



Fair Water Connections

An association seeking a fair deal in water supply provision

Commentary on Water Company Proposals for New Water Adoption Arrangements which Align with Ofwat Adoption Code Requirements (V1)

In response to requirements set out in the Ofwat Code for Adoption Agreements (first issued in November 2017) Water UK, on behalf of their (English) water company members, has recently submitted a suite of adoption arrangement proposals to Ofwat for approval. When implemented these will impact on the way Self-Lay Providers (SLPs), who are members of Fair Water Connections (FWC) operate. It is not yet known how Ofwat will respond in terms of accepting, or not accepting, the proposals or deciding whether they first need to run their own consultations. Nevertheless what has been developed is of significant interest to the self-lay community and the purpose of this commentary is to outline what has been offered and provide feedback on the proposals.

1. Overview

Whilst Water UK has sought stakeholder views about various aspects of what they have been developing this is the first time that the whole package has been made available to review.

The Ofwat Code for Adoption Agreements requires companies to work with their customers to develop, agree and maintain sector guidance (covering processes for entering into asset adoption agreements) and create a model adoption agreement template. The sector guidance and the model adoption agreement needing to reflect overarching principles which are in the Code. Whilst the Code covers water and sewer adoptions only new water arrangements are now being considered.

The Ofwat Code specifically covers water companies operating wholly or mainly in England. See Appendix A for a link to the Ofwat Code for Adoption Agreements.

The Code was produced because it is required by the 2014 water legislation. Ofwat state that the purpose of their Code is to:

- a. enable the timely provision and adoption of new infrastructure required for housing growth;
- b. enable customer focused delivery of the services customers require when entering into adoption agreements;
- c. facilitate Customers entering into Water (and Sewerage) Adoption arrangements;
- d. drive efficiency and effectiveness of processes, reducing the time and costs incurred by all parties entering into adoption agreements;
- e. protect End-user Customers by preventing the adoption of sub-standard infrastructure; and
- f. enable effective competition in the provision of new connections.

The Code requires Water (and subsequently Sewerage) Companies to publish:

- a. Sector Guidance;
- b. Model Adoption Agreements; and
- c. Any company-specific arrangements relating to the adoption of infrastructure.

The recently published proposal being aimed at providing both standardised, cross company, procedures and a new model adoption agreement. These being intended to create standardised arrangements with any company specific variations being limited to 'local operational practices or local design guidance'.

Noteworthy is that throughout the whole development process those leading the project have not seen a need to hold a workshop to explain their rationale and outline their reasoning to customers for what is now in their proposals. This means that there is much uncertainty around how the package will operate and the ways companies will interpret the various elements.

2. Ofwat Code Specifics

Whilst the Ofwat requirement for a standardised process and model adoption agreement to be introduced is readily understandable Ofwat, in their Code, also stipulates a number of additional requirements. These include that:-

- Dispute resolution must be aided by there being clear named points of escalation for each party to the relevant agreement and their contact details; and,
- Companies must state the minimum levels of service a Customer can expect to receive in respect of each procedure, both in terms of time and quality of the service' and,
- Appropriate Customer Redress is to be provided if a Water (or Sewerage Company) fails to meet the minimum levels of service; and,
- Design/construction guidance needs to cover all aspects of adoptable Contestable works; and,
- An (ongoing) governance process is put into place.

Ofwat has also set-out a number of Principles that they require new adoption arrangements to follow. These are a need for the arrangements to:-

- Be **Customer Focussed**; and,
- Be **Fair and Proportionate**; and,
- Be **Clear, Complete and Current**; and,
- Provide a framework that enables effective competition, i.e. a **Level playing field**; and,
- Be **Efficiency** by promote efficient and effective processes, so; and,
- Be **Predictable and Transparent** and so provide Customers with sufficient certainty as to what they can expect; and,
- **Encourage Innovation**, and thereby deliver a better service for Customers; and,
- Be **Resilience and Sustainable**

When submitting documents to Ofwat for their approval (which is needed prior to implementation) companies were tasked, by the Code, with demonstrating that the proposals reflect a broad consensus of opinion amongst Customers and between water companies themselves.

Although entirely separate to the new adoption arrangements they do follow the April 2018 introduction of changes to water connection (mains and services) charges brought about by new Ofwat Connection Charging Rules. As there is much interlinking between charging and adoption, with many companies stating adoption requirements in their charging publications, consideration of the charging interface is merited before adoption arrangements get finalised.

3. Competition Compliance Factors

Despite water connections work being openly (backed up by being prescribed in water legislation) a competitive activity for some 15 years, and thereby able to be done by accredited SLPs and (in a slightly different context) NAVs as an alternative to water company delivery, there remain provision constraints which the self-lay community views as anti-competitive. During the development of the new adoption arrangements it has been hoped that all competition compliance factors will have been able to be worked through. This is not however the case and, although Ofwat has stated that they “will not be looking to approve any arrangements that are anti-competitive” it is still necessary to flag a number of competition compliance related matters.

In some cases the constraints SLPs experience are a matter of judgement (as to whether the way the proposed requirements are being structured reflects a reasonable balance of risks). There are however some situations where it looks that aspects of the proposals are structured in ways which restrict and distort competition. So, if implemented as currently drafted, there is potential to breach Competition Act prohibitions. It also pertinent that within the operating regions of many English water companies self-lay take-up is not at the level to remove related ‘abuse of a dominant position’ challenges. Hence potential in the new arrangements for water companies to impose, directly or indirectly, “unfair trading conditions” on their competitors merits highlighting. This is therefore done throughout this commentary.

4. What Has Been Published (By Water UK)

Following over 12 months development work Water UK, who have led an Adoption Code delivery programme on behalf of their water company members, have issued the following documents to Ofwat and published them on their website. (See Appendix A for a link to the documents).

The published documents are (using the Water UK terminology)

- Draft Sector Guidance for the adoption of self-laid assets by water companies in England
- Appendix C – Procedures
- Appendix D – Design Guidance
- Appendix E – Minimum Information
- Appendix F – Model Adoption Agreement
- Appendix G – Level of Service Measures and Reporting
- Appendix H – Terms of Reference for the (ongoing) Codes Panel
- Recommendations to Ofwat

Also published are other documents which relate to the development journey and seeking to support the offered proposals.

Below this commentary discusses below the various documented components.

Observing their development it is apparent that much time has been spent on refining the process procedures to reasonably meet all stakeholder requirements. However other key components have either been subjected to much less exposure to customer feedback or the development team have not seen a need to be modify their proposals in response to the customer feedback that has been provided. This means that many customers will argue that there is currently not the required ‘broad consensus’ acceptance of the offered package

5. Comments on the Various Procedural Component Elements

5.1 Sector Guidance

To pull the various proposed new adoption components together a new Sector Guidance document has been produced. This will replace the current Code of Practice.

The Sector Guidance contains a document hierarchy (to cover the potential for conflict between the various components). The given order of precedence (with the highest first) being:-

- Model Adoption Agreement; then,
- The Sector Guidance document; then,
- Procedures; then,
- Level of Service and Reporting; then,
- Design and Construction Standards; then,
- Minimum Information; then,
- Connection Options

Interestingly local arrangements do not feature in this hierarchy, it presumably being assumed that they fit within the Design and Construction Standards. The procedures however offer a number of variant options which, presumably, individual water companies will specify as applying in their area.

Another omission is that there is not a tie to the company specific local charging arrangements. Yet many of these make reference to policies and practices which impact onto self-lay procedures.

To follow the Sector Guidance companies are required to publish an Annual Contestability Summary (an ACS). This categorising the work that is open to competition in each company's area. Whilst this will share important information it surely needs to be more dynamic than being published annually.

With regards to providing a framework into which the Annual Contestability Summary fits the Sector Guidance proposes 3 categories of work types. These are universally contestable work activities, a number of separately defined mains connection activities (which companies will decide for themselves whether, and on what terms, to make contestable) and non-contestable work (i.e. tasks that only a company can do).

Whilst a framework for opening up of, certainly lower risk, connection types is to be encouraged it is not known how many companies will permit any of the potentially different new connection types to be done by SLPs. Also what terms will be imposed and whether companies will produce any form of objective justification detailing why works are being restricted. Hence there is a need for companies to immediately issue their local Contestability Summaries so that a discussion can commence about unreasonable restrictions and working towards cross company consistency.

Furthermore many companies currently restrict work types that were previously defined as universally contestable. So there is lack of confidence that activities such as sampling and meter fitting (which some companies have previously stated must be done by themselves) will now be opened up to be done by SLPs.

Omitted (or unclear if it is incorporated into the mains connection categories) in the Contestability framework are individual new service connections supplied off existing mains. (*Note – the current Code of Practice defines these as being contestable subject to the Water Company assessing that the*

condition of the main does not heightens the risks to existing assets such that it could affect supplies to existing customers).

Although the Sector Guidance discusses Level of Service and Redress, when company delivery failures arise, these merit full evaluation so are separately discussed below.

5.2 Procedures

Those developing the new adoption arrangements have elected to not continue with the previous Self-Lay Code of Practice and instead have produced a set of procedure diagrams. These identify responsibility for the various tasks by placing activities in 'swim lanes' aligned to various delivery parties. Principally these are the developer, the Self-Lay Provider and the water company. To provide some added clarity the diagrams are accompanied with a set of notes (though, to use the diagrams it is also necessary to reference the Sector Guidance, Minimum Information and other documents).

Given the currently differing practices between companies (despite there being a national Code of Practice) the revised procedures should, if successfully, and consistently, implemented demonstrate a significant step change. In many ways, especially if the identified modifications can be quickly made, it would be help self-lay provision if the proposed procedures were to be quickly implemented. (This could be done whilst the other, agreement, and associated terms related matters, see below, are worked through with stakeholders).

The process procedure stages that have been documented are:-

- Stage 1a – Pre-planning enquiry stage *[mainly done by developers before appointing a SLP]*
- Stage 1b – Developer chooses delivery route and allocates self-lay duties
- Stage 1c – Point of Connection (assessment and confirmation)
- Stage 2 – New Mains Design
- Stage 3 – Design Review / Execution of Adoption Agreement
- Stage 4 – Water Main Construction
- Stage 5A – Mains Connection (low risk/routine in-line connection)
- Stage 5B – Mains Connection (medium risk connection) *[where permitted]*
- Stage 6 – Vest Main and Correct Any Defects
- Stage 7 – Make Service Connections

Identified shortcomings and omissions in the documented procedure proposals include:-

1. They permit a number of 'company specific' variations (particularly in the service connection section but also elsewhere). Hence a means for companies to define what is their 'local' process needs to be defined; and,
2. There are inconsistencies between the allowed self-lay mains connection stages and the default option of connection work being done by the water company themselves because the company alternative does not look to be adequately detailed; and,
3. It is also unclear how companies will define what work activities relating to mains connections they will permit as being contestable and how their 'local' definitions will fit into the national standards; and,
4. Without any indication about where it will be required a 'Spade Valve' option has been added into the mains connection mix but it is not thought that any company contractor

currently has to incur the cost, and process delays, of installing such a valve on the connections work that they do; and,

5. Preventing SLPs from making service connections until a vesting certificate has been issued. This is disadvantaging SLPs by restricting their flexibility compared to water companies who can both energise new mains and make the first service connections on the same visit. *(To overcome this perhaps a restricted number of services could be permitted whilst the vesting certificate is being processed).*
6. The (to be discontinued) current Code of Practice contains many common practice specification requirements (drawn from CESWI) which will either now need to be duplicated in all water company local specifications or will get lost!

Also noteworthy is that some of the earlier, and post vesting activities deal with situation which arise regardless of whether the work is done by a SLP or, through requisitioning, companies themselves. However responsibility for equivalent (particularly initial enquiry, private pipework approval and installed asset protection) activities is not universally defined elsewhere for company provision. So there is potential for liabilities, and risks, to fall differently between the delivery choices open to developers and for this to disadvantage competitive provision.

5.3 Levels of Service

Water companies have been measuring their Level of Service response times across a range of Developer Services activities for a few years. Whilst the opportunity has been taken to strengthen definitions what is actually being recorded is largely carried over from what is currently in place. The major differences being the intention to:-

- a) Introduce a chess type clock (where time logging is paused should further information be required from the customer); and,
- b) Establish the 'right date' for mains connections at the agreement acceptance stage.

The chess type clock proposal looks to have some merit, though it does nothing to penalise a company whose forms etc. require information at inappropriate stages and thereby cannot reasonably be completed by customers. But the 'right date' approach has not been adequately explained to give any confidence that this is not a ruse to set, in advance, an arbitrary date which when it subsequently turns out not to align with the customer's actual programme the water company can excuse themselves of any delivery liability.

Furthermore most companies already report full achievement of the required service standard times. So carrying forward the same response times looks to be far from challenging with nothing to stimulate individual companies to themselves offer better service standards. Given that the Ofwat D-MeX, Developer Services Customer Satisfaction Mechanism is in the process of being implemented surely it is now to be expected that companies would want to go beyond all collectively meeting what already looks reasonably relaxed service standards (especially when Charging changes ease what were previously classified as 'complex' to supply sites)!

The proposed metrics are:-

SLPM – 1/1 – Initial Application review (7 calendar days) [Cat 1] ^[1]

SLPM –1/2 – Review Point of Connection proposal (14 calendar days after SLPM 1/1) [Cat 1]

SLPM - 2/2a – Review Design Application (5 calendar days) [Cat 1]

SLPM - 2/2b – Provide design (23/37 calendar days depending whether classed as ‘complex’) [Cat 1]^[2]

SLPM – S2/1a – Review SLP design approval application (5 calendar days) [Cat 1]

SLPM - 2/1b – Provide design approval to SLP (9/16 calendar days depending whether classed as ‘complex’) [Cat 1]^[2]

SLPM - S3/1 – Design/revise adoption agreement (which covers review design/execute adoption agreement) (7 calendar days of receiving request) [Cat 2]^[3]

SLPM – S3/2 – Agree mains connection date (No target time – note this is when the ‘right day’ is set)^[4]

SLPM –S5A/1 – Review low risk mains connection application and agree connection date (7 calendar days)^[5]

SLPM – S6/1 – Issue vesting certificate (within 1 working day of connection notification) [Cat 2]

SLPM – S6/2 – (if required) confirm final asset value (within 7 calendar days of as built drawings and build profile [Cat 2]

SLPM – S6/3 – final asset payment made (within 28 calendar days of invoice) [Cat 2]

SLPM – S7/1 – Validate notification and provide consent to progress with service connection (7 calendar days) [Cat 1]

SLPM – S7/3 – (When requested) Install ‘screw in’ meter and record details [Cat 1]^[6]

Measures on SLPs

SLPM – S5A/2 – Complete mains connection and provide required information (1 working day)

SLPM – S7/2 – SLP to notify Water Company that a service connection has been made (information to be provided within 1 working day of completing a non-household connection and 5 calendar days for a household connection.^[7]

Notes

- [1] – Query SLPM – 1/1 being 7 calendar days when design applications (see SLPM 2/2a) can be reviewed in 5 calendar days?
- [2] – Query why design response is dependent on the size of the development as this does not affect the earlier Point of Connection response and the charging arrangements now only require the ‘site specific’ work elements to be considered when preparing the response?
- [3] – The requirement for SLPs to separately call off adoption agreements looks an unnecessary element designed to lengthen the process!
- [4] – Insufficient information is provided to establish what is being measured when the ‘right day’ date is being agreed.
- [5] – The current review and approve target for routine mains connections is currently 3 working days so it looks unacceptable to stretch this to 7 calendar days.
Whilst the target is set for ‘low risk’ connections no target is set for other mains connection categories (so is it to be assumed that the ‘right day’ covers connections done by the company?).
- [6] – A few companies currently insist on screwing in meters on all connections. So is this going to change to only be on ‘customer request’ activity?
- [7] – Whilst recognising specific reporting requirements arise when non-household connections are made the proposed 1 working day response target looks unreasonable and will be a barrier to such connections being done by SLPs. (*Note – water companies themselves have 5 working days*

to respond so why are they so unwilling to share the allowed time equitably with a SLP? Also if the proposal of initially classifying all service connections as 'non-household' gets implemented a 1 day turnaround would have an unreasonable impact on SLPs).

The Ofwat Code requires companies to state the minimum levels of service a Customer can expect to receive in respect of each procedure, both in terms of time and quality of the service'. It is therefore very disappointing that nowhere in the published documents does it give any indication of companies committing, or at least striving to achieve, any of the above service measures.

5.4 Redress

In addition to committing to meet published service standards the Ofwat Code requires companies to provide appropriate Customer Redress when they fail to meet the minimum levels of service. Although Redress provisions should have been in place for nearly 10 months the concept, and reasoning behind their introduction, has not really registered with water companies. This may well have led to their current proposals being somewhat limited.

From a customer perspective what is being sought is not a means to claim for any losses but to have the certainty that companies are committed to deliver and will take prompt action to recover the situation should they identify themselves that a delivery target is unlikely to be met. Instead the company proposals are to offer two levels of Redress, depending whether the measure is defined (see the listing in the level of Service section above) as a Category 1 or a Category 2 activity.

The proposals being to:-

- For Category 1 failures; to refund any application etc. fees within 30 working days; and,
- For Category 2 failures; within 1 working day of a missed target, for companies to email the SLP with details of why the situation has arisen and provide a new delivery date. Should this not satisfy the SLP they can escalate a complaint (though this may take 5 days for an initial response) to a nominated company 'compliance manager'.
Note – depending on a company's policy SLPs may also be able to go through some form of claims process in an attempt to recover identifiable losses.

Again SLPs look to be left with a lowest common denominator type solution without any realisation that best customer service arises when potential failures are identified at an early stage and appropriate recovery plans put in place. So it looks as though the proposals do not grasp the impact on SLPs should any water company delivery failure arise. Also, almost as if they are predicting failures, the Redress offer looks to be structured to minimise the financial impact on companies themselves.

From a customer perspective the offered Redress arrangements look to fall a long way short of what the Ofwat Code prescribes. Given that SLPs are not interested in an extensive claim route (after all how do you compensate for loss of reputation brought about by mains not being able to be energised when envisaged) a means needs to be found whereby companies take full ownership for the timely delivery of the works for which they are fully responsible. The suggestion being that if some form of automatic payment is actioned immediately a target date is passed that such payments, especially if they escalated by the day, would aid a company to better recognise that prompt remedial action needs to be immediately put into place.

Redress Notes

1. Despite Redress needing to be in place since April 2018 Ofwat has not openly given any indication to companies as to whether this aspect of their Adoption Code is being satisfied. This has not helped stimulate company thinking around Redress arrangements; and,
2. The 'right day' target approach (see Levels of Service), especially if it needs to be subsequently adjusted by a customer, may well just add to the confusion as to what the 'target date' actually is on critical mains connection work; and,
3. The latest connection charging arrangements facilitate disconnecting 'site specific' works from any (subsequently needed) network enhancements. This is proving a difficult concept for companies who routinely still maintain that a site cannot be supplied before network reinforcement works have been completed. Better recognition that few sites require their full demand capacity immediately on connection is required. Hence if companies could, in their customer planning interface, now disconnect any necessary network enhancement works from the delivery of 'site specific' enabling works it should ease tensions and facilitate much needed improvements to customer service delivery.

5.5 Design and Construction Standards

Whilst there is much commonality in water provision standards each company retains various local technical requirements. These are however relatively few (see the schedule in Appendix B of the locally defined requirements in the Current Self-Lay Code of Practice) however the proposals of now allowing each company to create their own list against a loosely defined template is likely to lead to SLP frustration caused by not readily being able to identify, for where they are working, the correct company specific standards. This situation being exasperated as many of the common technical details in the current Code of Practice are not been carried forward.

Given that the water companies use CESWI (the Civil Engineering Specification for the Water Industry) and all editions of the Self-Lay Code of Practice have recognised the value of using a common CESWI extract it looks to be a retrograde step to now introduce a fairly loose document with much scope for local practices. Instead a move to the sort of tables that are used in the Sewers for Adoption document would be preferable. This would provide, in a single reference document, a common source for readily identifying local differences. The advantage of doing this being reducing the risk caused by different (company specific) wording leading to SLP misunderstandings and associate risk of being non-compliant.

The potential for much confusion is readily demonstrated by the number of sections in the proposed Design and Construction Standards Template (see Appendix D) where numerous sections are highlighted for local interpretation. *(These look to significantly exceed the local input into the current Code of Practice)*. Examples which stand out are that each company can specify their own definition of 'major' and 'minor' variations but the Sector Guidance itself (which in the document hierarchy is above the Standards Template) specifically states (in 4.7.1) that local practices will only arise in 4 specific areas!

Furthermore there are inconsistencies in the Design Template itself, where (in 10.2) it states that the sizing of pipes for detailed final design should be based upon a hydraulic calculation yet many companies normally use, including for their own designs, indicative pipe diameter selection methods (detailed in 10.3).

So rather than drawing as much cross company consistency as is possible it looks as though the proposals have been drafted to enable companies to legitimately confuse SLP technical staff who work across companies by the application of multiple local practice variations. There is also a total disconnect between the headline (self-imposed) restriction on local practices and what the 'Template' document will end up allowing. Hence significant work looks to be needed to produce a single, cross company, Design Standards reference document that readily provides the information customers need.

5.6 Minimum Information

In the document hierarchy the Minimum Information is placed lower than many of the other documents yet it contains details which integrate into the Procedures (which are at a much higher position). This disconnect merits being addressed as it is arguable whether, for clarity and understanding, the Minimum Information requirements should actually be considered as forming part of the procedures.

Whilst some aspects of the required 'minimum' information may be difficult for the customer to provide they look to form a 'best practice' framework which should now be subjected to customer and company testing to establish how workable it is to routinely provide the stipulated information.

No indication has been given about intentions to introduce common templates for information collection (and move away from an array of company specific forms all collecting the same information). From a SLP perspective the work process would be much eased if companies would now work together to produce a common set of forms and covering all interfaces where information needs to be provided by a SLP.

There appear to be significant elements shown as activities in the Procedures which cross between the SLP and the company which are not covered in the Minimum Information Tables. Specific examples being:-

- a. Where the mains connection is done by the company. What information does the SLP need to provide before the company connection can be done? and,
- b. No mention is made of what needs submitting at the asset payment claim stage; and,
- c. The service connection procedure is in 2 stages. The first, covered, in part, by the specified Minimum Information, is the approval to connect stage with the second being the information expected to be provided when each connection is made. Noticeable omissions being the private pipework certification some companies require to have and also any prescribing of the post work records; and,
- d. Interestingly there is no commitment if a company does the design for them to provide a full job pack (with schedules of materials, CDM documents etc.) though this looks to be required when a company submits a design for approval.

Hence further work looks to be needed to complete the Minimum Information requirements and for standard forms/input templates to be developed in ways which do not create a plethora of local variants.

6. Adoption Agreement Proposals

When sending their documents to Ofwat Water UK admit that there are weaknesses in their proposed new Agreement template and that this is an area where additional work by Ofwat could be needed. Given that the Agreement is a key element, which sets contractual responsibilities on all the parties, it is somewhat disappointing that, at the end of their project, Water UK have not developed an Agreement which even they recognise has not passed the 'broad customer acceptance test' specified in the Code.

Instead what is being offered looks somewhat of an afterthought which has been drafted more as a stand-alone entity rather than being fully integrated into the full set of new adoption procedures. Furthermore Ofwat prescribes in their Code requirements which the agreement needs to pick-up. These include dispute resolution with escalation to named contacts, commitments regarding Levels of Service and Redress provisions. Yet, of these, only the dispute resolution element is partially covered in the published document and the proposed wording goes to lengths to limit the possibility of appropriate Redress being paid (when Level of Service delivery failures arise).

Additionally there is a need to ensure that the Agreement satisfies the 'Fair and Proportionate/Level Playing Field' Ofwat principles criteria and that it is fully compliant from a competition compliance perspective. Whilst improvements, relating to this requirement, have been made during the drafting the currently offered Agreement looks to seek to protect companies much more than it commits delivery from them. Hence, for fairness, more needs to be done to produce a document that is better balanced for all parties.

Also noteworthy is that Water UK is proposing to continue with a single, multi-party, Agreement which gets exchanged once scheme specific terms are finalised. This is the same as the way that the current Agreement works. In doing this they have discounted suggestions, including earlier ones from Water UK themselves, that the process would be significantly eased, for all parties, if the document was actioned as a framework Agreement at a much earlier stage with just a simple exchange of letters once the scheme terms are known. This would then recognise the differences between requisitioning and self-lay provision which necessitate a substantive Agreement but shows, at the stage in the process where response times are critical, much better equivalence between self-lay and the requisitioning alternative. Taking this concept forward would still require the Agreement terms, as discussed below, to be amended and then, simply, transcribed into a Framework Agreement setting.

An element that has not been provided, in any of the documents, is a simple summary of the obligations each party has responsibility to delivery. Whilst not distracting from the contractual agreement the suggested summary would set the scene and provide much needed clarity about roles and functions.

6.1 Adoption Agreement Unfairness

The following highlights some of the more significant, towards SLPs, unfairness aspects in the proposed Adoption Agreement:-

1. The proposed Agreement makes it a requirement for SLPs to hold WIRS, which is an accreditation scheme which water companies have arranged to be provided by Lloyd's

Register. This scheme does much to raise confidence that SLPs have the required competence and capability to do self-lay works. However companies are not recognising that restrictions which are brought about by SLPs having to satisfy WIRS requirements, and which do not arise when companies do the equivalent work themselves, look to be a breach of the Competition Act Chapter I prohibition of “decisions and concerted practices between or among undertakings or associations of undertakings which have as their object or effect the restriction, distortion or prevention of competition”.

This issue is not mentioned in any of the Adoption proposals Water UK has published. But the continuing unfairness of water companies requiring accredited SLPs to only use operatives who hold a Network Construction Operations (Water), or NCO(W), NVQ registration with EU Skills, when company contractors, and their own operatives, do not is unduly restricting labour and disproportionately increasing SLP costs. Hence it now needs to be reviewed and decisions made about whether this aspect of WIRS is unduly restrictive on SLPs. Especially when many SLPs are now sufficiently experienced, and have large enough workforces, to (like company contractors) run their own in-house training and competence assessments.

Note – If the need for NCO(W) was removed SLPs would still need, to hold WIRS, to demonstrate that their operatives were competent to do mains and service laying work.

2. The proposed Agreement allows company delivery commitments to be suspended should any ‘Force Majeure’ event arise. ‘Force Majeure’ being defined to cover a company reallocating a gang should any form of network incident arise. Whilst recognising that such a response is reasonable when serious incidents happen the agreement effectively allows companies, when any minor network disruption happens, to routinely divert resources away from supporting self-lay works in preference to redeploying those working on company provision projects. So, unless countered, this is potentially unfair.
3. From April 2018 water companies have been required to provide their Customers with appropriate redress if they fail to meet the minimum levels of service that they publically report against. Whilst companies have not yet generally embraced this requirement some realise the reasoning behind it and that SLPs can be seriously disadvantaged, both in terms of their reputation and the delay penalties that arise if a developer cannot sell houses to pre-agreed programmes because new water supply work is not able to be finished. The new Agreement however, in draft Clause 14.4, effectively precludes meaningful Redress provision (as it gives a wide ranging list of events against which no losses or damages will be payable). Note this Clause would look to restrict claims in those companies who currently have policies which allow developer customers to seek compensation!
4. Although Agreement Clause 4.2 indicates that companies will carry out their works on the terms set out in this Agreement, and in accordance with Procedures including the Levels of Service, this is hardly (as required by Adoption Code clause 3.4.2b) a firm commitment towards meeting the minimum levels of service contained in the Procedures. So, for fairness a company assurance to, at the least, endeavour to work to (and hopefully beat) published service standards surely merits more than a passing inclusion in Clause 4.2.

Note – this is a further example of possibilities for individual companies to strive towards delivering good customer service getting ‘lost’ in the details of an Agreement!

5. A Complaints escalation framework has been appended to the draft agreement. This, in all probability, has been steered by the Adoption Code wording and is something of an appendage (as it is positioning near the end of the proposed Agreement). Whilst this, by getting all parties to name contacts, is an improvement on the current situation the attention on 'complaints' looks, in itself, to be a failure. This is because the focus is on providing customers with a means to complain, should a project catastrophe occur, when they normally just want the company to own, and speedily resolve, the problem. Hence the proposal surely does not get to the heart of why Ofwat made naming contacts an Agreement (and Procedures) requirement. Instead it looks unfair that SLPs, and developers, are being denied (though accepting that the situation will differ across companies) access to good customer service by clauses which look to be structured to protect companies from not being responsive and tackling issues before undue delays escalate their customer impact.
6. Recognising that the current proposals are centred on Adoption the creation of procedures which just apply to self-lay provision and are not so formalised when companies provide new mains and service to developers themselves looks intrinsically unfair. Hence there looks to be an urgent need for companies to produce corresponding procedures covering the front end, pre-development enquiry stage, service connection approvals and the responsibility for protecting commissioned works.

6.2 Adoption Agreement Corrections

Within the proposed Adoption Agreement there are a number of corrections needing to be made. These are listed in Appendix C.

7. Local Requirement Uncertainty

Although the new Adoption arrangements package has been positioned as a standardised, across company, framework there is much customer scepticism that, when implemented, all companies will interpret the requirements in the same way. This is borne out through past experience and because the offered package allow much scope for local forms etc. and options to select permitted variations.

Hence there is an urgent need for companies to initiate their own consultations detailing their local intentions and to ensure that these are 'broadly' acceptable to their customers.

8. Future Governance

The Ofwat Code requires an ongoing Panel to be set-up to take forward any subsequently necessary changes to the Adoption Agreement and Procedures. Until the documents get finalised it is difficult to get a feel for whether the, to date, dominant lead of Water UK is going to be allowed to continue or if a much better balanced new forum will be able to be created.

It looks an omission that the Ofwat Code does not identify a need for a Panel secretariat. This void has, to date, allowed Water UK, whose personnel look to have limited experience of the work activities under discussion, and no direct responsibility for the way the proposals will subsequently work, to dominate/control the development project. So whilst Water UK will, no doubt, argue that it

is their members who have signed off the proposals it is far from clear, from a customer perspective, how much company scrutiny there has actually been.

Another factor that appears to have been overlooked on the development group is that customers routinely choose to use representative bodies to champion their cause. This allows them to concentrate on their business priorities knowing that others are keeping them alert to what is happening elsewhere. Perversely we have just had 12 months of development work where a trade body representing companies has done their best to exclude input from trade bodies representing customers!

Hence it is now paramount that decisions are made about the way that the future Governance Panel is going to operate. This should engage with all stakeholder groups and listen to the way that they would like to be represented before any decisions are made about the Panel structure. Also, if a secretariat is needed consideration needs to be given as to how this should be constituted to ensure a balanced input from all parties.

Furthermore there is currently a disconnect between WIRS governance, and the water company role in this, and any link to the future Adoption Code Governance Panel. This is something that urgently requires fixing as the operation of the WIRS scheme has importance to SLPs and companies alike. So any potential for the WIRS Panel and the Adoption Code Panel to make different decisions on similar matters will, no doubt, cause much (avoidable) confusion.

Other influencing factors are:-

- it is not just company Developer Services staff who are involved with self-lay as the constructed assets invariably get adopted by network functions. Hence the company side input into the new panel merits being drawn from a mix of roles.
- As all SLPs have to hold WIRS using a WIRS channel to select SLP representation looks to be the most sensible.
- Whilst appointing an independent Panel chair may have merit it could be difficult to find a sufficiently independent individual who has some knowledge of connection activities. In this regard the set-up and operation of the Water UK group leaves much customer disquiet so it is surely paramount that, if the independent chair option is selected, that they are appointed before the workings of the Panel are shaped.
- Alternatively the option of appointing joint Chairs from the panel membership, and for them to oversee any secretarial input, looks to have much merit and would avoid the situation of those funding the Chair being able to influence how the role functions.

It therefore looks necessary for the Code requirements themselves regarding a future Governance Panel to now be thoroughly reviewed before any decisions are made about setting up a new Panel.

9. Summary

Much work has gone into the development of the proposed new water Adoption arrangements and, if implemented consistently, in their current form it would be an improvement which benefits the self-lay community and their developer customers. The Ofwat Code however looks to require companies to go further and tackle wide ranging factors which currently restrict self-lay competition.

Hence there is a need for the enhancements summarised below to be enacted, and competition compliance matters resolved, before the proposals are moved towards implementation.

Also noteworthy is that there is a real danger, especially by those companies who have limited exposure to competitive connections provision, that they will see following the Water UK led proposals, especially when these get endorsed by Ofwat, as meaning that they are fully competition compliant.

Key concerns about the current Adoption Arrangement proposals/matters raised in the FWC commentary are that the proposals:-

1. Are too heavily skewed towards protecting companies and do not provide a sufficiently fair balance of risk to satisfy, from a customer perspective the overarching principles set-out in the Ofwat Code; plus provide equivalence in their dealings with all (Developer Services) customers and,
2. Do not remove anti-competitive existing factors. Particularly by:-
 - a. Retaining the requirement on SLPs to incur the cost and registration of having to train their operatives in ways that water companies, and their contractors, avoid; and,
 - b. Not recognising the significant impact (in generating delays at a time critical stage) in only allowing site specific self-lay agreements, which require multiple signatures when equivalent terms on the 'company delivery' alternative only require a simple exchange of letters; and,
3. Mask the many possibilities for companies to introduce local variants and to specify their particular requirements in ways which perpetuate extensive local practices. This includes separately specifying procedures in separate charging documents and individually deciding which types of mains connections to make contestable; and,
4. Do not position companies, from either a Level of Service or Redress perspective, to own delivery of related non-contestable work elements which demonstrate genuine delivery commitment; and,
5. Not recognising the key inter relationship with WIRS (which is a scheme that water companies effectively control) and which engages with all practicing SLPs; and,
6. Seek to frame an ongoing Governance Panel in ways which could make it difficult for SLP input to help shape future changes to the Adoption Arrangements.

10. Comments and Feedback

This feedback, which is drafted from a self-lay viewpoint, on the Adoption proposals submitted by Water UK to Ofwat for approval has deliberately been shaped to encourage comments and feedback. Hence general comments and thoughts on how the proposals need to be improved and trial implementation got underway would be much welcomed.

Comments and feedback should be made to:-

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Fair Water Connections Managing Coordinator
Email: martyn.speight@fwconnections.org
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Appendix A – Links to Related Documents

The Ofwat Code for Adoption Arrangements can be found at -

<https://www.ofwat.gov.uk/publication/code-adoption-agreements/>

The suite of proposals issued to Ofwat by Water UK can be found at -

<https://www.water.org.uk/technical-guidance/developers-services/water-asset-adoption/>

Appendix B – Locally Specified Components In The Current Self-Lay Code of Practice

- Metering policies (2.8.6, 3.6.1.9, 3.6.5.1 and 3.6.6.1);
- Specific water quality testing criteria sufficient for water samples to be tested by any accredited laboratory (to be included in 1.6.9);
- Private pipework approval to connect requirements (1.6.10 and 2.8.4);
- Risk criteria which may restrict contestable work open to competition (1.8);
- Testing and disinfection practices (2.6.6);
- Mains design requirements and allowable materials (3.1 and 3.5.1.6);
- Depth of cover for mains (3.5.2.1);
- (Where empirical table in CoP not used) allowable minimum pipe sizes (3.5.3.2);
- Backflow prevention measures on supplies to non-household premises (3.6.1);
- Guidance on the use of ducts for service pipes (3.6.1.6);
- (Where other than 750mm) depth of cover for service pipes (3.6.2.1);
- (Where Table 5 does not apply) sizing criteria for service pipes;
- Arrangements for supplying flats and multiple occupancy premises (3.6.4.2);
- If a controlling valve is needed on the incoming supply to a manifold (3.6.5.5);
- Whether (service) manifolds maybe constructed in chambers (3.6.5.6);
- Restrictions on making service connections to premises which are not substantially complete (3.7.4.2);
- Minimum allowable separation between service connection tappings (3.7.4.3);
- If a corrosion-resistant tracking system is needed on service connections (3.7.4.6);
- Permissible materials for service connections (3.7.4.7);
- Requirements for testing and disinfecting services (3.7.4.7);
- Requirements for 'as-laid' drawings (3.7.5.2);
- 'As-Laid' drawing legend requirements (3.7.5.9);
- Format for 'as-laid' drawings (3.7.5.13).

Appendix C –Adoption Agreement Corrections

Within the proposed Adoption Agreement there are a number of corrections needing to be made. These include:-

1. The 'Accredited' definition shows a lack of understanding of WIRS. In WIRS SLPs who hold Project Management accreditation can take projects forward in their own right (but do subsequently need to appoint a construction subcontractor who is suitably WIRS accredited). They do not however, as the proposed Agreement wording states, need to hold both Project Management and Construction accreditation; and,
2. The Days definition differs from the way 'days' are defined in other documents; and,
3. The Point of Connection definition does not differentiate as to whether it is covering the 'Chargeable PoC' or the 'Supply PoC'. (Actually both are needed); and,
4. Connection of new service to existing mains looks to be excluded in the 'Self-Lay Works' definition; and,
5. Confusion in the definitions arises through overlaps between 'Self-Lay Works', 'SLP Works' and 'Water Main'; and,
6. It is not readily apparent how service laying works, which are automatically vested (rather than requiring a vesting certificate) will fit into the Clause 2.2 termination of the Agreement framework; and,
7. Weekly whereabouts merits being included in the definitions and a prescribed input specified (rather than the multiple passing references in the Minimum Information schedule); and,
8. Does Clause 9.1 effectively extend to require a street works licence on any works in areas of a site that a developer is offering up for adoption? And,
9. Clause 12.3 covers the developers responsibility for pipework complying to the Water Supply (Water Fittings) Regulations. Where companies only allow connections to be made after they have themselves inspected the private pipework is this clause applicable? And,
10. There is a mismatch between Clause 15.1a and 15.2. This is because 15.1a fixes prices for 12 months but 15.2 makes the rates payable those on the day of vesting. So this anomaly needs rectifying along with (if it is still necessary) a view being taken on determining rates on a vesting date which comes after the work being done.
Note – the potential disconnects between company specific local charging arrangements and the Adoption Agreement/Procedure needs to be addressed; and
11. The (penalty) interest rate set in Clause 15.4 looks to be set at the bank rates companies enjoy and not those SLPs experience. Hence the same rate on both parties cannot be reasonable; and,
12. The subcontracting Clause (25) is much more onerous than the WIRS requirements. Given that WIRS accreditation looks to adequately control subcontracting arrangements much of Clause 25 is surely not needed; and,
13. The status of changes to the Procedures, or other key documents, made after an agreement is signed are not readily apparent.