



## Our framework for resolving pricing disputes involving bulk supplies

A bulk supply is the supply of water or the provision of sewerage services from one appointed water and/or sewerage company to another water and/or sewerage company or to a non-household customer that is usually a large business user. Companies can draw up a contract between them (a 'bulk supply agreement') that sets out the terms and conditions of a bulk supply, including the price.

Under the Water Industry Act 1991, if companies fail to reach agreement on a bulk supply, they can ask us to make a decision (a 'determination') on the price and other contractual terms and conditions.

### Overview of our powers to resolve bulk supply pricing disputes under the Water Industry Act 1991

Section	Description
s40 and s40A	Pricing disputes in relation to bulk supplies of water. This may involve: <ul style="list-style-type: none"><li>• water trading between incumbent water companies;</li><li>• a supply to a new entrant (commonly known as a new appointment and variation (NAV)) that serves a new development; and</li><li>• a supply to a NAV for onward supply to a large user.</li></ul>
s56	Pricing disputes in relation to any terms, conditions or 'special agreements' between non-household customers and a supplier where the relevant supply is not covered by the supplier's charges scheme.
s66D	Pricing disputes in relation to supply to a water supply licensee.
s110 and s110A	Pricing disputes in relation to cross boundary sewers. Pricing disputes with regard to new connections with public sewers. This may involve: <ul style="list-style-type: none"><li>• sewerage trading between incumbent sewerage companies;</li><li>• a discharge from a new development served by a new entrant; and</li><li>• a discharge from a new entrant serving a large user.</li></ul>

## **Our objective in making bulk supply price determinations**

Our objective in resolving bulk supply pricing disputes is to ensure our approach for setting charges is consistent for different customers. This will avoid adverse impacts on other customers as a result of resolving individual pricing disputes.

For each individual bulk supply pricing dispute, we will:

- consider the relevant provisions of the WIA91 under which we are resolving the case
- have regard to our general duties to:
  - further the interest of consumers, wherever appropriate by promoting competition
  - enable companies to properly carry out their assigned functions
  - enable companies to finance their functions.

## **Our framework for assessing costs to resolve bulk supply pricing disputes**

In terms of assessing costs, we consider that the best approach for resolving current bulk supply pricing disputes is to use the price being disputed as a starting point for our investigation. For the avoidance of doubt, we will start by looking at the relevant costs that underlie the price being disputed. When doing so we use the current price as the reference point as to what price – as well as any other terms and conditions – we will determine, but in all cases we will require evidence that the price being disputed is based on robust information on the relevant costs.

We term this the ‘business-as-usual’ approach. This business-as-usual approach will typically, but not necessarily, involve setting charges on the basis of relevant average accounting costs. This is because average accounting cost has been, to date, the mode of cost assessment in the water sector.

We will only depart from this approach where our testing shows that this approach would cause material adverse effects. In particular, we will examine whether the use of average accounting costs:

- is appropriate given the geographic nature of supply
- would give rise to competition concerns

## Minimising inconsistencies with future approaches to pricing

The Water Bill 2013-14 provides for Defra and Welsh Ministers to issue guidance on charging, and Ofwat to issue charging rules (having regard to this guidance) for charges imposed by companies – including bulk supplies, connection charges, and charges schemes. However, we are tasked with determining charges to resolve various pricing disputes under the current legislation. This may mean that the charging terms for these current determinations are set on a different basis to those that will be set for customers following the finalisation of the guidance and rules on charging.

The approach to assessing costs outlined above could still lead to inconsistencies with the approaches to charging that may emerge in future. This inconsistency of approach could potentially result in harm being caused to customers.

We do not want to make long-term determinations that are inconsistent with the key principles underlying our general duties or any future approach under new charging rules.

To minimise this, we intend to make provision for the ability to revisit our price determinations in the future as necessary. Depending on the nature of the determination, this could be achieved by either:

- limiting the term of the agreement to a pre-determined date in the future, so that there is a natural opportunity for the parties to renegotiate the price or – if agreement cannot be reached – make a reference to us; or
- including a ‘trigger’ mechanism in the supply agreement that would allow the parties to renegotiate the price if, for example, we materially changed our policy following the date of the determination. If no agreement can be reached, either party could refer the matter to us for a new determination.

We will consider the best option to use based on the facts of each case.

## Further information

- [‘Negotiating bulk supplies – a framework’](#), August 2013
- [‘Bulk supply pricing – a statement of our policy principles’](#), February 2011

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