The Consumer Council for Water’s response to Defra’s Retail Exit Consultation Paper
Introduction

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 the Department for Environment, Food and Rural Affairs’ (Defra) consultation on enabling incumbent water companies to exit the non-household retail market.

Executive Summary

Overview

We support many of Defra’s suggestions to protect non-household (NHH) customers if their incumbent water company (undertaker) chooses to exit the retail market. The suggested ‘principle of equivalence’ is key to giving those ‘transferred’ NHH customers “access to the same safeguards as they would have had if they had remained with the undertaker”.

However, there are areas within Defra’s policy suggestions that will need strengthening to ensure customers do not see detriment from the experience.

While market reform has been built on the premise of increasing choice to customers, retail exit is one area where customers are not given a choice about whether their undertaker transfers their retail account to a retail only licensee (acquiring licensee).

We have researched NHH customers’ views on retail exit and used that evidence to frame this response.

Evidence from non-household customers

The key messages about what NHH customers think about retail exit are:

- Given the choice, many NHH customers, would prefer their undertaker not to exit the retail market. They believe this would leave them with more control over their account if their undertaker remained unchanged.

- Customers did see more advantages of a transfer to an acquiring licensee that is associated with their local undertaker, rather than an acquiring licensee which is unrelated. They believe that an associated licensee would have existing staff with relevant experience and the parent company would have an incentive to ensure consistent service and to take responsibility. Larger customers generally tend to be more receptive to a change.

- Customers’ key concerns are that retail exit will lead to transferred customers having to pay higher prices and being unfairly locked into a contract with the acquiring licensee.

- Customer want the process of an undertaker exiting the non-household retail market - ‘retail exit’ - to:
  - Be hassle free;
  - Feel like there has been no change;

1 Terms used: ‘undertakers’ – used by Defra in their consultation and means the regional water companies that currently serve most water customers.

‘Acquiring licensee’ – is the retailer who takes on the customer base from the undertaker when the undertaker decides to not operate in the non-household retail market.

2 CCWater Research ‘Exit Strategies’
While there is much in the consultation that will offer customers the protection and reassurance they seek, there are issues that we would like Defra to consider as it develops its policy further:

Non-price terms or service - Customers do not want to see deterioration in the service they receive, and their ideal transfer process would involve no change. Therefore we believe acquiring licensees should honour the non-contractual service standards provided by the undertaker to individual customers. This may include monthly meter readings; payment or debt recovery arrangements; an account manager; or larger compensation payments if something goes wrong.

Communication - Communication with customers needs to be at least 6 months ahead of retail exit. Customers argued for 12-18 months before April 2017; and 6-12 months after, due to the billing cycle and wanting time to assess the market. These timescales were consistent across focus groups and should be considered further; they would provide reassurance to customers that their interests are being looked after.

Enforcement - Government needs to clearly lay out who will enforce the Regulations and what the sanctions will be if an acquiring licensee does not abide by its agreement(s).

Supplier of first and last resort regimes - We believe niche acquiring licensees should be included within these regimes, because it would allow the customer types they serve to be allocated to them - subject to their capacity. In the case of a last resort regime, it may also help ensure that customers continue to receive the particular type of service they are used to.

Right to return to acquiring licensee once a customer has switched away - Customers who have switched away from acquiring licensees should be treated in the same way, and given the same rights as an incumbent’s customer who has switched away.

Gain sharing - We are aware that there are provisions in the Licence that allows for the benefit of proceeds of protected land sales to be shared 50:50 between customers and shareholders. Is there a valid reason why sale of these retail assets should not be treated in the same way?

Helping customers get the best deal - We understand from Citizens Advice that some energy customers have remained on very old contracts for a long time, and that those contracts don’t always offer the best deal for customers. Given the issue of the lack of switching in some sectors, there will need to be consideration on how to ensure customers have easy access to information about better deals.

Protecting customers from unscrupulous third parties - During the retail exit process there could be an opportunity for unscrupulous third parties to write to customers and act as though they were the new acquiring licensee. The communication process will need to ensure that information about the acquiring licensee is clear to avoid scams.

3 Niche licensees could be small licensees who are focusing on a particular customer segment, such as dairy farmers or garden centres.
Responses to the consultation questions

Principle of Equivalence

1. Do you agree that we should seek to secure equivalence between customers that have been transferred following an exit and customers who are still served by an undertaker that has not chosen to exit the market—and, if so, why?

2. Are there circumstances in which you think this might prove difficult to achieve? If so, how could we best approach this?

We agree with the principle of equivalence, but consider it maybe difficult to achieve because of the non-price aspect of the deemed contract. Using the Guaranteed Standards Scheme as the baseline level of service could cause customers problems if it results in a lower level of service than non-household customers currently receive.

We know customers want ‘no change’ from the transfer to an acquiring licensee. The deemed contract, as suggested, could mean the existing more tailored service levels, such as monthly meter reads, account managers, payment or debt recovery arrangements, leakage allowances or large compensation payments when something goes wrong, may not be honoured unless they are part of a pre-existing contract.

To overcome this, we believe acquiring licensees should be required to honour the service standards provided by the undertaker to the individual customers, possibly through codes of practice.

Deemed Contracts

3. Do you agree that there should be a deemed contract in all instances where a non-household customer is served by a licensee but has not negotiated a contract with that licensee — and, if so, why?

We agree that a deemed contract is needed to allow non-contracted customers to receive regulated protections, but consider the non-price aspect of the deemed contract could work against some customers’ interests - see response above.

4. What terms do you think should feature in the deemed contract?

Price terms

We found that NHH customers were particularly concerned that they would be adversely affected by price rises when they were transferred to the acquiring licensees (at exit or subsequently).
Therefore, to address this concern, we believe that if NHH customers of undertakers are receiving regulatory protection on price, this protection should also apply to NHH customers who have been subject to a forced transfer to minimise detriment to transferees.

If NHH customers’ undertaker exits after regulation price protection has ended then the NHH customer should pay no more than the same price they would otherwise have paid the undertaker for at least a year.

Non-Price terms

Customers do not want to see any deterioration in the service they receive\(^4\), so we believe acquiring licensees should honour the service standards provided by the undertaker to the individual customer. Please also see our response to question 2.

Length of contract

NHH customers’ other greatest concern was about being locked into a contract. Therefore we believe the deemed contract should allow customers to switch away from the acquiring licensee without restriction.

Price Terms

5. From Market Opening to 2020 do you agree that the deemed contract should include price terms which are identical to those that the customer was receiving from its water undertaker at the time of the retail exit?

Yes. See comments made under question 4 - price terms.

6. If we work on the assumption that the transferred customers of an exited undertaker should have a deemed contract that includes a clear set of price terms, what factors do you think should be taken into account when establishing those terms post 2020?

We agree with your proposed requirement on Ofwat to “keep the need for price protection for NHH customers under review as the market develops.”

Most NHH customers surveyed are concerned about price rises and some think retail exit is unfair. It is therefore critical that they do not suddenly see large bill increases - above what NHH customers of undertakers are seeing - beyond 2020.

Below we have outlined the factors that we believe should be taken into account:

- If NHH customers of remaining undertakers are having their price limits and service levels determined by Ofwat, then NHH customers who have been subject to a forced transfer should also have their price limits and service levels determined by Ofwat using the same methodology.

\(^4\) Such as the introduction of new time limits for being cut off due to late payment; introduction of interest charges on late payments; changes to billing cycle which will particularly impact budgeting for small and micro businesses; and risk of an increase in estimated bills if meter reading is not sufficiently resourced.
This should apply until the market offers alternative options for all types of customer segments to switch.

7. How could we make our approach to setting non-price terms more effective?

We appreciate that Defra needs to develop Regulations that are enforceable. As such a set of minimum, cross-industry standards are appropriate, with substantial penalties for failing to meet those standards.

However, customers expect a ‘seamless’ process when a retail transfer occurs. To achieve this we believe acquiring licensees should honour the services each NHH customer received from the undertaker, as a minimum, and that there should be the facility for customers to complain to CCWater if they believe they are receiving a poorer standard of service. Expectations on meeting the current service standards that customers actually receive could form part of a Code of Practice.

8. What do you think the revised Guaranteed Service Standards (GSS) should include?

Protections for small/micro businesses and similar-sized NHH organisations should continue to mirror the protections household customers receive, because the needs and service experience of these customers are similar to that of household customers. This was echoed in a report by the Federation of Small Businesses.

Our Uncharted Waters research into the views of NHH touched on the area of GSS. Overall, respondents found the existing GSS broadly acceptable, though there was some criticism around delays in communication. The respondents’ limited contact with water companies drove this acceptability.

The Process for reviewing the GSS

As Ofwat reviews GSS, it may want to consider if every customer segment feels the need for baseline GSS. Some companies may feel the GSS is not relevant to them, and that contractual terms offer more appropriate protection. The research could test if this is the case.

Experience from dealing with complaints around GSS

Based on our experience of dealing with customers’ complaints, we have some suggestions, which in order to help the development of the revised GSS standards, are available on request, and we welcome the opportunity to discuss with Ofwat.

9. Are there any other non-price terms that do not form part of the GSS that you would expect to see included in the deemed contract?

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5 Ofwat expect to review GSS during 2015-16
Yes:
There should be either a minimum of one bill per year based on a meter reading undertaken by the acquiring licensee or its agents; and monthly meter reads where this has been previously agreed (but not contracted) with the undertaker, or a requirement on the retailer to provide the actual consumption over a minimum period of time, so the customer has full information on their usage prior to any decision to switch.

- Customers should be able to continue to pay on the same terms they paid the undertaker, such as monthly, quarterly or six-monthly instalments for a minimum of a year after transfer; and customers should be able to continue to repay any debt on the terms agreed with the undertaker - unless the customer defaults. This would deliver customers’ wish to see ‘no change’ during a retail exit.

10. Do you agree that there should be different requirements for licensees that are looking to take on large-scale customer transfers compared with licensees that wish to specialise in providing services to a niche class of customers?

Yes. Acquiring licensees will need to satisfy Ofwat that they have the capacity and capability to serve the customer segment(s) for which they wish to provide retail services.

11. What differences do you think it would be reasonable to see in the licensing regime in terms of capacities and/or capabilities between acquiring licensees and smaller entrants?

We agree with Defra’s statement that the licensing regime will need to be flexible. What this could mean in practice is:

- A licensee that wishes to have a particular customer segment transferred to it would need to be assessed in the context of the delivery of services that the particular customer segment requires (quantity of customers, their locations, and any bespoke services they may require).
- A requirement to have codes of practice to define required service standards and protections for customers.
- A check of the licensees financial ‘health’, to ensure it has the resources necessary to deliver services to the required standard in the longer term.

Standard licence conditions should provide a ‘baseline’ for what licensees should offer.
12. Do you agree that a transferred customer should remain on the deemed contract until they choose to switch to a negotiated contract or another licensee - even if they are transferred on more than one occasion? What do you think are the main advantages and disadvantages of this approach?

We agree with the proposition that customers should stay on the deemed contract until they choose to switch because it would help customers see little change from the first and subsequent transfers.

The main disadvantage could be that customers remain on deemed contracts for a long time and miss out on better deals. To overcome this there will need to be consideration on how to ensure customers have easy access to (information about) better deals.

13. Do you agree that customers should retain the right to return to their acquiring licensee on the deemed contract terms and conditions for two years following a transfer?

14. How far do you agree that this protection should be time-limited? What do you think is a reasonable time-frame?

As customers would prefer their undertaker not to exit the market, it is important that customers who have switched away from acquiring licensees are treated in the same way, and given the same rights as an undertaker’s customer who has switched away.

15. Do you agree that we should introduce a “supplier of first resort” panel across England that will be available to take on new customers following an exit?

Yes.

16. Can you think of any ways in which we could refine our approach to new connections and new owners/occupiers in exit areas to make it more effective?

We are unclear why niche acquiring licensees should be able to opt out of the “supplier of first resort” panel. While niche acquiring licensees will have more limited capacity, and that should be accounted for, it may be that a niche acquiring licensee would be the best option for a particular customer. Their capability may need reviewing if they cross a certain size threshold – but it should not preclude them from being considered.

This alternative approach should allow Ofwat to allocate a new customer to a niche acquiring licensee, but give the licensee the ability to appeal on the grounds of poor fit or insufficient capacity.
17. Do you agree that we should require at least one acquiring licensee in every transfer to opt into the supplier of last resort regime?

18. Can you think of any ways in which we could refine our approach to the supplier of last resort regime to make it more effective?

The supplier of last resort could work on the basis that all acquiring licensees need to be members of the scheme.

Regular reports by acquiring licensees to Ofwat on anticipated capacity over the following 12 months should allow Ofwat to judge the most appropriate ‘last resort’ licensee in the event it is needed.

This system would not presume that every member of the scheme could take on mass transfers of customers, or that all customers have to be taken on by the same licensee.

There could be instances when it is a niche licensee that has gone out of business, and another niche licensee has the capacity and capability to take over those customers. This could be the best result for the customers. See also our response to question 10.

19. Are there other issues that we should consider in our suggested approach to the applications criteria and process?

We are aware that there are provisions in the Licence that allows for the benefit of proceeds of protected land sales to be shared 50:50 between customers and shareholders. Is there a valid reason why sale of these retail assets should not be treated in the same way, i.e. that any benefits from the proceeds of these sales be shared with customers?

20. Do you agree that we should require both undertakers and licensees to communicate with transferred customers?

We agree that both undertakers and acquiring licensees should communicate with transferred customers. As revealed in our research, communication should start at least 6 months ahead of the transfer to give customers time to assess their options and consider switching to an alternative retailer.

NHH customers gave us a time line of when they expect to be communicated with, by whom and on what. This is outlined in our research results on our website (link) - slides 61 & 62

- For some customers the first step in communication about retail exit is to raise awareness of the changes brought about by market reform in England to set the scene for any subsequent communication from undertakers about retail exit:
  - This is particularly the case for medium-sized organisations and public sector bodies who are unaware of the forthcoming changes and concerned/less positive about market reform;
Additionally some micro- and small organisations felt that awareness raising would prepare them for any subsequent communication from undertakers about retail exit; and

Larger organisations are more likely to be aware of the changes or less concerned, and so they are less likely to feel awareness raising is important;

- To ensure that general communication about market reform is unbiased many feel that awareness raising campaigns should not be the responsibility of undertakers, but should be driven by organisations such as Defra, Ofwat and CCWater;

- Further communication about retail exit should come from undertakers and acquiring licensees, preferably as written communication with customers’ bills;

- Timing of communication could vary depending on the billing cycle of the business.

21. Are there any additional issues that we should consider in our approach to customer communications?

Undertakers and acquiring licensees should consult CCWater on communication plans

Defra should consider making it a requirement that the exiting undertaker and acquiring licensee consult CCWater on its communication plans. It will be particularly important that engagement is appropriate for all customer segments.

It could also be useful if Defra/Ofwat and CCWater considered whether there should be some standard information that should feature in all relevant pre/post exit communication with customers about the transfer - to ensure consistent unbiased messages.

Easy access to list of alternative licensees

It is important that customers, whose accounts are to be transferred, are told that they have the option to switch. Customers may then want to consider a list of alternative licensees. Ofwat or the Market Operator’s website should host this information, and CCWater could provide a web-link so customers can be made aware of how to access the list during the communication process.

Differing communication according to size of organisation and water use

Our research found that different sized organisations have different expectations on how they will be communicated with.

Smaller and medium-sized organisations expect:

- the majority of communication will be written;

- communication that will reassure them that the process will be straightforward and hassle free.
Larger organisations which are high water users currently have an account manager, and are more aware of market reform have higher expectations of a more individual approach. They would like:

- communication to be personal and come directly from their account manager; and
- a minimum of a phone call from both the existing and the new account manager, but some would like a personal site visit.

Customers have suggested a 6-12 months timeline of communication. While this seems a long period customers clearly have an expectation that they will receive clear communication about exit, well in advance of it happening.

Scams

The retail exit process could provide an opportunity for unscrupulous third parties to write to customers and act as though they were the new acquiring licensee. The communication process will need to ensure that information about the acquiring licensee is clear to avoid scams.

Supplier of last resort communication

There should be standardised communication developed for when customers have to transfer to another acquiring licensee due to their current licensee leaving the market place.

22. Do you have any other comments about our overall policy approach to retail exit?

Enforcement

There needs to be a clear, effective enforcement process to ensure the acquiring licensee is meeting its price and service obligations. It should also be clear what the sanctions are if a retailer is not meeting its obligations. We would welcome the opportunity to explore this further with Defra and other interested parties.

We consider that Ofwat is best placed to take on the enforcement role.

Change of use

It should be formally stated that if a NHH customer changes the property’s use to household, separates a mixed use supply, or makes any other change which renders it ineligible, then the household customer would automatically revert to their local undertaker.

Allocating customers when an undertaker transfers customers to more than one acquiring licensee

When an undertaker decides to transfer customers to more than one acquiring licensee, it would be useful to clarify what the process for allocating customers should be. This could help avoid, for example, the undertaker’s associate licensee ‘cherry picking’ the most valuable customers.
If some customers are ‘left behind’ unintentionally, and there is more than one acquiring licensee, what will be the process for allocating them to a licensee?

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