

WORSHIPFUL COMPANY OF WATER CONSERVATORS

RESPONSE TO THE CONSULTATION BY OFWAT ON PROPOSED LICENCE MODIFICATIONS TO INTRODUCE CUSTOMER FOCUSED PRINCIPLES FOR ALL COMPANIES

NOVEMBER 2023

1 The Worshipful Company of Water Conservators ('WCWC'), is a City of London Livery Company, focussed on the long-term health of our water resources and the broader environment. Our members include senior professionals from water, environmental and related industries and regulators, along with others who share our concern for water and the environment. Our experience and knowledge ranges from the complexities of environmental sciences, through the application of engineering to deliver the goals identified by those sciences, and the subsequent management of the assets created. The Company's purpose is *Promoting a diverse and sustainable environment.*

2 The Company is responding to the Consultation because of its professional roles in water and climate change policy, mitigation and adaptation. It is a member of the City of London Livery Climate Action Group. It considers that the regulation of used sanitary and care products discharged into sewers is a major contribution to tackling the problem of overflowing sewers.

SUMMARY

3 The WCWC supports the modification to Water Company Licences, but suggests that the opportunity of this change should be used to modify the Purposes of the Companies. The WCWC also suggests that there needs to be a strategic review of Licences rather than the 'piecemeal' approaches used now.

OVERVIEW

4 Recent events, involving both perceived and real failures of customer service, require an effort to restore trust. This consultation sets out Ofwat's proposal to modify Companies' Licences to introduce a new customer-focused licence condition, following on from its consultation in May 2023. It invites comments on its proposal to modify each Water Company's Instrument of Appointment (licence) by deleting existing Condition G and replacing it with a new Condition G relating to customer service, and deleting Condition J.

5 The Proposed Condition G for Companies operating wholly or mainly in England and have exited the retail market requires the Appointee to adopt high standards of customer service and appropriate support for the full diversity of its customers' needs. It also proposes similar changes within Wales. The Condition breaks down to:

G1 Interpretation and application

G1.1 An 'incident' means an event or situation which causes or may cause damage, disruption, distress or inconvenience to the Appointee's customers in their capacity as such which is not trivial.

G1.2 References to customers in principles G3.1 to G3.6 means the Appointee's customers in their capacity as occupants of Household Premises.

G2 Principles for customer care

The Appointee must:

G.2.1 Develop or have in place policies and approaches to meet the principles for customer care set out in paragraph G3, consulting with the Consumer Council for Water where appropriate;

G.2.2 Implement or continue to follow those policies and approaches in a way that meets the principles for customer care set out in paragraph G3;

G.2.3 Explain in a manner that is effective, accessible and clear how it is meeting the principles set out in paragraph G3.

G3 The principles for customer care are:

G3.1 The Appointee is proactive in its communications so that its customers receive the right information at the right time, including during incidents.

G3.2 The Appointee makes it easy for its customers to contact it and provides easy to access contact information.

G3.3 The Appointee provides appropriate support for its customers when things go wrong and helps to put things right.

G3.4 The Appointee learns from its own past experiences, and shares these with relevant stakeholders. The Appointee also learns from relevant stakeholders' experiences and demonstrates continual improvement to prevent foreseeable harm to its customers.

G3.5 The Appointee understands the needs of its customers and provides appropriate support, including appropriate support for customers in vulnerable circumstances, and including during and following incidents.

G3.6 As part of meeting principle G3.5 above, the Appointee provides support for its customers who are struggling to pay, and for customers in debt.

RESPONSE TO THE PROPOSAL

6 The WCWC does not offer any change to the detailed wording Proposal but supports the principles as defined in the consultation document. However, it wishes to make two points on strategy.

Strategic review of the Licence

7 The Price Review process has thirty years of accretion and the time has come to determine if it can be simplified. One way of doing this would be to reset the relationship of the Letter of Appointment and the Price Review process. Changes to the Appointment would allow

some principles to be set more permanently whilst other could be varied as factors impacting the price review process vary. At the moment regular changes are made on detail, but not principle. The last significant review was 2015. The Licence provides a stable ‘bedrock’ of the economic regulatory regime, so any major review should only be conducted rarely.

[https://consult.defra.gov.uk/water/water-supply-and-sewerage-licensing-regime/supporting_documents/WSSL%20Licensing%20Consultation%20Document.pdf#:~:text=The%20WSSL%20standard%20licence%20conditions%20are%20intended%20to,legal%20instruments%2C%20in%20particular%20the%20Wholesale%20Retail%20Code\).](https://consult.defra.gov.uk/water/water-supply-and-sewerage-licensing-regime/supporting_documents/WSSL%20Licensing%20Consultation%20Document.pdf#:~:text=The%20WSSL%20standard%20licence%20conditions%20are%20intended%20to,legal%20instruments%2C%20in%20particular%20the%20Wholesale%20Retail%20Code).)

Changing Company Behaviours: Enhancing the Articles of Association of the WSCs and Modifying Licence Conditions

8 There is a need for the water industry to send signals on its focus on restoring trust by behavioural change. The WCWC recognises that this change will part of those signals.

9 One suggestion for changing behaviours, which has emerged is that the Articles of each water service company are extended beyond the main one to take money from investors (their creditors and shareholders) and generate profits on their investments, i.e., a new additional purpose, and this reflects the Directors’ duties within the corporate entity itself. The WCWC suggests that such an evolution of Purpose could be required by a modification of Condition A of their Licences.

10 The Articles of each Water Service Company would be extended to cover explicitly the commitment to sustainability, maintaining and improving environmental standards and acting in the long-term interests of the community and customers.

11 The water companies seem to have understood the importance of this. In recent years, with the climate emergency accelerating and the challenges of providing resilient supplies to our growing population becoming ever more acute, there were industry-wide discussions around the social and environmental purpose of a water company (highlighted by the British Academy in its influential report “Principles for Purposeful Business”, published in November 2019).

12 In April 2019 the water industry published its shared Public Interest Commitment, in which each committed company committed to enshrining public interest in their company’s purpose and signed up to five ambitious goals to tackle leakage, carbon emissions, plastics, affordability and social mobility.

13 Enhanced Articles of Association would require a water company to conduct its business and operations for the benefit of shareholders while delivering long-term value for the company’s customers, the region and the communities it serves, and seeking positive outcomes for the environment and society. Put simply, this means that the Board must take account of the wider impact the company has on our customers, communities and the environment, as well as delivering a fair return for our shareholders.

14 One water company already has this as an enhanced purpose in its Articles (<https://www.ciwem.org/news/a-fresh-water-future-peter-simpson-anglian-water>) with a public statement “Our Purpose is to bring environmental and social prosperity to the region we serve through our commitment to Love Every Drop.” With an explicit commitment to consider:

- the impact of our operations on communities and the environment;
- the interests of the company's employees;
- the need to foster good relationships with customers and suppliers;
- the need to maintain our reputation for high standards of business conduct; and
- the consequences of decisions in the long term.

15 Other companies have less formal, brand commitments. This concept could be given some formality for all water companies. For example, in Regulations under Schedule 3 Regulation 4 of the 2006 Companies Act, the government publishes Model Articles. It is possible that this route could be used to prescribe an enhancement of the Articles for WSCs and then these would be reflected in the Terms of Appointment. The suggested enhancement could be evolved further. There is a need to establish a chain of command by which facility managers who might have felt obliged to neglect their duties by senior management or indeed directors (therefore triggering the 2006 Companies Act) and in turn, directors by their investors (if private equity investors are to be appropriately penalised, it is simply a case of caveat emptor).

16 The WCWC suggests that the current voluntary enhancement of the Articles of Association of the WSCs to cover explicitly the commitment to sustainability, maintaining and improving environmental standards and acting in the long-term interests of the community and customers should be made a formal part of the regulatory system, as suggested earlier by an amendment to condition A of the Licences. This would improve tangible accountability of Boards and Directors and would enable the government to be in a position to state that it had taken action on a change in the status of companies without massive structural changes. This would have the advantage that there would be a manifest commitment to the environment alongside responsibility to shareholders.

17 In another element of changing the Purposes of Companies, the WCWC is also aware of some discussion on a modification of Condition P of the Licence, viz that:

P2 The Appointee must:

P2.1 meet the objectives on board leadership, transparency and governance set out in paragraph P3; and

P2.2 explain in a manner that is effective, accessible and clear how it is meeting the objectives set out in paragraph P3.

P3 The objectives are:

P3.1 The Board of the Appointee establishes the company's purpose, strategy and values, and is satisfied that these and its culture reflect the needs of all those it serves

18 The WCWC suggests that Ofwat could review and update its guidance on leadership ([Board leadership, transparency and governance – principles - Ofwat](#))

19 The WCWC understands that it will not be possible to implement these additional changes as part of the current consultation, but in the Ofwat/government response, the WCWC suggests that it could immediately launch a further consultation, so that any change is in place

by April 2025. If it is agreed that a strategic review of Licences is needed, then the WCWC accepts that this may be conducted in the longer term and the proposed modifications of Condition A and P should not wait.

20 The WCWC is also mindful of the resistance to any changes in corporate governance. Proposed legislation on tightening corporate governance rules was dropped in October 2023 after lobbying by the financial services sector. These would have required companies to disclose their distributable profits, publish directors' assessment of the risk of material fraud and explain whether disclosures on metrics such as a company's carbon emissions would be independently audited.

<https://www.gov.uk/government/news/burdensome-legislation-withdrawn-in-latest-move-to-cut-red-tape-for-businesses>

21 The government is also expected to omit separate, long-awaited primary legislation to implement sweeping changes to audit and boardroom rules. The WCWC suggests that the proposed change for water sector governance would be more acceptable to water companies and would send powerful signals to the wider community of intent to change.