



# **Retail market opening - further changes to all instruments of appointment - 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.
- 1.2 We welcome the opportunity to respond to Ofwat's consultation on further changes to Instruments of Appointment (IoA).
- 1.3 Effective consumer protection is important for a successful non-household retail market. We, therefore, welcome new licence conditions giving effect to the Market Arrangements Code (MAC) and the Customer Protection Code of Practice (CPCoP) in the IoA.
- 1.4 We believe that the proposed changes to the licence conditions will help the transition from the current Water Supply Licence (WSL) regime to the forthcoming Water Supply and Sewerage Licence (WSSL) regime from April 2017. We, therefore, generally support the proposals.
- 1.5 However, we are concerned that in preparing the market for opening with the development and publication of market codes, documents and guidance, CCWater's continuing statutory role in complaint handling has not been made clear. We called for this in our response to both the WSSL application process consultation and the draft CPCoP consultation<sup>1</sup>.
- 1.6 We urge Ofwat to explain our role in market reform documentation. Non-household customers should have the same opportunity to seek our help with their queries and complaints as household customers. Through our advice, we can help reduce any potential complaint backlog relating to customer switches and new market processes.
- 1.7 Even though non-household customers have the right to switch retailer, they may not exercise it if the cause of their complaint lies with the wholesaler. By not signposting our help, Ofwat may inadvertently cause non-household customers to lose confidence in the open market. This could occur if they perceive there is limited ability to hold wholesalers to account.
- 1.8 Our comments on the specific questions are set out overleaf.

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<sup>1</sup> [CCWater's response to Ofwat's consultations on the WSSL application process and draft CPCoP](#)

## 2. Response to the consultation questions

**Question 1: Do you agree with the proposed new conditions summarised in table 1.1? In your response please provide comments on each of the proposed new conditions separately.**

<b>Market Arrangements Code (MAC) condition</b>	We welcome the proposal to give effect to the MAC by adding a licence condition in the IoA, particularly as it is a non-statutory code. Given its role in the governance of the new market, it is appropriate to give the MAC legal backing. We also note that this condition mirrors that which is included in the WSSL standard conditions published by Defra.
<b>Customer Protection Code of Practice (CPCoP)</b>	Effective consumer protection will be an important element of a successful non-household retail market. We, therefore, welcome the inclusion of a statement requiring compliance with the CPCoP in the IoA. We made this point in our response to Ofwat's recent Code of Practice consultation.
<b>Stapling condition</b>	We believe it is sensible to require appointed companies with both a wholesale and retail business to comply with the provisions in the Wholesale Retail Code (WRC). This will help to create a level playing field with new entrants.

**Question 2: Do you agree with the proposed changes to existing conditions as summarised in Table 1.2? In your response please provide comments on each of the proposed new conditions separately.**

<b>Terminology</b>	We accept the need for a change in some general terminology to reflect legislative changes.
<b>Condition S</b>	The condition requiring appointed companies to comply with the Customer Transfer Protocol (CTP) will be replaced by the new market arrangements in the MAC and WRC. We, therefore, understand the need to remove the obligation from the IoA with effect from April 2017. However, we note that Ofwat propose to retain it for wholesale combined supply arrangements and would welcome further details on the transitional period. In particular, how customers will be safeguarded from any negatives of the legacy CTP when the arrangements in the MAC and WRC are in use.
<b>Condition R 1-4</b>	The same comments apply as for Condition S.

<b>Condition F6 A.2A</b>	We welcome the obligation for the non-household retail business of an appointed company to produce a certificate of adequacy. This will provide assurance to Ofwat and other market participants, and is consistent with the obligation for WSSL licensees.
<b>Condition Q</b>	We welcome the obligation for drought payments to be paid to all affected business customers regardless of supplier. It is important that no customers are disadvantaged.
<b>Condition G</b>	<p>We would welcome further clarity on the proposals for Condition G, particularly as this condition includes customer protection measures and covers the process of informing customers about the functions of CCWater and where they can contact us.</p> <p>We agree there must be greater clarity on where customer service obligations sit, but Ofwat is not clear whether the WRC, the CPCoP or a separate IoA condition would be the most suitable place to put these obligations in place for non-household customers. We would like to understand how this will be enforced to ensure no customer detriment.</p> <p>CCWater’s continuing role in complaint handling needs to be made clear and reflected in any amended text. We have stressed the importance of this in our response to both the WSSL application process consultation and the draft CPCoP consultation.</p> <p>It is important for non-household customers to know they can contact CCWater with outstanding queries and complaints. Through our advice, we can help reduce any potential complaint backlog relating to customer switches and new market processes.</p> <p>Even though non-household customers have the right to switch retailers, they may not exercise it if the cause of their complaint lies with the wholesaler. By not signposting our help, Ofwat may inadvertently cause non-household customers to lose confidence in the open market. This could occur if they perceive there is limited ability to hold wholesalers to account.</p> <p>In addition, we expect there to be a co-ordinated approach across all related market documents so that companies and customers are not confused about the process they should be following.</p>

<b>Condition I</b>	We note that this condition, which requires appointed companies to check for leakage when a meter is installed, and make a one-off adjustment to charges for an undetected leak after the meter has been installed, remains unchanged. However, we welcome a change to the WRC statutory document to require a retailer to pass on any leakage adjustment to a customer after installing a meter, and explain the process for doing so. This is a similar approach to the provisions in the WRC regarding GSS and drought payments.
<b>Condition R7-9</b>	We welcome further consideration about whether any changes should be made to the WRC about information sharing, as we note that no change is currently proposed to this condition.
<b>Condition F6</b>	We welcome amending this condition to create a level playing field obligation.
<b>Condition R5</b>	In the interest of keeping Ofwat informed, we understand the reason for retaining this obligation to advise of any changes in the appointees' relationships with licensees.

**Question 3: Do you consider that derogations may be required for small companies and/or companies whose supply systems are wholly or mainly in Wales, due to their limited number of eligible customers? Please state what any such derogations should cover.**

The proposals set out in the consultation appear sensible. Any derogations should ensure that all companies can operate fairly in the market.

**Question 4: Do you agree with our proposal to use a combination of 'sunset' and/or 'sunrise' clauses for the changes so that we can implement these changes ahead of the Secretary of State's decisions on retail exit?**

We agree. We believe this would be more straight forward than creating two separate versions of the IoA, one for non-exited and one for exited appointees.

**Question 5: Do you agree with our proposal to use section 55 of the WIA91 to make these changes?**

This appears to be a sensible approach and one that mirrors provisions for the WSL regime being enacted using the 2003 Act.

**Question 6: Do you have any comments on the proposed drafting set out in the Appendices?**

The table in section 3 advises that the revised draft text on Condition G is included at Appendix 2. This is missing from the consultation. It is important for us to see this in order to provide full comments.

### **3. Enquiries**

Please send questions about this consultation to:

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