

## D-Mex IAP Response

B2.6.WSH.OC

Supporting document

*April 2019*

[dwrcymru.com](http://dwrcymru.com)



Following our PR19 Business Plan submission for AMP7 we wrote to Ofwat on the 14<sup>th</sup> December 2018 about the proposed 'Developer Services Measure of Experience' (D-MeX). We received Ofwat's response on the 8<sup>th</sup> March 2019 and also the D-MeX shadow year policy and guidance documents were published on the same day. Our letter and Ofwat's response can be found in Appendix 1

Ofwat's response acknowledged that having carefully considered the issues we raised and whilst Ofwat "recognise that national and regional differences exist we [Ofwat] are not minded to apply company-specific or other adjustments to D-MeX, to avoid undue complexity".

Prior to Ofwat's response dialogue continued between us so that we could provide clarification of the points we had raised in respect of D-MeX. This substantially focussed on the materiality of the legal and regulatory differences that exist in our operational area compared to the WaterUK Developer Services Levels of Service which is the basis for the D-MeX mechanism. The information we provided demonstrated that 83% of the water activities that are covered by the water metrics are affected by the legal and regulatory differences in our operational area and 65% of the sewerage activities are covered by the sewerage metrics. This is based on the activity volumes we submitted to WaterUK for the period October 2017 to September 2018 inclusive.

Whilst we appreciate that Ofwat do not wish to add complexity to the D-MeX mechanism this cannot be a legitimate reason for us to be unfairly disadvantaged due to legal and regulatory differences that we have no control over – the detail of these many differences are outlined in our letter to Ofwat and hence we will not repeat the detail in this response. Furthermore the materiality of the legal and regulatory divergence in our operational area for the range of activities performed in line with the WaterUK Developer Services Levels of Service are significant and this clearly demonstrates that we cannot be equitably compared to other water and sewerage undertakers in England. This position is supported by the comments made by many customers during the surveys conducted by Ofwat during the D-MeX Wave 1 & Wave 2 surveys together with our own qualitative surveys we have undertaken over the last 4 years and the extracts from these surveys we provided in our letter to Ofwat substantiate our concerns.

To be clear we fully support measuring the service and performance provided to customers engaged in development activities and we have already been measuring both our quantitative and qualitative service delivery over many years. We place significant focus on this area of our business, and have done so for over a decade, to ensure we support all forms of growth and economic development in our region and our track record demonstrates this commitment which spans our colleagues on the 'front-line' right the way through to our Board. For example we were the first company to implement a 'Developer Customer Service Commitment' that covers all of the WaterUK Developer Services Levels of Service. This commitment provides for an automatic payment to be made to the customer where we fail to meet a Levels of Service target.

We have set out in our PR19 Business Plan the innovative and detailed plans we have for our Developer Services function so that we remain an industry leader and also the 'provider of choice' for our customers. Our future plans build upon our many achievements which include :-

- Creating a dedicated and all-encompassing team with expert industry leading knowledge to provide all the services expected and desired by developer customers
  - Delivering industry leading performance – we are the top performer for both water & sewerage measures and also the most consistent performer based on the WaterUK Developer Services Levels of Service since they were introduced in April 2015
  - Our independently conducted annual customer service survey demonstrates our continuous improvement over the last 4 years since the survey was first launched. Our last survey
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undertaken in February 2018 resulted with a customer satisfaction score of 86% and 87% for customer trust which is a fantastic endorsement of the service provided by our dedicated team.

- Supporting over 98% of all housing units that are subject to a planning application and it's in excess of 99% if you exclude issues where our existing assets are physically impacted by the proposed development.
- Reducing 'avoidable' complaints (those where we have failed the customer) by over 70% since 2015/16.

Whilst we are very supportive of measuring the service we deliver to this important customer group we still have a number of significant concerns about the current approach being proposed for D-MeX and in particular how our performance will be fairly assessed and appropriately determined when compared to the other water companies.

We believe the solution to overcome these issues would be to move away from a D-MeX league table approach and instead agree specific performance targets for each water company with further consideration of the associated financial incentives. The benefits of this approach would include :-

- Prevent unfairness and the potential for perverse outcomes materialising in the industry which could ultimately be to the disadvantage of customers.
- Each water company devising their developer services plan which is tailored to their specific developer services market.
- Facilitate and ensure that water companies collectively continue to share and promote best practice, innovation and consistency in line with customers expectations and requirements.

Following our recent Developer Customer Forums held in both North & South Wales where over 80 developer customers were in attendance it is clear that the support for providing financial incentives as part of a D-MeX mechanism is a concern to them. Many customers also expressed that such an approach would lead to a perverse outcome in that customers would have more of an incentive to assess a water company's performance as poor to reduce the developer charges they would incur in the future. Our customers appear to favour evolving our current 'Developer Customer Service Commitment' (in essence a Guaranteed Service Standards scheme) rather than wanting to be part of a qualitative survey mechanism as per the current approach with D-MeX. This is because customers want to be 'compensated' for any failure they suffer individually as a result of the water company.

On the basis of what we have outlined above we would request that Ofwat reconsider its position regarding D-MeX and either :-

- Exclude us (and other Welsh Undertakers) from a D-MeX mechanism that is based on an industry league table approach
  - Change the approach with D-MeX which centres on each water company making performance commitments for their developer service activities that will be used to ensure continuous improvement in both responsiveness and the quality of the service provided by a water company
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APPENDIX 1 – DMEX Comparison Paper July 2018



## **Proposed Ofwat Developer Service Customer Measure of Satisfaction / Experience (D-MEX)**

### **Comparison of the Legal and other requirements placed on WaSCs in England and Wales**

The introduction of a customer satisfaction measure for developer customers is to be welcomed as this is a vitally important customer group in the context of supporting the broader economy but also providing new customers and revenues to the water industry which provides benefits for both existing and new household and non-household customers.

Ofwat intend to introduce the D-MEX arrangements in April 2020 and comparisons will be made to determine where each WoC and WaSC resides in a league table. Those companies in the upper tier of the league table are currently proposed to receive a financial reward and those in the lower tier are proposed to receive a financial penalty.

Since April 2015 all WoCs and WaSCs (this does not include NAVs performance as they currently don't report this information) in England and Wales have been measuring their performance in accordance with the WaterUK Developer Services Levels of Service. These service levels relate solely to the delivery of quantitative performance (i.e. meeting a prescribed timescale) and do not measure qualitative performance.

The Levels of Service are applied consistently across the whole industry and do not differentiate due to diverged legal or regulatory requirements between England and Wales or the varied activity volumes received by each company. Fundamentally though as the timescales involved with the Levels of Service are consistent across the whole industry there is minimal sensitivity that can occur when comparing companies' performance.

The same though cannot be said with the proposed D-MEX arrangements as this will measure each company's performance on both quantitative and qualitative aspects and the table below summarises the differences between WoCs & WaSCs operating in England or Wales\*.

In summary the legal and regulatory position in Wales has changed significantly including the nature of a WoC / WaSCs role. In essence the role in Wales has moved away from one of providing a service upon a request from a customer to one of enforcing legal requirements routinely (e.g. mandatory sewer adoption requirements) and supporting regulations that are not aligned with water industry duties (e.g. domestic fire sprinkler requirements<sup>\*2</sup>). In addition to these changes there are other variances which include approaches to charging, adoption codes, surface water drainage consent and adoption and formalisation of the water companies' role in the development planning process.

On a final point the changes that will likely materialise in April 2020 due to the Wales Act 2017 will add significant complexity for both developer customers and WoCs/WaSCs who operate on both sides of the England / Wales border. This is due to the water industry related legislation changing in concept of applying to companies on a 'wholly or mainly' England or Wales approach (which is currently the case) to operating on a country boundary approach. The consequence of this is that Dwr Cymru for example will have to operate in both regimes dependent on where the development site is located – England or Wales.

This will require colleagues to be trained in both regimes and being mindful of these complexities and it is very likely to increase the risk that customer satisfaction will suffer as a consequence regardless of the amount of effort the company makes to provide good customer service. Two recent examples demonstrate this type of impact – customers believe that Dwr Cymru have introduced the mandatory sewer adoption requirements (not Welsh Government) and that Dwr Cymru are not delivering the water supply requirements for domestic fire sprinklers (the flow and pressure required for direct mains fed systems which typically require pressures in excess of 4 bar to meet the test requirements – far beyond the minimum standards required for a water company). This is despite significant customer engagement over a considerable period of time including the provision of guidance documents and presentations.

As a result it is quite apparent that the proposed D-MEX measure will not provide an equitable comparison of company performance from an English versus Welsh perspective. Further consideration needs to be given to these differences before the D-MEX arrangements are finalised and implemented to ensure no company is disadvantaged through no fault of its own.

\*currently the water industry legislation works on a 'wholly or mainly England/Wales basis but this will likely change in April 2020 to Country boundary as a result of the Wales Act 2017.

\*<sup>2</sup> this measure applies to the whole of Wales.

Activity	Legal Provision	Position in England	Position in Wales	Parity?	Extent of advantage/disadvantage
Statutory Consultee – Development Plans	T&CP Act 1990 and amendments	Specific Consultation Body	Specific Consultation Body	Yes	n/a
Statutory Consultee – Planning Applications	T&CP Act 1990 and amendments	No formal role although water & drainage are material planning considerations	Statutory Consultee	No	Material difference for companies in Wales which requires formal responses within prescribed timescales.
Statutory Consultee – SuDS Approval Body	Schedule 3 F&WM Act 2010 (from January 2019)	Not applicable	Statutory Consultee	No	Material difference for companies in Wales. Issues likely to be directed at water companies wrongly.
Pre-planning Service (water)	T&CP Act 1990 and amendments Unregulated service	No formal requirement  All companies provide this service	Part of the role as Statutory Consultee All companies provide this service	No	Material difference for companies in Wales
				Yes	
Water Connections (inc Infrastructure Charges)	Section 45 WIA91	Equivalent duty but new charging arrangements apply*	Equivalent duty but WIA91 charging requirements apply* Also see domestic fire sprinkler requirements* <sup>2</sup>	No	Material difference due to charging approach but unsure who will benefit. Companies in Wales have been expected to adapt domestic connection arrangements where fire sprinklers are being installed and provide further information.
Self-lay Water	Section 51 WIA91	Equivalent duty but new charging arrangements apply*. Also see Adoption Code arrangements*	Equivalent duty but WIA91 charging requirements apply.*	No	Material difference due to charging approach but unsure who will benefit.
Water Requisition	Section 41-44 WIA91	Equivalent duty but new charging arrangements apply*	Equivalent duty but WIA91 charging requirements apply*	No	Material difference due to charging approach but unsure who will benefit.
Water Diversion	Section 185 WIA91	Equivalent duty and charging as per WIA91*	Equivalent duty and charging as per WIA91*	Yes	

\*currently the water industry legislation works on a 'wholly or mainly England/Wales basis but this will likely change in April 2020 to Country boundary as a result of the Wales Act 2017.

\*<sup>2</sup> this measure applies to the whole of Wales.

NRSWA Diversions	NRSWA Act 1991	Equivalent duty and charging as per NRSWA91	Equivalent duty and charging as per NRSWA91	Yes	
Pre-planning Service (Wastewater)	T&CP Act 1990 and amendments Unregulated service	No formal requirement	Part of the role as Statutory Consultee	No	Material difference for companies in Wales
		All companies provide this service	All companies provide this service	Yes	
Sewer Connections	Section 106 WIA91	Must receive notification of proposed direct and indirect sewer connections and issue approval or refusal purely based on entitlement arising and 'mode'	Same as England but a Section 104 Adoption Agreement must be in place for all lateral drains and sewers prior to construction and being connected to the public sewer. Sewerage Undertakers required to enforce these requirements.*	No	Significant and fundamental difference with sewer connection and sewer adoption approach in Wales that has a substantial material effect to parity.
Sewer Adoption – pre construction	Section 104 WIA91 Section 42 F&WM Act 2010	Customers can choose whether to offer sewers etc for adoption and even when an adoption agreement is put in place either party can avoid concluding the process.	All sewers etc that are to connect to a public sewer must be included within an adoption agreement prior to construction and connection to the public sewer. The adoption requirement prevents either party stalling progress.	No	Significant difference in requirements which are relatively complex for those customers who are not regular developer customers. Many of these customer do not understand why they have to enter into an adoption agreement and the consequences of not doing so.
Sewer Adoption – post construction	Section 102 WIA91	Obligation to consider a customer request to adopt existing sewers etc	Material difference due to mandatory adoption requirements	Partly	Majority of sewer adoption in England will be formalised post construction whereas in Wales this will be pre-construction and both processes are fundamentally different.
Sewer Requisition	Section 98-101 WIA91	Requirement to provide sewers	Material difference due to charging	No	Material difference due to charging approach

\*currently the water industry legislation works on a 'wholly or mainly England/Wales basis but this will likely change in April 2020 to Country boundary as a result of the Wales Act 2017.

\*2 this measure applies to the whole of Wales.

		etc in line with legal provisions.	approach but unsure who will benefit.		but unsure who will benefit.
Sewer Diversion	Section 185 WIA91	Requirement to divert or alter apparatus and charge reasonable costs	Requirement to divert or alter apparatus and charge reasonable costs	Yes	
Building over or near public sewers	Building Regulations Part H	Requirements compatible	Requirements compatible	Yes	
Water & Drainage Searches (CON29DW)	Formerly part of the Home Information Pack Requirements	Requirements compatible	Requirements compatible albeit increased contacts are made due to mandatory adoption and fire sprinklers	Partly	Level of information and contacts due to mandatory sewer adoption requirements are significant and require a high level of support and routine enforcement action
SuDS & SAB	Schedule 3 F&WM Act 2010	Not applicable unless area covers parts of Wales	Implementation January 2019 for areas in Wales.	No	Welsh companies will not be permitted to adopt surface water assets from Jan 2019 which is very likely to frustrate customers. A further risk is that an ineffective implementation of Schedule 3 by Local Authorities will place additional pressure on water companies to assist with overcoming such issues. This is similar to what has occurred with mandatory sewer adoption and fire sprinklers
Change from 'wholly or mainly' to Country boundary for water industry legislation	Wales Act 2017	Not applicable unless area covers both England & Wales.	Not applicable unless area covers both England & Wales.	No	The Wales Act will change the legal requirements placed on developer customers and the relevant water companies. This will result in companies having to comply with two different legal/regulatory regimes adding complexity and confusion for customers
NHH Retail Competition	Water Act 2014	Applies to all NHH customers	Applies to NHH customers with a	Partly	When / if the DS requirements are

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			consumption in excess of 50ML		brought in this could create a disparity.
Domestic Fire Sprinklers	Domestic Fire Safety (Wales) Measure* <sup>2</sup>	Not applicable unless area covers parts of Wales	Mandatory	No	The fire sprinkler requirements are a building regulations requirement and are therefore not aligned with a water company's duties. Developer customers prefer mains fed sprinkler systems which requires at least 4 bar pressure well beyond a water company's minimum duty. This causes significant customer frustration that is wrongly directed towards the water company.
DS Charging Arrangements	Water Act 2014	New charging arrangements in place in line with Ofwat Charging Rules from 1/4/2018	Charging arrangements as per WIA91. Awaiting Ofwat Rules consultation	No	The different charging arrangements creates disparity. Welsh companies have no flexibility currently to align charges with customers' views. This may change prior to April 2020 however with the implementation of Welsh arrangements far closer to April 2020 without a period of 'bedding in', adaptation and familiarisation presents disparity between English and Welsh companies in respect of customers' views.
Adoption Codes	Water Act 2014	Adoption Codes in the process of being implemented for water and sewerage.	Currently awaiting Adoption Code consultation however they are likely to be significantly different for sewerage given mandatory adoption requirements	No	The differences that result from the adoption code requirements will likely result in customers having variant views of the arrangements.

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\*<sup>2</sup> this measure applies to the whole of Wales.

APPENDIX 2 – Welsh Water Letter to Ofwat Developer Services Measure of Experience (D-Mex)  
for PR19 -14<sup>th</sup> December 2018

Keith Mason  
Senior Director  
Ofwat  
Centre City Tower  
7 Hill Street  
Birmingham B5 4UA

14<sup>th</sup> December 2018

Dear Keith

**Developer Services Measure of Experience (D-MeX) for PR19**

Following our PR19 Business Plan submission for AMP7 we thought it important to write to you about the proposal by Ofwat to introduce the 'Developer Services Measure of Experience' (D-MeX) and the current position of how this mechanism might work in practice.

We fully support measuring the service and performance provided to customers engaged in development activities and in fact we have already been measuring both our quantitative and qualitative service delivery over many years. We place significant focus on this area of our business, and have done so for over a decade, to ensure we support all forms of growth and economic development in our region and our track record demonstrates this commitment which spans our colleagues on the 'front-line' right the way through to our Board.

Our Developer Services team is led by a Director (Ian Wyatt) who is a member of our Executive Team and reports directly to our Managing Director. Ian has the accountability for the services we provide to all of our business customers except those few that are in the contestable market. All aspects of our developer customer performance is reported to our Board on a monthly basis.

We have set out in our PR19 Business Plan the innovative and detailed plans we have for our Developer Services function so that we remain an industry leader and also the 'provider of choice' for our customers. Our future plans build upon our many achievements which include:-

- Creating a dedicated and all-encompassing team with expert industry leading knowledge to provide all the services expected and desired by developer customers
- Delivering industry leading performance – we are the top performer for both water & sewerage measures and also the most consistent performer based on the WaterUK Developer Services Levels of Service since they were introduced in April 2015
- Our independently conducted annual customer service survey demonstrates our continuous improvement over the last 4 years since the survey was first launched. Our last survey undertaken in February 2018 resulted with a customer satisfaction score of 86% and 87% for customer trust which is a fantastic endorsement of the service provided by our dedicated team.
- Supporting over 98% of all housing units that are subject to a planning application and it's in excess of 99% if you exclude issues where our existing assets are physically impacted by the proposed development.
- Reducing 'avoidable' complaints (those where we have failed the customer) by over 70% since 2015/16.

Whilst we are very supportive of measuring the service we deliver to this important customer group we do have a number of significant concerns about the current approach being proposed for D-MeX and in particular how our performance will be fairly assessed and appropriately determined when compared to the other water companies. The approach used for D-MeX has to provide parity across the industry as the risks are extremely high for all water companies from both a reputational and financial perspective.

Our objective of setting out our concerns below is to assist Ofwat with implementing an effective and equitable developer customer service mechanism for developer customers and we are very willing to provide any necessary support with achieving this vital aim.

### Arrangements in Wales

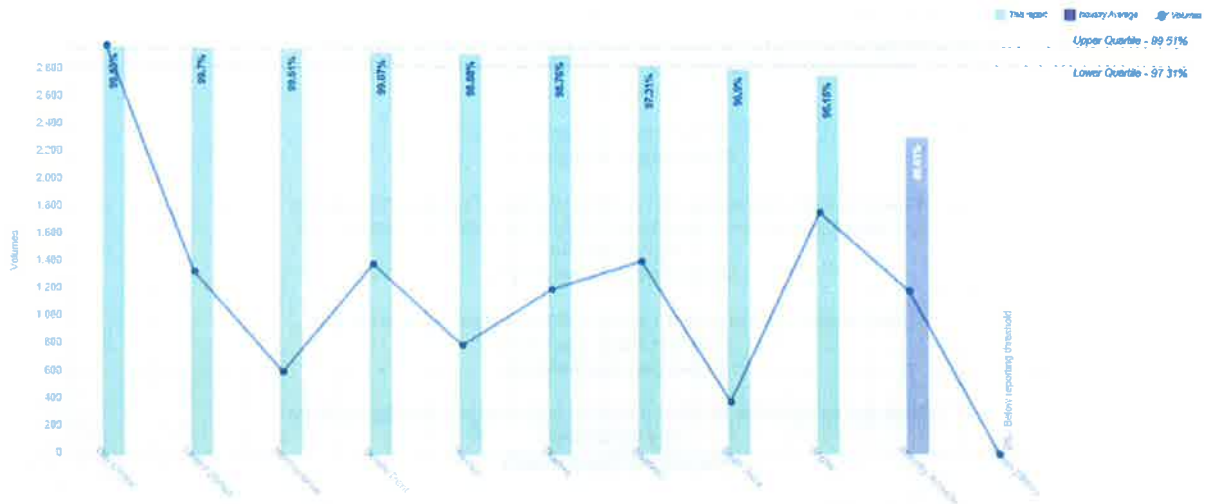
For water and sewerage undertakers who operate in Wales there have been many changes, some that are very significant, in both legislation and regulation compared to those companies who operate in England. Many of these changes have altered the duties and fundamental role that Welsh Water undertake particularly in respect of those involving developer customers. We have attached a summary of these changes to this letter which includes a brief commentary of how this has altered our role compared to our English counterparts.

For example the enactment by the Welsh Government of section 42 of the Flood & Water Management Act 2010 now requires anyone who is constructing new sewers, lateral drains and pumping stations in our area (that will connect to an existing public sewer) to enter into a section 104 adoption agreement with us prior to undertaking any sewer construction or connecting to a public sewer. It is important to note that customers seeking adoption of new sewerage systems prior to section 42 would typically be confined to national housebuilders and even then they would limit the scope of adoption to the 'spine sewers' in the new highway down to the connection with the public sewer. Post section 42 being enacted all customers constructing any new sewers or lateral drains (whether this be associated with small alterations around a privately owned house, a self-build property in an existing rear garden or a housing / commercial development) must include all new sewers, lateral drains and pumping stations in an adoption agreement.

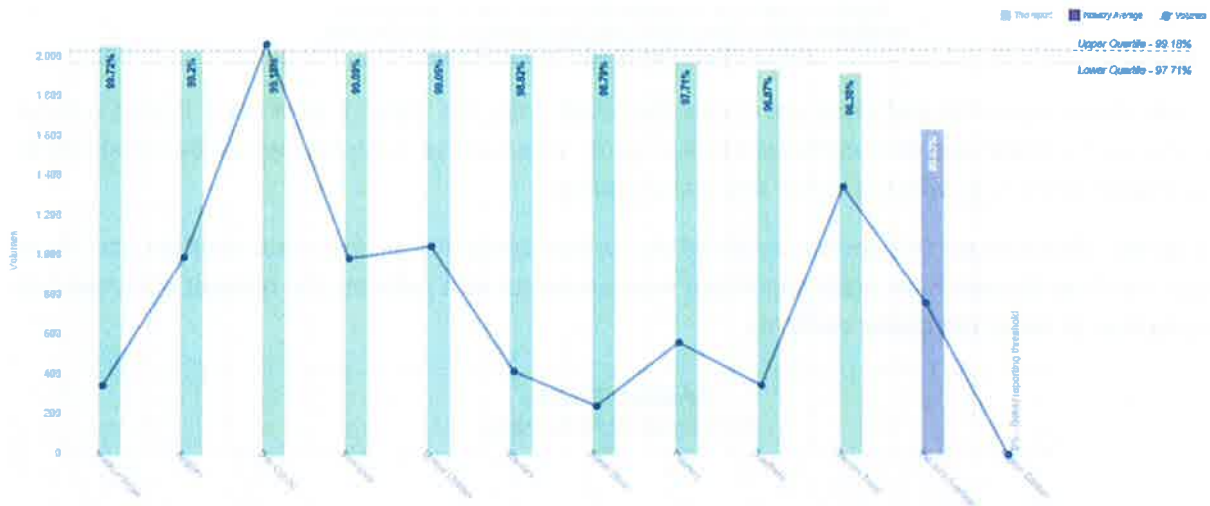
They must also comply with the Welsh Ministers Foul Sewer Standards which are mandatory. Failure to do so is in breach of section 106 of the Water Industry Act 1991 and also an offence under section 109 of the Water Industry Act 1991 if they connect to a public sewer. So whereas prior to section 42 being introduced customers had the choice of whether to offer new sewers for adoption to us (as they still do in England) they are now obligated to do so and we have a duty to enforce these requirements.

In addition section 42 prescribes a detailed legal process to ensure the timely adoption of this new infrastructure that both a developer customer and we have to follow and formally put in place to protect the new homeowners from liabilities. Hence this process has introduced the obligation for customers to engage with us, enter into a legal agreement, pay the relevant charges and provide a surety – a completely different process compared to England where they can choose whether or not to offer sewers for adoption.

Whilst we are the 6<sup>th</sup> largest water company in Wales & England we handle at least twice the number of sewer adoptions compared to the English companies as can be seen from the graph below which has been taken from the WaterUK Developer Levels of Service information for the period April 2015 to November 2018.



The graph below provides information from the same source and period for the number of section 104 legal agreements drafted.



What these two graphs also demonstrate is that whilst the sewer adoption arrangements in our area are mandatory and the process significantly more onerous for both customers and us we are an upper quartile performer for both quantitative measures and top performer in respect of technical vetting.

However when we have had our independent qualitative surveys undertaken annually over the past 4 years the verbatim comments we receive clearly demonstrate that customers do not welcome complying with these new adoption requirements and this therefore influences the feedback and view they provide to us of the service we deliver. We have provided a selection of these comments below all of which are matters beyond our control :-

*"We deal a lot with Severn Trent and the process is much smoother especially the S106 applications. Welsh Water S104 causes the majority of delay issues"*

**Developer**

*"Too much paperwork and red tape – can't start drainage until the 104 has been approved, causing huge delays and cost"*

**Developer**

*"Too long to approve – unrealistic to wait for drawings to be approved"*

**Developer**

*"Welsh Water take too long to deal with S106 matters. The idea that drainage is not to be started before the signing of a S106 is simply wrong. Costs developers money and worse, men their jobs."*  
**Developer**

*"S104 has been a problem to us"*  
**Groundwork Contractors**

*"Based on the S104 agreement coming to place, it's alright for existing customers, but for new applications S104 is very time consuming and very expensive"*  
**Groundwork Contractors**

*"New Section 104 regulation seem to have slowed down technical responses and approvals"*  
**Developer Consultants**

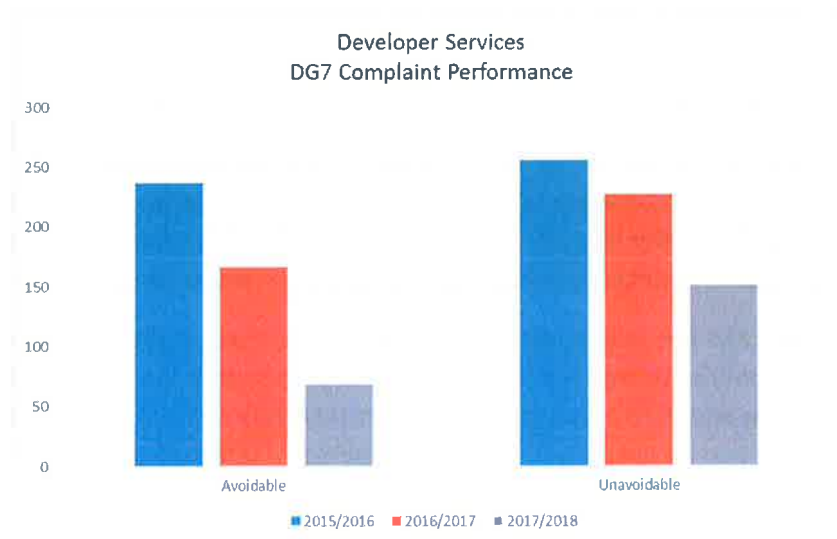
*"Since the introduction of WMS the S104 approval process has become very frustrating"*  
**Developer Consultants**

*"Tackle the Welsh Government about coming up with a process that allows Developers to commence with S104 drainage works prior to the S104 Agreement being completed (look at United Utilities process for this)."*  
**Developer**

*"Legislation has made things take longer and more complicated not necessarily Welsh Waters fault but the new legislation has made them act in a different way as duty bound by law now"*

This feedback has continued when you review the results from the 'Wave 1' & 'Wave 2' D-MeX surveys conducted by Ofwat and demonstrates a lack of parity when our performance would be compared to the English companies which is unfair and unacceptable.

To further demonstrate this point a review of our written complaint performance over the past three years confirms that we have made significant improvements with reducing the number of complaints we receive as the graph below confirms.



However when you analyse our 'unavoidable' complaints (those where we have no ability to change or influence policy or the outcome) for each of the three years the number of complaints relating to sewer adoption remains generally static at around a third of the total. This is a further indicator that customers do not welcome having to comply with the legal obligations placed upon them (and us) in respect of sewer adoption.

In summary whilst we are providing industry leading and upper quartile quantitative performance for the sewer adoption activities all of the qualitative information we have from customers to date

support our real concerns that our customer service delivery cannot be fairly appraised against English water companies and therefore by the current approach being advocated for D-MeX.

Similar issues and evidence exists with the requirement in Wales for new houses to have fire sprinklers installed and also as a result of us being a Statutory Consultee in the planning process. The comment below is another gained from our independent customer survey when in fact we have no specific duty or responsibility in this area as a water undertaker. Similar comments are also prevalent in our 'Wave 1' & 'Wave 2' D-MeX survey comments.

*"We've put sprinklers into properties and the response time with the sprinkler system is a nightmare but I think because it's new but still it's taking a long time"*

**Small Developer**

### ***Industry collaboration***

Throughout our engagement with developer customers both locally and nationally it is a clear expectation by customers that the water industry deliver services consistently and uniformly. This has been facilitated by the water companies working collaboratively over the last decade or more and more laterly through WaterUK. It is important to note that there is still much work to do in this area.

The most recent demonstration by customers of this expectation was at the WaterUK Developers Day in Birmingham where in a number customer presentations and questions from the floor this very requirement was highlighted and the water companies challenged. Both DEFRA and Ofwat representatives were present and heard first hand how important this objective is to customers.

A very likely consequence of the currently proposed D-MeX mechanism is that collaborative working between water companies will be constrained and frustrated as each company will be competing to be at the top of the D-MeX league table and therefore unwilling to share best practice and innovations that would benefit customers across Wales & England. We are aware that most, if not all, of the other water companies have the same concern. If this were to become the reality then it would be a perverse outcome for a measure that is meant to improve developer customer service delivery.

### ***Nature of the Developer Services Market***

Another important consideration is how each water company (including water only companies) can be fairly compared given that they vary considerably in size, levels of developer services activity and the varying 'players' prevalent in their area. Examples of this could be :-

- High or low levels of self-lay activity
- The extent of NaV activity in a company's area
- Whether the company's area is heavily urbanised or rural or a mix as this would determine the type of developer customers that are active e.g. national or local housebuilders

The question that results from this is how a fair D-MeX sample can be derived for each water company and we do not think this is achievable.

### ***Summary***

Based on what we have outlined above and in the attached we are convinced that two issues will cause unfairness to materialise if the D-MeX mechanism is implemented in its current form. The two issues are firstly the substantial differences in legislation and regulation in Wales compared to England

which fundamentally alter a Welsh water company's role in the developer services area and secondly that the development market in each water company's area varies considerably. The other significant issue is that customers who work across numerous water companies areas will likely fail in their expectation of water companies approaching service delivery consistently.

We believe the solution to overcome these issues would be to move away from a D-MeX league table approach to reward or penalise water companies and instead agree specific performance targets for each water company with further consideration of the appropriateness of reward and penalties being used. The benefits of this approach would include :-

- Prevent unfairness and the potential for perverse outcomes materialising in the industry which could ultimately be to the disadvantage of customers.
- Each water company devising their developer services plan which is tailored to there specific developer services market.
- Facilitate and ensure that water companies collectively continue to share and promote best practice, innovation and consistency in line with customers expectations and requirements.

We would be very willing to engage and provide Ofwat with any further support that may be helpful and this includes broader dialogue with the rest of the water industry and customers.

Yours sincerely



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**Mike Davis**

**Director of Strategy and Regulation**

(signed in his absence by Faye Yoxall personal assistant)



Appendix 3 Ofwat Letter to Welsh Water D-Mex for PR19 -8<sup>th</sup> March 2019

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Centre City Tower, 7 Hill Street, Birmingham B5 4UA  
21 Bloomsbury Street, London WC1B 3HF

Mike Davis  
Director of Strategy and Regulation  
Dŵr Cymru Welsh Water  
Pentwyn Road  
Nelson  
CF46 6LY

By email. Cc [Ian.Wyatt@dwrwymru.com](mailto:Ian.Wyatt@dwrwymru.com)

8 March 2019

Dear Mike

## **Dŵr Cymru Welsh Water and D-MeX for PR19**

Thank you for your letter dated 14th December 2018 addressed to Keith Mason regarding D-MeX; Keith sent this letter on to me for a reply.

We set out in the [December 2017 PR19 Final Methodology](#) we are taking account of the regulatory differences between England and Wales as we design D-MeX, for example that mandatory adoption of sewerage infrastructure exists in Wales, whereas it does not in England.

In your letter you stated that differences in legislation and regulation in Wales compared to England mean that a Welsh company's role is fundamentally different in the provision of developer services. Welsh Water also proposed that the solution to these issues would be to move away from the league table approach and agree specific performance targets for each water company (effectively bespoke Performance Commitments), rather than a league table approach, due to the variation in the development market in different areas.

Since then my colleague Jasminder Oberoi has been in touch with Ian Wyatt, Director of Business Customer Services, to gather further details in relation to the representations in your letter.

We have carefully considered the issues you have raised. Consistent with the PR19 Final Methodology, while we recognise that national and regional differences exist we are not minded to apply company-specific or other adjustments to D-MeX, to

avoid undue complexity. We are therefore not minded to treat companies differently, either in relation to differences in law or the developer market. This is because we want to preserve the integrity of the incentive, and evidence from the pilot does not demonstrate that particular companies are disadvantaged by our intended approach to D-MeX including the league table approach.

We will however continue to monitor the impact of the D-MeX survey on companies in the Shadow year before making a final decision.

If you have any questions please contact [Jasminder.oberoi@ofwat.gsi.gov.uk](mailto:Jasminder.oberoi@ofwat.gsi.gov.uk) in the first instance.

Yours sincerely

**Anita Payne**

**Director, PR19 Outcomes and Customer Engagement**