Customer protection in a retail market: Guaranteed Standards Scheme - an Ofwat consultation
1. **Introduction**

1.1 The Consumer Council for Water (CCWater) is the statutory consumer organisation representing the interests of customers of regulated water and sewerage companies in England and Wales. CCWater has four regional committees in England and a committee for Wales.

1.2 We welcome the opportunity to respond to Ofwat’s consultation on customer protection in a retail market - Guaranteed Standards Scheme (GSS), which relates to the extension of GSS to customers of licensees that will operate in the non-household retail market from 2017.

2. **Executive Summary**

2.1 We broadly support Ofwat’s proposals put forward in its consultation.

2.2 The GSS is a set of minimum standards of service and financial remedies that should protect all customers of licensed companies including those that are able to switch supplier.

2.3 A GSS that offers the same minimum protection to all customers is fairest to licensees and appointees.

2.4 The principle of GSS is to ensure that the party that causes a fault for a customer pays the compensation and does so promptly. We think it needs to be clear which company is responsible for making the payment, otherwise customers could face delays in receiving compensation due to confusion or disputes over responsibility between wholesalers and retailers.

Ofwat could provide more clarity on these issues:

2.5 **GSS allocation:** As presented, Ofwat’s intention to allocate GSS to wholesalers and retailers does not appear to take account of grey areas such as wholesalers missing agreed appointments.

As is currently the situation, customers will expect that the company that failed in the service provision accepts fault and funds the GSS penalty. As a principle of basic customer service, customers will reasonably expect Ofwat to settle formal GSS disputes quickly and easily.

2.6 **Full GSS review after market opening:** A full review of GSS may not fit within the remaining timescale until market opening. However, we agree with Ofwat that a full review after April 2017 is warranted because:
• GSS payment amounts have not been varied since at least 2008;
• there are minimum services that GSS could cover but does not (see Question 3);
• from April 2017, customers and companies may have identified protections that customers ought to be getting but are not under the prevailing GSS scheme; and
• household customers that cannot switch suppliers will still need GSS to be a crucial minimum protection safeguard for them and it is right that it be fully reviewed to make sure it is still fit for purpose.

From April 2017, if there has been a reasonable degree of competition activity, Ofwat could look to consult on a full review of GSS soon after market opening. We would welcome further clarity from Ofwat about when it intends to do a full review.

2.7 Impact assessment: Ofwat’s sensitivity analysis is unclear and therefore it is difficult for us to comment on it.

Ofwat should focus on feedback from prospective retailers to determine if the operator codes for the market\(^1\) will allow retailers sufficient cash flow to cover large scale GSS claims.

3. Consultation Questions

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<th>Q1 Do you think there are any particular issues that we should consider as part of our work on customer protection for the retail market?</th>
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We think that Ofwat should also consider other issues as part of its customer protection work in advance of the retail market opening. Through our research\(^2\) and discussions with customers and their representatives, customers have told CCWater that they want protection against:

a) Complaints left unresolved or transferred between retailers and wholesalers;
b) unfair terms if or when their incumbent service provider exits the retail market;
c) lack of clarity in contract terms and conditions;
d) lack of clarity about companies to which they can switch;
e) mis-selling,
f) unfair contract terms and conditions from retailers;
g) switching problems minimised by a clear procedure; and
h) improper behaviour of third party intermediaries (brokers).

Many of these customer expectations could be safeguarded by GSS. For instance, issues (a) to (f) could be raised through written customer complaints and would require the company to respond substantively in 10 working days, as per the GSS requirement. Issues (g) and (h) will have to be covered by separate consumer protection work by Ofwat.

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\(^1\) Market operator codes are hosted on Open Water’s website [here](#).
\(^2\) Our Uncharted Waters research is [here](#), and Exit Strategies research is [here](#).
Q2 Do you have any views on the potential for customers to forego their entitlement to GSS?

At market opening, our view is that customers should not be able to forego their entitlement to GSS.

GSS is a minimum service standard with modest financial penalties. Therefore we feel that it is unlikely to limit larger business customers from negotiating better contractual protections on top of GSS if they choose to.

GSS should continue to protect all customers, including smaller non household customers (e.g. sole traders, charities) that may not actively negotiate with retailers.

Q3 Do you agree with our proposal to extend the GSS Regulations so that they apply to all licensed companies?

We agree that GSS should protect customers of all licensed companies, including those that are able to switch supplier. This offers the same minimum protection to all customers and is fairest to licensees and appointees. It may be sensible to secure companies’ commitment to provide GSS by requiring this to be a specific part of deemed contracts.

CCWater welcomes Ofwat’s commitment to undertake a full review of GSS in due course. A review is warranted because:

- GSS payment amounts have not been varied since at least 2008 (although we recognise that some appointees make above the minimum required payments for some standards);
- there are minimum services that GSS could cover but does not (see Question 3);
- from April 2017, customers and companies may have identified protections that customers ought to be getting but are not under the prevailing GSS scheme; and
- household customers that cannot switch suppliers will still need GSS to be a crucial minimum protection safeguard for them and it is right that it be fully reviewed to make sure it is still fit for purpose.

There are other elements of consumer protection that we believe could be added, amended or clarified within GSS. For instance:

- Retailer switching timescale;
- meter testing timescale;
- financial values reassessed in line with inflation and good practice;
- clarity about the beneficiary (whether it is the occupier or the bill payer that should receive GSS);
- the payment method (e.g. BACS, cheque, etc.); and
- the requirement on customers to make claims versus companies paying GSS automatically.

We would welcome further clarity about when Ofwat intends to do a full review of GSS.
From April 2017, if there has been a reasonable degree of competition activity (i.e. new retailers entering the market and customers switching), Ofwat could look to consult soon after market opening. We propose this could be within 12 months as leaving it later could push legislative amendments two years beyond launch date and erode consumer confidence.

Q4 Do you agree with our proposal to allocate each service standard to either wholesale or retail?

We think that Ofwat’s allocation of GSS to either the wholesaler or retailer needs to be explained further. The way it is currently laid out in the table in the consultation document will lead to unwelcome potential for confusion among wholesalers, retailers and customers. It is not clear if the allocation refers to the company that:

- Should deliver the guaranteed standard;
- should ultimately register the regulatory penalty;
- is responsible for making the GSS payment; or
- is ultimately responsible for funding the payment.

Here are two examples where the allocation table lacks clarity on how GSS should apply:

**Example 1:**
A customer suffering a service failure outside of normal business hours contacts a wholesaler for help. A subsequent failure by the wholesaler to keep an agreed appointment ought to result in the wholesaler funding a GSS payment. It would be unfair to expect the GSS failure for either arranging or keeping the appointment to be allocated to or funded by the retailer in such a case.

**Example 2:**
A wholesaler gives sufficient notice of a supply interruption to the retailer, but the retailer then fails to pass this on to the customer. Even though the wholesaler is responsible for notifying customers about the interruption, in this case, the retailer is at fault and ought to fund the GSS failure.

Ultimately, the market codes require the retailer to handle the GSS claim and make payments to the customer. We feel this is the clearest and easiest way for the customer to claim GSS and receive payment.

If the company that fails to meet the requisite standard is the wholesaler (or its representative) then it should fund the GSS payment. Market codes allow for settlement of any payment the retailer made on behalf of the wholesaler.

However, confusion over responsibility of payment may lead to delayed payments to customers due to disputes between wholesaler and retailers. This must be avoided.
Q5 Do you agree with how we have proposed the service standards be allocated?

No, we do not agree that the allocation as presented in the table deals with the grey areas highlighted in Question 4 above.

We also would want assurances from Ofwat that it has a mechanism for resolving GSS disputes in a reasonable amount of time (i.e. within weeks). This is particularly important if retailers and wholesalers cannot agree on responsibility.

We do not think that dispute resolution timescales measured in months are proportionate when GSS payments are typically in the £20 to £50 range. Ofwat previously investigated whether it should outsource some of its dispute handling. Is outsourcing still an option?

Q6 Do you agree with the proposal to recommend that this allocation is included in the GSS Regulations?

We believe that Ofwat’s rationale for the allocation needs to be explained further if this is going to be included within the GSS regulations.

Other comments

Possible unforeseen consequences for household customers

Some water companies currently offer “enhanced GSS”. This is where they offer a service standard or financial payment above what is mandated by GSS. If in the future water companies were to rescind their provision of enhanced GSS (e.g. to lower their prices for non household customers), household customers could be negatively impacted.

4. Preliminary Impact Assessment consultation questions

Q1 Do you agree with our approach to this draft impact assessment? If not, how do you think this could be improved and why?

We agree that GSS is currently straightforward to implement and companies that successfully operate a right first time approach to customer service should not typically have to make many GSS payments.

In a recent Ofwat workshop, retailers expressed concerns that large scale GSS payments could present them with a cash flow problem. Retailers with cash flow concerns may be less likely to participate in the market which in turn would limit customer choice.

Therefore, Ofwat should consider the financial impact on retailers that might be obliged to make a multitude of GSS payments to customers quickly but are not able to recover these funds immediately from wholesalers that are at fault.
Q2 Do you agree with our analysis, and in particular our key assumptions? If not, please provide your views and any evidence you think could help to improve it.

Ofwat has given the reasoning behind its key assumptions. However, it is difficult to comment on the analysis. Ofwat refers to a “sensitivity analysis” without an explanation of the underlying calculations. The sensitivity analysis might have to be explained more clearly.

Ofwat states, on page 16 of its impact assessment, that since 2009 it has made six determinations (presumably related specifically to GSS?) and that “we progress each determination efficiently. We estimate our staff costs needed to make each determination equate to only around £9,900 to £15,400.”

As the payment to customers is between £20 and £50, it seems that a range between £9,900 and £15,400 is disproportionately expensive and not efficient. Perhaps Ofwat could clarify these costs further.

5. Enquiries

5.1 If you have any questions about CCWater’s response to this consultation, please contact:

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