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Your Ref:

Our Ref:

Date:  
8 August 2014

Contact:  
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Dear Andrew,

**Consultation on Ofwat's section 13 proposal to modify the licences of all appointees in England and Wales – condition R1**

Thank you for the opportunity to comment on the proposed licence modification.

I can confirm that Southern Water is content for the proposed modification to be made to its licence. However, we have a number of minor points, all of which relate to the late changes proposed to facilitate funding being provided to Ofwat instead of Open Water. These are intended only to clarify the drafting and to give additional reassurance to companies over the management of funds provided under the condition.

- (i) The consultation paper is clear that if funding is provided directly to Ofwat, this would be ring-fenced and not used to deliver any other Ofwat activity. However, this is not clearly set out in the licence condition itself. We suggest that paragraph 3.3 is expanded to include the following additional wording: "Funds raised under this condition shall not be applied for any purpose other than that set out in paragraph 1 of this condition."

Since this change does no more than echo the very clear message in the consultation then it would not require a further section 13 notice.

- (ii) The licence text relating to the provision of funding to Ofwat (but not OWML) allows for two subsequent calls on companies for additional funding, up to the maximum allowable amount. It is important that Ofwat/Open Water has strong incentives to budget for and manage the programme efficiently without recourse to companies to fund any unplanned overspend.

Our preferred solution would be to align the wording with that for Open Water such that the funding is restricted to that budgeted for the work at the start of each year. However, there is a small risk that this might be construed as a substantive change, which would require publication a further section 13 notice. Since that would be highly undesirable for all parties, we think that the same objective could be achieved by Ofwat making a clear commitment in the consultation response to complete transparency in publishing its detailed budget and the associated work programme each year. Any subsequent deviations from this, resulting in additional funding requirements should similarly be published with a clear rationale.

- (iii) Finally, the Ofwat Forward Programme and budget for 2014/15, included some funding for activities associated with market opening (though it is not clear from the Forward Programme the extent of this funding). Companies will therefore want reassurance that they will not be called on to fund this same work under the Open Water programme. We think this can also be addressed by a clear commitment to publication of the Open Water budget and work scope, making clear what is funded under this condition and what is within the core Ofwat budget.

We would be happy to discuss any of these points further with you if helpful.

Yours sincerely,

**Simon Oates**  
**Director of Strategy and Communications**