

Draft Determination Representations

WSH.DD.OO.2

D-MeX

30 August 2019

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1. Background

We have carefully reviewed Ofwat's D-MeX response within the Draft Determination and whilst we continue to be supportive of a customer service satisfaction measure for developer customers we remain very concerned with the mechanism proposed.

Our position and concern about the proposed arrangements for D-MeX has been well documented, with the necessary information and evidence, in our response to the IAP and also in our letter to Ofwat dated 14th December 2018. A copy of our letter can be found in our Supporting Appendices folder; document 5 and we would respectfully request that Ofwat revisit the very real concerns we have raised. We remain willing to clarify or assist Ofwat in any way necessary.

This response will not repeat the issues we have already raised with Ofwat and will instead provide additional information and evidence that the many legal and regulatory differences between Wales and England mean that to apply a simple customer satisfaction comparison across all Welsh and English companies as the basis of significant financial incentives is inequitable and unsound. We also discuss the further detail provided regarding the proposed reward and penalty arrangements.

2. Legal and regulatory changes in Wales

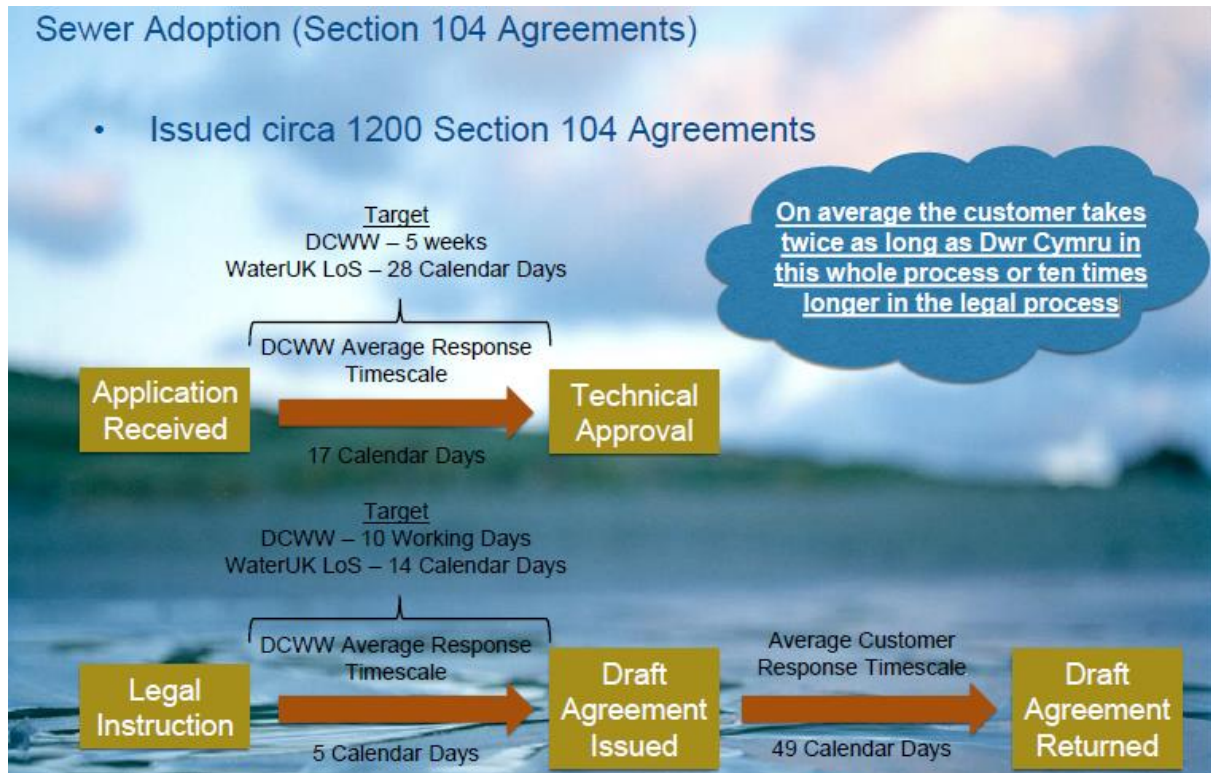
Firstly, we have clear evidence that housebuilders who are unhappy with new legal/regulatory changes in the development sector introduced by Welsh Government often consider wrongly that Welsh Water is to blame for the resulting difficulties. The Welsh Government established a House Builders Engagement Programme around 2015. The meetings are attended by a number of Welsh Ministers (Minister for Environment, Energy and Rural Affairs, Minister for Housing and Local Government and Minister for Economy and Transport), Directors of housebuilders and the Home Builders Federation. Given many of the changes relate to water and sewerage, Welsh Water have also been invited to attend for specific matters.

On the three occasions on which we have attended developer customers have expressed concerns about our performance. However, upon further discussion, it has become clear their difficulties are not in fact to do with Welsh Water, but the burden of needing to comply with regulatory requirements.

An example of this relates to mandatory sewer adoption requirements. Some developer customers were suggesting that we were taking in excess of six months to get a sewer adoption agreement in place. In fact, the process involves a number of steps that require actions to be completed by developers and the water company sequentially. As we are a top performing water company in the WaterUK Developer Service Levels of Service, of which sewer adoption activities form a part, we were confident that any alleged delays were not due to delays on our part. Since we track every step in the process, we were able to conduct detailed analysis of the time taken to respond by each party. The results of this analysis can be found below. It confirms that we always respond within the required timescales, whereas developer customers generally do not.

This demonstrates that the perceptions of these developer customers is that we are the cause of issues and this will detrimentally affect how they rate our customer service and customer satisfaction rating for D-MeX. This would not be the case in England, as the processes perceived

by customers as burdensome and problematic, and which are the basis for their dissatisfaction, apply in Wales (or our operational area) only.



3. D-MeX shadow year results

Over the last couple of months we have received the results from the D-MeX shadow year surveys for Wave 1 and Wave 2. Both sets of results included references by customers to the specific legal/regulatory differences that apply to Dŵr Cymru. The table below is an extract from the results received in Wave 2 and concisely demonstrates the impact the Welsh arrangements have on customer satisfaction levels.

Related to	Customer comments	Related to question	Overall satisfaction	Process
Sprinklers	The mains needs to be a fifty mil bore for a sprinkler system. Sprinklers in Wales are guaranteed on new houses.	5.2 - Top 3 priorities	8	Water connection
Sprinklers	Just to be more helpful to the client. I had to put in a sprinkler system and they specified but it had nothing to do with them. Had to go through loops and plans for the sprinkler system. They wanted to know the size of the sprinkler system. Only asked for a supply of water.	6 - Something that could have been done better	0	Water connection
Sewers adoption	Timeliness; other water companies don't require section 104. Welsh Water need to	5.1 - Top 3 priorities	2	Technical vetting of adoptions

	employ more people on the legal side if there are any hold ups.			and diversion
	Value for money, and an answer for why Welsh Water are doing section 104.	5.2 - Top 3 priorities		
	Speed the process up of allowing me to lay the sewers down.	6 - Something that could have been done better		

It is clear that the comments are primarily concerned with the legal and regulatory requirements (domestic sprinkler requirements and Section 104 requirements), and there is little, if anything, that we could have done to improve the situation for the customers. There are strong grounds to believe these comments, and the issues they identify, impact significantly on our satisfaction score. Even where customers do not make specific comments identifying the regulatory issues as the source of 'dissatisfaction', it seems likely that the scores they give will be similarly influenced by these issues.

It is also noteworthy that these results re-affirm the D-MeX pilot survey results and the feedback we receive in our independently conducted qualitative surveys – we have provided this specific information and evidence in our letter to Ofwat included in Supporting Appendices folder; document 5.

In conclusion, we believe these surveys provide further evidence to support our contention that the responses of developer customers to satisfaction surveys in Wales are biased negatively by the perception of customers to the legal and regulatory requirements in Wales. As detailed in our IAP response, these include fire sprinkler requirements, sewer adoption vetting and section 104 adoption agreements – mandatory sewer adoption requirements. Links to a sample of news articles can be found at the end of this document.

4. Likely future impact from implementation of Schedule 3

Since our letter to Ofwat in December 2018, Schedule 3 of the Flood & Water Management Act 2012 has come into force in Wales, requiring surface water arrangements on the substantial majority of developments to be approved by the SuDS Approval Body (SAB – the Local Authority). This is now a similar process to applying for planning permission and results in developers not being able to construct the new surface water system until approval is granted by the SAB. Furthermore the SAB is required to adopt the new surface water system constructed by the developer and this is intended to remove Welsh companies from having a requirement to adopt new surface water systems on developments as has been the case in the past.

Despite the considerable customer engagement efforts of Welsh Government and ourselves over the last few years leading up to this change, it is quite clear that the significant majority of customers are not complying with the new requirements. This is further compounded by a number of Local Authorities who are not properly prepared to undertake the SAB role. This is causing frustration and delays with developer customers progressing housing delivery in particular. The transitional arrangements (that come to an end in December 2019) are

significantly masking the real impact that will occur post January 2020, so the situation will get worse for developer customers.

This situation is creating issues for us that will affect developer customer satisfaction.

Specifically:

- i) Any application to connect a new surface water system to a public sewer cannot be authorised by us under Section 106 Water Industry Act 1991 unless the developer customer has first gained SAB approval. As a consequence we are legally obliged to refuse the connection application and reinforce the need for the developer customer to gain SAB consent first. A refusal by us is not what the developer customer expects and will lead to dissatisfaction and complaints, even though we have no choice in the matter.
- ii) The arrangements for developer customers to ensure the SAB adopts the new surface water system are currently inconsistent and unclear. There are no set timescales to conclude this part of the process and no set charging arrangements for the future maintenance and replacement arrangements for the system. In contrast the arrangements for a Welsh company to adopt surface water sewers are well defined and the costs involved clear and relatively minimal. As a result developer customers are requesting that we continue adopting these systems. Whilst in strict legal terms we cannot refuse to adopt surface water sewers (and enter into a section 104 agreement for this purpose) this does not circumvent the requirement on the developer customer to gain SAB consent and the requirement on the SAB to adopt the system. In short this will result in the developer customer wasting time and money and suffering the associated development programme delay.

This is very different to the arrangements for English companies. If the current proposals for English companies to adopt SuDS (as per the Adoption Codes for Sewers) is implemented, the differences will become even more marked.

We are certain that this change will have a further negative impact on our D-MeX customer satisfaction scores when the transition arrangements end in December 2019.

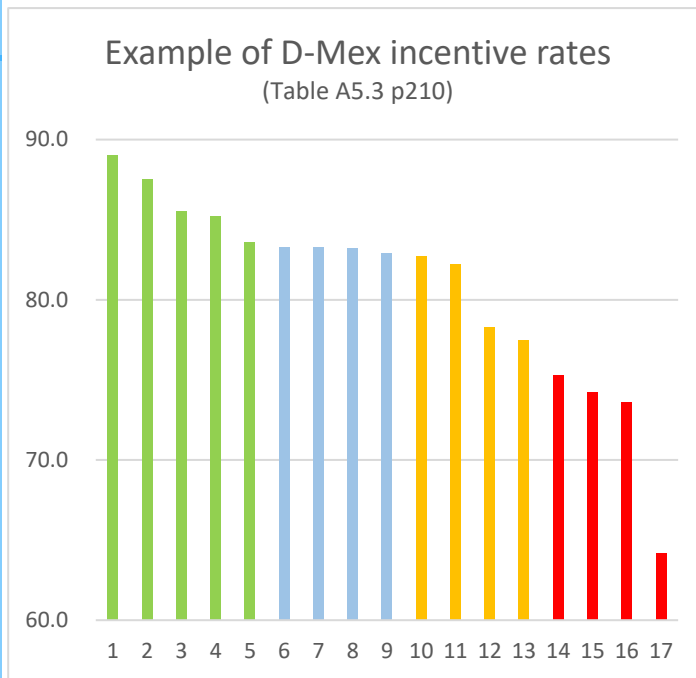
5. Comments on proposed D-MeX financial incentive framework

In respect of the proposed reward and penalty arrangements for D-MeX we have two main points, which relate to the proposed league table approach, the reward/penalty segmentation, and the proposed values of these.

Firstly, Ofwat are now proposing a two-tier approach to penalties. Under this approach, a mid-league table position would result in a penalty. We do not believe this is a reasonable proposition, particularly when D-MeX is a completely new measure that needs to be tested robustly and refined.

In the example provided by Ofwat in the DD shown below, there is a minimal difference between the score of the 5th and 10th company, yet one receives a 6% rewards while the other receives a 6% penalty.

D-MeX score	Reward/penalty
89.0	6%
87.5	6%
85.5	6%
85.2	6%
83.6	6%
83.3	0%
83.3	0%
83.2	0%
82.9	0%
82.7	-6%
82.2	-6%
78.3	-6%
77.5	-6%
75.3	-12%
74.2	-12%
73.6	-12%
64.2	-12%



We believe that penalties should not apply to the middle two quartiles for the above reasons at least until it becomes clear whether the D-MeX scores will be stable or volatile for companies. This will not be known until the final D-MeX mechanism has been confirmed and been active for a couple of years.

The level of both reward and penalty proposed in the draft determination has also significantly increased (2.5% to 6% reward and 5% to 12% penalty) and we are not convinced that this is appropriate. As we outlined above D-MeX is a completely new measure and a period of time should be facilitated to ensure D-MeX delivers the expected objectives and rewards / penalises the right companies. In our view the financial aspects of D-MeX are secondary in any event as we, and no doubt other companies, will be more concerned with the reputational aspects of the service provided to this very important customer group.

6. Summary

In summary we believe that the submissions we have provided to Ofwat clearly demonstrate that we cannot be fairly compared with English companies. A Welsh companies' role is now fundamentally different to an English companies and has gone from simply 'service provision' to one of enforcing compliance with legal / regulatory requirements. In addition our view is that Ofwat should consider further the reward and penalty arrangements due to D-MeX being a completely new measure and the lack of testing of the final mechanism.

Samples of news items attesting to the issue facing housebuilders in Wales

<https://www.bbc.co.uk/news/uk-wales-34590196>

<https://www.bbc.co.uk/news/uk-wales-24288018>