
Wholesale-Retail Code Change Proposal – Ref CPW068 Market Arrangements Code Change Proposal – Ref CPM017

Modification proposal	Wholesale-Retail Code Change Proposal – CPW068 and Market Arrangements Code Change Proposal – CPM017 – Market Incident Management Plan Committee Revisions
Decision	The Authority has determined that it cannot properly form an opinion on the approval of the Change Proposals and requests that the Panel revise and resubmit a Final Report
Publication date	2 October 2019

Background

The Market Incident Management Plan is set out in Code Subsidiary Document (CSD) 0007 (Business Continuity Management) and is a documented plan of action for use at the time of an incident which affects, or has the potential to affect, the overall market functioning. It covers the key personnel, resources, services and actions needed to implement the incident management process.

In order to strengthen business continuity, the Market Incident Management Plan Committee (MIMP Committee) was established in 2017 to support the Panel in overseeing the Market Incident Management Plan. The MIMP Committee also provides governance processes surrounding major incident planning and the Business Continuity Management Framework.

The issue

The Final Report issued to the Authority states the issue as:

“Currently, previous members of the MIMP Committee have refrained from invoking their option to retain their position as members of the MIMP Committee.

A further two subsequent requests have been made to trading parties, in which only one nomination was received. Currently, 5 positions remain open.

It is the view of the Proposer that the lack of engagement from trading parties is due to:

- Original requests were made to Contract Managers to join the Committee, who may not be fully experienced in the needs of business continuity;
- Actual Business Continuity and Disaster Recovery leads not being fully aware of the availability of the positions;
- The need for a sub-group of the MIMP Committee to form the Incident Management Group that will have strategic responsibility for the managing of any invocation of the Market Incident Management Plan.”

The modification proposal¹

The Final Report states at section 3.1 that the proposed solution is as follows:

“In order for the Market Incident Management Plan Committee to fulfil its intended objectives, the following solutions are proposed:

- Remove specific obligations in the market codes to ensure greater flexibility for the Market Operator to be able to fulfil its objectives in providing market-wide assurance that the Market Incident Management Plan remains fit-for-purpose via the Market Incident Management Plan Committee.
- The Terms of Reference (TOR) for the MIMP Committee to be the centralised document which details the requirements and obligations for the MIMP and its committee members.
- The intended MIMP Sub group (as specified in the MAC) obligations are to be removed from the MAC and replaced with the ‘Market Operator Gold Command’ team (in the TOR) to relieve burden on Trading Parties during an incident and to allow for them to focus on their needs in case of an incident

It is proposed that all of the requirements and obligations of the MIMP Committee which are currently defined in both the MAC and CSD0007 are removed and that all incidents (whether specific to MOSL or the wider-market) are strategically managed via a ‘Market Operator Gold Command’ team. The Market Operator Gold Command is currently chaired by the Market Operator’s Director of Market Performance and

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

Operations. It is intended that the requirements and obligations of the ‘Market Operator Gold Command’ team will be added to the revised TOR.”

At section 3.4, the Final Report concludes that:

“The MIMP Committee Terms of Reference will also be updated to align with the proposed changes to the MAC and CSD 0007. The revised TOR will become the centralised place in which the MIMP Committee’s obligations will be employed. The Market Operator would like to retain the MIMP Committee as an Additional Panel Committee, but for requirements to be defined by the TOR only, in a manner similar to that of the General Data Protection (GDPR) Issues Committee.”

Industry consultation and assessment

The Panel did not consult on this Change Proposal.

Panel recommendation

The Panel considered this Change Proposal at its meeting on 25 June 2019. It recommended, by a unanimous decision, that Ofwat approve this proposal on the basis of improving the principles of proportionality and transparency. The recommended date of implementation is 30 September 2019.

Our decision

We have considered the Final Report and the additional documentation provided to the Authority. For the reasons detailed below, the Authority has determined that it cannot properly form an opinion on the approval of the Change Proposals and requests that the Panel revise and resubmit a Final Report.

Reasons for our decision

The Authority is supportive of changes to the MAC and WRC that resolve the ongoing problems with the membership of the MIMP Committee, and agree that it is important that arrangements are put in place so as to manage an incident of this nature effectively.

However, having carefully considered all of the information presented to it, it was unable to establish exactly what issue the proposal seeks to address, and how the

solution addresses it. For example, it is not clear why the MIMP Committee roles cannot be filled, and how the proposed solution will resolve this. Further, it is not clear whether the intention is to remove the MIMP Committee or retain it in some form, and in which case what it will be required to do.

The Authority found little or no rationale in the Final Report as to why the proposed changes were required, and what alternatives (and evidence) had been considered that enabled the conclusion to be reached that the solution presented was the best option. For example, it is not clear why the governance arrangements for the MIMP Committee have been removed from both the MAC and the TOR, and what role it would take on as an Additional Panel Committee. Further, it is unclear how the conclusion was reached that the MIMP sub-group should be replaced by the Market Operator Gold Command team, and why it is necessary to remove current procedures in their entirety from the MAC to achieve this, rather than amending them.

The Authority considers that any proposed amendments to the legal drafting require review to ensure that they line up with the proposed solution, and other parts of the relevant code.

Decision notice

In accordance with paragraphs 6.3.8 and 7.2.7 of the Market Arrangements Code, Ofwat determines that it cannot properly form an opinion on these Change Proposals and requests that the Panel revise and resubmit a Final Report.

Georgina Mills
Director, Business Retail Market