Consultation on Ofwat’s approach to enforcement
1. Introduction

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

1.2 We welcome the opportunity to comment on Ofwat’s consultation on its revised approach to using its regulatory enforcement powers.

2. Executive summary

2.1 CCWater welcomes Ofwat’s review of its approach to applying its enforcement powers where regulated water companies fail to comply with their statutory or licence obligations.

2.2 We agree that Ofwat’s enforcement powers should be applied:

- As a last resort if companies cannot or do not amend their behaviour to address their non-compliance and apply appropriate remedies for customers as a proposed settlement. However, we would like to see Ofwat act in a timely manner if there is customer detriment caused by a company’s non-compliance.

- In a proportionate way, relative to the scale and level of harm, risk or detriment to customers caused by the non-compliance, and taking into account any harm or detriment that may arise from a lack of enforcement.

- In a way that identifies remedies - through either company settlements or Ofwat enforcement actions - that focus on service improvement and/or compensation for customers who are affected by the company’s failure.

2.3 We also agree, subject to the concerns set out below, with Ofwat’s proposed process for assessing evidence of non-compliance with company obligations, based on:

- Identifying which party is best placed to apply enforcement, if a company cannot or will not provide a suitable settlement.

- Assessing the suitability of the various enforcement actions available (if Ofwat is deemed as the appropriate body to apply this).

- Analysis of the cost of applying an enforcement action compared to the value of the benefits of this to customers.

2.4 We have the following suggestions to add greater clarity in the proposed approach to enforcement:

- It is unclear whether the self-reporting of non-compliance by a company may lead to a more lenient settlement or enforcement action. While we accept that a more lenient approach in this scenario may incentivise companies to self report failures, addressing the detriment or risk to customers should be the guiding principle for the form of settlement or enforcement that is agreed.

- We would welcome clarity in the revised approach to show how it will work alongside the forthcoming charging rules for new connections. The revised enforcement approach should strengthen the effectiveness of these new rules.

- We would welcome clarity on what actions Ofwat would take if a company failed to fully comply with information requests from Ofwat in the process of assessing a breach of statutory or licence conditions.
• We would welcome a stronger statement that companies and Ofwat should be transparent in communicating to customers on the reason for the non-compliance, actions taken to resolve it, and the compensation or redress that will be made to customers, and when.

• We would welcome confirmation from Ofwat that it will
  o Recognise the role of CCWater and other stakeholders in possibly ‘triggering’ the settlement/enforcement process through alerting Ofwat to possible non-compliance through monitoring of company performance or analysing complaints.
  o Consult stakeholders, including CCWater, on the options available for applying a remedy (either through a company settlement or Ofwat enforcement action).

3. Responses to the consultation questions

Q1: Do you think the proposed changes to our approach to enforcement are proportional and targeted?

Yes. We agree with Ofwat’s processes for:

• The provision of information from a company to identify the cause of its non-compliance, and whether it is a ‘one off’, an intermittent issue or an on-going problem.

• Identifying which party is best placed to apply enforcement (the Environment Agency, Natural Resources Wales or Drinking Water Inspectorate may be the relevant party in some cases).

We also agree that during this process, companies should have the ability to propose an appropriate settlement for customers. This should include proposed actions to prevent a repeat of the issue alongside redress to customers that is proportionate to the level of detriment caused. This may be effective at changing company behaviour and may mean no Ofwat enforcement is needed.

If a company fails to propose a settlement (or its settlement offer is deemed inappropriate or insufficient), we agree that Ofwat should assess:

• What form of enforcement is most appropriate to drive the company to resolve the problem and give sufficient redress to customers. An enforcement order to improve service performance for customers and/or provide customers with financial compensation could be a more effective solution than a fine.

• A level of enforcement (such as financial compensation to be given to customers) that is proportionate to the scale and level of detriment to customers.

We agree with the hierarchical ‘pyramid’ of options for enforcement actions (leading up to special administration by Ofwat) set out in the consultation paper.

Compliance with charging rules

The document confirms that Ofwat’s process of settlement/enforcement would apply if it considers that a company is not complying with an Ofwat set code or rule. We agree that companies should be able to offer an appropriate settlement in such a scenario, with enforcement by Ofwat to follow if this is deemed insufficient.
This process should also apply to the emerging charging framework for new connections. As there have been longstanding concerns about the charges for laying new infrastructure, delays in completing this work, and Ofwat delays in handling charges disputes, the forthcoming framework should lead to fewer disputes. We would like to see confirmation that the enforcement regime will reinforce this.

Other points for clarification

We have some further suggestions to add further clarity to the proposed approach:

- Page 6 of the paper sets out the overall approach to assessing whether enforcement actions are required. We suggest Ofwat’s process should include an assessment of the scale and impact of any customer detriment or risks caused by the issue. This should underpin any decision on a company settlement and/or Ofwat enforcement.

- Page 15 paragraph 33 sets out how a breach of a company’s obligations would be discovered by Ofwat. It is unclear whether the self-reporting of non-compliance by a company may lead to a more lenient settlement or enforcement action. While we accept that a more lenient approach in this scenario may incentivise companies to self-report failures, addressing the detriment or risk to customers should be the guiding principle for the form of settlement or enforcement that is agreed.

- Page 17 paragraph 44 explains how Ofwat would gather information from a company to determine whether a contravention has occurred (and to what extent). We would welcome clarity on what actions Ofwat would take if a company failed to fully comply with information requests from Ofwat. If this means Ofwat will proceed to considering enforcement options more quickly, this should be made clear.

- We would welcome a stronger statement that companies and Ofwat should be transparent in communicating to customers the reason for the non-compliance, the actions taken to resolve it, and the compensation or redress that will be made to customers, and when.

- We would also welcome an indication from Ofwat that it will consult stakeholders, including CCWater, on both a proposed company settlement and/or enforcement action. CCWater’s knowledge of the company, through our complaints work and local monitoring may give valuable perspective on the options being considered.

- CCWater may also provide Ofwat with information (from our own monitoring of company performance or from customer complaints analysis) that could act as evidence of non-compliance. We would welcome recognition of the potential of Ofwat’s stakeholders to supply information that may ‘trigger’ a settlement/enforcement process.

Q2: Which areas, if any, would you like Ofwat to focus on in any future review of our approach to enforcement?

The consultation paper explains how Ofwat encourages companies to self report any breaches of its conditions, and be proactive in proposing settlements as a way of providing redress for customers. As a result, this may mitigate against the need for Ofwat enforcement.

A future review of Ofwat’s approach could focus on how the new regime for the monitoring company performance could have a role in preventing non-compliance. This would mean that, even if a company is currently compliant, any evidence of a downward trend in performance could see Ofwat warn a company that there is the potential for non-compliance and resulting detriment to customers. It may be worthwhile looking at what
signals could be given to companies in this scenario to help prevent a failure to customers in the first place.

Enquiries

Enquiries about this consultation response and requests for further information should be addressed to:

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