Market Architecture Plan - An Open Water consultation
1. Introduction

1.1 The Consumer Council for Water (CCWater) is the statutory consumer organisation representing domestic and business water and sewerage consumers in England and Wales. CCWater has four regional committees in England and a committee for Wales. CCWater regularly talks to domestic and business customers and carries out research into their views on water and sewerage issues. We welcome the opportunity to respond to Open Water’s Market Architecture Plan (MAP).

2. Executive Summary

2.1 As the consumer body in the water industry we have a detailed understanding of the benefits, concerns and potential issues of a competitive market for non-household customers in England, and the lessons to be learned from other competitive markets. In addition to talking directly to customers, we have got this through carrying out research into the views of non-household customers on market reform\(^1\) and we commissioned a report to explore the lessons learned from other sectors\(^2\). Both these documents have been shared with Open Water. During the development of the rules, systems and processes to support market reform we will be working with Government, Ofwat, Open Water, and other key market participants to ensure the concerns and issues identified are addressed.

2.2 As Open Water work with the industry to review the rules around market reform it is critical that consideration is given in the process as to how these rules influence and affect the non-household customer journey and experience of the new competitive market.

2.3 Our main comments focus on the following aspects of the MAP and appendices:

- As the operational and market rules in the Scottish retail water market are being used as a starting point by Open Water, it is critical that these rules are fully tested for their appropriateness in the larger English water market. Lessons learned from the Scottish water market and other competitive markets\(^3\) must also be fully considered and used to shape the operational and market rules.
- It is crucial that the wholesale and non-household retail businesses of incumbent water companies operate at arm’s length and are seen to be doing so. It would, therefore, be helpful if there was a clear definition of what a ‘level playing field’ means.
- Consideration should be given to the development of penalties for wholesalers and retailers failing to meet the requirements set out in the operational and market rules. This is important as breaches could result in detriment to customers.
- It is good practice to publish performance and compliance data for all market participants, particularly as non-household customers have indicated that one of the benefits of competition is water companies being placed under more pressure to perform.

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1. ‘Uncharted Waters: Non-household customers’ expectations for competition in the Water Industry’ - Accent - June 2014
2. ‘Lessons Learned’, PWC, September 2014 - A report commissioned by CCWater
3. ‘Lessons Learned’, PWC, September 2014 - A report commissioned by CCWater
• The process for allocating ‘gap premises’, including the ‘provider of last resort’ process, needs to be fully reviewed to identify and resolve customer service issues that could arise ahead of market opening.
• The proposed roles of the Market Operator appear to be extensive. We have concerns about how these roles will work in practice and the cost implications of such a range and number of roles.
• The overall process for blocking customer switches, in particular the ability to block for customer debt, needs further review, and we have suggested principles to be considered in shaping this process.

Further details of each of these aspects, and more, are set out below.

2.4 Our response to the MAP is clearly set out under the headings of the areas we support, the areas where we have concerns, and the areas where we require clarification. We have also signposted whether our comments relate to the MAP document itself or the MAP appendices for ease of reference.

3. **Design principles, CEO and Board summary, and introduction**

*MAP document comments*

**Areas we support**

3.1 We broadly agree that the design principles set out in the MAP are sensible, most particularly the principle that, “the framework that is developed must work for customers”. It is critical that the market is shaped to meet the needs of non-household customers. This can be achieved, in part, by addressing their views as expressed in research\(^4\) we commissioned. The competitive market must also ensure no detriment to those customers ineligible to switch retail provider.

3.2 We welcome the comments made on maintaining momentum, particularly the reference to the “shadow operation” planned from October 2016. We agree that water companies must focus their immediate attention on the changes necessary to achieve arm’s length operation, improve their understanding of costs and services, and develop appropriate price and service packages. We also believe this should happen at the same time as ensuring their non-household customer data is complete and accurate.

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\(^4\) ‘Uncharted Waters: Non-household customers’ expectations for competition in the Water Industry’ - Accent - June 2014
Areas where we have concerns

3.3 As the operational and market rules in the Scottish retail water market are being used as a starting point by Open Water, it is critical that these rules are fully tested for their appropriateness in the larger English water market. We recognise that through the various workshops over summer-autumn 2014 (attended by water companies as wholesalers and retailers, WICS and CCWater), Open Water is reviewing how the Scottish rules could be applied to the English retail market. In particular, it is seeking to identify what changes are required or should be explored in more detail to ensure the rules are fit for purpose in England. These amended rules will then be consulted on more widely by Open Water and then by Ofwat before sign-off. This approach must include ensuring appropriate changes made to the Scottish rules since 2008 are in the English rules from the start. It is also critical that any new entrants, as well as wholesalers and incumbent retailers are involved in the testing.

3.4 It is important that lessons learned from the Scottish water market and other competitive markets are fully considered and used to shape the operational and market rules. We would also like to see evidence that previous comments raised in response to the Market Blueprint, and in discussions at previous workshops, have been considered.

3.5 We question the mix of terminology throughout the MAP document in reference to the different stages towards market opening. “Go-active” is referenced as well as “shadow operation” as the six month before opening, and in terms of April 2017 it refers to “go-live” and “market opening”. It would be beneficial to use common, clear and consistent definitions to avoid confusion.

Areas where we require clarification

3.6 We would like to see a firm commitment that Ofwat will monitor the market and operational rules rather than “it is likely to” as stated in the ‘Governance of the market’ section. CCWater will also monitor the operation of the market and raise any concerns with Ofwat.

3.7 Figure 1 (and 9) which sets out the information and money flows is a helpful diagram, but we suggest that the ‘use and charge information’ is a two flow process that is largely driven by the retailer in order to bill the customer. We suggest this is reflected in the diagram.

4. Ensuring a level playing field

MAP document comments

Areas we support

4.1 We agree it is crucial that the wholesale and non-household retail businesses of incumbent water companies operate at arm’s length and, as importantly, are seen to be doing so. This is important to encourage new entrants into the water market.

5 Lessons Learned’, PWC, August 2014 - A report commissioned by CCWater
4.2 That said, it may be some time after the market has fully opened for all non-household customers in England that all incumbents, especially the smaller ones, can truly demonstrate arm’s length trading by working from separate premises and by separating IT and communications systems.

4.3 We, therefore, welcome Ofwat’s requirement on incumbent’s Boards to be responsible for ensuring that they compete fairly, and provide assurance to Ofwat on this matter.

Areas where we require clarification

4.4 While we agree with the concept of a level playing field, we consider that it would be helpful if, at the outset, the MAP defined what the term actually means. The absence of a definition means that various parties could have a different understanding of level playing field, adding their own assumptions on top of the discussion points within the MAP. This is relevant given that the MAP states that:

- “a level playing field will first and foremost require a common understanding of the advantages that the retail operation of an incumbent water and sewerage company or water company enjoys” (page 22); and
- “a change of mind set and culture was likely to be essential within the incumbent wholesale and retail businesses” (page 28).

4.5 We note that Ofwat is considering the information that each market participant should make available to the Market Operator (MO). Early notification of the scope of this information would be helpful so that all participants can assess whether this will contribute to a level playing field.

5. The operational rules

MAP document comments

Areas we support

5.1 We agree that retailers should not use the operational rules as an excuse to deliver an inappropriate level of service to their customers (page 35). The rules should be high level, work for all market participants, and ensure transparency in their application and interpretation. Our research shows that non-household customers broadly support the idea of market competition as long as it reflects their needs and protects them against adverse market conditions.

5.2 We support the statement that access to the non-household market is “regulated, not negotiated” (page 35). This should help to ensure transparency and a level playing field. A report commissioned by CCWater highlights that good practice consumer protection around transparency and reducing the complexity of contracts is another potential area of focus to prevent market failure. We believe this will help protect customers against malpractice and help to achieve the market’s objective of ensuring that customers get the best possible deals.

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6 Reference - Uncharted Waters, Slide 33
7 ‘Lessons Learned’, PWC, August 2014 - A report commissioned by CCWater
5.3 We support the publication of performance and compliance data for all market participants, not only for incumbent companies (page 35). Non-household customers have indicated that one of the benefits of competition is water companies being placed under more pressure to perform\(^8\). It would also be beneficial for the English market to develop something similar to what already exists in Scotland, whereby retailers are surveyed on their satisfaction with the wholesale services provided.

5.4 We agree with the proposal to bring all processes under one set of operational rules. This will enable each market participant to follow the same process to address any issues arising, including performance levels and expected speed of response. Doing so will also bring greater clarity around roles and responsibilities.

Areas where we require clarification

5.5 Open Water should consider the development of penalties for wholesalers and retailers failing to meet the requirements set out in the operational (and market) rules, as breaches could result in detriment to customers (page 37). In our research, non-household customers have indicated (as part of the fundamentals of market design) that it must be clear what penalties are in place if retailers fail to deliver\(^9\). We would like greater clarity about who would be responsible for the design, implementation and enforcement of the resulting penalties.

5.6 We believe consideration should be given to penalties for manipulating the market as per the latest Government proposals in the Energy sector.

5.7 It must be made clear who the contact for all non-household customer queries is. In our research, non-household customers have expressed concerns about communication with regards to wholesale failures\(^10\). The majority of customers are happy to contact their retailer for retail issues such as metering and billing, but there is uncertainty as to what will happen in a ‘crisis’ situation, such as an interruption to supply. To alleviate concerns they want reassurance that the retailer will respond promptly and efficiently\(^11\). This should be addressed in the operational rules.

5.8 We require clarity on the process where a new entrant retailer contracts an unaccredited third party to deliver activities on its behalf, as it appears these arrangements are outside the scope of the operational rules. How would such arrangements be negotiated? Should there be protection in place to ensure no detriment to customer service?

Appendix 2 comments

Areas we support

5.9 We agree that disconnections are a last resort measure and should only take place once all applicable statutory and regulatory requirements (including customer protection obligations) have been satisfied. We would expect that if an action to

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\(^8\) Reference - Uncharted Waters, Slide 33
\(^9\) Reference - Uncharted Waters, Slide 41
\(^10\) Reference - Uncharted Waters, Slide 67
\(^11\) Reference - Uncharted Waters, Slide 70
disconnect went ahead the operational rules would provide enough notice for a non-household customer to take corrective action.

**Areas where we have concerns**

5.10 In our response to the Market Blueprint, we raised concerns about how the new connections proposals would address the problem of delays in water companies’ processing applications and queries from developers. While there are timescales for wholesalers and retailers (and accredited entities) to undertake defined tasks in the draft rules, there appear to be no penalties for failing to do so. As such, the MAP does not allay those concerns. We suggest this is addressed by Open Water in consultation with the water industry and developer representatives.

5.11 Appendix 2 questions whether wholesalers and retailers should be able to negotiate between each other non-standard services and service levels. We believe that retail market arrangements should avoid being restrictive as it is not in customers’ interests to unduly limit flexibility, variation and innovation in wholesale services available to retailers. We suggest an approach in which high-level information is made available so that non-standard services are sufficiently transparent to demonstrate that wholesalers have not unduly discriminated between retailers.

5.12 We consider that involving the retailer in arranging all visits instigated by the wholesaler to a customer’s premises could potentially delay and complicate work associated with a visit. We suggest that wholesalers should be allowed to arrange visits directly. They should obtain the relevant information from the retailer and inform the retailer of the date, time and purpose of the visit, and any resultant action.

**6. The market codes**

**MAP document comments**

**Areas we support**

6.1 Non-household customers have told us they want the competitive water market to be fair, simple, transparent and flexible\(^\text{12}\). We, therefore, welcome the statement that, “...market participants will need to see open and fair rules...” We agree that there should be a single set of common rules, limiting the barriers to entry, to the benefit of customers.

6.2 We agree that the MO should be invisible to non-household customers. While they do not need to know what goes on ‘behind the scenes’, it is important for non-household customers to understand what is required of them to be able to switch retailer smoothly and seamlessly.

6.3 We agree that there must be a higher level of regulatory involvement in market rule changes in the early stages of the market opening to ensure the rules are fit for purpose.

\(^{12}\) Reference - Uncharted Waters, Slides 39-42
We agree it would be sensible to have the same panel members review changes to both the operational and market codes to ensure these remain aligned.

Areas where we have concerns

The MAP states (page 49) that wholesalers may want to establish their own parallel mechanism for assessing amounts owed. It goes on to add that this could lead to issues with ensuring a level playing field and the controlling of detailed non-household customer information. We are concerned about the potential impact on customers and would like the opportunity to discuss this further with Open Water.

Appendix 3 comments

Areas we support

Overall, we support the monitoring of performance standards and the adoption of the Scottish process whereby the MO produces compliance reports which are reviewed annually by the Board of the MO.

We welcome the draft market rules including confidentiality obligations (section 10.5.1) to ensure the protection of customer data.

Areas where we have concerns

The process for allocating ‘gap premises’ needs to be reviewed to identify and resolve customer service issues that could arise ahead of market opening.

In instances where gap premises are identified by a wholesaler, the wholesaler will write to the non-household customer giving the customer 14 working days to choose a retailer. Where the customers fails to elect its own retailer the MO will then assign a retailer on a rotational basis through the ‘provider of last resort’ (POLR) process. We have a number of concerns about this process.

We believe that 14 working days will not give non-household customers sufficient time to make an informed choice. While we welcome the customer being given the choice in the first place in the wholesaler led scenario, we suggest the customer be given at least 20 working days in which to choose a retailer. This is consistent with customers’ views on the timescale for reminders about a contract ending.

Where a customer fails to elect a retailer in time, we want assurance that the retailer assigned to the non-household customer will allow the customer the ability to swiftly switch the assigned premises to a retailer of its choice, particularly if the rest of the customer’s premises are supplied by one retailer under a multi-site arrangement.

In allowing a retailer to automatically supply gap premises it identifies, we believe there is a risk that some retailers may devote a disproportionate amount of resources in doing so, and its other non-household customers may suffer a reduction in service as a result. We feel this issue could be exacerbated if

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13 Gap premises are those eligible customer premises that are receiving a water and/or sewerage service but are not registered in the central system held by the MO, and are not paying for those services
14 Reference - Uncharted Waters, Slide 62
wholesalers are allowed to offer incentives to ‘find’ gap premises, which is a current practice in Scotland. However, in identifying non-household customers that have been receiving a service and not paying for it, this could reduce the cost impact on all other customers of an incumbent water company.

6.13 We expect early communication with customers at gap premises by the incoming retailer so that if the customer would not choose to go to that specific retailer it can switch the premises away as soon as possible. Overall, this is a complicated process which must be fully considered to ensure the benefits are delivered in parallel with non-household customer protections.

6.14 We have concerns about the multiple role of the MO in monitoring performance, invoicing charges, and enforcing breaches of cost recovery rules through court proceedings (see our response to the Market Blueprint (MO 4d)). The proposed roles of the MO appear to be extensive, other examples being that it may chair the rules or code panel as set out in the section of the MAP document on ‘Governance of the market’ and carry out self-assessment of its performance. We would like greater clarity on how these roles would work in practice, and believe Ofwat should have a clear role in a number of these processes. We also want clarity on how the costs associated with these multiple roles will be recovered, and whether they will eventually be passed through to non-household customers.

6.15 In our response to the Market Blueprint, we questioned the proposed approach to financial settlement and, in particular, the role envisaged for the MO in calculating payments due between market participants. We recognise the MAP and appendices proceed on the assumption that the MO will be responsible for a range of activities associated with financial settlement. Whilst we understand the reasons for the MO doing this, and recognise this is a similar practice to other competitive markets, we want to note the potential for duplication in effort and costs where wholesalers carry out their own wholesale charge calculations. Moreover, it is possible that a centralised calculation of wholesale charges could limit innovation in charging methods.

6.16 We are concerned about the proposed process that allows a customer’s current retailer to block a switch to an alternative retailer by submitting a cancellation request for the reasons of:
• outstanding debt to the current retailer,
• if there is a valid contract in force and in effect, and
• if the current retailer is a self-supply licensee.
Whilst this process is similar to energy market arrangements, we question whether this is in customers’ interests. In particular, we are concerned about blocking for outstanding debt in instances where (i) a customer may be mistakenly identified with outstanding debts to its current retailer or (ii) there may in fact be no outstanding debt against valid invoices, and the customer may be disputing invoices that are erroneous (e.g. due to billing errors by the retailer).

6.17 We recognise that allowing retailers to block switch requests for outstanding debt may make some contribution to lowering the costs and risks that retailers face in relation to bad debt. However, the ability of a retailer to block a customer with outstanding debt from switching to another retailer may tilt the process in their favour. If the market rules are to allow some blocking of switches in cases of
outstanding debt, it may be appropriate to narrow the circumstances under which blocking would be permitted and give the customer a reasonable opportunity to challenge the block and seek a remedy.

6.18 We suggest that:
- Outstanding debt should only be a valid reason for cancellation if that debt is not disputed by the customer (alternatively, if the outstanding debt relates to an invoice that a customer has already disputed before the switch request, the retailer must use best endeavours to resolve the dispute before submitting a cancellation request);
- The current retailer must confirm that its contract with the customer explicitly allows the retailer to block the switch;
- The current retailer must promptly inform the customer of its decision to make a cancellation request, and explain the reasons for doing so;
- All retailers must have a resolution mechanism in place through which the customer can take steps to address the reasons for cancellation;
- The cancellation window is of a reasonable duration to prevent lengthy switches; and
- The use of retrospective cancellation requests (made after the cancellation window) must be limited, and the retailer making the retrospective request should bear the costs of reversing the switch.

Areas where we require clarification

6.19 Whilst we welcomed the Market Blueprint proposal to allow customer reads on switching if a retailer read is not possible, we note that this is now in question due to the different approach in Scotland. In that market, customer reads are only allowed for cyclic reads. We would like to see the difference in policies further considered before deciding the position for England.

6.20 We believe that mandating a meter reading by the new retailer or its agent upon switching could make the switching process more cumbersome and introduce delays. This was also a view shared by attendees at a recent CCWater business customer forum on market reform. We see merit in allowing customer reads and do not think that the switching process should be seen as an opportunity to improve the quality of consumption data held by the MO, or to check whether meters are working properly. There are other provisions in the rules aimed at achieving these objectives.

6.21 Part 1, section 1.3.3, of the draft market rules refers to applicants to the market code having completed the training process. In part 4, section 4.2.2, it also states that wholesalers must carry out the market tests and market assurance processes required by the MO. We would like greater clarity on what these training and tests involve, how often they will be required, and how they could improve customer service levels.

6.22 Linked with the above point, the draft market rules propose that, “the MO may also specify other conditions which an applicant must meet”. We want to understand what these ‘other conditions’ are as we would not want excessive scope to unduly restrict entry to the retail market. Admission to the market code and centralised retail systems are essential for a new entrant, so the conditions
for entry must be specified in market rules and subject to consultation and review well before April 2017.

6.23 We specifically seek clarity on the transfer of licences by retailers set out in part 1, section 1.4 of appendix 3, and question whether it is a likely proposal for England. We are unsure whether Open Water’s proposal is to include transfer of licences, or whether this would need to be amended or removed in developing a market code for England. We would welcome clarification from Open Water in this respect.

6.24 We note that, at their own costs, retailers and wholesalers must establish and maintain systems that are compatible with the system equivalent to the Central Registration system in Scotland. We want to understand how this links to the proposal made in the Market Blueprint on systems architecture, whereby the services within the IDEX are automated, semi-manual and manual. We also would like transparency in cost of those systems.

6.25 We would welcome further details of how the retailer of last resort or POLR (see 6.9 above) works in Scotland in order to understand how it might work in England. Should a similar approach be adopted, we want to understand whether:

- the opt-in list of retailers would be reviewed to ensure those on the list are able to realistically offer this service;
- those retailers opting-in are able to specify the number of customers they have the ability to take on and still deliver a good service; and
- large retailers who cannot opt-out of the process would be forced to take on all customers allocated, as this could deter entry.

6.26 It would be helpful to have more information on market datasets (part 5, section 5.17) and how this will work in practice. For example, will there be a charge for ad-hoc data and how will data to any expert assisting in resolving a dispute be controlled?

6.27 In terms of the market rules around the change process in part 8, section 8.7.1 (ix), we expect to be consulted on any changes to the market rules which could have implications for customers and the services they receive.

7. Wholesale contracts

Appendix 4 comments

Areas we support

7.1 We support the view expressed in Appendix 4 (page 114) that, “it is expected that special agreements will form part of the retail market and customers who currently benefit from a special agreement will have the option to switch supplier without losing the benefit of their current deal”. Also, we believe that incumbent companies must not be allowed to terminate special agreements early, or to prevent renegotiation of a similar special agreement.

7.2 In schedule 4 of the wholesale contract, we welcome the inclusion of service standards (including timescales and fees payable) setting out the process for addressing customer complaints, keeping appointments with customers, planned
and unplanned interruptions to water supply, sewer flooding etc. We would want similar arrangements to be in contracts in England.

Areas where we require clarification

7.3 The Scottish Water template for wholesale services agreement (pages 153-155) includes provisions for payments from wholesaler to retailers (to be passed on to customers) for specified failures against service standards. It will be important that further work on wholesale agreements (and relevant aspects of other arrangements such as operational rules) reflect the following:

• The Guaranteed Standards Scheme (GSS) applying to companies in England.
• Additional service standards that companies have agreed to provide as part of the 2014 wholesale price control.

7.4 Furthermore, elements of the retail market arrangements (e.g. wholesale agreements and operational rules) may have the practical effect of creating additional standards of performance and service beyond those arising from GSS and wholesale price controls. Where this is the case, water companies and CCWater should be given opportunity to comment on the proposed standards, and decisions on these should not be lost in the details of draft technical documents.

8. Setting retail margins, and retail and wholesale tariffs

MAP document comments

Areas where we have concerns

8.1 It is important that retail margins are set at the right level to allow reasonable but not excessive profits by retailers, and to encourage efficient new entry. We recognise that different types of non-household customers incur different wholesale and retail costs to serve for a variety of historical, political, economic and social reasons.

8.2 Any review of tariffs would need to consider the impact on different customer groups and how incident effects could be minimised before changes were made. CCWater and many parliamentarians argued for the Water Act 2014 to prevent de-averaging, and the Government made it clear that de-averaging must not be allowed where it is harmful to customers. We expect guidance to address this issue.

9. Timetable and critical path

MAP document comments

Areas we support

9.1 A suitable timetable and critical path are crucial for the successful opening of the retail non-household market in England in April 2017.

9.2 We support Ofwat’s commitment to develop and implement suitable customer protection arrangements for the new market. In our recent research, non-

15 Lord de Mauley 4 February 2014
household customers have indicated they would like choice but with appropriate protection\textsuperscript{16}.

**Areas where we have concerns**

9.3 We have concerns about the potential difficulties posed by the lack of firm dates, aside from those associated with PR14, and would like a clearer indication of those dates as the processes and planning are refined.

**Areas where we require clarification**

9.4 We seek clarity on the types of activities that could be delayed without having a negative impact on market opening. Any resulting delays to critical activities and their potential effects should be clearly communicated to all parties concerned.

9.5 It is not clear from the key steps to market opening when Ofwat plans to draft and consult on the code of conduct on mis-selling.

9.6 We want assurance that by October 2016 water companies will have the capacity (and preparedness) to react to any major changes in their operations and/or strategy so as to successfully “go-live” by April 2017. Also that non-household customer data is complete and accurate.

**Enquiries**

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\textsuperscript{16} Reference - Uncharted Waters, Slide 71