[redacted]

Consumer Scotland
Luchd-Cleachdaidh Alba

WICS Competition Team
Moray House, 1st Floor
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Stirling, FK8 1QZ

Sent by email to: **competitionteam@watercommission.co.uk**

6th December 2024

Dear WICS Competition Team,

Consultation on measures in support of the retail market

Consumer Scotland welcomes the opportunity to respond to this consultation which sets out a range of measures intended to support improved functioning of the retail market.

This consultation marks an important step in the introduction of the proposed Code of Practice and the Market Health Check process which will underpin it. This is a positive development which has been driven forward by a temporarily expanded form of the non-household sector's Senior Stakeholder Group. Consumer Scotland acknowledge the significant efforts of market stakeholders, including many Licensed Providers, who have worked collaboratively to ensure that the proposed Code of Practice sets a strong foundation to enhance customer experience in the years ahead.

The Code of Practice itself will evolve over time. In the coming months, Consumer Scotland intend to conduct customer-facing research, co-funded by WICS and the CMA, to gain insight on the areas non-household customers value within the current Code, and to gain an understanding of some of the initial areas which the Code's Customer Panel could focus on to guide any future expansion of the Code's provisions.

This consultation focuses primarily on the Market Health Check process which will underpin the Code itself.

Summary

Consumer Scotland welcomes this further milestone in the development of the Code of Practice. Broadly, the principles set out by WICS in relation to the Market Health Check are proportionate and sensible. These should support the ultimate objective of ensuring that non-household customers have confidence that Code signatories are meeting their commitments.

Consumer Scotland are grateful to the efforts of all market participants who have supported the Code's development to date. Following the conclusion of customer research early in 2025, we are confident that the sector will have a strong basis on which to guide further proposals for enhancements to the Code itself.

Given that the Code will consistently evolve, it will be important to ensure ongoing dialogue between the MHC team and the Code's Customer Panel as proposals develop, to ensure that the validation process which may underpin specific commitments is credible and robust.

Question 1. Do you agree with the proposed MHC process? What improvements consistent with the objectives and operating principles could be considered?

Broadly, Consumer Scotland agree that the process set out within the Market Health Check framework represents a sensible approach to ensure that commitments undertaken via the Code of Practice are validated.

Consumer Scotland note that a certification is not given until any major issues identified via the MHC process are addressed, and this is entirely appropriate to ensure that customers have confidence that code signatories are delivering the commitments they have set out.

The process as set out reflects the spirit of 'Ethical Business Practice' which has been adopted by the market at large, allowing for a more iterative process of improvement whereby Licensed Providers are given scope to address and take ownership for minor issues internally.

While Consumer Scotland agrees that it is appropriate for Licensed Providers to take ownership for these issues, it may be helpful to specify in more detail what monitoring action is taken to ensure that these minor issues are revisited, even with the Licensed Provider taking overall ownership. For example, it would be helpful to outline if the MHC team would revisit these minor issues more explicitly in a subsequent MHC event.

Additionally, ongoing discussions have already identified some potential areas where the code may evolve. These include more substantial suggestions for further developing the process, such as the possibility of a 'multi-tiered' approach, allowing Licensed Providers to attain different levels of certification.

While Consumer Scotland agrees that the current approach is the most appropriate (i.e. – focusing on a single level of certification) as this allows for a more straightforward introduction of the process into the market and explanation to non-household customers, there may be merit in this being further explored, either within the intended customer research or at a future point.

With that in mind, while we broadly agree that the current approach is sufficient, WICS may wish to give early consideration into how the process could evolve, if a multi-tiered system was to be developed in future.

More generally, it will be important for consistent engagement to take place between the MHC team within WICS and the Customer Panel that will support the Code's governance, ensuring that the MHC team has early sight of any proposed changes to the Code and consider how these will be built into the existing validation framework. WICS themselves are of course represented on the panel which may be sufficient to allow for this visibility.

Consumer Scotland also note that WICS have outlined that they may consider reviewing options for strengthening either the Code of Practice itself or the market code to ensure that the usage of Third Party Intermediaries is appropriate and does not create detriment for customers. Previous research in the Scottish market from Citizens Advice Scotland[i] has illustrated that although many TPIs are reputable, and they play an important role in supporting switching and competition in the market – there are concerns around mis-selling of products and sharp selling practices. This is also an area where other regulatory or government activity is taking place[ii] reflecting these challenges.

Therefore, we would concur that this is a worthwhile area for further development, either within the Code or via other market structures.

Finally, with regards to the Code itself, Consumer Scotland highlighted in its response to WICS' consultation[iii] on the Business Plan Metrics related to the upcoming SRC27 review that engagement across market participants to build a consistent, overarching picture of customer experience across the non-household market would be beneficial.

While the proposed customer research linked to the Code will provide a useful starting point for its evolution, there may be value in market participants discussing whether a more coordinated approach to sourcing customer views could benefit the health of the market at large and enhance ongoing work to improve customer experience. Ongoing visibility of customer experience in a consistent way will be crucial to guide these improvements or understand the impact of the Code itself or any further proposals – Therefore, this may also be a worthwhile initial area for discussion linked to Code development.

<u>Question 2/3. Which high risk, high impact areas do you think the MHC should prioritise in its first iteration in relation to the CoP / the SLCs?</u>

The most recent substantive piece of research into customer service in the Scottish non-household market was conducted by Citizens Advice Scotland (CAS) as the predecessor body which formerly held responsibility for advocacy in this sector. Published in 2022, the research indicated several key areas which may guide efforts to focus the Market Health Check process[iv].

An initiative similar to the Code of Practice was one of recommendations of this work, and it should support improved customer service by delivering further clarity on the service standards Licensed Providers are committing to.

The key service areas identified by the CAS research are illustrated in appendix B on the linked document and focused essentially on two core areas – frustration with billing practices and difficulties with switching provider. Billing and charges related issues are also the largest cause of complaints recorded by CCW in the English and Welsh markets.

Given the potential for these areas to cause financial harm to customers, and also to constrain competition within the market, Consumer Scotland would suggest that these are appropriate initial areas to focus MHC activity on and ensure that behaviour standards committed to by Licensed Providers are being achieved.

Consumer Scotland should be able to provide additional views on this issue in Q1 2025, based on the outcome of the customer research project.

More broadly, Consumer Scotland would suggest that an initial approach to gauging high impact areas could also be found in the matrix which sets out compensatory payments[v] (pg. 22 onwards) for failure to meet default standards in key areas, such as responses to complaints. Given that there is thematic overlap with some Code of Practice areas, and the compensatory payments are designed to enhance behaviour in these areas at default levels and reflect impact to customers, there may be some value in guiding MHC / SLC validation processes using this matrix. From a SLC perspective, this would presumably be linked to where there may be overlap with the market code and these areas.

The Scottish Government is currently developing policy to address climate change adaptation. This addresses how we use and value water, water resource planning, protecting the water environment and addressing issues such as flooding and water shortages. We would welcome the non-household sector playing a key role in supporting the delivery of policy change to ameliorate the effects of climate change and consideration of how this may be represented within the Market Health Check.

Question 4. Do you agree with on the proposed funding approach for the MHC process?

Particularly given the significant level of commitments to sign up to the Code going forward, Consumer Scotland can understand the logic in the activities associated with the Code of Practice and Market Health Check acting to provide benefits across the market, and this effectively acting as part of WICS' ongoing workplan. This is supported by the ongoing improvements to market behaviours which will be driven by the MHC process itself.

Therefore, the suggested approach to funding appears appropriate and sensible. Albeit fundamentally, this discussion is for organisations which pay the levy and WICS to conclude.

Questions – Level Playing Field – Business Stream & Cross Border Entities

Broadly, Consumer Scotland are supportive of the principles outlined by WICS in this section of the consultation – ensuring that a level playing field exists in the market (and thus that competition is enhanced) and ensuring that entities which operate in the Scottish market are financially resilient in order to protect customers from the impact of economic shocks.

Consumer Scotland also accept, that as in other markets, certain providers of substantial scale may have additional governance or regulatory requirements to provide a higher degree of consumer protection. It is also not uncommon to have varying degrees of separation within corporate entities to reflect their distinct regulatory obligations.

Beyond the principles, these are detailed regulatory decisions which Consumer Scotland does not have specific proposals to present. While we would be supportive of the regulator taking reasonable actions to ensure that it has confidence that Scottish operating entities are not cross-subsidising activities in the English market, there are presumably efficiencies which benefit consumers which could be lost dependent on the level of organisational separation intended.

Consumer Scotland may be better placed to comment on specific measures WICS may be considering, based on our activities across other regulated markets, once they have considered a final set of measures following this consultation.

Yours sincerely,

[redacted]

[redacted]

Consumer Scotland

[i] insight_report_tpis_april_2021.pdf
[ii] Regulating Third-Party Intermediaries (TPIs) in the retail energy market - GOV.UK
[iii] WICS Draft Business Plan Guidance consultation | Consumer Scotland
[iv] are_you_being_served_final_report_for_publication_march_2022.pdf
[v] 2021-22 Default directions.pdf

Sent by email to: competitionteam@watercommission.co.uk

6 December 2024

Dear Sirs,

Re: Consultation on measures in support of the Retail Market

Thank you for providing us with the opportunity to review the proposed measures to support the Retail Market, specifically in relation to the Market Health Check and Level Playing Field arrangements.

Market Health Check ("MHC")

As you are aware, Clear Business Water Limited ("CBW", "we", "us", "our") has confirmed our commitment to the voluntary Customer Protection Code of Practice.

We support the proposed MHC process. With regards to high risk, high impact areas to be addressed in the first iteration of the MHC, as the first MHC is not due to commence until October 2025 the high risk, high impact areas may look different to now. However, based on the current market environment, we would suggest:

- Customer switching and termination fees for early termination
- Communications before agreeing a contract

Level Playing Field arrangements

[✂REDACTED].

Should you have any queries regarding our response or wish to discuss anything further, please do not hesitate to contact me at [✂REDACTED].

Yours sincerely,

[✂REDACTED].

same water different price

WICS Consultation on Measures in Support of the Retail Market

Response of Business Stream

Thank you for the opportunity to respond to the above consultation. We have commented on each section in turn below.

Customer Protection Code of Practice (CPCoP)

Content of the CPCoP: We have been actively involved in the development of the new Code and support its implementation from 30th April 2025. The current draft is a good start, but we agree with WICS that further work is required to strengthen requirements on LPs' use of TPIs, especially to ensure that customers receive complete information and accurate quotes.

New Licence Condition: With reference to the wording of the proposed new licence condition, as WICS is aware, we consider that it would be more transparent and equitable if all LPs were required to comply with the terms of the new CPCoP, rather than this being a voluntary licence condition.

Market Health Check (MHC)

Do you agree with the proposed MHC process? What improvements consistent with the objectives and operating principles could be considered?

The overall MHC process proposed is clear and seems appropriate as a general framework. As suggested, it would be helpful to keep the process under review so that it can be adapted to respond to changes in circumstance.

Timescales: The proposed timescales may need to be adapted depending on the focus area of the audit – a more in-depth or data intense audit may require longer for both the data collection and review stages for example. Similarly, where an identified issue requires LPs to make process or system changes, this may need more than 40 BDs to put in place.

Frequency: It is assumed that the MHCs will be staggered, given that there are expected to be 18 LPs within the scheme. A MHC timetable, scheduling the expected start dates for each LP would be useful. It would also be useful to indicate how often WICS expects to undertake a MHC for each LP.

Focus areas: Is it anticipated that the focus area(s) would be the same for all LPs in each round of MHCs, or would a risk based approach be adopted with targeted focus areas for individual LP's?

Which high risk, high impact areas do you think the MHC should prioritise in its first iteration in relation to the CoP?

We believe that the MHC focus areas should be those of most significance to customers i.e. the key 'touch points', and/or those areas where concerns have been raised by market participants or customers previously, such as:

- sales quotes – accuracy and completeness. This might also help inform the review of TPI behaviours referred to in the consultation (page 8);
- contract renewal; and
- the customer transfer process.

Which high risk / high impact areas do you think the MHC should prioritise in its first iteration in relation to the SLCs?

For those LPs who sign up to the new licence condition, the scope of the MHC will include both the CPCoP and the SLCs, whereas for those who don't sign up, WICS's audit will cover only the SLCs. Hence it might be appropriate to have two different scopes for the SLC audit, depending on whether or not an LP has signed up to the CPCoP.

Do you agree with the proposed funding approach for the MHC process?

We agree that a proportionate mechanism for funding the MHC is appropriate.

Whilst we can see that there may be some cost advantages of WICS undertaking the role of Market Health Checker, the original proposal was that the role would be undertaken independently. We believe that this approach has merit, even if it would cost a little more.

Level playing field: Measures in relation to Business Stream

We support the view that the Governance Code should be reviewed to ensure that it is up to date, that elements that are no longer relevant (e.g. the capital structure of SWBS at the time of market opening) are removed, and that it remains fit for purpose. However, we would suggest that WICS continues the statutory consultation process with Scottish Water and Business Stream first. This would be consistent with the requirements of the 2005 Act and WICS's powers to issue directions, which require WICS to consult with those parties directly affected. Any proposed changes should be properly considered by Scottish Water, Business Stream and WICS before any further public consultation. It will also be important to ensure that any changes to the Code are consistent with any changes to the wider regulatory arrangements for all LPs (discussed further below) with any concerns addressed through changes to Licence Conditions rather than the Governance Code, to ensure that Business Stream is not competitively disadvantaged.

Business Stream continues to operate entirely independently of Scottish Water. We conduct annual audits to demonstrate our adherence to the Governance Code, we comply with the SLC A9 requirements regarding financial independence and operational adequacy and our funding is subject to extensive market benchmarking to ensure compliance with the Subsidy Control Act. Each year, our Board provides a written statement to WICS to evidence our compliance with the conditions of SLC A9 for the previous calendar year. We also fulfil similar licence obligations in relation to our English customer base. We're not aware of any concerns or evidence that would suggest that our Scottish business is at risk from our activities in the English market and if WICS does have any concerns, we would like to fully understand them.

Although the consultation contains no detailed proposals, some of the broad suggestions could potentially have very significant implications for Business Stream, so we would like to ensure that they are properly considered before any decisions are made, for example:

- *"…separation between the regulated and non-regulated businesses of SWBS".* This would not be feasible in practice and it would provide no benefit to our customers. It would add significant cost, distort the level playing field for Business Stream and undermine our competitive position. We report our gross profit and contribution on a regional basis, and we price for Scottish and English activities separately, even when we are tendering for the UK-wide portfolio of a multi-site customer, ensuring that our pricing in each market reflects the direct costs of participating in that market so as to avoid any cross-subsidy. But in practice we operate as a single business, in the same way as our competitors who operate in both markets. Our customers enjoy the benefits of an integrated Anglo-Scottish service and the associated efficiencies.
- *"…we are consulting on the introduction of a principle (as part of the Code) on the long term sustainability of SWBS' dividend policy".* There is nothing definitive in the consultation paper to indicate what this might entail, but the measures referred to that were introduced by Ofgem and Ofwat in 2023 were designed to address specific concerns and they were applied consistently across the markets.

For the reasons stated in the introductory paragraph above, we don't feel that it would be appropriate to respond publicly to the specific questions posed within the consultation, although we would be happy to discuss the issues raised with WICS directly.

Measures in relation to other licensed providers (LPs)

Standard licence condition (SLC) A9 makes specific provisions:

- prohibiting the receipt of financial support from other market players or from related undertakings, including English wholesale companies (para 3);
- requiring that Scottish customers are not disadvantaged by an LP's English activities, including a requirement to operate at arm's length from any related undertaking; and ensuring Scottish licenced services are adequately financed (para 5(a) and (b)); and
- prohibiting anti-competitive transactions (5(c)).

WICS has not set out any explicit concerns or evidence to indicate that LPs are failing to comply with these requirements, so our responses to the consultation questions are based on our general experience of the market.

Are these annual declarations sufficient to ensure there is confidence in a level playing field?

Should we require additional evidence to be provided to support the declaration? For example, can we be fully confident that any support to a licensee from a related undertaking is provided on an arm's length and commercial basis?

We are aware that LPs operate within a range of different business models, gaining efficiencies and economies of scale from operating across geographical boundaries, across different products (e.g. waste disposal, multi-utility offers) and across different customer groups. Others may benefit from their ownership model – through shared common service provision or parent company support[1]. These different business and ownership models facilitate competitive differentiation between LPs and for the most part customers derive the benefits through competitive offerings. Providing the relationship between LP and parent company is transparent and there are clear cost-reflective allocation methods evidenced in LPs' accounts, it is difficult to see how WICS could distinguish between and mitigate the advantages gained by some LPs from their association with a wholesaler parent company, as opposed to the benefits gained by others as a result of different business or ownership models.

What additional evidence could be required to demonstrate that the English regulated business is not adversely impacting the Scottish regulated business? Could a form of separation between the entities holding the two licences be considered?

It is not clear to us how Scottish customers would be at risk from their LP's English water retail activities, any more than from their LP's other business interests (e.g. multi-utility). It wouldn't be practical, and it wouldn't be in customers' interests to create an artificial separation between the LP entity supplying a customers' Scottish sites vs their English sites, any more than it would between the LP entity supplying the water component of a customer's multi-utility product vs the energy component. It would just add cost and undermine the benefit for the customer of purchasing a combined service offering.

One area where Scottish customers could be more at risk than in the English market is in relation to the financial resilience of their LP. Recognising the risk to customers of retailer failure, Ofwat has recently taken steps to:

(i) proactively monitor retailers' financial strength: In addition to the annual Certificate of Adequacy obligation, since May 2023 Ofwat has issued bi-annual requests for financial and governance information from retailers in order to maintain visibility of financial resilience in the market; and

(ii) protect customers against the risks of retailer failure: Ofwat and MOSL are currently taking measures to make the Interim Supply process (equivalent to the POLR process in Scotland) less risky for retailers so as to increase the protection for customers in the event of an unplanned retailer exit from the market (see more detail below).

[1] For clarity, this does not include Business Stream, as we are prohibited from receiving any support from Scottish Water under the terms of the Governance Code.

What other changes would support confidence in a level playing field in the market that WICS could consider given its statutory duties and powers?

In the absence of any specific concerns, we would be reluctant to see any regulatory changes at this stage to either increase arm's length measures or to try and 'protect' Scottish customers from LPs' English business.

If WICS has specific concerns, they could be addressed by seeking additional information to support the annual SLC A9 Board compliance statements. The MHC process could also be used to verify compliance with the relevant requirements of that licence condition.

On the wider question of protecting customers against retailer failure, we believe there is merit in considering for Scotland the sorts of changes that Ofwat is introducing to encourage more retailers to participate in the Interim Supplier (IS) process in England. In Scotland, Business Stream is obliged to participate in the POLR scheme because of our market share, but the costs and risks of taking on the customers of a failed retailer are considerable, especially the wholesale charges pre-payment requirement, and only one other LP (out of 19) has been prepared to opt into the scheme this financial year. With only two LPs in the POLR scheme, the costs and risks of the process could in turn have knock-on effects on the financial resilience of the POLR LPs, and inhibit their other activities. As mentioned above, in England Ofwat is introducing two measures to make the Interim Supply scheme less risky for retailers:

(i) **Recovery of additional costs**: There will be a mechanism by which the interim retailer is able to recover the additional and unavoidable costs of taking on the role. This could include additional bad debt, associated with disenfranchised customers and those who switch before paying their bills; the costs of onboarding and setting up new customers and dealing with customer queries; and the costs of additional working capital to fund customer operations and wholesale charges; and

(ii) **Wholesale charge deferral:** This second mechanism will allow the interim retailer(s) to defer a proportion of wholesale charges for a period of months following an Interim Supply event, in order to help address the problems with raising and financing working capital to pay wholesale charges before revenues are billed and recovered from the new customers.

We've been closely involved in the development of these mechanisms and whilst we understand that the English and Scottish regulatory framework are not completely aligned, we would be happy to discuss how a similar approach might work in Scotland to help protect customers and to ensure a level playing field.

05/12/2024

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6th December 2024

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Dear WICS

CONSULTATION ON MEASURES IN SUPPORT OF THE RETAIL MARKET

Thank you for providing Wave the opportunity to respond. Before we outline the responses to the designated questions in the consultation, we have some feedback surrounding the provision of the questions and additionally some comments about areas of the Code of Practice that we would like to highlight at this stage.

Comments outside of the consultation questions

Whilst the consultation questions themselves are thorough, the varied format of the questions throughout the document made them difficult to navigate. Consistent formatting of questions would be helpful for future consultations. A helpful addition could also be to have a full list of questions at the end of the document for easier summation.

Wave recognises WICS's decision not to consult further on the Code of Practice (CoP) at this stage, however we still have a concern in relation to TPI interactions with Licensed Providers (LPs), in particular, the inclusion of the ability for customers to leave whilst still under contract. With this respective change, TPIs may decide to engage less with the market due to an increase in customer volatility or, exploit this increased customer volatility to encourage further switching to increase commission payments, which are both detrimental to the customer experience in the market.

Additionally, we think further clarity is needed in relation to sections 2.3.4 and 2.3.5 of the CoP, Scottish Water's backdating policy and the Statute of Limitations, which don't appear to be fully aligned. It's not clear why Scottish Water's backdating policy of 7 years goes back further than the Statue of Limitations of 5 years which is also reflected in section 2.3.4 of the CoP.

Implementing the Market Health Check Response

Do you agree with the proposed MHC process? What improvements consistent with the objectives and operating principles could be considered?

Wave agrees with the proposed process in principle, however with the wide scope of the CoP, we do have concerns about the potential burden placed on LPs to provide the required information depending on the volume. WICS has referenced how the costs incurred in carrying out this process will be recovered from LPs, but should be mindful of additional costs to LPs, ensuring cost and effort is balanced with the benefits of the review, aligning with the "Cost-Effectiveness" Principle.

It would be beneficial to LPs for WICS to provide context around the information being provided by LPs at the point of request. For example, some determination on what areas of the MHC are deemed minor or material issues would be helpful. The areas of focus should also be contributory to the customer experience, rather than how processes or systems work that are not affecting customer experience.

Wave supports the intention to review and refine the process at the end of the first MHC, when any learning can be picked up and addressed.

Which high risk, high impact areas do you think the MHC should prioritise in its first iteration in relation to the CoP?

Section 1B – Third Party Intermediaries

Which high risk, high impact areas do you think the MHC should prioritise in its first iteration in relation to the SLCs?

Nothing Identified

Do you agree with on the proposed funding approach for the MHC process?

We agree with the funding approach, believing it to be fair, straightforward to administer and easily implemented within current processes.

<u>Measures in relation to Business Stream</u>

How do we ensure that the Code arrangements can stand the test of time and that SWBS continues to operate in a financially independent way?

We would expect Scottish Water Business Steam (SWBS) to be required to pay arm’s length costs for any financial support. Wave has benchmarked its credit support guarantees from our shareholders externally to be able to demonstrate we were not getting advantaged financial terms. We expect the same to be in place with SWBS to demonstrate independence.

Are the financial covenants still effective and consistent with demonstrating financial viability whilst providing SWBS with the necessary flexibility to respond to market changes?

SWBS has received funding to run its regulated business as per 6.1 of the Code and has to warrant that it has enough annually. We are aware that some Wholesalers in England offer more attractive payment terms to government backed retailers, however, if it has been warranted that no further funding is required, then how does that government backing actually offer any benefit to warrant the more attractive payment terms? It seems clear from the Code that SWBS should be financially insulated from Scottish Water (SW).

Are there any changes required to the information sharing controls between SWBS and Scottish Water?

Nothing identified.

Should there be any specificity on who should (or should not) hold Board level positions within SWBS?

There should be a clear distinction between SWBSH and SWBS. SWBSH are there to appoint SWBS directors and provide segregation to SW, so no SWBSH directors or employees should be on the SWBS board to maintain independence of decisions.

What additional evidence could be required to demonstrate that the English regulated business is not adversely impacting the Scottish regulated business? Could a form of separation between the two elements be considered?

The code references that there are 2 businesses, regulated and non-regulated. If both are within the same legal entity, it will be difficult to get assurance that there is no cross subsidy if there is no verifiable arm's length cross charge for services.

What other changes to the Code could reinforce confidence in a level playing field?

We note that the Scottish situation is probably unique in that Scottish taxpayer's money is being used to run SWBS competing within the water retail business in England. The question is whether this provides confidence that there is a level playing field.

Measures in relation to other licensed providers

Are these annual declarations sufficient to ensure there is confidence in a level playing field?

Wave considers that the annual declarations are sufficient.

Should we require additional evidence to be provided to support the declaration? For example, can we be fully confident that any support to a licensee from a related undertaking is provided on an arm's length and commercial basis?

The annual declarations are signed by the Boards of LPs and their Ultimate Controllers which should provide sufficient confidence.

What additional evidence could be required to demonstrate that the English regulated business is not adversely impacting the Scottish regulated business? Could a form of separation between the entities holding the two licences be considered?

Before considering further measures, evidence needs to be provided to demonstrate why the current arrangements are adversely impacting the Scottish regulated business. We're not aware that this is the case. We do not support separation which would likely increase costs for all customers.

What other changes would support confidence in a level playing field in the market that WICS could consider given its statutory duties and powers?

Nothing identified.

We hope that our response is useful. Do let me know if you would like to discuss further.

Yours faithfully

[redacted]

Legally privileged and confidential

SCOTTISH WATER

CONSULTATION ON MEASURES IN SUPPORT OF THE RETAIL MARKET

CONSULTATION RESPONSE

1. INTRODUCTION AND SUMMARY

1.1 Scottish Water welcomes the opportunity to respond to the Water Industry Commission for Scotland (**WICS**) '*Consultation on Measures in Support of the Retail Market*' (the **Consultation**).

Measures in support of a Code of Practice

1.2 Scottish Water is supportive of the proposed measures in support of a Code of Practice (CoP) and the approach outlined in WICS consultation. Scottish Water consider the collaborative process through which the market developed the CoP to have been beneficial. Scottish Water note the link between the CoP and Market Health Check (MHC) and wholesale prepayments and will update the Financial Resilience statement accordingly to support the proposed implementation timescales. Scottish Water support the proposed review at the end of the first MHC process and consider the funding approach outlined in the consultation to be appropriate.

Level playing field

1.3 Introduced at the time of market opening in 2008, the Governance Code was an important regulatory measure which provided confidence for new entrants investing in the non-household retail market in Scotland. Scottish Water considers that the Governance Code and other current regulatory measures provide a robust set of arrangements ensuring the independence of Scottish Water Business Stream Limited (**Business Stream**) in respect of the non-household retail market in Scotland. While there are certain aspects of the Governance Code that could be updated, such as to reflect the current capital structure of Business Stream, Scottish Water does not consider amendments are needed to address any perceived concerns as to there not being a "level playing field" for licensed providers in the Scottish market. As detailed in the Consultation, the market has developed significantly since market opening.

1.4 Should WICS have concerns in respect of Business Stream's activities in the English retail supply market, these should properly be addressed with Ofwat and the regulatory regime as it applies in that market.

1.5 Should WICS have concerns in respect of Business Stream's financial resilience and wish to consider introducing a principle on the long-term sustainability of Business Stream's dividend policy, that should more properly be addressed through Business Stream's licences as a retail provider in the Scottish non-household market, with equivalent provisions for other market participants. That would be consistent with the similar measures taken by Ofwat and Ofgem (as referenced in the Consultation) and with the powers and competences of WICS as regards the participation of licensed providers in the Scottish market.

1.6 The remainder of this response is structured as follows:

1.6.1 ***Section 2***: Scottish Water's detailed response to section 2 of the Consultation on measures in support of the proposed Code of Practice (the **CoP**).

1.6.2 ***Section 3***: Scottish Water's detailed response to section 3 of the Consultation on level playing field.

2. MEASURES IN SUPPORT OF A CODE OF PRACTICE

2.1 Scottish Water welcomes the opportunity to comment on the proposed measures in support of the retail market. Scottish Water are supportive of the proposed measures in support of a CoP and the approach outlined in WICS consultation.

Scottish Water consider the collaborative process through which the market developed the CoP to have been beneficial. The engagement and cooperation among market participants, including the Steering Group (SG) and the Senior Stakeholder Group (SSG), have been instrumental in shaping the CoP. This collaborative approach should ensure that the CoP reflects the diverse perspectives of participants, meets the needs of customers, and fosters a sense of ownership and commitment across the market.

Scottish Water note the link between the CoP, MHC and wholesale prepayments and will update the Financial Resilience statement accordingly to support the proposed implementation timescales.

Scottish Water support the proposed review at the end of the first MHC process. This review should provide valuable insights and help to refine the CoP and other market arrangements to better serve the interests of customers and market participants.

Scottish Water consider the funding approach outlined in the consultation to be appropriate, striking a balance between ensuring adequate resources for the HMC process and maintaining affordability for participants and customers.

Scottish Water look forward to continuing to work with the SG and other market participants to support the successful implementation of the CoP and MHC.

3. LEVEL PLAYING FIELD

Measures in relation to Business Stream

3.1 Scottish Water agrees that now is an opportune moment to review the Governance Code to ensure it is fit for purpose.

3.2 While there are certain aspects of the Governance Code that could be updated, Scottish Water is not aware of any specific market concerns as regards a "level playing field". No such concerns appear to have been articulated in the Consultation as to the governance arrangements ensuring the independence of (or business separation of) Business Stream from the rest of the Scottish Water group of companies, nor as regards Business Stream's financial stability.

3.3 Indeed, the Consultation acknowledges that many of Business Stream's original customers have switched to other licensed providers and that Business Stream has lost approximately half its market share since market opening.

3.4 While Business Stream has entered the English non-household retail market and made a number of acquisitions, and while financial resilience in the retail market both north and south of the border has rightly been a concern for regulators, any amendments to be made to the Governance Code as regards ensuring a "level playing field" need to be properly articulated and understood before proposing any form of regulatory action.

3.5 Should WICS have concerns in respect of Business Stream's activities in the English retail supply market, Scottish Water's view is that those should properly be addressed with Ofwat and through the regulatory regime as it applies in that market.

3.6 Should WICS have concerns in respect of Business Stream's financial resilience and wish to consider introducing a principle on the long-term sustainability of Business Stream's dividend policy, Scottish Water's view is that this should more properly be addressed through Business Stream's licences as a retail provider in the Scottish non-household market, with equivalent provisions for other market participants. That approach would be consistent with the similar measures taken by Ofwat and Ofgem (as referenced in the Consultation) and with the powers and competences of WICS as regards the participation of licensed providers in the Scottish market.

Question 1*: *How do we ensure that the Code arrangements can stand the test of time and that Business Stream continues to operate in a financially independent way?

3.7 The Governance Code was established at the time of market opening for the purposes of ensuring the independence of Business Stream from Scottish Water. In Scottish Water's view, the Governance Code has stood the test of time and Business Stream continues to operate in a financially independent way.

3.8 As a matter of good regulatory practice, Scottish Water agrees that periodic reviews of the Governance Code are a good way to ensure it remains fit for the purposes for which it was put in place. However, Scottish Water is not aware of any specific market concerns either from WICS or from licensed providers operating in the Scottish non-household retail market.

3.9 Scottish Water agrees with WICS that some technical amendments are required to update the Governance Code to reflect changes since it was put in place. Scottish Water will continue to engage with WICS constructively on such amendments and any feedback from the market through the Consultation.

Question 2: Are the financial covenants still effective and consistent with demonstrating financial viability whilst providing Business Stream with the necessary flexibility to respond to market changes?

3.10 The Governance Code currently requires Business Stream to ensure that, at the end of each financial year:

- the ratio of EBITDA to net interest payable is no less than 3 to 1; and
- total net borrowings do not exceed 3.5 times EBITDA.

3.11 Scottish Water considers that these ratios remain generally appropriate for ensuring Business Stream's financial viability whilst providing it with an appropriate degree of flexibility to respond to market changes.

3.12 As an economic regulator, it is for WICS to take a view as to whether the current financial covenants in the Governance Code present any form of risk to Business Stream's viability or to the orderly participation of other licensed providers in the Scottish non-household retail market in a manner that is not detrimental to the exercise of Scottish Water's core functions or the "participation duty" as referenced in the Consultation (that being the statutory test under the Water Services etc. (Scotland) Act 2005 (the **2005 Act**), which WICS needs to consider when proposing any amendments to the Governance Code).

3.13 The Consultation does not specify why the current financial covenants are not (or might not be) effective in demonstrating financial viability whilst providing Business Stream with the necessary flexibility to respond to market changes. That makes it difficult to respond further to this question.

3.14 To the extent WICS does have concerns in respect of Business Stream's financial viability, WICS should consider whether it would be more appropriate to seek to address those through conditions in Business Stream's Scottish retail supply licences. That approach would be consistent with the similar measures taken by Ofwat and Ofgem (as referenced in the Consultation) and with the powers and competences of WICS as regards the participation of licensed providers in the Scottish market. The Consultation makes specific reference to Standard Licence Condition B4 (**SLC B4**) on the financial resilience of participants in the Scottish non-household market.

3.15 Similar points can be made regarding the proposed introduction of a principle in the Governance Code in respect of Business Stream's dividend policy, at least to the extent WICS is looking to introduce regulatory measures similar to those put in place by Ofwat and Ofgem (as indicated in the Consultation).

3.16 While Business Stream's financial viability is a legitimate regulatory concern, it is unclear from the Consultation what evidence there is to support any such concern. It is also unclear how the introduction of such a principle in the Governance Code is needed to ensure Business Stream's independence from Scottish Water in terms of a "level playing field". Such a provision risks treating licensed providers differently and discriminating against Business Stream, contrary to ensuring a "level playing field".

3.17 Scottish Water is concerned that WICS' approach here is misdirected. To the extent WICS does have concerns with Business Stream's dividend policy and Business Stream's financial viability as a licensed provider in the Scottish market, WICS should properly seek to address those concerns through appropriate conditions in Business Stream's Scottish retail supply licences. It would not in Scottish Water's view be appropriate to address those concerns through the Governance Code. It is not clear from the Consultation how such measures are necessary to ensure the independence of Business Stream from Scottish Water in order to secure the orderly participation of licensed providers in the Scottish market in a manner that is not detrimental to the exercise of Scottish Water's core functions (in terms of issuing directions under section 11 of the 2005 Act).

Question 3: Are there any changes required to the information sharing controls between Business Stream and Scottish Water?

3.18 In Scottish Water's view, the current information-sharing controls work well, are sufficiently robust and are in line with regulatory best practice across other utilities. For example, the arrangements set out in clause 4 of the Governance Code are similar to restrictions on sharing information between Openreach and the wider BT Group in the telecommunications context and between electricity networks and related entities.

3.19 Scottish Water is not aware of any specific concerns as regards confidential information-sharing between Business Stream and the rest of the Scottish Water Group. As such, Scottish Water considers that the existing arrangements are sufficiently robust and have led to an appropriate and well-calibrated regime for controlling the sharing of confidential information.

Question 4: Should there be any specificity on who should (or should not) hold Board level positions within Business Stream?

3.20 In Scottish Water's view, the current arrangements as regards the independence of Business Stream's board are robust and work well to ensure that Business Stream operates independently while still being subject to an appropriate degree of oversight and corporate governance.

3.21 Under the Governance Code, Scottish Water Business Stream Holdings Limited (**SWBSH**) makes appointments to and removals from Business Stream's board.[1] In exercising that function, SWBSH is required to ensure that Business Stream can act independently and at arm's length from Scottish Water. Before making any appointments to or removals from the Business Stream board, SWBSH must inform WICS,[2] and WICS has the ability to intervene in the event it considers that a proposed Business Stream board appointment risks compromising Business Stream's independence. As an overarching requirement, Business Stream's board is required to take decisions independently from SWBSH and Scottish Water more generally.[3]

3.22 In practice, under these arrangements Business Stream has maintained an independent board with a separate executive team and suite of non-executive directors from those of Scottish Water. The only overlap with Scottish Water's board is the non-executive chair role. That position is held by the same person for both the Scottish Water board and the Business Stream board. This has been the case since the establishment of Business Stream and WICS is fully aware of the position.

Question 5: What additional evidence could be required to demonstrate that the English regulated business is not adversely impacting the Scottish regulated business? Could a form of separation between the two elements be considered?

3.23 The Consultation notes that the Governance Code focusses on the regulated activities of Business Stream in the Scottish market, but that it states the Scottish regulated business (the **Regulated Business**) must not be affected by the performance of the English regulated business (the **Non-Regulated Business**).

3.24 The Consultation fails to identify any specific concerns, but seeks views on possible reporting transparency and/or separation between the Regulated Business and the Non-Regulated Business. There is reference to potential conflicts of interest as between utility network businesses and businesses within the same group engaged in other unspecified activities,

[1] Governance Code, clause 2.1.c.

[2] Governance Code, clause 2.1

[3] Governance Code, clauses 2, 2.1 and 3.

citing some of the work Ofgem has undertaken on ownership unbundling. From this context, it is not clear to Scottish Water what WICS' specific concerns are here. If WICS does wish to consider amendments to the Governance Code, it should articulate (i) their relevance to the purpose of the Governance Code in terms of the orderly participation of licensed providers in the Scottish non-household retail market; and (ii) why they are necessary and proportionate as a form of regulatory measure under section 11 of the 2005 Act. In doing so, WICS should consider the measures already set out in its Standard Licence Conditions and the position under the licences Business Stream holds from Ofwat.[4]

Question 6: What other changes to the Governance Code could reinforce confidence in a level playing field?

3.25 As set out above, Scottish Water agrees that now is an opportune moment to review the Governance Code to ensure it is fit for purpose. However, Scottish Water is not aware of any wider issues as to confidence in the current Governance Code and any perceived need to reinforce confidence in a "level playing field" in the Scottish non-household retail market.

[4] See Consultation, Section 3.2 which sets out these requirements in respect of the Scottish market.

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WICS Consultation on Measures in Support of The Retail Market

Everflow Response

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Consultation Questions

Section 1 - The Market Health Check

Overarching Response

Our response to the specific questions posed below address the Market Health Check (MHC) process, its focus areas, and the proposed funding approach. However, the points we have made are underpinned by broader concerns about the lack of clarity, direction, and effective governance in the development and future implementation of both the MHC and the Code of Practice (CoP). These overarching concerns are detailed below for The Commission's consideration.

Lack of Vision, Clarity, & Evidence

We support regulation where there is a clear and well-evidenced need to drive better outcomes for customers. However, the development of the CoP and the MHC has lacked focus, transparency, and sound evidence, eroding our confidence that these initiatives will in fact deliver meaningful customer benefits.

Unclear Purpose and Lack of Evidence

The protracted timeline of development—marked by shifting deadlines, intermittent engagement, and an overall lack of a sense of urgency—has raised serious doubt about the pressing need for or purpose of the MHC. It furthermore remains unclear whether these measures address genuine customer demand, or if they are driven by the regulator's perception of market deficiencies.

To our knowledge, the Commission has not conducted customer research to substantiate claims of significant customer demand. Meanwhile, our own experience as a licensed provider indicates that customers prioritize price, and service quality/speed above all else, whilst generally trusting market and regulatory systems to ensure compliance. Customers rarely monitor party performance themselves, and we believe they are unlikely to view the CoP or MHC as directly relevant to their needs.

The lack of demonstrable links between the initiatives' objectives and measurable customer demand or benefits suggests a risk of unwarranted regulatory overreach. A clearer articulation of purpose, supported by customer-focused evidence, is needed to ensure these measures are necessary and proportionate.

Misaligned Framework Objectives

Further confounding the purpose and intent of this program of work is a fundamental misalignment of the current framework with its stated objectives. The CoP and MHC were initially positioned as voluntary mechanisms to encourage performance above a minimum standard. However, several inconsistencies in the framework undermine this intent:

- *Undefined minimum standards:* It is unclear what standard the CoP is intended to exceed, as no baseline performance benchmarks have been defined.
- *Mandatory elements disguised as voluntary:* Linking CoP participation to financial resilience scores imposes de facto penalties for non-participation, negating its voluntary nature.
- *Customer confusion:* Given the above, the CoP is poised to function as a new baseline standard rather than a mechanism for exceeding a baseline, which will create a misunderstanding of its purpose amongst customers.

The decision to link CoP participation to financial resilience was made prior to the CoP's creation and has not been reviewed. The Commission has neither acknowledged this shift nor justified the resulting implications for the framework and how it will be communicated to customers. This lack of review or justification threatens the transparency and credibility of the framework in its entirety.

It is also not clear why the link has been drawn between the CoP and financial payment terms. Escalation pathways already exist within licence conditions where non-compliance exists, none of which include links to financial resilience scores. We would expect a similar approach to the MHC and CoP, and it is not clear why non-compliance with the CoP would necessitate additional financial payments to Scottish Water when the CoP is not designed to measure financial resilience. The link between the two increases the risk surrounding non-compliance, and based on the current approach the indication is that an additional month's prepayment could be requested with minimal notice. Clarity is needed as to 1) why the link is being made between the CoP, MHC and financial resilience, and 2) where changes to financial resilience will sit within the proposed escalation pathways for non-compliance. Otherwise, LPs will be unable to have confidence in the regulatory regime.

Ambiguity & Gaps in Governance

The governance of the CoP development to date raises significant concerns about the future management of the MHC, particularly in terms of impartiality, decision-making processes, and resource allocation.

Conflicted Interests and a Lack of Impartial Oversight

Whether or not these were acted upon, it must be acknowledged that all key collaborators involved in developing the CoP had vested interests in the outcome achieved, and we have been continuously disappointed by a lack of impartial oversight that would have mitigated any impacts in this regard. This lack of oversight fuels our concerns that competitive interests—in particular from the likes of larger, more established trading parties— may have taken precedence over broader market goals in creating the CoP.

The draft governance structure set out for the CoP exacerbates these concerns. It relies on a majority voting system with a non-representative quorum, lacks requirements for formal consultation on amendments, and does not mandate approval by WICS or alignment with the CoP's core principles. This design leaves the CoP vulnerable to frequent changes which would cause operational challenges.

Such a skeletal governance framework raises fundamental questions about the MHC's resilience and purpose:

- How frequently will the MHC be subject to changes, and will these changes serve customer interests?
- Are we measuring the right metrics if those metrics can be so easily altered?
- Has the structure been designed with sufficient thought, given the wealth of precedence for more robust governance in other markets?

Insufficient Resource Allocation and Inconsistent Engagement

The resources allocated by WICS and the CMA to the CoP's development have also been limited, with inconsistent personnel involvement. Organizations like ours have been left uncertain about compliance requirements, and --with just eight months until implementation--we face the risk of enforcement without clear sight of specific auditing standards or expectations.

Addressing these governance shortcomings will be essential to ensuring that the MHC and CoP serve their intended purpose of enhancing customer outcomes. Robust oversight, balanced representation, and transparent decision-making processes must be prioritized to instil confidence in these frameworks moving forward.

Path Forward

Given these systemic issues, we are deeply concerned about the implementation of the MHC. While we do not oppose its introduction in principle, the significant gaps in detail, historical lack of governance and communication, and a rapidly approaching implementation date make it crucial that the below are thoroughly considered and improved upon such that we might move forward in a way that will make the transition effective, seamless, and most importantly, customer-focused:

1. *Clear and Evidenced Problem Statements and Goals*: The market requires a well-defined understanding of the objectives and the problems the MHC seeks to address. We urge the Commission to carefully articulate the specific issues the MHC is intended to address, and the objectives it seeks to achieve, supported by evidence of customer demand or market deficiency.
2. *Specific and Transparent Expectations:* Trading parties require clear guidance on minimum performance standards, compliance timelines, and auditing requirements to enable effective planning and resource allocation. This should include clear distinctions between requirements for CoP participants and non-participants.
3. *Improved Governance Structures:* The governance of both the CoP and MHC must provide for robust safeguards and independent oversight, in order to ensure that vested interests do not dilute their intended objectives.
4. *Consistent Communication and Resourcing:* To address the historical gaps in engagement, the Commission must commit to clear, consistent communications supported by evidence-based decision making, and ensure sufficient resources are allocated to supporting implementation, particularly given the decision not to seek external support for the MHC.

In summary, while we supported the underlying intent of the MHC and the CoP, addressing these fundamental concerns will be critical to their success. Without these improvements, we fear that both programs of work will fail to deliver meaningful customer benefits.

1. Do you agree with the proposed MHC process? What improvements consistent with the objectives and operating principles could be considered?

The proposed timescales and process overview appears reasonable and familiar to us based on our previous auditing experience. However, given the lack of detail put forward in any formal proposals for the MHC at this stage alongside the proposed implementation date, we have a number of outstanding concerns around the MHC. We address these above in our overarching response, as we felt it necessary to touch on concerns that have accumulated throughout the process that has led the market to this point before expanding on our concerns around the process moving forward.

2. Which high risk, high impact areas do you think the MHC should prioritise in its first iteration in relation to the CoP?

In its first iteration, the MHC should prioritize areas that directly impact customers’ primary concerns: **billing accuracy and timeliness** and **ease of switching providers**. These elements are in our view the most critical to ensuring a positive customer experience.

With regard to billing, the MHC should focus on:

- **Information Requirements:** The MHC could evaluate a sample of LP bills to ensure that they provide clear, concise, and complete information to customers, consistent with the CoP requirements. Given that most LPs will have an automated system that generates consistent bills, we would suggest that this sample does not need to represent a large proportion of the LP’s customer base. In the interest of efficiency and proportionality, a small but representative sample should suffice.

- **Final Bill Timeliness:** The MHC should seek to ensure that LPs have systems and/or processes in place that minimise delays in issuing final bills, as this can be a significant source of frustration for customers and a barrier to switching. In an audit context, this could require LPs to evidence the date of final bills issued relative to the date of account closure or termination notice for a percentage of their customer base. Where final bills are not consistent with the SLA set out in the CoP, LPs should be able to evidence succinctly why this was the case (e.g. lack of required information from the customer, market, etc).

With regard to switching, the MHC should focus on:

- **Terminations and Objections:** To ensure that these processes are handled efficiently and transparently to avoid unnecessary delays or disputes, the MHC could seek to obtain a sample of LP communications on switch/objection.
- **Sales Practices:** To ensure that LPs are operating ethical and customer-focused sales to prevent misinformation or coercion, the MHC could require LPs to produce relevant policy documents and a sample of sales communications.

These focus areas align with customers' expectations for seamless transitions and fair treatment, directly supporting the market's goals of promoting competition and delivering value.

3. Which high risk / high impact areas do you think the MHC should prioritise in its first iteration in relation to the SLCs?

Given the CoP's intent to require retailers to exceed the minimum standards set by the Market Code and, by extension, their Standard License Conditions (SLCs), many SLC-related priorities—particularly those under A4 (Compliance with Market Code) and A5 (Compliance with Operational Code)—are likely to overlap with the CoP's focus areas.

To avoid duplication of effort, the MHC should prioritize SLCs that are not covered by the CoP. Specifically, this includes:

1. **A11 (Compliance with the Disconnections Document):**
   Ensuring that retailers adhere to the standards and procedures outlined for disconnections. This could be assessed by requiring License Providers (LPs) to produce and maintain clear and comprehensive policies on disconnection processes, along with supporting documentation that demonstrates compliance.
2. **B1 (Duty to Provide Default Services):**
   Verifying that LPs are fulfilling their obligations to provide default services where required. This could be audited through a review of terms and conditions and relevant policy documents, ensuring that these align with regulatory expectations and are communicated effectively to customers.

By focusing on these areas, the MHC can ensure a balanced approach that addresses all relevant SLC obligations while avoiding redundancy in its auditing processes. Requiring LPs to produce relevant policy documents and terms and conditions provides a practical and transparent means of demonstrating compliance in these areas.

4. **Do you agree with the proposed funding approach for the MHC process?**

In principle, we agree with the proposed funding approach for the MHC process. However, we would like to draw attention to the concerns outlined in our overarching response regarding resource allocation and governance.

The history of inconsistent engagement and insufficient resourcing during the development of the CoP raises questions about whether the MHC process will be adequately supported to deliver its intended outcomes. To ensure that the funding is effectively utilized, we urge the Commission to:

1. Allocate Adequate Resources: Ensure sufficient personnel and expertise are dedicated to the implementation and oversight of the MHC.
2. Maintain Transparency: Provide clarity on how funding will be deployed and whether it will be sufficient to achieve the stated objectives of the MHC without requiring additional contributions in the future.
3. Improve Communication: Regular updates and stakeholder engagement will be essential to build confidence in the process and demonstrate that resources are being used effectively.

While we support the funding approach in principle, its success will hinge on addressing these longstanding concerns to ensure a robust and transparent implementation of the MHC.

Section 2a – Measures in Relation to Business Stream

1. **How do we ensure that the Code arrangements can stand the test of time and that SWB continues to operate in a financially independent way?**
2. **Are the financial covenants still effective and consistent with demonstrating financial viability whilst providing SWBS with the necessary flexibility to respond to market changes?**

While the ownership structure of SWBS by Scottish Water theoretically presents risks to independence, we are aware of no evidence that this structure is causing any practical issues. If disparities were evident, such as SWBS being assessed differently on financial resilience compared to other retailers based on inconsistent criteria, this would merit further attention. However, to our knowledge this has not been the case. The current financial covenants appear effective in maintaining financial viability while allowing flexibility for SWBS to adapt to market changes.

3. **Are there any changes required to the information sharing controls between SWBS and Scottish Water?**
4. **Should there be any specificity on who should (or should not) hold Board level positions within SWBS?**

We do not see a need for further specificity regarding board-level positions at SWBS or additional information-sharing controls. The existing governance framework adequately addresses potential conflicts of interest between SWBS and Scottish Water. If further controls were deemed necessary, they should focus on targeted, evidenced risks rather than introducing blanket measures that could increase operational complexity without clear benefits.

5. **What additional evidence could be required to demonstrate that the English regulated business is not adversely impacting the Scottish regulated business? Could a form of separation between the two elements be considered?**

We strongly oppose any proposals to enforce separation between SWBS's Scottish and English entities. Such a move lacks justification, would offer little value for money, and could harm consumers, particularly multi-site customers who benefit from operational efficiencies across markets.

Operational separation could increase costs for both LPs and customers, potentially driving up prices and reducing service quality. Any such proposal would need robust evidence to demonstrate it is in the interests of consumers, which we currently do not see.

6. **What other changes to the Code could reinforce confidence in a level playing field?**

We do not see a need for additional changes to the Code at this time, as we are not aware of any reasons why changes would be required. However, if the Commission has identified specific issues or evidence indicating that the existing arrangements are not ensuring a level playing field, we would welcome the opportunity to review, discuss, and provide constructive feedback on any proposed changes.

Section 2b – Measures in Relation to Other Licensed Providers

1. **Are these annual declarations sufficient to ensure there is confidence in a level playing field?**

The current framework of annual declarations provides a reasonable level of assurance that licensed providers are operating fairly and independently. We believe these to be sufficient, especially given that we are not aware of any instances where LPs have provided false declarations to the Commission. Furthermore, current and proposed auditing activities through the CMA and MHC should provide a strong basis of evidence for the Commission to investigate and escalate any suspicion of a false declaration.

2. **Should we require additional evidence to be provided to support the declaration? For example, can we be fully confident that any support to a licensee from a related undertaking is provided on an arm's length and commercial basis?**

We do not believe additional evidence is necessary to support the annual declarations. However, LPs operating in both markets are required to provide a narrative overview of their institutional governance arrangements at least every two years—or more often if any significant changes have occurred—in order to provide assurance to the English regulator that any support to a licensee in England from a related undertaking is provided on an arm's length and commercial basis. If there is evidence pointing towards a need for further assurance, we believe this approach to be a proportional potential solution that is likely to be sufficient in addressing The Commission's concerns.

3. **What additional evidence could be required to demonstrate that the English regulated business is not adversely impacting the Scottish regulated business? Could a form of separation between the entities holding the two licenses be considered?**

We strongly advise against any proposals for separating entities holding licenses across markets, in particular where this would result in operational separation. Such measures would introduce significant inefficiencies, and are likely to negatively impact consumers.

The following must be considered:

1. **Customer Impact:**
    - **Multi-Site Customers:** LPs operating across both Scottish and English markets provide valuable benefits to multi-site customers. These customers benefit from streamlined operations, consistent service levels, and simplified engagement with their licensed provider. Disrupting this structure could lead to operational fragmentation, creating confusion and additional costs for these customers.
2. **Cost Efficiencies:**
    - The current setup allows businesses to operate at scale, driving efficiencies that directly benefit customers through competitive pricing and improved service quality. Forcing a separation would erode these economies of scale, increase operational costs, and ultimately harm consumers.

The current structure of entities operating across both markets provides demonstrable benefits to customers and Licensed Providers. Any proposal to alter this arrangement must be supported by strong evidence of material harm that outweighs the benefits outlined above.

4. **What other changes would support confidence in a level playing field in the market that WICS could consider given its statutory duties and powers?**

Whilst in principle we can support measures that enhance transparency and safeguard a level playing field, we must stress that any proposed changes must be justified by clear evidence of current or potential issues. The benefits of the current setup—particularly for multi-site customers and operational efficiency as outlined above—must be weighed against the costs of any additional measures. Where further assurance is required, existing reporting frameworks should be leveraged in the first instance to avoid effort duplication and unnecessary cost.