

Response of Resolving Water Disputes Ltd to the Ofwat consultation on protecting customers in the non-household retail market

Introduction

This response is submitted by Resolving Water Disputes Limited (RWD) to the consultation on protecting customers in the non-household retail market dated December 2015.

RWD is the company that was set up to operate a voluntary ADR scheme in the water sector. The implementation of the Scheme by appointed companies came in response to an invitation to the sector to take responsibility for providing a dispute resolution service for cases which previously had no obvious means of resolution, other than by court proceedings. The industry responded enthusiastically to this invitation as a means of demonstrating its commitment to providing good customer service.

The scheme that appointed companies established, the Water Redress Scheme (“WATRS” or the “Scheme”) aims to enhance consumer confidence in the water industry by providing an easy to understand and easy to use process for the quick, effective and final resolution of so called “deadlocked disputes” between customers and companies. RWD is a wholly-owned subsidiary of Water UK and all companies that are members of the Scheme are required to enter into a contract with RWD. The operation, independence and effectiveness of WATRS is overseen and assured by the WATRS Independent Oversight Panel (the ADR Panel).

22 water and sewerage appointed companies (WaSCs), water only companies (WoCs) and small water and sewerage appointed companies/inset appointees (“appointed companies”) are currently members of WATRS. These members are also all members of Water UK although membership of Water UK is not a condition for membership. In fact, two of the members of the Scheme were not Water UK members when they first joined the Scheme.

The adjudication services themselves are provided by the CEDR Services Limited (CEDR) under contract to RWD, with scheme members being third party beneficiaries of that contract. The adjudication services are paid for by subscribing members through a mixture of annual subscriptions and case fees.

The Scheme is still at an early stage but we are delighted in the confidence that the proposals in this consultation show in the Scheme. If Ofwat confirmed the approach set out in the consultation, RWD would be pleased to work with all retailers operating in England and Wales to ensure that their customers had access to same dispute resolution service currently provided to the customers of appointed companies.

This response deals only with question 30 in the consultation.

Q30: Do you agree with our proposal to use the Customer Protection Code of Practice to require all retailers to join the WATRS water redress scheme, if they have not already done so?

RWD, as operator of the scheme, does not wish to express a view on membership being compulsory for retailers but a number of comments are offered which should assist Ofwat in considering this proposition.

- 1 When the industry, Ofwat and CC Water discussed the establishment of what was to become WATRS, it was recognised that there would be benefits in having a single, water industry-wide ADR scheme – both to avoid confusion for customers, and because a single scheme would be a more cost-effective means of delivering an ADR service for customers than multiple smaller scale schemes.
- 2 The Scheme was therefore designed to allow retailers to join. Under Rule 2.1 eligible complainants are defined as the following (our emphasis):
 - a. a person/s who receives water and/or sewerage services provided by a company in the course of its business as a statutory undertaker **and/or statutory licensee** including but not limited to the person/s on whom liability to pay charges for such services would fall
 - b. a person/s to who water and/or sewerage services are provided or are to be provided by the company in the course of its business as a statutory undertaker **and/or statutory licensee**, and the person/s who wish to have such services provided by such a company
- 3 We also consider that the scope of the Scheme (see Rule 3 of the Scheme Rules) is appropriate for disputes that are likely to arise as between a WSSL retailer and a non-household customer. We would however draw attention to the matters referred to in paragraph 10 below regarding process.
- 4 While RWD would be pleased to welcome retailers as members of the Scheme, it notes that requiring retailers to join the Scheme would create a disparity between them and appointed companies which are not required to join by the terms of their licences. There is also a question of whether compulsion is appropriate in a competitive market as the commitment or otherwise of a trader to particular levels of customer service is one method of differentiating itself from its competitors. A requirement to join WATRS might also remove some of the pressure on the scheme provider to perform if it did not face the prospect of companies choosing to leave the scheme if they were unhappy with its performance.
- 5 The success of the Scheme to date in attracting members and the arrangements in place to ensure the independence of the Scheme suggest that in practice, new retailers will in any event wish to join it.
- 6 The oversight provided by the ADR Panel is designed to ensure that the scheme is, and is seen to be independent of appointed companies. We, and the ADR Panel, would be pleased to discuss these arrangements with retailers, to ensure they have trust and confidence in the oversight arrangements. The ADR Panel recently reviewed the first

six months' operation of the scheme, making a number of recommendations for improvement – all of which were accepted by appointed companies and are being implemented.

- 7 The Scheme is funded by payments from members, the current level of these payments reflecting the contract in place between RWD and CEDR. RWD would wish to review with CEDR whether the inclusion of retailers in WATRS will require changes to the current fee structure.
- 8 An additional point which is not referred to in the consultation but which would need to be considered is that because the retail market will be on a contractual (or deemed contractual) basis, the ADR Directive and UK implementing regulations will apply. Traders will be required to give consumers information about the existence or otherwise of ADR for disputes with customers (Regulation 19(2) of SI 2015/542- The Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015) and this might in any event be expected to lead to traders wishing to nominate the Scheme as being available to customers.

The Directive does not apply at present due to the purely statutory nature of the relationship between appointed companies and their customers.

- 9 Any extension of the Scheme to retailers will also require the Scheme to be provided by an approved “ADR entity”. We understand that CEDR is currently designated as such an entity.
- 10 In order for a customer to be able to make an application to WATRS, he/she must have either a WATRS Notification letter or a WATRS Option letter. The former is issued by CC Water if the customer has exhausted his/her company's complaints procedure and after the completion of mediation and/or formal investigation by CC Water. A WATRS Option letter is issued by CC Water where the customer's dispute is subject to a formal investigation by CC Water and 8 weeks have elapsed since the investigation began or 4 weeks after the date on which a dispute has been referred to and been accepted by CC Water and the dispute is subject to mediation which is still continuing. We would therefore note that the CC Water procedure would need to be made available to customers of a WSSL retailer as it is currently to customers of the appointed companies.
- 11 Finally, we note that the consultation envisages a potentially significant role for Third Party Intermediaries. While we would expect retailers to be the main focus of complaints, it may be appropriate for the future ADR arrangements to make specific reference to the position of these intermediaries in order to clarify the respective responsibilities of retailers and intermediaries. It may also be appropriate for intermediaries to be encouraged to be part of an ADR scheme.