

1 October 2021

[www.water.org.uk](http://www.water.org.uk)

## 1. Introduction

- 1.1. Water UK is the representative body and policy organisation for water and wastewater service providers across the UK. We welcome the opportunity to comment on the consultation on Reforming Competition and Consumer Policy.
- 1.2. We support the broad aims of the consultation of ensuring that free, open and competitive markets with high consumer standards drive growth, innovation and productivity, although many aspects of the consultation may be more immediately relevant to other sectors given the particular nature of the water industry as a highly regulated infrastructure sector providing an essential public service.

## 2. Retaining merits-based appeals against regulatory price determinations

- 2.1. We are though conscious that the thinking in the consultation derives from a number of sources, including proposals made in February 2019 by Lord Tyrie<sup>1</sup>, in his role at the time as chair of the CMA, to reform the competition and consumer protection regimes of the CMA.
- 2.2. These proposals were wide ranging, and we supported their overall aim of safeguarding the interests of consumers and maintaining and improving public confidence in markets.
- 2.3. We were however concerned about the unintended consequences of one specific aspect of Lord Tyrie's proposals; while this has not been taken forward in the current consultation, we would like to take this opportunity to reiterate our concerns.
- 2.4. The aspect of concern was Lord Tyrie's suggestion that the existing role the Competition and Markets Authority (CMA) plays in relation to appeals against regulatory price review determinations could instead be fulfilled by the courts.

---

<sup>1</sup>

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/781151/Letter from Andrew Tyrie to the Secretary of State BEIS.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/781151/Letter_from_Andrew_Tyrie_to_the_Secretary_of_State_BEIS.pdf)

- 2.5. Regulatory price reviews are extremely complex processes that require regulators to make a series of detailed economic assessments before coming to a view on the right level at which firms should be setting prices to meet the needs of customers and the environment over the short and longer term.
- 2.6. To do justice to the issues at hand, any appeals against a price review determination need to be considered by an expert economic appellate body, and the existence of an appeal route to an expert body is an essential element of the system of independent economic regulation in the UK. Even if not used, its existence serves to incentivise regulators to focus on a high-quality evidence-based approach to price reviews.
- 2.7. The complexity of the issues involved, and the importance of an expert body carrying out a merits-based reconsideration of these issues, have recently been demonstrated by the CMA's redeterminations for four water companies<sup>2</sup>.
- 2.8. Furthermore, the existing merits-based appeal route to the CMA is highly valued by investors in utility sectors. The Government wishes to encourage a wide base of investors to the UK to meet the multibillion-pound challenge of delivering much needed new infrastructure and the effective maintenance of existing assets.
- 2.9. Removing the current appeal route and replacing it with a narrow judicial review type appeal to a court would undermine the confidence investors have in the UK system of regulation and could threaten the availability of low-cost investment in the future.
- 2.10. For these reasons, we are pleased to note that the consultation does not propose to change the basis, nature or institutions involved in regulatory price review determinations, and we continue to urge caution in this respect to avoid unintended consequences.

---

<sup>2</sup> <https://www.gov.uk/cma-cases/ofwat-price-determinations>