



Marie Cawley
Department of Trade and Industry
Consumer and Competition Policy Directorate
Bay 417
1 Victoria Street
London
SW1H 0ET

20 August 2004

Dear Marie

APPLICATION FOR DESIGNATION AS A SUPER-COMPLAINANT UNDER THE ENTERPRISE ACT 2002

1. I have pleasure in making an application on behalf of WaterVoice for designation by the Secretary of State for Trade and Industry as a “super-complainant” under Section 11 of the Enterprise Act 2002.
2. This letter sets out how WaterVoice believes it satisfies the broad criterion under Section 11(6)(a) of the Enterprise Act, that it represents the interests of consumers of any description and also meets the other five published criteria.

Broad Criterion

3. WaterVoice is a consumer organisation, established in 1990, which represents the interests of customers of the regulated water and sewerage companies in England and Wales.
4. Our activities include:
 - i) Promoting and advocating the interests of customers in respect of price, quality and value for money of water and sewerage services.
 - ii) Balancing the interests of different groups where necessary, including the needs of vulnerable customers and others with special needs.
 - iii) Commissioning research, understanding customers’ views and identifying their expectations and priorities.
 - iv) Investigating customers’ complaints about their water and sewerage company and seeking a fair and reasonable outcome.

- v) Dealing with enquiries from customers and providing information.
- vi) Influencing decisions by, and the policies of, Ofwat, the Environment Agency, the Drinking Water Inspectorate, the Government and the European Union to take proper account of customers' interests.

Criterion 1

The body is so constituted, managed and controlled as to be expected to act independently, impartially and with complete integrity.

5. WaterVoice comprises nine regional committees in England and a committee for Wales (the Customer Service Committees established in 1990 by the Director General of Ofwat, under what is now Section 28 of the Water Industry Act 1991). The Chairmen of the ten WaterVoice committees form the WaterVoice Council (a non-statutory body).
6. The WaterVoice committees have duties under Section 29 of the Water Industry Act 1991 to represent the interests of all customers and potential customers of the water and sewerage companies allocated to them by the Director General, and to investigate complaints made by customers. WaterVoice committees are also required by Section 194 to prepare and send reports on specific matters to the Director General as well as an Annual Report of their activities. The WaterVoice Council deals with policy and representational issues at national and European level.
7. The ten WaterVoice Committee Chairmen are appointed by the Director General following consultation with the Secretary of State for Environment, Food and Rural Affairs (for the Chairmen of the nine committees in England) and with the Welsh Assembly Government (for the Chairman of the committee for Wales). The members of the ten committees are appointed by the Director General in consultation with the relevant Committee Chairman. As of 31 March 2004 there were 138 members. The appointments fall outside the remit of the Commissioner for Public Appointments, as they are not made by Ministers, but the Director General complies with the Commissioner's Code of Practice.
8. Chairmen and members, as a condition of their appointment, are required to comply with a Code of Conduct (Appendix I). Among other requirements relevant to WaterVoice's impartiality, Chairmen and members are prohibited from trading in shares or having active financial interests in the water companies and are required to disclose other matters which may constitute a conflict of interest.
9. Biographical information for all WaterVoice Committee Chairmen and members is published in the WaterVoice Annual Report 2003-04 (Appendix II) and on the WaterVoice website (www.watervoice.org.uk).

10. WaterVoice's principal officer is the Council Secretary (who is also Head of Consumer Representation Division in Ofwat). Each of the ten WaterVoice committees is supported by a small team of staff headed by a Regional Manager. Names of the Council Secretary and Regional Managers are published in the WaterVoice Annual Report and on the WaterVoice website.
11. WaterVoice is currently funded by the Director General, who appoints all staff and provides all central support services except for press and publications which WaterVoice handles in-house. The working relationship between Ofwat and WaterVoice is set out in a Memorandum of Understanding signed in January 2002 and updated in March 2003 (Appendix III). The MoU recognises WaterVoice's right to speak independently of Ofwat about customers' interests. (In October 2005 WaterVoice is due to become a new independent Consumer Council for Water, established and sponsored by Defra under the Water Act 2003. A Memorandum of Understanding between Ofwat and WaterVoice will be a statutory requirement under the Act.)
12. As WaterVoice is treated for funding purposes as part of Ofwat, separate accounts for WaterVoice are not available. However, the direct costs of WaterVoice are identified in Ofwat's Resource Accounts.

Criterion 2

The body can demonstrate considerable experience and competence in representing the interests of consumers of any description.

13. WaterVoice has represented the interests of customers of the water and sewerage companies in England and Wales since 1990, at regional level by the ten Ofwat Customer Service Committees (CSCs) and at national level by the CSC Chairmen's Group, later re-named the Ofwat National Customer Council (ONCC). In April 2002 we announced, with the support of Ofwat's Director General, a new corporate identity – WaterVoice - for the ONCC and the CSCs. The new name brought the following benefits:
 - i) A clear distinction between Ofwat's role as a regulator and our role as customer representatives.
 - ii) A customer voice with more impact with the committees working individually at regional level, and together at national level, under one name.
 - iii) A more independent voice for customers in advance of legislation to set up the new Consumer Council for Water under what is now the Water Act 2003.
14. Each of the WaterVoice committees comprises an experienced Chairman and at least ten members, with a range of backgrounds, experience and skills, drawn from the local community. The ten WaterVoice committees and their

support staff have detailed knowledge of each water company's policies and procedures and of the region. The WaterVoice Council is supported by a small team of staff headed by the Council Secretary based at WaterVoice's Head Office in Birmingham. WaterVoice has 59 staff in total.

15. Ofwat provides WaterVoice with support services including advice from specialist staff on legal, scientific and technical matters. Where there would be a potential conflict of interest in Ofwat's lawyers advising WaterVoice, arrangements exist for WaterVoice to obtain independent legal advice (as happened earlier in the year when WaterVoice obtained advice from Wragge and Co on the super-complaints provisions in the Enterprise Act).
16. Our activities in representing the interests of water customers covers a wide range of issues as shown in the WaterVoice current Programme 2003-04 to 2004-05 (Appendix IV). Our experience and competence in representing the interests of water customers is illustrated in the following examples:

Price regulation

17. We have played a major role at national and regional level in influencing the process and outcome of Ofwat's Price Reviews in 1994 and 1999 and are currently involved in Price Review 2004 which will result in Ofwat announcing in December its decisions on new price limits for the water companies for the next five years.
18. Jointly with Ofwat, the Environment Agency, DWI, Water UK and other stakeholders, we have commissioned two major market research projects (MORI August 2002 and MVA December 2003) to establish customers' priorities and willingness to pay for improvements. We have campaigned about companies' plans for substantial increases in water bills and have achieved extensive publicity for our views that current proposals are neither acceptable nor affordable to customers.

Charging and tariff policy

19. We made a substantial contribution to the Government's review of water charging policy, resulting in the Water Industry Act 1999 which extended rateable value based unmeasured charging, introduced the free optional metering policy and a ban on disconnection for non-payment.
20. We have detailed discussions every year with each water company on their tariff proposals for the following year, as part of the process of Ofwat's approval of the companies' charges schemes.

Competition and mergers

21. We have lobbied for the limited introduction of competition in the water industry, which resulted in provisions in the Water Act 2003. We are playing

a full and active part working with Ofwat and other stakeholders in developing the new regulatory framework

22. We have submitted written evidence and given oral evidence at Competition Commission Inquiries into water company merger proposals. We are opposed to the special water company merger regime in the Enterprise Act 2002 and have consistently argued that a more flexible approach to mergers would be of benefit to customers.

European Union

23. Much of the investment required by water companies and financed by customers in higher bills to improve the water environment, is driven by EU Directives. We have been active in Brussels for many years in lobbying and influencing the European Commission and European Parliament to ensure that costs and benefits are assessed properly and that water customers' interests are taken into account in the decision making process in setting new standards. Our work has covered the Drinking Water Directive 1998, the Water Framework Directive 2000 and the current proposal for a new Bathing Water Directive to replace the 1976 one.
24. We have responded to consultations by the Commission on other issues where relevant including, most recently, the 2003 Green Paper on Services of General Interest. We have been invited by the Commission to discuss its review of competition in the water sector.

UK legislation

25. We have submitted written responses to, and been invited to put our views at meetings with Government officials, on Green and White Papers and consultative Bills. We were successful in tabling a substantial number of amendments to the Water Bill and in getting a number of important issues debated in the Lords and Commons in relation to the provisions for a new Consumer Council for Water, as a result of which a number of Government concessions were made to its duties and powers.

Select Committee Inquiries

26. We have been invited to give oral evidence and/or have submitted written evidence to many inquiries, including in the last year:
 - i) House of Commons Environment, Food and Rural Affairs Committee Inquiry on Water Pricing.
 - ii) House of Commons Environment Audit Committee Inquiry on Water: The Periodic Review 2004 and the Environmental Programme.
 - iii) The House of Lords Constitution Committee Inquiry on the accountability of regulators.

Complaints handling

27. We carry out regular audits of the handling of customer complaints by the water companies and work with them to improve quality and effectiveness. We investigate complaints where the customer remains dissatisfied, after the company's complaints procedure has been exhausted. We seek a fair and reasonable outcome to the justified complaint through negotiation and persuasion. We have no powers to award compensation but we have to date secured a total of nearly £9 million in compensation and rebates for customers.

Influencing policy

28. We have campaigned for sewer flooding to be eliminated by 2010 and have successfully pushed this up to the top of the agenda with the water industry, Ofwat and Government. This was recognised by the National Audit Office in the report of its value-for-money study on Ofwat and the public sewer network which looked, in part, at tackling sewer flooding.
29. We have focused attention on the serious and growing problem of customer debt in the water industry and the issue of affordability of water bills for those on low incomes both now and in anticipation that the Price Review 2004 will lead to substantial increases in water bills. We have commissioned independent research jointly with Ofwat into Paying for Water (Accent Marketing & Research September 2003) and have worked with the water companies' representative body, Water UK, on follow-up research commissioned by the industry.
30. The legitimacy of concerns about water debt and affordability have been recognised in the report of the Environment, Food and Rural Affairs Committee Inquiry on Water Pricing and the report of the Environmental Audit Committee on Water: The Periodic Review 2004 and the Environmental Programme. The Government has announced a review of the way in which poorer households are helped with their water and sewerage bills. We have been advised by Defra that WaterVoice will be involved in the review.
31. We were invited by the Treasury and DTI to contribute to a Government review of consumer representation in the regulated industries. Our involvement was important, not only because the water industry has strong regional and monopoly characteristics that are not found in other regulated industries, but also because of the expertise we were able to contribute to the review and the conclusions and recommendations that emerged from it.

Criterion 3

The body has the capability to put together reasoned super-complaints on a range of issues.

32. We are pleased to submit as required with our application a selection of WaterVoice papers produced in the last two years alone on a range of water industry issues, as evidence of our capability to produce reasoned super-complaints. I list below and attach as Appendices:

Evidence to Select Committees

- House of Commons Environment, Food and Rural Affairs Committee Inquiry into the Water Framework Directive and its implementation in the United Kingdom
- House of Commons Environment, Food and Rural Affairs Committee Water Pricing Inquiry
- House of Lords Select Committee on the Constitution: the Accountability of Regulators to Citizens and Parliament

Competition Commission Inquiries

- Vivendi/First Aqua Merger Inquiry

Ofwat Periodic Review 2004

- Setting price limits for 2005-10: Framework and approach

Defra consultations

- Extending opportunities for competition in the water industry in England and Wales
- Reductions for vulnerable groups
- Review of existing private sewers and drains in England and Wales

European Commission Consultations

- Green Paper on Services of General Interest

33. In producing papers and submissions, we draw as appropriate on:
- i) The experience and skills of our regional Committee Chairmen, members and staff and the detailed knowledge they have of each water company's policies and procedures and of the region.

- ii) The experience and skills of the WaterVoice Council and its staff, who have expert knowledge of water industry issues at national level, including the work and policies of Ofwat and other regulators, Government and the European Union.
- iii) Analysis of contacts between customers and WaterVoice including complaints about companies, details of which are recorded on a database that enables trends and problems to be identified. (Following a successful pilot, we have installed a Geographical Information System (GIS), which will enable complaints to be plotted on maps to provide a new means of analysis and presentation).
- iv) Findings from independent research commissioned by WaterVoice in partnership with Ofwat and other stakeholders, that identify customers' views about water and sewerage services and priorities for improvement.

Criterion 4

The body is willing and able to co-operate with the Office of Fair Trading (OFT) and/or with any other authority, body or person having responsibility for responding to super-complaints.

- 34. We are ready and willing to co-operate with OFT and any other authority body or person having responsibility for responding to a super-complaint, including taking account of guidance issued by the OFT.
- 35. WaterVoice has a long track record of professional and constructive working relationships with Government departments, primarily but not exclusively with Defra, with the Welsh Assembly Government and regulatory bodies including Ofwat, the Environment Agency, the Drinking Water Inspectorate and with the water companies' representative body, Water UK. We also co-operate and work with generalist consumer bodies such as Consumers Association and the National Consumer Council, and sectoral consumer bodies such as Energywatch, Postwatch and the Rail Passengers Council.

Criterion 5

The fact that a body has a trading arm will not disqualify it from being designated provided that the trading arm does not control the body, and any profits of the trading arm are only used to further the stated objectives of the body and the body has established procedures to ensure that any potential conflicts of interest are properly dealt with.

- 36. WaterVoice as currently constituted cannot have a trading arm.

Withdrawal of designation

37. We confirm that we will notify the Secretary of State of any material changes to the information supplied, which could be relevant to meeting any of the criteria.

Personal information

38. We confirm that there is no information in this application which we would not wish to be made public.

Yours sincerely

A handwritten signature in black ink, appearing to read "Roy Wardle". The signature is written in a cursive style with a large initial 'R'.

Roy Wardle
Council Secretary