

Customer Licence Condition Consultation response
Ofwat
Centre City Tower
7 Hill Street
Birmingham
B5 4UA

By email: customerfocus@ofwat.gov.uk

7 July 2023

Dear Ofwat,

RE: Putting water customers first: A consultation on introducing a customer-focused condition into the licences of all water companies in England and Wales

Thank you for the opportunity to review and respond to the consultation on Ofwat's proposals to modify water company licences through the introduction of a 'principles-based' licence condition to set binding expectations on companies with regards to the service and support they provide to customers in England and Wales.

We understand this consultation follows on from your work with CCW and stakeholders from across the water sector and beyond to develop the proposals into this form. This included workshops held in 2022 which Yorkshire Water representatives attended. We note Ofwat intends to present its final licence modification proposal, if progressed, via a formal consultation in accordance with section 12A of the Water Industry Act 1991, which you envisage would take place in quarter 3 of this financial year, with the licence modification being targeted to come into effect in quarter 4.

Ofwat's aim for the proposed new licence condition is to create an incentive for companies to deliver the very best service for customers and ensure Ofwat can take action and effect change when service falls short.

Regarding the three stated high-level outcomes detailed in the consultation – customers are well informed; when something goes wrong, affected customers will

have confidence the company will put it right; and the full diversity of customers' needs are identified, understood, and met by companies in the services and extra help they provide - we believe these reflect common aspirations between companies, CCW, and the regulator to drive high standards of customer service across the water sector and to provide support for the full diversity of our customer's needs.

Ofwat explains that examples of customers being let down and issues not being satisfactorily resolved can over time have a detrimental impact on the overall trust and confidence in the water sector. Although annual research by CCW and UKCSI respectively shows customer satisfaction with the services delivered across the sector is being broadly maintained (CCW reports a small uptick to 86% for 2022/23 from 84%, and UKCSI reports 76% overall satisfaction at January 2023 up from 75% same time in 2022), we understand Ofwat may be motivated to bolster the regulatory framework ahead of AMP8 to balance its reliance on the C-MeX performance commitment as an incentive that focuses on the average or typical service experience for most customers or groups of customers most of the time.

Ofwat should consider in the round the long-standing universal mechanisms that remain to provide protections for impacted customers also act as incentives for companies. For example, the Guaranteed Standards Scheme (GSS), investigations and calls for evidence related to significant events, escalated complaints to CCW and Ofwat itself, and the alternative dispute resolution regime (ADR), that operate alongside companies own policies that provide appropriate compensation to reflect damage and harm customers have experienced and financial support for those customers struggling to pay their bills.

We do have some concerns that the proposed approach creates a new risk that Ofwat in the future could use this broadly structured licence condition to effectively mandate significant changes upon companies in the both the standards of services to be delivered to customers and how these are to be delivered, without adequate recognition of the associated time for companies to make required changes and within what is achievable through totex allowances only determined at five-year intervals where we may see continued unwillingness to reflect reasonable input price pressures for household retail services, set against significant investment pressures on asset renewals and improving environmental outcomes.

Appended to this letter we provide our responses to the consultation questions and a number of observations about how the draft high-level principles would need to be complemented by a suite of key guidance for companies to inform their work with their household customers to deliver improving services and a better experience all round. We believe the formation of well-constructed guidance and its subsequent evolution is fundamental to give clarity to what are the prevailing minimum expectations of services delivered for customers, irrespective of whether Ofwat pursues its proposed new licence condition. Clarity from guidance could also be valuable to household customers and other stakeholders and customer representative groups who may wish to challenge and influence companies to improve their customer support.

In association with the proposals being consulted on, we would like Ofwat to update companies on the plans for a review of the Guaranteed Standards Scheme and future arrangements in respect of the potential for greater national alignment of social tariffs and support for those customers struggling to pay their water bills.

We look forward to working with you on the proposals and the detailed guidance and its governance.

Should you have any further questions or require more information please let me know.

Yours faithfully,

pp ~~~~~

Chris Offer
Director of Strategy and Regulation
Yorkshire Water

Yorkshire Water response to the consultation on introducing a customer-focused condition into the licences of all water companies in England and Wales

Yorkshire Water provides below its responses to the consultation questions.

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

We view the three stated **outcomes** (as laid out in *section 4. Aspiration and outcomes*) as a fair reflection of our common aspirations to drive high standards of customer service across the water sector and to provide support for the full diversity of our customer needs.

The three stated outcomes are:

- Customers are well informed.
- When something goes wrong, affected customers will have confidence the company will put it right.
- The full diversity of customers' needs are identified, understood, and met by companies in the services and extra help they provide.

As these are understandably brief, we welcome the additional narratives provided in the consultation document that expand on the outcome statements with an emphasis on companies being proactive both around understanding their customer individual circumstances and in their communications. We note the outcomes will not be referenced in the licence condition directly and are uncertain how Ofwat will ensure there is consistent focus on these outcomes throughout the suite of associated guidance that Ofwat produces to enable the proposed licence condition to have effect.

We also welcome that Ofwat has provided **customer service issue examples** set against each of the three 'outcomes' – presented as good practice and bad practice examples. We believe these reflect an accepted understanding between regulator and company of some good and bad experiences from the customers perspective.

However, the examples do not attempt to articulate a demonstration of systematic process strengths or failings in a company in regard to the customer experience situations used.

If these examples are to be used by companies, stakeholders and customers in future as reference to the regulator's expectations, we would like to see them revised and extended into the typical causes behind the 'experience' of the customer to show how well designed or poorly designed processes created or influenced the desired or unwanted outcomes.

Ofwat did indicate at the workshop of 18 May 2023 that it plans to expand on these examples in its future related guidance. We would like Ofwat to consider how such examples can better reflect the both the exemplars and poor ways of working of a water company, to express your expectations for the drivers of customer experience outcomes, not simply portray the outcomes themselves. In addition, as the stated outcomes will not be included within the text of the proposed new licence condition, we would welcome these being referenced consistently in any guidance developed and maintained by Ofwat.

We would be happy to work with Ofwat on how the examples could be expanded or adapted further.

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

The proposed high-level principles as worded can be open to wide interpretation by companies, Ofwat and other stakeholders. Ofwat believes its 'principles-based' approach will enable companies to innovate to deliver great customer service, and we acknowledge that such a structure to this new licence condition means it is more likely to be able to support flexibility of application to specific scenarios and for companies to work out what is best for their own customers. The principles approach may also allow for progress in respect of more valued experiences for the diversity of customers into the future.

However, there are risks that stakeholders and customers may have differing views on how a company should interpret the high-level principles as obligations of the Appointee to be amongst other things:

- "... proactive in its communications ...",
- "... provides appropriate support for customers when things go wrong ...",

- "... provides support for customers ... who are struggling to pay, and for customers in debt."

This may result in more onerous disputes with customers unhappy with their company's policy or position on a related matter. To help mitigate this and provide confirmation as to the extent a company should strive to meet these obligations, we would welcome the addition of text to the drafting under G4 as follows:

"G.4 The principles are:

G4.1 *The Appointee [by making best endeavours / through all reasonable means] is proactive in its communications so that customers of the Appointee receive the right information at the right time, including during incidents.*

G4.2 *The Appointee makes it easy for customers of the Appointee to contact it and provides easy to access contact information.*

G4.3 *The Appointee [by making best endeavours / through all reasonable means] provides appropriate support for the Appointee's customers when things go wrong and helps to put things right.*

G4.4 *The Appointee learns from its own past experiences, and share these with other sector players, it also learns from others experiences and demonstrates continual improvement to prevent foreseeable customer harm to the Appointee's customers.*

G4.5 *The Appointee understands the needs of customers of the Appointee and [will make best endeavours to] provide[s] appropriate support, including appropriate support for customers in vulnerable circumstances, and including during and following incidents.*

G4.6 *As part of meeting principle 4.5 above, the Appointee [will make best endeavours to] provide[s] support for customers of the Appointee who are struggling to pay, and for customers in debt."*

It is therefore important that companies can make clear links in their customer policies to the contents of the guidance that Ofwat issues (as referenced in licence paragraph G5) and not simply the principles alone. We reference more about how we understand the guidance will help all parties understand Ofwat's expectations

and our views on how these should be managed and revised in our response to Question 5.

We would welcome assurances from Ofwat that it will apply flexibility in how it interprets the principles when balancing the obligations of this licence condition with other licence conditions and statutory duties.

Specifically in relation to the principles:

- **G4.4** - this principle covers how a company should learn from its past experiences and those from others. We confirm that Ofwat's current Performance Commitments and ODI regulatory regime creates strong motivations for companies to pursue and retain comparative competitive advantage over each other, given that C-Mex is a totally relative assessment with both financial and reputational incentives.

On this basis it is contradictory to expect companies to openly share all their innovative best practice with each other where they believe this best practice provides them a competitive advantage.

It is important for Ofwat to recognise there are likely to be tensions between the expectations on companies to both collaborate and compete at the same time, and that the related guidance is clear that it intends to address customer issues that are not captured by C-MeX.

Of course we already see significant collaboration and pragmatic sharing of ideas and practice across the sector where the matters being addressed are more technical or issue specific and we expect many of these to continue. For example, Yorkshire Water is a member of the Money Advice Liaison Group (multi-sector group), and Infrastructure North (supporting customers in vulnerable circumstances working with the gas/electricity distributors), and the Utilities Cost of Living Leadership Group. We also support many of the WaterUK hosted expert groups like the Customer and Communities group and the Debt Network.

We would welcome confirmation from Ofwat that the level of collaboration and sharing it sees happening across the sector today is where its expectations are set and are likely to remain.

- **G4.5 and G4.6** – these principles require companies to provide appropriate support for customers in vulnerable circumstances, including those struggling to pay. The ability of companies to fulfil this requirement, now and into the future, may be currently constrained by both the Defra guidance from 2012 on company social tariffs¹ and the present interpretation of what may constitute undue discrimination in the fixing of charges under Condition E (Undue Preference/Discrimination in Charges) of the licence.

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?

Yes, we agree.

For clarity, we would like Ofwat to confirm either in paragraph G6, or unambiguously in a subsequent decision document that it does not intend for principles G4.1 to G4.5 or G4.6 to apply to customers receiving new connections services from Appointees. Whether these customers are developers, self-lay providers or new appointees, we understand these are not considered as “customers of the Appointee” where that term is used in companies’ licences. They are not generally occupants of Household Premises or ‘domestic customers’ and even in circumstances where a new connections customer is an individual, we do not see the protections provided under this new licence condition relating to them when receiving new connections services.

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

Yes.

We would expect non-household customers without a retailer should exclude those business customers who have made self-supply retail arrangements (where they hold a self-supply retail licence whether or not they use an intermediary to perform retail duties and to liaise with wholesalers). If that is confirmed as the case, we believe no business, charity, or public sector customer eligible for the non-

¹ Guidance to water and sewerage undertakers and the Water Services Regulation Authority under Section 44 of the Flood and Water Management Act 2010 – published by Defra June 2012

household retail market in England should have this licence condition apply to or relate to them.

Q5. Should any areas of customer service be prioritised in our development of the guidance? If so, which areas?

As we noted above, the principles in this licence condition are open to wide interpretation and will only gain a closer common understanding across stakeholders of the expectations of companies when considered in conjunction with guidance – such guidance laying out Ofwat’s minimum expectations for the sector.

Therefore, as Ofwat has expressed in its workshops, the guidance covering a range of key customer service matters targeted by the drafted licence principles is fundamental to the successful enactment of this licence condition proposal. How the guidance is created, expressed, published, and importantly change managed, will be critical to its effectiveness.

Priority areas for new/updated guidance

Serving customers in vulnerable circumstances would benefit from regulatory guidance, and we are encouraged that Ofwat has already started engagement with the sector and stakeholders on how it should develop such guidance. A sizeable proportion of our customers do face a range of situations and challenges that, even where transient in nature, have a significant impact on their lives and how they manage their relationship with key services, such as water utilities.

The list of ‘existing guidance’ presented by Ofwat in Table 5. in the consultation is useful and contains publications that present useful lessons or examples of good and poor customer service, but they may not all be considered guidance or guidelines. Some are event specific reports and findings from investigations that are timebound and will not be revised or adapted in future (even if the learnings they contain remain applicable). We would welcome a view in the coming weeks of what Ofwat expects to be in the full suite of guidance documentation that will support this principles-based licence condition.

Change management for guidance revisions

We would like condition G5 to be expanded to refer to guidance pertaining to this licence condition being subject to consultation with companies during its initial development and for any subsequent updates or revisions.

Proposed changes to draft text:

G6 - *"Ofwat may issue and revise guidance in relation to paragraphs G3 and/or G4 [subject to consultation with the Appointee and stakeholders]. Guidance issued by Ofwat under this condition will include an expectation that the Appointee consult the Consumer Council for Water and take its representations into account before making or revising any policies or processes which relate to some or all of the matters specified within the principles or that guidance."*

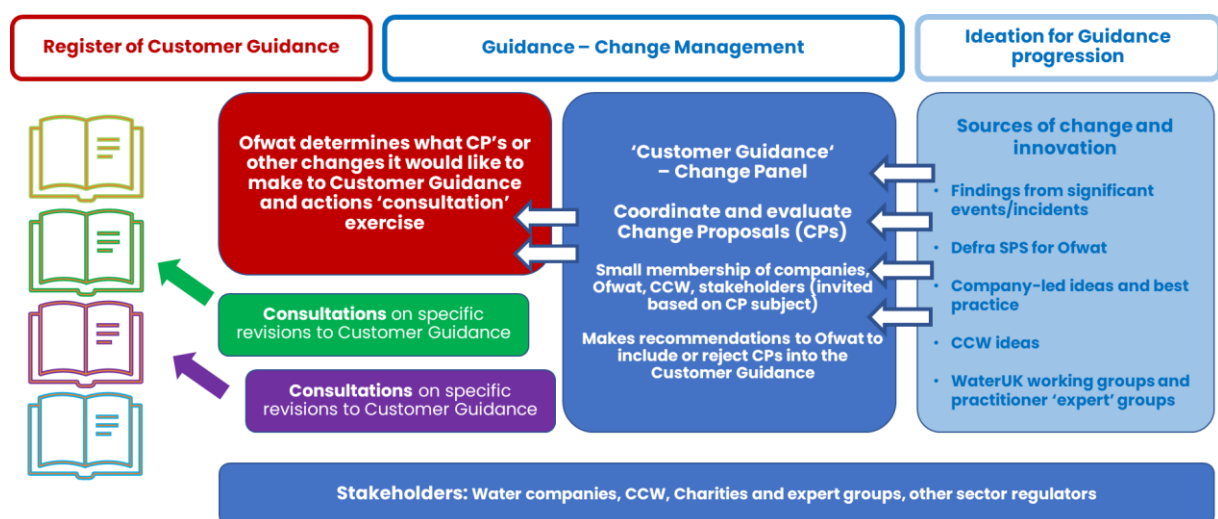
We are pleased that Ofwat "will seek to keep guidance relevant and appropriate", and we would like to understand what it will put in place to ensure a robust and consistent arrangement to develop and revise guidance does not effectively nullify or otherwise circumvent the current protections that apply to licence modifications.

We would like to see more thought being given (or shared if Ofwat has already started to develop its approach) to how the governance regime around the evolution of guidance will work. We believe there should be a formalised change management process created that allows change proposals to be developed and evaluated with stakeholders' views sought to shape the progression of minimum standards for customer service within the guidance. We would be happy to work with Ofwat and stakeholders in formulating a governance model that provides scrutiny of change, including its deliverability and implementation, but does not impede agility to desirable progress.

For example, we would welcome the setting of the minimum period between which any guidance within the suite of guidance (referred to by Ofwat on its 18 May 2023 call as a 'guidance register') would not have amendments or revisions come into effect. We suggest this would be a period of at least 12 months in order to allow companies time to review and adapt to the revised expectations in updated guidance, following appropriate consultation and decisions being taken by Ofwat.

We believe there could also be value in setting up a new, flexible, 'expert panel' that could consider guidance change proposals and make recommendations to Ofwat on design and implementation matters in advance of the formal consultation process related to all named guidance. CCW could be on such a panel. Although the guidance has not been referred to by Ofwat as formal Codes or Rules, the expectation from Ofwat is a company should follow the guidance unless it has a clear rationale for not doing so, such as its approach demonstrably provides a better service to its customers. With that in mind we believe a change management approach utilising an expert panel, similar in approach to how change proposals are managed for the Codes in the non-household retail market, could be sensible and give confidence to all parties.

We are concerned that Ofwat's reference in section 6 of the consultation "...to provide opportunities for stakeholders to comment", does not go far enough and is too vague for a regulatory framework that is intended to be effective for customers for many years to come. The diagram below outlines what features at a high level a change proposal and consultative governance approach supported by an expert panel could look like.



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

Clearly having guidance to support customer outcomes is very helpful in understanding what is expected of companies and setting minimum standards.

There is always a balance to be struck in not making guidance too prescriptive or complicated that it prevents flexibility or innovation in how services are delivered for the diversity of customers. We believe the priority matters that require national consistency like debt support or vulnerability should be a focus so we can agree best practice. These matters also benefit from having a range of expert stakeholders outside companies able and willing to contribute their experience from the customers perspective.

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

We welcome the continued role of CCW as a consultee on key aspects of how a company sets its policies around the delivery of its services to customers. However, we would like to see a level of pragmatism about where CCW can add most value as a key consultee for a company's policies or procedures, and we would welcome the opportunity to discuss with Ofwat and CCW what they envisage to be the specified matters where this role would apply. We note CCW can add real value to the development of company policies where it can provide insight and clear rationale for any proposed inclusions or additions.

We would have some misgivings if all policies/procedures relating to services for customers within the remit of this licence condition and the guidance register would always be subject to 're-consultation'. We are confident Ofwat and CCW would not wish to create rules that become over-burdensome or create undue delays to policy changes that benefit customers going live or place higher costs on such changes.

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

The mechanisms and collateral identified by Ofwat as insight opportunities seems extensive and we have nothing obvious to add. However, we are interested in how Ofwat will combine or triangulate these to form a coherent view of how a company serves its customers and complies with the licence principles as proposed.

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

We have reviewed Ofwat's proposals with reference to the proposed obligation under new condition G3.3 for companies to *"explain in a manner that is effective, accessible and clear how it [the Appointee] is meeting the principles set out in paragraph G4"*.

To aid companies operate against that obligation, we expect Ofwat to provide a clear reporting framework so that all companies are working to consistent and consolidated reporting requirements, including clarity on the standard expected in terms of evidence provision, whether that be within the APR or otherwise.

The self-reporting requirements proposed seem to be in line with similar reporting principles, such as the Board Leadership, Transparency and Governance principles, whereby companies need to report against guidance. Requirements for both self-reporting and additional ad-hoc call for evidence reporting needs to be proportionate to the expected value it would give to customers, Ofwat and other regulators or interested stakeholders.

We presently report to Ofwat and CCW across a range of frequencies and formats, and we would like Ofwat and CCW to consider using this opportunity to consolidate reporting where feasible so that the additional regulatory reporting burden can be minimised. We would be happy to discuss with Ofwat and CCW what reporting rationalisation could be possible.

Overall, we have seen Ofwat's reporting requirements of companies continue to grow. The scale of the data tables in the APR grew by 70% between AMP6 and AMP7 and additional requirements have been requested within the reporting guidance during this time to be incorporated into the annual reporting regime. There is an

increasing burden and resource pressure to deliver more and more information each year.

We agree the use of the APR could be workable and may avoid some of the additional burden of a separate company publication being developed and delivered annually. We would welcome guidance or clarity of expectations from Ofwat on what should be reported by companies following implementation of the licence condition, including the level of granularity so that companies can more quickly become aligned and consistent for the benefit of both Ofwat and stakeholders who may wish to compare compliance across multiple companies. Specific guidance will also help independent auditors who review company annual reporting submissions. Care should be taken to not over-extend the formal reporting requirements that come off the back of this licence condition. The APR should remain a document that a range of stakeholders find useful and informative.

Ad-hoc calls for evidence of compliance to the licence condition principles or related guidance should also be targeted and appropriately sized. We have seen that Ofwat's request in 2022 for companies to submit their views of how they comply with the Paying Fair Guidelines suffered with ambiguities and a lack of emphasis about what information being sought from companies mattered most to Ofwat.

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

The broad timescales for implementation of the new licence condition seem reasonable, but we seek confirmation that the expected implementation of the licence condition would be sometime in Q4 2023/24 (as presented at workshop of 18 June) or later, and not Q3 2023/24 as noted in the consultation document.

Given the importance of the suite of relevant guidance to the effective implementation of this licence proposal, we would welcome more information on the proposed timescales for the formation of Ofwat's 'guidance register'.

In both workshops and in recent dialogue with Ofwat, we have stressed that implementation timescales and/or compliance timeframes would need to account for system changes and policy updates and new process launches that

companies would need to make. Many of these will have an array of reasonable lead times depending on what step changes are triggered by the expectations laid out or emerging from the range of guidance.

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

The current Condition G defines the provision of core customer information. We are open to the customer information obligations being transposed into new 'guidance' to ensure this retains a consistent approach that is appropriate for all customers.

In 2017/18 Ofwat considered deleting licence Condition J when it ran its licence simplification project. However it did not take that action at that time and then discontinued its planned subsequent phases of simplification. We would welcome Ofwat tidying up licences by removing this out of date condition.

In reference to our earlier response to Q5., we would like to see clarity from Ofwat that it will wish companies to report against compliance to guidance that forms the 'guidance register'. Although there has been, and will continue to be, other opportunities to learn lessons from reviews of both good and bad examples of customer service, and some that indicate systemic problems that companies need to address, we would like to see these lessons being incorporated into the formalised guidance documents within the register. This will avoid potential confusion on the locations and relevant content of a more fluid accumulation of guidance or reports construed by Ofwat as potential guidance that is applicable to the licence condition. That is not to say that companies should not review a wide range of materials and reviews in developing their services, policies and procedures to better meet the needs of all its customers, but that minimum or core reporting requirements will be baselined to the guidance publications that make up the register and are subject to regular review and change management processes.

