

## Ofwat Consultation

1<sup>st</sup> September 2017

### “DELIVERING WATER 2020:

### CONSULTING ON OUR METHODOLOGY FOR THE 2019 PRICE REVIEW

#### Introduction

The HBF welcomes the opportunity to respond to the above document.

As you are aware the HBF is the representative body for housebuilders in England and Wales. HBF's membership of more than 300 companies builds most of the market sale homes completed in England and Wales, and encompasses private developers and Registered Providers. As the main trade association for the house building industry our members constitute one of the largest customers who will be affected by these proposals. As such, we trust that OFWAT will attach the appropriate quantitative and qualitative weight to our response, in particular when making any decision arising from this consultation.

#### HBF Response

The direction being taken by OFWAT in the next Price Determination is welcomed by the HBF. The objective of a focussed approach in relation to Developer Services is long overdue – an ethos that our Members have been calling for quite some time.

We note the comments made in Appendix 2 of the consultation – in this part of the consultation a number of issues appear to have been raised as a result of some form of stakeholder engagement but with HBF not having been invited to such.

Before going into more detail it would be helpful/useful if Ofwat were to first confirm if the recommendations advanced in this consultation are to apply equally to the Retail and Wholesale Sectors of the market. As house builders will need to engage with respective sectors we believe that this should be case but the consultation is silent on such an important issue. Can OFWAT therefore provide some degree of clarity?

Moving into the main body of the consultation we have been taken by one particular comment, namely, the last bullet point on page 99. We would tend to agree that large developers do not necessarily respond to customer surveys but the reason(s) for this is easily explained. At present, the house building industry has little to no trust or confidence in the Water and Sewerage Sector.

Moreover, despite being a major customer nothing seems to change and house builders are continuing to experience poor levels of service accompanied by ever increasing costs with little to no transparency in terms of how charges have been determined. Furthermore, if we are to meet the Government's objectives when it comes to the delivery of new housing the 'sector' must undergo a quantum leap in performance if this key objective is to be realised – see later comments relating to Modern Methods of Construction.

Our Members, supported by the HBF have continued to engage with the Water and Sewerage Sector at all levels. Moreover, as part of this process our attempts to bring about improvements and to instigate changes that have mutual benefit(s) have often been ignored. Regrettably, our experience is one of declining levels of service/performance with a perceptible 'sector' ambivalence towards the needs of the house building industry. As a result, until there is a positive attitudinal change within the sector as a whole, a poor response to any customer care survey can be expected. In many respects, until there is a notable degree of follow-up action and/or improvement in performance, completion of any such survey will continue to be viewed as a somewhat futile exercise.

Perhaps the question OFWAT should consider is why should house builders devote further resources in replying to customer surveys when there is no resultant improvement in performance? This is the main reason why we do not think OFWAT's proposal of six monthly satisfaction surveys will work. If the aim is for D-Mex to be seen to benefit the house builder customer, we would ask OFWAT to listen more attentively to what the Industry needs and to replicate other parts of the Utility Sector where customer generated comments and initiatives have resulted in improved performance and reduced cost.

With the introduction of a D-Mex incentive there would appear to be a number of advantages. That said, we believe the concept needs to be better matched to the needs of house builders whilst also effectively dealing with the following principal issues:

1. Levels of Service
2. Competition
3. Dispute Resolution, in particular an improved and expedited process.

We have not included any reference to charges/costs in our response to 'D-Mex' - hopefully this will be effectively addressed in the on-going work relating to the New Charging Rules/Charging Arrangements. That said, we are somewhat concerned that there would appear to be a concerted effort by Water & Sewerage Companies to prolong disclosure of the detail relating to their likely charges until such time as the implementation date of the Charging Rules in April 2018 is nearly upon us. We do not consider this to be acceptable.

As an aside but of noteworthy significance is the fact that some eight years ago the HBF started on a similar journey with OFGEM, in particular looking at how DNOs could become more focused towards the needs of the house builder customer.

At the time one of the main areas where house builders had the greatest degree of concern was in relation to Levels of Service and Competition. As a result of listening to the needs of house builders OFGEM introduced practices and procedures that had benefits for all partner and stakeholder interests, in particular house builders. In our opinion, OFWAT could learn from what has previously passed even to the point of replicating what takes place in a customer focused energy sector.

For ease of reference, we have summarised below possible improvements to the current D-Mex proposals - we firmly believe these could yield even greater benefits and therefore improved trust and confidence in the Water & Sewerage Sector.

## 1. Levels of Service (LoS)

At the moment we are aware of the work Water UK are doing in relation to LoS. However, the HBF has little or no confidence in the metrics or reporting process that is being communicated. By way of comment, the metrics have more to do with administrative performance rather than the physical delivery of water and sewerage infrastructure. Furthermore, the current approach to an assessment of performance is being undertaken on a voluntary basis whilst the recently disclosed high levels of compliance do not reflect the experience and feedback the HBF receives from its members. In addition, the final version of the internal audit undertaken by Water UK and which has only just been released after a lengthy delay, has closer synergy with the poor levels of performance house builders are experiencing in reality. More importantly, it is quite clear from sections of the report narrative that in some cases, performance data has been massaged to reflect much higher percentage levels of compliance. (See paragraph (c) of the Executive Summary of the CH2M Report “Developer Services in the England and Wales Water Industry – Horizontal Audit of Levels of Service Reporting: July 2017”). This report was prepared on behalf of Water UK and it is of some concern that levels of service may well be being manipulated to create the impression of high levels of compliance.

In response, our preferred way forward with LoS is for the introduction of Guaranteed Levels of Performance (GLoP) with penalties on non-compliance. There is no reason why a GLoP process could not replicate what OFGEM put in place in 2010, the only variation would be that OFWAT could use a “carrot as well as a stick” in rewarding those companies that have met certain high levels of performance in the way they manage their LOS with developer customers.

To aid further discussion we have enclosed information and details on the OFGEM GSoP process in Appendix 1 and Appendix 2.

## 2. Competition

A key aspect of getting better delivery and competitive pricing lies in the introduction of more competition in the Water and Sewerage Sector – an essential need for all house builders, supported by greater freedom of choice. However, competition in the Water and Sewerage Sector is somewhat varied, with some companies having been pro-active in promoting competition whilst others have been known to be obstructive. It is a moot point as to whether the current market reform proposals will actually provide greater competition. In many respects, the jury is out on this issue given that no water and sewerage company has yet disclosed their likely charging arrangements and how these in turn will facilitate greater completion through SLPs and/or NAVs.

From the HBF perspective D-Mex will miss a major opportunity if it does not seek to promote the drive toward competition.

Again, we can look back at OFGEM who introduced the concept of a “Competition Test” for DNO’s. This was also supported by cost benefits when infrastructure was adopted by Independent DNO’s – these are the Electricity Sectors equivalent of NAVs. The objective of this concept was to introduce an incentive rather than penalise DNO’s – the latter being the equivalent of Water & Sewerage Companies. However, the ultimate threat of referral to the Competition and Markets Authority provided and continues to provide an appropriate deterrent if a DNO does not embrace competition and/or seeks to introduce inequitable terms and conditions.

If trust and confidence in the Water & Sewerage Sector is to prevail then the commercial barriers and high contestable charges imposed by companies on Self-Lay Providers (SLPs) and NAVs must be addressed.

In our opinion, a degree of “blue sky thinking” would not go amiss when it comes to how D-Mex can be applied in relation to competition. This would result in obvious advantages for house builders.

### 3. Dispute Resolution

It is a stark fact of commercial life that there will be occasions when issues will arise between organisations leading to a difference of opinion or at worst, a dispute.

At present, within the Water and Sewerage Sector there is no expedient/effective dispute resolution process in place. Moreover, commercial pressures often result in house builders having to acquiesce when confronted with inequitable terms and conditions imposed by a water and sewerage company. The house builder’s position is simple, namely, that delay adds to cost, therefore accepting inequitable T & C’s is often the lesser of two evils if delays and excessive additional cost is to be avoided. (Typically, for every £5m invested in land and work in progress, the weekly interest bill on capital locked up is around £3250).

We are therefore drawn to what OFWAT sees as one of the main objectives and aims of PR19;

**“OFWAT Price Review is an important tool for delivering trust in water. PR19 provides the framework for a resilient long-term future for water, providing more of what matters to customers at a price they can afford and are willing to pay”**

Acceptable levels of service together with effective competition really does matter to house builders, similarly, the ability to get speedy resolution when there is a dispute. However, the variation in terms of how companies interpret and apply legislation, together with industry guidance is one of the most confusing if not frustrating issues for house builders and one that often leads to disputes. For example, why do house builders have to pay for

foul sewer offsite network reinforcement in a significant number of water and sewerage companies, (around 50% of all companies) yet in others, they do not? Why is one company charging “x” and another charging 10 times “x” for the same work? The developer then asks the question and is told in no uncertain terms that further progress with their application is dependent upon acceptance of the terms and conditions as presented. Moreover, dispute resolution in the Courts is not the answer, similarly, a determination process involving OFWAT that take years to come to a conclusion. Indeed leading Counsel has stated in quite unequivocal terms that recourse to the Courts is not the way forward.

A dispute affects house builders whatever the size or magnitude of their development. Therefore, if we are to meet the Government’s housing objectives it is essential that we have guaranteed levels of service, fair, equitable and transparent costs and a dispute resolution process that is both quick and efficient. In our opinion, effective dispute resolution, accompanied by appropriate time limits for evidential disclosure must be considered in D-Mex. In many respects, this would replicate part of the planning appeal process so there are established precedents to follow.

We would therefore advocate that D-Mex promotes a more transparent and proactive approach to disputes where they can be fast tracked and water and sewerage companies can be assessed on their ability to resolve a dispute.

### **Conclusion**

The HBF welcomes both the opportunity and challenge of working alongside OFWAT in relation to the PR19 aims and objectives together with the introduction of D-Mex. It is fundamentally important for the voice of the house building industry to be heard on issues which are in desperate need of rectifying/improving if we are to meet the Government’s housing objectives.

Finally, the Government and the house building industry are committed to not only increasing the provision of new homes but also to reducing the time taken to construct a new home. With regard to the latter, Modern Methods of Construction (MMC) are an integral part of achieving these objectives and it is not surprising to find that off-site/MMC manufacture is playing a far greater role when it comes to housing provision. PR19 is silent on this issue and fails to advise the Water and Sewerage Sector that it must begin to prepare for a housing building industry that can deliver an increasing number of new homes within a 6 week window and sometimes much less. These reduced construction

periods have not been considered in the D-Mex proposals, similarly, the levels of service/performance metrics set by the Water and Sewerage Sector. This is a quite serious omission that we would advocate OFWAT takes on board and one that may necessitate more direct and detailed discussion with HBF before PR19 is allowed to become crystallised.

***Craig C Ferrans MCIAT HBF Technical Director***

## Appendix 1

### **Guaranteed Standard of Performance for Electricity Applications and Connections on Developments**

For many years the Industry has expressed its concern over the way Distribution Network Operators (DNO) perform in relation to the application and connection process for electricity on developments. In the HBF Utility Survey in 2006 the Electricity Sector was highlighted as being the main utility which caused delays on sites and the subsequent reason that some properties are late in being completed. As a result of the findings of the HBF Utility Survey and the subsequent discussions with Ofgem, the Industry Regulator, it was decided that there was a need to provide solutions to the various issues which would only prove successful if they were incorporated in some form of statutory framework. The culmination of these discussions and numerous meetings is that from 1<sup>st</sup> October 2010 a DNO will be required to work within a legal framework for new electricity connections with guaranteed standard of performance as well as a requirement to comply with an Industry License Condition.

The guaranteed standards place a legal obligation on DNO to comply with prescribed levels of service in the application process and in relation to the connection of electricity on developments for demand supplies of electricity. There is now also a clear distinction in the application process for a budget estimate and detailed quotation which in the past has been an issue for DNOs.

All of this is encapsulated in a statutory instrument and more importantly the guidance which has been compiled by Ofgem. This guidance explains in detail the changes and obligations that will take place from 1<sup>st</sup> October and can be found at:-

[http://www.ofgem.gov.uk/Networks/ElecDist/QualofServ/GuarStandds/Documents1/Connections%20GSOP%20guidance%20Sept\\_0809.pdf](http://www.ofgem.gov.uk/Networks/ElecDist/QualofServ/GuarStandds/Documents1/Connections%20GSOP%20guidance%20Sept_0809.pdf)

The most interesting aspect of the SI and guidance is that a DNO will now have to pay developers a penalty fine for each day over a prescribed set period when they fail to comply with a guaranteed standard. In total there are nineteen standards that incorporate Metered Supplies for the whole of the development process from a budget application to ensuring



that a property is connected, as well as further standards for Unmetered Supplies for the likes of street lighting, traffic signs etc.

The introduction of the statutory instrument and guaranteed standards constitutes a major shift in approach by a Utility Industry Regulator and is most welcomed by the House Building Industry. Although in financial terms the penalty fine may be seen as punitive with regard to the effect the delay may cause. It was universally accepted by DNOs and all participants that these changes should emanate in a more customer focused approach by a DNO which in turn will aid better communication between all parties. It is also hoped that in the foreseeable future these guaranteed standards will be further extended to incorporate criteria associated with generated supply from developments.

Appendix 2**OFGEM GUARANTEED STANDARDS OF PERFORMANCE FOR ELECTRICITY CONNECTIONS.****Metered Quotation Standards**

<b>Reporting code (ECGS No)<sup>1</sup></b>	<b>Service</b>	<b>Performance Level</b>	<b>Payment to Customer</b>	<b>Reg. Ref.</b>
1A	Provision of budget estimate <1MVA	Within 10 working days	£50 – One off payment	4(2)
1B	Provision of budget estimate >1MVA	Within 20 working days	£50 – One off payment	4(3)
<b>Reporting code (ECGS no)</b>	<b>Service</b>	<b>Performance Level</b>	<b>Payment to Customer</b>	<b>Reg. Ref.</b>
2A	Provision of a quotation for a single LV single phase service connection	Within 5 working days	£10 for each working day after the end of the prescribed period up to and including the day on which the quotation is dispatched	5(2)
2B	Provision of a quotation for small LV projects: <ul style="list-style-type: none"> <li>▪ 2-4 LV single phase domestic services or</li> <li>▪ for connections to 1-4 LV single phase domestic premises involving an extension to the LV network or</li> <li>▪ a single two or three phase whole current metered connection (not requiring an extension to LV network)</li> </ul>	Within 15 working days	£10 for each working day after the end of the prescribed period up to and including the day on which the quotation is dispatched	5(3)

<b>Reporting code (ECGS no)</b>	<b>Service</b>	<b>Performance Level</b>	<b>Payment to Customer</b>	<b>Reg. Ref.</b>
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3A	Provision of any other LV demand quotation	Within 25 working days	£50 for each working day after the end of the prescribed period up to and including the day on which the quotation is dispatched	6(2)
3B	Provision of an HV demand quotation	Within 35 working days	£100 for each working day after the end of the prescribed period up to and including the day on which the quotation is dispatched	6(3)

1 ECGS no.: Electricity Connections Guaranteed Standards number.

2 Reg Ref: reference to the specific regulation as listed under the Electricity (Connections Standards of Performance) Regulations 2010

Reporting code (ECGS no) <sub>1</sub>	Service	Performance Level	Payment to Customer	Reg. Ref.
3C	Provision of a EHV demand quotation	Within 65 working days	£150 for each working day after the end of the prescribed period up to and including the day on which the quotation is dispatched	6(4)

#### Other Metered Standards

Reporting code (ECGS no) <sub>1</sub>	Service	Performance Level	Payment to Customer	Reg. Ref.
4A	Contact customer (post acceptance) about scheduling <5 LV service connections covered by 2A & 2B	Within 7 working days	£10 for each working day after the end of the prescribed period up to and including the day on which contact occurs	8(2)
4B	Contact customer (post acceptance) about scheduling other LV demand connections	Within 7 working days	£50 for each working day after the end of the prescribed period up to and including the day on which contact occurs	9(2)

4C	Contact customer (post acceptance) about scheduling HV demand connections	Within 10 working days	£100 for each working day after the end of the prescribed period up to and including the day on which contact occurs	9(3)
4D	Contact customer (post acceptance) about scheduling EHV demand connections	Within 15 working days	£150 for each working day after the end of the prescribed period up to and including the day on which contact occurs	9(4)
<b>Reporting code (ECGS no) 1</b>	<b>Service</b>	<b>Performance Level</b>	<b>Payment to Customer</b>	<b>Reg. Ref.</b>
5	Commence LV, HV & EHV demand works on customer's site	In timescale agreed with the customer	£20 for each working day after the agreed date up to and including the day on which the works are commenced	9(5)
<b>Reporting code (ECGS no) 1</b>	<b>Service</b>	<b>Performance Level</b>	<b>Payment to Customer</b>	<b>Reg. Ref.</b>
6A	Complete service connection works	In timescale agreed with the customer	£25 for each working day after the agreed date up to and including the day on which the works are completed	8(3)
6B	Complete LV works (including phased works)	In timescale agreed with the customer	£100 for each working day after the agreed date up to and including the day on which the works are completed	9(6)
6C	Complete HV works (including phased works)	In timescale agreed with the customer	£150 for each working day after the agreed date up to and including the day on which works are completed	9(7)

Office of Gas and Electricity Markets 10 Connections GSOP guidance September 2010

<b>Reporting code (ECGS no) 1</b>	<b>Service</b>	<b>Performance Level</b>	<b>Payment to Customer</b>	<b>Reg. Ref.</b>
6D	Complete EHV works (including phased works)	In timescale agreed with the customer	£200 for each working day after the agreed date up to and including the day on which the works are completed	9(8)
<b>Reporting code (ECGS no) 1</b>	<b>Service</b>	<b>Performance Level</b>	<b>Payment to Customer</b>	<b>Reg. Ref.</b>
7A	Complete LV energisation (including phased works)	In timescale agreed with the customer	£100 for each working day after the agreed date up to and including the day on which energisation occurs	9(9)
7B	Complete HV energisation (including phased works)	In timescale agreed with the customer	£150 for each working day after the agreed date up to and including the day on which energisation occurs	9(10)
7C	Complete EHV energisation (including phased works)	In timescale agreed with the customer	£200 for each working day after the agreed date up to and including the day on which energisation occurs	9(11)