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Variation of Icosa Water Services Limited's appointment to include Land at Kergilliack Road, Falmouth

About this document

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On 25 January 2021, Ofwat began a [consultation on a proposal](#) to vary the appointment of Icosa Water Services Limited's ("**Icosa Water**") appointment to become the sewerage services provider for a development in South West Water Limited's ("**South West Water**") sewerage services area called Land at Kergilliack Road, Falmouth ("**the Site**").

The consultation ended on 22 February 2021. During the consultation period, we received representations from four organisations, which we considered in making our decision. On 15 April 2021, we granted Icosa Water a variation to its existing appointment to enable it to supply sewerage services to the Site.

This notice gives our reasons for making this variation.

Contents

About this document	1
1. Introduction	3
2. The application	5
3. Responses received to the consultation	7
4. Conclusion	10
Appendix 1: Site Map	11

1. Introduction

The new appointment and variation mechanism (**NAV**), specified by Parliament and set out in primary legislation, allows one company to replace the current company as the provider of water and/or sewerage services for a specific area. This mechanism can be used by new companies to enter the market and by existing companies to expand into areas where they are not the appointed company. In this case, Icosa Water applied to replace South West Water to become the appointed sewerage company for the site.

A company may apply for a new appointment (or a variation of its existing appointment to serve an additional site) if any of the following three criteria are met:

- None of the premises in the proposed area of appointment is served by the existing appointed company at the time the appointment is made (the “**unserved criterion**”);
- Each premises is likely to be supplied with at least 50 mega litres per year (in England) or at least 250 mega litres per year (in Wales) and the customer in relation to each premises consents (“**the large user criterion**”);
- The existing water and sewerage supplier in the area consents to the appointment (“**the consent criterion**”).

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

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

Entry and expansion (and even the threat of such by potential competitors) can lead to benefits for different customers (such as household and business customers and developers of new housing sites). Benefits can include price discounts, better services, environmental improvements and innovation in the way services are delivered.

Benefits can also accrue to customers who remain with the existing appointee, because when the existing appointee faces a challenge to its business, that challenge can act as a spur for it to improve its services. We believe the wider benefits of competition through the

new appointments and variations mechanism can offset any potential disbenefits for existing customers that might arise. We consider these potential disbenefits in more detail below.

2. The application

Icosa Water applied to be the sewerage services provider for the Site under the unserved criterion set out in section 7(4)(b) of the Water Industry Act 1991 (“**WIA91**”). Icosa Water will serve the Site by way of a bulk discharge agreement with South West Water.

2.1 Unserved status of the site

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

Icosa Water has provided a letter from South West Water, dated 27 October 2020, which confirms that, to its knowledge, the Site is unserved. Aerial maps show that there are no existing buildings on the Site.

Given the information provided by Icosa Water and South West Water, we are satisfied that the Site is unserved.

2.2 Financial viability of the proposal

We will only make an appointment or variation if we are satisfied that the proposal poses a low risk of being financially non-viable. We assess the risk of financial viability on a site-by-site basis and also consider the financial position of the company as a whole.

Based on the information available to us, we concluded the Site demonstrates sufficient financial viability, and Icosa Water has satisfied us that it can finance its functions and that it is able to properly carry them out.

2.3 Assessment of ‘no worse off’

Customers on the Site will be no worse off being served by Icosa Water rather than South West Water as Icosa Water proposes to match its customer charges on the Site to South West Water's charges.

With regard to service levels, we have reviewed Icosa Water's Codes of Practice and its proposed service levels and compared these to the Codes of Practice and the performance commitments of South West Water. Based on this review, we are satisfied that customers will

be offered an appropriate level of service by Icosa Water and that overall customers will be 'no worse off' being served by Icosa Water instead of by South West Water.

2.4 Effect of variation on South West Water's customers

In considering whether customers will be no worse off, we also looked at the potential effects of this variation on the price that South West Water's existing customer base may face.

The calculation necessarily depends on a range of assumptions, and there are clearly difficulties involved in quantifying the effect on customers of South West Water. It is therefore necessary to use a simplified set of figures. We have expressed the effect in 'per bill' terms to try and quantify the possible effect in an easily understandable way. Broadly, we have assessed the potential magnitude of this impact by comparing how much South West Water might have expected to receive in revenue from serving the Site directly, were it to serve the Site, with the revenues it might expect from the proposed arrangement with Icosa Water.

We estimate that there will be no increase on the sewerage bills of existing South West Water customers, once the Site is fully built out, if we grant this variation to Icosa Water.

This impact does not take into account the potential spillover benefits to customers arising from dynamic efficiencies achieved as a result of the competitive process to win new sites.

2.5 Developer choice

Where relevant, we take into consideration the choices of the site developer. In this case Icosa Water has the consent of Eythorne Building Contractors Limited to become the sewerage services provider for the Site.

3. Responses received to the consultation

We received responses to our consultation from four organisations: the Consumer Council for Water (“**CCW**”), Drinking Water Inspectorate (“**DWI**”), South West Water and the Environment Agency. We considered these responses before making the decision to vary Icosa Water's appointment. The points raised in the responses are set out below.

DWI had no comments to make with regard to this consultation and did not have any objections.

3.1 CCW

CCW stated that in general it expects new appointments and variation appointees to match or ideally better the incumbent's prices, service levels and service guarantees.

Overall, CCW supports this application, recognising that Icosa Water generally matches or exceeds most of South West Water's service standards. For example, Icosa Water will offer greater compensation if it fails to respond to written complaints within 10 working days and provides an automatic disturbance allowance, of up to £100, to customers who have experienced sewer flooding. CCW agree with our assessment that customers will not be worse off in terms of the level of service they will receive from Icosa Water compared to South West Water.

CCW noted that Icosa Water will match South West Water's charges. However, it stated that it was disappointed that there will be no direct financial benefit to customers by having Icosa Water as their provider, as Icosa Water do not have any discount arrangement in place.

CCW notes that Icosa Water will not be able to offer its financially vulnerable customers a social tariff in the way that South West Water can. However, CCW recognised that Icosa Water will offer the standard WaterSure tariff for qualifying customers, who find themselves in financial difficulty. CCW considered that given its relatively small size and customer base, it may be appropriate for Icosa Water to tailor some of the services that it provides. Until it can provide a formal social tariff, however, CCW expects Icosa Water to offer appropriate flexible support to any individual in financial difficulty, especially those who would otherwise benefit from a social tariff. It noted that this should not be at the expense of its other customers. CCW expects Icosa Water to research the views of its customers on any proposed cross-subsidy before introducing any social tariffs.

CCW also recognised that there will be no increase in sewerage bills for existing South West Water customers as a result of this variation. However, CCW stated that whilst it appreciates

that the incumbent's customers will not be financially disadvantaged, it is unclear if there will be any significant benefits arising from this arrangement for existing South West Water customers. CCW consider that, ideally, the incumbent's existing customers should receive some benefit from the new arrangement. CCW questions the value of the NAV regime if it cannot deliver benefits to customers.

One of our key policies is that customers should be no worse off if a NAV is granted, this includes existing customers of the incumbent company. That is, an applicant must ensure its new customers are made no worse off in terms of charges and service than if they had been supplied by the previous appointee. We do not require applicants to better the service and price of previous incumbents.

3.2 The Environment Agency

The Environment Agency was supportive of the application in principle but in its consultation response it asked three questions and provided two comments to pass onto Icosa Water.

The Environment Agency asked:

1. Will extra infrastructure other than mains sewers be required e.g. combined sewer overflow, pumping station?
2. Where will the waste flows discharge to?

The Environment Agency advised that any discharge will need an Environment Agency permit and there is no guarantee that these will be issued. It added that there are no discharge permits currently associated with this site and there is no evidence provided that South West Water has accepted the discharges.

3. Which waste water treatment works will receive the discharge from the Site and does South West Water have the capacity to receive the discharges?

The Environment Agency also made the following comments:

- The appropriate assessment done for this application does not consider the impact of increased nutrient loading on the Falmouth and Helford Special Area of Conservation, due to the increased effluent load from the new development, only the impact of increased recreational activity. This is relevant due to the 2019 Dutch Nitrogen ruling.
- If the plan is for the sewage to be discharged to South West Water's sewers as it leaves the Site and no other infrastructure is required then the Environment Agency would have no further comments to make.

We shared the above with Icosa Water and it responded with the following:

- No additional infrastructure is required.
- There is no need for an Environment Agency permit, as Icosa Water will be serving the Site by way of a bulk discharge agreement with South West Water.
- Icosa Water confirmed that the discharge from the Site will go into the Falmouth Sewage Treatment Works.
- Icosa Water confirmed that it has noted the Environment Agency's comment regarding the impact of the increased nutrient loading at the Falmouth and Helford Special Area of Conservation.

We shared Icosa Water's response with the Environment Agency and it confirmed that it was happy with the response and has no further comments or queries.

3.3 South West Water

South West Water said it is supportive of the development of markets where customers could benefit, or in the least suffer no detriment. South West Water said it agrees with our assessment that the Site will not have any impact of the bills of existing South West Water customers and it agrees with our proposal to grant this variation to Icosa Water.

4. Conclusion

Having assessed Icosa Water's application and having taken account of the responses we received to our consultation, we decided to grant a variation to Icosa Water's area of appointment to allow it to serve the Site for sewerage services. This variation became effective on 16 April 2021.

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

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