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17 April 2015

Dear Ofwat

Re: Guidance on eligibility – a consultation

We welcome the opportunity to comment on Ofwat's eligibility consultation and the questions contained within. Our response is set out below against each of the five consultation questions.

As a starting point, we agree that council tax and business rates should be used as a method for defining whether a premise is likely to be eligible. However, we do not agree with the use of council tax or business rates to determine the extent of an eligible premise. Instead, the 2011 Ofwat guidance should stand as the basis for defining a single set of premises.

We are fully committed to providing the greatest clarity to customers on whether they are eligible or not for the non-household market. For most customers, eligibility will be obvious. But for those at the margin we would recommend that guidance is kept as simple as possible. Ofwat's starting assumption is that mixed-use premises will be in the market. We are concerned that this assumption may cause incidence effects for customers in some scenarios. On this basis, the principal use of the premise is very important and final decisions on principal use should be customer- led.

We have structured the rest of our response to specifically answer the five questions set out in the discussion paper.

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Q1 Do you have any comments or concerns in relation to our proposed guidance on the threshold requirement?

We believe, given the differences between companies operating wholly or mainly in Wales and those operating wholly or mainly in England, it would be beneficial for Ofwat to issue separate guidance for the different operating regions. This would avoid unnecessary complications to the guidance for the majority of companies with respect to the threshold requirement, and significantly simplify the guidance for companies not operating wholly or mainly in Wales.

Q2 Do you have any comments or concerns in relation to our proposed guidance on what constitutes a single set of premises?

We are comfortable that, as a starting point, council tax and business rates should be used as a method for defining whether a premise is likely to be eligible.

However, we do not agree with the use of council tax or business rates to determine the extent of an eligible premise; nor should the use of business rates to define eligibility naturally result in disaggregation into smaller units.

In its 2011 guidance Ofwat set out that a single set of premises would be defined according to the following criteria:

(i) The premises are located within a single boundary and a single customer occupies the premises and is liable for water bills in respect of those premises (single boundary premises);
(ii) The premises consist of co-located buildings, other similar structure and/or land which have adjoining boundaries or which are separated only by transport infrastructure and a single customer occupies the premises and is liable for water bills in respect of those premises (common occupation co-located premises); or
(iii) The premises consist of a single building or co-located, separately occupied buildings, other similar structures and/or land with all four of the following characteristics:
    a. They have a common landlord or managing agent in respect of the totality of the premises;
    b. They have adjoining boundaries or are separated only by transport infrastructure;
    c. They are served by a self-contained common water supply system that does not belong to an appointed water company; and
    d. A single customer is liable for water bills in respect of the totality of the premises (common management co-located premises).

It is our view that the continuation of these criteria, both when the threshold requirement applies and when it does not apply, is the most rational approach in terms of customer expectation and the most sensible in terms of operating the market. As the guidance notes, this is a mixed

question of law and fact, but one which should be determined by the practicality established by the facts of the situation of the premises.

So, there will be a number of practical, network-related reasons why a number of properties (which are separately measured for the purposes of business rates) should be treated as single premises for eligibility purposes. For example, a shopping arcade may have individual shop units paying separate business rates but a single metered supply serving multiple units. If this arrangement is owned and operated by a management company, then only the management company (i.e. the bill payer) would be eligible to switch retailer and not the individual units, irrespective of the fact that business rates are separately payable by the individual units.

Furthermore, the disaggregation of existing premises into separate properties would have consequences for tariffs and charges. For example, disaggregation of premises would lead to charges being applicable for each disaggregated property.

In the case of measured charges on two or three part tariffs, this would translate into a fixed and variable tariff (and in the Anglian region, potentially a Maximum Daily Demand component) which would be applicable per disaggregated property. This would create incidence effects for customers, who could suddenly face multiple fixed charges and varying volumetric rates which could increase their total charges. We consider this to be undesirable and not in the customer interest.

The consultation document sets out that licensees are not precluded from treating groups of premises as a single entity for billing purposes, for the convenience of the customer. However, a customer by customer approach does not seem an appropriate or logical basis for agreeing "siteness". Nor can billing arrangements overcome the bill incidence effects noted above, as the calculation of charges by the Market Operator will be determined at a SPID level, and premises will be synonymous with SPID.

Equally, in the context of a large industrial site in single occupation, the liability to pay business rates to determine "siteness" for the contestable market, should equally not lead to disaggregation of existing premises. To do so appears to run counter to the established legal precedent which looks at the "rateable hereditament", a concept unique to rating law and not necessarily the same as premises.

In answer to the question of whether or not premises in a single occupation constitute one or more hereditaments, rating cases and the principles used to determine whether premises are a separate hereditament can be summarised as follows (a non-exhaustive list):

- whether two or more parts of the premises are capable of being separately let. If not, then the premises must be entered as a single hereditament;
- whether the premises form a single geographical unit.
- whether, though forming a single geographical unit, the premises by the structure and layout consist of two or more separate parts.

- whether the occupier finds it necessary or convenient to use the premises as a whole for one purpose or whether he uses different parts of the premises for different purposes.

Looking at these would suggest that if an existing customer premises contains two or more buildings that are individually business rated (even if this results from historical accident), then these premises should not be disaggregated for the purposes of the market.

On this basis the 2011 guidance should stand as the basis for defining a single set of premises.

Q3 Which factors are relevant when deciding whether or not the principal use of mixed-use premises is as a home?

We are fully committed to providing the greatest clarity to customers on whether they are eligible or not for the non-household market.

Ofwat's consultation sets out its expectation that for mixed-use premises (or those referred to as "composite" in the Valuation Office Agency datasets) that the starting expectation for these properties would be that they were in the market.

We recognise that this definition has the potential to cause some incidence effects in scenarios where properties which are currently classed as domestic (and charged on the suitable tariffs) are put into the market where commercial tariffs would apply.

On this basis, the principal use of the premise is very important. This decision of the principal use should be customer- led, that is, if the customer states (and provides appropriate evidence) that the principal use of the premise is their home, then they would be outside of the market. We believe this approach is more appropriate than companies carrying out detailed desktop or site surveys.

This approach would be consistent with the requirements of the Data Protection Act 1998, which requires that the information collected about private individuals must not be excessive and should not be kept for longer than is necessary. In the context of companies unilaterally collecting information about household use, such data collection may be against the law. In instances where we cannot legally gather more information, it will be hard for companies to determine a customer's eligibility without direct input and contact with the customer itself.

We think that the customer leading this process resolves this issue.

Q4 Do you have any comments on our proposed guidance on the definition of eligible non-household premises?

The consultation rightly points out that *"no single rule can be applied in England and Wales without exceptions"* which is a view we support. Therefore the VOA dataset should be a guide only, with the onus remaining on companies to determine eligibility.

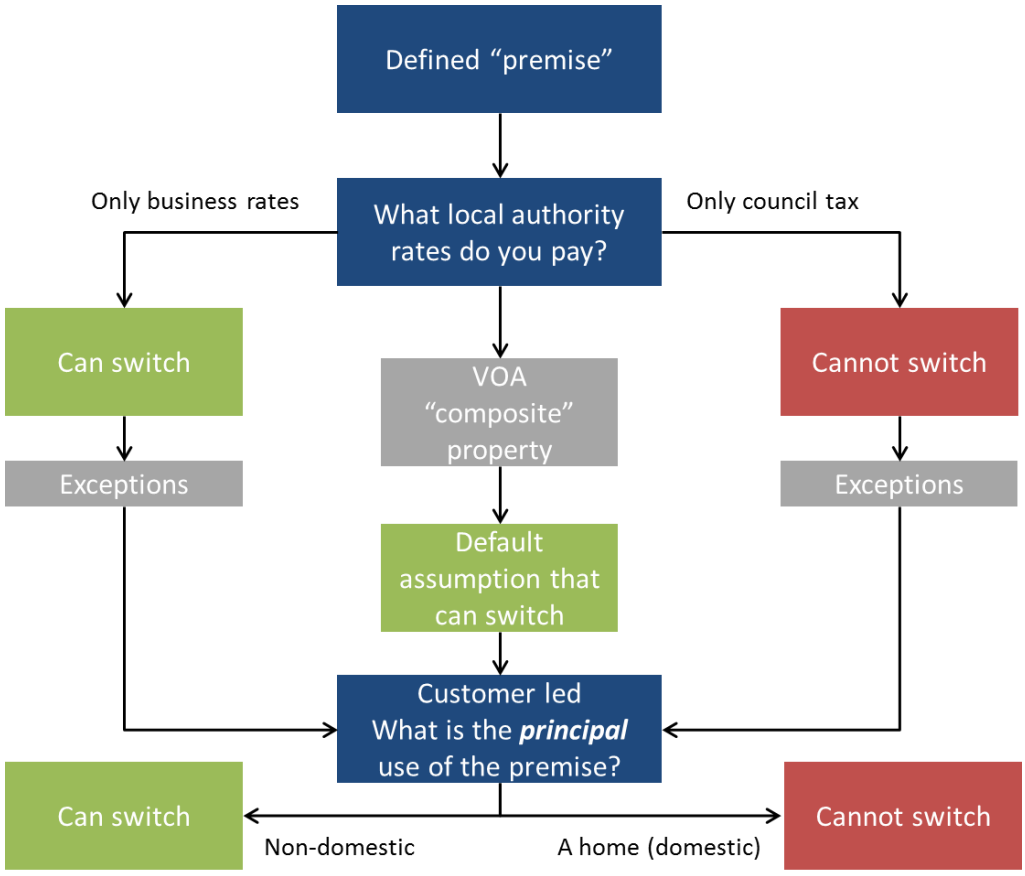
We also note in certain areas of the guidance, there is acknowledgement that there will be cases where the VOA dataset will not give the "right" answer. As stated above, we therefore consider the VOA data and business rates data should only be used as a guide.

We are comfortable with the proposal in Ofwat's consultation that the starting point for mixed-use premises is that they are in the market.

Combining our responses to questions 3 and 4; we consider that the flow diagram contained in the guidance document should be amended as follows to reflect that:

- There will be exceptions to eligibility for premises paying only business rates or only council tax; and
- For mixed use premises, defining principal use will be customer led.

The amended diagram is set out below:



Q5 Do you have any further comments on concerns in relation to the proposed changes we are making to this guidance?

There will be situations where principal use of a premise will change repeatedly according to personal circumstances. For example, a business might start up from a domestic home and then move to alternative premises as it expands, or vice versa as the business contracts. In these circumstances, it will be challenging for companies to know the relevant situation of the customer. This complexity supports a customer-led approach being used to determine whether mixed use premises are eligible or not.

In terms of some specific comments on examples in the consultation:

A nursing home – we assume that this will probably be business rated and the company paying the bill will see it as commercial premises. It will have offices and administration and may well have live-in staff. Is it clear that that this will be 'household' for the purposes of the market?

A farm – We expect there to be many scenarios for arrangements between farms, farmhouse and tenant farmers (and land). The guidance does not give clear guidance, which suggests that companies will have to investigate the minutia of detail surrounding each farm to determine eligibility.

Concluding thoughts

We agree with the importance of NHH customers having upfront a clear understanding of whether they are likely to be eligible to switch their retail supplier. This guidance offers a simple guide through the use of business rates but squarely places the onus on companies to determine eligibility.

Whilst the approach to using business rates will help provide clarity for some customers, this does not go far enough to resolve properties in the "grey areas". Furthermore, this does not help to provide guidance for premises which may repeatedly switch between being classified as household or non-household. As stated above, this should be customer led and not subject to detailed data studies.

As a company we recognise that this guidance placed a responsibility on companies to provide clear additional information to customers to manage their expectations on whether they will be eligible to participate in the market in April 2017, or subsequently should their circumstances change. We are committed to doing this.

If you have any questions or comments on the content of this letter or appendix, please contact Darren Rice (dRice@anglianwater.co.uk 01480 323906).

We look forward to continuing engagement with Ofwat as the market reform programme enters a critical phase.

Yours sincerely,

Jean Spencer
Regulation Director