

By email

7 June 2018

Change of Control
Ofwat
Centre City Tower
Birmingham
B5 4UA

Dear Ofwat

CHANGE OF CONTROL – GENERAL POLICY AND ITS APPLICATION

This letter sets out our response to the consultation on potential licence changes related to “change of control” and further areas of licence improvement. We do not have any comments on the specific matters that relate to Thames Water. We set out below our view against each of the consultation questions.

1. *What are your views on the introduction of notification requirements on change of control into the licence information requirements?*

We support this proposal, as it codifies what in practice should happen anyway. The wording of the licence condition may need to recognise what level of likelihood of a change of control is required. We interpret from the consultation this is at the point a prospective controller can be identified, rather than earlier in a sale process such as “expressions of interest”. It is not currently clear in proposed clause P3.6 when this would apply.

2. *What are your views on the proposed obligation to price us information?*

We agree that it would be worthwhile having a provision for the Appointee to provide Ofwat with any information that may be reasonably required. This would need to apply at the point at which the appointee could obtain this information, which would be at the point at which 3.6 (b) or (c) applied, but not 3.6(a) in all circumstances.

3. *What are your views on the information that may be helpful for our assessment of change of control?*

The information suggested in Appendix 2 appeared to meet the purposes of the consultation. You may wish to consider in addition whether any proposed changes of Directors to the Appointee and details of individuals proposed as potential directors of the Appointee, may in some situations be required.

- 4. What are your views on the proposed obligation to require the Appointee to comply with any direction from Ofwat to enforce an Ultimate Controller's undertaking?*

We agree that there is a gap in the current requirements, reflecting that Ofwat cannot force an Appointee to enforce an Ultimate Controller obligation.

- 5. What are your views on bringing all licences up the same standards, including introducing a requirement to meet the BLTG principles?*
- 6. Are there aspects of the most up to date provisions which you think we need to revisit or amend?*

We would be content with the proposed requirement to meet the corporate governance principles. However, in practice there needs to be some recognition in the licence that there will circumstances where it takes time to apply a new set of principles. Therefore we would propose the addition of "as soon as reasonably practicable" to proposed condition P clause 2.2.

We agree that for most companies the requirement to must at all times maintain an investment grade credit rating is appropriate, rather than to use "all reasonable endeavours". However, there may be circumstances where it is not practical or desirable to enforce this condition, and by exception companies may need a period of time to adjust. Therefore Ofwat could consider the addition of "unless otherwise agreed by the Water Services Regulation Authority in writing" to Condition P clause 7.2. This would also be consistent with 7.3(a), given there is a cash lock up consequences of not having an investment grade credit rating this implies a consequence to something that must not happen according to the proposed P7.2.

- 7. What are your views on how the ring fencing conditions need to be further strengthened?*

In the short timeframe provided for this consultation, we have not identified any specific need for further strengthening of the ring fencing conditions from the information provided. The examples included in the consultation seem to relate to specific circumstances that it will not be straight-forward to include through general licence clauses. A comparison to good licence practice from other sectors may help to identify circumstances that require additional strengthening and what the licence achieved in practice. One alternative would to include additional information requirements for the period of events, such as during change of ultimate controller(s), or for the credit-rating triggered events within the licence.

We think the best approach will be to consider this as part of the Board Leadership Transparency & Governance principles review, and what elements of the proposals require specific reference in the Licence rather than reliance on the proposed condition P clause 2.2.

We look forward to contributing to the modernisation of water company licences, and the role this has in ensuring that the water sector meets the expectations of customers and stakeholders.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "Iain McGuffog".

Iain McGuffog
Director of Strategy & Regulation