
Wholesale Retail Code and Market Arrangements Code Change Proposal – Ref CPW092 and CPM029

Modification proposal	Wholesale Retail Code and Market Arrangements Code Change Proposals – CPW092 and CPM029 – Unified Disputes Process and Committee
Decision	The Authority has decided to approve this Change Proposal with modifications
Publication date	26 October 2020
Implementation date	13 November 2020

Background

Currently the Market Arrangements Code (“MAC”) sets out four types of disputes for which there are different processes:

Trading Disputes: any query or dispute arising under the Wholesale-Retail Code (“WRC”) as to the existence, nature or effect of any errors in or omissions from any Data Item. These Disputes relate to settlement.

Non-Trading Disputes: any dispute among two or more Trading Parties relating to the WRC, that is not a Trading Dispute, Market Arrangements Code Dispute or Market Operator Dispute. Non-Trading Disputes may for example relate to non-compliance concerns or disagreements between Trading Parties that do not affect Primary Charges.

Market Arrangements Code Disputes: any dispute between Trading Parties or the Market Operator and one or more Trading Parties in respect of an act or omission of a Trading Party relating to the MAC. These disputes relate to concerns about non-compliance with the MAC.

Market Operator Disputes: any dispute raised by a Wholesaler or Retailer against the Market Operator for the reasons set out in section 5.3 of Schedule 1: Part 4: Market Terms of the WRC, for example if the Market Operator does not provide its proposed rectification plan within specified timeframe, where there are issues regarding the rectification plan or implementation of the rectification plan. A Market Operator Dispute could arise for example, where a Wholesaler

and Retailer agree that has been Inaccurate Settlement but the Market Operator does not agree.

The MAC sets out the processes that should be followed to progress each type of dispute to resolution. The processes and stages for each type of dispute vary, and they have different timeframes attached to them.

The issue

The proposer, acting on behalf of the Trading Disputes Committee (“TDC”) is concerned that having four separate disputes processes is confusing, inefficient, and overly complex. It suggests that this in turn is a barrier to resolving disputes. The Final Recommendation Report also suggests that some Trading Parties may consider that ‘navigating the codes’ is too complex and time consuming to consider raising a dispute.

In addition to the complexities that exist as a result of having four different disputes processes, the Final Recommendation Report indicates that having different timeframes attached to each process creates further confusion. For example, the Trading Disputes process allows the Disputing Parties a maximum of 20 Business Days to attempt to resolve the dispute before escalation, whereas the Market Arrangements Code Disputes and Non-Trading Disputes processes allow a maximum of 60 Business Days.

The disputes processes also have different escalation stages. The Market Arrangements Code Disputes and Non-Trading Disputes processes have prescribed escalation stages within the Disputing Parties (for example General Managers). The Trading Disputes process does not - the Disputing Parties are free to have any two representatives resolve the Dispute who have the authority to do so. Further, there is only a Committee to resolve Trading Disputes; there is no Committee for the three other dispute processes.

Another issue that is outlined in the Final Recommendation Report is that Trading Parties may informally resolve disputes without notifying the Market Operator meaning that there is limited visibility of the types of disputes that arise. If there was greater visibility of all types of dispute (including those resolved informally) then consideration could be given to whether there are issues within the codes that could be addressed which might contribute to a reduction in the number of disputes that arise.

The Change Proposal¹

It is proposed that the four existing dispute processes (Trading, Non-Trading, Market Arrangements Code and Market Operator) are combined into one Dispute resolution process. This proposal also seeks to expand the remit and change the name of the TDC to encompass the proposed consolidated Dispute resolution process. The proposal includes a Terms of Reference for the revised Disputes Committee, which will set out its role and procedural requirements.

Pre-escalation validation criteria

It is proposed that prior to escalation of a Dispute to the Disputes Committee for consideration, the Market Operator, acting as Disputes secretary, will assess potential Disputes against the following proposed validation criteria:

- Have you attempted to resolve the Dispute informally through any existing procedures in the codes?
- Have you notified the other Disputing party or parties that you wish to commence a formal Dispute?
- In the case of a Dispute involving the Market Operator, has MOSL failed to provide or implement a suitable rectification plan as required?

Timeline

It is proposed that all Disputes will follow the same timeframe and process.

Following the initial escalation of disputes that meet the above detailed validation criteria and confirmation from the Market Operator that the dispute is valid, the dispute will be published on the Market Operator's website within five Business Days of the original request.

Subsequent to this, Trading Parties will enter a Negotiation Period. An initial meeting between the Disputing Parties must be held within ten Business Days of the dispute being published. Trading Parties will have Negotiation Period of a maximum of 20 Business Days to agree a resolution. Although, where both parties agree, an extension to this timeframe could be requested from the Disputes Committee which would provide time for continued negotiation.

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>

Following the Negotiation Period, if the Disputing Parties have not been able to agree a resolution or one party requests then the Dispute shall be escalated to the Disputes Committee. The Dispute would then be tabled for discussion at the next meeting of the Disputes Committee for it to reach a determination or request further information if required. If the Dispute is urgent, then an extraordinary meeting of the Disputes Committee will be held (see below).

If a Dispute was resolved within the Negotiation Period, the Dispute would be closed. If the Disputing Parties do not provide an update to the Disputes Committee, the Dispute would be referred to the Disputes Committee for closure.

It is proposed that no Dispute may be referred to arbitration unless it has first been considered by the Disputes Committee. Where the Disputes Committee is unable to reach a majority decision or if within 20 Business Days of the determination a Disputing Party does not accept the determination then the Dispute will be referred to arbitration.

Decision making of the Disputes Committee

The Disputes Committee would be comprised of ten members that have the requisite experience and expertise in the water and sewerage industry as the Panel decides is appropriate.

The Terms of Reference would set out that Disputes Committee would need to be quorate at any meeting at which matters would be decided. Quorum would be a minimum of at least five Disputes Committee members including:

- Two Wholesaler members;
- Two Retailer members; and
- One Wholesaler or Retailer member.

The Disputes Committee would decide decisions on a simple majority basis, abstentions would not be counted.

If a meeting were not quorate within one hour of commencement, this would be adjourned and re-scheduled by the Disputes secretary at the earliest opportunity.

The Disputes Committee would be able to impose administration charges (at an amount approved by the Panel) on any disputing Trading Party should they deem the dispute to be vexatious or frivolous.

Urgent Disputes

The Disputes Committee's Terms of Reference would provide for urgent disputes.

Where a Disputing Party considers the Dispute to be urgent, the Market Operator will send the Dispute and any evidence to support it to the Chair of the Disputes Committee. Unless a meeting of the Disputes Committee is scheduled to take place within the next three Business Days (in which case the Dispute will be added to the agenda), the Chair shall direct the Disputes secretary to convene an Urgent Meeting. The urgency of the Dispute would be assessed against Urgency Criteria at the meeting and the members will decide using available evidence whether they agree that the Dispute is Urgent.

If the Disputes Committee decided that a Dispute is not Urgent then the Dispute would progress along the normal timescale. However, if a Disputing Party does not agree with the decision then the Disputes Committee would set a timeframe for that party to provide additional evidence regarding the urgency. The Disputes Committee would give consideration to this and should it decide that the Dispute is not urgent, then that decision would be final and the usual timescale would be followed.

Disputes Committee secretary

The Disputes Committee secretary will be the Market Operator, acting in an independent and administrative capacity, for the purpose of facilitating the resolution of a Dispute. The Disputes Committee's Terms of Reference sets out further detail about the Disputes Committee secretary, including matters relating to conflicts of interest. This role will involve ensuring that agendas for the meetings of the Disputes Committee and high level details of the Disputes raised are available on the Market Operator's website in advance of the meetings.

Rectification plans

Where the Disputing Parties accept the determination of the Disputes Committee they will be required to follow the rectification plan set out by the decision. Failure to follow the rectification plan would be a breach of the MAC. The Market Operator will be responsible for monitoring performance against rectification plans and reporting back to the Disputes Committee. If a party is not compliant with a rectification plan, the Disputes Committee would meet with that party to determine the appropriate action.

Industry consultation and assessment

A Request for Information was published on 15 June 2020 and closed on 3 July 2020. There were 17 respondents; 11 Wholesalers, five Retailers and the Consumer Council for Water (“CCW”). A summary of the key consultation responses has been provided below, the verbatim consultation responses and a more detailed summary of these can be found in the Final Recommendation Report.

Views on extending the role of the Disputes Committee

All respondents (11 Wholesalers, five Retailers and CCW) agreed with the proposed extension of the role of the existing Trading Disputes Committee. Respondents that agreed provided reasons such as they considered that the proposed changes would improve the efficiency of the Disputes process by streamlining this and providing consistency which should help to reduce the time taken for Disputes to be resolved. One respondent highlighted that it considered the proposal may help to avoid arbitration costs on occasion. CCW considered that reduced costs to resolve disputes could in turn deliver benefits for customers.

One Retailer recommended a peer review process should be created as an option for Trading Parties to request from the Disputes Committee for technical Disputes that may require specific knowledge. Another Retailer expressed concern that there was no proposed provision to ensure that the Disputes Committee would have or would have access to sufficient breadth and depth of knowledge and insight into the principles and workings of credit arrangements and credit providers. The TDC confirmed that the Disputes Committee would have the option of seeking expert advice as required if it did not have ‘depth of knowledge about the subject matter’.

A Retailer expressed concern that there was no explicit provision or process for ‘urgent disputes’. In particular there was concern regarding disputes over credit (which will be changed via CPW080 should this be implemented). In response to this concern, the TDC inserted urgency criteria into the proposed Terms of Reference for the Disputes Committee.

Views on the proposed solution to consolidate the four existing dispute processes into one Dispute process

A large majority of respondents agreed with the proposed solution.

One Wholesaler respondent, whilst supporting the principle of the proposal, did not agree with the proposed solution. This respondent had two specific concerns. Firstly, it considered that the proposed publication of the Dispute by the Market Operator would be premature. It said that the intent of publication of a Dispute is to afford time to any other impacted parties to identify if they are impacted by the Dispute in order for this to be taken into account by the Disputes Committee. This Wholesaler thought that it would be more appropriate for details to instead be published when the Dispute is escalated to the Dispute Committee. In response to this comment, the TDC clarified that the intent of publication of a Dispute would be to afford other parties time to identify if they are also impacted by the Dispute.

The second concern raised by the Wholesaler respondent related to escalation of a Dispute to the Disputes Committee within the initial 20 Business Day resolution window. This respondent considered that everything should be done to encourage cooperation at this time to ensure that all discussions have been exhausted.

One Retailer agreed with the proposed solution subject to introduction of a peer review facility (see above). Another Retailer agreed with the proposed solution although highlighted that CPW080, if approved would extend the Disputes process to credit issues. This respondent said that CPW080 was raised to reduce the risk of a Wholesaler putting a Retailer into default as a result of disputed credit items. However, this respondent maintained its concern that credit Disputes could be used by a Wholesaler to trigger default on a timescale that does not allow for prompt and effective determination. This respondent expressed concern regarding how urgent matters such as credit Disputes would be handled. It asked what criteria would be used to assess urgency, what procedures there would be for dealing with an urgent Dispute, and questioned why these matters were not referenced in the proposal. This Retailer highlighted that these issues would be of particular importance for dealing with credit Disputes.

Views on the proposed timeline for the unified disputes process, specifically whether all types of dispute should have the same timeline

The majority of respondents agreed with the proposed timeline. Three respondents disagreed (one Wholesaler, one Retailer and CCW).

The Retailer that disagreed suggested that an expedited route could put pressure on Trading Parties where the dispute is one which would usually take time to resolve, particularly if the dispute involves settlements or customer experience. This Retailer considered that Trading Parties should be able to

request an expedited route where certain criteria is met for example, the Dispute relates to credit or impacts a large number of customers. Another Retailer that agreed with the timeframe did so with significant reservations (these reservations related to how urgent disputes would be dealt with and where Disputes are complex / credit related).

A Wholesaler that disagreed said it was concerned that no timeframe has been apportioned to the Disputes Committees determination. This Wholesaler did however agree that the arbitration step should not be time limited. It suggested that a timeframe for the Disputes Committees decision could be for example, 20 Business Days following the Disputes Committees meeting. Where a determination could not be reached in that timeframe, the Disputes Committee could seek an extension from the disputing Trading Parties and if this is refused by either party, they should be able to refer the Dispute to arbitration. This respondent thought that its proposed solution would provide a measure to control the additional operating costs raising from the Disputes Committee's extended remit. The TDC considered apportioning a timeframe to determinations however decided against this. It highlighted that there is the facility for any party to request urgent status and if appropriate an extraordinary meeting of the Disputes Committee would be called. Further, it was argued there is currently no evidence to suggest that a timeframe would be required, or that there is any incentive for the resolution of any Disputes to be delayed by the Disputes Committee. The proposed procedure has a focus on flexibility to respond quickly and as such, the Disputes Committee needs to possess the same level of flexibility and agility to effectively deal with the range of Disputes brought to it. It has been confirmed that the performance of the new procedure and Disputes Committee will be under constant review and as such, measures could be introduced if deemed necessary.

CCW did not agree, it acknowledged that there may be benefits but suggested that a reduced timescale might not be appropriate if there is sufficient complexity to the type of Dispute raised. CCW was interested in how the TDC deemed the proposed standardised timescale to be appropriate. It highlighted that allowing lengthy timescales for resolution of Disputes could result in a poor customer experience. A Wholesaler also considered that there is a risk that a Dispute could be held up by the Disputes Committee due to lack of resource. In response the TDC highlighted that the timescales for resolution would improve upon the current timescales for most types of Dispute. It also made reference to the process for urgent Disputes which it considers could facilitate expedition of resolutions in urgent cases. The TDC agreed that the timescale for resolving Disputes should be kept under review and that the Disputes Committee should monitor its own efficiency and if evidence comes to light that this was resulting in negative experiences for customers then it would be dealt with accordingly.

Views on whether the change would improve management and oversight of Disputes

All respondents agreed that the proposed change would improve the management and oversight of Disputes. Respondents highlighted that the change would streamline the processes and provide greater consistency. One respondent highlighted that it would mean that all Disputes will be public and will therefore come under market scrutiny. This respondent expected that decisions of the Disputes Committee would “more clearly and transparently set the basis on which a dispute is possible and precedents about how types of dispute will be determined”. This respondent suggested that if CPW080 is not approved by the Authority that the amendments proposed under that Change Proposal to section 9.7.4 of the Business terms should be incorporated into this Change Proposal to ensure that all disputed items are properly incorporated into the disputes process.

Views on code drafting

The majority of respondents agreed that the proposed drafting delivers the intent of the proposed change.

One Retailer said that it considered that the drafting delivers the intent of the change however, it considered that the drafting was flawed as it did not account for credit disputes/urgent disputes.

One Wholesaler raised some points of clarification, it suggested:

- Amendment to section 5.2.1 (k) of the MAC to replace reference to ‘Trading Disputes’ with “any types of Disputes as considered under section 17 Dispute resolution” to ensure consistency. The TDC agreed with the proposed amendment.
- Amendment to section 1.5 of Schedule 9 of the MAC so that this section should explicitly state that the Chair of the Disputes Committee should be Independent (i.e. not from a Trading Party or MOSL), given that the Disputes Committee will cover Trading Disputes and Market Operator Disputes. The TDC agreed and recommended the following drafting amendment: “The Disputes Committee Chairman shall be independent, in that they must not be employed or engaged by any Trading Party or by the Market Operator, given the nature of the Disputes they shall be dealing with.”
- Unless CPW080 has been implemented in advance of this change, this Wholesaler also recommended part of the red-lined changes that have been proposed to Section 9.7.4 of the Business Terms under CPW080 are included here in order to unify with the revised disputes resolution process.

Concerns with the proposal

The majority of respondents did not raise any concerns regarding the proposal. Three respondents raised concerns.

One Retailer highlighted that it had concerns which had been expressed through its responses to the other questions.

A Wholesaler questioned what evidence was available to support the assertion that a lack of unified Disputes process may be preventing parties from bringing forward Disputes. In response to this concern the TDC said that the proposal does not aim to encourage more Disputes. The main aim is to simplify the procedures and provide a more effective, transparent and accessible route for Dispute resolution for all Trading Parties. The TDC considers that establishing one committee that deals with all Disputes will increase the level of oversight and improve the identification of common issues and/or areas of friction in the market.

The Wholesaler respondent thought that the timeframes might restrict negotiations. The TDC did not agree as while the prescribed negotiation period under the proposed procedure is 20 business days, the Disputing Parties are able to extend the negotiation period, as long as it is agreed upon by all parties involved. The proposal focuses on flexibility, allowing urgent Disputes to be dealt with quickly whilst those which may take time to work through co-operatively can be allowed to do so.

It was also noted by the same Wholesaler that the removal of the requirement for involvement of senior managers/directors in the negotiation timeframe which it considered could reduce the likelihood of a resolution being reached before intervention of the Disputes Committee. The current escalation stages of these Disputes make assumptions about the organisational structure of Trading Parties which may not be valid in every case. This change allows Trading Parties to decide for themselves as to who is responsible for resolving and has internal oversight of Disputes. The aim is to introduce a procedure which works for both very small parties and the very large. The current prescriptive escalations and timeframes for certain types of Dispute prior to arbitration result in the Disputing Parties having to wait for the codified timeframe before being able to escalate to the next level, therefore resulting in delays to resolution and potentially detrimentally impacting customers.

This Wholesaler also expressed concern regarding whether the Disputes Committee would be able to process the increased volume of Disputes and whether increases volumes would exacerbate the recruitment issues the TDC

currently experiences. The TDC responded to say that since Market Opening only one Dispute has reached escalation to the TDC. With the current workload, or lack thereof, the last two TDC meetings have been cancelled. The Committee is confident therefore that it has the bandwidth to handle an increase in Dispute volumes. The TDC feels that the difficulty in recruiting is more likely the result of the small niche role that it has played historically and the current workload challenges faced by Retailers, particularly in light of the COVID pandemic, rather than any presumed increase in workload. The TDC highlighted that the procedures proposed would be under constant review and as such, further measures can be introduced in the future if necessary.

Another Wholesaler respondent thought that the proposal could be improved in a number of ways:

- Equal weighting of Wholesaler and Retailer representation on the Disputes Committee;
- A clear, robust and fair appeal process to include but not limited to, the introduction of a final arbitration stage;
- A level of governance to ensure the Disputes Committee cannot impose a determination which does not align with regulatory stipulations imposed on Trading Parties; and
- Introduction of an independent secretary on the Disputes Committee for Market Operator Disputes and Market Arrangements Code Disputes to maintain a level of impartiality.

The Terms of Reference make provision regarding representation on the Disputes Committee and it is part of the proposal that the final stage of the Disputes process would be referral to arbitration. The TDC responded to the suggestion that there should be a level of governance to ensure determinations align with regulatory stipulations by highlighting that if parties don't accept the decision, the option of arbitration remains as a final backstop. The TDC confirmed that it would be happy for wording to be introduced to the MAC or Terms of Reference to highlight that the Disputes Committee cannot impose a determination which contravenes regulatory stipulations.

CCW expressed that it would not want the reduction and consolidation of timescales resulting in less scrutiny. To help ensure this would not happen, CCW suggested that it would be beneficial for Trading Parties to feedback on their experiences participating in the various Disputes processes.

Other views

All respondents agreed with the proposed implementation date of 13 November 2020, with some calling for implementation as soon as reasonably practicable.

All respondents agreed that the proposed change better facilitates the objectives and principles of the WRC and the MAC.

All respondents that answered this question suggested that there would be no or minimal impacts on systems and processes and that there would be minimal or no costs implications as a result of the proposed change.

Panel recommendation

The Panel considered this Change Proposal at its meeting on 25 August 2020. It recommended, by unanimous decision, that the Authority approve this proposal. This recommendation has been made on the basis of improving the principles of efficiency, transparency, barriers to entry, simplicity cost effectiveness and security and non-discrimination. The recommended date of implementation is 13 November 2020.

A Panel member questioned whether the parties could still use arbitration. It was confirmed that by consolidating the process, arbitration was placed as the final step after the Disputes Committees determination. A Panel Member queried if there are any aspects of Trading Party Disputes that are not covered by this new process, for example, commercial non-settlement aspects of Disputes. The Proposer noted that if CPW080 is approved by the Authority it means that informal disputes will have to be formally raised and therefore will be covered under the new process.

A Panel observer said that it will be important for the Market Operator to put in place appropriate provisions to ensure that in the event of a Market Operator Dispute, the Disputes secretariat services provided to the Disputes Committee are ring-fenced to ensure independence and impartiality. The TDC has responded to explain that the Terms of Reference enables the Disputes Committee to require the Disputes Committee secretary to sign a letter confirming they can provide the required level of independence and impartiality. The Disputes Committee Chair is also independent and as such can ensure the impartiality of the Disputes secretary. Wording has been introduced to the Disputes Committee Terms of Reference to highlight that any Market Operator team or individual involved in providing secretariat services or investigative services, or otherwise facilitating the resolution of a Dispute, must not be connected with the terms of such Dispute.

The Panel noted at its meeting that should CPM030 be implemented in advance of CPM029, the legal drafting of CPM029 will require amendment to reflect that.

Our decision

We have considered the issues raised by the Change Proposal and the supporting documentation provided in the Panel's Final Recommendation Report and have decided to approve this Change Proposal with modifications.

The modifications to legal drafting, which are set out in the appendix, are to reflect:

1. implementation of CPW102 & CPM030 (Gender neutrality in the codes) on 6 November 2020 to ensure that terms in the legal drafting are gender neutral;
2. modifications agreed by the TDC after the Authority sought clarification on its view of consultation responses recommending the changes; and
3. the removal of one reference to 'Expert' in the WRC, as the definition and all other references will be removed as part of this proposal.

We have concluded that the implementation of CPW092 and CPM029 will better facilitate the principles and objectives of the WRC and the MAC² and is consistent with our statutory duties.

We note that the majority of respondents to the industry consultation were supportive of the proposed amendment. Most considered that a unified Disputes process will be more efficient. We sought clarification from the TDC regarding its views on some of the consultation responses that did not appear to have been replied to in the Final Recommendation Report. We have included these views in the 'industry consultation and assessment' section of this document. Having considered the views we are satisfied that the TDC has appropriately considered and addressed the concerns raised by respondents to the consultation.

We consider that the proposed change furthers the principle cost effectiveness, simplicity and security as reducing the number of disputes processes will assist in making it simpler for disputes to be raised and progressed as they will follow a set route irrespective of the nature of the dispute. A simplified process also

² detailed in Schedule 1 Part 1 Objectives, Principles and Definitions of the WRC and Schedule 1 of the MAC, Principles and Definitions.

has the potential to improve cost effectiveness because Trading Parties may be able to more efficiently be able to resolve the dispute. We also note that by extending the role of the TDC to include all Disputes may result in potential cost savings for Disputing Parties as they may not need to escalate the Dispute to arbitration if they are unable to agree a resolution. It could ultimately be of benefit to customers if such costs are saved.

We agree with the Panel's view that extending the role of the TDC would increase transparency of Disputes across the market. This in turn creates potential for market wide issues to be identified. Information relating to market wide disputes might be used to address issues (for example by raising Change Proposals) that result in frequent disputes and therefore, the number of disputes relating to a particular matter may be reduced.

The proposal also furthers the principle of non-discrimination because the unified Disputes process will be more easily accessible by all parties.

Decision notice

In accordance with paragraph 6.3.7 and 7.2.9 of the Market Arrangements Code, the Authority approves this Change Proposal.

Georgina Mills
Director, Business Retail Market

Appendix – modifications to legal drafting

1. Modifications to reflect CPW102 & CPM030 – Gender neutrality in the market codes (effective from 6 November 2020)

To section 2.6 of the Market Arrangements Code (MAC):

"Disputes Committee Chair man "	the meaning given in Paragraph 1.5.1 of Schedule 9 (Disputes Committee)
---	--

To section 18.8.4 of the MAC:

- 18.8.4 The arbitrator shall allocate the costs of a Dispute Settlement Run as part of ~~his~~ **their** determination and the relevant Trading Parties shall pay such costs to the Market Operator as directed by the arbitrator.

To section 1.3 of Schedule 9 of the MAC:

- 1.3.2 Each Trading Disputes Committee Member shall act impartially and independently of the interests of ~~his~~ **their** employer and of any person or class of persons and, in exercising ~~his~~ **their** functions under this Schedule 9 (Trading Disputes Committee), shall not be bound by or follow the instructions of any person save as set out expressly herein.

To section 1.4 of Schedule 9 of the MAC:

- 1.4.1 (c) the restrictions which the Panel considers appropriate on the disclosure of data by the Trading Disputes Committee (including in particular requirements for a Trading Disputes Committee Member not to disclose to ~~his~~ **their** employer information obtained as a Trading Disputes Committee Member);

...

- 1.4.1 (f) the functions of the Trading Disputes Committee Chair~~man~~;

...

- 1.4.1 (i) requirements (as the Panel considers appropriate) for the Disputes Committee Chair~~man~~ and Disputes Committee Members to confirm or acknowledge in writing that they will act in accordance with this Schedule 9 (Disputes Committee) and the Disputes Committee Terms of Reference.

To section 1.5 of Schedule 9 of the MAC:

- 1.5 Chair~~man~~
1.5.1 The Panel shall from time to time appoint an individual with appropriate seniority to act as the independent chair~~man~~ of the

Disputes Committee (the "Disputes Committee Chair~~man~~"), and may remove and replace such individual so appointed from time to time in its sole discretion.

- 1.5.2 The Disputes Committee Chair~~man~~ or such substitute as may be designated from time to time by the Disputes Committee Chair~~man~~ in ~~his~~ their sole discretion shall chair the meetings of the Disputes Committee. The Disputes Committee Chair~~man~~ shall have such additional functions in connection with the conduct of the business of the Disputes Committee as the Panel shall assign to ~~him~~ them.
- 1.5.3 The Disputes Committee Chair~~man~~ shall not be a member of the Disputes Committee and shall not have a vote at meetings of the Disputes Committee.

To section 1.7.1 of Schedule 9 of the MAC

- 1.7.1 Subject to the Disputes Committee Terms of Reference, the Disputes Committee Chair~~man~~ may (and, if required by such terms or requested by the Disputes Committee, shall) invite any individual to attend a meeting of the Disputes Committee in order to speak to particular items on the agenda. Such individual may be an expert or wider industry representative where the Disputes Committee agrees that expert advice on any issue relevant to the Dispute is required to facilitate their consideration and determination of the Dispute.

To section 1.7.3 of Schedule 9 of the MAC

- 1.7.3 Save where the Disputes Committee Chair~~man~~ invites a Trading Party to attend a meeting of the Disputes Committee, a Trading Party shall have no right to attend any meeting of the Disputes Committee.

To section 1.9.1 of Schedule 9 of the MAC

- 1.9.1 The Disputes Committee Chair~~man~~ may not postpone a meeting of the Disputes Committee or defer a decision on any Trading Dispute if the circumstances giving rise to the Dispute are likely to recur until a decision is reached by the Disputes Committee unless the Disputes Committee reasonably determines that further information is required to properly consider and make a decision in respect of a Dispute.

2. Modifications agreed by the TDC after the Authority sought clarification on its view of consultation responses recommending the changes

To section 5.2.1 k) of the MAC:

- 5.2.1 k) establish a Trading Disputes Committee on a standing basis in accordance with the provisions of Schedule 9 (Trading Disputes Committee), to investigate and resolve ~~Trading any types of Disputes as considered under section 17 Dispute resolution;~~

The following addition to section 17.4 of the MAC:

- 17.4.16 The Disputes Committee cannot impose a decision which contravenes any Disputing Party's legal or regulatory obligations.

The following addition to section 1.5 of Schedule 9 of the MAC:

- 1.5.4 The Disputes Committee Chairman shall be independent, in that they must not be employed or engaged by any Trading Party or by the Market Operator, given the nature of the Disputes they shall be dealing with.

3. Modifications to rectify errors in proposed drafting

To section 4.13.5(b) of Schedule 1: Part 4: Market Terms of the Wholesale Retail Code:

- 4.13.5 (b) the costs of all Dispute Settlement Runs shall be decided by the Disputing Parties, the Disputes Committee or the relevant arbitrator ~~or the Expert~~ in accordance with Sections 17 and 18 and Schedule 9 (Disputes Committee) of the Market Arrangements Code; and