**WATER SECTOR GUIDANCE**

**CHANGE PROPOSAL FORM**

Please complete the form below to submit a change proposal to the Water Adoption Panel.

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| **Name of Proposed Change:**  **Providing Means to Escalate Category 1 Performance Delivery Failures** |
| **Section 1 - Proposed Change**   1. *Please outline the details (including any relevant supporting documentation) of the proposed change.*   The water adoption procedures set out performance standards against various self-lay activities. These are classified into Category 1 (which basically covers application and design stage) and Category 2 (where construction stage related tasks are covered).  Should Category 2 failures arise SLPs have a related escalation procedure whereby they can press companies to take remedial action to recover the delivery failure. But with Category 1 failures companies only have to refund any application fees but do not have any prescribed actions placed on them to remedy turn-around times or give escalation access to a nominated compliance manager who can be asked to expedite necessary remedial action.  This proposal is to remedy this deficiency such that, where it becomes necessary, SLPs can highlight the impact on themselves of designs and other approval delays to the nominated compliance manager. This should then bring about rectification and thereby provide a means for SLPs to tackle the growing occurrence of some companies appearing to accept their performance delays (even though these can have a material impact on SLPs).   1. *Has the proposed change been considered previously (including during any prior consultation process)? If so, please provide details.*   Other than as generalised feedback to the original proposals this shortcoming has not previously been raised.   1. *Does the proposed change need to be considered by a specific date? If so, please explain why?*   No. But there is growing evidence of some companies not taking Category 1 failures seriously (once they have refunded any fees) so, from a SLP perspective, there is an urgent need for the matter to be addressed.   1. *Does the proposed change raise any health and safety issues? If so, please provide details.*   No specific health and safety considerations.   1. *Please provide any further information relevant to the change proposal.*   Section 10, covering Redress, in the Water Sector Guidance only has Section (10.1.1) covering Category 1 Service Standards delivery. This reads:-  *Where the failure arises in relation to a Category One Metric, the Water Company shall within thirty working days of the failure arising and without any requirement on the part of the SLP to notify the Water Company of the failure, send to the Customer a refund for the fee in question*.  Permitted Category 1 response times range from 5 days (for acknowledgements), with many at 14 days (for straight forward Points of Connections and design approvals), up to 42 days (for complex designs). So, for most, the company acknowledgement of delivery failure comes significantly after the required response times.  For Category 2 delivery failures there are however 4 clauses which prescribe:-   * Companies to themselves detect failures and respond with proposed remedial action and to state the new delivery date; * Giving the SLP the right to request escalation to the Compliance Manager; * Actions expected of the Compliance Manager, these include ‘lessons learnt’ identification; * What is to happen should a second delivery date be missed; and, * How any identified financial loss is to be handled.   Additionally the guidance is drafted in a way where it is not clear whether Clauses 10.5 (companies extending their own Redress arrangements beyond those in the Guidance) and 10.6 (possible competition law obligations consequences of repeated delivery failures) apply to Category 1 matters. |
| **Section 2 - Scope of the Proposed Change**   1. *Which section(s) of the Water Sector Guidance and Model Adoption Agreement does the proposed change concern? Please provide specific references to the relevant documentation.*   . The proposed modifications are shown in red below.  10.1 Where the Water Company fails to comply with a Metric set out in Appendix G (Levels of Service), without prejudice to any liability on the part of the Water Company under the WAA, the consequences shall be as follows:  ~~10.1.1~~ 10.2 Where the failure arises in relation to a Category One Metric, the Water Company shall within thirty working days of the failure arising and without any requirement on the part of the SLP to notify the Water Company of the failure, send to the Customer a refund for the fee in question.  10.2.1 Where a company has not delivered the applied for output to a SLP within twice the Category One timings in Appendix G (Levels of Service) the Water Company shall email the SLP with such information as shall reasonably be available to it regarding the nature and cause of the failure with relevant supporting evidence, and an indication of the new date for the performance of the service in question.  The SLP may either confirm acceptance of this information or request escalation to the Compliance Manager;  ~~10.1.2~~ 10.3 Where the failure arises in relation to a Category Two Metric, without any requirement on the part of the SLP to notify the Water Company of the failure, the following procedure shall apply:  • within one working day of the failure, the Water Company shall email the SLP with such information as shall reasonably be available to it regarding the nature and cause of the failure with relevant supporting evidence, and an indication of the proposed remedial action;  • that email shall also contain a new date for the performance of the service in question (and in the case of a failure to meet the Delivery Date, that email will also contain a new date for the performance of the service which will be as soon as reasonably practicable taking account of the circumstances which led to the original delay);  The SLP may either confirm acceptance of this information or request escalation to the Compliance Manager;  ~~10.2~~ 10.3.1 Where the SLP requests such escalation, the Compliance Manager shall, within five working days of receipt of such notification, issue a written report setting out the causes of the failure, proposals to remedy the failure and lessons learnt by all parties which might prevent a recurrence of similar failures.  ~~10.3~~ 10.3.2 If before the due date for performance of an activity to which a Category Two Metric applies, a Water Company anticipates not being able to fulfil its obligations on the due date, it shall instigate the procedures set out in section 10.1.2 above.  10.4 Where the SLP considers that it has suffered direct financial loss as a result of any Water Company failure to comply with its obligations under sections 10.2.1 or 10.3 ~~10.1.2~~, it may make a written complaint to the Water Company Compliance Manager. The Water Company shall ensure that its internal complaints procedures are sufficiently robust and capable of processing complaints of this nature and able to make ex gratia payments where SLPs reasonably demonstrate such financial loss.  10.5 The above provisions represent a minimum level of redress and where individual companies consider it appropriate, they may adopt other forms of redress in addition to those set out.  10.6 Repeated failure may raise questions about the compliance of the Water Company with its competition law obligations and may result in legal/regulatory consequences.  Note – modification of clause numbers is to give required emphasis to there being consequences with Category 1 failures (along the lines of those in place for Category 2). |
| **Section 3 - Rationale for the proposed change**   1. *What is the nature and effect of the current position/existing arrangements?*   The performance of some companies on Category 1 Level of Service activities is falling well short of the required Levels of Service. Where this arises SLPs currently have no meaningful way to get companies to recognise that delivery delays need to be remedied. Also that such delays adversely impact on SLPs themselves. This is unfair on customers, both SLPs and developers, and changes to the Guidance are needed to give this performance issue the attention it deserves.  Also the current Guidance wording is heavily skewed towards emphasis on Category 2 failure responses when limited redrafting could materially rebalance this situation.   1. *What is the nature and effect of the proposed change?*   Giving some, much needed, status to Category 1 service delivery failures and providing SLPs with an escalation means when they encounter unreasonable delays during the application and design stages.   1. *Why is the proposed change necessary?*   Because the current Guidance is heavily weighted towards responding to Category 2 failures and does not help those SLP who encounter significant delays during the application and design stages.   1. *What is the desired outcome of the proposed change?*   Greater focus on delivering application responses and designs to the prescribed times. |
| **Section 4 – Impact on the Principles and Objectives of the Code**   1. *Outline, how and why the proposed change maintains consistency with the principles and objectives of the Code for Adoption Agreements, and any relevant statutory or regulatory requirements?*   Against the Code Principles modifying the Redress section in the Water Sector Guidance would:-   * Facilitate better Customer Service by establishing what happens should a Water Companies fail to deliver Category 1 services in extended timescales; and, * Be Fair and proportionate by only giving customers an escalation route when significant, against the prescribed times, delays occur; and, * Clarify the Guidance wording such that it is more “clear, complete and current”; and, * Lead to fewer delays and thereby provide a leveller playing field so SLPs can more effectively compete with Water Companies to provide new connections services; and, * Tackle delay inefficiencies and give customers the greater predictability they need to gain certainty as to what they can expect at each step in the process. The process will also be more transparent. |
| **Section 5 – Impact on Customers and Water Companies**   1. *What is the impact of the proposed change (be it positive and/or negative) on Customers?*   Change will benefit customers as it will give them greater certainty, and a route to resolve delays, during application and design stages.   1. *Is there any evidence of customer concern relating to the proposed change? If so, please provide details.*   No. This change is much sought by SLPs, especially those currently adversely impacted by company processing delays.   1. *What is the impact of the proposed change (be it positive and/or negative) on Water Companies?*   On most companies this change will have no impact and those whose performance is currently delaying their customers should be aware of their performance so they should already have ‘action plans’ in place to remedy the situation.   1. *Estimate how much notice Customers and Water Companies may reasonably require to be able to meet any new requirements arising from the proposed change.*   Customers require no notice of this change. For companies it is not a change to performance standards, just how delivery failures should be escalated. So minimal notice is thought to be needed.   1. *What is the suggested implementation date of the proposed change?*   Progressing towards implementation is dependent on Panel response times and Ofwat’s approval. Suggestion is that implementation should be no later than 1st April 2022. |
| **Section 6 – Stakeholder Engagement**   1. *Please outline any informal/formal consultation undertaken with relevant stakeholders likely to be affected by the proposed change, including details of any responses provided by stakeholders.*   The issue has been raised with those companies whose performance is of concern to their SLP customers. Whilst the emphasis, in these discussions, has been on getting 'stalled' schemes underway the request for Water Guidance change should not be a surprise! |
| **Section 7 – Applicant’s Details** |
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