October 2020

Reference of the PR19 final determinations: Fundamental errors of approach - response to CMA provisional findings

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1. Fundamental Errors of Approach

1.1 The Competition and Markets Authority (CMA) reference group (the **Panel**) has made a number of fundamental errors in its approach to the provisional findings. The errors are both substantive and procedural. They relate in particular to: (a) the consistency and rationality of its approach; (b) the adequacy of its reasoning; (c) its selective and flawed use of evidence.

1.2 Furthermore, the provisional findings appear to be materially incomplete in relation to some issues (for example, leakage, which was a key policy area in PR19), where the CMA has indicated that it is still seeking further information to inform its decision-making, impacting on our ability effectively to respond. Unless the CMA articulates its intended decisions in sufficient time both to permit consideration and response and to enable the responses to be taken into account, its decision-making will not comply with the principles of fair consultation.

1.3 There is still time and opportunity for the Panel to correct these errors and to reach a final determination that is sustainable – but only if the Panel best uses the full time available to it. That is why we wrote to the CMA on 15 October urging it to extend its current administrative timetable.

1.4 There is certainly no good reason for the Panel to compress its procedure so as to complete the references in December, three months earlier than necessary.

1.5 The disputing companies have argued for that artificial end date, but their arguments carry little weight for all of the reasons set out later in this document. Moreover, while we agree that a prompt conclusion of the references would usually be desirable, in the light of what we have seen in the provisional findings, promptness cannot outweigh the needs of procedural fairness or the imperative for the Panel to correct its errors and make the best possible decision in the interests of customers.

1.6 The CMA responded to our letter on 21 October, and we address the key elements of that response in this section.

1.7 More particularly, we address below the errors in the Panel's approach that lead us to conclude that significant further work needs to be done if its final determinations are to be valid and robust.

The Role of the Panel – Consistency and Rationality

1.8 The Panel does not act as a decision-maker in its own right. It is appointed by the CMA to exercise the functions of the CMA on the CMA's behalf.[1]

1.9 It follows that the Panel is subject to the statutory and public law duties of the CMA. The decisions of the Panel must sit consistently and rationally within the framework of previous decisions by other panels appointed to perform a similar role on behalf of the CMA, because they collectively constitute a body of decisions made by the CMA itself.

1.10 Unfortunately, important elements of the provisional findings are not consistent with the CMA's previous determinations, and this inconsistency appears to lack appropriate justification.

1.11 To be clear, there are reasons why decisions made by any given panel appointed to a price control reference may legitimately differ from those of previous panels. Such differences may properly be the result of, for example: variations in the legal framework or market characteristics of the sectors involved; changes in circumstance taking place over time; innovations in regulatory policy; or developments in regulatory understanding. Ofwat, as statutory regulator for the water sector, understands as well as anyone that economic regulation cannot be a static activity and must evolve over time.

1.12 However, where two panels appointed to make decisions on behalf of the CMA reach radically different provisional findings on such a cross-sectoral issue as the cost of capital in two comparable situations, barely six months apart, something has gone wrong.

1.13 The Panel appointed for the purposes of the current references has arrived at initial conclusions on the cost of capital which are manifestly inconsistent with previous regulatory practice and with the equivalent findings of the CMA panel established to determine the NERL reference this year. This has been the case even though the panel in the NERL reference considered the same issues and heard most of the same arguments, including receiving representations from two of the disputing water companies.

[1] Section 12(3D) of the Water Industry Act 1991 and Schedule 4 to the Enterprise and Regulatory Reform Act 2013.

1.14 These differences cannot be explained as an evolution of regulation responsive to sectoral change – and the provisional findings do not seek to suggest that they are. Instead they are an apparently unjustified failure to treat like cases alike.

1.15 What has occurred here is a radical departure from well-established regulatory best practice, without adequate justification or explanation. The effect of this is that the CMA is on course to make two decisions – within the same year and on a cross-sectoral issue – that are mutually incompatible, and without any rational explanation for that difference in treatment.

1.16 This is the view not just of Ofwat, but of other sectoral regulators who have studied the provisional findings. We have had the advantage of seeing in draft a UKRN letter to the CMA, written on behalf of a number of its independent economic regulator members, which records their concerns about the fact that 'in a number of areas the PFs appear to depart from previous regulatory approaches or to be inconsistent with previous CMA decisions'.

1.17 That assessment can readily be illustrated by two points of comparison with the NERL provisional findings –

(a) The Panel in this case has used corporate bonds as a proxy for identifying the upper limit of the risk-free rate, whereas in NERL the CMA relied on index linked gilts in line with established regulatory policy and practice. UKRN describes this as 'a departure from regulatory and previous CMA decisions'. In their expert report, Wright and Mason note that it is 'counter to the approach taken by the CMA in the recent NATS decision' and is, in addition, 'the first time, that we are aware, of a UK regulator (implicitly) advocating that the CAPM be implemented with a distinction between the lending and borrowing rates of the marginal investor'.

(b) The Panel has adopted a policy of 'aiming-up' in relation to the cost of capital that is at odds with the approach taken by the CMA in NERL, where the CMA had expressly considered the same arguments but identified no reason to accept them. That difference of approach is both stark and unjustified. UKRN notes that 'The framework for assessment of aiming up is different to that used in the CMA's recent NERL decision'. Wright and Mason, whose earlier work is cited by the Panel in support of its conclusions, reject the Panel's approach and state that 'we find no merit in any of the CMA's arguments relating to aiming up'. They describe the Panel's reasoning as entailing 'a perverse approach to regulation'.

1.18 There are multiple problems with the novel approaches adopted by the Panel.

1.19 **First**, a rational decision-maker acts consistently with its own previous decisions. As noted above, the Panel operates within an institutional framework which inevitably imposes on it constraints that it appears not to have recognised in these parts of the provisional findings. It is required to acknowledge the previous decisions of the CMA and act consistently with them, unless it has a good reason for not doing so and can explain why that difference of approach is objectively justified.

1.20 Put simply, there is no reason why the CMA should make one set of cost of capital decisions in relation to NERL and, just a few months later, make significantly different decisions on the same subject-matter in respect of the water references. Nor has any such reason been suggested in the provisional findings.

1.21 Consequently, if the Panel, as an emanation of the CMA, confirms the above-mentioned novel aspects of its provisional findings, then the CMA as an institution would be acting inconsistently with its own decisions in a manner that would amount to a serious error.

1.22 **Second**, a predictable and stable regime is critical to effective and lawful economic regulation. The CMA itself has previously referred to this in its determination of the *Phoenix Natural Gas* case, as it plays an important role in making the UK an attractive place for investment and therefore serves to drive down the cost of capital over the long-term. The CMA ought to be as subject as any other regulator to the principles it outlined there. If anything, it should adhere to those principles more closely than other regulators: as the body which is charged with the role of decision-maker in an appellate or review function from the sectoral regulators, it makes decisions that are closely scrutinised by all other regulators and that have the widest consequences.

1.23 Predictability and stability in regulation, as the CMA observed in *Phoenix Natural Gas*, serve an instrumental policy purpose. Instability and unpredictability have the opposite effect: 'Investor confidence might nevertheless be weakened if the regulator is perceived to behave inconsistently, and so the expectation will be established that where a regulator

has behaved in this way in the past, there is a risk that it will do so again in the future. In this way, the cost of capital might be increased.'[2]

1.24 Again, this is not to suggest that regulatory policy cannot evolve and adapt over time. Indeed it is generally accepted that such evolution may be required. However, such changes must proceed from an acknowledgement of the prior policy from which they are departing, explain why things have changed such that a new policy is required, and consult on that reasoning (together with supporting evidence). As the CMA put it in *Phoenix Natural Gas*, changes must be properly 'signalled'. But no such acknowledgment and explanation can be found in the provisional findings.

1.25 **Third**, the Panel's treatment of previous CMA determinations is selective, depending on whether it has provisionally decided to act consistently with them or to depart from them. In the former situation, previous CMA decisions are referred to expressly and endorsed as expressions of an institutional view; in the latter, they are ignored.

1.26 For example:

(a) The Panel states in response to Bristol Water's application for a company-specific adjustment: 'In our Bristol PR14 determination we stated that the amount of new debt taken in any particular period remains a question for management, and hence not for the regulator to second-guess…This would support using a notional level of new versus embedded debt. In the absence of new evidence that suggests a different approach, we continue to believe that the notional level of new versus embedded debt should apply' (emphasis added).[3]

(b) Similarly, regarding the measurement period for market data when assessing the risk-free rate: 'we propose to average market data over a 6-month period, in line with the approach taken in the CMA's NATS/CAA decision'.[4]

[2] CMA (Competition Commission) Final Determination in Phoenix Natural Gas, November 2012, paragraph 9.118

[3] Competition and Markets Authority, 'Provisional findings report', September 2020, p. 624, paragraph 9.486.

[4] Competition and Markets Authority, 'Provisional findings report', September 2020, p.532, paragraph 9.127.

(c) By contrast, when the Panel departs from the views of previous CMA panels in relation to the proxy for the risk-free rate and the use of 'aiming-up', no reference is made to the previous CMA decisions.

1.27 The provisional findings are therefore not only inconsistent with previous decisions of the CMA as an institution but are also **internally inconsistent** as to the approach taken towards the relevance of previous CMA decisions. Not only is this irrational in itself but it also makes it difficult for the reader of the provisional findings, in that there is no explanation why different approaches have been taken to different previous cases.

1.28 **Fourth**, in neither the provisional findings nor its correspondence does the CMA recognise the fundamental departures from past policy contained in some parts of the document.

1.29 The CMA letter of 21 October states that: 'The Approaches to the redeterminations paper of 11 June 2020 made it clear that working papers would only be issued by exception, for novel issues. No such issues were identified…'. It will be clear from the above that we disagree that there is no novelty in the CMA's provisional findings, as do other interested observers.

1.30 The implied CMA interpretation of what constitutes a 'novel issue' suggests a larger procedural problem with its approach, which we address under the next sub-heading.

1.31 As noted above, if the Panel chooses to depart from established regulatory policy, in particular a policy reflected in previous CMA determinations, the provisional findings should acknowledge that fact and explain why the departure is justified in all the circumstances.

1.32 Far from taking these steps, the provisional findings have, in relation to the cost of capital, gone so far as to claim to be maintaining a continuity of approach even while they entail significant changes in policy. Specifically, in relation to the decision to 'aim-up', the Panel justifies its provisional conclusions in part on the basis that it is only doing what has previously been done – '…there has been a long history of regulatory decisions…we note that the most common decision has been that some 'aiming up' has been merited in order to promote

investment in the sector, and that there may be benefits to consistency – including ensuring investor confidence in the sector' (emphasis added).[5]

1.33 With respect to the Panel, we disagree with the above statements, and cannot find support in past practice for the approach now proposed. It should be noted that the members of the UKRN who have written to the CMA generally regard the provisional findings as representing a significant break with a previous continuity of approach.

1.34 The Panel appears in this instance to have proceeded on the basis of a significant category mistake, which has led it into the error of suggesting that it is proposing to do nothing new and can find 'common' examples of its approach in past practice.

1.35 There is a category difference between (on the one hand) the practice of sometimes taking a conservative approach to identifying the appropriate range of values for an individual CAPM parameter, or to choosing a point estimate from within that range, and (on the other hand) the approach that the Panel now adopts of systematically and deliberately aiming up, as a matter of policy, when making a choice from within the overall range of possible WACC values.

1.36 Indeed, as Wright and Mason have pointed out, not only are these different things, but the provisional findings entail doing both at once – 'the CMA has anyway aimed up as it has gone along, setting ranges for the components of the cost of equity which are already high', giving rise to a compounding effect through which 'the CMA has overshot by a wide margin' the true cost of capital. Europe Economics make the same point: 'the CMA's approach to its choice of ranges for each of the individual cost of equity parameters is conservative, amounting to a form of implicit aiming up. Hence its overall aiming up is double aiming up.'

1.37 Thus, far from being consistent with past regulatory practice, this new approach entails the Panel making a radical break with the established position without acknowledging or justifying that result.

[5] Competition and Markets Authority, 'Provisional findings report', September 2020, p. 671, paragraph 9.668.

Adequacy of Reasoning

1.38 The provisional findings must include an adequate statement of the Panel's reasons for its provisional conclusions, and must do so for two distinct (albeit related) legal reasons:

(a) because they function as a consultation document on which the Panel is inviting representations in order to inform its final determination, and accordingly need to explain the proposals of the Panel with sufficient clarity and detail as to allow consultees to understand them and make an intelligent and informed response; and

(b) because they take the form of a proto-final determination, and as such should be expected to contain information approximating to the level of reasoning that is to be included in the final determination in accordance with:

(i) the general public law requirement of adequacy in reasoning; and

(ii) the requirements of statute applicable to the references ('shall include… such an account of their reasons for those conclusions as, in the opinion of the CMA, is expedient for facilitating a proper understanding…').[6]

1.39 The Panel and its supporting staff team have of course worked exceptionally hard under significant time pressure to produce the provisional findings, and Ofwat acknowledges the effort that has clearly gone into reaching this stage of the reference process.

1.40 Therefore, when we encouraged the Panel to use working papers at an earlier stage of the process – as recorded in our letter of 15 October – it was not because of any desire to add to the burden of the process. Instead it reflected an underlying concern that an excessive weight of expectation would otherwise be placed on the provisional findings, as a single consultative document issued by the CMA during the reference process, to meet these legal requirements.

1.41 Having considered the provisional findings since our letter, we believe that our earlier concerns have now been borne out. The level and quality of reasoning given within the document varies across its different sections, and in a number of instances we have struggled to understand how the Panel has arrived at

[6] Section 12(3C)(b) of the Water Industry Act 1991.

certain of its key conclusions. This makes it challenging for us to respond to all aspects of the consultation.

1.42 To be clear, in referring to the 'novelty' of some of the Panel's conclusions (particularly in relation to the cost of capital), we do not mean that we were unaware of the arguments in support of those conclusions that have been made by the companies. The novelty lies in the fact that **the CMA** (through the Panel) is planning, for the first time, to adopt policies that depart from prior regulatory practice, including its own. The question in this case is whether an adequate rationale has been provided for these newly-arrived at policy conclusions.

1.43 To take a specific cost of capital example, in the NERL reference the CMA rejected arguments for aiming-up because 'in the air traffic sector we do not see any evidence that such a premium is necessary. NERL has a clear incentive to identify and deliver the capital programme associated with AMS, both through the regulatory framework and also through the broader governance of the relevant initiatives.'[7] But this statement could (and in our view, does) apply equally to the water sector. Did the Panel consider and reject the NERL approach, and if so what is the sectoral difference or very recent development that led to that conclusion? The provisional findings do not provide the answer.

1.44 Another example is the way in which the Panel has provisionally decided to treat some of the disputing companies' proposed enhancement schemes. The Panel acknowledges that enhancement is 'an area of particularly acute information asymmetry'[8] and, indeed, recognises expressly that in the light of this asymmetry, it is 'appropriate to require the company to provide robust evidence to support its claims'.[9] In some cases, Ofwat's view in its Final Determination was that the company had failed to meet the requisite high evidential bar as to the necessity/benefits of the scheme at all; in others, Ofwat

[7] CMA, NERL Provisional Findings, March 2020, paragraph 12.290
[8] Competition and Markets Authority, 'Provisional findings report', September 2020, p. 264, paragraph 5.19.
[9] Competition and Markets Authority, 'Provisional findings report', September 2020, p. 307, paragraph 5.171.

considered that there was insufficient evidence to support the costs of the company's proposal:

(a) An enhancement scheme that falls into the former category is Northumbrian Water's Essex Resilience scheme. While the Panel seems to agree with Ofwat as to the adequacy of the company's evidence ('Northumbrian's submissions make it difficult for us to perform any form of cost benefit analysis...[the basis of its argument] does not appear to fit well with the wider regulatory regime which is based on quantified risk-based approach planning…Northumbrian has done minimal optioneering…',[10] it nevertheless goes on to decide provisionally to allow the scheme in the full requested sum of £20.4 million. We cannot reconcile the Panel's conclusion that 'there is sufficient evidence to support this proposal'[11] with its earlier express recognition that what the company presented was inadequate.

(b) Moreover, the Panel's decision on the Essex Resilience scheme is inconsistent with the approach that it has taken in respect of 'deep dive' assessments of other enhancement schemes. For example, Yorkshire Water's Living with Water Partnership scheme was criticised for 'limited evidence of broader optioneering'[12] and a 20% cost challenge was therefore applied. The Panel considered that one of the reasons for doing so was that such a challenge was 'consistent with Ofwat's general approach to schemes which it considered had not demonstrated sufficient optioneering'.[13]

(c) An enhancement scheme that Ofwat considered, at a high level, to be reasonable but challenged in relation to the company's decision-making and cost efficiency was Anglian Water's strategic interconnector scheme. We concluded that the company's proposed costs were inefficient. The Panel has disagreed and provisionally decided to increase Anglian Water's allowance for this scheme by £38.9 million, largely on the basis of advice

[10] Competition and Markets Authority, 'Provisional findings report', September 2020, p. 325, paragraph 5.245.
[11] Competition and Markets Authority, 'Provisional findings report', September 2020, p. 327, paragraph 5.252.
[12] Competition and Markets Authority, 'Provisional findings report', September 2020, pp. 314-315, paragraph 5.204 (c).
[13] Competition and Markets Authority, 'Provisional findings report', September 2020, p. 315, paragraph 5.206.

that the Panel received from its engineering advisers. The advisers were asked to review and comment on Anglian Water's cost estimates for 7 proposals and concluded that 5 of the 7 estimates 'appear reasonable' and the remaining two 'seem substantially greater than [the advisers] benchmarks' but for explicable reasons.[14] No further detail of the basis for these conclusions is given in the provisional findings. It is simply not possible, from this sparse summary, to understand the basis for the engineering advisers', and therefore the Panel's, conclusions.

1.45 A third example of inadequate reasoning by the Panel is the view that it expresses in the provisional findings as to the likely consequences of our overall package of performance commitments (**PCs**) and outcome delivery incentives (**ODIs**) for the companies. The Panel expresses the view that the sum of exposure, for the disputing companies, arising from the 'maximum net penalties' in asymmetric ODIs is in the range of 1-2% of return on regulated equity (**RORE**) and concludes, 'Based on our in-the-round assessment of the package of ODIs, we consider that 0.1%-0.2% of RORE is a reasonable estimate of the expected loss from the asymmetric incentives for an average performing company.'[15]

1.46 We do not agree that the skewed ODI risk calculated by the Panel is an accurate assessment of the overall effect of our performance incentives. Put simply, we do not consider that, for an efficiently performing company (which is what we assume the Panel must be equating with an 'average performing company', as it would be inappropriate to compensate for inefficient behaviour), asymmetric incentives translate into an expectation of negative ODI payments. Given the very limited and incomplete explanation for the Panel's calculation of its 'reasonable estimate' of expected loss in RORE, it is not possible for us to understand how the Panel has reached this conclusion.

1.47 Furthermore, the problem is wider than this. The role of the Panel in these references is to remake the price control determinations for the disputing companies in full. In doing so the Panel is clearly entitled to proceed, as it has, on the basis of hearing from the parties (and third parties) their competing perspectives, and focusing on the issues which are most significant or most

[14] Competition and Markets Authority, 'Provisional findings report', September 2020, p. 347, paragraph 5.342
[15] Competition and Markets Authority, 'Provisional findings report', September 2020, p. 478, paragraph 7.237.

strongly contested. However, these are merely matters of procedure. They cannot convert the substantive role of the Panel into that of an adjudicative tribunal, when its function is one of policy formulation.

1.48 It is an inadequacy of reasoning, therefore, when the provisional findings list at some length the main arguments advanced by the parties and then reach a conclusion that, in its explanation of the Panel's assessment of the issues, offers no explanation why those arguments have been accepted or rejected by the Panel on behalf of the CMA. Even if the Panel were exercising an adjudicatory rather than a policy-making function, the standard of reasoning in places falls far short of what would be expected of a court or tribunal.

1.49 The provisional findings cannot be expected to document or address every line of argument or each piece of evidence submitted by the parties, and nor do we suggest that to be the appropriate standard by which to judge them. They should, however, as a minimum: (i) explain how the Panel has assessed the main submissions made by the parties; (ii) identify any that it disregarded as not relevant to its determination; (iii) indicate the weight attached by the Panel to those treated as relevant; and (iv) identify any additional considerations of the Panel's own and what weight has been attached to these.

1.50 Without this, we are left to speculate why matters that we have suggested to the Panel ought to have considerable weight in its reasoning do not in fact feature anywhere in its analysis.

1.51 Given our statutory role in providing advice and assistance to the CMA in this process, and our evident knowledge and expertise in the regulation of the water sector, we would have considered that our submissions should at least carry sufficient weight as to feature in the Panel's reasoning, even if it ultimately did not choose to find them persuasive. And if it were unpersuaded by them, we would at least have expected to be able to understand from the provisional findings why this was the case.

1.52 Put simply, the mere fact of recording the existence of submissions by a party does not evidence that the Panel has considered them or placed any weight on them; still less does it provide an adequate explanation of what role (if any) they have played in its own reasoning.

1.53 Ultimately, it has not been possible for us to determine precisely what the Panel has understood in relation to certain matters, or what if anything it has made of certain of the points raised or evidence provided by us in submissions. For example –

(a) We clearly explained how we considered our (and the CMA's) statutory duties should be applied with regard to 'aiming-up'. The provisional findings have recorded this submission,[16] but in the Panel's analysis of the issue, it does not address the submission or explain why it disagrees (as we must assume it does). The Panel states that 'We consider this analysis in response to Ofwat's submissions that it is only appropriate to aim straight, and that aiming up would be the incorrect way to balance the finance and consumer duties…'.[17] And we would note that our position in any event referred to the application of the financing functions duty and not a balancing of different elements of the duties as this quotation implies.

(b) We provided evidence to explain why the previous distressed sales of Wessex and Dŵr Cymru offer no comfort sufficient to alleviate the need for a measure such as our Gearing Outperformance Sharing Mechanism (**GOSM**).[18] These submissions are neither recorded[19] nor addressed in the Panel's analysis,[20] where the Panel continues to rely on those cases as a justification for not adopting the GOSM.

(c) We suggested ways in which the Panel might address any financeability issue that it perceived there to be, for instance by reconsidering the level of notional gearing adopted in the determination. However, the Panel has instead provisionally decided to 'aim-up', apparently in part for the purpose of addressing financeability concerns. There is no indication of whether it has engaged with our alternative suggestions and rejected them (and, if so, why) or whether it has simply declined to consider them.

1.54 It is difficult for us to see how a concluded view of any significance could be arrived at without the Panel having addressed directly a number of the issues we have raised as the statutory regulator for this sector.

1.55 In addition, we have struggled to understand some of the judgments the Panel has made in setting cost of capital parameters or choosing its percentile for 'aiming-up', and it is unclear to us why the Panel has failed to use data already

[16] Competition and Markets Authority, 'Provisional findings report', September 2020, p. 661, paragraphs 9.636-9.637.
[17] Competition and Markets Authority, 'Provisional findings report', September 2020, p. 671, paragraph 9.669.
[18] Ofwat, 'Risk and return – additional submission following our hearing on 22 July', August 2020.
[19] See for instance Competition and Markets Authority, 'Provisional findings report', September 2020, p. 649, paragraph 9.589.
[20] Competition and Markets Authority, 'Provisional findings report', September 2020, p. 657, paragraph 9.624.

available to it in these proceedings to cross-check its conclusions on the cost of capital.

1.56 In particular, for instance, in relation to the cost of debt, we understand why the provisional findings reach the conclusion (in line with long-established practice) that an individual company's allowed cost of capital should not be based on its actual cost of embedded debt. However, since the Panel has available to it verified recent evidence of the actual costs of sector companies' embedded debt, it is extremely difficult to understand why it has not used that evidence to sense-check its determination of its cost of debt allowance for the disputing companies, or why this is said to be too complicated. In our view, such a check should have caused it to think again about its decision on this parameter (or to explain why it still considered its allowance appropriate).

1.57 Again, we fully appreciate the time pressures to which the Panel has been subject. If the difficulty in using available evidence to carry out these cross-checks was merely that there was a shortage of time to do so before the provisional findings had to be published, the document could have identified that fact and indicated that it was subject to a separate analysis and a subsequent issue-specific consultation. But in any event, in circumstances where the CMA proposes to conclude these references with three months to spare, there is clearly enough time both for the necessary cross-checks to be carried out and for the Panel's reasoned engagement with our evidence.

1.58 In its letter of 21 October, the CMA indicated that we had made a limited number of requests for further information following the publication of the provisional findings, implying that our concerns about the inadequacy of their reasoning were overstated.

1.59 We do not accept that implication. We have requested further data where it appeared to be lacking and might readily fill a gap in our understanding of the Panel's analysis and provisional conclusions. However, most of the problems with the document relate to inadequacies of reasoning that cannot be addressed by such focused requests for missing information.

1.60 For example, in relation to the Essex Resilience scheme referred to in subparagraphs (a)-(b) above, the difficulty is not that specific information is missing but that in our view the explanation simply does not make sense. The Panel accepts the need for robust evidence and endorses, elsewhere in the same document, our approach of applying a cost challenge when a company has done insufficient optioneering around its proposals. The Panel acknowledges that what Northumbrian Water presented was so inadequate that

no cost-benefit analysis could be done and that the company had undertaken 'minimal' optioneering. Yet the proposed scheme was not only allowed but no cost challenge was applied. To take another example, and contrary to what the provisional findings state, the summary of the engineering advice provided by WRC is insufficient to enable us to properly understand and respond to the basis for the recommendations.

1.61 All we can do in such cases is to identify in this response those parts of the provisional findings where we are unable to understand why the Panel reached the decisions it has, and where that either (i) suggests to us that there are deficiencies in its reasoning or (ii) makes it impossible for us to understand those reasons with sufficient clarity to enable us to respond to them fully. We have done our best to do so, within the limited time available, and have recorded those concerns both here and in the other documents that form part of this response. The response therefore needs to be read in full in order to obtain an appreciation of the scale of the issue.

1.62 Accordingly, it is not the purpose of this section to document a complete list of these issues. However, by way of indicative examples:

(a) In relation to 'aiming-up', Wright and Mason assess the Panel's documented rationale as falling 'well short of sufficient reason for aiming up', while Brian Williamson describes it as 'a blunt and costly instrument in pursuit of a problem that has not been shown to exist'. We endorse and adopt these observations. We have found it impossible to understand the Panel's logic for concluding that there is a need to aim up in order to ensure 'continuing investment in the water sector' beyond AMP7. Nor do the provisional findings indicate the Panel's response to our submission on this issue.

(b) If aiming-up is adopted as a policy, no adequate explanation has been given for the Panel alighting on the 75th percentile as the point at which to aim up for the cost of equity.

(c) The provisional findings appear, in relation to the Anglian Water strategic interconnector scheme, to be driven heavily by advice that the Panel received from its engineering advisers. That advice has been summarised but has not been provided in full (despite requests) and nor has any of the evidence or factual material on which that advice was based.

(d) As indicated above, despite accepting that asymmetric ODIs are appropriate in some circumstances, the Panel seems to have reached the conclusion that the effect of the ODIs in our proposed package, taken in the round, is that an 'average performing company' would face expected negative ODI payments – in other words, that even an efficient company

would expect to be penalised. It is unclear what calculation has been performed, and what assumptions have been made, to reach this conclusion.

Consulting on materially incomplete proposals

1.63 As noted above, there are several issues in respect of which the Panel still appears to be seeking evidence, and considering its proposed approach, at the provisional findings stage. These are not merely points of detail but also include policy areas of major importance.

1.64 Leakage, for example, was a key policy area for us in PR19. The Panel has, in its provisional findings, expressed the provisional conclusion that the disputing companies that have identified a requirement for enhancement spending to achieve their leakage reduction commitments should be allowed the efficient cost of doing so, even if they are not upper quartile performers, on the basis of assumptions about the historical efficiency of upper-quartile performers and a lack of evidence that leakage underperformance by the poorer performers among the disputing companies (Yorkshire Water and Northumbrian Water) has been a source of profit.[21]

1.65 To be clear, we disagree with both the Panel's reasoning and with its conclusion. We think that the sector could have pushed much harder, in the past, to reduce leakage through innovation at no further cost to customers and that allowing enhancement spending for poor performers will, in effect, reward failure. But we are also troubled by the Panel's statement that it 'intend[s] to ask the companies which have requested allowances for enhancement Totex for further information to confirm the details of the spend which they have proposed…[and] will review the information provided to assess whether it provides sufficient confidence that the level of expenditure proposed will be in customers' interests'.[22]

1.66 In reaching its final decision, the Panel not only is required to comply with the principles of fair consultation but is also bound by the same statutory duties as

[21] Competition and Markets Authority, 'Provisional findings report', September 2020, pp. 494-495, paragraph 8.63.
[22] Competition and Markets Authority, 'Provisional findings report', September 2020, p. 495, paragraph 8.67.

bound Ofwat in reaching the Final Determinations. It would be contrary to all of these obligations if the Panel were to scrutinise the companies' requested enhancement allowances without giving us, the sectoral regulator which reviewed the business plans of all 17 water and wastewater companies in PR19, an adequate opportunity to comment on the companies' requests and the evidence in support of them, and an opportunity to comment on the CMA's assessment of such evidence.

1.67 A further example is the proposed growth reconciliation mechanism, or 'true-up'. While the provisional findings endorse the appropriateness of a true-up mechanism,[23] they go on to say, 'We are considering applying an asymmetric true-up mechanism…on the basis that the majority of growth costs at sewage treatment work is not avoided when growth falls below forecast due to longer-term planning commitments. At this stage we are consulting main and third parties and seeking further information to understand whether we can implement it without overfunding companies.'[24]

1.68 For the reasons set out elsewhere in our response, we consider that the Panel is right to be concerned about the risk of over-funding. Taking an asymmetric approach to reconciliation would unfairly benefit companies at the expense of customers and lead to suboptimal investment decisions. But again, as with leakage, while we have done our best to respond below to what can be responded to, it is troubling that there is no clarity as to how exactly the Panel proposes to take its proposal forward. If the Panel decides that asymmetric rates are appropriate, will it consult on the unit rates to be applied? If not, what opportunity will we have to make informed and focused representations on the decision? If we are consulted, what is the intended timing and how can the Panel be confident that it will be sufficient not only for consultation but for our response to be taken conscientiously into account?

[23] Competition and Markets Authority, 'Provisional findings report', September 2020, p. 218, paragraph 4.504.
[24] Competition and Markets Authority, 'Provisional findings report', September 2020, p. 220, paragraph 4.512.

Selective and flawed use of evidence

1.69 The Panel has three important and overlapping duties in relation to its gathering and use of evidence –

(a) a duty to give due weight to all relevant evidence, which includes a duty not to give undue weight to any evidence;
(b) a duty of sufficient inquiry, which requires the Panel to take positive steps to ensure that it has available to it all relevant facts and information, which must then be taken into account in its decision-making;
(c) a duty correctly to interpret and apply the evidence on which the Panel relies, so that its decisions are not based on mistakes of fact.

1.70 Again, we recognise that the Panel and the supporting CMA staff have worked extremely hard to gather, absorb and consider a large volume of evidence in these references, and that this task has been unenviable in light of the time pressures to which they have been subject. A considerable amount of good work has been done.

1.71 Nonetheless, we have identified within the provisional findings many instances, a number of them of great significance to the provisional conclusions reached, in which it has been difficult for us to understand how the use of evidence by the Panel meets the duties mentioned above. The effect of this, in our view, is to have led the Panel into serious and avoidable errors in its substantive conclusions.

1.72 All of these points are identified in detail where they naturally arise in the submissions made in the other documents which form part of this response, to which we direct the Panel's careful attention. However, we identify several purely illustrative examples below in order to give an indication of the nature and scale of these issues.

1.73 With regard to the duty to give due weight to evidence, the provisional findings appear to be selective in their use of evidence, in ways that are difficult to understand – in some cases appearing to place material weight on evidence that cannot rationally bear that weight, while at the same time having no regard to other clearly relevant matters.

1.74 For instance, it is surprising that the CMA's determination in the case of SONI is cited as evidence of aiming-up to compensate for asymmetric risk[25]. The key feature of the SONI case was that SONI is an asset-light company, not comparable with any of the regulated water companies – as indeed the Panel itself recognises[26]. In SONI, the CMA made clear that its approach was grounded in the special circumstances of the company and was not aligned with wider regulatory practice: 'We recognise that the circumstances of this case are unusual, and that regulators do not usually set allowances to reflect asymmetric risk. Our remedy reflects the unusual circumstances of the case…'[27] In other words, no real weight can be placed on the determination in SONI as a justification for aiming-up in the water sector.

1.75 In spite of this, the Panel relies upon SONI as part of the body of CMA decisions ('our SONI decision'[28] – emphasis added), while at the same time, as noted earlier, making no reference to other decisions of the CMA which do not support the approach taken in this case. This appears highly selective.

1.76 With regard to the duty of sufficient inquiry, we note that, for example:

(a) The Panel has declined to use evidence of the actual costs of embedded debt of the water companies, which was readily available to it, as a cross-check against its conclusions on the index-based allowanced for the cost of that debt. The provisional findings say that there are 'Even as a cross-check…significant difficulties and complications with using actual debt costs'.[29] However, no further explanation of these 'complications' is offered, and we do not understand the supposed difficulty and the choice

[25] Competition and Markets Authority, 'Provisional findings report', September 2020, p. 672, paragraph 9.672.
[26] Competition and Markets Authority, 'Provisional findings report', September 2020, p. 669, paragraph 9.662.
[27] CMA – SONI Ltd v Northern Ireland Authority for Utility Regulation (2017), Final Determination, para 12.102 – cited in Competition and Markets Authority, 'Provisional findings report', September 2020, p. 669, paragraph 9.661.
[28] Competition and Markets Authority, 'Provisional findings report', September 2020, p. 672, paragraph 9.672
[29] Competition and Markets Authority, 'Provisional findings report', September 2020, p. 590, paragraph 9.340.

not to use actual data. The use of real company data as a cross-check against conclusions derived from the use of indexes or benchmarking is a standard regulatory technique, and should not be unduly complex if verified data is available. The consequence of this choice is that the Panel proposes to allow a cost of embedded debt that is higher than the actual cost for all but one company in the entire water sector; a decision that lacks obvious rational justification.

(b) The Panel has failed to carry out even basic cross-checks on the overall risk and return package, making no inquiry at all into the range of contemporaneous evidence available to it[30] for that purpose.

(c) The Panel relies on speculative propositions about the relationship between the cost of capital and the willingness of investors to commit to the sector. The duty of sufficient inquiry would imply that it was necessary for the Panel to consider whether empirical evidence supported this proposition. We have therefore ourselves commissioned that empirical analysis, which is set out in the PwC report provided with our response. It demonstrates that there is no support at all for this theory in the water sector, on a consideration of over twenty years of data.

1.77 With regard to failures to correctly interpret or apply the evidence that the Panel has considered, we recognise that the purpose of the consultation currently being carried out is that the Panel can be informed of and correct for these to avoid making any fundamental mistake of fact that undermines its final determination.

1.78 Our response documents therefore identify a range of errors in the Provisional Findings that are avoidable, and will need to be corrected by the Panel in reaching its final conclusions. Illustratively, these include –

(a) The use of various invalid assumptions, erroneous calculations and flawed data that lead the Panel to conclude, wrongly, that an efficiently performing company should expect negative ODI payments.

(b) The inappropriate weight placed on the use of RPI in calculating the value of the Total Market Return, in circumstances in which RPI is itself an upwardly-biased and deficient measure of actual consumer inflation that cannot easily be compared over time. This leads to the logically unsustainable outcome that has been identified by Wright and Mason:

[30] As noted in section 2 of Reference of the PR19 final determinations: Risk and Return – response to CMA provisional findings.

'despite acknowledging the likely upward bias of historic average returns, in light of forward-looking considerations, the CMA has ended up with an upper limit of its range so obviously at, or beyond, the range even of historic return averages'.

(c) The assumption of a uniform distribution across the range for each of the cost of equity parameters, failing to recognise that there is a probability distribution of the individual parameters used to calculate the point estimates, and leading to a material overstatement of the cost of equity.

(d) The decision to give a full allowance to the Essex resilience scheme, entailing a different treatment of the data to that adopted in the case of other deep dive assessments where the optioneering and cost efficiency evidence were lacking.

1.79 Finally, we observe that in relation to its rejection of our proposal for GOSM, the Panel has accepted that this flows from legitimate concerns – 'Ofwat has legitimate concerns that customers face costs where the water companies have gearing well above notional levels, and this increase in gearing could have an adverse effect on financial resilience'.[31] However, it appears to have concluded that it was not necessary to deal with this evidence of a significant problem because Ofwat could consider alternative remedies in the future.[32]

1.80 With respect to the Panel, we find this a problematic line of reasoning. The evidence which it has to consider must include the licence conditions of the companies, which exist in their current form and constitute part of the factual and legal background to the references. They cannot be amended by us at will, and the speculative prospect of their amendment at some later date is not, in our view, an appropriate response to the question of what ought to be done now, to address a known and identified policy need, in the price controls of the disputing companies. We suggest that the Panel should address the situation as it finds it on the current state of evidence, and not as it could (but might not) in future become.

[31] Competition and Markets Authority, 'Provisional findings report', September 2020, p. 657, paragraph 9.623.
[32] Competition and Markets Authority, 'Provisional findings report', September 2020, p. 658, paragraph 9.630.

Conclusion

1.81 The cumulative effect of the foregoing, in our respectful view, reinforces the concerns expressed in our letter to the CMA of 15 October and the need to extend the current administrative timetable. These are issues of great importance to the water sector and to customers. We are doing our best, consistently with our statutory role of advising and assisting the CMA, to give the Panel the information that it needs to ensure that its final decision is consistent with its statutory duties. It is axiomatic that we cannot do that properly unless the requirements of fair consultation are met.

2. Impact of using the full timetable

2.1 For all of the reasons set out above, and as detailed in our letter of 15 October, we urge the CMA to take the time needed to complete this complex redetermination with the degree of fairness and thoroughness required. The more that we have considered the provisional findings, the more it is clear that the mid-December deadline which the disputing companies have sought to insist upon will not allow the CMA proper time, and it should make use of the full statutory period available.

2.2 We noted in our 15 October letter that if the impact of the redetermination was spread over three years rather than four, the variations in customer bills would be relatively small; and would have a minimal impact on companies' ability to proceed with their investment programmes. Viewed overall, achieving a fair and proper CMA redetermination must be the driving concern in the circumstances.

2.3 We have considered carefully the various claims to the contrary that the disputing companies have put forward in correspondence. Their responses are notably disparate, but some of them have put forward arguments about the claimed impact on customer bills, repeated concerns about the alleged effect on investment programmes, and raised points relating to financial resilience and management distraction. In addition, Yorkshire Water envisages a 'very short extension' being possible, Northumbrian Water has put forward a proposal for the CMA to make its final determination in early January, and Bristol Water simply notes that this redetermination has already taken longer than previous redeterminations. The disputing companies propose a case management conference to consider what they inaccurately term an extension (of course the CMA does not need an extension). If the CMA would find such a hearing helpful, in relation to this issue, we support it being held soon. For present purposes, we summarise shortly and in turn our responses to the points raised by the disputing companies in their recent correspondence.

Impact on bills

2.4 The disputing companies suggest that taking the full time for the redetermination and spreading the impact of the provisional findings over three years rather than four would have a material impact on customer bills, or in Yorkshire Water's and Northumbrian Water's case, create a significant bill shock (exceeding a nominal bill increase of 5%). These concerns are unfounded. Our modelling suggests that spreading the CMA's provisional

finding over three years rather than four would increase average bills by around 1% extra per year. Overall this would lead to a total difference in bill levels of an average of £5 by the end of the period, or just over 1% of the total water bill (see further detail in appendix 1). The potential difference in bills this would result in is much smaller than the variation in bills from inflation each year, which has a standard deviation of 1.8% per year. Our modelling is based on customer preferences for a smooth changes in bills over time.[33] We are unclear how Northumbrian Water has arrived at the figures that it suggests, and based on our modelling they are simply wrong.

2.5 Northumbrian Water further suggests that due to the low forecast CPIH inflation this November (which will be used to index bills for 2021-22), it would be better for the CMA to make its redetermination so that it impacts bills next year rather than the year after. Northumbrian Water overstates CPIH forecasts for next year with the Office for Budget Responsibility (OBR) forecasting CPI inflation of 1.3% for 2021.[34] Northumbrian Water also misunderstands the likely pressures on customers in the next year from the impacts of Covid-19 with the OBR forecasting that employment will fall further in 2021 before recovering in 2022.[35] Accordingly, we do not consider that this argument should be given any weight.

2.6 The impact on customer bills of taking the full time for the redetermination is also small compared to other factors that can impact customer bills, such as: adjustments to reflect ODI and revenue reconciliations and rebalancing of charges between non-household and household customers. For example, the standard deviation in differences between actual and forecast wholesale revenues (which are trued up on a two year lag) is 1.9% per year, and even the limited in-period ODI reconciliation adjustments for PR14 could amount to more than 1% per year.[36] Metered customers will also experience bill variations as their usage varies from one year to the next.

[33] Ofwat, 'PR19 final determinations: Yorkshire Water', December 2019, p. 76.
[34] OBR, 'Fiscal sustainability report - July 2020', July 2020, tables 2.2 to 2.4.
[35] OBR, 'Fiscal sustainability report - July 2020', July 2020, tables 2.2 to 2.4.
[36] See for example the Severn Trent in-period adjustment which would have been more than 3% before smoothing, Ofwat, 'Final determination of in-period ODIs for 2016-17', December 2017, table 24, p. 54.

2.7 Some companies have proposed household bill increases of more than 5% in nominal terms for next year even without the impact of the CMA decision. This includes Bristol Water, which states that 'Household bill increases are currently forecast at 4.2% for measured customers, and between 7-8% for unmeasured customers.' This reflects a number of factors, including PR19 blind year adjustments, rebalancing of demand between non-household and household customers and growth in the number of customers on social tariffs, but excludes the impact of the provisional findings.[37] In these circumstances deferring the bill increase until 2021-22 might provide a benefit to customers in terms of smoothing bills.

2.8 There is a further point of detail raised by Northumbrian Water and Yorkshire Water concerning our charging rules and any bill increases for particular customer groups that may exceed 5%. In the interests of clarity, and to avoid any misleading impression that may have been given, we note that the charging rules do not impose a 5% limit on bill increases. A greater than 5% change from one year to the next is a trigger for companies to carry out a proportionate impact assessment and consider the need for handling strategies.

2.9 Overall, the claims of the disputing companies on bill impact are significantly overstated, and in places misleading.

Impact on investment

2.10 The disputing companies suggest that taking the full time for the redetermination would delay or create uncertainty over investment. As set out in our letter dated 15 October: 'For the most part the scope of investment programmes are not in dispute, and any debate is largely around the efficiency of programmes, for example on smart metering. There is nothing preventing the disputing companies proceeding with these programmes.'

2.11 In an extremely limited number of circumstances there is a difference of opinion over the scope of particular investments, in particular, for Northumbrian Water's Essex resilience scheme and Anglian Water's strategic interconnector. However, even in these cases a slightly later redetermination would only have a minimal impact on the delivery of these schemes. For example, the Essex

[37] Bristol Water, 'Indicative Charges 2021/22 Assurance Statement', October 2020, p. 13.

resilience scheme has a three year programme and can still easily be completed by the end of the period. For the strategic interconnector, the debate is over the size of some of the pipes and it is unclear why this should delay the programme overall.

2.12 Anglian Water also claims that taking the full time for the redetermination would mean an ongoing shortfall in opex of around £30 million a year due to what it considers are issues in the opex/capex allocation. We note that the CMA is yet to decide on this matter, and we dispute Anglian Water's claims. In any event, given that we operate a totex regime which allows companies the choice between operating and capital expenditure, we do not understand why the classification of £30 million of expenditure should prove to be an issue. This is particularly in circumstances where the Ofwat final determination allowed Anglian Water to advance revenue from future periods (and so the company would have more PAYG revenue in period). In addition, earlier in the process Anglian Water suggested that it was delaying the start of its enhancement programme (some £1.5 billion of expenditure over the period) to focus on core delivery providing additional headroom in its totex allowance for additional expenditure, if required. Accordingly, this argument by Anglian Water should be given no weight.

Impact on financial resilience

2.13 Each of Anglian Water, Northumbrian Water and Yorkshire Water, to a greater or lesser degree, allege that taking the full time for the redetermination will impact their financial resilience. This seems difficult to understand given that the listed companies, which are close to our notional gearing level,[38] continue to operate successfully with strong investment grade credit ratings, and trade at a significant premium to the RCV, and a number of water companies have been able to successfully raise debt at favourable financing rates.[39] Again, we suggest that these claims are significantly overstated and should be approached by the CMA with great care.

[38] We note that the actual gearing of both Anglian Water and Yorkshire Water is considerably above our notional gearing level.
[39] Ofwat, 'Risk and return – response to companies' 27 May submissions to the CMA', June 2020, Table 3.3.

Management time and cost

2.14 Northumbrian Water and Bristol Water allege that taking the full time for the redetermination would provide a distraction to management in the disputing companies. Companies took on their request for a redetermination knowing full well the impact on management time and that the full extent of the timetable could be 12 months. Using the full timetable is nonetheless only three more months of management input. The additional time will allow companies to prepare charges in a more orderly fashion than the current timetable, with plenty of time ahead of the new charging year. We are also concerned that unduly compressing the redetermination into a short time period could increase rather than reduce the impact on management distraction by unduly compressing response times. We do not consider that hearings or submissions should be prevented, or due process not followed, in an attempt to meet an inappropriate deadline requested by the disputing companies.

Northumbrian Water's proposal for a small extension to the December timetable

2.15 We note Northumbrian Water's proposal for a very short extension to the timetable to early January, if Ofwat accepts a delay to the mid-January publication date for wholesale charges and statement of significant changes to charges until 1st February. Yorkshire Water makes a similar suggestion, but in much less detail. As Northumbrian Water explains, any delay in providing them with wholesale charging information will have an impact on the over 20 retailers it serves and their ability to agree contracts with non-household customers. Northumbrian Water rightly accepts that given the challenges with Covid-19 on the non-household retailers, clearly this is not ideal. Northumbrian Water notes that it is yet to consult with retailers on this proposal. We do not consider such a proposal would it be welcomed by retailers, who would effectively be asked to delay their charges to allow them to be increased.

2.16 Northumbrian Water's proposal would provide the CMA with two to three extra weeks to make its final redetermination, over what is the Christmas period, which is likely to encompass little more than ten additional working days. We do not consider that this proposal, would allow the CMA the time it requires to adequately and fairly consider all of the issues when making its final redetermination.

Time taken for redetermination

2.17 Bristol Water comments that this redetermination has taken longer than previous redeterminations. While Bristol Water's appeal in 2015 took seven months, Ofwat's process for making final determinations from business plans for 17 companies takes 15 and a half months. We consider that trying to complete full redeterminations for four companies in what would be less than nine months, in light of the matters we have identified in the provisional findings as set out earlier in this document, is a monumental task. It is not useful to make direct comparisons between the time taken for four redeterminations and a single redetermination raising different and more limited issues. In light of the provisional findings, and given the enormous significance of the issues raised – not only for the disputing companies, but more widely – it is essential that the CMA should take the time that it needs and make full use of the statutory timetable to arrive at a fair and robust redetermination.

A1 Appendix

A1.1 The following tables set out the bill profile set out in our final determination compared to bill profiles for the provisional findings, implemented over four and three years respectively. The provisional findings bill profiles are based on customer preferences for a smooth bill profile with the increase in bills spread over the remaining years of the control. Table A1.1 shows the bill profiles in 2017-18 prices and table A1.2 shows the change in bills compared to the previous year.

Table A1.1: Bill profiles under final determinations and provisional findings

	2020-21	2021-22	2022-23	2023-24	2024-25
Anglian Water					
Final determination	394	390	386	382	378
PF – 4 years	394	396	403	405	406
PF – 3 years	394	390	402	407	411
Bristol Water					
Final determination	165	162	160	157	155
PF – 4 years	165	166	166	167	168
PF – 3 years	165	162	165	168	171
Northumbrian Water					
Final determination	326	325	323	321	319
PF – 4 years	326	331	335	340	345
PF – 3 years	326	325	333	342	351
Yorkshire Water					
Final determination	379	372	364	357	349
PF – 4 years	379	379	380	381	381
PF – 3 years	379	372	377	383	389

Table A1.2: Difference in bills

	2021-22	2022-23	2023-24	2024-25
Anglian Water				
PF – 4 years	0.3%	1.9%	0.5%	0.2%
PF – 3 years	-1.0%	2.8%	1.3%	1.0%
Change	-1.3%	0.9%	0.9%	0.8%
Bristol Water				
PF – 4 years	0.5%	0.4%	0.4%	0.4%
PF – 3 years	-1.5%	1.7%	1.7%	1.7%
Change	-2.0%	1.3%	1.3%	1.2%
Northumbrian Water				
PF – 4 years	1.4%	1.4%	1.5%	1.4%
PF – 3 years	-0.5%	2.7%	2.7%	2.5%
Change	-1.8%	1.3%	1.2%	1.1%
Yorkshire Water				
PF – 4 years	0.1%	0.1%	0.2%	0.1%
PF – 3 years	-2.0%	1.5%	1.6%	1.4%
Change	-2.1%	1.4%	1.4%	1.3%

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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