

WORSHIPFUL COMPANY OF WATER CONSERVATORS

RESPONSE TO THE DEPARTMENT OF BUSINESS AND TRADE CONSULTATION ON SMARTER REGULATION: STRENGTHENING THE ECONOMIC REGULATION OF THE ENERGY, WATER AND TELECOMS SECTORS

3rd JANUARY 2024

PROLOGUE

1 The Worshipful Company of Water Conservators ('WCWC') is a City of London Livery Company focussed on the long-term health of our water resources and the broader environment. Our members include senior professionals from water, environmental and related industries and regulators, along with others who share our concern for water and the environment. Our experience and knowledge ranges from the complexities of environmental sciences, through the application of engineering to deliver the goals identified by those sciences, and the subsequent management of the assets created. The WCWC's purpose is *promoting a diverse and sustainable environment*.

2 The WCWC is responding to the consultation by the Department of Business and Trade (DBT) because of its professional roles in water and climate change policy, mitigation and adaptation. It is a member of the City of London Livery Climate Action Group. Its principal interest is in contributing on the effectiveness of regulators in impacting on the water and environment sector. The WCWC is pleased to have had the opportunity to respond to the consultation and looks forward to being able to make further inputs as requested in the future.

This consultation

3 The DBT Economic Regulation unit has published this consultation on the economic regulation of the utilities sector.

<https://assets.publishing.service.gov.uk/media/655dee93d03a8d000d07fe75/strengthening-the-economic-regulation-of-the-energy-water-and-telecoms-sectors.pdf>

"The consultation focuses on a specific set of proposals that target issues raised across these areas:

- *growth (WCWC: this means economic growth)*
- *competition*
- *consumers*
- *duties*
- *appeals*

It seeks views on proposals that can:

- *improve the economic regulatory environment*
- *increase investment and growth*

- *promote competition*
- *provide support to consumers*
- *bolster the appeals regime”*

4 It is part of a wider set of reforms seeking to improve economic regulation. It is complementary to the parallel consultations:

- by the Smarter Regulation Unit on the revised statutory guidance to assist regulators in fulfilling their responsibilities under the growth duty; and

<https://assets.publishing.service.gov.uk/media/655e18c45395a900124635f1/consultation-on-the-growth-duty-draft-statutory-guidance.pdf>

- by the Smarter Regulation Unit ... the ‘Smarter Regulation Call for Evidence on the regulatory landscape’, where any responses relating to Ofgem, Ofwat and Ofcom will be considered alongside responses to this consultation.

<https://www.gov.uk/government/calls-for-evidence/smarter-regulation-and-the-regulatory-landscape>

The Brexit Opportunities Unit is also involved.

5 The two consultations and the call for evidence have been issued separately and on examination are detailed facets of the same narrative and perhaps could have been better co-ordinated. **The WCWC has decided to respond to the two consultations and the call for evidence as a set but in a way which enables each response to stand alone.** The responses are informed by the experiences of members of WCWC who have worked in and with regulators, principally Ofwat, the Environment Agency (EA) Natural England (NE) and Natural Resources Wales (NRW) in the context of the consultation. But in the context of the regulatory landscape, experience of working with the Drinking Water Inspectorate is included. **The insights provided on the broader landscape may be of some assistance in evaluating regulators in other sectors.**

SUMMARY

6 This response is focussed on water service delivery. The generation of these co-ordinated responses has presented a challenge in setting out headline points in context. Key suggestions and observations are highlighted here in red to stand out, but are explored further in the following text.

7 The delivery of a sustainable water environment supported by effective water services extends beyond the economic regulators, and, for example, the contributions of the EA and NE to water management are very different to that of Ofwat. Water is unique in having environmental regulators and an economic regulator sharing the front line in a high-profile sector. The roles of the EA and NE will have as much impact as that of Ofwat in post Brexit onshoring, as the WCWC has pointed out. This consultation has a focus on Ofwat (along with Ofgem and Ofcom) but cannot be considered in isolation with respect to water (the consultation on guidance on Growth Duty will eventually include all the water regulators (when Ofwat is added).

8 The WCWC suggests that the uniqueness of such a high profile requires a further integration of all regulatory roles in the water sector articulating the harmonised

responsibilities of the regulators. So, what is envisaged for Ofwat in this consultation should be part of that. This is needed urgently and, for example, should provide joint guidance on growth from DBT and Defra as advocated in the submission by the WCWC on the growth duty of utility regulators. It is justified by the magnitude of the investments needed.

9 The WCWC reiterates that the missing pieces of this mosaic of consultations are references to the impacts of planning and development control by local authorities and so the Department of Levelling Up, Housing and Communities (DLUHC) should be involved as well. In spite of good intentions by water companies and by Ofwat, planning restrictions can hinder major projects as the controversies on major water supply and storage schemes demonstrate. If the DBT agrees with the suggestion of an overview of the relationship of growth and the environment, the WCWC suggests that the DLUHC should also be involved in order to issue revisions to the planning framework.

10 The WCWC understands that there are proposals for smarter economic regulation common to the three utility sectors and that it is convenient for DBT, and makes common sense, to articulate these together in single statutory guidance. The WCWC supports the proposals and urges that these will be applicable however the integrated approach is packaged. It comments on some of these.

11 Smart economic regulation by Ofwat must not be seen as an end in its own right, it must be part of a strategy meeting defined wider goals such as sustainable water services and environment. In the case of water management, it must form part of a national water strategy advocated previously by the WCWC. In the parallel submission on growth, the WCWC provides greater insights on the implications of this as part of smarter regulation. Growth should be a goal which includes happiness, wellbeing, fulfilment, etc. rather than just financial measurements. The WCWC suggests that there has not been sufficient consensus on what the overall role of water is in this balance and this highlights the suggestion that it would be useful if water management was separated out from the debates about all utility regulators.

12 The WCWC suggests that the best way of strengthening the role of Ofwat in economic regulation is to place it in the context of a national water strategy and to make it smarter by an urgent review of the price setting processes to reflect over thirty years of experience. The WCWC suggests that smart regulation of water must therefore include:

- A simpler, clearer ‘line of sight’ between the source of investment and the practical application of that investment with optimum return to investors and fair charges to customers. This must form part of the economic regulatory process.
- Integration of all the growth duties of all the regulators in the water sector, with separate guidance.
- Closer working of all relevant government departments and Defra arms-length bodies.
- A reduction of fragmentation of policy and practice
- Creation of a national consensus on water.

- A ‘once in a life time’ review of the price review and determination processes probably ready for 2029, implementing the lessons of almost 35 years of experience and acceptance of the economic and financial consequences of all the current demands for improvements to water services. This would embrace the principles of smart regulation.
- Attention to many specific issues which need resolution; this submission provides many insights but draws attention to the very high profile of the regulation of connections of foul and surface waters to sewers; it supports the proposed implementation of the Schedule 3 of the Flood and Water Act 2010 and suggests a review of S 106 of the Water Industry Act 1991. It looks forward to contributing to further consultations on these matters.
- Economic growth being environmentally sustainable.
- In the simplest of descriptions, the guidance for an integrated growth duty for all water regulators (emerging from one consultation) contributes in part to the strengthening of the role of Ofwat (the other consultation) which is part of a smarter regulatory landscape for all water regulators (emerging from the call for evidence) as expressed through a national water strategy.

13 The WCWC understands that smarter regulation should be as simple as possible, understandable, but focussed. It is the UK government’s programme to reduce burdens on businesses and promote innovation and growth

Smarter regulation - GOV.UK (www.gov.uk)

This means only using regulation where necessary, and ensuring its design and use is both proportionate and future-proof. It is led by the DBT and has three pillars:

- Reforming existing regulations to minimise regulatory burden and ensure our regulations are contemporary and forward looking. This includes reforms to both retained EU law (REUL) and wider domestic regulation.
- Making regulation a last resort, not a first choice. This includes making use of alternatives to regulation wherever beneficial.
- Ensuring a well-functioning regulatory landscape.

14 But in preparing this submission and examining the proposals, the WCWC suggests that the complexity of what is proposed, coupled with the complexity of water regulation does not necessarily meet the objectives of smart regulation. The syntax used can be obscure to most people. This strengthens the need for a clear standalone integrated national strategy for water, as advocated above, which embraces all the matters led by the DBT and Defra.

15 WCWC suggests that the balance in the consultation might be tilted too much towards the world of economics and finance. For example, the WCWC is not sure that there is sufficient understanding of the issues around asset provision, asset maintenance and asset operation in terms of quality compliance regulations and suggests the search for innovative finance and investment and the objective of competition must not compromise operational integrity (and explores this central issue in some depth in answering the questions). However, the WCWC

has set out its concerns about the extension of Ofwat's Direct Procurement for Customers (DPC) and Strategic Infrastructure Regulation 2013 Project (SIPR) concepts to include water and sewage treatment works, both have risks. It is concerned that increasing fragmentation of the delivery of water services would run counter to the integrated, holistic approaches advocated in the consultation.

16 At a time when there is so much scrutiny of the water sector, the approach to its management must be clear to all interested parties, but much of this consultation is couched in terms only comprehensible to the people most involved with the processes.

LANDSCAPE OF THE CONSULTATIONS

17 The WCWC comments that there is a substantial series of relevant recent and ongoing consultations. At the same time the House of Lords Industry and Regulators Committee called for evidence in its inquiry into independence and accountability of UK regulators <https://committees.parliament.uk/call-for-evidence/3260> to which the WCWC has responded. https://www.waterconservators.org/wp-content/uploads/HoL-Regulation-Dec-9-2023_2.pdf

18 This is not the first time that evidence has been collected on the water regulatory landscape.

19 As explained earlier, the DBT has already consulted on the extension of the growth duty, under the 2015 Deregulation Act, to Ofwat to which the WCWC has responded in August 2023 <https://www.waterconservators.org/wp-content/uploads/Ofwat-and-growth-09-08-2023.fin.pdf>

20 In June 2022 the House of Lords Industry and Regulators Committee held an inquiry into Ofwat powers <https://www.waterconservators.org/wp-content/uploads/H-of-Lords.pdf>

In March 2023 it published its report 'The affluent and the effluent: cleaning up failures in water and sewage regulation' <https://publications.parliament.uk/pa/ld5803/ldselect/ldindreg/166/16602.htm>

There was a follow up inquiry into Ofwat in the summer of 2023 with a final report in September 2023. The committee's main conclusions and recommendations were:

- *“The government and Ofwat must set “stretching targets” to reduce storm overflows across the water network.*
- *Ofwat and the Environment Agency “must go further” to hold water companies to account for environmental pollution through penalties and prosecution.*
- *Ofwat has “failed to ensure companies invest sufficiently” in water infrastructure, instead “choosing to keep bills low” at the expense of investment.*
- *Water companies have been “overly focused on maximising financial returns” at the expense of operational performance and protecting the environment.*
- *Ofwat should ensure that water company executives cannot receive substantial bonuses if their companies have missed performance and pollution targets.”*

<https://lordslibrary.parliament.uk/cleaning-up-failures-in-water-and-sewage-regulation-industry-and-regulators-committee-report>

21 There have been numerous consultations by Ofwat on the evolution of its role and powers to regulate the water industry, for example in putting customers first during November 2023 to which the WCWC has responded.

<https://www.waterconservators.org/wp-content/uploads/Ofwat-customer-first-a.pdf>

22 These consultations pose some complex questions which require detailed responses. The WCWC has contributed in several ways on the role of Ofwat and on regulation as set out in earlier paragraphs. It suggests that consideration needs to be given to the weight of consultation processes in order to avoid consultation fatigue. At the moment the processes seem fragmented. The issues of economic regulation in each sector -water, energy and telecoms -will be different but sharing some common principles. The role of Ofwat, which has featured more than that of the other arms-length bodies in Defra is much more intimately involved with the role of the EA and NE. The WCWC suggests below that it would be more effective to bring the fragmented elements on water regulation together, including the role of water in growth, and separate this out from the regulation of energy and telecoms.

23 The fragmentation of consultation reflects the fragmentation of policy making and practice in water management regulation. The WCWC has advocated the introduction of an integrated national water strategy which would overarch all the contributions of the regulators including those for the environment, which paradoxically have a growth duty at present whilst Ofwat does not, for example (planned to be added by the DBT). Indeed, not only should such an approach bring together all the arms-length bodies in the water sector, but it should bring together relevant government departments such as DBT (including the different units within the Smarter Regulation Directorate) and Defra.

24 The DBT wishes to have specific examples. As this submission is being prepared, the media has many observations and articles on the effects of storm water and sewage connections to public sewers. Some with musing about the historical inheritance of combined sewers, these have been triggered by the completion of the programme of installation of overflow event duration monitors at the end of 2023

25 In the submission on the Proposal for Statutory Guidance on the Duty of Growth, the WCWC suggests that the duties of all prescribed regulators should be brought together to produce a sustainable integrated driver for a surgent economy and draws attention to the fact that there are bodies not yet prescribed which will impact on the role of water in growth of the economy. One group of such bodies are those which are likely to be Approving Bodies under the proposals for the implementation of Schedule 3 of the Flood and Water Act 2010. [Sustainable drainage systems review - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/sustainable-drainage-systems-review)

In this review, promising consultation in 2024, reference is made to SUDS (Sustainable Urban Drainage Systems) approving bodies (SABs), which being Local Authorities, are outside the scope of the Guidance of the Duty of Growth . Even so, the impact of their decisions will influence the roles of both Ofwat and the EA.

26 And is there is the allied issue of the rights of developers to connect to sewers under S106 of the Water Industry Act 1991. More detail is given on this issue in the Appendix para A4.

27 Thus in the context of integration, the WCWC suggests that any proposals on the future of S106 and on Schedule 3 of the Flood and Water Act 2010 be couched within the scope of the of the Growth Duties of at least Ofwat and the EA (this is discussed further in the Appendix).

Bringing all the parties together on a very high-profile national problem would be an excellent demonstration of the value of smart regulation.

28 The WCWC repeats that the missing pieces of this mosaic of consultations are references to the impacts of planning and development control by local authorities and by any intervention of the DLUHC. In spite of good intentions by water companies and by Ofwat planning restrictions can hinder major projects as the controversies on major water supply and storage schemes demonstrate.

KEY POINTS FOR THE ECONOMIC REGULATION TEAM IN THE DEPARTMENT

Integrated regulation is smarter

29 In short, the WCWC suggests that regulators should learn from the past, plan for the future, and act in the present. It is evident that the community at large is losing trust in regulations, regulators and the behaviour of regulated bodies. The WCWC observes, without comment, the focus on bodies in the water sector and other sectors, such as education, that building and maintaining trust in regulation is crucial, but in a way which avoids cynical ridicule.

30 The WCWC supports any initiative to make regulation smarter. It suggests, however, that in the sectors of interest to it, bringing the fragmented elements on water regulation together would be more effective, and separate this out from any like regulation of energy and telecoms. For example, issued as integrated guidance on the growth duty for water. The smartest regulation must be the simplest way of achieving objectives. In the simplest of descriptions, the guidance for an integrated growth duty for all water regulators (emerging from one consultation) contributes in part to the strengthening of the role of Ofwat (this consultation) which is part of a smarter regulatory landscape for all water regulators (emerging from the call for evidence) as expressed through a national water strategy.

31 Thus, the WCWC suggests that the best way of strengthening the role of Ofwat in economic regulation is to place it in the context of a national water strategy and to make it smarter by an urgent review of the price setting processes to reflect over thirty years of experience.

32 The consultation has some very detailed questions, but the WCWC submits that the context it has provided is a useful backdrop to interpret any detailed evidence submitted by other respondents. It does offer some high-level responses on some of the proposals in this consultation.

The price review process

33 The WCWC has found it challenging to answer the consultation without a detailed examination of the price review process and in particular the content and intent of the current price review process PR24. To do so would make this submission much longer. Other responses by the WCWC to consultations on Ofwat do provide more detail. To strengthen the economic regulation by Ofwat will require a review of the price review and determination processes and the benefits of that will not be achievable until PR 29. The WCWC reiterates its suggestion that the review should embrace the integrated approaches it has advocated as

set out above and in Appendix 1. However, as much as possible must be done in PR24 and the WCWC suggests that early agreements between Defra and its arms-length bodies will be of great benefit (but it may be too late. Key facts and data from water company plans - Ofwat).

34 This is set out in the response to the consultation on the growth duty for utility regulators. The WCWC has commented that after some thirty years of execution of the current role of Ofwat and the concomitant water company licence conditions, there should be major review to re-streamline the price review and determination processes, rather than the constant nibbling at the licences and price review and determination processes. It poses the question: 'is this the smartest way of managing the economic regulation processes at a time of very substantial increases for demands for investment, rising public expectations and intense media and political scrutiny?' This must involve the roles of the EA and NE, which this consultation specifically excludes; the EA and NE are covered by the current Guidance on the Growth Duty and by the call for evidence on the regulatory landscape. The roles of the EA and NE will have as much impact as that of Ofwat in post Brexit onshoring, as the WCWC has pointed out. Consideration should also be given to the role of the Office of Environment Protection.

35 Appendix 1 sets out the key features of what the WCWC submitted to the House of Lords in June 2022 on the factors which create complexity in delivering smarter economic regulation for water. There is the critical point that the complex practical physical world of asset delivery and operations and the world of finance have become separated and not addressed properly in the wider world, as recent events in Thames Water attest.

The two worlds of finance and operations

36 One world has been the financial markets, populated by issues like:

- Dividend, equity, debt, gearing, and financial engineering.
- The best or most effective way of raising money to invest – in bonds, share issues, in group loans, in external loans etc.
- It is often impatient, with a short-term outlook.

The other world has been water services engineering and operations populated by matters like:

- Capital asset engineering or operating solutions to real environmental problems.
- Operational efficiency.
- Customer service.
- Compliance with regulations.
- The impact of decisions on customer charges.

37 This latter is a world which demands patience. Even with the best will, changes involving operational capital in particular cannot be made overnight. But do they communicate effectively with each other? Between them lies economic regulation, involving matters such as: the weighted cost of capital, Regulatory Asset Value (RAV), return on capital, and natural capital. In these worlds, even the term ‘capital’ can mean subtly different things to different people.

38 The problems lie in the communication between these two worlds and that creates myths. Ofwat seeks to make a connection between these worlds. But the demands on water services, and the consequent costs, clash with the acceptability and affordability of rising water charges, which is at the heart of current debates on water regulation. For example, there does not seem to be a direct ‘line of sight’ between projects like the reduction of storm sewage and overflows and the impact on decisions like how these should be funded: directly by revenue or debt or equity. The generally accepted accounting practice rules should eliminate some of the debate.

39 Whilst the concepts of the Water Industry Environment Programme and the Water Industry Strategic Environmental Requirements (WISER, May 2022) are embedded, they help, but what about all the other initiatives?

<https://www.gov.uk/government/publications/developing-the-environmental-resilience-and-flood-risk-actions-for-the-price-review-2024/water-industry-strategic-environmental-requirements-wiser>)

Much has happened since 2022 regarding what is needed in terms of physical performance, in sewage treatment in particular, and the amount of investment needed and that must be reflected in PR24 (any change is too late now).

40 A study of the recent problems at Thames Water shows that these worlds must work more closely in future, or even merge. This is at the heart of future smart economic regulation of water services and indicates a complexity not really shown by the consultation. The WCWC is concerned that the current price review processes have not addressed the complex financing structures within the asset owners. Ofwat needs the power to investigate thoroughly the financial structure of a holding company and to appoint financial and legal experts to help them in that exercise, the costs of which should be recoverable from the holding company. If the investigation shows that a funding arrangement would seriously weaken the holding company’s financial standing the proposed transaction should be stopped and if necessary new owners found for a subsidiary licenced water company. It may be coincidence but at the same time as Thames Water revealed financial problems, it was also found guilty of an operational offence.

[Thames Water apologises after 200 tankers of raw sewage left in Surrey town | Water industry | The Guardian](#)

41 In simple terms, the WCWC suggests that there needs to be a simpler clearer ‘line of sight’ between the source of investment and the practical application of that investment with optimum return to investors and fair charges to customers. This must form part of the economic regulatory process.

42 There has been a focus on innovation in investment models to seek sources of finance. This is explored in more detail subsequently. This was highlighted in the November 2023 debate organised by the WCWC at Bakers Hall on financeability of future water services.

New appointments and variations (NAVs) are limited companies which can be appointed to provide a water and/or sewerage service to customers in an area which was previously provided by the incumbent monopoly provider. These companies are appointed by Ofwat and have the same duties and responsibilities as any other statutory water company.

43 One model is that of Direct Procurement for Customers (DPC) as set out by Ofwat; this involves a water or wastewater company competitively tendering for services in relation to the delivery of certain large infrastructure projects, resulting in the selection of a third-party competitively appointed provider (CAP). DPC will result in water companies competitively procuring more aspects of an infrastructure project, including financing for the project. Ofwat believes that by outsourcing the delivery of infrastructure projects using DPC, water companies can achieve significant benefits for customers. This includes both through innovation and lower whole life costs of the project. It is a requirement for all projects valued at more than £100 million (including lifetime operating costs) to be outsourced on a design, build and operate basis.

44 Another model is that arising from the Specified Infrastructure Project Regulations 2013 (SIPR). These Regulations give the Secretary of State for Environment, Food and Rural Affairs or Ofwat the power, in certain circumstances, to specify an infrastructure project in the water sector in England and Wales. Specification means that the infrastructure project must be put out to competitive tender under the Water Industry Act 1991 and the Regulations, rather than being delivered by the relevant incumbent water or sewerage undertaker in the course of its statutory duties.

45 The crux of the difference between the two models is that a SIPR model is a license-based approach whereas a DPC model is a contractual based approach. There are of course elements of contracting in the SIPR model (for example the supply chain arrangements). There are also elements of regulation within the DPC model, for example the change in licence conditions allowing for revenue to be passed through by the developing undertaker. Overall, however, the foundation of a SIPR model is the licence provided to the new Infrastructure Provider (IP), whereas in a DPC model it is the contract between the DPC provider (the Competitively Appointed Provider (CAP)) and the water undertaker. So the nature of the 'outsourcing' model used will be dictated by the extent of outsourcing, whether it is for infrastructure provision including maintenance or including full operation and this informs the answers given by the WCWC to the questions posed in the consultation. The economic criterion for selection will be ultimately value for money and the impact on customers' bills; but the operational criterion will be that which provides the least risky achievement of the quality goals.

46 There is no doubt that there has been an accretion of economic regulation over the last thirty years, which needs urgent review to reflect the merging of these two worlds. It is not sure that the mechanisms envisaged in this consultation will reduce the complexity of the price review processes; it has advocated a 'one in a life time review' of the whole process of the content of licences and price reviews. This should address the points raised above. The two worlds of investment and operations must be kept in balance.

ANSWERS TO DETAILED QUESTIONS

47 The consultation has some very detailed questions, but the WCWC submits that the context it has provided is a useful backdrop to interpret any detailed evidence submitted by other respondents. It does offer some high-level responses on some of the proposals. The WCWC reiterates the point made in the Summary about the extra complexity of these proposals added to the already complex landscape of water regulation. Do the proposals result in regulation of the water sector being smarter according to the defined principles?

<https://www.gov.uk/government/collections/smarter-regulation>
[Smarter regulation to grow the economy - GOV.UK \(www.gov.uk\)](#)
[Better Regulation Framework - GOV.UK \(www.gov.uk\)](#)

With Guidance being given as recently as September 2023

48 The WCWC suggests that the balance of focus in the consultation might be tilted too much towards the world of economics and finance. The search for new sources of investment must not compromise operational integrity. The focus of what is proposed must also be considered in the context of public procurement of infrastructure and attendant services. This follows on from the earlier discussion on NAVs.

<https://www.gov.uk/guidance/public-sector-procurement-policy#utilities-contracts-regulations-2016>
https://www.legislation.gov.uk/ukxi/2016/273/pdfs/ukxi_20160273_en.pdf
[Public procurement policy - GOV.UK \(www.gov.uk\)](#)
https://www.legislation.gov.uk/ukxi/2016/274/pdfs/ukxi_20160274_en.pdf
[Procurement policy note \(PPN\) 04/16: Concession contracts threshold - GOV.UK \(www.gov.uk\)](#)

49 Before answering the specific questions, the WCWC offers the following additional thoughts on collaboration and customer care. There is no specific mention of collaboration in the proposals but it is in the consultation on statutory guidance for the growth duty. The WCWC refers to this in the submissions in the consultation on the growth duty guidance and the call for evidence on the regulatory landscape. It must be an essential feature of the concepts of a holistic approach underpinning several of the questions.

The WCWC has already suggested a number of times, as have many other parties, that the planning process is often the impediment. The controversies over reservoirs highlight this. Equally if planning permission is given for industrial and retail development this inevitably brings obligations for water companies to provide associated domestic water services which may cause some challenges over which they have restricted control. There is often conflict between housing development and environment protection, as the controversies over nutrient neutrality also highlight. Sustainable growth, with respect to water, must involve the DLUHC. The WCWC has advocated in this trio of submissions that the departments should collaborate on which entities should be embraced by the growth duty under the Deregulation Act of 2015. The WCWC suggests that this should extend to close working of the units within the Smarter Regulation Directorate of DBT.

50 The WCWC observes that there are a number of government departments involved which can lead to fragmentation of policy. The WCWC repeats its suggestion that an overarching multi departmental national water strategy (but led by Defra) is needed to complement the Defra water plan and this should embrace the existing and extended growth duties. The WCWC has suggested that, as a consequence of that plan, there should be greater coordination between the environmental regulatory parties: it now suggests that the two planning departments should be added to that caucus. It has already suggested that there must be greater coordination between local government and the water services sector by partnering between Water UK and the Local Government Association. So 'collaborative' is a very important growth behaviour and it would be helpful if that collaboration could be articulated more clearly and effectively. And urges the DBT and Defra work together.

51 Customer care (referred to also in the submission in the consultations on the Growth Duty guidance and in the call for evidence on the regulatory landscape) must underpin many of the answers given and will be an essential part of the recovery of public trust in the water sector.

52 Collaboration means that the relationship between regulated and regulator is supportive but does not condone inappropriate behaviour. The behaviour of customer orientation especially as a behaviour expected of a regulator with the people and bodies regulated is important and this passes through to the embedding of that behaviour in the functions of the regulated bodies in serving consumers.

53 This is encapsulated in the concepts of customer service. But this a rather dated concept as modern business goes well beyond this into customer care, indeed, into customer delight. <https://www.taskus.com/insights/customer-care-beyond-customer-service>

What does this mean in terms of smarter regulation? First it is evident that the community at large is losing trust in regulations, regulators and the behaviour of regulated bodies. The WCWC observes, without comment, the focus on bodies in the water sector and other sectors such as education. Building and maintaining trust in regulation is crucial but in a way which avoids cynical ridicule.

54 So in the context of this consultation the WCWC suggests that any guidance to regulators needs to be more explicit. The execution the growth duty should ensure that this must contain the requirement that the regulated bodies discharge their obligations in a way which is focussed on customers. But it also means that a regulator must deal with the regulated bodies in a way which treats them as customers to be cared for. Ofwat has proposed a change in the licence conditions for water companies to put customers first. The WCWC has responded. (<https://www.waterconservators.org/wp-content/uploads/Ofwat-customer-first-a.pdf>)

Driving economic growth and investment

Proposal 1: Holistic assessment of infrastructure and long-term planning

55 This is what the WCWC has been advocating, starting with a national water strategy. The WCWC has also advocated a greater simplicity in the price review processes and suggests that the 25-year Strategic Position Statements must be given greater prominence. But it also questions as to whether or not some of the proposals will promote such an approach.

56 There needs to be a more comprehensive understanding of the balance of asset maintenance, asset renewal, asset enhancement and assets for growth. Perhaps there has not been enough attention given to replacement. The whole issue of asset lives and asset turnover needs addressing. And the connection of these aspects of infrastructure investment must be more closely aligned with operational costs (as set out subsequently).

Q1 Needs assessment, how and who

57 The water companies are best placed to assess needs within a framework defined by Ofwat to meet targets set by the environmental regulators working as partners within the proposed national strategy for water. Adding another party would be counter to smart regulation. The WCWC supports the strengthening of the 25-year Strategic Position Statements which must overarch the five-year price reviews. The notion set out in the consultation that linking infrastructure needs more closely to regulator decisions on energy and water is exactly what the WCWC has been advocating.

Proposal 2: Comparative metrics

58 The WCWC urges caution over the excessive use of comparative metrics; these can be useful but each sector has unique characteristics and too much focus on them can be a distraction.

Proposal: 3 New funding mechanisms

59 This is a major proposal and is of such complexity that it deserves a section within the national water strategy advocated by the WCWC. There is a great deal of complexity underpinning this which needs to be clearer. The WCWC agrees that with the very high demands for investment and the undermining effects of loss of trust in the sector, that steps must be taken to find new ways of financing the programmes needed to deliver all the aspirations for the sector.

60 Before that can be addressed, the WCWC draws on the experiences of its members to set out some fundamental points. Running the water service assets involves different elements as set out in its response to Proposal 1. Each of those capital elements have operating costs (opex) and capital investment costs (capex). Opex breaks down into operational and maintenance costs. In review of the content of some of the text in the questions for this proposal, the WCWC considers that some further understanding is required (as will be evident below).

[Operation vs Maintenance: Deciding Between Similar Terms \(thecontentauthority.com\)](http://thecontentauthority.com)

61 When it comes to managing any kind of machinery or equipment, two terms that are often used are operation and maintenance. While both are essential for ensuring the smooth functioning of the equipment, they refer to different aspects of the process. In simple terms, operation refers to the process of using the equipment to perform its intended function. It involves turning it on, running it, and turning it off when the task is complete. Operation is the process of making the equipment work, whether it's a car, a computer, or a manufacturing machine. Maintenance, on the other hand, refers to the process of keeping the equipment in good working condition. This includes regular checks, cleaning, and repairs to ensure that the equipment functions properly. Maintenance is essential to prevent breakdowns and extend the lifespan of the equipment to achieve at least its accounting book life.

62 So in terms of water sector delivery, the net present value of totex (combining opex and capex discounted at regulatory cost of capital) must be the driver and some optimum solutions, such as nature-based solutions may be opex rich rather than capex rich. But the drive for return on investments and the constant restrictions on prices means that the balance has been tilted towards capital

63 The Thames Tideway Tunnel ([Thames Tideway Tunnel - Wikipedia](#)) and the Havant Thicket projects cited in the consultation offer interesting models of alternative financing; Bazalgette Tunnel Limited (BTL) is a licensed infrastructure provider for Thames Tideway responsible for its finance, building, maintenance and operation. It's investors are Allianz, Amber Infrastructure, Dalmore Capital and DIF. Since the licence award, it also trades as Tideway. The project separates out operational costs from maintenance costs within opex. Once completed, Thames Water will operate the tunnel as an integral part of the London sewerage network, and recover the capital costs through water charges, while Tideway will be responsible for its day-to-day maintenance. So, this can be described as a Design Build and Maintain contract (DBM). This is a SIPR project; in fact, SIPR was introduced to facilitate the Thames Tideway project.

64 In this case, the overall asset host remains liable for the legal responsibilities of environmental and public health as expressed through regulations prescribing the qualities of outputs. Whilst the balance of maintenance and operation is relatively benign for assets, such as reservoirs, it is not for assets like sewage treatment works, where the relationship between operation and maintenance is much closer. The public will never tolerate the off-loading of legal liabilities by the asset host (the water company) to the infrastructure providers.

65 Growth in the water sector is dealt with by the responses of the WCWC in other submissions to DBT.

Q2 Standardisation across economic regulators

66 The WCWC supports cross sector and cross regulator learning but not standardisation. WCWC suggests that, with all of the economic dynamics outlined in the consultation coupled with the much stronger dimension of environmental regulation, there will be little benefit in standardisation of economic processes as across sectors.

67 The WCWC notes the reference to Ofgem's Totex Incentive Mechanism, otherwise known as the 'sharing factor' to determine the regulated companies' exposure to underspend or overspend. This is intended to improve efficiency and to deliver the benefits of these efficiencies with consumers; it provides some protection to companies on overspend. There may be some merit in exploring more for the water sector.

Q3 Best practice examples

68 The WCWC suggests that a best practice network is established between the water economic regulators of England and Wales with those in Scotland and Northern Ireland.

Q4 What challenges are faced at present when attempting to transfer water and how can these be mitigated?

69 This takes the consultation into some detailed operational matters. Is the DBT considering both transfer schemes involving raw or treated water? There are the regulatory issues of cross company transfers. In practical terms there are ecological and customer issues because even with water transfers within compliance with all the requirements of the legislation, if customers receive waters from different sources at different times in a mixed supply zone, they can detect minute variations of taste. But this is not an impediment to mixed sources of water in one supply zone.

70 A good example of ecological problems are those caused by zebra mussels.
https://www.nonnativespecies.org/assets/Good_Practice_Management_-_Zebra_mussel.pdf

The guidance is produced by yet another RAPID (Reducing and Preventing of Alien Species Dispersal), a three-year LIFE project (the LIFE Programme is the EU's funding instrument for the environment and climate action) led by the Animal and Plant Health Agency (APHA), with Natural England and Bristol Zoological Society as key partners that piloting innovative approaches to Invasive Alien Species (IAS) management in freshwater aquatic, riparian and coastal environments across England.

71 The WCWC supports the development of mains water distribution networks within regions as developed by Anglian Water.

Q5 Commentary on RAPID

72 There are unique features in terms of water resources planning which drove the creation of RAPID, the WCWC suggests that these drivers might not be so evident for other schemes, such as water treatment works. The WCWC agrees that RAPID is contributing to the way forward and its work must embrace the contribution of entities arising from water resources infrastructure NAVs. It should embrace all water resources schemes, including major water transfers, but more careful consideration must be given to proposals for desalination.

Q6 Role of regulators to enhance competition in large procurements and design build operate schemes

73 The WCWC suggests that the concepts of competition set out in the proposals might not necessarily be the optimum way of meeting the goals of the Defra water plan and whatever is added to it. But the question itself harks back to the points made in the introduction to the answers and in the Key Points. The question implies that the will outsourcing through a NAV would embrace operations within the concept of the general use of the term, which in more precise terminology would embrace operations and maintenance (Design Build Operate and Maintain or DBOM) and is not the SIPR model set out by the Thames Tideway example of DBM. This question reveals some thinking which needs to be articulated more clearly (as in the introductory paragraphs to the answers to these questions) and reveals a proposed interface between operations and finance not yet explored in terms of alternative funding mechanisms. This interpretation is strengthened by the Question 9 regarding the role of the Drinking Water Inspectorate.

74 To re-iterate, the Thames Tideway model clearly separates provision and maintenance of the asset from its operation. Thames Water remains liable for the environmental impact of the storm overflows. So if, for example, a water treatment works is vested in a NAV, the question

arises, who has the ultimate legal liability for water supplied at consumers taps, this will be a water company.

75 Thus liability for the qualities for water supplies is split according to the nature of the NAV. If there is full legal liability vested in the SIPR NAV for drinking water put into a distribution system, there will be an interface of responsibility between the bulk supplier (the NAV licenced company) and the distributing supplier (the water company). Whilst this has been practiced with varied success in other countries, it has not been in the UK and the experiences of the connection between production and distribution are discussed below. Similar arguments can be constructed around sewage treatment, but in that case the legal liability for sewage effluents would be off loaded onto the NAV for treatment works, but presumably would leave the legal responsibilities for sewer overflows with the water company.

76 But if the NAV is for a SIPR DBM as in the Thames Tideway, then there will be an operational interface in the treatment works which could cause problems particularly during a crisis. Who would be responsible for unplanned maintenance? In this case the water company would retain legal liability for outputs. The relationship of operations and maintenance is much more intimate and immediate for treatment works than, say, the operation of a reservoir; and this can be a crucial issue in managing a crisis which requires unplanned maintenance.

77 If the arrangements are for a DPC then the external accountabilities of a water company cannot be offloaded into a contractual relationship between it and the CAP.

78 Whichever models in the search for innovative sources of funding are used, if they applied excessively the WCWC suggests that it could cause fragmentation of services which seems counter-intuitive to the overall thrust of the consultation to improve collaboration and co-operation in a holistic approach. They must not compromise operational integrity and this must be a key factor in determine the viability of any proposal. This is explored in more detail in the answer to question 9 below.

79 Hard-won experience provides evidence of the need for systems integration e.g., in a selection some of many examples:

- Phenol in the River Dee and Huntington Water Treatment Works in 1984 ([Celebrating 30 years of protecting River Dee drinking water | News Releases | News | Severn Trent Water \(stwater.co.uk\)](#))
- Excessive Aluminium in Camelford water supplies in 1988 ([Camelford water pollution incident – Wikipedia](#))
- Cryptosporidium in water supplies in Oxford in 1988 ([An outbreak of waterborne cryptosporidiosis in Swindon and Oxfordshire | Epidemiology & Infection | Cambridge Core](#))
- Blue green algae in reservoir raw waters in Angai in 1989 ([Cyanobacterial \(Blue-Green Algal\) Toxins and Their Significance in UK and European Waters | Request PDF \(researchgate.net\)](#))

- Freeze thaw crisis in Northern Ireland in 2010-11
[https://www.uregni.gov.uk/files/uregni/media-files/Investigation report into the freezethaw incident 2010-11](https://www.uregni.gov.uk/files/uregni/media-files/Investigation%20report%20into%20the%20freezethaw%20incident%202010-11)

80 Experience of some members of the WCWC is that even within water companies past experiences of splitting management of treatment (production) from reticulation (water distribution and sewerage) could cause practical operational delivery problems, particularly during an emergency when clarity of responsibility is vital. As stated earlier' treatment and reticulation management are very closely allied. It is recognised that the skill sets of 'production' are different to those of 'pipe management' and must be integrated into one team, and not executed separately. The risks of separation are set out above; who would be overall responsible for making sure that customers are protected if a water treatment works is vested entirely in a NAV? A good example of the connectivity is managing booster chlorination in the distribution system alongside chlorination of treatment works outputs to maintain wholesomeness in customers taps. How would another Camelford incident be managed in such circumstances? This is discussed more in the answer to question 9.

Q7 Opportunities for collaboration and holistic approaches

81 The whole central tenet of the WCWC contribution has been to spell out the need for a holistic approach to the regulation of the water sector as set out again in this submission. It is not sure that all of the proposals will contribute to this.

82 The WCWC supports the strengthening of the roles of the regional water resources planning groups.

83 It notes the notion of the systems-based approach to water management and the work ongoing at present referred to in the consultation. The WCWC has been an advocate of catchment management:

THINK-PIECES – The Worshipful Company of Water Conservators

The WCWC has announced that this will be the subject of the next debate at Bakers Hall in London on March 21st 2024. Any formal model which emerges from the current work will be subject to the same principles of smart regulation (as set out in the submission to the consultation on the guidance on the growth duty).

Competition

Proposal 4: Streamline and expand use of NAVs

84 The WCWC agrees that with the demands for water investments every opportunity should be found for novel funding mechanisms and this was one of the conclusions of the recent WCWC debate on financeability organised at Bakers Hall in London on November 22nd 2023. The WCWC has set out its concerns earlier in this response over what kind of schemes will be eligible. It repeats a key message that the search for new sources of finance and the desire to promote competition must not compromise operational integrity in operations in the water sector.

85 The WCWC agrees that whatever processes are adopted they must be as flexible as possible and be optional, not mandatory.

Q8 Should the legislation be amended to increase flexibility

86 Yes

Q9 Extend DWI powers to regulate third party providers

87 Based on the thinking set out earlier, the answer to the question on the extension of DWI powers is proceed with great caution, as the SIPR model NAVs might well be unsuitable for treatment works. But if decisions are to pursue this option, DWI has no powers to regulate the NAV for example under Regulation 28 of the Water Supply Regulations (Water Quality) Regulations (as amended) 2016. An example is given for the execution of these powers for Huntington Water Treatment Works in 2021.

[Notice of Regulation: Huntington Water Treatment Works - Drinking Water Inspectorate \(dwi.gov.uk\)](#)

It will be necessary to extend DWI powers to ensure, as much as possible, that the public interests are protected under the circumstances.

Q10 Alternative sources of water

88 Water companies should be able to draw raw water from whatever source. There is the complexity of allowing one water company to supply drinking water into another licenced region. So, promoting cross border transfers of either raw or even treated water is a feature of national flexibility and the evolution towards a national network (for example the Ely Ouse Transfer scheme) subject to the cautions outlined earlier:

[Cam and Ely Ouse abstraction licensing strategy \(ALS\) – GOV.UK \(www.gov.uk\)](#)

Q11 Modification of Planning Framework to accommodate Nationally Significant Infrastructure Projects

89 Yes, in fact the WCWC has advocated a systemic review of the relationship of the Planning Framework and the delivery of water services.

Q12- Q13 Consultations

90 Engagement with the communities served is very important but the WCWC urges caution in taking the current systems much further. The experiences of the Thames Water Teddington Scheme should inform DBT and Defra on how to improve the processes. (<https://thames-wrmp.co.uk/new-water-resources/teddington-river-abstraction/>)

Proposal 4 Streamlining NAV processes

Q14-16 Streamlining processes

91 Yes make the processes smarter! And that means consistent. But this does not necessarily mean a separate national scheme.

Q17 -19 Non retail competition

92 The WCWC comments that the processes should be as smart as possible and cannot see the benefit of Ofwat delegating any of its responsibilities to another party.

Q20 -21 Further funding models

93 The WCWC does not have suggestions at present.

94 Proposal 5 Not relevant to water

95 Q22 No comment

Proposal 6 Comparative metrics

96 WCWC suggests that too much obsession with comparators can become an inhibitor to investment and innovation.

Supporting customers

97 See the introduction to the answers for some thinking about customer care.

Proposal 7 Cross utility cooperation on the Priority Services register

98 Agreed.

Q23 -25 How to improve the register

99 The WCWC offers no comment now, except to offer the support for an integrated register which should combine the insights and best practice of all current registers.

Proposal 8 UK Regulators Network to convene agreement on bill communications

100 The WCWC suggests that this network is not wide enough to meet the challenges facing the water sector. It should also involve the Environment Regulators. And a major part of the messaging must come from the sponsoring departments. The messages for water will be different to those for energy for example and vary from region to region; any coordination must avoid a one size message fits all.

101 The WCWC has already drawn attention to best practice networks and there are others besides the UKRN which it will highlight in its response on regulators to DBT. The WCWC is not aware of such a formal network for environmental regulators, the decisions of which would have economic impact. The WCWC is aware that the UK regulators do meet regularly. This is highlighted in the submission on the regulatory landscape.

Q26 Communicating affordability

102 The WCWC observes that this must involve the concepts of 'Citizen Delivery' i.e., communicating at the same time that issues like reducing water consumption, and care with sanitary litter involve everyone. The Defra can play its role in this matter and speed the introduction of measures which manifestly demonstrate the virtues of good water husbandry like introducing mandatory SUDS and water efficiency regulations.

Proposal 9 Reallocation of customers

Q27 Benefits

103 Agreed, should be seamless for consumers.

Duties and functions

Proposal 10 Review of duties of economic regulators to enable better focus

Q28-31 Review of Ofwat.

104 The WCWC has advocated such a review in time for the start of the PR29 process and urges DBT and Defra to work together not only for efficiency, but as role model of the collaboration espoused by the consultation.

Proposal 10 Sponsor departments' role

105 The Defra is the sponsor for Ofwat, the EA and EN, so which body is going to take the lead in sorting out the issue of water being a contributor to a resurgent English economy and environment? The WCWC has advocated several times there is a need for an integrated national water strategy (see Appendix 1). The introduction of this would overarch all the contributions of the regulators including those for the environment, which paradoxically have a growth duty at present, which Ofwat does not, for example. Indeed, not only should such an approach bring together all the arms-length bodies in the water sector, but it should bring together relevant government departments such as DBT and Defra and the DLUHC. This strategy must embrace growth (which is addressed in the submission on the proposals for changes to the guidance. The WCWC reiterates its observations in this submission that there is an urgent need for DBT and Defra to work together.

Appeals

106 The WCWC does not wish to offer any comment except to say that it will behave all parties to make these processes as swift as possible. The appeal process is important to investors who need to be assured that the commitment within the Letter of Appointment to the financing of further legal and statutory obligations will be met, so an assurance of the independence of the appeal body is essential.

Proposal 13

Q37-38 Change to Ofwat's appeal mechanisms

107 Yet another consultation is proposed; it should part of the major review advocated by WCWC.

APPENDIX 1

Submission by WCWC to the House of Lords Industry and Regulators Committee Inquiry into Ofwat Powers, June 2022

A1 In reviewing that submission to prepare for this submission, the WCWC notes that progress has been made on many of the issues which it raised. The WCWC encourages the DBT to visit its website and review the whole submission to the House of Lords Committee, but to aid this call for evidence some of that submission, which is relevant to this call is abstracted.

A2 The WCWC submits that the committee should not look at the work of Ofwat in isolation, it must, at the very least, assess the interplay between and effectiveness of economic and environmental regulation, and the links with Government policy. The key challenge facing Ofwat, and the sector, is how to secure improvements in environmental quality and resilience to drought and flood without creating an unaffordable bill burden. Current approaches will not achieve this.

A3 Part of the necessary changes should be a shift towards outcome-based environmental regulation. Rather than specifying outputs that water companies must deliver, Ofwat should instead specify outcomes that are needed. This would unlock the ability to look at problems in the round, drawing in all sectors that contribute to the root cause of problems that need resolution (agriculture, industry, developers) to work with the water sector to find best value solutions, stimulate innovation and increase the number of nature-based solutions.

A4 This submission was supported by some specific suggestions given in an appendix to help Ofwat, the other regulators and water companies, particularly in the examples in the Appendix provided to the House of Lords, but not included here. The thinking of the WCWC has developed since June 2022 and these are incorporated. Some relatively straightforward policy changes could be implemented, including:

- New developments should have a legal requirement to deliver Sustainable Urban Drainage Systems (SUDS, with exemptions in prescribed conditions, now the subject of government plans to implement as of 2023). The requirement should clarify that separated surface water can be discharged directly to water courses subject to complying with consents issued by the EA which will be the subject of the existing appeals procedure for all discharges.
- Update of the automatic right to connect to the public sewer network under S106 of the Water Industry Act 1991 to accommodate the requirements for SUDS. Additionally update the process within that Section of the Act available to developers to appeal against any refusal to connect to a sewer to bring it into line with the procedure for appeals to Ofwat for refusal of consent to discharge to a sewer. Both of these points were discussed earlier as example of integrated duties for growth of regulators in the water sector.
- Making water companies a statutory consultee in planning processes.
- Requiring responses to the contributions from the statutory consultees.

- Tighter product regulation to reduce sewer blockages and reduce water consumption.
- Improve the processes for dealing with disruption to roads and access when water infrastructure is being put in place or repaired.

A5 Given the above, the WCWC suggested that Government should review its proposed targets arising from the Environment Act 2021, which would work against the outcome-based approach. For example, the proposed target for phosphorus reduction is focused only on phosphorus reductions “from treated wastewater” which will drive expenditure and focus from water companies only on the “end of pipe” issue, rather than the root cause, at great cost and with limited benefit to river health. Instead, wording that targeted “Good Ecological Status” in rivers, would drive actions from all sectors to deliver the outcome that is desired.

A6 The WCWC submitted to Defra that Government should also bring forward a national strategy for water, and as already submitted to Defra, this should include a national rivers strategy which would embrace a more coherent approach to inland bathing waters with a Royal Commission, or similar, to draw this together and build national consensus.

A7 The submission highlighted that achieving our environmental targets will require a much broader national effort than just the triangulated nexus of Ofwat, the environmental regulators and water companies. It includes recognition of roles of other organisations and in particular what roles we must all play as individuals. This is relevant to understanding the way forward on storm overflows, which the committee refers to specifically (this has moved forward in 2023 since that submission in 2022).

A8 The deliberations on matters raised by Defra and the committee have suggested that there might need to be a review of national committees and consideration given to an extension of the Government’s foresight programme, and even a revival of Royal Commissions.

A9 The WCWC has supported the changes in water management to protect and enhance the environment and better meet public expectations while also responding to other factors including pressures arising from climate change and the need for more homes. It is also mindful that this is an additional cost to water service customers at a time of economic hardship. But it has expressed reservations on the way that those changes are being delivered.

A10 The WCWC suggested that a more refined approach to setting operational and investment targets and better cost benefit appraisal is needed, the targets are simplistic and blunt instruments and there must be a more local approach using national principles rather than national targets. There needs to be a greater understanding of the practical issues around delivery and this has consequences for the programmes agreed between the water companies and Ofwat.

The national context

A11 In simple terms, Government strategy appears to rely on the central triangulated nexus of the environmental regulators, principally the Environment Agency in England and Natural Resources Wales, with Ofwat, and the water and sewerage companies, and appears to rely on its role being setting national targets and leaving it to the nexus to deliver. The consultations have not recognised the roles of other parties nor of other roles of Government, and the WCWC has highlighted this.

A12 The WCWC submitted that meeting society's environmental aspirations needs more than just the involvement of the regulators and water companies. The WCWC suggests that currently society at large needs to accept the principle that water and sewerage companies' core business is transport and production i.e. they produce drinking water and transport it to customers and then collect and transport used water and thence produce clean effluent for return to the environment. They have no direct control over what the consumption demands or used water qualities are. It must be recognised that the limits are being approached of what they and the regulators can achieve alone in terms of behavioural change. We all need to think more about what we put down sewers, be it used care products, phosphate, or surface water, and how we use water wisely. The WCWC asks - is this a function for which Ofwat should have ultimate responsibility through the price review processes?

A13 To some extent the inquiry itself prolonged the simplistic approach by linking the inquiry into Ofwat to the requirement that water companies reduce storm overflows, without recognising the roles of other contributors such as planning authorities. There is much more that Ofwat is required to do in terms of economic regulation of the water companies, including some aspects which have less public exposure, such as the reduction of phosphate in sewage effluents.

Current approaches

A14 There is a need for a 'road map' to explain how the current and future water management initiatives are meant to relate to each other. As presented, they are a collection of seemingly ad hoc proposals which need to be integrated with other relevant initiatives and policies. For example, targets for phosphate in, and abstraction of, river waters, are dealt with in the consultation on 25 Year Environment Plan Targets; sewer blockages (a major cause of sewer overflows) are dealt with only in the drive to reduce single use plastics by proposing a ban on plastic containing wet wipes, sewer overflows are dealt with separately, but its consultation contains a significant narrative about swimming in inland waters (which are influenced by many other factors). There is a plethora of other relevant plans such as the water industry national environment programme (WINEP) and the water industry environment plan.

A15 It would be clearer if they were all linked as actions in the 25 Year Plan. The lack of the 'road map' is a reflection of the seeming absence of an overall strategy, which would contain detailed points of principle. Getting this sorted out would then provide the first step in assessing the role of Ofwat and then deciding how best it can contribute.

A16 Meeting the aspirations will mean higher costs. As the House of Lords report on sewage effluents in March 2023 attested and for which there has been much debate during 2023 and the recognition that water charges will have to rise. Extra spending in a period of economic difficulties ought to focus on instances where tangible benefits will be attained. There seems to have been an absence that proposals, so far, have been subjected to the Treasury 'Green Book' on Appraisal and Evaluation (updated 31 March 2022). The WCWC suggested that the committee might wish to look at the extent that more focussed and appropriate cost benefit analysis is needed and how this would fit into the background to water economic regulation.

A17 The Defra consultations have not demonstrated any role for other parties which have influential roles in economic regulation - an example is the impact of planning on the role of

Ofwat. Neither do the consultations take account of some of the practical issues of delivery, which the WCWC anticipates will not be overlooked by Ofwat, but it was suggested that the committee and now DBT might like to inquire into.

A18 There is a need to change the planning framework on connections to sewers. At present there is a right to connect to public sewers subject to the connection meeting defined technical standards and there is a connection or infrastructure charge to cover the impact on infrastructure. The WCWC supports the proposal to remove this right in the forthcoming review. The WCWC welcomed the intention to make the provision of Sustainable Urban Drainage Systems (SUDS) mandatory.

A19 The provision of much needed housing is often overwhelming sewers, but the water companies and regulators have no powers to object to development but do have statutory obligations as a consequence of planning decisions. In some cases, the views of water companies and regulators are taken into account but not always. There are already some developments being held back for such matters, and the WCWC is aware that some Members of Parliament are advocating the opposite to what the WCWC is submitting and that the 'role of unelected bodies should be curtailed' (the debates over nutrient neutrality have intensified in the 18 months since the inquiry). The WCWC submitted that a very useful change would be to make water companies at least statutory consultees in planning processes and review the impact of the regulators as existing statutory consultees.

A20 There also needs to be greater clarity in the relationship between individual connections providing a very small increment of financial contribution and the major provision of additional assets as individual connections increase. There is a difference between the connection of very large development and the constant addition of individual properties. The WCWC has suggested that the automatic right of connection of domestic foul water to sewers under Section 106 of the 1991 Water Industry Act can cause problems with sewer overloading. It needs review and refinement with rights of appeal upon refusal akin to the rights of connection of trade effluent but the WCWC foresaw that this will be an impediment to development and will thus cause a clash with regular planning permission processes. The WCWC urged, therefore, that the Government needs to refine the planning framework to complement this change. It was suggested that the Committee might wish to explore the role of Ofwat in such matters. These are important for the issue of growth as other submissions to DBT point out.

A21 The other aspect of planning for new build is the commitment to mandatory SUDS and the implementation of Schedule 3 of the Flood and Water Management Act 2010 announced in January 2023 was welcome. All new build should have SUDS, but the WCWC cautioned that there are some situations in which this may not be possible, for example, in single property infill in tight urban situations, which of course is going to exacerbate the challenge of the task of water companies. So, there is a possibility that some new build might be connected to the new surface water sewerage systems. The WCWC submitted that planning and building consents must have a legal requirement for SUDS, unless there is an exemption granted under prescribed conditions. It may well be that this could be achieved as a planning direction with a statutory code of practice. The building regulations might also need attention. Again, the role of Ofwat should be examined in this context. It is proposed that SUDS approving bodies (SAB) are set up at the county and unitary level; this will introduce yet another regulatory body which will lie outside the prescribed organisations covered by the growth duty.

<https://www.gov.uk/government/news/new-approach-to-sustainable-drainage-set-to-reduce-flood-risk-and-clean-up-rivers>

A22 The implementation of any changes in the way the water environment is husbanded may take some time, but there are issues which must be addressed by Government, sooner rather than later. In spite of the public demand for action, when it comes to granting planning permission for new assets, like storage tanks, there is less tolerance, as the objections to the Thames Tideway Tunnel demonstrate. This aspect of delivery of the Defra storm discharge reduction plan might need to be addressed by planning guidance under the planning framework. There is limited patience over the disruption of roads and access. The Government needs to ensure that the New Roads and Street Works Act 1991 is fit for purpose (and any associated Code of Practice) and that compensation arrangements under Section 180 and Schedule 12 of the Water Industry Act 1991, as amended, and Section 177 and Schedule 21 of the Water Resources Act 1991 are fit for purpose. These will influence how water companies perform and hence the role of Ofwat.

A23 In the submission to DBT on regulators the WCWC points out that the aspirations of regulators can be governed by the speed and content of Government policy making. This submission to the committee gave some specific examples of ‘front line’ issues and one was that of the problems caused by sanitary litter arising from sewer overflows. Little progress has been made and the WCWC responded to a recent Defra consultation.
<https://www.waterconservators.org/wp-content/uploads/Wet-wipes.pdf>

WCWC suggestions for changes to context

National river strategy

A24 A theme common to many of the challenges of water regulation is the way rivers are managed, and that is the ‘big issue’ behind the committee’s reference to storm overflows. There is an urgent need for a national river strategy. The Government consultations in 2022 focussed ‘piece meal’ on algal problems arising from the presence of nutrients, lowered river flows due to over-abstraction, pollution from sewer overflows, and a particular focus on the demands for swimming in rivers (bathing waters).

A25 The WCWC advocated that to effect a concept of local delivery within a set of national principles, a return to river quality objectives is needed. An overarching river use and quality strategy is required to provide a holistic framework into which the proposals will fit. This should evolve from existing basin and catchment plans. In this approach there are agreed sets of quality criteria for recognisable uses, including the demands of nature, there are public consultations on uses within defined stretches of river. Once it is agreed what those local uses are, the relevant criteria are combined into a quality specification for each stretch. These are then used to determine discharge consents (including the separated surface waters) and river flow regimes, using models such as SIMCAT, under the future regulations of the Environment Act 2021. Whilst the introduction of the Defra water plan in April 2023 was welcome, the WCWC still advocated the need for an overarching strategy.

A26 This would then provide the right framework for an inland bathing water strategy, which would be the right place rather than being fitted into the consultation on storm overflows. This would give Ofwat a better framework to work in.

Creation of a national consensus

A27 The committee will note the numerous suggestions by the WCWC for more coherent strategies and for the strategic and tactical role of many other parties, and it will note many points made in the examples in this Appendix. It is a challenge to determine how best this submission can be converted to practical reality. A conclusion would be to create a national water forum in which all relevant parties can contribute, not necessarily all being standing members. Its purpose would be to bring all parties together to agree a better consensus than that of the moment. Whilst individual pieces of water policy are contained in a series of consultations, it is challenging to bring coherence from each of the responses and this must make life more difficult for Ofwat. The committee was asked how it might like to reflect on how it thinks that this could be better achieved in the absence, *pro tem* of an overarching strategy. The water plan makes some move in this direction but the WCWC suggests that this is not enough, highlighted particularly in the submission to the DBT on the regulatory landscape and the need for collaboration.

A28 It is clear that Government must have a different role than just setting targets for the regulators and water companies, it must lead in the broader social changes necessary. The WCWC understands that there must be a balance between the need to avoid too much intervention and the need to provide a framework in which the achievement of aspirations can flourish. The simple truth is that as the demands for environmental improvements increase, we all have a role to play in delivery.

A29 Citizen science is defined as public participation in scientific research, participatory monitoring, and participatory action research, whose outcomes are often advancements in scientific research by improving the scientific community's capacity, as well as increasing the public's understanding of science. It has been used increasingly, for example, in river management. Ultimately, this is leading to a bottom-up social movement that is clamouring for a change in the way we manage our water environment. The WCWC supports the important role of public participation.

A30 As highlighted in the outcomes of COP26 the time has come to embrace the reality that environmental aspirations will only be reached by a broader coalition of delivery involving all of us be that individual or corporate. For example, in the storm overflows consultation document, reference is made to 'actions that we can all take to reduce the amount of rainwater entering our sewers and keep them flowing freely'. The WCWC has already advocated this kind of approach in its submission for a holistic strategy for dealing with used care and sanitary products. The WCWC would like to see the government take national leadership in this concept. The WCWC suggests that the time has come to create a nexus between citizen science and citizen delivery, and it will be considering how this could be best achieved.

National committees

A31 A final overarching conclusion of the WCWC's deliberations was that these matters are sub texts in the matter of how much environmental resource we have in the UK to sustain a projected population with current life style expectations. This seemed to be missing from the consultation documents. The WCWC drew attention to the final conclusions of the work of the Royal Commission on Environmental Pollution in 2011 on demographic change and the environment.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/228980/8001.pdf

A32 It concluded that in 2011 current trends suggested we can expect a growing population in the UK – fuelled by increasing life expectancy and net inward migration – and an increasing number of households, more of them than today occupied by only one person. But these trends do not apply uniformly across the UK and the Royal Commission was struck by the intense graininess of the situation at all levels (Chapter 2). Where people are, and how they live, have major environmental impacts. More importantly, policies to influence behaviour and consumption may be more effective than any attempt to constrain or even reduce population size. At the same time the government’s Office for Science Foresight projects was reporting on allied matters, such as food security.

A33 It raises many sensitive social matters beyond those addressed in the planning framework some of which have been highlighted again in the conclusions of COP 26. It focuses on how we will live in future and hence what we need to do now to prepare for that future. This most certainly underpins any progress on water management policy. It concluded that if we adopt all the mitigation measures it considered, then the UK could probably cope with the demographic changes projected by the Office of National Statistics. The study did not address the consequences of changing aspirations of the changing demography. For example, it did not envisage the rise in demand for wild swimming or reduced meat consumption and the impact of these on water management and food production strategies. Since 2011 we have endured the impact of a global pandemic and new energy and food securities being ‘weaponised’.

A34 The WCWC submitted that it might be time to appoint another, similar review body to revisit the conclusions of the work of the Royal Commission on Environmental Pollution 2011 and determine if they are still relevant.

A35 This raises a fundamental question about independent sources of advice and wisdom. In the past we had, for example, several national standing and ‘one off’ technical committees and working parties (e.g. detergents, storm overflows, sludge management, sewage disposal) which led to the creation of water companies, water analysis), and regular inquiries by Royal Commissions; we still refer to ‘Royal Commission Standards for sewage treatment’, and a more active foresight programme.

A36 Now we have a plethora of sources ranging from government task groups (such as the storm overflows task force), higher profile committees (such as the Committee for Climate Change), the less active foresight programme (the last horizon scanning report was 2016 and the only current project is looking at the role of future societal change within UK, pathways to net zero, published in April 2023), regulator and trade body committees; and the work is often contracted out. The concept of a standing technical committee seems to be vested more in the work of the Commons Select Committee the Environmental Audit Committee, which has a somewhat more political hue than the former Royal Commissions, and of course House of Lords Committees. But these are just examples, and there is an urgent need to map out why and how these reports are produced and how they all fit together, and then decide if any changes are needed. The Committee might like to reflect on this when considering how Ofwat can be assessed in future.

A37 The old system of standing technical committees and Royal Commissions was dismantled gradually, firstly after the election in 1979 and then after the election in 2010. The question is: has this left a gap which we have not filled properly yet? The advantage was that the Royal Commission on Environmental Pollution brought all relevant and interested parties together to provide overviews on broad or specific topics, such as the last Report on the impact of changing demographics on the environment in 2011.

Demographic change and the environment: twenty-ninth report - GOV.UK (www.gov.uk)