

WORSHIPFUL COMPANY OF WATER CONSERVATORS

RESPONSE TO THE CALL FOR EVIDENCE BY THE ENVIRONMENTAL AUDIT COMMITTEE ASKING THE QUESTION - IS THE GOVERNMENT DOING ENOUGH TO FIX THE UK'S RIVERS, MEETING ON 15th MAY 2024

1st MAY 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 Environmental Audit Committee has announced a follow-up evidence session on water quality and water infrastructure, taking place on Wednesday 15th May 2024. The announcement stated that:

In its evidence session, the Committee will consider what progress has been made since the Committee's influential 2022 report on 'Water quality in rivers'. In its 2022 report, the Committee called a step change in regulatory action, in water company investment and in cross-catchment collaboration, so as to restore rivers to good health and prevent further damage. MPs demanded far more assertive regulation and enforcement from Ofwat and the Environment Agency. Several recommendations made in 2022 appear to have influenced Government and regulator policy. There remain questions about the level of progress the Government has made on water quality since.

The Committee will return to its recommendations, examining the ongoing role of the environmental and economic regulators in enforcing responsible behaviour by water companies and taking action against unpermitted sewage discharges. Members will want to examine whether current plans for investment in infrastructure improvements are adequate, timely and deliverable, and how permitted sewage discharges are being monitored.

<https://committees.parliament.uk/committee/62/environmental-audit-committee/news/201014/is-the-government-doing-enough-to-fix-the-uks-rivers-committee-takes-stock-of-water-quality-progress/>

3 The WCWC is responding to the call for evidence 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.

SUMMARY

4 The WCWC's position on where we are now is best provided principally as a repeat of the evidence it gave to the Department of Business and Trade in the Winter of 2023-4. It is modified somewhat to reflect the fact that the DBT consultation and the WCWC responses were focussed largely on England and to some extent, Wales.

- Be clear on whether a policy or regulation, driven by the UK government, is for England, Wales or the UK.
- Develop a national water strategy, and to do so urgently. This was expressed in the context of England. The WCWC suggests that the EAC considers whether a high level quadripartite national strategy, or, at least, a Concordat might be of some value.
- Create a national consensus on water including how it can be an effective and safe enabler of a resurgent economy. This applies equally as the UK and at national levels.
- Rebuild public trust by being clearer about the objectives and consequences of delivery plans; this would include a review of the resources available to the regulators and to ensure that the economic regulatory processes embed the principles of trust and customer care.
- Apply 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.
- Accept that innovation in investment must not compromise operational integrity.
- Integration of all the growth duties of all the regulators in the water sector, with separate guidance.
- Establish a closer working of all relevant government departments, particularly DBT, Defra and DLUPHC and Defra arms-length bodies. In the context of the UK such co-operation must extend to similar bodies in the devolved administrations
- Reduce of the fragmentation of policy and practice.
- Apply a 'once in a lifetime' review of the Ofwat price review and determination processes rather than the current approach of 'piece-meal' changes (in England and Wales). The WCWC suggests that this should be 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 as set out here, while preserving the principles of commercial viability. The WCWC suggests that any strengthening of the regulatory process must include extended powers for Ofwat to investigate and regulate the financial structures of the holding companies, all of their subsidiaries and their licenced subsidiary water companies. And would include an extension of the Purpose of the water companies. This will contribute to the rebuilding of public trust but must be done in ways which do not discourage investment.
- Attend to many specific issues which need resolution within this context.
- Recognise more explicitly that economic growth must be environmentally sustainable and incorporate the principles of Natural Capital.
- Plan for the future, learn from the past, act in the present.

WHAT HAS BEEN DONE SINCE 2022?

5 There is not sufficient time to summarise everything achieved, or in progress, since the publication of the EAC report in early 2022. The WCWC is aware of reviews, consultations, and policy and practice initiatives in England by Defra, Ofwat, the Environment Agency,

Natural England and, latterly, the Department of Business and Trade (more of this later) and the House of Lords Committee on Industry and Regulators. The EAC would provide a great service if it could produce an inventory of all such activities.

6 In reviewing the evidence for this Inquiry the WCWC has become aware of a lack of clarity in the difference between UK issues and devolved national issues in many circumstances. This lack of clarity comes from the very top of the administration of water policies and through the media debates. The WCWC admits that it has not been clear, but then that lack is reflected in the title of the Inquiry because, if it addresses UK issues then it should assess the progress of all four governments and should have a much wider range of bodies in its inquiry, than the Environment Agency and Ofwat. The heart of its focus seems to be, in fact, the UK Government exercising its functions in England. Either the call for evidence needs to be tightened or addresses the progress of all four governments. The WCWC considers that there would be merit in the latter approach.

7 The EAC will be aware that the framework for the regulation and delivery of water services and the conservation of the water environment is different in all four nations. The WCWC does not offer an opinion of comparison but does note that all systems are finding it a challenge to meet all the demands for improved water services and the consequent costs. As an aside the WCWC also notes that there are similar debates, at the moment, over the quality of the River Siene, in France, prior to the Paris Olympics and, of course that is yet another system of delivery and regulation in that country.

8 The EAC will also be aware of the different rate of progress in the four administrations. There are some statutory requirements which apply across the UK, some are implemented differently in each administration, some are harmonised. For instance, the Urban Waste Water Treatment Regulations 1994 and the Water Framework Directive 2017 apply to England and Wales with separate Regulations in Scotland and Northern Ireland, although there is similar administration. Wales has already implemented Statutory Sustainable Drainage Systems. The recently announced ban on plastic single use wet wipes will be implemented with equivocal language *'The UK Government will introduce new world-leading legislation to ban wet wipes containing plastic, the Environment Secretary has confirmed today (22 April 2024). Defra intend to bring forward the legislation for England ahead of summer recess, with Northern Ireland, Scotland and Wales following by the autumn as part of an aligned approach to bring the ban into force.'* The DBT is a UK body and whilst its consultations in the Winter of 2023-24 had consequences for the UK, its principal focus was on England and to some extent Wales. If the EAC does decide to take the approach of following progress on UK rivers it might like to consider the value if it addressed the consequences of these disparities.

9 There have been a number of significant steps in England such as the creation of the Defra Water Plan in April 2022 and the determination to implement S82 of the Environment Protection Act 2021, for example. It is difficult to assemble all of the initiatives as responses to that Plan. There needs to be a set of metrics which tracks progress. The WCWC observes that there is still not enough joined up regulation, no National Water Strategy or clear objectives on how rivers should be used sustainably. The WCWC has advocated the value of a water commission or even a Royal Commission (a device used in bygone times when there were similar national issues; if there is an agreement that a truly national approach is might be of value by all four administrations, then a Royal Commission would be ideally suited to look into this). Water Company Licences in England and Wales are still amended on a piecemeal basis.

10 The WCWC is sure that the EAC will be aware of the initiatives by all the Governments, but to aid other readers of this submission a summary is given of the announcements by the UK Government with respect to initiatives in England so far this year as a demonstration of the fragmented approach.

What has the UK Government done in England in 2024:

20 February

- Water company inspections will more than quadruple as the Government cracks down on poor performing companies.
- Fourfold increase in water company inspections to hold companies to account.
- Includes up to 500 additional staff for inspections, enforcement and stronger regulation over the next three years, with recruitment already underway.
- Part of a tougher regime fully funded by government and water company permits.
- This announcement builds on the recent improvements the government has delivered to the water environment, including:
 - 100% of storm overflows in England are now monitored - providing a complete picture of when and where sewage spills happen.
 - Removing the cap on civil penalties for water companies and broadening their scope so swifter action can be taken against those who pollute our waterways.
 - Increased protections for coastal and estuarine waters by expanding the Storm Overflow Discharge Reduction Plan, prioritising bathing waters, sites of special scientific interest and shellfish waters.
 - Requiring the largest infrastructure programme in water company history - £60 billion over 25 years – to revamp aging assets and reduce the number of sewage spills by hundreds of thousands every year.
 - Providing £10 million in support for farmers to store more water on their land through the Water Management Grants to support food production and improve water security.
 - Speeding up the process of building key water supply infrastructure, including more reservoirs and water transfer schemes.

February 26

- Subject to a two-week [consultation](#), the Environment Agency will create 27 new designated swimming spots across England. If designated, sites will receive regular water monitoring from the Environment Agency, who will investigate pollution sources and identify steps to be taken in response, which could include actions by water companies, farmers and others.

March 11

- Fast-tracked investment of £180m over the next 12 months which is expected to prevent more than 8000 sewage spills polluting English waterways, the Environment Secretary announced. It follows the Secretary of State directing water and sewage companies last December to measurably reduce sewage spills over the next year by accelerating commitments and delivering new funding.
- The Environment Agency's portal will allow water industry workers to report serious environmental wrongdoing by their organisations.

March 26

- A new portal has been launched today to make it easier for internal water company whistleblowers to safely report serious environmental wrongdoing by their water companies.

March 27

- 100% of storm overflows now fitted with monitoring devices required by the government.
- The Environment Agency has published its Event Duration Monitoring (EDM) data for 2023 showing the frequency and duration of spills from storm overflows in England. The data for 2023 shows a 54% increase in the number of sewage spills compared to 2022, and a 13% increase compared to 2020. The increase in spills compared to 2022 is partly because 2023 was named by the Met Office as the 6th wettest year since its records began in 1836.

April 12

- The Farming Minister has announced a new plan to better protect and preserve the River Wye for future generations, including up to £35 million in funding and the appointment of a new 'River Champion' and taskforce.
- The River Wye and its surrounding area is cherished by residents and visitors., The condition of the river is declining due to pressures including climate change, invasive species, and pollution from various sources, including from farms across the catchment area. The government is working at pace to intervene after the condition of the River Wye Special Area of Conservation (SAC), which covers the stretch of the river in England, was downgraded to 'Unfavourable – Declining' last year. Further actions outlined in the plan include:
- Creating a level playing field for the export of poultry manure from intensive poultry farms with over 40,000 birds by reforming Environmental Permitting Regulations.
- Proving the concept of a circular economy in manure nutrients with the potential added benefit of boosting rural renewable energy, through a carefully supported Pilot Farm Trial of Micro Anaerobic Digesters (AD).
- Promoting soil and nutrient retention in local fields with new actions in the Sustainable Farming Incentive (SFI) in Summer 2024, including No Till arable farming.
- Providing £1.5 million of development funding to the local Wyescapes and Wye Valley – Ridge to River – Landscape Recovery Projects over the next two years (subject to the projects passing enrolment checks).
- Providing funding for the Restoring our Rivers project and Arrow Valley Diversity Project, delivered with local partners in the next financial year.
- Working with partners in academia, agriculture and the third sector (both in England and Wales) to produce new evidence on how farmers can mitigate pollution, including from legacy phosphate deeper in the soil structure.

April 22

- UK-wide ban on wet wipes containing plastic to be put into law.
- World-leading legislation will be introduced this year to help tackle plastic pollution and clean up waterways.
- Transition period set out for businesses to help them adapt.

What has not been done in England, apart from the systemic issues identified above?

This is not exhaustive but indicative.

- The Water Plan recognises that the definition of Chemical Status gives highly misleading indications with consequences for water companies and agriculture. There has been no progress.
- Apart from the River Wye announcement, the enthusiasm in the Water Plan for a national strategic approach to catchment management seems to have waned.
- Apart from an announcement in January 2023 that Schedule 3 of the Flood and Water Act 2010 regarding sustainable drainage systems will be implemented, no progress seems to have been made, but it is promised for this year.
- There has been no progress on the review of S106 of the Water Industry Act 1991 regarding the automatic connection of private sewage drainage into public sewers.
- The first consultation on the banning of single use wet wipes containing plastic took place when the EAC was considering the matter of river quality in late 2021/early 2022. The intention to ban has only just been made. The WCWC, like others, has suggested a much wider strategy; banning wet wipes is just one tactical measure. Whilst the government is committed to only ‘pee, poo and paper’ being flushed down loos, there is no indication of how it will contribute to narrowing the gap between the ban and that aspiration, by addressing product and behavioural changes.

11 Whilst the present focus on water management has revealed unacceptable practices, allegedly both in terms of day-to-day water operations and in financial engineering of investments, a great deal of media misinformation is obscuring well informed debate. The WCWC has sought to fill that gap by organising City Debates at the Bakers’ Hall in London. The recent ones were on governance, financeability, and catchment management, by organising webinars and providing comprehensive well-informed responses to consultations. More of this sort of activity is sorely needed.

12 The WCWC has recommended that a national water strategy should embrace the concept of river use and quality objectives. As a specific issue in this context, the WCWC is concerned about the content of apocryphal information as well as scientific fact in the debate about the occurrence and risks from coliforms in the water environment. Citizen science needs to be placed in the context of validated data. The WCWC suggests that this specific topic needs urgent resolution so that public trust is not eroded unnecessarily, and investment is not misplaced. The Bathing Waters Standards for coliforms would provide a useful starting point.

13 It is clear, that whatever governance mechanism is in place, a lot more investment is needed and that has to be financed and paid for. The debt incurred will result in increased charges at a time of the cost of living being a big social issue. The WCWC repeats its contribution that there needs to be a national consensus between service deliverers and regulators and policy makers on the messaging of this, rather than saying ‘not my job.’ This needs a national agreement as to where issues like wilding swimming, for example, sits in national priorities.

14 A more recent issue has been the arguments over how sewage effluent quality is assessed and the WCWC has suggested a revised system of Effluent Quality Assurance. Whilst this is a matter of arcane statistics, getting the assessment wrong could have serious legal and investment consequences.

15 As explained earlier, the WCWC responded to the DBT on its consultations and much of what is set out in this evidence is elaborated in those submissions. The consultation and response were focussed principally on England and to a lesser extent, on Wales. In view of the complexity of the consultations, the WCWC produced an overview which is included here as an appendix. These provide a broader and deeper insight than could be achieved by just providing answers to the prescribed questions.

APPENDIX 1

WORSHIPFUL COMPANY OF WATER CONSERVATORS

OVERVIEW OF THE RESPONSES TO THE DEPARTMENT OF BUSINESS AND TRADE ON:

- **CONSULTATION ON EXTENDING THE GROWTH DUTY TO THE ECONOMIC REGULATORS OFGEM, OFWAT AND OFCOM AUGUST 2023**
- **CALL FOR EVIDENCE ON SMARTER REGULATION AND THE REGULATORY LANDSCAPE JANUARY 2024**
- **CONSULTATION ON THE GROWTH DUTY DRAFT STATUTORY GUIDANCE JANUARY 2024**
- **CONSULTATION ON SMARTER REGULATION: STRENGTHENING THE ECONOMIC REGULATION OF THE ENERGY, WATER AND TELECOMS SECTORS JANUARY 2024**

11th JANUARY 2024

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*.

PROLOGUE

2 During the later months of 2023, the Department of Business and Trade (DBT) consulted on the role of regulators, particularly economic regulators, in the resurgence of the UK economy. A key statement on driving growth through world class, smarter regulation, by the Chancellor of the Exchequer and Secretary of State for Business and Trade was set out in a

letter on November 22nd 2023 following the Autumn Statement, to regulators within the scope of the Growth Duty (s108 Deregulation Act 2015) i.e., Ofgem, Ofwat and Ofcom. This is set out because of the importance of what it says for the water sector.

https://assets.publishing.service.gov.uk/media/6568909c5936bb00133167cc/E02982473_Autumn_Statement_Nov_23_Accessible_Final.pdf

“Institutional frameworks and regulation are important for economic growth. That is why the government set out its vision in Smarter regulation to grow the economy (May 2023) for an ambitious approach to regulation. As Chancellor of the Exchequer and the Secretary of State for Business and Trade, we are committed to ensuring that regulators are contributing to this agenda as much as they can. We want to see our independent regulators take a more active role in creating a dynamic business environment which will result in the UK being seen as a great place for investment and innovation, whilst continuing to protect consumers and the environment.

Growth Duty Guidance

We have published a consultation on measures to strengthen the regulators’ Growth Duty. Central to this is consulting on new statutory guidance to which you, as regulators within scope of the Growth Duty would need to have regard. Our intention in updating the statutory guidance is to be clearer about how regulators can support sustainable economic growth alongside or as part of their other duties. Subject to consultation, regulators will be expected to consider seven Drivers of Economic Growth and seven Behaviours of Smarter Regulation. Your views are important, and we strongly welcome your input to this consultation before we issue final guidance to be effective in April 2024.

Growth Duty Reporting

The Government believes that transparency and accountability for regulators is vital to show Parliament and the public the critical work that regulators do. Therefore, alongside consulting on statutory guidance, HM Government is consulting on whether regulators should publicly report on the Growth Duty, either using non-statutory reporting, which would allow for more flexibility and proportionality, or statutory reporting that would be more uniform, but could support greater consistency.

In this letter we want to set out further details to regulators of how a non-statutory approach could work, subject to consultation. Under this model, we would invite you as regulators to report on your actions as an opportunity to showcase the valuable work that you do. Regulators would be invited to publish a report every year that included a Growth Duty statement and Growth Duty performance metrics. Please see Annex below.

To support growth, the government will evaluate how regulators have considered the Growth Duty before taking decisions on taxpayers’ grant-in-aid funding and assessing regulators’ approach to fees.

Strengthening Economic Regulation

Additionally, the government has confirmed its intention to extend the Growth Duty to Ofcom, Ofwat and Ofgem. Alongside this, the government has published a consultation on

strengthening the regulation of the water, energy, and telecoms sectors.³ We are rightly proud of the UK's system of independent economic regulation; it has attracted over £570 billion of investment between 2000 and 2020, helping to enhance infrastructure and deliver improvements to these essential industries. Ofcom, Ofwat and Ofgem have played a vital enabling role in encouraging this investment and, as set out in the economic regulation consultation published today, we expect these regulators to continue to focus their efforts on ensuring the sectors are able to attract the investment needed for the UK to deliver on its resilience and climate targets.

A Competitive UK Business Environment

The purpose of this work is to ensure that the UK business environment is internationally competitive by preventing unnecessary burdens on business and ensuring that regulators operate in proportionate way, considering how they can support growth and investment in the sectors they regulate”.

3 The following were then issued:

- The Call for Evidence

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

- Consultation on the revised statutory guidance to assist regulators in fulfilling their responsibilities under the growth duty

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

- Consultation on strengthening 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>

4 During July-August 2023 the DBT had consulted on the extension of the Growth Duty under the Deregulation Act 2015 to include Ofgem, Ofwat and Ofcom. The DBT Better Regulation Unit responded in November and announced that it will proceed with the extension.

<https://www.gov.uk/government/consultations/smarter-regulation-extending-the-growth-duty-to-ofgem-ofwat-and-ofcom>.

5 The WCWC has responded to all of the above invitations and these can be found on the consultations page on its website. It did so because of the professional roles of its members 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 decided to respond to the two consultations and the call for evidence issued in November, as a set but in a way which enables each response to stand alone.

6 The responses are focussed on the water sector and 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 thrust of the consultations. In the context of the regulatory landscape, experience of working with the Drinking Water Inspectorate is included and the insights provided on the broader landscape may be of some assistance in evaluating regulators in other sectors. The WCWC is pleased to have had the opportunity to respond to the call for evidence and looks forward to being able to make further inputs as requested in the future.

7 It appears that there are two interrelated processes. First, how can the water sector be an enabler to a resurgent economy, and second, applying the principles of smart regulation to the sector. These are related insofar that the best contribution to the economy will be made if the regulation is smart. But in seeking to prepare an effective set of submissions, the WCWC offers a comment that the whole initiative on smarter regulation is starting to create a complexity in its own right which can be difficult to interpret in the context of the water sector. 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 the language of the consultations and call for evidence is couched in terms only comprehensible to the people most involved with the processes. So, in examining the experiences of regulation in the call for evidence, the DBT might also include some self-examination of smart regulation.

[Smarter regulation to grow the economy - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

[Better Regulation Framework - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

8 The current consultations and the call for evidence pose some complex questions which require detailed responses. WCWC 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 the sectors of water, energy and telecoms will be different for each sector but will share some common principles. The role of Ofwat, is much more intimately involved with the role of the EA and NE within Defra than energy or telecoms. So, the WCWC is focussed on what all of this means for the water sector.

SOME HIGHLIGHTS OF THE RESPONSES

9 In the simplest of descriptions: the guidance for an integrated Growth Duty for all water regulators (emerging from one consultation with Ofwat now being added) 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).

Some relevant economic principles

The two worlds of finance and operations

10 The WCWC highlighted that the consultations by DBT sit between the worlds of finance and practical operations of the water sector. This was explored by the WCWC in its submissions.

11 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.

12 The latter is a world which demands patience. Even with the best will, changes involving investment in capital plant, 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.

13 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. The generally accepted accounting practice rules should eliminate some of the debate.

14 There needs to be greater clarity about what has been suggested by environmental and quality regulators and what has been included by OFWAT in a Periodic Review which in turn will define water charges. One example: in 2023 Defra promised £50billion to tackle combined sewerage overflows (CSOs) between 2025 and 2050. The water companies need clarity on how much will be allowed in OFWAT determinations for 2025-30 and then a detailed definition of which schemes are funded for each company. Those decisions must be respected by other regulators.

15 There has been a focus on innovation in investment models to seek sources of finance. These were explored extensively particularly in the response on strengthening the role of economic regulators. This focus was highlighted in the November 2023 debate organised by the WCWC at Bakers Hall on the financeability of future water services.

16 But the WCWC expressed some concerns about some of the proposals for innovative investment models and expressed a view that the search for innovative investments must not compromise operational integrity. This was explored in some depth in the response to the consultations on growth and strengthening economic regulation. It appeared that the consultations were tilted towards the worlds of finance more than operations.

17 The WCWC has suggested for some time that there must be an effort to bring these two worlds into greater harmony. There is much debate about the effectiveness of economic regulation in the water sector and the WCWC has suggested that the time has come for a once in a life time review of the price setting process to make it more streamlined and benefit from over 30 years of practical experience. It is suggested that such a review could embrace the purpose of water companies. This should take account of the circumstances facing the water sector over the coming years.

18 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 regulators or all utilities. The WCWC suggests that the uniqueness of such a high profile requires an integrated approach in the water sector articulating the harmonised responsibilities of the regulators, and what is envisaged for Ofwat in these consultations 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 guidance on the growth duty of utility regulators. It is justified by the magnitude of the investments needed.

The two worlds of economics and environment.

19 The WCWC is very much aware of the role of water in a successful economy. Indeed, the UK's industrial and commercial past was driven by access to water, be it inland for hydro power of many kinds, or seas and estuaries for international trade. But despite trade effluent controls and the regime of consented discharges to rivers it has come at a price for the environment, for which efforts are being made to address now.

[Making Water a Part of Economic Development: The Economic Benefits of Improved Water Management and Services | SIWI - Leading expert in water governance](#)

The WCWC pointed out that growth must not be seen as an end in its own right, it must be part of a strategy meeting objectives defined in wider goals, such as sustainable water services and environment.

20 The notion that there is a lack of communication between operations and finance is also repeated in the interface of the value placed on the environment in the widest sense and the economics of considering water as a commodity in a resurgent economy. Growth should be a goal which includes happiness, wellbeing, fulfilment, etc. rather than just financial measurements. The WCWC suggests that more attention should be given to the principle of 'natural capital'

[Enabling a Natural Capital Approach guidance - GOV.UK \(www.gov.uk\)](#) .

21 The WCWC notes that whilst the consultations, particularly that on the Draft Guidance on the Duty of Growth, refer to Environmental Sustainability, they did not address how the economics of Natural Capital and the Triple Bottom Line would be factored in. Indeed, Natural Capital is within the purview of Defra and the WCWC suggests that the two government departments should cooperate in bringing these two dimensions of economics together.

22 Just as the three submissions were finalised in January 2024, extensive and severe flooding occurred in England and Wales. This provided a reminder that any national water strategy must embrace flooding, and this has been advocated by the WCWC. Not only does this demonstrate the impact of climate change on how water behaves naturally in the environment, but it also demonstrates the challenges of maintaining hydraulic integrity of sewerage systems. Mitigation of and adaptation to flooding must be accounted for in the environmental regulators Growth Duty and feature further in any revisions to the planning framework.

How much does society value high quality water, how much does water cost and how much is society willing to pay?

23 Society at large is placing more value on high quality water in the natural environment than it has for many decades, perhaps ever. The submissions of the WCWC highlight the fact that to meet this perceived need the costs of delivery will rise however they are financed. As a consequence, prices will rise and that creates a series of issues around affordability and public trust in companies and economic and environmental regulators for a service essential to health and wellbeing. The WCWC notes that there was no discussion about affordability in the concepts of smart regulation and tariff innovation should be addressed as a consequence of these consultations. The WCWC suggests that the DBT must be central in enabling society to accept this shift in cost and charges and they must prepare the strongest possible business case in partnership with OFWAT plus the companies, EA and NE to explain the reasons to the public and to Government.

The value and cost of regulators

24 In a further example of the dilemmas outlined above, the WCWC responded to the question in the Call for Evidence on the Regulatory Landscape about funding of regulators. It is true that regulators in the water sector are valued, but the WCWC posed the question as to whether or not the costs of that value are satisfied by the price society is prepared to pay for their contributions and notes the diminishing budget for the E A. But increasing resources is more than just employing more people and the WCWC drew attention to the contribution of technical innovation, for example in the use of drones for inspections being more effective and cheaper than manual inspections.

25 The WCWC highlighted some of the tensions in the relationships of a Sponsoring Department and its Arms-Length Bodies (ALBs) and funding is part of that. Allied to that are the relationships between those parties in setting front line practice within national strategies and policies.

Shared responsibilities

26 According to the DBT, there are 90 regulators across the UK, not including local authorities. They cover a wide range of areas and have a range of different powers and responsibilities; in some cases, they have been given a specific job to do by Parliament. Many regulators, though not all of them, are public bodies funded by the taxpayer. These include the EA and NE in the water sector, but not Ofwat - an omission being rectified. The delivery of a sustainable water environment supported by effective water services extends beyond the economic regulators.

27 There are others with influence on water management but they are not included in the Duty of Growth. Water companies have regulatory powers on such matters such as the physical criteria for sewer connections, water fittings and trade effluent discharges. Local authorities, excluded from the consultations and call for evidence, regulate planning and building construction and may ignore the advice of the water companies. Local authorities may not follow rules which work well with the water company responsibilities, for water fittings for example. They are regulators of private water supplies (all under the Water Industry Act 1991) and have powers regarding environmental nuisance. They could well play a role as Approving Bodies in the proposed framework for Sustainable Urban Drainage Systems (SUDS) and this is articulated by the WCWC in the submission to the consultation of the strengthening of economic regulation). Other examples include local flood risk management authorities.

<https://www.gov.uk/government/collections/flood-and-coastal-erosion-risk-management-authorities>.

<https://www.gov.uk/government/collections/environmental-permitting-resources-for-local-authorities>

28 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 could have as much impact as that of Ofwat in post Brexit onshoring, as the WCWC has pointed out.

29 The WCWC highlighted in its submissions on growth, examples of new industries drawing on water resources beyond any control by Ofwat but within the direct purview of EA regulation. The WCWC understands that there are drivers and behaviours in the Growth Duty common to the three utility sectors and that it is convenient for DBT, and makes common sense, to articulate these together in statutory guidance. In that sense the WCWC supports the revision of the guidance. These revisions will be applicable however the guidance on the Growth Duty is packaged. But it might well be more effective if the economic regulation of water is taken out of the ‘utility box’ and put in a ‘water box’ with the other regulators affecting the water sector.

30 The missing pieces of this mosaic of consultations are references to the impacts of planning and development control by local authorities and that the intervention of the Department of Levelling Up, Housing and Communities (DLUHC) is needed to issue variations to the planning framework. 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. The WCWC suggests that the DLUHC should also be involved in order to issue revisions to the planning framework. The WCWC has suggested that a closer working relationship between Water UK and the Local Government Association should be developed.

31 A feature highlighted by the WCWC is the constant theme throughout the submissions that the three government departments - Defra, DBT, DLUHC and the Defra ALBs - must work closer. A key feature of all the submissions, and indeed other papers produced by the WCWC, is cooperation and collaboration to produce a national water strategy and consensus on the way forward.

An evolution of Ofwat’s Appeal functions

32 The WCWC has drawn attention to some specific opportunities which would be very good demonstrations of smart regulation. One such example is the very high-profile attention given to sewer connections.

33 New developments should have a legal requirement to deliver SUDS, with exemptions in prescribed conditions, now the subject of government plans to implement Schedule 3 of the Flood and Water Act 2010. 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. The WCWC suggests an 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, there is a need to 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 in the submissions as a very good example of integrated Duties for Growth of regulators in the water sector in addition to the extended Appeal role of Ofwat.

34 Whilst reference is being made to Ofwat Appeal functions the WCWC also pointed out in its August submission on extending the Growth Duty to Ofwat that even if the Growth Duty is extended to Ofwat then there is no obligation for water companies to provide water to non-domestic customers. The WCWC suggested that this obligation should be extended to water companies with the caveat that an applicant could Appeal to Ofwat if an application for supply is refused.

35 So in summary the WCWC is suggesting a major revision of the Appeal functions of Ofwat to cover both of these resolutions of current problems and these would be part of the systemic review suggested by the WCWC.

A couple of other points of high-profile interest before the WCWC sets out its suggestions for smart regulation of water in future

Innovation

36 Innovation is referred to in the Duty of Growth consultation, but it must form part of all smart regulation; and in its submission the WCWC has pointed to many examples of specific innovation in new investment models, by expanding the appellant functions of Ofwat, by the use of drones for inspections, the evolution of catchment management and so on. The WCWC supports any development of tariff innovation, which is balanced fairly.

37 The WCWC is very supportive of innovation and has pointed out that any technical innovation must always be accompanied by caution in application so that no risks to health and the environment occur. It is co-operating in producing a think piece on innovation since 1974. It is, however, essential that operational and technical innovation must produce a tangible and measurable benefit if it is successful and the regulators should insist that the benefits should be clearly stated before the innovation is adopted.

Customer care

38 The WCWC also pointed out that the concept of customer care should be embedded in the way that regulators treat the organisations they regulate and to ensure that those regulated

organisations are focussed on customer care for the end users, and in that sense is a good example of innovation.

SMART REGULATION OF WATER

39 Smart economic regulation by Ofwat must not be seen as an end in its own right, it must be part of a strategy meeting objectives defined in wider goals for sustainable water services and environment.

40 In the submissions the WCWC outlined some principles of how smart regulation could be applied to the water sector. But in case the suggestions were couched within a longer summary and supporting texts these principles are set out below with some elaboration which enables this overview to be used as a standalone document. The WCWC suggests that these should:

- Develop a national water strategy, and do so urgently.
- Create a national consensus on water including how it can be an effective and safe enabler of a resurgent economy.
- Rebuild public trust by being clearer about the objectives and consequences of delivery plans; this would include a review of the resources available to the regulators and to ensure that the economic regulatory processes embed the principles of trust and customer care.
- Apply 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.
- Accept that innovation in investment must not compromise operational integrity.
- Integration of all the growth duties of all the regulators in the water sector, with separate guidance.
- Establish a closer working of all relevant government departments, particularly DBT, Defra and DLUPHC and Defra arms-length bodies.
- Reduce of the fragmentation of policy and practice.
- Apply a ‘once in a life time’ review of the Ofwat price review and determination processes rather than the current approach of ‘piece-meal’ changes. The WCWC suggests that this should be 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 as set out here, but preserve the principles of commercial viability. The WCWC suggests that any strengthening of the regulatory process must include extended powers for Ofwat to investigate and regulate the financial structures of the holding companies, all of their subsidiaries and their licenced subsidiary water companies. And would include an extension of the Purpose of the water companies This will contribute to the rebuilding of public trust but must be done in ways which do not discourage investment.
- Attend to many specific issues which need resolution within this context.
- Recognise more explicitly that economic growth must be environmentally sustainable and incorporate the principles of Natural Capital.
- Plan for the future, learn from the past, act in the present.

