

Centre City Tower, 7 Hill Street, Birmingham B5 4UA
21 Bloomsbury Street, London WC1B 3HF

By email

11th December 2019

Freedom of Information Act (FOIA) 2000 - Request For Information

Reference: FOI 201911168

Dear [REDACTED]

Ofwat received your request for the following information on 15th November 2019

'I have been trying to find information about the scale or schedule of penalties that can be imposed on water companies should they fail to meet their performance commitments 2020-2025 .. on things like leakage, interruptions to supply, property flooding, customer contacts etc. but haven't been able to find any schedules etc. on your website. '

I am pleased to say that Ofwat will be publishing the price review Final Determinations on Monday 16th December for each company. The range of penalties which we define as 'underperformance payments' in £million if a company does not meet its performance commitments, falls under the 'Outcomes' part of the price review methodology. This should be easy to find on www.ofwat.gov.uk once published but if you have any difficulty finding them post-publication please come back to me.

In the meantime you may be interested in some of the decisions and financial and other penalties that Ofwat have taken in the past and which are available to view here <https://www.ofwat.gov.uk/regulated-companies/investigations/closed-cases/>

Ofwat has powers to take action in the following types of dispute, for example, where companies fail to meet their obligations. Sections 18-22E of the Water Industry Act 1991 provide that Ofwat may take enforcement action against the companies it regulates where these companies either fail to comply with their statutory duties and licence obligations, or are likely to do so.

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To secure compliance and change behaviour we can obtain legally binding undertakings and impose enforcement orders. For the most serious contraventions we can impose financial penalties on companies.

On 22 July 2014 we imposed a nominal penalty amount of £1 on Thames Water after concluding an investigation into the misreporting of sewer flooding data. We investigated Thames Water's recording of the number of properties at high risk of sewer flooding between 2005 and 2010, and found that it had misreported. There was no evidence of deliberate misreporting. Following our investigation Thames Water committed to:

- putting an additional £2 million into its independently managed Thames Water Trust Fund, to assist customers who are having difficulty paying their bills;
- investing £5 million to support additional community projects such as local programmes to better protect rivers and improve the natural environment; and
- accepting a reduction of £79 million from its regulated capital value (RCV). This will result in lower bills for Thames's 14 million sewerage customers for years to come

On 8 August 2018 we published the findings of our latest enforcement investigation into Thames Water after it had failed to meet its leakage performance commitments. This included obtaining a package of financial and non-financial commitments worth £120m to customers from the company. The commitments made by Thames Water mean the company will:

- Return a further £65m to customers, in addition to the £55m in automatic penalties Thames Water has incurred for missing its leakage and Security of Supply (SOSI) performance commitments.
- Restore its leakage performance back to the level it had promised its customers (606Ml/d) by 2019-20.
- Prepare its PR19 business plan on the basis of a commitment to reduce leakage by a further 15% by 2025 and by 50% in future price control periods.
- Publish monthly audited reports on the progress of its leakage recovery plan.
- Do more to engage meaningfully with customers on leakage issues, including at its Board.
- Ensure no executive or senior management incentive bonus which is dependent on the company's leakage performance in 2018-19 and 2019-20 is paid unless the company meets or exceeds its performance commitments.
- Provide more detailed and externally audited evidence when it provides Ofwat with certificates under Condition F of its licence assuring that it has adequate resources, systems and controls in place to meet its statutory obligations.

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- Review the governance arrangements of the boards of Thames Water Utilities Limited and Kemble Water Holdings Limited.
- Maintain sufficient management control over the delivery of its operational functions (whether delivered by its own employees or outsourced) to ensure it is able to meet its leakage and SOSI performance commitments.
- Provide written monitoring reports to Ofwat demonstrating its compliance with its section 19 undertaking.

On the 10th October 2019 Ofwat confirmed that Southern Water will pay £126m in penalties and rebates to existing and former wastewater customers.

This package of penalties and rebates is the biggest Ofwat has ever imposed reflecting the serious failures in the operation of Southern Water's sewage treatment sites, and the deliberate misreporting of performance information. More information on the Southern investigation is available on Ofwat's website [here](#).

In addition to our enforcement powers described above we have additional dispute resolution or 'determination' powers available to us under the Water Industry Act 1991.

Please be aware that as the information you have requested is planned for imminent publication, exemption s22 of FOIA is engaged and your request is technically refused. Although there are public interest arguments in favour of disclosure at this point such as financial scrutiny, transparency and accountability, the public interest is firmly in favour of withholding the information for this short period. The information is commercially sensitive until the point of publication, must be consistently declared for each water company at the same time to prevent any disadvantage and to ensure that each determination has passed the same quality checks prior to release. There is a strong public interest in ensuring that information released into the public domain meets the above criteria.

Once a(n) FOI/EIR request is answered, it is considered to be in the public domain. To promote transparency, Ofwat may publish the response and any material released on our website in the [FOI disclosure section](#). Any personal information in the letter will be removed before publishing.

We will hold the information in accordance with Ofwat's Retention and Disposal schedule which can be found in our Publication Scheme at the following link <https://www.ofwat.gov.uk/foi/policies-and-procedures/>. If you have any concerns how

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Ofwat processes your personal data please contact the Data Protection Officer at dpo@ofwat.gov.uk. To view Ofwat's full Privacy Policy please go to <https://www.ofwat.gov.uk/foi/policies-and-procedures/>

If you have any queries or concerns with regard to the content of this email please do contact me, quoting the reference number. If you are unhappy with how your request has been responded to you can request an internal review. Please contact the Programme and Project Management (PPM) department at foi@ofwat.gov.uk.

Further information concerning your rights is available from the Information Commissioner's Office at:

<https://ico.org.uk/>

or

The Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow

Yours sincerely,

A black rectangular box used to redact the signature of the sender.