
Wholesale Retail Code & Market Arrangements Code Change Proposals – Ref CPW049 & CPM012

Modification proposals	Wholesale Retail Code & Market Arrangements Code Change Proposals – CPW049 & CPM012 – Operational Performance Standards Review
Decision	The Authority has decided to approve these change proposals
Publication date	28 February 2019
Implementation date	1 April 2019

Background

As set out in the Code Subsidiary Document 0002 (CSD0002), the Market Performance Framework (“MPF”) is intended to provide a level of confidence to Trading Parties and the Market Operator (“MOSL”) that those who are operating within the market are complying with their obligations, that risks to the Central Systems are managed and that there is continual improvement in the performance of the market to ensure its orderly operation.

There are a number of elements within the MPF that monitor and report performance in the market, against a range of pre-defined standards and timescales. The standards are broken down into the Market Performance Standards (“MPS”) and Operational Performance Standards (“OPS”). Retailer and Wholesaler performance is measured by the MPS, whilst the OPS solely measures Wholesaler performance.

The business retail market opened in April 2017, and for the first year financial charges in relation to a failure to comply with the MPS were suspended to allow time for Trading Parties and MOSL to ensure their processes were robust. As of 1 April 2018, Trading Parties became liable for charges for late or missed tasks covered by the MPS. Whilst MOSL do request data from Wholesalers regarding performance against OPS tasks, which is then summarised and published in a Peer Comparison Report on a monthly basis, late tasks falling under OPS do not currently receive a financial penalty (‘OPS Charges’).

In March 2018 CPW030 (Market Performance Framework for 2018/19) was implemented and following its implementation the Market Performance Committee (“MPC”) carried out a review. Following feedback received, it agreed to review the OPS framework including the timing of the introduction of financial penalties for poor performance by the end of the 2018/19 financial year.

In May 2018 the Operational Performance Standards Working Group (“OPSWG”) was established, which has a combination of both Wholesaler and Retailer members. The OPSWG has carried out work to identify issues, propose solutions and recommend improvements for implementation prior to, or in line with, the introduction of OPS Charges, with the aim that all Trading Parties will have confidence in the self-reporting of OPS by Wholesalers.

The issue

OPS and MPS form the two key standards of the MPF; under the MPS late or missed tasks are now liable for charges (‘MPS Charges’), and have been since the 1 April 2018. However, if a Wholesaler fails to complete a task on time under OPS, it would not currently receive a financial penalty. This is seen as disproportionate as Retailers undertake over 95% of all MPS tasks, and therefore bear a much higher risk of financial penalties. It has been noted that when an OPS task is completed late, it can have a direct impact on the customer experience and in some cases, can affect the relationship between a Retailer and its customer.

Therefore the proposals covers two areas of the OPS that have been highlighted by Trading Parties as requiring review;

- i) Standardisation of Reporting – currently there is a lack of clarity within CSD0002 and the Operational Terms around reporting, as it leaves open for different interpretations on the manner in which OPS should be reported; this is a concern raised by various Wholesalers. Currently there are various approaches taken when self-reporting OPS performance, which raises issues with data assurance. There is a clear requirement for a standardised consistent approach to be adopted by all Trading Parties.

There are issues with the monthly OPS Peer Comparison Report published by MOSL due to the lack of standardised reporting, which has caused problems with the transparency of this report and performance analysis. Increasing the confidence that Trading Parties have in the

fairness and transparency of this report is considered to be important to drive and incentivise good performance and behaviours.

- ii) Introduction of OPS Charges for late tasks – following the initial review of the MPF by the MPC, it found Retailers felt strongly about what they believed to be an inequality between the implementation of MPS Charges, whilst there are no similar OPS Charges. Retailers also voiced discontent over MPS failures and consequent MPS Charges as a direct result of a Wholesaler’s failure to complete an OPS task within the CSD0002 timescales, resulting in a financial loss for the Retailer and negative end-customer experience.

Some concerns were raised regarding the introduction of OPS Charges. It was suggested that this could potentially perversely drive the wrong behaviours. However, it is also noted that this argument could have been applied for the introduction of MPS Charges. The initial indication is that MPS Charges for Wholesalers has resulted in a substantial improvement in performance. It has been suggested that this is because of increased scrutiny by different departments within each Trading Party.

The modification proposal¹

Standardisation of OPS reporting methodology

There is a clear need for a standardised consistent approach to be adopted by all Trading Parties, as mentioned above the various approaches taken when self-reporting OPS performance, raises issues with data assurance and transparency. Two separate methodology documents have been produced to satisfy the requirements for the Market Operator to provide guidance² and to ensure standardisation of reporting:

1. Generic reporting guidance is provided on areas such as Business Day start and end times, and the manner in which non-business days should be reported. This document also provides more in depth guidance on the recording of deferred and rejected tasks, which will provide greater standardisation and confidence in data assurance. This generic reporting

¹ The proposals and accompanying documentation are available on the MOSL website at <https://www.mosl.co.uk/market-codes/change#scroll-track-a-change>

² The proposed drafting of CSD0002 requires the Market Operator to provide guidance on the calculation of tasks with a Permitted Deferral (section 4.2.5), guidance on standardised deferral codes (section 4.2.6) and standardised rejected codes (section 4.2.8)

guidance document was produced to align with the MPS reporting and Market Terms, where possible.

2. The second methodology document provides clearer reporting guidance on individual OPS tasks.

Assurance of OPS reporting methodology

It is proposed that the 'Peer Comparison Report Guidance' document is amended to facilitate the additional data required when reporting. This data includes reporting the number of tasks in period into distinct categories: started, completed with deferred timescales and rejected. The MPC believes the additional data being collected will help facilitate assurance, however it recommends that MOSL continue to develop its approach to reporting analytics, audit and performance resolution.

OPS Charging Framework

The lack of detailed transactional reporting restricts the level of complexity that can be applied to the OPS charging framework, however the proposals aim to bring the OPS charging levels into alignment with the MPS charging framework. Several charging methods were discussed, such as a multiple time parameter stepped method similar to that used with the MPS, but it was concluded that aggregated reporting and charging on completion would make this approach unpractical at the present time.

It is proposed that there will be a single charge, at the time of a Key Performance Indicator ("KPI") failure. A charge of £40.00 would be applied to all standards excluding G4, which corresponds to the Wholesaler MPS level 3 charge. It is proposed that there will be no charge for G4, and this will be in place pending a review in the second half of the 2019/20 financial year. The rationale behind the decision to propose setting the OPS Charge at £40.00 was:

- i) The introduction of the OPS Charge has been requested as soon as possible by Ofwat and many Retailers. It was deemed that setting the charge at the maximum Wholesale MPS Charge ensured simplicity and given the work undertaken around introducing standardisation of OPS reporting, this allows for a charging regime to commence at the beginning of the next financial year.
- ii) When OPS Charges are in place, the reporting mechanism will not take into account recurring charges. Therefore a task that transitions from 'late' to 'extremely late' will not receive an additional charge. The Final Report indicates that in the absence of an ability to derive a more complex

charging framework, it was agreed the level of the OPS Charge would ensure all late tasks would incur a material financial penalty.

It is proposed that there will be a two-stage time parameter reporting method, with the aim of ensuring extremely late tasks remain visible and maintain their level of importance to be completed. The two-stage time parameter is:

- i) Tasks completed 'extremely late' – any OPS task which is completed in double (or higher) the number of Business Days specified in the relevant KPI.
- ii) Outstanding 'extremely late' tasks – any OPS task which is outstanding at the end of the relevant reporting period (excluding time for permitted deferrals), and is double (or higher) the number of Business Days specified in the relevant KPI.

It has been noted that due to the market having a precedent in allowing a non-charge period for new reporting, 'extremely late' OPS tasks would fall under this and therefore an OPS Charge would not apply to these. The request for information responses raised concerns over the lack of additional charges for extremely late completed tasks. However, as these tasks along with extremely late outstanding tasks will form part of the Peer Comparison, it is believed completing tasks in a timely manner will lead to an increase in the reputational incentive placed on the relevant parties. When transactional reporting is available, it has been suggested that the introduction of a tiered charging structure should be re-examined.

It is also proposed that there is no cap on the number of late tasks which OPS Charges apply to. This is because there is an overall lower volume of OPS tasks compared to the MPS tasks, and Wholesalers have the ability to defer tasks in certain circumstances and there is a potential impact of poor Wholesaler performance on Retailers. However, should the volume of chargeable tasks significantly increase, or aspects of the charging framework change, this may require further review.

MPC decision on the Redistribution of Operational Performance Standards Charges

The redistribution of OPS Charges to Wholesalers has not been included within the proposals due to concerns raised on Wholesaler performance incentives in Ofwat's recent [Call for Inputs \(CFI\) on Strengthening wholesaler performance and service in the business retail market](#). Due to the potential issues that may arise with charging, the MPC were drawn towards recommending against redistribution at the earliest point, whereas the OPSWG looked to follow redistribution in line with CPM008, and

the eventual redistribution mechanism relating to MPS. However, the MPC now have time to consider the options available prior to the redistribution of OPS Charges in April 2020. The MAC states there shall be a review to determine the redistribution or alternative use of surplus OPS Charges, which begins no more than three months after the introduction of OPS Charges, and it will conclude no later than nine months after the introduction of OPS Charges.

Proposed Initial OPS Performance Measure Improvements – Trade Effluent

It is proposed that two new operational processes are included in the Operational Performance Standard framework;

- G2: Application for a Trade Effluent Consent Step 7
 - To be included in aggregated Peer Comparison and be subject to OPS Charges, in line with existing OPS standards (excluding Process A); and
- G4: Trade Effluent Monitoring A: Routine sampling Step 3 and B: Non-routine sampling Step 2
 - To be reported on separately for Peer Comparison purposes and will have an OPS Charge of zero imposed, pending a review in the first half of the 2019/20 financial year.

Although it is proposed that process G4 is included in the monthly Peer Comparison Report, it was agreed that the high number of Trade Effluent Monitoring sample results may distort the OPS figures. Also, due to the higher volume of actual sample results, it was argued that this could be a disproportionately high part of overall OPS performance and therefore could distract from performance areas with the most direct customer impact. It will be beneficial to have a period of embedding prior to the decision on the implementation of OPS Charges being made in respect of process G4.

Invoicing

It is proposed that OPS charges are invoiced 9 Business Days following the end of relevant month; the Wholesalers will then have 20 Business Days after the date of the invoice to make payment. It is believed that these timeframes are proportionate, and require no significant additional resourcing requirements from the Wholesalers. Wholesalers will be required to submit OPS Performance data within 6 Business Days of the end of the relevant month.

Therefore, in order to facilitate the implementation of the change proposals to amend the OPS framework in order to provide greater standardisation of reporting and to

introduce charges for missed KPI's, it is proposed that changes are made to the following:

- Code Subsidiary Document 0002: Market Performance Framework

Sections Affected: Definitions, Section 1.4, Section 4, Table 2 Section 4, and Section 5.4.

- Wholesale Contract Schedule 1, Part 3: Operational Terms

Sections Affected: Process H1 (Part 4), Process C5 (Step 4) and Part I Disconnections.

- Market Arrangements Code

Sections Affected: Section 9 and Section 9.2.2

Industry consultation and assessment

A Request for Information was issued by the Panel on 2 November 2018 and closed on 16 November 2018. There were a total of 22 respondents, 13 were Wholesalers, eight Retailers and the Consumer Council for Water ("CCW").

Out of the respondents, 11 Wholesalers and eight Retailers agreed that the proposed reporting methodology was adequate to provide sufficient clarity and standardisation of OPS reporting. One Wholesaler stated the changes to the reporting methodology made it much more clear and concise, therefore leaving the processes far less open to interpretation than before. All Retailers welcomed the changes with one stating it removed the ambiguity around reporting, which previously deemed the peer comparisons meaningless. Two Wholesalers and CCW disagreed, with one Wholesaler raising concerns around assurance, stating that in order to provide further assurance an independent audit should be carried out to check Wholesaler compliance with the reporting parameters.

When asked whether they agreed that the proposed additions to the OPS data submission template will support assurance through transparency, 12 Wholesalers and seven Retailers agreed. The majority of those in agreement stated the revisions to the template would provide transparency and assurances that OPS tasks were all being recorded in the same way. One Wholesaler believed the additional data being requested i.e. requests that are cancelled, deferred, or extremely late, would assist

in capturing a better view of the customer experience. Three Trading Parties disagreed, with one Retailer stating the lack of independence in the reporting was a barrier to transparency, and went on to suggest a methodology should be developed for MOSL to monitor and report, rather than relying on self-reporting methodology for the OPS.

Two Wholesalers envisaged substantial difficulties in collating the additional data required, using the proposed OPS data submission template, with one raising concerns over the scenarios in which reporting would be required, the other Wholesaler stated system changes would be required as items such as 'deferred timescales' are not currently captured. The other 18 Trading Parties did not see any major difficulties in collating the additional data, with many suggesting there would be changes to their reporting systems, albeit minor changes.

When asked whether bringing the deadline for OPS submissions forward to the 6th Business Day of the Month would cause any substantial issues, four Wholesalers believed it would, citing time constraints to conduct internal assurance of the reported results. 17 Trading Parties indicated that they would have no issues with the submission date being brought forward, although one Wholesaler who had no issues did state that it was mindful of Trading Parties with larger volumes of data to collect.

Two Wholesalers and two Retailers disagreed with the proposal for late OPS tasks being charged at a single point of failure, aligning to current code KPIs, and therefore 'extremely late' reporting measures to not be charged at this time. A Wholesaler stated this method might disincentivise Trading Parties from resolving an item once it becomes overdue, and instead allocating resources to work on other items which were still within the relevant SLA. 17 Trading Parties agreed, however one Retailer who agreed with the proposed OPS Charge expressed concern that while a Retailer could be subjected to an 'extremely late' fail as a direct result of a Wholesaler's 'extremely late' fail, the Wholesaler would not be subject to the same charge that the Retailer would, therefore there are inconsistencies between Retailers and Wholesalers priorities.

Four Wholesalers and one Retailer did not agree with the OPS level charge being set at £40, with the general feeling that the OPS charge should be set to a lower MPS level, with one Wholesaler believing that the OPS Charge should mirror that of the MPS meaning £40 should be for an 'extremely late' fail. Of the 17 Trading Parties that agreed with the proposed OPS Charge level, one Wholesaler did state that if a charge was introduced for an 'extremely late' task, the proposed OPS Charge of £40 for late items should be reassessed.

When asked whether it agreed that charging should be suspended for the proposed new OPS measures G4A and G4B, 12 Wholesalers and 4 retailers did agree, with one Wholesaler agreeing with this approach as it was consistent with the approach taken with MPS. Six Trading Parties disagreed, with Retailers suggesting the market had been open for a significant period already, and therefore all Trading Parties should be equipped to apply these new measures.

All Retailers (with the exception of one who did not respond, as it believed this question was non-applicable to its organisation) and 11 Wholesalers agreed that any redistribution of OPS Charges should be set to align with the MPS process, pending a formal review once sufficient data is available. A Wholesaler added in light of the interdependencies between MPS and OPS, along with the non-discriminatory market objective, it was in support of the decision for the redistribution of both OPS Charges and MPS Charges under the same approach for 2019/20. Two Wholesalers disagreed, with one suggesting the charge should be given back to the affected Retailer, while the other recommended that the charges should be used to fund market change in order to improve the customer experience. As stated above, the proposals do not make a recommendation in respect of the redistribution of OPS charges, due to the MPC noting concerns raised on Wholesaler performance in Ofwat's recent CFI. The MPC felt more time to consider the options for redistribution of OPS Charges, prior to redistribution in April 2020 was the best option.

Respondents were asked whether they agreed with the proposed addition of Trade Effluent measures G2 Step 7, G4A Step 3 and G4B Step 2 for OPS reporting, and asked if they had any further comments on the separate reporting of G4A and B. Nine Wholesalers and eight Retailers agreed with the proposed additions, one Wholesaler believes the inclusion of these measures will increase the focus within this area and encourage greater accuracy of data. Four Wholesalers did not agree, two of which solely because they were water only companies; both of the remaining Wholesalers stated they agreed with the addition of G2 measures, but not those of G4, with one Wholesaler explaining it is not consistent with the other measures being introduced.

The majority of Trading Parties (eight Wholesalers and five Retailers) did not believe the red-lining proposed changes in the legal documents required any further amendments. Five Wholesalers and three Retailers did believe further changes were required, two respondents picked out specific sections within CSD0002 where the OPS Charge of £40 had not been updated – this has since been rectified. Some of the other responses made reference to the methodology not being incorporated into CSD0002, however the MPC did this deliberately as it wanted to gauge the appetite for change prior to reflecting it within CSD0002.

Ten Wholesalers and seven Retailers agree that the proposed methodology should be refined and incorporated into the WRC and MAC. There was a theme in the responses for there to be consistency throughout and no uncertainty around the reporting obligations, with a Wholesaler continuing to state if the methodology is not incorporated into the codes it will risk being considered as best practice or optional. Three Wholesalers and one Retailer did not agree, one Wholesaler disagreed as it felt the methodology may require constant updating and review, therefore it should be referenced within CSD0002, but should sit as a standalone document outside of the codes.

When asked whether it believed the correct approach is that assurance is substantially the responsibility of the Wholesaler reporting the information, with limited external scrutiny, there was a split opinion on this with the majority of Wholesalers agreeing and the majority of Retailers disagreeing. Nine Wholesalers and three Retailers agreed, with one Retailer stating that although they agreed with the principle of giving the Wholesalers responsibility, it believed that there should a mechanism to give external assurance that the information provided by Wholesalers is accurate, and went on to provide the following suggestions:

- The introduction of a mechanism whereby Retailers are able to ‘challenge’ data, if they feel there is a discrepancy between actual and reported performance.
- Using the MPS approach as an example, where Wholesalers are underperforming, MOSL should seek ‘Performance Rectification Plans’.

A Wholesaler also pointed out that an external body carrying out additional assurance would only be of limited assistance, due to the lack of knowledge and understanding of the systems and processes by the external body which would be required to assure them. For the four Wholesalers and five Retailers who opposed the self-assurance approach, they generally believed an external audit would be the best way to ensure compliance.

The majority of respondents (11 Wholesalers and eight Retailers) agreed that invoicing dates and payment terms for OPS Charges should be aligned to the current market arrangements for other charges payable in arrears. The main theme amongst those who agreed was that it would add consistency and efficiency to the process if it fell in line with current payable MPS charges. Of the two Wholesalers that disagreed, one suggested OPS Charges should be invoiced on a quarterly basis due to the relatively low charges associated with OPS.

When respondents were asked to highlight the main concerns they envisaged with the proposed implementation date of 1 April 2019, internal systems and processes appeared to be at the top of the list, with estimations of a potential three month

period required. The potential introduction of 'Bi-lateral solutions', and a clash of the dates was also put forward as a concern. However eight Wholesalers and 6 Retailers did not envisage any issues with the implementation date.

Future OPS performance measure improvements

The OPSWG believe that the initial changes included within the proposals will introduce an improved reporting methodology, with more in depth and standardised data. When combining this with the introduction of charges, it believes that there will be an improvement in the market performance and Retailer/customer experience. A further OPS review is recommended to be conducted during the 2019/20 financial year, in order to address outstanding improvements that have been omitted from these change proposals. It is also suggested that this future review may take into account the effectiveness of the standards themselves.

The OPSWG has stated there was a unanimous agreement within the working group that a move to transactional reporting would be greatly beneficial. This is because it would increase the reliability of Peer Comparison reports, allow on-going assurance and for more detailed performance analysis and permit a bilateral charging framework between Wholesalers and affected Retailers.

It is also recommended that within the code a process is defined which allows for transparent bilateral agreements between Wholesalers and Retailers where there is a single large quantity of OPS tasks. However, relevant Trading Parties should have complete discretion over any bilateral agreements, with no obligation for the Retailer to enter into negotiated timescales; however this should be monitored by MOSL for transparency, and with the MPC providing governance.

Panel recommendation

The Panel considered these change proposals at its meeting in December 2018. It recommended, by a unanimous decision, that the Authority approve these proposals on the basis of improving the principles of efficiency, proportionality, transparency and the operational terms objective. The recommended date of implementation is 1 April 2019.

Our decision

The single-charge level of £40 was a concern raised by a number of respondents. When considering the level of the OPS Charge the OPSWG took into account feedback received from Wholesalers and Retailers, who identified that the OPS in general has more impact on customers than MPS. Therefore the OPSWG took the view that any charge imposed should at least be equal to MPS Charges. We agree with this approach as no evidence has been provided to demonstrate the charging figure should be set any higher, or lower than £40. However we feel the proposed OPS Charge is a short term solution, and there is clearly a need for consideration of an appropriate method which ensures that charges are also applied to 'extremely late' tasks. Similarly the proposed reporting but non-charging relating to G4A and G4B we agree should be reviewed following the collection of a full three months' worth of data.

Although there were some concerns raised over challenges with the collection of the reasons behind why tasks were deferred and rejected, we support the recommendation for Wholesalers to record this reasoning, and feel this could be made a requirement in the codes at the next OPS review point. The information obtained behind the reasoning for why tasks are deferred or rejected will also support the MPC's IPRP/PRP process as the MPC would in theory be able to approach a Trading Party and request this type of data in order to gain a better understanding of poor performance and if tasks are being unfairly rejected by Wholesalers, which could result in Retailers failing to hit certain MPS task deadlines.

Several respondents expressed disappointment at the scope of the proposed changes, stating that the proposals did not provide a sufficiently holistic view of Wholesaler performance and suggested that further work in this area was urgently required. We strongly support the OPSWG in their view that a further review should be carried out in the financial year 2019/20, as there is scope for further improvements to the OPS which could include the addition of new metrics. The MPC are yet to make a decision on the redistribution of OPS charges, and we will await confirmation of how the funds will be used.

We have considered the issues raised by the modification proposals and the supporting documentation provided in the Panel's Final Report. In conclusion we support the implementation of CPW049 & CPM012, as it will better facilitate the MAC Code Principles, the principles and objectives of the WRC detailed in Schedule 1 Part 1 Objectives, Principles and Definitions and is consistent with our statutory duties.

However, we have considered the legal drafting provided by the Panel that accompanied the Final Report and have found typographical errors. We have notified MOSL regarding the errors, and MOSL have advised us they will consider and correct prior to the publication of our decision.

Reasons for our decision

We set out below our views on which of the applicable Wholesale Retail Code and MAC principles are better facilitated by the modification proposals.

Efficiency

The proposed changes would increase efficiency and coordinated cooperation between Wholesalers and Retailers. The introduction of OPS Charges would result in improved incentives, which Wholesalers would positively affect Wholesaler behaviour.

Proportionality

Along with increasing the alignment between the MPS and OPS framework, and modelling the OPS framework on the existing MPS model, the new obligations and charges of a Wholesaler are realistic and well balanced.

Transparency

Wholesalers will be required to report with greater clarity, which will result in improved confidence in the OPS Peer Comparison report generated by MOSL.

Decision notice

In accordance with paragraphs 6.3.7 and 7.2.8 of the Market Arrangements Code, Ofwat approves these change proposals.

Emma Kelso
Senior Director, Customers and Casework