

# Code for Adoption Agreements

## Water sector documents: Change proposal (Ref 006)

<b>Modification proposal</b>	Water sector guidance: Redress for category one metrics
<b>Independent Water Adoption Panel Recommendation</b>	The Panel recommended approving the change proposal
<b>Decision</b>	Ofwat has approved this change proposal using wording which Ofwat has modified from the original change proposal.
<b>Publication date</b>	13/04/2022
<b>Implementation date</b>	20/04/2022

## Background

Fair Water Connections (**FWC**) submitted this change proposal on 11 October 2021 to the Independent Water Adoption Panel (**the Panel**), with the Panel publishing the proposal on its website on the same day. The function of the Panel is to consider change proposals to the [water sector guidance and model water adoption agreement](#) which apply to companies operating wholly or mainly in England. These documents were developed by companies as required by the [Code for Adoption Agreements](#) (**the Code**) and came into effect in January 2021. A change proposal is defined in the Code as a proposed change to the sector guidance or the model adoption agreements.

The change proposed by FWC concerns the redress procedures set out in section 10 of the water sector guidance. These procedures apply when a water company fails to meet the levels of services metrics set out in Appendix G (Levels of Service). The metrics are divided into two redress categories: category one and category two. Category one metrics broadly cover the application and design stage of the adoption process, whereas category two metrics broadly cover the construction stage. For metrics which have a category two redress process, there is a complaint escalation procedure set out in the water sector guidance. However, where a water company fails to meet a category one metric, there is only a requirement for the water company to refund the associated application fees to the Self-lay

Provider (**SLP**). FWC has proposed a change to the water sector guidance which would set out a set complaint escalation procedure for category one failures.

The Panel considered the change proposal at its meetings on 12 October 2021 and 7 December 2021 and sought additional feedback from the Panel members' companies. On 5 January 2022, the Panel made its recommendation to Ofwat its recommendation to accept the proposed changes to the water sector guidance document.

## The change proposal

FWC has proposed changes to section 10 of the water sector guidance document which concerns redress procedures. The proposed change is to address the lack of a complaint escalation procedure associated with failures by a water company to meet level of service metrics which are categorised as having a category one redress procedure in Appendix G (**Category One Failures**). FWC has proposed adding the following escalation procedure for Category One Failures:

"10.x.x. Where a company has not delivered the applied for output to a SLP within twice the Category One timings in Appendix G (Levels of Service) the Water Company shall email the SLP with such information as shall reasonably be available to it regarding the nature and cause of the failure with relevant supporting evidence, and an indication of the new date for the performance of the service in question.

The SLP may either confirm acceptance of this information or request escalation to the Compliance Manager;"

Making this proposed change would also require consequential renumbering of the other parts of Section 10 of the water sector guidance document to accommodate the newly inserted paragraph.

As part of this proposed change, FWC has also proposed a change to section 10.4 of the water sector guidance. This section currently sets out the procedure for a situation where an SLP considers that it has incurred direct financial loss as a result of a water company failing to comply with the escalation process which is set out for category two failures. The change to section 10.4 is set out below, with the additional text added in red, where "10.x.x" is a reference to the new section proposed by FWC, as set out above.

"10.4 Where the SLP considers that it has suffered direct financial loss as a result of any Water Company failure to comply with its obligations under sections 10.1.2 or 10.x.x., it may make a written complaint to the Water Company Compliance Manager. The Water Company shall ensure that its internal complaints procedures are sufficiently robust and capable of processing complaints of this nature and able to make ex gratia payments where SLPs reasonably demonstrate such financial loss.

In the change proposal form, FWC explained it considers the proposal is necessary because the redress sections in the current water section guidance are heavily weighted towards responding to category two failures and do not help SLPs who encounter significant delays relating to category one failures. FWC further stated it expects the change will benefit customers as it will give them greater certainty, and a route to resolve delays, during the application and design stages of the adoption process.

## Consultation and assessment

In submitting its recommendation, the Panel confirmed that it met the Code requirement<sup>1</sup> to assess the change in terms of:

- The need for change, for example, is it a service improvement or is it needed to address a particular issue?
- Consistency with the principles and objectives of the Code, and any relevant statutory requirements; and
- The impact of the change (be it positive and/or negative) on customers and on sewerage companies.

In considering the change proposal, the Panel has:

- discussed the Proposal at two meetings; and
- sought feedback from members' companies as the Panel was not able to reach a unanimous view on the proposal during its first meeting on 12 October 2021.

Ofwat has consulted with the Drinking Water Inspectorate (**DWI**) about this change proposal. The DWI did not have any abjections to the proposed change.

## Panel recommendation

On 5 January 2022, the Panel recommended to Ofwat, by unanimous decision, that it approves making a change to the water sector guidance based on the proposal by FWC.

In reaching its decision, the Panel stated that it took into account the following factors:

- There is a potential risk that performance failures come to be seen as a 'cost of failure' for undertakers if there is no proper incentive for improvement;
- The feedback from both undertakers and developers, from which the Panel sought views on the proposal, was positive and supportive of the aims of the proposal; and

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<sup>1</sup> See paragraph 3.8.11 of the Code.

- A standardised approach to performance failures would support consistency and clarity within the Code documentation.

## Our decision and reasons

We have considered the above issues, and all the supporting documentation provided to us by the Panel, and have decided to approve the change proposal. The Panel noted that, while overall industry performance against category one performance metrics was high, SLPs do experience service failures and some water companies have notably worse performance than others. As a result, it appears to us that such service failures are a problem that SLPs are experiencing and there may be benefits to having a stronger escalation procedure associated with such service level failures to drive better performance.

We agree that without a clear escalation process for Category One Failures, there is a risk that water companies view the current requirement to refund application fees as a cost that can be weighed up against the cost incurred in meeting the levels of service. The proposed change should prevent this risk from occurring by having a clearer and more robust escalation process, and therefore increase the likelihood of resolving Category One Failures in a timely manner. This also aligns with the Code principles of being customer focussed and being fair and proportionate.

We therefore approve the change proposal put forward by FWC to amend section 10 of the water sector guidance. However, we have decided to amend the wording of the proposed change to make it easier to read and more consistent with the rest of section 10, while retaining the changes to the redress procedures that FWC proposed. The changes to section 10 of the water sector guidance are set out below and include the insertion of new paragraphs at section 10.2.1 and 10.2.2 as well as a consequential renumbering of the paragraphs in section 10. The changes to section 10 are set out in red font, with strikethrough text to indicate where the previously existing text has been removed.

“10.1 Where the Water Company fails to comply with a Metric set out in Appendix G (Levels of Service), without prejudice to any liability on the part of the Water Company under the WAA, the consequences shall be as follows:

~~10.1.1 10.2~~ Where the failure arises in relation to a Category One Metric, ~~the Water Company shall within thirty working days of the failure arising and without any requirement on the part of the SLP to notify the Water Company of the failure, the following procedure shall apply:~~

- ~~The Water Company shall, within thirty working days of the failure arising, send to the Customer a refund for the fee in question.~~

- Where a Water Company has not performed the service in question, which has a Category One Metric, within twice the maximum timescale allowed, the Water Company shall email the SLP with such information as shall reasonably be available to it regarding the nature and cause of the failure with relevant supporting evidence, and an indication of the new date for the performance of the service in question.

The SLP may either confirm acceptance of this information or request escalation to the Compliance Manager;

10.1.2 10.3 Where the failure arises in relation to a Category Two Metric, without any requirement on the part of the SLP to notify the Water Company of the failure, the following procedure shall apply:

- within one working day of the failure, the Water Company shall email the SLP with such information as shall reasonably be available to it regarding the nature and cause of the failure with relevant supporting evidence, and an indication of the proposed remedial action;
- that email shall also contain a new date for the performance of the service in question (and in the case of a failure to meet the Delivery Date, that email will also contain a new date for the performance of the service which will be as soon as reasonably practicable taking account of the circumstances which led to the original delay);

The SLP may either confirm acceptance of this information or request escalation to the Compliance Manager;

10.2 10.3.1 Where the SLP requests such escalation, the Compliance Manager shall, within five working days of receipt of such notification, issue a written report setting out the causes of the failure, proposals to remedy the failure and lessons learnt by all parties which might prevent a recurrence of similar failures.

10.3 10.3.2 If before the due date for performance of an activity to which a Category Two Metric applies, a Water Company anticipates not being able to fulfil its obligations on the due date, it shall instigate the procedures set out in section 10.3 above.

10.4 Where the SLP considers that it has suffered direct financial loss as a result of any Water Company failure to comply with its obligations under sections 10.2 or 10.3 10.1.2, it may make a written complaint to the Water Company Compliance Manager. The Water Company shall ensure that its internal complaints procedures are sufficiently robust and capable of processing complaints of this nature and able to make ex gratia payments where SLPs reasonably demonstrate such financial loss.

10.5 The above provisions represent a minimum level of redress and where individual companies consider it appropriate, they may adopt other forms of redress in addition to those set out.

10.6 Repeated failure may raise questions about the compliance of the Water Company with its competition law obligations and may result in legal/regulatory consequences.”

## **Decision notice**

In accordance with paragraph 3.9.4 of the Code Ofwat approves this Change Proposal using wording which we have modified from the original change proposal.

**Emily Bulman**  
**Director, Markets and Charging**