

Appendix B: Evidence on D-Mex negative bias in Wales

7 September 2022

Executive summary

The purpose of this document is to set out evidence underpinning our argument that the D-Mex measure and incentivisation framework needs to be amended to take account of the particular set of circumstances in Wales that impacts developers' views of water companies and the service they provide.

Introduction

We are fully supportive of measuring the service and performance provided to all developer customers engaged in development activities. We place significant focus on this area of our business, and have continued to invest, innovate and enhance the services and support we provide to our developer customers. Some of the highlights include: -

- Ongoing investment in our assets to support growth and development aspirations in our area. We support in excess of 99% of all new houses that are subject to a planning application, with the significant majority of the remainder being constrained due to asset conflicts and safety concerns – not hydraulic capacity. This compares to the pre-2010 position where we were not able to support over 40% of the houses proposed due to hydraulic capacity constraints.
- We have significantly invested in the evolution of our digital systems that support all of our developer services related activity for the benefit of customers and colleagues, which includes the creation of the developer customer portal where they can apply, track and interact with us throughout the delivery of the service.
- We have hosted frequent formal engagement events for our developer customers since 2010, most recently throughout COVID19, maximising use of technology and alternative ways of delivering services to meet the expectations from customers.
- Developed innovative policies to support developer customers where they identified 'pain points' with our service. Our specific developer customer surface water removal incentive and hydraulic modelling cost reduction schemes have demonstrated to customers that we have taken the right steps to address their service concerns together with supporting the achievement of environmental improvements.

Arrangements in our operational area

For water and sewerage undertakers who operate wholly or mainly in Wales there have been many changes, some that are very significant, in both legislation and regulation relating to developer activity compared to those companies who operate in England. Many of these changes have altered the statutory duties and the fundamental role that Welsh Water undertakes. Our role has changed from providing a service upon request from a customer (i.e. where the customer can choose to use a service or not) to one where a customer has no choice but to use our service and if they don't, we have to enforce these legal requirements upon them. This can ultimately lead to taking court action due to a criminal offence being committed. This routinely relates to mandatory lateral drain and sewer

adoption requirements and the requirement for SAB approval for sustainable drainage (SUDS). Another example is where Building Regulations are not aligned with water industry duties that relate to the requirement to install domestic fire sprinklers in all new homes. For developer customers to comply with these regulations a direct-fed sprinkler system typically requires in excess of 3 bar pressure in our water network (and sufficient flow to match) whereas our duty requires us to provide no less than 1 bar at the property boundary.

In addition to these changes there are other variances which include approaches to charging, adoption codes, surface water sewer adoption and formalisation of the water companies' role in the development planning process. We have previously provided a summary of these variances to Ofwat at PR19, and an up-to-date summary is attached in Annex 1.

Due to these fundamental differences in our operational area, the qualitative survey and satisfaction scoring undertaken as part of the D-MeX mechanism with developer customers remains incomparable to those surveys conducted with customers served by the English water companies. The representations we made to Ofwat during the PR19 process are still valid and they have been further substantiated through the evidence we have collected during the live operation of D-MeX in AMP7. The result of the different arrangements in place in our operational area have a material negative impact on our D-MeX outcomes and put us at a disadvantage when our performance is compared with the rest of the industry. The vast majority of this impact is not something we can influence unless for example we did not enforce these requirements, offered all the related activities to support compliance for nil cost to customers (this would contravene our competition law obligations) and not require surety to ensure the relevant construction standards were met (this would expose the generality of customers to this financial risk which is inappropriate).

Pre AMP7

Prior to the implementation of D-MeX and during the shadow year all WoCs and WaSCs in England and Wales were measuring their performance in accordance with the Water UK Developer Services Levels of Service. These service levels related solely to the delivery of quantitative performance and were not affected by the different legal or regulatory requirements for England and Wales.

During the shadow year of D-MeX our concerns were outlined to Ofwat about the proposed approach to D-MeX and in particular how our performance could not be fairly assessed and appropriately determined for the qualitative element of D-MeX when compared to other water companies, given the difference in our role and the regulatory requirements placed upon us. Just under 90 % of all our developer services activities (in terms of number of transactions) relate to mandatory sewer adoption and fire sprinkler legislation, both of which are within the scope of the legislation that affects only Welsh companies, and where customers have and continue to voice their dissatisfaction with issues that are outside of company control.

In addition to the quantitative measures already in place since 2015 and prior to shadow year of D-MeX where we consistently achieved upper quartile position, we commissioned independent customer surveys to measure our qualitative performance on an annual basis. The survey results demonstrated that whilst we have seen a year-on-year improvement in our customer satisfaction score - achieving 86% by 2019 - customer feedback captured the frustration created by having to comply with the different legal requirements in our area, and the processes dictated by the legislation. A small selection of verbatim comments are noted below to give an indication of the nature and impact felt by customers who were surveyed.

"We deal a lot with Severn Trent and the process is much smoother especially the 106 applications. Welsh Water S104 causes the majority of delay issues" - Developer	"Too much paperwork and red tape – Can't start drainage until the 104 has been approved, causing huge delays and costs"- Developer	"S104 has been a problem for us" - Groundworker
Tackle the Welsh Government coming up with a process that allows developers to commence S104 drainage works prior to the S104 Agreement being completed - Developer	"It's alright for existing customers, but for new applications S104 is very time consuming and very expensive" – Groundwork consultant	"New S104 regulation seem to have slowed everything down" – Developer Consultant

PR19 / AMP7

The introduction of a customer satisfaction measure for developer customers is welcomed as this is a vitally important customer group in the context of supporting the broader economy.

However, as AMP7 progress it is increasingly clear that differences in legislation in Wales impact customer satisfaction levels and the D-Mex performance outcomes. The evidence derives from customer feedback from the qualitative survey output, customer complaints and independent research work. Customers continue to perceive that Welsh Water have introduced the mandatory sewer adoption requirements (not Welsh Government) and that Welsh Water are to blame for not delivering the water supply requirements for domestic fire sprinklers. (The flow and pressure required for direct mains fed systems which typically require pressures in excess of 3 bar to meet the test requirements – far beyond the minimum standards required for a water company). We have continued to engage with customers at every opportunity over a considerable period to do all we can to mitigate the negative impact of the legislative requirements on develop customers, but much of the impact remains beyond our control.

The verbatim comments below are a small selection of those we have received as part of the D-MeX qualitative surveys completed by Ofwat during the AMP7 period. These all relate to issues that are beyond company control.

<i>"We had to pay for the Legal work" -</i>	<i>"The S106 cannot be completed without the Section 104" -</i>	<i>It's a connection to the sewer system. We were told a Section 104 was needed" -</i>	<i>"The water pressure is 1 bar; we're asking for the sprinkler system which needs 6 bar"</i>	<i>"We needed a S104 to complete the development, also for us to sell the property"</i>
<i>Legislation has made things take longer and more complicated not necessarily Welsh Waters fault, but the legislation has made them act in a different way as duty bound by law now.</i>	<i>The whole was very bureaucratic.</i>	<i>Welsh Water is the worst company I have worked with in my life. The most awkward in comparison to other utility companies. Welsh Water always has red tape.</i>	<i>The current water pressure is not strong enough for the sprinkler system</i>	<i>Well, the system is extremely complex for somebody who doesn't have experience like me</i>

<i>"The sprinklers add time and cost, it is definitely more difficult.</i>	<i>"In regard to sprinklers, more clarity upfront regarding water pressure - give a better indication of what this will be.</i>	<i>It's very complicated process, I do not think it needs to be, it could be made simpler.</i>	<i>Being flexible to meet our specific development needs instead of applying continued red tape</i>	<i>That they send their staff to be trained in the sprinkler system.</i>
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The tables below are an extract of data taken from the Water UK portal for the shadow year and years 1 and 2 of D-MeX and relate to the sewerage measures where legislative differences between English and Welsh companies are prevalent. This demonstrates that we handle at least twice the number of sewer adoptions compared to English companies. This data also shows that a number of companies report 'zero' activity for S9.1 including Hafren Dyfrywy which is something that requires better understanding. This could for example indicate that the relevant legislative requirements are not being followed or enforced and therefore lead to a difference in the experience customers receive and whether they are included for the purposes of D-MeX measurement for both quantitative and qualitative components.

		Anglian	Dwr Cymru	Hafren Dyfrdwy	Northumbrian	Severn Trent	South West	Southern	Thames	United Utilities	Wessex	Yorkshire
S7.1 - Adoption Legal Agreements issued within Target	Shadow 2019/2020	342	572	4	108	398	93	65	129	311	111	193
	Y1 2020/2021	271	472	17	69	209	38	77	12	259	93	110
	Y2 - 2021/ 2022	171	452	11	47	143	0	39	0	168	42	37
	2019 - 2022	784	1496	32	224	750	131	181	141	738	246	340
S8.1 - s106 sewer connection - approval letters issued within target	Shadow 2019/2020	2061	739	17	457	2549	664	1153	2523	912	476	854
	Y1 2020/2021	2091	640	19	441	2405	653	1242	2381	851	520	754
	Y2 - 2021/ 2022	2114	626	16	509	2319	679	1175	2409	924	558	936
	2019 - 2022	6266	2005	52	1407	7273	1996	3570	7313	2687	1554	2544
S9.1 - s106 sewer connection - rejection letters issued within target	Shadow - 2019/2020	404	205	0	38	0	38	657	0	285	7	473
	Y1 2020/2021	668	206	0	36	0	16	855	0	292	9	27
	Y2 - 2021/ 2022	370	217	0	84	0	4	1347	0	205	8	28
	2019 - 2022	1442	628	0	158	0	58	2859	0	782	24	528

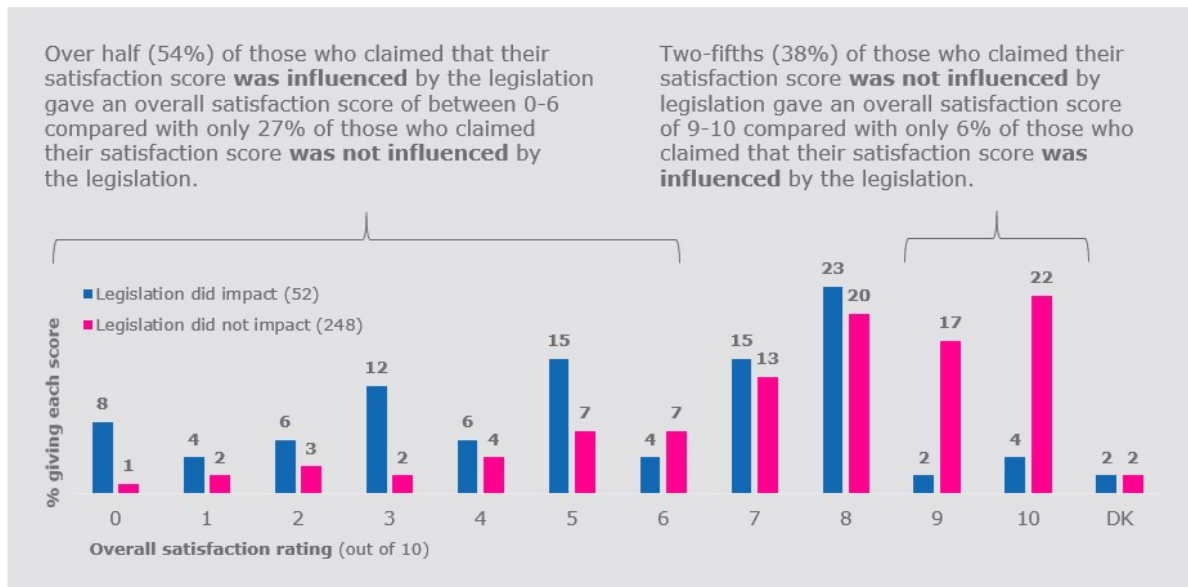
Independent Research

During the latter part of 2019 we commissioned additional independent research to be undertaken to gain further insight into whether our developer customer satisfaction scores were being impacted by the different legislation and regulation that applied in our operational area. We received the final report in February 2020 and the findings were based on 300 developer customer surveys. Customers were randomly selected from those who were included in our D-MeX survey submissions to Ofwat for the shadow year.

The conclusions was that two fifths (41%) of the customers surveyed claimed to be aware of the differences between Welsh and English legislation. Nearly one fifth (17%) of the customers surveyed claim their overall satisfaction rating was influenced by the legislation. Taking this as a minimum, this would be sufficient to have a significant influence on D-Mex scores achieved.

The below graph illustrates the difference in scores given by individuals who claimed that legislation did have an impact (in blue) and those who said it didn't (in pink). In terms of giving top scores, a score of 9 or 10 was given by 38% of those who claimed their score was not influenced by the legislation in

Wales, whereas only 6% of those who said they were influenced by the legislation gave a score of 9 or 10. At the lower end of the scale, customers who said they were influenced by the legislation were much more likely (54%) to give a score of 0-6, compared to those who did not (27%).



Ongoing Analysis

We have completed a comparison of the measures that are associated with the legislative differences to gauge the impact on overall satisfaction levels. This has been completed for both Year 1 and 2 periods of AMP7 to give a comprehensive account of any potential movement in customer sentiment.

Year 1 - Based on the relevant measures and of those customers referencing the differences, the average CSat score can be seen as reduced by 3.31.

Year 2 – The same comparison was made as for year 1 with a reduced average CSat score of 2.79.

These qualitative score reductions are spread across 7 different quantitative measures, and they account for an average of 98% of the total qualitative surveys undertaken for us each quarter.

This data is an underestimate of the real impact on our qualitative score as most customers are unlikely to state anything about the legislative difference in the verbatim survey comments, and is likely to be at least twice this score based on our own independent research. This data also aligns reasonably well with the conclusions of the independent research we conducted summarised noted above.

Quantitative measure	YR1						
	Total No. of surveys	% of the total survey sample	Average CSat score who referenced legislation	Average CSat score with no referenced legislation	Variance in Csat	No. of survey responses referencing legislation	% of surveys referencing legislation by measure
Not Applicable							
S1.1							
S6.1	75	8%	4.18	7.61	-3.43	22	29%
S7.1	37	4%	4.50	8.30	-3.81	10	27%
S8.1	63	7%	3.71	7.68	-3.97	15	24%
S9.1	23	3%	1.75	8.78	-7.04	4	17%
W3.1	347	38%	5.29	6.42	-1.14	14	4%
W4.1	300	33%	6.57	7.03	-0.46	7	2%
Total Survey Sample = 911	877	96%	4.33	7.64	-3.31	72	8%

*Note – There is no data for Not applicable & S1.1 for YR1

Quantitative measure	YR2						
	Total No. of surveys	% of the total survey sample	Average CSat score who referenced legislation	Average CSat score with no referenced legislation	Variance in Csat	No. of survey responses referencing legislation	% of surveys referencing legislation by measure
Not Applicable	21	2%	0	5.9	-5.9	1	5%
S1.1	12	1%	6	7.67	-1.67	1	8%
S6.1	79	8%	4.23	7.48	-3.25	13	16%
S7.1	45	4%	4.1	7	-2.9	10	22%
S8.1	56	6%	4.07	7.04	-2.96	14	25%
S9.1	19	2%	3.83	6.05	-2.22	6	32%
W3.1	442	44%	5.23	6.92	-1.69	13	3%
W4.1	307	31%	4.64	6.36	-1.73	11	4%
Total Survey Sample = 1003	981	98%	4.01	6.80	-2.79	69	7%

Customer complaints

We have continually analysed our written complaints to identify trends and areas of focus to improve. The last four years of complaint data have shown an improvement and reduction in close to 40% 'avoidable' complaints. These are complaints where we can influence outcomes such as adherence to agreed timescales. Those complaints where we have little or no influence, relate to the requirements of Mandatory Sewer Adoption, Legal Agreements and Fire sprinkler legislation, with our one-off and smaller sized developers not understanding that water companies are required to comply with the legislation, often resulting in complaints. We have continued to mitigate these issues with ongoing dialogue at every opportunity providing support, guidance, and explanation, but with limited success.

Typical cause for unavoidable complaint

- Developer - struggling to understand the reason for having to enter into a legal agreement
- Developer - Customer confused & frustrated over policy despite support by engineer
- Homeowner - Cannot sell property as no section104 in place
- Customer thinks our paperwork is "ridiculous" and a waste of time
- Designer not happy with pressure for fire sprinkler system and not meeting system pressure requirements

Summary

Based on our findings over a sustained period both prior to and during PR19 D-MeX implementation, we have:

- Stated our support for the need to measure customer satisfaction
- Completed independent research that demonstrates the impact of Welsh legislation compared to English companies on customer satisfaction levels
- Outlined our concerns to the proposed qualitative measure of performance and league table approach
- Worked to support our customers through the different legislation that applies in our area.

We are committed to providing excellent service and will continue to do so, and fully support the need to monitor and continually improve performance. However, including Welsh companies in D-MeX in the way it currently operates is not equitable in terms of comparing with English companies'

performance. We would be willing to engage with Ofwat further to provide any further background and develop an equitable way of comparing the service we provide developer customers with companies in England.

Annex 1 – Comparison of the arrangements in England and Wales that relate to Developer Customers/Services

Activity	Legal Provision	Position in England	Position in Wales	Parity?	Extent of advantage/disadvantage	Updated position (August 2022)
Statutory Consultee – Development Plans	T&CP Act 1990 and amendments	Specific Consultation Body	Specific Consultation Body	Partly	n/a	The guidance issued by NRW/EA to planning authorities regarding impacts on SACs due to phosphate increases caused by new development. This has caused delays to housing delivery in these areas but this is not due to our performance and the largest contributor of phosphates is not from WwTW discharges.
Statutory Consultee – Planning Applications	T&CP Act 1990 and amendments	No formal role although water & drainage are material planning considerations	Statutory Consultee	No	Material difference for companies in Wales which requires formal responses within prescribed timescales.	The guidance issued by NRW/EA to planning authorities regarding impacts on SACs due to phosphate increases caused by new development. This has caused delays to housing delivery in these areas but this is not due to our performance and the largest contributor of phosphates is not from WwTW discharges.

Statutory Consultee – SuDS Approval Body	Schedule 3 F&WM Act 2010 (from January 2019)	Not applicable	Statutory Consultee	No	Material difference for companies in Wales. Issues likely to be directed at water companies wrongly.	Complaint and D-MeX data confirms that we are negatively impacted by these requirements?
Pre-planning Service (water)	T&CP Act 1990 and amendments Unregulated service	No formal requirement All companies provide this service	Part of the role as Statutory Consultee All companies provide this service	No	Material difference for companies in Wales	
				Yes		
Water Connections (inc Infrastructure Charges)	Section 45 WIA91	Equivalent duty but new charging arrangements apply*	Equivalent duty but WIA91 charging requirements apply* Also see domestic fire sprinkler requirements*2	No	Material difference due to charging approach but unsure who will benefit. Companies in Wales have been expected to adapt domestic connection arrangements where fire sprinklers are being installed and provide further information.	
Self-lay Water	Section 51 WIA91	Equivalent duty but new charging arrangements apply*. Also see Adoption Code arrangements*	Equivalent duty but WIA91 charging requirements apply.*	No	Material difference due to charging approach but unsure who will benefit.	

Water Requisition	Section 41-44 WIA91	Equivalent duty but new charging arrangements apply*	Equivalent duty but WIA91 charging requirements apply*	No	Material difference due to charging approach but unsure who will benefit.	Dedicated fire mains?
Water Diversion	Section 185 WIA91	Equivalent duty and charging as per WIA91*	Equivalent duty and charging as per WIA91*	Yes		
NRSWA Diversions	NRSWA Act 1991	Equivalent duty and charging as per NRSWA91	Equivalent duty and charging as per NRSWA91	Yes		
Pre-planning Service (Wastewater)	T&CP Act 1990 and amendments Unregulated service	No formal requirement All companies provide this service	Part of the role as Statutory Consultee All companies provide this service	No	Material difference for companies in Wales	
				Yes		
Sewer Connections	Section 106 WIA91	Must receive notification of proposed direct and indirect sewer connections and issue approval or refusal purely based on entitlement arising and 'mode'	Same as England but for foul sewers a Section 104 Adoption Agreement must be in place for all lateral drains and sewers prior to construction and being connected to the public sewer. Sewerage Undertakers required to enforce these requirements.	No	Significant and fundamental difference with sewer connection and sewer adoption approach in Wales that has a substantial material effect to parity.	Also includes SAB related refusals?

			* In the case of surface water a SAB consent must be granted prior to a section 106 notice being served by the customer.			
Sewer Adoption – pre construction	Section 104 WIA91 Section 42 F&WM Act 2010	Customers can choose whether to offer sewers etc for adoption and even when an adoption agreement is put in place either party can avoid concluding the process.	All sewers etc that are to connect to a public sewer must be included within an adoption agreement prior to construction and connection to the public sewer. The adoption requirement prevents either party stalling progress.	No	Significant difference in requirements which are relatively complex for those customers who are not regular developer customers. Many of these customer do not understand why they have to enter into an adoption agreement and the consequences of not doing so.	Impacted by SAB requirements and not able to adopt SUDs systems?
Sewer Adoption – post construction	Section 102 WIA91	Obligation to consider a customer request to adopt existing sewers etc	Material difference due to mandatory adoption requirements	Partly	Majority of sewer adoption in England will be formalised post construction whereas in Wales this will be pre-construction and both processes are fundamentally different.	
Sewer Requisition	Section 98-101 WIA91	Requirement to provide sewers etc in line with legal provisions.	Material difference due to charging approach but unsure who will benefit.	No	Material difference due to charging approach but unsure who will benefit.	SAB requirements and surface water sewer delivery (Pontardulais??_

Sewer Diversion	Section 185 WIA91	Requirement to divert or alter apparatus and charge reasonable costs	Requirement to divert or alter apparatus and charge reasonable costs	Yes		
Building over or near public sewers	Building Regulations Part H	Requirements compatible	Requirements compatible	Yes		
Water & Drainage Searches (CON29DW)	Formerly part of the Home Information Pack Requirements	Requirements compatible	Requirements compatible albeit increased contacts are made due to mandatory adoption and fire sprinklers	Partly	Level of information and contacts due to mandatory sewer adoption requirements are significant and require a high level of support and routine enforcement action	
SuDS & SAB	Schedule 3 F&WM Act 2010	Not applicable unless area covers parts of Wales	Implementation January 2019 for areas in Wales. Approval to connect surface water to the public sewerage system is subject to the SAB consenting to this. Any section 106 notice served without a SAB consent must be refused by the sewerage undertaker.	No	Welsh companies will not be permitted to adopt surface water assets from Jan 2019 which is very likely to frustrate customers. A further risk is that an ineffective implementation of Schedule 3 by Local Authorities will place additional pressure on water companies to assist with overcoming such issues. This is similar to what has occurred with mandatory sewer	

					adoption and fire sprinklers. Customers will also be frustrated by welsh companies refusing section 106 notices where SAB consent has not been granted.	
Change from 'wholly or mainly' to Country boundary for water industry legislation	Wales Act 2017	Not applicable unless area covers both England & Wales.	Not applicable unless area covers both England & Wales.	No	The Wales Act will change the legal requirements placed on developer customers and the relevant water companies. This will result in companies having to comply with two different legal/regulatory regimes adding complexity and confusion for customers	
Domestic Fire Sprinklers	Domestic Fire Safety (Wales) Measure* ²	Not applicable unless area covers parts of Wales	Mandatory	No	The fire sprinkler requirements are a building regulations requirement and are therefore not aligned with a water company's duties. Developer customers prefer mains fed sprinkler systems which requires at least 4 bar pressure well beyond a water company's minimum duty. This causes significant customer frustration that	

					is wrongly directed towards the water company.	
DS Charging Arrangements	Water Act 2014	New charging arrangements in place in line with Ofwat Charging Rules from 1/4/2018	Charging arrangements as per WIA91. Awaiting Ofwat Rules consultation	No	The different charging arrangements creates disparity. Welsh companies have no flexibility currently to align charges with customers' views. This may change in the future.	
Adoption Codes	Water Act 2014	Adoption Codes in the process of being implemented for water and sewerage.	Currently awaiting Adoption Code consultation however they are likely to be significantly different for sewerage given mandatory adoption requirements	No	The differences that result from the adoption code requirements will likely result in customers having variant views of the arrangements.	