



The voice for water consumers
Llais defnyddwyr dŵr

CCW response to the Water Services Regulation Authority (Ofwat) Consultation:

Proposed Changes to Non-Household Eligibility Guidance & Supplementary Eligibility Guidance

1. Introduction

- 1.1 The Consumer Council for Water (CCW) is the statutory body representing the interests of household and business customers of water and sewerage companies and licensed retailers in England and Wales.
- 1.2 We welcome the opportunity to respond to this consultation on Ofwat's proposed changes to the non-household retail market eligibility guidance. As the legislation does not define 'premises', it is essential that clear guidance is in place to help trading parties determine who is eligible for the market, and to aid customers understanding of the decisions being made. Given how the guidance was drafted before the retail market opened in April 2017, we agree it is sensible for Ofwat to review, and propose any necessary changes, which should address concerns highlighted over the intervening period.
- 1.3 It is also sensible to review the guidance in light of the fact that this is still an area that impacts customers. While the number of market eligibility related queries to CCW have gradually decreased since market opening, we still receive contact from customers challenging their non-household status, and therefore their eligibility for the retail market. Many also contact us to seek an independent view of the information they have been provided by their retailer in this area. To enable us to provide accurate guidance and advice, and make evidenced based challenges to retailers where necessary, it is vital that the guidance documentation is up to date and easy to interpret, for the benefit of customers.

2. Response to Consultation Questions

Question 1 – Do you have any concerns about our proposed changes?
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- 2.1 We agree with the proposal to merge the Eligibility Guidance and Supplementary Eligibility Guidance into one document, so that all relevant guidance is accessible in one version. This should make it easier to navigate and interpret, which is a key consideration highlighted in our introductory comments.
- 2.2 Given the differences between England and Wales in terms of market eligibility, it is also sensible to separate the guidance into two parts to avoid any potential confusion in interpreting the guidance.
- 2.3 As stated previously, it is important for customers that decisions around eligibility are being made according to a logical, and comprehensive guidance document. A review of the scenarios previously contained in the Supplementary Guidance document is therefore welcome, particularly given the length of time since the original guidance was drafted. An updated list of scenarios should help trading parties establish eligibility in cases that have a degree of complexity. However, we do have some concerns around the eligibility assessment process which we will expand on in our answer to Question 2.

Question 2 - Is there anything in respect of eligibility for the business retail market that the proposed updated guidance does not cover that you consider would be useful? If so, please provide details of why this would be useful

- 2.4 In terms of determining the extent of the premises, it would be helpful to define, or give some examples, of what is meant by 'additional data' to determine eligibility (as referenced in the last paragraph in section 2.2). Expanding on this point may be beneficial for trading parties in terms of helping them resolve a complex case and give clarity on the source of additional data.
- 2.5 The information contained in Figure 1 to help determine the eligibility of a mixed-use premises is helpful. However, it would also be useful to know Ofwat's view on whether or not certain information items could potentially carry more weight than others in the assessment process. This would be particularly relevant in the event that a retailer has considered all the items, but the primary usage is still unclear. CCW has also seen many examples where a retailer and a customer are in disagreement regarding the eligibility status, with each attributing a greater level of importance to different factors. It would, therefore, be useful to receive further guidance on the next steps in such scenarios.
- 2.6 Similar to the above point, it would also be worth setting an expectation that retailers consider *all* the information items in Figure 1, when assessing the eligibility of a mixed-use premises. CCW has seen examples where retailers make an assessment based on one item, with no consideration given to the others. This is often despite evidence being provided by the customer which could potentially change the outcome of the assessment. Such approaches lead to inconsistent outcomes for customers, so we would like the guidance to state that retailers should be expected to have considered all the items, and any decision made should also demonstrate the consideration of any customer evidence, even if they eventually determined this was not material enough to influence their decision.
- 2.7 We have seen many cases where the retailer has passed responsibility to the wholesaler to make the eligibility decision in response to a customer query. It is, therefore, helpful that Ofwat has highlighted that the retailer has a licence obligation to ensure that their customers are eligible for the retail market, which implies an ownership of an eligibility dispute. However, we have seen examples where wholesalers take an active role in determining eligibility, which may be due to the fact that they are responsible under the Wholesale Retail Code for de-registering premises from the market that have been deemed ineligible. If the wholesaler's role is limited to facilitating the de-registration of an ineligible premises, rather than being involved in the decision which leads to this, then the guidance needs to outline this expectation.
- 2.8 In terms of resolving an eligibility dispute, it is right that CCW can offer advice and assistance, which would primarily be to the customer, but could also extend to providing our opinion on an eligibility assessment to the relevant trading parties. However, while we are happy to communicate with all parties, our involvement can only be initiated by the customer contacting us. We, therefore, ask that the wording on page 9 is changed to make this clear, as it currently implies that any party can ask for our involvement, which would potentially compromise our position with the customer.

Question 3 – Are the scenarios provided in the updated guidance comprehensive enough? Are there any missing that would be helpful, or are there some scenarios that are no longer required? If so, please provide details of why you believe this to be the case

- 2.9 We agree that the scenarios provided are comprehensive, and the list includes all those that CCW most commonly sees. Notwithstanding our comments concerning the possible problems with assessing mixed-use premises, we believe this part of the guidance is clear, and should be helpful to trading parties determining eligibility, and also helpful to us when handling customer queries of this nature.
- 2.10 Regarding Temporary Supplies for Developers, there remains a concern that when these are used for household developments, it sometimes results in them incorrectly remaining in the market once the development has completed. This can have consequences for customers in the form of backdated bills once the household premises is identified and de-registered. This problem can be exacerbated by communication problems between developers and wholesalers, which results in temporary supply points not being de-registered at the point where the development transitions to a household premises. In response to these concerns, we would urge Ofwat to provide a view on whether such temporary supplies could be determined as ineligible for the retail market, either through a wider interpretation of the relevant section of the Water Industry Act 1991, or through a change in that legislation.

Enquiries

Enquiries about this response should be addressed to:

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