



# **Compliance Code**

**31 March 2021**

## **Purpose of the Compliance Code**

This Code is for Portsmouth Water's employees. Its aim is to ensure that, as competition develops in the water industry, the Company has in place guidance for staff on appropriate behaviour if certain situations arise, so that the Company cannot be accused of anti-competitive behaviour or anti-competitive practices.

However, the Company is clear that intention of actions are not always necessary; if the unintended consequence of an action is to inhibit competition then this may be regarded as anti-competitive behaviour.

Under Condition R of our Instrument of Appointment, we are required to have a Compliance Code for the purposes of our dealings with Licensed Water and Sewerage Suppliers (WSSL) which complies with guidance published by Ofwat.

Portsmouth Water has decided to apply the same principles to all such dealings and will ensure they are handled appropriately in our normal day to day dealings so that there is no perception that we might be acting anti-competitively by trying to persuade water supply customers or developers not to change supplier.

## **Relevant legislation**

The Competition Act 1998 prohibits the following anti-competitive behaviour:

- Any agreement (or other action) by undertakings which has as its object or effect the prevention, restriction or distortion of competition; and
- Any conduct which amounts to an abuse of a dominant position.

Portsmouth Water is likely to be dominant in many aspects of water supply within its area. In some cases Portsmouth Water holds a monopoly so it **must** take special care not to abuse its dominant position.

Whilst the Competition Act sets general prohibitions, the Water Supply Licensing regime (see Appendix 2) introduced by the Water Act 2003 is more specific.

To facilitate the introduction of Licensed Water and Sewerage Suppliers (WSSL), Conditions R and S were added to Portsmouth Water's Instrument of Appointment (see Appendix 3 for more details).

Under Condition R, all negotiations with, and any information received from a Licensed Water Supplier **must** be kept strictly confidential. In addition, we **must not** show undue preference or undue discrimination and we **must** have a Compliance Code.

## **Scope of the Compliance Code**

During the dealings with potential NAV Appointees (formerly called Inset Appointments) and Water and Sewerage Licensees (WSSLs) we will enter into an exchange of information and we must only use the information we receive for the purpose for which it is intended. For each WSSL we will sign the Wholesale Code, a document published by Ofwat on 17 February 2017. We will also ensure the security of any information we receive from all retailers.

## **Breaches of this code**

Any breach of this Code (unless trivial or immaterial) may result in disciplinary proceedings being taken against the employee involved.

This is because any breach of this Code could put the Company at jeopardy of being in breach of the Competition Act 1998, the Water Industry Act 1991 or the Company's Instrument of Appointment.

Ofwat can impose financial penalties for breach of the Competition Act 1998 or for breach of its statutory duties under the Water Industry Act 1991 or the Company's Instrument of Appointment. These fines can be up to 10% of group turnover for a period of up to 3 years.

In addition, for certain offences under the Competition Act, individual employees may be liable personally and, if found guilty, could be fined or sentenced to a term of imprisonment.

## **Training**

Training on the requirements of the Competition Act 1998, Condition R and this Code will be provided to all employees in roles or functional areas where there is a risk of non-compliance.

In the event of any doubt or ambiguity regarding any aspect of competition law, Condition R or this Code, employees should discuss with their line manager or the Company Secretary.

## **Monitoring**

In addition, the process, systems and documentation will be audited internally on an annual basis to ensure compliance.

Under Condition R, this document must be reviewed at intervals not exceeding 12 months.

## 1. **New Appointment and Variations (NAV) appointments within Portsmouth Water's area**

Where a NAV appointee approaches Portsmouth Water to enquire about providing water to sites within the Portsmouth Water region, there is a risk that information produced may not be shared consistently, or processed correctly. This section sets out the procedures for dealing with applications for a NAV and also developers and the roles of key teams. The NAV process is set out in Appendix 1.

### **Roles and Responsibilities**

The Finance and Regulation Director and the Chief Executive Officer will be made aware of any applications on a weekly basis.

The Network Engineer will ensure NAV appointees are dealt with equitably.

Initial communication with developers will normally be handled by the Network Engineer. He will co-ordinate the response to the appointees and developers as required.

Portsmouth Water does not have any separate teams solely to deal with NAV appointments and so it is imperative the Company acts in a fair manner and the individuals involved are aware of and adhere to this code.

The Developer Services Team **must:**

- Act as the single point of contact for all asset planning enquiries for NAVs and developers;
- Facilitate the response to enquiries and ensure all parties for a development receive equivalent information based on their specific requirements following standard design principles;
- Develop a plan for the mains required for the site and provide a cost for these mains.
- Provide information to the Network Engineer so that all NAVs receive equivalent information based on their specific requirements following standard design principles.

They must **not:**

- Contact the developer directly;

The Network Engineer will work in conjunction with the Developer Services Manager to ensure a level playing field is maintained.

Finance / Regulation **must:**

- Calculate the price we will subsequently deliver the water to the NAV;
- Not contact the NAV directly but refer all enquiries through the Network Engineer.

## **2. Wholesale supplies and Common carriage (or combined supplies) by a Licensed Water Supplier**

Where a Licensed Water Supplier (WSSL) approaches Portsmouth Water to enquire about providing water to sites within the Portsmouth Water region, there is a risk that information produced may not be shared consistently, or processed correctly. This section sets out the procedures for dealing with applications for any wholesale supplies or common carriage by a WSSL. The supply process is set out in Appendix 2.

### **Roles and Responsibilities**

The Finance and Regulation Director and the Chief Executive Officer will be made aware of any applications on a weekly basis.

The Network Engineer will ensure any WSSL request is dealt with equitably.

Initial communication with the WSSL will normally be handled by the Network Engineer. He will co-ordinate the response to the WSSL.

Portsmouth Water does not have any separate teams solely to deal with WSSL appointments and so it is imperative the Company acts in a fair manner and the individuals involved are aware of and adhere to this code.

The Developer Services Team **must:**

- Act as the single point of contact for all asset planning enquiries for WSSLs;
- Facilitate the response to enquiries and ensure all parties receive equivalent information based on their specific requirements following standard design principles;
- Develop a plan for the mains required to meet the WSL's requirements, either existing mains or new mains;
- Provide new service information to the Network Engineer so that all WSSL receive equivalent information based on their specific requirements following standard design principles.

They must **not:**

- Contact the WSSL directly;

The Network Engineer will work in conjunction with the Developer Services Manager to ensure a level playing field is maintained.

Finance / Regulation **must:**

- Calculate the price we will deliver the water to the WSL;
- Not contact the customer directly but refer all enquiries through the Network Engineer.

### 3. Non-Household Retail Competition

In order to comply with Competition Law, we need to ensure that in our role as a wholesaler we do not show any preference to any retailer over another in the non-household retail market.

This is referred to as the 'Level Playing Field' ('LPF').

Our strategic decision not to participate in the retail market means that we do not have an associated retailer under our ownership. Accordingly, our strategy has reduced LPF compliance risk, but not eliminated it entirely.

We retain choice over the retailer we chose for the provision of water and wastewater services at our sites.

#### Roles and Responsibilities

The day to day operational contacts with all retailers are managed through our Wholesale Service Desk. A dedicated team have been established to manage this process. Specifically a bespoke portal has been developed to allow all retailers, who have signed the relevant Wholesale Code, to communicate with the Company.

The monthly settlement process is managed by the Finance Department. Invoices will be raised on a monthly basis in accordance with market codes and our published timetable.

All other matters, typically commercial in nature, will be addressed in the first instance by the Finance and Regulation Director.

The Wholesale Service Desk **must**:

- Act as a single point of contact with all retailers for operational issues
- Facilitate the requests from retailers in accordance with the market codes
- Co-ordinate communication with the customer direct in the event of an unplanned interruption to supply or a water quality incident

The Finance Team **must**:

- Manage the payment process with all retailers in accordance with the market codes

More generally all staff must **not**:

- Recommend a retailer to customers or say that one retailer is better than another
- Discuss billing queries, but tell them to contact their retailer
- Do not show due preference to any one retailer.

Our 3 point level playing field policy is as follows:-

- We have trained all relevant staff in the business in their responsibilities to ensure we comply with the "market level playing field rules"
- We monitor all dealings of our Wholesale Service Desk with retailers to ensure no preference exists
- We audit processes, recorded calls and other information to ensure compliance

## **Appendix 1 – New Appointments and variations NAV's (formerly known as Inset Appointments)**

The Water Industry Act 1991 sets out the inset appointment framework. These are now called NAVs, (Newly Appointed Variations). It allows sites supplied by one undertaker to be replaced by another undertaker as the supplier of water and/or wastewater services. Applications are made to Ofwat. There are three criteria, only one of which **must** be met, in order for a NAV agreement to be granted:

- The premises is supplied with at least 50,000m<sup>3</sup> of water per year e.g. a large user
- The site is not served by an existing undertaker e.g. a Greenfield site or a privately supplied site such as MoD sites
- The existing undertaker consents to the change

As part of the process, potential NAVs may need to negotiate with Portsmouth Water for bulk supply terms. Potential NAVs may also require information from Portsmouth Water in relation to off-site water mains and connection costs.

In dealing with potential NAVs, Portsmouth Water and its representatives **must** at all times comply with the Competition Act 1998 which prohibits any abuse of its dominant position.

The guidance given in the attached Code is intended to help employees comply with Portsmouth Water's legal obligations and must be followed at all times.

## Appendix 2 – Licensed Water Supplier

The Water Act 2003 introduced a competitive market in water supply for non-household customers using more than 50,000m<sup>3</sup> of water per year per site. Subsequent legislation has reduced the threshold to 5,000m<sup>3</sup> of water per year per site. These eligible customers can be supplied by a WSSL using either:

- A Retail Licence which enables the holder to purchase water from Portsmouth Water and sell it on to an eligible customer, or
- A Combined Licence which enables the holder to introduce its own water into Portsmouth Water's water supply network and then sell the water to an eligible customer. This is sometimes called "common carriage".

As part of the process, Portsmouth Water will need to negotiate with the WSSL the terms upon which the WSSL can take a wholesale supply or can introduce its own water into the water supply network.

In dealing with WSSL, Portsmouth Water and its representatives must at all times comply with the Water Industry Act 1991, its Instrument of Appointment, its Access Code (which **must** comply with Ofwat's Access Code guidance, and, of course, the Competition Act 1998.

Condition R of Portsmouth Water's Appointment requires Portsmouth Water to keep all relevant information received from a WSSL confidential and not to use any such information for any purpose other than arranging for the customer to be supplied by the licensee.

The guidance given in the attached Code is intended to help employees comply with Portsmouth Water's legal obligations and **must** be followed at all times.

## **Appendix 3 – Non-discrimination and Confidentiality Clauses within Condition R**

### **6. Anti-Competitive behaviour**

The Appointee shall not show undue preference towards, or undue discrimination against

- (a) customers or potential customers (or classes of customers) of a licensed water supplier, as compared with either the Appointee's own customers or potential customers (or classes of customers) or the customers or potential customers (or classes of customers) of any other licensed water supplier; or
- (b) a licensed water supplier, as compared with any other licensed water supplier or the Appointee itself.

### **7. Obligations about information**

(1) Whenever the Appointee is:

- (a) negotiating with a licensed water supplier the period for which and terms and conditions on which it might discharge any of its duties under sections 66A to 66C; or
- (b) discharging any of those duties,

it shall ensure that legally enforceable terms exist about the confidentiality of information provided to or by it for those purposes.

(2) Without prejudice to the generality of sub-paragraph (1) above, the Appointee shall not use or disclose information received from or in relation to a licensed water supplier in the course or contemplation of the discharge of its duties under WIA 1991 sections 66A to 66C or in the course or contemplation of its dealings with that licensed water supplier under sections 66A to 66C, except:

- (a) for the purpose for which it was furnished and to the minimum extent necessary to discharge those duties or for those dealings;
- (b) where required or permitted by law; or
- (c) where otherwise agreed with the licensed water supplier.

(3) Without prejudice to the generality of sub-paragraph (1) and (2) above, and subject to sub-paragraphs (2)(a), (b) and (c) above, the Appointee shall ensure that information received from or in relation to a licensed water supplier in the course or contemplation of the discharge of its duties under sections 66A to 66C or in the course or contemplation of its dealings with or in relation to that licensed water supplier under sections 66A to 66C is not used or disclosed or otherwise distributed or disseminated within the Appointed Business otherwise than for the purposes for which the information was furnished.

(4) (a) The Appointee shall have a Compliance Code which complies with Compliance Guidance issued by the Authority . . .

- (c) Subject to sub-paragraph (d) below, the Appointee:

- (i) shall review its Compliance Code annually not later than the anniversary of the date upon which Compliance Guidance is first issued by the Authority; and
  - (ii) may at any time revise it.
- (d) If the Authority revises its Compliance Guidance, the Appointee shall revise its Compliance Code to conform to such revised guidance, within the timescales set out by the Authority.