

Trust and confidence: self-lay provision of new connections



Contents

The story so far	3
What is self-lay provision and why is it important?	6
An open conversation about trust and confidence in self-lay	8
Common assurance requirements	10
Our initial view	12
We want your thoughts	14

The story so far

Our [shared vision for the water sector](#) in England and Wales is that customers and wider society have trust and confidence in vital public water and wastewater services. So what drives this trust and confidence? We spent a lot of time considering this question with stakeholders to inform our new strategy for the sector and for Ofwat, '[Trust in water](#)', which we launched in January 2015.

Most obviously, trust and confidence is about whether the sector delivers the outcomes that customers and society expect. But what struck us when we looked at this further was that trust and confidence is not just about **what** the sector delivers, but also about **how** it does this. There are two vital strands to this.

- The first is that the **quality of the relationships** that exist in the sector matters immensely. Absolutely key to this is the relationship between water companies (as service providers) and their customers, which needs to be fair, open, honest and transparent.
- The second is about the **legitimacy** water companies can achieve by engaging actively with their customers to understand and reliably deliver services that meet those customers' needs. Critically, this includes water companies understanding how their delivery of services impacts on the outcome a customer is seeking – in particular, the impact they can have if their delivery is poor.

The sector has delivered real benefits as a result of water companies taking greater ownership of their relationship with their customers. During the 2014 price review (PR14), where we set the price and service package ('price controls') that must be delivered between 2015 and 2020, water companies engaged in [the biggest customer conversation the sector has ever seen](#). These conversations resulted in water companies producing business plans that really focused on what mattered most to their customers. As a result, the sector will deliver £44 billion of investment in services while reducing customers' bills by an average of 5% in real terms by 2020.

Water companies' customers are perhaps often perceived as the people who turn on the tap and consume a water supply. But there are a range of other customer types that use different services that water companies also provide. These include developers and [self-lay organisations](#) (SLOs), which use a range of services that relate to providing infrastructure for water supplies. Some of these services can only be provided by the water company (that is, they are 'non-contestable'), while for others SLOs compete with the water company to provide services to developers (known as 'contestable' services).

The sector will deliver £44 billion of investment in services while reducing customers' bills

We want to ensure that all developer services customers have trust and confidence in the services that water companies provide

The two strands set out above are relevant to all of the services that water companies provide, and to all of the customers they work with. Over the past year, the sector has embarked on a journey to specifically improve trust and confidence in the services water companies provide to developers and SLOs. These services are essential in enabling housing growth. They are also one of the few areas of the sector open

to competition and the benefits that can deliver for customers. While customer service in developer services is strong for some services and with some water companies, there are marked differences between the water companies and even within the services that individual companies provide. We and, most importantly,

customers want to see this gap closed and the sector as a whole raising its game.

The key steps in this journey so far include the following.

- We have set out our [general expectations of how water companies provide new connections](#) in relation to:
 - customer service;
 - competition law compliance; and
 - planning for and enabling growth.
- We have set out our [general expectations on common areas of dispute referred to us about charges for](#)

[new connections](#). We consider disputes on a case-by-case basis, but these expectations are our starting point when considering these issues. We hope that providing clarity on them will help to avoid disputes and where they still arise, to help customers get timely resolutions.

- The UK Government has published '[Better connected: a practical guide to utilities for home builders](#)', a guide for developers on getting new connections from all of the utility sectors. This sets out the arrangements in the water sector and includes a draft of the service standards the sector has now agreed (see below).
- We have published our [final decision to accept binding commitments from Bristol Water](#) under the Competition Act 1998. We opened this investigation following allegations that Bristol Water might be abusing its dominant position as an appointed water company to harm competition in the competitive market for new water connections. The case identified a number of concerns about competition and customer focus in relation to how water companies provide non-contestable services to SLOs seeking to compete in the new connections market. We have used this case to progress further discussions with the sector about these issues.
- We have asked all water companies to review:
 - the information they provide to customers about the self-lay option

- for new connections; and
- how SLOs access the information and services they need from water companies to provide their own services (for example, application forms, information on process, design and construction requirements, and details on charges).

We are using the information water companies have provided to work with them to highlight good practice and areas for improvement.

- Following consultation with their customers, all of the water companies have agreed a set of [service standards](#) for a range of developer services. These standards enable customers of developer services to better understand what they can expect from water companies' service delivery. Water UK, the sector's representative body, will publish reports every three months on water companies' performance against the standards¹. This greater transparency will challenge and encourage water companies to continuously improve the services they offer. It will also highlight where we may need to take regulatory action to address underperformance.
- We have regular discussions with developer service customers and water companies to:
 - better understand the issues that matter most to customers;
 - identify and share what good and bad service looks like; and
 - help prioritise our activities to focus



on those areas of great detriment for customers.

- Individually, water companies are progressing a range of activities to improve and innovate in how they deliver developer services.

This all shows that the sector has taken some important steps in improving its relationship with its developer services customers. But there remains more to do.

We want to build on this momentum to ensure that all developer services customers have trust and confidence in the services that water companies provide.

1. The first report was published in July 2015.

What is self-lay provision and why is it important?

Providing new water connections is currently one of only a few areas of the sector where customers in England and Wales can choose their service provider. In this market, suitably qualified SLOs are able to compete with water companies to provide certain services. Developers can benefit from the choice this market offers. It can let them choose a service provider that best suits their

needs and can act as a driver for more customer-focused, efficient and innovative services. Use of SLOs to provide new connections is higher in some parts of the country than others. There are likely to be a number of reasons for this, ranging from different regional economies to the size of new development sites.

But some of the differences may be because of how water companies provide their non-contestable services to SLOs and developers.

To be able to operate, SLOs are reliant on water companies. This is because while SLOs can provide most of the process required to get a new connection, there are some parts of that process that only the local appointed water company can provide. This is largely because of the water companies'

statutory (legal) duties and responsibilities (as set out in legislation and the company's licence) in relation to:

- the legal requirement for a water company to take on ownership of ('adopt'), and where appropriate pay for, any water infrastructure that an SLO provides; and
- the operation of the live water supply network, particularly in relation to ensuring public safety and security of supply.

As a result, an SLO always needs to access and use some non-contestable services that only the water company can provide, so that it can provide its own contestable services. Therefore, SLOs are customers of the relevant water company for a range of non-contestable services.

As a minimum, these non-contestable services include:

- applying for and agreeing a self-lay agreement with the water company;
- gaining approval of infrastructure designs, so that they meet required quality standards; and
- adopting the infrastructure that the SLO provides, including paying the SLO and/or developer an asset value payment² where relevant.

Providing new water connections is one of a few areas where customers in England and Wales can choose their service provider

2. When a water company adopts a self-laid water main it will make a payment to the SLO or developer reflecting the value of the infrastructure. The legislation requiring this refers to this payment as the 'discounted offset amount' but it is commonly called an 'asset value payment'. The method for calculating this payment is set out in the Water Industry Act 1991. Asset value payments are only made for water mains, not adopted service connections.

SLOs might also need the water company to make the final physical connection to the existing network and/or to provide reinforcement works in the existing network that are needed to provide a water supply to the new development site.

Water companies are also able to provide new connections for developers and have statutory duties to respond to requests for new connections. Because some of the services required in the process are contestable and some are non-contestable, if a developer asks a water company (rather than an SLO) to provide a connection, the water company effectively provides non-contestable services to itself to enable it to provide those contestable services against which it competes with SLOs. So, water companies need to be particularly mindful of competition law compliance risks and management in doing this to ensure fair competition.

When providing non-contestable services to SLOs, water companies need to consider whether the way in which they deliver that non-contestable service is more expensive or difficult for the SLO to access than it would be for the water company's own business operation to access the same service. If it is, this risks creating an unfair market where, by making its offer appear more attractive



(whether intentionally or not), the water company is abusing its monopoly position to harm competition. These are the issues that were at the heart of the [Competition Act 1998 case we opened into Bristol Water](#), and for which we accepted commitments in March 2015.

An open conversation about trust and confidence in self-lay

Through this document we want to have an open conversation with the sector and its customers about trust and confidence in the self-lay provision of new connections and in how water companies deliver the services SLOs need from them (in particular, non-contestable services) to enable the SLO, in turn, to deliver contestable services for their developer customers.

There are a range of issues that could form part of that conversation, but in particular this document focuses on the reasonableness of the requirements (financial, procedural and/or contractual) that water companies place on their SLO customers to assure themselves of the quality of the SLO's work. These requirements are often, but not exclusively, put in place by water companies by means of the terms of the self-lay agreement they enter into with an SLO and/or developer under section 51A of the Water Industry Act 1991 (WIA91).

Such terms are a common area of dispute. Customers can appeal to Ofwat (under section 51B of the WIA91) if they object to the terms a water company offers in a self-lay agreement. So, this is an area in which we want to provide more clarity on our general expectations (as we have for other [common areas of](#)

[dispute](#)). To do this, we want to better understand and create greater transparency (both for our purposes and for customers' understanding) about the reasons why some water companies have these requirements. We also want to better understand the impact such requirements have on water companies, SLOs and developers.

This document sets out our initial views on what we consider to be 'reasonable' terms for water companies to require within self-lay agreements in relation to assurance on an SLO's work. We are using it to:

- seek interested parties' views on our initial position;
- stimulate an open conversation across the sector on this;
- better understand and share what 'good' looks like for service provision to SLOs and why; and
- inform our general expectations on the terms we consider reasonable in relation to assuring an SLO's work.

We hope that these conversations will result in the following.

- **Increased transparency and assurance** around our starting position when considering appeals under section 51B of the WIA91, and the rationale for and legitimacy of terms water companies may require from SLOs and/or developers. We consider appeals on a case-by-case basis in light

We want to have an open conversation about trust and confidence in the self-lay provision of new connections

of the facts that the parties involved present, but our general expectations are our starting point when considering such disputes. We hope that providing clarity on our general expectations will help to improve the dialogue between water companies and SLOs (since both will better understand what we would typically expect) and avoid the need for customers to appeal to us. If customers still feel the need to appeal to us, our general expectations will also help deliver more timely resolutions for them.

- **Stronger and more effective relationships** between water companies and their customers, with:
 - developers and SLOs getting the services they need and being able to better understand why companies make certain requirements of them; and
 - water companies able to better understand how their services and requirements impact on their SLO and developer customers.
- **Greater trust and confidence** in the services that both the SLOs and the water companies provide to enable self-lay provision of new connections. This will play an important role in bringing about a more effective new connections market in all areas.
- **Sharing examples of good practice** in how water companies deliver their non-contestable services. This will challenge the way water companies are



tackling the same issues, driving and enabling those that are underperforming to get better, and encouraging ongoing improvements across the whole sector that will deliver better services for customers.

We will consider any issues we have overlooked before we finalise and publish our expectations. This will provide greater transparency for customers and water companies on our general expectations and our starting position when considering appeals under section 51B of the WIA91. This will help to avoid and resolve disputes between water companies and SLOs. It will also help to improve the dialogue between SLOs and water companies and delivery of their respective services.

Common assurance requirements

We are aware that when an SLO provides new connections (and therefore requires non-contestable services from a water company), there are a number of ways a water company might assure itself about the quality of the SLO's work.

Many of these are required through the terms of the self-lay agreement the water company enters into with the SLO and/or developer. Others may be part of wider processes the SLO must go through as a result of having to work with the local water company to progress their works.

Often, these terms are required on a 'one-size fits all' basis, rather than on the basis of risk

Some examples of such assurance requirements include the following.

- **Ensuring the SLO is suitably qualified** to do the works it is carrying out. This is often done by reference to accreditation under the [Water Industry Registration Scheme \(WIRS\)](#), which is recognised by all water companies and operated by Lloyd's Register on behalf of the sector.
- Contractual requirements for the SLO to comply with **detailed design and construction specifications** in order for its works to be of a sufficient standard.
- **Supervision and inspection visits** (and other potential control points) by

the water company when the SLO is providing the works. Such visits are often at the SLO's cost and/or subject to the water company's scheduling timescales and potential delays.

- Enforceable **contractual obligations for the SLO to remedy any defects** that may arise in its work for a defined period of time after completing the works.
- A water company requiring that it holds a **defects liability retention payment**³ for a period of 12-24 months once the SLO's works are completed. Holding this money means the water company avoids having to pursue these costs from the SLO and/or developer if they are ultimately required during the defect liability period. The value of this payment is often established by reference to the asset value payment the water company will ultimately pay the SLO and/or developer for the self-laid infrastructure, rather than the estimated costs of remedying any potential defects.

This list is not exhaustive, but it demonstrates fairly common terms that water companies require. A few companies require a combination of some or all of the terms set out above, as well as other requirements. Often, these terms are required on a 'one-size fits all' basis to all SLOs and development sites, rather than on the basis of risk, past

3. Typically, when a water company adopts self-laid infrastructure it is subject to a defined 'defects liability period' during which the SLO and/or developer is responsible for rectifying or paying the water company to rectify any defects that appear in the adopted infrastructure. Some water companies require that they hold a sum of money from the SLO / developer to cover the potential costs of such works.

performance, the SLO or site-specific concerns.

All of these requirements may have financial (both costs and cash flow) and/or scheduling risks for the SLO and/or its developer customer. The layering of multiple requirements magnifies those risks for the SLO. Taken together, these requirements can place a disproportionate risk burden on the SLO.

In some circumstances, this could be a key factor in whether an SLO is able to compete fairly in the new connections market, and whether a developer would consider the self-lay option unattractive when compared with the option of using a water company to provide their new connections. Where such requirements are not justifiable, this might be an abuse of the water company's dominant position in providing non-contestable services, and could potentially be in breach of competition law.



Our initial view

Water companies must balance protecting customers with ensuring SLOs can fairly access their services

When we receive individual appeals about the terms a water company has offered in a self-lay agreement, we consider them on a case-by-case basis in light of the facts that the parties to the dispute have presented to us. Our general expectations form our starting position for considering such appeals, but there may sometimes be justifiable grounds for moving away from them depending on the facts of an individual case.

This chapter sets out our initial view about what we consider to be ‘reasonable’

terms and requirements relating to a water company wanting assurance about the quality of an SLO’s work. But we would like to open this up for discussion, so that we can consider all relevant factors before we finalise and publish our general expectations.

Water companies have statutory duties as part of their core regulated businesses to ensure the security and quality of their water supplies. As a result, we acknowledge that they must take appropriate steps when incorporating any new infrastructure into their networks to **satisfy themselves that this infrastructure has been constructed in accordance with their requirements.** They must do this to ensure the new infrastructure does not risk jeopardising the water supplies of existing and new customers.

Providing certain water mains and service pipes is a contestable market

where SLOs can compete with water companies to provide certain services. As is the case when water companies provide water mains and service connections, when SLOs provide services this includes them making sure that what they are providing meets the necessary, specified construction requirements.

So, water companies must balance appropriately their role in protecting existing and new water supply customers with their role in ensuring SLOs can fairly access their non-contestable services.

This means water companies must provide their non-contestable services to SLOs on the same terms as the water company itself can access those services for the purpose of enabling other, contestable services.

We recognise that one way in which a company may choose to do this is through the terms of its self-lay agreement. However, some of the water companies’ requirements currently appear to reflect a lack of trust and confidence in SLOs rather than the actual quality of their work and/or actual risks. This is despite the accreditation arrangements the sector has itself put in place to provide the necessary confidence in SLOs, and the contractual provisions in self-lay agreements where this fails.

Beyond demonstrating being suitably qualified and having contractual requirements to construct to a particular specification and remedy any defects within a defined period, water companies

should **only require additional assurances where they are truly necessary**. They should consider fully whether, how and why any additional requirements are different from those needed when the water company provides the same contestable services. They should consider fully the reasons for and impact of layering such assurances.

The overriding principle water companies should remember as a starting point for their terms is that **suitably qualified SLOs are as able as the water company itself to provide contestable services** and should be trusted to do so, unless there is robust evidence to the contrary. This is particularly true for services a water company outsources to a third party contractor⁴ – by doing this, the water company is demonstrating that it does not necessarily need to provide this service itself directly, and that a third party can provide it under suitable assurance requirements.

We consider suitable qualification and contractual obligations to meet the water company's design and construction standards and to remedy any defects for a liability period should be sufficient assurance for water companies. We consider that any additional assurance terms in self-lay agreements (and the wider processes that relate to them) should be:

- **reflective of the accreditation schemes** which are developed and recognised by the sector and which SLOs incur a cost in seeking accreditation under;

- **transparent and available for all SLO customers** to access and understand the rationale for any requirement(s) and any differences in their application;
- **reflective of and proportionate** to the identifiable costs and/or risks the water company faces. This would allow requirements to be reduced or escalated to reflect any specific concerns a water company may or may not have in relation to a particular SLO and/or development site where there is evidence of this (for example, the requirements could be reduced where an SLO has demonstrated a track record of no problems arising, and escalated where an SLO's previous works have raised compliance issues or defects, or where the complexity of a site's infrastructure poses particular risks); and
- **reasonable** in terms of who holds the balance of risk.

Such an approach should ensure that the terms of self-lay agreements provide sufficient assurance that the infrastructure SLOs provide is safe and fit for purpose while not becoming a barrier to competition in the new connections market. This allows customers to benefit from competition.

The approach also gives water companies scope to put in place additional assurances where they can evidence they are really needed (and thereby incentivise improvements), and likewise to relax requirements where there is sufficient trust and confidence that the SLO's work will not compromise water supply supplies to existing and new customers.

4. Often called a 'term contractor'

We want your thoughts

We are really interested in hearing your views, both on the issues we have set out above and our initial view on our expectations of water companies' assurance requirements.

Have we identified the right areas that are causing difficulties for SLOs accessing water companies' non-contestable services? Are there different or additional ones?

Have we sufficiently captured the concerns water companies are seeking to mitigate through their assurance requirements?

Does our initial view strike the right balance between water companies' wider duties and SLOs right to compete in this market? If not, why not?

Have we missed anything?

Where have you seen the scale and nature of water companies' assurance requirements work well? And what made it work better for both the SLO and the water company?

Please send your comments to us in writing either by post or email to the following address by **13 November 2015**.

Casework – Trust in self-lay consultation
Ofwat
Centre City Tower
7 Hill Street
Birmingham B5 4UA
Email: TrustInSelfLay@ofwat.gsi.gov.uk

We will consider all of the responses we receive to this consultation document. They will inform our final general expectations on the reasonableness of assurance-related terms in self-lay agreements. We plan to publish these expectations on our website by the end of 2015.

We do not intend to publish the individual responses we receive to this document. However, in the spirit of having an open and transparent conversation with the sector on these issues, we will publish a summary of the responses we receive so that both water companies and their customers have sight of the issues interested parties raise with us.



Ofwat (The Water Services Regulation Authority) is a non-ministerial government department. We regulate the water sector in England and Wales. Our vision is to be a leading economic regulator, trusted and respected, challenging ourselves and others to build trust and confidence in water.



Ofwat
Centre City Tower
7 Hill Street
Birmingham B5 4UA

Phone: 0121 644 7500
Fax: 0121 644 7533
Website: www.ofwat.gov.uk
Email: mailbox@ofwat.gsi.gov.uk

Photos © Department for Work and Pensions, Haloocyn, JMOConnor, Transport for London, United Utilities, Wagg66

Printed on 75% minimum de-inked post-consumer waste paper.
September 2015

ISBN 978-1-910739-16-7

© Crown copyright 2015

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3 or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information, you will need to obtain permission from the copyright holders concerned.

This document is also available from our website at www.ofwat.gov.uk.

Any enquiries regarding this publication should be sent to us at mailbox@ofwat.gsi.gov.uk.