

26 April 2016

Trust in water

Trust and confidence: self-lay provision of new connections – summary of consultation responses

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About this document

This document summarises the responses we received to our consultation '[Trust and confidence: self-lay provision of new connections](#)' which we published on 28 September 2015.

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1. Introduction

On 28 September 2015 we published a consultation document '[Trust and confidence: self-lay provision of new connections](#)'. Providing new water connections is currently one of only a few areas of the sector where customers¹ in England and Wales can choose their service provider. In this market, suitably qualified self-lay organisations (SLOs) are able to compete with water companies to provide certain services. This enables developers to choose a service provider that best suits their needs and can act as a driver for more customer-focused, efficient and innovative services.

To be able to operate SLOs are reliant on water companies. This is because there are some parts of the connections process that only the local appointed water company can provide due to their statutory (legal) duties and responsibilities (as set out in the legislation and the water company's licence). One such service that only the local water company can provide is its legal requirement to take on ownership of ('adopt') self-laid infrastructure.

The purpose of our consultation was to seek views on the reasonableness of the requirements that water companies place on SLOs, via self-lay agreements², to assure themselves of the quality of the SLO's work before they take on ownership of that infrastructure.

We currently have powers under section 51B of the Water Industry Act 1991 ('the Act') to determine an appeal made to us about the terms of a self-lay agreement. Agreement terms relating to assurance requirements is a common area of dispute. We believe that publishing our general expectations on assurance terms will enable SLOs and water companies to better understand our starting position when considering appeals that come to us under section 51B of the Act. In other areas that we have taken this approach it has helped to reduce the number of disputes arising and where they do arise has helped to resolve them more quickly.

The Water Act 2014 makes changes to the Water Industry Act 1991 that will allow us to set rules about charges for new connections. We expect these rules to be in place by autumn 2016 in order for the new charges to take effect from the 2017-18

¹ A customer might be an end user of water services of a developer

² Entered into under section 51A of the Water Industry Act 1991

charging year. The Water Act 2014 also makes provision to require us to issue a code in respect of self-lay agreements entered into under section 51A of the Act, which may, amongst other things make provision about the terms and conditions of a section 51A agreement. Government has not yet provided a commencement date for that bringing that provision into effect.

Our consultation document set out our initial view on what assurance requirements we considered would be reasonable for a water company to include in the terms of a self-lay agreement entered into under the current provisions of the Act. We sought interested parties' views on this initial position, in particular to understand whether it strikes the right balance in terms of enabling SLOs to fairly compete in the new connections market, whilst enabling water companies to satisfy their duties to provide safe and secure water supplies to customers.

We recognise that assurance terms are just one part of a wider conversation the sector is having with its customers to ensure they have trust and confidence in the services that water companies provide to them. Our consultation therefore also asked for views on whether we had correctly identified the areas causing difficulty for SLOs when SLOs access services from water companies. By identifying further areas of concern, we hoped that our consultation would help to inform the on-going dialogue water companies are having to drive improvements in service.

Our consultation closed on 13 November 2015 and we received 26 consultation responses, including:

- 17 responses from water companies;
- 5 responses from SLOs;
- 3 responses from customer representative bodies within the sector; and
- 1 response from a consultant working in the sector.

In chapter 2 below we summarise the key themes raised in the consultation responses. These are further detailed in Appendix A. In parallel with this document, which summarises the responses we received to our consultation, we have published: an Information Notice confirming our general expectations on assurance terms in self-lay agreements; and a document outlining next steps in relation to the other issues raised by respondents to the consultation.

2. Summary of consultation responses

Our consultation sought views on:

- whether we had identified the right areas of concern for SLOs and water companies; and
- our initial position on what we would expect to be “reasonable” assurance terms for water companies to require in self-lay agreements entered into under section 51A of the Act.

Specifically we asked interested parties the following.

- 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?

In the following sections we summarise the key points raised in the consultation responses we received.

2.1 Areas causing difficulties for SLOs accessing water companies’ non-contestable services

Respondents broadly agreed with the areas of difficulty we had identified in the consultation document. Some respondents felt that the areas identified were fairly high level and could benefit from being detailed further. A number of the responses built further on the areas we had identified. In doing so, their comments and concerns particularly focused on the following.

- **Trust** – Several respondents expressed their view that water companies appear to distrust SLOs, with one water company expressing the view that there is a level of distrust from SLOs that water companies are not providing a fair and open service to developers and SLOs. One respondent stated that it is unclear to

them why this is the case, and noted that it can sometimes feel as if the water company wants to do everything in its power to make it difficult for an SLO to do work. Another respondent noted that distrust is more often demonstrated at an operational level, where water companies or their representatives are interfacing with SLOs on site, for example during connection or metering activities.

Several water companies noted that building greater trust and confidence between an SLO and a water company relies on developing strong working relationships and closer, two-way dialogue at all stages of the process to allow a shared understanding of, and confidence in, what is required. It was noted by one respondent that such conversations need transparency on both sides. One water company noted that having a fair and open market providing customers with choice for new connections services gives water companies a great insight into how good their own service is compared with the services others provide.

- **The suitability of the Water Industry Registration Scheme ('WIRS') accreditation** – Some respondents noted that the qualifications and competencies water companies require of SLOs under the WIRS accreditation are often different, or less, than what water companies require of the term contractors they take on to deliver works on their behalf³. Two respondents noted that water companies require SLO staff to hold qualifications under the Network Construction Operations Scheme ('NCO'), but do not require the same of their term contractors. Some respondents expressed their view that there needs to be a level-playing field, with the same minimum competency requirements applying to both SLOs and term contractors. One water company noted that alongside WIRS accreditation, it also requires SLOs to have the appropriate level of insurance and public liability to be in place for the work they are undertaking.

One water company noted that the WIRS approach works well in terms of providing clearer accountability; setting expectations; and monitoring SLO and water company performance, workmanship and quality of information provided. Another water company noted that it trusts the WIRS process to manage and control any issues that may arise. A number of water companies noted their view that whilst the WIRS scheme was fit for purpose when it was originally established, it may now need revisiting and strengthening. One respondent stated their view that the WIRS scheme has lost the confidence of some water

³ Many water companies out-source the delivery of new connections activities to third party contractors. These are often called "term contractors"

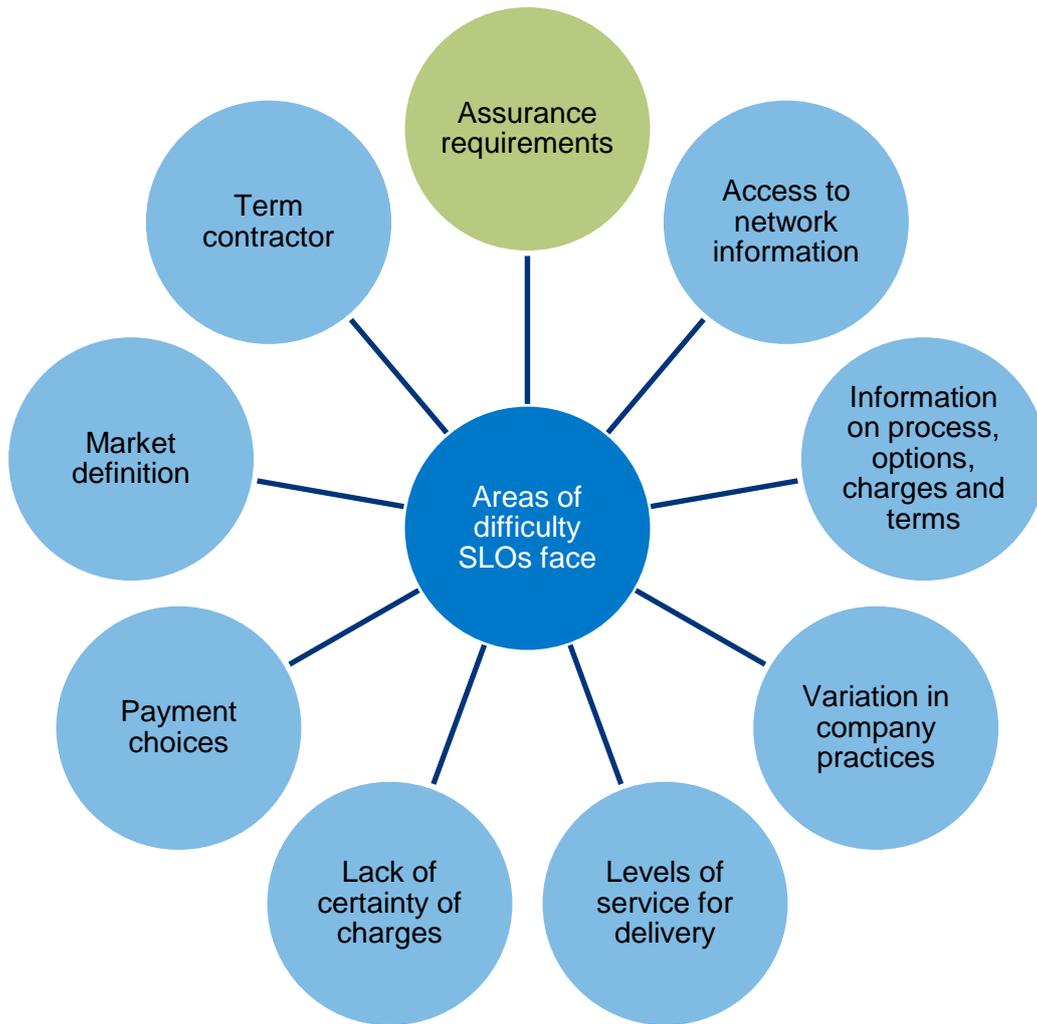
companies, who have concerns about the robustness of the process and audits, and may need reviewing. Another respondent noted that the WIRS accreditation process can be ineffective if an SLO repeatedly underperforms, since any SLO losing its accreditation can easily reemerge under a different name. One respondent proposed that there may be scope for the WIRS scheme to enable better information sharing between water companies to allow greater visibility and trust and confidence around different SLOs / work gangs' performance.

- **Control points** – some respondents highlighted that SLOs can face delays and additional costs if a water company requires “control points” within its processes, in order to assure itself about self-laid works, but then does not itself meet its own timescales following notification by the SLO. It was suggested that SLOs should be able to proceed when the required notice periods for such control points have elapsed, rather than having to wait further on the water company.

One water company noted that if SLOs are suitably qualified, supervision and controls during the design and construction stages of the works should not be unnecessarily onerous. Another water company stated that it is not unrealistic that a competent SLO could self-manage the whole process, including any required audits and that suitable technology already exists that would enable this and provide water companies with the required confidence that infrastructure has been laid in accordance with requirements, e.g. GPS and date-stamped photos. Likewise two respondents noted that SLOs should be able to self-approve non-complex developments, as is sometimes possible for water companies' term contractors.

Our consultation was specifically focused on the difficulties SLOs face as a result of water companies' assurance requirements. Beyond assurance requirements, a number of respondents (in particular SLOs and customer representative bodies) noted that there are other potential difficulties that SLOs face in accessing water companies' services. The key areas identified by respondents are shown in figure 1 below and further detailed in Appendix A.

Figure 1: Areas of potential difficulty that SLOs face raised by respondents



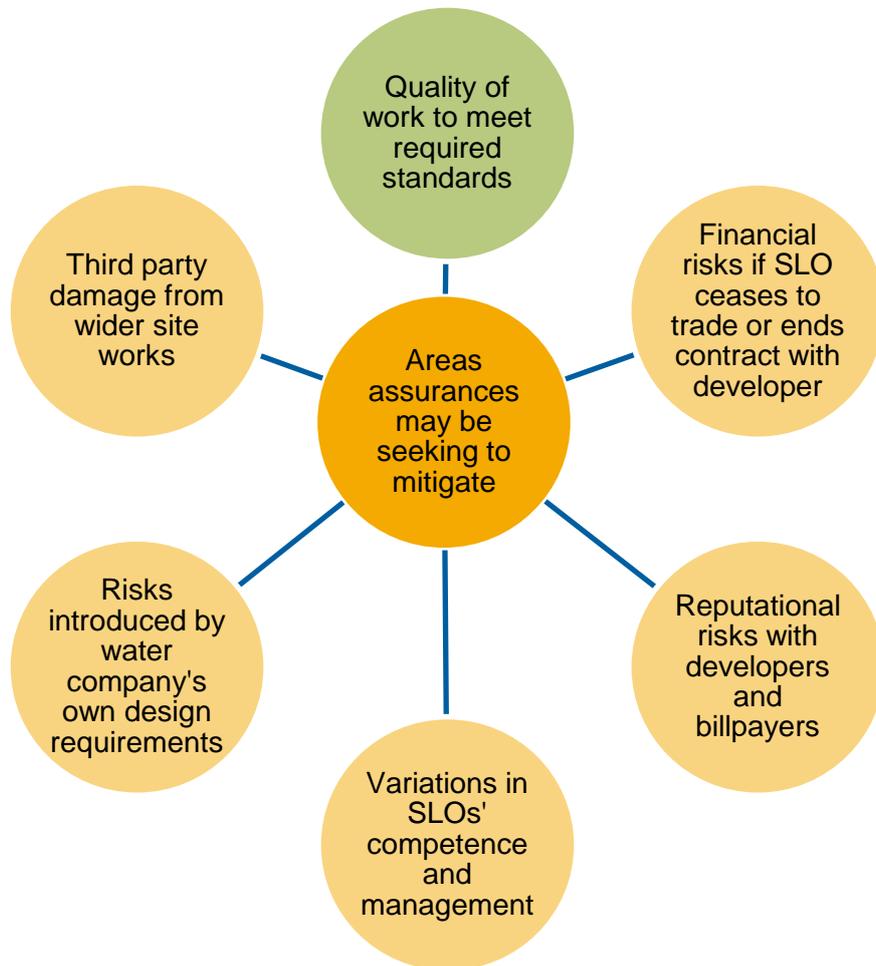
2.2 The concerns water companies are seeking to mitigate

Our consultation document noted that water companies have statutory duties to ensure the security and quality of water supplies to customers. We acknowledged that when adopting infrastructure a water company must satisfy itself that the infrastructure's construction will not jeopardise the water supplies of existing or new customers.

The majority of water companies responding to the consultation stated that the assurance requirements water companies require are intended to ensure the quality of the self-laid works they will be adopting. Some of the responses explicitly agreed that this is to ensure safe and secure water supplies. One water company noted the importance of new mains being laid to an adoptable standard and of SLOs recognising that their responsibility does not end when an asset is adopted because for a defined period they remain responsible for remedying any defects that may arise in their work. Another water company noted that if the quality of self-laid infrastructure is not of an appropriate quality it could ultimately expose the relevant water company to legal or regulatory action if a problem arises.

Beyond providing assurance about the quality of an SLO's work, respondents to the consultation (both water companies and others) identified a number of other concerns water companies are, or are perceived to be, seeking to mitigate through the assurance requirements they require. These are shown in figure 2 below and further detailed in Annex A.

Figure 2: Concerns that water companies may be seeking to mitigate



2.3 Whether our initial view strikes the right balance

Our consultation document set out our initial view about what we consider to be “reasonable” terms and requirements for a water company to seek in order to assure itself about the quality of an SLO’s work. This initial view is summarised in the boxes below.

It is reasonable for the terms of a self-lay agreement to require an SLO to:

- Demonstrate it is suitably competent to provide the proposed self-laid works, for example by means of WIRS accreditation
- Be subject to contractual obligations to meet the water company’s design and construction standards when providing the self-laid works
- Be subject to contractual obligations to remedy any defects arising with the self-laid works within a defined liability period

Any additional assurance requirements terms beyond these terms should be:

- Reflective of the accreditation schemes that are developed and recognised by the sector
- Transparent and available for all SLOs to access and understand the rationale for, including the reasons for any differences in their application
- Reflective of and proportionate to identifiable costs and/or risks the water company faces
- Reasonable in terms of who holds the balance of risk

The majority of respondents to the consultation agreed that our initial view struck the right balance between enabling SLOs to compete in the new connections market, whilst providing water companies with sufficient assurances to fulfill their wider statutory duties, including to protect the water supplies of existing and new customers. One respondent welcomed that our proposed approach was not prescriptive but rather set out sensible broad principles that any mature customer-focused business would support.

In contrast some respondents stated their view that our initial position did not provide enough detail, in particular in terms of providing a standard framework to help water companies to take into account specific considerations for individual SLOs, or how our expectations would be enforced if water companies failed to follow them.

One water company expressed concerns regarding our suggestion that terms could be risk-based rather than standard for all SLOs. It stated that offering different terms to different SLOs based on subjective criteria is more likely to lead to competition law

challenges than applying reasonable, standard terms. It stressed however that the reasonableness of those standard terms is key. Another respondent noted that requiring additional assurances from SLOs that have had poor compliance runs the risk of being considered unfair treatment.

One water company expressed its view that our initial view did not give sufficient emphasis to the need for supervision and inspection. It noted that the quality of workmanship is only as good as the operatives working on a section of pipework at any one time, and that therefore, in addition to formal assurances from the SLO, there is a need for a degree of on-going supervision and inspection to ensure the quality of work is being maintained. Several other water companies noted the need to be able to undertake some degree of supervision and/or inspection for assurance on the workmanship of installations on site.

In responding to our consultation a number of water companies highlighted elements of our initial view that they are already implementing on a day-to-day basis when working with SLOs. Examples included some water companies:

- considering **WIRS accreditation** to be sufficient for the purposes of demonstrating that an SLO is suitably competent, and therefore not requiring anything further from an SLO to demonstrate its competency unless there have been specific issues with a particular SLO regarding its actual (rather than perceived) quality of work, as confirmed by a Lloyds Register audit. One water company noted that it has signed up to WIRS to streamline this process and did not want to add further administrative work for themselves or SLOs;
- applying the **same expectations for the quality of work to both SLOs and their term contractors**;
- **not requiring the SLO to deposit a defects liability retention payment with the water company for the defects liability period**, with the water company considering the self-lay agreement to provide sufficient assurance that liabilities arising during the defect period will be the responsibility of the SLO or developer to rectify;
- **no longer insisting on supervision and audit inspections**, and any associated costs, as part of scheme delivery, albeit retaining the right to inspect any ongoing installation on an ad-hoc basis on the same basis as any scheme delivered by the water company itself through its term contractor;

- taking a **risk-based approach to site inspections**, with inspections (and resulting charges for inspections) proportional to the level of competence observed in the early stages of construction; and
- **removing the requirement for SLOs to notify** the water company prior to any service connection taking place.

Likewise a number of responses highlighted that they have experienced assurance requirements working well for both SLOs and water companies. Examples identified included some water companies:

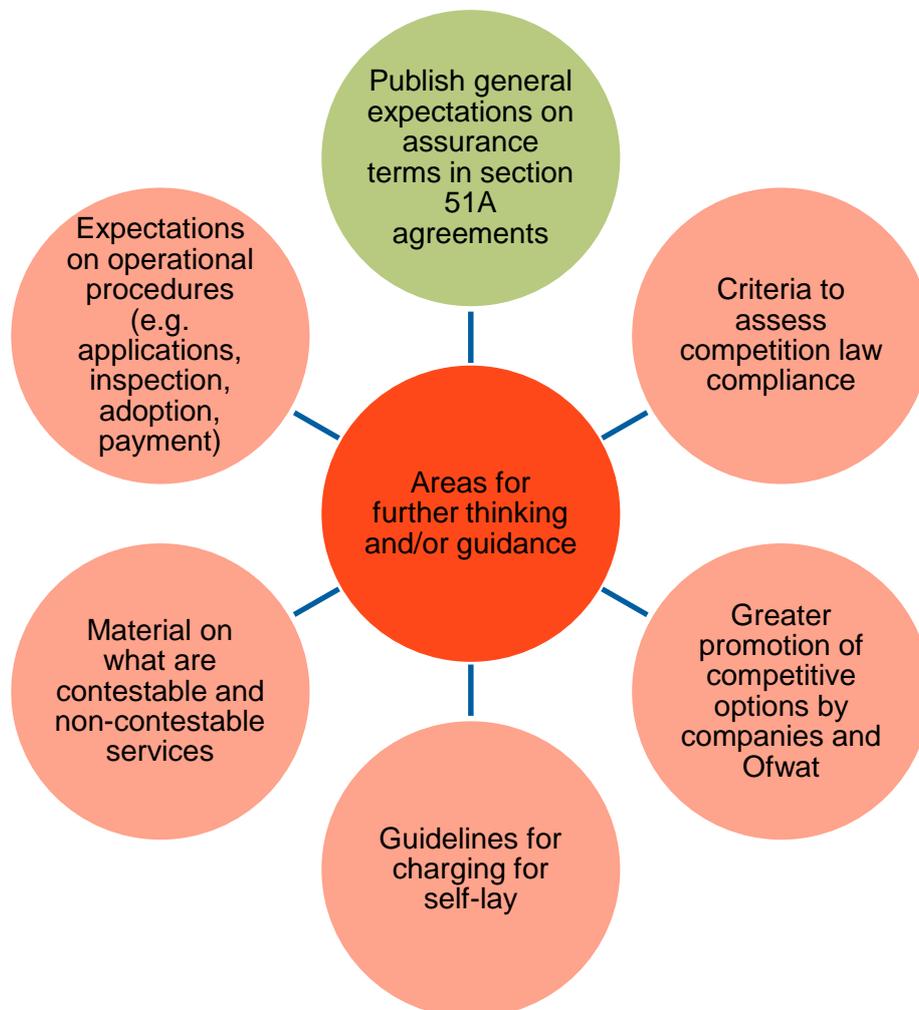
- building good working relationships with SLOs such that the SLO is able to proceed with works with the water company's confidence;
- developing payment choices and systems that avoid payment hold-ups and remove potential financial burdens on SLOs;
- positively engaging with SLOs and developers to understand and address difficulties where they arise and to ensure simple and timely information sharing; and
- taking a balanced view on their levels of risk exposure as a result of self-laid works.

As explained in our consultation and in the introduction to this document, our consultation was specifically intended to inform our consideration of appeals to us under section 51B of the Act, about the terms that a water company is seeking in a self-lay agreement entered into under section 51A of the Act. The consultation responses raised a number of concerns and suggestions beyond assurance terms. Whilst these cannot be used to inform our expectations of terms under section 51B of the Act, they are nonetheless valuable contributions to the wider conversations the sector is having to identify and address areas of concern, so that customers have trust and confidence in the services that water companies provide. One respondent highlighted that the water sector is a considerable way behind the electricity sector in ensuring a level playing field for competition in new connections, and in particular commended steps Ofgem has taken to instigate changes in electricity network operators' procedures, process, levels of service, transparency and attitude in order to enable more effective competition⁴. Beyond publishing our finalised general expectations on assurance terms within section 51A agreements, key areas where

⁴ Further details of recent developments in competition in connection in the electricity sector can be found at: <https://www.ofgem.gov.uk/electricity/distribution-networks/connections-and-competition/competition-connections>

respondents felt further thinking and/or guidance would be helpful are set out in figure 3 below.

Figure 3: Areas respondents felt need further thinking and/or guidance



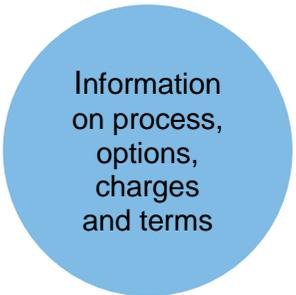
3. Next steps

As outlined in our consultation document, the sector has been progressing a range of work to improve trust and confidence in the services water companies provide to developers and SLOs. Our consultation was another step in that journey and there remains more to do.

This document summarises the responses we had to our consultation. We received very useful comments from interested parties which have helped us to finalise our general expectations on assurance terms. In parallel with this document we have published two Information Notices, one confirming our general expectations on assurance terms in self-lay agreements, and a second outlining next steps in relation to the other issues raised by respondents to the consultation.

Appendix A: Detailed summary of consultation responses

Table 1: Areas of potential difficulty that SLOs face raised by respondents

 <p>Access to network information</p>	<p>Respondents expressed concerns that there is a risk that water companies and their term contractor could have preferential access to information about the existing network (for example information on available capacity or points of connection) and/or restrict or delay SLOs' access to such information, resulting in the term contractor having a competitive advantage over SLOs when tendering for work. One respondent stated that it considered this to be exclusionary behaviour.</p>
 <p>Information on process, options, charges and terms</p>	<p>A number of respondents raised concerns about finding and understanding information on water companies' services. In particular respondents highlighted that some water companies:</p> <ul style="list-style-type: none"> • do not make clear where customers have a choice in provider, with few water companies actively encouraging self-lay activity in their area; • are reluctant to provide information on how they have calculated charges and asset values for SLOs; • do not have clear and transparent terms for their agreements, resulting in uncertainty for SLOs; and • have unclear and/or onerous processes that are difficult to understand and navigate; can cause delays and higher costs for SLOs; and can interfere with the SLO's own work processes. <p>One water company respondent noted that they actively monitor their processes to ensure there is fair and equivalent access to the information and services needed to participate in the new connections market.</p>

 <p>Variation in company practices</p>	<p>One respondent noted the difficulty SLOs and developers face in trying to navigate significantly different practices between different water companies, despite the similarities of the actual activities that have to take place. Three water companies highlighted the value of standardising self-lay guidance and documentation across the sector, in particular they noted this would be useful in terms of what services are contestable; levels of service; provision of information; a new framework self-lay agreement; notice documents; and defects liability periods. One SLO respondent noted that some water companies' processes are a lot more advanced than others and hence produce a more competitive market for developers. Another respondent expressed the view that some water companies appear to think that because they have limited demand for self-lay provision there is no need for them to develop self-lay processes.</p>
 <p>Levels of service for delivery</p>	<p>Some SLO respondents said they had experiences of being unable to rely on the timely provision of services by some water companies, resulting in delays, additional costs, reputational damage and/or cash flow issues for the SLO's own services. It was noted that delivery guarantees for services would be helpful and that levels of service should be the same as those provided if a water company were to provide the service, so that an SLO can compete equally on delivery throughout the process. One respondent noted that it would be helpful if more details could be revealed about water companies' performance against the levels of service reported by Water UK. The respondent stated that their own experiences did not match the performance being reported by water companies and expressed the view that there would be improvements in performance if a water company had to pay a financial penalty when it failed a level of service. One respondent noted that areas with a high level of self-lay activity, have also seen a proportionate improvement in the provision of services by the water company itself.</p> <p>In particular, responses from SLOs and customer representatives highlighted that timely levels of service could be an issue when waiting for a water company to:</p>

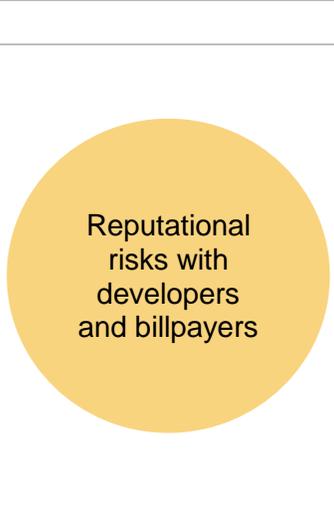
	<ul style="list-style-type: none"> • issue self-lay agreement terms; • provide metering equipment; • obtain final inspection and approval of the self-laid works; • make the final physical connection of the self-laid assets to the water company’s existing network; and/or • process the payment of asset value payments following the adoption of self-laid assets. <p>A number of water company responses highlighted issues that can affect their ability to deliver a quality service to SLOs. These included:</p> <ul style="list-style-type: none"> • Poor communications between the SLO and its developer customer, resulting in potential confusion and additional works if the developer separately contacts the water company to request information and/or works. • Last minute requests for works (e.g. site visits or connections) outside of the agreed notification periods, which can result in knock-on delays for SLOs and/or developers, and/or reputational damage and inefficient scheduling of works for the water company.
 <p>Lack of certainty of charges</p>	<p>One respondent stated that water companies should not be able to revisit and change their charges for non-contestable works and the proposed asset value once the self-lay agreement has been agreed and signed by all parties. The respondent stated that the charges for non-contestable works need to be fixed when the water company issues details of them to the SLO or from the design approval stage.</p>

 <p>Payment choices</p>	<p>One respondent stated that it is important that water companies’ payment choices do not create a barrier to SLOs competing to provide services. One respondent stated that developers should be able to choose which of the charges arising from a development site (including for example infrastructure charges and water charges incurred during the development of the site) they pay directly to the water company and which the SLO pays. A further respondent expressed the view that SLOs should not be restricted by having to take on a greater financial burden when accessing services than the water company; they noted that this can be a particular issue for larger, phased development sites which may or may not create multiple adoption / payment / warranty points triggering a payment. They also noted that cash flow can often be largely in the favour of the water company (creating difficulties for an SLO) when infrastructure charges are included alongside other charges and payment (i.e. automatically offset against asset payments).</p>
 <p>Market definition</p>	<p>Some respondents made comments about which services are considered to be “contestable” and which “non-contestable”. Key comments included that:</p> <ul style="list-style-type: none"> • Non-contestable services should be restricted to approval tasks and any work on existing systems which has a demonstrable risk that justifies requiring it to be done directly by the water company. • Water companies should have to provide a full justification for restricting SLOs from doing any “contestable” works, against a narrow definition of what is considered “non-contestable” work. • Design services are often an area where companies push back on SLOs providing the service, rather than providing the means by which SLOs could deliver the service to the water company’s satisfaction (e.g. publishing the water company’s required design standards). • The taking of water samples from new mains might be a service that should be contestable, subject to appropriate competencies in the accreditation process. • What is considered to be contestable needs to recognise where legal responsibility lies when things go wrong and the scale of the risk(s) involved (particularly for existing customers). The respondent noted that a possible solution might be classifying services according to the expertise required and the level of risk should things go wrong.

	<ul style="list-style-type: none"> • There is scope to consider whether making connections to the existing network should be more contestable, with one water company noting that it is currently trialing this with a small number of self-laid connections on a risk-based basis. The response notes that expansion of this would require an SLO to have the appropriate level of insurance to reflect the risk of the work it is undertaking. • One water company considered the installation of smart water meters and associated wireless technology to be a non-contestable service because it forms part of a specific, specialist programme being rolled out by the company.
 <p>Term contractor</p>	<p>A number of respondents expressed concerns about potential barriers SLOs might face when accessing services as a result of a water company’s decision to outsource its services to a term contractor. Comments included that:</p> <ul style="list-style-type: none"> • Barriers to accessing services can arise from SLOs having to coordinate with term contractors regarding the provision of non-contestable services; • Non-contestable services might be offered at preferential rates to term contractors compared to the rates offered to SLOs and there is a need to ensure charges are applied equally for the same services; • Applications for the water company to provide services (via their term contractor) might be processed quicker than those for SLOs; and • It is not always clear that the same or similar processes are being applied to the water company’s term contractor as those required of SLOs. • Comparisons between SLOs and a water company’s term contractor do not necessarily provide direct correlation. <p>A number of water companies noted that their auditing of SLOs’ work mirrors the approach taken with their term contractors.</p>

<p>Two water companies noted that a water company's contractual relationship with its term contractor is usually longer term and more rigorous than that in place with an SLO under a self-lay agreement. They highlighted that this provides the water company with greater scope for addressing poor performance, for example by removing particular work gangs from future work; refusing payment until any concerns are rectified; or not granting the term contractor any further work. It considered a self-lay agreement did not provide a water company with the same scope to immediately address performance concerns with an SLO, albeit it recognised that it could report any issues regarding an SLO's work to Lloyd's Register. One water company also noted the additional assurances it is able to require from its term contractor, for example requiring performance bonds or parent company guarantees.</p>

Table 2: Concerns that water companies may be seeking to mitigate through assurance requirements

 <p>Financial risks if SLO ceases to trade or ends contract with developer</p>	<p>One respondent noted that a water company can be exposed to financial risks (for outstanding payments and/or the costs of remedying defects) when an SLO and/or a developer ceases to trade, or if the contractual arrangements between the SLO and developer break down ahead of intended payments being made to the water company. One water company response alleged that an SLO it has worked with, immediately closes its business when it has completed work to avoid resulting liabilities and then re-establishes itself under a different name.</p>
 <p>Reputational risks with developers and billpayers</p>	<p>One respondent noted that where customer issues subsequently arise from poor quality infrastructure this can pose reputational risks for the adopting water company. In particular a number of water companies noted that they have experienced difficulties as a result of SLOs providing them with incomplete or inaccurate information about self-laid infrastructure (such as as-laid drawings, plot-to-postal information, meter details and service connection notifications) that cause them subsequent operational problems and reputational damage when setting up accounts for and supplying customers. One water company noted that whilst in principle SLOs may be as able as the water company itself in providing contestable services, they are subject to different drivers and incentives that could foster different behaviours. It noted that a key difference is that water companies have a relationship with the end customer receiving supplies via the new infrastructure, whereas the SLO moves on to its next job and does not have continuing obligations to the end customer.</p>

 <p>Variations in SLOs' competence and management</p>	<p>One water company highlighted that whilst there are some highly competent SLOs, not all have the same level of competence and some are better managed than others. It noted its view that it is unfair for those SLOs that operate in compliance with requirements to be disadvantaged in the market because some SLOs do not respect their obligations and/or take short cuts resulting in quality issues. One response noted that some SLOs could do more to ensure that their own quality control processes are robust so that infrastructure is presented for adoption with minimal defects.</p>
 <p>Risks introduced by company's design requirements</p>	<p>One respondent expressed the view that some water companies' own design specifications can introduce risk to assets installed by SLOs, for example, placing meters in public footpaths rather than within properties, or requiring water mains to be installed in streets as defined by the New Roads and Street Works Act rather than in areas that are intended to be adopted by a local authority.</p>
 <p>Third party damage from wider site works</p>	<p>Two respondents highlighted the risks water companies can face as a result of third party damage to self-laid infrastructure as wider construction works on the development site are completed. One respondent noted that in some cases a water company will require an SLO and/or the developer to be responsible for protecting self-laid infrastructure until the site's highways works are completed, therefore being liable for any damage incurred. They consider that such a requirement is not usually included in the terms for requisition agreements, despite the likelihood of damage being the same.</p>