



Citizens Advice response DEFRA retail exits consultation

The Citizens Advice Service

The Citizens Advice service provides free, confidential and impartial advice to help people resolve their problems. As the UK's largest advice provider, the Citizens Advice service is equipped to deal with any issue, from anyone, spanning debt and employment to housing and immigration plus everything in between. We value diversity, promote equality and challenge discrimination.

The service aims:

- To provide the advice people need for the problems they face.
- To improve the policies and practices that affect people's lives.

Citizens Advice Bureaux deliver advice services from over 3,500 community locations in England and Wales, run by 382 independent registered charities. Citizens Advice itself is also a registered charity, as well as being the membership organisation for these 382 member bureaux. In Scotland 61 Citizens Advice Bureaux (CAB) help over 250,000 clients with over half a million new problems every year.

This response has been prepared by the Consumer Futures division of Citizens Advice which represents the interests of consumers across essential, regulated markets in Great Britain. We use compelling evidence, expert analysis and strong argument to put consumer interests at the heart of policy-making and market behaviour. Representing the interests of small business and small non-domestic consumers is a key part of work of the Consumer Futures Unit.

Introduction

The Consumer Futures Unit within Citizens Advice, and its predecessor bodies, has a significant amount of experience in representing the interests of domestic and non-domestic consumers sectors in regulated sectors, particularly energy. Whilst we are not experts in water policy we work closely with colleagues in the Consumer Council for Water (CC Water) and OFWAT on cross sector regulatory issues that affect our respective sector areas and our sister organisation, Citizens Advice Scotland, has a statutory duty to represent domestic and non-domestic water consumers in Scotland and therefore has direct experience of retail water competition for small and medium sized businesses.

Whilst we cannot bring in depth expertise and knowledge of the water sector to this consultation response (indeed we believe our colleagues at CC Water are best placed to do this) we can bring our wider knowledge of consumer issues in other regulated markets and in particular lessons learnt in the energy market since the introduction retail competition in the late 1990s.

It is key that the retail exits process is designed and executed with the consumer in mind. Customers should experience a smooth transition and not suffer any uncertainty or detriment as a result of retail exit. On a wider note we believe DEFRA, OFWAT and suppliers have a chance to ensure that consumers are put at the very heart of this process. There is a chance to use this process to ensure that consumer protection and engagement is

embedded at the very beginning of retail competition and by doing this the industry can avoid some of the mistakes made at the opening up of other complex utility markets such as energy.

Questions

- 1. Do you agree that we should seek to secure equivalence between customers that have been transferred following an exit and customers who are still serviced by an undertaker that has not chosen to exit the market – and , if so, why?**

We agree that there should be equivalence between customers that have been transferred following an exit and customers who are still serviced by an undertaker. Transferring customers will not have chosen to transfer so it is right that they retain the same safeguards and services as those customers in areas where the statutory undertaker has not exited. It is therefore important that those customers who are affected by retail exit experience as little disruption as possible and they are in a no worse position than those customers not affected by retail exit. Measures should be put in place to ensure that new providers post transfer commit to providing transferred customers with an equivalent service to the one they had prior to the transfer.

Whilst transferring customers will have the ability to seek a new contract with a licensed provider if they are unhappy with being transferred, in reality we would expect many customers of an exiting undertaker, particularly the very smallest businesses, will transfer. For many small businesses whilst water is essential, it is a small cost for their business¹ therefore many may value continuity and predictability over any potential savings from switching. Furthermore we expect that the retail market may not be sufficiently mature at the point of retail exit for many very low using businesses to have much choice of supplier, we would expect any new licensees to naturally seek to acquire higher volume users in the first instance and tailor their offers and marketing strategies to reflect that.

Given that we believe many small businesses with have little appetite or incentive to enter the competitive market at the beginning it is essential where an undertaker exits, transfer of customers is smooth and problem free and that they continue to experience the same service as those who have not had to transfer.

It is also useful for DEFRA to consider that transfer from an exiting undertaker will be the first experience many small businesses have of the opening up of the retail market, if they have a poor experience or associate this with a loss of service or confusion it may lead to disillusion and disengagement with the market in future.

- 2. Are there circumstances in which you think this might prove difficult to achieve? If so, how could we best approach this?**

We do not have any detailed knowledge here so will leave the water industry and the Consumer Council for Water to answer this question in detail. We understand that there may be some businesses that will have negotiated particular contractual arrangements with their statutory undertaker and would expect them to be honoured by the new licensee. There may be issues in terms of understanding and knowledge of historical contractual

¹ The Consumer Council for Water estimates that small businesses on a single site spend between £100 and £680 annually on water. (<http://www.ccwater.org.uk/wp-content/uploads/2014/06/Uncharted-Waters-Non-household-customers-expectations-for-competition-in-the-water-industry1.pdf>)

arrangements that exist across the transferring customer base. This also could introduce complications for the new provider.

We would suggest that it should up to the exiting undertaker to ensure they have correct records of any existing contractual arrangements and ensure that information is given to the new supplier, or that prior to transfer the new provider communicates with transferring customers setting out options that would include remaining on their existing terms. Not only does this provide customers with stability but also alerts them to the concept of greater choice and possible benefits.

3. Do you agree that there should be a deemed contract in all instances where a non-household customer is served by a licensee but has not negotiated a contract with the licensee – and, if so, why?

We agree that a deemed contract would be the best solution for customers served by a licence with no negotiated contract. This would ensure some equivalence between customers served by a licensee and those still with their statutory undertaker.

Going forward we would also expect the deemed contract to be the best solution to cover a number of situations where a customer may not have a contract – for example when a business had moved into a new property and has yet to negotiate a contract or where a business has allowed their fixed term contract to expire without negotiating a new contract.

4. What terms do you think should feature in the deemed contract?

It is important that customers who are transferred to a licensee at the opening of the market do not suffer any loss in service standards or any price inequality as a result of their transfer. Therefore we would expect any terms in the deemed contract to replicate the service standards and protections that customers currently receive from their statutory undertaker at the very least. The contract should set out clearly the service standards that the customer should expect, the responsibilities of the customer and supplier, any access rights to premises, meters of pipes the licensee may have, what price they will be charged and how this will be calculated and procedures for complaints and redress.

A deemed contract should not require a customer to pay any termination penalty or give any notice in order to move to a different contract or supplier.

5. From Market Opening to 2020 do you agree that the deemed contract should include price terms which are identical to those that the customer was receiving from its water undertaker at the time of the retail exit?

We agree that this seems to be the best way to ensure customers of exiting undertakers do not lose access to the price protections than those customers who remain with their undertaker enjoy. It also means that customers who are transferred are guaranteed stability in charging and are not exposed to any price shocks.

We do have a concern though that this may mean that customers, particularly those that may struggle to engage with the market (for example very low consuming businesses) may not have an incentive to investigate what the competitive market has to offer. Whilst we have already discussed that savings for low consuming businesses may not be much of an incentive to engage, research shows that some small businesses do see price as a sufficient motivator. In a survey of small businesses (that is businesses with 49 FTE or fewer) in 2014 by BMG Research for Citizens Advice 12% of small businesses were interested in

switching water supplier, this rose to 52% if switching could save the business money². Therefore it may be helpful to consider putting a duty on licensees to inform their customers on deemed contracts if they could be better off on an alternative contract offered by the licensee. This could take the form of a reminder on bills or an annual prompt letter illustrating potential savings that could be made.

6. If we work on the assumption that the transferred customers of an exited undertaker should have a deemed contract that included a clear set of price terms, what factors do you think should be taken into account when establishing those terms post 2020?

If price controls remain in place beyond 2020 for statutory undertakers we would expect the same assumption of equivalence between those customers who have remained with their statutory undertaker and those transferred to a licensee. That is those with deemed contracts continue to be covered by the same price protections as customers of statutory undertakers.

If it is proposed that price controls for the retail prices are removed after 2020 we would in the first instance expect the regulator to look at how competition is working and whether it is considered that competition alone is enough to ensure prices are kept reasonable. This assessment should look at various sub groups of non-domestic customer rather than just the whole market, this is essential to understand the impacts and benefits of competition for SMEs and micro businesses. There should be particular attention paid to groups such as low users and micro businesses. There needs to be particular care taken to ensure that smaller customers do not end up on default maximum tariffs as a penalty for an inability to engage with the market.

If price protection is removed we would expect the price in the deemed contract to be set by each supplier and to be variable. We would expect that variable rates for those on deemed contracts would be higher than a negotiated fixed contract, this is the case in the energy market, however some controls would need to be established to avoid the exploitation of sticky customers, who are more likely to have remained on a deemed contract. One way to ensure the price is fair is to include a license condition requiring terms in a deemed contract, including prices, to be fair and not unduly onerous or the introduction of a charge cap to protect low using non household customers against high default tariffs. For transparency we would expect suppliers to publish the rates offered to customers on deemed contracts.

7. How could we make our approach to setting non-price terms more effective?

We agree with DEFRA's proposed approach of including a standard set of non-price terms in the deemed contract. The non-price terms in the deemed contract should lay out the service standards that a customer should enjoy and should ensure that customers transferred on a deemed contract with a licensee experience the same levels of service (or better) as they would have enjoyed if their undertaker had not exited the market. It should also cover any access needs and rights the supplier has, obligations customers have in terms of payment for the service and what penalties the supplier may choose to exercise in the event of non payment.

There are non-price terms and wider protections that we think should not only apply to those on deemed contracts but all SME customers in the retail water market. These are best dealt with via license conditions and guaranteed standards. This is mainly to ensure that all

2

http://www.citizensadvice.org.uk/index/policy/policy_publications/the_experiences_of_small_businesses_as_consumers_in_regulated_markets.html

customers receive protection from poor or mis-leading information , poor service or mis-selling but also to avoid a two tier market where those on the deemed contracts feel that the competitive market is too complicated or confusing to enter resulting in the deemed contract being the preserve of the smallest and stickiest customers.

From our experience of the energy market mis-selling or poor service can knock consumer confidence in, and negatively impact their experience of the competitive market. Furthermore, poor supplier practices such as mis-selling or poor information can actually hinder competition by discouraging people .

8. What do you think the revised Guaranteed Service Standards (GSS) should include?

The Guaranteed Service Standards should set out minimum standards, service, and compensation levels if these standards are not met, that all retail customers should enjoy in relation to the following areas (this is not an exhaustive list)

- Keeping appointments
- New connections
- Information about charges for new connections
- Water quality
- Reconnections
- Supply interruptions (planned and unplanned)
- Response times to complaints and written enquiries

DEFRA may also want to consider proposing service standards related to issues that often cause problems for the customer between the wholesaler and retailer such as:

- New connections
- Disconnections
- Reconnections
- Trade effluent
- Meter installation / up or down sizing

In the past this would not have been an issue as they would have dealt with one party – the one that owns the infrastructure, not just the ‘billing front end company’.

Guaranteed Standards can also be used to protect the service standards of particular vulnerable groups. DEFRA may want to consider this option if it was thought to be desirable to extend some protections to transferring customers.

9. Are there any other non-price terms that do not form part of the GSS that you would expect to see included in the deemed contract?

We believe that wider consumer protections are useful and actually can help to drive a competitive market as empowered and confident consumers who are sure of their rights and protections are often more open to switching supplier and engaging with the market. As we

discussed earlier in this response widely differing protections between customer groups can risk further embedding stickiness, this could be a particular risk for customers who are transferred following a retail exit. Therefore we would expect to see some, if not all, of the non-price terms in deemed contracts reflected as obligations across all licensed suppliers in the codes, Guaranteed Service Standards or license conditions. We are particularly thinking of standards around billing, service, information, selling and the handling of complaints.

We propose that the following non-price terms to be included in the deemed contract and that when drawing them up OFWAT are mindful of the principal of treating with equivalence those customers who are transferred to a licensee as a result of retail exit and those that remain with their statutory undertaker.

- Payment methods - as a general rule transferred customers should be able to continue on their preferred payment method
- Any additional charges such as late payment penalties
- Billing – there should be minimum standards for the frequency and basic content of bills customers receive – including remaining on paper billing at no extra charge.
- Information about prices and price changes - default customers on variable price tariffs should be given adequate and clear information about the prices they will be charged and any proposed price changes and informed clearly in writing what this means for their tariff.
- Appointments – there should be minimum standards for meeting appointments for meter reading and fixing faults, that reflect current GS standards.
- Responding to written queries - there should be minimum standards on responding to queries about the bills or an operational problem that reflect that the more immediate response expected in the use of email or telephones.
- Complaints – the complaints procedure should be set out clearly including details of the process of escalating complaints and the role of any Alternative Dispute Resolution process that is in place.
- There should also be a term in the deemed contract allowing the customer to remain on these terms until such time as the customer chooses to move on to a contract with their current provider or a different provider. There should also be no notice period or financial penalty imposed if the customer leaves a deemed contract.
- There should be clauses setting out the obligations of the customer and supplier including entry requirements of the supplier for reading meters and repairing faults
- Consequences of late payment and non-payment and company procedures for dealing with debt and disconnection
- Processes for switching supplier.

10. Do you agree that there should be different requirements for licensees that are looking to take on large-scale customer transfers compared with licensees that wish to specialise in providing services to a niche class of customers?

In theory we would support this as it would allow smaller licensees to enter the market without so much regulatory burden. There is a precedent for this in the domestic energy market where suppliers with small customer bases are exempt from certain regulatory requirements such as social or environmental obligations or the requirement to offer a range of payment methods.

We would point out though that this model is only suitable for licenses seeking to enter the market and acquire customers through competition rather than transfer. In these circumstances customers choosing this supplier would be fully aware that there may be fewer regulatory obligations or protections than they enjoyed with their undertaker and willing to make the trade-off for lower prices. However no matter how small a new entrant is we would expect there to be minimum requirements around levels and quality of customer service.

11. What differences do you think it would be reasonable to see in the licensing regime in terms of capacities and /or capabilities between acquiring licensees and smaller entrants?

As outlined above we believe that there should be some differences in the way acquiring licensees and smaller entrants are regulated. We do not have enough detailed knowledge of the market to understand all the regulatory obligations the regulator might want to introduce for licensees. For a small licensee who wishes to specialise in a certain market it would seem sensible for them to opt out of certain regulatory requirements that an acquiring licensee would have to honour such as the obligation to offer a wide range of payment methods or to provide paper billing. However as mentioned above we would expect all licensees to have to meet certain minimum levels of service.

12. Do you agree that a transferred customer should remain on the deemed contract until they choose to switch to a negotiated contract or another licensee-even if they are transferred on more than one occasion? What do you think are the main advantages and disadvantages of this approach?

We agree with this approach.

The advantages are that these customers, who are likely to be the smallest businesses or low users who are less engaged, retain the price protection and service standards they enjoyed with their statutory undertaker. This is important as it may take these groups a good few years to engage with the competitive market or indeed for the market to provide offers that are attractive to them. In this time it is important that any transferred customers experience stability and predictability until they chose to engage with the market.

The disadvantage of this approach is that it may embed stickiness in the smallest and least engaged groups of customers as they will not experience any prompts to engage with the competitive market. This could lead disengagement and some customer spending more than they need to through not switching to more competitive rates, something that has happened to sticky customers who have remained with “incumbent suppliers” in the energy industry.

This could be addressed by requiring suppliers to proactively remind all their customers on deemed contracts of their right to switch and informing them of where they offer a tariff that is cheaper than their current deal. As we have already discussed, smaller customers can also be deterred from engaging in the competitive market if they are unsure of their protections or if they hear that businesses that have switched have had poor experiences. Therefore OFWAT and suppliers can tackle this by ensuring that there is an appropriate minimum standard of protections and customer service required of all licensees who supply SMEs and working to ensure poor practice such as ensuring that mis-leading sales practices are identified and stopped promptly.

13. Do you agree that customers should retain the right to return to their acquiring licensee on the deemed contract terms and conditions for two years following a transfer?

We agree that transferred customers should retain the right to return to their acquiring licensee on the same terms and conditions.

This will provide a “safety net” for those businesses who are perhaps nervous of leaving their deemed contract for the competitive market. This way if they do decide to try a different deal or supplier but find it is not for them they do have the option to return to their “home”

Hopefully this reassurance will persuade some customers who may be more inclined to be sticky to enter the market.

14. How far do you agree that this protection should be time limited? What do you think is a reasonable time frame?

We do agree that this protection should be time limited. As the market develops overtime it is possible that customers may switch multiple times and licensed suppliers may merge or exit the market it will become harder and harder for transferred customers to return “home”.

DEFRA’s suggestion of two years from the initial transfer seems to us to be a reasonable time frame.

15. Do you agree that we should introduce a “supplier of first resort” panel across England that will be available to take on new customers following an exit?

We agree that a supplier of first resort panel should be available across England to take new customers where the statutory undertaker has exited.

We presume that similar to the energy industry there will be no duty to supply on licensees that supply the non-domestic market under retail competition (that is a licensee will be free to refuse to take on a non-domestic customer). Whilst in reality refusal to supply across the board very rarely happens in energy, small low using new customers may be faced with little choice and those that are regarded as a credit risk may have more onerous terms and conditions attached to their contract (such as the demand for an up-front deposit).

It is possible that small low using businesses or those with credit issues may also face similar problems in water. Therefore it makes sense in a relatively immature market that a supplier of first resort is identified to ensure every business has at least one supplier that will take them on as a new customer and will offer them competitive rates and access to equal benefits as for larger customers. Whilst the energy market does not have a similar provision it is more mature and unlike energy there is also a potentially significant negative externality in terms of public health and hygiene if a business does not have access to wholesale and retail water services.

If a supplier of first resort regime is introduced we would want appropriate protections put in place to protect those new customers who find that the supplier of first resort is their only option from being offered significantly worse terms than other customers who can go to the competitive market. We would suggest that it would make sense, at least until 2020, for these customers to be offered the same terms as those customers transferred from their statutory undertaker.

16. Can you think of any ways in which we could refine our approach to new connections and new owners/occupiers in exit areas to make it more effective?

One aspect we think should be considered is the need for robust and timely SLAs between the licensee and the wholesaler who most likely owns the infrastructure e.g. if considering a new connection. We know from our colleagues in Citizens Advice Scotland that when retail competition for non-household customers was introduced in Scotland that the lack of service level agreements between Scottish Water and the licenced provider caused, at times, extensive delays and that the impact on customers, such as housing developers, could be severe.

17. Do you agree that we should require at least one acquiring licensee in every transfer to opt into the supplier of last resort regime?

We agree that this is a good approach and would ensure that DEFRA's ambition that no customer should be left without wholesale or retail water services following exit. However we feel it should be an opt out rather than opt in regime and indeed perhaps a condition of acquiring the customers of an exiting undertaker. We agree any acquiring licensee who wishes not to be included in the supplier of last resort regime should be required by OFWAT to give reasonable justification against criteria drawn up by OFWAT as to why they should be excluded.

18. Can you think of any ways in which we could refine our approach to the supplier of last resort regime to make it more effective?

We do not have any further comments to add.

19. Are there other issues that we should consider in our suggested approach to the applications criteria and process?

We agree with DEFRA's proposals for a simple, light touch applications process. The only point we wish to add here is that it is essential that customer information about retail exit is clear and accessible, and that information is released in a way that supports positive customer engagement. We feel there is a role here for government and consumer bodies as well as the regulator and the companies involved. The most important issue is that businesses affected understand what is happening, what the time table is and how it will affect them and where to go for more information.

20. Do you agree that we should require both undertakers and licensees to communicate with transferred customers?

We agree that DEFRA should require both undertakers and licensees to communicate with transferred customers.

There should be a requirement for any communications to be clear, understandable and written and designed in such a way that ensures they cannot be mistaken for marketing material or any other type of circular. It would be helpful if DEFRA specified key information that should appear in the letter.

We also agree that the exiting supplier should be responsible for communicating information about the exit and next steps such as transfer of customer accounts and balance at date of transfer, and the acquiring supplier should be responsible for sending information about what happens once the transfer has happened. There should also be clear information about arrangements for customers with outstanding debt.

It may be necessary for DEFRA to ensure co-ordinated timings of communications so customers of an exiting undertaker receive information at the appropriate time.

The letter sent by both parties should also give clear information about who the customer should contact if they have any queries or complaints as well as signposting to sources of

independent advice and information. As mentioned in the consultation other parties such as OFWAT, CC Water, government etc.. also have a role to play in ensuring that customers affected by exit and transfer have appropriate levels of information, it is as important to ensure customers do not get too much information as it is to ensure they get enough. As a general rule we see it as the role of the exiting and acquiring supplier to communicate information that is relevant to the circumstances of their individual customer, whereas it is the role of government, OFWAT and CC Water to communicate wider information about retail competition, retail exits, and wider consumer information.

21. Are there any additional issues that we should consider in our approach to customer communications?

It is important that DEFRA and other parties monitor communications to ensure that there is no scope for malicious parties to use retail exits in order to carry out scams on small businesses – for example using the exit of an undertaker to imply that a business has to contract with a new supplier or third party.

It is also important to remember that communication is not limited to informing customers about retail exit. DEFRA should be clear with exiting undertakers and licensees, who is responsible for handling complaints and resolving issues throughout the process and how that is communicated. We would want to avoid a situation where a customer with a problem is passed between suppliers. It should be clear from the outset which company is responsible for resolving problems. In our opinion it make sense that the receiving licensee would be responsible in the first instance for resolving problems given that they should have more of an incentive to keep the customer happy (following the gaining supplier led model of switching that is used by a number of industries including the energy industry).

22. Do you have any other comments about our overall policy approach to retail exit?

We do not have any further comments to add.

23. Is there anything else you would like to add to your response?

We do not have any further comments to add.

