



The voice for water consumers  
Llais defnyddwyr dŵr

# **CCW's response to the Smarter Regulation consultation**

**January 2024**

# 1. Introduction

The Consumer Council for Water (CCW) is the statutory consumer organisation representing household and non-household water and sewerage consumers in England and Wales. We welcome the opportunity to provide a response to the Department for Business and Trade's Smarter Regulation consultation.

In our response we focus on the regulation of the water sector and how it affects consumers.

## 2. Consultation questions

### CHAPTER 1: DRIVING ECONOMIC GROWTH

- 1. The government welcomes views on appropriate terms of reference, including scope, for such an infrastructure needs assessment, as well as views on who would be best placed to deliver this. The government welcomes any further views on the assessment.**

Nil response.

- 2. To what extent, in the standardisation of processes and procedures, is there greater scope for regulators to learn from each other?**

When considering standardisation, regulators need to involve consumer bodies in thinking about systems and processes that aim to improve the service customers receive. Consumer bodies have a wealth of knowledge and expertise into what works for customers and what doesn't, so can play an important part in building a service that works for all.

While there are clear advantages to cross-sector learning, it's important to recognise and respect the unique characteristics and challenges of each industry. The adaptation of lessons learned should be done in a way that aligns with the specific needs and nuances of the water, energy, and telecoms sectors in the UK. Regular communication and collaboration between regulatory bodies and consumer bodies can facilitate this exchange of knowledge and contribute to more effective and efficient regulatory practices.

It is important to note that any standardisation of processes and procedures may not lead to improvements in regulation if lessons are not learned and implemented. Alongside standardisation, there should be a commitment by regulators to be willing and open to learning from each other, identifying and implementing good practice.

- 3. To ensure the outcome is fit for purpose, are there any other examples of best practice or regulatory efficiency that should be considered in addressing complexity?**

In the water sector, the move towards outcome-focused regulation has allowed some flexibility for how water companies can deliver improvements. This can help foster innovation in how outcomes are delivered, particularly on environmental aims.

To ensure the right outcomes are targeted, regulators must involve consumer bodies in the regulatory process to gather diverse perspectives and evidence of consumers' views and expectations. This can lead to better-informed decisions.

Regulators can also use pilot programmes to test and refine their regulations in a controlled environment before full-scale implementation, and involve consumer bodies in the process to help ensure that the change delivers tangible benefits. For example, innovative new tariffs are piloted (in the water sector) in a process that involves CCW input, engagement and support. This approach encourages innovation and identifies potential issues early.

Alongside this, there should be a focus on public accountability, such as reporting on regulatory performance and progress in delivering outcomes. Transparency helps build public trust in the regulatory process.

#### **4. What challenges are faced at present when attempting to transfer water and how could these be mitigated?**

From a consumer perspective, the customers of the provider of the water want to be reassured that they will not be exposed to higher risk or a lower standard of service as a result of the water being transferred, for example an increased risk of a hosepipe ban in drought conditions. There is an expectation that the customers of the company benefitting from the transfer will cover the related costs.

If a transfer means that a consumer will be served from a different source of water, they will need early notice of any potential changes in terms of taste or hardness etc. and again early reassurance that the quality and safety of the water is still meeting rigorous standards. Ideally public engagement 'town hall' sessions should be held to help improve understanding and gain acceptance from the affected community.

We know that consumers also feel strongly<sup>1</sup> that if water is being sent elsewhere, the companies benefitting from the transfer should have good leakage performance otherwise they feel 'their' transferred water could be going to waste.

#### **5. Does RAPID currently have the right scope? Should it be expanded? If so, please explain.**

RAPID does appear to have been successful in progressing the development of more strategic water resource schemes which is what it was intended to do.

What we believe is currently missing is a similar body to provide the same oversight, momentum and direction in relation to water use, which is a crucial element of the

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<sup>1</sup> For example, see 'Piping Up: Customers views on the transfer of water supply pipe ownership in Wales' (CCW, 2017) [here](#).

strategy to meet our future water needs . A third of the water we need to save to secure reliable supplies for the future has got to come from us all using less water, especially at home.

Defra's Plan for Water sets out that by 2050, England has to cut its water usage to 110 litres per person per day. The Welsh water companies have agreed to the same reductions. At the moment, we are each using 144 litres of water every day on average. That figure has stayed about the same for the last ten years – it even increased during the pandemic.

So to make the water savings we need to make will require a massive effort. We will have to put in place policies, regulations as well as practical interventions and easy-to-understand advice.

We will also need to properly understand what changes people's behaviour. Many water companies already provide smart water meters to customers. Some are trialling what they charge for different amounts of water to help customers use less.

But there is no central oversight on what works in saving water. We believe that there needs to be one umbrella body to provide overall strategy and give direction; to coordinate all the demand management activities; and evaluate them in a central evidence base so future investment can be targeted at the programmes that deliver the best results.

We have been promoting our own concept for Accelerating Reductions in Demand (ARID) that would satisfy that requirement and could work well with RAPID<sup>2</sup>.

## **6. What kind of role could regulators play to enhance the effectiveness of competition in large procurements and/or long-term design-build-operate contracts?**

We believe that the approach adopted should always consider the best potential outcome for customers in terms of certainty of outcome and efficiency in both delivery and cost. Regulators should be ensuring that consumers interests are protected but also that the environment is also protected and any impacts minimised and mitigated. The Thames Tideway Tunnel<sup>3</sup> would appear to demonstrate that this can be achieved as the costs associated with the project have been well below the original estimates and Tideway have delivered the project on time.

This approach should be expanded to design–build-operate contracts that use nature based solutions (NBS) rather than hard engineering. We know customers

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<sup>2</sup> Details can be found [here](#)

<sup>3</sup> More information on the Thames Tideway can be found [here](#)

support this type of approach to delivering an outcome<sup>4</sup>, so regulators need to create the conditions that would allow NBS or a mixed NBS/hard engineering approach to deliver large projects. NBS can create conditions that take up water in flood conditions and release it slowly during drier times. NBS benefit the climate and regulators should actively support them.

**7. Do further opportunities exist to promote coordination and holistic approaches to issues in the water sector? If yes, please elaborate.**

Through the National Framework in England<sup>5</sup> we are already starting to see a more holistic approach to water resources planning which is to be welcomed. There is still some way to go before we have truly integrated multi sector plans.

The review of the Water Strategy for Wales<sup>6</sup> and the review of water policy governance also present an opportunity to update and coordinate water sector priorities and actions in Wales across issues and sectors. This could provide an opportunity to elevate the importance of river pollution actions which dominated water related work in Wales at the moment, and to also plan for better coordinated water resources and demand management collaborative work

In relation to drainage and wastewater management there are clearly opportunities to bring the various responsible authorities together to better integrate plans to deal with flooding. For example, in relation to pollution in waterways, the causes can be diverse and include agriculture and farm run-off, highways and road run-off, business and commercial spills, and mis-connections. This again would present an opportunity for more co-ordination in terms of planning, monitoring and enforcement.

Given the high costs consumers ultimately pay for this investment, far greater collaboration is needed between regulators and consumer bodies to ensure that money is well spent and that those who cause the problem pay their fair share of the costs.

Catchment based planning and coordination can help to ensure the right solutions are found for that location. Nature Based Solutions also allow for greater collaboration and we know that consumers wish for these to be explored as they recognise the additional benefits these can bring.

## **CHAPTER 2: COMPETITION**

**8. Should the government legislate to amend the test to allow more projects to be delivered under the Water Industry Act 1991 and SIPR (Security Investment**

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<sup>4</sup> Keen to go green: Customer preferences and priorities for wastewater solutions (CCW, February 2024) is [here](#)

<sup>5</sup> [Meeting our future needs: an national framework for water resources](#)

<sup>6</sup> [Water Strategy for Wales](#)

**Program Regulations)? Please provide evidence.**

Nil response.

- 9. Should the government amend the Water Industry Act 1991 and related regulations to extend the role of the DWI to also include regulated and non-regulated third-party providers?**

Nil response.

- 10. Should the government commence Chapter 2B of Part III of the Water Industry Act 1991 and make regulations under those provisions? This would enable the regulation of certain water supplies from third parties to water companies.**

Nil response.

- 11. Should the Planning Act 2008 definition of water NSIPs (Nationally Significant Infrastructure Projects) be updated? If your response is yes, what should the new definition be/include?**

Nil response.

- 12. Should the government amend Section 8 of the Water Industry Act that currently requires Ofwat to undertake a full statutory consultation on all licensing applications, irrespective of the scale or nature of the new site being applied for by new appointees, to consider the scale or nature of applications being made?**

Yes, we support a change to the current application process now that the NAV market has become established. We agree that it is sensible to now take greater consideration of the nature and scale of the site and the experience of the NAV company making the application.

- 13. What consultation time lines would be appropriate for smaller scale applications?**

Currently, if Ofwat decides to consult on an application this is for a minimum of 28 days. This period may be extended in certain circumstances – typically more complex/unusual cases - as set out in Ofwat's NAV application guidance<sup>7</sup>. Given the range of stakeholders who might potentially want to make representations about an application we do not consider the current timelines unreasonable to ensure there is sufficient opportunity for any interested party to make a response.

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<sup>7</sup> [NAV-application-process-guidance-Sep-18.pdf \(ofwat.gov.uk\)](#)

**14. Do you agree that the government and Ofwat should look at ways of streamlining the NAV application process for variations of licences, including by removing the need to consult in certain circumstances?**

Yes, we agree with this proposal. The increase in the number of NAV applications and the associated workload is an issue that can be addressed through a streamlining of the current process. We would welcome being involved in a review of the current application process in our role as a consultee in this process and as the voice for water consumers.

We do not consider that there is a need to consult on granting variations to established NAV companies seeking to supply additional sites within an incumbent area they already operate in.

The NAVs framework has introduced an element of competition into the provision of regional water and wastewater services by allowing new entrants to replace the incumbent monopoly providers in specific geographical areas. However, what it doesn't offer is any additional choice to the consumer.

While Ofwat has identified the wider benefits of this framework, it is our view that any new appointment should benefit the customers of the new NAV appointee, either financially or through improved levels of service, while not having dis-benefits for customers of the incumbent company in the area the variation is located. The principle that customers should be 'no worse off' within the current application process helps to meet CCW's expectation.

Any streamlined process must still recognise that consumers will have no more choice over their NAV supplier than they do for an incumbent operator.

It is important to consider when assessing this regime what value NAVs add to the landscape of the sector and the level of service consumers receive.

**15. Do you agree that the government should consider moving towards a national licencing regime for NAVs?**

We agree that an England and Wales licencing regime for NAVs could help reduce the administrative burden and potentially the costs associated with the current application approval process.

To make this work, a NAV company would need to commit to match - or preferably exceed - the levels of service offered by any incumbent company, ensuring potential NAV customers are 'no worse off'. This is because of the varying levels of service and policies offered by the individual regional monopoly incumbent companies in the areas a NAV company may want to operate in and which currently require comparison.

**16. Do any other barriers exist to market entry in the water sector that the regulator or the government should explore removing?**

*Help for those struggling to pay*

In considering the ‘no worse off’ principle, the current lack of any formal provision of a social tariff to financially vulnerable NAV customers is a disadvantage of the NAV regime. Social tariffs are currently funded by a cross subsidy on customer bills.

We have challenged NAV companies and expect them to tailor the services they provide and to offer appropriate flexible support to any individual in financial difficulty who would otherwise benefit from a social tariff. While some have committed to match incumbent companies’ levels of assistance, the lack of a formal requirement on NAV companies to provide a social tariff is a potential disadvantage to their customers. We have raised our concerns about this gap in provision with Ofwat in our responses to NAV consultations.

We remain committed to the introduction of a consistent and comprehensive social tariff funded through a single pot that companies contribute into, as recommended by the Affordability Review of 2021<sup>8</sup>. Such a scheme has the potential not only to remove the current ‘postcode lottery’ of support provided by incumbent companies, but also to include all NAV customers in the provision of support. This would be less onerous on a NAV than having to handle multiple social tariffs criteria from different incumbent water companies. This would reduce a barrier to entry.

#### *Barriers to entry*

We are aware through our discussions with NAV companies that the current regulatory regime imposes obligations, and so costs, on NAVs which could act as a barrier to entry into the market. These include the NAV application process itself – with the requirement for the repetitive provision of information.

#### **17. Do you agree that the ability to change the WRC for uncontentious and non-substantive changes should be delegated from Ofwat?**

We agree there is merit in changing the WRC to allow for decisions on non-substantive changes to be delegated from Ofwat, as this will allow resources to be concentrated on assessing substantive code change proposals, which are more likely to have tangible customer benefits.

In our response to the January 2023 industry consultation on ‘Developing an effective code change mechanism’<sup>9</sup>, we raised concerns that while the proposed revisions to the process should result in the prioritisation of well evidenced proposals, it would not significantly improve Ofwat’s resources in terms of how quickly decisions are made on whether or not changes should be implemented.

We therefore agree that not having to approve non-substantive, and ‘housekeeping’ changes to the WRC, would strengthen the principle of prioritisation, which may ultimately benefit customers if substantive proposals are being implemented quicker.

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<sup>8</sup> [Independent water affordability review - CCW \(2021\)](#)

<sup>9</sup> [MOSL consultation on Developing an Effective Code Change Mechanism](#)



However, there would also need to be a process in place to determine which change proposals are non-substantive in nature. This could be accomplished by a guiding set of principles in the market codes, which a body in the code change process (such as the existing Code Change Committee) could use to assess proposed changes against to ensure these are non-substantive.

In terms of who the power to approve non-substantive code changes should be delegated to, we believe the most appropriate body would be the Market Operator, given their existing responsibilities and market expertise. This would be preferable to either delegating the responsibility to another existing body in the code change process (as they should be concentrating on substantive change proposals) or a new body that may lack sufficient market knowledge or understanding of the WRC.

**18. Should the government amend/remove the consultation requirements in the Water Industry Act for WRC changes?**

We do not agree that the consultation requirements should be removed, as it is important that the option remains for market participants, and relevant stakeholders, to be consulted in respect of substantive changes to the WRC. While the current code change process allows the Market Operator to consult on change proposals if appropriate, there is a risk this could change in future iterations of the process if the legal requirement under the Water Industry Act is removed. It is vital that substantive changes, particularly those affecting customers, are afforded proper scrutiny by the industry.

However, we believe there is merit in the consultation requirements being amended to allow housekeeping, and non-substantive, changes to the WRC to progress as quickly as possible.

**19. Do you see any further ways market governance in the non-household retail market could be improved?**

We have supported the changes that have been made to market governance over the previous four years. The previous model did not place sufficient emphasis on market strategy, nor did it allow appropriate focus on, and prioritisation of, changes to the market codes that would deliver the greatest benefits for customers. The creation of the Strategic Panel with responsibility for strategic direction, and overseeing improvement programmes, was a positive change to the existing model. The creation of such a body has meant there is now an emphasis on how to improve market and customer outcomes on a strategic level, where previously such direction was lacking. In addition, we have supported the recent changes to the code change process, as this will give greater prioritisation to those changes that will have the greatest impact on customers.

In terms of further improvements that could be made to market governance, Ofwat's involvement in the code change decision making process needs to be tailored according to where they are providing the most value. The proposal to delegate decision making on non-substantive changes to an alternative body should help address this, but we also believe there is merit in a legislative change to allow Ofwat to only make decisions on changes that have been recommended for implementation by the Code Change Committee, rather than

also those recommended for rejection, as is currently the case. Delegating the final decision to reject a proposed change to a more empowered Code Change Committee would both strengthen the market led governance model, and also free up Ofwat resources, which should enable changes recommended for approval to be implemented faster.

We have supported the shift from an industry led governance model to a market led one, as this now includes a greater representation of independent and customer voices on the various market committees, alongside trading parties. This is necessary to not only ensure a wider selection of views, but also to reduce the risk of vested interests being kept in check, which may otherwise hinder beneficial changes for customers. However, there remains a risk that such vested interests may still stifle changes and initiatives which could otherwise benefit customers. The Strategic Panel should play a strong role in ensuring this does not happen, and if necessary, be prepared to dilute the influence that trading parties have by increasing independent and customer representation on the market committees. Ultimately, if such an issue is undermining the current governance model to such an extent that it cannot be resolved by the Strategic Panel, it may be appropriate for Ofwat to intervene. This could involve Ofwat making wholesale changes to the governance structure to ensure market development is not being hindered, and customers are being sufficiently protected. .

## **20. Do further opportunities exist to introduce greater competition for strategic investment into the water and energy sectors?**

There are potential opportunities in the wholesale networks and water supply parts of the English water sector, beyond the limited competition in water resource trading and bio resources that currently exist. For example opening competition to the construction and operation of water main networks or water treatment.

There is little scope for further competition in the household retail part of the water sector, as limited margins and savings for household customers would mean engagement with such a market from customers is likely to be very low.

We outlined in our Five-year review of the market<sup>10</sup> how the rate of switching of micro businesses was very low. We recommended that there be a change to the eligibility criteria in England unless tangible benefits are realised for micro-businesses, measurable by the rate of switching and contract re-negotiation by 2025.

It's important that any moves to increase competition should be carefully managed to protect customers' interests, to ensure the water sector is accessible, affordable, and sustainable for all. Additionally, proper regulatory oversight is crucial so that any increase in competition delivers tangible improvements, greater efficiency and customer protection.

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<sup>10</sup> [Our review of five years of the water retail open market - CCW \(2022\)](#)

## **21. What alternative funding/competition delivery models could be considered?**

Nil response.

## **22. Do the existing concurrency powers and arrangements deter or address anti-competitive behaviour in the regulated sectors? Please explain the reasons underpinning your response.**

The current concurrency powers address anti-competitive behavior in the water sector. The role of the Competition and Markets Authority means that there is additional protection in the water sector and opportunity for market participants to appeal if regulatory decisions are seen to be anti-competitive.

### **CHAPTER 3: SUPPORTING CONSUMERS**

## **23. What are your views on the creation of a single, multi-sector Priority Services Register?**

We are very supportive of a “tell your story once” approach. As part of our searching for global good practice to inform our vulnerability policy work, we have seen it successfully implemented in Australia as part of the Thriving Communities One Stop One Story Hub<sup>11</sup>. This hub enables frontline workers in corporate, government and community organisations to connect and refer their clients to a range of supports through a single, secure access point. Most importantly, it allows people to tell their story once and get access to holistic wrap around support from multiple service providers. As mentioned in your consultation document, there is also the “tell us once” death notification service.

One of the key outcomes of our affordability review<sup>12</sup>, was the development of a single online hub. We have partnered with Northumbrian Water and a cross sector working group to develop the “Support for all hub”. The original pilots in two regions have recently been successfully completed. The next stage is a submission bid for funding for a wider pilot involving more regions and organisations.

Key learning points from the initial pilot are:

- Data consistency and ultimately integrity has been one of the key problems discovered as part of the regional pilots of the support for all hub. This has generated high numbers of exception reports which then need investigating and correcting. There is also inconsistency in whether the data is held at household level or at the individuals who need the extra help level, some utility parties have different data formats at customer or property level, e.g. MPAN (Meter-Point-Administration-Number), UPRN (Unique-Property-Reference-Number) etc. We agree with your

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<sup>11</sup> [Thriving Communities Partnership - The One Stop One Story Hub](#)

<sup>12</sup> [CCW Affordability Review Recommendations](#)

recommendation that any single service should have universally clear language, shared data removal and retention policies and centrally managed data validation but would add that a consistent data format and shared data checking should also be added.

- It is essential that a record of the date that the last update on the data was made and who carried out the update is captured. This would make the process of checking the data held is correct more efficient for both the consumer and the organisations who currently have a requirement to check the data.
- There are existing vulnerability hubs that have different data inputters – companies, organisations, individuals (or their support person) that capture their own data. The ideal solution will be one hub that allows for the same inputters but which has consistent data captured.

We would welcome the opportunity to be part of the working group to explore this proposal. We feel that expanding membership to include consumer bodies would bring beneficial insight from work already underway on this topic and also from our research. We should also be considered as the potential host of the hub once it has gone through its development and pilot stage to give consumers confidence that it is a trusted party who holds their data.

#### **24. What are the best data sources of vulnerability that the PSR should use? Who should be able to input data?**

The hub should be capable of recording permanent and transient extra help needed, as well as being able to incorporate multiple extra help needs.

Example of data sources for permanent and multiple needs include:

- Current PSR registers from Energy, Water and other utilities.
- Local resilience forums.
- Specified persons (those listed in Schedule 4 of the Digital Economy Act (DEA) 2017 Public Service Delivery<sup>13</sup> ).
- Local authority – blue badge, assisted bins, social care support, and household support fund recipients.
- NHS/Irish Healthcare System - clinically vulnerable.
- DWP – carers allowance, disability benefit payments.
- Individual customers or their nominated support person.

Examples of data sources for transient vulnerability include:

- The support sector (e.g. charities/advice organisations) has good visibility of transient PSR vulnerability.
- Local resilience forums.

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<sup>13</sup> [Digital Economy Act 2017 \(legislation.gov.uk\)](https://legislation.gov.uk)

- Individual customers or their nominated support person.

Data should be able to be inputted by people and organisations who are fully aware of the data protection responsibilities for data. Individuals should be able to check their data and request any changes.

We consider that a new objective for the Digital Economy Act (DEA) 2017 Public Service Delivery<sup>14</sup> data sharing powers could be introduced for, “*data sharing to enable specified persons (those listed in Schedule 4 of the DEA), to be able to share data in order to prepare to support people in the event of an emergency, or to provide support following an emergency to enable people to receive an inclusive service from essential utilities tailored to their needs.*”

The following organisations should also be added to the specified persons list:

- Water Undertakers
- Energy Suppliers
- Electricity Distribution Network Operators
- Gas distributors
- Telecoms companies

We have previously been involved in discussions with Defra, Water UK and a selection of water companies regarding this proposed objective and would welcome the opportunity to be part of a working group to explore this further.

In addition to data sources for PSR consumers, consideration should be given to the security and emergency measures (water and sewerage undertakers and water supply licensees’ direction 2022) requirement for a water undertaker to identify and prioritise vulnerable sites within its area. Therefore, there needs to be an effective method for retailers to share data regarding these sites with wholesalers.

## **25. What vulnerabilities and services should the PSR cater for?**

We want to ensure that every consumer in vulnerable circumstances gets the support they need, when they need it – regardless of the temporary or longer-term challenges they face.

We would not want to see the current range of support offered by water companies reduce.

We note that in your consultation, you state that a universal PSR would primarily cover support in emergency situations, including planning and preparation, but could also include regular support such as communication requirements. Through our joint incident research

with Ofwat <sup>15</sup> we know that external factors during the emergency incident itself can directly cause people to need transient help. We also know that communication itself is a form of aid which allows people to take informed action to get the support they need. As such, communication requirements and temporary needs should be included when planning, preparing and providing support during emergency situations.

People needing extra help or their representatives are best placed to say what that extra help looks like and how long it will be needed for. However, our research shows that awareness of the extra help available is low<sup>16</sup> and therefore some water companies have partnered with charities/organisations who can provide advice and training on some of the common extra help needs that the people they represent may find most useful.

The extra help that some people need, can vary due to many changing factors. This could include:

- If the person is at a crisis/acute stage for their condition/s and the extra help is essential or if it is at remission stage and a lower level of support or even no support may be needed.
- Changes to their existing support network – for example the person previously providing support is no longer able to do so.
- Transitioning need for support e.g. Children under 5 in the household at present but they will get older each year or English not first language but over time develops ability to communicate in English.
- External factors such as extreme weather or transport strikes can cause people who may most days be able to travel to get support in an incident become unable to whilst the external factor is impacting them.
- Innovation in inclusive design can mean that specific support that was once needed is no longer needed as the innovation has made the service more accessible to them.

## **26. How can existing affordability support be better communicated to increase customer awareness?**

We support the proposal for UKRN to convene work with regulators, industry and the government to ensure greater consistency in in how affordability support and bill changes are communicated within and across sectors, looking at both household and business customers.

However, we also feel that consumer bodies and key stakeholders supporting people who are struggling to pay should also be involved. This will bring

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<sup>15</sup> CCW and Ofwat joint research into Anglian Water incident response (2023) [here](#)

<sup>16</sup> [CCW Water Company Performance Dashboard highlighting awareness of additional services is low.](#)

greater insight on the challenges faced and improved evaluation of proposed solutions. We would welcome the opportunity to be part of this work and to share the learnings from our extensive work on affordability, which included work on increasing customer awareness.

In our 2020 review of current affordability support<sup>17</sup>, we found that lack of awareness is an obvious barrier to accessing support and that the variety and complexity of support available to customers who struggle to pay their water bill can be a barrier, not only to communicating and spreading awareness, but also to customers applying for the support to which they are entitled.

The review made a series of recommendations which had a strong focus on improving awareness of, and ease of access to, support schemes, and to overcoming barriers that prevent customers getting the help they need.

We would be happy to offer further discussion on the recommendations that we made and companies progress to date in taking the recommendations forward (which can also be found in our 'One Year On' progress report from 2022, along with further updates in our dedicated webpage)<sup>18</sup>.

We have also worked collaboratively with Water UK on a joint campaign to raise awareness of support which generated increased use of the affordability tools on our website.

Whilst this consultation question is focused on improving awareness we want to highlight that our review also found that not knowing what help is available isn't the only barrier to accessing support.

The low income households' experiences of water bill affordability<sup>19</sup> and support research commissioned for our review revealed that other barriers which would need considering alongside raising awareness, can include:

- Mental and emotional barriers
- Lack of trust
- Complexity
- Location
- Literacy and language skills

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<sup>17</sup> [CCW Independent Review of Water Affordability 2021](#)

<sup>18</sup> [Affordability Review - One year on](#)

<sup>19</sup> [Low Income Households' Experience of Water Bill Affordability and Support 2021](https://www.ccw.org.uk/our-work/affordability-and-vulnerability/affordability-review/affordability-review-one-year-on/)  
<https://www.ccw.org.uk/our-work/affordability-and-vulnerability/affordability-review/affordability-review-one-year-on/>

- Physical health

We were successful in working with companies to standardise a number of common scheme descriptors<sup>20</sup> across all water companies in England and Wales. This links to your proposal for common descriptors which can also be a barrier to consumer awareness.

## **27. What are the benefits and risks of giving Ofwat the power to allocate a water retailer if the incumbent retailer becomes insolvent?**

One of the recommendations made in our Five Year Review of the Business Retail Market<sup>21</sup> was a strengthening of the interim supply process to ensure business customers are guaranteed a continuous service if their retailer exits the market.

While we support the work Ofwat is doing to incentivise retailer participation in this process, we remain concerned that without the power to compel such participation, customers of a failed retailer could still be left without a replacement if none, or an insufficient number of, retailers fail to voluntarily opt in.

We believe there are benefits to giving Ofwat the power to allocate an interim retailer, as this will address the gap in protection we have identified. While affected customers may still experience a degree of disruption from a change in supplier, this should be mitigated by the seamless continuation of their retail service by the guaranteed appointment of an interim one.

There may be risks with the allocation of a retailer if the process of selecting the interim supplier is insufficiently robust. For example, one of the benefits of the current voluntary system is retailers may only choose to opt in if they are confident they can absorb the costs of taking on affected customers. Any allocation process would therefore have to ensure that selected retailers are sufficiently financially resilient, particularly when taking on a large number of customers, otherwise there is a risk of destabilising the market if it resulted in further retailer failures, which will then result in a further customer impact.

An allocation process would need to take into account how well a retailer is performing in the market, especially a retailers' performance in terms of the volume of complaints it receives and how well it handles them, thereby determining the likely impact on new customers.

Poor service with their interim supplier is unlikely to be mitigated by competitive pressure on that retailer to improve, as such pressures are currently largely absent. CCW's 2022 Testing the Waters research<sup>22</sup> shows that only around 50% of micro and small business customers are aware of the market. Of those that are aware, they are still less likely to switch or re-negotiate than large businesses. Whether or not a retailer is deemed suitable for allocation would therefore need to be based on not only it's level of financial resilience, but also how

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<sup>20</sup> [Affordability Review: Outcomes - CCW](#)

<sup>21</sup> [Our review of five years of the water retail open market - CCW](#)

<sup>22</sup> [Testing the Waters 2022 - CCW](#)



well they are performing against the customer focused activities and metrics in the Market Operator's Market Performance Framework, and it's complaints performance.

#### **CHAPTER 4: DUTIES AND FUNCTIONS**

**28. What would be a suitable timeframe in which to conduct a review of the regulator's duties?**

In water, conducting reviews at regular intervals, such as every five years after the price review process, would be an opportune time to assess Ofwat's performance, duties, and regulatory framework as the outcome of the price setting process and what is delivered for customers and the environment can be taken into account.

**29. What is an effective remit for economic regulators? How can regulators improve delivery of both economic and non-economic functions?**

The remit for economic regulators must have the interests of consumers and the issues that matter to them at the heart of what they do. This should ensure consumers get an inclusive, quality service at an affordable price.

Regulators need to be transparent in how they make their decisions and be accountable to customers and their stakeholders. How well regulators are doing to achieve this can be checked by the relevant consumer body researching the level of trust that consumers have in the regulator.

**30. The government's provisional view is that regulators' economic core duties are: Fostering economic growth; Ensuring effective competition; Delivering Net Zero and protecting the environment; protecting consumers. Are these the correct set of core economic duties regulators should be focused on? If not, what should regulator duties be focused on?**

Yes, we agree that these should be the core duties.

**31. What are key benefits of this approach? What might any risks or unintended consequences be?**

At the highest level the duties are clear, but a Governmental strategic steer or guidance on trading off priorities would be helpful. For example around investment decisions in price reviews. This is because these duties can compete with each other. For example, the need to balance companies' financeability can sometimes contradict the need to protect consumers' interests and this a balance or trade off that can be a challenge for regulators such as Ofwat to successfully achieve.

## CHAPTER 5: APPEALS

**32. The government welcomes your views on enabling the CMA to have the additional flexibility to appoint larger groups to hear non-price control water appeals and energy appeals. What might be the downsides of this approach? Do you have any evidence of alternative models e.g., international comparators?**

To provide the Competition and Markets Authority (CMA) with additional flexibility to appoint larger groups to hear non-price control water appeals, a few considerations and potential downsides should be taken into account:

- The larger group needs to have the trust of the sector they are hearing the appeal from, including consumers.
- Any changes to widen the scope of appeals against regulatory decisions in the water sector may involve legislative amendments or changes to regulatory rules governing the CMA's decision-making processes.
- This must ensure that the decision-making process remains transparent and accountable. Larger groups may face challenges in maintaining transparency, and mechanisms should be in place to address this concern.

**33. What are the risks to consider before giving CMA power to directly extend deadlines in energy and water appeals? What opportunities do you feel this proposal may create? Do you have any evidence regarding this proposal that the government should consider?**

Granting the CMA the power to directly extend deadlines in water appeals comes with both risks and potential opportunities.

There is a risk that extensions will lead to delays in resolving appeals. This can lead to uncertainty for consumers, businesses and stakeholders. Timeliness is crucial in regulatory matters, as delays could impact decision-making, investment, and planning.

However, if this risk is addressed, extensions can lead to the following opportunities:

- Enhanced flexibility and adaptability in responding to unforeseen circumstances or complex issues that require more time for thorough examination.
- More informed and well-considered decisions. The CMA may be able to conduct more comprehensive analysis, and engage further with stakeholders including consumer groups. This may help deliver better regulatory outcomes.
- Fairness and due process by allowing parties adequate time to present their cases and respond to new information or developments that may arise during the appeals process.

**34. In what other ways can the consumer voice be represented during energy, water and telecoms appeals?**

Consumer bodies should have the right to appeal regulatory decisions to the Competition and Markets Authority (CMA) in the England and Wales water sector because.

- Consumer bodies act as advocates for the interests of consumers and help ensure that regulatory decisions are fair, transparent, and accountable. Allowing them to appeal regulatory decisions ensures that consumers have a voice in the regulatory process, helping to protect their rights, interests, and well-being. This can enhance public trust in the regulatory system. The right to appeal empowers consumer representatives to challenge decisions that may be perceived as unjust or detrimental to consumers.
- Consumer bodies can contribute to the promotion of competition within the water sector. By appealing decisions that may hinder competition or innovation, consumer representatives help create a regulatory environment that fosters efficiency and benefits consumers.
- In cases where regulatory decisions may lead to market failures or inadequate consumer protection, consumer bodies can use the appeal process to highlight these concerns. This contributes to regulatory adjustments that address identified shortcomings.
- Consumer bodies act as additional eyes and ears in the regulatory process. Their ability to appeal decisions encourages thorough scrutiny of regulatory actions, potentially uncovering oversights or issues that need further examination.
- The right to appeal can encourage greater dialogue and collaboration between regulators and consumer bodies. It encourages constructive engagement, allowing regulators to better understand consumer perspectives and concerns, leading to improved decision-making.
- Appeals by consumer bodies can contribute to the evolution of regulatory frameworks over time. By challenging decisions, consumer representatives may influence regulatory changes that better align with the evolving needs and expectations of consumers.

In summary, granting consumer bodies the right to appeal regulatory decisions to the CMA in the England and Wales water sector is an essential component of a robust and consumer-focused regulatory framework. It ensures that consumer interests are considered, promotes fairness and accountability, and contributes to the overall effectiveness of regulatory oversight within the water sector.

**35. Are there any concerns or opportunities you foresee in allowing interveners, who have acted on behalf of consumers interest, to recover reasonable costs incurred alongside the body hearing the appeals costs? How may this impact cases and legal practice in this sector? What would be useful to include in the**

### **guidance for the appeals body to deliver this mechanism?**

Allowing interveners who have acted on behalf of consumer interests to recover reasonable costs may be beneficial as it can incentivise effective and meaningful consumer representation. It allows consumer groups to actively participate in appeals without facing financial constraints, enhancing their ability to represent consumer interests. Any barrier to consumer bodies could limit the diversity of voices in the regulatory process.

There would need to be clear and transparent criteria for determining when interveners are eligible for cost recovery. This may include considerations related to the significance of their contribution (as the appeals body should not be overwhelmed with appeals on less material issues), the reasonableness of costs, and the public interest.

### **36. What unintended consequences or risks should the government be aware of when considering making this amendment to code modification appeals?**

This question relates to the energy sector. Nil response.

### **37. What are the costs and benefits of moving the regime from a redetermination to an appeals standard? Do you have any evidence for this, for example from other regulated sectors or international examples of appeals regimes?**

### **38. What risks of making this change should the government be aware of?**

In answer to both questions, we support having an appeals standard that provides greater legal certainty by establishing a more predictable and standardised framework for assessing appeals. This can enhance clarity and consistency in decision-making, and can streamline the process by focusing on specific errors rather than requiring a comprehensive re-examination of facts and merits. This could also be more efficient, potentially leading to quicker resolution of appeals.

In setting the boundaries for an appeals standard, the CMA must not limit the scope for appellants to seek redress, particularly if the focus is primarily on legal errors only. This could reduce the avenues for challenging regulatory decisions on substantive grounds. This might result in a less thorough review of the merits of a case, potentially overlooking substantive issues that could impact the regulated sector.

### **39. What information do you consider necessary for Ofcom to include in its decision documents?**

Not applicable to CCW.

## Enquiries

Enquiries about this consultation should be addressed to:

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