
Statement of reasons: The granting of consents to Dee Valley Water Limited pursuant to condition P of its licence

1. Background

Ofwat decided on 29 June 2018 to modify the conditions of the Instrument of Appointment ('licence') of Dee Valley Water Limited ('Dee Valley')¹, with effect from 1 July 2018. Dee Valley's acceptance of these modifications was a condition of us granting variations to its and Severn Trent Water Limited's ('Severn Trent') areas of appointment and granting it a new sewerage licence². The applications from both companies to vary their areas of appointment followed Severn Trent's purchase of Dee Valley in February 2017. Dee Valley has been, since that date, wholly owned by Severn Trent.

Until these modifications, Severn Trent's licence did not contain many of the ring fencing conditions found in licences of other regulated water companies. We considered it important to address this gap in Severn Trent's licence so that its customers enjoyed the same level of protection in this area as enjoyed by customers of other companies. While Dee Valley's licence did contain most of the ring-fencing conditions, these were not in the most recent form and we considered it beneficial if both companies, operating within the same corporate group, had consistent ring-fencing conditions. The ring fencing conditions aim to 'ring fence' the regulated company from the activities of other entities such as other group companies. The purpose of the ring fence is to ensure that the regulated company retains sufficient rights and assets and has in place adequate management resources and systems of planning and internal controls and that any transfers or transactions entered into by the

¹ On 30 June 2018, Dee Valley Water Limited changed its name to Hafren Dyfrdwy Limited. It changed its name again to Hafren Dyfrdwy Cyfyngedig on 7 November 2018.

² See: [Variation of Severn Trent Water Limited's \(Severn Trent Water\) appointment to include the Chester Site and variation of Dee Valley Water Limited's \(Dee Valley Water\) appointment to include the Powys site.](#)

regulated company do not adversely affect the company's ability to carry out the regulated activities. This constitutes an important protection for customers.

As a result of the acquisition of Dee Valley by Severn Trent, Dee Valley's financial arrangements changed. Rather than all funding being sourced externally, financing was provided by Severn Trent. Certain provisions in the new financing arrangements required Ofwat's prior consent. In a letter dated 26 June 2018 (the **Consent Request Letter**, see appendix 1³), in anticipation of Dee Valley entering into new financing arrangements, Dee Valley sought Ofwat's consent in relation to certain provisions in these new intra-group financing arrangements and to it ceasing to hold an investment grade credit rating⁴.

This document sets out the consents we have granted and approvals or agreements we have given⁵, the licence conditions under which they have been given, the conditions which we have placed on those consents and the reasons for granting those consents. It should be read in conjunction with our letter to the company dated 28 June 2018 (the **Consent Letter**, see appendix 2). The relevant licence conditions under which consent has been granted in the Consent Letter can be found in appendix 3.

³ The Consent Request Letter also refers to the consent request letter submitted by Severn Trent on 24 May 2017, a copy of which is available in Appendix 1 of [Statement of reasons: The granting of consents to Severn Trent Water Limited pursuant to conditions A and P of its licence](#)

⁴ The relevant conditions under which Dee Valley sought consent, approval or agreement are set out in appendix 3.

⁵ Consents, approvals and agreements are collectively referred to as 'consents' hereafter.

2. Our approach

The consents which we have granted are specific to the circumstances of this particular case, in particular the fact that Dee Valley was ceasing to have external debt and was to become a wholly owned subsidiary of another appointed company. Given these two factors and save where expressly stated to apply to future arrangements, they should not be relied on by any company, including Dee Valley, as necessarily indicative of our approach in the future.

In assessing Dee Valley's requests we have considered the particular circumstances in light of our statutory duties (see summary in appendix 4). In particular, in assessing the requests from Dee Valley, we have considered the extent to which customers would be protected in the event of a default by associated companies in relation to loans made or cross default obligations or guarantees given. We have also considered risks to the financial resilience of the company and our duty to ensure that regulated companies can finance the proper carrying out of their functions.

In some cases we have attached conditions to the consents which we have granted to help mitigate any risks to customers or the financial resilience of the company. We have also stated that the consents will expire if Dee Valley ceases to be a subsidiary of Severn Trent given that our reasons for granting certain consents relate to Dee Valley's status as a subsidiary of Severn Trent.

List of consents granted and reasons

Consent sought	Nature of consent / licence conditions (full detail set out in consent letter)	Conditions on consent (full detail set out in consent letter)	Reasons for granting consent and supporting factors
<p>Credit Rating Consent</p> <p>Consent for Dee Valley and its Financing Subsidiaries not to hold an investment grade credit rating and confirmation from Ofwat that the provision of a certificate pursuant to Condition P, 7.3 may be based on the Severn Trent credit rating.</p> <p>Further information about the request was provided in paragraph 1 of the Consent Request Letter.</p>	<p>Agreement for Dee Valley and any Associated Company which issues corporate debt on its behalf not to maintain an Issuer Credit Rating which is an Investment Grade Rating.</p> <p>Consent pursuant to Condition P, paragraph 7.1.</p>	<p>In accordance with Condition P, paragraph 7.3, Dee Valley must provide a certificate of its Board stating that it would be able to maintain an Issuer Credit Rating which is an Investment Grade Rating and a statement of the main factors which it has taken into account in giving the certificate.</p>	<p>As a result of the new intragroup financing arrangements put in place at the time of the acquisition or shortly thereafter, Dee Valley does not have any external debt and therefore does not have any need to obtain a Credit Rating to enable it to raise debt. We do not consider it would be value for money to maintain one at the present time.</p> <p>As a result of our agreement to allow Dee Valley not to hold an investment grade credit rating in these circumstances, we have added Condition P, 7.3 to Dee Valley's licence. This condition anticipates such circumstances where an Investment Grade Rating may not be required and requires that, in place of having a suitable credit rating the appointee's board must instead provide a certificate that in the opinion of the Board it would be able to maintain an Investment Grade Rating and include a statement of the main factors which it has considered in giving this opinion. This is intended to provide Ofwat with assurance on the financial resilience of the Appointee as, in practice, in order to give its opinion, Dee Valley's Board will need to maintain credit metrics consistent with an Investment Grade Rating. Ofwat's guidance to Dee Valley makes clear that while Dee Valley may refer to Severn Trent's credit rating and the loan provided by Severn Trent</p>

Consent sought	Nature of consent / licence conditions (full detail set out in consent letter)	Conditions on consent (full detail set out in consent letter)	Reasons for granting consent and supporting factors
			as relevant factors in giving its annual certificate, it should consider other relevant factors, including financial ratios.
<p>Intra-group Financing Consent</p> <p>Consent for Dee Valley to put in place and maintain cross default obligations in respect of the liabilities of its subsidiaries in loan facilities with Severn Trent.</p> <p>The particular intra-group financing arrangements were described in paragraph 2 of the Consent Request Letter and paragraph 3.2.1 of the consent request letter from Severn Trent.</p>	<p>Approval for Dee Valley to maintain cross default obligations</p> <p>Consent pursuant to Condition P, paragraphs 6.3(c) of Dee Valley's licence</p>	<p>There shall be no material changes, without Dee Valley first obtaining Ofwat's further consent, to the terms of the loan facility. See paragraphs 3.2.2 and 3.2.3 of the Consent Letter.</p>	<p>Dee Valley and Severn Trent have stated that these arrangements allow Dee Valley to access finance at a lower cost than it otherwise would be likely to be able to if it did so outside the group. The primary purpose of these arrangements is to finance Dee Valley's regulated activities and the arrangements constitute its only current source of financing. The cross default obligations are a common feature of arm's length financing arrangements involving subsidiaries because often subsidiaries do not trade or generate sufficient revenue in their own right. Therefore, we have consented to Dee Valley incorporating cross default obligations in its intra-group financing arrangements in respect of the liabilities of its subsidiaries.</p> <p>There can be no material changes to the arrangements without Dee Valley seeking further consent which would allow us to withhold consent if our assessment shows that it is not appropriate to consent to an amended arrangement.</p>
<p>New Financing Arrangements Consent – Cash Pooling Consent</p> <p>Consent sought for guarantees and cross default obligations and making loans pursuant to</p>	<p>Approval for guarantees and cross default obligations and making loans.</p> <p>Consent pursuant to Condition P, paragraphs 6.3(a), 6.3(b), 6.3(c) and 6.4 of Dee Valley's licence</p>	<p>Arrangements should be on terms materially similar to those of Severn Trent's existing overdraft and cash pooling arrangement and relate to Dee Valley and any Financing Subsidiary only. See sub-</p>	<p>This overdraft and cash pooling arrangement can only comprise Dee Valley and any Financing Subsidiary only. This means that Dee Valley is not exposed to the risk of any default by companies in the wider group, and there may be a benefit to this arrangement as it can help to minimise costs for Dee Valley if, for example, it is in a position where it may find itself temporarily overdrawn as this can be offset by credit balances held by its subsidiaries.</p>

Consent sought	Nature of consent / licence conditions (full detail set out in consent letter)	Conditions on consent (full detail set out in consent letter)	Reasons for granting consent and supporting factors
<p>new overdraft and cash pooling arrangements.</p> <p>Details of the proposed cash pooling arrangements were provided in Severn Trent's consent request letter.</p>		<p>paragraph 3.3.1 of the Consent Letter.</p> <p>On the date on which the arrangement is entered into Ofwat has not notified Severn Trent that the grant of a new consent may no longer be consistent with Ofwat's policy. See sub-paragraph 3.5.2(b) of the Consent Request Letter.</p>	<p>Any risks are limited because the arrangement is with a subsidiary over which Dee Valley has control and which is limited in the activities that it can undertake.</p> <p>While we are satisfied that the granting of this consent balances our duties appropriately at the current time, Ofwat's future position regarding the treatment of subsidiaries (including Financing Subsidiaries) and financial ring-fencing more broadly may change. While any such change would occur in accordance with our statutory and general administrative law duties, we considered it prudent to note in our consent that, if Ofwat's policy changes, we will notify Dee Valley of the impact on the consent granted so that Dee Valley does not assume that the consent applies to future arrangements entered into following a change in our policy.</p> <p>Consent is subject to a) the arrangement being limited to Dee Valley and its subsidiaries and for their benefit only and b) there being no change in in Ofwat's policy when the arrangement is entered into.</p>

Appendix 1: Consent Request Letter



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26 June 2018

Dear Aileen

Project Penguin – consent request letter

As you know, Severn Trent Water Limited ("STW") acquired Dee Valley Group plc, the holding company of Dee Valley Water plc ("DVW") in February 2017 with a view to restructuring the DVW and STW business into separate English and Welsh appointees (the "Restructuring").

Ofwat has requested that STW and DVW adopt the most recent set of financial ring fencing conditions as part of the Restructuring. On 23 March 2018, Ofwat consulted¹ on, among other things, modifying the instrument of appointment ("licence") of DVW to incorporate these new financial ring fencing conditions (the "New Conditions").

On 25 April 2018, Liv Garfield wrote to Rachel Fletcher to confirm that DVW could not formally consent to the modification of its licence to incorporate the New Conditions until agreement had been reached on the form of certain consents to be provided by Ofwat.

The purpose of this letter is to formally request the consents ("Consents") which DVW requires from Ofwat with respect to the New Conditions. For this purpose, reference is made to a letter from STW to Ofwat dated 24 May 2017 (the "STW Letter") which sets out the rationale for the Transaction and describes various consents required by STW and DVW.

DVW requests Ofwat to grant the following Consents:

1. Consent for DVW and its financing subsidiaries to not directly hold an investment grade credit rating (Condition P, paragraph 7.1 and 7.3 of the New Conditions) and confirmation from Ofwat that the provision of the certificate pursuant to paragraph 7.3 of Condition P of the New Conditions may be based on the STW investment grade rating whilst DVW

¹ <https://www.ofwat.gov.uk/wp-content/uploads/2018/03/Consultation-proposed-modification-of-Severn-Trent-Water-licence-and-Dee-Valley-Water-licence.pdf>

remains a wholly owned subsidiary of STW. As set out in sub-paragraph 3 of section 3.2.1 of the STW Letter, this consent would allow DVW to use the credit rating of its parent, STW, to fulfil its obligation to hold a credit rating. [REDACTED]

2. Consent for the cross default obligations contained in the loan facility described in sub-paragraph 1 of section 3.2.1 of the STW Letter pursuant to which STW makes loans to DVW and its subsidiaries for the purposes of the DVW regulated activities, to refinance existing DVW debt and to put in place arrangements in lieu of DVW holding an investment grade credit rating (Condition P, paragraph 6.3 of the New Conditions).
3. Consent for the purposes of Condition P, paragraphs 6.3(a), 6.3(c) and 6.4, entering into guarantees and cross default obligations and (ii) for the purposes of Condition P, paragraph 6.3(b), DVW making loans, in each case, pursuant to new overdraft and cash pooling arrangements provided that such arrangements relate only to DVW and any Financing Subsidiary and are for their benefit only.

Yours sincerely

Tony Ballance
Director, Strategy & Regulation

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Appendix 2: Consent Letter



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Ms Liv Garfield
Dee Valley Water Ltd
Chief Executive Officer
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28 June 2018

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Dear Liv,

Dee Valley Water Limited -Consent to certain financing arrangements pursuant to Condition P

1 Introduction

- 1.1 Dee Valley Water Limited (formerly known as Dee Valley Water plc and shortly to be re-named Hafren Dyfrdwy Limited) ("Dee Valley Water") is the holder of an instrument of appointment originally granted under sections 11 and 14 of the Water Act 1989 and a new wastewater appointment granted on or around that date of this letter (together the "Appointment"). Words and expressions defined in the Appointment shall have the same meaning in this letter unless the context otherwise requires.
- 1.2 On or around the date of this letter a new Condition P will become effective in the Appointment. Condition P contains provisions which, among other things, restrict Dee Valley Water's ability to enter into transactions with Associated Companies and to maintain agreements which include cross default obligations, without Ofwat's consent.
- 1.3 In a letter dated 26 June 2018 (the "Consent Request Letter", included as the Appendix to this letter), in anticipation of Condition P being introduced into the Appointment, Dee Valley Water sought Ofwat's approval or agreement (each referred to as a "Consent") in relation to certain provisions in its financing arrangements and certain proposals in relation to its credit rating which Dee Valley Water considered required Ofwat's consent, approval or agreement pursuant to certain provisions of Condition P.

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- 1.4 The Consents provided in paragraph 3 of this letter are the only consents granted to Dee Valley Water in respect of the requests made in the Consent Request Letter. Appending the Consent Request Letter to this letter shall not be interpreted as Ofwat consenting or approving other matters detailed in the Consent Request Letter or Ofwat granting consents on the terms requested therein.
- 1.5 The Consents provided in paragraph 3 of this letter are granted on the basis of the information provided by Dee Valley Water to Ofwat in the Consent Request Letter, supplementary information provided by Dee Valley Water, information provided by Severn Trent Water Limited in a letter dated 24 May 2017 (the "**Severn Trent Letter**") and Ofwat's assessment of the specific circumstances of Dee Valley Water at the time. Accordingly, they should not be taken to be a statement of Ofwat's policy in relation to the availability of consents to other appointees.
- 1.6 A copy of this letter and its Appendix will be published by Ofwat.
- 1.7 Words and expressions defined in the Appointment shall have the same meaning in this letter unless the context otherwise requires.

2 Nature of Consents Sought

- 2.1 Dee Valley Water's request was made in the context of its acquisition by Severn Trent Water Limited on 15 February 2017 (the "**Acquisition**") and the proposed modification of the area covered by and the new wastewater appointment to be included in the Appointment following the completion of the Acquisition.
- 2.2 Dee Valley Water's requests fall into three broad categories:
- 2.1.1 consent pursuant to paragraphs 7.1 and 7.3 of Condition P to Dee Valley Water and its Financing Subsidiaries not directly holding an investment grade credit rating and confirmation from Ofwat that the provision of the certificate pursuant to paragraph 7.3 of Condition P of the New Conditions may be based on the Severn Trent Water investment grade rating whilst Dee Valley Water remains a wholly owned subsidiary of Severn Trent Water (the "**Credit Rating Consent**"); and
- 2.1.2 consent pursuant to paragraph 6.3 (c) of Condition P to Dee Valley Water entering into loan facilities with Severn Trent Water Limited on terms described in the Severn Trent Letter, paragraph 3.2.1, sub-paragraphs (1), (3) and (4) and supplementary information provided by Dee Valley Water (the "**Intra-group Loan Facility**") which contains cross-default obligations given by Dee Valley Water in respect of its subsidiaries: the purpose of the loan

facility is to finance Dee Valley Water's regulated activities, refinance Dee Valley Water's existing financing arrangements and to put in place arrangements in lieu of Dee Valley Water holding an investment grade credit rating (the "**Intra-group Financing Consent**").

2.1.3 consent pursuant to paragraphs 6.3 and 6.4 of Condition P to Dee Valley Water entering into a cash pooling arrangement with its financing subsidiaries which contains guarantees and cross default obligations and pursuant to which loans are made to Associated Companies (the "**Cash Pooling Consent**").

2.2 Dee Valley Water considers that the Credit Rating Consent is required because it would allow Dee Valley Water to use the credit rating of its parent, Severn Trent Water, to fulfil its obligation to hold a credit rating which it considers to provide cost efficiencies without causing detriment to consumers or prejudicing its ability to finance its functions.

2.3 Dee Valley Water considers that the Intra-group Financing Consent is required because it is now reliant on its parent company for finance, which brings cost efficiencies. A necessary condition of that financing is that it enters into the cross default obligations described in the Consent Request Letter.

2.4 Dee Valley Water considers that the Cash Pooling Consent is required because it proposed to put in place a cash pool which would bring cost efficiencies. Based on similar arrangements in place at present, a necessary condition of such an arrangement would be that Dee Valley Water would guarantee the performance of its subsidiaries and would provide to (and receive from) its subsidiaries loans from time to time.

3 Ofwat's consent

3.1 Credit Rating Consent and guidance regarding annual certification

3.1.1 In accordance with, and for the purposes of Condition P, paragraph 7.1, Ofwat agrees that Dee Valley Water does not need to comply with Condition P, paragraph 7.2. Accordingly, Dee Valley Water will be required to comply with Condition P, paragraph 7.3.

3.1.2 Ofwat notes that, while there is no provision in Condition P, paragraph 7.3, for it to provide consent or approval regarding the factors considered by a Board of an appointee, it would be helpful to Dee Valley if Ofwat provided some guidance. Accordingly, Ofwat confirms that it would consider it reasonable if the certificate provided each year by Dee Valley Water's Board of Directors referred to Severn Trent Water Limited's credit rating and the loan provided by Severn Trent Water to Dee Valley Water as relevant factors (but not the only

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such factors) in its opinion given in that certificate. Ofwat's confirmation is, therefore, without prejudice to Dee Valley Water's obligation to consider other relevant factors, including financial ratios, when providing its certificate.

3.2 Intra-group Financing Consent

3.2.1 In accordance with, and for the purposes of Condition P, paragraph 6.3(c) and subject to the conditions set out in paragraph 3.2.2 below, Ofwat approves Dee Valley Water maintaining cross default obligations in the Intra-group Loan Facility.

3.2.2 This Consent is subject to the conditions that there shall be no material changes (as defined below), including if such changes would constitute a renewal, extension or replacement, to the terms of the Intra-group Loan Facility without Dee Valley Water first obtaining Ofwat's further consent (such consent not to be unreasonably withheld or delayed).

3.2.3 For the purposes of paragraph 3.2.2 above, a change shall be considered "material" if such change (by itself or together with other changes made after the date of this letter), would or could reasonably be expected to:

- (a) materially extend the period for which the cross default obligation is in effect;
- (b) materially increase Dee Valley Water's liability under the cross default obligation; or
- (c) materially and adversely modify the circumstances in which liability under the cross default obligation may arise.

3.2.4 Dee Valley Water shall, as soon as reasonably practicable following a change to the Intra-group Loan Facility (and in any event within 30 days of the change becoming effective), notify Ofwat in writing of the details of the change(s) made.

3.3 Cash Pooling Consent

3.3.1 In accordance with, and subject to the conditions set out in this paragraph 3.3:

- (a) for the purposes of Condition P, paragraphs 6.3(a), 6.3(c) and 6.4, Ofwat approves the guarantees and cross default obligations; and
- (b) for the purposes of Condition P, paragraph 6.3(b), Ofwat approves Dee Valley Water making loans,

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in each case, pursuant to a new overdraft and cash pooling arrangement provided that:

- (i) such arrangements are entered into on terms materially similar to those of the existing overdraft and cash pooling arrangement described in the Severn Trent Letter, paragraph 3.3.1, sub-paragraph 1(14) and supplementary information provided by Dee Valley Water;
- (ii) the arrangement relates only to Dee Valley Water and any Financing Subsidiary and is for their benefit only; and
- (iii) on the date on which the overdraft and cash pooling arrangement is entered into Ofwat has not, pursuant to paragraph 3.6.2, notified Dee Valley Water that the grant of a new consent on equivalent terms to that granted in this paragraph 3.3 would be no longer be consistent with Ofwat's policy.

3.3.2 Following a general change in policy with regards to the granting of Consents pursuant to Condition P, sub-paragraph 6.3(a), 6.3(b) or 6.3(c) or paragraph 6.4 and the equivalent provisions in the appointments of other Appointees only, Ofwat may give notice to Dee Valley Water in writing that the grant of a new consent on equivalent terms to that granted in paragraph 3.3.1 of this letter may not be consistent with Ofwat's policy going forward and any cash pooling or other similar financing arrangements entered into by Dee Valley Water after the date specified in Ofwat's notice will be expected to comply fully with Condition P unless Ofwat provides a new approval, consistent with its new policy.

4 General Provisions relating to Ofwat's Consents

4.1 The Consents provided in paragraph 3 shall take effect on and from the date and time that the Appointment is modified to include Condition P and shall expire if Dee Valley Water ceases to be a subsidiary of Severn Trent Water.

4.2 The Consents provided in this letter are without prejudice to Dee Valley Water's other obligations pursuant to its Appointment which are imposed other than pursuant to Condition P.

5 Reasons for Consents

Ofwat considers that the Consents provided in paragraph 3 above should be granted because, in the current circumstances and from the information provided, Ofwat is satisfied that the granting of consent is consistent with its statutory duties. A

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statement of Ofwat's reasons for granting the Consents in this letter will be published
separately.

Yours sincerely

Aileen Armstrong
Senior Director Finance and Governance

Enc (or Encs)

Ms Liv Garfield
28 June 2018
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Appendix 1

Copy of Consent Request Letter

Appendix 3: Licence conditions under which consent was sought

Consent was requested by Dee Valley in relation to the following licence conditions.

Condition P

6.3 The Appointee must not, without the prior approval of the Water Services Regulation Authority:

- (a) give a guarantee in relation to any liability of an Associated Company;
- (b) make a loan to an Associated Company; or
- (c) enter into an agreement or other legal instrument incorporating a Cross-Default Obligation.

6.4 The Appointee must not continue or permit to remain in effect an agreement or other legal instrument incorporating a Cross-Default Obligation unless:

- (a) prior approval has been given by the Water Services Regulation Authority; or
- (b) the Cross-Default Obligation would only arise on a default by a subsidiary of the Appointee and the Appointee ensures that:
 - (i) the period for which the Cross-Default Obligation is in effect is not extended;
 - (ii) liability under the Cross-Default Obligation is not increased; and
 - (iii) no change is made to the circumstances in which liability under the Cross-Default Obligation may arise.

7.1 The Appointee must demonstrate its ability to service its debt obligations by complying with paragraph 7.2 other than where the Water Service Regulation Authority agrees that the Appointee does not need to comply with paragraph 7.2, whereupon it must comply with paragraph 7.3.

7.2 The Appointee must ensure that it and any Associated Company which issues corporate debt on its behalf maintains, at all times, an Issuer Credit Rating which is an Investment Grade Rating.

7.3 Where the Water Services Regulation Authority has agreed that the Appointee is not required to comply with paragraph 7.2, the Appointee must no later than

the date on which the Appointee is required to deliver to the Water Services Regulation Authority a copy of each set of accounting statements prepared under Condition F submit to the Water Services Regulation Authority a certificate which:

- (a) states that in the opinion of the Board of the Appointee, the Appointee would be able to maintain an Issuer Credit Rating which is an Investment Grade Rating; and
- (b) includes a statement of the main factors, including financial ratios and other information, which the Board has taken into account in giving its opinion for the certificate.

Appendix 4: Ofwat's statutory duties

In summary, our main statutory duties in relation to water and sewerage companies are to:

- further the consumer objective (to protect the interests of consumers, wherever appropriate by promoting competition);
- secure that the relevant companies properly carry out their functions;
- secure that the relevant companies can finance the proper carrying out of their functions; and
- further the resilience objective (to secure long-term resilience)

Subject to those duties, we also have duties to (among other things) ensure that consumers are in particular protected by ensuring that transactions with associated companies are carried out at arm's length.