

30 March 2017

Trust in water

**Consultation under section 8 of the Water Industry Act 1991 on the proposal to terminate Cholderton and District Water Company's licence and to change the area to which Wessex Water Services' licence relates**

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## About this document

Cholderton and District Water Company Limited (Cholderton) wishes to become a private water supplier because, as a very small company, it may not be able to meet the demands, costs and obligations of the regulatory framework in the future. The proposal to become a private water supplier has consequences for its current and future customers. Customers would lose their statutory protections such as the limits on prices, the ban on disconnections and the Guaranteed Standards Scheme. Cholderton proposes to adopt most of the current protections if it became a private water supplier but the Water Services Regulation Authority (Ofwat) could not enforce these because it has no powers to regulate private water suppliers.

All areas of England & Wales need to be covered by a statutory water undertaker<sup>1</sup>. For Cholderton to become a private water supplier, its licence would need to be terminated and another company would need to cover its area. Wessex Water Services Limited (Wessex Water) has made an application to vary its licence to cover the area served by Cholderton. Wessex Water would not take over Cholderton's water supply network. Under the proposal, Cholderton would, therefore, continue to supply its current customers through its current network as a private water supplier.

Under Section 7, of the Water Industry Act 1991 ('the WIA91'), Ofwat can, in accordance with a general authorisation given by the Secretary of State, vary the area to which a company's appointment (licence) as a water undertaker relates with the consent of the company concerned. Wessex Water has applied for the proposed variation and Cholderton has agreed to the proposed variation and the consequential termination of its licence. The proposal is made with the support of the boards of both Wessex Water and Cholderton.

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<sup>1</sup> A company, sometimes known as an Appointee, is appointed to be the water undertaker for a particular area and has certain statutory powers and duties to supply water. The appointment is made by an Instrument of Appointment (referred to in this document as a 'licence'). For the remainder of this document, we use the term 'licensed water company' to mean a water undertaker.

Before Ofwat can make an area variation to replace a licensed water company, we must publish a notice stating that we propose to make the variation and the reasons why we propose to do so... This document is that notice and is issued under section 8 of the WIA91.

This document invites comments on the proposals. The document sets out the consequences of the proposed changes as well as the reasons for them. Appendix 1 sets out some frequently asked questions and responses to assist customers in their further consideration of the proposals.

We are particularly concerned to hear from Cholderton's customers to ensure that the change to becoming a private water supplier has been explained to them, its consequences are clear (that they will no longer be entitled to their statutory protections and rights) and that they consider it is the best way forward for the company. We will consider all responses before deciding whether or not to proceed with the proposals

## **Responding to this consultation**

We invite stakeholders to comment on our proposed variation by no later than 28 April 2017. You can email your responses to [financeandgovernance@ofwat.gsi.gov.uk](mailto:financeandgovernance@ofwat.gsi.gov.uk) or post them to:

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We will publish responses to this document on our website at [www.ofwat.gov.uk](http://www.ofwat.gov.uk), unless you indicate that you would like your response to remain unpublished. Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with access to information legislation – primarily the Freedom of Information Act 2000 (FoIA), the Data Protection Act 1998 and the Environmental Information Regulations 2004.

If you would like the information that you provide to be treated as confidential, please be aware that, under the FoIA, there is a statutory 'Code of Practice' which deals, among other things, with obligations of confidence. In view of this, it would be helpful

if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that we can maintain confidentiality in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on Ofwat.

## Background

Cholderton holds a licence under the Water Industry Act 1991 (WIA91) but it is a very small company. It has around 2,000 customers (800 connections) centred around two villages on the Wiltshire/Hampshire border (Cholderton and Shipton Bellinger). It has a turnover of around £170,000 with an average unmeasured bill of £241 and an average measured bill of £177. Its area is covered by Wessex Water or Southern Water Services Limited (Southern Water) for sewerage services (but the only supplier to date of sewerage services in Cholderton's area is Southern Water). Cholderton is a family owned business. Its largest customer is the Cholderton Farm Estate, which is also owned by the family. The water supply network of the farm estate and the water company are wholly integrated.

Cholderton is, by far, the smallest licensed water company governed by the WIA91. Since privatisation of the water sector in 1989, the demands of the regulatory framework have imposed a large burden on Cholderton because of its size. This is only likely to increase. There is significant regulatory change on the horizon, including the opening of the retail market for business customers in April 2017, the requirements and costs of the Water Resource Management plan for Defra and the expectations for Ofwat's next price review in 2019. This is compounded by the lack of corporate depth at the company. The owners have, therefore, had to consider the future of Cholderton as a licensed water company under the statutory WIA91 framework.

Cholderton believe the one viable way forward that would resolve these issues is for the company to relinquish its licence as a water undertaker and to become a private water supplier. This would substantially reduce its regulatory obligations and mean that it was no longer regulated by Ofwat but it would also mean that customers would lose their statutory protections under the WIA91. Cholderton has indicated that it considers the alternative option of acquisition by another licensed water company (therefore maintaining the current regulated position and statutory protections) is not feasible because of the integration of the farm estate with the rest of the regulated network.

All areas of England & Wales need to be covered by a licensed water company. For Cholderton's licence to be terminated, another licensed water company would need to cover its area. Wessex Water has made an application to become the water undertaker for Cholderton's area without taking over Cholderton's network. Cholderton would continue to supply its current customers as a private water supplier.

We are required to consult on the proposals to replace Cholderton as a licence holder. This is particularly important to allow us to gain the views of Cholderton's customers on the proposals. Our decision on whether or not to replace Cholderton would be subject to our section 2 duties, including in particular our consumer objective to protect the interests of customers.

## The changes being proposed

Cholderton wishes to become a private water supplier. This would require us to vary Wessex Water's licence so that it covers the area for which Cholderton is currently the licence holder and, as a consequence, we would terminate the licence of Cholderton.

Cholderton will not transfer its water supply network to Wessex Water and will continue to supply water services to its existing customers but as a private water supplier unregulated by Ofwat. Cholderton's customers will therefore **not transfer** to Wessex Water. The company has assured us that it will remain able to continue to lay pipes, connect new properties etc. through two local Acts of Parliament which are still in force.

The company has stated its intention to:

- ensure that customers are no worse off and retain the same protections they have under the WIA91
- retain the independent Customer Challenge and Action Group (CCAG) it set up to represent and protect customers' interests
- allow the CCAG to set its future price limits (from 2018-19 onwards)
- maintain standards of performance which will be monitored by the CCAG
- retain its existing water quality testing regime which is outsourced to Wessex Water's laboratories

The company has informed us that the Cholderton Estate is in the process of becoming an incorporated trust. If the Cholderton became a private supplier, the owners would seek to have the company transferred to the trust and be run by the

trustees. The owners would seek to preserve the rights of customers within the trust deed when the company is incorporated into the trust, thus placing obligations on the trustees to water customers. The trustees would run the water company for the benefit of all its customers, which will include the estate itself.

## **The views of other parties**

Wessex Water has confirmed that it has agreed with Cholderton that it is willing to change its licence to take over Cholderton's area. It understands that Cholderton will retain its existing network and will continue to provide water services but as a private water supplier. Wessex Water would be the 'supplier of last resort' if Cholderton failed to supply its customers (we explain what this means below in the section 'The continued protection of customers').

The Drinking Water Inspectorate (DWI) who monitor water standards and quality for the drinking water supplied by licensed companies have informed both companies that they would be comfortable in principle with the water quality position if Cholderton was to become a private supplier provided that concerns they have raised are resolved. These issues include confirmation of the sustainability of the current provisions for delivery of wholesome water, and the arrangements for transfer and delivery of the current legal obligations. Water quality for private suppliers is the responsibility of the relevant local authorities rather than the DWI under the WIA91. Cholderton has committed to retaining its existing testing regime which is outsourced to Wessex Water's laboratories.

The chair of the CCAG has written to us to say that the CCAG considers taking the company private is the best option, given the current circumstances and likely future regulatory requirements. It considers that 'reverting to a private supply would significantly reduce the regulatory burden and, with the appropriate safeguards, enable the company to continue to supply drinking water to its customers'. The CCAG comprises its independent chair, customers, local authorities (including the Shipton Bellinger Parish Council) and the Consumer Council for Water (CCWater) (although the latter may not be able to continue as a member if Cholderton become a private supplier).

The CCAG would monitor the company's performance and also formally set its prices (starting from 2018-19). It would use comparisons of prices for water services with a nearby village in Wessex Water's area to set prices.

CCWater is the independent statutory consumer body for water customers in England and Wales. It recognises the future challenges that Cholderton faces but

CCWater's main concern is the continued protection of Cholderton's customers. CCWater, like Ofwat, would lose its statutory powers to protect customers if the company became a private water supplier. In the absence of its preference for Cholderton being taken over by another regulated company, it considers that customer protection would be best maintained by transferring the company to the proposed charitable trust as soon as possible, preferably contemporaneously with the move out of the WIA91 framework.

Defra recognises the considerable burden that the regulatory framework places on Cholderton as a very small company and awaits the outcome of the consultation with interest. A primary concern for Defra is to ensure that customers will be no worse off as a result of Cholderton becoming a private water supplier. Defra therefore welcomes the proposal for a continuing role for the CCAG in protecting the interests of customers.

## **The continued protection of customers**

The proposal to become a private water supplier has consequences for current and future customers. Customers would not be protected by the provisions of the WIA91 that apply to licensed water companies if Cholderton becomes a private water supplier.

Examples of such customer protections are:

- the Guaranteed Standards Scheme, which sets customer service standards and requires water companies to make payments to customers if those service standards are not met,
- the ban on disconnection of supply to households for non-payment of bills,
- the limits on prices. These are set by Ofwat every five years; and
- the obligations on a licensed water company to maintain its network and to provide supplies of water.

Private water supplies are subject to broadly equivalent water quality standards to those that apply to licensed companies. The relevant local councils (Test Valley Borough Council and Wiltshire Council) would become the water quality regulators for Cholderton as a private water supplier. The DWI has a statutory role to act as technical advisors to the relevant local councils in relation to the implementation of the Private Water Supplies Regulations.

Cholderton would no longer be required to produce water resource management plans or drought plans for Defra. It would however continue to be regulated by the Environment Agency as an abstractor of water.

In England, non-household customers would be able to switch their water supplier when the new retail market for water supply and sewerage services opens on 1 April 2017. However once the company becomes a private water supplier, these rights would be lost and non-household customers cannot then switch. Non-household customers provided with sewerage services by Southern Water will still be able to switch their sewerage service to a sewerage licensee within the competitive market.

The key risk is the lack of certainty of future protection for customers. The company has proposes to adopt most of the current statutory safeguards as set out earlier in the document. However, it is important to note that there is no direct sanction or enforcement action that could be taken by Ofwat (or others) if Cholderton did not meet its commitments. We have no powers to regulate private water suppliers.

If these commitments were reflected as part of the proposal to transfer the company to a charitable trust, this is likely to provide some further protection for customers but enforcement of these private rights would require private action (with the associated costs).

There is not currently any statutory process under which private water networks can be adopted by water undertakers. If Cholderton's network suffered a serious failure after it became a private supplier such that its customers needed a supply of water from Wessex Water, then the normal route would be for them to requisition a new water main from Wessex Water to which they could connect. It would be the responsibility of those requisitioning a new water main to pay for the costs of providing that main, unless Wessex Water agreed otherwise.

If this proposal for Cholderton to become a private water supplier does not proceed, it will continue to be a licensed water company (with all the protections that this currently provides customers). However, this also means a continuation of the obligations and burdens of the regulatory framework. As set out earlier in this document, this may well not be feasible for the company even in the short term.

This could mean we may have to take enforcement action against the company if it is unable to comply with its statutory duties or licence conditions. This could, in exceptional circumstances, lead to the appointment of a Special Administrator to run the company. The consequences of this are unknown. A Special Administrator would seek to sell the company and would ensure that customers would continue to receive water supply services until then. But there is no guarantee that new owners could be

found and the costs of the Special Administrator would have to be paid by the company (and its customers).

## **Ofwat's considerations of the proposed changes**

We must make our decisions on whether or not to vary the areas of licenced water companies in accordance with our section 2 duties under the WIA91. This means that we must act in the manner which we consider is best calculated to (amongst other things):

- further the consumer objective to protect the interests of consumers etc. In this context, 'the interests of consumers' means 'the interests of consumers in relation to the supply of water by means of a water undertaker's supply system to premises either by water undertakers or by water supply licensees acting in their capacity as such'; and
- secure that the functions of a water undertaker are properly carried out as respects every area of England and Wales

We would therefore need to satisfy ourselves that the change to becoming a private water supplier has been explained to Cholderton's customers, its consequences are clear to them (essentially to give up their statutory protections and rights) and that they consider it is the best way forward for the company.

We also need to confirm that Cholderton's customers are capable of being supplied by a licensed water company (in this case Wessex Water), albeit on a 'last resort' basis. Wessex Water have confirmed this to us.

After considering Cholderton's proposal and the options presented to us, together with the views from other interested parties including the CCAG, we consider it appropriate to formally propose to make the variation to Wessex Water's licence, and to terminate the licence of Cholderton. We do so because we consider that:

- there are reasonable arguments that it is a more proportionate solution for customers in these exceptional circumstances to enable Cholderton to continue to operate as a small and locally accountable water supplier without being subject to disproportionate regulatory burdens;
- if Wessex Water is asked to provide a supply of water to the area in the future, it (a large and established business) will be able to properly carry out, and finance, the functions of a licensed water company and to provide

sufficient supplies of water. They would, therefore, be the 'supplier of last resort'; and

- the most likely alternative that we can envisage over time is enforcement action and ultimately Special Administration, which would come at a cost to local customers and would likely give rise to considerable uncertainty and disruption

We are encouraged that Cholderton has given sufficient commitments to maintain the existing protections provided in the statutory framework for water customers and to increase the role of the independent CCAG. This would be enhanced if the proposal to transfer the company to a charitable trust could also reflect these commitments as part of that incorporation.

Overall, we recognise that the arguments are finely balanced but given the circumstances, we consider it is appropriate to formally consult on the proposals for the reasons set out above. However, we will not proceed with the proposals unless we are satisfied that:

- the change to a private supply has been explained to Cholderton's customers;
- its consequences (particularly that they will essentially be giving up their existing statutory protections) are clear to them; and
- they consider the changes are the best way forward.

Appendix 1 sets out some frequently asked questions and responses to assist customers in their consideration of the proposals.

## Next steps

Our consultation closes on 28 April 2017. We welcome responses to, and representations, on the proposals, particularly from Cholderton's customers (the process for this is set out at the start of this document). We will consider all responses before deciding whether or not to proceed with the proposed area variation and the termination of Cholderton's licence.

## **What will it mean for me if Cholderton becomes a private water supplier? FAQs for customers**

### **Will there be any change to the water I receive?**

Cholderton's customers will continue to receive water through the same pipes from the same source(s). Cholderton has committed to maintaining supplies in the future and we have no reason to believe that the water supply will be discontinued (see below). However, Ofwat would not be in a position to require this.

### **Will I become a customer of Wessex Water?**

No. Cholderton will not transfer its water supply network to Wessex Water and its customers will therefore **not transfer** to Wessex Water.

### **What will happen to prices and may the company increase them?**

Cholderton has said that it will allow the independent Customer Challenge and Action Group (CCAG) to set its future price limits (from 2018-19 onwards). Prices will continue to be reviewed annually. The CCAG has customer representatives and is there to oversee customers' interests. It intends that the wider customer base will have the opportunity to discuss the proposed prices at their parish meetings prior to 1<sup>st</sup> April each year.

Water bills may increase even if Cholderton continues to be a regulated company. The price limits set by Ofwat for the period up to 2020 allow it to increase the revenue it recovers each year by slightly less than inflation (as measured by the Retail Prices Index). Price limits beyond then would not be set by Ofwat until late 2019 if Cholderton remained a regulated company.

### **Will I be able to speak to someone locally to deal with any queries about my bill or to report any service issues?**

The company have told us that customers will still be able to contact the Cholderton Estate office. If the company is unable to answer your query or you are dissatisfied with the response you will be able to notify a member of the CCAG. The names of customer representatives on the CCAG will be published on the Cholderton website and water bills.

## **What if I have a complaint about Cholderton?**

As now, you should contact Cholderton to give it an opportunity to resolve your complaint. CCWater and Ofwat would no longer be able to deal with complaints if you were dissatisfied with the company's response. The CCAG may be able to take up the complaint on your behalf.

## **What if I have problems paying my water bill?**

As now, you should contact Cholderton to discuss payment options.

## **Will the Guaranteed Standards of Service (GSS) as shown on the company's website still apply?**

Cholderton has stated its commitment to maintain the same standards it has as a regulated company including those to meet the GSS. However, this will not be a statutory protection that Ofwat can enforce. The CCAG will monitor performance rather than Ofwat or CCW. Your existing rights as a consumer under the WIA91 will no longer apply but the company has committed to maintaining them so it believes that customers should not see any impact on service standards or compensation for not meeting them following the change.

## **Could my water supply be disconnected?**

Water companies can only disconnect water supplies in certain circumstances and cannot disconnect certain premises (including houses) if charges are not paid. Cholderton has said that it will retain the same protections if it becomes a private water supplier. These would not be enforceable by Ofwat and it would be a private legal matter between Cholderton and a customer if there was a dispute.

## **Who will ensure that the water quality is monitored and what if there are problems with the quality of the water I receive?**

The local authority rather than the DWI will be responsible for monitoring water quality. Cholderton has stated that it will not seek to terminate or vary the existing contract with Wessex Water for weekly water quality sampling and analysis. Broadly equivalent standards for water quality will apply. The relevant local council (Test Valley Borough Council or Wiltshire Council) will have powers to take action if water quality standards are not complied with.

## **Will I still be able to pay my water bill as I do now?**

The company has said that the existing options for settling your water bill will continue including payments in cash at the Estate Office or in an envelope at the village shop.

## **I currently pay unmeasured charges; will I still have the option to switch to a water meter?**

Although the statutory right to a meter will no longer apply, the company has stated that it will still continue to fit water meters free of charge to those who want one.

## **My wastewater services are provided by Southern Water; will this change if Cholderton become a private water supplier?**

No it will not. Customers of Southern Water will see no change from the current arrangements.

## **I am a business customer, how will the change affect me? Could I still switch my supplier in the new retail market?**

You will not have the statutory rights provided by the Water Industry Act 1991 framework. The opening of the non-household retail market will not apply to customers of private water suppliers so you will not be entitled to switch your supplier of water services once Cholderton becomes one. You will be able to change your sewerage supplier, if eligible.

## **What happens if Cholderton can no longer provide water supplies?**

If the proposal proceeds, Wessex Water would become the licensed water company for Cholderton's area without taking over Cholderton's network. Wessex Water would be the 'supplier of last resort'. In the unlikely event that Cholderton is no longer able to supply drinking water, Wessex Water could be required to step in to provide supplies of water. It is willing and capable of fulfilling this role.

Customers in Cholderton's area could require Wessex Water to provide a new water main to which they could connect. Unless Wessex Water agreed otherwise, it would be the responsibility of those requesting a new water main to pay for the costs of providing that main, and for individual customers to pay for the costs of connecting their premises to it.

### **Can I get a supply of water from Wessex Water?**

Yes, but you will need to pay for the costs of connecting your premises to Wessex Water's network. The costs could be large if a new water main is needed, even if these could be shared with other customers seeking a similar connection.

### **What will happen if the change in status does not happen?**

Cholderton would remain a licensed water company. Although there is unlikely to be an immediate impact, an alternative supplier might need to be found if the company proves unable to meet the extra regulatory obligations related to the new retail market for business customers, the Water Resource Management planning process and the price review in 2019. The main reason for the proposal to change the status of the company is to avoid the uncertainty and potential disruption this could cause customers and potential additional costs.