

28 October 2019

Trust in water

**Proposal to grant a variation of appointment
to Independent Water Networks Limited to
enable it to provide water services to a site
called Breary Lane, Leeds**

Contents

1. About this document	3
2. The Site	3
3. The applicant	5
4. The proposal	6
5. Our approach to the assessment of this application	7
6. The application	8
7. Conclusion and next steps	12
8. Site map	13

1. About this document

We propose granting a variation of appointment to Independent Water Networks Limited as a water company and varying the appointment of Yorkshire Water Services Limited as a water company. This notice is a consultation on this proposal under section 8(3) of the Water Industry Act 1991 (“**WIA91**”).

The consultation period will last for 28 days from the date of publication of this notice. Having considered any representations submitted during the consultation period in response to this consultation notice, Ofwat will decide whether or not to grant the variation of appointment set out above.

2. The Site

Independent Water Networks Limited (“**Independent Water Networks**”) has applied for a variation to its appointment to be able to provide water services to a site called Breary Lane in Leeds (“**the Site**”).

The Site boundary maps can be viewed in section 8 of this document.

The Site is within the water services area of Yorkshire Water Services Limited (“**Yorkshire Water**”). If granted, Independent Water Networks will provide water services to 319 household customers, there will be no business customers on the Site. Independent Water Networks has advised that the Site is likely to be fully built out by 2026.

Independent Water Networks proposes to provide water to the Site by way of bulk supply agreement with Yorkshire Water

3. The applicant

In October 2007, Independent Water Networks obtained its first appointment as a water and sewerage undertaker for a housing development at the Long Croft Road site in Anglian Water's area. Since then Ofwat has agreed to vary Independent Water Networks' area of appointment so it can serve a further 35 sites for water and/or sewerage. The register of new appointments and variations can be viewed [here](#).

4. The proposal

Ofwat proposes to:

- grant a variation of appointment to Independent Water Networks as a water company to include the Site in its water supply area; and
- vary the appointment of Yorkshire Water as a water company by excluding the Site from its water supply area.

By means of the above, Independent Water Networks will become the water supplier for the Site.

5. Our approach to the assessment of this application

The new appointment and variation mechanism, set out in primary legislation¹, provides an opportunity for entry and expansion into the water and sewerage sectors by allowing one company to replace the existing appointee as the provider of water and / or sewerage services for a specific area. This mechanism can be used by new companies to enter the market and by existing appointees to expand their businesses.

When considering applications for new appointments and variations, Ofwat operates within the statutory framework set out by Parliament, including our statutory duty to protect consumers by promoting effective competition, wherever appropriate. In particular, in relation to unserved sites, we consider that we must ensure that the future customers on a site – who do not have a choice of supplier – are adequately protected. When assessing applications for new appointments and variations, the two key policy principles we apply are that:

- customers, or future customers, should be no worse off than if the site had been supplied by the existing appointee; and
- Ofwat must be satisfied that an applicant will be able to finance the proper carrying out of its functions as a water and/or sewerage company.

We clarified these two policy principles in February 2011, and updated them more recently, when we published our new appointments and variations – [policy](#) (2015) and [process](#) (2018) documents. In December 2015, we published our '[Statement on our approach for assessing financial viability of applications for new appointments and variations](#)'. This states that we will adopt a company-based assessment of financial viability, rather than a detailed site-based assessment, where it is appropriate to do so.

When we assess whether customers will be no worse off as a result of the appointment, we not only consider the customers on the site but also the generality of customers – i.e. customers of the existing provider and customers more generally across England and Wales, who in our view benefit from the effective operation of the new appointment and variation mechanism.

¹ The legal framework for new appointments is set out in the WIA91. Section 7 of the WIA91 sets out the criteria by which an appointment or variation may be made. Section 8 sets out the procedure for making that appointment or variation.

6. The application

Independent Water Networks has applied to be the water company for the Site under the unserved criterion, set out in section 7(4)(b) of the WIA91.

6.1 Unserved status of the Site

To qualify under the unserved criterion, an applicant must show that at the time the appointment is made, none of the premises in the proposed area of appointment is served by the existing appointee.

Yorkshire Water has provided Ofwat with a letter dated 8 March 2019 confirming that in its view the Site is unserved because there is no public water or sewerage infrastructure on the Site.

IWN has confirmed that the Site is greenfield. There is a building on the Site which has been confirmed by Independent Water Networks Limited to be a shed which has never had a water supply.

Having reviewed the facts of this Site, and taking into account the letter from Yorkshire Water, we consider the Site to be unserved.

6.2 Protecting customers

Ofwat acts to protect consumers, especially those who are unable to choose their supplier. In assessing applications to supply new development sites, Ofwat acts on behalf of both existing customers as well as potential new customers who are not yet on site, to protect their interests. The fact that future customers on a site have not directly chosen their supplier is not a position unique to new appointments and variations – only business, charity and public sector customers (“Business Customers”) in England and Wales are able to choose their supplier².

Recognising this, our assessment of an applicant’s proposals includes analysis of its plans to ensure customers will be at least no worse off in terms of their annual bills and levels of service than if they had been supplied by the existing appointee in

² The majority of Business Customers where the area of the relevant appointed company is not wholly or mainly in Wales (and whose premises are, or are likely to be, supplied with at least 50 MI where the relevant area is wholly or mainly in Wales) can effectively switch suppliers of water and/or sewerage from 1 April 2017.

whose geographical area the relevant site sits. We will continue to protect customers on a site by regulating the new appointee's prices and service levels.

6.3 Price

Independent Water Networks has confirmed that customers on the Site will be no worse off if served by Independent Water Networks rather than Yorkshire Water (i.e. charges will be no more than those of Yorkshire Water). Independent Water Networks will assess whether a discount will be offered to customers on the Site after Yorkshire Water has published its charging scheme for the next financial year.

6.4 Levels of service

Every appointee is required under its conditions of appointment to publish Core Customer Information. We have assessed Independent Water Networks' proposed Customer Code of Practice, and our view is that these are of an appropriate standard. Our view is that customers on the Site would be no worse off in relation to the points covered by the Customer Code of Practice than they would be if Yorkshire Water were to be the customers' water services supplier.

6.5 Site owner choice

Independent Water Networks has the consent of the developer, Miller Homes, to become that water services supplier for the Site.

6.6 Environment Agency ("EA") and Drinking Water Inspectorate ("DWI")

We take the views of these organisations into account before progressing to formal consultation on an application for a new appointment. Both the EA and DWI informed us that they are content for us to consult on this application³.

³ The EA and the DWI will also be formally consulted on the proposals, as they are on the list of organisations which must be formally consulted as set out in section 8(4)(b) of WIA91.

6.7 Incumbent's existing customers

In considering whether customers will be no worse off, we also considered the potential effects of this new appointment on the prices that Yorkshire Water's existing customer base may face.

The calculation necessarily depends on a range of assumptions, and there are clearly difficulties involved in quantifying the effect. It is therefore necessary to use a simplified set of figures. We have expressed the effect in 'per bill' terms to try to quantify the possible effect in an easily understandable way.

We have assessed the potential magnitude of this impact by comparing how much Yorkshire Water might have expected to receive in revenue from serving the Site directly, were they to serve the Site, with the revenues they might expect from the proposed arrangement with Independent Water Networks.

We estimate a potential £0.003 annual increase on the water bills of existing Yorkshire Water customers if we grant this variation to Independent Water Networks. This is once the Site is fully built out, which we understand is likely to occur in 2026.

This estimate does not take into account the potential spill-over benefits to customers arising from dynamic efficiencies achieved as a result of the competitive process to win sites.

Therefore we consider that granting this variation to Independent Water Networks would have a very small financial impact on customers' bills and could have potential benefits for customers.

6.8 Ability to finance and properly carry out its functions

We have a statutory duty to ensure that efficient appointees can finance the proper carrying out of their functions. When a company applies for a new appointment or variation, it must satisfy us that it is able to carry out all of the duties and obligations associated with being an appointed water or sewerage company.

We have considered the revenues and costs of the Site relating to the provision of water services should the relevant variation be granted.

Independent Water Networks Limited obtained an unlimited Keepwell Agreement⁴ from its owner Brookfields UK Limited (“**BUUK**”) in July 2013. Independent Water Networks has confirmed that this agreement is still in place and will cover the Site. BUUK continues to hold an investment grade credit rating with Moody’s.

On this basis, we are currently satisfied that Independent Water Networks would be able to finance its functions if the variation is granted.

⁴ A Keepwell Agreement is an agreement between a parent company and a subsidiary whereby the parent company guarantees to provide all of the financing that is needed by the subsidiary for the term of the agreement.

7. Conclusion and next steps

In assessing Independent Water Networks application, we have considered the general benefits of new appointments. Our view is that our two key policy principles would be met in this case, as customers would be no worse off, and Independent Water Networks would be able to finance, and carry out, its functions. We have also considered the effects of granting the variation on the existing customers of Yorkshire Water.

We are currently minded to grant the variation under the unserved criterion. We are consulting on our proposal to do so.

Where to send submissions

Any person who wishes to make representations or objections with respect to the application should do so in writing to Hayley Robinson at Centre City Tower, 7 Hill Street, Birmingham, B5 4UA or by email at hayley.robinson@ofwat.gov.uk

Representations must be received by Ofwat no later than 17.00 hours on 25 November 2019. Further information about how to make representations or objections, including information on the treatment of confidential information, can be obtained from Ofwat at the above address or at <http://www.ofwat.gov.uk/foi/>

Ofwat will only use the information you have provided for the purpose of this consultation. We will retain your information in accordance with Ofwat's retention schedule and will not share with third parties unless we have a legal obligation to do so. For further information please see Ofwat's Privacy Policy in our [Publication Scheme](#).

8. Site map



<p>PLAN REFERRED TO IN THE VARIATIONS OF THE APPOINTMENTS OF INDEPENDENT WATER NETWORKS LIMITED AND YORKSHIRE WATER SERVICES LIMITED, AS WATER UNDERTAKERS, MADE BY THE WATER SERVICES REGULATION AUTHORITY ON</p>		<p>WATER SUPPLY PROJECT: 34094659 ADDRESS: Breary Lane, East Bramhope, Leeds, LS16 9AP OS GRID REFERENCE: 426126, 442892</p>	<p>INSET MAP 1 SCALE: DRAWN: EA 1:15 000 at A3 DATE: 29/07/2019</p> 
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Ofwat (The Water Services Regulation Authority) is a non-ministerial government department. We regulate the water sector in England and Wales. Our vision is to be a trusted and respected regulator, working at the leading edge, challenging ourselves and others to build trust and confidence in water.

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