

AffinityWater

The Non-Household Water Market Affinity Water Compliance Code

August 2021



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This Compliance Code is prepared under Condition R of Affinity Water Limited's Instrument of Appointment ("licence") and Ofwat's Guidance on Compliance Codes.

Capitalised terms shown in bold in this Compliance Code have the meanings given in the Glossary Appendix.

1 Purpose of this document

Affinity Water has special responsibilities under competition law because it owns and operates the whole of the water supply network in its area. We take all necessary steps to ensure that we comply fully with the law and do not behave anti-competitively. In doing so, we recognise the special responsibilities we have as a monopoly supplier of certain services.

This **Compliance Code**, which is a requirement of Condition R of our licence, explains what every one of us must do to ensure we meet our responsibilities under competition law when providing wholesale services to water retailers. It applies where **Affinity Water** is supplying water to (or negotiating the terms of supply with) a retailer.

This Compliance Code sets out Affinity Water's arrangements to:

- Demonstrate that we comply with our obligations under Condition R of our licence;
- Protect commercially sensitive information received from, or in relation to retailers;
- Provide clear information to Affinity Water personnel on their individual obligations; and
- Set out the procedures we have put in place to train people and monitor compliance

We expect all staff to comply with this Code at all times.

We all must take compliance with this **Code** seriously because any contravention could put **Affinity Water** at risk of breaching competition law or its licence conditions.

Owat has the power to impose financial penalties on **Affinity Water** of up to 10% of our annual turnover for any contraventions of our licence conditions. Individuals can be personally liable if found guilty of certain competition law offences could be fined, or sentenced to a term of imprisonment.

This **Code** is primarily for **Affinity Water** employees (and others acting on behalf of **Affinity Water**). We are publishing it on our website so that retailers and their non-household customers can understand **Affinity Water's** approach to ensuring they are treated fairly.

This **Code** has a section setting out the rules which all of us must follow. Further sections explain what this means for particular teams and make compliance responsibilities clear.

We will provide training to you on the requirements of this **Code** to the level appropriate for your role. Competition law training will be refreshed at regular intervals and new joiners will receive appropriate training within a short time of starting their employment.

Every one of us must follow this **Code**. Please take the time to read it. If you are ever unsure as to what you need to do to follow this **Code**, or have any concerns about the issues mentioned in the Code, you should discuss these with your line manager or seek further guidance from the Legal Team.

KEY POINTS

- This Compliance Code is designed to ensure that everyone plays fair so that retailers and their customers benefit from competition in the non-household retail market
- As a wholesaler, Affinity Water has to comply with its licence, Market Codes and competition law, and the legal consequences of non-compliance are significant
- The Code helps to ensure that you know what to do and when to do it. If you breach this Code it may result in disciplinary proceedings being taken against you. It is therefore important that you comply with this Code at all times and understand what is required of you.

About the Non-household Retail Market

From 1 April 2017 retail competition was extended to all non-household premises, so other retailers and new entrants are able to purchase wholesale water services from Affinity Water and sell these to eligible customers. The non-household retail market works like many other open utility markets in the UK, such as telecoms, electricity, and gas. Competition aims to drive down prices and improve customer service for consumers, whether they are a small charity or a large corporation.

Having one water retailer also means companies can opt to have just one water bill, if they wish, for all of their sites/businesses wherever they are in the country. Being able to switch water and sewerage service supplier means that businesses are free to negotiate for the best package that suits their needs; be it through more efficient customer service and better-tailored packages, water efficiency advice, or price.

Water retailers (either a **Water Supply Licensee** or the retail arm of an incumbent water company) buy the physical supply of water from wholesalers such as **Affinity Water** and other incumbent water companies. Wholesalers supply water and/or wastewater services to premises in their designated supply areas. Retailers then provide these services to their non-household customers along with retail services such as billing, water meter reading and customer services.

Household customers continue to receive all their water services directly from their existing supplier and cannot change supplier.

A set of market rules known as the **Market Codes** has been established for wholesalers and retailers to follow. **Affinity Water** must provide wholesale services to all retailers in accordance with the **Market Codes** and on a level playing field basis.

Following the market rules ensures that the market operates properly for the benefit of all retailers' customers and that all retailers are treated fairly. More background on the Market Codes and Affinity Water's obligations is set out in the Appendix to this Code.

Condition R of Affinity Water's licence sets out our obligations in respect of providing a supply of water to water supply licensees. It provides that all negotiations with, and any information received from or about a water supply licensee must be kept strictly confidential. In addition, we must not show undue preference or undue discrimination to any retailer and we must have a Compliance Code which follows Ofwat's compliance code guidance.

2 Key Rules

Do:

- Make sure that you follow all of the market rules –you will be given training to help you
- Handle information in line with the directions in this Code - keep information confidential and share information only where you need to and are confident this is allowed under the **Market Codes**.
- Direct all non-emergency contact from retailers during normal business hours to the **Wholesale Operations Service Desk**
- Provide the same standard of service to all retailers and their non-household customers
- Respect any restrictions on your access to people, premises, and computer systems
- If you aren't sure then ask –there are plenty of people who can help –you can ask your line manager or any member of the Legal Team

Don't:

- Offer any opinion about any retailer or competitor to any business, or any other party
- Give preferential treatment to any retailer
- Provide information about one retailer to another (even if you have the consent of the other retailer)
- Give out any information about retailers' customers unless you are sure this is necessary under the **Market Codes**

Information handling obligations:

This section establishes general principles in relation to information and its handling. Other sections detail more specific guidance for particular teams.

When retailers contact **Affinity Water**, they may share confidential information about their businesses and their non-household customers. Confidential information is information about the affairs and operations of the retailers and their non-household customers which is not readily available to the public.

Affinity Water must:

- Ensure that information received from retailers is used only for its intended purpose and not to gain any unfair commercial advantage over its competitors unless it needs to be shared under the Market Codes. For example, we may receive confidential information about a retailer's activities which we must not share within the company if it is not within the intended purpose or with any other retailer or third party.
- Take steps to protect information from misuse either within the company or unauthorised disclosure to third parties.
- Only request so much information as is reasonably required.
- Set out how information received from, or in relation to, retailers, will be handled and provide details of the person, or team, who is responsible for this information.
- Set out procedures for sending information to retailers and provide the information required by Condition R as set out below.
- Only request information from a retailer that we reasonably require provide wholesale services to them and their customers.

Condition R provides that we must provide retailers with information reasonably required to:

- Enable them to apply for, negotiate and conclude an access agreement under section 66D WIA91;
- Comply with any condition of their water supply licences or any statutory requirement imposed in consequence of those licences;
- Comply with any reasonable request for information from the Environment Agency.

The above principles underlie many of the responsibilities and required behaviours set out in this Code.

In order to help you keep information confidential, only employees working in the **Wholesale Operations Service Desk** team and the Commercial Team have access to the dedicated email accounts made available to retailers for operational and commercial contact.

Treating all retailers the same:

We need to treat all retailers the same whenever:

- We are providing a service to them
- They contact us with a query

Affinity Water must not show undue preference towards, or unduly discriminate against, any non-household retailers or their customers. This means that **Affinity Water** must treat all retailers, and all non-household customers of those retailers, in the same way. We must therefore, where appropriate, provide our wholesale services (and commercial information about our services) to all retailers:

- Within the same timescales
- Under the same terms and conditions
- For the same price
- Using the same systems and processes
- With the same degree of reliability and performance.

Commercial information might include information about charges and tariffs, operational information such as water quality or water resources information or information relating to new wholesale services.

Why does it matter?

If we show preference for one retailer over another this is unfair and could undermine competition.

Our reputation for compliance and playing fair is important

How do I follow this rule?

- Treat all retailers the same; be careful not to give any special treatment to any one retailer or their non-household customer
- When attending non-household premises, provide the same high standard of service to customers of all retailers and do not make any favourable or unfavourable comment about any particular retailer
- Refer any contact from a retailer to the **Wholesale Operations Service Desk** unless this relates to an emergency incident. Refer to the guidance for specific teams for case of emergency, unplanned events and out of hours contacts

3 Guidance for Wholesale Operations Service Desk

If you are working on the Wholesale Operations Service Desk you are acting as the single point of contact for all retailer contact, enquiries, service requests and complaints. These retailers are your customers. You must treat all retailers as equally valued customers of Affinity Water and must not provide any special treatment or service to any one retailer.

Remember that we have an obligation to provide retailers with the information that they reasonably require to enable them to apply for, negotiate and conclude an agreement to supply, to comply with their licence and any statutory requirements and any reasonable requests for information from the Environment Agency.

Contact with Retailers

All non-emergency contacts from retailers during normal business hours must be dealt with by the **Wholesale Operations Service Desk**. The **Wholesale Operations Service Desk** has its own dedicated e-mail address (wosd@affinitywater.co.uk) and telephone number 0345 350 3677.

All emergency contacts from retailers must be dealt with by the **Operational Contact Centre**, which will deal with any emergency situations in accordance with the requirements of the **Market Codes**. The **Operational Contact Centre** will notify the Wholesale Operations Service Desk of any retailer contact.

In case of out of hours non-emergency contacts, the **Operational Contact Centre** must advise the retailer to call the **Wholesale Operations Service Desk** during normal business hours.

Contact from Retailers' Customers

If a retailer's customer calls with a routine request or query, or with a complaint, they must be directed to contact their retailer.

If a retailer's customer calls about an emergency, they should be passed to the **Operational Contact Centre**. An emergency includes any unplanned event or incident affecting the supply of water services, including about drinking water quality or damage to property from burst mains or a leak.

Complaints

If **Affinity Water** receives a complaint from a retailer about the provision of wholesale services, the complaint must be dealt with in accordance with the process set out in Section F5 of the Operational Terms of the **Market Codes**. The **Wholesale Operations Service Desk** is responsible for receiving and responding to all complaints relating to the provision of wholesale services.

A complaint should not be expedited or elevated simply because, for example, a retailer alleges that **Affinity Water** has breached the **Market Codes** or its legal obligations relating to competition law. To do this could give them an unfair advantage over their competitors. Any complaint which alleges that **Affinity Water** has breached the **Market Codes** or its legal obligations relating to competition law should be referred to the Legal team.

A retailer's customer calling with a complaint must be referred to their retailer unless it relates to an emergency or urgent situation related to an unplanned change to water services. In this case the complaint should be dealt with by **Affinity Water** in accordance with Part E of the Operational Terms of the **Market Codes**.

Agreeing Terms of Business with Retailers

All wholesale services provided to retailers must be on the basis of the tariffs and charges set out in **Affinity Water's Wholesale Tariff Document** and the terms and conditions set out in the **Wholesale Retail Contract** and **Market Codes**. Each retailer must be offered credit terms consistent with their credit standing and the requirements of the **Market Codes**. Wholesale special agreement tariffs may not be offered to any retailer without the approval of the Director of Legal, Risk & Compliance.

If your role involves discussing and negotiating the terms and conditions for **Affinity Water** to provide a wholesale water supply to a retailer, you must respect the confidentiality provisions in Part H of the **Business Terms** of the **Market Codes**.

Do:

- Act as a single point of contact for all enquiries from any retailer
- Ensure you deal with all contacts from retailers in the same way regardless of which retailer is contacting you
- Keep **Confidential Information** confidential
- Ensure you inform a retailer of any contact from one of its customers

Don't:

- Disclose information or data relevant to one retailer to another retailer
- Give special treatment to any one retailer

4 Guidance for Operational Contact Centre

Unplanned events and incidents

You should deal with an emergency situation which you are contacted about by a retailer or their non-household customer in the usual way and in accordance with Part E of the Operational Terms of the **Market Codes**.

Once you have dealt with the immediate situation you must notify the Wholesale Operations Service Desk of the contact.

Here's a scenario that will help you understand what to do:

You receive a call from a retailer's customer complaining about the taste of their water. You should respond to this in exactly the same way as you would to a complaint from a household customer. Once you've addressed the immediate problem you should inform the **Wholesale Operations Service Desk** so that they can keep the retailer informed.

Other contacts from retailers and their customers

If a retailer contacts you with any request or query which doesn't relate to an emergency they should be referred to the **Wholesale Operations Service Desk**.

If you receive a call from a retailer's customer about a non-emergency matter, you must ask them to refer their enquiry to their retailer. If in doubt contact the Wholesale Operations Service Desk.

Do:

- Answer any queries from a retailer's customer about an emergency situation
- Direct a retailer's customer making contact about a non-urgent matter to contact their retailer
- Reassure retailers' customers that in an emergency they can still contact **Affinity Water** who will respond to the situation

Don't:

- Suggest to retailers' customers that they contact our usual customer helpline number about routine queries. They need to contact their retailer about these
- Offer to speak to your Affinity Water colleagues about any non-urgent non-household issue. Retailers' customers must contact their retailer about these. If in doubt contact the Wholesale Operations Service Desk

5 Guidance for Community Operations

Visiting non-household premises

If your role involves visiting non-household premises, you have a key part to play in ensuring compliance.

Non-household "customers" are customers of their retailer. You should treat all retailers' customers equally, regardless of who their retailer is. You should never ask who their retailer is or comment on any retailer.

You will, though, need to think about how you respond to any queries from a retailer's customer during your visit to non-household premises. You must not discuss billing or customer service matters with them and must ask them to direct these enquiries to their retailer. If they are not sure who their retailer is, ask them to look at their bill and use the details provided there. Only act on the job in hand and don't offer advice to them about other matters, except in the event of an emergency.

Dealing with an emergency situation is the legal responsibility of the wholesaler, **Affinity Water**, so you can answer any of the customer's questions about an emergency.

Here's a scenario that will help you understand:

You are visiting non-household premises to carry out a job and while you are there the retailer's customer asks you whether you can help them to understand an item on their bill. You must explain that their water is supplied by their retailer and ask them to check their bill and contact their retailer using the details provided on their bill.

Do:

- Answer any queries from a retailer's customer about an emergency situation
- Direct a retailer's customer asking about a non-urgent matter to contact their retailer
- Reassure retailers' customers that in an emergency they can still contact **Affinity Water** who will respond to the situation
- Provide the same high level of service to all retailers' customers you visit

Don't:

- Suggest to retailers' customers that they contact our usual customer helpline number about routine queries. They need to contact their retailer about these.
- Offer to speak to your **Affinity Water** colleagues about any non-urgent non-household issue. Retailers' customers must contact their retailer about these. If in doubt contact the Wholesale Operations Service Desk.

6 Guidance for Commercial Teams

Agreeing Terms of Business with Retailers

All wholesale services provided to retailers must be based on the tariffs and charges set out in **Affinity Water's Wholesale Tariff Document** and the terms and conditions set out in the **Wholesale Retail Contract** and **Market Codes**. Each retailer must be offered credit terms consistent with their credit standing and the requirements of the **Market Codes**. Wholesale special agreement tariffs may not be offered to any retailer without the approval of the Director of Legal, Risk & Compliance.

If your role involves discussing and negotiating the terms and conditions for **Affinity Water** to provide a wholesale water supply to a retailer, you must respect the confidentiality provisions in Part H of the **Business Terms** of the **Market Codes**.

At a Glance

Do:

- Act as a single point of contact for all enquiries from any retailer
- Ensure you deal with all contacts from retailers in the same way regardless of which retailer is contacting you
- Keep **Confidential Information** confidential
- Ensure you inform a retailer of any contact from one of its customers

Don't:

- Disclose information or data relevant to one retailer to another retailer
- Give special treatment to any one retailer

7 Guidance for Other Wholesale Teams

Dealing with enquiries

Wholesale teams outside of the **Wholesale Operations Service Desk** and Operations Contact Centre should not have any direct contact with retailers or their customers.

You may feel that you are being unhelpful if a retailer or their customer does contact you and asks you a question which you could answer. But it is essential that all queries are passed on to the proper point of contact, which is the **Wholesale Operations Service Desk**.

You should only respond to enquiries concerning retailers or their customers that are formally forwarded to you by the **Wholesale Operations Service Desk**. Any information that you are preparing for a retailer should be provided only to the **Wholesale Operations Service Desk**, who will forward it on.

Do:

- If contacted by a retailer, politely refer them to the **Wholesale Operations Service Desk**
- If contacted by a retailer's customer, politely refer them to their retailer

Don't:

- Agree to help out the retailer or their customer 'just this once'

8 Guidance for Other Teams

Dealing with enquiries

If you do not work for the **Wholesale Operations Service Desk** or Operational Contact Centre, you should not be contacted by a retailer or one of their customers about wholesale water services provided to non-household premises.

If you do receive contact from a retailer, you should ask them to contact (or transfer them to) the **Wholesale Operations Service Desk**. Don't try to answer their enquiry.

If the caller is a retailer's customer you should ask them to contact their own retailer, unless it is an emergency in which case they should be referred to the Operational Contact Centre. If they are unsure as to who is their retailer you can suggest that they check their bill.

Here's a scenario that will help you understand what to do:

You receive a call from a retailer about a problem being experienced by one of their customers. You know you could help. You must however advise them they must contact the **Wholesale Operations Service Desk** who will assist them.

9 Monitoring Compliance with this Compliance Code

We will evaluate the effectiveness of this **Compliance Code** on a regular basis to ensure that it is working effectively. Where areas of risk are identified that are not already covered, we will update the **Code** to address them. The **Code** will be reviewed annually.

We have established a Markets Oversight Committee to oversee compliance. The remit and purpose of the Committee is as follows;

- A forum for sharing good practice on enabling effective markets and competition law compliance.
- Assist in embedding cultural improvements within Affinity Water to effect change so that supporting markets goes beyond compliance to a step change in behaviour.
- Enable the sharing of knowledge on cross-cutting issues that affect all competitive markets.
- Monitor and challenge performance against key measures of success in competitive markets.
- Plan and implement a growth strategy across our dealings with all stakeholders and regulators.

Appendix: Background to the non-household market and Affinity Water's obligations and glossary

Appendix: Background to the non-household market and Affinity Water's obligations and glossary

Condition R of Affinity Water's Instrument of Appointment

Affinity Water is a statutory water undertaker appointed by the Secretary of State. It operates under an **Instrument of Appointment**, often referred to as a licence, which imposes conditions on how it carries out its functions as a water undertaker.

Condition R of Affinity Water's **Instrument of Appointment** relates to the duties placed on **Affinity Water's** wholesale functions in providing water supplies to **water supply licensees** (retailers). It sets out certain rules about how **Affinity Water** should interact with retailers. These cover anti-competitive behaviour and obligations about what information should be provided to a retailer so it can provide retail services to non-household customers within **Affinity Water's** water supply area. **Affinity Water** must have a **Compliance Code** which complies with Ofwat's Compliance Guidance and which covers its obligations to discharge its wholesale duties and its obligation of confidentiality.

Condition R also requires that where a water undertaker is related to a retailer, it must ensure that every transaction between the two is carried out on arm's length terms.

Water retailers (either a **Water Supply Licensee** or the retail arm of an incumbent water company) buy the physical supply of water from wholesalers such as **Affinity Water** and other incumbent water companies. Wholesalers supply water and/or wastewater services to premises in their designated supply areas. Retailers then provide these services to their non-household customers along with retail services such as billing, water meter reading and customer services.

Household customers continue to receive all their water services directly from their existing supplier and cannot change supplier.

A **water supply licensee (retailer)** holds a licence granted by Ofwat to use an incumbent's network (where certain conditions are met) to supply water to the licensee's own retail customer. The licensee may hold a "retail authorisation" and/or a "wholesale authorisation".

A **retail authorisation** allows a **water supply licensee (retailer)** to take water from an incumbent's network to supply water to the licensee's own retail non-household customer. All non-household customers can choose their retailer.

A **wholesale authorisation** allows a **water supply licensee (retailer)** to put water into an incumbent's network to supply water to the licensee's own retail non-household customer. This is sometimes known as "common carriage" and is currently only allowed where the licensee's retail customer uses more than five million litres per year at a single site. These arrangements are managed in accordance with the incumbent's published **Network Access Code**.

The **Market Codes** described in this document do not apply to the situation where a **water supply licensee** with a wholesale authorisation seeks to put water into **Affinity Water's** network to supply water to the licensee's own retail non-household customers. These arrangements must be managed in accordance with **Affinity Water's** published **Network Access Code** which sets out the relevant provisions for securing access to **Affinity Water's** supply system. Before any information is exchanged between **Affinity Water** and a **water supply licensee** in these circumstances, a legally binding confidentiality agreement must be entered into. The rules in this **Compliance Code** relating to operating a level playing field, confidentiality and business separation apply equally to these arrangements.

Market Arrangements Code

A multi-lateral code applying to all market participants and the **Market Operator**. It contains provisions which set out how the parties work together to govern the market.

The provisions include governance of the **Market Operator**, including the constitution of its board and the financing of the company; governance of the market, including the constitution of the panel, which is responsible for reviewing change proposals affecting both the **Wholesale-Retail Code** and the **Market Arrangements Code** and making recommendations to Ofwat on those changes.

Wholesale-Retail Code

The **Wholesale-Retail Code** sets out the legally binding obligations to be followed by wholesalers (**Affinity Water**), retailers and the **Market Operator**.

The Wholesale-Retail Code consists of 5 core documents supported by subsidiary documents, forms, and high-level processes. These are described below.

Wholesale Contract

The Wholesale Contract is a short, standardised contract. The key purpose of the contract is to give contractual effect to all of the parts of the **Wholesale–Retail Code**, including the Business Terms, and to allow wholesalers to charge retailers for the wholesale services and be paid accordingly.

Objectives, definitions, and principles

Sets out the overall objectives of each of the Operational Terms, Market Terms and Business Terms and includes a glossary of abbreviations and defined terms.

Business Terms

Sets out the 'terms of trade' between a wholesaler and a retailer. The provisions align with those found in commercial contracts and have the effect of codifying such requirements across the market. These include provisions relating to the supply and the services; charges and billing arrangements, including timing of invoicing; default and termination; force majeure; disputes arrangements; confidentiality; and provisions relating to credit cover.

Operational Terms

Sets out the processes and other arrangements which apply to wholesalers and retailers to enable operational work to be undertaken for the retailer's customer. They also set out the requirements for ensuring that certain information flows from wholesalers to retailers take place, such as information about planned activities affecting services, so that retailers can inform their customers; and how other critical matters are dealt with, in particular unplanned events affecting the supply of water or sewerage services.

Market Terms

Taken together, the Market Terms and Code Subsidiary Documents (CSDs) set out the obligations of the **Market Operator**, wholesalers, and retailers, and how they interact to ensure the market functions in an orderly way.