

Appendix H Water Sector Guidance

**WATER SECTOR GUIDANCE PANEL**

**TERMS OF REFERENCE**

**1. INTRODUCTION**

This document sets out the Terms of Reference for the panel (the **Panel**) established to consider Change Proposals to the Water Sector Guidance and the Model Water Adoption Agreement under the Ofwat Code for Adoption Agreements, August 2018 as that code may be revised from time to time (the **Code**).

**2. DEFINITIONS**

In these Terms of Reference, the following definitions apply in addition to those definitions included elsewhere in these Terms of Reference:

- (a) **Business Day** means a day on which banks are ordinarily open for business in England, not being a Saturday or Sunday;
- (b) **Chair** means the person appointed to chair the Panel under clause 7;
- (c) **Change Proposal** means proposed change to the Water Sector Guidance or the Model Water Adoption Agreement;
- (d) **Contestable** means services and/or works that can be provided either by the relevant Water Company or by an alternative provider. This may include works outside the physical boundary of the Development site;
- (e) **Customer** means a customer of a Water Company's developer services at any point in the process to adopt infrastructure from the point of application for an adoption agreement to the completion of that agreement. This does not include the End-User Customer but includes Developers and Self-Lay Providers;
- (f) **Developer** means any person or company which is responsible for a Development;
- (g) **Development** means premises on which there are buildings, or on which there will be buildings when proposals made by any person for the erection of any buildings are carried out, and which require connection with, or modification of, existing water infrastructure;
- (h) **Eligible SLP Customer** means a Customer whose name appears on the list maintained by Lloyds Register of Self-Lay Providers or any replacement list considered by the Secretariat to contain substantially all Self-Lay Providers
- (i) **End User Customer** means the owner or occupier of premises who receives a supply of water from a relevant Water Company or Licensed Retailer. For the purposes of these Terms of Reference, this does not include Developers, Self-Lay Providers or Licensed Retailers.

- (j) **Guidance** means the Water Sector Guidance approved by Ofwat under paragraph 3.2.4 of the Code.
- (k) **Implementation Date** means the date on which the Water Sector Guidance comes into effect;
- (l) **Independent** means not involved or interested in the provision of water and/or sewerage services to consumers in England and Wales in any manner whatsoever (including, without limitation, as an officer or employee of, consultant to or investor in a Water Company, Licensed Retailer or otherwise involved in the provision of water and/or sewerage services to consumers in England and Wales, other than (i) as a consumer or (ii) as a person appointed under these Terms of Reference);
- (m) **Licensed Retailer** means a holder of a water supply licence with a retail authorisation under sections 17A Water Industry Act 1991 (WIA 1991);
- (n) **Member** means a member of the Panel appointed in accordance with these Terms of Reference and being a natural person;
- (o) **Model Water Adoption Agreement** means the Model Water Adoption Agreement approved by Ofwat in accordance with the Code;
- (p) **Operational Terms** means the detailed operational procedures applying to the Panel set out in Appendix 1 and which may be changed from time to time by the Panel subject to compliance with these Terms;
- (q) **Panel** means the group of individuals appointed under these terms and the duly appointed Chair of that group from time to time;
- (r) **Secretariat** means the one or more individuals engaged by the Panel to provide administrative support to its activities;
- (s) **Self-lay Provider or SLP** means an entity that is engaged in the construction of Contestable infrastructure on behalf of a Developer
- (t) **Water Adoption Agreement** means an agreement under section 51A WIA 1991 for the construction of Water infrastructure by a Customer, and the transfer of ownership of the assets to a relevant Water Company;
- (u) **Water Company** means a company holding an appointment under the WIA 1991 to provide water services;
- (v) **Website** means the website established by the Panel for the purpose of publicising these Terms of Reference and the work of the Panel;

In these Terms of Reference:

- (a) Words denoting persons include individuals and bodies corporate, partnerships, unincorporated associations and other bodies;
- (b) References to 'writing' or 'written' includes emails;

(c) References to the Code or any other document are to the Code or that document as amended, replaced or extended from time to time in accordance with the requirements of the Code or that document (as the case may be);

(d) A reference to any body is: (i) if that body (statutory or otherwise) is replaced by another organisation, deemed to refer to that replacement organisation; and (ii) if that body (statutory or otherwise) ceases to exist, deemed to refer to that organisation which most substantially serves the same purposes as the original body;

(e) A reference to a statute or statutory provision must, unless otherwise stated, be construed as including: (i) a reference to any orders, regulations and subordinate legislation (as defined by section 21(1) of the Interpretation Act 1978) made from time to time under the statute or statutory provision; and (ii) a reference to that statute, statutory provision or subordinate legislation as may be modified or replaced from time to time;

(f) References to a person must, except where the context requires otherwise, include its successors in title and permitted assignees;

(g) Any words or expressions used in the WIA 1991 or Water Act 2014 have, unless the contrary intention appears, the same meaning when used in these Terms of Reference;

(h) The words 'other', 'includes', 'including' and 'for example' do not limit the generality of any preceding words, and any words which follow them must not be construed as being limited in scope to the same class as the preceding words where a wider construction is possible; and

(i) References in this document to clauses are to the primary terms and references to paragraphs are to the contents of Appendix 1.

### **3. FUNCTION OF THE PANEL**

3.1 The function of the Panel is to consider Change Proposals to the Water Sector Guidance and the Model Water Adoption Agreement and to make recommendations to Ofwat concerning such proposals in accordance with the requirements of the Code.

3.2 In carrying out that function, the primary aim of the Panel shall be to promote practices and procedures that contribute to the timely construction of water supply assets that comply with the Guidance and allow Water Companies to fulfil their statutory duty under S37 WIA.

3.3 The decision on whether to accept any Change Proposal shall be for Ofwat to make in accordance with the Code.

3.4 In carrying out its functions the Panel shall:

- 3.4.1 act in an independent, impartial and transparent manner, and in accordance with the Code;
- 3.4.2 take into account the Code's purposes, as set out in paragraph 1.2.2 of the Code, including, in particular, the purpose of enabling effective competition in the provision of new connections; and
- 3.4.3 where possible, encourage the removal of local practices where this can be shown to be of benefit to Customers.

#### 4. **DUTIES OF THE PANEL**

- 4.1 The Panel shall have the duty to:-
  - 4.1.1 arrange for the appointment of Members (save for initial appointments which shall be the responsibility of Water UK);
  - 4.1.2 develop a budget for its activities in accordance with paragraph 2 of Appendix 1;
  - 4.1.3 obtain insurance in respect of such liabilities relating to its activities as it shall consider appropriate;
  - 4.1.4 arrange for the publication via the Website of its proceedings, including all Change Proposals, deliberations of the Panel and decisions on Change Proposals.

#### 5. **POWERS OF THE PANEL**

- 5.1 The Panel shall have the power to:
  - 5.1.1 appoint, remunerate and remove the Secretariat and set out the working procedures, roles and responsibilities of the Secretariat;
  - 5.1.2 appoint, remunerate and remove any professional advisers
  - 5.1.3 constitute working groups from among its members to which it may delegate any of its duties and powers under these Terms of Reference;
  - 5.1.4 amend the Operational Terms, subject to the requirements of the Code;
  - 5.1.5 do anything else reasonably necessary for or incidental to the discharge of its function.

#### 6. **SECRETARIAT**

- 6.1 The Secretariat shall carry out the functions allocated to it under these Terms of Reference and its overriding objective shall be to ensure that the Panel operates effectively in accordance with these Terms of Reference.
- 6.2 The Panel may from time to time adopt a more comprehensive set of rules governing the constitution and role of the Secretariat.

**7. APPOINTMENT OF CHAIR**

The chair of the Panel shall be appointed by the Panel save for the first such appointment which will be made by Water UK. Further details regarding such appointment are in Appendix 1.

**8. MEMBERSHIP OF THE PANEL**

**Composition**

- 8.1 The Panel shall consist of ten Members and a Chair.
- 8.2 The Members shall comprise five individuals nominated by Water Companies and five nominated by Customers.
- 8.3 Of the five Members nominated by Customers, three shall represent Self-Lay Providers (Self-Lay Members) and two Developers (Developer Members).
- 8.4 In an advisory capacity only and without voting rights, a representative from Water Industry Recognition Scheme (or any additional or replacement sector-recognised accreditation scheme) shall be invited to attend meetings of the Panel. Such person shall be the "Scheme Representative".
- 8.5 Observers may from time to time be invited to attend meetings of the Panel as the Panel may determine and subject to such conditions as to speaking as may be determined by the Panel;
- 8.6 The appointment and removal of Members shall be dealt with in accordance with the rules set out below.
- 8.7 The Secretariat shall seek nominations from among Eligible SLP Customers for the position of Self-Lay Members and shall arrange for a vote of Eligible SLP Customers to elect three nominees to the Panel.
- 8.8 In relation to Developer Members, the Secretariat shall seek nominations from the Home Builders Federation or House Builders Association for those positions.
- 8.9 Representatives of Water Companies shall be nominated by Water UK.
- 8.10 Those individuals chosen by Water UK from among SLP and Developer Customers and from Water Companies before the date on which these terms of reference come into effect shall be considered to be duly appointed Members and shall be subject to these terms in all respects.
- 8.11 Individuals appointed to the Panel under this Clause 8 shall be employed by a Water Company or Customer as the case may be and shall have the requisite skills and experience to fulfil the role of Member.
- 8.12 If the operation of the above procedure fails to secure the appointment of sufficient Members in any of the three categories of Member, the Secretariat shall take such steps as it thinks fit to secure suitable appointees for the vacancy in question.

8.13 Panel Members appointed in accordance with this clause 8 shall be appointed for a fixed term not exceeding two (2) years and shall be eligible for re-appointment following expiry of their initial or any subsequent term.

8.14 A person shall cease to hold office as a Panel Member if:

- (a) he or she resigns office by notice delivered to the Secretariat; or
- (b) the Panel resolves that he or she should cease to hold office;
- (c) in respect of Water Company representatives, Water UK so notifies the Secretariat; or
- (d) they are, for any reason or change of circumstance, no longer able to act in accordance with the requirements of this clause 8;

and upon any person ceasing to hold office as a Member a new Member shall be nominated as appropriate in accordance with this clause 8. Once nominated a new Member shall take office with immediate effect.

8.15 The circumstances in which the Panel may resolve that a person shall cease to hold office include where:

- a) he or she shall cease to be employed by a Water Company or Customer as the case may be;
- b) he or she is absent for more than three meetings in any twelve-month period (unless prevented from attending on any occasion by exceptional circumstances);
- c) he or she acts in a way that would or would be likely to bring the Panel or the operation of the Water Sector Guidance into disrepute or otherwise affect adversely the reputation of the Panel.

8.16 Members may by writing to the Chair appoint an alternate person to represent them at up to two meetings of the Panel in any calendar year.

8.17 Such alternates may attend and exercise and discharge all the functions, powers and duties of his/her appointor at the relevant meeting or meetings of the Panel.

8.18 Members may by notice in writing to the Chair remove or replace their then nominated alternate.

8.19 References in these Terms of Reference to a Member shall be construed as including a reference to that Member's alternate.

### **Role of Members**

8.20 A person appointed as a Member, when acting in that capacity:

- (a) shall act impartially, in the best interests of the market as a whole and shall be guided by the aim set out in clause 3.2;

- (b) shall not be representative of and shall act without regard to the particular interests of the body or person by whom he or she was nominated to be a Member.

8.21 A person shall not be appointed as a Member unless he or she shall have first confirmed in writing to the Secretariat that they agree to act as a Member in accordance with and acknowledges the requirements of clause 8.20 and have provided to the Secretariat a letter from their employer agreeing that they may act as a Member and that the requirements in this clause shall prevail over his duties as an employee

8.22 A person elected as a Member shall notify the Secretariat in writing where they cease to be employed by the employer by whom they were employed at the date of their appointment or any change of role which affects their ability to act in accordance with clause 8.20.

## 9 PROCEDURES

9.1 Each Member shall be entitled to attend, and to speak and vote at, every meeting of the Panel.

9.2 At its meetings, the Panel shall consider what necessary or beneficial changes are needed to the Water Sector Guidance and Model Water Adoption Agreement in response to any written Change Proposals that it receives and make recommendations to Ofwat in accordance with the requirements of the Code.

9.3 Prior to considering any Change Proposal at a meeting, and other than in a case of urgency as certified by the Chair, the Panel shall at least 15 Business Days ahead of such meeting:

- a) have published the same on the Website; and
- b) have notified such interested parties as it considers appropriate of the Change Proposal, including Customers, Water Companies and relevant regulatory bodies.

9.4 At its meetings, the Panel shall take into account comments received pursuant to such publication and notification.

9.5 The Panel shall assess all Change Proposals in terms of: (i) the need for the change, for example, is it a service improvement or is it needed to address a particular issue; (ii) consistency with the principles and objectives of the Code, and any relevant statutory or regulatory requirements; and (iii) the impact of the change (be it positive and/or negative) on Customers and on Water Companies.

9.6 In considering how to deal with any Change Proposals, the Panel shall:

- a) consider how much notice Customers and Water Companies may reasonably require to be able to meet any new requirements, which may not be less than 20 Business Days;

- b) ensure that changes do not have retrospective effect;
- c) have regard to Information Notices, orders and determinations issued by Ofwat, and consider whether consequential amendments to the Water Sector Guidance and Model Water Adoption Agreement are required as a result.

## **10 CONTENT OF RECOMMENDATIONS**

- 10.1 Each recommendation shall set out in writing the following:
- a) what the recommended change is and the area that the recommended change will affect;
  - b) whether the change has been assessed in terms of whether, and if so, how the change has been assessed in terms of meeting the requirements set out in paragraph 3.9.1 (b) of the Code;
  - c) whether interested parties including Customers have been consulted, providing examples to evidence this;
  - d) whether changes should or should not be made to the Water Sector Guidance or the Model Water Adoption Agreement and the reasons why changes should or should not be made;
  - e) a suggestion of when recommended changes should be effective from;
  - f) whether the recommendation reflects consensus of opinion of Members.
- 10.2 where the recommendation does not reflect consensus of opinion the Panel must set out the differing views of its members and the reasons for following one view over an alternative view.

## **11 SUBMISSION OF RECOMMENDATIONS**

- 11.1 All recommendations shall be submitted to Ofwat no later than three calendar months after the relevant Change Proposal has been published under clause 9.3 (a).
- 11.2 All such submitted recommendations shall also be published by the Panel on the Website.
- 11.3 The Panel shall also publish on the Website details of all changes approved by Ofwat pursuant to the Code



## **12 AMENDMENTS TO THESE TERMS OF REFERENCE**

- 12.1 The Panel may, subject to the consent of Ofwat, propose amendments to these Terms of Reference from time to time where necessary or desirable for the purposes of fulfilling its functions under the Code.
- 12.2 Changes to Appendix 1 may be made by the Panel from time to time under the voting procedures set out in that appendix without the consent of Ofwat, subject to compliance with the Code.

Appendix 1

**1 FEES AND EXPENSES**

- 1.1 The Chair shall be entitled to reasonable remuneration for their services on or in connection with the Panel. For the avoidance of doubt, no other Members shall be entitled to remuneration for their services on or in connection with the Panel.
- 1.2 Each Member and the Chair shall be entitled to all documented travelling and other expenses properly incurred by him or her in connection with his or her attendance at a meeting of the Panel or otherwise in connection with the discharge of his or her duties as a Member or Chair as the case may be.
- 1.3 Any remuneration to be paid in accordance with paragraphs 1.1 and 1.2 shall be paid by Water UK.

**2 BUDGET**

The budget for the Panel shall be prepared for the first year of its operation by Water UK and for subsequent years shall be proposed by the Panel to Water UK, acting on the advice of the Secretariat, no less than 90 days before the date on which Water UK decides on its budget. Currently, therefore, a budget proposal would need to be submitted by no later than 31 December in each year.

**3 OPERATION OF THE PANEL**

**Chairing arrangements**

- 3.1 The role of the Chair shall be to secure that the Panel operates in accordance with the requirements of the Code and the Terms of Reference.
- 3.2 The Chair shall have a casting vote in case of deadlock.
- 3.3 If the Chair is unable to attend a meeting a deputy chairperson shall be appointed to chair the meeting in question by majority vote of those present at the meeting of the Panel and shall have the powers of the Chair.
- 3.4 The appointment shall be advertised publicly in appropriate media and the Secretariat shall arrange for a shortlist of suitably qualified candidates to be interviewed by a panel of Water Companies and Customers. The Secretariat shall use all reasonable endeavours to secure a balanced appointment panel between Water Companies and Customers.
- 3.5 The person selected as Chair shall be the person who in the reasonable opinion of the selection panel best fulfils the following criteria:
- 3.5.1 demonstrable chairing skills;
  - 3.5.2 independence;

3.5.3 understanding of or ability quickly to understand the objectives of the Code and Panel

3.6 The individual selected by Water UK as Chair before the date on which these terms of reference come into effect shall be considered to be the duly appointed Chair and shall be subject to these terms in all respects.

### **Transparency of operation**

3.7 Unless otherwise decided by the Panel, all of its meetings shall be open to the public.

3.8 The Secretariat shall arrange for all Panel meetings to be advertised on the Website on or immediately after the day on which any meeting is convened.

### **Convening meetings**

3.9 Any meeting of the Panel shall be convened by the Secretariat in one of the following ways:

3.9.1 By giving notice to each Member and any alternate appointed in accordance with clause 8.16, setting out the date, time and place of the meeting and (unless the Panel has otherwise decided) giving at least 20 Business Days' notice of the meeting and accompanied by an agenda and such supporting papers as are necessary.

3.9.2 Where the Secretariat with the agreement of the Chair is of the reasonable opinion that an urgent meeting is required to consider any Change Proposal, (and the business of that meeting is capable of being transacted in accordance with clause paragraph 3.15), the notice period required in paragraph 3.9.1 shall be waived

3.10 With the consent of all Members and the Chair the requirements of paragraph 3.9.1 may be waived or modified,

3.11 Meetings shall be convened no less than once every six months, and unless otherwise agreed by the Panel, shall be convened every three months during the first year in which the Panel is in operation.

3.12 A meeting of the Panel may consist of a conference between Members who are not all in one place, but who are able to speak to each of the others and to be heard by each of the others simultaneously. A Member taking part in such a conference or telephone call shall be deemed to be present in person at the meeting and shall be entitled to vote and be counted in the quorum accordingly. In this case there is no requirement that the Members are in England or Wales as the case may be.

3.13 Where a Member has an interest, direct or indirect, in any actual or proposed matter which conflicts with the interests of the Panel or where a Member becomes aware that an entity for which he or she works or provides services (or an affiliate of such an entity) has such an interest, that Member shall declare such conflict to the Panel. The fact that a Member works for a Water Company or Customer shall not, by itself, constitute a conflict required to be declared to the Panel under this clause.

- 3.14** The Panel shall, in the event of any conflict of interest being declared by a Member at a meeting of the Panel, decide the most appropriate course of action and in doing so, will be guided by the purposes of the Code.

**Decision making**

- 3.15 No business shall be transacted at any meeting of the Panel unless a quorum is present at the meeting. The quorum for a meeting shall be six Members, including no less than two appointees from Water Companies, two from SLP Customers and one from a Developer Customer, each of whom must be entitled to vote at that meeting.
- 3.16 At any meeting of the Panel any matter to be decided shall be put to a vote of Members upon the request of any Member.
- 3.17 Any matter to be decided by a vote shall be decided by:
- (a) A unanimous vote of those votes cast at the meeting by Panel Members (and an abstention shall not be counted as a cast vote); or
  - (b) Being voted for by a Qualifying Majority.
- 3.18 For the purposes of paragraph 3.17, a "Qualifying Majority" shall be not less than a majority of votes cast either in person or in writing provided that such majority includes at least two Water Company, two Self-Lay and one Developer Member.
- 3.19 A resolution in writing signed by or on behalf of all of the Members entitled to vote in respect of the matter which is the subject of the resolution shall be valid and effectual as if it had been passed at a duly convened and quorate meeting of the Panel and such an instrument may consist of several instruments in like form each signed by or on behalf of one or more of the Members.

**Procedures**

- 3.20 Minutes of meetings of the Panel shall be taken and published on the Website within one calendar month of the relevant meeting.
- 3.21 Only the Chair shall comment publicly on deliberations and decisions of the Panel.
- 3.22 The Panel may from time to time set out requirements that Change Proposals must meet with a view to ensuring that it has adequate information to allow proper consideration of the content of such Change Proposals.