

## **Part 6: Performance Standards, Monitoring and Issues Resolution**

### **6.1 Scope**

This Part 6 sets out or refers to:-

- 6.1.1 the Performance Standards relevant to each Trading Party;
- 6.1.2 the role of the CMA in monitoring and reporting on compliance with the Performance Standards and on its own compliance with the Market Code;
- 6.1.3 the role of the CMA in connection with failures to meet the Performance Standards; and
- 6.1.4 the role of the CMA in dealing with enquiries from and resolving issues raised by Trading Parties.

### **6.2 Trading Party Performance Standards**

- 6.2.1 Each Trading Party shall carry out its duties under the Market Code in order to meet the Performance Standards relevant to it.
- 6.2.2 The CMA shall monitor the performance of each Trading Party against the Performance Standards and shall send each Trading Party a report detailing that Trading Party's performance against the Performance Standards on a monthly basis.
- 6.2.3 If a Trading Party fails to meet any of the Performance Standards and any Performance Standard Charges are due in accordance with Sections 6.2.4, 6.2.5 and 6.2.6, then the CMA shall be entitled to invoice that Trading Party for Performance Standard Charges in accordance with CSD 0002 (Performance Standards) and Part 7 provided that the Board shall be entitled, in its discretion to disapply any of the Performance Standard Charges at any time prior to the Review Date. In deciding whether or not to disapply any of the Performance Standard Charges the Board shall consult with the TP.
- 6.2.4 Subject to Sections 6.2.5 and 6.2.6 below, for each period of three months from the Go Live Date each Trading Party shall incur a Performance Standard Charge

~~of £30~~ for each Performance Standard failed where "failed" has the meaning given in CSD 0002 (Performance Standards).

6.2.5 ~~No Performance Standard Charge will be payable by any Trading Party in relation to the first 5 per cent of Performance Standard failures by that Trading Party in the relevant three month period. Performance Standard Charges will be designated as CMA Performance Standard Charges or SWLP Performance Standard Charges in accordance with CSD0002 (Performance Standards).~~

6.2.6a The aggregate liability of ~~each Trading Party~~ Scottish Water in relation to any Year for CMA Performance Standard Charges shall in no event exceed ~~£100,000~~ 0.15% of the Wholesale Charges payable to it over the full financial year based upon the R1 Settlement Runs as published at the date of the invoice for each quarters Performance Standard Charges. For the avoidance of doubt, there is no cap on the aggregate liability of Scottish Water in respect of SWLP Performance Standard Charges.

6.2.6b The aggregate liability of each Licensed Provider in relation to any Year for CMA Performance Standard Charges shall in no event exceed 0.15% of the Wholesale Charges payable by it over the full financial year based upon the R1 Settlement Runs as published at the date of the invoice for each quarter's Performance Standard Charges. The aggregate liability of each Licensed Provider in respect of CMA Performance Standard Charges will be further reduced by the aggregate of SWLP Performance Standard Charges due to it. In the event that the aggregate of the SWLP Performance Standard Charges exceeds the capped liability in respect of CMA Performance Standard Charges, there will be no overall liability in respect of charges between the Licensed Provider and the CMA.

6.2.7 The CMA shall provide a report to the TP on a quarterly basis setting out the extent to which Trading Parties are meeting or failing to meet the Performance Standards, such report to be prepared on a market level basis and shall not specifically identify individual Trading Parties.

6.2.8 The CMA shall be entitled to require that a Trading Party carries out further training and/or Market Tests in accordance with the Training Process and/or

Market Assurance Process where that Trading Party persistently fails to meet some or all of the Performance Standards relevant to it.

6.2.9 Each Trading Party shall keep full and accurate records of the performance of its duties under the Market Code.

6.2.10 If a Trading Party incurs any Performance Standard Charges that Trading Party shall provide a written report to the CMA confirming the remedial steps that it will take to avoid such failure recurring.

### **6.3 Performance Standards and Performance Indicators Review**

~~6.3.1 The CMA shall monitor the performance of each Trading Party against the Performance Indicators during the period from the Go Live Date to the Review Date with a view to considering whether or not such Performance Indicators should become Performance Standards. NOT USED~~

~~6.3.2 The Board shall review the Performance Standards and the Performance Indicators in the period of three (3) months immediately prior to the Review Date and shall be entitled to make amendments to the Performance Standards and the Performance Standard Charges and to introduce new Performance Standards and Performance Standard Charges in order to encourage continuous improvement in Trading Parties' compliance with their duties under the Market Code such amended or new Performance Standards and Performance Standard Charges to take effect from the Review Date. NOT USED~~

6.3.3 The Board shall review the Performance Standards and the Performance Standard Charges on an annual basis thereafter from the first anniversary of the Review Date and shall be entitled to make amendments to the Performance Standards and the Performance Standard Charges and to introduce new Performance Standards and Performance Standard Charges in order to encourage continuous improvement in Trading Parties' compliance with their duties under the Market Code.

### **6.4 Monitoring and Enforcement by the CMA**

6.4.1 The CMA shall also monitor compliance by each Trading Party with its duties under the Market Code (other than in relation to the Performance Standards).

- 6.4.2 The CMA may commence and continue court proceedings on the instructions of the Board against any Trading Party which is, or may be, in breach of any of its duties under Part 7 of the Market Code.
- 6.4.3 Each Trading Party (other than the Trading Party in breach or possible breach) hereby appoints CMA as agent in its name and on its behalf to commence and take such proceedings, and agrees that CMA shall exclusively have the conduct of the proceedings.
- 6.4.4 All costs and expenses incurred by CMA in the proceedings (including any amounts awarded to the Trading Party in breach or possible breach) shall be CMA Charges.
- 6.4.5 Where any amount is recovered from the Trading Party in breach pursuant to such proceedings, such amount shall be taken into account in determining under Section 7.3 and Schedule 21 the amounts payable by Trading Parties in respect of CMA Charges on such basis as the CMA shall consider fair and reasonable in all the circumstances.

## **6.5 CMA Performance**

- 6.5.1 The CMA shall comply with its obligations to receive and issue data in accordance with the Market Code. The CMA shall monitor its compliance with the timescales set out in the Market Code and will provide quarterly reports to the TP in relation to receipt and issue of data items as agreed by the Technical Panel setting out the extent to which it is meeting or failing to meet such timescales.
- 6.5.2 To the extent that the CMA materially or persistently fails to meet certain timescales set out in the Market Code, the CMA shall provide a written report to the TP confirming the remedial steps that it will take to avoid such failure recurring.

## Extract from Schedule 1 – Definitions

*To be removed / inserted as applicable alphabetically in the schedule.*

~~"Performance Indicators" the areas of performance for each Trading Party to be monitored by the CMA set out in table 2 of CSD 0002 (Performance Standards);~~

"Performance Standard Charges" any charges to be applied for failure to meet any Performance Standards as updated and amended from time to time in accordance with Part 6. For the avoidance of doubt this includes both CMA Performance Standard Charges and SWLP Performance Standard Charges;

CMA Performance Standard Charges the Performance Standard Charges designated as CMA Performance Standard charges in accordance with table 1 of CSD 0002 (Performance Standards)

SWLP Performance Standard Charges the Performance Standard Charges designated as SWLP Performance Standard charges in accordance with table 1 of CSD 0002 (Performance Standards)

"Performance Standards" the standards of performance for each Trading Party set out in table 1 of CSD 0002 (Performance Standards), as updated and amended from time to time in accordance with Part 6;