



# **Compliance Code**

**March 2014**

## Purpose of the Compliance Code

This guidance for Portsmouth Water's employees is introduced to ensure as competition develops, the Company has in place guidance to ensure appropriate behaviour so that we cannot legitimately be accused of anti-competitive behaviour or anti-competitive practices. (Remember: intention is not always necessary. If the unintended effect is to exclude competition then that will 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 Suppliers (LWS) which complies with guidance published by Ofwat. Portsmouth Water has decided to apply the same principles to all dealings with competitors (eg applications for an inset appointment – see Appendix 1) and 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 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 Suppliers (LWS), Conditions R and S were added to Portsmouth Water's Instrument of Appointment (see Appendix C for more details). Under Condition R, all negotiations with, and any information received from or about, 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 Inset Appointees and Licensed Water Suppliers 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 LWS applicant we will enter into a confidentiality agreement to confirm to them that this will be the case. We will also ensure the security of any information we receive.

## 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 Chris Hardyman.

## **Monitoring**

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

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

## 1. Inset appointments within Portsmouth Water's area

Where an 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 an inset appointments and also developers and the roles of key teams. The inset process is set out in Appendix 1.

### Roles and Responsibilities

All applications will be passed through to the Finance and Regulation Director or Engineering Director who will ensure new developers and inset appointees are dealt with equitably.

Communication with developers will normally be handled by the Commercial Manager. He will co-ordinate the response to the appointees and developers.

Portsmouth Water does not have any separate teams solely to deal with water competition issues 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 Water Regulations and Planning Team **must**:

- Act as the single point of contact for all asset planning enquiries for 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.

They must **not**:

- Contact the developer directly but refer all enquiries through the Commercial Manager;
- Provide new service information to the Commercial Manager so that all developers receive equivalent information based on their specific requirements following standard design principles.

The Commercial Manager will work in conjunction with the Distribution Engineer, the Distribution Manager and the mains planner.

Customer Services **must**:

- Calculate the price we will deliver the water to the appointee/developer;
- Not contact the developer directly but refer all enquiries through the Commercial Manager.

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

Where a Licensed Water Supplier 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 an inset appointment and also developers and the roles of key teams. The inset process is set out in Appendix 2.

### **Roles and Responsibilities**

All applications will be passed through to the Finance and Regulation Director or Engineering Director who will ensure new developers and inset appointees are dealt with equitably.

Communication with developers will normally be handled by the Commercial Manager. He will co-ordinate the response to the Licensed Water Suppliers and developers.

Portsmouth Water does not have any separate teams solely to deal with water competition issues 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 Water Regulations and Planning Team **must**:

- Act as the single point of contact for all asset planning enquiries for developers;
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The Commercial Manager will work in conjunction with the Distribution Engineer, the Distribution Manager and the mains planner.

Customer Services **must**:

- Calculate the price we will deliver the water to the appointee/developer;
- Not contact the developer directly but refer all enquiries through the Commercial Manager.

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

The Water Industry Act 1991 sets out the inset appointment framework. 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 an inset to be granted:

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

The 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 LWS 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 negotiations, Portsmouth Water will need to negotiate with the LWS the terms upon which the LWS can take a wholesale supply or can introduce its own water into the water supply network.

In dealing with LWS, 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 information received from a LWS 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 . . .