

Failures in water and sewage regulation: Briefing note Ahead of House of Lords debate on 16.10.23

Executive summary

- The Industry and Regulators Committee report into failure in water and sewage regulation, and follow-up inquiry into the role of Ofwat and the Government, set out a compelling case for delivering essential improvements to water infrastructure and enhancing enforcement.
- Wildlife and Countryside Link is strongly supportive of the recommendations made by the Committee, in particular:
 - The greater use of Nature-Based Solutions to improve water infrastructure.
 - Increased funding for the Environment Agency, to enable more effective enforcement.
 - A change of strategic direction, to be set and sustained by Government, towards making environmental improvements a water industry priority.

Wildlife & Countryside Link (Link), a coalition of eNGOs working to recover nature, strongly supports the report published by the Industry and Regulators Committee report in March, entitled "*The affluent and the effluent: cleaning up failures in water and sewage regulation*".¹ Link also welcomes the letter sent by the Committee to Defra in September, following the conclusion of a follow-up inquiry into the role of Ofwat and Government in addressing those failures.²

The Committee's analysis of key water and sewage regulation flaws is accurate, namely failures by Ofwat to require water companies to improve and invest and failures by Government to properly fund enforcement and to set central direction. The full package of Committee recommendations would deliver more investment and enhance enforcement, set around an effective National Water Strategy. In addition to expressing eNGO support, we highlight below further evidence backing these recommendations. We would be grateful if peers could consider making these points during the debate on the report scheduled for 16th October.

Investment in water infrastructure: The role of Nature-Based Solutions

The Industry and Regulators Committee report rightly highlights that Ofwat has failed to ensure that water companies invest sufficiently in water infrastructure. Ofwat has historically encouraged an approach that has prioritised keeping bills low over infrastructure investment.

¹ <https://committees.parliament.uk/work/7759/followup-ofwat-the-water-industry-and-the-role-of-the-government/publications/>

The evidence Link submitted to this inquiry, through its Blueprint for Water group, can be found here: [https://www.wcl.org.uk/docs/Blueprint for Water Ofwat Inquiry Response 24 06 2022.pdf](https://www.wcl.org.uk/docs/Blueprint%20for%20Water%20Ofwat%20Inquiry%20Response%2024%2006%202022.pdf)

² <https://committees.parliament.uk/committee/517/industry-and-regulators-committee/news/197495/ofwat-follow-up-irc-letter/>

Correcting this error during a cost-of-living crisis, in a way that protects the most vulnerable, will be a challenge. The report is correct in identifying Nature-Based Solutions (NBS) as a key part of the solution, a way to increase investment at comparatively low cost.

Upgrades to water infrastructure are usually envisioned in terms of traditional engineering, concrete pipes and tanks, man-made structures and networks. Such concrete-based solutions carry a hefty price tag and a heavy climate cost. Concrete is thought to be responsible for up to 8% of global carbon emissions.³

NBS, meaning in this context the restoration of habitats in such a way as to enhance their ability to store water, provide an environmentally friendly alternative. New woodlands and re-wetted bogs can act as sponges, soaking up and filtering pollution before it reaches rivers.⁴ Such restoration increases the amount of habitat wild species can thrive in, boosting nature's recovery, as well as carrying a lower carbon cost than concrete.

Pioneering partnerships between nature organisations and water companies have shown that this approach also offers value for money. In 2015 United Utilities dropped plans for traditional engineering upgrades to sewage disposal works on the River Petteril in favour of nature-based solutions across the catchment area. Nutrient pollution reduction targets were met, and more than £7 million was saved in comparison to the traditional engineering-based solution.⁵ The project provided an additional £1.7 million in natural capital benefits compared to conventional solutions.⁶

Further pioneering projects, from Norfolk to Devon, along with international studies have further demonstrated that habitat restoration tends to be cheaper than concrete-based engineering, whilst delivering equivalent or even greater environmental outcomes.⁷

There is a particular opportunity for water companies to invest in treatment wetlands on or near wastewater treatment works to treat primary, secondary or tertiary wastewater. Where there is enough land available, treatment wetlands can also be used to intercept combined sewage overflows (CSOs) to prevent them reaching watercourses.⁸

Despite warm words from the Government about the potential of wetlands and other NBSs, the regulatory landscape is still strongly biased in favour of concrete solutions, which will cost more. Ofwat's

³https://www.researchgate.net/publication/228756550_Carbon_Dioxide_Emission_from_the_Global_Cement_Industry

⁴ <https://www.sciencedirect.com/science/article/pii/S0925857422002336>

⁵ <https://www.unitedutilities.com/globalassets/documents/pdf/pr24---unlocking-nature-based-solutions-to-deliver-greater-value.pdf>

⁶ <https://getnaturepositive.com/gnp-case-studies/united-utilities-petteril-project/>

⁷ <https://www.scientificamerican.com/article/green-infrastructure-can-be-cheaper-more-effective-than-dams/>

⁸ <https://features.wwt.org.uk/pollution-busting-wetlands/index.html#group-section-Could-wetlands-hold-the-answer-52aeKJ7pW0>

2023 round of accelerated infrastructure delivery decisions saw a number of NBS project proposals rejected, for not being able to reach technical specifications designed for concrete engineering.⁹

Ofwat, the Environment Agency and Defra need go further to encourage the adoption of NBSs. Link has proposed that all three set an aspirational sector-wide target of 10% of Water Industry National Environment Programme (WINEP) investment being directed towards NBS, supported by new guidance to water companies on how to meet the target.¹⁰ The switch to outcomes based regulatory approaches, as recommended by the report, will help with this, as will the Government's September 2023 decision to allow water companies to meet their Levelling Up & Regeneration Bill duties to reduce nutrient pollution through NBS across catchment areas.¹¹

Further, sustained policy action from Ofwat, the Environment Agency and Defra is needed to de-risk NBSs approaches for water companies. This will enable greater use of this cost-effective approach to improving water infrastructure, reducing costs for the public whilst boosting nature's recovery and contributing to net zero.

Enforcement of water pollution regulations: The challenge facing the Environment Agency

As the report highlighted, *"it is crucial that the Environment Agency is provided with adequate funding to carry out inspections"*.

This has not been the case over recent years. The Environment Agency saw its environmental protection budget more than halve in the last decade, from £170 million in 2009-10 to £76 million in 2019-20. More recent increases have helped to halt the decline, but not to reverse it.¹²

After such a sustained period of financial pressure, it is perhaps not a surprise that the Environment Agency is struggling to monitor and enforce the rules designed to prevent the pollution of freshwater systems. A whistle-blower was reported in the Guardian in 2022 as stating that

*"Should a polluter be caught, any tools that were at [its] disposal to take action have been systematically removed ... Officers are actively encouraged not to take enforcement action, and asked to find another solution. We are no longer a deterrent to polluters."*¹³

Any credible plan to turn around water regulation must tackle the sustained shortfalls in enforcement. The Government should commit to restoring the Environment Agency budget to 2009-10 levels in real terms, by 2025.

⁹https://www.wcl.org.uk/docs/WCL_Blueprint_response_Ofwat_Accelerated_infrastructure_delivery_project_draft_decisions_May_2023.pdf

¹⁰https://www.wcl.org.uk/docs/WCL_Blueprint_Ofwat_Letter_Transformational_Price_Review_31_05_2023.pdf

¹¹See pages 3 and 4 https://www.wcl.org.uk/docs/Levelling_Up_Bill_Protected_landscapes_12.09.23.pdf

¹² <https://hansard.parliament.uk/commons/2022-11-17/debates/29A0035B-708A-4796-8C52-395CA86C7C54/EnvironmentAgencyEnforcementBudget>

¹³ <https://www.theguardian.com/environment/2022/jan/20/environment-agency-cuts-staff-blow-whistle>

This increase in budget will also help equip the Environment Agency to respond to some of the fastest growing water quality challenges. Increasing quantities of hazardous chemicals are reaching freshwater¹⁴, including chemicals not currently captured by wastewater treatment, which enter rivers through 'clean water' or the breakdown of parent chemicals into more toxic substances.¹⁵ More Environment Agency resources are required to improve monitoring and assessment to better understand and address chemical pollution.

Strategic direction: The Government is going the wrong way

The report called on the Government to establish a new central focus in water and sewage regulation, with investment to secure the health and abundance of freshwater systems into the long-term replacing the historic preoccupation with keeping consumer bills low.

It is concerning to note that recent Government communications steer in the opposite direction. In July the Secretary of State for the Environment, Food and Rural Affairs sent a communication to water companies through the Environment Agency, regarding planned water company actions under Water Resource Management Plans (WRMPs) and the Water Industry National Environment Programme (WINEP). The letter raised concerns about the affordability of environmental investments, before going on to say that the Secretary of State was keen for water companies to consider these concerns, suggesting possible deferral of investment, in order to keep water bills low. Link has expressed significant concerns about this communication.¹⁶

Cutting back on essential environmental improvement, as suggested by the Secretary of State's letter, would not only fly in the face of the Committee recommendations – it would also be a false economy. It would all but guarantee that the currently parlous state of water systems would deteriorate further over the decades ahead, threatening the quantity and quality of water supplied and devastating freshwater health. This would store up much greater costs for the taxpayer than action now. It is welcome that water company business plans for 2025-2030, submitted to Ofwat on 2nd October, favour ambitious investment in our water systems over the Government's suggested approach.¹⁷

The Government's deviation away from the required focus on necessary infrastructure investment can also be seen in recent attempts to extend the Growth Duty to Ofwat. Link has strongly objected to this proposal¹⁸, which would weigh the balance even more heavily towards economic and cost considerations, at precisely the time when it needs to be adjusted the other way.

¹⁴ <https://www.wcl.org.uk/toxic-chemical-cocktails-in-rivers-across-england.asp>

¹⁵ <https://cdn.buglife.org.uk/2021/11/Pharmaceuticals-in-freshwater-environments-and-their-potential-effects-on-freshwater-invertebrates-1.1.pdf>

¹⁶ https://www.wcl.org.uk/docs/WCL_Letter_Secretary_of_State_PR24_Ambition_10_08_2023.pdf

¹⁷ <https://theriverstrust.org/about-us/news/response-to-water-company-investment-plans>

¹⁸ https://www.wcl.org.uk/docs/WCL_Response_Growth_Duty_Extension_Consultation_17_08_2023.pdf

The National Water Strategy recommended by the Committee has been partially delivered, through the Plan for Water published by the Government in April. However, as highlighted in the Committee's follow-up letter, the Plan for Water fell short on policy detail and overall coherence.¹⁹ An updated strategy is needed, with firmer policy detail and greater guidance for regulators.

The Government should accept the Industry and Regulators Committee's recommendations on the strategic direction of water regulation in full. In order to further these recommendations, it is essential that the Secretary of State's letter to water companies is withdrawn, the Growth Duty extension proposals dropped, and the Plan for Water reissued with more detail.

[Wildlife and Countryside Link](#) (Link) is the largest nature coalition in England, bringing together 78 organisations to use their joint voice for the protection of the natural world.

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¹⁹ <https://www.wcl.org.uk/a-bit-wet-defra-plan-for-water.asp>