



Water UK Response to the BIS Consultation on Alternative Dispute Resolution for Consumers

2 June 2014

Background

This response has been prepared by Water UK, a members' organisation which represents most of the UK's water and sewerage undertakers.

We note that Water UK was not included on the list of consultees, no doubt on the basis that the water and sewerage undertakers provide their services to consumers pursuant to the undertakers' statutory obligations under the Water Industry Act 1991 (WIA). As there are no contracts with consumers for water and sewerage services, the sector is therefore one to which the provisions of the ADR Directive do not apply.

However, while this means that many of the more detailed aspects of the consultation are not directly relevant to the water sector, we would nonetheless like to comment in particular on Question 1

Q1 Possible gaps in ADR provision

The consultation notes in paragraph 11 that a gap in the water sector in relation to ADR provision has previously been identified.

While a binding method of alternative dispute resolution is not currently available in relation to most disputes in the sector, the water industry in England and Wales is currently working with stakeholders such as the sector's economic regulator, Ofwat and the Consumer Council for Water (CCWater- the sector's consumer representative body) to put in place a new ADR service to remedy this gap. (Separate arrangements apply in Scotland, where an independent dispute resolution service is provided by the Scottish Public Service Ombudsman.)

When things go wrong, customers expect their suppliers to respond to their complaint quickly and fairly. In most cases, that is exactly what happens in the water sector in England and Wales. The sector provides about 24 million

customers with water and wastewater services. At the moment, water companies receive about 150,000 written complaints a year, a number that has fallen by almost 45% in five years. While water companies themselves resolve most complaints, in some cases, CCWater acts as a mediator to resolve complaints; or Ofwat makes a decision where it has legal powers to do so.

But in a limited number of cases – perhaps a few hundred cases per year – a dispute occurs between water companies and customers that cannot be resolved satisfactorily under these arrangements. The principal reason for these disputes being “deadlocked” is that at present there is no organisation that can provide consumers with a binding resolution for their dispute.

The new ADR service that is being established aims to provide a fair and effective way of resolving these complaints, with the decisions of the ADR service being binding on water companies.

This service will be funded by the industry – individual customers will not have to pay to use the service – and governance arrangements are being put in place to ensure that it is, and is seen to be, impartial and independent from the industry.

We will shortly be inviting submissions from providers who may wish to operate this ADR scheme for the water sector, and we currently expect that the service will be operational later this financial year.

Q5 Minimum and Maximum settlement values

The proposed water sector scheme does not have a minimum award sum but does impose maximum values, namely, £10,000 for disputes involving household consumers and £25,000 for disputes involving non-household consumers. These limits aim to ensure that the great majority of disputes which are currently unresolved are handled by the scheme but that those involving more significant sums are subject to the more detailed scrutiny that court proceedings involve. Water UK estimates that the current thresholds will allow the majority of disputes to be resolved in this manner.

Q6 Funding models

The consultation suggests that reliance on case fees alone is not a suitable way to fund an ADR scheme. Water UK agrees with this conclusion.

In any sector, it is difficult for a potential provider of ADR services to provide the necessary resources to allow satisfactory levels of service where it does not know the likely number of cases that will be submitted to it in any year.

This applies with greater force in sectors such as water where there is a relatively complex legal background to most disputes. While this remains to be tested through the procurement process, it seems likely that any service provider will require to be paid an element of fixed funding in order to acquire and retain the specialist skills to resolve disputes in the sector.

On the other hand, Water UK considers that individual case fees are an essential element of funding as well. Those companies with the greatest number of unresolved disputes will therefore make the greatest financial contribution to the service.

Q23 Binding decisions

The proposed water sector scheme will make the outcome of the new resolution service binding on the company, but not on the consumer.

In general, we believe that consumer confidence in such schemes will be significantly enhanced if companies are bound by the outcome of the process while giving the consumer the option to pursue matters further should he or she not be satisfied with the outcome of the process.

Q25 Possible long-term simplification of the ADR landscape

Water UK would wish the particular characteristics of the regulated sectors, including water, to be taken account of in any proposed simplification of the ADR landscape.

In many sectors, an ADR scheme could be expected to deal with relatively simple contractual disputes revolving for example around the speed of the supplier's service or the quality of workmanship. Such disputes may also arise in regulated sectors but our experience suggests that the extensive legislative framework within which regulated companies operate will give rise to disputes requiring the decision maker to understand that framework.

A generic ADR scheme, focussed on resolving contractual disputes, would therefore not, in our view, be appropriate for such disputes. Water companies would not support any proposed change to the ADR landscape which required disputes in the sector to be submitted to a scheme which was not sector specific.