

31 October 2016

Casework – Adoption Codes Discussion
Ofwat
Centre City Tower
7 Hill Street
Birmingham
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By E mail to AdoptionCodes@ofwat.gsi.gov.uk

Dear Sir/Madam

Agreements for water and sewerage companies to adopt infrastructure consultation.

Thank you for consulting Northumbrian Water on the above.

We welcome the opportunity to provide comments at this early stage of Ofwat's consideration of future codes relating to water and sewerage infrastructure adoption. This is an area which for a variety of reasons does not currently work as well as it could or indeed was intended. As you would imagine we are in regular dialogue customers and have developed a good understanding of the shortfalls in the current arrangements and some of the challenges they encounter. In making our responses we will endeavour to provide a view that supports efficient delivery of water and sewerage adoption but balance that by recognising those developer challenges.

In response to the individual questions within the consultation we would comment as follows:

Q1. Which parts of the procedures for making an adoption agreement under section 51A or section 104 WIA91 should be included in the code(s)? These might include or differ from those set out above. For each, please explain why and what benefit its inclusion in the code(s) could deliver.

We agree with the areas you have identified for inclusion within the code(s).

Our experience of working with developers indicates that where we work most effectively is where each party has certainty of what each is expected to do and at which stage in the process. Having procedures for adoption built into the codes would create an opportunity set out these expectations where they do not currently exist, or to use less legalistic language than within the current Act.

Q2. Which parts of the procedures for making an adoption agreement under section 51A or section 104 WIA91 should not be, or are unnecessary to be included in the code(s) and why?

None, for reasons set out in Q1 above.

Q3. Should the code(s) set out a common procedure applicable to all water and sewerage companies, or should it set out key principles that companies' own processes and procedures should comply with? Why?

We believe that setting out key principles will create an environment which will allow greater opportunities to explore more innovative and streamlined processes with our developer customers. However, the successful and timely completion of sewer adoption agreements in particular is outside of the direct control of a Sewerage Undertaker. The introduction of the Developers' Charter in 2015 placed level of service requirements upon Sewerage Undertakers to provide a draft legal agreement to a developer with 14 days and certainly this is an area where we have made significant improvements. However, this has done nothing to improve the successful completion of legal agreements.

In preparing our response to this consultation we carried out analysis of the sewer adoption, diversion and abandonment applications we completed during the period 1st April 2015 to 31 March 2016.

During that period we issued 146 draft legal agreements for sewer adoption and only 31 have been subsequently signed. In the same period we issued 15 sewer abandonment agreements of which only 3 were signed and 51 sewer diversion agreements of which 19 are now signed.

The agreements themselves have been in common use for many years and we rarely receive requests to vary the terms so we have sought to identify and understand the reasons for delay.

Some developers report that it is purely down to their own workload priorities and that in the absence of the requirement for a legal agreement to be in place prior to a connection being permitted, as would have existed if Section 42 of the Flood and Water Management Act 2010 had been enacted, then there is no urgency to complete the agreement.

Other developers have indicated that they are limited by the number and scale of bonds of surety and prefer to have the sewers on another site adopted before seeking to enter a new agreement requiring a further bond.

The formulation of the code(s) needs to be cognisant of the current under performance in this area and should seek to engage all parties to identify some areas of common ground upon which we could all work. Perhaps this indicates the need for reciprocal Developer's Charter Levels of Service performance metrics for certain key developer activities, such as the completion of draft legal agreements.

Q4. If the code(s) were to include details of the procedures to be followed by Ofwat in issuing an order for a water or sewerage company to enter, vary or terminate an adoption agreement, what in particular would it be useful for the code to include?

It would be useful for indicative timescales for the completion of legal agreements to be included and for a target expectation for the completion of actions by each party to drive through the adoption of sewerage systems.

Q5. To what extent would it be helpful for the code(s) to set out details of what type of works it is or is not appropriate to be done by a person other than the water or sewerage company? Are there particular types of work where such clarification would be beneficial?

Until recently the whole area around contestable and non-contestable work has been contentious and a source of disagreement between developers, water companies and SLOs. However, there has been great progress in recent months in the form of a self lay review group under the co- chairmanship of Steve Betteridge and Martyn Speight. There would appear to be far greater confidence than ever before, that a single unified document, acceptable to all parties will be adopted as the industry standard.

We believe that it is likely that the final outputs of this document should form the basis of what should or should not be appropriate for inclusion within the code(s) as there should be broad agreement from all parties.

Q6. Are there certain terms or conditions that should be mandatory for all water and/or sewerage adoption agreements? Please outline which and why.

One of the frustrations water companies and our customers face is the open-endedness of the sewer adoption process with the onus on the developer to complete the construction and remedial works.

Often a developers' engineering team is more focussed on gaining technical approvals for new sites which form part of housing numbers for this financial year, than completing the remedial works for a development site completed some years ago. This is to an extent understandable given the necessity to recover losses from the financial crash from 2008 onwards. It is however, no comfort to our customers who live on sites without adopted sewers and surfaced roads years after the development is substantially complete.

The option to call in bonds of surety exists but is not something we would wish to do to one of our developer customers, nor indeed is the sum likely to cover the scale of remedial. Surety providers also seek certainty that the developer is refusing outright to complete the works, which of course they are not.

We believe that the terms and conditions should impose greater onus on both parties to drive the final adoption of sewerage systems collaboratively, without recourse to bonds of surety.

Q7. Are there particular areas in which it would be unnecessary or unhelpful for the codes to set out mandatory terms and conditions? Please outline which and why.

None identified

Q8. Are there certain areas where it would be useful to have standard terms and conditions for adoption agreements, even if they were not mandatory? Please outline which and why.

See response to Q6.

Q9. Are there particular areas in which it would be unnecessary or unhelpful for the codes to set out standard terms and conditions? Please outline which and why.

None identified

Q10. Are there circumstances in which the code(s) should make different provision for different persons? If so, please outline in what circumstances and why.

Perhaps one area to explore with developer customers is the issue of surety bonds and how the comparative scales of risk posed by differing developer groups can be recognised. Certainly the levels of risk associated with the small one-off builders, SMEs and large national builders is very different but our ability to treat these developer groups differently would have to be quantified and justified.

The presence of the 10% bond figure currently within Sewers for Adoption, if anything, creates a blockage to companies considering the introduction of alternative surety arrangements.

The code should encourage companies to introduce new surety arrangements which encourage and incentivise the completion of developer activity which allows the smooth and timely adoption of sewers.

We trust this information will assist you in gaining a better understanding of the opportunities and challenges which exist that may be addressed through the new code(s) and we remain available and committed to supporting you through this process.

Yours sincerely



Les Hall
New Development Manager