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CONSUMER DISPUTE RESOLUTION
CENTRE

Review of Post-Company Complaints Handling Processes in the Water Sector in England and Wales

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1. EXECUTIVE SUMMARY

This review was carried out in four phases: Phase One, an inception meeting with Water UK; Phase Two, desk-based research on the post company complaints system in the water industry, together with research into other Alternative Dispute Resolution (ADR) schemes and academic literature, to inform the review team's recommendations; Phase Three, interviews with key stakeholders and an end-to-end review of selected, redacted case files provided by Water UK; and Phase Four, analysis of the data collected. Seven specific areas were outlined by the client for review and these form the basis of the report:

1. Accessibility
2. Independence and accountability
3. Fairness and impartiality
4. Flexibility and 'future proof'
5. Effectiveness and efficiency
6. 'Expertness' and professionalism
7. Comprehensiveness and integration.

Accessibility

A number of interviewees highlighted the impact that the structure of the post-company complaints process in the water sector has on customer engagement. We found that the number of stages, their different modes of operation, and the length of time it took to traverse the complaints procedures from one end to the other, could all be detrimental to consumers in terms of accessibility.

Views on the simplicity and ease-of-use of the CCWater and WATRS complaints processes varied amongst participants. A number of interviewees felt that while CCWater was very accessible for users, the particular process employed by WATRS, that of adjudication was likely to be intimidating to some users. The potential difficulty that some consumers may have in using the scheme was highlighted by the fact that many water companies need to

go to a great deal of time and effort in preparing cases for WATRS. Some complainants, being unable to match the level of expertise and effort displayed by water companies, may therefore struggle to utilise the scheme effectively.

Though respondents to the customer service surveys analysed for this review were unlikely to be representative, our analysis indicates that consumers felt that they needed more assistance in accessing the service. Ongoing efforts to smooth the transition between CCWater and WATRS underway should alleviate this issue to some extent, but we feel that these efforts should be expanded upon.

The number of stages involved, and the different ways that they operate, is also likely to be confusing for consumers and present a possible barrier to accessibility. Considering how to best present and advertise the overall post-company complaints process for customers would be beneficial towards alleviating this.

Independence and accountability

It is positive to report that the feedback provided by the Independent ADR Panel to WATRS indicates that it effectively holds the scheme to account. In making recommendations to companies, the work of the Independent ADR Panel exceeds its specification as laid out in its Terms of Reference, and it takes a holistic view of the wider complaints processes in the water sector, encouraging synergy and with a view to improving the customer experience of the complaints processes in the sector as a whole.

Participants interviewed were asked their views on the governance arrangements that are currently in place. Not unexpectedly there was a mixture of views expressed. There was a suggestion that the Independent ADR Panel could do more in terms of improvement activity. However, there was sympathy with the Independent ADR Panel in that it had little executive capability in order to be able to undertake the activities suggested.

The conclusion of the review team is that the activities of the Independent ADR Panel have led to some important improvements throughout the

complaints process in the water sector. However, there are some areas where the Independent ADR Panel has recommended improvements or made findings, usually involving areas outside its remit, where we feel that we could recommend wider-ranging improvements. We feel these would help the water sector in England and Wales achieve a more customer-focused complaints process.

Fairness and impartiality

Research indicates that people are more likely to accept the outcome of a decision if they perceive the process and interactions with the complaint body as fair, even if the outcome is not in their favour. This is in keeping with the Independent ADR Panel's findings, which has observed that research from other dispute resolution schemes shows that users who do not achieve the outcome they are seeking may consequently feel that the process is not fair.

There is little data available as to whether customers feel that the CCWater and WATRS processes are fair and impartial, although existing evidence suggests that some customers who had used the WATRS process were dissatisfied and felt that the process was not fair and impartial. A review of a very small number of such cases by the Independent ADR Panel led it to conclude that the evidence had been considered properly in those cases, and that the decisions were fair.

The review of WATRS case files carried out for this research found that the decisions reviewed were generally of a very high standard, and well communicated. In general, they were very well laid out, with clear explanations of often complex issues, and clear reasoning and conclusions, setting out the adjudicator's reasoning as to how they reached their decision and why. There were some instances, however, where the decision might not be in the plainest language possible, and might be difficult for certain complainants to understand. A number of interviewees expressed the view that the process used by WATRS was too focused on the relevant law (as opposed to actual consumer detriment), too formal and not customer focused.

Some felt that the current process favours companies over complainants. Successfully raising a complaint to WATRS involves a complainant making effective, succinct, and sufficient arguments, and their ability to do so was sometimes brought into question, especially when considered alongside the ability of water companies to do so. Building on the accessibility problems this raises within the report, it also indicates that the post-company complaints procedures in the water sector might be structurally biased against complainants. They are not likely to possess the same capabilities as water companies to present effective, succinct, and sufficient arguments, which can have an impact on their ability to achieve fair and impartial outcomes from the scheme.

It was suggested by some interviewees that “a good customer advocate is required” for WATRS to be truly accessible. It was suggested that CCWater could play a bigger role in this area, for instance by utilising its expertise to help a complainant succinctly and persuasively make a case to the scheme. This raises questions as to whether the answer to any perceived problems with the current system is to provide an advocate for customers within the current adversarial process, or whether introducing a less formal and more inquisitorial process, with decisions made using the ‘fair and reasonable’ standard used elsewhere, might be preferable from a user perspective.

Flexibility and future proof

Both CCWater and WATRS deal with complaints from non-household customers about retailers which are members of the scheme. WATRS do not, however, deal with complaints from either non-household customers or retailers about wholesalers. Given the way in which the scope of the scheme has changed since it was established, there is a question as to whether the interests of non-household customers are best served under the current scheme.

The review team is concerned about the costs involved in dispute resolution utilising the MOSL methods available, and the way that wholesaler/retailer disputes can have an impact on the non-household customer. It is critical that, as the contracting party with the consumer, the retailer is able to

provide all of the redress that is due to the consumer. This will allow cases to be resolved in full at the WATRS stage, except where complaints exist that should have been raised separately with the wholesaler. Involving a third party, the wholesaler, in a bilateral dispute between customer and retailer will be too complicated to resolve easily, and is likely to have a negative impact on customer satisfaction.

The retailer also needs to be confident, in that case, that it is able to retrieve any redress that it has paid to the consumer, but is due from the wholesaler, quickly and without undue additional cost. The existing MOSL disputes process, though we were unable to review it in full for this report, appear to be a time-consuming process that may not be suited to resolving a dispute over responsibility for paying non-household consumer redress, especially where this is of a comparatively low value.

Effectiveness and efficiency

The EU ADR Directive requires ADR schemes to resolve disputes within 90 days of receipt of the complaint file, and to inform customers within 3 weeks if their case falls out with the scheme's remit. CCWater has a target to acknowledge complaints within 5 working days and to resolve customer complaints within 20 working days. WATRS aims to send a decision within 25 working days of receipt of application. There was no adverse comment made about these timescales.

The water sector is fairly unique amongst utility sectors, in that there is no definite limit on the time that companies can hold onto a complaint before a consumer acquires the right to pursue a remedy through ADR. There were a number of concerns expressed that perverse incentives existed, which may encourage companies to hold onto complaints longer than necessary. This might mean that consumers are spending too long in having their complaints considered by the company and are not necessarily receiving an independent decision to which they are entitled. As this is not within the scope of the review, no detailed work was undertaken by the review team into the complaints handling of water companies themselves, but it was raised by several interviewees. This approach may also prevent the regulator

from obtaining an accurate picture of the way that water companies are performing.

Where a complaint is upheld, and failings identified, an appropriate remedy should be provided in all the circumstances, taking account of the impact of any failings on the complainant. WATRS are able to require a good range of remedies, but their ability to utilise them to their full benefit might be limited by their approach to complaint resolution, as opposed to investigation, and their ability to require remedies above and beyond what a complainant has asked for. Here we have suggested that WATRS consider producing guidance on when to require apologies, and that the Independent ADR Panel consider amending scheme rules to give WATRS more freedom in reaching remedies beyond the scope of what a consumer has articulated when bringing their complaint to the scheme.

Using a more inquisitorial method of dispute resolution, and moving towards a 'fair and reasonable' standard of decision-making, outside of purely legal rights and responsibilities, would be beneficial if WATRS were to seek to put complainants back into the position they were in, before detriment occurred. Complainants in general cannot be expected to understand the full reasons behind a conflict arising, and an inquisitorial process can allow these reasons to be unearthed, while using the 'fair and reasonable' standard can allow lasting remedy to be crafted. WATRS should be encouraged to utilise their unique and independent perspective of complaints in the water sector to require action on the part of water companies to review policy and process, so correcting problems in the long-term, reducing complaints about specific topics, and driving innovation. This would in turn represent a greatly increased return on investment for water companies.

'Expertness' and professionalism

The review of WATRS case files found that decisions were generally excellent and well structured, showing clear reasoning and explaining often complex issues clearly. Overall, the files showed that WATRS demonstrated the necessary knowledge of the water industry in order to make its decision. There

was a general feeling among those interviewed for the research that WATRS adjudicators were professional and technically very good at what they do.

They were, however, sometimes seen as not having sufficient expertise on emerging and complex issues. This was seen to be a particular problem in relation to complaints involving wholesalers and non-household retailers. However, views were raised as to whether this kind of knowledge was necessary for the adjudicators as these types of problems were picked up at other stages of the process. Likewise the provision of expert advice for WATRS, which interviewees reported was only used once, should mitigate this gap.

Some concerns were also expressed that while the adjudicators had good legal abilities, they may be less proficient in terms of customer service. We also noted that the accreditation and continuous review function was limited to the (albeit considerable) ability of a few people. However, given the current size of the scheme, and the current role of their adjudicators in that they have no contact with complainants outside of providing written decisions, we did not have any major concerns in this area.

Comprehensiveness and integration

The number of stages that complainants are required to go through in the water sector is likely to produce complainant fatigue, and deter them from pursuing the complaint through the sheer effort and repetition of making a new complaint about the same issues and circumstances to three different organisations. There seems to be an appetite for an expanded working relationship between CCWater and WATRS that should allow for a more joined-up experience for consumers in this area, potentially expanding upon a recent pilot where CCWater helped consumers raise a complaint with WATRS. However, we think that much more needs to be done here to present something of a unified front-end to complainants.

Currently, systemic improvement arising from complaints data and individual complaint outcomes is undertaken within water companies, and by CCWater. From the responses we received, it is clear that the decisions made by WATRS need to be incorporated into the wider work on systemic improvement that is currently carried out.

Should closer working between CCWater and WATRS be the outcome of the review, then there might be a need for the Independent ADR Panel, or other stakeholders involved in the governance of the post-company complaints procedures, to monitor the relationship between CCWater and WATRS closely to ensure appropriate separation of responsibilities and independence. Taking responsibility for collating data for systemic improvement would also need to be carried out by a body sitting above the two schemes. Indeed, following the implementation of all or some of our recommendations, a wider consideration of how effective independent oversight of the whole post-company complaints process can be ensured, might be advisable.

2. INTRODUCTION

In July 2018, Queen Margaret University was commissioned by Water UK to carry out an independent review of the post-company complaint handling procedures in the water sector in England and Wales. The review was commissioned in light of questions raised by Ofwat and other stakeholders about the effectiveness of the current complaints procedures, following a review completed by the Independent ADR Panel which highlighted poor handling in a very small number of cases (WATRS Independent Oversight Panel, 2017).

Ensuring that complaints handling meets the needs of water and sewerage customers fits with the vision of Water UK, of 'a water sector that provides customers and communities with world-class services and enhances the UK's quality of life.' One of Water UK's priorities is to help water and wastewater companies work with others to increase levels of customer and stakeholder trust in the sector (Water UK, 2018).

Aims and objectives of the review

The focus of the review was on the user journey throughout the complaints handling system. The aim of the review was to consider how well the current system is functioning from a consumer perspective, and drawing on best practice on complaints handling, to identify any areas where there might be room for improvement, in both the short and longer terms.

Scope of the review

The review is focused on the post-company complaints handling procedures operated in the water sector, with particular focus on the role of WATRS. While it did not directly investigate the water and sewerage companies' own internal complaints handling procedures, some of the conclusions may inevitably impact on these, and where this is the case, the review comments on these. The review considers issues from the perspective of both household customers and non-household customers.

The structure of this report

In the remainder of this introductory section, details on the methodology are presented. Section Three discusses the context surrounding complaints handling in the water sector, against which the review was conducted. Sections Four to Ten of the report consider in turn each of the seven criteria for assessment which have been identified. Each section considers the relevant criteria, firstly analysing the literature on what constitutes best practice for that criteria, and then discussing how well the current complaint handling arrangements meet this, with reference to 1) the data gathered on the operation of the schemes; 2) the data from the stakeholder interviews; and 3) the analysis of the case file data. Section Eleven sets out the overall conclusions emerging from the review. The recommendations which we make on the basis of our review findings, for improvements in both the short and longer term, are set out in Section Twelve.

Review methodology

The review was carried out in four phases, as set out below.

Phase 1: Information Gathering

The research team gathered key information from Water UK to inform the later phases of the review. This included internal documentation related to case handling by CCWater and WATRS and governance information relating to the handling of complaints. Water UK was also consulted on the selection of key stakeholders, including members of the Independent ADR Panel and a selection of water companies, to be interviewed at Phase 3.

At this stage, a free-text questionnaire was also made available to complainants to provide comments on the post-company complaints handling procedures. Unfortunately, we did not receive any responses to it.

Phase 2: Desk-based research

A review was conducted of the material gathered during Phase 1, alongside publicly available information about the schemes. A review of contemporary research into other ADR schemes, including academic literature, was carried

out, in order to form conclusions about best practice, with reference to the seven specific areas outlined by the client for review:

1. Accessibility
2. Independence and Accountability
3. Fairness and Impartiality
4. Flexibility and 'Future proof'
5. Effectiveness and Efficiency
6. 'Expertness' and Professionalism
7. Comprehensiveness and Integration

Previous research into customer satisfaction with complaint handling at CCWater and WATRS was also reviewed in order to inform the later stages of the review. This consisted of data collected by WATRS, totalling 55 responses, and separate customer satisfaction data collected by DJS, totalling 63 responses (collated at Appendix 3). Given that interviewees independently opted-in to provide responses to these surveys, the data gathered is unlikely to be truly representative. This is especially true as the WATRS surveys allow interviewees to skip questions, leaving gaps in data, and as the DJS survey has evolved over time, changing the questions that it asks.

Nevertheless, this data offers a useful insight into complainant satisfaction with the WATRS scheme, and has been utilised to draw more definite conclusions about the way the scheme is operating, alongside our own interviews with industry stakeholders and representatives. Both sets of data provided space for interviewees to provide qualitative data around their views of the process, and where improvements could be made, which has also been utilised.

The purpose of this phase was to inform the interview schedule for phase 3, and to identify any specific areas that would warrant particular attention other than those already highlighted. The work done in this phase was also intended to provide a benchmark against which to measure CCWater and WATRS, and to provide a rich knowledge base to inform the overall review.

Phase 3: Interviews with key stakeholders and review of case files

A total of 31 persons were interviewed – a list of the participating organisations is listed at Appendix 1. Predominantly the interviews were one-to-one interviews, although the interviews with staff from CCWater and WATRS comprised of group interviews (one each for CCWater staff and WATRS staff respectively). In summary, interviews were conducted with:

- 16 persons from 13 water companies (wholesale and retail)
- 7 persons from CCWater and WATRS, and
- 8 persons from other stakeholder organisations.

Please note that, throughout this report, we use the term 'Representative' to indicate a quote or statement from a participant representing a water company. The term 'Stakeholder' is used to represent the remaining participants, who are involved in the water sector but do not represent a company which might be complained about using the processes that are subject to this review. This is done in order to maintain confidentiality of responses, whilst also highlighting the main differentiating factor in their backgrounds.

In addition, an end-to-end review of ten case files provided by Water UK was conducted. A semi-random method of selection took place here, based on the outcome, value, and subject of the complaint, in order to give the reviewer a broad picture of the operation of WATRS. Each of these case files included the full case file from CCWater, as well as the decision made by WATRS.

Phase 4: Analysis of data and preparation of final report

This phase involved analysing the data collected in previous phases, which was used to reach reasoned observations on each of the seven specific areas for evaluation. A draft report was prepared and presented to the client, to allow for corrections and clarifications to be made. A final report was then prepared, taking these into account.

3. CONTEXT

Complaints can be made by both household/domestic and non-household (NHH) customers. In April 2017, the retail market was opened up to NHH customers, and post-company complaints may now be made about NHH retailers to CCWater and WATRS. This has resulted in a significant increase in complaints from NHH customers - from 10% of all complaints received by CCWater in 2016-17, to 29% in 2017-18 (CCWater, 2018a).

The current process for complaints about water or sewerage services in England and Wales is summarised at Figure 1.



Figure 1 – water/sewerage complaints process

Stages 1 and 2- the company's complaints process

Where a customer has a complaint about their water or sewerage services, they must first make a complaint directly to the relevant water company (Stage 1). If the complaint is not resolved at that stage, it is escalated within the company itself (Stage 2). The company must send a substantive response to the customer's complaint within 10 days (Ofwat 2017a) from initial receipt, though in certain circumstances, a company can extend that timescale by a further 10 days.

Stage 3- CCWater

Where the complaint is not resolved at stage two, the customer can take their complaint to the Consumer Council for Water (CCWater), which provides the statutory independent alternative dispute resolution scheme to resolve complaints about water companies. CCWater may refer some

categories of complaint to another body, such as Ofwat¹, the Drinking Water Inspectorate² or the Environment Agency/National Resources Wales³

CCWater is a publicly funded (by water consumers through a charge to water and sewerage companies collected by Ofwat, at a cost of around 21 pence per year to consumers) 'water watchdog', which provides advice and support to consumers about water and sewerage services. It also advocates on behalf of consumers and carries out research on water issues. CCWater also has a statutory role in resolving complaints against water and sewerage companies. Where a complaint has not been resolved through the water company, CCWater can formally investigate the complaint, but companies are not bound to accept either its findings or recommendations. Its target is to close 70% of complaints within 20 working days, and 85% of complaints within 40 working days.

Stage 4 – WATRS

To be eligible to make an application to the Water Redress Scheme (WATRS), domestic customers must have exhausted the company's complaint procedures and have received a closure letter from CCWater. They then have 6 months within which to take their complaint to WATRS. NHH customers must also have exhausted the company's complaints procedures, but they are not obliged to take their complaint to CCWater before applying to WATRS. In practice, however, they generally go to CCWater first. WATRS will make a formal adjudication decision on the complaint.

WATRS was established in 2015 to provide an independent, impartial adjudication service. The scheme is run by Resolving Water Disputes (RWD), formerly a wholly owned subsidiary of Water UK, which is now owned by wholesaler and retailer companies who are members of Water UK. It is a voluntary scheme for suppliers and NHH retailers. A small number of retailers are not members of the WATRS scheme; these have appointed other dispute resolution companies to supply services to them. Companies can subscribe to WATRS without being a member of Water UK or a shareholder of RWD, the

¹ Ofwat has powers in relation to some types of dispute, such as anti-competitive behaviour, water or sewer main requisitions and sewer adoptions

² For complaints about drinking water quality

³ For uncontrolled discharges of sewage into the environment

only criteria for utilising the scheme is that a company holds a licence of appointment or a water supply and/or sewerage licence.

WATRS is funded by the participating companies, and the scheme is free of charge to consumers. The adjudicator makes a decision based on documentary evidence only. If the customer accepts the outcome, the company is required to comply with the decision within a specified timeframe. At present, WATRS is operated by the Centre for Effective Dispute Resolution (CEDR), under contract to RWD.

Methods of dispute resolution

As the complaint is escalated through the various stages of the post-company complaints process, the methods of resolution become increasingly formal and decision-based. The dispute resolution matrix at Figure 2 shows differing possible approaches to dealing with disputes, according to: 1) how formal or informal they are and 2) the extent to which they are focused on either agreement between the parties or on a decision being made (Gill et al, 2014).

The water company's complaints procedure is an informal process. CCWater's mediation/conciliation process is also informal, and it is focused on the parties reaching a resolution. Finally, the WATRS process is a formal adjudication process, which produces a formal decision. If the complainant remains unhappy following that decision, or decides not to use WATRS, their only recourse is to go to court.

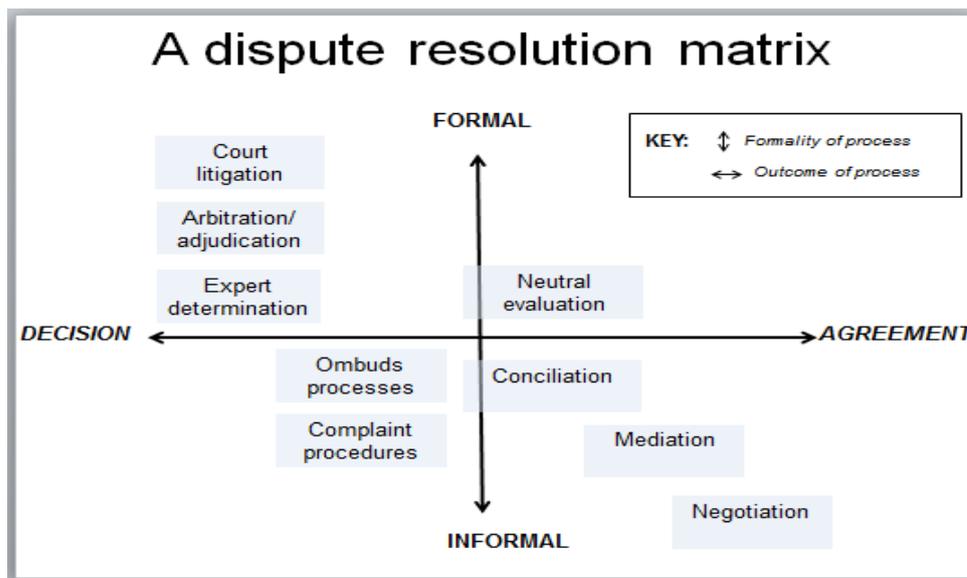


Figure 2: Differing Approaches to Resolving Disputes(Source: Gill et al, 2014)

Complaint volumes

The available complaints data suggest that the vast majority of complaints made to water companies are resolved at stages 1 and 2. Table 1 shows the number of complaints made by household customers to companies, CCWater and WATRS in both 2016-17 and 2017-18. In both years, fewer than 10% of written complaints made to water companies were escalated to CCWater, while a very small percentage of initial complaints were considered by the WATRS scheme.

While there was a substantial increase in the number of NHH complaints dealt with by CCWater in 2017/18, there was a sizeable drop in the number of complaints made to companies by household customers (CCWater, 2018).

There was also a reduction in the numbers of complaints going to CCWater, but at the same time, the number of complaints which were referred to WATRS, while still fairly low, increased by around 52%.

Table 1: Complaints data for England and Wales: household customers

	2016-17	2017-18
Written complaints to companies ⁴	83255	69324
Complaints to CCWater ⁵	7837	6815
Eligible complaints to WATRS ⁶	164	249

These figures may suggest that the vast majority of complaints are resolved informally to the parties' satisfaction, and that only a small percentage require more formal resolution. It is possible, however, that there are other reasons for the significant drop-off in complaints at each stage. This is explored further later in this report.

⁴ CCWater, 2018a.

⁵ CCWater, 2017a; CCWater, 2018a

⁶ CCWater, 2018a (this figure also includes NHH customers if applicable)

4. ACCESSIBILITY

In order to be effective, a complaints process must be available and accessible to everyone who might want or need to use it. This means (see e.g. Queen Margaret University, 2018; British Standards Institute, 2015, McBurnie and Gill, 2017; Klein, 2015; Ombudsman Association, 2017) that:

- a) It should be well publicised and clearly communicated to potential complainants
- b) it should be free, simple and easy to understand and use
- c) it should be focused on the needs of users
- d) it should seek to support vulnerable complainants

The British Standard on Complaints Handling (British Standards Institute, 2015) sets out a series of requirements regarding the accessibility of complaints processes. Information should be made available about how to make a complaint, about the complaint process itself, and this information should be easy to read. The process should be easy to comprehend and use. Complaint-handling staff should fully understand the complaint process, and possible escalation paths. They should also be trained in how to identify, record, and acknowledge complaints; and how to identify those who may need additional assistance to make a complaint.

a. Well publicised and clearly communicated

If consumers are not aware of a complaints process, they are unlikely to use it. It is therefore vital that they are made aware of the existence of a complaints process, at a time when they may need to consider using it. Signposting by relevant organisations at each stage of the process is crucial in ensuring that complainants are aware of the next stage, should they wish to use it. Such signposting is a requirement within most regulated sectors, and there is a requirement on water companies, under their licence conditions, to signpost consumers to CCWater, and to WATRS in specific circumstances.⁷ Companies

⁷ Signposting to WATRS is not a licence condition for wholesale members. NHH retailers are required to provide access to ADR under the Business Code of Practice (Ofwat, 2017b). It is a contractual requirement of RWD that all companies provide the details of WATRS on their website, and is referred to in each company's Customer Complaints Code of Practice.

are required to include information about the two schemes in any code of practice which they send to customers in response to a complaint.

When closing a case, CCWater tells the consumer that they have the option of taking their complaint to WATRS, and CCWater has a link on its website to WATRS. This suggests that consumers who have a complaint about their water or sewerage services should be fully aware of both the CCWater and WATRS schemes.

Research by CCWater (CCWater ,2017b) suggests, however, that despite the signposting of consumers at each stage of the process, levels of consumer awareness about dispute resolution processes within the water sector are low. The research further found that only 51% of those interviewed were able to name their water company as the place to go for help if they had a complaint.

This research also found that unprompted awareness of CCWater was less than 1%, and that when asked if they had heard of the organisation, 89% of interviewees had not. Of those who had heard of CCWater, only one-fifth knew that it dealt with complaints about water companies. Awareness of WATRS is also low: CCWater found that only 31% of 100 consumers who had been informed about WATRS said they were aware of the scheme (CCWater, 2018b). The clear message from a range of interviewees was that people felt that the information about WATRS was lost among other communications.

Interviewees were divided in their responses concerning the visibility of CCWater and WATRS to consumers. Though it was considered that “signposting on bills, the website, and from customer teams is very transparent” (Representative 1), it was also suggested that whilst some customers clearly understood the respective functions of CCWater and WATRS, others clearly did not (Representative 3). Some felt that the “system is a bit confusing for customers as there are two bodies, but overall [customers] have a good understanding of the roles and functions of CCWater and WATRS” (Representative 1).

Limited customer knowledge of CCWater and WATRS was put down to their relevance being only at the point of complaint, when a problem with their

water supply occurs: Representative 5 argued that the nature of water as a product leads customers to engage with these processes only when problems occur. It was unlikely that customers engaged effectively with the information provided about these services on bills (Representative 16). A general theme was that “more awareness raising [about CCWater and WATRS] is necessary” (Representative 5).

b. Free, simple and easy to understand and use

Consumers should be able to access complaints processes free of charge as charging a fee is likely to be a barrier to access. Ideally, a free phone number should be provided for people to contact the complaints scheme, and that phone number should not incur a cost when using a mobile phone. Both WATRS and the CCW are free for customers to use, though WATRS does provide a landline number for contact which will attract charges to consumers who contact them by this means.

An effective complaints process should also be simple (with as few steps as possible), clear and capable of being easily understood by everyone. It should also be made available in a variety of formats, and there should be flexibility in the methods by which complaints can be made and handled. These issues are discussed further at points c. and d. below.

The overall water complaints process has four stages: two stages with the water company, then if unresolved, CCWater, followed by WATRS if the complainant remains dissatisfied. This contrasts with the process for water complaints in Scotland, where there is a two-stage process within the company, and then a third and final stage of review by the Scottish Public Services Ombudsman. In addition, in Australia, there are only two or three stages – one or two within a company stage and then consideration by the water ombudsman.

Views on the simplicity and ease-of-use of the CCWater and WATRS complaints processes varied amongst interviewees. It was suggested that the CCWater processes were too lengthy and complex, inconsistent, and that they gave unreasonable hope to consumers in terms of outcome, at least when compared to the types of decisions and remedies offered by WATRS

(Representative 6). Others felt that “In reality, if CCWater haven't been able to achieve an outcome, you are unlikely to get any further”, and that the WATRS stage just prolongs the overall process for customers (Representative 15).

A number of interviewees felt that while CCWater was very accessible for users, the adjudicative approach used by WATRS was likely to be daunting for consumers (Representative 16) and so presented a barrier to accessibility, in terms of being easy to use. Many Representatives stated that their organisations went to a great deal of time and effort preparing cases for WATRS, often involving legal teams, and that as a result “for customers this process must be really hard, companies put in a lot of effort to use the scheme” (Representative 16) and receiving a WATRS case results in “a big flurry of work when a WATRS case comes in” (Representative 8). As a result, “from a complainant's perspective presenting a case can be much harder” (Representative 8) without the resource and expertise possessed by many of the water companies who are tasked with defending complaints to WATRS.

Customers responding to the DJS survey overwhelmingly found that they had to put in considerable effort in utilising the scheme.⁸ One respondent to the customer service survey conducted by WATRS commented in particular on the difficulty of preparing a complaint for WATRS, arguing that many people would not be able to compose a letter, let alone structure a case to the standard required by the WATRS adjudication scheme. They felt that this would therefore put complainants at a natural disadvantage compared to water companies. One of our interviewees suggested that this difficulty might lead customers to feel that they had little chance of success when bringing a case to WATRS, which might fuel a belief that WATRS was biased towards the companies (Stakeholder 8).

⁸ 21 of 63 interviewees gave this measure a score of 10 out of 10 in terms of customer effort, and 50 of 63 gave it a score of 5 or more (see Appendix 3 for the aggregated data)

c. Focused on the needs of users

Complaints processes should be designed in such a way that they are focused on the needs of those who may need to use them. This might include ensuring that:

- complainants can contact the organisation to complain through as many different communication channels as possible, at times which suit them
- all complaints literature is written in plain language, including commonly used languages and other accessible formats
- a translation service is made available
- support in making a complaint can be provided, either by the organisation itself or by signposting them to an independent advocacy or advice organisation.

For the British Standards Institute (2014), best practice requires that clear and simple information about an organisation's complaints process should be available in various languages and accessible formats on its website, brochures and other written materials. It further states that organisations should provide flexible methods for making a complaint. These might include complaints being made:

- Over the phone
- In person
- In writing, by letter, email or fax
- Through social media
- Through web-chat
- Through feedback forms (e.g. 'tell us what you think')

A review of the websites for both CCWater and WATRS indicates that some attempt is made by both organisations to help complainants submit complaints. CCWater offer flexibility and support to potential complainants by accepting complaints in a variety of formats, including face-to face meetings, although this necessitates an appointment and is presumably

geographically dependent. It also provides support to those with particular needs such as vision or hearing challenges.

To access the WATRS scheme, complainants need to download a PDF form and, once completed, upload it onto the WATRS site. CCWater has begun completing this form on behalf of its users, which we consider would be beneficial in terms of removing barriers to complainants accessing the service, and is beginning to show signs that it is increasing take-up of the scheme at the time of writing (Stakeholder 12). WATRS provides examples of successful and less successful complaints, which is helpful to those considering submitting a complaint, but the language used in guidance notes and FAQs appears legal in nature and may be intimidating to lay persons.

Analysing the customer satisfaction survey data provided to us from DJS research, we are able to draw some observations about whether the WATRS scheme is meeting the needs of users. Just under half of interviewees to the DJS surveys rated the scheme at the lowest score available of one (24 of 53 asked this question), with a further nine rating it at two out of five. Another customer satisfaction survey provided to us, gathered between 2017 and 2018 and conducted by WATRS, indicated that approximately 76% of complainants felt dissatisfied with the scheme overall. One indicator for this response might lie in a perceived lack of available assistance with using the scheme; 37 of 62 interviewees to a question about the manner of staff that they had dealt with answered that they “don't know” or that the answer was “not applicable”. Only 24 interviewees were asked if it was easy to provide the information required by the scheme, however, and the results here are more varied.

It should be noted that 86% of the interviewees to the WATRS survey were not provided with an award, which is likely to have had an effect on their overall view of the service, as we discuss in the section on fairness and impartiality. Similarly for the DJS survey, 32 of 55 gave the final decision a rating of one, indicating that they had not received what they were looking for.

Though it is difficult to assess from the customer satisfaction data gathered whether WATRS is focused on the needs of its users, the data gathered does

suggest that people are dissatisfied. Given that the majority surveyed had not interacted with WATRS staff as indicated by the DJS data, combined with our review of publicly available information, it can be suggested that complainants could be provided with more support in using the scheme. Stakeholder 14 did tell us that the WATRS scheme does provide a helpdesk function, which deals with process questions, general enquiries, and signposting functions. They stated, however, that these function signposts any legal queries to the Citizens Advice Bureau. This adds a further step to an already lengthy process for consumers, and may also present a further delay to the complainant in reaching the conclusion of the overall post-company complaint procedure in the sector.

d. Meeting the needs of vulnerable consumers

If a complaints process is to be accessible to all consumers, it must meet the needs of those who may be considered vulnerable. Significant attention has been paid to consumer vulnerability both in the academic literature (see Brennan et al, 2017), and by regulators, who have taken a proactive approach to vulnerability (George et al, 2015). There is recognition that getting it right for vulnerable consumers leads to better outcomes for all consumers, but it can be particularly challenging to ensure that a complaints process meets the needs of vulnerable customers.

Vulnerable customers are less likely to make a complaint in the first place, and should be encouraged by organisations to do so, so that it can be ensured that their needs are met.

While certain groups may be identified as more likely to be vulnerable, there is currently a move away from defining vulnerable customers by their personal characteristics towards a wider approach, which also takes into account people's wider circumstances and the nature of the product or service involved. Research suggests that most of us will experience vulnerability at some time in our life; a recent study found that 50% of UK consumers had one or more characteristics of potential vulnerability (FCA, 2017). FCA reviews of complaint handling have found that in around one in eight cases firms did not handle vulnerability issues adequately (FCA, 2016, p. 22).

Ofwat has recently had a strong focus on protecting vulnerable consumers, primarily within the context of how they are supported by water companies, and the upcoming price review, rather than in relation to complaints (Ofwat, 2018).

WATRS currently provides various ad hoc or bespoke adjustments for complainants, where it is recognised that these might be required. Following our review, we consider that this is currently sufficient, given the low number of complaints that are received. If these numbers increase, however, a more formal approach to providing assistance to complainants with additional needs will require consideration (Stakeholder 14).

These measures consist of, for example:

- Providing materials in different font sizes
- Providing materials on different coloured papers
- Providing clarification and assistance over the phone in terms of accessing the scheme
- Signposting to Citizens Advice where assistance with the legal aspects of the service is required

Overall, however, the issues identified in this section with the post-company complaints process are likely to be exacerbated for consumers who have additional needs. Both the length of the overall process and the complicated nature of the WATRS processes, being adjudicative in nature and relying to some extent on the ability of the complainant to marshal an effective argument coupled with appropriate evidence, present a gap in the services provided to vulnerable consumers (Representative 11). Vulnerable customers in particular might not have the available time or stamina to pursue a complaint over the course of a year, which might be required to see a complaint through to the final stage.

One respondent felt that “Stated very broadly - vulnerable customers would have trouble making effective arguments” (Representative 6), while another thought that “from the complainant’s perspective presenting a case can be much harder, for vulnerable and less articulate customers especially”

(Representative 8). These feelings were echoed by Stakeholders 6, 7, and 8, as well as Representatives 10 and 11, who also felt that increased CCWater advocacy when using WATRS presented the best option available for alleviating these issues. It was suggested that so long as CCWater undertook this function as part of its advocacy role, and that CCWater continued to act to the fullest of its ability in this way regardless of its own opinion of the strength of a case, this would merely be a continuation of its statutory function (Stakeholder 12).

It was also identified that an ability to use the internet was critical in order to access the WATRS scheme effectively. Representative 7 suggested that being able to raise a complaint to WATRS over the phone would be required to avoid this barrier. WATRS does provide a telephone helpline, but a complainant cannot raise a complaint using this service. Instead, it provides advice (though not legal, where instead it signposts to the Citizens Advice Bureau) and answers general queries about the service, or helps to explain decisions. This telephone helpline is positive in terms of accessibility, however we think it would benefit from wider publication to consumers, as prior to it being described to us by Stakeholder 14, we were not aware of its role or function.

5. INDEPENDENCE AND ACCOUNTABILITY

If consumers are to have confidence in a complaints process, they must be able to trust it and to have confidence that the scheme is independent from the water companies, and that it is free from bias towards those companies.

The scheme must have appropriate governance and accountability arrangements in place to ensure this. It should also be open and transparent in its operation.

While intended to relate specifically to ombudsmen, the Guide to Principles of Good Governance by the Ombudsman Association (BIOA, 2009) provides a useful starting point in considering this. The three principles which are most relevant in this context are:

- Independence

'ensuring and demonstrating the freedom of the office holder from interference in decision making'

- Accountability

'ensuring that all members of the scheme, including the office holder, staff members and members of any governing body are seen to be responsible and accountable for their decisions and actions, including the stewardship of funds (with due regard to the independence of the office holder)'.

- Openness and transparency

'ensuring openness and transparency in order that stakeholders can have confidence in the decision-making and management processes of the scheme'.

In terms of whether consumers trust schemes to be independent and impartial, research undertaken for Citizens Advice (Gill et al, 2017) found that no ADR schemes surveyed carried out research into trust levels, apart from the Financial Ombudsman Service. The report suggested that other schemes should consider incorporating questions on trust levels into any consumer

research they carry out. It would also be helpful to ask industry and policy makers about their levels of trust in the scheme.

WATRS is operated by the Centre for Effective Dispute Resolution (CEDR), which is certified to provide consumer dispute resolution in this area by the Chartered Trading Standards Institute. The operation, independence and effectiveness of WATRS is overseen and assured by the WATRS Alternative Dispute Resolution Panel (the Independent ADR Panel) which has been established to ensure the integrity of the Scheme. The Panel has eight members:

- 3 water industry representatives
- 1 representative appointed by Ofwat
- 1 representative appointed by CCWater
- 3 independent members

The chairperson is one of the independent members.

The Resolving Water Disputes (RWD) website provides access to a wide range of information concerning the WATRS scheme. However, it would not necessarily be easy for complainants to find, except through the WATRS website. It also does not explain the difference between the Independent ADR Panel, and RWD, which may cause consumer confusion.

This website includes details on its governance arrangements, minutes of Independent ADR panel meetings and decisions made by the scheme. However, there is no facility for people with additional communication needs to be able to access the information. The information is not available in Welsh or in any language other than English, nor is it advertised how people with such language needs can access it. In addition, for people with visual or hearing impairments, there is no provision for access to the information in any special format.

The Independent ADR Panel's role (Water UK, 2015) is to ensure that the WATRS scheme adheres to the following principles:

- Independence

- Fairness and Impartiality
- Proportionality
- Consistency
- Transparency
- Effectiveness
- Accountability
- Accessibility

From a review of the board minutes and reviews provided, it is positive to report that the feedback provided by the Independent ADR Panel to WATRS effectively addresses concerns around these areas. In making recommendations to companies, CCWater, Ofwat, and itself, the work of the Independent ADR Panel exceeds its specification as laid out in its Terms of Reference (Water UK, 2015). It takes a holistic view of the wider complaints processes in the water sector, encouraging synergy and with a view to improving the customer experience of the complaints processes in the sector as a whole. As a result of this, many of the recommendations contained within this report share a similar ethos and are broadly in line with the recommendations made by the Independent ADR Panel. This indicates that the direction of travel for the post-company complaints handling processes in the water sector is positive, and towards an improved customer experience.

Participants interviewed were asked for their views on the governance arrangements that are currently in place. Not unexpectedly, a mixture of views were expressed. While some felt that the Independent ADR Panel provided a strong challenge to retailers (Representative 1) and that transparency and engagement between the Independent ADR and the industry was good (Representative 4), other interviewees felt that the governance relationships were 'bland' or 'fine' (Representatives 14 and 16). One person suggested that the Independent ADR over-scrutinised the scheme and that the role of the Independent ADR Panel should be more of a 'critical friend' than an oversight body (Stakeholder 12), while another interviewee argued that the relationship should be made more robust (Stakeholder 2). It was suggested that organisations not represented on the Independent ADR Panel felt that they had no voice (Representative 3). This

lack of representation on the Independent ADR panel may be behind concerns that there was a lack of clarity over the role of the Independent ADR Panel (Stakeholder 12 and Representative 13).

In terms of the activities of the Independent ADR Panel, there was some criticism concerning its oversight of the activities of WATRS. These included concerns about inconsistency in how adjudicators determine the balance of probabilities (Stakeholder 3); the content of decision reports (Stakeholder 4); and that the focus of the Independent ADR Panel tended to be on the 'negatives', when it should also be highlighting the 'positives' (Stakeholder 12) of the WATRS operation, celebrating its successes as well as highlighting areas for improvement. In particular, concerns were raised that the three cases per year reviewed by the Independent ADR Panel were unrepresentative of typical casework (Representative 13 and Stakeholder 12). Finally, there was one suggestion that the Independent ADR Panel could do more in terms of improvement activity (Stakeholder 4). This was tempered by comments from other stakeholders who expressed sympathy with the Independent ADR Panel, in that it had little executive capability in order to be able to undertake the activities suggested (Stakeholder 2, 3, 4 and 9).

The Independent ADR Panel has made some important improvements to the scheme. Our review of the board minutes, overall reviews, and end-to-end case reviews, alongside data gathered on WATRS and our review of their cases, indicates that a good dialogue exists between the two parties, and that considerable efforts are made by WATRS to incorporate the recommendations made by the Independent ADR Panel. Notable examples include:

- The Independent ADR Panel recommended, as documented in the third review (WATRS Independent Oversight Panel, 2018) that WATRS should review the way it assesses the burden of proof in a case, particularly with reference to the ability of a customer to prove a negative, for instance that they had not used a certain amount of water. The Principal Adjudicator responded to this by issuing a Policy Statement on Burden and Standard of Proof to all adjudicators, clarifying that adjudicators should acknowledge the imbalance of

resources that exists between companies and complainants when assessing the burden of proof. As part of this Policy Statement, it was clarified that adjudicators should request additional evidence from a company and draw appropriate conclusions where the company continues to fail to provide the requested evidence.

- The Independent ADR Panel recommended, as documented in the 6-month review (WATRS Independent Oversight Panel, 2015), that WATRS produce guidance on the levels of award it would be able to make on non-financial losses. This was a response to feedback from across stakeholder groups, to help manage complainant expectations of redress, and reassure all parties involved that financial awards were made in a consistent manner. WATRS in turn produced a publicly available guide to compensation for inconvenience and distress, detailing four tiers of awards available, and providing example cases for each tier to guide staff and complainants on what to award, and what to expect, in terms of redress.
- The Independent ADR Panel recommended, in the second review of WATRS (WATRS Independent Oversight Panel, 2016), that measures be taken by WATRS to improve the accessibility of language used by adjudicators when informing complainants of their decision. This was in response to a customer satisfaction survey undertaken by CEDR in which nearly half of interviewees had reported that the written decision provided was “not at all clear” or “slightly clear”. The Panel concluded that the language utilised was too technical (in legal terms) for some customers to follow the reasoning, and that this might have an impact on acceptance rates and overall complainant satisfaction. This began a process of continuous review of the language used by WATRS across all of its communications, and the production of a decision template to ensure that complainants were provided with all relevant information to help them understand how WATRS reached a decision.
- The Independent ADR Panel considered, in its third review (WATRS Independent Oversight Panel, 2018), that the transition for consumers

between the CCWater stage and the WATRS stage was not as smooth for complainants as similar transitions in other sectors. It highlighted in particular the need for a complainant to fill out a separate application to WATRS, after having already done so with CCWater. This has resulted in a trial period where CCWater is assisting complainants in filling out their application to WATRS.

However, there are some areas where the Independent ADR Panel has recommended improvements or made findings (usually involving areas outside its remit) where we feel wider-ranging improvements could be recommended, which would help to realise the Independent ADR Panel's vision for a more customer-focused complaints process in the water sector.

Conducting an end-to-end review in September 2017 (WATRS Independent Oversight Panel 2017), the Independent ADR Panel highlighted the differences between the intended post-company complaints process as it was designed, and the actual experience of three customers. This highlighted that the intended length of process, at 65 days, was greatly exceeded in each case, and that the second stage of the process, where a complaint is escalated internally within a company, had not been utilised. These delays occurred between the water company's handling of a complaint, and the complainant raising the issue with CCWater.

Recommendations were made to Ofwat to look at how regulatory levers could be used in order to shorten this timescale. We highlight elsewhere in this report how the length of time a complaint takes can seriously impact accessibility and satisfaction, and would endorse these recommendations.

6. FAIRNESS AND IMPARTIALITY

An effective complaints process should be objective, impartial and evidence based. Complainants should be treated with respect and fairness (Queen Margaret University, 2018). Research for Citizens Advice (Slater and Higginson, 2016) found that consumers expect that, when they make a complaint, they will be treated fairly, with respect, courtesy and empathy and as a valued customer.

The concept of 'fairness' in complaints handling can have a number of meanings. Firstly, there is across various regulated sectors a general principle that customers should be treated fairly, including the investigation of their complaints. Secondly, there is the fairness of the complaints process itself, and whether complainants perceive it to be fair. One of the advantages of complaints processes over the courts is that they are more flexible and, rather than basing their decisions entirely on the law, they can take a more subjective approach in looking at what is fair in the individual circumstances. Ombudsman schemes use a 'fair and reasonable' standard when resolving complaints.

Justice theory suggests that while distributive justice (whether the outcome was fair) is important, satisfaction with complaint handling also depends on procedural justice (the extent to which the processes used are viewed as being fair), and on interactional justice (the extent to which the complainant feels they were treated fairly during the process). Research suggests that where an outcome is negative, high levels of procedural and interactional justice, particularly the latter, can go a long way towards mitigating the disappointment with the outcome and increasing its acceptability (See e.g. Thibault and Walker, 1975; Lind and Tyler, 1988). One study found that perceived procedural justice is even more important when outcomes are not in favour of the complainant (Grootelaar and Van den Bos, 2018). The main elements of perceived procedural justice (Van den Bos et al, 2014) are that⁹:

⁹ It should be noted that, for the purposes of this review, we did not conduct direct research into complainants perceptions of justice. We have built the conclusions and recommendations that follow from our analysis of interviewee responses and existing customer research data, which was not designed specifically with assessing perceptions of justice.

- People want to be heard: they want to be able to present their case
- Individuals want to have some influence over the process, such as being able to submit evidence they feel to be important
- They want to be made aware of, and kept informed of, the process, the individual steps and the reasons that lay behind the final decision; and
- People want to be treated with respect throughout the process.

It is therefore important that complaints processes recognise this, and take into account procedural and interactional justice considerations, both in terms of the rules of the process, and also in terms of how it is operated by customer-facing staff. Training here will also be important to ensure that complainants are treated politely, with respect and with empathy throughout the process.

Managing Expectations

It is also important that those working within the complaints process have the ability to manage a complainant's perceptions of what has taken place and their resultant expectations of redress (Gilad, 2008). Good expectations management is a critical element of ensuring satisfaction where the customer's expectations of distributive justice are not met – where they do not receive a positive outcome, or where the positive outcome is not of the size or scope that they had sought. It relies upon a complaint handling culture that is open and empathetic, and effective guidance and training for complaint handlers to ensure consistent and effective customer experience of the complaints process. Effective expectations management is likely to involve setting out likely complaint outcomes at the start of the complaint process; demonstrating an understanding of the complainant's position, and appropriate empathy with their experiences. Complaint handling bodies should therefore provide guidance and training to complaint handlers on making decisions, communicating findings effectively and persuasively, and communicating with empathy.

Some stakeholders felt that complainants had unrealistic expectations (Stakeholder 1, Representative 2). Representative 1 felt that CCWater has

negatively affected outcomes for companies in the past because it provides opinions that lead customers to have higher expectations, although another thought that CCWater had become more consistent, and was now less emotional and more reasoned than before (Representative 3). Others thought that CCWater still raised expectations, which WATRS then brought down again (Representatives 10 and 11) Some Stakeholders (6,7, and 8) thought, however, that CCWater worked hard to manage expectations throughout the whole process. If there is a failure to manage complainants' expectations from the start of the process, they are more likely to consider the process to be unfair, which will impact their overall perceptions of justice in the process.

Impartiality and objectivity

Another key aspect of fairness is ensuring that the process itself and how it operates is, and is seen to be, impartial and objective. Complaints should be considered in an equitable and unbiased manner, and dealt with without bias or prejudice. Decisions should be made in accordance with the rules as publicised, on the basis of an independent and impartial evaluation of all relevant evidence. The organisation should implement policies and/or guidelines that set out the behaviour expected of both its staff and complainants. The reasons for decisions should be clearly set out and explained to the parties, and parties should be made aware of how a decision may be challenged. If a complaint is made about a member of staff, the investigation should be carried out by someone else (British Standards Institute, 2015; Ombudsman Association, 2017).

An important aspect of impartiality is ensuring that the rules and mechanics of the entire process are clearly set out, and are seen to be fair and impartial. It is equally important that those who deal with the complaints act in an impartial and objective way. Complaints handling staff /decision-makers must take care to ensure that they are neutral in their treatment of parties. They should be aware of how decisions can be affected by unconscious bias, and should take action to ensure that this is minimised (Ombudsman Association, 2018). Staff should receive appropriate training in order to ensure that they

are aware of such issues and take these into account in their decision-making.

Another important aspect of managing expectations is making sure that complainants are clear from the start that the process is impartial, rather than taking their side. Research for Citizens Advice (Gill et al, 2017) found that, while most consumers did not expect ADR schemes to take the consumer's side, and understood the need for them to be objective, some also wanted the scheme to help them with their complaint, particularly at the start of their complaint. There is a difficult balance to be struck here, in ensuring that complainants are able to access and use the complaints process, while ensuring that an impartial approach is maintained.

While legal representation is not the norm in most ADR processes, a challenge which may arise within a more formal dispute resolution process such as adjudication or arbitration is that one party (generally the company complained about), may employ such representation. If, as is likely, the other party does not have the resources to pay for legal representation, this presents a difficulty for the decision-maker in terms of treating the parties in an equitable way.

International guidelines for arbitrators (Chartered Institute of Arbitrators, 2011) recognise this dilemma and suggest that, where arbitration schemes involving consumers, small businesses, not-for-profit organisations or similar types of party do not have provisions on this issue, the arbitrator may wish to carry out their own research on the possible grounds of success of a party who is unable to represent itself effectively; raise any points discovered from this research with all the parties, and invite them to present arguments on them, without indicating their view on the merits of the points; and ask questions of witnesses and of the weaker party which will enable it to present its case equally and fairly. They can then reach a decision on the basis of the parties' submission and their own research, while being careful not to show bias in favour of either party.

There is little data available as to whether customers feel that the CCWater and WATRS processes are fair and impartial. There is some limited evidence

that some customers who had used the WATRS process were dissatisfied and felt that the process was not fair and impartial. Customer satisfaction research carried out by the Independent ADR Panel in 2017 (WATRS Independent Oversight Panel, 2018a) found that 81% of customers who had used WATRS were very or somewhat dissatisfied with the outcome. It also found, however, that 77% of customers who had used WATRS were not awarded anything they had asked for, while 19% had been awarded some of what they asked for, and only 4% got everything they had asked for.

A recent review by the Independent ADR Panel of a very small number of cases where customers has raised concerns about the WATRS process led it to conclude that the evidence had been considered properly in those cases, and that the decisions were fair (WATRS Independent Oversight Panel, 2018b).

The review of WATRS case files carried out for this research found that the decisions reviewed were generally well communicated and of a very high standard. In general, they were very well laid out, with clear explanations of often complex issues, and clear reasoning and conclusions, setting out the adjudicator's reasoning as to how they reached their decision and why. There were some instances, however, where the decision might not be in the clearest language possible, which might be difficult for some complainants to understand. The Independent ADR Panel has noted that 'some of the language in decisions could have been more "every day", and it is possible that some users have not fully understood the adjudicator's reasoning' (WATRS Independent Oversight Panel, 2018b). One Stakeholder (12) interviewed said that: "plain English is aimed for, but some terminology or concepts are difficult to make understandable to the average reading age, and this causes problems".

Some Representatives felt that WATRS was viewed well by industry and made good decisions, quickly (Stakeholder 9). Decisions were seen as 'fair, well researched, well explained and persuasive' (Representative 2), and others took the view that WATRS decisions had greatly improved and were now more consistent.

Other, wider concerns were raised about the fairness of the WATRS process. A number of interviewees expressed the view that the process was too formally legal for complainants to navigate effectively. Drawing from our considerations in the accessibility section on the legal nature of the WATRS adjudication process, some Representatives felt that it was likely to be daunting for consumers, that it was too formal and focussed on legal rights and obligations, and that it was not customer focused.

Many Representatives stated that their organisations went to a great deal of time and effort preparing cases for WATRS, often involving legal teams. There is “a big flurry of work when a WATRS case comes in” which means that “from a complainant’s perspective presenting a case can be much harder” (Representative 8). One Representative (16) noted that “for customers this process must be really hard, companies put in a lot of effort to use the scheme”.¹⁰ Complainants are unlikely to have the level of resource and expertise which many of the water companies who are tasked with defending complaints to WATRS will have. This indicates that the WATRS processes are much easier to utilise for water companies than for complainants, and raises concerns that this represents a structural bias towards companies over consumers.

In order to achieve a balanced playing field between consumers and companies in an adjudicative setting, there would be a need for consumers to be provided with similar levels of legal assistance. Without such ‘equality of arms’, we have concerns that whilst the decision making process might be fair and impartial in itself, the system employed may naturally favour one side over the other. In a business-to-business case, however, this may not have such a pronounced effect, although small or micro businesses may encounter similar difficulties to household consumers. Even where a business customer has access to legal assistance, the water company may be able to marshal greater financial and legal resources, which may still play a role in the outcome of a case.

¹⁰ This data was originally analysed as part of our investigation into the accessibility of the WATRS scheme, but has been repeated here as it is equally relevant in terms of fairness and impartiality

Some noted that it was difficult for customers to understand the respective roles of CCWater and WATRS, or their relationships with companies. Cases which reached the WATRS stage were often by their nature complex, which made it difficult for complainants to understand what was going on.

Stakeholder 1 thought that WATRS was “too legalistic, too cold and communication is poor, and shows a lack of empathy”. Another stakeholder (3) thought that, while there had been recent improvements in communication in terms of keeping complainants informed, there was a more fundamental problem in that the CEDR model may not be the most appropriate approach. Stakeholder 3 expressed concern that “the adjudicator is not always getting to the bottom of the issue”- probably because the process is an adjudication, rather than an investigation, and so the focus is on reaching a decision based on the evidence available rather than seeking the objective ‘truth’ of the matter through further investigation.

Some felt that both the legislation and the current process favours companies over complainants, which has an impact on the fairness of the process. The process of complaining to WATRS also involves making effective, succinct, and sufficient arguments (Stakeholder 13), which theoretically could allow for cases to be decided upon a technicality or the quality of argument made (Stakeholder 5). Some of the case files reviewed for this report did contain indications that, had the customer been asked for certain further evidence, it was possible that there may have been a different outcome. It is important to consider, however, that the customer may have been asked to provide this information before WATRS had made a decision, and had declined this opportunity.

In the WATRS customer satisfaction survey data from CEDR, several complainants say that they feel the adjudicator has been persuaded by the water company involved, or has accepted their information without requiring evidence – whereas the scheme has not accepted the complainant's word on the same basis. This general perception that the scheme is biased, combined with the fact that, at the end of what is essentially a four-stage process (Representative 7), customers have to restate their complaint again

to the WATRS scheme, could impact the willingness of complainants to progress to their complaint beyond the CCWater stage.

One interviewee raised concerns that those customers who do reach the WATRS stage are unlikely to succeed (Representative 15). This may, however, have been from a particular company's perspective, as data provided by CCWater shows that 24% of WATRS cases in 2016-17 required further action by the water company, and a further 10% were settled successfully. Others pointed out that it must be very disappointing for customers who have put a lot of effort into taking their case all the way to the final stage, when their complaint is not upheld.

Others felt that “a good customer advocate is required really” (Representative 13) for WATRS to be truly accessible, and that “CCWater should be making sure that WATRS users are sufficiently prepared” to use the scheme (Stakeholder 5). Stakeholder 12 also felt that if CCWater were able to ‘fight’ a case on behalf of consumers, so utilising its expertise to help a complainant succinctly and persuasively make a case to the scheme, this would further help to alleviate communication and accessibility issues for both sides.

This suggestion raises issues as to whether the role of CCWater should be that of a consumer advocate or an impartial dispute resolution provider. It also raises questions as to whether the answer to any perceived problems with the current system is to provide an advocate for customers within the current adversarial process in order to ensure ‘that there is equality of arms’, or whether introducing a less formal and more inquisitorial process might be preferable from a user perspective.

The DJS research provided to us asked complainants to provide their views on the impartiality and fairness of the WATRS scheme.¹¹ 30 of the 56 complainants questioned felt that the scheme was not impartial, with nine not providing an answer, and 17 stating that they did feel it was impartial. Although the data is not representative, and it seems likely that those who did not receive the substantive result they were looking for are over-represented,

¹¹ See Appendix 3 for the aggregated customer satisfaction data from DJS

these findings suggest that the scheme suffers from at least a perception of bias from the complainant's perspective. This is further reinforced by 29 of the 56 interviewees stating that they did not feel that the scheme had treated them fairly.

This data, albeit limited, supports our view that there are structural issues surrounding the type of dispute resolution method used that may make the scheme naturally weighted towards a favourable result for a water company.

Another specific concern raised was in relation to compensation guidelines. Representative 1 felt that "compensation amounts [provided by WATRS] are not always in line with the rules of the scheme", while Stakeholder 5 said that decisions don't refer to compensation guidelines, and that they should do.

Procedural Fairness

It is noted that within the scheme rules under which WATRS operates (WATRS, 2017), Rule 5.6 provides that a complainant is unable to request that an adjudicator's decision be set aside, yet, if it believes that an adjudicator acted out with the Scheme Rules, a company may apply to do so. While it is accepted that this will apply only in rare circumstances (to date, it has only been applied once), to a reasonable observer, this could appear to favour companies. Complaint processes should apply the same rules to both parties.

A complainant or company is able to make a complaint about WATRS concerning the quality of service relating to the administration of the complaint by WATRS (Scheme Rule 8.3). To make such a complaint, the individual or company is required to make the complaint using the 'IDRS' complaints procedure, available from WATRS.

This entitlement is not currently readily apparent to complainants. The individual is required to read the Scheme Rules to become aware of this right and there is no explanation in the Scheme Rules or the Website about the 'IDRS Complaints Procedure'. Such rights should be made clear to both

parties either in writing during the WATRS process or clearly available on the WATRS website.¹²

¹² When we provided the draft of this report to interviewees for comment, we were advised that the lack of a full complaints procedure involving this stage was a technical issue with the WATRS website, as opposed to an oversight or deliberate attempt to mask stages of the process for users of the scheme. We are pleased to note this, though have kept the wording above as ensuring complainants are fully aware of the processes available to them remains important in terms of procedural justice.

7. FLEXIBILITY AND FUTURE-PROOF

WATRS and its complainants

Wholesalers provide water to NHH customers through the same pipes and networks as before, but they no longer carry out customer-facing activities in many situations they did previously.¹³ They charge a wholesale rate for supply to the retailers, who deal directly with the customer, and bill them, charging additional fees for their service on top of the wholesale costs. Wholesalers are also responsible for the maintenance of the water and wastewater networks within their region. This includes the sourcing, treatment and transportation of water, and the collection and treatment of wastewater. Retailers provide customer service and billing to business customers (Wischussen, 2017).

Both CCWater and WATRS deal with complaints from non-household (NHH) customers about retailers which are members of the scheme. WATRS does not, however, deal with complaints from either NHH customers or retailers about wholesalers.

Given the way in which the scope of the scheme has changed since it was established, there is a question as to whether the interests of NHH customers are best served under the current scheme.

The WATRS scheme rules state: 'For the avoidance of doubt, the definition of a 'customer' in this Rule includes companies, developers and self-lay organisations' (Rule 2.1.2).

Given the distinction between retailers and wholesalers, there is a question as to whether the customer complaints process in the water sector should also encompass complaints from NHH customers which might relate to wholesale or distribution issues. As things stand, where such issues arise, the NHH customer would need to make a complaint about the retailer. The outcome of the complaint may be that the retailer is required to pay compensation to the customer, and the retailer would then need to pursue legal action against the wholesaler to recoup this. It does not appear to be appropriate within a consumer dispute resolution scheme to deal with complaints by retailers

¹³ Except in Wales, where Dwr Cymru Welsh Water continues to have a relationship with NHH customers, and wholesalers continue to have a relationship with domestic customers.

against wholesalers. The general rule applying to goods and services is that the consumer's contract is directly with the retailer.

Other sectors where wholesale distribution and customer retail are operated by different organisations are gas, electricity and telecommunications. All of the ombudsman schemes within these sectors deal only with complaints made by customers against the direct service provider i.e. internet service provider or energy company.

MOSL procedures and interview data

Market Operator Services Limited (MOSL) is responsible for the central IT systems that enable NHH customers to switch between water retailers. As market operator, it makes sure all companies can enter, exit, and participate freely in the market (Open Water, 2018).

NHH customers have a direct contractual relationship with their retailer, but not with the wholesaler who supplies the retailer. In other markets, such as telecommunications, the makeup is similar, with customers having a contractual relationship with the telecommunications provider, but not with Openreach, which supplies the network.¹⁴

Retailers are responsible for receiving customer complaints and dealing with them in the first instance. However, given that they provide the physical water and wastewater services to customers, wholesalers still have a supporting role to play despite being one step removed from customers (CCWater, 2018c). As a result, wholesalers are still responsible for delivering resolutions to problems such as supply issues or legacy complaints arising before the market opened up. Nevertheless, most of the 2,782 complaints received in the build up to the market opening were related to service issues that retailers had the power to put right, and the high number reported when compared with the years prior to market opening did relate to specific issues with a small number of retailers (CCWater, 2018d).

Nevertheless, interviewees reported that they had concerns with how the NHH retail market was functioning, especially in relation to complaints and

¹⁴ With the exception of Virgin Media

redress. The changes seem to have led to different outcomes for customers, with Representative 1 stating that they felt the liberalisation of the market had led to compensation and gestures of goodwill not being awarded in the same manner as they had been previously, causing confusion for NHH customers. Others felt that “Guaranteed Service Standards need to be clearly established for each party alongside a route to recourse” (Stakeholder 1), and that because of market changes, cases resolved two years ago, prior to the market opening, may have received different outcomes than they would today (Stakeholder 12).

There were also concerns that retailers are beholden to wholesalers when a customer complaint is received, and that they need to fight a wholesaler's case for them, defending their actions to the consumer and ultimately footing the bill for the complaint, leaving them uncertain about how to recoup these costs from wholesalers. At the same time, some felt that the process for dealing with wholesalers involves the retailer acting as the customer's advocate (Representative 5). CCWater themselves have acknowledged that process issues between retailers and wholesalers (alongside expected teething problems with new retailers in handling complaints) have driven up the number of new investigations that they opened in 2017-18. Collectively this means that NHH complaints generally take longer to resolve and are more complex than complaints from domestic customers (CCWater, 2018a).

From the responses we received, and the insight available to us from CCWater, the impression is given that the complaints processes currently in operation in the NHH market require a serious investment of resource by retailers, when a wholesaler is involved. It is critical to note, however, that only 7 percent of NHH complaints involve an element concerning the wholesaler (CCWater, 2018c). The proportion of complaints with wholesaler influence therefore remains low, and this is critical to our understanding of the current functioning of the NHH market.

It was revealed, in our discussions with sector representatives and stakeholders, that many of their concerns about customer complaints in the NHH market were based upon uneasiness about what may occur in the future, as opposed to what was taking place at the present time.

Accountability and ownership regarding complaints form the basis of these concerns (Representative 1). There was a general feeling that while at the moment, good relationships between retailers and wholesalers allow the system to function reasonably well (Representative 4), there is no structural method for ensuring that retailers are reimbursed when a wholesaler is at fault in a complaint situation (Representatives 4 and 5). While relationships between retailers and wholesalers are currently fairly good, there were concerns around what might happen if a rogue operator were to enter the market, if relationships were to sour, or serious disputes were to arise.

MOSL does operate a dispute process to resolve problems between wholesalers and retailers, and CCWater does attempt to resolve disputes between these two parties. However, the general impression obtained from our discussions with water retailers was that retailers were not aware of the MOSL disputes process. Further to this, the one retailer that was aware of the MOSL disputes process stated that they found the process to be too resource intensive, and opted to settle with the retailer rather than utilise the disputes process (Representative 6). This centred particularly on a perceived requirement for legal representation, and for meetings to be conducted by directors, which was not seen to be proportionate to the extent of the dispute at hand.

There was a general view across the retailers, wholesalers, and stakeholders we interviewed that further actions are required to increase confidence in the processes available if things were to go wrong. Clearer understanding for both parties could be achieved by introducing "Guaranteed Service Standards ... for each party alongside a route to recourse" (Representative 2); greater wholesaler accountability where it is due through the improvement of market codes and agreements (Representative 1); and further education, especially for retailers, around which issues are the wholesaler's responsibility, and which legal and contractual obligations lie with the retailer (Stakeholder 15). Given the market has only recently been opened up, it is not surprising that it is facing some teething problems, especially around dispute resolution, as this has also been a critical issue for the other liberalised utility markets.

Several interviewees highlighted that the emergence of complaints management companies (CMCs) in the NHH market has become problematic for retailers, especially where the cost of using WATRS remains free to consumers, even those which are in fact large businesses. We suggest that to combat this problem, while microbusinesses should still be able to utilise WATRS as a household consumer would, there should be consideration of a mechanism to allow adjudication costs to be split between the parties depending on liability, as with a standard business-to-business arbitration or adjudication. This mechanism should also limit the impact that allegedly spurious claims originating from or encouraged by CMCs might have on the outgoings of retailers.

Ensuring a functioning, customer-focused, complaints procedure in the NHH market

We have concerns about both the costs involved in using the current MOSL dispute process and the impact that wholesaler/retailer disputes can have on the NHH customer. It is critical that as the contracting party with the consumer, the retailer is able to provide all of the redress that is due to the consumer. This will allow cases to be resolved in full at the WATRS stage, except where complaints exist that should have been raised separately with the wholesaler. Involving a third party, the wholesaler, in a bilateral dispute between customer and retailer would be too complicated to resolve easily, and is likely to have a negative impact on customer satisfaction.

The retailer also needs to be confident that it is able to recoup any redress that it has paid to the consumer, but which is due from the wholesaler, quickly and without any additional cost. Given the small margins that many retailers appear to be operating with, it is understandable that our interviewees felt uneasy around this area, and they may well view it as an operational risk. We have not been able to discuss the operation of the MOSL dispute processes in full as part of this research, and so are not able to comment on it beyond providing our observations on the information available on the internet, and the insights of those who responded in our interviews. It does appear from what our interviewees told us that it is a time-consuming process, which is not

currently very well publicised, and may not be suited to resolving disputes over responsibility for paying NHH consumer redress.

We are concerned that there might currently be a gap for NHH consumers who wish to escalate a complaint about a wholesaler to an ADR scheme. We consider that such a process needs to be quick and relatively cheap. Given that retailers will have already needed to make payments based on the wholesaler's liability, and any relevant WATRS decision, this process should be funded initially by the wholesaler, although this cost should be recoverable if the dispute resolver finds that the case was spurious or without merit. We recommend that, for cases involving disputes over who is liable for certain costs that a retailer has paid as redress for a consumer (which should also include the costs borne by the retailer in going to WATRS where the redress paid is found to be entirely the responsibility of the wholesaler), a business-to-business adjudication scheme should be used. Consideration might also be given to making such a process available to household consumers who have a dispute with the wholesaler. In both instances, however, additional mechanisms will be required to ensure that both wholesalers and retailers are fully committed to following the directions of such a scheme, which we appreciate could be problematic.

There is also a concern that "an inter-sector spat between wholesaler and retailer [will have] a negative impact on consumers" (Representative 7). It is therefore essential that the processes for resolving disputes between wholesalers and retailers are correctly aligned to the dispute resolution methods utilised between retailers and consumers. Timescales, especially, are critical, where retailers are waiting for information regarding a customer's case. Where delays caused by wholesalers providing information lead to undue delay for consumers, for instance, there should be clear expectations set out for wholesalers that mirror the timescales provided to retailers.

8. EFFECTIVENESS AND EFFICIENCY

Some aspects of efficiency and effectiveness have been considered in relation to other criteria. These include how user-friendly the system is (accessibility); providing complainants with the opportunity to be heard and understood; ensuring they feel respected (fairness); and whether complaints-handling staff have received adequate training (professionalism). Other aspects of these broad criteria, which are considered here, include:

- The timeliness of decision-making/ resolving complaints.
- Publishing a clear complaints process, and following this when dealing with complaints.
- Providing appropriate remedies, taking account of the impact of any failings on the complainant.
- Actively seeking customer feedback/ monitoring customer satisfaction.
- Accurate recording of complaint data and holding data securely.
- Using complaints data and customer feedback to identify problems and trends, and to promote learning and improve service delivery.

Timeliness

Complaints should be dealt with as quickly as possible, and at as early a stage as possible. Research suggests that timeliness is important to consumers and has an impact on satisfaction (Slater and Higginson, 2016). Early resolution also reduces the costs of dealing with complaints and maximises the opportunity for organisational learning.

In terms of 'first-tier' complaints handling, traditionally organisations were asked to resolve complaints in a 'timely' manner. There has been a move from this to require complaints to be resolved 'promptly'. The point at which the complaint can be referred to an external redress scheme is consistent across statutory Ombudsman schemes across the UK, such as the FOS and Ombudsman Services: Energy, at eight weeks (or at the point when the dispute reaches 'deadlock', whichever is the earlier).

Once a complaint reaches an ADR scheme, it is important that it is dealt with as promptly as possible. The complainant may have had a long journey to

get there, and any further delay will be frustrating. The EU ADR Directive (Directive 2013/11/EU) requires ADR schemes to resolve disputes within 90 days of receipt of the complaint file, and to inform customers within 3 weeks if their case falls out with the scheme's remit.

Research for Citizens Advice (Gill et al, 2017) found that some ADR schemes were meeting the 90-day timescale comfortably, but that others were not consistently meeting this target. In addition, there was variation between ADR schemes on whether they have clear specific and publicised timescales.

A review of second-tier utility complaint schemes in Australia found that such schemes did not set firm timescales for water companies to resolve a complaint, saying only that they should be resolved within a reasonable time (George et al, 2007). Utilities Disputes Limited (the energy complaints commission in New Zealand) allows companies 20 working days to resolve a complaint, which can be extended to 40 days with the agreement of the customer if progress is being made with the complaint but it is not yet completed (McBurnie and Gill, 2017). The complaints commission could refer the complaint back to the company to be dealt with at a senior level if it felt that such an action was the best way in which to resolve the complaint.

Such an approach ensures that complaints are not left within companies and subject to unreasonable delays, while ensuring that intervention by the complaints commission does occur when there is little likelihood that the company can resolve the complaint.

CCWater have a target to acknowledge complaints within 5 working days and to resolve customer complaints within 20 working days. WATRS aims to send a decision within 25 working days of receipt of application. These timescales, if followed, provide for fairly prompt resolution of complaints by both bodies.

Our research found concerns, however, about the length of time water companies can take to deal with complaints, and the potential impact

where a company decides to hold on to a complaint or 'churn it'¹⁵ until a complainant decides to discontinue pursuing it.

A number of interviewees highlighted that the lack of a fixed time limit for complaints to be passed on to CCWater was likely to contribute to overall complainant fatigue (Representatives 6, 12, 13, and 14, and Stakeholder 13). There were concerns, however, that some types of complaints can take a long time to resolve and that imposing and strictly enforcing a fixed timescale might interfere with a water company's ability to resolve these properly (Representative 7).

There were also concerns around how implementing a stricter time limit for resolving complaints at the company stages would interact with the Service Incentive Mechanism, and the upcoming C-MeX and D-MeX processes. Some interviewees stated that historically CCWater would separate complaints requiring engineering works, such as those about sewer flooding, from other, more customer service-focussed ones, from complaints reporting figures (Stakeholder 10). The potential introduction of a stricter timescale for water companies would therefore need to consider these points. Otherwise, however, this was viewed as a positive step by interviewees in terms of shortening overall complaint timescales and therefore removing the barrier that these present to complainants, especially those considered to be vulnerable.

Providing appropriate remedies

Where a complaint is upheld, and failings are identified, an appropriate remedy should be provided in all the circumstances, taking account of the impact of any failings on the complainant. The aim should be to put things right, and to put the complainant back into the position they would have been in had the failing not occurred, so far as possible (Queen Margaret University, 2018; PHSO, 2009). Research by Citizens Advice found that most ADR schemes offer possible remedies other than a simple financial award. The evidence suggests that, while complainants are often seeking a financial

¹⁵ Note: this report has not investigated complaint handling practices in water companies and so is not in a position to comment on it actually taking place, and instead highlights that this is a *potential outcome* of not having fixed timescales. Some Representative interviewees did comment that they were concerned this was happening in other organisations.

award, they are often also looking for another remedy, such as an apology and/or an explanation of what went wrong (See e.g. Creutzfeldt, 2016; Slater and Higginson, 2016). Other possible remedies might include taking practical action to put things right; adjusting charges; and imposing a requirement to provide a service.

It was commented upon that the range of remedies available to companies was too limited (Stakeholder 1), however from our review of cases and the relevant scheme rules (WATRS, 2017), these are fairly comprehensive and cover the provision of:

- An explanation and/or apology;
- A service;
- Something to be done about a bill or bills;
- Some action to be taken (subject to the company having a statutory right to carry out the action);
- Compensation;
- An allowance against charges.

Representative 6 felt that actions required by water companies could be more wide ranging, and include policy or process reviews where fault is identified. Further to this, Representative 1 felt that more direct instructions from WATRS on what was needed to correct problems in the longer term would be useful. Stakeholder 3 reinforced this view, stating that issues around billing in particular continued to appear despite WATRS identifying failings in previous cases.

Our review of the relevant scheme rules (WATRS, 2017), alongside our review of cases, led us to consider that WATRS has a good set of powers regarding remedying consumer detriment, but that it might benefit from more encouragement in terms of instructing action or requesting an apology from a company.

In terms of interactional justice, recognition of the complainants feelings is an important step in achieving a satisfactory remedy - "Customers do not simply come to the firm for logistical reasons (e.g., a broken dishwasher); they come

to have their emotions redressed as well. This can be termed *psychological compensation*" (Chebat et al, 2005, p. 340).

Requesting an apology should not be considered as a request for a company to admit liability (See Regan, 2015, for further discussion of this idea), but as recognition that the complainant feels to have been unfairly treated. As such providing an apology to redress a complainant's emotional state – even if their complaint is without substantive merit – should be considered based on the emotions the complainant has presented with.

Training on providing an effective apology may be useful for complaint handlers at water companies, but this consideration is outside the scope of this review. WATRS staff may, however, benefit from the development of policy or guidance around when to require an apology from a water company. It should be expected that, as a complainant has brought a complaint through the stages of the post-company complaints procedures, they perceive themselves to have been aggrieved by a water company, rightly or wrongly, and as such the benefit of providing an apology is likely to be felt in almost all complaints (see Felstiner, 1981 for a broader discussion of the transformation of disputes).

Current scheme rules allow WATRS to "direct the company to provide any of the remedies ... which have been requested by the customer in the application form" (WATRS, 2017, p.14). They are however allowed, "in exceptional circumstances ... [to] award more compensation than has been claimed by the customer" (WATRS, 2017, p. 15). We are concerned, though it was not particularly apparent from our review of casework conducted by WATRS, that these rules might limit the scope of WATRS to remedy consumer detriment that it would have been unreasonable to expect a consumer to have knowledge of and so claim for. Likewise, in adopting a more strictly adjudicative stance, WATRS may be limited in their ability to uncover such detriment. It is hoped that the work of CCWater in preceding stages will have both provided sufficient education to a consumer in terms of understanding their rights and responsibilities, and helped them articulate these to WATRS,

but we do think that this may represent a gap for consumers when compared with what is available in other utility sectors.¹⁶

Requiring an action, to review a policy or process, or take steps to ensure a problem does not happen again, forms an important part of the quasi-regulatory role of Ombudsman schemes (and other consumer ADR schemes that fulfil similar roles) in setting out the standard of behaviour and service that should be expected of the companies it handles complaints about. It also represents an opportunity for WATRS to provide an additional return on investment for water companies, by harnessing the knowledge that complaints provide to stimulate innovation and service improvement (Simmons and Brennan, 2013). Directing companies to take action to resolve issues in the long term should therefore be an important element of WATRS decision-making, where achievable.

Undertaking to provide lasting remedies may require a movement away from an adjudicative method of dispute resolution, and incorporating a more inquisitorial process, looking into why problems occurred as opposed to considering whether a problem occurred or not. Likewise, adopting more creative remedies that allow for systemic improvement both in response to specific complaints and utilising complaints data more broadly, and which we discuss in the section on 'comprehensiveness and integration' in detail, would benefit from the use of a broader consideration of what is fair and reasonable in the circumstances, as opposed to a more specifically legal analysis of rights and obligations. Utilising this standard would allow WATRS to consider complaints in a more holistic manner, consider the measures a water company is capable of achieving, and so recommend realistic actions that would solve specific problems for complainants in the short and long term, where relevant law alone might not be sufficient.

The Service Incentive Mechanism and complaint culture

Though it was not a specific aspect of our review at the outset, a number of interviewees expressed concerns that the existing Service Incentive

¹⁶ For instance, the Ombudsman Services scheme rules define under paragraph 10.3 that when the Ombudsman concludes that a company has not acted fairly or reasonably, they may impose any of the remedies available to it, and under 10.4 that they may make recommendations about changing policies or procedures (Ombudsman Services, 2015).

Mechanism (SIM) might lead organisations to focus on “managing the metrics” as opposed to focusing on systemic problems with service delivery (Representative 12). In the household market, the SIM is designed to mimic a functioning market, in that better performance equates to more profitability. However, in terms of complaints, this could theoretically drive unwanted behaviours from companies who might wish to avoid the reporting and escalation of complaints which would affect this financial incentive (Representative 12).

One interviewee thought that introducing a time limit for how long companies can hold complaints before escalation to CCWater “might stop some nefarious behaviours” (Representative 16) regarding this. We are also aware that the SIM is being phased out to make way for the new C-MeX and D-MeX processes. Whilst it is not strictly within the scope of this report to examine the existing mechanism, we would stress that it is important for companies to be actively encouraged to escalate complaints in a timely manner, so that complainants can receive remedy in a timely fashion, and so that industry stakeholders can receive a true picture of how the sector is functioning, intervening where required.

A complaint should be viewed as a valuable source of feedback, and the additional costs associated with CCWater and WATRS, in terms of case fees and additional resource, in resolving an escalated complaint represent enough of an incentive for water companies to resolve them in-house where this is feasible. We would therefore suggest thinking about limiting future incentives to meeting timescales for response and escalation, as opposed to numbers reported or those that are escalated for investigation or adjudication. When complaint figures and types are made transparent to industry stakeholders, this should allow for penalties and rewards to be appropriately made based on an assessment of specific circumstances.

9. EXPERTNESS AND PROFESSIONALISM

It is important that staff who deal with complaints have the necessary expertise to deal with them effectively. The Ombudsman Association's Service Standards Framework (Ombudsman Association, 2017) states that member schemes should ensure that the staff who consider complaints have the relevant knowledge, training and skills to make decisions, or have access to suitable professional advice.

All staff who might have involvement with complaints should be suitably trained and have the necessary skills for their role. Some complaints might be resolved at a very early stage by frontline staff, for example. All staff within the organisation should therefore have some understanding as to what constitutes a complaint, and how the organisation's complaints process works.

It is particularly important that caseworkers who deal with complaints have the necessary skills and knowledge to deal with them adequately and appropriately. They should have appropriate training to help them develop the knowledge, skills and confidence that they need to be able to resolve complaints well. This might include technical knowledge of a particular subject area to deal with complaints; analytical, investigation and interviewing skills; and also 'soft' skills, such as listening, empathising and communicating well with customers.

The Ombudsman Association defines a 'caseworker' as 'a member of staff who has a direct role in helping to resolve a complaint. This could include individuals who give advice, carry out investigations, draft written determinations and/or issue decisions' (Ombudsman Association, 2018).

In its 'caseworker competency framework' (Ombudsman Association, 2018), the Ombudsman Association sets out six core competencies that are demonstrated by effective caseworkers. The six core competencies are:

- Analytical (methodical; questioning; perceptive; reflective)
- Constructive (flexible; pragmatic; adaptable; resilient)
- Impactful (authoritative; clear; persuasive)

- Open-minded (progressive; collaborative; resourceful; impartial)
- Approachable (inclusive; empathetic; engaging; authentic)
- Professional (organised; responsive; focused; ethical)

Each of the competencies is broken down into several competency areas, as shown above, and a list of both effective and ineffective behaviours is set out for each of these. This framework provides a very useful starting point to measure the competency of complaints handling staff.

The WATRS scheme is currently operated by the Centre for Effective Dispute Resolution (CEDR). All adjudicators under the scheme are legally qualified. They are required to have:

- A law degree and/or be qualified as a solicitor/barrister
- Not less than two years' post-qualifying experience
- Acted as an adjudicator or arbitrator for CEDR in business to customer disputes for at least 2 years

All adjudicators have access to a panel of independent experts for advice on technical issues where this is required. Every new adjudicator is provided with a mentor, and each decision is reviewed by the lead adjudicator, who provides advice and direction to the adjudicators as required, before the decision is finalised. Stakeholder 12 felt that the level of scrutiny in WATRS was much higher than in other areas of dispute, with more of a focus on decision-making than in other areas.

Adjudicators are also provided with CEDR training on resolving disputes, usually within the aviation sector, and this competency is used as a baseline in terms of competence to work on WATRS. Their accreditation is determined by the Lead Adjudicator, before confirmation by the Principal Adjudicator. Though the accreditation and process of continued review are very much handled by individuals, and based on their supervision as opposed to a formal, written policy, given the apparent size of the operation. Based on our view of their case handling obtained from an end-to-end review of 10 cases, we consider this approach to be sufficient and effective.

While the level of qualifications required for the role is very high, the adjudicators fit within the Ombudsman Association definition of 'caseworker', as they carry out investigations, draft written determinations and issue decisions. They should accordingly be able to demonstrate the core competencies required for a caseworker. While it might be assumed that those with legal qualifications and training should easily be able to demonstrate certain competencies (such as those falling within 'analytical' and 'professional'), such qualifications and training alone do not necessarily mean that an individual will demonstrate others (such as some of the competencies required to be 'approachable' or 'open-minded,' for example.) The requirement to have two years' experience as a CEDR adjudicator or arbitrator might be expected to help adjudicators to develop such competencies, if required.

With the current WATRS setup, where case handlers do not individually have contact with complainants outside of the context of providing a written decision, some of these softer skills might not be necessary for the operation of an effective service, but we would expect that these were displayed by staff who spoke to customers on the phone. When questioned about the customer service function provided at WATRS, respondents stated that their experiences were positive. However, over half of those questioned for the DJS customer service survey cited that they did not have experience of the "helpfulness of staff".¹⁷ This may indicate that the customer service function is not often used by complainants, or that consumers are not aware of it. Further research with complainants who utilise the WATRS scheme would be required to make definite conclusions on this point, though further awareness-raising activities of this useful function would be a positive undertaking for both complainants and water companies. Were future changes to the role of caseworkers at WATRS to be made in terms of making contact with complainants and companies more regularly, we would recommend that training to ensure all aspects of the competency framework are met is undertaken, as we would with any other ADR scheme where caseworkers have a customer-facing role.

¹⁷ See Appendix 3 for the compiled DJS customer service survey data

The review of WATRS case files found that decisions were generally excellent and well structured, showing clear reasoning and explaining often complex issues clearly. Overall, the files showed that WATRS demonstrated the necessary knowledge of the water industry in order to make its decisions.

Interviewees generally felt that WATRS adjudicators are technically proficient in terms of dispute resolution (Representative 4) and that “within the narrow domain they have been given, yes [they are expert and professional]” (Stakeholder 3). They were, however, not seen by some to have sufficient expertise on water issues; they are not ‘expert’ and ‘professional’ in terms of responding to emerging and complex issues (Representative 2). This was seen to be a particular problem in relation to wholesaler issues: “their role needs updating in light of the opened up market, regarding wholesaler issues especially” (Representative 4). It should also be noted that some interviewees felt that issues of a very complex or emergent nature did not often reach the WATRS scheme, as these were resolved in-house, and with CCWater’s assistance where required. Some decisions were felt not to be factually accurate (Representative 1). Consumer research for Citizens Advice (Gill et al, 2017) found that consumers using dispute resolution schemes thought technical expertise was important, and some felt that the complaint handler did not have sufficient technical expertise and did not understand what their complaint was really about.

Some concerns were expressed that while the adjudicators had good legal abilities, they may be less good in terms of customer service (Stakeholder 3). As discussed in relation to fairness and impartiality, some felt that the approach of the adjudicators, and the decisions they made, could be overly focused on the legal aspects of the case, where this might not result in an equitable outcome for the complainant, and were not always well communicated to parties. This is in keeping with the current role and purpose of WATRS. Others felt there was a lack of empathy expressed towards parties in the decisions issued by WATRS.

Concerns were also expressed by Stakeholder 3 as to evidence of inconsistency in how two adjudicators might interpret the civil burden of proof (i.e. on the balance of probabilities), which may point to issues with

unconscious bias, and a need for more training here. We were provided with a guidance note clarifying the WATRS position on this, which is available publicly and has been communicated to adjudicators. Stakeholder 12 explained that adjudicators were well attuned to bias issues, and that the fact that adjudicators do not have any contact with complainants over the phone “provides something of a firewall in terms of unconscious bias”, though this may raise concerns regarding procedural fairness.

Overall, our review of 10 end-to-end case files confirmed the technical proficiency of WATRS adjudicators, and no evidence of bias in terms of decision-making was discovered. We did, however, notice instances where consumer detriment may well have occurred, but the decision turned on the evidence made available to the adjudicator. While this is not unusual across second-tier complaint handling in general, there is the possibility that further guidance for either party in terms of what evidence should be provided might assist an adjudicator in reaching a more complete decision. As we discussed in the section on fairness and impartiality, there are also structural concerns which may lead to decisions being weighted in favour of water companies, where this might not be the best outcome overall.

10. COMPREHENSIVENESS AND INTEGRATION

The customer complaints journey

The customer journey throughout the entire complaints process should be as integrated and seamless as possible. As discussed in relation to accessibility, ideally a complaints process should be simple, with as few stages as possible. In most regulated sectors, there is only one further stage for dispute resolution (although in some sectors there may be more than one possible ADR scheme at that stage) after a complaint has been dealt with by the service provider.

In working to ensure that a process is as integrated as possible, it is important to understand where referrals to a scheme come from. It is therefore helpful to collect this information, in order to ascertain whether any changes might be required to encourage further referrals.

In many sectors, referrals may come from a wide range of sources, including advice agencies, internet searches and the service provider. In the case of CCWater and WATRS, it might be assumed that consumers are generally referred via a water company (in the case of CCWater) or CCWater (in the case of WATRS). Research for Citizens Advice (Gill et al, 2017) found that some ADR schemes made such an assumption, but most did not collect referral data, which meant that it was not possible to say with certainty where referrals had come from. That research found that in fact, some of the few ADR schemes which did collect referral data found that, rather than member businesses, the majority of referrals came through internet search engines.

While the norm is for complaints to be referred to just one external dispute resolution process, it is vital in circumstances where the complainant might be required to go through a final process where they are unhappy with the outcome, that any transfer between the two processes is made as easy as possible for them.

Firstly, there is a possibility that the complainant may experience 'referral fatigue'. This concept has long been recognised in relation to the advice sector- this means that each time people are referred or signposted on to a

new adviser, a proportion will give up (Pleasence and Balmer, 2010). The same is likely to be true here, in relation to dispute resolution. A 'warm transfer', where the customer is immediately handed over the signposted organisation (e.g. a call is put through or an email forwarded) is more likely to result in the complaint being taken forward than a 'cold transfer' where the complainant is simply given details of the new organisation and left to contact that organisation him/herself.

Secondly, if the complainant is required to make a new complaint about the same issues and circumstances to another body, the sheer effort and repetition involved is likely to deter them from pursuing the complaint further. The complainant should not therefore be required to re-submit their original complaint, or to re-state their complaint in a different format to the second dispute resolution body.

Interviewees were generally unified in their feelings that the overall structure of the post-company complaints processes is confusing and difficult for customers to use. One said that the "complaints processes are long and multi-staged which in itself is confusing for consumers" (Stakeholder 1), and that customers sometimes lacked agency in the wider complaints process because the endpoints for different stages were not clear (Stakeholder 2). These lengthy timescales, and multiple stages, were felt to be detrimental to consumers (Stakeholder 4), wear them out (Stakeholder 5), and so discourage continuation of complaints through to the final stages available to them. One respondent summarised the process by stating that it is good at providing complainants with voice – a critical aspect of effective holistic complaints management (Chebat et al, 2005) -alongside expressing understanding – but that they were likely to be confused by the complaints landscape (Representative 3).

Recent efforts have been made to simplify the process for customers bringing their complaints to WATRS by having CCWater assist them with filling out the complaint form. It is our view that this innovation fits with the remit of CCWater as a consumer advocate. Though the effects of this process are only just starting to have an effect on the number of complaints passing through to WATRS (Stakeholder 12) at the time of writing this review, both industry

stakeholders and representatives felt that this process was very positive for consumers, and would help to alleviate some of the issues reported with complainants having difficulty using the service (Representative 16).

A number of interviewees highlighted the negative impact that they believed the unique nature of the post-company complaints process in the water sector has on customer awareness and understanding of the bodies involved. Representative 15 thought that consumers would be confused by the structure in the water sector when comparing it with other utility sectors. They also stated that “it’s confused, from a customer’s point of view they need quick access to advice and resolution”, and that signposting is confusing, which prevents customers from understanding what they need to do at each stage. This was seen to often lead to customers rushing through the earlier stages, without appreciating their purpose or the opportunities that these stages offered for the resolution of their complaint. When compared to other sectors, which have one body providing post-company complaint resolution, it was felt by interviewees that the existence of more than one scheme might, at least from a customer perspective, be the main reason behind the low awareness and confusion about the processes available.

Some interviewees considered that a single dispute resolution scheme for post-company complaints procedures would be beneficial to the water sector. Representative 15 felt that this should take the form of an Ombudsman, with all the relevant powers required, to ‘sort things out’ for consumers. Others felt that the whole process could be owned by CCWater (Representative 14), or that the problems experienced by consumers in moving between schemes could be best handled by CCWater (Representative 11).

In our previous research for Citizens Advice (Gill et al, 2017) we found that consumers often found the overall ADR landscape to be complex and confusing, and highlighted the need for simplification and rationalisation where possible. Approaching this in the water sector is a little complicated, however, because of the statutory nature of the CCWater scheme, and its role as a consumer advocate (Stakeholder 6 noted this also).

In terms of improving the post-company complaints handling procedures in the water sector, our initial thoughts would be to look at other regulated sectors and seek to emulate best practice where it is relevant. This would involve one scheme, with multiple stages involving conciliation or mediation and adjudication, such as those operated by the Financial Ombudsman Service, or Ombudsman Services: Energy. In conducting this review, we have considered that CCWater already fulfils many of the functions that we would want to see an Ombudsman undertake in the water sector. It carries out investigations into potential systemic improvement, offers training to water companies, and provides consumer advice in relation to complaints. In offering mediation and in conducting investigations (in some cases) into complaints, it also provides many aspects of the usual complaint handling functions of Ombudsman schemes. We consider that the operation of a fully functioning Ombudsman in the water sector would therefore duplicate many of the functions that CCWater already provides well. A logical conclusion might therefore be for this review to recommend that CCWater should seek to take over the operation of the final stage of the water sector complaints procedure.

We consider, however, that the statutory role of CCWater prevents us from making such a recommendation. In terms of the Water Industry Act 1991, CCWater's functions include representing the views of consumers to water companies.¹⁸ In our view, this would jeopardise the ability of CCWater to operate a fair and impartial dispute resolution scheme which could make a decision that is binding on both parties. A degree of separation, overseen by the Independent ADR Panel, is a positive aspect of the existing setup that in our view should remain. Without a change to the legislation, which would likely also necessitate a wider reconsideration of the role of CCWater, therefore, we do not think it would be possible for CCWater to take on such a role. In any case, we consider that such a change would be quite labour intensive. We believe that the existing structure can be improved to become more customer-focused without undertaking this measure, at least in the short term.

¹⁸[Section 27E](#)

Recording of complaint data and using complaints data and customer feedback to improve delivery

Taking a holistic as well as a specific view of complaints, Ombudsman schemes typically act in a quasi-regulatory manner in driving improvement within bodies that they handle complaints about, both in terms of specific responses to complaints, and the use of complaints data (Gill and Hirst, 2016). Recording of complaints data is important, both in the interests of transparency, and in terms of reviewing matters such as:

- the number and categories of complaints received
- outcomes reached and remedies provided
- rates of upholding /dismissing complaints
- timescales for resolution

Collecting this information is vital in terms of driving future improvements, both within the complaints scheme itself, and more widely in terms of identifying problems and trends within particular service providers and/or across the sector which need to be addressed. Good complaints handling should lead to continuous improvement, ensuring that in the medium-term, root causes are addressed and systemic solutions are put in place. Guidance by the Scottish Public Services Ombudsman (2011) on complaint handling standards states that “an effective complaints handling procedure is driven by the search for improvement”.

Publication of data is one method of improvement by which regulators seek to increase transparency. It helps inform decision making and strengthens competition by facilitating comparison, thereby incentivising businesses to improve their performance (FOS 2016; UKRN 2014). For markets where, like the water market, switching may not be possible, such as the rail market, publication of data can be used to put pressure on businesses and improve the accountability of rail companies and the regulatory process (ORR, 2011). The publication of data by ombudsman schemes can also play an important role in relation to transparency, promoting good practice and driving wider improvement, although practice varies (see e.g. Ombudsman Services, 2018).

Currently, systemic improvement arising from complaints data and individual complaint outcomes is undertaken within water companies, and by CCWater, in the water sector. CCWater provides information on common threads and systemic improvements that can be made (Representative 1); has 'robust discussions' with companies alongside feedback on lessons learned and actions taken (Representative 4); and utilises its policy team to conduct wider industry learning (Stakeholder 6). It also holds quarterly meetings with directors (Representative 10) using high-level analysis of data (Representative 12) and produces reports on major incidents such as the 'freeze/thaw' event in March 2018 (CCWater, 2018e). It also conducts training, conducts own-initiative reviews of complaints data, policy, and practice, and undertakes case and customer service audits (Stakeholder 6). These are all practices that we would be encouraging Ombudsman schemes to undertake with complained-about bodies, and are usually characteristic of more progressive schemes which take a proactive approach to systemic improvement (Gill and Hirst, 2016).

Despite this, a number of interviewees highlighted to us that a lot of systemic improvement is carried out in-house by companies, and that outside of quarterly meetings with CCWater, there are no formal arrangements for systemic improvement (Representatives 12, 13, and 6). Others thought that the improvements are quite generic (Representative 5) or do not go far enough in terms of tackling persistent problems such as billing (Stakeholder 3). All those discussing systemic improvement also highlighted that any systemic improvement arising out of decisions made by WATRS was conducted in-house, and that they had encountered no arrangements where learning could be derived on a more formal, cross-company basis, from WATRS decisions.

From the responses we received, it is clear that the decisions made by WATRS need to be incorporated into the wider work on systemic improvement that is currently carried out. It is also suggested that wider work could be undertaken with water companies, as some feel that more could be done on an industry scale.

Representative 12 also highlighted that, thinking in 'blue sky' terms, a single system for recording complaints being passed through from CCWater to WATRS, would be beneficial. Whilst this might not be feasible, it is clear from our review of WATRS cases that a more streamlined approach to sharing evidence would be beneficial to WATRS adjudicators, in terms of efficient case handling practice, as well as enabling a smoother transition between CCWater and WATRS for complainants, as discussed further in the section on accessibility.

11. CONCLUSIONS

In exploring the post-company complaints procedures in the water sector, we found many positive things to say about the way they are operated and the commitment of those who work within them to ensuring positive customer experiences, swift and appropriate complaint handling, and, critically, an unfettered supply of clean water. While we have come away from this review with a reasonable number of recommendations, for the most part these stem from the structural difficulties that those working within the sector have striven to deal with.

This conclusion will first provide a brief summary of our conclusions relating to each area we were asked to assess the post-company complaints procedures against, followed by a narrative accompanying the most prominent issues that we identified.

Accessibility

Overall we highlighted that we have a number of concerns regarding the accessibility of the post-company complaints procedures. These mainly stem from the overall structure of the procedures, in that they have four stages, and can take a very long time, which vulnerable complainants and those with additional needs might find especially difficult to traverse.

We also highlighted that the adjudication scheme utilised at the final stage might discourage complainants from accessing it, as it could appear complicated and difficult to use to some. Understanding of the overall complaints procedure was also felt to be limited, which might impact accessibility, and would benefit from more awareness-raising activity.

Independence and Accountability

We are pleased to note that the Independent ADR Panel seems to effectively carry out its role in overseeing the WATRS stage, and that likewise WATRS takes on its recommendations well. In some areas the Independent ADR Panel exceeds its remit, with the clear aim of orienting the post-company complaints procedures more firmly towards consumers, which is encouraging.

There are some areas where we have felt that, with our external view, more wide-ranging recommendations could be made.

Fairness and Impartiality

We consider that WATRS currently provides an excellent adjudication service, but that in its essence, adjudication might not be the best form of dispute resolution for this sector in terms of providing for the fair and impartial resolution of complaints. Water companies are able to mobilise much greater resource, and the legislation surrounding the sector is complex and unclear for consumers, indicating that they might need more assistance in terms of effectively asserting their rights and making effective representations to the scheme.

Flexibility and Future-Proof

We are concerned that there are gaps for NHH customers and NHH retailers in resolving disputes with wholesalers, and that gaps in obligations (between consumers and retailers, and retailers and wholesalers), that could lead to detrimental outcomes. It is clear that those involved in the NHH market are seeking clarity and assurance that the underpinning mechanisms will ensure fair and equitable outcomes for everyone involved in the developing sector, and our recommendations attempt to address these aspects first and foremost.

Effectiveness and Efficiency

As arose in the section on accessibility, the potential length of the process could be a barrier to the overall effectiveness and efficiency of the process, allowing complainant fatigue to discourage complainants from traversing the entirety of it.

We also considered that, though WATRS was provided with a broad set of powers in terms of providing remedies, it might be held back by some of the scheme rules that may place too much emphasis on the complainant claiming for the right actions and amount of compensation. Through this, WATRS might not be realising its potential to drive service improvement in water companies through requiring action to prevent complaints occurring in

the future. This represents a potential missed opportunity in terms of return on investment for water companies.

Finally, in this section we responded to feedback from interviewees that measures for incentivising efficient resolution of complaints might drive the wrong type of behaviours in companies. We would therefore suggest thinking about how future incentives are structured, to ensure that all complaints are escalated correctly, without fear that this might result in a financial penalty.

Expertness and Professionalism

We generally found the WATRS scheme adjudicators to be very proficient case handlers, and certainly expert and professional within their roles. We consider that if complaint numbers were to rise, more formal, documented processes around accreditation and continuous improvement might be advisable, but that given its current size, current arrangements are sufficient. If the WATRS scheme were to expand to involve a more inquisitorial approach, further training to meet some of the more 'soft-skill'-oriented elements of the Ombudsman Association Caseworker Competency Framework might be advised.

Comprehensiveness and Integration

In this section, we highlighted again the impact that the overall structure of the post-company complaints procedures can have, in this case on the effective functioning of the process as a whole, with particular regards to efforts driving systemic improvement using complaints data. Efforts to present a more integrated front-end, for consumers at least, will be required to tackle these issues effectively.

We also considered that the valuable complaints data from WATRS decisions was not being utilised effectively, and that efforts to incorporate this data with that from CCWater, towards a greater focus on systemic improvement across the sector using, should be considered.

Overall Conclusions

The existing WATRS adjudication scheme provides effective and efficient remedies in an unbiased and technically proficient manner. Aside from some issues around the use of plain English, which to an extent is to be expected when running a scheme based on legal principles, the main issues that it faces result from the type of dispute resolution method offered. This differs from the way in which dispute resolution schemes in other utility sectors operate, and represents a significant departure from the previous stage in the process operated by CCWater. At the same time, given the structure of the overall post-company complaints procedures, which cannot be altered in the short to medium term due to the statutory nature of CCWater¹⁹, utilising a purely adjudicative stage for the final element of the process was a logical and reasonable approach to adopt.

CCWater also provides a number of functions that the review team would normally encourage Ombudsman schemes to take up, and which Ombudsman schemes do already take up where they are moving towards the use of more quasi-regulatory, progressive methods. It provides conciliatory functions, conducts investigations, and takes an own-initiative approach to resolving system-wide issues. However, its statutory role as a consumer advocate limits its ability to provide an impartial final decision on cases. The use of a separate and independent body to take up this final stage is therefore in our view still the best approach to take, at least in the short to medium term.

There is a need, therefore, to ensure that WATRS and CCWater work together as closely as possible, whilst retaining this separation, in order to ensure independence and so the ability to ensure truly impartial decisions on individual cases. The data acquired from final WATRS decisions should be fed back to CCWater, and utilised to drive systemic improvement throughout the industry.

Given the overall number of stages, and therefore the number of handovers consumers experience in the water sector complaints procedures, there is a need for the transition between stages to be as seamless as possible for

¹⁹ See section 10. Comprehensiveness and Integration for a fuller discussion of the statutory nature of CCWater, and how we consider this impacts its role as a dispute resolution provider at the final stage.

consumers. Eradicating the separation of WATRS and CCWater, from the consumer perspective, should be the goal. Doing so should reduce the high levels of consumer effort and fatigue that were reported to us, driving greater uptake of the scheme, which should in turn ensure greater transparency to relevant stakeholders as to how the water sector is functioning.

Many complaints take too long to go through the entire complaints process within the water sector, including the two stages of the company's handling of the complaint. We also noted the potential for complaints to remain with water companies for longer than is necessary. The scope of this review did not include an analysis of the handling of complaints by companies themselves, and we do not suggest that individual companies delay complainants in advancing to the CCWater stage. We consider, however, that having specific time limits (depending on the type of case, if necessary), to ensure that this practice cannot take place, would be in the best interests of water consumers and the overall water sector.

We also noted that there are some elements around the incentives provided for complaint handling that could potentially drive poor practice, by encouraging companies not to escalate complaints when they would be best resolved through the later stages of the process. As the new initiatives are developed around the reporting of complaints data, escalation where necessary should be actively encouraged, to ensure that complaints are celebrated for the unique feedback and opportunities for innovation that they provide, rather than not avoided.

The length of time and number of stages that a complaint has to go through are not the only structural problems faced by consumers, however. In other utility sectors, and regulated sectors, an inquisitorial approach has been undertaken to specific complaint investigations by Ombudsman schemes, in order to address the imbalance of power between consumers and service providers. Such schemes take a 'fair and reasonable' approach to decision-making, which does not bind caseworkers to the strict letter of the law where other measures would be appropriate. We consider that it would be in the best interests of consumers if future iterations of WATRS were to follow a similar path; we therefore recommend that a similar approach is adopted for the

final stage of the complaints process in the water sector. Another option here, to ensure that consumers have equality of arms when using the WATRS scheme in its current adjudicative form, would be to have CCWater represent consumers to the scheme. This would enable consumers to have greater parity with water companies, in that CCWater could help them provide succinct, effective, and sufficient arguments.

With the recent opening of the NHH market, retailers and wholesalers in this area who spoke with us revealed concerns that the complaints system was perceived to be functioning primarily on goodwill and positive relationships between parties, rather than the underpinning mechanisms which should ensure that each side met its obligations to the other, and to the consumer. We were not able to develop a full understanding of how the MOSL dispute processes functioned, which was largely down to the fact that they are as yet relatively untested. Our recommendations here are focused on ensuring that a speedy method of dispute resolution is available, and that larger companies are treated more equitably in terms of access to dispute resolution than at present. In most sectors where dispute resolution is available, this is only available to small or micro-businesses, and consumers, although the financial sector is looking to expand this (FCA 2018). Where larger businesses do have access to dispute resolution, which we consider to be commendable, there is less imbalance of power between the parties. An adjudicative method, where both sides can be called on to meet the costs dependent on the outcome, is more appropriate.

12. RECOMMENDATIONS

Our findings lead to us to make a number of recommendations which could be implemented in the short to medium term, in order to improve the operation of the dispute resolution process within the water sector, from the perspective of both household and NHH customers. While some of these recommendations are aimed at a particular body or bodies, where responsibility lies for implementing others is not always clear cut. We have not therefore directed some recommendations towards any specific body - this is a complex sector, and in most cases there are a number of organisations who could have a role in implementing them. Depending on the particular issue concerned, these organisations might include any or all of the following:

- Water UK
- Resolving Water Disputes
- The Consumer Council for Water
- The Independent ADR Panel
- Ofwat
- MOSL
- DEFRA
- Water and sewerage companies

Wherever responsibility for taking forward particular recommendations might lie, it is vital that the relevant bodies within the water sector work together in partnership so far as possible, to ensure that any necessary changes are achieved, for the benefit of all those operating within the sector.

1. For Ofwat, and other stakeholders as relevant. Time limits for the consideration of complaints, at the company level, before complainants are given the right to escalate their issue to CCWater, should be introduced. Companies should inform complainants of these rights on company literature, when the complaint arises, and when the time limit is reached. The time limit could allow for flexibility for complaint types that typically take longer to resolve, such as those requiring engineering works.

2. The current four-stage process, with multiple handoffs, presents problems for complainants. The review team suggest the following options for consideration:
 - a. CCWater represents the complainant to WATRS, effectively continuing their advocacy role and ensuring that the arguments put to WATRS are succinct, persuasive and effective.
 - b. If CCWater is unable to resolve the complaint it should, after discussion with, and the agreement of the complainant, forward the complaint to WATRS without the need for further action by the complainant.
 - c. CCWater should gather all the evidence that is required by WATRS before making the referral to WATRS. This will necessitate close collaboration between CCWater and WATRS, to ensure that all relevant information is obtained.
 - d. Relevant stakeholders may wish to consider the branding of the complaints process so that for the complainant it looks like a single step in the process. For example, 'The Water Ombudsman provided by CCWater and WATRS'.²⁰
3. For the Independent ADR Panel and WATRS. The quasi-legal approach to decision-making adopted by WATRS may result in injustice in some cases, especially as decisions are made on a narrow interpretation of the law. To resolve this, WATRS should adopt a more inquisitorial approach to its handling of disputes, and the 'fair and reasonable test' used in almost all other private sector ADR schemes. Complainants need to be made aware of what evidence will be needed to prove or disprove their case, and how the case will be managed.²¹

²⁰ This would require approval from the relevant competent authority, as required by The Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015.

²¹ While we consider that decisions reached under the current scheme are objectively fair, they may be undermined by complainants' perceptions of procedural or interactional unfairness. The adoption of an inquisitorial approach by WATRS would help with this perception, but this would need to be supported by an increased emphasis on interactional justice (the extent to which the complainant feels that they were treated fairly during the process).

4. A consistent approach to the management of expectations of the overall post-company complaints procedure should be taken at company level, and throughout the process.
 - a. We recommend that a single factsheet is produced detailing the process from start to finish, which should be provided to complainants both when they first raise a complaint and when they become eligible to begin the post-company complaints handling procedure.
 - b. Staff involved in the post-company complaints handling process should be able to guide complainants through the process, describing what will happen and providing advice on the progression of the case.
 - c. Staff at all levels should receive appropriate guidance on how to signpost consumers to other, more appropriate dispute resolution processes, such as the ICO, where these exist.
 - d. Information regarding complaints about the post-company complaints procedures should be made readily available, and the process should be easily accessible for consumers.
 - e. The way that decisions are made should be communicated effectively throughout the process, and in the decisions themselves. Both sides should be made aware throughout the process what evidence is going to be utilised in making a decision, how it will be assessed, and what the likely outcomes will be.
 - f. Decisions that involve an award relating to distress and inconvenience should be phrased in a way that specifically relates to the guidance produced for complainants on these types of awards.
5. For the Independent ADR Panel and WATRS. The ability of water companies to challenge a WATRS decision on specific grounds should be reviewed to ensure that they are afforded exactly the same grounds for challenge as a consumer.

6. Complaints data from WATRS decisions should be communicated effectively, alongside data collected by CCWater where relevant, to inform systemic improvement, regulatory action, and investigation by CCWater, where necessary.
 - a. If changes are made to the way that CCWater and WATRS operate, including in the way that they share information and evidence pertaining to a specific case, and the dissemination of wider complaints data towards better regulation and systemic improvement, the overall role of the Independent ADR Panel should be reviewed in light of these changes, alongside other governance functions where applicable. It is critical that whichever body oversees the overall post-company complaints process in the water sector is sufficiently independent, has appropriate executive authority, and is resourced so as to meet that authority.
 - b. Consideration should be given by WATRS to introducing more granular categories of decision, in addition to 'upheld' and 'not upheld', potentially to include 'maintained' and 'partially upheld'.²² The data generated from these classifications would enable stakeholders and companies to group types of decision more effectively, and drive further action or learning.
 - c. Regular customer service surveys should be conducted for the entire post-company complaints process, covering the same questions consistently, to allow for effective comparison of data and to drive systemic improvement within the post-company complaints handling procedures. Consideration should be given to including measures to assess perceptions of procedural justice amongst complainants who have used the procedures.

²² A level of discretion is warranted here, and relies upon the case-handlers determination of whether the complainant's assertions are well-founded or not. An 'upheld' complaint would be, for instance, where a company has refused to admit wrongdoing and has not taken action to remedy the situation. A 'partially upheld' complaint might be one where a company has recognised wrongdoing, but not to a sufficient extent, or without remedying it fully. A 'maintained' complaint would be where in general the company has acted properly in response to a valid complaint, whereas 'not upheld' would relate to a situation where a caseworker was not able to find, on the balance of probabilities, that a consumer had suffered any detriment as a result of the actions or inactions of the water company involved.

7. Consideration should be given to introducing a business-to-business ADR scheme in the NHH sector, for SME and larger business consumers, where case fees can be split between the NHH retailer and the NHH consumer, dependent on the result of the case.
8. The existing dispute processes utilised by MOSL should be reviewed, to ensure they are fit to deliver timely and low-cost resolution for low-value disputes between wholesalers and retailers. Consideration should then be given as to whether the implementation of an ADR scheme for the quick, affordable, and simple resolution of disputes between wholesalers and NHH retailers would be beneficial.
9. Timescales and service standards in the NHH sector should be reviewed, to ensure that obligations between wholesalers and retailers match those between retailers and NHH consumers, where they exist.
10. For WATRS and the Independent ADR Panel. Given that a contractual obligation exists between retailers and NHH consumers, WATRS should be able to require remedies from retailers even where wholesalers are involved in the complaint. Retailers should then be able to recoup any costs from wholesalers, using the methods discussed in recommendation 8.
11. Efforts should be made with retailers and wholesalers to ensure they are aware of their respective responsibilities with regards to consumers, and each other, within the NHH market. This should include awareness raising around the dispute resolution procedures available to them.
12. Consideration should be given to adopting further methods of raising awareness of the dispute resolution procedures within the water sector, which will be aided by consistent branding if this is taken up. This should include raising awareness of both the Independent ADR Panel, and Resolving Water Disputes, in addition.
13. Both CCWater and WATRS should make available information about their complaints process in key languages other than English, and in formats accessible to those with additional sensory requirements.

14. For the Independent ADR Panel. A regular schedule for review, improvements and amendments to the WATRS specification should be adopted, to allow for changes to be implemented over a set period, and a review of contractual arrangements where necessary
15. CCWater should place emphasis on 'triaging' cases where appropriate, and ensure that those not suited to mediation can be handled via other methods quickly and efficiently
16. For Ofwat. Ensure when developing new performance measures for water companies that the receipt of complaints is actively encouraged, towards a more inclusive and accepting complaints culture, and allowing for a full picture of customer satisfaction with the water sector to be obtained
17. For WATRS and the Independent ADR Panel. Caseworker and customer-facing staff at WATRS should undertake relevant training to ensure that they meet the meet the competencies set out in the Ombudsman Association Caseworker Competency Framework, as is relevant to their specific roles.
18. WATRS and the Independent ADR Panel should together consider amending scheme rules under section 6 to allow for WATRS to more freely make awards and require action beyond what a complainant has articulated when bringing a complaint to the scheme
 - a. This may include adding specific terminology allowing an adjudicator to make 'recommendations' to water companies to amend policy or process to avoid future detriment
19. WATRS and the Independent ADR Panel should together consider producing guidance on when to require an apology from a water company, taking into account the emotional aspects of the complainants experience, outside of the substantive merits of the case where necessary

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14. PROJECT TEAM



Nial Vivian is an experienced ADR practitioner and a lecturer and researcher in the related academic field. Prior to joining Queen Margaret University in August 2016, he resolved complaints across a number of schemes and disciplines in the private sector, including undertaking work for the independent reviewer of a major regulator. Since joining Queen Margaret University, he has undertaken qualitative research into Scottish Local Authorities and their implementation of Scotland's Model Complaints Handling Procedures (Mullen et al, 2017), and for Citizens Advice (Gill et al, 2017) into complainant perceptions of ADR. He has also designed and delivered teaching at undergraduate and postgraduate levels for complaints professionals and students across private and public sectors, including the Property Ombudsman and the Information Commissioners Office.



Sarah O'Neill is a part-time Lecturer in Dispute Resolution at Queen Margaret University. She is a non-practising solicitor and independent consultant, with many years' experience of working on consumer and access to justice issues. She was formerly Legal Officer at the Scottish Consumer Council, and Director of Policy at Consumer Focus Scotland. She has written widely in the areas of civil and administrative justice, consumer redress and alternative dispute resolution. She is a part-time legal chairperson of the First-tier Tribunal for Scotland (Housing and Property Chamber). She also holds an MBA, and she is an accredited mediator. She is currently a board member with the Scottish Legal Aid Board.



Gavin McBurnie is a Lecturer in Dispute Resolution at Queen Margaret University. He has undertaken work for the International Ombudsman Institute, the OECD and the National Assembly for Wales. Formerly a Director at the Parliamentary and Health Service Ombudsman in England he has also worked at Director level in the NHS in both Scotland and England. In addition, he holds both an MBA and an LLM and is researching for a PhD on the methods used by health ombudsmen in their system improvement role.

15. ACKNOWLEDGEMENTS

We would like to thank all of our interviewees for the candid, open, and critical way in which they were prepared to discuss the complaints processes in the water sector with us. It is only with your excellent input that we were able to build something resembling a complete picture of a complicated sector, with many unique elements, and highlight the opportunities that lie ahead.

Our thanks especially go to the representatives of CCWater, WATRS, and the Independent ADR Panel who spoke with us. You showed a real commitment to improving the customer experience of complaints in the water sector, and provided interesting ideas and challenges that helped to shape this report.

APPENDIX ONE

List of organisations from which participants in the research were interviewed.

A. Stakeholder Organisations

OFWAT

DEFRA

Water UK

MOSL

Independent ADR Panel

B. Water Sector Organisations

Anglian Water

Bristol Water

Dwyr Cymru

Northumbrian Water

SES Water

Severn Trent

Southern Water

Thames Water

United Utilities

Water Plus

Water Retail Company

WAVE

Wessex Water

C. Complaint Organisations

CCWater

WATRS

APPENDIX TWO

Brief Review -Water Industry Alternative Dispute Resolution (ADR) Scheme

Introduction

The review of the post-company complaints scheme for the water sector makes many recommendations which, if implemented, would impact upon the tendering process for the approved ADR scheme. This brief note details some of the implications for the System/Process Specification document and makes recommendations where appropriate.

System/Process Specification

The specification document is a generic document detailing the entire post-company complaints process including both CCWater and WATRS. It provides a suitable basis going forward.

The document contains the principles which underpin the ADR Scheme (P.6). Each of the eight principles has a supporting explanatory sentence. The Independent ADR Panel may wish to review the document Key Practices for Industry-based Customer Dispute Resolution produced by the Australian Government²³. The Australian Government model has six principles, but the eight principles in the System/Process Specification map across effectively.

The approach adopted by the Australian Government provides more detail on each principle. Each principle has a supporting purpose and a list of key practices which, if followed, will indicate strong compliance with the principle. This extra detail makes clear to all interested parties what can be expected from the ADR scheme.

The ADR referral process contained within the Independent ADR's System/Process Specification document may need amending if it agrees for an enhanced role for CCWater in the complaint process and/or if it takes steps to minimise the boundary between CCWater and WATRS.

²³ AUSTRALIAN GOVERNMENT, 2015, *Key Practices for Industry-based Customer Dispute Resolution*, [Online] [Viewed 18 October 2018] Available from https://static.treasury.gov.au/uploads/sites/1/2017/06/key_pract_ind_cust_dispute_resol.pdf

Standard to be used and revised complaints process for the ADR scheme

Concern has been raised by the Review Team within the main report about the approach being used by WATRS in resolving disputes. This approach is a desk and paper-based approach which makes adjudications on the basis of narrow legal tests. As such there is little emphasis placed upon interactional justice and the review team noted an 'inequality in arms' in the overall process, thus undermining procedural justice too.

Within the main report, it is suggested that the test to be used in resolving complaints using the ADR Scheme should be the 'fair and reasonable test' used in most industry based second tier complaint schemes. Utilities Disputes, the New Zealand second-tier complaints bodies for utilities became the recognised body for water complaints in January 2018. In recognition of its new responsibilities it produced specific scheme rules for water complaints.²⁴ In this document, Utilities Disputes describes the fair and reasonable test that it will use for water complaints:

UDL must deal with each Complaint on its merits and with the objective of reaching an outcome that, in its opinion, is fair and reasonable in all the circumstances having regard to:

- a) any legal rule or judicial authority that applies,
- b) rules of natural justice,
- c) general principles of good industry practice and any industry guidelines that apply,
- d) resolving Complaints in a cooperative, efficient and timely way, and
- e) assisting Complainants and Providers to reach informed and voluntary agreements to resolve Complaints where possible.²⁵

Another factor to consider in relation to the 'fair and reasonable' standard, is the legal idea of 'the man on the Clapham omnibus'. This idea is that a caseworker must make a consideration for what the "sane, sober but not extraordinarily gifted person who never

²⁴ UTILITIES DISPUTES, 2018, *General and Scheme Rules for the Water Complaints Scheme operated by Utilities Disputes Limited*, [Online] [Viewed 18 October 2018] Available from <http://media.utilitiesdisputes.org.nz/media/Scheme%20documents/Water%20Complaints%20Scheme%20rules%20Jan%202018.pdf>

²⁵ Ibid (Rule 24, Page 5)

takes unreasonable chances, and does nothing extraordinary, but does everything that is ordinary to perfection"²⁶ would consider to be reasonable in the circumstances.

In this way, consumer ombudsmen also apply extra-legal standards in their decision-making. They do not only consider the law, but are also empowered to consider what is 'fair and reasonable' in all the circumstances of the case. In order to ensure fairness in the individual case, they are able to depart from the law where this is necessary.²⁷

Ombudsmen also in this role perform a quasi-regulatory function by providing the industry with messages about expected standards and conduct, promoting the fair treatment of the individual through decisions in individual cases²⁸, and the publication and sharing of these decisions.

The Independent ADR panel will no doubt wish to consider, the suitability of the fair and reasonable test for its purposes and, if it does, whether it should describe the test in a way similar to that provided by Utilities Disputes Limited.

There is nothing within the Independent ADR Panel's System/Process Specification document which specifies the approach to be adopted by the appointed ADR body. In addition, the Scheme Rules used by WATRS provides no real detail on the process that will be used²⁹. The guidance notes produced by WATRS makes clear that the process is a paper-driven approach and that there will be no verbal communication with the complainant on the grounds that by not speaking with the complainant, this will ensure that the process will remain 'fully independent and impartial'.³⁰

In comparison, the scheme rules for water complaints overseen by Utilities Disputes contains:

²⁶ LEMPERT, R. 2003. *Following the Man on the Clapham Omnibus: Social Science Evidence in Malpractice Litigation*. [online] [available at http://repository.law.umich.edu/cgi/viewcontent.cgi?article=1017&context=law_econ_archive]. Accessed 13 July 2017.

²⁷ GILL, C. and HIRST, C. 2016. *Defining Consumer Ombudsmen: A Report for Ombudsman Services*. [online]. available at: <https://esrcjustenergy.files.wordpress.com/2017/05/defining-consumer-ombudsman-schemes.pdf>. [accessed 18 October 2018].

²⁸ Ibid

²⁹ WATRS, 2017, *Water Redress Scheme Rules (2017 edition)*, [Online] [Viewed 18 October 2018] Available from <https://www.watrs.org/documents/170331160419-water-industry-adjudication-rules-april-2017.pdf?v=1491406739>

³⁰ WATRS, 2018, *Guidance Notes*, [Online] [Viewed 18 October 2018] Available from https://www.cedr.com/docslib/WATRS_Customer_Guidance.pdf Page 2

COMPLAINT RESOLUTION PROCESS

30. After accepting a Complaint for consideration, UDL must:

- a) use reasonable efforts to resolve the Complaint in a timely manner,
- b) comply with the requirements of natural justice and procedural fairness, and
- c) regularly inform the Parties of progress towards resolving the Complaint.

31. In resolving the Complaint, UDL:

- a) must investigate the Complaint to the extent it considers appropriate in the way set out in these General Rules and the relevant Scheme Rules and consistent with the rules of natural justice,
- b) may consider any information in relation to a Complaint, and make any inquiry, that is fair and reasonable in the circumstances, and
- c) must aim to be consistent with the way other Complaints have been resolved by UDL, but is not bound by any legal rule of evidence. Decisions do not create precedent.

This provides a loose but effective framework by which Utilities Disputes can operate. The Independent ADR Panel may wish to include within its specification for the ADR Scheme a paragraph, or paragraphs, which sets out the framework by which the approved scheme will operate.

APPENDIX THREE

Data compiled from the DJS Customer Service Survey

	Overall	Easy to understand letter	Knew choices and steps to take	Could complete the form?	Ease of providing info required?	Helpfulness of Staff	Manner of staff	Timeline as expected	Scheme was Impartial?	Scheme acted Independently?	Scheme treated you fairly?	Final Decision?	Customer effort	NPS/would use again
0													1	17
1	24	1	2	3	5		4					32	2	5
2	9		3	7			2					9	3	1
3	4	2	4	12	3	1	2					5	4	5
4	11	2	10	14	4		4					5	2	
5	5	1	10	15	6		13					3	9	2
6													6	2
7													3	
8													9	4
9													2	1
10													21	15
Y								1	17	25	22			
N									30	24	29			
Don't Know/not applicable		1	3	12	6	5	37	6	9	7	5	1	1	2
Total Complainants	53	7	32	63	24	6	62	7	56	56	56	55	63	54