

April 2024

Investigation into the eligibility of premises for the business retail market

**Made under S17e of the
Water Industry Act 1991**

Final determination

Ofwat

Contents

1. Introduction	2
2. Background	3
3. Legal Framework	5
4. Jurisdiction to determine the dispute	8
5. Our draft determinations	9
6. Our final determination	11

1. Introduction

- 1.1 This is the final determination for a complaint submitted to Ofwat by [REDACTED] ("**the Complainant**") for determination under section 17E of the Water Industry Act 1991 ("**the Act**"), to establish the eligibility and extent of particular premises for the non-household retail market.
- 1.2 The dispute is between the Complainant and United Utilities Water Limited ("**United Utilities**").

Purpose of this document

- 1.3 On 2 October we issued a first draft determination to the parties, copying in Water Plus, the relevant retailer. In response to that draft determination, we received new relevant information that prompted us to revisit the decision outlined in our initial draft determination and we issued a second draft determination on 8 February 2024.
- 1.4 This document is our final determination of the dispute referred to above. It sets out the determination we have made following our consideration of the legal framework for disputes under section 17E of the Act.
- 1.5 Now we have issued our decision as final there are no routes of appeal if either of the parties disagree with our final decision. At this point, the only route of challenge to our final decision is via judicial review proceedings. Judicial review claims must be submitted promptly and within three months from the decision.

Summary of our final determination

- 1.6 Our final determination is summarised below and explained in more detail in Chapter 6 of this document.
- 1.7 Our decision is that the properties referenced in this determination [REDACTED], should be reclassified to recognise two non-household and four household premises to be registered and charged within their respective markets.
- 1.8 In making this decision we have considered our eligibility guidance and the evidence gathered from the parties on the configuration and use of the properties.

2. Background

A. The Parties

Customer

- 2.1 The customer is [REDACTED] is the owner of the properties subject to this determination. The customer is a family-owned company of which [REDACTED] (also referred to as "**the Complainant**") is a director. All customer correspondence we have had concerning this complaint has been with [REDACTED].

Companies

- 2.2 United Utilities Water Limited ("**United Utilities**") is appointed under the Act to provide water and sewerage services to household customers in the area where the properties are located. It previously served the properties that are subject to this determination prior to the opening of the non-household retail market in April 2017.
- 2.3 Water Plus Limited ("**Water Plus**") is a retail licensee in the non-household retail market. In April 2017, the properties were transferred from United Utilities to be served by Water Plus for retail water and sewerage services.

B. The Properties

- 2.4 The two properties referred to in this determination are located at [REDACTED] ("**the Properties**"). The Properties are two distinct but attached buildings which are each comprised of individually rented units. The units are privately rented out by the Complainant.
- 2.5 The property at [REDACTED] consists of business units eligible for six Business Rates entries and one domestic unit which is registered for Council Tax. The property at [REDACTED] consists of business units eligible for three Business Rates entries and three domestic units which are registered for Council Tax.
- 2.6 For both properties the building, and the units contained within it, are currently supplied by Water Plus for both water and sewerage services, each via a single supply point and meter that is billed for on one account for each property. As a result, the Complainant currently has two accounts with Water Plus, with one supply point and one Supply Point Identification ("**SPID**") in the non-household retail market systems

for each building. The Complainant is billed directly by Water Plus and pays for those two accounts and then distributes the costs of this to the occupiers of the units within the Properties according to private charging arrangements between himself as landlord and the separate units as tenants.

C. The Dispute

- 2.7 United Utilities carried out an assessment as to whether the Properties were properly classified as being two non-household premises for the purposes of eligibility for the non-household retail market. It concluded that the Properties comprised 13 separate premises rather than two, with nine of those being eligible for the non-household retail market (to be served by Water Plus), and four being household premises (to be served by United Utilities). United Utilities conveyed this to the Complainant in a letter and in response, the Complainant referred a dispute to Ofwat requesting that Ofwat make a determination on the eligibility and extent of the Properties to be in the non-household retail market. The Complainant's view is that the Properties should continue to be classified as two non-household premises to be supplied by Water Plus.
- 2.8 Prior to this formal referral, Ofwat had engaged with both the Complainant and United Utilities in connection with the Properties, with the Complainant initially contacting us in July 2022.
- 2.9 The Complainant's request for a determination was received on 29 June 2023. Following this request, we carried out a preliminary assessment to establish whether to take this matter forward. On 31 July 2023, we decided to open a case and informed the parties accordingly.
- 2.10 We have been advised by United Utilities that any proposed new billing arrangements are on hold whilst this dispute is determined.
- 2.11 This determination is based on the information we have gathered from both parties since we were originally contacted by the Complainant in 2022, with reference to our eligibility guidance.

3. Legal Framework

3.1 Section 17E(1) of the Act allows us to determine, in a case referred to us by:

- a water supply licensee or a potential customer of a water supply licensee; or
- a sewerage licensee or a potential customer of a sewerage licensee,

whether a proposed supply of water to, or proposed sewerage services for, the customer or potential customer, would be in accordance with what is authorised by the licensee's licence.

3.2 Section 17E(2) of the Act provides that the matters we may determine include:

- the extent of the premises to be supplied or served;
- whether the premises to be supplied or served are household premises;
- in the case of supply by a water supply and / or sewerage licensee (WSSL licensee) with a restricted retail authorisation¹, whether the threshold requirement is satisfied in relation to premises to be supplied; and
- any other matter, the determination of which is relevant to those matters.

3.3 Under schedules 2A and 2B of the Act, a licensee with a retail authorisation may not supply or serve household premises. The Act does not define 'premises' for the purpose of assessing eligibility. Licensees can only supply customers at individual eligible premises. Each of the premises supplied must be eligible.

3.4 Section 17C of the Act defines household premises as "premises in which, or in any part of which, a person has his home". It qualifies this by saying that premises will only be household premises if "the principal use of the premises is as a home." This recognises that some premises are mixed use, with part of the premises being a home and part of the premises being non-household.

3.5 Under section 17DA Ofwat must issue guidance dealing with the factors that are or are not to be taken into account in determining the extent of any premises.

3.6 Our eligibility guidance gives effect to the above requirement and provides guidance for establishing whether business customers in England and Wales are eligible to switch the water and sewerage retailer serving their premises. It includes both statutory and non-statutory guidance.

¹Restricted retail authorisation: This is a water supply licence that authorises the holder to use the supply system of an appointed water company whose area is wholly or mainly in Wales to supply the eligible premises of its customers only.

- 3.7 Our eligibility guidance sets out that mixed-use premises, where it is not readily apparent what the principal use of a premise is, may be considered to be non-household premises if the household part of the premises is dependent in some way on the non-household part. We consider 'dependent' as meaning that the existence of the household part is linked to the function of the non-household part of the premises. However, it must always be open to a retailer or customer to demonstrate that for a particular premises the principal use is not as a home.
- 3.8 Our eligibility guidance also provides that it may be necessary for a retailer to gather evidence to establish whether, for a given mixed-use premises, the principal use is as a home. We expect that retailers will want to start by carrying out a relatively light-touch assessment. Where data about the premises and the customer that a retailer already holds, or can access, is insufficient to establish how the premises is used, the retailer might consider the amounts of Council Tax and Business Rates payable with respect to the premises or use certain online tools to gather evidence on the premises' use. HM Land Registry, which deals with the ownership of property, may be a useful resource to inform a view on mixed-use premises. Below we have included other information we expect the retailer to typically use to help establish the principal use of a premises. We expect the retailer to consider all relevant available information, to ensure it makes an informed and appropriate assessment. This information includes:
- The premises' ownership.
 - Any arrangements between a resident and a business in terms of water use and payment for it.
 - Any difference in size between the residential area and the commercial area at a premises.
 - The location of the water meter.
 - The highest incidence of rates.
 - The scale of household and non-household activities undertaken at the premises relative to each other.
 - Relevant evidence submitted by the customer – for example, photographs or floor plans of the premises.
 - Relevant evidence submitted by the Wholesaler.
- 3.9 Our eligibility guidance also sets out a simple methodology for determining the extent of premises and provides that "in general, we consider that every property that is assessed separately for the purposes of Council Tax and Business Rates – or that would be assessed separately if the property were not exempt from such rates – should be treated as a separate premises for the purpose of establishing whether the premises constitutes one or more properties."

3.10 We consider complaints on a case-by-case basis when asked to make a determination under section 17E of the Act.

4. Jurisdiction to determine the dispute

- 4.1 Ofwat has jurisdiction to determine disputes about the extent of premises in determining whether properties are eligible for the non-household retail market and to determine whether premises are household or not.
- 4.2 When disputes about eligibility are referred to us, we expect the parties to have considered our [eligibility guidance](#) and to have taken reasonable steps to try and resolve the issue first. In this case the Complainant has exhausted United Utilities' complaints process and Ofwat has been involved with extensive communications between United Utilities, Ofwat and the Complainant in attempts to resolve the dispute.
- 4.3 We are satisfied that both parties have considered our eligibility guidance and have taken reasonable steps to try and resolve the issues. However, ultimately it appears the dispute relates to a fundamental disagreement regarding the extent of the premises. As such, we consider we have jurisdiction and it is appropriate for Ofwat to proceed with making a determination in this matter.

5. Our draft determinations

- 5.1 On 2 October 2023 we issued our first draft determination in relation to this matter.
- 5.2 The first draft determination provisionally determined that the Properties consisted of nine non-household and four household properties.
- 5.3 In response to this first draft determination we received representations from both the Complainant and United Utilities. The representations we received from the Complainant included information regarding the configuration and use of the Properties that we had not previously considered. Of particular relevance was that some of the units within the Properties did not have access to their own water or sewerage services and instead only used shared facilities. In addition, it became clear that the business use of some of the units were not completely distinct from each other and our determination may not reflect current or future use. We therefore considered it necessary to revisit our draft determination. Water Plus did not respond to this first draft determination.
- 5.4 As a result, on 8 February 2024 we issued a second draft determination to the Complainant, United Utilities and Water Plus setting out the details of the determination we were minded to make on this dispute. This was to provide all parties with an opportunity to comment.
- 5.5 Our second draft determination proposed to determine that the Properties should be reclassified to recognise two non-household premises, and four household premises to be registered and charged within their respective markets.
- 5.6 In response to this draft determination we received representations from United Utilities and the Complainant, but not from Water Plus.

The Complainant's position

- 5.7 The Complainant responded to our second draft determination and noted that the proposed determination was more welcome than the initial scenario outlined by United Utilities and the conclusion of our first draft determination.
- 5.8 The Complainant stated that he could appreciate the logic in our proposed determination, however noted that it was difficult to see how this arrangement would work in practice given the pipework arrangements for both buildings.
- 5.9 The Complainant also raised concerns regarding the charging arrangements for surface water and highways drainage.

5.10 We note these concerns, however given that these relate to charging arrangements and sit outside of the remit of this determination we consider that it is for the Complainant and United Utilities to discuss the proposed charging methods going forward.

5.11 We understand that United Utilities would like to conduct a site visit to determine the possibilities for metering and to better understand the pipework that serves the Properties. In addition, we note the option to charge the customers on an assessed basis should metering not be a viable option.

United Utilities' position

5.12 In its response to our first draft determination, United Utilities confirmed it did not have any further comments to make and agreed with the provisional determination.

5.13 In its response to our second draft determination, United Utilities said that even if some premises did not have their own access to water and sewerage services, its view was that the Properties should be assessed as being nine separately rated non-household premises and four household premises. United Utilities acknowledged that the configuration of the buildings was complex but said that ordinarily this would be manageable.

5.14 However, United Utilities recognised that the position with regard to the non-household properties was less clear than originally thought and that the configuration of the building could potentially be subject to change in the future, with liability for charges being less clear than might otherwise be the case.

5.15 Given the above, United Utilities does not propose to challenge this matter further on the basis that this determination does not conflict with or override its ongoing application of its existing eligibility and charging policies.

5.16 United Utilities has also outlined its proposals for charging the customers within the premises, based on the assessment set out in our second determination. However, we note that charging arrangements are not subject to this determination and United Utilities should take this matter up with the Complainant directly.

5.17 We have now made our final determination, having considered all the representations provided by both parties to both of our draft determinations.

6. Our final determination

A. The Complainant's View

- 6.1 The Complainant considers that the Properties should be eligible for the non-household market and, as such, disputes United Utilities' decision to re-classify the Properties into 13 units rather than the existing two units with some of the units being classified household and some non-household.
- 6.2 The Complainant relies on the fact that each of the two Properties are supplied by a single supply point and considers that the Properties comprise two mixed-use premises with the principal use of each building being non-household.
- 6.3 The Complainant has substantiated this conclusion by providing floor plans which show that the primary use by square foot is for business purposes.
- 6.4 The Complainant has also provided evidence of planning permission which shows that planning permission for alterations to the Properties was granted in 1990 and 1997 with the renovation works being carried out shortly after 1997. The Complainant has advised that at the time of the alterations, the water company (at that time North West Water), was advised that the Properties were to be renovated and split into sub-units, including some household units. The Complainant states that at that time the water company advised him that it was not possible to split the supply to the individual units within the Properties and this resulted in each building having only one supply point.
- 6.5 At the opening of the non-household retail market in 2017 these two accounts were transferred by United Utilities to Water Plus and the Complainant continued to divide the usage costs between his tenants within the Properties.
- 6.6 Following consideration of our initial draft determination, the Complainant provided us with more detail about the arrangements in both Properties: specifically, that the shops and offices in both [REDACTED] all make use of shared bathroom and kitchenette facilities in a common area. This area is referred to by the Complainant as the 'landlord's common area'.
- 6.7 The Complainant says that although several of the units have a business rates listing, they have no direct water or sewerage supply, and therefore, in the Complainant's view, should not be billed as a separate premises.

- 6.8 The landlord's common area of both buildings have a water supply, currently from the two SPIDs, but no business rates listing as these types of areas are specifically excluded by the Valuation Office Agency for valuation purposes.
- 6.9 Given this clarification provided by the Complainant, as detailed above we revisited our first determination and issued a second determination.

B. United Utilities' View

- 6.10 Following the dispute initially being raised with us, in July 2022, United Utilities, confirmed to us in an email of 9 September 2022, and a subsequent report submitted on 26 January 2023, that in 2021 it had identified that there were four household premises within the two buildings. It stated that it had identified this through an exercise it was undertaking to identify sites not registered in the non-household retail market ("gap sites"), for which it had checked Council Tax records.
- 6.11 United Utilities proposed to re-classify the Properties in line with its current understanding of their extent and use, treating them as a greater number of premises, some registered in the non-household retail market and some in the household market. It considers this will mean it is charging customers in the correct markets.
- 6.12 In United Utilities' view, the Properties consist of in total nine non-household premises and four household premises.
- 6.13 United Utilities has advised that it would like to arrange a visit to the Properties to determine whether it would be possible to individually meter the sub-units within them in order to bill each accurately. If this is not possible it proposes to bill the individual units on the basis of an assessed charge.
- 6.14 United Utilities' assessment and resulting proposal is primarily based on there being separate Council Tax and Business Rate listings for each of the sub-units, which it concludes means they can be considered premises in their own right. It has provided details of the Valuation Office Agency listings that confirm this. In its view this means that the occupant of each of those premises is individually liable for charges, which will be assessed for each of those individual premises. United Utilities has also stated that it considers that the Council Tax and Business Rates registrations demonstrate that the Properties have been substantially altered from their original configuration. United Utilities has stated that it was previously unaware of these alterations until it identified them in 2021.

6.15 In December 2023, we advised United Utilities that there had been a delay on our part in progressing the final determination as a result of further communication and representations from the Complainant indicating a lack of water and sewerage services within several of the units.

6.16 In response to this, United Utilities stated that it does not believe that the existence of communal facilities within the Properties (rather than individual facilities within each premises) should influence the way in which the premises are assessed in terms of the eligibility of individual premises, or change their liability for charges. This is in line with United Utilities' current policy statement for beneficial use.

6.17 United Utilities' current understanding is that all occupants of the premises within the [REDACTED] have the use of the communal facilities, and that all occupants have access to full water and sewerage services. Therefore, it is the view of United Utilities' that they have the benefit of full services in the same way as customers with individual supplies within their premises. As a result, United Utilities considers that all occupants are connected to its network for water and sewerage services, and that it is therefore reasonable to levy charges to these customers in respect of each individual premises for surface water and highways drainage. It does not charge any specific surface water and highway drainage charges for the shared areas where the communal facilities are located as there is no business rating assessment for these.

6.18 United Utilities has quoted its beneficial use policy in coming to this conclusion:

"Communal facilities in a building or on a site either measured or unmeasured are considered to be a supply of water to the premises. All properties allowed to use the facilities are considered to have use of a supply and will be charged accordingly, even if the customer advises that they do not use the supply."

6.19 We also note that United Utilities has stated that it has not been able to form a view of the extent of the services within each unit given that it has not conducted a site assessment of the Properties. United Utilities intends to conduct a site visit to the Properties to determine whether individual metering is possible and if this is not the case it will charge on an assessed basis.

C. Engagement with Water Plus

6.20 As the dispute is between United Utilities and the Complainant, prompted by the changes being proposed by United Utilities, we have not directly engaged with Water Plus regarding this issue.

- 6.21 United Utilities confirmed in an email of 7 August 2023 that it has worked closely with Water Plus throughout its handling of this complaint to ensure that as the retailer, Water Plus is fully aware of the case and any developments. In particular, United Utilities has provided assurances that it will keep Water Plus fully informed regarding any action that will be taken regarding the non-household market SPIDs associated with the Properties. Any proposed new billing arrangements are on hold whilst this dispute is determined.
- 6.22 Ofwat has been provided with a key point of contact at Water Plus in relation to this dispute and we sent Water Plus a copy of both draft determinations in order for it to provide any representations if it wished to do so, given the potential knock-on effects for which premises it serves. It did not however, make any representations on the draft determination and therefore no objections have been made in relation to our decision.

D. Our final determination

- 6.23 In our first draft determination we said that we were minded to determine that the Properties, which are currently registered as two non-household premises, should instead be considered as nine non-household and four household premises each to be registered in the respective markets to which they belong.
- 6.24 Our first draft determination was based on the information available to us at the time and we took into account that the sub-units within the Properties are liable for Council Tax and Business Rates separately. We relied on our eligibility guidance which states:

"To ensure that the market works as effectively as possible and in the interest of customers, we have adopted a simple methodology for determining the extent of premises. Accordingly, in general, we consider that every property that is assessed separately for the purposes of Council Tax and Business Rates – or that would be assessed separately if the property were not exempt from such rates – should be treated as a separate premises for the purpose of establishing whether the premises constitutes one or more properties."

- 6.25 In his initial representations the Complainant referenced a separate section of our eligibility guidance:

"In certain circumstances, it may be justifiable for a retailer to supply several non-household properties through a single supply point – for example, because they are supplied via a private distribution network (for example, such as on

certain industrial estates) and there is evidence of a joint billing agreement. In such circumstances, these properties should be treated as a single premises."

- 6.26 This section of our eligibility guidance does not include reference to a scenario in which there are both household and non-household properties to be supplied through the same supply point. In respect of the Properties, we note that there is an internal distribution system from the single supply points and the Complainant has stated there is a joint billing agreement in place for the Properties. However, there is also a clear separation between the use of the units within the Properties, some of which are household and some non-household. The non-household units are occupied by different entities for different purposes. The household units are liable for Council Tax and the non-household units are liable for Business Rates. Whilst there is a billing arrangement in place between the Complainant and his household and non-household tenants, it is not clear if this is a specific joint billing arrangement with regards to water and sewerage charges (typically agreed with the water company) or if water and sewerage charges are included in the relevant tenancy agreements.
- 6.27 The Complainant argues that given the single supply points for each of the Properties, they should be considered as two mixed-use premises and given that several of the units do not have access to their own water or sewerage supplies it is not logical to charge each separately for services they do not individually benefit from.
- 6.28 Given the clarification provided by the Complainant since our first draft determination and having revisited the facts in full regarding the extent of the premises, we re-considered the internal layout of the Properties alongside images of them and the Complainant's additional comments before issuing our second draft determination. From that, we have concluded that the household premises within the Properties are discrete and separable from the rest of each building. The domestic flats are self-contained within the building and as demonstrated by floor plans provided by the Complainant are not reliant on other parts of the building for services (differing from the business units). In addition, the Complainant confirmed in an email of 2 November 2023 that our understanding of the domestic units was correct; the units are self-contained, function as domestic dwellings and are each separately occupied with no links to the businesses. As detailed previously, these four flats are each registered for Council Tax, and we accordingly think that these parts of the Properties constitute four separate household premises.
- 6.29 The position with regard to the remainder of the Properties is less clear. Although United Utilities proposed registering nine non-household premises, we understand there are more than nine current non-household tenants and liability for charges may not be as clear as we initially envisaged. From looking at details of the business rates

it seems that the two ground floor offices across both buildings could be linked as there is only one business rate registered for these two units and we understand there is a connecting door between them. We also consider that the new information provided by the Complainant is relevant, namely that at least five of the business units do not have individual access to water or sewerage services, instead getting access to these services only via common spaces.

6.30 Having considered all the available evidence, on balance we cannot conclude that there are nine separate non-household premises across the Properties. It is not clear that the existing business units are distinct, and it seems highly likely that the configuration of the space could change with new tenants. Taking into account that historically the Properties have been treated as two separate buildings, each with its own metered water supply, we do not think there is a case for concluding that there is only one non-household premises (notwithstanding that there is one business rate for the two ground floor offices across both buildings). Rather we are minded to conclude that the Properties comprise two non-household premises for the purposes of eligibility in the non-household retail market.

D. Conclusion

6.31 Based on the evidence gathered from the parties, and having considered our eligibility guidance, we determine that the Properties should be reclassified to recognise two non-household premises, and four household premises to be registered and charged within their respective markets.

6.32 We have requested that United Utilities and Water Plus correspond with the Complainant to clearly outline the next steps for him in relation to billing arrangements at the premises going forward.

6.33 United Utilities has confirmed that it is liaising with Water Plus in relation to ongoing billing and will be in touch with the Complainant regarding these details. In addition, we have received confirmation that United Utilities does not intend to backdate any charges to the Complainant.

**Ofwat (The Water Services Regulation Authority)
is a non-ministerial government department.
We regulate the water sector in England and Wales.**

Ofwat
Centre City Tower
7 Hill Street
Birmingham B5 4UA
Phone: 0121 644 7500

© Crown copyright 2024

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3.

Where we have identified any third party copyright information, you will need to obtain permission from the copyright holders concerned.

This document is also available from our website at www.ofwat.gov.uk.

Any enquiries regarding this publication should be sent to mailbox@ofwat.gov.uk.

OGL