

**Southern Water Condition R  
Compliance Code**

**October 2011**

**Southern Water Condition R  
Compliance Code  
Chief Executive Officer's Statement**

Southern Water must ensure that it complies with all its duties under sections 66A-66C of the Water Industry Act 1991 together with Condition R of its Instrument of Appointment. These duties are in addition to Southern Water's policy to comply with all applicable laws, EU, UK and other national laws on competition.

The Condition R Compliance Code is designed to protect Southern Water and its employees from a breach of Southern Water's obligations under this Condition.

Competition Compliance is vital to the operation of the business. It is the responsibility of each of us to be aware of the rules contained within the Code and to ensure that it is adhered to.

**Matthew Wright  
Chief Executive Officer  
October 2011**

## **Aims of this Code**

This Condition R Compliance Code (“Code”) has been prepared by Southern Water in furtherance of its policy of complying fully with all applicable Competition Laws. In particular, in Southern Water’s dealings with licensed water suppliers (“LWS”) pursuant to Sections 66a-66c of the Water Industry Act 1991.

The purpose of the Code is to ensure that Southern Water:

- does not unfairly discriminate between licensees (or its customers) and its other customers; and
- does not retain an unfair commercial advantage because of its activities under Condition R (this also applies to any associates of Southern Water); and
- does not show undue preference to, or undue discrimination against, actual or potential customers or any licensees.

It is a requirement of Condition R, paragraph 7(4)(a) that Southern Water has in place a compliance code which adheres to Ofwat’s compliance guidance.

This code ensures that Southern Water complies with its legal and regulatory obligations and should be read in conjunction with Southern Water’s Competition Law Compliance Manual.

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

## **Southern Water's Commitment to Compliance**

Southern Water is fully committed to rigorous competition law compliance. It also expects its suppliers and competitors to be fully committed to rigorous competition law compliance. Southern Water's commitment is confirmed in the Chief Executive Officer's Statement on page 1. To the extent that any employee of Southern Water has any questions concerning Southern Water's policy in this regard, they should feel free to contact the Company Secretary or any other member of the Compliance Team or the Chief Executive Officer.

### **Introduction**

Competition ensures that businesses continually seek to improve their efficiency and quality. It is an essential feature of the free market since the availability of choice between goods and services means commercial success is directly related to the ability to satisfy the wishes of the customer. Competition laws, which seek to ensure the maximisation of customer welfare, exist in most countries throughout the western world. Lower prices, better products, wider choice and greater efficiency are the result.

In general terms, all competition rules seek to prevent and penalise:

- agreements or understandings between two or more businesses which may be intended to regulate the market, but do not necessarily give the best deal to the customer; and
- actions by an individual business which dominates its market sector and takes advantage of that dominance to impose unfair trading conditions on its customers or competitors.

The rules are rigorously enforced by competition watchdogs around the world. Failure to obey the rules can lead to:

- key provisions in agreements being unenforceable;
- substantial fines of up to 10% of group worldwide turnover; - order to modify agreements or business practices;
- criminal prosecution leading to fines or prison sentences for individuals; and
- civil actions by third parties such as competitors, suppliers or customers.

In addition, there can be equally significant non-legal consequences:

- diversion of management time and resources in dealing with an investigation;
- adverse publicity; and
- increased risk of further complaints against the Company and ongoing surveillance by the competition authorities.

Since 1 March 2000, UK domestic competition law has prohibited:

- anti-competitive agreements between businesses (the so-called “Chapter 1 prohibition”, Competition Act 1998 (“CA ‘98”)); and
- abusive behaviour by businesses in dominant market positions (the so-called “Chapter II prohibition”, CA ‘98).

The prohibitions are modelled on Articles 81 and 82 of the EU Treaty, which have been applicable in the UK for over 25 years. However, whereas the EU Treaty competition rules only apply if the agreement or practice affects trade between EU countries, the domestic prohibitions apply to competition in the water sector. These were introduced through amendments made to the Water Industry Act 1991 (“WIA ‘91”) by the Water Act 2003 (“WA ‘03”).

The UK’s Office of Fair Trading (“OFT”) and the sectoral regulators, including the Water Services Regulation Authority (“Ofwat”), are responsible for the enforcement of the CA ‘98. From 1 May 2004, they have also had the power to enforce Articles 81 and 82 of the EC Treaty where appropriate.

It is very important for all of Southern Water’s business units to comply with competition law. Failure to comply with competition law can have serious ramifications both for Southern Water and for individuals, as set out above.

### **The Competition Rules and Water Industry**

As explained above, the water industry falls within the ambit of the UK’s competition rules. Although the OFT has the main responsibility for administering the CA ‘98, in the water and sewerage sectors the CA ‘98 is enforced concurrently by the OFT and Ofwat. Complaints about potentially anti-competitive behaviour may, therefore, be made to either the OFT or Ofwat.

Both the OFT and Ofwat may investigate suspected breaches of the competition rules on their own initiative. Generally, however, both react to complaints.

Condition R of Southern Water’s Instrument of Appointment supports the duties placed on Southern Water by sections 66A-66C of the Water Industry Act 1991.

Ofwat has the power to impose financial penalties of up to 10% of turnover where a company contravenes its appointment conditions.

## **Employee Commitment**

A breach of its Instrument of Appointment can have serious adverse consequences on Southern Water and alleged violations of competition laws can have serious adverse consequences on the company and individual employees. It is essential that every Southern Water employee is familiar with the fundamental principals of applicable competition laws and understands how they apply to Southern Water's day-to-day business. While the company does not expect its employees to become experts in competition law, it does require that each employee: (i) learns what actions are specifically forbidden or required by this policy; and (ii) learns to recognise the types of business activities and practices that may raise competition issues, so that advice may be obtained when appropriate from the Compliance Team.

## **Southern Water's Policy of Competition Law Compliance**

It is the responsibility of everyone in Southern Water to ensure that we comply with our duties under our Instrument of Appointment and all relevant legislation and remain faithful to our policy of compliance. With this in mind, we will have formal arrangements to help achieve this objective. These include:

- the circulation of this **Compliance Code** to key employees within Southern Water;
- the use of **on-line training** to enable Southern Water's staff to understand and comply with the competition rules including compliance under Condition R and sections 66A-66C WIA91;
- the establishment of monitoring and reporting systems; and
- the creation of a team to support our compliance policy and provide practical advice.

The successful implementation of these arrangements is essential to ensure that the best interests of Southern Water are fully protected and that Southern Water complies with its obligations to LWS.

*You are therefore responsible for:*

- *reading the code and ensuring that you comply with it at all times*

*Internal disciplinary procedures will be applicable to non-compliance by employees with the code. In certain cases, failure to follow the guidelines could result in an employee being guilty of gross misconduct, with all that flows from committing such an offence.*

**Kevin Hall**  
**Company Secretary**

**November 2008**

## **The Compliance Team**

Kevin Hall, Company Secretary is responsible for competition law compliance within Southern Water.

He is supported by Solicitors in the Company Secretary Team.

Michael Carmedy, Chief Financial Officer, is responsible for compliance with our Instrument of Appointment within Southern Water.

He is supported by the Competition Manager.

If any employee is in any doubt as to the course of action which should be taken on a specific matter or proposal, then he/she should contact any of the individuals listed above immediately. Corporate Accounts must ensure that if they are required to contact the Compliance Team they do not breach the requirements of this Code in respect of communications with the Regulation Team. Initial enquiries should, therefore, be made to Kevin Hall or his team in the first instance.

When appropriate, members of the Compliance Team may decide to consult outside counsel. No approach, however, should be made directly to outside counsel without the express approval of one of the members of the Compliance Team.

## **Training**

Compliance training will be offered on a continuing basis in order to reinforce the compliance messages and keep staff updated with changes. Southern Water considers that it is essential for all employees who have dealings that might infringe on competition law to have regular training. Southern Water has put a training programme in place. A training tracker on Policy & Procedures in relation to compliance is available to all staff.

Southern Water managers and staff must maintain training records. Finally comments and suggestions concerning the subject matter and the mechanics of the training programme would be welcomed by the Compliance Team.

## Structure of this Manual

This code covers:

- wholesale supplies and common carriage (or combined supplies) by a licensed water supplier (“LWS”).

## Basic Do’s and Don’ts

While every effort has been made to include all activities that may be covered by this Code it is impossible to compile a comprehensive list of do’s and don’ts with respect to the types of business conduct that may raise competition law concerns. Accordingly, please refer to the Compliance Team before undertaking business conduct that could subject the company to substantial competition liability. **The over-riding principle should be: “if in doubt, contact the Compliance Team”.**

The considerations that should be kept in mind are:

- Compete vigorously and independently at all times;
- Avoid any conduct which might be interpreted as being intended to exclude competitors, divide markets, or fix prices or other trading conditions to third parties;
- Always consider how your conduct may appear to a competition watchdog or court at a later date. You should assume that your conduct will **not** be viewed in the most favourable light by the regulatory authorities;
- Always check with the Compliance Team before offering “special” discounts, different prices or other conditions of sale to competing customers;
- Base all customer terminations on objective commercial justifications and make such terminations only after consultation with the Compliance Team. Never discuss a customer termination, either before or after such termination with a third party;
- Avoid any advertising, marketing or other program which objectively could be viewed as unfair or deceptive;
- Don’t enter any agreement, understanding or “gentleman’s agreement” or even discuss with a competitor any of the following:
  - prices, discounts or other trading conditions to third parties;
  - profits, profit margins or costs;
  - market shares, markets or sales territories;
  - distribution practices;
  - bids or intentions to bid;
  - supply capacity;

- entering or leaving any product or geographical markets; and
  - selection, classification, supply to or termination of customers or classes of customers.
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- Don't obtain information about competitors (especially about prices) directly from them. While obtaining information about competitors from published data and customers is permissible, you should always document your sources of information to avoid any inference that you received such information directly from a competitor.
  - Don't agree with or attempt to coerce customers with respect to any of their resale prices or other terms and conditions of sale. - Water companies cannot show any undue preference to, or undue discrimination against, actual or potential customers or any licensees.
  - A water company should not treat a licensee's customer any differently from its own customers (unless specifically agreed as part of an access agreement). For example, if there is a drought order or a hosepipe ban, the water company cannot require the licensee's customers to limit their water use in precedence or preference to limiting water use by its own customers.

## **Wholesale supplies and common carriage (or combined supplies) by a Licensed Water Supplier**

Southern Water must ensure that it complies with its obligations in respect of confidentiality, protection of commercially sensitive information and carry out its functions fairly and without discriminating against customers or licensees. Accordingly, Southern Water has outlined below the procedures that must be followed.

### **Information**

Southern Water will agree a pre-contract confidentiality agreement prior to entering into negotiations with a licensed water supplier.

Southern Water will provide a licensee with the information the licensee reasonably requires to:

- comply with any condition of its water supply licence, or any statutory requirement imposed in consequence of its water supply licence; or
- comply with any reasonable request for information made by the Environment Agency

### **Application by LWS**

The Regulation Team will act as the point of contact for all enquiries from a licensed water supplier in respect of any application by the licensed water supplier.

A Chinese Wall will be in place to ensure corporate accounts staff are not aware of any application regarding current customers.

The Regulation Team shall provide to a licensed water supplier such information as the licensed water supplier reasonably requires to enable the licensed water supplier to apply for, negotiate and conclude an agreement;

The Regulation Team will:

- respond to all requests for information above in a timely manner;
- ensure that information provided to it is used for the purpose it was obtained;
- protect commercially sensitive information received from or in relation to licensed water suppliers;
- immediately inform the licensed water supplier of relevant details if Southern Water becomes aware that a special consumer occupies or is likely to occupy any premises which the licensed water supplier is proposing to supply

Communication with business customers will normally be managed by Corporate Accounts

The Regulation Team will not inform Corporate Accounts of an application for a licence.

All correspondence from a LWS in respect of an application for a license will be handled by The Regulation Team Competition Manager.

To ensure that it complies with Southern Water's obligations on the handling of information, The Regulation Team will, before and during an application by a LWS:

- use all reasonable endeavours to deal with any application or request for information within the timescales set out by Ofwat in its published Access Code Guidance;
- keep all electronic confidential information in a secure area;
- keep all hard-copy confidential material in a secure area;
- **not** discuss the nature of the application with any department that is not above the Chinese Wall;

To ensure that it complies with Southern Water's obligations on carrying out its functions fairly and without discriminating against customers or licensees Corporate Accounts will;

- **not** enter into discussions or correspondence with a customer that might be perceived as influencing a customer in respect of an application

**Should Corporate Accounts or any other department within Southern Water become aware of an application other than from The Regulation Team full details of how this information was received should be recorded and passed to The Regulation Team**

#### **Successful Application by LWS**

Upon completion of the application The Regulation Team will cease to be the single point of contact with the LWS.

Corporate Accounts will communicate with the LWS as a customer of Southern Water. A separate contact e-mail address will be used for billing enquiries following a successful application.

The Regulation Team will manage the contract with the LWS and will liaise with the LWS when appropriate.

The Regulation Team will:

- **comply with any reasonable request for information by the LWS that the LWS may require to comply with any reasonable request for information made by the Environment Agency as soon as is reasonably practicable.**

The request from the LWS must be in writing and addressed to the contact at Southern Water details of which will have been provided to the LWS by Southern Water.

Corporate Accounts will:

- **immediately inform the LWS of every actual or potential incident which affects adversely, or is likely to affect adversely**
  - water quality;
  - water pressure;
  - continuity of supply; and
  - any other matters related to Southern Water's supply system as defined in section 177B(5), where relevant

The information will be provided in writing to the contact at the LWS, details of which will have been provided to Southern Water by the LWS.

## Glossary

Chinese Wall	An information barrier which separates those individuals making investment decisions about services to be provided by Southern Water from individuals who are privy to undisclosed material information which may influence those decisions
Combined Supply	A supply made to the Licensed Water Supplier which involves the introduction and common carriage of water as well as a wholesale supply
Common Carriage	The introduction of water into Southern Water's network and its transmission through such network as part of a combined supply
Competitive bids	Bids received from third parties for potential inset appointments or licensed water suppliers
Compliance code	This document
Condition R	All negotiations with, and any information received from or about a licensed water supplier <b>must</b> be kept strictly confidential
Customer	The owner or occupier of premises receiving or wishing to receive a water supply or sewerage service from Southern Water, including any potential owner or occupier of such premises
Instrument of appointment	The document appointing Southern Water as a water and sewerage undertaker
Licensed Water Supplier	Non-household customers using more than (LWS) 50,000m <sup>3</sup> of water per year per site can be supplied by a licensed water supplier. For more details see Appendix 1 of this document
Normal dealings	Day to day dealings with developers and customers, which are dealt with by Customer Services
Wholesale supply	A supply made to a Licensed Water Supplier

## Appendix 1 – Licensed Water Supplier

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

- a retail license which enables the holder to purchase water from Southern Water and sell it on to an eligible customer; or
- a combined license which enables the holder to introduce its own water into Southern 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, Southern 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, Southern 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 the Southern Water’s Appointment requires Southern 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 Southern Water’s legal obligations and **must** be followed at all times.

## **Appendix 2 – Non-discrimination and Confidentiality clauses within Condition R**

### **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 Appointees 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.

### **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 or its duties under 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 subsequent to sub-paragraphs 2a), 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 section 66A to 66C or in the course or contemplation of its dealings with or in relation to that licensed water supplier under section 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

- a) The Appointee shall have a Compliance Code which complies with Compliance Guidance issued by the Authority.
- b) Subject to sub-paragraph c) below, the Appointee:
  - i). Shall review its Compliance Code annually not later than the anniversary of the date upon which the Compliance Guidance is first issued by the Authority; and
  - ii). May at any time revise it.
- c) 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