding a Process Review, Panel shall determine, based on the conclusions of the review, whether:

- the performance issue shall be escalated to Ofwat;
- the performance issue shall be subject to a PRP to be monitored by Panel;
- the performance issue shall be subject to a PRP to be monitored by MPC (de-escalation to MPC);
- the performance issue shall be subject to an IPRP to be monitored by the MO (de-escalation to the MO)



The decision to escalate to Ofwat shall be based on the finding from the Process Review that:

- the Performance Resolution Process has been properly and fully applied;
- there are no additional actions or powers available to the MO, MPC or Panel to resolve the performance issue;
- the performance issue is having a detrimental impact on other TPs or customers; and
- the relevant casefiles are robust, and the performance issue has been properly evidenced by the MO and MPC.

Should the Panel determine during the Process Review that the relevant casefiles are not robust or that the performance issue has not been properly evidenced, then they shall request the MO, in conjunction with MPC, to rectify the state of the casefiles prior to the conclusion of the Process Review.

The Panel may decide not to escalate the performance issue to Ofwat if they find from the Process Review that the performance issue could be resolved through other actions, including setting a PRP or de-escalating to MPC or the MO.

The Panel shall notify the TP, the MO and MPC of the conclusions of the Process Review, and the resulting decision, using the "Panel\_Process\_Review" letter template (see Appendix I). This shall include a summary of the findings, with any detailed considerations included in an annex.

## 6.2 Performance Rectification Plan

If Panel decide, following a Process Review, that a performance issue should be subject to a PRP determined by Panel, then Panel may agree a new PRP with the TP following the same process as section 4 of this document. The Panel PRP shall be more in-depth than an IPRP or an MPC PRP, with focus on root-cause analysis of the performance issue aimed at identifying enduring solutions to ensure that the issue does not reoccur.

In most cases (if not all) the Panel will de-escalate to MPC if it decides a PRP is required, although this remains at the discretion of Panel, and they may retain the level of escalation if Panel deem it appropriate. For example, it may be appropriate for the PRP and monitoring to remain with Panel if the TP has exhibited engagement issues (for example, non-response to requests or not updating MO of progress) throughout the Performance Resolution Process.

Panel is also entitled to retain oversight of the PRP but require the TP to attend MPC meetings in the future, and engage with the MO on an on-going basis, as required. The process for monitoring the PRP is the same process as detailed in section 4.2 of this document.

## 7. Escalation to Ofwat

### 7.1 Reasons for escalation to Ofwat



Escalation to Ofwat is conceived as a last resort following the exhaustion of all options and powers belonging to the MO, MPC and Panel to resolve a performance issue or group of performance issues. Therefore, the MO is entitled to escalate to Ofwat in the following cases:

- all options and powers available to the Performance Resolution Process have been explored and exhausted, but the performance issue persists;
- the TP has failed to meaningfully engage in the process (this includes if the TP has refused to agree a PRP with either MPC or Panel);
- the TP has not kept the relevant parties updated as to its progress;
- the TP has deliberately misled either the MO, MPC or Panel; and/or
- Ofwat requests that the performance issue(s) be escalated to them.

Any TP that fails to engage with Panel in the Performance Resolution Process, including non-response or refusing to accept a PRP determined by MPC or Panel, may be escalated to Ofwat without conducting a full Process Review. In this case, Panel need only review the robustness of the casefiles and evidencing of the performance issue.

## 7.2 Final escalation notification

Panel may request that the MO escalate a performance issue to Ofwat following the conclusion of a Process Review. Panel may also escalate having determined, following a review of the performance of the TP against a PRP, that a PRP is insufficient to address the performance issue.

Panel will notify the MO and MPC by email of the escalation decision; and notify the TP by letter following the “TP\_Ofwat\_Escalation\_Notification” letter template. This should include:

- reference to the performance issue(s) being escalated;
- a summary timeline of what has happened so far;
- a summary of the reasons for the escalation to Ofwat; and
- details of what will happen next and when.

The MO will notify Ofwat using the “Ofwat\_Escalation\_Notification” template. The notification should include:

- reference to the performance issue(s) being escalated with reference to the specific code and obligations the performance issue relates;
- a presentation of data showing the actual performance of the TP against required performance;
- a summary timeline of what has happened so far, including key actions and decisions; and



- a summary of the reasons for the escalation to Ofwat, including a statement from Panel that the Performance Resolution Process has been reviewed and no further actions are available to resolve the performance issue.

The MO shall ensure that the casefile for the performance issue is available to Ofwat.

### 7.3 Escalation pipeline

The MO will maintain a list of TPs that are potential candidates for escalation to Ofwat (“Escalation Pipeline”). TPs should be included on the list for the following reasons:

- they have been escalated to Panel for at least one performance issue;
- they have been escalated to MPC for two or more performance issues; and/or
- the performance issue(s) are having a material impact on the calculation of Wholesale charges and/or other TPs.

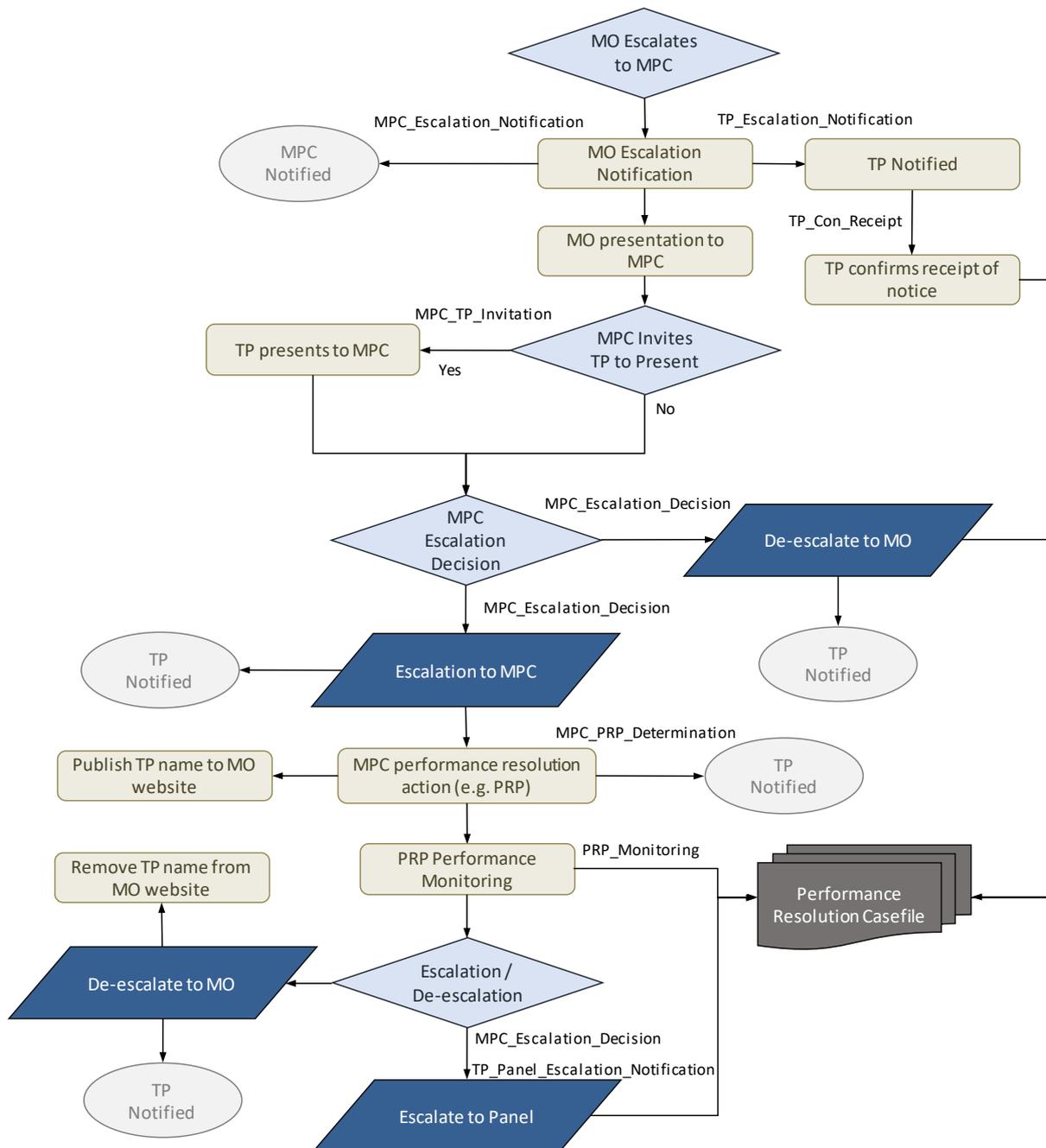
The MO shall send the Escalation Pipeline to Ofwat as an email when it is updated. At any stage of the process, Ofwat may, at their own discretion, arrange a preliminary meeting with any TP included in the Escalation Pipeline list.



## Appendix I: Templates [TBD]

## Appendix II: Process Flow Charts

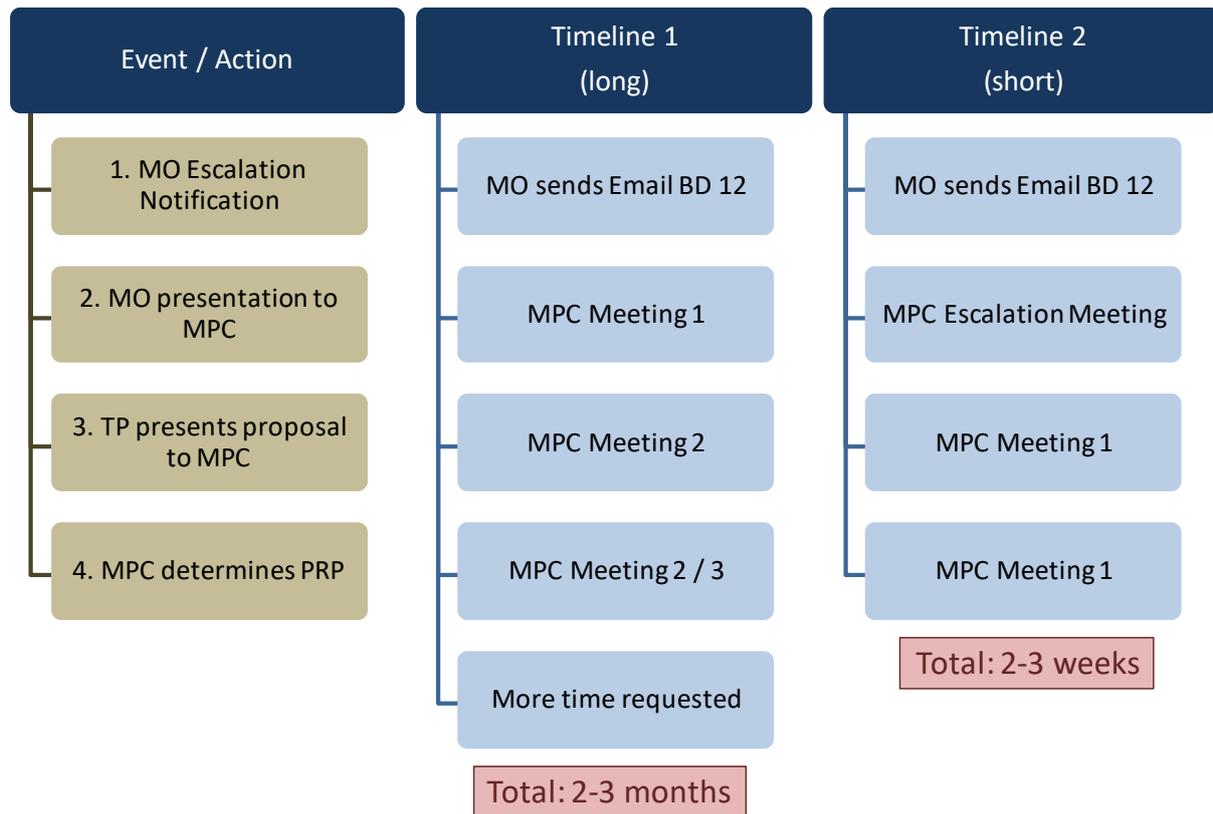
### A.II.i MO Escalation to MPC





## Appendix III: Indicative Timeline

### A.III.i Escalation from IPRP to PRP





## Appendix IV: Performance Resolution Casefiles

### A.IV.i Required contents

A casefile for a performance issue (“Performance Issue Casefile”) should provide context and the key elements of a performance issue. It shall consist of a set of appropriate evidence and an explanatory cover note. Evidence may include any of the templates referenced in this document, as well as any other additional materials, such as emails and meeting minutes. Any evidence should be relevant and clearly referenced in the cover note. The cover note should provide context and background to the performance issue and provide any explanation necessary for the evidence.

The following completed templates can, as appropriate, be included in a Performance Issue Casefile:

- Timeline of actions and decisions to date
- MO IPRP Performance Tracker
- TP Escalation Notification
- TP Confirmation of Receipt (MO Escalation)
- MPC Escalation Notification
- MPC Invitation to TP
- MPC Escalation Decision Letter
- TP Confirmation of Receipt (MPC Escalation)
- MPC PRP Determination Letter
- TP Confirmation of Receipt (MPC PRP Determination)
- MO PRP Performance Tracker
- Panel Escalation Notification
- Panel Invitation to TP
- TP Confirmation of Receipt (Panel Escalation Notification)
- Panel Escalation Decision
- TP Confirmation of Receipt (Panel Escalation Decision)
- Ofwat Escalation Notification
- TP Confirmation of Receipt (Ofwat Escalation Notification)

### A.IV.ii Storage and availability

The casefiles should be stored on a virtual format accessible only to the MO, MPC, Panel and Ofwat. The TP may request a copy of any casefile(s) related to their own performance issues from the MO but will not have direct access.