

United Utilities Water Limited Condition R Compliance Code

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Contents	Page
Introduction	3
Overview	4
Ofwat guidance	4
Summary of Condition R obligations	6
Arm's length trading	6
Handling transactions with WSL's	7
Obligations and information	7
Enforcement powers, staff training, monitoring and audit process and the disciplinary process	9 – 10
Wholesale supply and combined supply by a Water Supply Licensee (WSL)	11
Roles and responsibilities	11

Introduction

United Utilities (UU) is committed to complying with all applicable laws, regulatory requirements and its Instrument of Appointment (the licence under which we operate) in the conduct of its business. It is important that we are able to demonstrate that we have complied with the spirit of the law as well as the letter of the law, and that within UU there is a culture of compliance.

This Compliance Code sets out how United Utilities will comply specifically with its obligations under Condition R of its Instrument of Appointment

Each and every UU staff member is responsible for conforming with the companies policies. This Compliance Code has been prepared to assist UU staff in doing so. It is intended to help UU staff support compliance, understand the obligations and recognise potential problem areas.

Infringements of laws, regulatory requirements or the licence threaten both UU and its staff. Infringements can subject UU to prolonged and expensive investigations, litigation, substantial fines and restrictive orders by the regulatory authorities (including Ofwat). Breaches can also have severe implications for individuals who could face disciplinary action.

This code has been prepared to help UU staff recognise and thus avoid potential problem areas of non-compliance. It is important that UU staff seek advice before taking any action that may result in an impact on compliance or the perception of compliance with Condition R.

If UU staff are in any doubt then they should contact their line manager, the Economic Regulation team or the whistleblowing helpline.

Overview

Competition within the United Utilities Water Limited (UUW) area of appointment is developing, we are committed to behaving in a manner where we clearly avoid engaging in behaviour or practices which are or could be deemed to be anti-competitive.

This document reflects the structure of United Utilities as at April 2016 and the requirements for compliance for UUW, UUWSL and any other associated companies at that time. However, requirements are likely to evolve over time as a result of either internal or externally driven changes. Accordingly, when considering compliance with the code it is important to ensure that UU staff are referring to the most recent version available.

Ofwat Guidance

Condition R supports the duties placed on water undertakers by sections 66A-66C Water Industry Act 1991 (WIA91) with regard to the provision of access to WSLs on reasonable terms.

Condition R ensures that UUW as a water undertaker:

- Produces, publishes and updates as necessary a code for access (including prices) in compliance with Ofwat's access codes guidance;
- Does not unfairly discriminate against customers, including WSL's and their customers;
- Does not obtain an unfair commercial advantage because of its activities under this Condition (this also applies to any of UUW's associates); and
- Produces, publishes and updates this Compliance Code which follows relevant Ofwat guidance.

Condition R also requires that UUW does not show undue preference to, or undue discrimination against, actual or potential customers. This will prevent unwarranted distinctions between:

- UUW's retail activities and WSLs;
- Different WSLs (or their customers); and
- Customers connected to the UUW network, whether or not they are supplied by a WSL or UUW.

UUW cannot treat a WSL's customer any differently from its own customers (unless specifically agreed as part of the access agreement). For example, where water use may be limited in the event of a drought order or a hosepipe ban, it is irrelevant whether a customer is a customer of UUW or of a WSL and this must not be taken into account.

This Compliance Code is designed to set out the requirements of Condition R and how UUW staff should comply with them. Other business documents and procedures relevant to this Compliance Code include:

- The **Disciplinary Policy**, which covers disciplinary action in the event of breaches of the company's policies or procedures;
- The **Whistleblowing Policy**, which provides guidance for UU staff to enable the confidential reporting and investigation of potential misconduct, including breaches of Condition R and competition law;
- The **Competition Act Compliance Policy**, which provides an accessible guide to operating in accordance with competition law; and
- **Regulatory Accounting Guideline 5.06**, which sets out requirements on how to handle and account for intra-group transactions appropriately.

The first three of these policies are available to UU staff on the company intranet "One". Regulatory Accounting Guideline 5.06 can be found on Ofwat's website at the following URL:

<http://www.ofwat.gov.uk/publication/guideline-for-transfer-pricing-in-the-water-and-sewerage-sectors/>

PART I: Summary of Condition R obligations

This chapter outlines the duties placed on UUW under Condition R which fall within the scope of this Compliance Code. It also provides guidance on the issues that UU staff need to be aware of, including the types of procedures to prevent any breach of our obligations under this condition. The points set out in this chapter are intended to be examples and form a non-exhaustive list.

This code has been produced following consideration of guidance provided by Ofwat as is required by Condition R, that the appointee shall have a compliance code which complies with compliance guidance issued by the authority. Paragraph 7(4) of Condition R defines compliance guidance as guidance in relation to a water undertaker's compliance with its obligations under paragraph 7 (obligations about information and paragraph 5(1)(b) (arm's length trading)).

A Arm's Length Trading

Under Condition R paragraph 5(1)(b) where a water undertaker is related to a licensee they must ensure that transactions between the two parties are carried out at arm's length; that is as though the parties are unrelated. United Utilities Water Sales Limited (UUWSL) hold a Water Supply Licence and is an associate of United Utilities Water Limited the incumbent water company. Therefore transactions between UUW and UUWSL are required to be at arm's length.

Any service to UUWSL should be clearly illustrated in the financial records of UUWSL and UUW is required to comply with Regulatory Accounting Guideline 5 (RAG 5.06), and paragraph 5 of Condition R (anti-competitive behaviour).

This Compliance Code has been developed with regard to paragraph 6 of Condition F. Condition F requires UUW to ensure that all of its transactions with any associated company are at arm's length so that neither gives to, nor receives from the other, any cross subsidy

Individuals are not prevented from being directors of both UUW and UUWSL. They do, however, need to be aware of UUW's duties under Condition R. For example, if a director receives information when negotiating an access agreement in their capacity as director of UUWSL, they should not use it in their capacity as director of UUW.

Condition R Compliance Code

B Procedures that UU staff are required to follow when handling transactions with WSLs.

All requests from WSLs, including UUWSL, for access prices or customer transfers shall be directed to the Trading Manager (trading.manager@uuplc.co.uk). Access to this mailbox is restricted to a small number of named UUW staff.

Requests for services by a WSL, including UUWSL shall be directed through the Wholesale Supply Contracts Team. Their email address is (wholesaleservicedesk@uuplc.co.uk) and telephone contact details are 0345 070 2059. Details of any subsequent communications directly with the customer should be provided to the Wholesale Supply Contracts Team so that the WSL can be updated accordingly. These details are set out within the UUW access code.

Settlement of any amounts due to or payable by UUW for services provided to WSLs, including UUWSL, shall be conducted by the Wholesale Supply Contracts Team via the Wholesale billing system.

Emergency network or other service issues may be raised directly by the WSL and / or their customer via the Emergency Network Enquiries Team on 0345 6723 723 and dealt with following normal emergency response procedures. Details of any contacts directly from the non-household customer will be sent to the retailer and the Wholesale Supply Contracts Team.

UUW's Business Retail function should not be contacted or consulted in relation to service requests or service issues associated with non-household customers that have switched and are now the customers of a WSL unless:

- it is essential in maintaining / restoring service to that customer; or,
- for non-emergency activities, express permission is given by the Wholesale Contract Manager (Contact: wholesaleservicedesk@uuplc.co.uk or 0345 070 2059).

Other procedures and dealings applying to all WSLs must be conducted fairly and equitably irrespective of whether the WSL is an associate of UUW or not and in a manner that neither shows undue preference nor discrimination in the behaviour shown towards individual WSLs.

C Obligations and Information

The incumbent company must ensure that neither they nor any associated licensee or any other related company, obtains any unfair commercial advantage from the exchange of information specified under paragraph 7 of Condition R.

For example, UUW may have access to information relating to a WSL's activities, which it, or a related company, might be able to use to gain an unfair commercial advantage. This type of information must be kept confidential.

Condition R Compliance Code

In the course of providing access under sections 66A-66C WIA91, UUW will need to obtain information from WSLs. This may include details of:

- customers that the WSL supplies;
- its water sources;
- water quality; volume and timing of water to be supplied;
- the security of supply associated with the WSL's water sources; and
- meter reading details.

Paragraph 9 of Condition R requires UUW to not request from a WSL or from a person supplied or seeking to be supplied by a WSL more information than it reasonably requires:

- to carry out its functions;
- to ascertain whether the WSL has sufficient product and public liability insurance;
- to comply with any condition of its appointment;
- in relation to national security or civil emergencies; and
- to comply with any reasonable request for information made by the Environment Agency.

UUW may only use the information a WSL provides (or that relates to a WSL) in relation to the WSL regime for the purpose for which it was supplied.

UUW is required to take appropriate steps to protect any information it receives from misuse within the whole of UU. The purpose of paragraph 7 of Condition R is not only to prevent "inappropriate disclosure" of information to third parties (such as those outside of UUW) but also to prevent "inappropriate disclosure" of information within UUW (such as to other staff or agents of UUW).

Part II of this Compliance Code sets out how information received from or in relation to WSLs will be handled. The Trading Manager will be responsible for this information. It is essential that information we receive from or relating to a WSL in such circumstances is not used to gain an unfair commercial advantage or otherwise misused in any way.

In addition, part II of this Compliance Code sets out procedures for sending out information to WSLs. Under paragraph 8 of Condition R, UUW should provide a WSL with such information as the WSL reasonably requires to:

- enable the WSL to apply for, negotiate and conclude an agreement under section 66D;
- comply with any condition of its Licence, or any statutory requirement imposed in consequence of its Licence; and
- comply with any reasonable request for information made by the Environment Agency.

UUW Procedure

To avoid the possibility of information being used inappropriately and to remove any perception that UUW could be trying to persuade a customer not to switch supplier, UUW protects information received from or in relation to a WSL by:

- utilisation of a trading manager role, wholesale contract manager role and a wholesale supply contracts team to take responsibility for interactions with WSLs. These roles are in place to ensure the separation of the wholesale and retail activities within UUW, thereby maintaining confidentiality of the interactions with WSLs from the rest of UUW Wholesale;
- the use of separate email accounts and restricted access to drives to ensure the separation of information relating to WSLs from the rest of wholesale, thereby aiding confidentiality;
- setting out standard requirements to enable the assessment of the WSL application, thereby ensuring a consistent approach to evaluating the application;
- creation of a clear boundary between Wholesale and Business Retail by establishing separate directorates responsible to separate directors; and
- the provision of compliance training to UUW staff identified through a risk based approach to compliance.

D Enforcement Powers

Where Ofwat is satisfied that information is being, or is likely to be, misused in breach of Condition R, Ofwat can use its enforcement powers to secure compliance. Ofwat has the power to impose financial penalties of up to a maximum of 10% of company turnover where a company contravenes the terms of its licence.

E Staff Training

UUW takes a risk based approach to compliance, identifying those members of UU staff where the duties associated with their role mean they are likely to have increased risk of breaching competition law and condition R. The company provides staff with a level of training appropriate to the level of risk. UU staff who in the course of their work, have dealings with UUWSL, or WSLs and/or have access to information connected to applications and switched customers are considered at higher risk and therefore may be identified to undergo specific training to ensure understanding of the level playing field principle including competition law and Condition R.

If any member of UU staff feel they require this training, they or their manager should contact the Economic Regulation team. Additionally, all managers are encouraged to raise awareness of this Compliance Code.

F Monitoring and Audit Process

This Compliance Code will be evaluated on a regular basis:

- 1) to ensure that the code is working correctly;
- 2) to enable areas of risk to be identified and addressed; and
- 3) to ensure UU staff understand the code and are aware of their responsibilities.

Any changes which are required will be incorporated as part of the annual review and more frequently where necessary.

Regular audit of the code will be undertaken:

- 1) to understand levels of compliance;
- 2) to minimise the risk of any potential breaches; and
- 3) to evaluate relevant UU staff members knowledge of the code.

All contact with WSL customers must be recorded and logged to demonstrate that all such transactions are in compliance with the code.

Following the publication of new or revised guidance from Ofwat or significant organizational change, this code and relevant policies and procedures will be assessed to ensure compliance.

G Disciplinary Process

Individuals who breach Condition R may face disciplinary action in accordance with the Disciplinary Policy, which covers the requirement for all UU staff to comply with policies and procedures.

PART II Wholesale supply and combined supply by a Water Supply Licensee (WSL)

It is inevitable that UUW will participate in the competitive market that also includes Water Supply Licensees. UUW must ensure that any information it receives from the WSL, customer, or potential customer is not used to gain an unfair commercial advantage. The removal of the in-area trading ban from Condition R increases the need to ensure that both the separation between wholesale activities relating to licensees, and the equal treatment of all licensees receive additional focus. Set out below are the procedures for UUW staff dealing with WSLs.

Roles and Responsibilities

Trading Manager (trading.manager@uuplc.co.uk)

The Trading Manager will:

- act as the single point of contact for initial access price enquiries from WSLs;
- record all enquiries from and dealings with WSLs as part of the access price / contract application process;
- provide published access prices or such related information as may be required; and
- restrict access to information they receive from customers, potential customers and WSLs to the Wholesale Contract Manager, Wholesale Supply Contracts Team and colleagues as required to complete any application.

Wholesale Contract Manager (wholesaleservicedesk@uuplc.co.uk)

The Wholesale Contract Manager will:

- be responsible for the on-going management of the WSL contract; and
- respect the confidentiality of the information.

Wholesale Supply Contracts Team (wholesaleservicedesk@uuplc.co.uk)

The Wholesale Supply Contracts Team will:

- undertake the transfer of customers using the customer transfer protocol;
- invoice the WSLs for water services supplied;
- ensure the contractual details remain confidential;
- not disclose information to UUW Business Retail relevant to the WSL, customer or the transfer of the customer; and
- ensure customer information kept on file is secure, reliable, and accurate.

UUW Business Retail - Key Account Managers

The Key Account Managers shall:

- continue to deal with their customers fairly and equitably;
- maintain records of their customer visits recording any relevant points of discussion;
- not comment on a competitor or their competitive bid in any way; and
- deal with UUWSL at arm's length.

In the event that a customer informs the KCM that they are considering seeking a new supplier, then the KCM shall:

- take no steps to vary UUW's offering to them as a result of this information;
- record this information and its source; and
- only communicate the following information to the customer in relation to the switch:
 - That UUW is prevented from making a counter offer;
 - That following the switch they will no longer be customer of UUW Business Retail;
 - That any Key Account Services will need to be negotiated with their WSL;
 - That the WSL will continue to receive services from UUW wholesale, with UUW wholesale maintaining some responsibility for data loggers, and inspecting and testing and replacing meters as required; and
 - Some customers may retain a relationship with UUW for sewerage services.

Once the customer has switched there must be no attempt to undermine the WSL relationship with the customer.

Directors

- must understand their duties and responsibilities under competition law and Condition R;
- must respect the confidentiality of WSL information; and
- must ensure that WSLs are treated fairly and equally and that UUWSL is dealt with at arms-length.

Other staff

- Other sections of the business may be required to provide information and advice in order to complete a transfer and must provide support services to facilitate this where required. In doing so, they must respect the confidentiality of the information provided to them.