



Consultation response to ‘Reliable services for customers – consultation on Ofwat’s role on resilience’

28th August 2015

Introduction

1. This document contains WWF–UK’s responses to Ofwat’s July 2015 consultation on its (Ofwat’s) proposed approach to implementing the resilience duty placed upon it by section (2A) (e) of the Water Act, 2014.
2. Our response provides specific answers to the three questions posed in the consultation document, ‘*Reliable services for customers – consultation on Ofwat’s role on resilience*’, and, beforehand, some more general comments on Ofwat’s conception of the balance of its resilience duty (as between bill-paying customers and the impact-bearing customer otherwise known as the environment), and on its interpretation of its own role in the discharge of its duty to further the resilience objective.
3. Whether intended or not, we note a continued primacy of focus and emphasis by Ofwat towards ensuring the resilience of water and wastewater services to paying customers (sensu stricto) compared to ensuring the resilient well-being of the environment in the face of competing pressures and rising risks and challenges on its own need for water. The duty “to further the resilience objective” provides a basis for co-beneficial management of water left in, taken from and returned to the environment when and where resources are under stress, from one cause or another. We believe that scope exists for Ofwat to rise to the challenge of ensuring (and not just encouraging) all those operating in the water sector over whom it has regulatory powers to do their utmost to deliver sustainable water management, not just over the long run, as recognised, but also in the round (for the environment as well as for paying customers). This is especially (though not only) important in - and beyond –

those events that stretch the adaptive capacity and tolerances of our natural, social and physical systems.

4. In our view, it would be derelict for all parties involved in the water sector to fail to balance the needs of all receptors - people, business and the environment – in determining appropriate levels of service to each and all of those, on par, according to their level of resilience to, and their ability to recovery from, water shortages (whether quantity or quality induced). We consider that we (meaning all us who work in, depend upon or care for the water, wastewater and environmental sector) need to develop resilience insofar as our values extend, and our willingness to pay for some satisfactory level of service in respect of environmental, water supply and wastewater management standards goes, over and above the minimum that statutory responsibilities require. Furthermore, we consider that there is a need to ensure that the ways in which we cope in events beyond determined resilience levels work in practice, and are tolerable to us, in the reality of those circumstances and not just in theory, beforehand; and if not, we need to adjust our boundaries and responses, iteratively or otherwise. Resilience extends across the full set of business and operational plans for normal, dry, drought and emergency situation management. Water Resources Management Plans need to dovetail with Drought Plans, and Drought Plans with Emergency Plans, if appropriate resilience to the spectrum of risks we face is to be achieved. Ofwat, and others, need to exercise their powers and influence to encourage and ensure so.

WWF-UK's views on the importance of the resilience duty, and the environmental aspects of it

5. Ensuring that measures are taken to provide an appropriate level of resilience against extreme (drought, flood, pollution, outage etc.) events to all water users – including, not least, the environment and the ecosystems it supports - is a matter of key concern to WWF-UK. We lobbied hard for a sustainability duty to be added to Ofwat's primary financeability and affordability duties during the passage of the 2014 Water Bill, and we presented written and oral evidence that precipitated the offer from the then Water Minister of an amended resilience duty that provided for protection for the environment (and not just for water services) during drought (and other testing) events. The prior wording of the Act had, to our consternation, focused on providing resilience of services to people and business *against or in the face of environmental protection pressures*, as though environmental protection was a part of the problem, rather than an essential deliverable – not least as a means to sustain the

enduring capacity and well-being of the base source of water supplies and the receptor of treated water returns. Having fought hard to achieve what we considered to be an appropriate re-balancing in the requirement upon Ofwat to ensure resilience for people, business and the environment, we want to see resilience for the environment delivered in Ofwat's philosophy, and practice, on par with resilience of water and wastewater services to people and business.

6. So, if environmental resilience matters to Ofwat – as it should, and as we believe it does – it is important that it features 'up front', in titles, and in headlines, and not just in the wake of service commitments to customers (even if Ofwat's vernacular conceives of the environment as a customer, others may not appreciate so). We find the title of the resilience consultation document (*Reliable services for customers – consultation on Ofwat's role on resilience*) to be wanting in this regard, focusing as it does on 'services to customers' in the first instance; and we find that the contents of the document, and the positions that Ofwat take on what needs to be done, and on who should do what, betray too little a concern for the environment, as provider as well as customer, compared to the front of mind and front of text concern for the bill-paying customer. It's not that we think that a focus on the latter is not right; it's that we think that the focus on achieving environmental resilience needs to be brought level and into focus, too.

WWF-UK's views on attending to the needs of the environment on par with those of paying customers

7. We are aware that Ofwat itself includes the environment within its meaning of the term 'customer'. We are, though, concerned that Ofwat's documents (including *Reliable services for customers – consultation on Ofwat's role on resilience*) habitually include environmental interests as a codicil to frontline statements on the delivery of water and wastewater services, at peril of Ofwat's concern for environmental matters being interpreted by others as subordinate after-thoughts. The practice conveys (even if unintentionally) a second order concern for ensuring the resilience of the environment to water taken from it and returned to it in order to sustain water and wastewater services. We encourage Ofwat to make extra efforts to put environmental resilience on a par with resilience to paying customers in its public utterances and publications, not least to increase awareness of the needs and rights of the natural environment when and where water is scarce or otherwise at risk of support. We would like to see care for the environment as close to the heart of the matter as care for the customer.

8. The first paragraph of section 1 of the consultation, on page 5, mentions the need for '*services to be provided today and in the long term, without compromising the environment ...*' We take the view that 'not compromising' is necessary, but not enough. The water sector should be seeking to support and enhance the environment, not just to secure no deterioration of it. This view encompasses only the first part of the *Water Framework Directive* around no deterioration; it fails to incorporate the second part, the systematic restoration of the freshwater environment. We would like to see government and all regulators, including Ofwat, adopting and promoting this stance.

Responses to Question 1 of the consultation:

Q1 Is our basic understanding of resilience aligned with your own – are we addressing the right things in the right way?

9. Fundamentally we believe that a healthier freshwater environment is a more resilient one. A habitat with the capacity to withstand natural or manmade shocks is better equipped than one without, and therefore in a weaker or more fragile state. For example a freshwater ecosystem in an over-abstracted river is less able to withstand prolonged drought conditions when the natural headroom within a river, or its aquifer, has already been taken up for human use.
10. In broad terms, and so far as it goes, we agree with Ofwat's conception of resilience, though we are less satisfied with Ofwat's own role specification, which we consider to be too narrow, and too passive. We would also like Ofwat to 'champion' the need for environmental resilience. The summary of the resilience objective given in footnote 1 on page 1 of the consultation document includes welcome mention on the role of demand management, but it includes no mention of duty regarding resilience of the environment, alongside that of *water systems and services*. The wording of the Act on furthering the resilience objective is limited in regard to stating a need to ensure that the environment is resilient to events across the full range, including the highly infrequent (that need being implied rather than explicitly stated). That being so, we would like to see Ofwat taking a positive stance on supporting the need for environment resilience, on par with its support for the need for and achievement of service resilience.
11. We consider there to be a need to define, plan for and deliver agreed services to agreed standards, and for the limit of those to be informed and set by reference to customer support and, as an absolute minimum, legal duties and

responsibilities. But we also consider there to be a need to develop, test and apply coping strategies for circumstances beyond – more extreme than – the limits to which a mandate and/or a duty to be resilient extends. We – and the environment and its supported ecosystems - need to be able to cope beyond the limits of resilience we are prepared to pay for too.

12. We noted our views on this matter in our introduction but repeat them here to cover the risk that they may not otherwise be captured under the responses to this Question:
13. We consider that we (meaning all who work in, depend upon or care for the water, wastewater and environmental sector, which encompasses everyone) need to develop resilience insofar as our values extend, and our willingness to pay for some satisfactory level of service in respect of environmental, water supply and wastewater management standards goes, over and above the minimum that statutory responsibilities require. Furthermore, we need to ensure that the ways in which we cope in events beyond determined resilience levels work, and are tolerable to us, in the reality of those circumstances and not just in theory, beforehand; and if not, we need to adjust our boundaries and responses, iteratively or otherwise.

Responses to Question 2 of the consultation:

Q2 Do you agree with our view of what Ofwat should deliver, including where we might step in, and what is for others to deliver?

14. We regard Ofwat's definition of its own role and responsibilities in regard to its resilience duty to be too narrow, and too passive.
15. In our view, the duty to further the resilience objective placed upon Ofwat by section (2A) (e) of the Water Act 2014 means that Ofwat have a statutory responsibility to further water companies' activities in that regard, by requiring and enabling them to plan for and to deliver resilient services to paying customers to agreed standards/frequencies/durations, and to ensure that in doing so they support the well-being and the resilience of the environment and the ecosystems it supports to cope with and recover from drought and other extreme events, to the same stated standards as those adopted for water supply and wastewater services to paying customers. Furthermore, we consider that Ofwat must ensure that water companies develop and implement appropriate plans to effectively cope with and recover from events and occurrences that are more extreme (longer, more severe, less frequent, more

improbable) than those to which their resilience standards relate, consistent with support from their paying customers and (at the very least) their environmental duties and obligations. This is of particular importance in relation to climate change as it progressively impacts the natural systems the industry rely upon. We consider that resilience responsibilities extend to defined and agreed boundaries, to which stated levels of service apply, and beyond them, when planned and prepared coping strategies should apply.

16. It follows from the above that we consider that the duty to further the resilience objective not only includes, but goes beyond promotion of resilience activities by regulated water companies. We believe that the duty could not be properly discharged just by monitoring companies' activities, and commending or even rewarding those who are active in developing demand management measures, for example. Any such post-hoc recognition and commendation would amount to a passive assessment, and not even to promotion or encouragement of action, let alone support and enablement, and would be wholly unsatisfactory, in our view. Instead, we take the view that the resilience duty requires Ofwat to actively ensure that water companies plan for and deliver resilience and recovery to and beyond defined levels, to different standards and in different ways, respectively. This in turn means that we consider that in order to ensure so, Ofwat has a duty to actively encourage, to promote and to facilitate water companies' activities in these regards, and to assess the adequacy of their plans and actions in doing so, by reference, as a minimum requirement, to their customers' support for such and to their environmental duties and obligations such as they then exist and as they may reasonably be expected to become.
17. The consultation document states that Ofwat recognises the "*need to make sure that we are creating a framework that enables, incentivises and encourages the sector to deliver the resilience its customers want and need.*" (paragraph 1, page 15). We are pleased that Ofwat recognise so, and support the need for enablement, incentivisation and encouragement of those charged with delivering resilience by the economic regulator. We support the proposed (outcomes) focus on what service providers deliver, rather than on the (input) activities they undertake (s2.2, page 16). We note, though, that success on those fronts is achieved only if those 'push' drivers are strong enough to trigger positive action by the water companies. We would like to see strong incentivisation and strong encouragement from Ofwat, and we would like to see positive action by Ofwat to ensure that water companies deliver resilience in practice, to customers and to the environment. We note strong reluctance by Ofwat to '*turn resilience into a compliance issue*' (s2.3, page 19). We agree that neither the approach to resilience nor the standard at which it should be set should be mandated, or set sector-wide, but we do not agree that outcome or delivery standards on resilience should not be judged, or assessed and ensured, case by case and against individually-defined, customer-supported

and paid-for standards. To do otherwise would be lax, in regard to informing customers of companies' performance against their expectations. We think that Ofwat needs to assess service providers' delivery against their own promises, and as needs may be, to ensure that promises are kept. In that regard, we believe that compliance assessment and enforcement is essential.

18. We also note that maintaining the centrality of customers '*at the heart of all decision-making*' carries the risk that environmental resilience could be compromised where and when customer support for the environment falls low. We consider that using statutory obligations to define the baseline for environmental resilience would be to set the baseline too low, and we consider there to be a need for review of levels of service for the environment to safeguard against any risk of low standards.

Responses to Question 3 of the consultation:

Q3 What views do you have on how the water and wastewater sector might measure its performance in delivering resilient services – and the best way for us to demonstrate that we are carrying out our role?

19. In our view, the regulated water and sewerage companies should assess their individual and collective performance on their resilience obligations by reference to:
20. The adequacy of the standards of service reliance they have agreed with their bill-paying customers and their economic and environmental regulators, and in accordance with government advice and requirements, by reference to actual and simulated risk of the occurrence and exceedance of those standards
 - a) achievement of the standards of service agreed with bill-paying customers and approved by their economic and environmental regulators;
 - b) delivery compliance against statutory environmental duties and obligations, as a minimum and to such higher standards as they and their customers support.
21. As noted in our previous responses, we consider that Ofwat's role on the resilience obligation should be broader and more proactive than that it has so far defined for itself. It should assess and justify how well it is executing its role by reference to the ambition defined in the limits of that role specification, and not just in its compliance with that role. We encourage Ofwat to interpret and embrace its resilience duty more positively and more actively than does the

limited role specification it has proposed in the consultation document. For all (bill paying and impact bearing) customers to be well served, Ofwat needs to embrace them all equally, and actively. Environmental resilience needs to be put more centre stage in Ofwat's focus, and leadership in support of the interests of the full customer range needs to be taken up more actively by Ofwat.

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