Southern Water Local Authority Stakeholder Group

10:00 on Friday 19 January 2024
via MS Teams

Notes of Meeting

1. **Welcome Introductions - Cllr Rachel Millward ("RM") and Chris Bending ("CB")**

RM thanked everyone for coming to the meeting today, including special guests Paul Hickey (OFWAT) ("PH"), John Penicud ("JP"), Chris Braham ("CBR"), Nicole McNab ("NM") and Sue Cobb ("SCO") (Southern Water), as these meetings are a great way of getting local authorities together for a common cause.

It was suggested that Cllr Jim Murray, Neil Collins and Nadeem Din (Lewes/ Eastbourne) be included in future meetings. **ACTION**: Kellie Eldridge to add to the contact list. CB encouraged the rest of the Group to suggest deputies/other representatives as and when required going forward.

2. **Actions from minutes of lasting meeting (31 October 2023)**

RM referred to the actions from the last meeting, which were mainly for Simon Moody (Environment Agency) to respond, the answers of which were distributed to this Group by email on 3 January 2024.

RM also thanked everybody for contributing to the letter to Steve Barclay MP (DEFRA) which was sent on 18 December 2023 (to which we are still awaiting a response).

3. **OFWAT/Southern Water – discussion with Paul Hickey ("PH"), John Penicud ("JP"), Chris Braham ("CBR"), Nicola McNabb ("NM"), Sue Cobb ("SCO") plus Q&As**

PH began by thanking RM and CB for the invitation today. He explained he will be giving a short overview of the sector, to then open up the discussion for questions from the Group.

<u>The role of OFWAT</u>

PH explained his role – he is a member of the OFWAT senior leadership team and is also the lead in a joint venture with OFWAT, the EA and the Drinking Water Inspectorate (called the Regulators' Alliance for Progressing Infrastructure Development - "RAPID") to look at major new projects involving new reservoirs, transfers, water reuse scheme and desalination. PH has worked for OFWAT for 3 years, prior to that he worked for the EA for 10 years.

OFWAT is a non-ministerial, national organisation which is part of the civil service (but independent to protect it from undue political influence). The organisation consists of around 300 people and oversees all water/waster water companies in England and Wales.

The regulation of sectors works as a framework. DEFRA is a Government department which sets the legal framework for the water industry and equally sets the standards it needs to achieve both on water/waste water. OFWAT is an economic regulator and works with the EA and Natural England to set environmental standards and provide evidence on the state of the environment. OFWAT also works closely with the Drinking Water Inspectorate – a small organisation which is part of DEFRA who police the quality of water including that of private water companies. OFWAT works closely with those to understand the performance of the sector and how we need to engage.

OFWAT's economic regime – all water companies have licences and information on those is published on OFWAT/DEFRA's websites. They basically set out the operating requirements for a water/waste water company which are quite important when it comes to enforcement, as they give a clear base line for holding companies to account. We also have a price review process, which involves water companies being obliged to submit business plans to OFWAT every 5 years (including a 25 year+ context plan) to demonstrate they can deliver their service to the customers. Those plans contain the costs it takes to run the business as is, as well as the costs entailed for future growth, raising the level of standards, etc (eg for storm overflows and resilience). We assess those costs to make sure they are in the best interest of the customer and we work with the EA and Drinking Water Inspectorate to make sure those requirements are fulfilled by the water companies. We then set price limits that companies can charge to reflect those costs addressed in their business plans. We set performance commitments as part of that process and once we have completed the price setting exercise, there is an annual process performance assessment to look at how companies have performed against those commitments. We publish that information and challenge the companies if they have not fulfilled their obligation. This price review is an explicit part of accepting its price limits, in order that it can meet all its statutory requirements.

During the annual review process to check companies are fulfilling their requirements, there is a process of enforcement available to us if there is a service issue, where we have powers to action against those companies. There are a number of live investigations currently ongoing and where a company is found wanting, then we impose fines and also can take specific action against individuals if warranted.

We have gained funding to increase the level of scrutiny on the sector and attained new powers to address concerns, particularly around stakeholder dividend payments and executive bonuses to ensure they are linked to the service customers/the environment is receiving.

Information on OFWAT's statutory obligations can be found on our website: Regulating monopolies - Ofwat.

Questions from the Group

RM expressed concerns of the delivery of these water companies, asking for guidance on how local authorities can work with OFWAT to ensure there is better scrutiny / results.

PH replied that it is quite technical – this question could be turned around to ask how best local authorities would like us to serve them, given OFWAT's fundamental duty is to ensure customer/environment interests are met? OFWAT is not a large organisation but we are growing and we are very keen as to how best we can address those concerns. It would be helpful to have evidence in advance so we can hear from the companies themselves to address the concerns raised. RM replied local authorities would be happy to alert OFWAT of incidents if that would help.

Adur *- we have a large new regeneration project delivering approx 2,200 homes but it does place pressure on infrastructure. At planning meetings there is concern about resilience and whether the infrastructure can cope. How do we work with OFWAT to ensure Southern Water are held to account? This is not just about statutory obligations – this is a small area with a lot of applications with the potential of an accumulative effect. We need to provide comfort to residents.*

PH explained that OFWAT would expect as part of the development control process, for companies to engage in more tactical reinforcement to cope with individual developments. However they would also be expected to look at a more strategic level and expect companies to engage at the local plan stage to make more strategic decisions. There is a supply/demand element to look into the future at sewage systems, treatment works and water supply networks to ensure they meet those requirements. There is a big issue on water sources at the moment and whether they are sustainable for the environment. The key here is meeting those future needs in a way that reduces the obstruction in environmental sensitivities. For example in the south east we have a lot of companies (including small water-only companies) to ensure water investment. There is a group called "Water Resource South East" (Home | WRSE - Water Resource South East) which is looking at ways of building strategic infrastructure that serves more than one company.

Lewes *– we need to better understand the relationship between what OFWAT decides is a fair customer bill and what is a priority for investment. We have invited Southern Watern to meetings on a number of occasions to talk about storm overflow issues and in those sessions Southern Water have said to councillors that some of the problem is down to OFWAT saying their investment plans are too expensive which in turn could have repercussions on customers' bills. How does OFWAT balance the need of the environment/water quality versus price to the customer? Now that you have new powers to look at shareholder dividends and company executives' remuneration, are you able to be more assertive about requiring companies to channel some of those payments toward environmental needs / customer bill levels?*

PH explained there is a myth that OFWAT chops down costs to reduce bills – that is simply not the case. In relation to storm overflows, there are set government standards which we work to. On environmental improvements we look to the EA and they set individual permit requirements. OFWAT then scrutinises the costs to make sure they are efficient. We do not reduce the level of need, but we do an economic analysis against other companies to benchmark costs. Whilst obviously we are concerned about customer bills particularly in light of the current economic climate and

ensure support financial packages are available, the driver is to be properly funded to ensure water companies are adequately financed to do their activities. In relation to shareholder dividends, if a company is performing poorly and its owner wishes to reward their Chief Executive, they should cover that cost – it should not come out of the customers' pot. There is a very clear line between dividends, bonuses and performance.

What is OFWAT's role across different water companies? At Lewes we are at an interface with Southern Water/South East Water. In South East Water's plans there is a new reservoir which will put pressure on the River Ouse. Who is looking at the combined impacts and the two companies' investment plans?

PH explained that OFWAT has a statutory process to look at water resource management, particularly in the south east which should cover the interaction of these two companies. **ACTION**: PH to follow up with Cllr O'Brien offline.

John Penicud ("JP"), Director of Operations for Southern Water joined the discussion. He expressed his thanks for being invited to this meeting, which allows Southern Water to share a platform with OFWAT to enable the Group to get a full picture of the regulations from both organisation's perspectives. JP added that in terms of Southern Water's financial situation, Australian investment bank Macquarie has recently invested £1bn into the company.

In terms of Southern Water's price review process, Chris Braham ("CBR") Head of Asset Management, explained that there are 2 different levels for growth/infrastructure. Whilst we look at individual planning applications, we also take a tiered approach by also looking at a more strategic long term view (eg a 25 year population forecast using ordnance surveys/local plans). These take longer to push through as investments over 2025-2030 take priority. Regulatory environmental plans are large, but we are going through a process of joint working with EA/DEFRA to look at the priorities as it will have a big impact on affordability. It entails very proactive work to look at environmental priorities using different options (eg we could stretch delivery over seven years instead of five). We are trying to get the right balance for our customers. It is with the EA that we would typically agree the impact.

DEFRA have mandated a target of 10 overflows per year – we do have a local resource to understand how this impacts rivers/beaches – please see attached weblink: southernwater.co.uk/water-for-life/clean-rivers-and-seas-plan/map. (This link will take you to Southern Water's plan to reduce storm overflows. It contains all our overflows across our region (little under 1,000 in total). On the map, which is publicly available, it shows which overflows require work, what is the primary reason for that overflow activating, how much investment is required, when Southern Water will commence work there and the solutions we have proposed. There is also the ability to feedback on our plans on the map itself.)

We submit our plans based on a number of factors. We have looked at pathfinder projects for the last 18 months and trialled various projects. We use rainfall data and ground water levels to ascertain why we are spilling in those areas, to then come up with genuine answers. We absolutely believe that to hit targets we want to invest the majority of that into communities and tackle the source of the water (eg too much

water getting into our network) and solve the problem long term by working with communities. To do this, Southern Water/ OFWAT/DEFRA/EA need to work together.

Question from Marc Dorfman, Planning Officer at Lewes District Council via MS Teams chat - as far as Southern Water is concerned, can planning authorities impose a planning condition on housing applicants that "in advance of construction, proof of sewer capacity and required reinforcement is provided and agreed by the planning authority"? (In general Planning Regulations advise such a condition is not needed/allowed, because Southern Water has a duty to deliver new housing infrastructure).

ACTION: Southern Water to provide a written response as this was not addressed/ discussed during the meeting.

Chichester *– in terms of complaints, what is OFWAT's relationship with the water Ombudsman to resolve these? We have regular overflows into Chichester harbour. The purpose of storm overflows is to reduce the pressure in the wider area but at the same time residents are complaining of sewer flooding which are seldom resolved. Looking at the work of the Ombudsman, it would be interesting to know what the relationship is and how to expedite these sewer complaints. They have not been resolved in years.*

PH replied that OFWAT has a complaint handling system, with different levels of service to investigate/take action as needed. PH is aware of the issues in Chichester harbour and in particular the issues with the network there. However he was not aware that complaints have not been dealt with. **Action**: PH to look into the complaints further and report back to this group. JP added that Southern Water tends to meet the Consumer Council For Water (weblink: Here to fight your corner – the voice for water consumers - CCW) who acts as an umbrella for the organisation. In terms of sewer flooding, Southern Water has halved the number of internally flooded properties. That said, we have had the wettest weather on record across the south of England. **ACTION**: JP to look into this further and report back to Cllr Bill Brisbane.

Worthing *– query in relation to the joint working between OFWAT and other authorities / stakeholders with regard to sustainability/climate change – Worthing has really high ground water (as does Adur). Working with other stakeholders to maintain our network of drainage and drainage ditches in the natural environment has really dropped off over the years. That goes on to impact water getting into the network. Effective collaboration is needed – who makes sure everyone plays their part?*

JP acknowledged that Worthing does have the highest ground water levels seen in the last decade in their region. Typically it would be the local drainage authority we would work with, but when things go wrong flood forums/action groups are a good way of bringing groups together. Good examples are in East/West Sussex and Norfolk.

PH added that OFWAT has a sector lens, rather than a local one – we would get involved in an issue with the company but for a local issue, that would be more towards local forums given those issues can get quite complex so they do need that local coordination to manage those.

Cllr Wells replied that is the issue here. It is not effective so the problems do not get resolved successfully. The concern here is that kind of confidence in co-working is not working as best it can (and it should also be borne in mind the EA has its own financial constraints). What we can we as a local authority do to escalate this? The community is playing its part, but it is the breaking down of that effective working that is the problem here. **Action**: PH/JP to pick up with the EA to see if intervention is needed. Nicole McNabb ("NM") added that Southern Water is in the process of writing to all county councils to request a meeting to identify the hotspots for flooding, surface water problems, etc in a quest to determine how can we collectively collect that data and identify the areas where interventions would be most successful. Someone needs to take the lead. West Sussex has responded so far with a meeting arranged in February.

We have struggled to get from DEFRA two other bathing designations. We are doing everything we can as a local authority, working with the local community to monitor water quality. On hearing about water quality monitors used in communities in other areas, please can we have one in Worthing. Given Southern Water's drainage water treatment plan, please can we have sustainable initiatives funding to help our communities.

NM explained that with regard to citizen science projects, Southern Water is running several pilots. The aim is to pause in March 2024 to understand how the trials are progressing (ie is the process and the technology viable measures of bathing water quality, or is there other potential alternative technologies worth testing, what is best practice for sampling, etc.). When we pause, we will work with the pilot group to answer those questions and proceed with a second phase if deemed worthwhile.

There are several councils and groups that wish to participate in the project but we do not have any spare kits at this time. NM agreed to add Worthing onto the list of Councils/groups that are keen to take part, but at this point we cannot provide a guarantee as we will review all interested parties in the Spring if there is a phase 2.

For transparency, Citizen Science trial areas for phase one are as follows:

- Sandown (Isle of Wight)
- Whitstable
- Brighton
- Hastings
- Eastbourne

Water quality buoys deployed:

- Off Hayling Island
- Off Tankerton shore

Sometimes results are not quite sensitive enough. In terms of a sustainable drainage solution, this is sometimes a funding mechanism dilemma, sometimes bringing with it the complications of which funding pots should be used. Cllr Wells added that she meets quarterly with her community groups and she wants to ensure those methods of information are fed back. There's an information gap and we would like Southern Water to help us access that funding.

Brighton *- we have a significant number of combined sewers. In the periodic review process submitted to OFWAT, how does OFWAT manage the routine maintenance that is required? Is it ringfenced in those budgets? And how do you ensure it is regulated? We have so many combined sewers and it is great to have projects, but a lot of our issues are simply down to drainage within our system and we are very keen to pick up on this. From what we have seen in terms of drainage, we really want investment in our city to ensure that aspect of the problem is resolved.*

PH replied that the business plan starts with the cost to run the business "as is" (otherwise known as base expenditure) but also the capital cost needed to sustain that level of service. Then they overlay the additional expenditure needed to meet that growth. OFWAT receives all of those costs to consider. There is an element of efficiency to be investigated but there is an acceptance. Pots of money are not exactly ringfenced but there is an expectation that permits are complied with. For enhancement money there are particular outputs associated with that involving individual component parts. The expectation is that performance levels set within that are met. CBR added that Southern Water is trying to make sure we protect the capital maintenance investment as Southern Water recognises normal maintenance needs to be kept up and as part of price review process, we have cost adjustment claims for coastal areas etc. Absolutely, we go through a process and the evidence is looked at. We do recognise the importance of maintenance and it does get prioritised across the region.

JP added that Southern Water has actually spent more than the allowance by OFWAT by investing the shareholder money into an asset base and our base capital maintenance has been spent more in the last 5 years.

Wealden *- financial regulation from OFWAT – how much do you regulate the debts that water companies take on (particularly with customer bills ultimately having to over service those debts)?*

PH replied that one of the obligations from OFWAT is to ensure companies have the finances to deliver their obligations and that they are financially resilient. The check we make is to ensure any debt is sustainable and a lot of financial scrutiny takes place – this is part of our role. **Action**: PH to provide more information. We have had protracted discussions with Southern Water to ensure the company was financially resilient (eg Peacehaven). The OFWAT model is that of an "efficient company" – the debt ratio is 55/60% - Southern Water is currently at 62%. OFWAT's view is that if we decide to have more debt than the efficient company model, that is the risk of the shareholders.

Chris Bending ("CB") referred to a previous question in relation to Southern Water's work with County Councils. He suggested that District & Borough Councils be allowed more involvement, given they are probably more aware of the local issues than County councils. Wealden has previously had conversations with Southern Water but they are limited. We repeatedly encourage Southern Water to come back to us, so we can work with them and help them identify those problems.

PH replied that OFWAT has an annual process where companies submit evidence where they have not delivered and OFWAT follows up on this service failure and publish its findings – **ACTION**: PH to share the link from OFWAT's webpage.

CB referred back to another previous point, where every waste water asset has a permit set by the EA, which as part of the regulation is policed by them. This in turn compliments OFWAT's regulation of the water company at an asset level. These sector level high profile cases are published on OFWAT's complaints handling system where complaints are investigated. However local authorities do not fit into this category – local authorities are not customers. As local authorities where we are aware of a problem for our communities, how do we report this? **ACTION**: PH/CB to have a follow up discussion offline.[1]

JP provided a link through to the sectors performance commitments *(Water and sewerage companies in England: environmental performance report 2022 - GOV.UK (www.gov.uk))*. WINEP is the industry's Water Industry National Environment Programme, which is Southern Water's performance against the enhancement spend PH has spoken about.

Compliance process and how OFWAT oversees Southern Water – CB relays his understanding that OFWAT works with Southern Water to set the business plan and expects them to deliver that plan, leaving the EA to be the critical check. This presumably means that OFWAT is not doing compliance checks in the middle of the process? His fear is that if the EA are doing the enforcement that means the system has gone wrong. That is when the EA should take action – there is a concern that there is a big gap in the middle given OFWAT are not checking to make sure Southern Water is doing what they should be doing. In terms of the permit process, OFWAT should ensure Southern Water has a plan in place to make sure they do the upgrades and not just wait to the point of breaching the permit. We have the biggest concerns around this – Southern Water's delivery of those areas. Southern Water have said for a decade that upgrades have not happened for developments. It feels like there is a gap of action being taken.

CBR explained that the role of the EA is to confirm Southern Water has delivered and if we do not or if it is too late, it get picks up by OFWAT. Financial penalties then go back to the customers. We also have performance commitments and they are also reported, so it will manifest itself in one of those measures (ie if Southern Water is not meeting targets, money is returned in the form of penalties). Southern Water is seeing significant improvements but we are not yet where we want to be.

Whilst there is a complaints system, I cannot find how a local authority would raise those complaints with OFWAT or evidence that OFWAT is doing that work. I cannot see evidence of local failures which are important to residents. We are happy to look into any local issues and work with Southern Water to ensure work is taken. Can you share with us those investigations that OFWAT have done in the past, so we can help you regulate the work of Southern Water?

PH referred to a previous investigation where an in-depth investigation into Southern Water took place, OFWAT took action and a punitive fine was imposed (Investigation

[1] A meeting between Paul Hickey and Chris Bending has since been arranged for 7th March 2024.

into Southern Water's wastewater treatment sites and the company's reporting of relevant compliance information to us - Ofwat).

A weblink to their investigations site is as follows: Investigations - Ofwat.
A weblink to enforcement case studies is as follows: Enforcement cases - Ofwat.

Folkestone & Hythe *– we have 22 miles of coastline, all of which is deteriorating day by day. This week we are putting up no bathing notices along our coastline. There are 7 measurements points, 5 showing poor and one no bathing. 25% of all bill payments go to servicing Southern Water's debt and the £4bn did not get invested in our district. We had Storm Ciaran resulting in pump failures and flooding. Southern Water has worked hard with tankers carrying sewerage to put elsewhere. However we have Storm Isha expected next week. What is the message to those residents flooded with sewage?*

PH acknowledged bathing water quality is an unacceptable situation – we need to work collaboratively on those beaches. **ACTION**: JP to discuss Southern Water's plans with Cllr Martin offline. NM referred to a new colleague at Southern Water, Tom Gallagher, who has been brought in as the improvement lead who will be looking to get the right people together to resolve issues like this. There is a technical meeting with the Council on Monday. There is this belief there is an element finger pointing in all directions. We need to a have a reset to look at what we have done with all the organisations and determine what other parties we need to bring in to work in collaboration in relation to storm overflows. Globally we do not have enough knowledge on the impacts on water quality. We have buoys testing water regularly. What we are finding is that when there has been a storm release there are different impacts on water quality. We therefore need another meeting to reflect and decide what we can do going forward.

Cllr Stephen Scoffham – endorsing what Cllr Martin had just said. We have serious concerns about the bathing water quality across the district. Four out of our six beaches show declines of water quality and are going to continue unless something is done. Are we going to get a proper plan to deal with this? The response from Southern Water has been slow and unhelpful on this issue. This is not acceptable and cannot be ignored. Can we please work with you – we do not need to waste time with complaints if we can get an agreement with Southern Water now. We do not want to hear excuses.

ACTION: JP to organise a meeting with Cllrs Martin and Scoffham.

Arun *- are water companies lobbying Government to be statutory consultees?*

NM replied that Southern Water is desperately trying to lobby Government.

Tonbridge & Malling *– we are writing our Local Plan and we have flooding issues. We need to reinforce the need for Southern Water to work with us to ensure correct infrastructure is provided.*

NM agreed that Southern Water would do this. She is working on a specific plan on working with Councils on this.

On CSOs, no one knows where they are. Could signs be erected to identify/alert the public?

NM referred to their Beach Buoy system that does alert people to bathing spills at real time (this system is due an upgrade imminently which will improve its function even further). Re: signage, Southern Water is trialling signage elsewhere to see if it is useful and if it has an impact. Some signs have been made up but the stakeholders are yet to agree on the wording. We are looking at Brighton and Bexhill/Hastings areas as a pilot. The aim would be to get signage on all storm overflows. Southern Water would be prepared to partner with local councils to action this (who can then share widely with their communities).

Conclusion from discussions

RM summarised the discussions from today's meeting. It is clear we all need a much clearer understanding of how Councils can work with OFWAT to resolve problems. How can OFWAT help us to do that (rather than waiting until something has gone wrong)? How can we make sure the promised investments are happening?

PH expressed his concern about the gap in councils being able to talk to OFWAT. PH/CB to explores these issues further. In the meantime PH added he would be happy to attend future Stakeholder Group meetings to ensure issues are being taken forward. **ACTION**: PH to follow up with CB as a trail blazer for ideas.[2]

4. Next steps

Kellie Eldridge will provide minutes of this meeting, together with a summary of the agreed actions. CB will put some comms together for sharing with other members of the group as a collaborative press release. CB added that Southern Water have agreed to come back to attend a further meeting, following a discussion at the recent Working Group meeting.

RM ended the meeting by thanking PH (from OFWAT), JP, NM, CBR and SCO (from Southern Water) for attending. It really does help us gain a better understanding of how the different organisations interact with each other.

5. Date of next meeting (TBC)

Kellie Eldridge to set a date and invite Southern Water.

[2] A meeting between Paul Hickey and Chris Bending has since been arranged for 7th March 2024

Attendees (in organisation alphabetical order)

Cllr Steve Neocleous	Adur District Council
Cllr Sue Wallsgrove	Arun District Council
Anne Shattock	Basingstoke & Deane Borough Council
Cllr Theresa Fowler	Brighton & Hove City Council
Cllr Trevor Muten	Brighton & Hove City Council
Mita Patel	Brighton & Hove City Council
Andy Hill	Brighton & Hove City Council
Fjola Stevens	Chichester District Council
Cllr Bill Brisbane	Chichester District Council
Cllr Jonathan Brown	Chichester District Council
Andrew Frost	Chichester District Council
Cllr Jim Martin	Folkestone & Hythe District Council
Cllr Stephen Scoffham	Folkestone & Hythe District Council
Eleanor Evans	Hastings Borough Council
Mike Allgrove	Havant Borough Council
Emma Parkes	Horsham District Council
Marc Dorfman	Lewes & Eastbourne Councils
Cllr Emily O'Brien	Lewes District Council
Tom Gilbert	Maidstone Borough Council
Gabrielle Bussley	Medway Council
Dave Harris	Medway Council
Tim Guymer	New Forest District Council
Dean Brunton	New Forest District Council
Paul Hickey	OFWAT/RAPID
Jeff Pyrah	Rother District Council
Cllr Teresa Killeen	Rother District Council
Chris Braham	Southern Water
John Penicud	Southern Water
Nicole McNab	Southern Water
Sue Cobb	Southern Water
Julian Ling	Tonbridge & Malling Borough Council
Cllr Rachel Millward	Wealden District Council
Chris Bending	Wealden District Council
Stacey Robins	Wealden District Council
Annemarie Field	Wealden District Council
Cllr Vicki Wells	Worthing District Council

Apologies

James Appleton	Adur & Worthing Councils
Moira Hayes	Adur & Worthing Councils
Karl Roberts	Arun District Council
Cameron Morley	Hastings Borough Council
Leigh Palmer	Lewes & Eastbourne Councils

Thom Hoang	Maidstone Borough Council
Ben Hook	Rother District Council
Emma Henshall	Sevenoaks Borough Council
Cllr Catherine Sayer	Tandridge District Council
Cllr Dave Davis	Tunbridge & Malling Borough Council