

Wholesale-Retail Code Change Proposal – Ref CPW105

Modification proposal	Wholesale-Retail Code Change Proposal – Ref CPW105 – Provisions of Information Obligation
Decision	The Authority has decided to approve this Change Proposal
Publication date	14 July 2022
Implementation date	26 August 2022

We are approving this Change Proposal.

We consider that this change to the Wholesale-Retail Code (WRC) will enable the Code Change Committee (CCC) to focus its time on activities that provide greater value to customers and the market.

Key message for stakeholders to note:

We note that the purpose of the WRC requirement for the Panel to review and approve the summary list of documents is unclear. We agree that it does not seem an appropriate use of Panel or CCC time and resources to continually undertake this review.

However, we are mindful that this change relates to responsibilities and processes that govern the transparency and accessibility of market documents. We therefore encourage MOSL to clarify the process, roles and responsibilities for reviewing documents published under the Market Arrangements Code (MAC) and the WRC.

Background

This Change, originally raised in October 2020, seeks to rationalise the Panel’s involvement in the Provisions of Information obligation included within the Market Terms of the WRC.

Section 1.2.11 of the WRC Schedule 1 Part 4: Market Terms places an obligation on the Market Operator (MOSL) to provide a summary list of the documents that it makes

available to the general public, Trading Parties, Panel Members and the Authority, for approval by the Panel. In March 2019, MOSL presented to the Panel a list of documents to fulfil this obligation within the Market Terms. The Panel questioned the appropriateness of this obligation and requested MOSL to return with a Change Proposal that seeks to remove this requirement from the WRC.

In response to this, in July 2019, MOSL presented Change Proposal CPW059: 'Changes to Review Obligations' to the Panel to resolve this issue and to also 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 for 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 would be undertaken sat with MOSL and not the Panel, which did not align with the Final Recommendation Report. Ofwat stated that it could not proceed to make a decision on the Change Proposal and recommended that 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 re-considered its approach to CPW059 in light of this and decided to move forward with two separate Change Proposals. The revised version of CPW059 addressed the frequency of code obligated technical reviews and was approved by Ofwat in January 2021. [Change Proposal \(CPW105\) v1](#) was raised to assess the Provisions of Information obligation. The Panel considered CPW105 at its meeting on 24 November 2020 and a [Final Recommendation Report \(FRR\)](#) was submitted to Ofwat for approval in December 2020.

Ofwat considered the change proposal, and the issue it intended to address, but was unable to make a decision on the Change Proposal as there had been a misinterpretation of the requirements of the code to which the Change Proposal related. Ofwat noted that reference was made to a requirement on MOSL to publish a list of "non-Code obligated documents", which was incorrect as the WRC only requires MOSL to publish a list of MAC and WRC documents. The detail of this is set out in our [decision of 26 April 2021](#). In light of this misinterpretation by MOSL and the Panel, Ofwat requested the Panel to revise and re-submit the FRR.

MOSL subsequently revised the Change Proposal on 8 February 2022 and [version 2 of CPW105](#) and a further draft recommendation report were presented to the Code Change Committee on 26 April 2022. The CCC unanimously agreed to recommend approval of this change, and the FRR was submitted to Ofwat on 26 April 2022 for decision - this can be found [here](#).

The issue

Under section 1.2.11 of the Market Terms, MOSL is obligated to produce a summary of materials and information which it is required to make available under the WRC and the MAC. Where the codes do not specify recipients of the materials and information then MOSL also establishes and maintains a policy setting out who this information is made available to, which is included in the summary. The Panel is currently required to approve the summary from time to time, which has historically been annually. As explained above, this requirement has caused confusion in the past, with the Panel questioning the purpose of the obligation and what it was being asked to review and approve.

Following the implementation of CPM039/CPW124 - 'Revisions to Panel Composition' - the Panel was replaced by the Strategic Panel which inherited its obligations. At its January 2022 meeting, the Strategic Panel agreed to delegate a number of its code obligations to the Code Change Committee (CCC), including the duty to review and approve the list of materials and information.

The information in the FRR suggests that the original intention of the requirement seems to have been for the Panel to simply review and approve the availability of each document or advise MOSL if it should be restricted or broadened. However, to achieve this effectively, the Panel/CCC have now concluded that they would need to gain an appreciation and understanding of each document on the list every year and to interpret policies, strategies and legislation in relation to each one. There are currently 68 documents on the list, and the proposer of this change considers this to be an unrealistic demand on CCC members whose primary role and skillset is to review the market codes and make recommendations to Ofwat on proposed changes to them. It is not considered a good use of CCC members' time, and the value of them doing this is questioned.

The Change Proposal

CPW105 proposes to remove the requirement for Panel/CCC to review and approve the list of documents that is created by MOSL. The obligation on MOSL to create the list and a supporting policy will remain in place.

Industry consultation and assessment

There has been no consultation on this Change Proposal, as it is deemed to be low impact and straightforward. However, the Customer Representative (CCW) was contacted on two occasions during the change development for its view on the proposed solution for CPW105 and did not highlight any impacts on customers. On [Change Proposal \(CPW105\) v1](#), CCW commented: “We agree that the Panel’s main focus should be on high priority areas, so we would welcome an examination of current responsibilities to determine whether any could possibly be undertaken by an alternative committee, or under another process”. On [version 2 of CPW105](#), CCW said: “we agree that the focus of the Code Change Committee should be on changes that deliver benefits to customers and add value to the market”.

CCC recommendation

The CCC considered this Change Proposal at its meeting on 22 April 2022. It recommended, by unanimous decision, that the Authority approve this proposal on the basis that it furthers the WRC Principles of Proportionality, Efficiency and being Simple, Cost Effective and Secure. The recommended date of implementation is 26 August 2022.

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 proposal. We have concluded that the implementation of CPW105 will better facilitate the objectives of the WRC detailed in Schedule 1 Part 1 Objectives, Principles and Definitions and is consistent with our statutory duties.

We consider that the Change Proposal furthers the **primary principle** of the WRC as it is in the interests of existing and future non-Household customers to ensure that the Panel and its Committees operate in the most cost-effective way.

The Change Proposal is consistent with the supporting principle of **Efficiency** as it seeks to remove the low value-adding activity for the Code Change Committee to review and approve the list produced by MOSL and will allow the CCC to focus its time on tasks that are more likely to deliver greater value to customers and the market. We agree with the Proposer’s view that the change is also **simple, cost effective and secure** as it will remove cost and resource associated with the removed obligation.

We recognise the importance of ensuring transparency and accessibility of market documents. There is nothing to prevent any stakeholder approaching MOSL to request

access to specific documents, and MOSL can consider such requests at any time. In addition, the CCC (on behalf of the Panel) will still be able to request and review the summary of materials and information produced by MOSL if they so wish. If the CCC or Panel have concerns regarding the availability of a document, they may raise this with MOSL or propose a code change to prescribe its availability.

In the FRR, MOSL states that its member appointed Board already has oversight of MOSL publications. It is unclear to what extent the Board undertakes this activity. We have noted CCWs response to the initial change proposal and support its suggestion of "an examination of current responsibilities to determine whether any could possibly be undertaken by an alternative committee, or under another process." In light of the above comments, we would encourage MOSL to develop a process outside of the market codes which establishes:

- who will have the responsibility for reviewing market documents, and their publication, on an ongoing basis;
- the criteria for disclosure of these documents;
- how this should be set out in guidance;
- whether (and how) the CCC will be informed of any outcomes from these reviews).

Decision notice

In accordance with paragraph 6.3.7 of the Market Arrangements Code, the Authority approves this Change Proposal.

Dan Mason
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