

Industry and Regulators Committee inquiry into Ofwat: call for evidence

Blueprint for Water Response – June 2022

Wildlife and Countryside Link is a coalition of 65 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.

This response is supported by the following Link members:

- Angling Trust
- Amphibian and Reptile Conservation
- British Canoeing
- Freshwater Habitats Trust
- Friends of the Earth England
- Institute of Fisheries Management
- Marine Conservation Society
- Rivers Trust
- The Wildlife Trusts
- Waterwise

For further information, please contact Wildlife and Countryside Link:

Ellie Ward

Policy and Information Coordinator

E: eleanor@wcl.org.uk

Summary

Blueprint for Water welcomes this inquiry from the Industry and Regulators Committee into the work of Ofwat.

As the regulator of Water Services in England and Wales, Ofwat has responsibility for and great potential to drive action for the protection and enhancement of the water environment. Indeed, the Government's recent Strategic Policy Statement to Ofwat named 'protect and enhance the environment' as the top strategic priority for Ofwat and the water industry. However, this ambition is not currently being met.

We set out the following recommendations in our response for how Ofwat could better meet and deliver on that ambition:

- Use powers under the Water Industry Act 1991 to hold water companies to account and to ensure they properly carry out their statutory functions.
- Ensure that the cost of legal compliance is not passed onto the customer, through use of powers under the Water Industry Act 1991 to limit the payment of bonuses to water company executives who consistently breach their permits.
- Place environmental resilience at the heart of decision making, for example through mainstreaming and incentivising the use of catchment and nature-based solutions, and natural capital accounting, through PR24.
- Work closely with the Environment Agency and Natural England in decision making and plan assessment, to ensure that the environment is at the heart of these processes.
- Promote greater investment in water and sewerage infrastructure through the Price Review, acknowledging the importance of a long-term approach to resilience.
- Increase the visibility and transparency of in-AMP progress by water companies against their expectations, and provide greater clarity on expectations for future Price Reviews, to facilitate focus on long-term outcomes.

Further detail on how Ofwat can deliver transformational change and lead the way in driving the protection and enhancement of the water environment through the current Price Review can be found in our [‘Environmental Manifesto for PR24’](#).

Responses to committee questions

1. Is Ofwat meeting its statutory objectives?

1.1. Ofwat is not currently meeting its statutory objectives.

1.2. Under the Water Industry Act 1991, Ofwat has duties to “secure that water companies properly carry out their statutory functions”. However, Ofwat is currently failing to secure this. This is best exemplified by the ongoing issue of sewage pollution. In 2021 alone, untreated sewage was released from Storm Overflows in England 327,533 times, for over 2.6 million hours.¹ Storm Overflows are meant to be used only in extreme rainfall events, yet this is evidently not the case. As the current investigation into over 2200 sewage treatment works demonstrates, these sewage pollution incidents are the result of widespread, ongoing failures by water companies to comply with permit conditions, to the detriment of both the environment and customers.² Ofwat has thus failed to hold the industry to account in ensuring water companies are compliant with legislation, and to carry out their statutory functions. The environmental campaign group Wild Justice has this month filed a legal claim against Ofwat for their failure to monitor and enforce water and sewage companies’ actions to observe section 94(1) of the 1991 Act and regulation 4 of the Urban Waste Water Treatment (England and Wales) Regulations 1994.³

1.3. Furthermore, Ofwat has duties to protect the interests of customers. Ofwat should therefore not be allowing the water industry to pass the cost of legal compliance onto customers, leaving them to foot the bill for a historic lack of infrastructure investment to mitigate known challenges. This is particularly significant given the current cost of living crisis. Ofwat has powers under the Water

¹ <https://www.wcl.org.uk/stem-tide-of-sewage-pollution.asp>

² <https://www.ofwat.gov.uk/joint-ofwat-environment-agency-and-defra-announcement-november-2021/>

³ <https://www.endsreport.com/article/1789239/national-scandal-ofwat-faces-legal-action-sewage-pollution>

Industry Act 1991 to limit the payment of bonuses to water company executives who consistently breach their permits, an action recommended in the recent Environmental Audit Committee report on water quality.⁴ Further regulation is required by Ofwat to ensure a better balance is achieved by water companies between investment in assets, limiting costs to customers and return on investment to shareholders.

1.4. Ofwat also has a primary duty to “further the resilience objective to secure the long-term resilience of water companies’ water supply and wastewater systems”. The resilience of our natural environment and the water sector is fundamentally connected; proper consideration of environmental resilience is vital to achieving industry obligations and aspirations, including compliance with environmental legislation, the commitment to achieve net zero, and delivery of a sustainable water and sewerage service.⁵ Yet, as discussed under Q.5, the current state of the water environment is critical - fragmented, polluted and degraded, to the detriment of our communities, our economy, and our wildlife. Unless Ofwat places the environment at the heart of decision making, it will fail to deliver on this objective. Blueprint for Water set out in detail how this could be achieved through the current Price Review in our ‘Environmental Manifesto for PR24’.⁶

2. Are Ofwat’s statutory objectives clear and consistent? How can performance against these be measured? How well does Ofwat manage any trade-offs between its objectives?

2.1. As set out in the recent Strategic Policy Statement, protecting and enhancing the environment is and should be the top strategic priority for Ofwat.⁷ This should be clearly reflected in Ofwat’s statutory objectives, placing environmental resilience at the heart of decision making. PR24 must deliver this step-change, allowing water companies to lead the way in driving environmental improvements, improving water quality, reducing abstraction and employing high-quality catchment and nature-based solutions where these deliver greater benefits.

2.2. Ofwat could and should be doing more to facilitate the use of both catchment and nature-based solutions by the water industry. This Government has acknowledged that nature-based solutions are a win-win for people and nature, making good economic and environmental sense. The water environment provides the ideal opportunity for their delivery, reducing flood risk and pollution whilst also safeguarding water supplies from drought, securing valuable habitats for wildlife, and providing for community health and wellbeing.⁸ Yet because catchment and nature-based solutions are innovative and not ‘business as usual’ in their approach, there are barriers to their uptake – such as uncertainty around risk management.

2.3. Ofwat should be addressing these barriers directly, to mainstream and incentivise the use of catchment and nature-based solutions (C&NBS) by the water industry through PR24. Steps to

⁴ <https://www.theguardian.com/environment/2020/jul/01/england-privatised-water-firms-dividends-shareholders>

⁵ Wildlife and Countryside Link. (2020) ‘Naturally Resilient’.
https://www.wcl.org.uk/docs/Naturally%20Resilient_Final_Report.pdf

⁶ Wildlife and Countryside Link. (2021). ‘Environmental Manifesto for PR24’.
https://www.wcl.org.uk/docs/assets/uploads/WCL_Blueprint_for_Water_PR24_Environmental_Manifesto_September_2021.pdf

⁷ Defra. (2022). ‘The government’s strategic priorities for Ofwat’.
<https://www.gov.uk/government/publications/strategic-policy-statement-to-ofwat-incorporating-social-and-environmental-guidance/february-2022-the-governments-strategic-priorities-for-ofwat>

⁸ Wildlife and Countryside Link. (2020). ‘Changing Course’.
https://www.wcl.org.uk/docs/Changing_Course_Blueprint_25YEP.pdf

achieve this could include the introduction of common measures that incentivise natural capital accounting, and therefore the use of nature-based solutions. Ofwat should also support the mainstreaming of C&NBS through the PR24 methodology directly. Clear appraisal guidance is needed to ensure that where C&NBS are the preferred options by water companies and stakeholders, proposals will be accepted by Ofwat.

3. Does Ofwat have the necessary powers to meet its objectives? Does it need greater powers to ensure that water companies reduce sewage overflows?

3.1. Ofwat has powers that could be used to ensure water companies reduce sewage overflows, but has yet to use them. For example, the aforementioned power under the Water Industry Act 1991 to limit payment of bonuses to water company executives who consistently breach their permits, thereby disincentivising pollution.

3.2. As conservation eNGO Salmon & Trout Conservation have highlighted, the right for water companies to pay dividends to investors and shareholders comes with responsibility to meet the legal requirements set down in the privatisation legislation, specifically the Water Industry Act 1991, which was and remains enforceable by Ofwat.⁹ For monitoring and reporting sewage discharges, Salmon & Trout Conservation have shown that Ofwat has held the requisite powers since 1991 to require this information from water companies, for example by way of licence conditions.¹⁰

3.3. Ofwat should therefore be making full use of existing powers under the Water Industry Act 1991 to effectively regulate, monitor and take enforcement action against the industry where required.

4. Does Ofwat have the necessary resources to meet its objectives?

4.1. With increased customer interest in the water environment, and indeed its current critical state, the scope of Ofwat's work as a regulator will have changed. As such, the capacity of Ofwat's environmental team and expertise should be reviewed, and increased to reflect this growing customer interest and environmental challenge.

4.2. Furthermore, Ofwat should work more closely with the Environment Agency and Natural England, involving these organisations in decision making and plan assessment processes, to ensure that environment is at the heart of these processes. We discuss this further under Q.7. Indeed, a more collaborative approach could help to manage the capacity of the environmental team within Ofwat.

5. What are the main challenges facing Ofwat and how well is it meeting them?

5.1. Perhaps the most significant challenge Ofwat faces is the current, critical state of the water environment. 84% of waters (86% rivers) currently fail to meet Good Ecological Status, and not a single waterbody meets Good Chemical Status. Our freshwater habitats and species are in significant decline, with 13% of species threatened with extinction, and 90% of our wetland habitats have been

⁹ Salmon & Trout Conservation. (2022). 'Response to Government's Storm Overflows Discharge Reduction Plan'. <file:///C:/Users/user/Downloads/S&TC%20sewage%20response%20April%202021%20FINAL.pdf>

¹⁰ Salmon & Trout Conservation. (2022). 'Response to Government's Storm Overflows Discharge Reduction Plan'. <file:///C:/Users/user/Downloads/S&TC%20sewage%20response%20April%202021%20FINAL.pdf>

lost in the last 100 years.^{11 12} Parts of England are forecast to run out of water in the next 20 years, with the UK's total water supply forecast to drop 7% due by 2045 due to climate change and sustainable abstraction limits.¹³ Ofwat is not currently meeting the challenge to halt and reverse this decline; the state of the water environment is not improving.

5.2. Ofwat also faces the challenge of a historic lack of investment in infrastructure, for example in the sewerage system. As discussed further under Q.9, much of our water and sewerage infrastructure needs significant maintenance and/or replacement, as investment has failed to keep pace with increasing demand. Ofwat should promote greater investment in water and sewerage infrastructure through the Price Review, and enable water companies to take holistic action to tackle the synergy of stressors on the water and sewerage network, for example through C&NBS.

5.3. As discussed further under Q.6, Ofwat also faces the challenge of a lack of steer and sufficient strategic guidance from Government. For example, the recent Strategic Policy Statement from Government to Ofwat is less explicit in setting clear objectives and priorities for the sector than the previous SPS, or indeed to other sectors, such as the SPS to Ofcom.¹⁴ This lack of steer is perhaps partly responsible for Ofwat's reluctance thus far to make full use of powers under the Water Industry Act 1991, for example.

6. Does Ofwat receive sufficient strategic guidance from the Government on how to balance its objectives?

6.1. We welcomed the emphasis on the environment in the recent Strategic Policy Statement from Government to Ofwat, in particular the clear statement that protecting and enhancing the environment should be the top strategic priority for the industry.

6.2. However, this high-level ambition is not always followed-up with strategic guidance and detail. For example, in their recent report, CIWEM point out that the SPS still leaves significant discretion to Ofwat as to what may or may not be considered appropriate levels of investment in tackling storm overflows, despite this being a judgement more appropriate for an environmental regulator or for ministers.¹⁵

6.3. Similarly, whilst the SPS sets out expectations such as for the industry to take a collaborative, regional planning approach to water resources, or to 'significantly increase their use of nature and catchment-based solutions to achieve multiple benefits for the environment and the public', further

¹¹ RSPB. (2016). 'State of Nature UK Report'.

<https://www.rspb.org.uk/globalassets/downloads/documents/conservation-projects/state-of-nature/state-of-nature-uk-report-2016.pdf>

¹² WWF. (2020). 'A deep dive into freshwater'.

https://f.hubspotusercontent20.net/hubfs/4783129/LPR/PDFs/Living_Planet_Report_Freshwater_Deepdive.pdf

¹³ National Audit Office. (2020). 'Water supply and demand management'. <https://www.nao.org.uk/press-release/water-supply-and-demand-management/>

¹⁴

https://www.wcl.org.uk/docs/assets/uploads/Strategic_Policy_Statement_Ofwat_Blueprint_response_October_2021.pdf

¹⁵ CIWEM. (2022). 'River water quality and storm overflows'.

<https://www.ciwem.org/assets/pdf/Policy/Reports/Storm%20Overflows%20Systems%20Full.pdf>

detail such as timescales for achieving these is lacking. This again leaves decisions on the pace and scale of investment that is necessary in the hands of Ofwat rather than Government.

6.4. As stated, Government's SPS to Ofwat is less explicit in setting clear objectives and priorities than the previous SPS, or indeed those to other sectors such as Ofcom. This means that crucial decisions on areas and priorities for investment in PR24 across the long list of issues covered in the SPS will sit with Ofwat rather than the Government. Without specificity or prioritisation, Government risks companies and Ofwat making different decisions on direction. We saw in PR19 the effect of uncertainty on priorities and expectations which led in part to a record number of companies going through the CMA appeal process. In giving strategic guidance to Ofwat, Government must provide a much clearer indication of what it expects the sector to deliver to meet its short- and longer-term priorities, including by noting specific outcomes.

7. How well does Ofwat work with other regulators and authorities to meet joint challenges and overlapping responsibilities?

7.1. The critical condition of the water environment suggests that Ofwat and the Environment Agency are struggling to work together to address challenges such as pollution, and to effectively regulate the water industry such that the environment is protected. There is a need for stronger regulation and enforcement by both the Environment Agency and Ofwat.

7.2. For example, uncertainty under PR19 saw a number of water companies going through the CMA appeal process, to challenge decisions issued by Ofwat which placed at risk a number of schemes to ease pressure on the environment and in some cases deliver significant environmental benefit in line with sustainability principles and customer desires. Ofwat's decision contradicted the recommendations of numerous 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.¹⁶ A holistic approach, achieved through regulators working together, is required to address the multiple challenges facing the water environment.

7.3. It is therefore positive that Ofwat and the Environment Agency have come together in the current joint investigation into over 2200 sewage treatment works. This experience should be used to identify successful practice, and therefore help to foster better working relations in future.

8. How satisfactorily does Ofwat take the consumer interest into account?

8.1. Consumer awareness of and interest in the health of the water environment is increasing. Ofwat should take this into account and put environmental resilience at the heart of decision making.

8.2. Public interest in the water environment, and support for action taken to protect it, has significantly increased in recent years – for example, over 40,000 people signed the 2020 #EndSewagePollution coalition petition to demand water quality legislation through the Sewage (Inland Waters) Private Member's Bill. Research by the Consumer Council for Water in 2022 has shown that in principle, the majority of customers (58%) would pay more on their water bill to support investment to reduce the need to use Storm Overflows, subject to the detail and cost, and

¹⁶

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

(65%) want planned improvements to ensure that rivers are a healthy habitat for wildlife.¹⁷ The 2021 'Troubled Waters' report, led by RSPB, showed that 88% of people agree that rivers, lakes and streams are a national treasure, 87% believe more should be done to help freshwater ecosystems, and that 83% are concerned about the impact of sewage pollution.¹⁸

8.3. Furthermore, Ofwat should increase visibility and transparency of in-AMP progress against their expectations. Significant customer engagement and public discussion of water company plans and progress is often limited to the Price Review period. This could be achieved through evolving the Discover Water website, or by production of a new performance dashboard by Ofwat.

9. Does Ofwat's Price Review process adequately promote sufficient levels of investment in water and sewerage infrastructure?

9.1. No. There has been a historic lack of investment in water and sewerage infrastructure, an issue which is partly responsible for the poor condition of the water environment today, and undermines the sustainability and long-term resilience of the provision of these services.

9.2. Our sewerage system is old and in poor condition, with investment and improvements failing to keep pace with increasing demand on the network. This will only worsen with population growth and climate change. As such, much of our water and sewerage infrastructure is in need of significant maintenance and/or replacement. As set out in a recent report by CIWEM, whilst provision has been made by Ofwat for companies to maintain and upgrade their sewerage infrastructure as part of the 5-yearly price review, insufficient use of this provision has been made.¹⁹ The recent Water Quality in Rivers report by the EAC concluded that Ofwat 'has hitherto focused on security of water supply and on keeping bills down with insufficient emphasis on facilitating the investment necessary to ensure that the sewerage system in England is fit for the 21st century'.²⁰ ²¹^[OBJ]

9.3. Cuts to capital investment by the water industry, required by Ofwat through the price review process, have further hampered maintenance and improvement of this infrastructure. For example, PR14 saw Ofwat cut £1bn of capital investment from business plans, £100m of which was for Water Industry National Environment Programme (WINEP) schemes. For PR19, Ofwat proposed to cut £6.7bn, though this was reduced following water company appeal.²² Analysis by conservation eNGOs Angling Trust and Salmon & Trout Conservation suggests there has been a £10bn investment funding

¹⁷ Consumer Council for Water. (2022). 'Awareness and perceptions of river water quality'.

<https://www.ccwater.org.uk/wp-content/uploads/2022/04/Awareness-and-perceptions-of-river-water-quality.pdf>

¹⁸ RSPB et al. (2021). 'Troubled Waters'. <https://www.rspb.org.uk/globalassets/downloads/our-work/troubled-waters-report>

¹⁹ CIWEM. (2022). 'River water quality and storm overflows'.

<https://www.ciwem.org/assets/pdf/Policy/Reports/Storm%20Overflows%20Systems%20Full.pdf>

²⁰ Environmental Audit Committee. (2021). 'Water Quality in Rivers'.

<https://committees.parliament.uk/publications/8460/documents/88412/default/>

²¹ Angling Trust and Salmon & Trout Conservation. (2021). 'Time to Fix the Broken Water Sector'.

<https://anglingtrust.net/wp-content/uploads/2021/09/STC-AT-%E2%80%93-OFWAT-Report-final-draft.pdf>

²² Angling Trust and Salmon & Trout Conservation. (2021). 'Time to Fix the Broken Water Sector'.

<https://anglingtrust.net/wp-content/uploads/2021/09/STC-AT-%E2%80%93-OFWAT-Report-final-draft.pdf>

gap over the last 10 years, and that the consequences of failing to invest in water infrastructure will cost significantly more in the long term – £40bn versus £21bn, plus thousands of jobs.²³

9.4. Ofwat must better recognise acceptable cost, through taking a long-term approach to planning and priorities, acknowledging this as important for long-term resilience. Ofwat should promote greater investment in water and sewerage infrastructure through the Price Review, and enable water companies to take holistic action to tackle the synergy of stressors on the water and sewerage network. For example, as discussed under Q.2, Ofwat should incentivise and approve the use of C&NBS and the multiple benefits these can offer for both environmental and industry resilience, through transition to a natural capital accounting approach.

9.5. It is essential that Ofwat takes a holistic approach - the current investigation and public interest in sewage must not overshadow or prevent the required investment in water resources infrastructure, which too has failed to keep pace with demand and undermines long-term resilience. For example, in their report Angling Trust and Salmon & Trout Conservation point to failures to build new reservoirs in the southeast of England despite a 3 million population increase, and how lack of investment in water supply has seen excessive groundwater abstraction drying up some chalk streams altogether and damaging many other rivers.²⁴

9.6. Blueprint for Water set out in detail what is required of Ofwat and the water industry to deliver a transformational Price Review and lead the way in driving environmental improvements in our 'Environmental Manifesto for PR24'.²⁵

10. In its engagement with the water industry, does Ofwat strike the right balance between being open to industry input whilst also providing robust regulatory oversight?

10.1. In our response to the September 2021 review of the WINEP, we expressed concern for how the expectation of a water company developed WINEP will be achieved by PR29.²⁶ The PR24 WINEP cycle should create the roadmap that paves the way for different and more ambitious future cycles, yet fails to offer sufficient detail on how water companies and other stakeholders will collaborate in co-design and development.

10.2. Whilst the logic of moving to a water-company-led WINEP is clear, it is therefore not without risk. The audit role of the Environment Agency will be crucial in providing reassurance to customers and stakeholders that the ambition and purpose of the WINEP is not placed at risk through a company-led approach. Trust in water companies - particularly with regards to their environmental performance - is not high, so sufficient scrutiny of proposals will be necessary to ensure that the integrity of the WINEP is not compromised.

10.3. Furthermore, Ofwat itself could take a more proactive approach to analysing and assessing whether the regulatory approach is – or is not – working. The current investigation into sewage

²³ Angling Trust and Salmon & Trout Conservation. (2021). 'Time to Fix the Broken Water Sector'. <https://anglingtrust.net/wp-content/uploads/2021/09/STC-AT-%E2%80%93-OFWAT-Report-final-draft.pdf>

²⁴ Angling Trust and Salmon & Trout Conservation. (2021). 'Time to Fix the Broken Water Sector'. <https://anglingtrust.net/wp-content/uploads/2021/09/STC-AT-%E2%80%93-OFWAT-Report-final-draft.pdf>

²⁵ Wildlife and Countryside Link. (2021). 'Environmental Manifesto for PR24'. https://www.wcl.org.uk/docs/assets/uploads/WCL_Blueprint_for_Water_PR24_Environmental_Manifesto_September_2021.pdf

²⁶ https://www.wcl.org.uk/docs/WINEP%20Review_Blueprint%20response_September%202021.pdf

treatment works, for example, is the result of sustained eNGO campaigning and heightened public awareness, rather than steer from the regulator. Ofwat should be more reflexive and critical, taking a more active role in assessing and improving the regulatory approach.

11. Does Ofwat sufficiently consider the long term in its regulation? Does Ofwat strike a balance between more visible, short-term issues and long-term considerations?

11.1. It is encouraging to see a greater focus on the longer term as well as the short term from Ofwat for this Price Review period, PR24. For example, in Ofwat's 2021 publication 'PR24 and beyond', we welcomed the recognition that greater focus on long term priorities is valuable to driving action, providing a strategic steer to companies and ensuring that delivery in each AMP makes an appropriate contribution to long-term goals. This is particularly important for delivering environmental outcomes.

11.2. We recommended in our response to the publication that Ofwat could facilitate greater focus on the long-term through increased clarity on expectations for future Price Reviews, and that a strengthened approach to long-term resilience must include environmental resilience. We also emphasised the need for long-term policy and planning to integrate areas of crossover to deliver a holistic approach, for example, between water resources and wastewater. Additionally, the adoption of agreed principles, metrics or targets for areas requiring investment over the long-term – such as sustainable abstraction and environmental resilience – would help facilitate this long-term focus. For example, through giving companies the confidence to invest in delivery that will help achieve long-term aspirations.