

Irish Water

First Fix Leak Repair Scheme

For Domestic Water Customers

CER Consultation Public Submissions: Irish Water Response

Submission to the CER

Reg_PP_IW_FFLRS_003

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Introduction

This document provides an Irish Water response to the points raised by respondents to the CER consultation on the First Fix Leak Repair scheme. Comments are summarised and grouped by common theme and an Irish Water response is provided.

Consultation submissions and Irish Water responses

1. All leaks should be fixed

Some respondents felt that the First Fix Scheme is not comprehensive and that it should cover all leaks occurring on customer properties.

Irish Water response:

Given the level of customer side leakage it will not be possible to fix all such leaks under this scheme; there must be an element of prioritisation. IW has set out a proposal to achieve significant water savings in an efficient manner through prioritisation and identification via meter read data.

2. CFA level

One respondent queried if the level of CFA would be reduced to target smaller leaks at a later stage. Another respondent questioned how IW will distinguish between excessive use and leakage.

Irish Water response:

It is not intended to reduce the level of the Constant Flow Alarm under the First Fix Leak Repair scheme.

A continuous flow of water over a period of time indicates a leak; excessive use would more likely be intermittent throughout the day. The Constant Flow Alarm is set at 6 litres per hour over a 48 hour period and is set to this level to prevent activation due to background seepage which occurs on all water systems or low level internal leakage; such as dripping taps.

It would be very difficult to identify any leak occurring at a continuous flow of less than 6 litres per hour without carrying out significant excavation works.

3. Scheme objectives: Mitigating financial impact of leaks

One respondent suggested the inclusion of an additional consumer protection objective of mitigating financial impact on customers with leaks/generally mitigating impact on customers with leaks.

The same respondent suggested that arrangements should be made to mitigate the financial impacts on customers who do not qualify for the First Fix Leak Repair scheme at the end of the capped charges regime.

Irish Water response:

IW has considered this question and following discussions with the CER the following scheme objective will be included in section 3.1 of the policy document:

- “Reduce water lost through customer side leakage through the offer of a free repair for leaks on External Supply Pipes to eligible customers and thereby helping customers to reduce bills;”

4. Internal Stop Valve

Two respondents mentioned Internal Stop Valves as an eligibility criteria and the likelihood that a significant number of customers could be impacted.

One respondent requested that ISV be removed as a qualifying criterion for the scheme.

One respondent suggested that IW should gather data on the extent of ISV installation in homes to determine the number of homes that may be impacted. If significant a complementary policy of internal stop valve supply and installation would be required.

Irish Water response:

This is a technical requirement; the ISV is required to isolate the internal pipework in order to identify the source of the leak. All plumbing systems should have an internal stop valve at the mains point of entry to the dwelling to isolate the supply to the dwelling.

IW does not propose to implement a program of ISV installation. Surveying all properties in the state to determine the extent of ISV installation would be expensive and time consuming and would divert resources from the ultimate objective of the scheme which is the repair of customer side leaks. A scheme of ISV installation may increase customer eligibility but would leave fewer funds available to carry out leak investigations and repairs. ISVs are installed in the house and are therefore a matter for the property owner. The property owner may engage a plumber to have an ISV installed.

Several respondents suggested that Customers may not know how to locate their ISV and that assistance should be provided.

Irish Water response:

As part of the First Fix Leak Repair scheme process, when a customer contacts IW following receipt of a Constant Flow Advice Letter, Irish Water will ask a customer if they have an ISV. If the customer is unsure or cannot check, a leak investigation will be arranged. Unfortunately it is not possible to provide a ‘one for all’ guideline document to locate the internal stop valve as there are many variations to internal pipework layout/ entry locations etc. There are also many valves which may look the same on the internal plumbing network (depending on the particular configuration) controlling other elements of the water flow in heating systems for example. Typically this valve is under the sink as it is a common entry point for cold feed supplies.

5. Visible Surface Leaks

One respondent stated that the current process proposed for dealing with unmetered domestic customers who report a visible surface leak to IW could be stronger - Section 3.2.3 of Irish Water's First Fix Leak Repair Scheme document states that:

"IW may choose to carry out an assessment".

It is the respondent's view that IW should carry out an assessment where possible. The respondent stated that it would appear from IW's document that surface leaks will not be dealt with if a meter cannot firstly be installed at the property. The respondent stated that this approach may prove inefficient and at odds with the principle of water conservation as it will delay the fixing of the problem.

With regards to visible surface leaks the respondent indicated that consideration should be given to addressing these, regardless of whether the customer is domestic or mixed use.

Irish Water response:

Irish Water has amended the First Fix Leak Repair scheme policy document to clarify that all such reports will be looked into.

As outlined, it will not be possible to fix all customer side leaks under this scheme; there must be an element of prioritisation. IW has set out a proposal to achieve significant water savings in an efficient manner through prioritisation and identification of leaks via meter read data. In the event that a meter cannot be installed on a property where a leak is suspected, the customer should arrange for a plumber to investigate the leak.

6. Supporting ineligible customers

One respondent highlighted the concerns of customers with internal leaks that fall outside the scope of the First Fix Leak Repair scheme. They stated that "in the event that leaks are identified in homes which remain ineligible for the scheme one must consider the concerns of the household in this regard....Such households need to be provided with best advice as how to identify and remedy the problem. "

Irish Water response:

Where a leak is identified internal to the property, the leak investigator will provide the customer with information on the outcome of this investigation through the leak investigation outcome card. The leak investigator will also provide the customer with advice on how to detect the leak and will advise them to engage with a reputable plumber to rectify the leak.

7. Mixed Use Customers

Two respondents suggested that Mixed Use Customers should be included in the scheme.

Irish Water response:

The scheme has been designed based on the use of metered data to effectively and quickly identify the source of leaks on external supply pipes. As mixed use customers are not metered they cannot be involved in the scheme as currently designed. For mixed use customers to be included in the scheme it would have to be redesigned to include exploratory searches which are less efficient than leak investigation using meter data.

The First Fix Leak Repair scheme is the first step in a broader framework of customer side leakage policies that will be developed and rolled out by Irish Water. Not all leaks can be addressed within the scope of the First Fix Leak Repair scheme, however customers that do not qualify for the scheme may benefit from a future scheme.

8. Limits to eligibility/Timeframes

A number of respondents raised the issue of ineligibility from the scheme if they failed to respond to two consecutive Constant Flow Advice Letters. Respondents raised the point that customers may not receive two consecutive letters for reasons such as absence from the country but may wish to participate in the scheme. Respondents felt that such customers should not be excluded.

Irish Water response:

IW accepts that there may be some customers who do not receive both letters but may wish to participate in the scheme. It is not the intention of Irish Water to preclude qualifying customers who wish to avail of the scheme, but simply to put in place time limits to allow effective administration of the scheme. The revised First Fix Leak Repair policy document outlines that a customer who has not received the Constant Flow Advice letters may contact IW to request re-inclusion in the scheme.

9. Vacant properties

One respondent suggested that vacant properties were not eligible for the scheme:

“Under the proposed scheme vacant dwellings are not currently eligible. This means that there could possibly be an unfair situation where owners/landlords are forced to pay higher metered fees despite the only water usage being from a leak. “

Irish Water response:

Irish Water would like to clarify that vacant properties may be eligible for the scheme, subject to meeting the criteria set out in the First Fix Leak Repair scheme policy document and the terms and conditions. There is no provision in the First Fix Leak Repair scheme that excludes vacant properties from the scheme.

10. Limits and exclusions on the pipework (i.e. 15 meters in length etc.)

One respondent sought a rationale for the exclusions to Appendix 3 – First Fix Leak Repair Scheme Offer Terms and Conditions, in the definition “*External Supply Pipe*” sets out a number of exclusions including (i) *pipework that exceeds 15 metres in length*; and (ii) *pipework with an inside diameter exceeding 25 millimetres*’. The respondent also questioned *how many properties are likely to be affected*.

Irish Water response:

The majority of connections will fall within these standard parameters. For pipework exceeding 15 meters Irish Water may carry out local repairs (i.e. repairs at the locus of the leak(s) in question with no full pipe replacement taking place).

Irish Water carried out a review of the majority of the English and Welsh Water Companies plus Scottish Water to confirm their approach and customer Terms and Conditions for first fix or equivalent repairs. It was discovered that the replacement lengths adopted by the UK utilities vary from 7m up to 25m, with only one adopting 25m and the average replacement length across all operators at 12m. Irish Water elected for a service pipe replacement length of 15m, which when tested through the pilot study covered a vast proportion of pipe lengths encountered. Irish Water will still offer to carry out repairs on pipework in excess of 15 metres in length (subject to such repairs being cost effective) but intend to limit this to localised repairs solution instead of full service replacement.

11. Customer Notification letters

One respondent suggested that changing ‘the word “notification” to “advice” ... will achieve a much higher response rate and ultimately save water’.

Irish Water response:

Irish Water will make this suggested change to the policy document.

Another respondent stated that notification letters should be sent early so that customers have the opportunity to address leaks before the capped charges are lifted.

Irish Water Response:

The capped charges are set to remain in place until 31 December 2018. The First Fix Leak repair scheme is currently operational and Customer Flow Advice letters are being issued. It is anticipated that 77,000 such letters will be issued before the end of 2016

12. Specification of Meters

One respondent requested that the specifications made publicly available so that the accuracy of meters could be viewed and the “life” of the meter assessed. This respondent also requested information regarding what happens if the meter malfunctions.

Irish Water Response:

In accordance with the EU Measuring Instruments Directive (2004/22), the water meters installed by Irish Water are tested for metrological accuracy at a range of flow rates at the time of manufacture. Those that fail to meet the accuracy requirements are rejected. The meters are sealed by the manufacturer in accordance with the Measuring Instruments Directive and cannot be adjusted thereafter in service. The meters are tested across a range of conditions, including temperature and flow to International measurement standards, to which the meters have to comply. Irish Water anticipates that there will be a competitive tender for independent meter testing services for our programme of testing of meters in service. This will be subject to agreeing such a programme with the CER in due course. The full specifications from the framework are appended to this document. The design life for the water meters installed by Irish Water is 15 years. Each supplier has given a minimum 12-month full parts and labour warranty (guarantee) against material defect and/or poor workmanship.

13. Multiple leaks at a property

One respondent suggested that where multiple leaks exist on a pipe that these should be fixed.

Irish Water response:

The following text will be included in the revised First Fix Repair scheme policy document:

“If it is found, following excavation that a more than one leak exists on the External Supply Pipe, Irish Water will, where possible, repair all such leaks. This may require the replacement of a portion of the External Supply Pipe.”

14. Change in property ownership

A number of respondents suggested that new owners should not be penalised by the inaction of previous owners in relation to existing leaks and therefore should not be excluded from the scheme.

Irish Water response:

Irish Water agrees that new property owners should not be penalised for the inaction of previous owners. The following text will be included in the revised First Fix Leak Repair scheme policy document:

“In the event of a change of ownership of a Property in which a Constant Flow Alarm has been detected, IW will contact the new occupier of the Property on validation of their details with IW to notify them of the existence of Constant Flow Alarm at the Property. The Customer will be entitled to avail of the First Fix Leak Repair scheme at that point, subject to the terms and conditions.”

15. Landlord and tenant issues

Some respondents raised the matter of leaks occurring in tenanted properties. One respondent queried the policy in *“cases where a leak is identified in a rental property but the landlord takes no action to address the leak, thereby resulting in potentially higher bill charges for the tenants”*.

Irish Water response:

Under the Water Services Acts it is the responsibility of the property owner to repair leaks within the property boundary. Irish Water will offer qualifying property owners the option to avail of a free repair under the First Fix Leak Repair scheme; however we cannot oblige any property owner to avail of this offer. Where a landlord takes no action to repair a leak in a tenanted property this would be a matter for the tenant and the landlord to resolve, as for all household repairs.

16. Appeals procedure

Two respondents raised the right of appeal in relation to the scheme. One noted that no appeals system was in place. The other respondent focused on scenarios where eligible customers receive no or delayed service:

“...eligible households may....receive no or delayed service. Such customers should a) be informed of the nature of the leak b) the detailed reason as to why they are not receiving a service and c) be given the right to appeal the decision to an independent 3rd party such as the CER complaint process.”

Irish Water response:

Irish Water intends to process all eligible customers in accordance with the time frames set out in the First Fix Leak Repair scheme document.

Irish Water will respond to any customer complaints received in line with its Domestic complaint handling Code of Practice available at www.water.ie.

The right to appeal through the CER complaints process is a matter for the CER to consider.

17. Warranties Regarding Repairs

One respondent raised a number of points in relation to the provisions of the First Fix Leak Repair scheme terms and conditions pertaining to warranties regarding repair.

a. Definition of Local Repair

The respondent suggested that local repair, as set out in section 1.3 of the terms and conditions should be defined.

Irish Water response:

Following discussions with the CER, Irish Water has removed references to “local repairs” from the T&C’s document.

b. Defective Liability Period

Clause 8.1 of the terms and conditions provides for a 12 month remediation period following completion of Works that where a defect in the Works is identified, then Irish Water will procure the remediation of such Works. The respondent queried if a 12 month period is too short and if a period of time in keeping with the Statute of Limitations is more appropriate given the nature of the Works.

Irish Water response:

An amendment to the remediation period is not recommended at this time for the following reasons;

- The nature of the Works is such that if the works were defective, then such defect should come to the attention of the owner within a short period of time after completion of the Works and a 12 month remediation period is considered reasonable for this purpose;
- Irish Water is not under a contractual or statutory obligation to provide a first fix to the owner; imposing a six year remediation period does not go to the intention of the First Fix Repair Scheme Offer where Irish Water is seeking to improve water conservation by fixing existing pipe leaks only. A six year remediation period does not lend itself for that purpose.

c. The application of the Sale of Goods and Supply of Services Act 1980 (the Act) to circumstances where the materials used as part of the Works are defective.

The respondent suggested that “In relation to defects in the Works due to the material used by Irish Water as part of the Works, the lawfulness of the warranty exclusion should be reviewed to ensure that it complies with Part IV of the Sale of Goods and Supply of Services Act 1980”.

Irish Water response:

Clause 8 of the T&C document provides that it is in addition to, and does not detract from any existing statutory rights which the owner may have. In that regard, we are satisfied that the Terms and Conditions of the First Fix Repair Scheme Offer does not attempt to restrict the application of the Act.

d. SI No 27/1995 European Communities (Unfair terms in Consumer Contracts) Regulations, 1995 Section 3(1)

The respondent suggested that paragraph 8.2 of the terms and conditions be reviewed for compliance with SI No 27/1995 European Communities (Unfair terms in Consumer Contracts) Regulations, 1995 Section 3(1).

Irish Water response:

The terms of the First Fix Repair Scheme Offer do not breach the provisions of the Regulations as the terms of the contract create a benefit for the owner by offering to fix water leaks to External Supply Pipe at no cost to the owner. In that regard, there is no imbalance as the owner is free not to accept the offer or to procure the service from an alternative service provider.

Please note that this section has been reworded in the updated policy document.

e. Regulation 5 (1) Unfair Terms Legislation

The respondent also suggested that Paragraph 8.2 and any other paragraph which may raise issue under Regulation 5 (1) of the Unfair Terms Legislation should also be reviewed.

Regulation 5 (1) states:

“In the case of contracts where all or certain terms offered to the consumer are in writing, the seller or supplier shall ensure that terms are drafted in plain, intelligible language”.

Irish Water response:

The terms of the First Fix Repair Scheme Offer comply with Section 5 (1) of this regulation as the definitions and clauses of the contract are drafted in clear and uncomplicated terms.

Another respondent queried the liability where Irish Water caused the leak:

Irish Water response:

“Irish Water will, in conjunction with its contractors, implement strict quality control protocols around the works being carried out pursuant to the First Fix Leak Repair Scheme (including during leak investigation works). On that basis the likelihood of leaks being caused by the carrying out of the works is greatly reduced.

First Fix Leak Repair Works (carried out pursuant to the Terms and Conditions of the First Fix Leak Repair Scheme).

In the unlikely event that a leak is proven to have been caused by the negligent carrying out of the First Fix Leak Repair Works then clause 6 of the Terms and Conditions of the First Fix Leak Repair Scheme provides as follows (our underline added):

“The owner agrees that Irish Water will not be liable for any loss or damage in relation to the Property arising from, or in connection with, the carrying out of the Works (including the remediation of defects) except to the extent that such loss or damage arises from the negligence of Irish Water”.

On that basis Irish Water will be liable for loss or damage to the Property to the extent that such loss or damage arises from the negligent carrying out of the Works. This would, in our view, include loss and damage caused to the Property by a leak which is proven to have arisen from the negligence of Irish Water in carrying out the Works.

Clause 8 of the Terms and Conditions also deals with Irish Water’s liabilities if the leak repair work carried out is defective and is clear as to the basis and ambit of Irish Water’s responsibility and/or liability in that regard.

Leak investigation works (carried out prior to the offer and acceptance of the Terms and Conditions of the First Fix Leak Repair Scheme).

There is no exact rule or formula for determining liability in advance of such incidences occurring nor are such incidents covered by the Terms and Conditions of the First Fix Leak Repair Scheme. Accordingly, liability will be determined by reference to the facts on a case by case basis. To the extent that it is alleged that the actions of Irish Water or its contractors have caused or contributed to the injury then liability will be determined according to normal legal principles.

Additional items to note:

Section 4.2 of the proposed Irish Water First Fix Leak Repair Scheme document noted that

“Customers will be required to facilitate a leak investigation visit during Business Hours. This requirement is necessary for efficiency, operational and health and safety reasons. Leak investigators will also require the support of back office services and on-call plumbing services which are only in place during these times.”

The reference to “on-call plumbing services” will be removed in acknowledgement of the fact that such services could be procured in the marketplace. Such services could only be obtained at an increased cost and doing so would not be conducive to an efficient and cost effective operation of the scheme.