



Department  
for Environment  
Food & Rural Affairs

# Ofwat framework document

March 2020

Ofwat



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## Contents

Framework document: Ofwat.....	1
1. Introduction.....	1
2. Purpose of Ofwat.....	2
3. Governance and accountability.....	2
4. Responsibilities of Ofwat’s Chief Executive including as Accounting Officer.....	3
5. Responsibilities of the Ofwat Board.....	6
6. Central government accounts.....	8
7. Annual report and accounts.....	8
8. Internal audit.....	9
9. External audit.....	10
10. Management and financial responsibilities.....	11
11. Corporate governance.....	11
12. Risk management.....	12
13. Forward work programme and business plan.....	12
14. Ofwat staff.....	13
15. Review of Ofwat.....	15
16. Working relationship.....	15
17. Communication.....	15
18. List of appendices to the specimen document.....	17
Appendix A: Compliance with government-wide corporate guidance and instructions.....	18

# Framework document: Ofwat

## 1. Introduction

- 1.1.** This Framework Document has been drawn up by the Department for Environment, Food and Rural Affairs (Defra) in consultation with the Water Services Regulation Authority (Ofwat). This document sets out the operational framework within which Defra and Ofwat will operate. The document does not convey any new legal powers or responsibilities and is not intended to compromise Ofwat's regulatory independence. It has been agreed and signed by Defra and Ofwat as indicated by the signatures on page 17. Copies of the document and any subsequent amendments will be made available to members of the public on GOV.UK and Ofwat's website.
- 1.2.** The overall governance framework is set out in legislation and a number of other documents in addition to this Framework Document. Those documents are set out in **Appendix A**. Those documents, and those set out in paragraph 1.3 below, have primacy over this Framework Document, should any potential conflicts arise.
- 1.3.** The scope of this Framework Document extends to Ofwat's functions in relation to the regulation of the water and sewerage sectors in England only. It is intended to be supplementary to the Memorandum of Understanding between Defra and Ofwat prepared under section 52(4) of the Water Act 2003.
- 1.4.** Any questions regarding the interpretation of this document shall be resolved by Defra and Ofwat in consultation with other government departments including the Treasury and/or the Cabinet Office, as necessary.
- 1.5.** This document will be formally reviewed every three years, or sooner upon request of either party.

## 2. Purpose of Ofwat

- 2.1. Ofwat is established under section 1A of the Water Industry Act 1991 (WIA91) to carry out functions relating to the economic regulation of the water and sewerage sectors in England and Wales.
- 2.2. Ofwat's functions are principally set out in or by virtue of legislation, primarily the WIA91, and statutory duties which apply to the majority of these functions are set out in sections 2 and 3 of the WIA91. It is expected to carry out its functions with technical expertise, independence, impartiality and transparency.
- 2.3. As set out in section 2A of the WIA91, Ofwat must also carry out its relevant functions relating wholly or mainly to England in accordance with the strategic priorities and objectives set out by the Secretary of State in the Strategic Policy Statement to Ofwat.
- 2.4. Within the strategic policy framework set by government, Ofwat sets out its own vision, strategy and regulatory priorities for the water and sewerage sectors, which are set out on the Ofwat website.

## 3. Governance and accountability

- 3.1. Ofwat is the independent economic regulator for the water and sewerage sectors in England and Wales. [Cabinet Office guidance](#) classifies Ofwat as a Non-Ministerial government Department, one of three types of Arm's-Length Body.
- 3.2. Defra is Ofwat's sponsor department and is responsible for setting the wider policy and regulatory framework for the water and sewerage sectors in England to ensure that they deliver the government's objectives.
- 3.3. Established under section 1A of the WIA91, Ofwat's relationship with government is primarily set out in this legislation, and Defra is committed to implementing the [Principles for Economic Regulation](#) in its working arrangements with Ofwat. HM Treasury has principal oversight of Ofwat's finances.
- 3.4. Ofwat is directly accountable to Parliament for the performance of its functions and duties.

## Ministerial responsibility

- 3.5.** The Secretary of State for Environment, Food and Rural Affairs has a role in accounting to Parliament for the activities and performance of Ofwat. These responsibilities include:
- keeping Parliament informed about Ofwat's performance in specific contexts, such as Parliamentary Questions, and Parliamentary Debates, as set out in section 7.9 of Managing Public Money
  - carrying out responsibilities specified in the WIA91 (as amended), including appointments to the Board and determining terms of appointment of Board members and approving implementation of the non SCS pay remit
  - exercise of veto powers relating to some of Ofwat's functions

## Accountabilities and responsibilities as HMT's Principal Accounting Officer (PAO)

- 3.6.** The Principal Accounting Officer (PAO) of HM Treasury has designated the Ofwat Chief Executive as Ofwat's accounting officer. The respective responsibilities of the PAO and accounting officers for ALBs are set out in Chapter 3 of Managing Public Money which is sent separately to the accounting officer on appointment.

## Others

- 3.7.** The Parliamentary and Health Service Ombudsman (PHSO) may investigate all functions of Ofwat, subject to the terms of the PHSO's own complaints procedure and its powers and duties.

## 4. Responsibilities of Ofwat's Chief Executive including as Accounting Officer

- 4.1.** The Chief Executive is recruited through open competition. The appointment is made by the Ofwat Board. On appointment, the Chief Executive may become an executive member of the Board alongside non-executive members, subject to the agreement of the Secretary of State. The Chair should set performance objectives for the Chief Executive which reflect both the Accounting Officer (AO)

responsibilities and the Chief Executive's role in delivering Ofwat's functions, consistent with the strategic priorities and objectives set by the Secretary of State.

**4.2.** The Chief Executive as Accounting Officer is personally responsible for safeguarding the public funds for which they have charge; for ensuring propriety, regularity, value for money and feasibility in the handling of those public funds; and for the day-to-day operations and management of Ofwat. In addition, they should ensure that Ofwat as a whole is run on the basis of the standards, in terms of governance, decision-making and financial management, that are set out in Chapter 3 of Managing Public Money.

### **Responsibilities for accounting to Parliament**

**4.3.** The Chief Executive's responsibilities include:

- signing the accounts and ensuring that proper records are kept relating to the accounts and that the accounts are properly prepared and presented in accordance with any directions issued by the Treasury
- preparing and signing a Governance Statement covering corporate governance, risk management and internal control arrangements, for inclusion in the annual report and accounts
- ensuring that effective procedures for handling complaints about Ofwat are established and made widely known within Ofwat
- acting in accordance with the terms of Managing Public Money and, as appropriate, other instructions and guidance issued from time to time by the Department, the Treasury and the Cabinet Office
- acting in accordance with controls delegated to it from the Cabinet Office; and
- giving evidence when summoned before the Public Accounts Committee on Ofwat's stewardship of public funds

### **Responsibilities to the Ofwat Board**

**4.4.** The Chief Executive's responsibilities include:

- advising the Board on the discharge of Ofwat's responsibilities including as set out in this document, in WIA91 and in any other relevant instructions and guidance

- advising the Board on Ofwat's performance against its aims and objectives
- taking action as set out in *Managing Public Money* if the Board or its Chair is contemplating a course of action involving a transaction which the Chief Executive considers would infringe the requirements of propriety or regularity or does not represent prudent or economical administration, efficiency or effectiveness, is of questionable feasibility, or is unethical

## On managing risk and resources

### 4.5. The Chief Executive's responsibilities include:

- ensuring that all public funds made available to Ofwat including any approved income or other receipts are used for the purpose intended by Parliament, and that such monies, together with Ofwat's assets, equipment and staff, are used economically, efficiently and effectively
- ensuring that Ofwat acts in accordance with its statutory remit and that all associated legal risks are effectively managed
- ensuring that a system of risk management is maintained to inform decisions on financial and operational planning and to assist in maintaining and improving performance
- ensuring that an effective system of programme and project management and contract management is maintained
- ensuring that adequate internal management and financial controls are maintained by Ofwat, including effective measures against fraud and theft
- ensuring that a robust system of delegation is in place
- ensuring that effective personnel management policies are maintained
- recruiting, leading, managing and motivating the senior management team and staff including the development of an organisational culture that promotes high performance and commitment
- promoting and maintaining effective customer, stakeholder and partner engagement and collaboration at strategic and operational levels to ensure good understanding and responsive management of customer and stakeholder needs and concerns



## 5. Responsibilities of the Ofwat Board

- 5.1. Ofwat is led and directed by a Board whose Chair, Executive and Non-executive Members are appointed to the Board by the Secretary of State. Schedule 1A to the WIA91 sets out the legislative provisions on Ofwat's governance including on Board membership and appointment terms (see section 11 below).
- 5.2. The Ofwat Board should ensure that effective arrangements are in place to provide assurance on risk management, governance and internal control.
- 5.3. The Board is specifically responsible for:
  - establishing and taking forward the strategic aims and objectives of Ofwat
  - approving the annual budget and therefore annual licence fees
  - setting the strategic direction for the Executive team
  - ensuring that the responsible Minister is kept informed of any changes which are likely to impact on the strategic direction of Ofwat and taking forward the steps needed to deal with such changes
  - ensuring that any statutory or administrative requirements for the use of public funds are complied with; that the Board operates within the limits of its statutory authority, and in accordance with any other conditions relating to the use of public funds; and that in reaching decisions, the Board takes into account any relevant guidance issued by Defra/government
  - ensuring that the Board receives and reviews regular financial information concerning the management of Ofwat; is informed in a timely manner about any concerns about the activities of Ofwat; and acts appropriately on such concerns
  - demonstrating high standards of corporate governance at all times, including by using the audit committee, which maintains an appropriate degree of independence, to help the Board to address key financial and other risks

### The Chair's personal responsibilities

- 5.4. The Chair is responsible to Defra Ministers for the achievement of objectives covering the overall leadership, direction and effectiveness of Ofwat.

**5.5.** The Chair will represent Ofwat and will be the primary contact with Ministers for the Board, raising issues with Ministers as appropriate and ensuring that the other Board members are kept aware of such communications.

**5.6.** In addition, the Chair has the following leadership responsibilities:

- ensuring that the Board, in reaching decisions, takes proper account of relevant guidance provided by the responsible minister or the department or in the Statement of Strategic Priorities and Objectives to Ofwat
- driving collaborative working with OGDs as appropriate to make the best use of resources available and to maximise outcomes and multiply benefits
- promoting the efficient and effective use of staff and other resources
- delivering high standards of regularity and propriety

**5.7.** The Chair also has an obligation to ensure that:

- the Board is run in line with the government's Code of Good Practice for Corporate Governance, as appropriate
- the work of the Board and its members is reviewed annually, the Board is working effectively, and Board members are aware of the terms of their appointment, their duties, rights and responsibilities
- Board members proactively engage in succession planning and identification of potential candidates for future Board appointments
- the Board has a balance of skills appropriate to directing Ofwat's business, as set out in the government's Code of Good Practice for Corporate Governance
- they, together with the other Board members, receive appropriate training on financial management and reporting requirements and on any differences that may exist between private and public sector practice
- the responsible Minister is advised of Ofwat's needs with as much notice as possible before Board vacancies arise
- they assess the performance of individual Board members each year and advise the Secretary of State with as much notice as possible when they are being considered for reappointment or appointment
- there is a Board Operating Framework ([the Ofwat Rules of Procedure](#)) in place setting out the roles and responsibilities of the Board consistent with the government's Code of Good Practice for Corporate Governance

- there is a code of practice for Board members in place, consistent with the Cabinet Office *Code of Conduct for Board Members of Public Bodies*

## Individual board members' responsibilities

### 5.8. Individual Board members should:

- comply at all times with the *Code of Conduct for Board Members of Public Bodies* and with the rules relating to the use of public funds and to conflicts of interest
- not misuse information gained in the course of their public service for personal gain or for political purposes, nor seek to use the opportunity of public service to promote their personal interests or those of any connected person, firm, business or other organisation
- comply with the Board's rules on the acceptance of gifts and hospitality, and on business appointments
- act in good faith and in the best interests of Ofwat

## 6. Central government accounts

- 6.1. Ofwat must comply with requirements of HM Treasury including producing an Annual Report and Accounts that is laid by HM Treasury in Parliament.

## 7. Annual report and accounts

- 7.1. Ofwat's Board must publish its Annual Report and Accounts after the end of each financial year.
- 7.2. Section 192B of the WIA91 sets out requirements for Ofwat's Annual Report: it must report on Ofwat's activities for that year, including on the progress of the projects described in the forward work programme for that year.
- 7.3. In addition, the annual report and accounts must:
- cover any corporate, subsidiary or joint ventures under its control
  - comply with the Treasury's Financial Reporting Manual (FreM)

**7.4.** A draft of Ofwat's Annual Report and Accounts must be shared with the appropriate Defra and Treasury Ministers for comment before being finalised and signed by the Comptroller and Auditor General. It will then be laid before each House of Parliament. The Annual Report and Accounts must also be published on Ofwat's website, ideally on the same day, but not before, the document has been laid before Parliament.

## 8. Internal audit

**8.1.** Ofwat shall:

- establish and maintain arrangements for internal audit in accordance with the [Treasury's Public Sector Internal Audit Standards](#) (PSIAS)
- ensure that their Internal Audit service have complete access to all relevant records within their organisation
- set up an audit committee of its Board in accordance with the Code of Good Practice for Corporate Governance and the Audit and Risk Assurance Committee Handbook
- keep records of and notify the Treasury, Defra, and National Audit Office of any unusual or major incidents of fraud, error, or theft as soon as possible

### Audit and risk assurance committee

**8.2.** Ofwat's Board has a general responsibility to ensure that proper internal audit arrangements are established and maintained, and for that purpose should establish and maintain an Audit and Risk Assurance Committee (ARAC) in accordance with Managing Public Money and the Cabinet Office's [Guidance on Codes of Practice for Public Bodies](#). Ofwat should ensure that the operational risks it faces are dealt with in an appropriate manner, in accordance with relevant aspects of best practice in corporate governance, and develop and maintain a risk management strategy, in accordance with HM Treasury guidance [Management of Risk: Principles and Concepts](#).

**8.3.** The Internal Audit service should provide regular reports to the Chief Executive and also report regularly to Ofwat's Board, through the ARAC (and the ARAC chair, who

shall be a non-executive Member of Ofwat) on its programme, recommendations and their implementation.

- 8.4. The Internal Audit service shall have direct access to the Accounting Officer and to Members of the Board, usually through the ARAC. The Board or ARAC may deal directly with the Internal Audit service.
- 8.5. The internal audit service has a right of access to all documents, including where the service is contracted out.

## 9. External audit

- 9.1. The Comptroller & Auditor General (C&AG) audits Ofwat's annual accounts and HM Treasury lays them before Parliament, together with his report.
- 9.2. The C&AG:
  - will consult Ofwat on whom – the NAO or a commercial auditor – shall undertake the audit(s) on his behalf, though the final decision rests with the C&AG
  - has a statutory right of access to relevant documents, including by virtue of section 25(8) of the Government Resources and Accounts Act 2000, held by another party in receipt of payments or grants from Ofwat
  - will, where asked, provide departments and other relevant bodies with Regulatory Compliance Reports and other similar reports which departments may request at the commencement of the audit and which are compatible with the independent auditor's role
- 9.3. The C&AG may carry out examinations into the economy, efficiency and effectiveness with which Ofwat has used its resources in discharging its functions. For the purpose of these examinations the C&AG has statutory access to documents as provided for under section 8 of the National Audit Act 1983.
- 9.4. In addition, Ofwat shall provide, in conditions to contracts, for the C&AG to exercise such access to documents held by contractors and sub-contractors as may be required for these examinations; and shall use its best endeavours to secure access for the C&AG to any other documents required by the C&AG which are held by other bodies.

## 10. Management and financial responsibilities

### Managing Public Money and other government-wide corporate guidance and instructions

- 10.1.** Unless agreed by HM Treasury, Ofwat shall follow the principles, rules, guidance and advice in Managing Public Money. A list of guidance and instructions with which Ofwat should comply is in the Appendix to this document.
- 10.2.** Once the budget has been approved, Ofwat shall have authority to incur expenditure approved in the budget without further reference to the Treasury on the following conditions;
- Ofwat shall comply with the delegated financial limits agreed with the Treasury and set out in the delegation letter issued by Treasury prior to the commencement of a new financial year
  - Ofwat shall comply with Managing Public Money regarding novel, contentious or repercussive proposals
  - inclusion of any planned and approved expenditure in the budget shall not remove the need to seek Treasury approval where any proposed expenditure is outside the delegated limits or is for new schemes not previously agreed
  - Ofwat shall provide the Treasury with information about its operations, performance, individual projects or other expenditure as the Treasury may reasonably require

## 11. Corporate governance

### Non-executive board members

- 11.1.** Ofwat's Chair and non-executive Board members are appointed by the Secretary of State or delegated Minister in consultation with the Welsh Government. Such appointments are regulated by the Independent Commissioner for Public Appointments and will comply with the Government's [Governance Code for Public Appointments](#).

- 11.2.** The terms of appointment are to be determined by the Secretary of State, with no appointment longer than five years. Appointments can be renewed subject to a good performance appraisal, but no person may be a member for a total period of more than 10 years, whether or not continuous, save in exceptional circumstances.

### **Executive board members**

- 11.3.** The Chief Executive and executive Board members are recruited by Ofwat but appointed to the Board by the Secretary of State upon the advice of the Ofwat Chair.

### **Composition of the board**

- 11.4.** Ofwat will have a Chair, together with a minimum of 2 members that have a balance of skills and experience appropriate to directing Ofwat's business.

## **12. Risk management**

- 12.1.** Ofwat shall ensure that the risks that it faces are dealt with in an appropriate manner, in accordance with relevant aspects of best practice in corporate governance, develop a risk management strategy adopting the principles contained within the Treasury guidance [Management of Risk: Principles and Concepts](#).
- 12.2.** It should adopt and implement policies and practices to safeguard itself against fraud, error, bribery, money laundering and theft, in line with the Treasury's guidance [Managing the Risk of Fraud – Guidance for Managers](#).

## **13. Forward work programme and business plan**

- 13.1.** Section 192A of the WIA91 sets out a requirement for Ofwat to publish a "forward work programme" each year and sets out required content for this, and consultation and publication requirements. Prior to wider public consultation, Ofwat shall submit a draft of its Forward Work Programme for the year ahead to Defra for comment. The forward programme shall reflect Ofwat's statutory duties and clearly demonstrate how Ofwat's work contributes to the achievement of the government's strategic priorities and objectives for the regulation of the water sector.

- 13.2.** Ofwat may publish a business plan to set out the overall approach for delivering Ofwat's strategy over the longer term which may be updated periodically to reflect changing circumstances and evolving priorities, including government policy priorities and objectives for the sector, as set out in Defra's Strategic Policy Statement to Ofwat.

## 14. Ofwat staff

### Broad responsibilities for staff

- 14.1.** Within the arrangements approved by the responsible minister and the Treasury, Ofwat has responsibility for the recruitment, retention and motivation of its staff. The broad responsibilities toward its staff include ensuring that:
- the policies for recruitment and management of staff create an inclusive culture in which diversity is fully valued; appointment and advancement is based on merit, in line with the Civil Service Recruitment Principles: there is no discrimination on grounds of gender, marital status, sexual orientation, race, colour, ethnic or national origin, religion, disability, community background or age
  - the level and structure of its staffing, including grading and staff numbers, are appropriate to its functions and the requirements of economy, efficiency and effectiveness
  - the performance of its staff at all levels is satisfactorily appraised and Ofwat's performance management systems are reviewed from time to time
  - its staff are encouraged to acquire the appropriate professional, management and other expertise necessary to achieve Ofwat's objectives
  - proper consultation with staff takes place on key issues affecting them;
  - adequate grievance and disciplinary procedures are in place
  - whistle-blowing procedures consistent with the Public Interest Disclosure Act 1998 are in place
  - a code of conduct for staff is in place based on the [Civil Service Code](#)



## Staff costs

- 14.2.** Subject to its delegated authorities Ofwat shall ensure that the creation of any additional posts does not incur forward commitments that will exceed its ability to pay for them.

## Pay and conditions of service

- 14.3.** Defra should have regard to the Cabinet Office's [Public Bodies: A Guide for Departments](#) that provides guidance on staff issues in public bodies. Ofwat's staff are subject to levels of remuneration and terms and conditions of service (including pensions) within the general pay structure set by Cabinet Office and HM Treasury following consultation with Defra on any proposed changes.
- 14.4.** If Civil Service terms and conditions of service apply to the rates of pay and non-pay allowances paid to the staff and to any other party entitled to payment in respect of travel expenses or other allowances, payment shall be made in accordance with the [Civil Service Management Code](#) except where prior approval has been given by the Treasury to vary such terms.
- 14.5.** Staff terms and conditions should be set out clearly, in a form readily accessible to employees, and those which are relevant to Defra's role in relation to Ofwat should be provided to Defra together with subsequent amendments.
- 14.6.** The travel expenses of Board members shall be tied to departmental rates. Reasonable actual costs shall be reimbursed.

## Pensions, redundancy and compensation

- 14.7.** Ofwat's staff shall normally be eligible for a pension provided by Principal Civil Service Pension Scheme. Staff may opt out of the occupational pension scheme provided by Ofwat.
- 14.8.** Any Ofwat proposal to move from the existing pension arrangements, or to pay any redundancy or compensation for loss of office, requires the prior approval of Defra

or Cabinet Office. Proposals on severance must comply with Managing Public Money rules.

## **15. Review of Ofwat**

- 15.1.** Ofwat may be reviewed from time to time, in line with Defra and Cabinet Office requirements.

## **16. Working relationship**

- 16.1.** Defra and Ofwat are parties to a Memorandum of Understanding as required by section 52(4) of the Water Act 2003 which is designed to secure effective working arrangements between the parties.
- 16.2.** Defra and Ofwat are committed to maintaining a very good working relationship by being open and constructive at all levels, respecting each other's views and understanding the reasons for any differences. Defra and Ofwat should take proactive steps to manage differences early and effectively.
- 16.3.** Defra and Ofwat should ensure that their staff are clear on the roles and responsibilities of the government and regulator and highlight areas of interaction, for example on Parliamentary business. Where Defra and Ofwat interact, they should set out what each expects of the other to avoid duplication wherever possible.
- 16.4.** Senior Defra representatives may have discussions with senior Ofwat representatives, including Ofwat Board members, on topics of mutual interest. As an example, to facilitate this Defra representatives have in the past been invited by Ofwat to attend a discussion as part of an Ofwat Board meeting.

## **17. Communication**

- 17.1.** Defra and Ofwat are committed to the principle of good, early communication with each other on areas of mutual interest. This includes maintaining a "no surprises" policy based on notifying each other in advance where there is a likelihood of significant announcements and developments in policy. This will be done through

regular liaison and discussion to allow either party to make representations to the other in sufficient time for those representations to be considered.

**17.2.** Defra will ensure that Ofwat is kept informed of and, where appropriate, is consulted on decisions that affect the water and sewerage sector in England. Ofwat will ensure that Defra and other relevant contacts in the UK government are informed of Ofwat's views on issues that affect policy in the water and sewerage sector in England.

**17.3.** Defra and Ofwat will:

- brief one another as soon as practicable to the extent permitted by law on relevant developments within their respective areas of responsibility, notably prior to public release or publication of material of mutual interest
- identify notices and publications where the prior awareness of Ministers and other government departments will be needed and discuss release schedules accordingly
- share schedules for the publication of materials of mutual interest as is necessary for effective working relationships

**17.4.** Where appropriate, Defra and Ofwat will liaise, involve and keep each other informed as necessary of the drafting of key documents where relevant to the other party's functions.

**17.5.** Ofwat and Defra are subject to the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR) which ensure that the public can, on request, be given access to information.

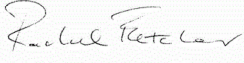
**17.6.** If either party receives a request under FOIA or the EIRs which may result in the disclosure of information that it has obtained from the other party ("the Originating Party") according to the information sharing provisions set out at 17.3 or 17.4 above, it shall consult the Originating Party prior to disclosing any of the information obtained.

## 18. List of appendices to the specimen document

Appendix A - List of government-wide corporate guidance instructions

Signed: 

(On behalf of Defra)

Signed: 

(On behalf of Ofwat)

# Appendix A: Compliance with government-wide corporate guidance and instructions

Ofwat shall comply so far as required and appropriate given its status with the following general guidance documents and instructions:

- Appropriate adaptations of sections of [Corporate Governance in Central Government Departments: Code of Good Practice](#);
- [Code of Conduct for Board Members of Public Bodies](#)
- [Managing Public Money \(MPM\)](#), in particular:
  - Fees and Charges Guide (Chapter 6 of *MPM*);
  - Drawing up Framework Documents (Article 7.2 of *MPM*);
  - Departmental Banking: A Manual for Government Departments (Annex 5.6 of *MPM*);
- Relevant Freedom of Information Act guidance and instructions (Ministry of Justice)
- [Public Sector Internal Audit Standards](#)
- [HM Treasury Guidance on Tackling Fraud](#)
- [Government Financial Reporting Manual \(FReM\)](#)
- [The Parliamentary and Health Service Ombudsman's Principles of Good Administration](#)
- Relevant Dear Accounting Officer letters
- Other relevant guidance and instructions issued by the Treasury in respect of whole of government accounts
- Other relevant instructions and guidance issued by the central Departments
- Statements and guidance issued by the sponsor Department as set out by statute
- Relevant recommendations made by the Public Accounts Committee, or by other Parliamentary authority, as accepted by the Government and agreed by Ofwat.