

15th April 2016

Our ref: Customer Protection CoP_01

Rowaa Mahmoud
Retail Market Opening Programme
Ofwat
4th floor
21 Bloomsbury Street
London
WC1B 3HF

Driscoll 2
Ellen Street
Cardiff, CF10 4BP
Telephone: 02920 028 711
Website: iwnl.co.uk

By email only

Dear Rowaa

Re: Customer Protection Code of Practice Consultation

Independent Water Networks Limited (“IWNL”) welcomes the opportunity to respond to the consultation on the Customer Protection Code of Practice. IWNL operates and serves customers on last mile networks across England and is owned by Brookfield Utilities UK (“BUUK”) that has experience in the energy sector of developing and contributing to code agreements. It is from this experience that we provide our comments.

In summary:

- IWNL is supportive of Ofwat managing the code modification process but believe a review should be conducted on an agreed timeframe to determine whether the code should be managed by an independent third party;
- IWNL believes that code governance and modification arrangements should be placed within the code and the requirement to comply with the code set out within the licence/appointment.
- Both licensees/appointees and Ofwat approved industry consumer groups should be able to propose and respond to changes to the code of practice.

We provide our full response in appendix 1. If however you have any questions or wish to discuss our comments further, please do not hesitate to contact me.

Yours Sincerely

Michael Harding
Head of Regulation

Appendix 1

Q1 *Do you agree with our proposed approach to the governance of the code of practice?*

We support the proposed approach with Ofwat managing the code modification process in the short term until the code has bedded in. We would recommend a review of code arrangements is carried out after 12 or 24 months to determine whether Ofwat or an independent third party would be best placed to manage the Code governance process. However, in either scenario we believe it is vital Ofwat has final oversight of changes to the code of practice to ensure decisions are made impartially and in the best interests of the industry.

We are fully supportive of the proposed pre modification development process as this will minimise the risk that changes to the code of practice are insufficiently developed prior to consultation. Furthermore, the pre modification development process should allow all parties to feed into and shape the development of a change, consequently producing a change for consultation that is more likely to gain industry support.

Though we are supportive of Ofwat managing the change process to the customer protection code of practice, we believe that the energy industry provides a different model which shouldn't be ruled on a longer term basis once the code of practice has bedded in. Such alternative approach is one where agreements and codes are managed by independent third party 'code administrators'. This allows the industry to take a greater role in 'self-governance' and allows the regulator either be involved throughout the modification development process by attending and overseeing modification development meetings or alternatively to be involved at the final stage, i.e. making the final decision on whether or not to approve a modification.

Using a third party code administrator to manage codes and agreements has resulted in the development of a code administrator's code of practice¹ to outline the principles that code administrators must undertake one of which is a 'critical friend'. As a critical friend, the code administrator provides support to all with an interest in the code modification process, but paying particular attention to under-represented parties, small market participants and consumer representatives. We feel this may be a role better suited to a party not involved in the final decision making process but appreciate that the potential development and implementation of a code administrator role for the code of practice may distract from the initial delivery of the customer protection code of practice and may not therefore be achievable in the short term. We would suggest however that at a predetermined point in the future, a review is carried out of the code arrangements (possibly at 12 or 24 months) to determine if the code governance arrangements are fit for purpose and whether any improvements can be made.

¹ <https://www.ofgem.gov.uk/publications-and-updates/code-administration-code-practice-version-4-1>

Should an independent code administrator be appointed, Ofwat should still retain the ability to lead change where this is of strategic importance to the industry or to implement a particularly complex change. However, Ofwat led change should not be the 'norm' to avoid the situation where the regulator is effectively participating in and managing the code to ensure market participants feel empowered and are encouraged to bring forwards change.

Q2 *Do you have any views as to whether the code governance and modification should be included in the code or the licence/appointment?*

We believe code governance and modification arrangements would be best placed within the code and the requirement to comply with the code clearly set out within the licence/appointment. This ensures that there is a clear hierarchy of regulation with the licence/appointment being used to set out a high level requirements (to sign up to and comply with the code of practice) and the detailed rules and requirements including those for change set out at a lower level within the code. This effectively mirrors the approach used in primary and secondary legislation and ensures that frequent change can be managed and implemented more efficiently. In addition, such an approach keeps the licence/appointment as a relatively "thin" and concise instrument allowing new entrants to easily identify and understand their key requirements with detailed procedures set out in subordinate codes and agreements.

Q3 *Who should be able to raise changes to the code of practice?*

We acknowledge a balance needs to be achieved between ensuring change can be efficiently managed without unduly restricting those impacted by the code to propose a change. As a minimum, we believe licencees/appointees should be able to bring about changes to the code and that consumer groups as interested parties should be able to propose changes to the code. Consumer groups however would need to be designated persons of interest through an Ofwat approval process.

We supportive of Ofwat making the final decision on amendments to the code. This would appear sufficient for now on the basis that it negates the need for potentially complex voting rules but would not rule out Ofwat exploring such arrangements at a later date, particularly should a panel approach be required. As parties are providing views only, we do not see any reason why consumer groups should not be able to respond to changes to the code.