

December 2019

PR19 final determinations

**Thames Water – Accounting for past delivery
additional information**

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Counters Creek

1 Our draft determinations

Thames Water customers experienced major sewer flooding events in the Counters Creek area of London in 2005 and again in 2007. The Counters Creek scheme was originally proposed in 2007 to reduce the risk of future flooding events in this area. We included cost allowances, and a performance commitment for delivering the Counters Creek scheme in 2015-20 in the PR14 final determination.

As explained further in the following sections, Thames Water included a proposal in its revised PR19 business plan to amend the performance commitment in a way that resulted in no underperformance payment being due, and instead returning unspent money to customers through an alternative approach.

In our draft determination we did not consider that the performance commitment definition, as set out in the PR14 final determination, needed to change as the company had requested prior to our draft determination. Accordingly we proposed to intervene to include an underperformance payment of - £130.056 million (2012-13 prices, net of tax) for performance commitment SB3: properties protected from flooding due to rainfall. We proposed this because Thames Water has not, and does not plan to deliver, the Counters Creek strategic storm relief sewer (the 'strategic sewer') for reasons that we consider to be inside the company's control. We said we consider that not delivering the strategic sewer constitutes cancellation of the Counters Creek scheme and therefore the performance commitment can and should be applied.

2 Stakeholder representations

In its representation on our draft determination, Thames Water reiterates its November 2018 request to change the definition of the performance commitment, so that no underperformance payment would be applied under this mechanism. The company justifies this request as it considers that properties at risk of flooding in the Counters Creek catchment have and will be protected using an alternative approach – mainly through Flooding Local Improvement Process devices ('FLIPs'). The company considers that the scale of sewer flooding risk is less than it had presented at PR14, and that the work it has completed (and plans to complete) will resolve the risk. It considers that the Counters Creek scheme is not being cancelled. It proposes to return the allowed expenditure not spent in the area to customers in full through a reduction to the regulatory capital value in the totex reconciliation of £86.351 million

(20117-18 FYA CPIH deflated prices) in addition to the reduction through the cost sharing mechanism.

Thames Water considers¹ that it has fulfilled the requirements (discussed in the next section) necessary to amend the performance commitment.

The company argues that its 'Counters Creek flood alleviation scheme ODI amendment proposal' (the 'proposal document'), which it submitted in November 2018 as late additional evidence following the submission of its business plan, sets out:

- the analysis the company has carried out since PR14 and why a strategic sewer is no longer needed to protect customers at risk of flooding in the Counters Creek catchment;
- the remaining available annual benefit in the catchment to demonstrate that it is not possible to deliver the level of benefit expected at PR14 or a greater level of benefit; and
- the revised approach to protecting the remaining customers who are at risk of hydraulic flooding.

In addition, Thames Water argues the proposal document:

- demonstrates that although the available annualised benefit expected at PR14 is not achievable, the change in approach is better value for money for customers; and
- describes the additional benefits to customers and residents from its change in approach, including that customers who have experienced sewer flooding are protected to a higher standard than the strategic sewer would have delivered.

In the company's 12 April 2019 letter from Nick Fincham, it also argues that Ofwat should consider the bigger picture; specifically, that it is right for companies to continue to develop their understanding of issues and, when presented with new information, to respond in an agile way. It considers our approach could be considered to penalise companies for taking this approach, and that this will create perverse incentives for companies and will result in schemes being delivered despite no longer being value for money for customers.

¹ Letter from Nick Fincham to Keith Mason, dated 12 April 2019.

In response to the draft determination Thames Water also argues its hydraulic model used to support its alternative approach is fit for purpose and has been independently verified. The majority of properties identified at PR14 are the ones subject to relief through a solution developed using the verified model and delivered by the company's revised approach. Thames Water argues that it was not funded to relieve properties that had not reported sewer flooding and therefore it would not have been appropriate to spend significant sums on investigating properties that may only be at risk in the future.

The company acknowledges that it has already spent £116.7 million on enhancement investment on the Counters Creek scheme² – partly for FLIPs, but primarily in preparation for the strategic sewer construction, including the design, planning permissions and £14 million to reorganise Cremorne Wharf to accommodate the strategic sewer. This resulted in abortive costs to modify the Thames Tideway Tunnel to accommodate a connection for the strategic sewer that Thames Water did not have access rights to be able to build. Under its proposal, none of these abortive costs would be returned to customers.

In its representation on our draft determination, Thames Water argues it took the right decision to revise its approach to the Counters Creek scheme. It argues that it is protecting the properties that it committed to protect in its PR14 plan by the end of 2015-20. It consequently argues that it is unreasonable to impose the underperformance payment solely because the scheme was delivered through a different combination of solutions than envisaged at PR14.

Thames Water included evidence in its representation from the Independent Advisory Group ('IAG'), which is a panel that originally consisted of three leading experts on drainage that Thames Water set up to challenge the Counters Creek scheme at PR09. The company states that the Independent Advisory Group agrees with the company that the scheme has not been cancelled because:

1. The original Counters Creek scheme included a mix of measures, including the strategic sewer, local sewer upgrades and FLIPs. The current scheme includes two of these three measures (but not the strategic sewer).
2. The commitment was to protect 1,766 properties, and the current scheme will deliver a substantial part of that benefit.

² See 'PR19 – PCD2 - Wastewater Network Plus Price Control – September 2018', page 62.

3. There have been significant changes to the local environment and to the understanding of the system's performance which justify a major review and development of alternative strategies for managing flood risk in the area.

There were however areas where a common position was not reached with the Independent Advisory Group, particularly around the evidence on modelled flooding versus reported flooding, and the risk that FLIPs may cause detriment by increasing risks to properties not directly protected by them.

Thames Water also argues that the underperformance payment calculation agreed in the PR14 final determination is not appropriate. Their arguments are discussed further in section 3.4 on our application of the performance commitment.

We received representations from two other respondents in relation to the Counters Creek scheme, one from the Council of the Royal Borough of Kensington and Chelsea, and one from an individual.

The response from the Council of the Royal Borough of Kensington and Chelsea states that they agree with our assessment that the majority of the planned benefits have not been realised and that the company does not sufficiently understand the flooding risk, and so the company is not effectively managing the risk that flooding may reoccur in future.

The individual states that customers protected by a FLIP device are still at risk of flooding and that further protection of customers should be provided by the company.

3 Our assessment and reasons

In this section we first set out what Thames Water agreed to deliver and what it is delivering in relation to Counters Creek. We then explain why we consider that the company has not met the evidential bar under the change protocol to change the performance commitment. Finally we explain our application of the performance commitment.

3.1 Thames Water's commitment

The strategic sewer, together with other improvements over the 2015-20 period (local sewer upgrades and installation of FLIPs), were expected to deliver an annualised benefit of £14.2 million in the Counters Creek area by reducing the risk that properties that had previously been flooded would experience flooding in future.

The Counters Creek scheme was also expected to deliver wider benefits by the risk of flooding to other properties as well, but these benefits are harder to quantify, and were excluded from the benefits estimated. The PR14 final determination included an allowance of £227 million for the Counters Creek scheme³. The strategic sewer made up the majority of the quantified planned expenditure for the Counters Creek scheme (95%), as well as of the annualised benefits (77%) and total protected properties (73%).

Table 3.1 from 'T0042 Counters Creek Flooding', which was part of Thames Water's PR14 business plan, reproduced below, sets out the cost of the two aspects of the scheme that were quantified – the strategic sewer and the FLIPs. Note that the proposed expenditure is higher than the allowance we finally set in PR14 as we applied a 25% reduction to the net costs as we were concerned that the design was not sufficiently mature.

Table 3.1: Summary of Outcomes and Expenditure for AMP6 Service Outcome

	Performance Measure	Activities	Capex £m	Opex change £m
Properties and public areas protected from flooding	Number of properties with reported internal flooding moved to 1:30 year flood protection from overloaded sewers	New storm relief sewer [the strategic sewer]	244.2	-0.1
		AMP6 FLIP programme	12.7	0.7
Total			256.9	0.6

Table 3.2, reproduced from 'Performance commitment response, performance commitment: SB3 Properties protected from flooding due to rainfall', submitted by Thames Water as part of the PR14 determination process, sets out the planned properties protected and annualised benefits to be delivered by the Counters Creek scheme.

³ In addition to an implicit modelled allowance of £137 million, we made an allowance of £90 million.

Table 3.2: Properties to be protected and annual benefits to be delivered by the Counters Creek scheme

Flooding scheme name	Properties	Annual Benefit
Counters Creek - strategic storm relief sewer	1063 ⁴	£11,001,702 ⁵
Counters Creek - FLIPs programme	396	£3,211,084

The performance commitment set out that:

'If the Counters Creek project is cancelled and will not be delivered in 2015-20 or future control periods for reasons inside company control the outcome delivery incentive underperformance payment will follow the same method as for non-delivery of the other sewer flooding outputs. This leads to a maximum underperformance payment of £162 [million].'

3.2 What Thames Water is delivering

Despite having identified the need for a strategic sewer in 2007, Thames Water was not able to secure its first choice of drive sites for its construction. It also received opposition to its plan. This delayed the scheme and led to further design costs and further studies and later, in November 2018, to the proposal of an alternative approach that does not include the strategic sewer.

The company has, so far, spent £116.7 million on enhancement investment on the Counters Creek scheme and considers that improvements have to date delivered an annualised benefit of £0.9 million. The company claims to have high confidence that there are properties where improvements could deliver a further £1.9 million of annualised benefits before 2020. It is therefore clear that, even based on Thames Water's own estimates, the current approach will not deliver a substantial part of the initially estimated benefit.

⁴ Includes properties that may have had a FLIP installed as a short-term measure in 2010-15.

⁵ Annualised benefit is consistent with £235.8m, 40 year net present benefit and approach reported in Technical Appendix T0042. This was first presented to Ofwat at a meeting on 6th August 2012 and was included in Appendix D of the April 2013 Change Protocol Submission.

3.3 Thames Water has not provided sufficient evidence that the performance commitment should be changed

Our policy in relation to requests for changes to outcomes, performance commitments and outcome delivery incentives is set out in '[Information notice 16/07](#)'. In relation to major scheme performance commitments and outcome delivery incentives the '[Final price control determination notice: policy chapter A2 – outcomes](#)' explains (on page 67) that we will undertake an additional assessment of incentives regarding major scheme non-delivery penalties when they are due to be applied to determine the circumstances around non-delivery and the extent of non-delivery. **We explain that the penalties for non-delivery will apply unless a water company provides compelling evidence that it has delivered an alternative outcome that delivers greater benefit to customers or that the statutory requirement driving the scheme has been removed.**

Our principles for assessing major schemes are set out on pages 27 and 28 of the '[PR14 reconciliation rulebook policy document](#)'. When evidencing the delivery of a previously assessed and approved scheme, a company is required to demonstrate such a scheme is operational and is delivering the originally intended benefits to its customers. We note that where a company delivers different schemes to those originally envisaged, the company is subject to a higher burden of proof. If an alternative solution is delivered, the company needs to clearly demonstrate that it has delivered greater benefits to customers (to be reviewed on a case-by-case basis) or that the statutory requirement driving the scheme has been removed. We impose this higher burden of proof because we are facing a change to a scheme that has been previously assessed and approved, and that the company has been funded to deliver, so we need to make sure that what the company delivers is a better solution. When making this assessment we take into account evidence on customer preferences and benefits, and the level of independent assurance provided.

Having reviewed the information and actively considered all issues raised in the representations provided to us, we do not consider that the company has provided the necessary compelling evidence to demonstrate that its new approach is appropriate and that performance commitment SB3 should be changed, for the following reasons:

- Thames Water does not meet the high evidential bar to demonstrate its alternative solution delivers greater benefits as it does not demonstrate that the strategic sewer is no longer required and/or even that all of the customers who would have benefited from the sewer will be equivalently or more well-protected

under the alternative approach. In particular, there is insufficient evidence that Thames Water understands the risk of flooding in the Counters Creek area.

- When the company made the case for the strategic sewer it argued that the risk of flooding had to be assessed over a wide catchment area. This is because water draining from this larger area could fill up the deep sewer, which could then overflow following a subsequent rainfall event. However, and in contrast, the evidence presented as part of the PR19 business plan submissions only covers the localised impact of rainfall events in 2016 and 2018. These events have not been shown to be of the same nature or to have had the same impact on the upstream drainage catchment as those that caused the initial concern about flooding in the area. Nor does the company provide evidence that its assertion in PR14 that rainfall over a wider catchment should be considered, was incorrect.
- Thames Water's analysis used to support its current view of flooding risk excludes the upstream drainage catchment, which both Mott MacDonald and Thames Water previously said will contribute to flows and hence to the flooding risk. The 'Mott MacDonald Technical Note: Historical (Radar) Rainfall Assessment 2004 to 2018' included as appendix A in Thames Water's proposal document to change the outcome delivery incentive states: 'Only records relating to the 1km grid cells were analysed and the extents of the 1km grid cells selected for analysis was limited to cover the Boroughs of London Borough of Hammersmith and Fulham (LBHF), Royal Borough of Kensington and Chelsea (RBKC) and the City of Westminster. These extents do not cover the upstream drainage catchment, which will influence flows. This choice was made to limit and focus the analysis on the areas where reported flooding was currently being reviewed under the Counters Creek Flood Alleviation Scheme (CCFAS).' We consider the exclusion of the upstream drainage catchment, which was included in the analysis supporting the development of the Counters Creek scheme, renders the analysis incomplete and insufficient to provide certainty that the measures the company has put in place provide adequate protection from hydraulic flooding for the relevant properties.
- Thames Water has not provided evidence that its revised hydraulic model covering a smaller catchment area is fit for purpose. While the company states that the model has been independently verified, it does not provide evidence on what purpose the model has been verified for. In particular, Thames Water has not demonstrated that its model is fit to provide the assurance that the measures it has put in place will protect customers in the event of rainfall events similar to those experienced in the past, or that could occur in future.
- The Independent Advisory Group argues that significant changes to the local environment and to the understanding of the system's performance justify a

major review and development of alternative strategies for managing flood risk in the area. However, in the light of the matters set out above, we consider that the company has provided insufficient evidence that it has an adequate understanding of the risk of flooding in the area to demonstrate that the strategic sewer is unnecessary to protect customers.

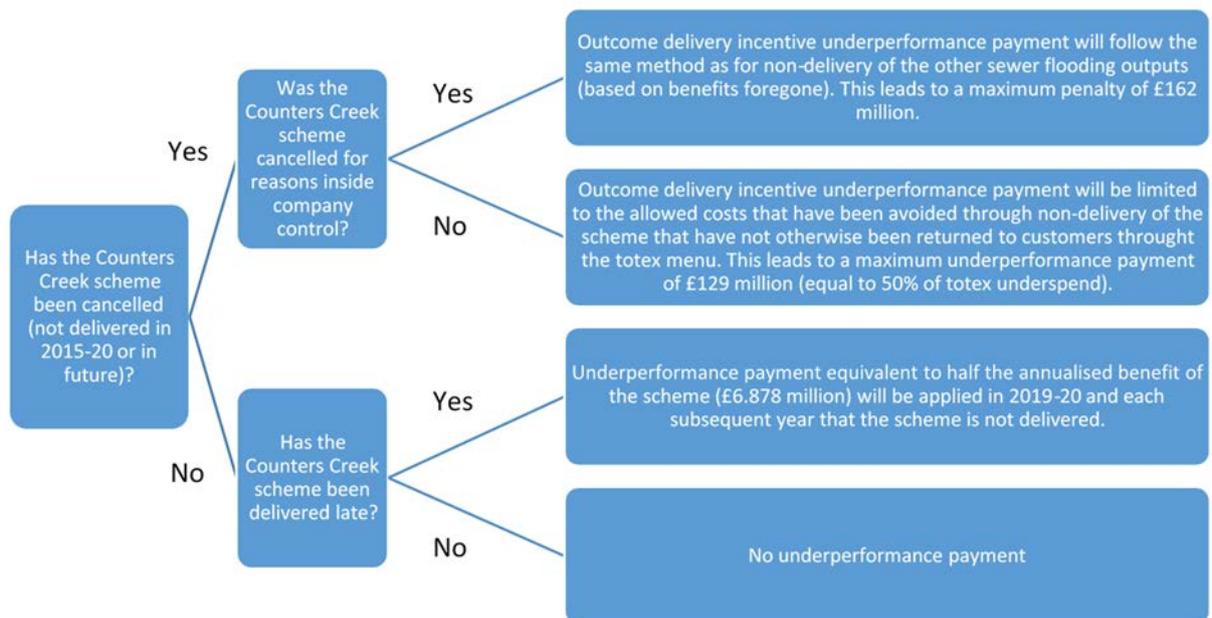
- We therefore do not consider that the company has provided sufficient evidence that the strategic sewer is no longer needed and we cannot have confidence that its revised approach is appropriate and will protect customers. We do not have confidence that the customers that would have been protected by the strategic sewer, would be protected if a similar event to the previous major flooding incidents were to occur. We note that the performance commitment incentive rate only takes account of the quantifiable benefits of reducing the flooding risk for properties that Thames Water provided evidence at PR14 had previously flooded. However, the Counters Creek scheme was expected to deliver wider benefits by reducing the flooding risk for other properties as well.
- The company has already invested £116.7 million on enhancement on the Counters Creek scheme⁶, which is over half of the £227 million allowance, but expects to be able to deliver only one quarter of the benefits of the scheme. We consider that some of this spending has not delivered benefits and was avoidable – for example, the expenditure at the Cremona Wharf site. The overall approach has therefore delivered:
 - lower absolute benefits; and
 - lower benefits per £ spent;so is worse value for money for customers than the Counters Creek scheme agreed at PR14.
- The original case for the scheme acknowledged that the strategic sewer would deliver ‘wider benefits’ than those quantified. The strategic sewer would improve drainage for a larger number of properties than just those previously affected by sewer flooding, on which the annualised benefits are based. FLIPs are being used to deliver a significant proportion of the benefits now being realised, and they only protect individual properties, whilst potentially increasing flooding risk for other properties. It is therefore likely that the total benefits will be lower under the company’s current approach, even if a limited number of individual properties may be protected to a higher degree, which is in itself not certain.

⁶ See ‘PR19 – PCD2 - Wastewater Network Plus Price Control – September 2018’, page 62.

3.4 Our application of the performance commitment

The element of performance commitment SB3 relating to the Counters Creek scheme follows a multiple step process to determine whether and how large an underperformance payment is due. Figure 3.1 below sets out this process.

Figure 3.1: Decision tree for Counters Creek element of SB3



To apply the performance commitment we therefore need to determine firstly whether the Counters Creek scheme has been cancelled, and secondly whether if it was cancelled, this was for reasons inside the company's control.

Performance commitment SB3 includes a specific underperformance payment related to Counters Creek based on outputs, rather than outcomes. This is different from the other areas covered by the performance commitment, where delivery depends on outcomes. For the other schemes, this means Thames Water had the flexibility in terms of solutions to protect properties from flooding. But for this element, the commitment is measured through the delivery of the Counters Creek scheme. This is defined with a 'maximum penalty', implying that it is within the scope of the performance commitment that part of the benefits of the scheme could be delivered even though the scheme is 'cancelled', as in this case, in which case a lower penalty would apply.

The performance commitment does not explicitly define what the 'Counters Creek scheme' is. However, as the summary above (in particular, Tables 3.1 and 3.2) shows, the vast majority of the Counters Creek scheme, on any measure, is the strategic sewer; the strategic sewer represented 95% of the proposed expenditure at the time of PR14 (see Table 1), 77% of the annualised benefits, and 73% of the total protected properties of this scheme (see Table 2). By contrast, the FLIPs deliver a small part of the scheme's benefits, and are a significantly smaller part of the costs.

We therefore conclude that the Counters Creek scheme consists primarily of the strategic sewer, with the FLIPs as a secondary element of the scheme.

We therefore conclude that not delivering the 'strategic sewer' constitutes cancellation of the Counters Creek scheme under the definition of performance commitment SB3. To put it differently, unless the strategic sewer is delivered on time or is planned to be delivered late (so as to be 'delayed' by the definition of the performance commitment), neither of which has happened, then the Counters Creek scheme has been cancelled.

It should be noted that in its request to change the performance commitment, the company recognises that the Counters Creek scheme **as understood at the time of PR14** has not been implemented and will not be in the future.

We therefore consider the non-delivery of the strategic sewer constitutes a cancellation of the scheme.

We then need to consider whether the cancellation of Counters Creek scheme occurred for reasons that were within Thames Water's control. Based on the evidence provided we consider the Counters Creek scheme was not delivered for the following reasons that were within Thames Water's control.

- The Board of Thames Water decided not to proceed with the construction of the strategic sewer.
- The company failed to secure sites in advance for the construction of the strategic sewer.
- The company failed to make timely provision for joint working on the Cremorne Wharf site through its involvement in setting up Thames Tideway.
- The company delayed its stakeholder engagement, which may have contributed to it failing to secure support for its plan.

The company also argues that as the Counters Creek scheme is the largest flooding scheme in the UK, it needed to take time to assure the evidence for the need for the investment and the solution was appropriate. We consider that the time that the

company had prior to agreeing funding and the delivery incentive for the Counters Creek scheme ahead of the PR14 final determinations was sufficient for it to be reasonably expected to build a sufficiently robust case. Even if there had not been sufficient time – which we do not consider to be the case – this would not demonstrate that cancellation was outwith Thames Water’s control.

We consider that the Counters Creek scheme has been cancelled for the reasons above, which are within the company’s control.

The majority of the originally envisioned benefits that the company was funded to provide have not been realised. The statement in the performance commitment definition that there is a maximum underperformance payment for cancellation implies that cancellation can occur when some benefits have been achieved, as in this case.

The performance commitment definition references a document (PCR SB3 - 27 June 2014) that sets out further details which help to understand the performance payments to be made under this performance commitment:

- ‘We recognise any flooding programme is subject to uncertainty, as rainfall causes new flooding of properties – and this may affect the prioritisation of schemes, or even the scale of investment that is cost beneficial. We have used a matrix of benefits to manage uncertainty. The matrix below underpins this performance commitment.’
- ‘In the event that we deliver an annual benefit of less than £20 million⁷ by the end of AMP6, a matrix is used to determine the underperformance payment rate.’ The matrix is how the company has determined the lower annualised benefit of £2.8 million (£0.9 million + £1.9 million).

⁷ The £20 million annualised benefit for performance commitment SB3 includes other schemes in addition to the £14.2 million intended to be delivered through the Counters Creek scheme.

We calculate the underperformance payment as follows:

$$\begin{aligned}\text{Underperformance payment} &= \text{£130.056 million} \\ &= ((\text{£14.2 million} - \text{£2.8 million})/\text{£14.2 million}) \\ &\quad * \text{£162 million}\end{aligned}$$

All values are in 2012-13 prices RPI deflated prices.

This scales the maximum under performance (£162 million) by the proportion of the annualised benefits not delivered.

The performance commitment also set out that a change in scope of work delivered could impact the calculation of the outcome delivery incentive. The evidence provided by the company implies that the scope of works that the company has delivered and is planning to deliver was an element of the original scheme at PR14. Therefore no adjustment for the scope of work delivered is necessary for the calculation of the outcome delivery incentive.

Thames Water argues that the underperformance payment calculation agreed in the PR14 final determination is not appropriate for two reasons:

1. The £14.2 million annualised benefits includes benefits from properties that did not actually experience hydraulic sewer flooding⁸, which was not the intention of the calculation. Implementing solutions to protect these customers is neither necessary nor cost beneficial and so these benefits should be excluded from those foregone. The company argues that it now estimates the total available annual benefits to be around £10 million for properties protected in 2010-15 and 2015-20. The additional benefits available in 2015-20 are in the region of £4 million to £5 million.
2. The annualised benefits for 638 properties protected by temporary FLIPs installed in 2010-15 amounting to £5.5 million per annum are excluded from the benefits that Thames Water has delivered in the calculation of the underperformance payment.

⁸ This is due to issues with the data that Thames Water provided to support its PR14 business plan, as some properties were incorrectly identified as having experience flooding, and others were double counted.

We consider that the £14.2 million annualised benefits set in the PR14 final determination should be used for the maximum foregone benefits. This figure was calculated using Thames Water's data for the number of customers at risk and the estimate of the benefit. Thames Water argues that the data that it provided to support its PR14 business plan overstates the available benefits, because it incorrectly identified some properties as having experienced flooding, and others were double counted. The fact that the company provided poor quality evidence at PR14 should not justify a reduction in the underperformance payment at PR19. We do not consider the evidence sufficient to demonstrate that the annualised benefits set in the PR14 final determination are not achievable. Therefore we conclude that the benefit figures used to calculate the outcome delivery incentive underperformance payment should not be changed.

The second issue on the benefits that the company raises in its representation is that we exclude the £5.5 million of benefits from the protection of these 638 properties fitted with FLIPs in 2010-15. Thames Water calculates that if these properties were included in the calculation of delivered benefits, the resulting underperformance payment would be £68 million.

This exclusion is deliberate. The PR14 final determination set the performance commitment as follows:

'Detailed definition of performance measure: The number of properties which receive further protection from flooding due to rainfall by the end of 2015-20, at the estimated frequency and severity of flooding as detailed in Thames Water's business plan.'

As these 638 customers were already protected before 2015, they have not been 'further protected' by Thames Water in 2015-20, and so should not count towards the benefit delivered. If the strategic sewer had been built, these customers would have been 'further protected' in that the strategic sewer would have given them a longer-term, and potentially greater, level of protection than FLIPs originally installed as a temporary solution. The properties could therefore have been included in the benefit of the successfully delivered scheme for this reason.

We therefore consider that the calculation we performed in respect of the underperformance payment in our draft determination remains appropriate.

It is important to note that the outcomes and performance commitments intend to create incentives that are adequate to protect customers. If a scheme is funded and then not delivered, customers will suffer an important economic loss compared to if those benefits had been delivered at the allowed cost, as a result of both the benefits

foregone and the funding they have provided to the company to deliver the scheme. Therefore it is appropriate to base the outcome delivery incentive rates on the value that customers place on delivery. This means that in the event of non-delivery, customers receive some compensation for the benefits foregone through lower bills. If we merely recovered unspent cost allowances, a rational company would be ambivalent to delivery as investing or not investing would be cost neutral, provided they were delivering against their statutory objectives.

At the same time as protecting customers against non-delivery, we also want incentives to continue to encourage companies to become more efficient, reducing costs and finding better ways to deliver the same or better outcomes. As a result, and as mentioned above, we might consider not applying penalties for non-delivery if companies can demonstrate that they have delivered an alternative solution that delivers greater benefit to customers. But this is not the case for Counters Creek for the reasons detailed above.

We do not consider that the approach we use here penalises companies for responding effectively and appropriately to changing circumstances. As set out above, Thames Water does not provide sufficient evidence that it sufficiently understands the issues in Counters Creek, and therefore that it has taken the best course of action for customers. We also consider that the company had adequate time before it submitted its cost claim as part of its PR14 business plan to assess the circumstances, and it is not clear that the risks have changed since this time. This is why we continue to consider that applying the underperformance penalty as set in the PR14 final determination is appropriate. Indeed, we consider holding companies to account by doing so reinforces regulatory certainty, which strengthens the incentives for companies to deliver for customers through the existing framework.

4 Our final decision

We are not amending performance commitment SB3 as we consider Thames Water has not met the high burden of proof required to demonstrate that the solution it is proposing as an alternative to the strategic sewer is better for its customers.

We consider that the Counters Creek scheme has been cancelled for reasons within Thames Water's control.

We are therefore intervening to include an underperformance payment of - £130.056 million (2012-13 prices, net of tax) for performance commitment SB3. This underperformance payment takes into account the benefits that have been delivered

by Thames Water through the FLIPs in 2015-20 but also compensates customers for inefficient spending and foregone benefits.

Table 4.1: Summary of company proposal and final decision on final determination for the Counters Creek scheme (£ million, 2012-13 prices)

	Costs	Company proposal	Ofwat final decision
Costs allowed for Counters Creek scheme	227.2		
Thames Water's expected expenditure	103.1		
Costs returned through totex cost sharing		61.6	61.6
Additional costs returned		62.5	N/A
Costs returned through outcome delivery incentive underperformance payment		0	130.1
Customer share of expenditure incurred		103.1	35.6
Company share of expenditure incurred		0	67.5

Our intervention reduces the wastewater regulatory capital value at the end of the 2015-20 period by - £149.531 million (2017-18 FYA CPIH deflated prices).

In addition, we are introducing a new performance commitment to require Thames Water to improve its understanding of the risk of flooding and level of resilience within the Counters Creek area to protect customers against future flooding risk.

Ofwat (The Water Services Regulation Authority) is a non-ministerial government department. We regulate the water sector in England and Wales.

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