

Market Arrangements Code Change Proposal – Ref CPM047

Modification proposal	Market Arrangements Code Change Proposal ¹ – CPM047 – Change to Panel quorum
Decision	The Authority has decided to approve this Change Proposal
Publication date	10 January 2022
Implementation date	14 January 2022

We are approving this Change Proposal. Approval of this Change Proposal will avoid undue delay to the progress of other Change Proposals which are due to be considered at the January and February 2022 Panel meetings.

Background

The Market Arrangements Code (MAC) establishes quorum for the Panel. No business can be transacted at the Panel unless a quorum is present². The quorum is specified in section 5.9.1 to be a minimum of the following voting members:

- The Panel Chair (or the Panel Deputy Chair, or other appointed Panel Chair nominated by the Panel under Section 5.3.3),
- Two Associated Retailer Panel Members and two Unassociated Retailer Panel Members (or any combination equal to at least four Retailer Panel Members),
- Two Wholesaler Panel Members, and
- Two Independent Panel Members (or any of their alternates entitled to be present).

¹ Unless otherwise specified, the terms used in this document are those defined in the Wholesale Retail Code as approved by this document.

² Unless it is an urgent Panel Meeting.

In addition to the above, section 5.10.2 the MAC requires that a Qualifying Majority are in agreement for determinations to remove a Panel Member. A Qualifying Majority for the purposes of section 5.10.2 is not less than ten Panel Members.

Following approval of [CPM039/CPW124 – revisions to Panel composition](#) by the Authority in July 2021, the current Panel will cease to exist and, by the end of the transitional period (by 1 March 2022), will be replaced by the strategic panel and the Code Change Committee.

The issue

The Final Report details that two Trading Party Panel Members (one Wholesaler and one Associated Retailer) had confirmed that they would be stepping down from the Panel at the end of the 2021 calendar year. In both cases, the Panel Members shall be leaving their employing Trading Party and are therefore unable to appoint an alternate. This has resulted in the Panel having insufficient active Wholesaler Panel Members to fulfil quorum requirements for the January and February 2022 Panel Meetings. It should be noted that there has been an enduring Wholesaler Panel Member vacancy for a considerable period of time, despite numerous calls for nominations. If the Panel is not quorate, it is unable to transact any business at Panel Meetings and therefore would be unable to fulfil its duties as set out in section 5.2 of the MAC.

The reduction in active Panel Members from twelve to ten (or from thirteen to eleven, when including the Panel Chair) also means that, in the unlikely event that the Panel voted whether to remove a Panel Member from office, it would require a unanimous decision for there to be a Qualifying Majority.

The Change Proposal³

To ensure that quorum can be achieved at Panel meetings during the remainder of the transitional period, it is proposed that if Panel membership reduces from its number existing at the beginning of the transitional period (which it has done following the resignation of two Panel Members at the end of the 2021 calendar year), then:

- the requirement in section 5.6.13 of the MAC to elect a new Panel Member will not apply;
- Quorum is amended to "a minimum of the Panel Chair (or the Panel Deputy Chair, or other appointed Panel Chair nominated by the Panel under Section 5.3.3), four (4)

³ The proposal and accompanying documentation is available on the MOSL website at <https://www.mosl.co.uk/market-codes/change#scroll-track-a-change>

Panel Members from Trading Parties (which can be made up from any combination of Associated Retailer Panel Members, Unassociated Retailer Panel Members, and Wholesaler Panel Members) and two (2) Independent Panel Members (or any of their alternates entitled to be present), each of whom must be entitled to vote at that meeting".

To maintain consistency with the existing provisions which set out the requirements for determinations to remove a Panel Member, it is proposed that for the purposes of section 5.10.2, a "Qualifying Majority" will be not less than eight Panel Members (rather than ten Panel Members). This proposal would maintain consistency with the existing provisions as a unanimous decision is not currently required for a determination to remove a Panel Member to pass.

Industry consultation and assessment

On 6 December 2021, MOSL hosted a webinar on CPM047 to offer Trading Parties the opportunity to discuss the issue and proposed solution. The Final Report details that the webinar was attended by representatives from Anglian Water and Northumbrian Water. Both Wholesalers noted that the solution would ideally require the presence of a Wholesaler Panel Member in the January and February 2022 Panel meetings. However, the lack of Wholesaler representation at forthcoming Panel meetings is detailed in the Final Report to be mitigated through the use of industry groups for the Change Proposals on which the Panel may be invited to make a recommendation to the Authority ('CPW070c - Bilaterals Phase 3 - Processes B1 and F5' in January and 'CPW070d Bilaterals Phase 3 – Processes B3, B7, F4 & G1' in February). There is also Wholesaler representation on the industry groups⁴ that have contributed to the development of these Change Proposals. Additionally, the other changes that are due to be discussed at the January and February 2022 Panel meetings are in early stages of development, and the Panel will be invited to approve their respective change plans, rather than make a recommendation to the Authority.

The Final Report also notes that the Wholesalers attending the webinar considered that seeking Wholesaler nominations for the remainder of the transitional period would likely be ineffective (particularly as nominations would have been sought over the Christmas period). It is further stated that given the lack of response to previous calls to fill the enduring Wholesaler vacancy on the current Panel, and the fact that any successful nominee would only be afforded the opportunity to serve for two meetings, it

⁴ Further information regarding the industry groups can be found on MOSL's website [here](#).

would not guarantee a solution. Both Wholesaler attendees confirmed that they would be unlikely to nominate a candidate.

View of the Customer Representative

The Final Report details the view of the Customer Representative as follows:

“Whilst the solution proposed is not ideal in terms of governance, and we would not be supportive of this approach as a long-term code change, we understand the need for the proposed change as a pragmatic, short-term, solution only to cover just two Panel meetings in January and February 2022. It is important that the current Panel can continue to conduct business at these two meetings until the Code Change Committee commences its term in March 2022”.

Panel recommendation

The Panel considered this Change Proposal at its meeting on 14 December 2021. It recommended, by unanimous decision, that the Authority approve this proposal. This recommendation has been made on the basis of improving the primary principle and the secondary principles of continued development and sustainment of an effective market, efficiency and proportionality. The recommended date of implementation is 14 January 2021.

The Final Report details that Panel Members expressed concern regarding the proposed reduction to the Panel quorum although they were satisfied that this would not unduly impact business expected to be discussed at the Panel Meetings in January and February 2022. A member thought that the Panel would also be in a weaker position should an Urgent Panel Meeting be required.

It is noted, however, in the Final Report that the Panel recognised the exceptionality of CPM047 and emphasised the uniqueness of the issue, the short timescale available for resolution, the lack of viable alternative solutions, and the temporary condition of the proposed solution. These points were fundamental considerations in rationalising its endorsement of the proposed solution, which under normal circumstances, Panel members thought would not be considered appropriate. It was requested that this position be clearly outlined in the Final Report and future industry communication regarding CPM047.

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 the Change Proposal. We have concluded that the implementation of CPM047 will better facilitate the principles of the MAC detailed in schedule 1, Principles and Definitions, and is consistent with our statutory duties.

We consider that the Change Proposal furthers the primary principle of the MAC as it will operate in the best interests of customers. The amendments to the Panel quorum will ensure that Panel is still able to conduct business at its final two meetings in January and February 2022.

Whilst Wholesaler presence would be preferable at meetings of the Panel, it is understood that there will continue to be one active Wholesaler member and that previous efforts to appoint new Wholesaler Panel Member(s) have been unsuccessful. In this context we agree that the Change Proposal is proportionate as it is time-limited and where there is potential that Change Proposals may be recommended to the Authority, these have been considered by relevant industry groups (which are predominantly constituted of Trading Parties, including Wholesalers). The proposed amendments additionally advance the supporting principle of proportionality as the drafting amendments are proportionate to achieve the aim of the Change Proposal.

We agree that CPM047 is a pragmatic solution to ensure that Change Proposals can progress during the transition period. CPM047 will advance the supporting principle of efficiency by ensuring that Change Proposals that are due to be considered at the Panel Meetings in January and February 2022 are not unnecessarily delayed. If Change Proposals are subsequently recommended to, and approved by the Authority, they will deliver benefits to customers and the market without undue delay thereby also advancing the supporting principle of continued development and sustainment of an effective market.

Decision notice

In accordance with section 7.2.9 of the MAC, the Authority approves this Change Proposal.

Georgina Mills,
Director, Business Retail Market