

By email: AdoptionCodes@ofwat.gsi.gov.uk and by post

Code for Adoption Agreements Consultation,
Case Management Office,
Ofwat,
City Centre Tower
7 Hill Street
Birmingham
B5 4UA

10 August 2017

Consultation on the Code for Adoption Agreements

We are writing in response to the consultation on the proposed code for adoption agreements.

We support Ofwat's work on improving the regulatory framework for new connections and recognise our important role in facilitating connections and wider economic growth. We have been proactive in this area, in particular in developing our new connections charges.

But we have reservations about Ofwat's proposed approach for adoption agreements. This is a prescriptive approach, limiting companies' ability to tailor agreements to the needs of customers. It would be costly to implement and it is not currently clear whether the expected benefits justify the associated costs. This quantification of benefits is especially pertinent as the proposals are a departure from Ofwat's principles based regulatory model.

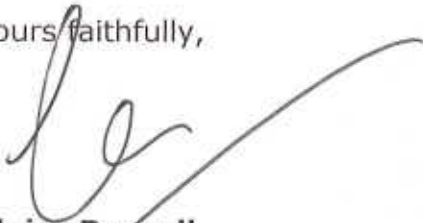
In particular, we are concerned that the establishment and operation of a code panel for this sole purpose would be resource intensive and costly. We are familiar with the electricity distribution connections code of practice. There are some key differences between that code and the proposed adoption agreement code. We believe these differences and, more generally, differences between the sectors means that the electricity code should not necessarily be regarded as a suitable precedent for the water and sewerage sectors. The electricity code applies across the whole

connections process, rather than one specific element. For this reason we believe the electricity code is more a proportionate regulatory instrument. To inform decision making, and accounting for the regulatory burden of Ofwat's preferred option, we believe a quantitative impact assessment should be undertaken. We are keen to work with Ofwat to support its impact assessment.

We believe that, based on the evidence available, a principles based code that aligns with Ofwat's regulatory model would be more appropriate and proportionate. This allows companies flexibility to ensure their agreements meet the specific needs of their customers. The principles based code would be supported by the Water UK measures of service and the proposed developer services measure of experience (D-Mex). Ofwat could take action against companies whose adoption agreements do not comply with the principles of the new code. This approach could be implemented quickly without the need to establish a code panel.

We trust these comments will help inform the final version of the code. Please do not hesitate to get in contact if you wish to explore anything further. Arun Pontin (aPontin@anglianwater.co.uk 07973 965537) would be a good point of contact in the first instance.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Claire Russell', with a long, sweeping horizontal line extending to the right.

Claire Russell
Legal Director

Consultation on the Code for Adoption Agreements

Question 1: Do you agree with our preferred approach in terms of the content and scope of our Code? Please explain your answer.

We do not believe the case for a prescriptive approach to harmonised adoption agreements between companies is sufficiently compelling to justify the burden of the preferred option. Ofwat has not outlined in detail the distortion in the market it is trying to address, nor have the expected benefits of the approach been quantified. Our experience is that complaints regarding adoption agreements are very rare.

The absence of an impact assessment is of concern, particularly as the preferred option being a departure from Ofwat's principles based regulatory model.

We are familiar with the electricity distribution Competition in Connections Code of Practice (CiCCoP). While there are some parallels between CiCCoP and the proposed code for adoption agreements there are some key differences. We believe these differences and, more generally, differences between the sectors means that the CiCCoP should not necessarily be regarded as a suitable precedent for the water and sewerage sectors.

- The CiCCoP was developed after an in-depth market study by Ofgem, which clearly identified the harm to competition and customers the code was intended to resolve.
- The CiCCoP is more proportionate as it, and its associated burden, applies across the whole connections process – the proposed code for adoption agreements applies to one part of the connections process. We believe this better justifies the burden associated with harmonisation and the development of a code panel.
- The CiCCoP harmonises company process but, by omission, it does not harmonise adoption agreements. Ofgem's market study did not find that different adoption agreements were limiting effective competition. This is also the case in the gas connections market.

We have concerns regarding the establishment of a code panel. We believe this is a resource intensive and costly approach. We note that in its review of the energy market, the Competition and Markets Authority highlighted the proliferation of industry codes and panels as a factor potentially restricting competition. We believe robust consideration and a clear expectation of benefits are required before further panels are established in the water and sewerage sector.

Our preference is for a framework-based approach setting out key underlying principles for adoption agreements while allowing companies to be responsive to the needs of their developer customers. This approach would be supported by the existing Water UK measures of service and the proposed developer services measure of experience (D-Mex), which will drive improvements in the experience of developers across the country.

Of the options identified, we believe Ofwat should pursue option one or two with a principles based code. Each company's adoption agreements and processes would need to be consistent with these principles. This is a more proportionate approach and aligns more closely with Ofwat's principles based regulatory model, which we support. This would remove the need for a code panel.

We do not believe that Ofwat would need to approve model adoption agreements for it to have a role in related enforcement. Under our proposed approach, Ofwat could take action against companies whose adoption agreement did not align to the principles of the code. Ofwat would still be able to take action under the Competition Act 1998 in the event that a company or companies were using adoption agreements to abuse their dominant position in the market.

Our responses to the following questions should be considered in light of our response to this question.

Question 2: Do you agree with our proposed code principles and their definitions? Please explain your answer.

We believe that the code principles are generally appropriate, with some caveats. We note that the proposed code principles are somewhat similar to Ofgem's minimum requirements for the CiCCoP. Developing agreements that ensure consistency across the sector while also allowing flexibility and innovation will be challenging.

The 'fair and proportionate' principle includes balancing different types of risk. We think the code should be clear that this is not safety risk - we strongly believe that companies should not compromise on end-user safety. We also note that water and sewerage companies will be balancing risk (e.g. water quality) that includes criminal sanctions, such as section 70 of the Water Industry Act 1991.

Our preferred approach is for these principles to be the core of the code, with company adoption agreements needing to meet these principles. The principles could be adapted to ensure high-level consistency in approach between companies while allowing flexibility on some of the detail. This would be more closely aligned to the arrangements for electricity

distribution where the Distribution, Connection and Use of System Code (DCUSA) outlines the types of provisions to be included in adoption agreements but allows company specific agreements.

Question 3: Do you think our proposed minimum information and publication requirements are appropriate and sufficient?

We support the principle that companies should make information available to their customers to facilitate the connections process. We already make much of the information outlined in the publication requirements available on our website. We agree that some of the information is best presented centrally but note that some of the requirements will be company specific.

If Ofwat pursues its preferred approach, we have some detailed comments on the requirements:

- We believe requirement *d* and *f* should be summaries of changes, rather than the publication of every change to the agreements and guidance.
- We believe requirement *J* should be produced periodically, perhaps annually or quarterly. More regular reporting would increase increases costs for companies for little additional value.

If a less prescriptive approach to the code is pursued, some of the reporting requirements will no longer be relevant.

Question 4: Do you agree with our proposed approach of requiring companies to develop Sector Documents and Model Adoption Agreements in consultation with Developer Service Customers, according to a set of minimum requirements?

We do not agree that companies should be required to develop and then abide by common adoption agreements. As noted above, gas and electricity companies do not use harmonised adoption agreements.

Question 5: Do you agree with our proposed minimum requirements? Please explain your answer

Our preferred approach is for the code to be principles based. We believe the minimum requirements are very detailed and prescriptive. We note that Ofgem's minimum requirements for the CiCCoP were more akin the proposed principles of the code for adoption agreements.

One of the minimum requirements is effectively a prohibition on water company inspection and approval of works. We understand the reasoning for this requirement, but have serious reservations regarding it and its implications for safety. We are ultimately responsible for the supply of safe drinking water (supported by criminal sanctions) and approval of works at a

point when they are still capable of inspection is an important part of how we manage our obligations. Additionally, it may be less efficient for all parties to conduct remedial works if works are found to be sub-standard post completion.

Question 6: Do you agree with our proposed approach to deviations? Please explain your answer.

Under our preferred approach, a process for deviations would not be necessary as companies could tailor scheme specific adoption agreements to meet the needs of the customer, while still complying with the code principles.

Question 7: Do you have any comments on our proposed approach to governing the initial approval of and subsequent changes to the Sector Documents and Model Adoption Agreements?

We do not agree with the proposed approach. The development of a code panel for this sole purpose is a costly and resource intensive exercise, adding to regulatory burden for companies. We believe that the requirements of a change recommendation are burdensome, adding to the overall difficulty and cost of the proposed governance.

We do not believe that sufficient detail on the expected benefits of the preferred approach has been provided. It is therefore unclear whether the cost associated with a code panel can be justified. To inform Ofwat's decision making, we believe a quantitative impact assessment should be undertaken.

Additionally, it is not clear if the panel would only consist of equal numbers of voting members from water and sewerage companies and developers or if other members would be included. We believe end-customers, the Drinking Water Inspectorate and the Environment Agency should be represented.

Adoption agreements are technical documents that include provisions regarding safety, design and materials. Ofwat may need to engage additional support to review and approve documents of this nature.

Under our preferred approach of a principles based code, neither a code panel nor Ofwat approval of the documents would be required.

Question 8: Do you consider the proposed timeline for submitting the Sector Documents and Model Adoption Agreements to us for approval to be realistic and achievable? If not, what would you consider to be a suitable timeline?

We believe the timeline is challenging for Ofwat's preferred option, which involves significant resources from companies, customers and other stakeholders. We believe experience developing other sectoral documents should inform the timeline. For example, the Water UK working group on Sustainable Drainage Systems (SuDS) has been ongoing for over a year with a recommendation not yet reached.

Developing documents that meet the requirements of the code and that are acceptable to all companies and customers will be challenging. It may not be achievable within the proposed timetable if unresolvable disagreements occur. We acknowledge that the CiCCoP was developed in a relatively short period. However that was following a market study and its requirements were well signposted. Additionally, it largely related to harmonisation of company processes – not the form of binding legal agreements.

Due to the level of regulatory burden associated with Ofwat's preferred approach, we believe quantitative impact assessment is needed before a decision can be made. This will have implications for the proposed timetable.

It is also worth noting that the sector is in a period of significant planning and change. Companies are developing their new connection charges, formulating their Water Resource Management Plans and considering their business plans for the next asset management period. We believe limited developer services resources are better deployed to providing customers with the best possible service and developing the new charging arrangements.

The principles based code could be implemented in a more timely fashion.

Question 9: Do you have any comments on the assurances the sector will be required to provide to us when submitting the Sector Documents and Model Adoption Agreements to us for approval?

If Ofwat proceeds on the basis of its preferred option, the assurances appear appropriate in principle. We would expect Water UK to play a key role in providing these assurances.

If a less prescriptive approach is adopted, we would expect companies to provide assurances that their adoption agreements comply with the principles of the code. The requirements should be consistent with the wider assurance framework to ensure appropriate and proportionate assurance.

Question 10: Do you have any comments on our proposed transitional arrangements to enable companies to comply with the Sector Documents and Model Adoption Agreements?

If Ofwat's preferred approach is followed, individual companies will not be in control of the form of agreement as it will be agreed collaboratively to meet the minimum requirements. As such the difficulty of implementation will only be known until relatively late in the process – around the time the model agreements and sector guidance are submitted to Ofwat.

We believe that the transitional arrangements should allow a longer period for companies to adapt their approaches and processes. Alternatively, Ofwat should keep the implementation period under review and make a decision on the transitional period once the documents have been developed and approved.

If our preferred approach is pursued, a shorter period of transition may be required.