

The Regulatory Appeals Team
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Dear Sirs,

Draft Water Codes Appeals Rules and Guide Consultation

Thank you for providing Yorkshire Water with the opportunity to comment on the above consultation which was published on the CMA website on the 20 June 2017.

Yorkshire Water is a statutory water undertaker that currently has separate divisions undertaking the functions of a wholesaler and a retailer in respect of the water retail market to which the Water Codes Appeals Rules relate. Our response to your consultation is from the perspective of a Trading Party within the retail water market.

Firstly, we welcome the CMA's decision to exercise its discretion to make rules and associated guidance in respect of the conduct and procedure for appeals under the Regulations. This will create clarity and support the efficient functioning of the market.

In general, we consider the both the Rules and Guide documents to be clear, logical in their layout and easy to follow. Furthermore, we consider they are consistent with the requirements of the Regulations.

In our review of the documentation, we have identified a small number of opportunities where minor amendments may improve understanding and clarity of the procedure. We have set these out in the table in the attached Appendix.

Whilst reviewing the consistency between the Rules and Guide, the Regulations, and the Act, we have identified a possible ambiguity which appears to reside not in the CMA's Rules or Guidance, but in the Water Act 2014. This relates to the exclusion of appeals under section 66DC(3) or 117H(3) and could potentially impact on the number of applications for permission to appeal made to the CMA.

These two sections exclude appeals on revisions to the designated codes that the Authority consider are minor or urgent. We cannot immediately identify any mechanism by which a minor or urgent revision is defined, and as a result believe this could create false expectations of those revisions that may or may not be appealed to the CMA. We will discuss this matter further with the Authority, however, you may wish to consider reflecting this in your guidance and provide clarification if considered necessary of what constitutes minor or urgent revisions in respect of exclusion from the appeals process.

We trust you find these comments to be helpful and supportive. If any matter is unclear or you require further information, please contact my colleague Howard Smith.

Yours faithfully,

Wendy Kimpton
Head of Regulation
Yorkshire Water Services Ltd

Appendix

Yorkshire Water response to CMA consultation on Water Codes Appeals Rules and Guide

Do you have any comments on the draft:

(a) Water Codes Appeals: Competition and Markets Authority Rules

Rule	Comment
2.1	To our knowledge, the consultation was not widely publicised. It may be beneficial to advise potentially interested parties (e.g. Trading Parties, the Panel) of the publication of future consultations relating to the water retail market.
Note on Rule 3	Without intimate knowledge of Regulation 5 and the Water Act, the note as written, may suggest to the reader that the whole of the Wholesale-Retail Code is excluded from the right of appeal. We suggest the addition of the words "in respect of minor or urgent changes" (or similar) are added in line three of the note after the words "Wholesale-Retail Code".
Note on Rule 3	As per our accompanying letter, you may wish to clarify what constitutes minor or urgent revisions in respect of exclusion from the appeals process.
5.1(e)	On line 1, after the words "...persons to whom" insert "a copy of"
5.8	Rule 5.8 requires those notified under regulation 6(3)(b) to acknowledge receipt (to the CMA) of the copy of the application for permission to appeal. Neither the Regulations or the Rules and Guidance require the appellant to notify the persons affected of this requirement to acknowledge receipt of the copy application.

(b) Water Codes Appeals: Competition and Markets Authority Guide

Part	Comment
3.6	This part of the guidance could be expanded to clarify the comment regarding the Rule 3 note and excluded appeals as above.