



**The Consumer Council for Water's
response to:**

Ofwat's consultation on eligibility

April 2015

Introduction

The Consumer Council for Water (CCWater) is the statutory consumer organisation representing household and non-household (NHH) water and sewerage consumers in England and Wales. CCWater has four regional committees in England and a committee for Wales.

CCWater regularly engages with household and NHH customers and carries out research into their views on water and sewerage issues.

We welcome the opportunity to submit our views on Ofwat's proposed guidance to determine which customers will be eligible to switch retailer once the market opens in April 2017.

Executive Summary

Overview

We support the overall approach Ofwat has taken in its guidance consultation on the issue of eligibility of NHH customers to participate in the market. This echoes our position on this subject. We feel the approach to eligibility must reflect NHH customers' views.

There are some areas in the guidance that may need additional consideration to ensure that NHH customers in England are treated in a consistent way. This is because companies will be making their own decisions about eligibility based on their interpretation of Ofwat's guidance.

The proposal to use Council Tax and Business rates (or a combination of the two) is a pragmatic approach to the difficult question of defining eligibility. For many, it will be straightforward, leaving time for water companies/licensees to focus on cases where eligibility might be more difficult to determine.

It may be helpful to have some examples of eligible and ineligible premises such as nursing homes, university halls of residence, and staff accommodation at hospitals within the guidance to help customers determine their own eligibility. This guidance should also include consistent, clear and easy-to-understand explanations to clarify the examples. This guidance would be very helpful when explaining to customers why a premise is or isn't eligible to switch.

The process for a customer (and a licensee) to request a determination from Ofwat under section 17 of the WIA 1991 on whether a premise is household or NHH must be made clear and be subject to appeal, where required.

If it is the licensee that requests the determination, the customer should be able to appeal this decision, although it is likely that in most cases the licensee will be working with the customer. It may also be that licensees have fewer requests for determination, given that they have a legal duty to ensure a customer is eligible or not before providing the service.

General comment

We support the overall approach Ofwat has taken in its guidance consultation on the issue of the eligibility of NHH customers to participate in the market. This echoes our position in this subject. We feel the approach on eligibility must reflect NHH customers' views, namely to:

- allow NHH customers to appeal the assessment that has been made about their eligibility to switch supplier or to be transferred to an acquiring licensee if their water company decides to exit the retail market. These processes should also include reasonable references to how long determinations and potential subsequent dispute resolution might take;

- make clear the process that customers must follow to request a determination from Ofwat to assess eligibility;
- be consistent in the way the guidance is applied so that customers know what to expect regardless of who their supplier is. We acknowledge that some inconsistencies may be inevitable as the system develops, and difficult cases might need to be resolved through an appeals process.

In Uncharted Waters¹, we found that NHH customers:

- want choice but with appropriate protection;
- want the processes to be simple so all can be involved;
- want market reform to be designed so it is fair, simple, flexible and transparent; and
- support including mixed-use properties in the eligible definition, but with caveats:
 - customers wanted examples such as a beauty salon operating from domestic premises put on a business tariff so it wasn't unfairly protected against disconnection².
 - customers felt a flat above a shop were two different premises that should have their supplies separated.

There are some areas within Ofwat's guidance that may need additional consideration to ensure that customers in different parts of the country (England) are being treated in a consistent way. These include (but are not limited to) 'mixed used premises' that are more difficult to categorise and consistent eligibility definitions within companies' charges schemes. In these (and possibly other) instances, companies are currently making their own decisions about eligibility based on Ofwat's guidance.

Outlined below are our suggested principles for determining who is eligible to switch water supplier, and our views on how Ofwat's draft guidance meets those criteria.

¹ Uncharted Waters: Non- household's customers' expectations for competition in the water industry. Accent, a report for CCWater. March 2014. <http://www.ccwater.org.uk/wp-content/uploads/2014/06/Uncharted-Waters-Non-household-customers-expectations-for-competition-in-the-water-industry1.pdf>

² The laws around disconnection were not explained during the focus group used as part of our research.

CCWater suggested principles	Assessment of whether Ofwat guidance meets CCWater's principles	Why does Ofwat guidance does not meet CCWater's principles
1. There needs to be a clear set of criteria for water companies to use to assess eligibility that customers can understand.	√	
2. There should be a consistent application of the rules and the tools used to apply the rules, with all water companies defining premises eligible to switch supplier in the same way.	X	<ul style="list-style-type: none"> It is suggested that companies need to decide individually how to assign mixed-use premises to household/non-household categories.
3. Ofwat's decisions on eligibility could also have implications for the way in which some companies currently categorise customers for charging purposes, potentially resulting in significant bill impacts for some. Ofwat should work with the Industry and CCWater to identify the extent of these impacts and how they should be mitigated.	X	<ul style="list-style-type: none"> For example, we are concerned about the potential for mixed used premises of being re-categorised and the implications this could have on their liability for surface water charges.
4. Protections for non-household premises to stop disconnection in the event of non-payment, in accordance with the WIA 1999 ³ , will apply whether the premises are eligible or not.	√	

³ Can't disconnect - private dwelling - a house, caravan, boat or similar; houses in multiple occupation; elderly accommodation where it is someone's principal home; hospitals; doctors surgeries; medical services or dental services provided; residential care home, nursing home or mental nursing home; children's' home; schools; FE or Higher Education institutions; children day care; prison or detention centres; police force buildings; fire brigade premises or ambulance premises.

CCWater suggested principles	Assessment of whether Ofwat guidance meets CCWater's principles	Why does Ofwat guidance does not meet CCWater's principles
<p>5. There must be clear policy for the separation of supplies at mixed-use premises where eligibility cannot easily be determined through the proposed rules. Ineligible customers must not pay all or part of the cost of supply separation for the purpose of another party becoming eligible, unless the household receives a commensurate benefit, such as improved pressure or reduced water discolouration.</p>	<p>X</p>	<ul style="list-style-type: none"> • The guidance document does not specify whether, and if so how, supplies should be separated in mixed-use premises. • Consequently, at present it does not indicate how household customers would be protected against paying (all/part) of the costs of separating the supplies.
<p>6. The process for a customer (and a licensee) to request a determination from Ofwat under section 17 WIA1991 on whether its premises is household must be made clear and be subject to appeal, where required.</p>	<p>Partly</p>	<ul style="list-style-type: none"> • Although there is a description of the determination process (Section 5 of the proposed guidance) there isn't an appeal process.
<p>7. Reference to eligibility to switch supplier should be placed on the bill with those seeking further information signposted to the Market Operator's website. This will allow customers to easily work out whether they can switch.</p>	<p>X</p>	<ul style="list-style-type: none"> • The guidance does not mention ways of informing customers about their potential ability to switch.

We expand on the issues and our concerns in response to the consultation questions below:

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

We have no comments on this.

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

We feel that the second option (page 11) “*requiring companies to engage with customers on this point (on the disaggregation of premises), so that the degree of aggregation depends on what best suits customers and companies*” is the best option.

Ofwat’s preferred option (each property that is eligible for disaggregation to be rated separately by the Valuation Office for the purposes of local taxation should be treated as a separate set of premises) might result in the disaggregation of a site that a customer would prefer to keep aggregated for billing purposes. We don’t think that a different way of charging should be imposed on customers if it would disadvantage them.

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

Achieving Consistency

Our concern lies in Ofwat’s subsequent comments concerning when it is not easy to determine whether mixed use premises are household or non- household. In the main consultation document, Ofwat says:

“Where this [the dependent] rule is not applicable, we expect that companies will assign their customers’ premises to the household or non-household categories in a number of steps. While companies have to decide for themselves how to do this, our guidance seeks to promote consistency throughout England and Wales by making some recommendations.”

We encourage the effort to promote consistency, but ultimately with different companies deciding for themselves how to assign customer premises to the appropriate category, inconsistency will creep in. Customers in different parts of England could potentially receive differing views of their eligibility.

We have seen how this can play out with the media and other commentators, with references to a postcode lottery where different companies apply different criteria to the same set of circumstances. We only have to recall how hosepipe bans were implemented in 2012 to see the danger in allowing variation of approach between companies. While there is unlikely to be the same level of media scrutiny, there could be some embarrassing questions asked of Ofwat (and Government) about the approach to eligibility.

We are content with the approach that classifies all mixed-use as non-household and then seeks to refine this using desk- top research. The issue of sub-sets such as nursing homes (and other care-related businesses) could be easily set out in guidance, to reduce the risk of inconsistency.

We support the suggestion to define mixed use premises as non-household if the household part of the premises is dependent in some way upon the non-household part.

Determination process

Once a company has decided whether a mixed use premise is household or non-household, they should advise the customer of their status and ask them to contact the company if they disagree, and also advise them of the determination process- although we (like Ofwat) would suggest liaising with the company is the first step.

Charges Schemes

As identified on page 3 (3rd principle) we are concerned that changes to eligibility could impact on the way customers are charged. We suggest Ofwat carefully considers the implications for charging and give consideration to transitional arrangements.

Separation of supplies

In some instances of mixed-use premises, where it is impossible to determine the principal use, the non-household customer may request separation from the household supply. This could be, for example, a flat above a shop that is not owned by the same person.

Where this happens, the guidance should be clear that ineligible customers must not pay all or part of the cost of supply separation for the purpose of another party becoming eligible, unless the household receives a commensurate benefit, such as improved pressure or reduced water discolouration.

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

Using Council Tax and Business Rates, or a combination of the two seems a pragmatic approach to the difficult question of defining eligibility. For many it will be straightforward to determine eligibility using these definitions, and it will leave time for water companies/licensees to focus on the cases that are more difficult to determine.

In terms of achieving consistency between the companies, please refer to our answer under Q3.

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

Making sure customers know they are eligible to switch

For some time after the opening of the market, reference to eligibility to switch supplier should be placed on the bill. Those NHH customers seeking further information should be signposted to the Market Operator's website. This should allow customers to work out easily whether they can switch or not, and the process for doing so.

This visual reminder to customers about their choices would aid the development of the market and may lead to greater customer participation.

To help customers determine their own eligibility, it maybe helpful to have some examples of eligible and ineligible premises such as nursing homes, university halls of residence, and staff accommodation at hospitals within the guidance. For example:

Question	Answer	Classification
Is the principal use a home?	Yes. It is likely to be the primary home for the majority of residents.	Household
Is it run like a business?	Yes. The residents are paying for their care and accommodation	Non-household
Is the household element dependent on the non-household?	It can be argued that it is. If the home was not run as a business, the residents would not be living there. Also, if the business fails, the residents would have to move elsewhere.	Non-household

This guidance should also include consistent, clear and easy-to-understand explanations to clarify the examples. This guidance would be very helpful when explaining to customers why a premise is or isn't eligible to switch.

Appealing against the water company's definition of eligibility

The process for a customer (and a licensee) to request a determination from Ofwat under section 17 of the WIA 1991 on whether a premise is household or NHH must be made clear and be subject to appeal, where required.

This could be a two stage process for customers who believe that they have been classified incorrectly. They could contact CCWater (after contacting their water company) who, could check if their status was assigned in accordance with Ofwat's guidance. If CCWater can easily re-assure the customer that their status is correct, then the complaint may be closed. However, if CCWater was not able to re-assure the customer that their status was incorrect, and therefore a determination by Ofwat is required, CCWater could refer the complaint.

It could be that some commercial premises feel their ineligible status is not valid, and CCWater taking this fairly standard role could free up Ofwat for cases that require a determination.

If it is the licensee that requests the determination, the customer should be able to appeal this decision, although it is likely that in most cases the licensee will be working with the customer. It may also be that licensees have fewer requests for determination, given that they have a legal duty to ensure a customer is eligible or not before providing the service.

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