



Licensing and policy issues in relation to the opening of the non- household retail market – an Ofwat consultation

1. Introduction

- 1.1 The Consumer Council for Water (CCWater) is the statutory consumer organisation representing the interests of customers of regulated water and sewerage companies in England and Wales. CCWater has four regional committees in England and a committee for Wales. We welcome the opportunity to respond to Ofwat's consultation on licensing and policy issues relating to the opening of the non-household retail market.

2. Executive Summary

- 2.1 We are broadly supportive of the proposals put forward by Ofwat in the consultation. The areas in which we have concerns are:

- 2.2 **Consumer Protection:** In section 7 Ofwat makes reference to the fact it has not included any specific licence conditions relating to consumer protection and that it *"will need to consider whether additional consumer protections are needed."*

- 2.3 Our research has identified a number of issues encountered in other liberalised sectors that customers say they want the water market to avoid. This includes mis-selling, tie-in and rollover contracts. We believe it is very important that Ofwat develops a code of practice for the industry to prevent these practices from occurring, and where they do, sanction parties that fail to adhere to the codes. Ofwat's instinct may be to allow the industry to regulate itself in this matter by encouraging a voluntary code. However, we believe that for the opening of the market at least there should be clear rules in place to ensure customers are not subjected to dubious practices during the rush to sign them up.

- 2.4 **Level Playing Field:** We believe that there needs to be clearer guidance about how companies must demonstrate compliance with Level Playing Field requirements, particularly where incumbent companies have elected not to legally separate their wholesale and retail businesses. We would welcome more information on how any breaches will be identified and the sanctions that would occur as a result. It is generally acknowledged that greater separation brings lower risk. For those companies that choose not to separate, it is probable that Ofwat would be reliant on receiving and investigating complaints in order to identify malpractice in the market. It is important for the industry to demonstrate that it takes the Level Playing Field concept seriously in order to build and maintain confidence in the market. A series of complaints about anti-competitive behaviour could undermine this confidence and prevent customers from engaging with the market.

- 2.5 **Market Readiness:** In order to give authority to any licence condition on market readiness Ofwat should specify the actions that will be taken as a result of any failure to meet these conditions. This could include referring the failure to Defra in order to inform the Secretary of State's decision on whether to approve market opening.

Q1 Do you agree with the proposal to have separate licences covering water and wastewater retail? If not, please explain how you envisage that a single licence for water and wastewater would differ?

Yes. This flexibility should help encourage a diverse market, with retailers able to specialise in water or wastewater separately if they wish.

Q2 Do you agree with the proposed amendments to standard conditions for the new water supply and sewerage service licence (WSSL)?

Yes.

Q3 Do you think any of the proposed amendments listed in Table 3 are non-routine and require additional discussion? If so, why?

No. These amendments are for standard conditions carried over from current licence text, with corrections made to reflect the enhanced scope of the new retail market. The additional changes to terminology are welcome as they provide greater clarity. We agree to the licence changes removing the in-area trading ban (as this is an expected part of the new market design) and the Customer Transfer Protocol (as this function is replaced by the Market Operator).

Q4 Do you agree with the proposed approach to maintaining customer protection in the future WSSL?

We welcome the licence condition that requires a retailer to annually submit a certificate confirming that it has sufficient resources to serve its customers. The improved wording adds clarity and reinforces the importance of this requirement. It is important that any risks to customers due to a retailer's inadequate resources are identified early so the mechanism to protect customers by appointing another retailer can be considered as soon as possible, to allow sufficient time for customers to be informed. We remain concerned about some wider issues of customer protection and these are detailed in the Executive Summary at 2.2.

Q5 Do you agree with the proposed approach to the Market Arrangements Code enablement?

Yes. We agree that licensees should have a duty to adhere to the conditions of the Market Arrangements Code, and recognise the details are in the code itself (as part of the Market Architecture Plan). We also welcome the introduction of the Interim Codes Panel (which should evolve after the market) as a mechanism to allow for future changes to codes if new evidence justifies this.

Q6 Do you have any specific comments on the legal drafting?

No.

Q7 Do you agree with the proposed approach to include requirements on arm's length transactions and non-discrimination?

Yes, in principle. We agree that to facilitate the development of competitive retail choice for customers, there should be equal treatment of all retailers. However, we would like there to be more detail about how this will operate in practice, how potential breaches

will be identified and what sanctions would be put in place for those that contravene the regulations.

Q8 Do you have any other comments on our proposed conditions in this area?

We agree that, in order to comply with the Enterprise and Regulatory Reform Act, the revised licence removes the ‘in area trading ban’. This should benefit customers in that it allows all retailers to compete for customers with multiple premises across different areas. In our ‘Uncharted Waters’ research on non-household customers expectations of the retail market, participants considered the current lack of bill consolidation for multi sites or multi meters to be a concern in the current water and wastewater sector. The introduction of multi site billing would be a trigger for switching for many customers. The research report can be found here - <http://www.ccwater.org.uk/wp-content/uploads/2014/06/Uncharted-Waters-Non-household-customers-expectations-for-competition-in-the-water-industry1.pdf> (see pages 21 and 25).

Q9 Do you have any other observations about our proposals on changes to the standard conditions for the new Water Supply Licence?

No.

Q10 Are there any areas not covered in the proposals in which you consider changes are required?

No.

Q11 Do you agree with our proposals for the conditions within Table 5? Please respond separately on each of the three Appointment conditions (Q, G and I) discussed.

Change of condition of Appointment	CCWater comment
Removal of wholesalers’ duty to pay compensation directly to non household customers in the event of supply interruptions caused by drought. Payments will now be made to retailers to pass on to non household customers, as per the Wholesale Retail Code.	<p>We agree that this is now a condition of the Wholesale Retail Code, which will be governed by the Market Operator. The Code needs to ensure that payment to customers via retailers is carried out in an appropriate timescale, and the customer receives notification.</p> <p>Ideally, we believe that Retailers should make payment to affected customers as soon as it has been established that such a payment is due. Waiting to receive recompense from the wholesaler before passing this on to the customer, who is the party that has suffered from the failure, is not good customer service.</p>
Conditions relating to undertakers / wholesalers dealing with customer complaints and communication with customers in emergency situations now only	We agree that, as the duty will be on retailers to deal with complaints from non household customers, this condition should be amended as the duty on retailer is part

<p>apply to domestic customers.</p> <p>The Operational Terms in the market codes now set requirements for retail and wholesaler interaction with non household customers in terms of complaints and emergencies.</p>	<p>of the Operational Terms.</p> <p>Similarly, communication with non household customers in emergency situations is also governed by the Operational Terms.</p> <p>While we agree with these licence changes we consider there is further work needed to improve the draft Operational terms in the MAP to ensure that non household customers receive adequate communication, and that wholesalers can also communicate directly with customers in an emergency situation.</p> <p>As the consultation paper recognises, there is also a need for the Operational Terms to ensure retailers inform non household customers of the availability and role of CCWater.</p> <p>We look forward to working with Ofwat and the Interim Code Panel to develop these parts of the Operational Terms further.</p>
<p>Conditions relating to undertaker payment of compensation to customers where a customer has identified and repaired a leak. This will now relate to domestic customers only, with such payments and associated communication with non households customers now carried out through the retailer.</p>	<p>We agree. Retailers may offer a range of different services and compensation polices regarding leakage repairs on customers' sites.</p>

Q12 Do you agree with our proposals for the conditions within Section 5.1.2 on equivalence? Please respond separately on each of the eight conditions discussed.

We agree with the proposed changes, specifically:

- Removal of in area trading ban for reasons detailed in our response to Q8.
- Removal of duty for information sharing with Ofwat, as this is replaced by provisions in the Wholesale Retail Code and MAP (information is now relayed to the Market Operator).
- Removal of Customer Transfer Protocol, as no longer required due to new market arrangements and the role of the Market Operator.

In addition, we note the removal of the duty for appointees to inform Ofwat if its relations with licensees (retailers) changes. We recognise that 'level paying field' conditions should mean all retailers' relationships with appointments are governed by standards set in the codes. However we expect Ofwat to use its powers if there is evidence at a later date of

any relationship or behaviours between appointees or retailers that can be seen as anti-competitive in a way that may restrict customer choice.

We note Ofwat is considering applying a licence fee for existing WSL licence holders in order to treat them in an equivalent manner to new WSSL holders. We support this in principle as a way of creating greater transparency, but would like Ofwat to consider whether the regulatory burden this applies justifies this visible equivalence across all licensees.

Q13 Do you agree with the draft condition set out in Appendix A to enable the Market Arrangements Code? Are there any reasons why this condition should differ between the Appointment and the standard conditions of the WSSL?

We agree that the draft condition to enable the Market Arrangements Code should be set out. If there is an aim of a level playing field, there is no reason that it should differ between the Appointment and the standard conditions of the WSSL.

Q14 What are your views on the proposed ‘stapling’ condition set out in Appendix B requiring the company to adhere to the Wholesale Retail Code in its interactions with its own retail business? Does the proposed condition work alongside Schedule 8 of the Market Arrangements Code?

We agree that companies should adhere to the Wholesale Retail Code in their interactions with integrated or related retail businesses. The proposed condition works alongside schedule 8 of the Market Arrangement Code.

Q15 Do you consider that the proposals will achieve the objectives of equivalence, with the same obligations and opportunities for all retailers? If not, what additional suggestions do you have?

It is not clear what would constitute an un-level playing field nor how an identified unfairness would be rectified. We expect Ofwat to use its powers if there is evidence at a later date of any relationship or behaviours between appointees or retailers that can be seen as anti-competitive in a way that may restrict customer choice. So, at this stage, we could not confidently state that the proposals will achieve the objectives of equivalence.

Q16 Do you have any other observations about our proposals on changes to the conditions for the Instruments of Appointment?

No.

Q17 Are there any areas not covered in the proposals in which you consider that changes are required?

No.

Q18 Are there any areas in your Appointment in which you think differences from the examples used will require detailed consideration in future work?

Not applicable to CCWater.

Q19 Do you agree that we should retain the three basic elements of financial stability, managerial competency and technical competency in assessing future licence applications?

Yes. We would expect that under managerial competency, the skills should include ability to handle day to day customer service, any problems, expected or not, and data.

Q20 Do you agree that gaining a retail future WSSL licence should be conditional on successfully completing market accession testing? Are there any aspects of the licensing process that could be further simplified to avoid duplication/overlap across the two processes?

Generally, we agree that there should be testing and that there should not be overlap in processes. However, as it's not clear what accession testing will entail, we cannot point to specific aspects of the licensing process that could be simplified. We recommend that Ofwat works with the Market Operator to avoid duplication.

Q21 Do you have any comments on the proposal that licence applications for the future market should include the provision of a completed certificate of adequacy?

We acknowledge that self-certification helps remove a barrier to entry for new entrants. This certification should be part of Director or board level meetings to give it some legitimacy. However, this is still a self-certification and does not in itself offer any protection to customers.

Q22 Do you have any comments about the coverage of wastewater in the licence application process and the role played by the Environment Agency?

We believe it is sensible that wastewater is covered by the licence application. The EA is an appropriate body to consult if necessary.

Q23 Do you consider that the role of any sponsor should be maintained limited or removed entirely? What are your reasons for this view?

As described, the sponsor's role could be seen as lip service, particularly if the licensee has never before been a part of the water industry. To protect customers we would want to see an application process that was demonstrably robust rather than one that relied on a written statement from another party.

Q24 Do you have any comments about the proposals to include coverage of customer facing systems in the managerial competency tests?

We strongly recommend that competency tests include coverage of customer facing systems. We recognise that some companies will start with no or few customers. However, they should have systems in place that enable them to deal satisfactorily with an expanding customer base as some companies could end up growing very quickly.

Q25 Do you agree that the scale considerations are better dealt with via the certificate of adequacy rather than additional testing in the licence application process?

We recognise the desire to avoid creating a burden on new entrants. However, we do not think that that it has to be onerous for new entrants to simply declare their anticipated

scale or how they would cope with an increase in scale. This could avoid problems in the future.

Q26 Do you agree with our proposed transition approach for current retail only WSL?

Yes, in order to satisfy the Level Playing Field requirements within the MAP it is important that new and existing licensees are treated in the same way. The questions at section 4.5 on market accession and customer-facing arrangements are also key customer protection measures so it is right that existing WSL holders demonstrate they meet all appropriate measures. However, in the interests of lessening the burden of unnecessary regulation, creating a simplified application path for existing licensees is the right approach.

Q27 Do you agree with our proposed approach to transition current combined supply WSL?

Creating a system that allows transition to upstream arrangements once these have been finalised seems sensible. We note that it may be necessary for there to be further consultation on certain aspects of the transition.

Q28 Do you agree with our proposed approach for creating self-supply licences?

Allowing a customer to self-supply and thereby act as their own retailer must be an available option in order to deliver an effective market that provides customers with real choice. It is possible that a customer who chooses to self-supply may decide to enter the full market and become a general retailer in future, strengthening competition in the market. The market and industry experience gained through self-supply will be invaluable in allowing the customers to decide whether or not to expand its retail operation. Modification of a full licence to specify only those premises that are affected (the customer and associated entities) seems a logical approach.

Q29 Do you agree that there should be a new condition in current licences and Instruments of Appointment to underpin the required preparations?

See answer to Question 30 below.

Q30 If you agree that there should be a condition, should it cover both a general obligation and a specific link to a formal transition plan?

It is a sensible precaution to create a new licence condition that requires companies to demonstrate a readiness for market opening. Clearly it is in companies' interests to ensure that adequate preparations have been made and that their business (in general and the data systems in particular) is ready to participate in the Go Active testing period from October 2016.

In order to make the condition effective there should be a link to a formal transition plan alongside the more general obligation. Requiring a company to commit to specific deliverables will help to prevent potential future disagreements about whether or not sufficient progress has been made towards achieving market readiness.

Q31 Are there any additional provisions that you think it would be helpful to include in a licence condition on company readiness or any other comments/concerns you would make?

Creating a licence condition with the possibility of specific requirements to test market readiness brings the question of what action would be taken if a company (or companies) were considered not to have met these obligations. The action, or sanction, might be different dependent on whether it was an individual company, or a number of industry participants, who were deemed to have made insufficient preparations. The Go Active period will be an important test of whether the market will be ready to open on 1 April 2017.

Q32 Do you consider that implementing an auction style allocation process similar to the one that Ofgem has adopted ahead of a backstop allocation process would be the best approach to protecting customers in the event of a the failure of a retailer?

We would support an auction style process to form the first part of the Supplier of Last Resort (SoLR) on the assumption that the mechanism which is put in place could leave a customer in a better position than they may be under the backstop allocation process. The consultation states that the auction process would help deliver the best price and service offer for customers and it is possible to envisage that a competitive bid by two or more retailers may lead to better terms being offered to a customer than if they were simply allocated to the “next-on-the-list” retailer. The system which is put in place must work to ensure that customers are allocated quickly and with minimal disruption (whichever route is ultimately used).

We welcome Ofwat’s intention to hold a workshop to look at this matter in more detail as we would like more information about how the process will work including:

- How customers will be provided with information about the process and their options for switching;
- The timescale during which the auction will take place.

Q33 Do you have any suggestions about the best approach to ensuring that the new market arrangements are proportionate for a) smaller wholesale companies and b) small retailers.

The approach for smaller wholesaler/retailers will need to strike the balance between ensuring the process does not create a disproportionate burden of work while also complying with the Level Playing Field requirements. See answer to Q34 below for more information.

Q34 Do you have any suggestions about the best approach for companies operating wholly or mainly in Wales?

CCWater’s principles for market reform state that benefits must be delivered for customers in both the contestable and non-contestable market and customers who cannot choose their retailer must not experience detriment. Therefore, the approach for customers in Wales must satisfy these principles.

We believe that companies in Wales (and smaller companies) should adopt the market codes and the related licence changes in order to satisfy the level playing field requirements. However we recognise that the number of customers likely to be affected is small (in the case of companies in Wales, a small number of border customers who are choosing to switch the sewerage supply provided by a company in England). Requiring the companies to put in place new, expensive IT systems in order to communicate with the Market Operator seems disproportionate. Therefore we encourage the companies to work

with Ofwat and MOSL to agree a way for information to be shared that complies with market requirements but is enacted at minimal cost and disruption. A manual one-to-one communication between a specified contact at the company and the MO to confirm the relevant customer information required might be a way of achieving this.

The recommendations of the Silk review for realignment of boundaries have the potential to affect customers' eligibility to switch supply. Some who are excluded from switching at market opening will become eligible, and vice-versa. Provision needs to be made within the licence to account for this. Companies, and other market participants, must also work to identify customers who will be affected and communicate with them to explain the changes and what it will mean for their business.

Q35 Do you have any comments about the circumstances in which a retail supplier should be able to opt out of the Supplier of First Resort (SoFR) arrangements?

Ofwat has said that it will consult further on this once the proposed retail exit regulations have been published by Defra. The examples given - that a retailer may opt out if they are either targeting specific regions or customer types, or are planning to exit the market - seem reasonable. However, the regulations may need to consider how to ensure that low-margin customers are not left without a retailer, or very limited market choice. This must be done while also maintaining Level Playing Field requirements and allowing companies autonomy over how they choose to run/target their business strategy.

Q36 Do you agree with our proposed approach for the developer services market and the related process proposed within MAP3?

See answer to Question 37 below.

Q37 Do you agree with our assessments of the interactions between the various parties?

We agree with the stated aim that market arrangements should not add unnecessary complexity to the provision of developer services. However we have some concerns that there is a lack of clarity about what, if anything, Ofwat will be doing to clearly set out the information requirements and the process developers will need to follow, besides what is in the consultation document.

In response to a number of queries to MAP2 relating to developer services (and in the introduction to Part A of the Operational Terms in MAP3) Open Water stated that the issue was outside of the scope of the market codes since it did not explicitly concern the relationship between the wholesaler and retailer (i.e. role of retailer if developer were building new sewers for adoption by incumbent). It was suggested that future work by Ofwat would likely address these concerns and lead to further revision of Part A, but it is not clear that further work is planned.

We are supportive of the adoption of the Water UK timescales for developments in MAP3. Setting clear, consistent timescales and guidelines for work associated with new connections will help drive a better base level of service for customers. The provision to allow work outside of these timescales with the agreement of the non-household customer is also an important addition to allow for the complexities often involved in new developments.

We understand that the diagram in Figure 6 is intended to reflect the changes in a wholesaler's interactions with self-lay organisations prompted by Ofwat's CA98 investigation into Bristol Water. However, we do not feel that it is very clear or easy to follow the interactions or the reasoning behind them. The diagram should be amended and/or provided with more detailed explanation.

Q38 Do you agree with principle that Special Agreements should be contestable and the current thinking on the details of the approach outlined in section 9.2.5?

We agree that Special Agreements should be contestable so that customers with these arrangements have the same opportunities to interact with the market, should they choose.

Ofwat acknowledges that customers with these agreements may not want the details disclosing due to commercial sensitivities and we feel the proposed approach strikes the right balance in protecting the interests of both customers and their retailers.

Q39 Do you agree with the principle that there should be early publication of wholesale charges and the current thinking on the details of the approach outlined in section 9.3?

We agree with these proposals.

Q40 Do you agree that wholesalers should only levy charges that are in their wholesale charges schemes or published as special agreements? If not, please provide arguments as appropriate to support your position.

It is very important that there is transparent, easily available information about all wholesale charges in the contestable market in order to allow retailers to determine their approach. In view of this we fully agree with this question.

Q41 Do you agree with our proposed approach to implement these licence changes? If not, how should we go about making these changes?

Yes, the proposed approach seems sensible given the restrictions imposed by legislation and timescales.

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