

March 2020

Ofwat's reasons for revoking NWG Business's licence and for introducing a special condition into Anglian Water Business (National)'s licence

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1. Purpose of this document

In accordance with section 195A of the Water Industry Act 1991 (“**WIA91**”), this document sets out Ofwat’s reasons for issuing:

- a) A [notice to revoke the water supply licence and sewerage licence](#) of NWG Business Limited; and
- b) A notice to amend the [water supply licence](#) and [sewerage licence](#) of Anglian Water Business (National) Limited.

This follows a [consultation](#) on these issues, which ran from 17 February 2020 to 16 March 2020.

2. Reason for revoking NWG Business Limited's Water Supply Licence and Sewerage Licence

2.1 Background to NWGB

- 2.2 On 30 September 2016, NWG Business Limited ("**NWGB**") was granted a water supply licence and a sewerage licence¹ ("**the Licences**") with retail and restricted retail authorisations.
- 2.3 On 30 September 2016, Anglian Water Business (National) Limited ("**AWBN**") was granted a water supply licence² and a sewerage licence³ with retail and restricted retail authorisations.
- 2.4 In August 2017, a 50:50 joint venture was finalised between Anglian Water Venture Holdings Limited and Northumbrian Water Group Limited⁴ to form a company with the trading name Wave Limited ("**Wave**"), with a view to Wave carrying out the retail functions of AWBN and NWGB. Subsequently, a decision was taken to retain only one licensee and to transfer all assets and customers from NWGB to AWBN.
- 2.5 In June 2018, NWGB wrote to its customers explaining that they were to be transferred to AWBN. Thereafter, on 31 August 2018, all businesses and assets operated and owned by NWGB and all its customers were transferred to AWBN.
- 2.6 Consequently, on 7 January 2020, NWGB applied to Ofwat for the revocation of its licences. It requested we revoke its licence by the end of the 2019-20 financial year.

2.7 Revocation of licences

- 2.8 On 16 March 2016, the Secretary of State issued a general authorisation to Ofwat to grant and revoke water supply and sewerage licences.
- 2.9 Under the [standard licence conditions \("**SLC**"\)](#), Ofwat may revoke a licence by serving a notice on the licensee in accordance with the general authorisation given by the Secretary of State, and in any of the circumstances specified in SLC 10.

- 2.10 NWGB requested the revocation of its licences under SLC10 (2)(a) which allows Ofwat to revoke licences with the consent of the licensee.
- 2.11 Ofwat is required to publish a notice ahead of revoking a WSSL licence. SLC 11 requires that in a notice of revocation Ofwat must specify the matters relied upon to justify the revocation and the date on which the revocation is to take effect, which (except in the case of urgency; insolvency; or where the licensee has consented to the revocation) must not be less than 30 days after the date the notice has been served. If the revocation is deemed to be urgent, the notice must specify the reasons for this.
- 2.12 Although not a statutory requirement (as the revocation was by consent), we consulted on the proposal to revoke NWGB's licences. We received two responses to the consultation and we took these responses into account in making our decision (see section 4 below). The revocations of NWGB's licences became effective on the 20 March 2020.

2.13 Customer Protection

- 2.14 When we revoke a WSSL, we seek to ensure that there is no detriment to customers as a result of the revocation. In this case, where a customer has transferred from one licensee to another, in line with the **Retail Exit Code ("REC")**, issued by Ofwat we have to ensure that:
- there are no outstanding and/or unresolved disputes associated with the outgoing licensee;
 - the incoming licensee has communicated with its customers at least two months before it discontinues supplies:
 - its name and contact details;

¹ Referred to jointly as WSSLs.

² <https://www.ofwat.gov.uk/wp-content/uploads/2020/03/Anglian-Water-Business-National-Limited-Water-Licence.pdf>

³ <https://www.ofwat.gov.uk/wp-content/uploads/2020/03/Anglian-Water-Business-National-Limited-Sewerage-Licence.pdf>

⁴ Both Anglian Water Venture Holdings Limited and Northumbrian Water Group Limited are holding companies, rather than regulated entities.

- the date from which it will start to supply them;
 - details of the applicable Scheme of Terms of Conditions; and
 - their rights to switch to a different retailer;
- the transferred customers will be supplied on equivalent terms and conditions as those of its previous retailer.
- 2.15 On 7 January 2020, NWGB provided us with a copy of a letter which it sent to its customers in June 2018 communicating to them details of the change in ownership and change in responsibility for their services and providing reassurance that the company's brand (Wave) along with the customers' current terms and tariffs would remain unchanged. The letter also stated that the change would not affect their right to switch provider at any time.
- 2.16 Given the evidence it supplied to us, we consider NWGB has complied with paragraph 6.1.2 of the REC. This requires that at least two months before a licensee discontinues supplies it must write to all its customers providing certain information.
- 2.17 We also took steps to protect customers by amending the conditions of AWBN's licences to provide that it will be the backstop retailer for customers in Northumbrian Water's area. The reasons for this are set out below.

3. Reason for amending the licences of Anglian Water Business (National) Limited

- 3.1 When the business retail market opened, in April 2017, the monopoly water and sewerage companies were able to elect to exit the business retail market. Once exited, they could no longer provide retail services to business customers in their areas of appointment. These customers were transferred to acquiring licensees⁵ who provided those retail services until such a point a customer may choose to switch its retailer.
- 3.2 The market arrangements also provided for acquiring licensees to become the mandatory backstop for customers in the area of appointment(s) for which they are the acquiring licensee, when a retailer makes a disorderly exit from the retail market (for example, in the case of insolvency), and for the purpose of directions to supply (including for gap sites – that is, sites that were not previously identified as being eligible for supply in the business retail market).
- 3.3 As a result, at the date of the monopoly water or sewerage company's exit from the non-household retail market, the Secretary of State imposed conditions on the acquiring licensees under Regulation 11(4) of the Retail Exit Regulations for them to be on the list of eligible suppliers in the event of an Interim Supply event occurring in the area for which they became the acquiring licensee. Under Regulations 43 and 58 of the Retail Exit Regulations, acquiring licensees must also be on the lists of eligible water supply and sewerage licensees for the purposes of directions to supply. Although there may be other licensees on the relevant lists, it is only an acquiring licensee who is obliged to be on the lists; other licensees can elect to withdraw from the lists. This means that if no other retailer has opted in to being able to provide retail services to customers in that area, customers are allocated to the acquiring licensee as a default.
- 3.4 If the original acquiring licensee for a particular geography exits the market, there is currently no provision in the market's regulatory framework for the replacement supplier to assume the responsibilities of

⁵ An acquiring licensee has the same meaning in this document as set out at Regulation 6 of the Water and Sewerage Undertakers (Exit from Non-household Retail Market) Regulations 2016 (the 'Retail Exit Regulations').

the acquiring licensee for that area. There is therefore no backstop supplier for that area, which means there could be no retailer for customers to be allocated to for interim supply events or for directions to supply.

- 3.5 As NWGB was the acquiring licensee in Northumbrian Water's area, the revocation of its licences would have meant there would have been no acquiring licensee in that area and therefore no backstop supplier for customers.
- 3.6 It is for this reason that we considered it necessary to insert a special condition into AWBN's licences so that it is obliged to be the backstop supplier in Northumbrian Water's area of appointment. When we consulted on the revocation of NWGB's licences, we also consulted on the proposal to amend AWBN's licence conditions.
- 3.7 We received two responses to the consultation. We summarise those responses below and set out how we took them into account in arriving to our decision.

4. Representations made and our responses

- 4.1 We received representations to our consultation from CCW (the Consumer Council for Water) and a water retailer.
- 4.2 The water retailer pointed out the correct name of the licensee is Anglian Water Business (National) Limited, rather than Anglian Water Business, which is the name we used in our consultation document. We acknowledge that an error was made, and have reflected this correction in this decision document, as well as in the associated notices to amend the licences of AWBN⁶.
- 4.3 It also asked why AWBN was selected as a backstop supplier, what evidence there was of a sale or transfer of ownership between NWGB and AWBN that would prevent the initiation of an interim supply process and that it was concerned this transfer would not be in the best interest of NWGB customers. It also questioned Ofwat's interpretation of "otherwise transfers ownership" as stated in the REC.
- 4.4 The [Interim Supply Code](#) (ISC) sets out the interim supply arrangements where a retailer is no longer able to provide services to its customers. We consider there was no need for an interim supply process to be initiated in this instance, given the joint venture arrangement between AWBN and NWGB to create Wave. As a result, NWGB and AWBN have been using Wave to continue to provide services to their customers.

⁶ <https://www.ofwat.gov.uk/wp-content/uploads/2020/03/20-03-18-Notice-to-amend-licence-of-AWB-sewerage.pdf> and <https://www.ofwat.gov.uk/wp-content/uploads/2020/03/20-03-18-Notice-to-amend-licence-of-AWB-water.pdf>

- 4.5 The decision for Wave to retain one set of licences and to transfer all assets and customers of NWGB to AWBN is permitted by the REC which allows a retailer to include in its Scheme of Terms and Conditions a provision allowing it to cease supply to customers in a limited set of circumstances, that include where “the Licensee sells or otherwise transfers ownership of all of part of its business to another Licensee who offers a supply to the Eligible Exit Area Customer on an equivalent Scheme of Terms and Conditions”.
- 4.6 We consider “or otherwise transfers ownership” means any business transfer other than a sale, so for example includes a merger.
- 4.7 Further, in terms of AWBN being chosen as the backstop supplier, we note that any licensee can put their name on the various eligibility lists and will be allocated customers on a random basis if there is an interim supply event. The change we are making is to ensure that there is at least one retailer on each relevant list.
- 4.8 CCW told us that it was supportive of our proposal, but enquired about the timing of the revocation and the licence amendment, so as to avoid a situation where a gap in customer protection exists.
- 4.9 To ensure that such a gap does not exist, the amendments to AWBN’s licences and the [revocation of NWGB’s licences](#) became effective on the same date, on 20 March 2020.

Ofwat (The Water Services Regulation Authority)
is a non-ministerial government department.
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