

Change of Control  
Ofwat  
Centre City Tower  
7 Hill Street  
Birmingham  
B5 4UA

Your ref

Our ref

Date  
8 June 2018

Contact

Tel 01903 272775

Fax

Dear Ofwat,

## **Change of control – general policy and its application to Thames Water**

Thank you for the opportunity to respond to the consultation on the change of control of Thames Water, in which you take the opportunity to raise some issues of wider relevance. We restrict our comments here to the issues of general application and do not comment on the specific proposals in relation to Thames Water, on which others are better placed to respond.

In general we have no material concerns about the proposals around change of control or strengthening the ring-fence, but will clearly need to see the details of specific licence provisions before we can comment further. In developing the detail of the licence conditions we think it is important that a number of principles are borne in mind.

- They are a proportionate response to an identified shortcoming in the current provisions, and have clear benefits for customers.
- They do not risk conflicting or competing with the duties of Directors under the Companies Act.
- That companies are reasonably able to meet the requirements of the licence conditions.
- That where licence conditions refer to compliance with documents that sit outside of the licence, there is an effective consultation and a right of appeal – as for example with the Regulatory Accounting Guidelines.

With those principles in mind, we provide brief answers to each of the generic consultation questions below.

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

We think it is sensible that there is a requirement on companies to notify Ofwat in the event of a change of control. To enable companies effectively to comply, it will be important for Ofwat to set out clearly a set of guidelines against which an assessment of whether a transaction is notifiable can be made.

**2) What are your views on the proposed obligation to provide us with information?**

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

We think it is appropriate that Ofwat should have the ability to require certain information on a change of control. While we have no objection to a specific provision being included on the face of the licence, we wonder whether Ofwat already has powers under Condition M of the licence, which requires companies to provide such information as Ofwat *“may reasonably require for the purpose of carrying out any of its functions under the Act”*.

**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 have some concerns about the proposal that Ofwat would effectively become party to a legal agreement between the company and its owners. It is not clear how Ofwat would envisage the undertakings being enforced in practice. The issues covered by the undertakings are matters which Ofwat could enforce directly against a company, who would then need to determine whether and how they might seek to enforce the obligations of the controller under the undertakings. If Ofwat were to become a party to the undertakings by amendment of the licence condition, it is likely that many of the existing undertakings would need to be revisited.

**5) What are your views on bringing all the licences up to the same standards, including introducing a requirement to meet the BLTG principles?**

We agree that all companies should have a similar set of ring-fencing obligations, unless there are company-specific reasons that this would not be appropriate. In respect of requiring all companies to meet the BLTG principles, and making this a licence requirement, we have the following observations.

One, it will be important that the scope of the BLTG principles is clearly delimited within the licence, to avoid the risk that other, loosely related matters are effectively made licence obligations by inclusion within the BLTG principles.

Second, it is also important that the licence condition refers to a specific document, so that it is clear exactly what the requirement is. The current wording refers generically to “corporate governance principles” which could be taken to encompass a wide range of requirements.

Finally, where the licence refers to secondary documents, it is important that companies have an effective right to make representations on changes to the subsidiary documents. This

principle is one that is recognised with respect to the Regulatory Accounting Guidelines, changes to which are appealable to the CMA.

**6) Are there aspects of the most up to date provisions which you think we need to revisit or amend?**

The regulatory ring-fence is an important tool both for protecting customers' interests and providing comfort to investors in water companies. We support a strong and effective ring-fence around the appointed business.

It is, of course, important that they are kept under review, but we are not aware of any specific concerns about the current ring-fencing provisions, which would merit significant strengthening at this stage. Where there is evidence of shortcomings in the current provisions we would, of course, be open to considering proportionate, targeted changes.

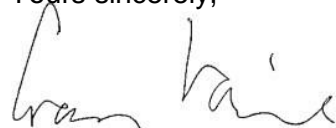
**7) What are your views on how the ring fencing conditions need to be further strengthened? In particular, in relation to:**

- a. Maintaining an appropriate credit rating and how and when the lock-up conditions are triggered?**
- b. Whether there needs to be a more explicit requirement to inform us of particular events affecting the Appointee?**
- c. Managing potential conflicts of interest where there are cross-shareholdings?**
- d. Safeguarding the autonomy of the Appointee?**
- e. Any other issues?**

Subject to more details of the specific provisions we have no particular concerns about any of the areas highlighted in the consultation for strengthening. We would be happy to work with Ofwat to develop conditions that meet specific concerns in these areas.

I hope this response is helpful and we would of course be happy to discuss any of the issues raised.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Craig Lonie".

**Craig Lonie**  
**Director of Strategy and Regulation**