

Rowaa Mahmoud  
Retail Market Opening Programme  
Ofwat  
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London WC1B 3HF

15 April 2016

Dear Rowaa Mahmoud

**Ofwat Consultation: protecting customers in the non-household retail market  
Response from Chair of WATRS Independent Oversight Panel**

I am responding on behalf of the WATRS Independent Oversight Panel to the consultation on your final proposals for protecting customers in the non-household retail market. The Panel oversaw the establishment of WATRS, and our continuing role is to assure its independence and effectiveness.

1. We support your proposals that retailers should have an effective and easily accessible complaint handling process and offer a free, independent redress scheme for complaints they have not resolved. It must be right to allow retailers to choose a redress scheme provided it meets criteria based on the standards in the ADR Regulations 2015. Nevertheless we see three advantages in their choosing WATRS:

- from a consumer perspective we think the redress landscape will be simpler, better known and easier to navigate if the majority of retailers are in the same scheme; and indeed the same scheme which serves customers in relation to their domestic water supply.
- WATRS has adjudicators who specialise in water complaints and have been trained in relevant legislation.
- although water supply is not currently contractual and therefore not covered by the ADR Directive, WATRS meets similar principles and is run by CEDR which is already certified as an ADR approved body and have access to specialist advisors for the more technical/complex cases.

We shall be looking at what adaptations may be needed to make WATRS a practical option for retailers. As your consultation says, the scheme was designed for different circumstances. For example, based on experience in other industries, it is likely that some complaints will involve sales and marketing issues (as covered by your draft Code) which do not crop up for domestic customers. Also current applicants to WATRS must have already been to the Consumer Council for Water (CCW), and we shall need to re-think the portal for retailers. In addition we understand that RWD may review its current subscription/case fee arrangements but the principle of free customer access will remain.

2. We should like clarification of the variety of terminology used in your draft Code for company Complaints Handling Procedures and redress schemes. Section 10.3.3 refers to Complaints Handling Procedures **investigating and resolving a complaint**; but the definition of a Complaints Handling Procedures on p.2 refers to **handled and progressed** and does not use the word *investigating*. By contrast the definition of a redress scheme on p.3 is: ***“a scheme under which a complaint from a Non-Household Customer can be made to and investigated and determined by an independent person”*** (emphasis added).

This is important because the verb “investigate” can have a particular meaning in alternative dispute resolution. For example the Ombudsman Association principles say: *“Ombudsman schemes do not just rely on the evidence the parties volunteer. They actively investigate cases ... calling for the information they require”*. If your definition of a redress scheme is read in this way, then it can only be provided by an ombudsman scheme and unfortunately WATRS would not qualify. WATRS is an adjudication scheme which relies on the evidence submitted by the parties. The application form (which we have improved in the course of the first year) guides the consumer as to what information and documents the adjudicator will need to assess the complaint. Then the company submits its response to the complaint, and as part of that is required to set out for the adjudicator its legal and company obligations to the customer in the particular circumstances. The adjudicator does not call for extra evidence. As mentioned above all the complaints have already been to CCW, which does have investigation powers, and the adjudicator will have access to the CCW file unless the consumer objects.

The UK has a variety of schemes compatible with the ADR Regulations, and we suggest your definition should be neutral as to whether retailers choose an ombudsman-type scheme or not. We think this could be achieved by deleting the words ***“..investigated and..”***

Yours sincerely

A handwritten signature in black ink that reads "S. J. Webber". The signature is written in a cursive, flowing style.

Sandra Webber  
Chair  
WATRS Independent Oversight Panel

## Response of Resolving Water Disputes Ltd to the Ofwat consultation on protecting customers in the non-household retail market – final proposals and draft customer protection code of practice

### Introduction

This response is submitted by Resolving Water Disputes Limited (RWD) to the consultation on protecting customers in the non-household retail market dated March 2016.

The response is limited to the proposals in relation to complaints handling and dispute resolution and section 10 of the draft customer protection code of practice for non-household retailers (the Code).

1. The Water Redress Scheme (“WATRS”) was established to enhance customer confidence in the water industry by providing an easy to understand and easy to use process for the quick, effective and final resolution of otherwise intractable disputes. Whilst we agree that it would be inappropriate for WATRS as a voluntary scheme to be prescribed, we note that when the scheme was first conceived, it was recognised by Ofwat that there would be significant benefits to customers in having a single, water industry-wide ADR scheme rather than multiple smaller scale schemes; we believe that this remains the case.
2. We note the proposal to define the set of requirements that any ADR scheme should meet “similar to those in the energy sector”. We would anticipate that WATRS will be able to meet such requirements as may emerge from this process and would welcome the opportunity to discuss the formulation of such requirements with Ofwat.
3. Currently there are two market leaders for ADR services in the UK; CEDR (which runs WATRS) and Ombudsman Services (OS) which runs the energy scheme. We are concerned that, as currently drafted, the Code would effectively preclude WATRS from being used by non-household customers.

The Code currently provides the following definitions:

“complaints handling process”: a procedure which sets out how a complaint from a Non-Household Customers can be made to, handled and progressed by a Retailer”

“Redress Scheme”: a scheme under which a complaint from a Non-Household Customer can be made to and investigated and determined by an independent person” (*emphasis added*).

However section 10.3.3 states “ [ a Complaints Handling Procedure must] describe the steps each Retailer will take with a view to investigating and resolving a complaint and the timescales within which each step is expected to be completed” (*emphasis added*). **(NB we believe that the reference here should be to a Complaints Handling Process)**

We believe that these provisions create a duplication of functions between the company's complaint handling process, which would be best placed to investigate customer complaints, and any redress scheme. We also note that operators of redress schemes are not well placed to carry out an investigation role as they have no powers to require the company to produce or provide evidence or to otherwise "investigate" a complaint.

WATRS is an evidenced based adjudication scheme in which the parties submit documentary evidence. When the customer makes his/her complaint it is for the company to produce evidence to refute the allegations made. The adjudicator will make a decision as to what is fair and reasonable on the basis of the evidence submitted by both parties. WATRS does not have any remit to investigate any complaint. It offers an alternative to customers to pursuing a case through the courts, a process which is likely to be more protracted and costly.

We note that OS operates on a similar basis.

We therefore suggest that the definition of Redress Scheme be amended to delete the words "and investigated".

4. As we noted in our response to the December consultation, in order for a customer to be able to make an application to WATRS, he/she must have either a WATRS Notification or a WATRS Option letter issued by CCWater. We note that the consultation and final proposals make no specific reference to a role for CCWater.

Whilst we welcome the opportunity to work with retailers and appointed companies to design the process by which non-household retail customers could come to the Scheme, we would wish to ensure that there is no disparity between the position of customers of "new entrants" and those of existing WATRS members. We would wish the role of CCWater to be clarified in the final version of the Code.

Resolving Water Disputes Ltd  
15 April 2016