

The response to the consultation on resilience 2015

Question 1. The resilience clause in the 2014 Water Act was introduced to meet the calls for a sustainability primary duty that was raised in the white paper. The resilience clause gives a far clearer definition of the role that Ofwat should undertake and brings Ofwat in line with the duty of Ofgem to protect the good of the customer, present and future.

Parliament debated these issues a number of times during the passage of the Bill. The result was a change to include in Ofwat's primary duties resilience that were in turn introduced to meet the demands for sustainability. Ofwat up to this point has seen itself as an essentially an economic regulator, indeed on page 17 of the consultation Ofwat still declares itself as the independent economic regulator and a protector of a good deal for customers. This definition ignores Ofwat's change in primary duties as a regulator with primary duties in resilience. The introduction even if it has taken over a year to form a resilience committee is a welcome step forward however the statement that Ofwat should work through stakeholders rather than mandating action is an abrogation of the primary duties that Ofwat has been mandated to undertake in the 2014 Act.

Ofwat has directed companies to undertake work to meet their duties by stepping up. This is a misleading proposition. Water Companies need to agree through price review the level of charges to consumers they could make. In a highly regulated market with pressure to keep bills as low as possible, water companies will be under pressure to do the minimum to reduce spending heavily on resilience work. The short term view based on shareholder return does not lend itself to long term investment, even if lack of action will lead to much higher bills to the same customers in the future.

Ofwat need to give clear direction and funding objectives to meet its resilience duties. Primary objectives on economic regulation cannot be seen as over-ruling resilience primary duties. Any attempt to justify the downgrading of resilience to in practice secondary duties could be challenged through judicial review. It would be argued that Ofwat has failed to implement sufficiently its new primary duties. The ratio of work undertaken on resilience compared to economic regulation could be the basis of the judicial review and therefore the number of Ofwats regulators involved in resilience work as part of their primary duties would be taken into account. Ofwat will need to show far greater engagement in this area.

The basis of funding decision may be impossible to implement in the present five year funding cycle. If it is very difficult to meet its primary duties through the present five year funding mechanism is this mechanism fit for purpose?

Q2

Ofwat has stated that it can only meet its objectives through water companies. If this is to be a successful strategy, clear targets and objectives with specific proposals on how they are to be achieved, must be a central tenet of any funding settlement. Water Companies need to have clear targets for minimum goals to be achieved and this has to be set by the regulator. The name regulator that is now not solely based on economic regulation means that resilience will need focus and leadership if Ofwat is to show it is meeting its responsibilities. A clear goal on the reduction of water use with clear and ambitious targets would be the clearest indicator that resilience duties, except for flooding, are being met.

Ofwat has shown that it has a clear idea of what needs to be done and these aims should be influenced by the resilience committee but reliance on other organisations to lead is unacceptable.

Q3. The most important goal in the resilience sector is to deal with the linked problem of drought and flooding. Climate change and a major increase in the population and water use will lead to stress in almost every catchment area in the country. Ofwat now has a clear duty to promote water efficiency not just by water companies but also consumers. A major opportunity arises through deregulation of the non-domestic retail marketplace. Ofwat could promote water efficiency through lower water rates if that allows water companies to reduce the capital cost of supply. This provision is set out in the 2014 Act.

Water use is the main issue to be tackled. The need for new and expensive technologies in monetary and carbon cost, such as desalinisation, or abstraction with associated environmental impacts could be mitigated. Clear and aggressive reduction targets must be implemented. The slow pace of change that is being introduced has not led to major savings and will cost future customers disproportionately.

A reduction of 20 litres per person of the population over a five year period would be measurable and achievable.

Lord Redesdale

CEO of the EMA