

Ofwat  
Centre City Tower  
7 Hill Street  
Birmingham  
B5 4UA

Yorkshire Water  
Western House  
Halifax Road  
Bradford  
West Yorkshire  
BD6 2SZ

By email: [customerfocus@ofwat.gov.uk](mailto:customerfocus@ofwat.gov.uk).

18 October 2023

Dear Ofwat,

**RE: Consultation on draft vulnerability guidance for water companies supporting customers who need extra help**

Thank you for the opportunity to review and respond to the consultation on your draft guidance for all water companies in supporting residential customers in England and Wales and non-household customers in Wales who need extra help accessing water and wastewater services.

We are encouraged by the draft vulnerability guidance presented by Ofwat and agree with the key objectives and much of its content. However, we do not believe the guidance as drafted is ready yet in a format or with the depth of content needed to be published as a standalone document to sit alongside the future customer focused licence condition.

Ofwat confirms that only sections 2 and 3 and some parts of section 4 of its consultation document will form the final guidance. We think there is more content needed and work required to incorporate some key elements of section 1 of the consultation into the guidance (context and who it applies to) and also build in a formal change management approach and protocols. It would be useful to companies and stakeholders for Ofwat to include in the guidance document how it plans to monitor how well companies work with this guidance after its commencement and as it evolves over time.

The vulnerability guidance will effectively act as an extension to a licence condition and will be expected to develop over time as customers' needs change

and companies' capabilities to provide extra help expand and adapt. Therefore, we believe Ofwat should present a formalised governance and change mechanism detailed within the guidance itself, and that mechanism should include a specified level of stakeholder consultation and notice periods for adoption and compliance.

Appended to this letter we provide our responses to the consultation questions and some observations about the proposed drafting of the guidance.

We look forward to working further with Ofwat in development of the final vulnerability guidance for water companies ahead of its publication expected in 2024.

Should you have any questions or require more information about this response, please let me know.

Yours faithfully,

Chris Offer

Director of Strategy and Regulation, Yorkshire Water

## **Yorkshire Water response to the consultation on draft vulnerability guidance for water companies supporting customers who need extra help.**

Yorkshire Water provides below its responses to the consultation questions.

### **Q1. Do you agree that we should retain the vulnerability definition we set out in our 2016 Vulnerability Focus report?**

Ofwat's preferred definition of vulnerability is:

*"A customer who due to personal characteristics, their overall life situation or due to broader market and economic factors, is not having reasonable opportunity to access and receive an inclusive service which may have a detrimental impact on their health, wellbeing or finances."*

In principle we agree with the meaning of this definition, but we believe that this wording could be made simpler and more focused. There is a chance that we try to be so careful with the wording that the definition loses its original intent.

Ofgem and the FCA have similar focus with simpler wording for their definitions:

- The FCA wording: *"...someone who, due to their personal circumstances, is especially susceptible to harm – particularly when a firm is not acting with appropriate levels of care."*
- Ofgem wording: *"... someone who is significantly less able than a typical consumer to protect or represent their own interests; and/or significantly more likely to experience detriment, or for that detriment to be more substantial."*

We also think the definition used by regulator, the Essential Services Commission (ESC) in Victoria, Australia is concise and intentionally focuses on the barriers customers may face accessing and engaging with essential services, rather than focusing on the characteristics of the customer that may lead to such barriers

existing or being more challenging. In its 'Getting to fair' strategy of 2021<sup>1</sup>, the ESC defines consumer vulnerability as:

*"A person experiencing, or at risk of experiencing, vulnerability is someone who experiences barriers to accessing or engaging in the essential services we regulate or administer. As a result of those barriers, that person experiences economic and/or social exclusion or harm. Barriers include event based circumstances, systemic factors and market-based factors."*

The ESC notes in its findings that people experiencing vulnerability are more likely to perceive barriers as insurmountable – *"The research shows while anyone may see the barriers to accessing essential services, for those experiencing vulnerability, the barriers appear bigger and more daunting. They also feel less confident that they have the power to change things"*.

We would welcome a rephrasing of the 2016 definition of a customer in vulnerable circumstances to refer to a customer who *"experiences significant barriers to accessing or receiving [essential] services..."*

For example;

~~*"A customer who due to personal characteristics, their overall life situation or due to broader market and economic factors, is not having reasonable opportunity to access and receive an inclusive service experiences significant barriers to accessing or receiving [essential] services, which may have a detrimental impact on their health, wellbeing or finances."*~~

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<sup>1</sup> [Essential Services Commission - Getting to fair strategy - 12 August 2021](#) - "Our 'Getting to fair' strategy gives us a roadmap to addressing consumer's experience of vulnerability and breaking down the barriers they can face."

## **Q2. Do you agree with our approach to nomenclature, particularly our use of the term 'extra help'?**

The term 'extra help' by itself is generic, which may result in confusion by customers and colleagues as to their understanding of what this means, what it includes, and who it is for.

However, if used in the context of who receives 'extra help' and what the 'extra help' is for and includes, then it is a useful term that can foster an inclusive approach covering a variety of circumstances.

The term 'vulnerability' remaining as the umbrella term is also accepted. This can encompass anything from safeguarding for vulnerable adults or children, to ensuring colleagues are aware of day-to-day requirements, such as having a password when visiting a customer at their property, or specific communication requirements for a customer. This terminology makes it simpler to describe to colleagues some of the requirements they may experience in their encounters with customers and the variety of these encounters.

## **Q3. Do you agree with our proposed approach to applying the guidance to new appointees and the Welsh non-household sector?**

We support the roll out of one set of guidance to all licensed organisations who are involved in the delivery of retail and wholesale services to end consumers including new appointees. This guidance should apply equally whether the organisation provides water or wastewater services or both services to customers.

Where a new appointee believes that their circumstances will require an alternative approach to meeting the expectations in the vulnerability guidance, we agree this should be clearly set out in the new appointees' vulnerability strategy. To support the delivery of their vulnerability strategy, new appointees should only look to leverage the provision of services from an incumbent company where the new appointee has a services agreement with that incumbent. New appointees should not expect the incumbent company to extend their own vulnerability strategy to include the customers served by the new appointee.

#### **Q4. What impact do you think our draft guidance will have on the experiences of customers who need extra help?**

The introduction of the vulnerability guidance should over time stimulate greater help from companies for their customers who face barriers in accessing services due to circumstances or vulnerabilities. We believe that the guidance will indirectly lead to improvements in awareness of this help.

We consider many of the features of the draft guidance are being provided to customers today, but there may be areas where the guidance will improve how companies identify and support customers who face barriers and vulnerability challenges that are more transient in nature. Therefore, we support the role that the introduction of well-structured and designed guidance can provide the sector and our customers.

We believe the guidance will encourage a greater degree of standardisation, clarity, and accountability across the industry. It will elevate the focus of leaders on continually seeking to improve both the experience and inclusivity of services for customers, enabled through the extra help and access they will be able to receive.

Conversely if the guidance is not applied in an effective way, then the result could be a more segmented experience, with too much onus on meeting specific needs rather than a focus on making services inclusive by design.

#### **Q5. Are there further lessons from other regulated sectors that could be incorporated into our draft guidance?**

We acknowledge that Ofwat has engaged widely in the development of this guidance including to the UK energy and financial services sectors in the UK, and with stakeholders who represent the interests of customers facing potential barriers to accessing services in full.

Although we do not point to any other sectors, we have been interested in the progress the utilities regulator, the Essential Services Commission (ESC), in Victoria, Australia, has made on the issue of customers facing vulnerabilities and their challenges in accessing essential services (i.e. utilities services). We read with interest the 2021 publication from the ESC on its new 'Getting to fair' strategy

and we think there may be some useful contributions this work could make to Ofwat's first vulnerability guidance for water companies.

Other than noting a general principle that the risk of over-regulation may impede the implementation of sustainable practices and innovations or undermine productivity, we believe the introduction of a framework that contributes to helping all residential customers access the essential services they need, when they need them, should be encouraged and supported.

**Q6. Do you agree with our proposed approach to enforcing our customer-focused licence condition by reference to our draft guidance?**

We agree with the approach of using guidance to support compliance with the customer-focused licence condition. This guidance should remain outcome and principle based rather than a prescriptive list of activities, in order to encourage innovation. We feel that the Paying Fair guidance are too prescriptive for instance and led to companies working through a list of activities to complete and comply with rather than considering the most effective initiatives to achieve the best outcomes for customers in their region at an efficient cost.

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.

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.

With this guidance Ofwat wants to set water companies the following objectives.

1. Provide a high standard of service and support.
2. Develop services that are inclusive by design.
3. Identify customers who need extra help.
4. Record their needs.
5. Develop vulnerability strategies.

For each of these objectives, the guidance sets out more detailed minimum expectations and brief examples of good practice.

At its customer focused licence condition workshop of 18 May 2023, Ofwat said it planned to expand on the examples used in its May 2023 consultation (customer service issue examples) for inclusion in its future customer focused related guidance. We said in response to that consultation that we would like Ofwat to consider how such examples could better reflect both the exemplars and poor ways of working of a water company, to express Ofwat's 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 also being referenced consistently in any guidance developed and maintained by Ofwat.

The use of examples will help companies make more consistent interpretations of the expectations in the guidance and enable Ofwat to review compliance and operate its enforcement approach more effectively. We do not see clearly how the expectation of presenting examples has been successfully conveyed by Ofwat into the draft vulnerability guidance presented now.

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. As Ofwat has effectively structured this guidance as an extension of a licence condition and will use the guidance to enforce the obligations set out in the licence condition, we believe there should be a formalised change management and governance protocol set up to maintain and evolve the guidance.

A formalised change management process should allow change proposals to be developed and evaluated with stakeholders consulted and their views sought to



shape the progression of expected standards for service within guidance – including in this case clarification where such standards are considered 'minimum' standards' for the extra help required by customers facing barriers accessing our services.

Once the governance and change management process is designed and agreed it should be documented within the guidance itself.

We would be happy to work with Ofwat and stakeholders in formulating a governance model that provides a mechanism for changes to guidance to be proposed and suitable scrutiny of change proposals, including their deliverability and implementation. A model that does not impede the agility of the sector to make desirable progress for the continued benefit of customers that may need extra help.

**Q7. Do you agree that our draft objectives cover the broad areas of vulnerability support activities that companies should be considering?**

Yes, we support the objectives, although we have feedback on the wording of some points.

In proposed objective 1 – High standard of service and support:

*"Customers who need extra support receive it and are happy with the service provided."*

We believe the emphasis should be on companies to be transparent and effective in setting and meeting expectations around customers' needs, rather than customers being 'happy with the service'. We recommend rewording this as 'customers who need extra support receive it and are satisfied that this meets with their expectations'. This aligns with the line later in the description of this objective that 'customers who require extra help are no less satisfied than other customers'.

In proposed objective 2 – Inclusive by design:

*"Services should be designed in an inclusive way that does not harm customers who have undeclared extra help needs."*

We find this phrasing confusing and suggest switching to a positive framing. For example;

*“Services should be designed in an inclusive way that **supports extra help needs, even if these needs have not been declared.**”*

## **Q8. Do you agree with the proposed list of minimum expectations we have set out?**

For the most part we agree with the minimum expectations. However, we have feedback on some of the minimum expectations, as we expand on below.

### **Objective 1 - High standards for service and support**

#### Expectation 1.1

On the suggested adaptation of '**offering different ways to pay**' – we believe Ofwat's intention is to focus this guidance to non-financial vulnerability and that the provision of a variety of ways to pay is part of the Paying Fair guidance.

On the suggested adaptation of '**siting new meters in places that are accessible to the customer**', we feel this may be quite a vague expectation in practice, and there may be instances where it is cost prohibitive or too disruptive for the customer to position a new meter in a location that is accessible to the customer. If the nature of the customers inability to access the new meter is considered temporary, then this expectation on siting the meter may not be appropriate.

Companies may be able to find alternative ways to provide the customer with information they need or seek in relation to the meter without them needing to physically access and view the meter. For example, removing the potential barrier to information by providing the customer with an ad-hoc meter reading outside the company's regular cyclic meter reading regime. It should also be considered by Ofwat that with the future planned deployments of Smart metering, such an additional service could be a more straightforward offering to customers due to the two-way remote communications typical with Smart meter solutions. Conversely, Smart metering solutions may generate more cases where meters are located primarily in places where the remote communications best operate, which may not necessarily be the most convenient for the customer to access the meter themselves.

We would like the adaptation under this minimum expectation to be altered to say adaptations are likely to include:

*“Offering an assessment of the siting of a new meter in a place that is accessible to the customer balanced with a reasonable cost and the necessary functionality of the meter.”*

### Expectation 1.3

We are concerned about the requirement to create compensation arrangements specific to the delivery of 'extra needs'. The guidance states this would be voluntary. However, this seems contradictory given that it is being mandated as part of guidance associated with the new licence condition, then in essence is it then mandatory?

We have some concerns without greater clarity of definitions, there could be high degrees of inconsistency across the industry.

CCW are in the process of redesigning the GSS framework and we feel this is the right mechanism for considering any new minimum or common compensation requirement regarding the delivery against 'extra needs', rather than within this vulnerability guidance. We believe CCW should be advised of this matter to include within its work on GSS.

## **Objective 2 - Inclusive by design**

### Expectation 2.2

On the expectation that companies will allow customers the **option of third-party billing arrangements** and that;

*“This is likely to be particularly valuable for customers with reduced capacity, whether or not they have a formal power of attorney arrangement in place.”*

Similar to some of our concerns expressed above, we would like Ofwat to be more clear in its guidance text around the minimum expectations. In this case about what Ofwat means by 'third party billing arrangements'.

We currently operate a verification process for our customers to ensure we are speaking to the account holder prior to disclosing any personal data. We also operate a nominee process, where customers can nominate a specific third party to speak on their behalf and this is noted on their account. We will also speak to those who have an appropriate power of attorney (POA) for an account holder. This would be considered appropriate within data protection legislation. We cannot speak to 'anyone' who calls about an account holder on their behalf and if we do, this would be classed as a personal data breach. If such an instance occurred, we would have to record the breach and depending on the risk assessment, notify the account holder and perhaps the Information Commissioner's Office (the ICO).

There are situations where we will provide third party data for exceptions such as the Police or HMRC, or if there is any other statute that allows or compels the sharing of information to a third party. This is not usually one specific organisation and even with the Police or HMRC we can decide not to share and ask for a Court Order. We do not envisage being able to provide personal data to a third party outside the situations or circumstances we detail above without something more concrete in our licence conditions. We do not believe an expectation in guidance from our regulator would be sufficient to mitigate a potential breach of data protection legislation that could result in undertakings or fines from the ICO and extremely dissatisfied customers and reputational damage.

Ofwat should provide further clarification in its proposed guidance document about what the expectations it has with respect to third party billing arrangements, perhaps with reference directly to the prevailing guidance for companies operating in regulated markets from the UKRN and the Office of the Public Guardian on powers of attorney.<sup>2</sup>

## **Objective 4 - Recording needs**

### Expectation 4.4

*"When sharing data about customers' extra help needs, companies should take into account customer views about data use. This may include conducting research, or using customer panels to gather views. The*

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<sup>2</sup> [Joint UKRN-OPG Guide to Power of Attorney: 'Supporting customers who do not make their own decisions'. 2019](#)

*findings of any such activities should be used to inform companies' approaches to data sharing."*

We do not believe it is appropriate to share customers' data on the basis of views expressed in research.

We inform our customers via our Privacy Notice (PN) what we do with their data. We cannot share outside this remit, or it would be in conflict with data protection laws (UKGDPR and the Data Protection Act 2018). A recent approach Yorkshire Water the industry has taken has been to share data about our Priority Services Customers (PSC) with the energy sector. This meant a change to our PN, input from the ICO, and we had to write to all PSCs to inform them about this change. It was not a simple variation and took the intervention of the regulator to support the industry.

We do not often use consent to share customer data as it is a high bar to reach and maintain. We are expected to follow the data protection legislation and document our decision making as well as have an audit trail to show our contractual arrangements as well as our due diligence assessments to ensure we do not conflict with the legislation.

Prior to any data sharing we have to establish if it would be considered 'fair and lawful'. Yorkshire Water has a governance process which includes the completion of a Data Protection Impact Assessment (DPIA), often a Legitimate Interest Assessment (LIA) or potentially an Appropriate Policy Document, also an Information Security Review Assessment and only then do we consider a Data Sharing agreement. If we fall short of these legislative demands, we can expect complaints and potentially fines from our regulator, the ICO. We do not consider a customer panel sufficient to be able to judge whether we meet the stringent governance requirements of adhering to this complex framework legal framework.

A customer panel may form the view that generally customers are supportive of the sharing of data for the purpose of 'customer extra help needs', but this wouldn't eliminate the need for all of the above expectations to be met under the present legislation.

A formal licence condition may help enable the sharing of customer data for specific purposes that we could rely on as our lawful basis. However, that may be challenging to put in place.

**Q9. Do our draft minimum expectations offer a good balance between making clear the minimum standards we expect from companies, and challenging companies to innovate and find new ways to meet the needs of their customers?**

Other than the concerns we raise and clarifications we seek in our response to Q8. on the minimum expectations, then yes, in general the guidance and minimum expectations appear to strike the right balance.

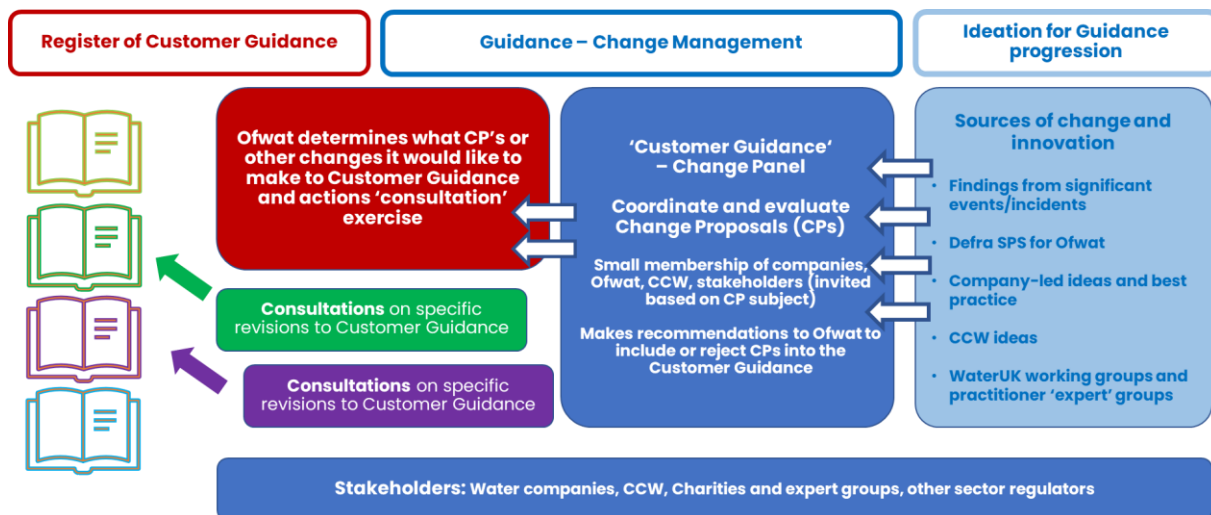
**Q10. Do you agree with the proposed approach and timeline around companies' vulnerability strategies?**

Yes, we agree with the timeline provided there are no significant updates to the guidance when the final version is issued.

We would also welcome the Inclusion In the guidance for a formal change management and governance protocol, covering how and when the guidance can be modified and what the Impact upon companies' vulnerability strategies may be. What approach and timelines will be appropriate for companies to update their strategies to maintain alignment to the guidance as it evolves over time would also be helpful to all users of the guidance.

In our response to the consultation on the new customer focused licence condition we referred to a formal change management framework that could be set up. We are concerned that although Ofwat references that the draft vulnerability guidance has been "*designed in a way that stakeholders views into account*". We would like to see the guidance go much further about how Ofwat will seek and take into consideration the views of stakeholders for future iterations of the guidance.

The guidance is intended to be a key component of a regulatory framework that is intended to be effective for customers for many years to come. We would like proactive stakeholder consultation to be a feature of how the guidance is managed into the future. The diagram below outlines what we believe could be the features at a high level of a formal change proposal and consultative governance approach supported by an expert panel could look like. This approach could be used across all guidance's that underpin and bring to life the new customer focused licence condition.



**Q11. Do you agree with our proposed approach to how water companies should use our guidance?**

Yes, we agree with the approach, and we note that where a company departs from any expectations in the guidance, it should do so based on evidence that it ensures customers interests are protected and the objectives of the guidance are better met. We refer to the need for Ofwat to remove any ambiguities currently within the draft guidance, including those that we have noted in this response, before it finalises the vulnerability guidance for water companies.

**Q12. Do you agree with our proposed approach and timelines for setting out our detailed expectations around the design of priority services registers in a separate standards document?**

Yes, we agree with the approach outlined for PSR and we would welcome the opportunity to be involved in this work with Ofwat and the sector.