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## Market Arrangements Code Change Proposal – Ref CPM013

<b>Modification proposal</b>	CPM013 – Voting Customer Representative
<b>Decision</b>	The Authority has decided to approve this Change Proposal with modifications
<b>Publication date</b>	5 September 2019
<b>Implementation date</b>	20 September 2019

### Background

The Market Arrangements Code (MAC) provides details on how the Panel is to be constituted. The Panel currently comprises of 13 voting members of which there are three representatives for each of the following categories: Wholesaler, Associated Retailer, Unassociated Retailer and Independent. These voting members are in addition to the Panel Chairman, who under current practice usually abstains from voting.

There are also Affiliated Members of the Panel, including a Customer Representative. As an Affiliated Member, the Customer Representative is entitled to attend and speak at Panel meetings, but they are not currently entitled to vote. The Customer Representative Affiliated Member role is currently fulfilled by the Consumer Council for Water (CCWater).

### The issue

In January 2019, at a Panel workshop, it was identified that there should be increased focus on the customer when the Panel is making decisions. As outlined above, the current voting membership of the Panel does not at present include specialist customer representation.

This proposal was developed to strengthen the focus on customers in Panel discussions and decision making.

## **The modification proposal<sup>1</sup>**

To emphasise the importance of the customer voice as part of the governance arrangements, it is proposed that section 5.3 of the MAC is amended to include a Customer Representative Panel Member, defined as:

“the Qualified individual nominated from CCWater, or any successor organisation to CCWater, and appointed by the Panel Chairman to represent the views of Non-Household Customers”.

As with Independent Panel Members, the Customer Representative Panel Member must be Qualified, meaning that they are “an appropriate expert with relevant experience of similar market operator functions and/or utilities markets and having the requisite skill and experience to perform the role envisaged”.

The Customer Representative Panel Member:

- Will be able to vote (reference to the Customer Representative as an Affiliated Member will be removed from the MAC);
- Will comply with section 5.7.1 requirements, as all other Panel Members are required to. For example, it must act impartially and without regard to the particular interests of the company, body or person by whom he was nominated, elected or appointed to be a Panel Member; and
- Will not affect quorum, although it is expected that they will attend most Panel Meetings.

The requirement that the Panel must consult with the Customer Representative (for example, through requests for information) when considering and evaluating Change Proposals has been amended so that the Panel must consult the Customer Representative Panel Member instead.

## **Industry consultation and assessment**

It was decided that an industry consultation would not be undertaken for this Change Proposal. The reasons provided in the Final Report include that the change:

- does not directly impact on Trading Party systems or processes;
- has minimal impact on Market Operator costs;

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

- is not contentious but rather an evolution in the market that exists for customers; and
- relates to internal Panel governance.

CCWater was consulted on the proposed change. It agreed that the customer voice is already represented on the Panel, however considered that this change would strengthen this. CCWater provided some caveats to its support for this change. It highlighted that it must be able to abstain from voting where the customer impacts are unclear or it is clear that there is no customer impact. It should be noted that all Panel Members are entitled to abstain from voting and doing so shall not be counted as a negative vote. CCWater also stated that it must not be constrained as a result of this change from being able to comment on issues of market performance, the work of the Panel and all other areas of the open market in relation to customers. The sub-group noted that the Panel and Committee External Communications Policy would apply to the Customer Representative Panel Member. However, if that individual is speaking on behalf of CCWater, as opposed to the Panel, this is not applicable.

### **Panel recommendation**

The Panel considered this Change Proposal at its meeting on 23 July 2019. It recommended that the Authority reject this proposal. Seven Panel Members voted in favour of the proposed change, two voted against and there was one abstention.

The Final Report states that the Panel Members who did not vote to recommend the Change Proposal for approval said that:

- They did not consider that the proposed change would bring any additional benefit and that there is no evidence of a lack of recognition of customer impacts at the Panel;
- Introducing a Customer Representative Panel Member that is able to vote “dilutes the votes of Panel members employed within the industry, by creating a fourth “non-industry” voting Panel member”;
- The Change Proposal significantly alters the Panel’s representation and voting arrangements. It was argued that this could have a direct effect on the costs borne by Trading Parties and therefore, they should be consulted;
- They had concerns over CCWater abstaining from votes where they did not consider there is a customer impact. It was stated that as a voting Panel Member they should vote and comment on all matters regardless of the customer impact.

If the Authority decides to approve this change, the recommended date of implementation is 30 September 2019.

## **Our decision**

We have considered the issues raised by the modification proposal and the supporting documentation provided in the Panel's Final Report. We have decided to approve this Change Proposal with modifications. We have concluded that the implementation of CPM013 will better facilitate the principles of the Market Arrangements Code (MAC) detailed in Schedule 1, MAC Principles and Definitions, and is consistent with our statutory duties. We have decided that the date of implementation will be 20 September 2019 to enable the Customer Representative Panel Member to vote at the next Panel meeting which is due to be held on the 24 September 2019.

## **Reasons for our decision**

We detail below how we think this Change Proposal could have a positive effect on the market. However, amendments to the proposed legal drafting are required to fulfil the policy position set out in the Change Proposal. Appendix 1 sets out the changes that must be made to the legal drafting.

Firstly, the Final Report includes commentary on why the requirement to obtain the view of the Customer Representative Panel Member during the consultation period is included. The Final Report states that it is considered that the clause increases the obligation for the Customer Representative Panel Member to provide a view on any customer impact, and also maintains the status quo.

We believe that the interests of current and future customers are very closely aligned with the best interests of the market as a whole. This is because markets are not an end in themselves - they are a means to delivering better outcomes for customers. However we note that the Panel and Committee External Communications Policy would apply to the Customer Representative Panel Member but not the Customer Representative. Therefore we propose to maintain the status quo where the Customer Representative (and not the Customer Representative Panel Member) is consulted when considering and evaluating Change Proposals.

Secondly, we have amended the proposed drafting of the definition of Customer Representative Panel Member as the proposal, in effect, provided two definitions – one within the Schedule 1, and the second at paragraph 5.6.11. To follow previous drafting protocols within the MAC, we consider that the definition within Schedule 1 should cross refer to that at 5.6.11, where the majority of the information is detailed.

We have considered the reasons provided by the two Panel Members that voted against recommending the proposal for approval. These Panel Members did not think that this Change Proposal would bring any additional benefits. It is our view that

adding a Customer Representative Panel Member has the potential to strengthen the focus on the customer voice in Panel's decision making. Customers are not homogenous so customer interests can vary between different types of customers – for example between current and future customers and between different groups of customer. Assessing the impact of a decision on customers overall can therefore be a challenging exercise. Whilst all Panel Members must act impartially and in the best interests of the market as a whole, they contribute different knowledge and experiences to their roles as Panel Members. The Customer Representative Panel Member will be an individual nominated from CCWater who can not only share their specialist knowledge and understanding of customers in the water sector with other Panel Members, but also draw on this to inform their own vote.

The two Panel Members that were not in support of the proposed change suggested that introducing another non-industry voting Panel Member dilutes the votes of those that are employed in the industry. It was their view that the Change Proposal significantly changes the Panel's representation and voting arrangements which can have a direct effect on the costs borne by Trading Parties and therefore Trading Parties should be consulted. Markets are a means to delivering improved outcomes for customers. Having a voting member who can bring specific background knowledge of customers can add value and a valuable perspective. As the Customer Representative Panel Member will be nominated by CCWater and must be 'Qualified', they will be familiar with how the market works and issues that customers may face. It is our view that any such a Panel Member is very much a part of the industry.

In relation to the concerns raised that the Customer Representative Panel Member may abstain from voting where they do not consider that there is a customer impact, it should be noted that all Panel Members have the right to abstain from voting. Abstention shall not be counted as a negative vote. The role of a Panel Member as set out in section 5.7 of the MAC will be applicable to the Customer Representative Panel Member as it is to all other Panel Members. Further, the voting mechanism has been amended (via implementation of [CPM016 in August 2019](#)) to a simple majority plus one mechanism for most Panel decisions. The change in the voting mechanism makes it likely that abstention will not have the same impact that it could have done under the previous Qualifying Majority mechanism. This is because even if a number of Panel Members abstain (and thus reducing the number voting to less than the 10 that would have been needed for a Qualifying Majority), it is no longer necessary that there is unanimous agreement before a decision can pass. It is now the case that a simple majority plus one of the voting Panel Members would need to have voted the same way for the decision to pass. That said, all Panel Members are expected to engage fully and actively in the matters before them and in practice we expect abstentions to be applied only in exceptional cases.

Overall, we consider this Change Proposal to be a positive first step to ensuring that customer impacts are brought out more explicitly in Panel discussions and decision making. However we agree that in and of itself, approval of this Change Proposal is unlikely to be sufficient to achieve this goal. Therefore we recommend the Panel considers what further steps may be required to ensure that customer impacts (including the impacts on different types of customer where appropriate) are brought out more explicitly in Panel discussions and decision making. Given the significance of this issue we suggest the Panel considers this as a matter of priority.

We have set out below our views on which of the code principles are better facilitated by the modification proposal.

### **Customer Participation**

We agree with the proposer's view that this Change Proposal furthers the principle of customer participation. This is because the Customer Representative Panel Member will be an individual nominated by CCWater and therefore they will be in a position to use their expertise and knowledge to help the Panel understand how Change Proposals could impact customers and will have a vote which can be used to influence the change process. This is a positive first step to ensuring that customer impacts are brought out more explicitly in Panel discussions and decision making. But it is our view that more needs to be done to achieve this goal.

### **Decision notice**

In accordance with paragraph 7.2.8 of the Market Arrangements Code, the Authority approves this Change Proposal with modifications.

**Georgina Mills**  
**Director, Business Retail Market**

## **Appendix 1 – Amendments to the proposed legal drafting**

### **Section 6, paragraph 3.3(b)**

The proposed amendment is not accepted. The current drafting is retained as:

“without prejudice to Section 6.3.3(a), obtain the view of the Customer Representative on the Change Proposal or Charging Change Proposal”.

### **Section 7, paragraph 2.3(b)**

The proposed amendment is not accepted. The current drafting is retained as:

“without prejudice to Section 7.2.3(b), consult with the Customer Representative on the Market Arrangement Code Change Proposal”.

### **Schedule 1, paragraph 2.6**

The deletion of the definition of Customer Representative is not accepted. The current drafting is retained as:

“the individual nominated by the Authority from time to time to represent the views of Non-Household Customers, which may be an individual from CCWater or any successor organisation to CCWater”.

The proposed new definition of “Customer Representative Panel Member” is amended to:

“the member of the Panel appointed by the Panel Chairman in accordance with paragraph 5.6.11;”