

Independent Steering Group – Water: Recommendation to the Codes Programme Board

Introduction

In November 2017, Ofwat issued a Code for Adoption Agreements (“Code”) which requires water companies to develop draft Sector Guidance (“SG”) and a draft Model Adoption Agreement (“MAA”) together with recommendations to Ofwat, covering both water and sewerage services. For water, these documents must be provided to Ofwat by 7th January 2019. The overall purpose of the guidance is set out in the Code and includes enabling the timely provision of new water infrastructure required to enable housing growth.

Water UK has taken forward work on behalf of the water industry under its Codes for Adoption Programme. It established the Codes Programme Board (“CPB”) to govern the programme and CPB will formally submit the draft SG, MAA and recommendations to Ofwat.

CPB established the Independent Steering Group Water (ISG-W) to provide strategic direction and oversight over the work of the programme. ISG-W consists of representatives from developers, self-lay providers (SLPs), water companies and Water UK itself. It is independently chaired and its Terms of Reference require the involvement of its customer representatives in its activities and decisions. These arrangements were in part to help enable water companies to demonstrate how they had met requirements in the Code relating to the need for adequate consultation with customers and the extent to which a broad consensus has been achieved amongst customers and water companies.

ISG-W’s Terms of Reference require it to *“compile the final Sector Guidance and Model Agreements and make a recommendation to the CPB”*.

This document fulfils that requirement. It first provides some contextual information relating to the work undertaken before setting out recommendations for Codes Programme Board. The document seeks to represent fairly the views of ISG-W members.

Outcomes of the work

It is not the purpose of this document to provide a comprehensive report on the work that the ISG-W has overseen. However, some understanding of the outcomes and conduct of the work will provide important context for the recommendations.

Draft Sector Guidance and Model Adoption Agreement

The draft documents that have been prepared are in a state suitable for submission to Ofwat.

Completion of the draft SG and MAA represents a significant step in the ongoing development of arrangements for the provision of new water infrastructure. They codify clearly and at a detailed level the expectations on all parties relating to the adoption process and provides a clear, consistent and, for water companies, enforceable baseline for the measurement of performance. They limit the areas in which local practices are permissible. It clarifies what activities must be contestable and makes it clear that how a greater degree of contestability can be achieved. They provide the basis for an efficient process for the delivery of water infrastructure while at the same time allowing water companies to manage risks to water supplies for end users in line with their statutory obligations. The arrangements will place significant compliance obligations on water companies

which should, if effectively implemented and enforced, result in an overall improvement in standards right across the industry.

Nonetheless, the work has encountered some difficulties. In general, the variety and complexity of matters raised by the work has required substantially more effort than was envisaged, one effect of which was to delay the original timetable. External factors have also prevented progress in some areas. Some matters have therefore not been addressed in the documentation and will benefit from further attention. Nor has it been possible to reach a consensus amongst the parties on all matters. This was envisaged and is allowed for in the Code but it inevitably disappointing that expectations have not been met in some cases.

Of these matters, ISG-W wishes to highlight the following:

- **Options for developers.** The programme developed materials as required, which sought to make the choices clear. However, we have been unable to include this work in the Sector Guidance pending resolution of issues associated with the legal rights to requisition, which are in the hands of others to resolve. It is clearly of vital importance to SLPs in particular that new arrangements do not unduly sway developers in the choices they make. Without the material the programme has developed, it is less easy to counter this risk.
- **Levels of Service.** The draft SG and MAA broadly codify levels of service currently delivered by leading water companies. Clearly bringing all companies to this standard and making such standards enforceable in regulation and in contract represents a substantial strengthening compared to current arrangements. There is also a tightening of service levels in limited cases. However, the expectations of some SLPs and others that the overall levels of service currently delivered by the best performing water companies would be materially tightened by this exercise have not been met. This is clearly something that can and should be considered and taken forward in future.
- **Requirement for timely execution of an adoption agreement.** The draft arrangements do not currently provide for a contractual obligation or include a level of service for the timely execution of an Adoption Agreement. There is recognition of the potential difficulty for all parties in establishing contractual pre-requisites, such as land rights, but some SLPs remain concerned that there is no recourse should a permanent source of water be unreasonably delayed. Procedural clarity provided by the draft SG should allow for greater visibility and certainty for all in setting a date for the provision of a source of water. However, discussions late in the programme which suggested the potential for further protection were not able to be worked up in time for inclusion in the draft SG. This thinking should be taken forward.
- **Accreditation.** A key achievement of the programme is to clarify and standardise an approach to contestability of activities required for the delivery of new water infrastructure via the adoption route. ISG-W considered at length whether and how the requirements placed on SLPs to be accredited to conduct contestable activities should be developed, and in particular whether such accreditation ought to extend to the employees or contractors of water companies involved in providing new infrastructure to promote a level playing field. There was not complete consensus about the rationale or merits of this but there remain strong views, particularly amongst SLPs that a revamped industry-wide approach to accreditation could be a further very important stimulus to achieving the overall objectives of the Code. ISG-W concluded that the detailed design of such arrangements was more than could reasonably be expected of the Programme at this stage, and it urges all parties to work together to progress this thinking.

Highlighting the above matters emphasises that the draft SG and MAA should be seen as a step in an ongoing journey of improvement. This work overseen by ISG-W builds on substantial progress

already made by the industry and its customers. Further improvements in the arrangements should be expected and encouraged.

Conduct of the work

The draft SG and MAA represents the outcome of very significant effort by developers, SLPs, water companies and Water UK. We are grateful for the extensive and valuable contribution efforts on the part of the individuals who have contributed to the work over the course of the programme and to those who have provided extensive and useful comments as the work has progressed.

The work generally was embarked upon in a spirit of collaboration and shared endeavour and to a large extent this continued through the course of the programme. What has been achieved could not have been achieved without this.

Nonetheless, there were aspects which have been more challenging.

While the SLP community has generally been very engaged and provided extensive input, it has proved much more challenging to achieve the same level of engagement with developers, albeit with some notable exceptions. One can speculate why this might be but, it is disappointing.

The complexity and scale of the various issues being faced, and consequent demand on resources to develop and finalise what is required appears, at times, to have limited the capacity of the programme to conduct the more extensive engagement and communication which some have advocated and which, perhaps, would have been helpful in earlier resolution of issues. For example, some have noted that meaningful engagement on the details of the MAA was later than desirable, although substantial efforts have been made to get this to where it is now. Clearly all parties need to prioritise resources, however there is arguably now a risk (that should be addressed) that some parties may not fully appreciate what the new arrangements require of them. This risk needs to be addressed in implementing the new arrangements.

Implementation

Clearly the draft Sector Guidance and MAA will not on their own deliver improvement on the ground. Effective and consistent implementation across the industry is needed and will demand resources and attention from all parties. For some, implementing the guidance as intended will involve substantial change and it is likely that there is a variable level of preparedness for it. Furthermore, there is a risk that in codifying practice and process has the unintended consequence of stifling or slowing the progress which has to date been made in a less formal way. SLPs are concerned about this prospect.

That is clearly not the intent but it should be recognised that outcomes in practice depends crucially on:

- effective implementation, including activities to communicate and engage all parties on the forthcoming changes, and the running of trials: it is encouraging that some parties have already committed to undertaking trials;
- ongoing management of performance, including measurement of relevant metrics and establishing mechanisms for evaluating and responding to poor performance;
- putting in place effective governance, in particular taking early action to constitute the required Panel and to clarify its scope of activity, whether that be a narrow role focussed on change governance or a wider role which encompasses oversight of improvement more generally

- effective regulation of compliance; and
- clear transition arrangements; and
- clarity as to implementation risks and how they will be managed.

All of these will be essential to ensure forward momentum is maintained. Members of ISG-W remain concerned that absence of clarity as to how these matters will be taken forward risks the work of programme not achieving its objectives. ISG-W therefore urges all parties to clarify what is required and expected in relation to implementation quickly.

Recommendations to the Codes Programme Board

ISG-W recommends that the draft Sector Guidance and Model Adoption Agreement prepared under its oversight are submitted to Ofwat.

ISG-W recommends that in submitting these documents the CBP makes the following points its accompanying recommendations report:

- Ofwat and water companies should devote appropriate resources to ensuring that the new arrangements are implemented as intended. Ofwat should make clear its expectations on companies in regard to implementation and engagement over the period to live implementation of the new arrangements;
- Trialling of the new arrangements should be encouraged and mechanisms put in place to ensure that the outcomes of those are properly recorded and considered;
- Transition arrangements should be clarified;
- Appropriate resources and attention be given by Ofwat, water companies and customers to the establishment of suitable governance arrangements, taking forward the arrangements for a Panel set out in the draft Sector Guidance;
- Ofwat and the water companies should consider how performance against the new arrangements should be measured, monitored and responded to and consider taking active steps to establishing acceptable arrangements; and
- Further attention should be given to the following specific matters noted earlier in this report identified during the course of the work of the programme: clarification of options for developers; levels of service; requirements for the execution of an agreement; and accreditation arrangements.

ISG-W recommends that at the time of submission of the draft SG and MAA guidance to Ofwat, the drafts are published.

ISG-W further recommends that these recommendations of ISG-W be published.

Martin Silcock

Independent Chair, on behalf of the Independent Steering Group – Water

4th January 2019