

14 February 2017

Ofwat
Centre City Tower
7 Hill Street
Birmingham B5 4UA

Emailed to: retailmarketopening@ofwat.gsi.gov.uk

Ref: Derogations Guidance – summary of responses and further consultation on certain aspects following MAC and WRC changes

Dear Ofwat,

Thank you for giving Water Plus the opportunity to comment on the “Derogations Guidance – summary of responses and further consultation on certain aspects following MAC and WRC changes”.

We have attached our comments and observations on a few key areas which I hope you will find helpful.

We would be more than happy to discuss these points in more detail, so please do not hesitate to contact me or someone from the Regulation team (contact details below or simply regulation@water-plus.co.uk).

Yours sincerely,

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1. General comments

Overall we see the possibility of a licensee or an appointee being relieved from compliance with certain of its obligations in the Wholesale-Retail Code (WRC) as a sensitive matter which should be very strictly controlled.

We have indicated below some of the areas where we think particular focus should be given:

- Level Playing Field: Derogations should be tested to ensure that they have no material impact on a level playing field between non-household retail market participants (i.e. licensees and appointees). This could occur for example if some players are allowed derogations which provide a material reduction in required compliance activity and therefore cost, as well as funding or collateral requirements. This is especially sensitive as the cost of compliance activity can be quite significant within a very low margin market. To avoid any such distortions, we suggest that any derogation granted to one participant be made available to the rest of the market.
- Customer Impact: Derogations which could have direct or indirect impact on customer service or protection should be avoided. For example, on standards of complaints processes and handling we would strongly support an industry minimum including two-stage process and access to WATRS.
- Period: We note that derogations are now being considered as twofold (i.e. "definite" and "triggers"). Whilst we support the exclusion of the "infinite" option (previously considered), we believe that "the trigger" option would need to be carefully monitored, to ensure the derogation terminates as soon as the "trigger level" is reached.
- Consultation of third-parties: It is mentioned that "third-parties may be consulted where required or where further information or views are felt to be required". We would welcome further clarity on the condition / definition of third-parties, and the process itself. In particular, as this could potentially raise questions from parties not consulted, which could have provided observations to the derogation request.
- Retrospective derogations: We agree that retrospective derogations should not be granted (we note that Ofwat support this view).

2. Updated Consultation Questions

- a. Has the restructure of the WRC and MAC caused any additional issues that are of concern?**

No further issues have been caused, other than those mentioned in point 1 above.

- b. Do you agree to our proposed approach to derogations within schedule 8 of the MAC given the restructuring?**

We note that two types of derogations will be available (i.e. general derogations for multiples parties and specific derogations for a single appointee).

See response in section 1 above.