

Link response: Industry and Regulators Committee Inquiry into ‘UK Regulators’

1st December 2023

This inquiry response is on behalf of [Blueprint for Water](#), part of the nature and animal welfare coalition [Wildlife and Countryside Link](#).

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Summary

Blueprint for Water, part of Wildlife and Countryside Link, welcomes the opportunity to respond to this call for evidence from the Industry and Regulators Committee on UK Regulators.¹

As a coalition of 80 organisations working for the protection of nature, our response provides evidence on the work of regulators with explicit responsibilities and statutory obligations towards the environment in the UK, particularly the Environment Agency, Natural England, and Ofwat.

UK regulators have an essential role in ensuring the protection and enhancement of nature, and in driving progress towards achieving Government commitments to halt the decline of nature by 2030, to reverse this decline by 2042, and to achieve net zero by 2050. Yet the clear, strategic direction, and the necessary funding and resources needed for regulators to do so successfully is lacking.

In order for UK regulators to successfully regulate for the protection of the environment, and therefore deliver good environmental outcomes, the following will be required.

- Regulators must have clear, strategic steer and backing from Government to uphold regulation. A strategic regulatory framework should set out the long-term vision for

¹ Wildlife and Countryside Link is a coalition of 80 organisations working for the protection of nature. Together we have the support of over eight million people in the UK and directly protect over 750,000 hectares of land and 800 miles of coastline. Blueprint for Water, part of Wildlife and Countryside Link, is a unique coalition of environmental, water efficiency, fisheries and recreational organisations that come together to form a powerful joint voice across a range of water-based issues.

regulated sectors, and how this will contribute towards the achievement of environmental targets and outcomes.

- Regulators must be sufficiently funded and resourced to fulfil their regulatory function, including to deliver a comprehensive and robust advisory, monitoring, and enforcement regime.
- Regulators should have a clear 'green duty', to further provide this strategic steer, direction and mandate towards positive environmental outcomes.

We discuss these points further throughout our response. Further thoughts on the role, remit and success of Ofwat in particular can be found in our June 2022 response to the previous Industry & Regulators Committee call for evidence into the work of Ofwat.²

We would be pleased to discuss any of the points in our response further.

Questions

1. Are UK regulators being given a clear job to do?

1.1. Environmental regulators in the UK have responsibility to regulate for the protection of the environment. However, high-level steer and general ambition passed from Government to regulators on the importance of protecting and enhancing the environment is not consistently backed with strategic guidance and detail. A clearer strategic regulatory framework, that sets out the long-term vision for regulated sectors, and how this will contribute towards the achievement of environmental targets and outcomes, is required.

1.2. For example, the most recent Strategic Policy Statement (SPS) from Government to Ofwat was clear in naming the protection and enhancement of the environment as the top strategic priority for the water industry. However, the SPS still leaves significant discretion to Ofwat in areas of judgement that should either make explicit reference to achieving the Environment Improvement Plan and other targets, or are more appropriate for other environmental regulators such as the Environment Agency, or for ministers.³

1.3. Similarly, whilst the SPS sets out expectations such as for the industry to increase the use of catchment and nature-based solutions (C&NBS) or to make greater use of partnership working, further detail on how this should be achieved is lacking. This again leaves decisions on the pace and scale of investment that is necessary in the hands of Ofwat, without sufficient strategic guidance or steer from Government. Without specificity or prioritisation, Government risks companies and Ofwat making different decisions on direction. For

² https://www.wcl.org.uk/docs/Blueprint_for_Water_Ofwat_Inquiry_Response_24_06_2022.pdf

³ CIWEM. (2022). 'River water quality and storm overflows'.
<https://www.ciwem.org/assets/pdf/Policy/Reports/Storm%20Overflows%20Systems%20Full.pdf>

example, PR19 saw a record number of companies going through the CMA appeal process, in part due to the effects of uncertainty on priorities and expectations.⁴

1.4. Furthermore, steers given to regulators can be inconsistent and contradictory, undermining long-term planning and processes, and complicating decision-making. For example, Government have added new and significant priorities into PR24 late in the planning cycle, with both the Storm Overflow Discharge Reduction Plan and Levelling Up Act being finalised the year that water industry draft plan submissions are due. This has yielded business plans with significant delivery risk attached, and made it impossible for Ofwat to achieve their statutory duties of securing affordable, deliverable plans that allow water companies to meet their legal requirements.

1.5. Additionally, the steer given by the Secretary of State to the water industry – via the Environment Agency – in summer 2023 advised the industry to phase all non-statutory environmental projects in PR24 to future price reviews,⁵ and to assume a more optimistic climate change scenario in water resources management planning.⁶ This contradicts the SPS, both in terms of the priority afforded to environmental ambition, and in that the requirements set out within the steer mean that schemes such as those using catchment and nature-based solutions (C&NBS) are most likely to be lost from PR24.

1.6. Government’s proposals to impose a Growth Duty⁷ on Ofwat create further contradiction. As an economic regulator, Ofwat already gives considerable attention to economic costs and benefits in decision making, and struggles to adequately capture and consider environmental costs and benefits. Extending the Growth Duty will create further complexity and confusion, increasing a false sense of conflict between the regulators' duty to growth, cost to customers, and the environment.⁸

1.7. Government’s instruction to the Environment Agency to monitor, advise, but not enforce the Farming Rules for Water regulations further demonstrates how Government steer can complicate and contradict regulatory objectives and functions, and ultimately undermine the purpose of legislation intended to protect the water environment from

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<https://www.wcl.org.uk/docs/Blueprint%20for%20Water%20%20submission%20to%20the%20CMA%20on%20Water%20Company%20Re-determinations.pdf>

⁵ https://www.wcl.org.uk/docs/WCL_Letter_Secretary_of_State_PR24_Ambition_10_08_2023.pdf

⁶ The Times. (2023). [Water firms urged to save money by diluting climate change plans.](#)

⁷ [Consultation on extending the Growth Duty to the economic regulators Ofgem, Ofwat and Ofcom: government response \(publishing.service.gov.uk\)](#)

⁸ Further detail on this can be found in Wildlife and Countryside Link’s response to the 2023 Government consultation on proposals to extend the Growth Duty to Ofwat, Ofgem, and Ofcom: https://www.wcl.org.uk/docs/WCL_Response_Growth_Duty_Extension_Consultation_17_08_2023.pdf

agricultural pollution.⁹ ¹⁰ Agricultural pollution is responsible for at least 40% of waterbody failures under WFD.

1.8. Further uncertainty is created by the Retained EU Law Act 2023. The Act gives Government the power to amend, revoke, or replace thousands of pieces of EU-derived legislation, many of which relate to the protection of the environment. The Government REUL dashboard suggests that a significant number of retained EU laws have yet to be reviewed.¹¹ That the future of so many pieces of legislation remain uncertain further undermines the long-term clarity of the regulatory framework, and risks creating contradiction and confusion within regulation and regulatory activities.

1.9. In giving strategic guidance to regulators, Government must provide a much clearer indication of what it expects the regulated sector to deliver to meet its short- and longer-term priorities, including by noting specific outcomes. This expectation must then be consistently reflected across Government decision making, to ensure that this steer is consistent across the policy landscape. This strategic regulatory framework should be consistent with, and promote the achievement of, legally binding targets for nature and climate, including to halt the decline of nature by 2030, to reverse this decline by 2042, and to achieve net zero by 2050.

2. Is the right balance being struck between the responsibilities of regulators and those of the Government, particularly where there are political or distributional trade-offs that need to be resolved?

2.1. The right balance is not always being struck. For example, water pollution has become a prominent issue both publicly and politically, with much criticism directed towards Ofwat and the Environment Agency for failing to enforce regulations. However, it is also the responsibility of Government to ensure that regulators have sufficient strategic steer, and that they are sufficiently funded to deliver robust and comprehensive monitoring and enforcement regimes. This responsibility is not being met.

2.2. As discussed, Government has previously instructed the Environment Agency to not enforce the Farming Rules for Water. The Environment Agency budget has been cut by over 50% in the past decade, and media reports from November 2023 show that processes of monitoring and reporting under WFD are being stretched owing to budget constraints.¹²

⁹ <https://www.endsreport.com/article/1756396/ea-chief-defra-told-us-not-enforce-farm-water-rules>

¹⁰ [Government retracts 'unlawful' pollution guidance for England's farms | Pollution | The Guardian](#)

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<https://app.powerbi.com/view?r=eyJrljoiM2RiODVkyTktMGZmOC00OTc4LWFhODEtNGNhYzFhNDM0ZTU1IiwidCI6ImNiYWw3MzMDA1LTAYzEtNDNiYi1iNDk3LWU2NDkyZDFiMmRkOCJ9>

¹² ENDS Report. (2023). [Water Framework Directive divergence dispute: What we know so far \(endsreport.com\)](#)

Analysis by Violation Tracker UK shows that enforcement actions taken by the Environment Agency against corporations have declined by 84% from 2012-2022.¹³ This marks a significant decrease in both civil and criminal sanctions.

3. Are regulators appropriately independent of government? Is the right balance being struck between strategic and political input from government and preserving the operational independence of the regulators?

3.1. The right balance is not being struck between strategic and political input from Government and preserving the operational independence of the regulators. Political interventions in regulatory processes can be contradictory and inconsistent, particularly if these are reactive or come part-way through regulatory processes, creating confusion and undermining certainty for regulators and regulated industries.

3.2. The current situation with PR24 exemplifies this. Ofwat published the final PR24 methodology in July 2022, and water companies were required to submit draft business plans by 2nd October 2023. The draft plans should now be reviewed by Ofwat, to then make draft determinations, before final business plans are confirmed in December 2024. However, as discussed, as late as July 2023 Government issued a new steer – via the Environment Agency - to the water industry that companies should explore phasing all non-statutory activity to future Price Reviews, and that more optimistic climate change scenarios should be explored in water resources modelling.

3.3. This intervention from Government into the regulatory process, at such a late stage, undermines certainty for businesses, investors, and for stakeholders engaging in the PR process. Draft business plans submitted to and published by Ofwat have not yet fully undergone the phasing exercise as requested by the Secretary of State, and are therefore likely to change significantly. For example, Southern Water have confirmed in their draft business plan that they have not yet been able to incorporate feedback or decisions, due to the timings of these phasing discussions.¹⁴

3.4. The intervention from Government resulted from political concerns regarding the price of water, and potential bill increases for customers. This sits within a broader context of water quality concerns that have rapidly risen on both political and public agendas in recent years. Yet the steer given essentially caps environmental ambition, threatening positive

¹³ <https://bylinetimes.com/2022/11/09/uk-environment-agency-prosecutions-6-of-the-level-they-were-a-decade-ago/>

¹⁴ Southern Water. (2023). 'SRN38 Water Industry National Environment Programme (WINEP) Methodology for WINEP Enhancement Business Cases Technical Annex'. https://www.southernwater.co.uk/media/9104/srn38-water-industry-national-environment-programme_redacted.pdf#page=17

commitments for nature from the water industry, and risks precluding the use of catchment and nature-based solutions for delivery. This contradicts the SPS and broader Government commitments to the environment, and risks jeopardising Ofwat's ability to review water industry business plans against criteria and expectations set out within the PR24 Methodology.

3.5. If guidance or steer additional or contrary to the strategic regulatory framework and long-term vision for regulated sectors is required, this should be issued by Government as early as possible in the regulatory process; ideally, before the regulatory process has begun. Guidance or steer issued should be accompanied with a clear explanation of how it will contribute towards the achievement of environmental targets and outcomes, and should be transparently communicated to all stakeholders.

4. Does the Government provide too much or too little guidance to regulators in making decisions, particularly in deciding between different objectives and priorities?

4.1. As discussed under Q1, Government steer and guidance to regulators is often high-level, insufficiently considers the long-term, and lacks clear strategic detail.

4.2. In giving strategic guidance to regulators such as Ofwat, Government must provide a much clearer indication of what it expects the regulated sector to deliver to meet its short and longer-term priorities, including by noting specific outcomes. This expectation must then be consistently reflected across Government decision making, to ensure that this steer is consistent across the policy landscape. This strategic regulatory framework should be consistent with, and promote the achievement of, legally binding targets for nature and climate, including to halt the decline of nature by 2030, to reverse this decline by 2042, and to achieve net zero by 2050.

4.3. Government should remove the Deregulation Act 2015 Growth Duty from all environmental regulators, and should not extend the Growth Duty to Ofwat, Ofgem, and Ofcom. The Growth Duty undermines the regulatory integrity of non-economic regulators, their independence, and their ability to fulfill their primary statutory duties and functions. Environmental regulation can drive innovation, reduce risks, create jobs and growth, create new business opportunities and boost the UK's international competitiveness. Given the importance of natural capital to future economic prosperity, a more appropriate goal for a 'growth' duty would be to focus on 'sustainable' or 'green growth' that is consistent with the protection and enhancement of the natural environment or 'natural capital'. We discuss this further in response to Q.6.

5. Are the roles and remits of different regulators sufficiently discrete, or is there overlap and duplication?

5.1. There is some overlap in the roles and remits of different regulators, and this is not in itself a problem. It would be expected that regulators with explicit responsibilities and statutory obligations towards the environment would have some overlap, due to shared aims and responsibilities to drive good environmental outcomes.

5.2. For example, both Ofwat and the Environment Agency have a role in regulating the water industry, to ensure that environmental regulations are being upheld and that environmental obligations are being delivered. It is essential that Ofwat and the Environment Agency work together effectively to regulate the water industry; different approaches to shared responsibilities and priorities could create complexity and confusion.

5.3. For example, as discussed, the 2019 Price Review saw a record number of companies going through the CMA appeal process. This was to challenge decisions issued by Ofwat which placed at risk several industry schemes to ease pressure on the environment, and in some cases, to deliver significant environmental benefits in line with sustainability principles and customer wishes. Ofwat's decisions contradicted the recommendations of a number of reports and publications aligned around the need for increased investment and activity to secure sustainable water supplies, including the Environment Agency's National Framework for Water Resources.¹⁵

5.4. Where the remits of different regulators do overlap, it is essential that they take a consistent approach in order to drive delivery. For example, although Government guidance via the SPS to Ofwat, WINEP guidance for 2025-2030 and Water Industry Strategic Environmental Requirements (WISER), has directly pointed to catchment and nature-based solutions, diverging regulatory attitudes are preventing water companies from taking this multi-beneficial, cost-efficient and low-carbon approach. For example, flexible permitting would allow water companies to implement catchment nutrient balancing. However, the Environment Agency has taken the approach of excluding companies with a 1- or 2-star EPA rating for 3 out of the last 4 years. Whilst concerns around allow 1 and 2-star companies to implement catchment nutrient balancing are understandable, these underperforming companies are exactly those which need to be driven to do more, and require the greatest steer to ensure this is delivered in a beneficial way.

5.5. Additionally, current economic regulation under Ofwat creates financial risks for such C&NBS approaches, which are mainly still seen as operational expenditure within a single AMP cycle, instead of acknowledged as part of long-term investment that should be

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<https://www.wcl.org.uk/docs/Blueprint%20for%20Water%20%20submission%20to%20the%20CMA%20on%20Water%20Company%20Re-determinations.pdf>

incorporated into the regulated asset base. Therefore, while it is necessary for the remits of both the Environment Agency and Ofwat to overlap and cover C&NBS, such as catchment nutrient balancing, it is essential that both regulators are then aligned and consistent in their approach. The Environment Agency and Ofwat should adopt joint, ambitious targets to increase uptake of C&NBS and support the mainstreaming of C&NBS by accepting these schemes when preferred by water companies and customers. For example, through setting an aspirational sector-wide target of 10% of WINEP investment going towards C&NBS.¹⁶

6. How effectively do regulators co-operate with one another, and how could this be improved?

6.1. The poor state of the environment suggests that regulators are struggling to work collectively to successfully enforce regulation. For example, the critical state of the water environment shows that Ofwat and the Environment Agency have faced significant challenges in tackling pollution, and to effectively regulate the water industry to ensure that environmental obligations are delivered. The Environment Agency continues to rely on industry self-reporting, and the latest Ofwat industry performance reports show that water companies are still failing to meet targets and deliver fully their statutory obligations.¹⁷

6.2. It is positive that Ofwat and the Environment Agency are working collaboratively in the current joint investigation into permit breaches at over 2000 sewage treatment works. This experience should be used to identify successful practice, and help to foster better working relations in future.

6.3. A further area where regulators collaborate, though could do so further, is around data and monitoring. For example, Natural England's assessments of the health of water-dependent protected sites rely on data collected and managed by the Environment Agency. As such, any decisions around changes to monitoring regimes should be discussed collectively.

6.4. A number of UK regulators, including the Environment Agency, are subject to the Deregulation Act 2015 Growth Duty. In 2023, Government consulted on further extending this Growth Duty to Ofwat, Ofgem, and Ofcom, and in November 2023 has indicated that it intends to go ahead with extending the Growth Duty. This is a significant concern. Extending the Growth Duty will weigh the balance too heavily toward economic costs, at the expense of environmental costs, benefits and needs. Government should set new legal duties for regulatory bodies to conserve, enhance and restore the natural environment in line with Environment Act and Net Zero targets, not introduce a duty that risks undermining their

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https://www.wcl.org.uk/docs/WCL_Blueprint_Ofwat_Letter_Transformational_Price_Review_31_05_2023.pdf

¹⁷ [Water Company Performance Report 2022-23 - Ofwat](#)

delivery. Furthermore, as discussed under Q.4, the Growth Duty and all reference to duties on environmental regulators to make decisions guided by economic growth should be removed.

6.5. Nature's recovery – in particular, the achievement of statutory nature and climate targets – should be set as statutory purposes for UK regulators. Having clear, consistent duties to enhance biodiversity and meet environmental targets will minimise conflict and enable more effective collaboration and join-up between regulators. For example, a strong 'green' or 'green growth' duty would not only help ensure that these regulated sectors are contributing to enhancing both environmental and economic resilience, but would help to provide the necessary steer and strategic oversight to ensure that regulators can successfully work together on driving these outcomes.¹⁸

7. Do the UK's regulators have the necessary skills, capabilities and expertise internally to perform the roles they have been given? If they do not, how could this be improved?

7.1. The function of the UK's environmental regulators is consistently undermined by insufficient budgets, resources and capacity to effectively monitor and enforce regulation.

7.2. Analysis in 2022 has shown that the Environment Agency budget has been cut by over 50% over the past decade.¹⁹ From 2013-2019, the number of water quality samples taken by the Agency fell 45%, and the number of sampling points by nearly 40%.²⁰ There has been an 84% decline in enforcement action undertaken by the Agency from 2012-2022.²¹ This has had direct implications for the Agency's capacity to fulfil their statutory duties. In 2022, Environment Agency staff were being instructed to ignore 'low-impact' pollution incidents due to capacity issues, and it was reported that self-monitoring by water companies was

¹⁸ Further views on the proposal to extend the Growth Duty, and an alternative proposal for a green growth duty, can be found in Wildlife and Countryside Link's August 2023 response to the consultation 'Smarter regulation: extending the growth duty to Ofgem, Ofwat and Ofcom':

https://www.wcl.org.uk/docs/WCL_Response_Growth_Duty_Extension_Consultation_17_08_2023.pdf

¹⁹ August 2022. <https://www.independent.co.uk/climate-change/news/water-pollution-sewage-environmentagency-funding-b2154848.html>

²⁰ Unchecked. (2020). 'The UK's enforcement gap 2020'.

<https://www.unchecked.uk/wpcontent/uploads/2020/11/The-UKs-Enforcement-Gap-2020.pdf>

²¹ <https://bylinetimes.com/2022/11/09/uk-environment-agency-prosecutions-6-of-the-level-they-were-a-decade-ago/>

100 times less likely to detect breaches than Agency testing.^{22 23} Of the 4,074 enforcement actions taken against companies by the Agency during the 2012-2022 period, 60% did not result in a fine.²⁴

7.3. These budgetary constraints also risk undermining the efficacy of proposed changes to improve the regulatory and enforcement regime. For example, Government's proposal to remove the cap on penalties that the Environment Agency can impose on the water industry for breaches of compliance will be dependent on Agency capacity to undertake intensive investigative procedures; the burden of proof required for Variable Monetary Penalties is currently the same as criminal prosecution.²⁵ It is also unclear as to whether this move to remove the cap on penalties is supported with genuine intent and backing from Government; increasing funding for the Agency would signal that this backing from Government exists.

7.4. It has been well-publicised in recent months that regulators not only face challenges with staff capacity and resourcing, but that staff morale is also struggling. In January 2023, UNISON announced that Environment Agency staff had voted to strike for the first time in the Agency's history.²⁶ In a 2022 media story, Environment Agency staff shared that the Agency's capacity had been cut back so significantly that they were unable to do their jobs, that the regulator no longer functioned as a deterrent to polluters, and that staff morale was low due to ongoing poor performance on water quality and enforcement.²⁷

7.5. Resourcing and capacity issues are felt across other UK environmental regulators. The 2020 'State of Natural England' report by the union Prospect shows that Natural England programme expenditure has fallen by £30 million since its formation in 2006 and that there have been significant cuts to staff.²⁸ There has been a decline in funding of 72% from 2010

²² The Guardian. (2022). 'Environment Agency tells staff to ignore pollution complaints, says ex-employee'. <https://www.theguardian.com/environment/2022/aug/29/environment-agency-tells-staff-to-ignore-riverpollution-complaints-age-of-extinction>

²³ Engineering and Technology. (2022). 'MPs demand action as data calls into question water company selfmonitoring'. <https://eandt.theiet.org/content/articles/2022/09/mps-demand-action-as-data-calls-intoquestionwater-company-self-monitoring/>

²⁴ <https://bylinetimes.com/2022/11/09/uk-environment-agency-prosecutions-6-of-the-level-they-were-a-decade-ago/>

²⁵ Wildlife and Countryside Link. (2023).

https://www.wcl.org.uk/docs/WCL_Blueprint_Response_Consultation_Strengthening_Environmental_Civil_Sa_nctions_May_2023.pdf

²⁶ <https://www.unison.org.uk/news/article/2023/01/environment-agency-workers-to-take-historical-strike-action-2/#:~:text=UNISON%20head%20of%20environment%20Donna,communities%20and%20the%20environment%20safe.>

²⁷ The Guardian. (2022). <https://www.theguardian.com/environment/2022/jan/20/environment-agency-cuts-staff-blow-whistle>

²⁸ <https://prospect.org.uk/news/prospect-launches-second-state-of-natural-england-report>

to 2019 for Natural England.²⁹ ENDS Report revealed in summer 2023 that Natural England has capacity for just one staff member to carry out condition assessments for every 73 Sites of Special Scientific Interest.³⁰ 78% of SSSIs have not been monitored in the last 6 years, and Natural England's regulatory tools to secure good management of SSSIs have only been used on 9 occasions in the last 20 years, covering just 0.2% of SSSIs.³¹

7.6. It is important that the skills and capacity of regulators keep pace with the scale of need. For example, customer interest in the health and wellbeing of the water environment has increased in recent years, and the state of freshwater environments remains critical. The water industry is significantly implicated in this, with pollution from wastewater responsible for at least 36% of waterbody failures under WFD.³² Yet Ofwat, responsible for regulating water company performance and delivery of environmental obligations, is ultimately an economic regulator. Ofwat has historically given considerable attention to economic costs and benefits in its decision making, and has struggled to adequately capture and consider environmental costs and benefits. It is essential that the capacity and expertise of Ofwat's environmental teams are sufficient to meet delivery challenges; essentially, the need for environmental resilience to be at the heart of all decision making. This would include, for example, ensuring that there is capacity and the necessary skills to incorporate a natural capital accounting approach into the Price Review, so that 'best value' decisions reflect the full suite of environmental costs and benefits, rather than solely financial cost.

8. Who should hold the regulators accountable for their performance against their objectives? What is the appropriate role of Parliament in performing this scrutiny role?

8.1. There should be a greater role for Parliament in holding regulators accountable, for their performance against their statutory objectives, and against progress towards the achievement of better environmental outcomes. For example, against delivery of the Environment Act targets, and the Environmental Improvement Plan.

8.2. In doing so, Parliament should consult with wider stakeholders, who will have insight, expertise and experience of both regulatory processes in action, and whether this is effective. For example, as discussed, breaches of sewage permits and illegal activity was known to – and being reported by – eNGOs and community groups prior to official acknowledgement by regulators. In the case of water industry regulation, company spending is dependent on payment from consumers; therefore, the values and wishes of

²⁹ <https://www.unchecked.uk/wp-content/uploads/2020/11/The-UKs-Enforcement-Gap-2020.pdf>

³⁰ <https://www.endsreport.com/article/1826837/serious-concern-one-natural-england-employee-assigned-sssi-assessments-every-73-sites-figures-reveal>

³¹ <https://questions-statements.parliament.uk/written-questions/detail/2021-02-09/151834>

³² [State of the water environment indicator B3: supporting evidence - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/100000/state-of-the-water-environment-indicator-b3-supporting-evidence)

consumers should be factored into regulatory decision making. For example, if there is strong customer support or preference for spend on infrastructure, or for the use of C&NBS, this should have greater weight in decision making by Ofwat and the Environment Agency in reviewing business plans and the WINEP.

8.3. The Office for Environmental Protection (OEP) must also have a significant role in holding regulators accountable. As England's environmental law watchdog, the OEP is already investigating possible failures of regulation; Government must respect the OEP's role, scrutiny, and advice. In holding Government to account for the delivery of environmental goals and targets, the OEP should also consider how Government is itself holding regulators accountable, and providing the necessary framework and resources for regulatory duties to be fulfilled.

9. How should the Government and the regulators themselves facilitate appropriate scrutiny and accountability of regulators? Are regulators sufficiently transparent about their own performance?

9.1. Regulators could take a more proactive and critical approach to analysing and assessing whether the regulatory approach is working as it should, and driving positive environmental outcomes.

9.2. For example, the latest Ofwat water company performance report 2022-2023 shows that companies are continuing to underspend on their enhancement allowances and delivery of funded improvements.³³ Similarly, Ofwat's 2023 assessment of company performance related pay (PRP) continues to flag historic issues regarding a lack of transparency on PRP policy, and on how decisions made align with company performance.³⁴ That the same issues are appearing repeatedly in annual assessments implies that Ofwat is failing to sufficiently reflect on the success of the regulatory approach, and to implement changes that might be required to secure better outcomes.

9.3. Regulators can themselves better facilitate scrutiny and accountability through greater transparency of process, and of information. This will allow regulators to be scrutinised and better held to account, both in terms of the regulatory 'work' they are doing, and in terms of the environmental outcomes driven.

9.4. For example, in the water environment, it can be difficult for stakeholders to understand the state of a waterbody or how this has changed through time as the data – though available online – is not presented in an accessible or understandable format. Without this understanding, it is difficult to assess whether a regulator has been sufficiently

³³ <https://www.ofwat.gov.uk/publication/water-company-performance-report-2022-23/>

³⁴ <https://www.ofwat.gov.uk/ofwat-sets-out-details-on-crack-down-on-exec-pay>

monitoring and enforcing compliance, and if this is having a positive impact. For example, in November 2023 a judicial review concluded in favour of a legal challenge against the River Basin Management Plan for the Humber district; this is in part due to the Court finding that the Environment Agency had failed to provide necessary information to anglers on the Upper Costa Beck to understand what action was being proposed to address reasons for fish failure, undermining the right of stakeholders to participate and contribute to river planning processes.³⁵

9.5. It has taken external organisations such as Violation Tracker UK to provide an accessible, easy-to-use database of corporate regulatory infringements, and any enforcement action taken.³⁶ This external provision of data is providing scrutiny and accountability that would otherwise be lacking. Data on the number of enforcement actions taken, and whether these have been followed up with penalties, is being obtained through Freedom of Information requests; it should instead be made publicly available by the Agency.³⁷

9.6. A similar situation can be seen in the Surfers Against Sewage 'Safer Seas and Rivers Service', and The Rivers Trust's Sewage Map, both of which provide information on sewage releases and water quality to inform water users.^{38 39} This information is often not readily available or accessible directly from industry or the regulator.

10. What mechanisms and metrics could be used to hold regulators accountable on a regular and ongoing basis and to judge whether a regulator is performing well?

10.1. The performance of environmental regulators must be judged against environmental outcomes. If the state of the environment is not improving, then environmental regulators are failing to deliver against their statutory duties. Assessment of performance could be tied directly to progress towards achieving targets under the Environment Act and the Environmental Improvement Plan, for example.

10.2. As discussed, the ability to assess the performance of regulators – and regulated industries – and therefore to hold them to account is being constrained by a lack of accessible data. For example, recent media stories discussing rumoured changes to WFD

³⁵ [WE WON! DEFRA's River Basin Management Planning unlawful, finds High Court - Fish Legal](#)

³⁶ <https://violationtrackeruk.goodjobsfirst.org/>

³⁷ For example, the figures in this report were uncovered through FOIs:

<https://bylinetimes.com/2022/11/09/uk-environment-agency-prosecutions-6-of-the-level-they-were-a-decade-ago/>

³⁸ <https://www.sas.org.uk/water-quality/sewage-pollution-alerts/safer-seas-rivers-service/>

³⁹ <https://theriverstrust.org/sewage-map>

monitoring suggest that WFD data will no longer be used to generate and communicate a national statistic for the health of waterbodies.⁴⁰

10.3. This is further undermined by the lack of an overall, or 'apex', target for water health under the Environment Act. Without this target, progress towards environmental improvement will only be apparent against siloed, sector-based targets, whilst accountability for the state of the water environmental overall will be lacking.⁴¹

Government should introduce an apex water target under the Environment Act, to drive and guide holistic action, and to ensure that regulators can be held accountable. Without an overall target, there is a significant risk that progress will be made in discrete areas of water health, whilst the overall state of the water environment does not improve, or declines.

Wildlife and Countryside Link (Link) is the largest nature coalition in England, bringing together 80 organisations to use their joint voice for the protection of the natural world and animals. Wildlife and Countryside Link is a registered charity number 1107460 and a company limited by guarantee registered in England and Wales number 3889519.

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- Angling Trust
- Friends of the Earth
- Froglife
- Institute of Fisheries Management
- The Wildlife Trusts
- Waterwise

⁴⁰ <https://www.endsreport.com/article/1846181/water-framework-directive-divergence-dispute-know-so-far#:~:text=DEFRA%20says%20that%20no%20decision,water%20body%20health%20in%20England.>

⁴¹

[https://www.wcl.org.uk/docs/The%20Environmental%20Targets%20\(Water\)%20\(England\)%20Regulations%202022%20-%20Link%20and%20Greener%20UK%20Briefing%2020.01.23.pdf](https://www.wcl.org.uk/docs/The%20Environmental%20Targets%20(Water)%20(England)%20Regulations%202022%20-%20Link%20and%20Greener%20UK%20Briefing%2020.01.23.pdf)