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21 Bloomsbury Street, London WC1B 3HF

21 January 2020

Dear Self-Lay Provider

Code for Adoption Agreements

I am writing to you regarding the [Code for Adoption Agreements](#) and, in particular, the draft water sector guidance and model water adoption agreement (**Water Sector Documents**) that water companies have been developing in consultation with their customers.

On 7 October 2019, water companies submitted their [revised recommendation](#) to Ofwat, including updated versions of the draft Water Sector Documents. This followed our review of earlier versions from which we said water companies must address a limited set of outstanding issues in order for the documents to meet the Code's requirements and be approved by us for implementation. These issues included, amongst others, further work on the draft model water adoption agreement, the balance of obligations on parties to the agreement and the design and construction standards. For a full list of the issues we identified for further work by water companies please see our Code for Adoption Agreements [webpage](#).

Our [review](#) of the revised draft documents has found that companies have submitted an improved set of Water Sector Documents in relation to each of the areas of further work we had identified. The latest recommendation does, however, indicate that a number of self-lay providers (**SLPs**) raised concerns during the consultation on the updated draft Water Sector Documents. Some SLPs have likewise raised concerns directly with Ofwat about the documents. SLPs' comments relate to both those specific areas of the documents on which we had asked companies to do further work, and on topics that go beyond these areas.

Due to the timing of their submissions to Water UK and Ofwat, it is not always clear whether SLPs' comments are based on the version of the draft documents that companies consulted on, or the updated version that was submitted to Ofwat after amendments made in light of the consultation. It is not, therefore, fully clear whether concerns expressed have subsequently been resolved or if not, the nature and extent of any outstanding concerns. In addition, there are some differing views amongst SLPs.

The Code sets out that, where possible, the Water Sector Documents must reflect a broad consensus of opinion amongst customers and water companies. The Code also sets out that Ofwat can seek further views from customers and companies prior to finalising the Water Sector Documents.

We consider that, given the lack of clarity on the extent of the consensus reached both amongst SLPs and between SLPs and water companies, it is beneficial to seek further clarification from those SLPs who responded to the latest consultation on the draft Water Sector Documents. We are interested in better understanding the extent and nature of any outstanding concerns those SLPs have in regard to the specific areas which we asked water companies to engage further on to produce the revised Water Sector Documents. This will help inform our view on whether there are any specific issues outstanding and if so whether they:

- a. Might be capable of resolution with minor amendment or additional clarification; and/or
- b. Might reasonably form part of future work for the Code Panel to consider as part of its on-going role to maintain and continue to develop the Water Sector Documents.

By engaging with SLPs via this letter we are not aiming to explore and address every issue with the self-lay process, nor to create a perfect enduring set of Water Sector Documents. Rather, our focus is on ensuring that the initial set of Water Sector Documents meet the Code requirements, thus, enabling them to be approved and incorporated into the Code. The sector will then move to the next phase of implementation which will include continuing to improve and strengthen them via the enduring Code Panel arrangements of which SLPs will play an important role. This will enable water companies and SLPs to benefit from the advances made to date during the development of the Water Sector Documents, whilst providing a formal mechanism for continuous improvement of them.

We have also included in an annex to this letter our current thinking on a number of areas where SLPs have previously expressed concerns. The purpose of this is to demonstrate our understanding of the issues SLPs have raised and to enable SLPs to understand and comment on our current views.

If, following this engagement, we conclude that the Code requirements have been satisfied and we can approve the Water Sector Documents, we consider it would be sensible to provide details of any outstanding issues SLPs and water companies have raised to the Code Panel for it to consider in its initial meetings and its future work planning.

Taking the above into account, we would be grateful for your answers to the following questions:

1. From 27 August to 18 September 2019, companies carried out a formal consultation on their water sector document proposals. On 7 October 2019, following formal consultation, companies submitted the revised Water Sector Documents to us and [published](#) them on their website. Water companies also subsequently set out in a [spreadsheet](#) how they responded to all of the consultation comments they received.
 - a. Have you reviewed the spreadsheet?
 - b. Have you reviewed the revised Water Sector Documents submitted to Ofwat?
 - c. Having reviewed the above documents, if you raised any comments during the consultation, do you consider these have been adequately addressed by the documents?
 - d. If you raised any comments but do not consider they have been adequately addressed, please confirm, from your perspective, any remaining areas of material disagreement on the issue(s) you commented on and how you consider that should be resolved in the Water Sector Documents.
 - e. Taking the above into account, overall, are you in broad agreement with Water Sector Documents?
 - f. If you are not in broad agreement, beyond your response to d) above, please confirm, from your perspective, any remaining areas of material disagreement.
2. From reviewing the above spreadsheet, it appears there are a number of key issues that SLPs were unhappy with at the time companies carried out their consultation. In the annex to this letter we set out some general comments on a number of these issues. Reflecting on these comments:
 - a. Do you have any material concerns regarding how these areas are addressed in the revised documents submitted to Ofwat? If so, please explain the nature of your concern and how you consider it would impact on SLPs / water companies entering into adoption agreements.
 - b. If some of these key issues remain of material concern, do you consider your concerns could reasonably be addressed if prioritised for consideration by the Code Panel after the Water Sector Documents have been approved?
 - c. If you do not consider your concerns could reasonably be addressed by the Code Panel, please set out why, including what impact you consider the Code Panel taking forward your concern would have on SLPs / water companies.

Please do provide any further information or supporting evidence where you consider this relevant to your answers to the above questions.

For clarity and ease of reference, please provide your response using the numbering format set out above. I would be grateful if you could please respond to the above questions by 7 February 2020. Please submit your response either by email to [REDACTED] or by hard copy to:

Michael Deakin
Ofwat
Centre City Tower
7 Hill Street
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B5 4UA

Privacy statement

Please read Ofwat's privacy statement for details on the personal data collected and used by Ofwat for the provision of services. This includes users of Ofwat's website and communications to Ofwat whether it be in electronic format, paper format or by telephone. You can find the privacy statement in our Publication Scheme which can be found on our website <http://www.ofwat.gov.uk/publication/privacy-policy/>. Please email mailbox@ofwat.gov.uk or telephone 0121 644 7500 if you would like a paper copy. If you have any concerns on how we manage your personal data please contact the Data Protection Officer at FOI@ofwat.gov.uk

Yours sincerely

[REDACTED]

Michael Deakin
Principal, Market Outcomes and Enforcement

Annex – Key issues

Having reviewed the revised Water Sector Documents, we recognise that there may be areas where some SLPs continue to have concerns. We have provided an indication of our current thinking on a number of these issues and welcome further comments on our initial views set out below.

a. Accreditation

The Code requires the Water Sector Documents to set out high level information about the sector's accreditation schemes for self-lay work. The Code states that the Model Water Adoption Agreement may require a relevant party to demonstrate competence, for example by means of WIRS Accreditation, and any additional assurance must be reflective of accreditation schemes developed and recognised by the sector.

Our current view is that the latest proposal from companies regarding accreditation meets these requirements. We understand that water companies collectively continue to recognise WIRS Accreditation and this is reflected in the Water Sector Documents. We also consider it appropriate for water companies to keep their recognition of accreditation arrangements under review to ensure that they remain proportionate and in compliance with competition law. Accordingly, we welcome the work currently being taken forward by water companies independent of the Code to assess how current arrangements for accreditation might be improved.

The definition of "Accreditation" in the Water Sector Documents includes the potential for SLPs to demonstrate competence using the Water Company's:

"...local accreditation arrangements, agreed with the SLP in relation to a specified activity, published in its Annual Contestability Summary (**ACS**), pursuant to section 3.2 of the Water Sector Guidance".

We consider this local option enables SLPs to meet such (potentially less onerous) competence requirements as water companies consider appropriate for work on their networks. In applying such requirements, water companies should comply with competition law to ensure that any differential treatment of SLPs and water company contractors performing equivalent works is objectively justified.

We recognise some SLPs' concern that water companies may apply different standards to their own contractors, however, the Code and adoption agreement do not apply to arrangements between water companies and their contractors. As such, we consider there to be an important role for our enforcement powers in ensuring that differential treatment is not anti-competitive rather than this being a flaw in the

Code. In doing so, any complaints we receive need to be sufficiently evidenced and, in deciding whether to begin an investigation, we will apply our prioritisation principles. For more information on competition law compliance please see our [website](#).

b. Redress

The Code states that the water sector guidance must include appropriate customer redress if a water or sewerage company fails to meet the minimum levels of service. We note that some SLPs still have some concerns about the Water Sector Documents' proposals on redress, specifically that they should include monetary compensation and interim solutions where there are service failures.

The draft Water Sector Documents contain strengthened cross referencing between the redress section in the sector guidance and the redress section in the model adoption agreement, which adds clarity on how the provisions will operate in practice. In addition, companies have also included a contractual commitment to a delivery date, which we consider is a significant improvement.

Following our initial review of the latest draft Water Sector Documents, we consider the revised version gives SLPs regulatory, contractual and complaint procedure redress in stated circumstances, although we note that not all level of service breaches will provide a contractual remedy.

Taking the above into account, our current view is that the proposals for redress in the draft Water Sector Documents could be considered appropriate and, therefore, compliant with the Code's requirements. This does not, however, preclude future work to further improve on this via the enduring Code Panel discussions.

c. Comparison of self-lay and requisitions

Some SLPs have raised concerns about how the process for self-lay compares to the requisitioning process and that this may raise level playing field concerns. We understand that the main reason behind this is a view that the adoption process now looks more complex than the requisitioning process.

Companies have stated that they consider the issue of any alleged anti-competitive behaviour is outside the scope of the Code and, as such, it has not been specifically addressed as part of the consultation process. Having said this, companies have responded to the concerns regarding a level playing field by including a comparison between the self-lay and requisitioning processes in the draft water sector guidance. Our current view is that this goes some way to addressing the concerns raised but we also note, as set out above, the work companies are doing to assess how to

improve the current arrangements for accreditation which may further address these level playing field concerns.

d. Design and Construction Specification

We consider the revised Design and Construction Specification in the water sector guidance is an improvement on what was originally submitted by companies as the Design and Construction Guidance. A substantial amount of work has been done on this document such that it could be said that guidance has been provided on all contestable activities. It is also apparent that a significant proportion of the comments provided by SLPs during the consultation on this document have been accepted by companies and subsequently reflected in the revised version.

Having said this, we recognise that whilst the Code permits local design guidance, the fact that there is still scope for variations continues to be a cause for concern for some SLPs.

We recognise both the concerns raised by SLPs during the consultation, and the significant amount of changes companies have taken on board in the revised version. Our current thinking is that given the largely technical nature of the document, the most appropriate way to resolve any outstanding issues SLPs have may be consideration by the Code Panel, with a view to continuing to reduce the amount of variation between company areas.

e. Pre-start meetings

Some SLPs have questioned the need for pre-start meetings and have concerns that in requiring these water companies can potentially restrict progress at sites and act as a control point. Companies have acknowledged these concerns and subsequently amended the wording of the revised Water Sector Documents to set out that pre-start meetings can be held but only should a party require them. We consider this change presents a fairer and more proportionate position than set out in the previous version of the documents.

We recognise that further developing this position, to potentially include some criteria against which it can be determined whether a pre-start meeting is reasonably required, could be helpful and we consider the Code Panel could be well placed to take this forward.