



Southern Water Condition R Compliance Code

September 2022



Southern Water Condition R Compliance Code

Chief Executive Officer's Statement

Southern Water is subject to legal and regulatory obligations set out in both legislation and in our Instrument of Appointment. This includes our obligation to comply with all duties under sections 66A-66C of the Water Industry Act 1991, together with Condition R of our Instrument of Appointment and relevant competition law.

These duties relate to competition in the water supply market and our obligations to suppliers and retailers holding a Water Supply and/or Sewerage Licence (WSSL).

This Condition R Compliance Code is designed to ensure Southern Water carries out its functions under the water supply licensing (WSL) regime fairly and without discriminating against customers or licensees. It also provides clear information to staff on their individual obligations to protect both Southern Water and its employees from a breach of Southern Water's obligations under this Condition.

Competition compliance is vital to the operation of our business and Southern Water is fully committed to rigorous competition law compliance. It is the responsibility of each of us to be aware of the rules and guidance contained within the Condition R Compliance Code and to ensure that these are adhered to.

Lawrence Gosden
Chief Executive Officer
September 2022

1. Purpose of this Code

Condition R of our Licence supports the duties placed on water companies to provide market access on reasonable terms to suppliers and retailers holding a Water Supply and/or Sewerage Licence (WSSL), referred to in this document as “licensees”.

The purpose of the Code is to ensure that Southern Water:

- does not unfairly discriminate between licensees (or its customers) and its other customers;
- does not gain an unfair commercial advantage because of its activities under Condition R;
- does not show undue preference to, or undue discrimination against, actual or potential customers or any licensees.

This Compliance Code sets out our arrangements to:

- demonstrate compliance with our confidentiality obligations under appointment Condition R and in relation to information provided to or by us under or for the purposes of this condition or Condition S (customer transfer protocol);
- protect commercially sensitive information received from or in relation to licensees;
- ensure that transactions between ourselves and any associate licensee are at arm’s length;
- provide clear information to staff on their individual obligations; and
- ensure that we are carrying out our functions under the WSSL regime fairly and without discriminating against customers or licensees.

These arrangements cover interactions with:

- (i) Licensees with a retail or self-supply authorisation (Retailers and Self Suppliers) within the business retail market; and
- (ii) Licensees with a wholesale authorisation (Retailers able to introduce water into a water undertaker’s supply system for the purpose of supplying its own large user customers, i.e., customers using over 5Ml per year).

The aim of this Compliance Code is to ensure a fair and level playing field for all licensees, and to allow customers to benefit from competition. Our legal obligations include complying with our Instrument of Appointment and competition law.

Owat can use enforcement powers to secure compliance with Condition R and competition law. Since April 2005, Ofwat have had the power to impose financial penalties of up to 10% of turnover where a company contravenes these appointment conditions.

It is a requirement of our Instrument of Appointment for Southern Water to have in place a Compliance Code, prepared in accordance with Ofwat guidance, demonstrating how we comply with the Instrument of Appointment Condition R.

2. Compliance

Southern Water's Commitment to Compliance

Southern Water is fully committed to rigorous competition law compliance. It also expects its suppliers and competitors to be fully committed to rigorous competition law compliance. Southern Water's commitment is confirmed in the Chief Executive Officer's Statement. To the extent that any employee of Southern Water has any questions concerning Southern Water's policy in this regard, they should feel free to contact any of the members of the company's Compliance Team listed immediately below.

Compliance Team

Lawrence Gosden (CEO), is responsible for compliance with our Instrument of Appointment within Southern Water.

Richard Manning, General Counsel and Company Secretary, is responsible for competition law compliance within Southern Water.

He is supported by Robin Churchill, Head of Legal, and Joanne Statton, Head of Company Secretariat. He is also supported by Dylan Freeman, Competitions and Market Lead, within the Regulations Team.

If any employee is in any doubt as to the course of action which should be taken on a specific matter or proposal, then he/she should contact any of these listed individuals.

When appropriate, members of the Compliance Team may decide to consult outside Counsel. No approach, however, should be made directly to outside Counsel without the express approval of one of the members of the Compliance Team.

Key Commitments

We are committed to:

- keeping all information relating to licensees, their customers and our business confidential;
- making sure no commercial advantage is gained from the exchange of information relating to licensees;
- understanding and acting in accordance with the rules of the legal and regulatory framework affecting competition at all times;
- maintaining compliance with our Competition Compliance Policy;
- not unduly discriminating against or showing undue preference to any party; and
- taking account of these principles in the continuing development of our customer and business relations.

Southern Water's Arrangements for Compliance

It is the responsibility of everyone in Southern Water to ensure that we comply with our duties under our Instrument of Appointment and all relevant legislation and remain faithful to our policy of compliance. To ensure we achieve this objective, we have the following formal arrangements in place:

- the circulation of this Compliance Code to key employees within Southern Water;



- the use of on-line training to enable Southern Water's staff to understand and comply with the competition rules including compliance under Condition R and sections 66A-66C WIA91;
- a Competition Law Compliance Manual that is available on the intranet
- the establishment of monitoring and reporting systems; and
- the creation of a team to support our compliance policy and provide practical advice.

The successful implementation of these arrangements is essential to ensure that the best interests of Southern Water are fully protected and that Southern Water complies with its obligations to licensees.

Employee Commitment

A breach of its Instrument of Appointment can have serious adverse consequences on Southern Water and alleged violations of competition laws can have serious adverse consequences on the company and individual employees. It is essential that every Southern Water employee is familiar with the fundamental principles of applicable competition laws and understands how they apply to Southern Water's day-to-day business. While the company does not expect its employees to become experts in competition law, it does require that each employee: (i) learns what actions are specifically forbidden or required by this policy; and (ii) learns to recognise the types of business activities and practices that may raise competition issues, so that necessary advice may be obtained when appropriate from the Compliance Team.

We are all therefore responsible for:

- reading the Compliance Code and ensuring that we all, individually and collectively, comply with it at all times

Internal disciplinary procedures will be applicable to non-compliance by employees with the Code. In certain cases, failure to follow the guidelines could result in an employee being guilty of gross misconduct, with all that flows from committing such an offence.

Richard Manning
General Counsel and Company Secretary
September 2022



3. Basic Do's and Don'ts

While every effort has been made to include all activities that may be covered by this Code it is impossible to compile a comprehensive list of do's and don'ts with respect to the types of business conduct that may raise competition law concerns. Accordingly, please refer to the Compliance Team before undertaking business conduct that could subject the company to substantial competition liability.

The considerations that should be kept in mind are:

- Compete vigorously and independently at all times;
- Avoid any conduct which might be interpreted as being intended to exclude competitors, divide markets, or fix prices or other trading conditions to third parties;
- Always consider how your conduct may appear to a competition watchdog or court at a later date. You should assume that your conduct will not be viewed in the most favourable light by the regulatory authorities;
- Always check with the Compliance Team before offering "special" discounts, different prices or other conditions of sale to competing customers;
- Base all customer terminations on objective commercial justifications and make such terminations only after consultation with the Compliance Team. Never discuss a customer termination, either before or after such termination with a third party;
- Avoid any advertising, marketing or other program which objectively could be viewed as unfair or deceptive;
- Don't enter any agreement, understanding or "gentleman's agreement" or even discuss with a competitor any of the following:
 - prices, discounts or other trading conditions to third parties;
 - profits, profit margins or costs;
 - market shares, markets or sales territories;
 - distribution practices;
 - bids or intentions to bid;
 - supply capacity;
 - entering or leaving any product or geographical markets; and
 - selection, classification, supply to or termination of customers or classes of customers.
- Don't obtain information about competitors (especially about prices) directly from them. While obtaining information about competitors from published data and customers is permissible, you should always document your sources of information to avoid any inference that you received such information directly from a competitor.



- Don't agree with or attempt to coerce customers with respect to any of their resale prices or other terms and conditions of sale. - Water companies cannot show any undue preference to, or undue discrimination against, actual or potential customers or any licensees.
- A water company should not treat a licensee's customer any differently from its own customers (unless specifically agreed as part of an access agreement). For example, if there is a drought order or a hosepipe ban, the water company cannot require the licensee's customers to limit their water use in precedence or preference to limiting water use by its own customers.

4. Background

Condition R

Our Instrument of Appointment contains Licence Condition R. This states that, as a water undertaker, we must:

- not unfairly discriminate between licensees (or their customers) and other licensees and customers;
- not obtain an unfair commercial advantage because of activities under this condition;
- ensure that any transaction between ourselves and any related licensee is carried out at arm's length.
- comply with confidentiality obligations and appropriately handle and protect any commercially sensitive information we receive from or in relation to licensees;
- produce, publish and update a Compliance Code that follows Ofwat's guidance;

In addition to Condition R, there is a separate Licence Condition (R3) that sets out our obligations in relation to the Market Arrangement Code (MAC).

The MAC is a non-statutory code that sets out arrangements for how the business retail market operates. As an appointee, we must be a party to and comply with the MAC; and take all steps in our power to ensure that the MAC principles are facilitated to ensure the market functions effectively to the benefit of customers. It is our policy to comply with the MAC, to be a member of Market Operator Services Limited (MOSL) and to participate in the functioning and governance of both MOSL and MAC development.

The water and sewerage supply licensing market

The Water Act 2014 (effective 1 April 2017) allows all eligible business, charity and public sector customers who use the water supply or sewerage systems of an appointed company whose area is wholly or mainly in England, to choose their supplier of water and wastewater services from retailers holding a WSSL.

The WSSL has several variations which include:

Retail authorisation that authorises the licensee to use the supply system of an appointed water company to supply the eligible premises of its customers only;

Retail restricted to self-supply authorisation that allows the holder to supply their own sites and those of persons associated with them but would not allow them to become a retailer for any other sites;

Wholesale authorisation which allows the licensee to introduce water into the public water networks of water undertakers whose areas are wholly or mainly in England in order to supply the licensee's own customers if their non-household premises consume at least 5 mega-litres of water a year.

5. Obligations under appointment Condition R

The Ofwat guidance sets out a number of key issues the Compliance Code must cover and the procedures to prevent any breach of obligations under this condition. These include:

Arm's length trading - This covers the arrangements in place to ensure that transactions between the regulated business and all licensees, including any associated licensees, are carried out at arm's length.

No undue preference or discrimination - This covers the obligation that there is no undue preference or discrimination in relation to retailers and their customers.

Information handling obligations and processes - This details the provisions we have in place to ensure we do not benefit from an unfair commercial advantage from any exchange of information between ourselves and a licensee; that there is no inappropriate disclosure of information; and that we only use the information a licensee provides for the purpose for which it is supplied.

General Areas

Staff training - This outlines the training provided to our employees in relation to this Code, competition law and level playing field compliance.

Compliance monitoring and audit - This details the provisions we take to monitor compliance, including both testing of individual employees' knowledge of competition compliance, and audits to check for potential breaches of the Code.

Disciplinary process - This details the procedures in place to investigate and manage any potential breach of Condition R and the disciplinary actions we will take in the event of non-compliance.

6. Condition R Obligations – Compliance Statement

1. Arm's Length Trading

Under paragraph 5 of appointment Condition R, a water company that is related to a licensee must ensure that transactions between the two are carried out at arm's length, that is, as though the parties are unrelated.

As of the date of this Compliance Code, Southern Water has exited the business retail market and does not have an associated retail licensee. Therefore, there are no transactions between Southern Water and a related licensee to carry out at arm's length.

2. No undue preference or discrimination (Level Playing Field)

Under paragraph 6 of appointment Condition R, a water company must ensure that it does not show undue preference towards, or undue discrimination against any licensee (such as a non-household retailer) or their customers. This includes undue discrimination or preference as compared to other licensees and their customers or Southern Water and its customers.

We will treat all retailers and their non-household customers in the same way to ensure a level playing field. We must provide all retailers with the same wholesale services, on the basis of the same contract terms and conditions, price, and levels of service.

Where we offer a variation to this service, we will ensure alternative terms and service levels are available to any other equivalent licensees, and where published, make clear the criteria under which such terms would be available. For instance, where we offer bespoke credit terms, we will publish the terms of these arrangements and provide equivalent terms for licensees who meet the criteria.

It is important to provide equivalent levels of service to all licensees, as failure to provide a level playing field would be unfair and may undermine competition.

Licence Condition E1 was introduced in April 2019, prohibiting undue preference toward or undue discrimination in relation to provision of other services including the provision of water resources; water efficiency services; leakage services; laying of pipes; sewer drains; new appointments and variations, or the development of bioresources.

Condition E1 contains similar principles to Condition R concerning level playing field in other developing markets with which Southern Water must comply. Therefore, it is important that we do not show undue preference or undue discrimination regarding the provision of water resources; water efficiency services; leakage services; laying of pipes; sewer drains; new appointments and variations, or the development of bioresources.

3. Information handling obligations and processes

Each water company must ensure that neither it, nor any related company, obtains any unfair commercial advantage from any exchange of information specified under paragraph 7 of condition R. For example, a water company may have access to confidential information about a licensee’s activities which it might be able to use to gain an unfair commercial advantage.

Southern Water is committed to only use the information a licensee provides for the purpose for which it was supplied.

Each Southern Water employee has a responsibility to ensure:

- Southern Water does not obtain any unfair commercial advantage from any exchange of information between ourselves and a licensee. For example, we may have access to confidential information about a licensee’s activities, which we will not use to gain an unfair advantage;
- We do not ask a licensee for more information than we reasonably require;
- We only use the information a licensee provides for the purpose for which it is supplied;
- There is no inappropriate disclosure to third parties or inappropriate disclosure of information internally;
- We do not use the information provided to us by a licensee to unreasonably disrupt any arrangement the customer is seeking to make with the licensee

Risk Mitigation

Following the opening of the business retail market in April 2017, Southern Water established a Business Channels function and market processes to ensure information received from licensees is restricted and used appropriately to meet the information obligations of Condition R. The following table sets out how we comply with these information obligations, including: how we handle information received from licensees; the team responsible for this information; how we restrict access to the information; and how we limit data exchange through secure channels.

Information Obligation	Risk Mitigation
Ensure information provided by the licensees is limited to the appropriate teams	Southern Water have created a wholesale B2B service function (Business Channels) that is a single point of contact responsible for all interactions with licensees, and which is fully separate from our customer retail activities.
Establish secure and dedicated means for the transfer of information between ourselves and licensees	<p>Licensee queries, correspondence and market information is received by our Business Channels team via:</p> <ul style="list-style-type: none"> (i) Our retailer portal; (ii) email (wholesaleservices@southernwater.co.uk) (iii) phone direct to our B2B service desk <p>The retailer portal allows secure information transfer through Southern Water’s firewall and DMZ, and access requires an individual username and password. Transfer of information is also permitted to and from the bilateral interface developed by MOSL.</p> <p>There are facilities available for the encryption of data sent to or from the email account as required.</p>
Ensure information requested is limited to that which is reasonably required	Information required for service requests is based on the standard forms stipulated in the Code Subsidiary Documents (CSDs) of the Wholesale Retail Code.



Ensure information is only used for the purpose for which it was provided	<p>Southern Water developed an Integration Hub and Business Console to store and access information provided by retail licensees. Access to these systems is limited to Business Channels who require information to serve the licensee. Access security is controlled through individual username and password.</p> <p>There is limited risk of obtaining any unfair commercial advantage or of using the information provided to us by a licensee to unreasonably disrupt any arrangement the customer is seeking to make with the licensee, following our exit as a retailer from the business retail market.</p>
Ensure that there is no inappropriate disclosure of information internally	Access to the Wholesale Services Integration Hub and Business Console workflow system is limited to those employees who need to view the data to serve licensees and their customers.
Ensure that there is no inappropriate disclosure of information to third parties	Access to the Business Console is limited to Southern Water employees. Disclosure of data to third parties is limited to information required to undertake wholesale service activities.
Accountability for control of information transfer and access to the licensee information contained within the Integration Hub	Business Channels is accountable for access to the retailer portal, integration hub (Business Console) and email account.

Wholesale Authorisations

Applications from licensees with wholesale authorisation regarding the negotiation of terms to introduce water into Southern Water’s supply system for the purpose of supplying their own large user (5MI p.a.) customers, requires additional processes and mitigations to ensure we meet the information obligations of Condition R.

Business Channels will act as the point of contact for all enquiries from a licensee with a wholesale authorisation in respect of any application to introduce water for the purpose of supplying its own large user customers.

For such applications, Southern Water will agree a pre-contract confidentiality agreement prior to entering into negotiations with the wholesale licensee.

Southern Water will comply with its Network Access Code, including following its application process and the target timetable, as set out in the Access Code required under Condition S.

Southern Water will provide the wholesale licensee with the information the licensee reasonably requires to:

- comply with any condition of its water supply licence, or any statutory requirement imposed in consequence of its water supply licence; or
- comply with any reasonable request for information made by the Environment Agency
- to enable it to apply for, negotiate and conclude an agreement.

Under paragraph 9 of Condition R, a water company cannot request from a licensee or from a person supplied or seeking to be supplied by a licensee, more information than it reasonably requires:



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

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

- customers supplied by the licensee;
- its water sources;
- water quality; volume and timing of water to be supplied;
- the security of supply associated with the licensees' water sources.

Southern Water will ensure that, for applications from wholesale licensees to introduce water into our supply network, we will:

- respond to all requests for information above in a timely manner;
- ensure that information provided to it is used for the purpose it was obtained;
- protect commercially sensitive information received from or in relation to licensed water suppliers;
- use all reasonable endeavours to deal with any application or request for information within the timescales set out by Ofwat in its published Access Code Guidance;
- keep all electronic confidential information in a secure area;
- keep all hard-copy confidential material in a secure area;
- not discuss the nature of the application with any staff or department not involved in the application
- comply with the Customer Transfer Protocol to ensure an efficient transfer of supplies to premises of customers, as required under Condition S

6. Condition R General Obligations – Compliance Statement

6.1 Staff training

Compliance training is mandatory on a continuing basis in order to ensure staff awareness and reinforce competition compliance. Southern Water considers that it is essential all employees have regular training. Southern Water has put a training programme in place with an eLearning module on competition compliance which is required on a biennial basis.

6.2 Compliance monitoring and audit procedures

The eLearning course is monitored and includes testing of individual employees' knowledge of competition and level playing field issues to ensure compliance.

Regular audits of potential breaches will also be undertaken to ensure compliance. This will include reviewing that all alternative credit and payment arrangements are published on our website to provide visibility to all licensees of non-standard terms; and review of wholesale performance by retailer to ensure that there is no undue preference to, or discrimination against, any licensees.

6.3 Disciplinary process

We will investigate any failure to comply with this Compliance Code, whether discovered by management, highlighted by audit, reported to the Compliance Team, or received via a complaint from a licensee. This will be undertaken by the Compliance Team and where appropriate, members of the Compliance Team may decide to consult outside Counsel.

Internal disciplinary procedures will be applicable to non-compliance by employees with the Code. In certain cases, failure to follow the guidelines could result in an employee being guilty of gross misconduct, with all that flows from committing such an offence.