

## Market Arrangements Code and Wholesale Retail and Code Change Proposals – Ref CPM040 and CPW121

<b>Modification proposal</b>	Market Arrangements Code (MAC) and Wholesale Retail Code (WRC) Change Proposals <sup>1</sup> – CPM040 and CPW121 – MAC and WRC principles
<b>Decision</b>	The Authority has decided to approve these Change Proposals with modifications
<b>Publication date</b>	28 July 2021
<b>Implementation date</b>	1 September 2021

### Background

In our Review of Incumbent Support for Effective Markets (project RISE) we concluded that - if the business retail market is going to deliver improved outcomes for customers, the environment and society more generally - then the market-led approach to governance needs to facilitate innovation and support real change that benefits customers, rather than focusing on minor amendments that reinforce the status quo. We noted that MOSL was working with the sector to identify and implement some improvements to the existing model of industry-led governance and strongly encouraged this work to consider how the focus on customers in decision making could be strengthened. Project RISE highlighted changes to the principles and objectives set out in the market codes as one example of how the market could sharpen its focus on the interests of end customers.

Following project RISE, in October 2020 MOSL and the Panel commissioned Satori Board Review to undertake a [Panel effectiveness review](#). This review highlighted that some stakeholders believed that the Panel should play a role in facilitating innovation and customer benefit. Neither of these are currently included in the principles of the WRC or the MAC.

In April 2021, the Panel established the [governance sub-group](#) to develop changes to the MAC and WRC, including to implement recommendations arising from the Panel Effectiveness Review. As part of this work, Ofwat raised this proposal, CPM040 and CPW121, to seek to improve the principles of the WRC and MAC by ensuring these are more focused on achieving desired outcomes and are appropriately defined. The sub-

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<sup>1</sup> Unless otherwise stated, the terms used in this document are those defined in the Market Arrangements Code and/or the Wholesale Retail Code.

group also considered proposals which recommended amendments to the Panel composition and structure (CPM039 / CPW124 – proposed by the Authority and CPM021 / CPW125 – proposed by Castle Water)<sup>2</sup>.

## The issue

The MAC and the WRC both incorporate an individual set of principles which should be used to underpin decision making, including by the Panel. But neither include principles explicitly focused on the delivery of improved outcomes for customers, the environment and society. To strengthen the focus on customers, it is considered that the principles need to be amended to ensure that decision making is sufficiently focused on achieving the desired outcomes. The Final Report sets out a number of issues with the current principles that need addressing:

1. The principles may not be sufficiently focussed or defined which fragments the basis of decision making;
2. Some principles may be open to interpretation leading to a lack of clarity around the desired market output and subsequent decision making; and
3. Certain desired market outcomes may not be effectively captured by the current principles (e.g. customer benefits and innovation).

## The Change Proposal<sup>3</sup>

As detailed above, neither the MAC nor the WRC include principles explicitly focused on the delivery of improved outcomes for customers, the environment and society. The proposed solution seeks to address this by introducing a more defined basis for decision making through principles which focus on delivery of improved customer outcomes for both existing and future Non-Household Customers.

To achieve this, these Change Proposals introduce a primary principle focused on the delivery of improved customer outcomes, and eight supporting principles which comprise a non-exhaustive list of how the primary principle may be furthered.

These Change Proposals also seek to more closely align the MAC and WRC principles, where appropriate, and to form sharper definitions of these.

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<sup>2</sup> The proposed solution recommended under CPM039 / CPW124 has now been approved by the Authority

<sup>3</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>

## Industry consultation and assessment

In addition to hosting a webinar to engage smaller Trading Parties on these Change Proposals, MOSL published a [consultation](#) to seek industry views. The consultation was published on 24 May 2021 and closed on 18 June 2021. There were 20 responses from 13 Wholesalers, five Retailers, the Consumer Council for Water (CCW) and the Major Energy Users Council (MEUC). Responses were largely supportive of the proposed amendments and in particular agreed that the primary principle will focus decision making to achieve improved customer outcomes. Respondents in support considered that the revised MAC and WRC principles would:

- Provide a direction and clarity through provision of a transparent framework against which to decide whether to recommend a Change Proposal to Ofwat for approval;
- Contribute to improving the quality of recommendations, which has the potential to reduce the resource burden on MOSL; and
- Assist with triaging and prioritising Change Proposals.

CCW and the MEUC agreed that the proposed set of principles would better facilitate customer benefits in the market as well as facilitating innovation. CCW suggested that if the proposed principles are adopted, efforts should be made to clearly communicate and promote them to market participants in order to ensure these are embedded from the start of the development of a Change Proposal and understood by every Trading Party. The MEUC added that having a primary principle of customer interest would act as a guiding light on all decisions.

Detailed below are: the key concerns that were raised by respondents to the consultation; the Proposer's (Ofwat's) reply; and the sub-groups views (where these have been provided in the Final Report).

One respondent said that there should be sanctions for failure by members, including dismissal of the Chair, Panel or Secretariat by the Board. The Proposer noted that the MAC provides for removal of members (including the chair) by determinations and removal of Board Members by a determination/vote. Therefore, there appear to be sufficient mechanisms within the MAC to address the concerns raised by this respondent.

Another respondent thought that the interaction of Ofwat's statutory duties with these principles in its execution of this role needs to be clarified. A suggestion was made by this respondent to delete 'where appropriate' from the legal drafting. The sub-group suggested that the wording should be amended to 'wherever appropriate' instead to align this with Ofwat's statutory duties. In response to this, the Proposer confirmed that the original proposal had included 'wherever appropriate' to align with Ofwat's

statutory duties and therefore, the drafting should be amended to ensure this reflects the original proposal.

It was suggested in a response that Proposers should be required to make an assessment against each principle in order to demonstrate that they have fully considered them. The Proposer agreed with this suggestion and considered that the amendments to the Change Proposal Form should address the issues raised by this respondent as Proposers should be required to outline how their proposal furthers the principles within this form. Our decision section (below) details amendments that should be made to the revised Change Proposal Form to ensure that the required evidence and information regarding how the primary principle is furthered is provided by the Proposer. Another respondent recommended that further direction should be provided to the Panel and committees about the extent to which the principles must be satisfied in order to recommend Change Proposals for approval. The Proposer suggested that this could be included in relevant terms of reference documents.

A respondent stressed the importance of consideration of economic impacts on Trading Parties in decision making. Another highlighted that equitable outcomes based on the regulated economic framework in which the Trading Parties operate are important. The Proposer considered that economic impacts would be considered through the revised principles of efficiency and proportionality and that equitable outcomes need to be balanced within the context of the market. One sub-group member thought that all that can be done to try to achieve 'equitable outcomes' is to ensure that there are appropriate governance arrangements, and it should be up to each party to translate them in their own commercial way.

Two respondents suggested drafting amendments for the primary principle. One recommended that this should include reference to Trading Parties. However, the Proposer did not consider this to be necessary as the primary principle is intended to focus on customer outcomes which will be delivered by Trading Parties. Another suggested that the drafting of the primary principle should be amended to refer to settlement of transactions as this respondent's view is that the codes do not exist to deliver customer benefits other than through their effective operation and that of the settlement regime. The Proposer considered this amendment would narrow the focus of the primary principle which would distort the intended focus on customer outcomes. The sub-group agreed with the Proposer's responses.

CCW were supportive of the proposal although recommended extension of the principle of seamless Non-Household Customer experience to include that it should also deliver tangible customer benefits. The Proposer suggested an amendment should be made so that the principle focuses on delivering a seamless experience **'for the benefit of'** Non-Household Customers. The sub-group agreed with the Proposer's recommended drafting amendment.

A respondent to the consultation thought that removal of the requirement to assess seamlessness across Scotland and the Scottish market could be seen as contradictory to the new primary principle. The Proposer noted that there is no reciprocal principal in the Scottish market and highlighted that this amendment is being proposed in recognition of the operational differences between these markets which might make it difficult to ensure a ‘seamless’ customer experience. The sub-group considered the Proposer’s reply and one member suggested a drafting amendment to include that ‘wherever possible, there should not be disruptions between the England and Wales and Scottish market’. Although, the sub-group agreed that the principles which focus on customer benefits provided some comfort that disruption or major issues between markets would not be supported in decision making.

It was recommended by one respondent that post change reviews should be undertaken to measure improvements following implementation of changes to ensure these are achieving the intended benefits. The Proposer and the sub-group agreed that this suggestion is outside of the scope of this Change Proposal and should be accounted for through amendments to the Panel composition (note that [CPM039 / CPW124](#) has now been approved).

### **Sub-group recommendation**

The sub-group unanimously agreed that the proposed solution improves upon the current position.

### **Market Operator Board view**

The Final Report highlights that the Market Operator Board believes the proposed solutions set out in the consultation build on principles of good governance and provide opportunities to prioritise action to address strategic challenges, while also creating efficiencies in considering code change and creating the conditions for market self-governance.

The MOSL Board considers “there must be clarity on the collective task so that MOSL, any Panel and its committees are all working towards the same outcomes. The Principles that have been proposed in CPM040 & CPM121 support this, providing for the appropriate amplification of good end customer outcomes”.

### **Panel recommendation**

The Panel considered this Change Proposal at its meeting on 8 July 2021. It recommended, by unanimous decision, that the Authority approve these proposals. This recommendation has been made on the basis of improving the principles of

efficiency, transparency and simplicity, cost effectiveness and security. The recommended date of implementation is 1 September 2021.

The Final Report details that Panel members agreed with the Sub-group and Proposer's rationale to improve consistency between the MAC and WRC, where appropriate, and bringing the customer to the heart of decision-making. The Panel noted an increased focus on customer benefit in its recent decisions, but considered that the proposal would cement that principle into the codes and its future decision making. Panel members also thought that the proposed set of principles are simpler and clearer. It is noted in the Final Report that one Panel member stated that the proposed set of principles would work seamlessly with the market strategy. Another Panel member highlighted the importance of ensuring these principles are well communicated and embedded if and when the proposed new governance structures are approved<sup>4</sup>.

A Panel member queried whether the supporting principle of seamless Non-Household Customer experience would have to be satisfied for all changes. It was clarified that supporting principles should be considered in the round. Therefore, a change might have no or negative impact on an individual supporting principle provided it had a positive impact on other supporting principles and did not have a negative impact on the primary principle.

To facilitate these Change Proposals the Panel unanimously approved the new template for the Change Proposal Form, subject to CPM040 and CPW121 approval.

## **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 have decided to approve these Change Proposals with modifications. The modified drafting is set out in appendix 1 of this document.

We have made modifications to the proposed drafting to ensure that the original intent behind the introduction of the primary principle in the MAC and the WRC is effectively achieved. This includes to emphasise that the focus of change proposals should be on promoting the primary principle and that the supporting principles cannot – individually or collectively – override the primary principle.

The revised Change Proposal Form should also be updated to make it clear that all change proposals must provide information and evidence to demonstrate how they

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<sup>4</sup> See Ofwat's decision on [CPM039 / CPW124](#) and [CPM021 / CPW125](#)

(directly or indirectly) support the primary principle. Further detail regarding how a proposed change impacts the supporting principles should be provided where these are relevant. We consider that these modifications make it clear that change proposals must support (directly or indirectly) the primary principle but that it is not a requirement for change proposals to further every one of the supporting principles. We acknowledge there could in some cases be trade-offs between the supporting principles that need to be considered, with the overall impact on current and future non-household customers being the primary focus.

We have concluded that, subject to the modifications detailed in appendix 1, implementation of CPM040 and CPW121 will better facilitate the Principles and Objectives of the WRC detailed in Schedule 1 Part 1 Objectives, Principles and Definitions and the Principles of the MAC detailed in Schedule 1. We also consider that approval of these Change Proposals is consistent with our statutory duties.

All proposals must further (directly or indirectly) the primary principle and therefore implementation of the revised principles will assist in better focusing decision making by the Panel (and its committees or sub-groups) on improving outcomes for existing and future non-household customers. It is also a requirement for Proposers to demonstrate that Change Proposals support the primary principle which will assist in ensuring that there is a focus on these outcomes from the outset.

For the avoidance of doubt, the existing principles remain in place and apply to all code changes up to the point where this code change is implemented.

We have detailed below which of the current principles we consider to be furthered by approval of these Change Proposals.

**Efficiency:** The proposed amendments have the potential to contribute to furthering the efficient, economic and coordinated operation of the water and wastewater sector by promoting more effective and focused decision making. Introduction of the primary principle across both the WRC and the MAC will facilitate efficient decision making by focusing the considerations primarily on improving outcomes for customers. The supporting principles will also act as an effective tool to guide decision makers to ensure they are appropriately considering whether the Change Proposal furthers the primary principle prior to making recommendations to the Authority. Where matters are to be decided at meetings (for example, Panel or committee meetings), these should be appropriately structured to allow sufficient time for members to discuss how the primary principle might be furthered, including where appropriate how relevant supporting principles contribute to the primary principle being furthered.

The revised principles can also be used to assist with effective prioritisation of Change Proposals. Using the primary principle to support prioritisation decisions can help to

ensure that those which are expected to deliver the most benefits for customers are prioritised over other Change Proposals.

The amendments to the principles in the WRC and the MAC to more closely align these will support more efficient decision making. There are now very few principles that differ between the WRC and the MAC and differences only exist in recognition and support of the differing purposes of each of these codes.

We consider that the new principles can also assist in improving the quality of Change Proposals which are submitted, which in turn can contribute to improving the efficiency of the change process overall. The amendments to the Change Proposal Form to incorporate the revised principles should encourage parties submitting a proposal to consider to what extent and how the proposal will contribute to delivering improved outcomes for existing and future non-household customers from the outset. The Final Report notes that the improved quality of proposals should also assist MOSL in providing guidance to the Panel in relation to prioritisation.

**Transparency:** The revised principles of the MAC and WRC further the principle of transparency as these are concise, clearly expressed, well-structured and readily accessible. Introduction of a primary principle improves transparency as to the primary focus for decision making. The eight supporting principles, which comprise a non-exhaustive list of how the primary principle may be furthered, should also improve transparency.

## **Decision notice**

In accordance with paragraph 7.2.9 and 6.3.7 of the Market Arrangements Code, the Authority approves these Change Proposals with modifications.

**Georgina Mills**  
**Director, Business Retail Market**

## Appendix 1 – amendments to the legal drafting

Modifications to the proposed legal drafting are shown in red below.

### MAC – Schedule 1 Market Arrangements Code Principles and Definitions –

- 1.1 Due regard shall be given to the following Market Arrangements Code Principles, both primary and supporting principles, in relation to the construction and interpretation of the Market Arrangements Code. The Panel, when contemplating any Market Arrangements Code Change Proposal, ~~shall give consideration to ensuring that such change is both consistent with and not to the detriment of any of the Market Arrangements Code Principles, and~~ shall give particular consideration to supporting, developing and implementing change that advances the primary principle.

#### Primary Principle

- 1.2 The Market Arrangements Code shall be maintained, operated and developed in a manner that best seeks to protect and promote the interests of, and participation by, existing and future Non-Household Customers.

#### Supporting Principles

In furthering the primary principle, regard shall also be given to the following supporting principles.

### WRC – Schedule 1 Part 1: Objectives, Principles and Definitions

#### Part A: Objectives and Principles

##### 1.5 Principles

Due regard shall be given to the following Principles, both primary and supporting principles, in relation to the construction and interpretation of the Wholesale-Retail Code. The Panel and the Market Operator, when contemplating any Change Proposal or Charging Change Proposal, ~~shall give consideration to ensuring that such change is both consistent with and not to the detriment of any of the Principles, and~~ shall give particular consideration to supporting, developing and implementing change that advances the primary principle.

### 1.5.1 Primary Principle

The Wholesale Retail Code and arrangements established by or under the Wholesale Contract shall be maintained, operated and developed in a manner that best seeks to protect and promote the interests of, and participation by, existing and future Non-Household Customers.

#### Supporting Principles

In furthering the primary principle, regard shall also be given to the following supporting principles.