

# Putting water customers first – Consultation by Ofwat May 2023

## United Utilities’ response - July 2023

UUW is pleased to have the opportunity to respond to Ofwat’s non statutory consultation on the introduction of a new customer focussed licence condition for all water companies in England and Wales.

Companies need to support and communicate with customers, manage complaints effectively and provide fair compensation when things go wrong. Ensuring that customers are well informed and can have confidence that companies will act to put things right is important for the industry’s reputation and the clear alignment of the industry to customer priorities. It is crucial that we recognise the full diversity of customer needs, and provide extra help where it is needed.

Given the high importance customers place on the quality of service they receive the proposed introduction of a new licence condition is a positive step for the water industry as a whole. Service quality is an important concern for customers, and it is right that the industry works hard to demonstrate that customer interests and concerns are being protected.

Following review of the consultation documentation we believe that:

- The proposed introduction of a new licence condition is a positive step for the water industry as a whole. A new licence condition can become part of a wider framework of protections for customers, alongside regulatory guidelines and service incentives.
- We support Ofwat’s proposed objectives for the new licence condition, and recognise some of the merits of a principles based approach to its design. Combining an outcomes focussed licence condition with more adaptive detailed guidance documents can be an effective approach to adaptive and proportionate regulation.
- There are other consequences that follow from a principles based approach. In particular this will require careful development of underlying regulatory guidance to ensure companies and customers have clear expectations of what is required and what can be expected.
- We note that where there is already an established body of relevant regulatory guidance and other company performance incentives for customer service, these have been developed prior to the introduction of a new licence condition. These may require review and reform in light of the condition and/or alternatively the interpretation and application of the condition will need to reflect the broader range of guidance and regulatory mechanisms.
- In circumstances where the changed licence or newly issued guidance gives rise to changes from established practices in a way that materially impacts company costs, the impact of this needs to be considered as part of Ofwat’s impact assessment and in the context of future price setting and cost assessments. In all cases, Ofwat should commit to consulting on guidance before it is adopted.
- We believe that wording in G5, regarding the requirement to consult CCW on policy and process change, should be reviewed, introducing a more focussed requirement to consult to ensure companies are able to undertake normal operational improvements without formal CCW consultation.
- We have also identified a number of targeted recommendations in the design and wording of the new proposed licence condition which we believe will help clarify and improve its workings. These recommendations are set out in detail below.
- We support the proposal for companies to report annually on how they have complied with a new licence condition, and suggest that this should form part of the future APR reporting process.
- In other respects, we consider the proposed changes to Conditions G and J to be workable. We anticipate that the new condition will have wider implications for the interpretation and implementation of other

conditions, most notably Condition E. We anticipate that the development of guidance and case studies to consider the interactions between this new condition and Condition E will be needed.

As United Utilities' non-household customer base is subject to retail service separation we have not sought to comment on arrangements where a direct relationship between end customers and incumbents remains.

We would be happy to discuss further any of the comments or observations discussed in this response. We have provided further detail in our response below, aligned to the specific questions raised within the consultation.

### **Q1. Do you have any comments on the outcomes or examples?**

Service experience is at the core of customers' perception of their water supplier. Companies need to support and communicate with customers, manage complaints effectively and provide fair compensation when things go wrong.

Over a number of years the industry in general, and United Utilities in particular has made great strides in improving customer service, addressing the sources of customer complaints, and responding more quickly and appropriately when things go wrong. The ability of the sector to recognise when service experience needs to be improved, particularly for vulnerable or financially at risk groups has improved markedly in the last few years. However it remains the case that the sector can, and should do more to improve customer outcomes.

Ensuring that customers are well informed and can have confidence that companies will act to put things right speaks to the legitimacy of the water industry in customers' eyes. It is crucial that we recognise the full diversity of customers' needs, and provide extra help where it is needed.

We are supportive of the proposed aspirations and outcomes set out by Ofwat in these licence reform proposal. Our own work to understand customers' service expectations<sup>1</sup> closely aligns to the key outcomes identified in the consultation. Given the high importance customers place on the quality of service they receive the proposed introduction of a new licence condition is a positive step for the water industry as a whole.

A new licence condition can become part of a wider framework of protections for customers, alongside regulatory guidelines and service incentives.

We recognise there are merits to a principles based approach to design. Combining an outcomes focussed licence condition, with more adaptive detailed guidance documents can be an effective approach to adaptive and proportionate regulation. However, there are also other consequences that flow from a principles-based approach.

We note that where there is already an established body of relevant regulatory guidance and other company performance incentives for customer service, these have been developed prior to the introduction of a new licence condition. These may require review and reform in light of the condition and/or alternatively the interpretation and application of the condition will need to reflect the broader range of guidance and regulatory mechanisms.

In circumstances where the changed licence or newly issued guidance gives rise to changes from established practices in a way that materially impacts company costs, then the impact of this needs to be considered as part of Ofwat's impact assessment and in the context of future price setting and cost assessments. We expect that principles of good regulation will continue to be applied as guidance is developed, and anticipate that the depth of future impact assessments will be proportionate to the more binding nature of the licence condition. It also be necessary to recognise that as guidance changes periods of transition to new standards will need to be allowed for. In all cases, Ofwat should commit to consulting on guidance before it is adopted.

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<sup>1</sup> United Utilities, "[Expectations of Service](#)" 2021

## **Q2. Do you have any suggested changes to the proposed wording of the principles to meet our specified outcomes for households?**

As noted above, a principles based approach to wording for a proposed licence condition is a workable option.

We agree that this principles based approach provides clarity on the purpose and desired outcomes from the licence modification. Whilst a more prescriptive approach to formulating licence conditions has the advantage of providing clarity to companies and customers as to what to expect in terms of licence compliance we recognise that using more flexible regulatory guidance documents to set out these detailed requirements and expectations provides for greater adaptability.

We have a number of observations on the proposed wording of the new licence conditions. We recommend that:

- G.1 –The condition require ‘appropriate’ standards of customer service, as opposed to ‘high’ standards. This provides for regulatory guidance to then specify minimum appropriate standards.
- G4.3 – The condition replace the phrasing “when things go wrong” with a reference to the term ‘incident’ which is specified under G.2
- G4.6 – Review whether the reference to G4.5 is needed, or could it be removed to aid clarity.
- G5 – Review the wording on CCW consultation to allow for companies to make some changes in policies and processes without requiring formal consultation before implementing the change. Our views are expanded on in response to question seven, below.
- G6 - Whilst we recognise the general trend towards standardised licences, in this case we consider the condition should be more specifically reflective of the points that are relevant to the company’s operations. United Utilities is not a new appointee, nor a Welsh company it would appear unnecessary to include wording in our company specific licence that does not apply to us. We believe that licence conditions are best drafted to be clear, concise and relevant, in order that the requirements of the licence are well understood by both the licensee and those who seek to examine the licence, including customers and other users. In this regard, inclusion of clauses that are irrelevant to the company tends to make the licence longer than it needs to be and less clear than it could be.

## **Q3. Do you agree with our proposed approach to exclude non-households from the condition relating to customers struggling to pay or in debt, consistent with corresponding non-households served by a retailer?**

United Utilities’ non-household customer base is subject to retail service separation, and as such receive their water retail services from an independent retailer. We therefore do not seek to comment on proposed licence arrangements where a direct relationship between end customers and incumbents remains.

## **Q4. Do you agree with our proposed approach that the remainder of the licence condition apply to non-household customers without a retailer?**

United Utilities’ non-household customer base is subject to retail service separation, and as such receive their water retail services from an independent retailer. We therefore do not seek to comment on proposed licence arrangements where a direct relationship between end customers and incumbents remains.

## **Q5. Should any areas of customer service be prioritised in our development of the guidance?**

### **If so, which areas?**

Given the age of the existing guidance on support for vulnerable customers, the current cross industry project to develop new vulnerability guidance is welcomed, and we are supportive of this being a priority.

It is important that we collectively recognise that existing guidance was set down at a point in time when it was considered as a guide for company activity, rather than a set of enforceable requirements. This means that in some instances existing guidance can be unclear as to when it is setting out minimum requirements that must be adhered to, and where it sets out aspirational recommendations, that companies should strive to achieve, but which would not be considered as mandatory. This implies that regulators and companies will need to recognise that a period of transition will be needed as guidance is renewed and updated in light of a new licence condition.

## **Q6. Which matters / company activities will benefit from having more detailed guidance, and which less?**

In general where regulatory or market incentives can reliably drive companies to deliver good customer service we believe detailed guidance should not be needed. For example the C-MeX incentive (and SIM before it) has proved effective in driving improving levels of service for the majority of customers in the most common areas of interaction with companies, meaning more detailed guidance in these areas is not needed. In contrast recent customer research has shown that this mechanism is less effective when trying to protect small customer groups, or drive service recovery improvement for low frequency, high impact service failures (such as sewer flooding).

There are a number of instances where CCW and Ofwat have developed separate guidance documents covering the same general area of activity. Whilst broadly guidance across regulators is consistent in tone and desired outcomes, there can be detail that differs between regulators. It would help clarify expectations on companies if over time guidance was consolidated into single, perhaps joint, guidance documents from Ofwat and CCW. For example the recent 'Paying Fair' guidance document from Ofwat had a number of small differences from comparable CCW publications. In contrast the "Customer experience of sewer flooding – a joint report by CCW and Ofwat" made it clear to companies that CCW and Ofwat had a shared view of required service levels for customers in this area.

As an overarching point, company management and company boards strive to meet licence requirements and regularly assess whether the company's policies and performance are compliant with the licence. Where a principles based approach to the licence is used then assessing and establishing compliance can tend to be more subjective and difficult to define than licence requirements that are detailed and specific. It is much easier, for example, to assess whether a company is meeting the credit rating requirements under the revised ringfencing licence requirements than it might be to assess whether a company is meeting the more generalised expectations under the customer focussed licence condition.

Because compliance with a principles based licence requirement is unlikely to be absolute, and incorporate some degree of judgment, guidance and case studies are helpful to companies in assessing their likelihood of compliance. On this basis, where there are clear regulatory expectations about what would or would not be considered compliance on a particular issue, these should be prioritised for guidance in order that companies can make a clearer, more informed assessment, of where their current policies and procedures are likely to comply or not comply with a principles based licence condition.

## **Q7. Do you agree with our proposal to include reference to CCW as a consultee within guidance?**

We agree that CCW should be consulted when companies seek to make material change to policies and formal procedures that alter customers' experienced outcomes.

However, in practice companies make numerous and frequent small changes to policies, processes and procedures to align to changing operational activities and workflows. As the current wording of condition G5 is set out it appears companies will be required to consult with CCW on all changes, no matter how small, on all processes and policies that in any way may affect customer service. It seems likely that this will materially and unnecessarily delay reform and restrict the flexibility that companies need in order to manage their operations. Ultimately, this may have a detrimental impact on companies' ability to meet customer needs and expectations.

One alternative option could be that the requirement to consult be moved from the more general licence condition wording, and instead placed directly into regulatory guidance documents, with the intention that the formal requirement to consult be constrained to higher focus areas directly covered by regulatory guidance. This will allow the current practise of company freedom to adapt wider workflows to changing customer expectations, whilst ensuring formal consultation continues in high focus areas, such as charging policies and procedures.

Another alternative would be to restrict the need to consult to material changes. This may require guidance on what types of changes would be considered material.

A final alternative would be to provide a positive carve out from the requirement for consultation where a company considers that an immediate change is necessary or expedient for the purposes of delivering good customer service. After the event, CCW could be informed of such changes and could then have an opportunity to comment upon them, including whether it considered the immediacy of the change was necessary.

#### **Q8. How can we gather further insight on company performance in this area?**

In practice many companies are providing substantial insight into customer service activities through existing reporting processes, such as the APR. We support the proposal for companies to report annually on how they have complied with a new licence condition, and suggest that this should form part of the future APR reporting process.

We believe that at this stage the requirement to report remain relatively open, allowing companies to present evidence and insight that they believe is most relevant to the new licence condition. Ofwat and CCW can then, over time, point to best practice examples of where companies are meeting such requirements and provide more prescriptive guidance where it is necessary and proportionate to do so.

#### **Q9. What are your views on annual reporting requirements to monitor compliance against the licence condition?**

See response to question eight above.

#### **Q10. What are your views on our proposed timescales for implementation?**

Introducing a licence condition part way through a financial year does present some timing and administrative challenges, particularly in terms of reviewing and updating existing policies and procedures, consulting where required with CCW, generating statements of compliance.

As such we believe there will need to be a period of time between finalisation of the new conditions wording and formal implementation. We recommend that if formal licence amendment consultation is completed in Q3 of 2023/24 then full implementation could begin from the start of 2023/24.

#### **Q11. What are your views on consequent changes to other conditions in licences and are there any other changes we should make?**

In general, we consider the proposed changes to Conditions G and J to be workable. We anticipate that the new condition will have wider implications for the interpretation and implementation of other conditions, most notably Condition E.

Principles G4.5 and G4.6 of the new licence condition require companies to provide adequate support for customers in vulnerable circumstances, including those struggling to pay. This is likely to raise points of interaction with the existing undue discrimination in charging constraints under Condition E of our licence. There appears the potential for conflict between the two licence conditions. It would be a helpful area for further guidance as to what may or may not constitute undue preference, given the new licence conditions.