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Dear Jakub,

Consultation on Draft Terms of Reference for Customer Challenge Group and draft Business Plan Guidance

Thank you for the opportunity to respond to this consultation.

[Redacted]

We have engaged with Ofgem's review of DCC's regulatory model because we share Ofgem's concerns about the performance of the existing DCC under the existing model; and because DCC's role is critical to the success of MHHS delivering consumer benefits and progress towards Net Zero.

We agree that the Customer Challenge Group Terms of Reference and Business Plan Guidance are well written and largely acceptable, save for the comments in our response below.

I would however highlight the potential risks associated with the outgoing licensee's producing the Business Plan and Price Control Information on which Ofgem will assess the Successor Licensee's Allowed Revenue. [Redacted] are concerned with the potential for inadequate information being presented and the consequent impact on costs and service delivery. We suggest that Ofgem build into their Allowed Revenue calculation for the first Price Control Period some retained margin available to Ofgem to split between the licensees (or return to customers), determined ex-post, to provide an incentive to the outgoing licensee to submit high quality Business Plan and Price Control Information.

We would also like to see scrutiny of any material changes to terms of employment or contract terms made by the current licensee before the Transfer Date to reduce the risk of gerrymandering.

We have responded at Appendix 1 to your detailed analysis.

I hope these comments are helpful. Please do not hesitate to contact me or [redacted] if you would like to follow up on any particular aspect of our response.

Yours sincerely,

[Redacted]

Appendix 1 – [Redacted] detailed responses to each of the consultation questions

The following table includes our views on the consultation:

Draft Terms of Reference for the Customer Challenge Group	
Question 1	Do the Terms of Reference provide a clear description of the role, membership, operations and outputs of the Customer Challenge Group?
<p>Yes but [redacted] believe there is an opportunity to increase the value from the CCG by expanding the objectives as noted below.</p> <p>[Redacted] are pleased to see at 2.1(c) that the Objectives include “Monitor DCC’s delivery of the Business Plan approved by the Authority” and the reference at 3.28 to quarterly monitoring meetings. This is because an effective challenge of delivery performance requires the retained ‘corporate memory’ of those engaged in the business plan review to be brought to bear on the routine challenge of periodic cost and performance reporting.</p> <p>In addition to the objectives stated, the CCG could make a significant contribution to areas of DCC oversight adjacent to the business planning cycle. Expanding on our response to Question 12 of Ofgem’s Allowed Revenue consultation [redacted] believes the following could be added as CCG Objectives:</p> <ul style="list-style-type: none"> - “Provide a view on proposed DCC personnel performance targets.” <ul style="list-style-type: none"> o Under the not-for-profit model Ofgem acknowledge that personal performance targets will be key to incentivise the right activities. Having reviewed and made recommendations on the Business Plan, CCG could usefully recommend those performance targets required to deliver the Business Plan. For the avoidance of doubt this is not to be involved with personal performance management, merely to set some of measures required. - “Provide a view on proposed Mechanism changes to the Allowed Revenue Model.” <ul style="list-style-type: none"> o Changes to the licence model could in future include such as setting of “stretch efficiency targets” or changes to uncertainty mechanisms. These will impact on the Business Plan delivery in ways that CCG membership should be well-placed to advise. - Review and make recommendations on proposed Customer Satisfaction Survey. <ul style="list-style-type: none"> o CCG should be given the opportunity to make observations and recommendations to the Authority on DCC’s proposed survey questions, process and scope. <p>To this point, we refer you to our responses to Questions 12, 14 and 15 of the Engagement section of the February 2025 Consultation on DCC review: Phase 2 – Process for determination of Allowed Revenue in which we outlined the opportunities available to the industry of implementing a wider scope for CCG.</p> <p>We also note that at paragraph 5.2 in the Decision to this consultation, published on 9 May 2025, Ofgem stated “customer engagement will be crucial to ensure DCC’s forecasts are transparently agreed upon ahead of costs being incurred”. [Redacted] wish to clarify that such forecasts are not only the subject of annual Business Plans, but will also be required during the course of a year, both for existing operations or projects and new proposals. For this reason [redacted] believe the scope of the ToR should encompass formal quarterly review by CCG of Business Plan and other forecasts. This could be met within the scope of the objective at 2.1(c).</p>	
Question 2	Do you have any views on the draft text of the Terms of Reference?
<p>[Redacted] believe the following amendments could usefully be made to the Terms of Reference:</p> <ul style="list-style-type: none"> • The suggested additional objectives above. • Expand on the Terms of Reference to include engagement on, and reporting of, forecasts for existing operation, projects and also proposed new activity. 	

<ul style="list-style-type: none"> • Reference the Ofgem representative role at 3.22, [redacted] note that this is contrary to common practice in modification working groups and Panels in which the Ofgem rep will often provide clarifications to the group, either immediately or by an action to return with a response. [Redacted] consider this to be very helpful guidance and suggest that the point at 3.22 is aligned with this custom and practice. • Include a reference to the voting arrangements, for example if a vote is passed by a majority of votes cast or by a majority of votes that could be cast i.e. by reference to the number of voting attendees at the particular meeting. • [Redacted] suggest that the CCG is obliged to record the rationale for both the majority and the dissenting minority voting. 	
Question 3	What, if anything, is missing from the draft Terms of Reference?
<p>⇒ CCG engagement to review and agree DCC's forecasts ahead of costs being incurred, intra-year. Likely quarterly.</p> <p>⇒ Those items referred in Q1 & Q2 above</p>	
General Feedback (section 1.5)	a) Do you have any comments about the overall quality of this guidance? It covers what would be expected
	b) Do you have any comments about its tone and content? No
	c) Was it easy to read and understand? Or could it have been better written? It was fine to read and comprehensible.
	d) Any further comments? No
Draft Business Plan Guidance	
Question 4	Does the draft Business Plan Guidance provide a clear description of the cost control process?
<p>[Redacted] believe that the process outlined seems generally reasonable.</p> <p>However specifically we have some quite concerns about controls to ensure the outgoing licensee does not purposefully, or indeed unintentionally, provide inadequate information for Ofgem's assessment of the Allowed Revenue of the Successor Licensee.</p>	
Question 5	Does the draft Business Plan Guidance provide clear expectations on the evidence required from the Licensee and the principles that Ofgem will apply in assessing the Licensee's Cost Control submission?
<p>Yes, but [redacted] consider these expectations, and the assessment principles may not alone be adequate to incentivise complete and accurate submission (see response to Q4).</p> <p>[Redacted] suggest that some form of retainer-mechanism is used to hook the existing Licensee into the quality of their submitted Business Plan and Price Control Information.</p> <p>That could comprise some or all of the following elements:</p> <ul style="list-style-type: none"> - an extension to their licence to coincide with the end of the Successor Licensee's First Price Control period on 31 March 2028. 	

- A gain-share mechanism that provides incentive on both parties to control costs and is dependent on meeting performance metrics. This could be finalised at the close of the first Price Control Period.
- An Allowed Revenue mechanism that retains some margin available to Ofgem to disburse between the outgoing and incoming licensee as incentive payments (or return to customers in the following price control period as appropriate)
- Public reporting on the adequacy / quality of the Business Plan and Price Control Information submission and the extent to which they positively assisted with appropriate Allowed Revenue assessment. The reputational consequences would act as a strong incentive on the outgoing Licensee to deliver adequate Business Plan and Price Control Information
- Requirement on the outgoing Licensee to warrant that the business they are handing over is a going concern
- Regarding TUPE of key staff and assignment of contracts, the outgoing licensee should be prevented from materially altering either the terms of employment or contract terms prior to Transfer Date.

Question 6	Do you have any views on the draft text of the draft Business Plan Guidance?
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Refer comments elsewhere.

Question 7	What, if anything, is missing from the draft Business Plan Guidance?
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[Redacted] believe that controls to ensure the Licensee's submission is adequate need to be strengthened.

It is imperative that the Successor Licensee's Allowed Revenue is set with reference to the widest consideration of all factors affecting the cost and required quality of delivery, to avoid a situation where the Successor Licensee remains short of adequate funding.

We acknowledge that the proposed re-opener process could address such issues, but that has an overhead in terms of management distraction and potential service quality, pending outcome of the re-opener. It also potentially puts an incoming Successor Licensee in a stronger position than they should be in respect of their claim.

[Redacted] believe it would be appropriate for Ofgem to build into the Allowed Revenue (for this first Price Control Period only) some margin available to Ofgem to disburse between the outgoing and incoming licensee as incentive payments (or return to customers in the following price control period as appropriate)