

November 2020

**Notice of our intention to release the  
Commitments made under the  
Competition Act 1998 by Bristol Water Plc  
in relation to the market for new water  
connections**

**Ofwat**

## About this document

This document gives notice to interested parties, pursuant to paragraph 11 of Schedule 6A of the Competition Act 1998 (**the Act**), that, in accordance with section 31A(4) of the Act, we propose to release the binding commitments made Bristol Water Plc and accepted by Ofwat. We invite representations from interested parties on this proposal and will consider any representations we receive before making a final decision whether to release the Commitments.

## Responding to this consultation

Any person wishing to comment on our proposal to release Bristol Water's commitments should submit representations by 5pm on 11 January 2021 to: [BristolWaterCA98@ofwat.gov.uk](mailto:BristolWaterCA98@ofwat.gov.uk) or post them to:

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

We do not intend to publish the responses to this consultation with our decision document. However, the information contained in the response may be used or summarised in that decision document. If you consider any of the information in your response to be commercially sensitive and/or confidential please do highlight this.

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with access to information legislation – primarily the Freedom of Information Act 2000 (FoIA), the General Data Protection Regulation 2016, the Data Protection Act 2018, and the Environmental Information Regulations 2004. For further information on how we process personal data please see our [privacy policy](#).

If you would like the information that you provide to be treated as confidential, please be aware that under the FoIA there is a statutory [Code of practice](#) which deals, among other things, with obligations of confidence. In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that we can maintain confidentiality in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on Ofwat.

If we consider that disclosure of the information will facilitate the exercise of our functions, and we do not consider that the reasons provided amount to sufficient justification to withhold disclosure, we will give you notice that we intend to disclose the information in question. We will also give you the opportunity to explain further why you believe that it should not be disclosed. Please note, we will not accept blanket requests for confidentiality or requests not supported by specific and clear reasons.

## Contents

1.	Introduction	4
2.	Executive summary	5
3.	Background	10
4.	Relevant developments in the water sector since the acceptance of the Commitments	17
5.	Legal framework	26
6.	Bristol Water's request to release the Commitments	27
7.	Our analysis of whether the Commitments remain needed	30
8.	Ofwat's conclusion and proposal	42
A1	Commitments given by Bristol Water pursuant to section 31A of the Competition Act 1998	43

## 1. Introduction

- 1.1 The Water Services Regulation Authority (**Ofwat**) hereby gives notice, as required by paragraph 11 of Schedule 6A of the Act, that it proposes to release the [binding commitments](#) (**the Commitments**) made by Bristol Water Plc (**Bristol Water**) and accepted by Ofwat under the Act. These Commitments were to address the competition concerns we identified during the course of an [investigation](#) under the Act into a potential abuse of a dominant position by Bristol Water. As required by paragraph 11 of Schedule 6A of the Act, we invite representations from interested parties on our proposal to release the Commitments before we make our final decision.
- 1.2 Acceptance of the proposal would remove the Commitments as a binding and enforceable requirement on Bristol Water, including the requirement for Bristol Water to regularly report to Ofwat on its compliance with the Commitments. Nevertheless, if the Commitments were released Bristol Water would, of course, continue to be required to comply with competition law in the new connections market and with the wider regulatory framework which has developed in relation to companies' activities in this market.
- 1.3 This document includes:
- [Section 3](#) – The background to the Commitments.
  - [Section 4](#) – Details of developments in the water sector since we accepted the Commitments.
  - [Section 5](#) – Relevant legal framework and guidance.
  - [Section 6](#) – Details of Bristol Water's request to us to release the Commitments.
  - [Section 7](#) – An overview of our analysis of Bristol Water's request and our resulting proposal to release the Commitments.
  - [Section 8](#) – Details of how interested parties can comment on our proposals.
  - [Appendix 1](#) – Full details of the Commitments including a glossary of key terms<sup>1</sup>.
- 1.4 We now invite interested parties to make representations on our proposal to release the Commitments. The closing date for representations is 11 January 2021. We will consider any representations made before making our final decision.

---

<sup>1</sup> Taken from our ['Decision to accept binding commitments under the Act from Bristol Water'](#)

## 2. Executive summary

- 2.1 In March 2013, Ofwat opened an [investigation](#) under the Act following allegations that Bristol Water was abusing its dominant position, in order to discriminate against self-lay providers<sup>2</sup> (**SLPs**) in the market for providing new water connections. Abuse of a dominant position is prohibited by Chapter II of the Act and Article 102 of the Treaty on the Functioning of the European Union (**TFEU**).
- 2.2 SLPs are contractors who work in the market for providing new connections. They typically provide developers with water supply infrastructure which the local water and/or wastewater company then adopts, taking responsibility for the assets and using them to provide services to end-user customers. To provide this infrastructure SLPs need to access the local company's non-contestable upstream services as essential inputs.
- 2.3 As a statutory water provider, the local water and/or wastewater company competes with SLPs in the market for providing new connections. An owner or occupier of premises, including developers, can ask a local water company to provide the new connections infrastructure, this is called a requisition. In providing this, the local water company is providing itself with upstream services to enable it to deliver downstream services where it competes with SLPs.

## The Commitments

- 2.4 On 23 March 2015, we published our [decision to accept binding commitments under the Act from Bristol Water](#). The Commitments include changes to Bristol Water's internal organisational structure and processes, and a clearer separation of Bristol Water's developer services functions, to better distinguish where it operates in the contestable market for new connections (**downstream services**), from those non-contestable services it provides as a monopoly supplier (**upstream services**). We considered that the Commitments addressed the four competition concerns that we had identified in our investigation. These were:
- **Concern 1:** Potential leveraging of a dominant position in upstream services to harm effective competition for downstream services;
  - **Concern 2:** Differences in the treatment of costs in the calculation of self-lay and requisition quotations which can result in the amount presented to the customer as being recovered by Bristol Water being less for the requisition than the self-lay option;

---

<sup>2</sup> To note, self-lay providers were previously referred to as self-lay operators (**SLOs**)

- **Concern 3:** The additional charges Bristol Water required of SLPs without a clear objective justification for and transparency around the reasons for the charges, the level of the charges and differences in their application between SLPs; and
- **Concern 4:** Bristol Water's interactions with SLPs in terms of communicating information to SLPs and developers on the processes and the prerequisite requirements they need to satisfy in order to access the upstream services provided by Bristol Water.

2.5 The Commitments we accepted were enduring in nature with no end date stated. At the time we recognised that it is unusual to accept enduring commitments; typically commitments under the Act fall away after a defined period of time. However, at the time we accepted the Commitments, the water sector was preparing to introduce a number of significant changes to the regulatory landscape that would be relevant to the issues being considered, in particular, the expansion of the [non-household retail market](#) and subsequent reforms to create markets in other parts of the water sector value chain.

2.6 These changes had the potential to impact on how water companies delivered, and priced, their new connections services. The details of these wider changes were still being finalised at the time of our decision on the Commitments and it was, therefore, unclear how Bristol Water implementing the changes might pose risks to how Bristol Water addressed our competition concerns. We, therefore, considered enduring commitments were appropriate in this case so that we had greater assurance of compliance during this period of change.

2.7 Whilst accepting enduring commitments, we recognised that this would be revisited in the future. Commitment A1.2 states that:

“These Commitments shall take effect from the date that, having been signed by Bristol Water, Ofwat's acceptance of such Commitments is notified to Bristol Water.

Nothing in this provision will prevent either party from requesting an amendment to, or early termination of, the Commitments (or requesting new commitments to substitute for the Commitments) at any point in time in light of, for example, changed market circumstances or legislative requirements.

Both Ofwat and Bristol Water recognise that changes are under way within the sector that may have relevance to the Commitments, in particular with regards to the expansion of the non-household retail market and subsequent upstream reforms. As and when appropriate, Bristol Water and Ofwat will meet to discuss whether the Commitments should be amended, terminated or replaced by new commitments in light of such sector changes.”

2.8 Commitment [A1.8](#) provides details of how Bristol Water would report to Ofwat on its compliance with the Commitments. This includes the frequency of the monitoring reports, which are to be submitted quarterly, and the requirement that there is independent assurance provided by a third party of Bristol Water's compliance.

## Bristol Water request to release it from the Commitments

2.9 On 1 December 2017, in line with commitment [A1.2](#), Bristol Water asked us to consider releasing it from the Commitments. Its submission to us set out why it believed the Commitments were no longer required (see [section 6](#) for further details).

2.10 We considered Bristol Water's request to release it from the Commitments against the competition concerns highlighted by our investigation. We also considered whether we were aware of any customer concerns relevant to the Commitments that might indicate the need for us to maintain greater scrutiny via the Commitments' monitoring requirements. Our assessment considered:

- Bristol Water's submission;
- The monitoring reports that we had received since the Commitments were accepted;
- The impact of the changes within the water sector since March 2015 when the Commitments came into force; and
- Any recent complaints Ofwat had received about Bristol Water's new connections activities.

2.11 Our review of Bristol Water's request concluded that the Commitments' requirements relating to changes in the company's organisational structure, and improving employees' awareness and understanding of competition law, had been well embedded into how Bristol Water's staff operated on a day-to-day basis. However, we were less assured that changes were fully embedded in other areas, in particular where relevant wider regulatory changes had been introduced after our acceptance of the Commitments, such as new [charging rules for new connections services](#) (**new charging rules**). Whilst the Commitments do not, in themselves, specifically require compliance with these wider regulatory changes the principles and requirements in the Commitments are relevant considerations for how Bristol Water implemented changes in the wider regulatory landscape within its business, in particular, in relation to charging.

2.12 This concern was reinforced by us having received, during our assessment period, two complaints regarding Bristol Water's charges under the new charging rules. All companies had published their new charges in early 2018 ready for the 2018-19



charging year. As a result, we concluded that it was not an appropriate time to release Bristol Water from the Commitments.

## Further Bristol Water requests to release them from the Commitments

- 2.13 After our decision not to release Bristol Water from the Commitments, there were a number of further relevant regulatory developments relating to the new connections market (more details in [section 4](#)).
- 2.14 In January 2020, Bristol Water contacted us again about the possibility of releasing it from the Commitments. We responded setting out the work we were doing to review water companies' role in developing effective markets (more details in [section 4](#)). We noted the link between the issues being considered by the review, and the areas covered by the Commitments, and the potential for the review to identify evidence or findings that would be relevant to any decision to release the Commitments. We said we would not make any decision on releasing the Commitments until our separate review was complete.
- 2.15 In July 2020, we wrote to Bristol Water to explain that, having completed our review of water companies' role in developing effective markets, and reflecting on Bristol Water's previous requests and correspondence, we would begin preparations to consult on a proposal to release Bristol Water from the Commitments.

## Next steps

- 2.16 In light of our most recent assessment (detailed in [section 7](#)), we no longer consider the additional protections provided by the requirements and monitoring of the Commitments (including independent assurance of compliance) to be proportionate or necessary to provide assurance that our original competition concerns have been addressed. In forming this conclusion, we have considered relevant factors including the development of the self-lay market<sup>3</sup> in Bristol Water's area, Bristol Water's positive performance in recent years against both the Commitments and other measures relevant to its interactions with the self-lay market and also that Bristol Water will continue to be required to comply with its obligations under the Act and other regulatory requirements, for example, the Licence Condition on undue discrimination and undue preference and the Code for Adoption Agreements (more details in [section 4](#)). With this in mind, we now consider it appropriate to release Bristol Water from the Commitments.

---

<sup>3</sup> This is referring to the market for new connections carried out by SLPs

2.17 As required by paragraph 11 of Schedule 6A of the Act, this document provides notice that we propose to release the Commitments and we now invite representations from interested parties on this proposal. Details of how to submit representations are set out in [section 8](#). We will consider any representations we receive before making a final decision on whether to release the Commitments.

## 3. Background

### Our investigation

- 3.1 In early 2013, we received complaints from two SLPs operating in Bristol Water's area of appointment. The complainants alleged that Bristol Water was abusing its dominant position as the company appointed under section 6 of the Water Industry Act 1991 (**WIA91**) as the water undertaker<sup>4</sup> (otherwise known as water company) for its specified area of appointment, by discriminating against SLPs in the market for new connections. Details of the investigation can be found within our [decision document](#)<sup>5</sup>.
- 3.2 We have concurrent powers with the Competition and Markets Authority (**CMA**) to investigate potential infringements of the prohibition in Chapter II of the Act and/or Article 102 of the TFEU so far as relating to "commercial activities connected with the supply of water or securing a supply of water or with the provision or securing of sewerage services"<sup>6</sup>.
- 3.3 In March 2013, we launched a formal investigation under section 25 of the Act, on the basis that there were reasonable grounds to suspect that Bristol Water had infringed Chapter II of the Act and/or Article 102 of the TFEU.
- 3.4 In July 2013, Bristol Water notified us that it was interested in offering commitments to address the competition concerns we had identified. We outlined our competition concerns in writing to Bristol Water and, following discussions between us and Bristol Water, we consulted on our proposal to accept binding commitments between 22 May 2014 and 18 July 2014. On 23 March 2015 we published the [decision to accept binding commitments from Bristol Water](#).

### The Competition concerns

- 3.5 During our investigation, we identified four competition concerns about Bristol Water's behaviour towards SLPs in the new connections market. There was one general, overarching, concern (see concern 1) and some more specific practices (see concerns 2-4). These concerns are detailed below, with additional information on how they demonstrated themselves provided later in the document. The specific concerns were:

---

<sup>4</sup> A company that has an appointment (otherwise known as a licence) to supply water services to a specific geographic area of England and Wales is called a water undertaker

<sup>5</sup> [Decision to accept binding commitments under the Act from Bristol Water](#)

<sup>6</sup> See section 31 of the WIA91

### **Concern 1: Potential leveraging of a dominant position in upstream services to harm effective competition for downstream services.**

Bristol Water is a vertically integrated business that is both dominant as a monopoly supplier in the provision of the non-contestable upstream services (services that SLPs need in order to compete in Bristol Water's area of appointment), and a competitor of SLPs in providing contestable downstream services for new connections. This vertical integration creates the potential means and incentive for Bristol Water to leverage its dominance in upstream services, so as to foreclose effective competition into the provision of downstream services. The alleged practices detailed in concerns 2 - 4 below raised concerns about whether potential future leveraging by Bristol Water could give rise to further, different practices which could have anti-competitive effects.

### **Concern 2: Differences in the treatment of costs in the calculation of self-lay and requisition quotations which can result in the amount presented to the customer as being recovered by Bristol Water being less for the requisition than the self-lay option.**

This conduct had the potential to exclude equally efficient operators from competing against Bristol Water. Differences in Bristol Water's quotations were driven by differences in how Bristol Water calculated the requisition charge and asset payment values<sup>7</sup>, in particular as a result of:

- differences in the costs included in the calculations depending on whether it was requisitioned or self-laid, despite the works entailed being the same and the limited differences in the legal provisions for these two calculations; and
- the exclusion of the costs of non-contestable off-site works from the total costs reasonably incurred against which income is offset within the asset payment calculation for self-laid mains, despite providing the income offset against the costs of the contestable and non-contestable works combined in the equivalent requisition charge calculation.

### **Concern 3: The additional charges Bristol Water required SLPs to pay without a clear objective justification for and transparency around the reasons for the charges, the level of the charges and the differences in their application between SLPs.**

The evidence gathered suggested that Bristol Water was levying a range of charges when providing the upstream services that SLPs need from it in order to compete in providing downstream services. These charges included a requirement to provide

---

<sup>7</sup> At the time, the methods set out in the WIA91 for calculating the requisition charge and asset payment broadly mirrored each other and were intended to use the same costs and income information. Companies no longer use this method for calculating these charges and instead follow Ofwat's charges rules for new connections

Bristol Water with a security payment or surety<sup>8</sup> in respect of the SLP's works (to cover the possibility of defects), and a range of administrative fees in relation to applications and inspections. There may be justification for additional charges where additional services are provided. But where the service was equivalent Bristol Water did not always apply these charges in the same way when it was providing downstream services itself. These additional charges could increase costs for SLPs and put them at a disadvantage when competing with Bristol Water in the contestable new connections market. This had the potential to prevent the entry and expansion of equally efficient operators in providing downstream services.

**Concern 4: Bristol Water's interactions with SLPs in terms of communicating information to SLPs and developers on the processes and the prerequisite requirements they needed to satisfy in order to access the upstream services provided by Bristol Water.**

The evidence gathered highlighted concerns that Bristol Water's conduct with SLPs may have included applying non-price constraints on the ability of SLPs to enter and expand in the provision of downstream services. The alleged conduct included:

- limited or no communication of changes in information requirements for particular services, so that SLPs had to take further time and action to ask for and receive the information they needed to access services;
- difficulties SLPs experienced in finding public information on expected processes and levels of services;
- delays in Bristol Water's provision of information and upstream services impacting on the work schedules of SLPs; and
- examples of Bristol Water choosing to or requiring that it liaise directly with the developer for the site concerned (the SLP's customer) rather than directly with the SLP (which is Bristol Water's customer for upstream services).

## The Commitments

3.6 On 23 March 2015, we published our decision to accept binding commitments from Bristol Water to address our competition concerns. We set out in our decision that we were satisfied that we had gathered sufficient information to enable us to assess whether accepting binding commitments would be appropriate in the circumstances of this particular case, and whether the commitments offered by Bristol Water would address the competition concerns identified.

---

<sup>8</sup> This acted as a deposit payment for a defined period to cover the costs of repairing any defects that arise during that time, after which it is returned to the customer

- 3.7 There are five headline commitments and a further commitment relating to reporting and providing information to us (see [Appendix 1](#) for full details). Each of the five headline commitments is structured as a principle followed by a series of specific actions. In summary, the five commitments offered by Bristol Water and accepted by Ofwat are:

### **Commitment 1: Calculation and presentation of costs of new infrastructure**

Bristol Water will take all reasonable steps to ensure that the costs quoted for providing water infrastructure on a new development are calculated in a way which does not cause undue preference to, or unduly discriminate against, either the self-lay option or the requisition option, and which is consistent with relevant legislation<sup>9</sup> (**Relevant Legislation**) and Bristol Water's licence (**Licence**). In particular, the specific actions mean Bristol Water will provide consistency and greater transparency in its treatment of costs when calculating quotations for requisition charge and self-lay asset payments.

### **Commitment 2: Broad equivalence of new development charges**

Bristol Water will take all reasonably practicable steps to ensure that charges applied to SLPs, or charged in circumstances where mains and/or service connections are being self-laid, are broadly equivalent to charges applied for equivalent services in the context of the requisition of mains and/or service connections, and that they do not cause undue preference to, or unduly discriminate against, SLPs or act in a way which is inconsistent with the requirements contained in the Relevant Legislation and the Licence.

### **Commitment 3: Interaction with self-lay providers**

Bristol Water will, using its best endeavours and acting in good faith, take all reasonably practicable steps to ensure that in its dealings with developers and SLPs it does not cause undue preference to, or unduly discriminate against, SLPs or act in a way which is inconsistent with the Relevant Legislation and the Licence. This includes Bristol Water taking all reasonably practicable steps to ensure it does not improperly use any information which it holds by virtue of its position as the appointed water company for the Bristol Water area, or information which it is given by third parties in order to comply with its statutory obligation to offer requisition services for mains and/or service connections, in a way which unduly distorts competition, causes undue preference or undue discrimination or is inconsistent with Relevant Legislation and the Licence.

### **Commitment 4: Policies and procedures**

---

<sup>9</sup> Defined as being the WIA91 and the Act

Bristol Water will, using its best endeavours and acting in good faith, take all reasonably practicable steps to provide external and internal policies and procedures relating to the provision of infrastructure for new developments which are clear and easily understood and do not cause undue preference or undue discrimination, and which are compliant with the obligations contained in the Relevant Legislation and the Licence.

### **Commitment 5: Internal structure and processes**

Bristol Water will, using its best endeavours and acting in good faith, take all reasonably practicable steps to ensure that its approach to the provision of services relating to the provision of water mains infrastructure for new developments is not structured in such a way that it causes undue preference to, or unduly discriminates against, SLPs or acts in a way which is inconsistent with Relevant Legislation and the Licence.

3.8 In deciding to accept the Commitments, we considered that they should be enduring in nature with no specified end date. This was to reflect the fact that the water sector was preparing to introduce a number of significant changes to the regulatory landscape that would be relevant to the issues being considered. In particular, the expansion of the non-household retail market and subsequent reforms to create markets in other parts of the water sector value chain. These changes had the potential to impact on how water companies delivered, and priced, their new connection services. The details of these wider changes were still being finalised at the time of our decision on the Commitments and it was, therefore, unclear how Bristol Water implementing the changes might pose risks to how Bristol Water addressed our competition concerns. We, therefore, considered enduring commitments were appropriate in this case so that we had greater assurance about how Bristol Water would address our competition concerns during, and despite, this period of change.

3.9 Despite the above, both Ofwat and Bristol Water recognised that enduring commitments are unusual<sup>10</sup> and that the Commitments may need to change or be removed in light of wider sector changes. Therefore, commitment [A1.2](#) states that either party may request:

“an amendment to, or early termination of, the Commitments (or requesting new commitments to substitute for the Commitments) at any point in time”. In addition, it states that “[a]s and when appropriate, Bristol Water and Ofwat will meet to discuss whether the Commitments should be amended, terminated or replaced by new commitments in light of such sector changes.”

---

<sup>10</sup> Commitments made under the Act typically have an end date at which they fall away. Often this period is within 3-5 years of the commitments being accepted

## Monitoring the Commitments

- 3.10 Commitment [A1.8](#) sets out the information Bristol Water is required to provide to Ofwat to enable us to monitor compliance with the Commitments. The first monitoring report had to be provided a month after the Commitments were accepted (April 2015), and then on a quarterly basis until such a time that Ofwat agreed the reporting frequency could be reduced or removed.
- 3.11 Bristol Water submitted a monitoring report on the implementation of the Commitments in July 2014, prior to our formal acceptance of the Commitments. Since its acceptance of the Commitments in March 2015, Bristol Water has submitted 22 monitoring reports to us and will continue to do so until the Commitments are amended or released.
- 3.12 As required by commitment A1.8, each monitoring report has been accompanied with an independent audit report which provides third party assurance of Bristol Water's compliance with the Commitments. To provide this, an independent third party audits a random sample of Bristol Water development projects, reviewing their project files and interviewing the staff responsible for them to ensure their handling of the project complies with the specific requirements of the Commitments.
- 3.13 The initial independent audit reports provided alongside Bristol Water's monitoring reports, for example those in April and July 2015, contained a number of recommendations about Bristol Water's compliance with the Commitments. These recommendations were typically quite technical and concerned, for example, changes to Bristol Water's process documents. Bristol Water acted on those recommendations, and over time, the number of recommendations made by the independent auditor declined and they tended to be points to note or for Bristol Water to remind their staff rather than substantive concerns. There have been no recommendations arising from the independent audits made since November 2019.
- 3.14 Overall the independent audit reports have been positive in reporting that the files they have audited have consistently demonstrated compliance with the Commitments, with no evidence of any undue discrimination or preference towards any SLPs. All reports since November 2015 noted that the standard of compliance demonstrated in those early reports continued to be maintained and that the issues identified by the audits had been addressed.
- 3.15 Whilst not strictly part of their monitoring of Bristol Water's compliance with the Commitments themselves, as contextualisation, the independent audit reports have also commented on those developments in the water sector that have relevance to the Commitments and Bristol Water's response to those developments. In particular, the reports have noted that Bristol Water implemented its charging arrangements for new connections services for 2020-21 following a consultation period with customers. The



independent audit reports also specifically confirmed that consistently the charges in the sample of cases they audited had been applied on an equivalent basis for both requisition and self-lay applications. This resulted in the audit reports noting there had been no suggestions of differential treatment.

- 3.16 Given Bristol Water has actioned the recommendations contained in the audit reports, where applicable, the declining number of recommendations made by the independent auditor, and our proposal to consult on releasing the Commitments, in July 2020 we confirmed to Bristol Water that the frequency of its reporting could reduce from quarterly to every six months.

## 4. Relevant developments in the water sector since the acceptance of the Commitments

4.1 Since our decision to accept the Commitments in March 2015, there have been a number of developments in the water sector that are relevant to the Commitments and the competition concerns we identified in our original investigation. We set out below which of the competition concerns and commitments the developments are relevant to. These developments also provide greater transparency and/or new regulation of water companies' activities in the new connections market. Bristol Water's behaviours and performance in light of this changed framework also provides useful evidence to us in assessing whether the competition concerns still arise (see [section 7](#) for more details).

### New charging rules for new connections

- 4.2 From 1 April 2018, companies wholly or mainly in England have been following a [new set of rules](#) for charging for new connections (including requisitions and self-lay) issued by Ofwat. As a result, companies no longer use the previous charging arrangements set out in primary legislation, which required particular methods for calculating requisition and self-lay charges. At times, the previous charging arrangements were interpreted differently by different companies, in particular in terms of the inclusion of costs for off-site reinforcement works. This could cause differences in how the same costs were treated in the calculation of requisition and self-lay charges, one of the competition concerns our investigation identified (see competition concern 2) which resulted in commitment [A1.3](#).
- 4.3 The new charging rules now ask that companies publish upfront fixed charges<sup>11</sup> for most connections services and that the charges for off-site reinforcement works are more transparent and cost reflective. The intention behind this increased certainty of charges and transparency was to enable a level playing field between water companies and other market participants, including SLPs, by better allowing customers to compare the cost and service available from these different providers and to highlight and challenge where needed if different amounts were being charged for the same services.
- 4.4 Following the new rules, companies now publish their charges upfront on their website, explaining how each charge is calculated and what services are covered by each charge. We expect that companies only change charges after proportionate, timely and effective consultation with groups of persons likely to be significantly affected by their proposed charging arrangements and any other persons the companies consider it

---

<sup>11</sup> Fixed charges mean charges set for a given charging year which are fixed in amount or which are calculated by reference to a predetermined methodology

appropriate to consult. This greater transparency is relevant to competition concerns 2 and 3 (see [section 7](#) for more details).

- 4.5 A key change brought about by the new charging rules is that requisition charges, connection charges and self-lay charges<sup>12</sup> relate only to the costs of on-site works. Any costs relating to off-site reinforcement works are not included in these charges, but instead form part of a standard infrastructure charge which is applied for each new connection made, regardless of whether it is provided by the water company or a self-lay provider. This increased transparency about which costs are being recovered through which service provides much less scope for companies to treat the same off-site reinforcement costs differently under requisition and self-lay options (competition concern 2).
- 4.6 In [July 2019](#), we made a further change to our charging rules, changing the way the income offset is applied<sup>13</sup>. Since April 2020, the income offset has applied to the infrastructure charge instead of being included in the calculation of the requisition charge or self-lay charges. Again, this removes the scope for the income offset to be applied differently for self-lay and requisitions options (competition concern 2).
- 4.7 The above changes should enable developers and SLPs to work out a reasonable estimate of the charges they will face (if they know the site parameters) and, because these charges now only include on-site charges, it means more transparency for the customers of these services enabling them to better compare providers for contestable services.
- 4.8 As set out above, the independent audit reports have consistently confirmed that Bristol Water's charges are being applied on an equivalent basis for both requisition and self-lay applications.
- 4.9 After their introduction in April 2018, we observed how the new charging rules were embedding in the water sector. On [29 April 2019](#), we wrote to companies highlighting that we had received a number of complaints over the previous 12 months in which it was alleged that water companies (including Bristol Water), had made it difficult for SLPs to compete and operate efficiently in the new connections market by means of their new charges, contractual terms and/or actions.
- 4.10 Our letter set out that we had received complaints about the level, clarity and application of design fees (relevant to competition concern 3), the clarity and comparability of how requisition and self-lay charges were calculated and the way in which asset payments and income offsets were calculated (relevant to competition

---

<sup>12</sup> Charges for adopting self-laid infrastructure provided under sections 51A or 104 WIA91

<sup>13</sup> The income offset has the effect of providing a discount to the costs incurred in providing new connections to recognise the new revenue the water company will ultimately receive from newly connected customers

concern 2). The extent to which companies' properly consulted on changes to their charging schemes for new connections had also been questioned.

- 4.11 Our letter noted that we recognised that the charging rules were relatively new and that, by the nature of them being largely principles based, they were, on some points, open to companies taking different approaches in their charging schemes. We highlighted that companies' competition law obligations require companies to ensure they are fully considering the effects of their charges and charging scheme documents on effective competition.
- 4.12 We used our letter to emphasise the need for all companies to focus on this as a matter of urgency and, since our letter, we have received no further specific complaints about Bristol Water's new connection charges. We consider this an important indicator of how the new charging rules have been implemented by Bristol Water with the required behaviours being embedded.

## Business retail market opening

- 4.13 In April 2017, the water sector's business retail market opened, enabling all businesses, charities and public sector organisations in England and large water users in Wales to choose their retailer for water and sewerage services. Monopoly water companies continue to provide the wholesale water and sewerage services which retailers sell on to their customers.
- 4.14 To facilitate the new retail market, the Government allowed monopoly water companies to exit the retail market and transfer their existing business, charity and public sector customer bases to an acquiring licensee in accordance with [The Water and Sewerage Undertakers \(Exit from Non-household Retail Market\) Regulations 2016](#).
- 4.15 On 1 April 2017, Bristol Water exited the non-household retail market. In doing so, it transferred all of its non-household customers to an associated retailer called Water 2 Business Limited<sup>14</sup>. What this means in practice is that Bristol Water now focuses on delivering upstream services to retailers operating in the market, including arms-length trading with its associated retailer.
- 4.16 The preparation for, and operation within, the newly expanded market required monopoly companies to have a greater understanding and management of competition law compliance including transparency and assurance on their compliance. This included better recognising and managing differences between their contestable

---

<sup>14</sup> Water 2 Business Limited is a joint venture between Bristol Water and Wessex Water Services Limited (who also exited the water retail market on 1 April 2017) and, therefore, remains an associate business of Bristol Water, sitting within its wider company group

(retail) and non-contestable services (wholesale). It also included appropriately managing upstream and downstream market interactions where staff and/or resources may be shared between different entities in company structures. To support this, and the Commitments, Bristol Water has put in place a new compliance team and regular compliance training to embed the required behaviours.

4.17 This development is relevant to all the competition concerns but, in particular, competition concern 1, which is an overarching concern about the potential leveraging of a dominant position in upstream services to harm effective competition for downstream services, and commitment 5 (see [section 3](#)) which includes actions for Bristol Water's internal structure and processes and the operational structure to functionally separate upstream and downstream services it provides in the new connections market.

## Review of Incumbent Companies' Support for Effective Markets

4.18 In May 2019, our CEO Rachel Fletcher [wrote to English water companies](#) to make it clear that we considered that overall levels of water company support for the development of effective markets (particularly the business retail and new connections markets<sup>15</sup>) was unacceptable. The letter challenged companies to improve and asked them to provide evidence to demonstrate where and how they were actively supporting the development of effective markets. Following us issuing a more detailed [information request](#), in October 2019 incumbent water companies (including Bristol Water) submitted information and evidence to inform our review.

4.19 We published the [findings](#) of our review in August 2020. Our assessment concluded that with respect to the downstream market in which SLPs compete, there were many examples of good practice enabling effective competition, but that this was inconsistent and some companies approaches could make it less straightforward to operate in some areas. We also set out that SLPs market share is strong in areas where some companies operate but not in others.

4.20 We [wrote to Bristol Water](#) on 11 August 2020, highlighting where it had performed well in our review of the new connections market. This included:

- It performed well against the [WaterUK levels of service metrics](#).
- Our October 2019 review of companies' webpages found Bristol Water's information for SLPs to be comprehensive, user friendly and easy to find.

---

<sup>15</sup> This is a term used in the report to describe the issues and services associated with new connections or diversions to incumbents' networks, typically when new properties are built

- We recognised Bristol Water’s efforts to engage with its developer services customers. We were encouraged to see that it held an open discussion on its charges for 2020–21 and other areas in its developer services work such as supporting more water efficient homes and the [Developer Services Measure of Experience \(D-MeX\)](#).

4.21 Our letter also highlighted a couple of areas that we considered needed further attention by Bristol Water. This included it not providing enough evidence that its new connection charges were cost reflective (as expected by the charging rules for new connections) and a finding that its on-site charges for 2019–20 appeared to be an outlier by being significantly lower than the average for the sector. We highlighted in our findings of the above review that charges that are below cost can act as a barrier to competition. Neither of these issues were specific to Bristol Water alone, with other companies having similar issues. With this in mind, in [May 2020](#), we issued a consultation looking at the differences in levels of charges with a view that there should be greater consistency between charging arrangements in certain respects. We issued our conclusions on this in [November 2020](#).

## Code for Adoption Agreements

- 4.22 The Water Act 2014 included a new requirement for Ofwat to issue statutory codes about the agreements water and wastewater companies enter into in order to take on responsibility for new connections infrastructure that has been provided by other parties, such as SLPs (**adoption agreements**). This requirement came into effect in October 2017 and, following a [statutory consultation](#), we published our [Code for Adoption Agreements \(the Code\)](#) in November 2017.
- 4.23 The Code sets a framework within which companies must deliver adoption agreements and places obligations on companies to work with their customers (for example, developers and SLPs) to develop, agree and maintain sector guidance and model adoption agreements (together **the sector documents**)<sup>16</sup>. Over time, as the sector documents are incorporated in the Code and brought into effect, we expect the Code to provide greater transparency, clarity, consistency and certainty for SLPs and developers about the processes and requirements they must go through to get the essential inputs (upstream services) they need from water and wastewater companies for adoption agreements, while continuing to assure water and wastewater companies that they are adopting quality, resilient infrastructure from SLPs.

---

<sup>16</sup> The Code sets out the minimum requirements for these documents, including information and publication requirements; when deviations from them may be permitted; and governance arrangements, which include the water and sewerage sector convening code panels to deal with changes to the documents

- 4.24 The Code also incorporated Information Notice 16/06<sup>17</sup>, which sets out our expectations regarding a series of non-price terms water companies could reasonably include in adoption agreements to provide assurance regarding quality of assets they would ultimately adopt.
- 4.25 In August 2020, we approved the [water sector guidance and model water adoption agreement](#) (**the water sector documents**) and, as such, they now form part of our Code. This means companies now have an obligation to comply with the water sector documents with failure to do so potentially resulting in us issuing a statutory direction. The water sector documents will come into effect on 1 January 2021<sup>18</sup>. As part of this, companies will also be required to report against a number of service level metrics which are set out in the water sector documents. This is particularly relevant to commitment 3 which is about Bristol Water's interactions with SLPs.
- 4.26 The development of the Code is particularly relevant to competition concern 4 and commitments [A1.5](#) (interaction with SLPs) and [A1.6](#) (policies and procedures), which are about how Bristol Water interacts with SLPs and developers to communicate information on the process and requirements to enable them to access upstream services.
- 4.27 Since January 2018, the Code has required companies to publicise any current procedures for making, varying or terminating adoption agreements including providing information on delivery options available to customers (including self-lay and requisition), guidance and current levels of service and redress.
- 4.28 The new water sector documents require Bristol Water to have in place clear, transparent processes for the adoption of water infrastructure. It also requires Bristol Water to deliver, and report, against certain levels of service with mechanisms in place for customers to seek redress where these levels of service are not met. As such, there is greater transparency of, and accountability for, their upstream services than there was, for example, when the competition concerns originally arose.

## Developer services measure of experience (D-MeX)

- 4.29 Every five years we review the revenue limits of the 17 largest water and wastewater companies in England and Wales. We call this our price review and it is where we set the price, investment and service package that customers will receive. This includes controlling the total revenue companies can recover through charging their customers. When we do this, we must balance consumers' interests with the need to ensure

---

<sup>17</sup> Please note this information notice was formally withdrawn in November 2017

<sup>18</sup> We also approved the sewerage sector guidance and model sewerage adoption agreement in October 2019 with them going live from 1 April 2020

companies are able to efficiently finance the delivery of water and sewerage services for current and future consumers.

- 4.30 One of the four key themes of our 2019 price review ([PR19](#)) was customer service. Providing an excellent customer experience for customers is fundamental for maintaining trust and confidence in the water sector. As part of PR19 we introduced D-MeX.
- 4.31 D-MeX is a common performance commitment for the 2020–25 period that is designed to incentivise companies to improve the service they provide to developer services customers, including developers and SLPs. It has two components – a qualitative component, which includes a satisfaction survey (run by an independent body) of the company’s developer services customers (including SLPs), and a quantitative component, which measures the performance of the company across selected Water UK performance metrics (see more [below](#)), including self-lay metrics. Companies started reporting against these metrics from 1 April 2020 with data for the quantitative element of the D-MeX score required to be provided on an annual basis.
- 4.32 D-MeX is designed to incentivise water companies to provide an excellent customer experience to developer services customers including small and large developers and SLPs. Companies will receive a D-MeX score based on the satisfaction ratings given by their customers in monthly surveys and their performance against the performance metrics (which as set out below is reported through Water UK). We will publish an annual league table for D-MeX showing each company’s score. As part of their price control, each company can receive outperformance payments or incur underperformance payments based on how it scores compared to other companies.
- 4.33 With the focus of D-MeX on the quality of developer services customers, including SLPs, experience, it is clear that the development of D-MeX is particularly relevant for competition concern 4 and commitment 3 (see [section 3](#)) which are about Bristol Water’s non-price interactions with SLPs (such as guidance information and service timescales that affect a customer’s experience). We also consider that D-MeX, through its qualitative component (that is, the monthly surveys), will provide us with an early visibility of any customer dissatisfaction through regular, and direct, interaction with developers and SLPs.

## Water UK Levels of Service

- 4.34 [Water UK<sup>19</sup>](#) has developed a range of [performance metrics](#) which measure water companies’ performance against levels of service agreed for a range of developer services (including services to developers and to SLPs). These metrics provide a useful

---

<sup>19</sup> The trade body representing the UK’s major water companies



means of monitoring the non-price behaviours that were identified by competition concern 4. Whilst these performance metrics were developed independently of Ofwat, as set out above, they now contain metrics used and monitored for the purposes of the Code and D-MeX.

- 4.35 Companies have reported these metrics quarterly since April 2015 with water companies' performance published on Water UK's website. They have also developed them further, including to increase and enhance the number of metrics relating to services for SLPs. Some of the metrics enable a more transparent comparison between how a water company is performing in terms of delivering services to SLPs compared with when it provides services to developers itself (that is, where the company is providing upstream services to itself to provide the downstream services where it competes with SLPs). They also show how a company is performing relative to the wider sector.
- 4.36 Bristol Water has consistently reported its performance against the Water UK levels of service in its monitoring reports. By way of comparison, the figures reported indicate an increasing performance with, for example, the May 2018 report noting Bristol Water's performance in delivering services to SLPs within the target timescales of relevant metrics improving from 86.9% in Q3 2017-18 to 98.3% in Q4 2017-18. The corresponding report in August 2020 reported Bristol Water's performance in delivering services to SLPs within the target timescales of relevant metrics at 100% for Q4 2019-20 and Q1 2020-21. The independent audit reports provided alongside Bristol Water's monitoring reports for the Commitments have also consistently reported that its reviews did not raise any concerns about the application timeframes with the statistics being reported not giving any indication of SLPs being disadvantaged.
- 4.37 As the Water UK levels of service capture metrics included in the Code and D-Mex, they are relevant to competition concern 4 and commitment 3, which are about Bristol Water's interactions with SLPs, in particular the timeframes within which Bristol Water's upstream services are provided to SLPs compared to their own downstream business.

## Undue discrimination and undue preference licence modifications

- 4.38 We made a [licence modification](#) to water companies' Instruments of Appointments, coming into effect on 1 April 2019, which prohibits them from showing undue preference or unduly discriminating against themselves, other monopoly companies, water supply and/or sewerage licensees or other persons when undertaking regulated activities. This supports effective competition within the value chain.

- 4.39 This licence condition adds to the potential regulatory sanctions and routes of recourse for behaviour which might hinder the establishment or maintenance of a level playing field in contestable services with our [consultation](#) on the proposed licence modification highlighting SLPs as one such market participant.
- 4.40 The licence modification also includes a provision requiring water companies to restrict the use of information submitted to them as part of a bid for the provision of services in the wholesale markets or, importantly for the Commitments, submitted by those making enquiries about, or entering into, agreements for the adoption of self-laid infrastructure. This is to prevent water companies from disclosing information within their business which could give them an unfair commercial advantage and dissuade SLPs from seeking to service developers.
- 4.41 Bristol Water's Instrument of Appointment now includes this new licence condition and it reinforces its obligations to comply with competition law.
- 4.42 We consider this licence modification has particular relevance to competition concerns 1 and 4, and commitment 3, which has specific actions for Bristol Water around improper use of information and commitment 5, which is about Bristol Water's internal structure and processes.

## 5. Legal framework

5.1 The Act sets out the circumstances in which commitments may be released:

- Section 31A(4)(b) of the Act states that the commitments may be released where we are requested to do so by the person who gave the commitments or there are reasonable grounds for believing that the competition concerns no longer arise.

5.2 Schedule 6A of the Act outlines the procedural requirements for releasing commitments:

- a notice stating that we propose to release the commitments, providing the reasons for it, and the period within which representations may be made in relation to the proposed release must be published and sent to the person who gave the commitments;
- the period under which representations may be made must be for a minimum of 11 working days starting with the date the notice is given or, if that date is not a working day, with the date of the first working day after that date; and
- we must consider any representations made in accordance with the notice.

## 6. Bristol Water's request to release the Commitments

6.1 As set out in [section 2](#), on 1 December 2017, Bristol Water submitted a request under section 31A(4)(b)(i) of the Act for us to consider releasing it from the Commitments. Bristol Water's submission set out why it believed that the Commitments were no longer required. Its reasons are summarised as follows:

Reason 1: The specific competition concerns have been addressed:

- The Commitments which required urgent action to be taken, such as restructuring its Developer Services team, were completed immediately before the Commitments were formally accepted in March 2015.
- The independent audit reports demonstrate that the remaining ongoing commitments have been complied with to such an extent that they have become culturally embedded in the organisation and Bristol Water states it now actively promotes competition, which is supported through a training programme for its staff (both new joiners and existing staff).
- The Developer Services team has redesigned its processes and systems to be more customer centric, having also moved within the organisation to be part of Bristol Water's Customer Services directorate. Examples of this are six-monthly customer facing engagement days, customer update meetings, feedback surveys and continuous improvement projects.
- Bristol Water actively contributes to sector developments in the new connections market by sitting on the Water UK self-lay working group tasked with improving the process for SLPs to fairly compete in the Developer Services market.

Reason 2: There is now effective competition in the new connections market within the Bristol Water area:

- 62% of new connections for sites in the competitive market in 2016-17 were undertaken by SLPs compared to 9.6% in 2012-13<sup>20</sup>.
- The number of active SLPs operating in the Bristol Water area has increased from two at the time of the original investigation to nine SLPs in December 2017.

Reason 3: The legislative and regulatory framework has changed since the date of the Commitments and has imposed new obligations and created greater transparency across the sector:

---

<sup>20</sup> This figure is in relation to sites with multiple connections (i.e. those sites SLPs typically compete for) and not in relation to all new connections (which includes single connections). The comparative figure for all new connections is 29%

- The new charging rules supersede some obligations in the Commitments, in particular the principles which underpin commitments 1 and 2.
- Alternative monitoring and enforcement options exist, for example as a result of the introduction of the Water UK Services Standards and D-MeX.
- The Business Retail market has created a new compliance culture across the sector which Bristol Water has embraced by creating a new compliance team which has oversight from both its Board and its Executive team.
- Whilst not time bound the Commitments envisaged a review at the time of retail separation because of the behaviours and cultural changes Bristol Water introduced which underpin many of them.

6.2 Having reviewed Bristol Water's December 2017 request, our preliminary conclusion was that the evidence presented by Bristol Water indicated that the changes required under the Commitments in relation to the structural changes of Bristol Water's business and raising of competition law awareness had been well embedded into Bristol Water's "business as usual" arrangements.

6.3 There were, however, elements where, at the time, we had less assurance that the changes required by the Commitments had been fully embedded, as they remained relatively new in a regulatory landscape which was itself changing in the period following acceptance of the Commitments, in particular in relation to charging for new connections services (see [section 4](#)). This concern was reinforced by us having received two complaints regarding Bristol Water's charges under the new charging rules, having published its proposed charging scheme for 2018-19, the first year of the new charging rules.

6.4 As a result, we concluded that it was not yet an appropriate time to release Bristol Water from the Commitments. In the meantime we continued to assess the customer complaints that had been raised with us to better establish if the issues that were raised reflected our original competition concerns or were indicative of wider sector issues of bedding in the new charging rules arrangements for new connections the water sector introduced that year.

6.5 In January 2020, factoring in the time since Bristol Water's previous request to release the Commitments, and the behaviours and wider regulatory changes being further embedded, Bristol Water contacted us again about the possibility of releasing it from the Commitments. We responded setting out the work we were doing in reviewing incumbent companies' role in developing effective markets (see [section 4](#)). We noted the link between the issues being considered by that review, and the areas covered by the Commitments, and the potential for the review to identify evidence or findings that would be relevant to any decision to release the Commitments. We said we would not make any decision on releasing the Commitments until our separate review was complete.

- 6.6 In June 2020, prompted by our May 2020 consultation looking at the differences in levels of charges, and following our delayed publication of our review of incumbent company support for effective markets due to the impact of Covid-19, Bristol Water contacted us again about the Commitments. In July 2020, we wrote to Bristol Water to explain that, having reflected on the above review, and Bristol Water's previous requests and correspondence, we were going to move forward in preparing a consultation on a proposal to release Bristol Water from the Commitments.
- 6.7 We have reviewed both of Bristol Water's requests to release the Commitments and our analysis of this review is set out in [section 7](#).

## 7. Our analysis of whether the Commitments remain needed

7.1 Following Bristol Water's requests for us to consider releasing it from the Commitments under section 31A(4)(b)(ii) of the Act, we have considered whether the competition concerns we originally identified in our investigation still exist, and if the Commitments remain needed as the most appropriate means of addressing those competition concerns. In reaching our conclusion, we considered:

- The quarterly compliance monitoring reports Bristol Water submits to us for the Commitments, including the independent audit reports provided alongside its own monitoring report;
- The various regulatory changes the water sector has seen since the Commitments were accepted (see [section 4](#)) that may be relevant to whether our original competition concerns remain valid or remedied, and/or whether the actions required by the Commitments remain needed or the most appropriate means of ensuring the competition concerns are addressed;
- Bristol Water's requests to release the Commitments, including the evidence Bristol Water provided to support its position that the Commitments are no longer needed (see [section 6](#)); and
- Other relevant information that we have from other areas of our work about how Bristol Water is performing<sup>21</sup> in the new connections market.

### Our view on whether it is appropriate to release the Commitments

7.2 We set out below the original competition concerns and draw on the analysis above to set out whether we have reasonable grounds for believing that the competition concerns no longer arise or that the Commitments are no longer appropriate.

#### Concern 1: Potential leveraging of a dominant position in upstream services to harm effective competition for downstream services

7.3 As set out in [section 3](#), this concern is about Bristol Water being a vertically integrated business that is both (a) dominant in the provision of the non-contestable upstream services necessary for SLPs to compete and (b) a competitor of SLPs in providing downstream contestable services for new connections. This creates the potential, and

---

<sup>21</sup> For example, consideration was given to Bristol Water's performance in the Water UK levels of service reporting, our review of incumbents' support for effective markets, and the number of complaints received by us from customers on matters relevant to the Commitments

incentive, for Bristol Water to leverage its dominance in upstream services into the provision of downstream services, so as to foreclose effective competition.

## Relevant Commitment(s)

7.4 All of the Commitments are relevant to this overarching competition concern as they address identified practices by which Bristol Water was potentially leveraging its dominant position. Commitment 5, in particular, seeks to address potential future leveraging by Bristol Water that could give rise to further, different practices which could also have anti-competitive effects. Commitment 5 requires Bristol Water to ensure its approach to the provision of developer services is not organisationally structured in such a way that it causes undue preference to, or unduly discriminates against, SLPs. In particular, it sets out that Bristol Water will:

- Adopt an internal operational structure which separates out its upstream and downstream services by creating a retail interface team (which deals with developers) and a wholesale interface team (which provides upstream services to SLPs and Bristol Water's own retail interface team). See diagram at [A1.10](#) – Appendix 1.
- Ensure its developer services team is distinct from the team responsible for the letting and management of the term contract.
- Ensure its developer services team has no influence over the appointment of the term contractor.
- Ensure the term contractor has no direct involvement in producing budget quotations for requisitioning and self-laying infrastructure.

## Analysis of implementation of Commitments

7.5 The independent audit reports confirm that Bristol Water has implemented all of the above actions required by commitment 5. They were actioned shortly after the Commitments came into force and have been complied with since.

7.6 Bristol Water has also overseen the movement of developer services to its customer service directorate which reinforces the functional separation of upstream and downstream services and the consideration of who is a customer of what services.

7.7 In addition to the above actions, Bristol Water staff now have a greater appreciation of competition law compliance risk and management from wider sector developments, commitments relating to on-going training and from the increase in self-lay activity which has helped familiarise and build this into business as usual practice. We consider that this has reduced the potential for Bristol Water to leverage its dominant position to



harm effective competition in the new connections market through other potential practices.

## Additional considerations

- 7.8 As set out in [section 4](#), on 1 April 2017, Bristol Water exited the non-household retail market and, in doing so, separated its retail activities from its wholesale activities for businesses, charities and public sector customers. We consider the approach and management required for this functional separation further supports that required to effectively manage the separation Bristol Water has made between its upstream and downstream services for developer services activities.
- 7.9 Also set out in [section 4](#), since 1 April 2019, Bristol Water has had a condition in its licence that prohibits it from showing undue preference or unduly discriminating against itself, other monopoly companies, water supply and/or sewerage licensees, or other persons when undertaking regulated activities. As highlighted above, we consider this an additional regulatory sanction and route of recourse for behaviour that might hinder the establishment or maintenance of a level playing field for contestable services in the new connections market.
- 7.10 Since our investigation there has been a growth in both the number of SLPs operating in Bristol Water's area and the proportion of relevant new connections activity that they undertake. This suggests that there is now more effective competition in the self-lay market in Bristol Water's areas. SLP penetration has increased from 20% of all new connections in 2015-16 (undertaken by 3 SLPs) to 35% SLP penetration of all new connections in 2018-19 (undertaken by 12 SLPs). In comparison, as set out in our review of incumbent company support for effective markets, we estimate SLPs provide infrastructure for around 30% of England's new water connections with the highest levels of SLP market share in 2018-19 seen in the areas of United Utilities (47% of water connections), Anglian Water (43%) and Severn Trent Water (38%).
- 7.11 In October 2019, Bristol Water also confirmed, in its response to our review of incumbent companies support for effective markets, that SLP penetration is at 65% for those sites they are actively seeking to undertake connections on (that is, sites with multiple connections as opposed to single connections). In December 2017, Bristol Water reported this figure was 62% which compares to 9.6% in 2012-13 (see [section 6](#)).

## Conclusion

- 7.12 Taking the above into account, we have concluded that the evidence presented suggests that the changes required under the Commitments, in particular commitment

5, in relation to the structural changes of the business and raising of competition law awareness have been significantly embedded into Bristol Water's business as usual arrangements and that the market is working effectively in Bristol Water's area enabling SLPs to both enter and compete. With this in mind, we consider we have reasonable grounds to consider that this competition concern no longer arises.

## **Concern 2: Differences in the treatment of costs in the calculation of self-lay and requisition quotations which can result in the amount presented to the customer as being recovered by Bristol Water being less for the requisition than the self-lay option**

7.13 As set out in [section 3](#), this concern is about the difference between self-lay and requisition quotations due to the different treatment of the same costs in their calculation, in particular costs arising from non-contestable off-site works.

### **Relevant Commitment(s)**

7.14 To address the above concern, commitment 1 ([A1.3](#), Appendix 1) requires Bristol Water to ensure the charges quoted for the provision of water infrastructure on a new development are calculated in a way which does not cause undue preference to, or unduly discriminate against, either the self-lay option or requisition option. In particular, it sets out that Bristol Water will:

- Calculate self-lay charges by reference to the total installation cost of all relevant contestable and non-contestable work attributable to the development in question.
- Ensure all budget quotations for developers contain information on the self-lay and requisition options.
- Ensure cost information provided by Bristol Water allows developers to make an informed choice between the self-lay and requisition routes.

### **Analysis of implementation of Commitments**

7.15 The independent audit reports confirm that Bristol Water has implemented all of the above actions. They were actioned shortly after the Commitments came into force and have been complied with since subject to some occasional minor recommendations, such as, for example, reminders on training and correct use of terminology, which have since been actioned.

- 7.16 Independent assurance of Bristol Water's monitoring reports confirm that the relevant charges are being applied on an equivalent basis for equivalent services and there is no suggestion of differential treatment.
- 7.17 The May 2020 audit report also notes, as contextualisation, that Bristol Water implemented its 2020-21 charges following a consultation period and Ofwat's charging rules in relation to asset values, infrastructure charges and income offset were all clearly reflected in its budget quotations.
- 7.18 This independent assurance also confirms that all budget quotations contain both the requisition and self-lay options and, even when the initial application takes the form of a requisition application, or self-lay application, the budget quotation will still include information relating to both options. In addition the budget quotation template is clear, easy to understand and allows the requisition and self-lay options to be compared through the provision of equivalent information.

## Additional considerations

- 7.19 As set out in [section 4](#), since the Commitments have been in force the water sector has seen significant change in the way water companies charge for new connections services in light of Ofwat's new connections charging rules. Prior to these changes, charging arrangements were interpreted differently by companies, in particular in terms of how the costs of off-site reinforcement works were treated in the calculation of requisition and self-lay charges. This sometimes resulted in one option appearing cheaper than the other despite the underlying costs being the same.
- 7.20 Now that Bristol Water has demonstrated its commitment to following the new charging rules there is a reduced need for reliance on those elements of the Commitments that were aimed at achieving the same outcome of ensuring consistency between the treatment of costs in requisition and self-lay charges. With requisition and self-lay charges now only including on-site costs, and all off-site reinforcement costs being put into a standard infrastructure charge applied to every newly connected premises, the result is the same treatment of reinforcement costs and income offset discounts regardless of whether infrastructure is provided by a company or another provider.
- 7.21 In addition, as set out above, publishing charges upfront, explaining how each charge is calculated and being clear what services are covered by each charge, which are all elements of the charging rules, will also help to ensure increased certainty of charges and transparency with the intention of enabling a level playing field between water companies and other market participants, including SLPs, by better allowing customers to compare the cost and service available from these different providers and to

highlight and challenge where needed if different amounts were being charged for the same services, addressing the competition concern outlined above.

7.22 As referenced above, the independent audit reports have specifically confirmed that charges have been applied on an equivalent basis for both requisition and self-lay applications. This resulted in the audit reports noting there have been no suggestions of differential treatment.

## Conclusion

7.23 Taking the above into account, we consider that there is reasonable grounds to believe that this competition concern would no longer arise absent the Commitments. Furthermore, should there be any future issues we consider that in many respects there are now other regulatory tools in place to address those which are likely to be more appropriate than commitments under the Act.

### **Concern 3: The additional charges Bristol Water required SLPs to pay without a clear objective justification for and transparency around the reasons for the charges, the level of the charges and the differences in their application between SLPs**

7.24 As set out in [section 3](#), this concern is about Bristol Water levying a range of charges and financial requirements for providing upstream services to SLPs, including surety requirements and a range of administrative fees, which could increase costs for SLPs. Where there is equivalence of service, Bristol Water was not always applying these charges to its own downstream services, for example, through the application of administration charges. These additional charges made SLPs appear more expensive to customers than Bristol Water and/or put additional, unnecessary financial pressures on SLPs' cash flow in order to provide surety payments for the costs of defect works they were already separately contracted to cover via their self-lay adoption agreements.

## Relevant Commitment(s)

7.25 To address the above concern, commitment 2 ([A1.4](#), Appendix 1) requires Bristol Water to ensure that self-lay charges are broadly equivalent to charges applied for equivalent services in the context of requisitions and that they do not cause undue preference to, or unduly discriminate against, SLPs. In particular, it sets out that Bristol Water will:

- Stop requiring the payment of sureties by SLPs and return any sureties held.

- Ensure the equivalent application of charges where services provided are equivalent.
- Review the calculation of relevant charges as part of the annual revision of charges.
- Explain the purpose of relevant charges including what they cover.

## Analysis of implementation of Commitments

- 7.26 As set out above, the independent audit reports confirm that Bristol Water has implemented all of the above actions. They were actioned shortly after the Commitments came into force, except for the return of sureties which was actioned prior to the Commitments coming into force, and have been complied with since subject to some minor recommendations which have since been actioned.
- 7.27 The independent audit reports specifically confirm that charges have been applied on an equivalent basis for both requisition and self-lay applications and no sureties have been requested. We have also had discussions with Bristol Water where it outlined how it works with its developer and SLP customers to explain its new charges and how they apply.
- 7.28 In May 2017, after the Commitments came into force, Ofwat issued a [determination](#) concerning an appeal against Bristol Water about the terms it was seeking under a self-lay adoption agreement. Specifically the complainant objected to the non-physical connection charge (administration charge) Bristol Water sought to recover. Whilst we considered it reasonable for Bristol Water to offer a term in the agreement requiring payment of an administration charge we considered the level and timing of that charge should be different and better reflect the level and timing of costs incurred by Bristol Water. We concluded that a significantly lower charge than Bristol Water included in the agreement was appropriate.
- 7.29 The above determination is relevant to the competition concern 3, and commitment 2, and, as such, the independent audit reports noted the progress of the above determination and, once finalised, they confirmed that Bristol water subsequently actioned the outcomes and started reflecting the new charge across its business.
- 7.30 In addition to the above, the August 2018 audit report noted our dialogue with Bristol Water regarding complaints about the scale and application of design checking fees (see paragraph 2.9). As a result of this, the November 2019 audit report confirmed that Bristol Water subsequently rectified any incorrect statements and inconsistent terminology used in its forms and charging documents. To do this, it adopted the use of the term 'design administration fee' on a consistent basis applying this fee to both developers and SLPs. Bristol Water also provided additional training on this to its staff.

## Additional considerations

- 7.31 As set out in [section 4](#) above, reflecting the new charging rules for new connections, water companies now provide upfront charges for most connection services and publish further information about how their charges have been derived and to make clear what services are covered by charges. The evidence we have seen indicates that Bristol Water is doing this. This is further supported by our review of companies' support for effective markets which found that which reviewed companies' webpages and found that Bristol Water's information for SLPs is comprehensive, user friendly and easy to find.
- 7.32 With the above in mind, we consider the scope for disparities in charging has reduced. We acknowledge there remains some potential for disparities in smaller, more administration related, charges, however, we consider the scope for disparities from large, more network reinforcement related, costs is significantly reduced.
- 7.33 As set out above (see [section 4](#)), we also wrote to companies in April 2019, a year after the new charging rules came into force, highlighting that companies need to ensure they are fully considering the effects of their charges and charging scheme documents on effective competition.
- 7.34 Should any new concerns arise regarding unreasonable charging, we would consider what regulatory tools are appropriate and possible to address them. Companies should also be developing their new connections charges in consultation with their customers, and Bristol Water has done so. This provides customers with an opportunity to highlight concerns with their approach to approving charges during their development.

## Conclusion

- 7.35 Taking the above into account, we consider that there is reasonable grounds to believe that this competition concern would no longer arise absent the Commitments. Furthermore, should there be any future issues we consider that in many respects there are now other regulatory tools in place to address them which are likely to be more appropriate than commitments under the Act.

## **Concern 4: Bristol Water's interactions with SLPs in terms of communicating information to SLPs and developers on the processes and the prerequisite requirements they need to satisfy in order to access the upstream services provided by Bristol Water**

7.36 As set out in [section 3](#), this concern is about Bristol Water's conduct with SLPs potentially including non-price constraints such as limited or no communication of changes in information requirements; difficulty accessing information on processes and levels of service; delays in providing information; and Bristol Water insisting on speaking to an SLP's client (that is, a developer) as opposed to the SLP, as its customer, for necessary information.

### **Relevant Commitment(s)**

7.37 To address the above concern, commitment 3 ([A1.5](#), Appendix 1) requires Bristol Water to ensure that in its dealings with developers and SLPs it does not cause undue preference to, or unduly discriminate against, SLPs. In particular, it sets out that Bristol Water will:

- Respond to pre-development enquiries made by SLPs in a way that does not discriminate, including setting out clear timeframes for handling enquiries and ensuring the timeframes apply equally to all enquiries.
- Ensure there is no improper use of information provided to Bristol Water in its capacity of providing upstream services to advantage itself in the downstream market.
- Remove the requirement for developers to countersign SLP forms.
- Ensure that once an SLP is appointed, all communications are directed to it as Bristol Water's customer rather than to the developer.
- Ensure there are broadly equivalent obligations on SLPs compared to the obligations imposed on water companies' own business in connection with the requisition of mains and/or service connections, which are clearly communicated and easily understood.

7.38 In addition to the above, commitment 4 ([A1.6](#), Appendix 1) requires Bristol Water to produce external and internal policies and procedures relating to the provision of infrastructure for new developments which are clear and easily understood and do not cause undue preference or undue discrimination. In particular, it sets out that Bristol Water will:

- Amend and update its policy documents and forms to reflect the Commitments.

- Review existing policy documents to ensure they are clear, and simple, and take account of SLP views and enable developers and SLPs to understand the service standard applicable under self-lay and requisition.
- Ensure external documents are easily identifiable and accessible.
- Review policy and procedure documents to ensure equivalent treatment of equivalent transactions.

## Analysis of implementation of Commitments

- 7.39 The independent audit reports confirm that Bristol Water has implemented all of the above actions. They were actioned shortly after the Commitments came into force and have been complied with since subject to some minor recommendations which have since been actioned.
- 7.40 In addition to the above, the audit reports also note the actions Bristol Water took on the back of the Ofwat Information Notice 16/06. As set out above, this information notice was on assurance terms in self-lay adoption agreements, in particular control point inspections, and the audit reports note that Bristol Water subsequently confirmed that there were no such control points in place for self-lay adoption agreements.
- 7.41 We also note the relevance of our review of incumbent support for effective markets, where we noted that our October 2019 review of companies' webpages found that Bristol Water's information for SLPs is comprehensive, user friendly and easy to find.

## Additional considerations

- 7.42 The introduction of D-MeX is particularly relevant to this competition concern. D-MeX provides an incentive to companies to provide an excellent customer experience to developer services customers and, as set out above, it will provide us with an early visibility of any customer dissatisfaction through regular, and direct, interaction with developers and SLPs.
- 7.43 As set out in [section 4](#), from 1 April 2019, Bristol Water has had a licence condition requiring it to restrict the use of information submitted to it as part of a bid for the provision of services in the wholesale markets submitted by those making enquiries about, or entering into, agreements for the adoption of self-laid infrastructure. This is to prevent water companies from disclosing information within their business which could give them an unfair commercial advantage and dissuade SLPs from seeking to service developers. We consider this an important protection in regards to the above action on ensuring there is no improper use of information provided to Bristol Water in its capacity to provide upstream services.



- 7.44 In addition to the above, in early 2018, prior to signing off the water sector documents, to deliver early benefits from the Code, we also required companies, including Bristol Water, to publish their details and current procedures (at that time) for making, carrying or terminating adoption agreements. In addition, we also required companies to provide customers with appropriate redress for failure to meet the current minimum levels of service that the water sector publicly reports against.
- 7.45 Bristol Water complied with these requirements, with the independent audit report picking up on Bristol Water's actions, and did not require any further intervention from us to ensure compliance. In particular, the May 2018 audit report noted the work Bristol Water had done to update its relevant policies and procedures and put in place a redress scheme. In addition, these are requirements that form part of the water sector documents and, as such, they will apply going forward. With this in mind, the actions Bristol Water has already taken should put them in a good position to comply with the Code long term.
- 7.46 As set out above, as of 1 January 2021, the process for the adoption of water infrastructure will change when the water sector documents come into effect. The water sector documents provide greater transparency and certainty on the sector's process requirements for SLPs to access upstream services.
- 7.47 The water sector guidance also includes a clear comparison between the self-lay process and the requisition process. In addition, the water sector guidance also includes a clear statement on competition law setting out that:
- “...the water sector guidance is without prejudice to water companies' duty to comply with the relevant legislation including, in particular, chapter II of the Act dealing with the abuse of a dominant position. In applying this water sector guidance, water companies will be mindful of the possible application of the Act.”
- 7.48 Whilst more time is clearly required to see how the water sector documents get embedded in the sector, and Bristol Water's business, we also consider the Code provides new protections for customers to address any potential future concerns should they arise. Companies will be required to implement these documents, and act in accordance with them, and we will be able to issue an enforceable direction to companies if we consider they are not acting in accordance with them. In addition, the water sector documents give customers contractual and complaint procedure redress in stated circumstances providing additional protections and assurances for stakeholders.
- 7.49 We also recognised in our review Bristol Water's efforts to engage with its developers, which has included regular market development days and an open discussion on

developer services charges from 2020 and other priority areas in the company's developer services work, such as supporting more water efficient homes, and D-MeX.

7.50 As part of our assessment, we have reviewed Bristol Water's performance on the level of services metrics to see whether there was a material difference in its offering to SLPs and its in-house service to developers. Overall, Bristol Water's performance against the self-lay metrics is equivalent to or better than their in-house service provision for requisitions. Bristol Water's performance in regards to the self-lay metrics has steadily increased since we accepted the Commitments. In its August 2020 monitoring report, Bristol Water noted that its performance against the SLP metrics for Q1 2020-21 was 100%.

## Conclusion

7.51 Taking the above into account, we consider that, given the progress made in the sector and by Bristol Water to improve how it interacts with SLPs to provide services, we have reasonable grounds to believe that this competition concern no longer arises. Furthermore, should there be any future issues we consider there to now be other regulatory tools in place to address those which are likely to be more appropriate than commitments under the Act.

## 8. Ofwat's conclusion and proposal

8.1 In light of our assessment, and having reflected on the full range of available options such as, for example, maintaining the Commitments, we consider that it would now be appropriate to release Bristol Water from the Commitments and this document provides notice of our proposal to do so. This is because:

- we have reasonable grounds for believing that our original competition concerns no longer arise;
- there has been marked growth in self-lay activity in Bristol Water's area since the Commitments were put in place, suggesting a more effective market is now in place;
- we consider that, having been in place now for over five years, the structural and cultural changes required by the Commitments should now be sufficiently embedded within Bristol Water's operations to be considered "business as usual" behaviours; and
- there have been a number of recent developments in the sector that have helped to materially reduce the means and behaviours by which some of the competition concerns originally arose, or newly require and incentivise Bristol Water to treat SLPs in the same manner in which they would their own downstream business where services are equivalent. Absent the Commitments we consider that these other regulatory tools would be an alternative, more proportionate means of providing early insight into similar concerns and addressing them should they re-emerge in the future. We, or the CMA, are also able to open a fresh investigation under the Act should new concerns give us cause to do so and meet our prioritisation principles for opening an investigation.

## A1 Commitments given by Bristol Water pursuant to section 31A of the Competition Act 1998

A1.1 Bristol Water plc (Bristol Water) gives to the Water Services Regulation Authority (Ofwat), without in any way acknowledging or accepting that it has infringed applicable competition law, the following commitments (the Commitments) under section 31A(2) of the Competition Act 1998 in order to meet Ofwat's concerns as set out inter alia in Ofwat's letter to Bristol Water dated 12 July 2013 and in Ofwat's notice of its intention to accept bindings commitments from Bristol Water dated 22 May 2014. Appendices always come at the end of a document. Do not call it an annex, which is a standalone document.

### A1.1 Interpretation

A1.2 The Interpretation Act 1978 shall apply to these Commitments as it does to Acts of Parliament.

A1.3 In these Commitments the word "**including**" shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word and the word "**include**" and its derivatives shall be construed accordingly.

A1.4 For the purpose of these Commitments, the following terms shall have the meaning ascribed to them below.

**Asset Payment** means the payment made by Bristol Water in the event that the mains are self-laid.

**Basic Supply Strategy Enquiry** means a basic enquiry which contains sufficient information to enable Bristol Water to provide an enquirer with an indication of the scope of the works needed to supply a development. No designs or Budget Quotation are provided.

**Budget Quotation** means the document setting out the budget costs for requisitioning and self-laying the infrastructure that is the subject of a Preliminary Mains Design Enquiry.

**Charges Scheme** means Bristol Water's Charges Scheme setting out connection, disconnection, development and infrastructure charges which is updated annually and published in April.

**Committed Sum** means the payment required by Bristol Water from a developer in the event that mains are requisitioned.

**Licence** means Bristol Water's Instrument of Appointment.

**Pre-Development Enquiry** means either a Basic Supply Strategy Enquiry or a Preliminary Mains Design Enquiry.

**Preliminary Mains Design Enquiry** means a detailed enquiry which contains sufficient information to enable Bristol Water to provide an enquirer with a preliminary design for all of the required mains, and a Budget Quotation for their installation.

**Relevant Charges** means the charges identified in [A1.9](#).

**Relevant Legislation** means the Competition Act 1998 and the Water Industry Act 1991.

**Requisition** means the installation, by Bristol Water or its designated contractor, of non-contestable and/or contestable water infrastructure (including mains and service connections) for new developments.

**Schedule of Rates** means the agreed rates for specified work items to be carried out by the Term Contractor as set out in the Term Contract for network maintenance and associated works.

**Self-Lay** means the laying of contestable water infrastructure (including mains and service connections) for new developments by the developer itself, or by an SLO appointed by the developer.

**Self-Lay Organisation (SLO)** means an entity engaged in the laying of water mains and service connections on behalf of developers.

**Sureties** means the self-lay sureties described in the 2013-14 Charges Scheme.

**Term Contract** means the contract to provide repair and maintenance services to Bristol Water for network maintenance and associated works, including the delivery of new connections when requisitioned from Bristol Water.

**Term Contractor** means the contractor appointed by Bristol Water under the Term Contract.

**Working Day** means any day of the week other than a Saturday or a Sunday or any day that is a public holiday in England.

## A1.2 Commencement and duration

- A1.5 These Commitments shall take effect from the date that, having been signed by Bristol Water, Ofwat's acceptance of such Commitments is notified to Bristol Water.
- A1.6 Nothing in this provision will prevent either party from requesting an amendment to, or early termination of, the Commitments (or requesting new commitments to substitute for the Commitments) at any point in time in light of, for example, changed market circumstances or legislative requirements.
- A1.7 Both Ofwat and Bristol Water recognise that changes are under way within the sector that may have relevance to the Commitments, in particular with regards to the expansion of the non-household retail market and subsequent upstream reforms. As and when appropriate, Bristol Water and Ofwat will meet to discuss whether the Commitments should be amended, terminated or replaced by new commitments in light of such sector changes.

## A1.3 Calculation and presentation of cost of new infrastructure

### Principle

- A1.8 Bristol Water will take all reasonable steps to ensure that the costs quoted for the provision of water infrastructure on a new development are calculated in a way which does not cause undue preference to, or unduly discriminate against, either the self-lay option or the requisition option, and which is consistent with all Relevant Legislation and the Licence.

### Specific actions

- A1.9 In particular, Bristol Water will:
- a. calculate self-lay asset values by reference to the total installation cost of all relevant contestable work and all relevant non-contestable work (including the proportion of any broader non-contestable schemes that are being undertaken to meet the needs of multiple developments and/or existing customers) that is attributable to the development in question;
  - b. ensure that Budget Quotations provided in response to a Preliminary Mains Design Enquiry contain information relating to both the self-lay and the requisition options, unless specifically requested by the entity that submitted the Preliminary Mains Design Enquiry to do otherwise; and

- c. take all reasonably practicable steps to ensure that the cost information provided by Bristol Water allows developers to make an informed choice between the self-lay and requisition options. To achieve this, Bristol Water will:
  - i. engage with developers and SLOs to discuss the form and the content of the Budget Quotation as part of an informal consultation process; and
  - ii. taking into account the views expressed during the consultation, produce a Budget Quotation which is clear and easily understood, allows the self-lay and requisition options to be compared through the provision of equivalent information for each option, and explains any differences between the cost of the two options.

## A1.4 Broad equivalence of new development charges

### Principle

A1.10 Bristol Water will take all reasonably practicable steps to ensure that charges applied to SLOs, or charged in circumstances where mains and/or service connections are being self-laid, are broadly equivalent to charges applied for equivalent services in the context of the requisition of mains and/or service connections, and that they do not cause undue preference to, or unduly discriminate against, SLOs or act in a way which is inconsistent with the requirements contained in Relevant Legislation and the Licence.

### Specific actions

A1.11 In particular, Bristol Water will:

- a. stop requiring the payment of sureties by SLOs in respect of mains laying and service connections;
- b. ensure any and all sureties held by Bristol Water will be, or have been, returned to the SLOs, with the payment of interest where applicable;
- c. ensure equivalent application of charges where services provided are equivalent, regardless of whether the mains and/or service connections are being self-laid or requisitioned;
- d. review the calculation of the Relevant Charges as part of the annual revision of the Charges Scheme to ensure that the Relevant Charges:
  - i. charged in a self-lay context are broadly equivalent to the charges applied in a requisition context;
  - ii. do not cause undue preference or undue discrimination; and
  - iii. are compliant with the Relevant Legislation and Licence; and

- e. provide an explanation of the purpose of each Relevant Charge, including what each one covers, and why each is charged, in the appropriate policy document(s). In particular, these explanations will be included in:
  - i. the external facing self-lay policy, as revised in accordance with Commitment A1.6b; and
  - ii. the 2014–15 Charges Scheme, and subsequent annual versions.

## A1.5 Interaction with self-lay organisations

### Principle

A1.12 Bristol Water will, using its best endeavours and acting in good faith, take all reasonably practicable steps to ensure that in its dealings with developers and SLOs it does not cause undue preference to, or unduly discriminate against, SLOs or act in a way which is inconsistent with Relevant Legislation and the Licence.

### Specific actions

- a. respond to Pre-Development Enquiries made by SLOs in a way which does not cause undue preference to, or unduly discriminate against, SLOs and in a way which is consistent with Relevant Legislation and the Licence. In particular, Bristol Water will:
  - i. set out clear timeframes for the handling of, and response to, Pre-Development Enquiries in its external policy and procedural documents;
  - ii. ensure that those timeframes apply equally to all equivalent enquiries; and
  - iii. ensure that the nature of the information provided by Bristol Water in response to Pre-Development Enquiries is broadly equivalent;
- b. take all reasonably practicable steps to ensure that Bristol Water does not improperly use any information which it holds by virtue of its position as the appointed water company for the Bristol Water area, or information which it is given by third parties in order to comply with its statutory obligation to offer requisition services for mains and/or service connections, in a way which unduly distorts competition, causes undue preference or undue discrimination or is inconsistent with Relevant Legislation and the Licence. In particular, Bristol Water will ensure that:
  - i. the Term Contractor and those Bristol Water staff preparing quotations for contestable works are not provided with, or given access to, any information relating to a particular development held by Bristol Water on terms which differ from those on which equivalent information would be provided to an SLO in equivalent circumstances;



- c. remove any requirements from the self-lay application form for the developer to counter-sign the form, unless it can be clearly demonstrated that there is an objective justification for the consent of the developer to be obtained;
- d. seek to ensure that once an SLO has been appointed for a particular development, all communications pertinent to that development will be directed to the appropriate party(ies), taking into account the roles performed by the parties involved in that particular development and any relevant instructions received by Bristol Water from the parties concerned;
- e. ensure that the obligations imposed on, and the services provided to, SLOs by Bristol Water in regard to the self-lay of mains and/or service connections are:
  - i. broadly equivalent to obligations imposed and services provided by Bristol Water in connection with the requisition of mains and/or service connections;
  - ii. clearly communicated and easily understood;
  - iii. do not cause undue preference to, or unduly discriminate against, SLOs; and
  - iv. are consistent with Relevant Legislation and the Licence; and
- f. For the avoidance of doubt, nothing in these Commitments will impose an obligation on Bristol Water to disclose to anyone any information, documents or materials which are provided to Bristol Water by third parties as part of a Pre-Development Enquiry, unless required to do so by legislation or the Licence.

## A1.6 Policies and procedures

### Principle

A1.13 Bristol Water will, using its best endeavours and acting in good faith, take all reasonably practicable steps to produce external and internal policies and procedures relating to the provision of infrastructure for new developments which are clear and easily understood, do not cause undue preference or undue discrimination, and which are compliant with the obligations contained in Relevant Legislation and the Licence.

### Specific actions

A1.14 In particular, Bristol Water will:

- a. amend and update its public and internal policy documents and relevant forms to reflect those commitments as identified herein which have immediate effect;
- b. review the existing external policy documents relating to the provision of infrastructure for new developments, namely the Developers' Charter, the

Addendum to the National Code of Practice and the Self-Lay Policy, and relevant forms utilised by developers, SLOs and their agents, in order to produce materials which:

- i. set out the relevant information in a clear and simple way;
  - ii. take into account the views expressed and suggestions made by customers, including developers, SLOs and their agents;
  - iii. enable developers, SLOs, and their agents to understand the service standards applicable to procedures under the self-lay and requisition options;
  - iv. do not cause undue preference or undue discrimination; and
  - v. are compliant with Relevant Legislation and the Licence;
- c. ensure that the external policy documents, and any relevant forms or other information, are easily identifiable and accessible;
- d. review the existing internal policy and procedural documents relating to the provision of infrastructure for new developments in order to produce material and procedures which:
- i. ensure equivalent treatment of equivalent transactions;
  - ii. do not cause undue preference or undue discrimination; and
  - iii. are compliant with Relevant Legislation and the Licence; and
- e. in the event of any changes being made to Bristol Water's policies and procedures in the future, in so far as they relate to self-lay, amend any relevant documents and publish revised versions within 20 working days of the changes being made.

## A1.7 Bristol Water's internal structure and processes

### Principle

A1.15 Bristol Water will, using its best endeavours and acting in good faith, take all reasonably practicable steps to ensure that its approach to the provision of services relating to the provision of water mains infrastructure for new developments (referred to by Ofwat as '**Developer Services**') is not structured in such a way that it causes undue preference to, or unduly discriminates against, SLOs or acts in a way which is inconsistent with Relevant Legislation and the Licence.

### Specific actions

A1.16 In particular, Bristol Water will:

- a. ensure that Bristol Water's Development Services team (which provides specific services to developers and SLOs) involved in the provision of Developer Services is

distinct from the team responsible for the letting and management of the Term Contract;

- b. ensure that the Development Services team involved in the provision of Developer Services does not have any direct decisive influence over the selection and appointment of the Term Contractor;
- c. ensure that the Term Contractor is not directly involved in the production of the Budget Quotation, with the exception of the provision of cost information for work items which are not covered by the Schedule of Rates;
- d. adopt an internal operational structure broadly equivalent to that set out in A1.10, which provides for two distinct and separately staffed functions, namely the Wholesale Interface and Retail Interface. These functions will have the following roles and responsibilities:
  - i. the Retail Interface will be created and will operate as the main interface with developers, their agents and any other customers in relation to new mains connections (**'Retail Interface Customers'**);
  - ii. the Retail Interface will respond to Pre-Development Enquiries from Retail Interface Customers in accordance with the timescales and standards set out in Bristol Water's public policies and procedures and in these Commitments;
  - iii. in order to respond to Pre-Development Enquiries, the Retail Interface will engage with the Wholesale Interface;
  - iv. the Wholesale Interface will operate as the main interface with the Retail Interface, SLOs and their agents, and other entities performing an equivalent retail function in relation to new mains connections (**'Wholesale Interface Customers'**);
  - v. the Wholesale Interface will be responsible for the assessment of the capacity of the network, identification of the infrastructure requirements for the proposed development, and calculation of the estimated installation cost, Commuted Sum and Asset Payment. Where necessary, the Wholesale Interface will interact with, and request services and obtain information from, other departments within Bristol Water;
  - vi. the Wholesale Interface will respond to Pre-Development Enquiries from Wholesale Interface Customers in accordance with the timescales and standards set out in Bristol Water's public policies and procedures and in these Commitments;
  - vii. the internal procedures relating to the activities of the Wholesale Interface and the Retail Interface will reflect the timescales and standards set out in Bristol Water's public policies and procedures and in these Commitments; and
  - viii. for the purpose of ongoing compliance with Commitments A1.7a and A1.7b, the Wholesale Interface and Retail Interface are equivalent to the Development Services team and will comply with those commitments accordingly;

- e. introduce the role of Network Site Agents, who will be responsible for oversight and management of the delivery of works in relation to any new development; and
- f. amend and update its public and internal policy, procedures and associated documents and forms to reflect the revised structure and in a way which is consistent with the principles set out in Commitment A1.6b, c, d.

## A1.8 Reporting and provision of information

A1.17 Bristol Water shall:

- a. provide written monitoring reports to Ofwat:
  - i. demonstrating the steps it has taken in complying with these Commitments; and
  - ii. providing assurance of its ongoing compliance with the Commitments.
- b. The first of these monitoring reports will be provided a month after the acceptance of the Commitments and then on a quarterly basis until such a time that Ofwat agrees this reporting frequency can be reduced or removed.
- c. provide to Ofwat any supporting information and documents which Ofwat reasonably requests in relation to, or in connection with, the Commitments (including, for example, the implementation and/or compliance with these Commitments).
- d. Ensure independent, third party assurance of Bristol Water’s compliance with the Commitments, with that assurance to be reported to Bristol Water’s Board and included in the monitoring reports provided to Ofwat.
- e. Designate a member of its Senior Management Team as the **Commitments Compliance Officer**, who will have general responsibility for: ensuring compliance with the Commitments; preparing the monitoring reports; and reporting the monitoring reports to Bristol Water’s Board such that the reports have the Board’s assurance before their submission to Ofwat.

## A1.9 Relevant charges

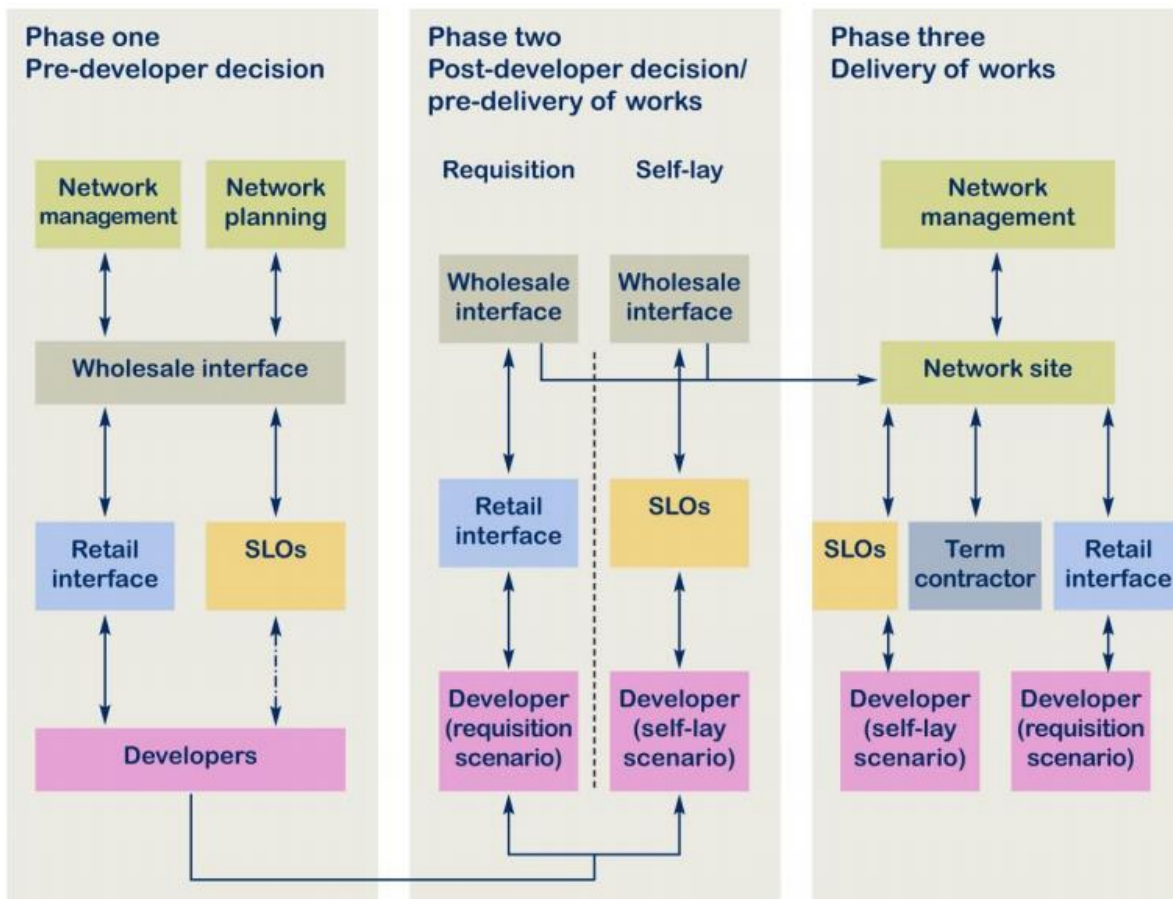
A1.18 The Relevant Charges are those identified in the table below.

Name of charge	Brief explanation
<b>Application fee</b>	The application fee charged by Bristol Water is set out in the Charges Scheme. It is a fee charged to cover the costs of assessing the network capacity, determining the point of connection, designing the mains and/or checking the design provided by the SLO, preparing the quotation, and other administrative work associated with progressing the application.
<b>Re-design fee</b>	Re-design fees are charged in circumstances where material amendments are required to a point of connection plan, mains design or quotation (e.g. to reflect updated or revised plans).

Name of charge	Brief explanation
<b>Administration charge</b>	<p>The administration charge is charged in relation to each new connection. It is intended to cover the cost of the 'back-office' functions carried out by Bristol Water in order to record each new connection within its systems. This includes tasks such as:</p> <ul style="list-style-type: none"><li>• Processing the application to connect;</li><li>• Updating the connection information on Bristol Water's systems, including the "as laid" information and meter details for billing purposes;</li><li>• Providing any necessary quotations for the cost of connection; and</li><li>• Inspection by the technical liaison officers of the installation of the customer's part of the pipe, which is installed by the developer.</li></ul> <p>For self-lay, this is listed as a stand-alone administration charge. An amount for administration costs is also charged in the requisition option, as a component of the connection charge.</p>

A1.19 The names used herein are accurate at the time that these Commitments were entered into. The names of the Relevant Charges, and the explanatory comments, may change from time to time.

## A1.10 Operation structure for Bristol Water's developer services function



**Ofwat (The Water Services Regulation Authority)  
is a non-ministerial government department.  
We regulate the water sector in England and Wales.**

Ofwat  
Centre City Tower  
7 Hill Street  
Birmingham B5 4UA

**Phone:** 0121 644 7500  
**Fax:** 0121 644 7533

© Crown copyright 2020

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit [nationalarchives.gov.uk/doc/open-government-licence/version/3](https://nationalarchives.gov.uk/doc/open-government-licence/version/3).

Where we have identified any third party copyright information, you will need to obtain permission from the copyright holders concerned.

This document is also available from our website at [www.ofwat.gov.uk](https://www.ofwat.gov.uk).

Any enquiries regarding this publication should be sent to [mailbox@ofwat.gov.uk](mailto:mailbox@ofwat.gov.uk).

**OGL**