

4 September 2019

Regulatory Ring-fencing  
Ofwat  
Centre City Tower  
7 Hill Street  
Birmingham  
B5 4UA

By e-mail: [REDACTED]

Dear Sir / Madam

## **CONSULTATION ON GRANTING DEROGATIONS FROM THE REGULATORY RING-FENCING FRAMEWORK**

We are pleased to have the opportunity to respond to Ofwat's consultation on the '*draft guidance on Ofwat's approach to granting derogations from the regulatory ring-fencing framework*'.

We recognise the importance of the regulatory ring-fence framework to ensure that the regulated company maintains sufficient financial and management resources to enable it to carry out its functions in a sustainable manner. We are also aware that there may be situations where a derogation from the strict interpretation of those conditions is required to ensure the effective and efficient running of the Appointee business. These situations may occur as a result of external market driven conventions.

We are pleased that guidance is being proposed to ensure that the process for obtaining a consent from Ofwat for a derogation will be clear. However, we have some observations on key aspects of the guidance which we feel should be further considered. In particular we have focused on financing activities as this is the area where we believe certain derogations may be required.

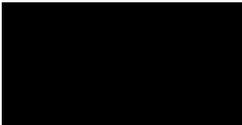
- **Appointee and wholly owned subsidiary financing activities** – to ensure alignment with financing conventions and facilitate the raising of cost effective and efficient financing from capital markets it may be appropriate to have in place entities within the Appointee Group to undertake that activity. For example, to access the capital markets, a non listed Appointee may need to issue debt instruments from an entity with a listing (plc). Where wholly owned entities in the Appointee group are in place to ensure adherence to financing market conventions, with a sole purpose of supporting the Appointee, then we believe the derogations process could efficiently be focused on the purpose and nature of the entity, rather than each individual financing transaction.
- We note in the consultation the recognition that such structures may necessitate the inclusion of cross default obligations where an Appointee is entering into a cross default obligation with a financing company acting purely on behalf of the Appointee. It may be worthy of consideration that the derogation given is for all the financing activities of such

subsidiaries, which are under the total and exclusive control of the Appointee, as opposed to each separate financial instrument.

- **Timescales for granting consent** – we recognise that the timescales for consent may differ depending on the nature of the transaction or entity. However, we would request that Ofwat reflects on the expediency that may be required for financing transactions as delays in granting consent may jeopardise the ability to secure the most competitive terms and rates in debt capital markets.
- **Commercially sensitive information** – we understand the need to publish the consent for derogations being sought however, in certain circumstances some of the detail required may be commercially sensitive and publication of information ahead of any transaction may be detrimental.
- **Demonstrating the impact** – the conditions within the licence are focused on ensuring that activities are in the best interests of customers. We believe this could be best delivered in reference to any initial financing type or instrument, as transactions on a case by case basis may be more difficult to separately consult upon and review.

We believe that the approach could be tailored depending on the nature of the activity, with financing transactions having a streamlined approach with a commitment to timescales for review and assessment.

Yours sincerely



**Sally Mills**  
**Regulatory Director**

