



Fair Water Connections

An association seeking a fair deal in water supply provision

Response to Ofwat's (May 2020) charging arrangements for new connection services for English companies comparative analysis and consultation

September 2020

Whilst we, as an association that supports the self-lay community, welcome Ofwat looking to further refine their Connection Charging Rules we are dismayed about how this consultation has been constructed as, to us, it significantly hinders company/customer discussions on 2021/2 charges. So whilst recognising that coronavirus considerations have impacted on timings Ofwat should recognise that leaving future standardisation to a proposed working group (that will not get set-up for at least 18 months) and not providing early release of an Information Note to replace IN 19/05 has lost momentum in working through competition related charging issues. It has also hindered the advancement of the early detailed discussions we previously enjoyed with some companies. We, as a body that has been leading on customer discussions with companies on charging are frustrated by this as it must have delayed moving local charging arrangements to a position where the Ofwat Connection Charging Rules deliver on the principle of being “fair (to all stakeholders) and affordable”. This being something that developer services customers have been looking for every company to deliver since the new charging arrangements were introduced across England in 2018.

We also comment that whilst we can see benefits from Ofwat reverting to include some tests of charges being deemed “reasonable” we would much rather they now focussed their attention on actively policing the current water connection Charging Rules. This is because our members regularly report, what look to them as, multifarious charging breaches yet we are not aware of any company (since 2018) being directed to change their charges. Instead we now fear that company resistance, and related regulatory manoeuvring, on what “reasonableness” means will hold Ofwat back from tackling the many and various non-compliance issues that are far too obvious to our members (a summary of which we give in our response to consultation Question 7).

Our consultation response is in 3 parts. In Part A we provide a summary overview on what Ofwat is now looking to advance. In Part B we give our commentary on the matters Ofwat has discussed in the analysis part of their consultation paper. Our response to the various consultation questions are in Part C.

PART A – Summary Reaction To Ofwat's Latest Water Connection Charging Proposals

Whilst we are largely supportive of the further changes Ofwat looks to be minded to make to their Water Connection Charging Rules we have difficulty reconciling why a further consultation is needed before charging abuses which are apparent to our members can be tackled. This is because many of the issues our members encounter relate to the way companies have elected to deploy the current Rules. In our ongoing discussions we have already made Ofwat aware of many of these.

To us the need for consistent cross company terminology and worked examples structured to enable all charges to be directly compared to those of other company should already been in place. We are disappointed that Ofwat's Information Note 19/05 was apparently not sufficiently prescriptive for this to be achieved. This, and the reluctance of water companies to now do anything collaboratively, has probably led to a situation whereby there has been a lack of willingness to work with us to get a better attempt at standard terminology ready for 2021/2. Doubtless companies may argue that their long term contracts are structured in ways which makes charging alignment difficult when, in reality, the nature of the work in all companies is much the same, it is just the way it is being described which differs!

Furthermore companies largely continue with descriptions which may work for them but do not adequately describe the work from a customer perspective. This surely now needs to change. An example of this being the "no excavation" work category when all connections require excavation by someone it is just who does the digging that changes. Hence we propose that the description of such work is changed to "customer excavation" (as this better describes responsibility for doing the digging and backfilling than "no excavation").

Whilst supportive of the Ofwat proposal to re-introduce a cost reflectivity principle we have concerns that this will be a detraction from getting all companies to fully comply with the existing connection Charging Rules. It may however be a means, something which has been lacking since 2018, whereby our members can challenge charges which they view as harming connection competition. This is because on either non-contestable fees/charges, including administrative and overhead allowances, which are set too high and do not reflect (with self-lay) savings from the transfer of work management activities to a SLP, or with contestable charges that are set at rates lower than SLPs know are their costs to do the work.

Our members fear that rather than tackle the already apparent issues, which they feel are already harming competition, further commercial opportunities will be lost whilst Ofwat works through with companies what "reasonable" means. Adding confusion to any discussion, particularly on administrative elements, will be those companies who draw on previous Ofwat determinations to set what are viewed as 'reasonable' amounts when other companies already feel that such rates are 'excessive' so themselves charge less. A further concern of the self-lay community is that it is not just what companies charge when they do the work themselves that is at issue but the proportion of the charge they retain when the work is delivered through self-lay. Examples of this include a recently identified company which charges the same 'project management' fees regardless of whether the work is done by themselves or an SLP and companies who offer little differential (less than a £15 in one case) when a SLP takes responsibility for the scheme design.

The proposal to create a 'working group' is something that we see as currently unnecessary in the water connection sector as the examples given are geared towards handling cross provider complexities that arise in electricity and not (yet) in water. It also cuts across already established adoption responsibilities (as set out in the Ofwat Adoptions Code). So our view on setting up such a group is that it would further delay aspects of charging consistency which could be quickly remedied by Ofwat issuing more extensive guidance than was in IN 19/05 and also enforcing the Rules that are already in place.

Furthermore, if Ofwat remains minded to set-up such a group, we do not view Water UK as an appropriate body to be tasked with taking such an initiative forward. This is because, to us, Water UK appears unable to demonstrate getting, from across all of their company membership,

wholehearted support on connection related matters. Instead we view them as tending towards aligning proposals with the lowest common denominator across their membership rather than making what is needed for open and fair connections competition their primary driver. This could be because companies themselves are not prepared to work together and initiatives end up being steered by the limited internal Water UK resource which has little front-line experience of developer sector activities. In this regard our view is that it is Water UK approach that has caused the significant delays in implementing new water adoption arrangements and the last thing our members want is for that situation to be replicated, with further delays and outcomes that are not what customers actually want, in water connection charging.

We also flag that our members value being represented by Fair Water Connections and, unlike companies, do not have the capacity to take time out to represent themselves. We therefore view it as essential, if a Working Group is to be established, that it is constituted in ways which allow customer representation. Also we ask that care is taken to ensure that the group constitution does not favour companies working together (by bringing forward matters they have been able to collectively discuss in Water UK groups) against a group of customers who have very differing business interests and, therefore, whose individual understanding of the full range of connection charging factors is limited.

PART B – Our Commentary On The Matters Brought Into Consideration By Ofwat

Whilst broadly supportive of many of the matters discussed by Ofwat in their paper there is much detail relating to connection competition which we feel merit further emphasis and other matters where we disagree with what is being discussed. Both of these are covered below in the order which they arise in the Ofwat document (from their Section 1 through to Section 5 and the Glossary).

B1.1 – Understanding the Problem

It is disappointing that Ofwat has not flagged that a contributor to the vastly different, across company charges, is that the Charging Rules that applied from 2018 changed the focus from each charge being 'reasonable' to the way that they are collectively applied should maintain the 'broad balance' with what customers were previously paying. This effectively allowed those companies whose charges had never been rigorously tested against a 'reasonableness' test to 'bank' what they had been doing and set their new charges from a totally different position to others!

Furthermore contractors secure contracts by the sum of their rates across a whole range of activities being compared against other tenderers. This allows company contractors great scope to ensure that they maximise returns from the work types they are most likely to get whilst offering lower prices for the types of work types which may not be allocated to them (i.e. 'contestable' elements of connections work as self-lay and NAV take-up increases). So our view is that assuming that all all contractors rates reasonably reflect the cost of doing an activity is incorrect. We therefore welcome that this factor has been picked up in the recently issued Ofwat review. That review is, however, weak on considering the impact of the limited charging differentials, between application and administrative charges, some companies have on company provision/requisitioning applications and the competitive/self-lay provision alternatives. Consequently we view this as a matter which Ofwat urgently needs to address.

Our view is that it is the historical situation which is a significant factor in the wide, cross company, divergence in charging levels. So we are encouraged that Ofwat is now looking at this issue but we suggest that they need to recognise that it is their previous behaviour, and lack of policing of company charging practices, which has aided material charging differences arising.

Related to this there is now surely a need to make it abundantly clear that the focus is on all charges themselves being 'reasonable' and that any historic recovery differences should be specifically handled through 'income offset' adjustments.

B1.2 Consistent Worked Examples

When IN 19/05 was issued we identified that the defined costed work elements, in the various development scenarios, was not sufficient to ensure costing consistency. Ofwat now look to have gone a long way towards addressing this in their A2 consultation annex. Hence we see little need to discuss the on-site work content further apart from there being a need to state that the costed works should always include the (chargeable) Point of Connection (i.e. a mains connection at the point nearest to the site where there is a main or larger, or equivalent size). Also that all administrative and other charges should be included such that the worked example totals compare well to the actual quoted charges should an application be submitted for a comparable development. In addition any upfront deposit payments should also be stated.

To us the full definition for all the worked examples need to be immediately 'fixed' so that meaningful cross company comparisons can be done from February 2021.

There, in our view, should also be a requirement for companies to state, against the multiple connection scenarios, that their costings needs to separately identify the costs against both 'contestable' and 'non-contestable' work types (as per Charging Rule Paragraph 15).

In summary the costed examples need to itemise all cost elements (from each company's local charging arrangements) so that the total matches the chargeable costs had that development taken place in that company's area. This would result in the creation of a set of illustrative templates for the various connection types that customers could themselves use (by inserting the actual unit volumes, and associated rates) for their development.

We also maintain that Charging Rule Paragraph 11 also needs to be observed by companies indicating any non-fixed costs and stating what could cause these to be subsequently adjusted. There is also a need for companies that apply an arbitrary number (in terms of not sharing how the volume units are derived) of cost items, such as site visits or quality samples, to openly specify how the units are set.

B2.1 Comparative Analysis (*Ofwat 2*)

Given that the Ofwat document was published over 3 months after companies issued their charges for 2020/1 we are disappointed that the comparison relates to 2019/20 charging so does not reflect any changes companies have made for the current charging year. This now means there will invariably be further delays whilst Ofwat works through the impact of the 2020/1 (Income Offset) changes and checks whether this has been applied in the ways they were envisaging.

We are unsure, from the listing of work out of scope of the Ofwat charging comparison, whether the cost of a site-specific (but off-site) mains connection have been included in the costs. If it hasn't, along with all associated mains connection activities, then this looks to be a major omission.

From our own review of the 200 site worked example scenarios we can only find 7 companies who provide sufficient granularity for us to contrast costs between company/requisitioning and self-lay provision. Whilst, on average across the 7 companies, a requisitioner would pay £206,820 for the site specific work to get such a site supplied (mains and services with Infrastructure Charges and Income Offset excluded) there is a wide range of total charges (from £94,200 to £336,350).

Looking in detail at 2 companies whose total costs are at the upper end of the pricing range we find:-

	Company A	Company B
Total charges if requisitioned	£312,720	£336,350
Infrastructure Charges Less Income Offset	£-12,200	-£89,800
Total Requisitioning Customer Payment	£300,520	£246,550
Requisition application, admin/overhead (incl design)	£46,000	£4,015
Percentage of requisitioning charges	14.7%	1.2%
Non Contestable works (mains connection)	£5,150	£11,390
Percentage of requisitioning charges	1.6%	3.4%
Self-Lay Fees and Non Contestable Connection	£22,760	£11,400
Percentage of requisitioning charges	7.3%	3.4%
Difference Self-lay to Requisitioning Overheads	£28,400	£30

In these 2 examples there are many differences which look to merit review but the headline matter is that whilst the total charges are not dissimilar there are marked differences between the 2 companies in how they approach overhead recovery and how non-contestable mains connections are priced. Both of which impact on competitive provision and we are therefore of the view that Ofwat needs to do this sort of analysis and determine what action is needed to achieve compliance with the requirements of their Connection Charging Rule paragraph 21 (charges should be set in ways which promote effective competition for contestable work).

B3.1 Different Terminology (Ofwat 3.1.1)

Whilst less of a factor with self-lay work than for on-site connections we agree that it would be helpful if companies all described surface types in the same way. We recognise that some companies may resist this as it could impact on the terminology used in their contracts but introducing standard definitions (especially if these were directly related to highway legislation terminology) would make interpretation easier for customers. If this takes time for companies to work through they should be given the opportunity to publish, for a fixed time period, local conversions (because the work itself does not vary across companies but the application of the various surface types does!).

To us the 'no excavation' description now needs to be replaced by 'customer excavation'. This is because the 'no excavation' label relates to how a company views the work and not that they are passing over responsibility for the excavation and reinstatement to the customer!

B3.2 Requirement for Worked Examples (*Ofwat 3.1.2*)

A major annoyance to SLPs is when unforeseen charging issues get identified at the terms issue stage. Their resolution is then on a critical path when, had they been picked up from a worked example, discussions can be held which do not hold up work progression. So we fully support the view that publishing fully costed worked examples is essential for both transparency and predictability. Sadly not all companies did this in 2020/1, particularly for the type of site developments which are of most interest to our members, so we urge Ofwat to remedy this before 2021/2 charges get published.

B3.3 Self-Lay Pricing (*Ofwat 3.1.3*)

We recognise that some companies have re-set their 2020/1 charges following the letters Ofwat sent them early in 2019/20. But it is telling that Ofwat can only give 2 examples of companies who have made any changes. We therefore expect Ofwat to now recognise that there has been little movement with ensuring that non-contestable charges do not disadvantage self-lay provision.

In this regard we highlight Ofwat's note 9 which basically says that they have not focused on design fees and design review fees because these only account for less than 3% and 2% respectively of total charges on a 50 unit site. Whilst a total charge for doing a full design should be well below 5% of the total provision costs the cost of design checking being 67% of the value of preparing a full design cannot surely be viewed as a reasonable charge for a 'checking' activity. Moreover Anglian Water initially take a design deposit which differs between company provided and self-lay designs but then refund it so if a SLP does the work they gets no cost advantage! With others the charging differential (between full design and checking) can be low (just £15 in South Staffs and £30 in United Utilities) so deters SLPs from doing designs themselves. This, to us, is one of many charges which individually may have relatively low overall impact, so can easily get overlooked, but where company charging squeezes out competitive provision. We also feel that companies should now all be offering SLPs the opportunity to self-certify designs which would aid the delivery process and further open up this aspect of connection competition.

B3.4 Charging Level Divergence (*Ofwat 3.2*)

On a site specific basis Ofwat has only previously looked at cost reasonableness (see B1.1 above) when specific schemes have been referred to them for determination. Even these have not led to any enforcement action being taken to apply findings to subsequent charging so it is hardly surprising that they are now finding a wide divergence in charging levels. Given the impact such charging differences can have on competition we view it as imperative that Ofwat now address the situation their limited focus on development specific outcomes has created. Clearly having directly comparable worked examples, which include all costs, would both aid Ofwat identify where action is merited and highlight charging disparities to customers.

There has also been a historic view in companies that controlling developer services charges is not as important as achieving low repair and maintenance costs. This is because developer services costs are separately paid by customers whereas companies themselves bear higher R&M costs. This invariably extends to how service management fees are viewed when connections work is outsourced.

B3.5 Street Works Barriers and Charging Comparisons (Ofwat B3.2.2)

There are categories of customers, mainly those who require work in the highway, who currently have no choice but to procure the services of water companies themselves. We therefore urge Ofwat to recognise that customers who are not developing sites requiring both mains and multiple connections need to have competitive provision made available to them.

Disappointingly this is not picked up in this consultation as the only way we can see customers who just require a service connection off an existing main in the highway benefiting from competition is from companies making available their street opening licences to SLPs. Something that they are currently not even prepared to discuss!

So even though competitive connection provision in a highway is being barred by the disproportional cost of a SLP having to get a job specific street opening licence when, for a company, their (blanket across all street works) noticing costs are relatively minor the impact this is having on a specific section of the connections market is not being picked up. To us this situation has parallels with the issues the Open Banking Working Group faced but the barriers in this part of the connections market will not change until Ofwat makes it clear to companies that their insistence that SLPs have to secure their own road opening permits needs to change. (Note – a working group is unlikely to resolve this issue whilst companies are not willing to discuss offering to issue street works opening notices on behalf of SLPs).

With on-site work we are concerned that some company charges are lower than the costs of a competent SLP doing the same work. Hence we flag this situation with service connections where a minimum no excavation rate of £166 applies in South West Water. We also note that Anglian Water look to insist that they get paid the full management overhead fee (set for the complete job) even when the SLP is doing the work themselves. This adversely distorts pricing in the company's favour.

B3.5 Self-Lay Activity (Ofwat 3.2.4)

We find it disappointing that Ofwat has not published the split between non-contestable and contestable components in their 50 unit development analysis. This maybe because it is not always easy to do but the data (as per our 200 unit site analysis – see above) would provide a more meaningful comparison than just comparing total scheme costs against self-lay activity levels.

Given the history behind self-lay take-up, and the largely conservative behaviour of developers (especially when water supply accounts for a relatively small proportion of their total development costs) we would have thought that the rate of change of self-lay take-up was a better comparator than current volumes. In this regard the shift in competitive provision in Thames Water, especially when one-off connections to multiple occupancy sites (as more typically happens in central London) are discounted, is something we applaud. We also note that our view of self-lay volumes being higher in Bristol is that a factor in this is that they are the only company where Ofwat has

investigated their connection practices against competition compliance. Elsewhere across southern England, whilst there are many historical influencing factors, the slow rate of growth of self-lay is of great concern to our members.

In our view 'margin' is a more material factor to our members than total costs so we feel that a review of non-contestable charges and competitive provision activity would surely have produced a closer relationship with volumes than the Ofwat offered analysis.

B4.1 Other Sectors (*Ofwat 4*)

We do not share the view that the leadership of Water UK has overcome adoption arrangement difficulties. Our position is rather that they have neither brought companies to a position where they are giving their wholehearted support, and taking the initiative forward, or got full customer agreement to their proposals. Instead we maintain that they have sought to apply their own controls which has led to delivery, and hence open connection competition, being held back against the implementation dates originally set by Ofwat. Our view is therefore that it is for Ofwat to regulate connection activities and not to leave it to the company side to control the development of competition, through working groups (or however), in ways that will invariably work for them! If Ofwat is not prepared to do this our preference would be for an independent interested body, such as CC Water, to take the lead in bringing the parties together.

The other sector examples, principally electricity, Ofwat uses as case studies do not look to sufficiently relate to water connection charging. So whilst we can see parallels with adoption arrangements, which includes design guidance, we feel that instigating a connections working group drawing on the offered case studies will confuse the situation. In our view what is needed is direction to give:-

- Consistent surface type categories; and,
- Worked examples which are well defined and lead to direct cost comparison; and,
- Exposure of 'non-contestable' costs; and,
- The policing of cost so that they are always 'work content reflective'.

All of which we expect Ofwat to be able to do without deferring to Water UK.

B5.1 Limits on Charging Methodology (*Ofwat 5*)

We recognise the benefits of limiting connection charging methodology but cannot accept that it should be limited to on-site costs. This is because on-site work would exclude all one-off connections in the highway and also the cost of primary mains connections and associated spurs through to the 'on-site' works.

Instead we propose that Ofwat uses 'site specific' works as the limiting factor and thereby embrace all work that is routinely open to competition.

B6.1 Standard Terminology (*Ofwat A1 Glossary*)

We are surprised that Ofwat has attempted to re-draft some well-established industry technology. Our feedback on their proposals are detailed in our response to Question 2 in Part C. We do

however urge Ofwat to draw on established definitions in historic publications, such as the WRc “Guide to Water Service Pipes” rather than seeking to redefine pipework sections in ways which do not align well with industry understanding.

With regards street surface types surely the starting point should be the definitions in the New Roads and Street Works Act (though companies have themselves pragmatically rationalised these into descriptions which are generally understood by customers).

Note – as discussed elsewhere there are issues when companies use descriptions which mean more to them than they do to their customers. This is why we view it as essential that the “No Excavation” description is replaced by “Customer Excavation”.

Part C – Response to Consultation Questions

Q1: Do you agree with our proposal on common terminology and the way we propose to implement it? What do you think would be the impact of harmonising terminology for charges for new connection services?

We fully support the proposal to have standard terminology for service connection work. Our view is that this should be based on existing common industry standards and surface descriptions which are already widely used by companies. Hence we are not supportive of some of the terminology offered by Ofwat (see Q2 response below).

Our view is that customers benefit where there is cross company alignment with industry norms for connection work types and descriptions. Bringing all companies to a common standard would make it easier for customers to compare charges and be clearer about what is included in each rate.

Q2: Do you agree with the definitions in the glossary (Appendix 1)? Please tell us what definitions you would amend, remove or add.

Our comments on the offered expanded glossary are as follows. *(To combine common discussion points we have not strictly stuck to an alphabetical listing in this section).*

“Point of Connection” we agree with the Ofwat definition but this should be called the **“Chargeable Point of Connection”** (as it forms the charging responsibility divide between site specific and network enhancement work).

We would delete the offered **“Alternative Point of Connection”** and replace it with **“Physical Point of Connection”** defined as the point on the existing network where the actual feed to a site is to be made. (Note – works between the **“Physical Point of Connection”** and the **“Chargeable Point of Connection”** are classified as **“Network Reinforcement”**).

We are surprised by the wording that it is proposed to add to the **“Communication Pipe”** definition. We do not view what is being added as technically correct (as meters are not always fitted on communication pipes as they maybe in the property wall or internal within the premises). If anything is to be added we would extract wording from the current Self-Lay Code of practice which reads **“That part of the service pipe which is owned by the Water Company and laid in the same street as the main to which it is connected.”**

We welcome the calcification of the **“Existing Main”** definition as this separates such mains from ones laid after the start of the development and which facilitates service connections being made to such new mains regardless of who laid them.

The offered definition of **“Footpath (Footway)”** is, to us, unacceptable as they may be constructed of a wide range of materials, and not just be “concrete covered”. (Instead please see our comments on surface types below).

In our view adding a definition for **“House”** (which includes flats) looks to add unnecessary complexity when there is already a definition for **“Domestic Premises”**.

Whilst recognising that it could be useful to classify services into **“Long”** and **“Short”** categories we are not comfortable with the definitions, or the 4m length divide. Our view is that **“Short”** services should cover work that typically contained within a service strip or footway, so is typically up to 2m long. But it needs to be specifically tied into services work so the descriptions should be **“Long Length Services”** and **“Short Length Services”** and extend from where the service connection is taken from a main to the supply pipe (*note - which may not always be at the property boundary*).

Because companies (by what our members have encountered) are not always clear that Connection Charging Rule Paragraph 27b precludes them from adding ‘enhancement’ elements to the site specific works being charged directly to developers we maintain there is a need to either broaden the **“Network Reinforcement”** definition or add a new **“Network Enhancements”** section. This stating that any work an undertaker specifically requires to address pre-existing deficiencies or to enhance network flexibility, in capacity or capability, unrelated to requirements associated with the new supplies are classified as **“Network Enhancements”** which are funded by the undertaker themselves (albeit though Infrastructure Charges).

As discussed in our general comments we urge that the term **“No Excavation”** is not carried forward and be replaced by a category called **“Customer Excavation”**. This is because the excavation, and backfill, still needs to be done (but by the customer and not the company). So our definition for this category (is not the version that Ofwat looks to have cut from a company’s offering but) “where the work is done in an excavation provided by the customer and who is also responsible for backfill and reinstatement. This includes laying service pipes through ducts which the customer has installed”.

Needing to be added is a definition for **“Ducts”**. These should be described as “a tube installed to the undertakers requirements used for pipelaying without excavation.

For completeness it may be worthwhile adding **“Trenchless Installations”** which are where pipes are laid through thrust boring, or other techniques to which avoid surface excavation.

To the **“Self-Lay Provider”** definition we would add the SLP acronym and also insert “On commissioning” at the start of the second sentence.

We would delete the proposed wording for “Unmade Ground” and suggest that there is a need for **“Surface Type Categories”** which separately embrace:-

- Main road (typically Type 1 and 2 as defined in the New Roads and Street Works Act)
- Minor Roads (typically Type 3 and 4 in the NR&SWA)
- Footpaths, Footways and Cycle Tracks
- Unsurfaced ground (basically ground that can be excavated and reinstated using hand tools)

Note – companies have already worked up surface type descriptions. All that looks to be needed is to map these and determine which are sufficiently minor they can be readily incorporated into a broader category.

Q3: Do you agree with the proposal to set out explicit expectations on the presentation of worked examples? What do you think would be the right level of detail to be required?

Yes we view prescribed worked examples, where customers can directly compare the charges for various water connection work packages, as essential. Our view is that the charging scenarios already set-out by Ofwat do not need to be changed but the definitions need to be tightened such that the total costs directly relate to what would be payable should that company receive an application for that work. With mainlaying this should include a short section of off-site work and the “Point of Connection” itself with all companies pricing against the same set of surface types. There is also a need for any upfront deposits to be clearly stated along with the circumstances which will trigger this money being refunded.

We regard it as essential, for openness and fair competition, that costed housing development scenarios expressly state the sub total of “**Non-Contestable**” and “**Contestable**” charges. We feel that this would significantly aid housing developers to be made more aware of the provision options open to them and support SLPs being able to identify costs when the work is done through self-lay.

Our view is also that, on the site developments scenarios, that charges associated with a) mains laying and, b) service laying should be separately totalled and statements made alongside the costings which specify when the various payments will become due.

A company that looks to set out the various charging categories well in their worked examples is Affinity Water. Others are similar but some require a lot of supplementary work to fully establish all of the charges. There are also some clear omissions (costs which are shown against requisitioning but not self-lay, and vice versa) which leads us to the view that Ofwat should extend their Rules to preclude companies from applying charges that are not demonstrated in their worked examples.

We also feel that it is essential that metering costs are fully identifiable, again with a non-contestable/contestable split including making it clear where meters have to be purchased from the undertaker.

We also, because our members have to routinely challenge companies to either get them to fund ‘enhancements’ (or to get them removed), consider that the medium and large worked example should include a second (cross) connection with details of how the company funding of this feeds into the customer payments.

Q4: Please highlight any substantive areas of our analysis you think are missing or could be improved.

Please see our analysis on Page 5 (above) for the level we think is necessary to review company worked examples.

To us it is paramount that, for site developments, the supplying connection (assumed to be a Tee on an existing main of adequate size) is included in the costs.

Additionally we maintain that the analysis needs to separately look at the 'non-contestable' and 'contestable' elements. These needing to be independently broken down into those related to both a) main laying and b) servicelaying work.

There also needs to be clarity over metering costs and, in particular whether the meter has to be bought from the company or can be directly purchased by a SLP.

We also (see our response to Question 3) believe that how companies handle 'enhancements' should be included in the analysis. Additionally a means is needed to constrain a company like Affinity Water, who currently have a mandatory charge for modelling, even though this is a network reinforcement matter and should not affect site specific charges. *(Note – our representation to Affinity Water looks to have got them to recognise the way they were charging for network modelling was not in accordance with the Ofwat Rules but their local charging arrangements have not been changed).*

Q5: What do you think are the reasons for the differences in charging levels? Do you think these differences are a problem? Please provide evidence to support your views where possible.

Our view is that the major contributing factor to the different charges is that they have not been set afresh but relate to what companies were charging under the Water Industry Act legislation. We know that these produced vastly different outcomes for similar work and whilst the Ofwat Charging Rules provided some clarity regarding legitimate charging the only real change in 2018 was separating out Network Reinforcements and making it clear that these were expressly to be funded through Infrastructure Charges. Our hope is that the 5 year rolling test through which receipts have to align with associated expenditure will now start to work through and effectively control Infrastructure Charges.[#]

But for non-network enhancement charges our view is that the (somewhat crude) 'balance' test allows the previous, cross company, charging differences to be perpetuated. To address this we are of the view that new controls maybe required but these will create much uncertainty (as regulatory impacts are worked through) at a time when customers want to be able to price works with confidence.

To illustrate the distain companies can show to the current Rules we have identified a 2018 director sign-off that states that when preparing for the 2018/9 charges they had identified that they were subsidising the work so they have increased their prices. (This surely, especially as the company comes towards the upper band in their total charges, being something that the 'balance' test should have ameliorated!).

Whilst cross company costing differences on site specific works are more a matter for developers than SLPs they do cause our members difficulties. This is because SLPs work across company areas so are having to regularly explain to their developer customers costing differences (which although tied to varying company non-contestable charges still need to be justified to their customers)'

Note - because network enhancements are now general works a company does they are no longer specifically reviewed by customers. Our members are however concerned that companies could seek to justify high charges by adding more system 'enhancements' than are necessary to support new connections off their networks. We therefore view it as imperative that Ofwat demonstrate that they have checks in place to protect developer customers from this happening.

Q6: Do you agree with our proposal to modify the Charging Rules for New Connection Services to explicitly include cost-reflectivity in the general principles? What other measures, if any, could be put in place to provide greater assurance that water companies' charges are cost reflective?

We fully support anything which ensures that non-contestable charges are fully cost reflective and that they are limited to the essential tasks that a company must do when connections are competitively provided. For some customers we can see that similar controls could be necessary on contestable work elements but we are of the view that with site specific works, where genuine competition exists, Ofwat's focus should be on determining that companies are not under-pricing their own provision or charging overhead recovery at rates which fall below what is needed to fund the necessary work.

We do however have concerns about how 'reasonableness' will be set. This is because some companies are now indicating that their costs (on such things as self-lay service connection administration) are lower than the rates that Ofwat has previously indicated (in determinations) are 'reasonable'. So we view any prospect of rates increasing to the Ofwat 'reasonable' level as being unacceptable.

Therefore we cannot see that just making 'cost reflectivity' a Charging Rule requirement will achieve a lot, after all "fairness and affordability" is already a general charging principle but is not policed sufficiently to meaningfully work through it to company charges.

Rather than bundle the consideration of all charges we maintain that Ofwat should make it clear that they intend to separately review company:-

- a) Infrastructure Charges (as now) against rolling 5 years expenditure (with checks that the works being done are strictly necessary to support new development growth); and,
- b) Income offset allowances (this continuing to work as a 'balancing' item); and,
- c) Non-contestable scheme administration (for each work stream; i.e. mains, water connections, sewers, diversions etc.); and,
- d) Contestable and non-contestable works elements (again for each work stream; i.e. mains, water connections, sewers, diversions etc.)

Note – our view is that connection competition would be better served if companies, wherever applicable, had to always state their 'non-contestable' base rate with the 'contestable' element then stated as an uplift.

If the worked examples summaries were to be constructed to provide unit rates against the categories indicated above Ofwat would surely be in a better position to review outliers and start to home in on what are 'best practice' reasonable rates. We view this as being preferable to the averaging of all company charges we have previously seen as a basis of determining what companies can charge.

Q7: What do you think are the benefits and dis-benefits of having common charging methodologies? Do you think companies should adopt common methodologies?

Whilst it would be better for our members were all companies to price on the same basis we are relaxed about forcing all companies to use the same methodology. What however, in our view, urgently needs to be addressed is those companies who do not look to comply with the current

Ofwat Connection Charging Rules. We can readily share examples our members have of apparent non-compliance against all of the requirements listed below:-

Paragraph 7 - Consultations that are neither proportionate, timely and effective

Paragraph 11 – There can be little explanation about how each charge has been calculated or derived and no explanation of how non-fixed charges can get adjusted.

Paragraph 12 – Company publications are either too simplistic or so complex. This means that customers cannot always readily determine all costs.

Paragraph 15 – It is not always possible for customers to determine which charges are associated with Contestable Work and Non-contestable Work.

Paragraph 16 – The introduction of 2020 charges has brought many instances of companies insisting that all non-contestable costs, and Infrastructure Charges are paid up front. Given that this can be on developments that will take multiple years to completely build we do not consider that a reasonable choice of times and methods of payment is always being offered.

Paragraph 18 – We query the point of having general charging principles such as “fairness and affordability” if Ofwat is now coming to the view that what companies are charging is not always “reasonable”?

Paragraph 19 – Whilst companies should only, unless they provide clear objective justification for doing so, retain their previous balance between developer and company payments we can identify where this looks to have not happened, or the justification for increases looks very weak.

Paragraph 20 – Although consistent charging is required for all customer groups we are not seeing this universally happening on non-contestable design verification and checking. Also on (self-lay specific) agreement issue charges.

Paragraph 21 – Identified in this response are a number of cases where company charges are not viewed as promoting effective competition. Hence we are of the view that Ofwat needs to urgently ensure that there is full compliance with this requirement and thereby better facilitate fair and open water connection competition.

Paragraph 22 – We have no issue with companies recovering “reasonable” administrative expenses but here are examples of where “reasonable” is already a requirement yet companies are being able to charge much more than Ofwat has previously determined are reasonable overhead recovery for an activity. Administrative charges on service connections being a clear example of where this happens.

Paragraph 24 – Although companies should only charge for “necessary” site specific infrastructure our members regularly receive company designs with additional cross connections or “looping” pipework sections which customers are expected to fund.

Paragraph 26 – This supposedly prevents companies from charging against requisitions the costs of any Network Reinforcement costs. But companies have continued to demand money, on a site specific basis, for modelling works (which are all about the reinforcement work a company needs to do) and to include ‘cross connections’ in their customer charged work.

Paragraph 28 (and 37) – See our Paragraph 24 response.

Paragraph 42 – Our members have experienced difficulties with large (above 355mm diameter) diversion costings in Thames Water where the company feels (though their local charging arrangements are not actually worded this way) that they are a ‘special project’ and handled by a specialist team who works outside the published charges.

Furthermore we are of the view that competitive provision would be better served if the Ofwat Rules more specifically dealt with self-lay rather than having to infer from the requisitioning provisions that, for parity, the same provisions must apply to self-lay.

Q8: Do you agree with the high-level scope of the proposed New Connection Charges working group? Please tell us your views on the proposed working group, including whether Ofwat should make the work mandatory, for example through a change to our new connection rules.

We do not believe that instigating a New Connection Charging Working Group is either desirable or necessary and are of the view that asking Water UK to take a lead with setting such a group up would hinder water connection competition. Our reasoning being that Ofwat just needs to implement the stricter definitions (in both work types and worked examples) discussed above and actively police their Connection Charging Rules. If however a new group were to be set-up, and work in the ways given for other sector bodies, it looks to cross over what is already the remit of the Adoptions Panel (in terms of connection design requirements) and the time it would take to get going would give companies even longer to avoid what they should already be doing.

If a new group is to be set-up our strongly held view is that it should be chaired by Ofwat (or possibly CC Water) and have a focus on addressing the continuing charging and costing barriers to water connection competition. In particular it should have a roll towards further opening up connection provision choice. This includes looking at the current street works noticing barriers which effectively prevent SLPs being able to offer off-site connections to developers and other customers.

Furthermore the views of our membership is that trade bodies should be able to represent them on any cross industry group. To their dismay this has not been allowed to happen on the recently formed Adoptions Panel so we view it as imperative that the constitution of any new group is drafted in a way which would allow for customer representation. We also note that whilst equal numbers of company representatives and customers may superficially look to be fair, in reality, companies already can work collectively through Water UK so will be in a strong position to resist any input from a disparate collection of customers.

The response has been submitted by:-

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Martyn should be contacted over any queries which arise from this response.