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## Wholesale Retail Code Change Proposal – Ref CPM 038/CPW 116

<b>Modification proposal</b>	CPM 038/CPW 116: Clarification and removal of redundant clauses in the Unified Disputes Process
<b>Decision</b>	The Authority has decided to approve this Change Proposal with modifications
<b>Publication date</b>	29 July 2021
<b>Implementation date</b>	01 September 2021

### Background

Two code modifications; CPW092/CPM029 Unified Disputes Process and Committee and CPW102/CPM030 Gender Neutrality in the market codes were approved by Ofwat in November 2020.

As part of CPW092/CPM029, the Unified Disputes Process was created to consolidate the four separate processes that deal with Trading, Non Trading Market Arrangements Code (MAC) and Market Operator (MO) disputes. By consolidating the processes and expanding the remit of the Disputes Committee it was agreed that this would improve efficiency by encouraging timely resolution of disputes and ensure that all Retailers and Wholesalers will be able to use the same process and receive the same opportunity for dispute resolution.

Following the approval and publication of the decision documents it has been discovered that there a number of drafting errors that need to be corrected along with some inconsistencies in these approved documents that could lead to misinterpretation.

### The issue

There are two types of issue that seek to be addressed by this Change Proposal. The first is minor drafting errors such as inconsistencies in cross-referencing. Others are clauses that may be open to interpretation and lead to inefficiencies in the Disputes process.

By not correcting these issues, it could have a negative effect on the operation of the Unified Disputes Process and could adversely affect Wholesaler-Retailer interactions, which is a key market friction currently impeding the more effective operation of the business retail market.

## The Change Proposal<sup>1</sup>

This change seeks to update section 11.2.1 and section 17 of WRC Schedule 1 Part 2 Business Terms, Process B2 of WRC Schedule 1 Part 3 Operational Terms and Schedule 9, section 17, 18 of the MAC in order to align with the changes implemented as a result of CPW092.

## Industry consultation and assessment

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

- this change seeks to clarify the steps involved in the Unified Disputes Process rather than changing the intention of the process as it has been agreed.
- the intended solution that was set out and agreed in the CPW092/CPM029 ‘Unified Disputes Process and Committee’ change proposal is not changed in any way.
- there was no industry consultation undertaken previously when agreeing CPW092/CPM029.

## Panel recommendation

The Panel discussed this change at its meeting on 25 May 2021 where it unanimously agreed to recommend CPW116/CPM038 to Ofwat for approval. All Panel Members agreed that tidying up the drafting from the previous CPM029/CPW092 and CPW102/CPM030 changes clarifies the disputes process and that the change would better reflect the Objectives and Principles, and supported the rationale provided in the Draft Recommendation Report.

Panel recommended in its FRR an implementation date of the 27 August 2021.

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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>

## 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, subject to some amendments to the proposed legal drafting. We believe that the changes suggested are reasonable and will enhance the effectiveness of the Unified Disputes Process.

We acknowledge the reasons given for industry consultation not being undertaken and agree with the reasoning put forward. We view the risk of the negative effects on how the Dispute Resolution Process functions as greater than that of not consulting at this time.

Our views relating to each of the proposed legal drafting changes is detailed in the table below:

<b>Proposed drafting change</b>	<b>Decision</b>
MAC Section 5.2.1 (o) – Remove redundant cross-reference.	Agree
MAC Sections 17 and 18 – Amend to read ‘Market Operator (as disputes secretary)’ to provide clarity and consistency throughout the code.	Agree
MAC Section 17.2.3 – New clause in the event a potential Dispute is not resolved by informal means, the Disputing party must make clear to the other Disputing Party its intention to escalate the Dispute to the Market Operator.	<p>Agree subject to proposed amendment in green text below to make clear that any Disputing Party, not just the one asserting the Dispute, can be the one to escalate the Dispute (but must make clear its intention to do so). Also suggest removing the word "formal" as it is unclear what that would add to the requirement that notification be in writing.</p> <p><i>In the event a potential Dispute is not resolved by informal means, <del>the Party asserting the Dispute</del> a Disputing Party must make it clear to the other Disputing Parties, by <del>formal</del> written notification, its intention to escalate the Dispute to the Market Operator (acting as disputes</i></p>

	secretary) <i>prior to doing so</i> pursuant to Section 17.3
MAC Section 17.3.3 - Amend to ensure that each Dispute shall be treated in accordance with the Disputes Committee Procedures where applicable and introduce the reference to Disputing Parties	Agree subject to the proposed amendment to the new wording at 17.3.10 (b), to use "Party or Parties" consistent with the rest of the MAC  <i>For avoidance of doubt the Disputing Party shall notify the other Disputing Party(s) or Parties of the written request.</i>
MAC Section 17.4.4 – This reiterates the Service Level Agreement in Section 17.4.7 of the MAC which states once a Dispute has been referred to the Disputes Committee, the Disputing Parties shall provide the Market Operator (acting as disputes secretary) with documents and evidence relating to the Dispute not less than fifteen (15 Business Days) prior to the next DC meeting, save where the Dispute has been deemed urgent pursuant to the Disputes Committee Terms of Reference and Section 17.4.6(b). This SLA was previously introduced in CPW092/CPM029 ‘Unified Disputes Process and Committee’, however, Section 17.4.7 of the MAC could be open to interpretation and so the proposal makes this clear by adding an obligation in section 17.4.4. See <b>Error! Reference source not found.</b> for the timelines.	Agree subject to the proposed amendment to use language consistent with the definitions and the rest of the MAC ("Disputes Committee" not DC).  <i>Once a Dispute has been referred to the Disputes Committee, the Disputing Parties shall provide the Market Operator (acting as disputes secretary) with documents and evidence relating to the Dispute not less than fifteen (15 Business Days) prior to the next <del>DC</del> Disputes Committee meeting.</i>
Replace non-gender-neutral terms with gender neutral terms in the MAC that were introduced by CPW092/CPM029 ‘Unified Disputes Process and Committee’, which was approved after ‘CPW102/CPM030 Gender Neutrality in the Market Codes’ was approved.	Agree
Housekeeping changes in the MAC to correct typographical errors.	Agree

Schedule 1 Part 2 Business Terms, Part I: Disputes - Amend to add 'of these Business Terms' as section 17 and 18 are same numbered in the MAC and the Business Terms. This provides clarity on which code document is being referred to.	Agree
WRC Schedule 1 Part 2 Business Terms, Section 11.2.1 - References to non-existent clauses due to broken cross-references will be rectified to refer to the correct sections.	Agree
WRC Schedule 1 Part 2 Business Terms, Sections 17 and 18.2.1 – Redundant clauses relating to timescales which do not align with the disputes process set out in the MAC will be removed. It also clarifies that if the Operational Terms/Business Terms/Market Terms/Code Subsidiary Documents set out any steps for resolution, these steps should be followed prior to raising the disagreement as a formal Dispute.	Agree
WRC Schedule 1 Part 2 Business Terms, Schedule 1A, 1.4 – Remove cross-reference to section 19 as this is not use.	Agree
WRC Schedule 1 Part 3 Operational Terms, Process B3 - Remove "Trading" from "Trading Disputes Committee".	Agree

We have decided on an implementation date of 1 September 2021.

## **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**