

Fair Water Connections

Seeking fairness for self-lay providers



14 September 2022

Response to Ofwat Consultation on proposed revision of the Code for Adoption Agreements

Being familiar with the Adoption Panel request for change mechanism we can sense the pragmatic reasoning behind the Ofwat proposal to extend the time that Panel has to approve each request. However, we are concerned that the focus of the proposal is just on getting the Panel approval process to align with practical considerations without any sense of what needs improving from the submitter's perspective. Based on our experience of submitting proposals for Panel approval, we know that there are other aspects of how a Panel handles change requests meriting being worked through alongside lengthening the time for Panel approvals. We therefore outline the additional changes which we feel are now needed so that they can also be considered by Ofwat.

The way that the Panel functions, as specified by Ofwat in their Adoption Code, looks to assume that submitted change requests will get 'approved'. There is however the possibility of requests being 'rejected', or as we have experienced, being modified by the Panel. What happens when either of these situations arises is not specifically covered in the Ofwat Code and that the Panel can then proceed with making recommendations to Ofwat without any referral back to the submitter. As this avoids testing whether what the Panel has assumed about the proposal is correct it can mean that the drivers for the change are not being fully recognised. Also, that opportunities for collaboration between the submitter and the Panel can be lost along with making changes which do not get to the heart of the matter identified by the submitter as needing to be remedied.

Our own experience of where a counter proposal has been advanced by the Panel concerns how companies specify mains flushing requirements where we requested a new local arrangements but the Panel proposed, without any consultation with ourselves, just asking companies to publish related information. Whilst what is now in place is an improvement on the original drafting there is no protection against a company making changes without consultation with SLPs. Hence we maintain that the Panel has grasped the issue but not fully recognised what was needed to protect SLPs from unfunded material work content changes. So, our request to Ofwat, as outlined below, is that where proposals get rejected or modified by the Panel that there is an opportunity for the submitter to further appeal to the Panel before recommendations are made to Ofwat.

Although this would extend the time for approvals it would, in our opinion, much strengthen the process and we therefore urge Ofwat to implement change drawing on the wording we suggest below.

We also comment that situations could arise where, maybe because some of the Adoption documentation wording is found to anti-competitive, where a rapid approval is needed. Hence there should not be an automatic presumption that extended lead times are always acceptable.

Although recognising that what is being requested will strengthen the level of discussion it will, invariably, lengthen the approval process. Our view however is, based on turn around performance to date, that there looks to be scope to quicken the subsequent Ofwat turn-around times and thereby adding time to the Panel approval process could be done in ways which has no material impact on the overall time from request to getting approved changes implemented.

Our Proposed Wording

In response to this Ofwat consultation, and to strengthen the involvement with submitter of change requests to either of the Adoption Panels we propose that the Adoption Code wording is changed to read:

3.9.2 When recommending approval to a change request each panel must submit their recommendations to Ofwat:

- a) Where the recommendation fully accords with the change request no later than 4 calendar months after publishing the relevant Change Proposal in accordance with paragraph 3.8.11(b). This does not preclude more rapid submissions to Ofwat when a need for urgent change is identified.
- b) Where the Panel proposes recommendations which differs from the submitted change request the submitter shall be updated on the Panel's view and given the opportunity to provide further clarification and information for the Panel to consider at their next meeting. When this arises 6 calendar months are to be allowed after publishing the relevant Change Proposal in accordance with paragraph 3.8.11(b) and submitting recommendations to Ofwat.

New Clause – should the Panel reject a change request the submitter shall be updated on the Panel's view and allowed a calendar month to provide more information for the Panel to consider at their next meeting. After further consideration, or if nothing further is submitted, the Panel may make their recommendation to Ofwat.

Making the changes we outline would, in our opinion, both enable the Panel to function in accordance with prescribed times and also much enhance engagement between the submitter and the Panel. We therefore commend Ofwat to make the wider changes we propose whilst implementing their own proposal regarding lengthening the time the Panel has before needing to make recommendations to Ofwat.

Prepared By

This submission has been prepared by:-

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Please contact Martyn should any further information or clarification to the above comments be thought helpful. Also if there is a wish for further discussion to address, from the self-lay community perspective, the identified shortcomings in the Ofwat proposals.

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