

27 October 2020



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By email to: [waterdetermination2020@cma.gov.uk](mailto:waterdetermination2020@cma.gov.uk)

Dear Kip,

**Anglian Water Services Limited, Bristol Water plc, Northumbrian Water Limited and Yorkshire Water Services Limited price determinations: Provisional Findings**

We are writing in response to the CMA's provisional findings to highlight that, while we are not as close as the CMA and some regulators to the detail on the circumstances and issues specific to the water sector appeals, we support and share the main concerns highlighted in the UKRN's response around the cost of capital in the provisional findings.

We strongly support the CMA's role as an independent regulatory appeals body and understand that the comfort for investors from an independent appeals process provides needed services and investment at a better value for money in the interest of consumers. We also recognise the challenges that the CMA faces in undertaking this role given the short timeframes, increasing complexity of the issues and broader evidence available, which create challenges in terms of consistency and learning from experience.

All these issues are particularly acute in terms of those inquiries (such as those currently underway in the water sector) that require the full redetermination of a price control. In such circumstances the CMA is required to give broad consideration to the price control proposals in line with the duties provided by the relevant statute, rather than arbitrate between the position of the regulator and licensee, or consider an appeal on a specific aspect of a regulatory determination.

In the light of these challenges and issues, the CMA's consultation on its recent interim determinations in the water sector is especially important. We would strongly encourage the CMA to commit the time and resources to giving full and careful consideration to the issues raised by respondents and to properly consider a wide range of evidence in reaching decisions on those matters where the precedent will have wider ranging significance, including in relation to the cost of capital. It will also be important for the CMA to fully and robustly explain and justify its decisions, particularly where its decisions create important cross-sector precedent.

For instance, it is not straightforward to understand the evolution in the CMA's thinking and position on issues such as the 'aiming up' on the cost of equity, the risk-free rate and estimates of expected total market returns. These are aspects of policy that are of importance across a number of sectors and the CMA will best meet the challenges of being a world-class regulatory appeals body by clearly articulating how and why its position on these matters has changed since the CMA's final determination for NERL.

The CMA should also ensure it has considered a sufficiently wide range of information on issues such as 'aiming-up' as, while there will be sector specific issues to address, more broadly there is evidence of relatively high levels of investment since privatisation and relatively rapid increases in regulatory asset bases over time, rather than a lack of investment. Clearly and robustly articulating the CMA's position on these issues and how it reached this position would contribute significantly to the success of the appeals system in the UK by increasing transparency and providing a clear view on how this important precedent should be considered in future regulatory determinations.

Looking beyond the current set of regulatory appeals in the water sector, the CMA may also wish to consider whether its processes and approach to price control determinations (and redeterminations in particular) should be reviewed to try and identify opportunities for them to be strengthened and made more robust, while also taking account of the constraints provided by the statutes that govern the CMA's discharge of its various functions.

Yours sincerely,

A solid black rectangular box used to redact the signature of Paul Smith.

**Paul Smith**  
**Group Director of Consumer and Markets**