

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

By email only: AdoptionCodes@ofwat.gsi.gov.uk

10 August 2017

Dear colleague,

Response to Ofwat’s “Consultation on the Code for Adoption Agreements”

We welcome Ofwat’s consultation on their proposed code for adoption agreements. Our responses to the questions are provided as an appendix to this letter and apply to both the adoption of water and the adoption of sewerage infrastructure.

Ofwat’s proposals are a constructive step forward in developing competition in connection service. We note that these proposals cover connection works that are to be adopted by the water or sewerage company. We think a separate code of practice is required for the provision of connections to competing NAVs. We think many of the principles and provisions in Ofwat’s draft code for adoption agreements would be common in this code. Of particular importance to us are the principles of:

- minimising to the fully extent possible the input services the water or sewerage companies impose on competitors; and,
- ensuring such input services, wherever reasonably possible, are provided using common processes and practices,

Additionally, we think that the code should include (or make reference to) an industry standard model for bulk supply agreements to NAVs.

Please contact me if there are any aspects of our response you would like to discuss further.

Yours faithfully

Michael Harding
Regulation Director

Appendix Response to Consultation Questions

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

We support Ofwat's preferred approach. As a NAV we compete with incumbent water companies for the provision and subsequent ownership of assets. Whilst we recognise that facilitating competition and encouraging innovation are two of the principles set out in the draft code, there is a risk that the documents that are subsidiary to the code could work against such principles.

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

We agree with the principles; however, we suggest some small amendments:

Customer Focussed

In the first bullet point we don't think that the arrangements in themselves can "seek to deliver"; it is the Water and Sewerage Companies that will deliver the services Customers need. We suggest amending the introductory clause as follows:

"Arrangements under the Code must balance the interests of Water and Sewerage Companies, Customers and End-user Customers, and set out how the Water or Sewerage Company will:"

Clear, complete and current

We think it would be better if the information principles were contained within the code rather than providing a link to a section on Ofwat's website

Level Playing Field

In the first bullet point we don't think that the code in itself can "ensure" or guarantee a level playing field; it is only through Water and Sewerage Companies complying with the arrangements that a *Level Playing Field* can be ensured. We suggest amending the bullet point as follows

"provide a framework that will ensure a level playing field that enables effective competition where parties can compete with the Water or Sewerage Company to provide new connections services";

We think the second bullet point could be clearer. We suggest amending the bullet point as follows:

"minimise as far as practicable the number and type of services and activities that fall within the scope of non-contestable services as far as practicable";

The third bullet point sets out that non-contestable services must be provided on an "equivalent basis", but does not set out what they are to be equivalent to. We suggest amending the bullet point as follows:

"require that the Water or Sewerage Company provides the provision of non-contestable services on an equivalent basis for to all relevant parties on an equivalent basis as it provides the same services for its own business".

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

We agree with the approach. We recognise that there are a number of ways that information can be provided. What is important is that the chosen solution is given the appropriate publicity to relevant parties and that access to the information is relatively straightforward

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 agree.

5) Do you agree with our proposed minimum requirements? Please explain your answer.

We think the obligations provide a good specification for the Water Sector Guidance and the Sewerage Sector Guidance. Whilst it may be implicit in paragraph 3.1.3(f), we think it would be useful that the guidance documents should either set out the standards that are to be adhered to for the work (e.g. design standards, construction standards), or alternatively reference the locations where such standards can be obtained.

Another aspect to consider is whether there are gaps in the current accreditation arrangements, and whether there is a need to promote the development of accreditations in areas that are not currently covered. This would be consistent with the principle of minimising the scope of non-contestable services as far as practicable.

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

We agree that deviations should be permitted where such deviations still align with the high-level framework of the Code's principles and where relevant parties agree to the deviation. We think this is essential to facilitate flexibility and innovation, and to allow solutions to be better tailored to Customers' needs.

We agree that Companies should be allowed (encouraged) to expand its definition of contestable works and encouraged to trial and where appropriate implement new innovative ways of providing services. Such services could subsequently implemented into the Code and / or sector guidance.

We recognise that there may be some (limited) circumstances where works ordinarily described as contestable need to be undertaken as a non-contestable activity.

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 agree with the proposed arrangements in principle. However, whilst it is desirable for representatives From Developer Services Customers and accreditation schemes' advisory panels to participate on the relevant sector panels, their participation cannot be mandated. It is important that the governance arrangements recognise this and allow for work to progress in circumstances where there may be under representation from Customers or a representative from an accreditation scheme.

- 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 agree with the proposed timelines.

- 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?**

Water and sewerage companies will to some extent be in a negotiating position with Customers on some aspects. Therefore, we recognise that there may be some areas where parties are unable to reach a consensus of opinion on some elements of the documents – for whatever reason. Therefore, there may be some areas that will be unresolved when the documents are submitted to Ofwat.

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

The lack of resolution of some aspects of the work should not prevent the relevant documents going live on 1 May 2018. There should be flexibility to allow some elements of the code to be developed post go live and implemented at a later agreed date. This would be better than delaying implementation of the whole code.

Information principles

We expect each company to make sure the information it provides its customers is consistent with its licence obligations and our information principles.

These principles, which complement each company's existing licence obligations, describe what we regard as effective information provision. They capture the objectives of relevant legislation – such as the Equality Act 2010 – and Government guidance, such as that produced by the Department of the Environment, Transport and the Regions (DETR) to accompany the 'Water Industry Act 1999: Delivering the Government's Objectives'.

Our principles are as follows.

- **Accurate** – Each company should make sure the information it provides is correct by regularly reviewing it – for example, to make sure it is consistent with its charges scheme. Any updates should be shared with customers directly and with advice providers.
- **Transparent** – Information should not be misleading. It needs to be unbiased and enable individual customers to make informed decisions.
- **Clear** – Information should highlight key messages and direct customers to more detailed information.
- **Accessible** – Each company should provide different information and use different communication channels to meet the needs and preferences of particular customer groups ('customer segmentation').
- **Timely** – Companies should design and deliver information in a way that makes sure customers get the right information at the right time – for example, when a customer moves home.
- **Customer-led** – Each company should actively seek its customers' and their representatives' views and feedback on the information it provides and how it provides it. It should respond to customer and customer representatives' information needs.