

Wholesale Retail Code Change Proposal – Ref CPW105

Modification proposal	Wholesale Retail Code Change Proposal – CPW105 – Provisions of Information Obligation
Decision	The Authority has determined that it cannot properly form an opinion on the approval of the Change Proposal and requests that the Panel revise and resubmit the Final Report
Publication date	26 April 2021
Implementation date	N/A

Background

Section 1.2.11 of the Wholesaler Retail Code (WRC)¹ Schedule 1 Part 4: Market Terms sets an obligation on the Market Operator (MOSL) to provide a summary list of the documents that it makes available to various groups and which the Panel is required to approve. In March 2019, MOSL presented to the Panel this list of documents to fulfil the obligation within the Market Terms. The Panel questioned the appropriateness of this obligation to publish a list of non-code obligated documents that are constantly changing. Panel Members requested MOSL to return with a Change Proposal that removes the obligation for the Panel to review and approve the summary list of documents.

In July 2019, MOSL presented Change Proposal CPW059: ‘Changes to Review Obligations’ to the Panel to resolve this issue and address concerns relating to code obligated technical reviews. The Panel voted unanimously to recommend the proposed change to Ofwat for approval. Ofwat considered the Change Proposal and determined that it could not properly form an opinion due to the following reasons:

- 1) **Inconsistency in legal drafting:** Ofwat’s review of the proposed legal drafting submitted alongside the initial proposal noted that the decision of when the reviews will be undertaken sat with MOSL and not the Panel, which did not align with the Final Report. Ofwat stated that it could not proceed to make a decision on the Change Proposal and recommended

¹ The terms used in this document are those defined in the WRC.

MOSL review the legal drafting, in order to reflect the solution in the Final Report.

- 2) **Lack of rationale:** Ofwat was concerned with the lack of rationale in the Final Report for the entire removal of the 'Provisions of Information' section of the Market Terms. It requested further details on why the Panel questioned the appropriateness, the rationale behind this and any consequential impacts.

MOSL considered the two issues previously presented in CPW059 and deemed it appropriate to progress each issue in separate Change Proposals. The revised version of CPW059 addressed the frequency of code obligated technical reviews and was approved by Ofwat in January 2021. This Change Proposal, CPW105, has now been raised to assess the Provisions of Information obligation.

The issue

The Final Report sets out that Section 1.2.11(b) of the Market Terms obliges MOSL to establish a summary list of materials and information it publishes and the recipients of such information. Section 1.2.11(c) states that the Panel should approve the information to be published under section 1.2.11(b) and conduct a review from time to time. However, the purpose of this review is not stated and the Panel has queried if its role is to audit the list and if so, how this could be achieved.

It is considered that this list provides increased transparency and clarity to industry participants on different non-code obligated items MOSL circulates within the market. MOSL consider that the purpose of section 1.2.11(c) is to allow the Panel to amend the availability of information to different groups, e.g. the Panel can change a document marked by MOSL as publicly available to one that is only available to Trading Parties, and vice versa. They consider that it was not intended for the Panel to review either the documents or their content, which would neither be practical nor achievable as the Panel is not familiar with all of MOSL's internal processes. As such, CPW105 seeks to remove the Panel's involvement in this obligation.

The Change Proposal²

CPW105 seeks to remove section 1.2.11(c) of the Market Terms that relates to the Panel's involvement in the Provision of Information obligation and proposes

² The proposal and accompanying documentation is available on the MOSL website at <https://www.mosl.co.uk/market-codes/change#scroll-track-a-change>

minor clarification amendments to section 1.2.11. This change does not propose the removal of the Provisions of Information obligation. MOSL will continue to update and publish this document each year, as has been the process since 2018, and will notify the industry of the updated document after each revision.

The Panel's Final Report provides the following rationale for the proposed amendments:

- It removes ambiguity around the purpose of the obligation and relieves the Panel of a questionable, low value adding activity. The Panel is intended to be a high-level strategic group that should focus on workstreams and projects that add value to the market, rather than overseeing the administration of MOSL publications.
- If the Panel wishes to review the publications, it can still request sight of the information provided by MOSL and who it is distributed to.
- It maintains the purpose of the summary list, which is to provide transparency and clarity to industry stakeholders on the non-code obligated items that MOSL publishes to different groups.
- It clarifies that the list may include materials that are not necessarily published on the website but circulated by MOSL, e.g. via email.

Industry consultation and assessment

An industry consultation for CPW105 was not undertaken. The Panel's Final Report provides the following reasons:

- 1) Trading Parties' systems and process will not be affected by the implementation of CPW105; and
- 2) The proposed solution relates to a Panel process. The Panel was therefore considered to be the only group necessary to consider whether the solution is fit for purpose and furthers the principles of the WRC.

View from the Customer Representative

The Customer Representative stated that if the Panel has questioned why they are undertaking review and approval of non-code documents, then it is sensible to consider ending their involvement in this, rather than clarifying it through a code change. Some of the reasons for questioning the role of the Panel may emanate from members feeling that Panel should be focusing on higher priorities (e.g. market changes that will benefit customers). The Customer Representative agrees that the Panel's main focus should be on high priority areas, and welcome an examination of current responsibilities to determine

whether any could possibly be undertaken by an alternative committee, or under another process.

Panel recommendation

The Panel considered CPW105 at its meeting on 24 November 2020. A Panel Member queried the MOSL governance process for determining the availability of information and materials published by MOSL, and whether removing the Panel's involvement in the Provisions of Information obligation would remove required oversight. The Panel agreed that MOSL has the appropriate internal mechanisms in place, such as the compliance framework, which are subject to monitoring and which ensure that information is circulated to the correct recipients. The Panel noted that it should trust MOSL to handle and manage administrative issues of this nature.

The Panel agreed unanimously (12 votes in agreement, with one abstention from the Panel Chair) to recommend CPW105 to Ofwat for approval. The recommended date of implementation is 14 May 2021, which the Panel noted was driven by scheduled code release dates.

Our decision and reasons for decision

We have considered the issues raised by the Change Proposal and the supporting documentation provided in the Panel's Final Report. We do not agree that section 1.2.11 of the Market Terms imposes an obligation on MOSL to publish a list of non-code obligated items, which MOSL confirmed in correspondence with the Authority may include for example monthly change updates, slides produced for industry groups, etc. Instead, this section imposes an obligation on MOSL to produce a list of materials and information which MOSL is required to make available under the WRC and Market Arrangements Code and establish and maintain a policy which sets out the recipients of such information. Section 1.2.11 specifically excludes from this obligation the notification and distribution of Data Items and Reports as those are specified in the relevant Code Subsidiary Documents of the WRC.

On the basis of this misalignment of interpretation of the WRC we have decided we cannot properly form an opinion on the approval of the Change Proposal and request that the Panel revise and resubmit the Final Report.

We support the Panel taking a more proactive and strategic role in actively promoting market improvement in the interests of customers. However, we consider that the Panel should have another opportunity to consider its role

having understood the nature of the list of documents that they are required to review. Once the Panel has considered this interpretation of section 1.2.11 of the Market Terms, we welcome the Final Report being resubmitted to Ofwat.

Decision notice

In accordance with paragraph 6.3.8 of the Market Arrangements Code, the Authority cannot properly form an opinion on the approval of the Change Proposal and requests that the Panel revise and resubmit the Final Report.

Georgina Mills
Director, Business Retail Market