
Market Arrangements Code Change Proposal – Ref CPM 034

Modification proposal	Market Arrangements Code Change Proposal – CPM034 Retailer panel member changes
Decision	The Authority has decided to approve this Change Proposal
Publication date	19 January 2021
Implementation date	01 February 2021

Background

The Panel is made up of elected members from Wholesale and Retail water companies, a Customer Representative plus three independent (non-water industry) members appointed by MOSL. The elected seats are populated by separate segments of the industry, with three seats each for Wholesalers, Associated Retailers and Unassociated Retailers.

The Market Arrangements Code ('MAC') sets out the governance arrangements for, amongst other things, how Panel meetings are conducted. In particular, it specifies that no business shall be transacted at any Panel meeting unless a quorum is present at the meeting. Quorum currently consists a minimum of:

- the Panel Chairman (or an Independent Director nominated by the Panel Chairman);
- two Associated Retailer Panel Members;
- two Unassociated Retailer Panel Members;
- two Wholesaler Panel Members; and
- two Independent Panel Members (or any of their alternates entitled to be present) each of whom must be entitled to vote at that meeting.

At full capacity, there should be three Associated Retailer Panel Members but only two out of these three positions are currently filled

The issue

Currently the panel only has five of the six available Retailer seats occupied and there are a number of Unassociated Retailers willing but unable to contribute to Panel activity. Associated Retailers have only filled two of their three Panel Member seats since April 2019 whilst Unassociated Retailers had to compete for their three seats.

Panel Members act in the interest of the market rather than their employer or employer's segment. However, they do bring experience and knowledge to Panel discussions, so a Retailer vacancy could imply reduced knowledge or experience of the Retailer segment than was envisaged when the Panel was established. There is an ongoing risk of an Associated Retailer Panel Member resigning or the next Panel election resulting in less than two Associated Retailer Panel Members, and the Panel becoming inquorate.

An inquorate panel could have a negative effect on prompt decision making which in turn may lead to negative impacts on both the interactions between wholesalers and retailers and ultimately customers.

The Change Proposal¹

The proposed change would allow any empty Retailer seat to be filled by either an Associated or Unassociated Retailer. It would not remove the distinction between Unassociated and Associated Retailers other than in respect to panel membership.

To reduce the risk of an inquorate Panel, an election will need to be held for the vacant Associated Panel Member seat once the change has been implemented.

Panels Final Recommendation Report states that the standard MAC rules for an election (as per section 5.6 of the MAC) will be followed with a number of amendments. These are as follows:

- Nominations for any Retailer vacancy will be invited from both Associated and Unassociated Retailers.

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>

- Where enough nominees have been received from a Retailer class for a vacancy, then only nominees from that class would be considered for that vacancy.
- If an insufficient number of nominees for a Retailer seat have been received, then nominees from a different Retailer class would then also be eligible for any vacant seats.
- Nominees from a different Retailer class would only be eligible once all the seats from the different class have been filled and they have not been elected to one of those seats.
- The election forms for Associated and Unassociated Retailers will be updated to allow them to list their preferences from the Retailer nominees provided. This would be set out to allow votes to be provided for nominees for their own class first and then their preferences from nominees received from a different Retailer class.
- Associated and Unassociated Retailers would only be able to vote for vacancies in their own class where sufficient nominations have been received.
- If a Retailer vacancy is opened to nominees from a different retailer class, due to insufficient nominations, then both Associated and Unassociated Retailers would be eligible to vote.

Industry consultation and assessment

There was no industry consultation on this change proposal. The reasons sighted in the Final Recommendation Report were that:

- Associated Retailers have had opportunities to appoint someone to the third seat and have not done so.
- This solution is to be implemented as an enduring code change. However, the Panel's Governance Review includes the composition of the Panel in its scope and its findings are expected to be consulted upon.
- The Panel is at risk of being inquorate from 1 April 2021 so this issue should be addressed quickly, without waiting for the outcome of the Governance Review.
- [CPM 022](#) was approved without industry consultation on the basis that 'the change affects how the Panel conducts business rather than the business of Trading Parties'.

Panel recommendation

The Panel discussed CPM034 at its meeting on 27 October 2020, where members unanimously agreed to recommend the change for approval (12 votes in favour) with the Panel Chair electing to abstain. The Panel agreed that CPM034 would help to ensure a fully represented and engaged Panel as envisaged in the Market Arrangement Code, which in turn would enable future governance and composition arrangements to be discussed with a full complement of Panel Members.

Our decision and reasons for our decision

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

As we set out in CPM 022 we are aware of and fully support MOSL's review of market governance which will consider the composition of the Panel. Our view is that it is crucial for the Panel's effectiveness that membership represents the spectrum of trading parties and those who wish to actively participate. It is therefore reasonable that vacant seats be offered to any Retailer and the election process undertaken as stated in the Final Recommendation Report.

We acknowledge the reasons given for industry consultation not being undertaken and support the reasoning put forward. We view the risk of the Panel becoming inquorate with the effectiveness reduced and decisions being delayed as a greater than that of not consulting at this time, particularly given that governance arrangements, including the composition of the Panel, will be consulted upon as part of MOSL's upcoming review of market governance.

We also support the desire to bring the membership of the Panel up to six Retailer panel members as quickly as possible and this change seems an appropriate way to do so.

To accommodate upcoming panel nomination meetings and associated elections, we approve an earlier implementation date to that stated in panel's Final Recommendation Report.

Decision notice

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

Emma Kelso - Senior Director, Markets and Enforcement