

August 2022

Consultation on change of ownership for Albion Water Limited

Ofwat

About this document

This document is a consultation on the issues arising out of the proposed change of control of Albion Water Limited¹ ("Albion Water").

Albion Water is a "**NAV**" (which stands for 'new appointment or variation')². NAVs are limited companies which have been appointed to provide a water and/or sewerage service to customers in an area which was previously served by the incumbent monopoly provider. Albion Water currently serves around 3,000 customers with sites in Gloucestershire, Hampshire, Kent and Essex. It also has several commercial water management partnerships.

We are asking for views on our assessment of the change of control and our assessment of the minimum financial security required by Albion Water.

This document sets out:

- Our assessment of the impact of the change of ownership and control on Albion Water and consideration of whether changes to that company's licence are required to protect customers.
- Our assessment of the entity identified as Ultimate Controller of Albion Water; and
- Our assessment of Albion Water's financial security.

¹ Company number **03102176**

² <https://www.ofwat.gov.uk/regulated-companies/markets/nav-market/>

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1. Introduction

Owners of water companies have an important role to play by, among other things, ensuring their actions are conducive to maintaining the company's resilience in the long term and the delivery of a high-quality service to customers. It is important that we assess changes in the ownership of the companies we regulate and, where appropriate, use our power to modify licence conditions if we believe that customers need additional protection.

The licence defines an "Ultimate Controller" as any person who or which (alone or jointly with others and whether directly or indirectly) is (in the reasonable opinion of Ofwat) in a position to control, or to exercise material influence over, the policy or affairs of the Appointee or of any holding company of the Appointee.

In the interests of customers and in accordance with our statutory duties, in particular our duty to secure that water companies properly carry out their functions, we aim to ensure that any Ultimate Controller of a water company has the integrity, and the operational and financial capability to run such an essential public service as a water utility. Our aim is to take a proportionate approach when there is a change of ownership or control of an Appointee and will carry out a consultation only in certain circumstances.

In this document, we set out the specific regulatory considerations arising from the change in control of Albion Water Limited ("Albion Water", company number 03102176) following its acquisition by Albion Water Holdings Limited ("AWHL", company number 13840186).

Figure 1.

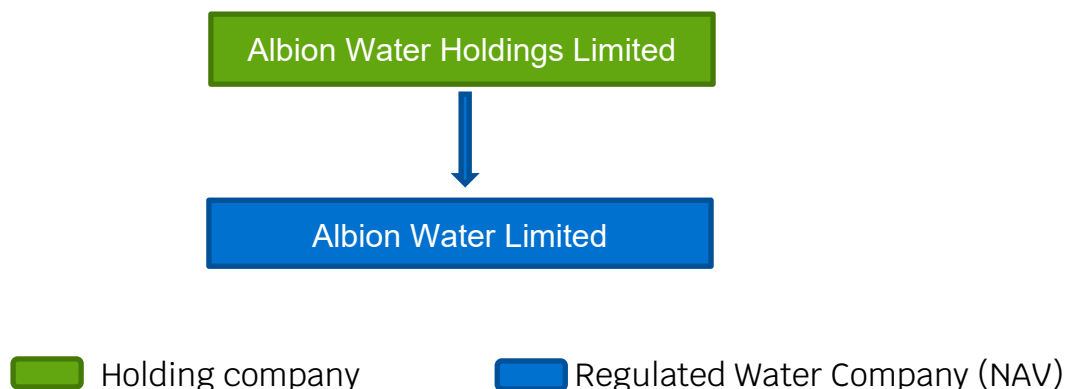


Figure 1 above highlights the companies discussed in this document. A detailed corporate structure diagram is shown in Figure 2 of section 2.1.

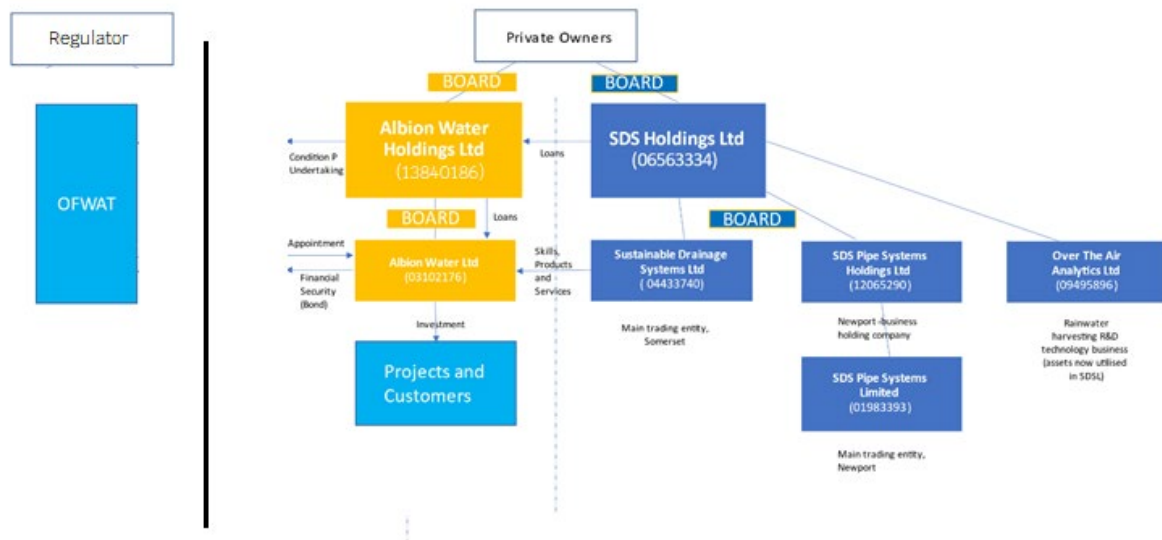
2. Albion Water – background and assessment of the new owners

In this section we set out an overview of the changes to the ownership of Albion Water Limited (Albion Water). We also assess the capacity of its new investor to be the owner of a regulated water company. To assess the new owner of Albion Water we reviewed information that we received from Albion Water Holdings Limited (AWHL). In addition, we have separately carried out our own investigations into the new corporate structure using publicly available information.

2.1 Overview of changes in Albion Water Limited ownership structure

In December 2021, AWHL entered into an agreement with Wessex Water Limited to acquire 100% of the shares of its NAV water business which it operated as Albion Water Limited. The transaction completed in mid-March 2022. The shares of AWHL are now 100% owned by Patrick Cullen.

Figure 1. The corporate structure within which Albion Water sits following the acquisition by AWHL:



Patrick Cullen is also the sole shareholder in SDS Holdings Limited ("SDS Holdings", company number 06563334) which in turn owns Sustainable Drainage Systems Limited ("SDS", company number 04433740). Therefore, following the transaction, Albion Water Holdings Limited and SDS Holdings will be under common control but remain legally separate.

2.2 Assessment of the incoming owner

When a change of ownership takes place, we look at how much relevant experience an owner has in delivering, managing, or investing in the infrastructure sector. We do this to gain insight into a new owner's knowledge and capabilities in owning a regulated entity.

The capacity to be shareholders of appointed water companies

We also want to be satisfied that any change of ownership does not compromise the effective management of the Appointee. To help with this, we look at relevant information, in each particular case, to help satisfy us that a new owner has the integrity and the operational and financial capacity to assume the role of owning a water company. We also consider whether the licence should be modified to ensure customers are better protected.

2.2.1 The new owners of Albion Water Limited

Albion Water Holdings Limited (AWHL)

AWHL was incorporated on 11 January 2022. It is a newly established company that has been introduced into the overall group structure to hold the shares of Albion Water. The shares of AWHL are 100% owned by Patrick Cullen, who is also the sole director and shareholder of SDS Holdings, the holding company of SDS.

SDS Group and its experience in the infrastructure sector

Established in May 2002, SDS has a comprehensive range of services including designing, manufacturing and installing water management systems which capture and treat water before controlling its return to the natural water cycle or retaining it for reuse or recycling.

The new owner of AWHL considers the two businesses will be complementary due to the synergies between their activities. SDS has over 20 years' experience of manufacturing, procurement and installation services within the water infrastructure industry. SDS specialises in the design of water management solutions, specifically system control. These are integrated water management systems such as stormwater treatment, rainwater conservation, surface water attenuation and wastewater management. The new owner of AWHL will aim to implement their knowledge and expertise in these areas into Albion Water.

The SDS group accounts reported turnover of £37m in the year to 30 September 2020 as well as strong positive net assets. The group has grown into a significant supplier of water infrastructure systems and solutions.

SDS Holdings has provided £0.5m of finance to AWHL as well as providing £0.6m of financial security. Further detail is set out in section 5.

Corporate governance and management of Albion Water

AWHL confirmed that the Board of Albion Water is comprised of:

Patrick Cullen – Chair

Patrick is the Managing Director at SDS and is currently Director across 16 entities within the group. His directorship at SDS commenced in May 2002.

Richard Averley – Business development

Richard is the Sales and Marketing Director at SDS and has been working at SDS for 13+ years. His previous role was National Specification Manager for nine years with Aggregate Industries.

Gareth Lindop – Finance

Gareth has been the Executive Director for Finance at SDS for one year. He has previously worked as the Head of Finance for Meiyume, Nisbets and at BT as Finance Director BT supply chain.

The Board of AWHL is comprised of the above members as well as Philip Piddington, who is a Non-Executive Director.

The Board of Albion Water have also ensured that they have access to advice from other legal and regulatory specialists, as required.

Adam Shore (SDS Director of Corporate Development) will sit as an observer on the Board of AWHL, along with Peter Heydenrych (SDS Group financial controller).

The Board of Albion Water has confirmed it will ensure separation and independence of reporting and controls between the regulated activities undertaken by Albion Water and the non-regulated activities being undertaken by SDS.

Albion Water confirmed the proposed Board members have relevant experience from their current and previous roles. The Board of Albion have confirmed that Albion Water has the necessary resources, including management and financial resources to comply with its obligations under the Act or the conditions of the Appointment.

Albion Water confirmed the Board will ensure adherence to the relevant statutory and licence requirements. It will endeavour to adhere to the best practice principles of strong governance and leadership as guided by Ofwat within the [Board, Leadership and Transparency Governance](#) principles.

Economic and financial standing

AWHL has confirmed that neither it nor any of its associated companies under common ownership are subject to any financial investigations by an accredited UK (or equivalent) regulator or have any legal or financial claims against them which might have a material impact on its financial standing. We have not independently verified these statements with other regulators; however, searches of public information have not revealed anything untoward.

AWHL has provided Ofwat with confirmation of a working capital facility between SDS Holdings and AWHL for £0.5m. Albion Water has provided Ofwat with confirmation of a loan agreement between AWHL and Albion Water for £0.5m.

Following the change of ownership, the balance sheet of Albion Water has been restructured and previous loans of c.£6M have been settled which has significantly improved the financial position of the company.

AWHL is also making further changes to improve the financial position of Albion Water. These include increased focus on debt collection from unbilled properties and removal of staff costs previously reported within the accounts of Albion Water that are not directly related to the provision of ongoing supply.

SDS Holdings has provided financial security to Albion Water in the form of a ring-fenced facility of £0.6m that can be drawn if required. AWHL forecasts that the working capital facility will sufficiently cover Albion Water's projected operating costs.

Further detail is set out in section 5.

Conflicts of interest

AWHL has stated that it has no direct or indirect equity interest in any undertakers or water supply licensees in England and Wales, therefore AWHL does not believe that there is any actual or potential conflict of interest.

Conclusion

Our change of control assessment has not found any issues associated with the new investors in Albion Water, based on the information we have received and considered to date. Therefore, we do not see a need to introduce additional protections in the licence as a result of the change in ownership.

Questions:

Consultation on change of ownership for Albion Water Limited

1. Do you have any views on our commentary about the incoming owners?
2. Do you agree that it is not necessary to place any additional requirements in the licence on Albion Water in respect of the change of control?

3. Albion Water Limited – identification of Ultimate Controller

In this section we discuss and seek views on, the identification of the provider of a Condition P undertaking to Albion Water under the new ownership structure. The entity giving the undertakings is required to, among other things, provide the Appointee with any information it needs to comply with its licence and to refrain from any action that may cause the Appointee to breach any of its obligations under the WIA91 or its licence.

All Appointees need the active co-operation of their owners in carrying out their functions. Albion Water has a licence obligation requiring it to obtain legally enforceable undertakings from its Ultimate Controller(s).

Under the current group structure, AWHL owns 100% of the shares in Albion Water, and as such, has a clear controlling interest in the regulated company. Having also assessed the corporate structure using Companies House data, we determined that the Ultimate Controller is AWHL.

The undertakings require that as Ultimate Controller AWHL will ensure that: Albion Water comply with its obligations under the Water Industry Act 1991 (Act) or the conditions of the Appointment. It will refrain from any actions which would or may cause Albion to breach any obligations under the Act or the conditions of the Appointment. The undertaking will remain in force as long as AWHL remains the Ultimate Controller of Albion Water.

We do not consider that undertakings need to be provided to Albion Water by any additional entities.

We received a copy of the undertaking that AWHL provided to Albion Water in March 2022 which is compliant with the licence.

Question:

3. What are your views on our identification of the Ultimate Controller?

4. Assessment of Albion Water's financial security

AWHL confirmed that it is providing financial security to Albion Water to the value of £0.6million. This financial security is backed by cash held by AWHL which will be ring-fenced for that sole purpose. Separately, AWHL has also provided a working capital facility to Albion Water of approximately £0.5million.

Our stated [standard policy for NAVs](#) requires a new applicant NAV to obtain a minimum level of financial security. In general, for new appointees we will require security equal to “one year’s annual operating costs required to supply the number of connections the business is projected to have in two years’ time (the “Standard Calculation”), however we will consider alternative mechanisms for providing financial security based on the applicant’s specific circumstances. Our policy states that as their business develops, NAVs are responsible for continually monitoring the minimum level of financial security needed to ensure they meet our requirements. The level of financial security required will likely increase over time as the number of connections provided by the NAV increases.

Having considered all the information available to us, we consider that an alternative approach compared to the Standard Calculation is appropriate in this instance. We have previously implemented an alternative approach for other established NAVs. The reason for considering an alternative approach is that Albion Water has a portfolio of c.2800 established household and non-household connections which is expected to provide a stable revenue stream. The steps that have been taken to improve the balance sheet and reduce costs within Albion Water will also place the company on a more secure financial footing than it has been in recent years.

Therefore, we consider that an appropriate minimum level of financial security for Albion Water is equal to that calculated from Ofwat’s Standard Calculation less 50% of earned revenues in the last financial year, as reported in Albion Water's statutory accounts. This is consistent with the approach that we have agreed with other established NAVs.

We engaged with Albion Water to establish the appropriate amount of financial security under this alternative approach. The company has provided financial projections including a post-completion balance sheet, and three-year forecasts for both income and expenditure.

AWHL has proposed further changes to improve the financial resilience of Albion Water which includes increased focus on debt collection from unbilled properties and removal of staff costs that are not directly related to the provision of ongoing supply.

AWHL has forecast that given the reduction in operating costs achieved by Wessex Water prior to the sale of Albion Water to AWHL and further changes as discussed above, a modest operating loss is expected in 2022. The company forecasts a small

number of new projects which are due to commence in early 2023 which will improve the financial position and profitability of the company in 2022/23 and in future years.

In addition to the ring-fenced financial security amount, Albion Water have a £0.5m on-demand working capital facility from AWHL, which is facilitated by a loan from SDS Holdings.

On this basis and taking account of the forecast information provided to us, we consider that the level of financial security that has been put in place for Albion Water is appropriate at this time.

Albion Water is responsible for ensuring the agreed level of financial security remains in place going forward. We expect Albion Water and its new owners to notify Ofwat of any changes or information that may indicate that it is appropriate for Ofwat to review the level of financial security. We may need to review the level and nature of security that is required in the future if, for example:

- There is a change in the risk profile of the Albion Water business.
- The financial performance of Albion Water is significantly out of line with the forecasts provided for the purpose of this assessment.
- Albion Water's business grows more quickly than expected.
- If there is any change to Ofwat's standard policy in the future.

We expect Albion Water to confirm annually the level of financial security that is in place and that the level of security meets the requirements set out above as part of their annual reports provided to Ofwat.

Question:

4. What are your views on our approach to financial security and the associated expectations?

5. Responding to this consultation and next steps

We would welcome any comments on this document. Please email them to financial.resilience@ofwat.gov.uk or post them to:

Albion Water Change of Control Consultation response, Ofwat, Centre City Tower, 7 Hill Street, Birmingham, B5 4UA.

The closing date for this consultation is 14 September 2022. If you wish to discuss any aspect of this consultation, please contact Elinor Mathieson on 0121 644 7814 or by email at elinor.mathieson@ofwat.gov.uk.

We intend to publish responses to this consultation on our website at www.ofwat.gov.uk. Subject to the following, by providing a response to this consultation you are deemed to consent to its publication.

If you think that any of the information in your response should not be disclosed (for example, because you consider it to be commercially sensitive), an automatic or generalised confidentiality disclaimer will not, of itself, be regarded as sufficient. You should identify specific information and explain in each case why it should not be disclosed and provide a redacted version of your response, which we will consider when deciding what information to publish. At a minimum, we would expect to publish the name of all organisations that provide a written response, even where there are legitimate reasons why the contents of those written responses remain confidential.

In relation to personal data, you have the right to object to our publication of the personal information that you disclose to us in submitting your response (for example, your name or contact details). If you do not want us to publish specific personal information that would enable you to be identified, our privacy policy³ explains the basis on which you can object to its processing and provides further information on how we process personal data.

In addition to our ability to disclose information pursuant to the Water Industry Act 1991, information provided in response to this consultation, including personal data, may be published or disclosed in accordance with legislation on access to information – primarily the Freedom of Information Act 2000 (FoIA), the Environmental Information Regulations 2004 (EIR) and applicable data protection laws.

Please be aware that, under the FoIA and the EIR, there are statutory Codes of Practice which deal, among other things, with obligations of confidence. If we receive a request for disclosure of information which you have asked us not to disclose, we will take full account of your explanation, but we cannot give an assurance that we can maintain confidentiality in all circumstances.

³ [Ofwat's privacy policy](#)

Consultation questions

We welcome responses to the following questions:

1. Do you have any views on our commentary about the incoming owners?
2. Do you agree that it is not necessary to place any additional requirements in the licence on Albion Water in respect of the change of control?
3. What are your views on our identification of the Ultimate Controller?
4. What are your views on our approach to financial security and the associated expectations?

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Ofwat
Centre City Tower
7 Hill Street
Birmingham B5 4UA
Phone: 0121 644 7500

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