



# Our Condition R Compliance Code



# Our Compliance Code

## Our purpose

At Thames Water Utilities Limited, we are subject to legal and regulatory obligations set out both in legislation and in our Instrument of Appointment. We take these obligations seriously and expect our employees and contractors to do the same.

One requirement set out in our Instrument of Appointment is to produce and circulate this Compliance Code,<sup>1</sup> prepared in accordance with guidance from Ofwat,<sup>2</sup> showing how we comply with Instrument of Appointment Condition R. Condition R relates to our obligations concerning the water supply market to retailers holding a Water Supply and/or Sewerage Licence (“WSSL”), who we refer to in this document as “licensees”.

This Compliance Code sets out our arrangements to:

- demonstrate compliance with the confidentiality obligations under Condition R;
- protect commercially sensitive information received from, or in relation to, licensees;
- make sure that transactions between ourselves and any associate licensee are at arm’s length;
- provide clear information to our staff on their individual obligations; and
- make sure we are carrying out our functions under the WSSL regime fairly and without discriminating against customers or licensees.

## Key principles

We and all of our employees 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.

## Our aim

The aim of this Compliance Code is to ensure fairness. By doing this, retailers and their customers can benefit from competition.

Our legal obligations include complying with our Instrument of Appointment and Competition Law.

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<sup>1</sup> Paragraph 7(4)(a) of Condition R of the Thames Water Instrument of Appointment requires water companies to have in place a compliance code which adheres to Ofwat guidance

<sup>2</sup> Ofwat Guidance on Compliance Codes, July 2008 and Expectations for Company Compliance Codes IN 16/01 March 2016

Please be aware that failure to comply with this Code or any action preventing or discouraging others from complying with this Code may result in disciplinary action up to and including dismissal. It is therefore important that you understand this Code.

## Contents

Section	What it covers
<b>1. Arm's length trading</b>	This details the procedures we've put in place to ensure that transactions between the regulated business and all licensees, including the associated licensee Thames Water Commercial Services Limited (TWCSL), are carried out at arm's length.
<b>2. No undue preference or discrimination</b>	This details the importance of ensuring that there is no undue preference or discrimination in relation to retailers and the non-household market and that there is a fair market.
<b>3. Information handling obligations and processes</b>	This details the importance of ensuring there is no undue preference or discrimination in relation to retailers and the non-household market and that there is a fair market.
<b>4. Compliance monitoring and audit procedures</b>	This details the provisions we should take so that we don't gain an unfair commercial advantage from exchanges of information required for the operation of the non-household retail market.
<b>5. Staff training</b>	This details the training provided to our employees in relation to compliance and the Compliance Code.
<b>6. Disciplinary process</b>	This details the procedures in place to investigate and manage any potential breach of Condition R and the actions we will take in the event that breaches are found.
<b>7. Compliance guidelines for managers and staff in day-to-day contact with eligible customers</b>	This details the principles and procedures to follow for staff dealing with eligible customers.

## Background information

### Condition R

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

- must produce, publish and update as necessary a Compliance Code that follows Ofwat's compliance code guidance;
- must comply with confidentiality obligations and appropriately handle and protect any commercially sensitive information we receive from or in relation to licensees;
- must provide clear information to our staff on their obligations relating to licensees and non-household customers;
- must not unfairly or unduly discriminate between customers connected to our network, whether they are supplied by us or a licensee;
- must not obtain an unfair commercial advantage because of our activities under this Condition; and
- must make sure that any transaction between ourselves and any related licensee is carried out at arm's length.

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). This is a non-statutory code that sets out arrangements for how the business retail market operates. 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. This will in turn make sure we treat retailers fairly and 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. This Compliance Code focuses on our obligations under Condition R relating to the use of information and arm's length trading with associated companies. This means the operation of the business retail market, as covered by the MAC and Condition R3, is outside the scope of this code.

### Background to the water and sewerage supply licensing market

We are the UK's largest supplier of water and wastewater services and an appointed water undertaker established by the Water Act 1989. Since the Water Act 2003 amended the Water Industry Act 1991 (WIA91), any company holding a Water Supply Licence (WSL) has also been able to procure water from us and sell services on to business customers as a retailer.

This practice was initially restricted to customers with high usage (more than 50 megalitres per year in England and Wales). This was later reduced in England to five megalitres per year. Some companies with a Combined Licence were also licensed to use water undertakers' supply systems in order to supply to eligible business customers.

The Water Act 2014 (effective 1 April 2017) allows all eligible business, charity and public sector customers (with no volume restriction) 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 WSS.

The 50 megalitres per year usage requirement continues to apply to business customers served by an appointed company whose area is wholly or mainly in Wales.

The WSSL has six variations:

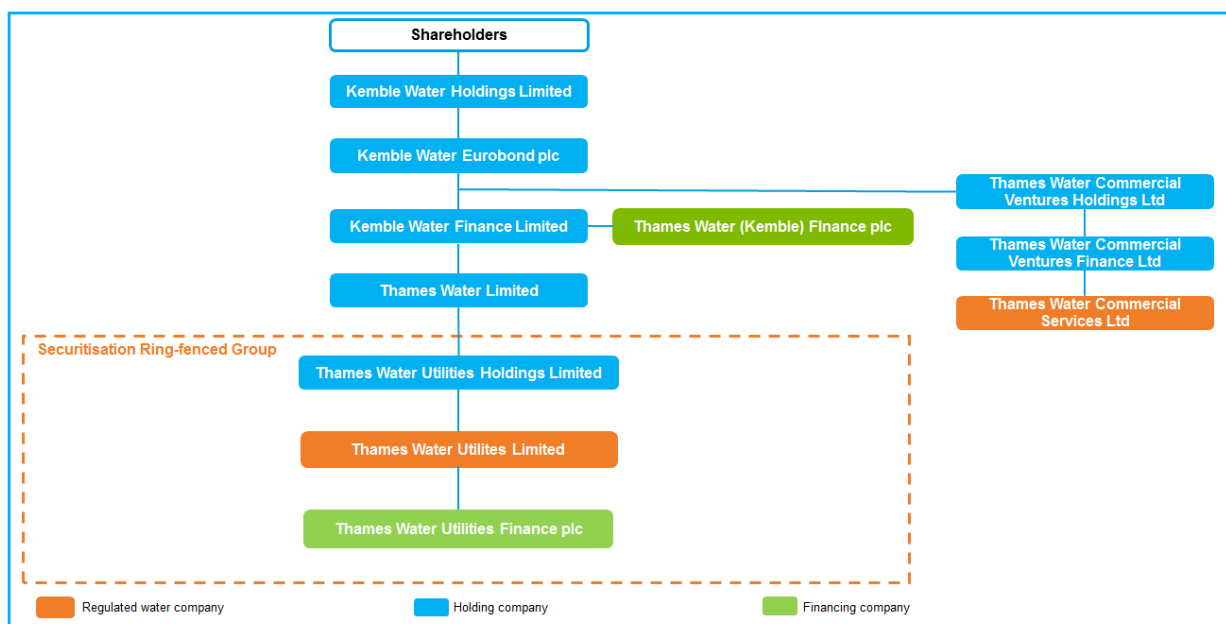
- **Retail authorisation (water):** This is a water supply licence that authorises the holder to use the supply system of an appointed water company whose area is wholly or mainly in England to supply the eligible premises of its customers only.
- **Restricted retail authorisation:** This is a water supply licence that authorises the holder to use the supply system of an appointed water company whose area is wholly or mainly in Wales to supply the eligible premises of its customers only.
- **Retail authorisation (sewerage):** This is a sewerage licence that authorises the holder to use the sewerage system of an appointed sewerage company whose area is wholly or mainly in England for the purpose of enabling the licensee to provide sewerage services in respect of the eligible premises of its customers, persons associated with the licensee or the licensee itself.
- **Wholesale authorisation:** This authorises the holder 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 megalitres of water a year.
- **Supplementary authorisation:** This licence authorises the holder to introduce water into the public water networks of water undertakers whose areas are wholly or mainly in Wales in order to supply the licensee's own customers if their non-household premises consume at least 50 megalitres of water a year.
- **Retail restricted to self-supply (water and/or sewerage) authorisation:** This is a licence that authorises 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.

## 1. Arm's length trading provisions

Under paragraph 5(1) of Condition R, any water undertaker related to a licensee must carry out transactions between the two at arm's length (as though the parties are unrelated).

As of the date of this Compliance Code, we are related to Thames Water Commercial Services Ltd (TWCSL), a subsidiary of Kemble Water Eurobond plc (see Figure 1 below).

**Figure 1: Summary of Kemble Water Holdings Limited Group Structure**



*The above chart sets out an abridged version of the Kemble Water Holdings Limited Group structure.*

Ofwat has granted TWCSL a WSSL to retail and supply water and/or sewerage services to eligible customers in England and Wales.

TWCSL is also the holder of a retail licence granted by the Water Industry Commission for Scotland to offer retail services to eligible customers in Scotland. To make sure we maintain arm's length dealing with TWCSL, we have:

- reviewed and updated our compliance procedures and Compliance Code to introduce greater safeguards, preventing the potential for misuse of information gained by our wholesale functions;
- taken steps to make sure that any services we procure from TWCSL are in line with Competition Law and our licence conditions, including Licence Condition P and Ofwat's Regulatory Guidelines; and
- ensured that any services we provide to TWCSL are in line with the requirements of Licence Condition P and Ofwat's Regulatory Accounting Guidelines. This means we must properly cost and design any financial dealings with group companies and non-appointed functions to protect our regulated customers from any disadvantage.

At the date of the opening of the extended non-household retail market (1 April 2017), TWCSL had no non-household customers within our appointed area or that of any undertaker. As of the effective date of this Code, this continues to be the case. We believe that the measures we've put in place, including staff training, are adequate to make sure that no licensee will be disadvantaged by any future dealings with our associated retailer TWCSL.

## 2. No undue preference or discrimination

In line with Condition R, we must not show any undue preference to or undue discrimination against actual or potential customers or any licensees. We must also not show undue preference or discrimination towards non-household retailers or their customers. We commit to treating all retailers and their non-household customers in the same way.

We must provide all retailers with the same wholesale services and commercial information, including the same terms and conditions, price and timeframes, unless they have paid for a variation to these factors.

Any failure to adhere to this may be deemed unfair and may undermine competition.

Licence Condition E1 was also introduced in April 2019, prohibiting undue preference towards or undue discrimination in relation to provision of certain services. This condition contains similar principles to Condition R, so we must also comply with the requirements of Condition E1.

We must not show undue preference or discrimination towards or against any person (including undue preference shown towards our business) in the provision of water resources; water efficiency services; leakage services; laying of pipes; sewer drains; new appointments and variations or the development of bioresources.

The aim of Licence Condition E1 is to help maintain a level playing field, support the development of new markets and positively change the behaviours of water companies.

## 3. Information handling obligations and processes

We have established the following information handling processes when dealing with data forwarded by a licensee for whatever purposes:

- We will make sure that neither we, nor any related company, 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 will not ask a licensee, or any person supplied or seeking to be supplied by a licensee, more information than we reasonably require;
- We will only use the information a licensee provides for the purpose for which it is supplied;
- We will hold the information provided only for the period specified in our Information Retention Schedule;
- We will take steps to protect the information that we receive from misuse with the company and prevent inappropriate disclosure to third parties;
- We will set out how we will handle such information received from, or in relation to, licensees and provide details of the person or team responsible for this information;
- We will set out our procedures for sending information to licensees. For example, we will provide a licensee with information reasonably required to:
  - apply for, negotiate and conclude a Wholesale Contract

- comply with any condition of its WSSL, or any statutory requirement imposed in consequence of its WSSL; and
- comply with any reasonable request for information made by the Environment Agency.
- We will not use the information provided to us by a licensee to unreasonably disrupt any arrangement the customer is seeking to make with the licensee; and
- We will restrict access to databases that hold information relating to licensee data only to those entitled to it. We will undertake any communications with a licensee related to Wholesale Services, including data exchange, through secure channels.

We have also taken the following actions to demonstrate that we can meet these obligations:

### **Actions to demonstrate our ability to meet obligations**

<b>Action</b>	<b>Description</b>
<b>Created a Wholesale Market Service function within Thames Water that is responsible for all market-related queries between ourselves and our licensees, which is fully separate from Thames Water's retail activities</b>	The role of this team is to ensure that there's one clear point of contact to the wholesale business for all licensee service access requests. This is completely separate to Thames Water's retail activities and TWCSL activities. This role ensures organisational separation.
<b>Established secure and dedicated means for the transfer of information between ourselves and our licensees</b>	All correspondence with WSSLs come through either:  Our dedicated email address <a href="mailto:wholesalemarketservices@thameswater.co.uk">wholesalemarketservices@thameswater.co.uk</a>  Or  The WMS Retailer portal  Our Wholesale Market Services team controls access to both the WMS Retailer portal and the email account. There are facilities available for the encryption of data sent to or from the email account and portal as required.
<b>Detailed the information we need from licensees to process communications and set out the rationale for the provision of this data to justify our need for it</b>	We won't ask for further information without a clear rationale. If a licensee cannot provide more information, we will continue to process requests within the timeframe we have agreed where possible.
<b>Detailed accountability and responsibility for handling communications to and from licensees</b>	Our Wholesale Market Services team is accountable and responsible for handling applications from our licensees.
<b>Established a secure database with access controlled by the Wholesale Market Services team to manage data transfer</b>	Access to this database is limited to those employees who need to see the data. Managers cannot delegate access to this database without the prior approval of the Contract Manager within the Wholesale Market Services team.



Tailored procedure and training for managers and staff in day-to-day contact with licensees	Our approach sets out how staff from the Wholesale Market Services team should behave when contacted by the licensee. You can find a summary in Section 7.
Set out terms of a confidentiality agreement as a first step to reach agreement on the final access terms with a licensee, in advance of any information exchange	You can find details of our confidentiality agreement at <a href="https://wholesale.thameswater.co.uk/About-us/Document-library">wholesale.thameswater.co.uk/About-us/Document-library</a>

We will follow these processes to make sure that we keep all information belonging to retailers and customers confidential. In this way, we will comply with our regulatory obligations and also make sure that neither we, nor our licensees, can gain an unfair advantage.

#### 4. Monitoring procedures

We will evaluate this Compliance Code on a regular basis:

- to ensure that the code is working correctly;
- to identify and address areas of risk; and
- to make sure our staff understand the code and are aware of their responsibilities.

We will incorporate any changes that we need to make as part of the annual review of the Code and more frequently where necessary.

We base our risk management and compliance reporting framework on a ‘three lines of defence’ model to provide continuous and reliable assurance over compliance with our obligations. These comprise:

- **1st line of defence:** delivered by business operations, comprising internal controls, management review and self-certification;
- **2nd line of defence:** delivered by oversight functions, comprising controls testing and/or sample testing by compliance/regulatory experts; and
- **3rd line of defence:** delivered by independent functions, comprising internal or external audit with formally defined terms of reference/agreed upon procedures.

The Head of Wholesale Market Services will complete a risk assessment for our Compliance Code every year, taking into account everything from customer impact and financial impact to complexity, data protection and competition law. This will inform the level and nature of assurance required (i.e. how many lines of defence are necessary) to:

- understand levels of compliance;
- minimise the risk of any potential breaches; and
- evaluate relevant staff members’ knowledge of the code.

#### 5. Staff training

Our Head of Wholesale Market Services has identified that specific training needs may arise as a result of the following circumstances:

- routine communications to and from licensees;

- changes to Ofwat guidance, our policies and/or processes;
- following investigation of complaint and/or disciplinary action; and
- changes to occupants of the roles involved in handling information from licensees

If employees are involved in licensee-related activities, they will undergo compliance training so that they are fully aware of the compliance procedures we expect them to follow.

The Head of Wholesale Market Services is responsible for ensuring access to available training material for relevant staff.

We will also provide regular training to Wholesale Market Services teams as part of our Competition Compliance training programme, most recently in context of the introduction of Condition E1.

## 6. Disciplinary process

Our compliance statement in the Aim of this Code states that:

*“Please be aware that failure to comply with this Code or any action preventing or discouraging others from complying with this Code may result in disciplinary action up to and including dismissal.”*

We will investigate any failure to comply with this Compliance Code, whether discovered by management, highlighted by audit, application handling or complaints from licensees.

In the first instance, the Head of Wholesale Market Services will carry out an investigation. Following this initial investigation, they may make a recommendation for appropriate action, and, depending on the level of non-compliance, we may then appoint an investigating manager or internal audit to carry out a more formal investigation. We will escalate any issues to the Regulatory Compliance Team as well as the Legal Team and relevant Directors.

If the investigating manager is satisfied that there is a case to be heard on completion of the investigation, we will arrange a disciplinary hearing.

Outcomes can include no case to answer, the issue of first or final written warning or dismissal and other disciplinary sanctions in line with the HR policy.

The employee has right of appeal against a decision.

## 7. Specific compliance guidelines for managers and staff in day-to-day contact with eligible customers

If a licensee approaches us to enter into a wholesale contract for wholesale services under the Wholesale Retail Code and wishes to supply premises in the area where we are the wholesaler, there is a risk we could use the information we receive from the licensee inappropriately.

To manage this risk, our Wholesale Market Services Team will make sure there are clear accountabilities so that we receive the data directly into the Wholesale Market Services Team, which we keep functionally separate from our retail business.

We will treat any information we receive into the Wholesale Market Services Team in relation to the switching of an eligible premise as confidential.

We will train all employees within the Wholesale Market Services Team to recognise that this data is confidential.

We will record all applications for contracts in the secured document storage area.

We will lock and password-protect unattended computers containing data relating to the above information.

We will avoid printing the above data and information, where possible.

If we print data, we will keep it secure at all times, and at no time will it be left unattended.

We will keep all printed documents in a locked cupboard or dispose of them in confidential document shredding containers.

We will hold all information, electronically or in printed form, only for the period specified in our Information Retention Schedule.

## Responsibilities

### Roles and responsibilities associated with Condition R Compliance

Role	Function	Purpose
Contract and Performance Manager	TWUL Wholesale Market Services	Responsible for managing information from retailers
Head of Wholesale Market Services	TWUL Wholesale Market Services	Accountable for compliance with the Code by the Retail facing market services team
Compliance & Policy Manager	Regulatory Compliance & Policy	Responsible for documenting compliance requirements relating to statutory and company licence obligations
Head of Legal & DPO	Finance & Commercial	To ensure the Compliance Code is consistent with our legal obligations and Competition Law Compliance Policy

## Useful references

If you would like any further detail or if you have a question about our Condition R Compliance Code, please contact our Wholesale Market Services Team on [wholesalemarketservices@thameswater.co.uk](mailto:wholesalemarketservices@thameswater.co.uk) or call 0800 009 3975.

You can also find out more at: [wholesale.thameswater.co.uk/About-us/Document-library](https://wholesale.thameswater.co.uk/About-us/Document-library)

## Approval

Document Owner	Stuart Thomson Compliance & Policy Manager	Issue Date 30 April 2020
Document Approver	Nicola Cocks Regulation Director	Approval Date 30 April 2020

*This Code has also been reviewed by other interested functions as appropriate including:*

- *Head of Wholesale Market Services*
- *Eversheds Sutherland Competition Lawyer*