

## **TDS Response to the Ofwat's Statutory Consultation on our changes to the Charging Rules – published August 2021**

### **Introduction**

TDS is an Engineering Consultancy that operates throughout England and Wales. It is one of the leading Consultants in the procurement and project management of utilities for House Builders and Developers. We work in partnership with our Client's to provide various options in how utilities can serve a development in both a cost effective way as well as from a practical perspective on their development requirements.

We have an in-depth understanding of charges that our Client's pay to the Water and Sewerage Sector prior to and following the privatization of the Sector.

We have also been at the forefront of a number of important Ofwat Determinations against Companies which have been successful in securing substantial refunds to our Client's, notably the recent Final Determination for Linden Homes at the Novartis Development.

One of our main achievements was when we worked alongside the QC's providing technical advice for Barratt Homes in the Supreme Court Case against Welsh Water in December 2009.

### **Our Response**

It is becoming clear to see that Ofwat are incapable of understanding or seeing the substantial structure and detailed issues that exist in the present Charging Rules.

This conclusion can be drawn from the two Reports sanctioned by Ofwat which clearly highlight the deep-rooted problems existing in:-

- 1. The Balance of Charges**
- 2. Cost Reflectivity**

Having had two Independent Reports published this year this consultation really was the last opportunity for Ofwat to address the issues that exist, and this consultation does not have any of the deep dive solutions to address the issues that exist since the implementation of the Charging Rules from 1<sup>st</sup> April 2018.

In many ways this consultation constitutes a sad reflection of the inability of Ofwat to grasp the issues at hand. Or it could be construed that the underlying problems that exist are so vast that to resolve them would have serious repercussions for many Companies, this in turn would be seen as a regulatory failure? Whatever the real answer is the Charging Rules must go down as one of the catastrophic failures that has ever taken place in this Sector.

The complacency of Ofwat can best be shown by the length of time given by Ofwat for responses to this statutory consultation issued on 3<sup>rd</sup> August and just four weeks to respond at the height of the holiday season. Also why was the SIA Report on Cost Reflectivity not issued with the consultation in June when it was completed prior to June?

Our conclusion is there is nothing in this consultation which will change the substantive issues we have raised in our past responses to Ofwat consultation this year and in previous years. We are now at a point where we should have been prior to the Charging Rules being issued over three years ago. The issues are now clear to see but this consultation goes nowhere near providing the answers for House Builders and Developers.

### **So what is needed?**

In our opinion the two main principles below need to be analysed openly as well as being made public.

#### **Cost Reflectivity**

There is an urgent need to obtain detailed itemised charges against specific issues, be it in the worked examples or other related charges. These then need to be further broken down to reflect overheads, labour, plant and materials. The latter should be derived against accepted criteria set out by Ofwat. An important point to note is that all of these costs should not allow for a profit margin.

An issue that is constantly missed by Ofwat is that the worked examples are only one part of charges being encountered by House Builders and Developers if they are fundamentally flawed then it is highly possible costs relating to diversions, supervision fees, SLP costs etc will be as well.

The analysis then needs to be focussed into each financial year on a comparison basis on key areas. Historical cost comparison going back before 1<sup>st</sup> March 2018 will enable everybody to see what impact the Charging Rules have had.

### **Balance of Charges**

The Companies need to publicly disclose how they calculate their balance of charges, and this then needs to be read in conjunction with its impact on cost reflectivity.

As we have stated in previous responses to Ofwat consultations there is a conflict taking place between these two principles which needs to be addressed.

**31<sup>st</sup> August 2021**