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Case No: AC-2026-LON-000872

**IN THE HIGH COURT OF JUSTICE**  
**KING'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 02/03/2026

**Before :**

**MR JUSTICE CHAMBERLAIN**

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**Between :**

**THE KING**

**on the application of**

**SOUTH EAST WATER LIMITED**

**Claimant**

**- and -**

**WATER SERVICES REGULATION AUTHORITY**

**Defendant**

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**Nicholas Gibson and Anirudh Mathur** (instructed by **Norton Rose Fulbright LLP**) for the  
**Claimant**

**Tom Cleaver and Femi Adekoya** (instructed by **DAC Beachcroft LLP**) for the **Defendant**

Hearing date: 2 March 2026

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## **Approved Judgment**

A version of this judgment was handed down in private in Court 3 at 4pm on 2 March 2026.

This version was handed down remotely at 10am on 4 March 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

## Mr Justice Chamberlain:

### Introduction

1. The Water Services Regulation Authority (“Ofwat”) is the body established by Parliament to regulate water and sewerage undertakers.
2. Where it is satisfied that a licensed water undertaker is contravening a licence condition or statutory requirement or is likely to do so, it must issue a “final enforcement order” unless an exception applies. It may also impose a penalty. Before doing either of these things, it must give notice of the order it proposes to make and/or the penalty it proposes to impose, allow a period for representations or objections to be made and consider these before deciding whether to withdraw, vary or confirm the decision.
3. In November 2023, Ofwat began an investigation into South East Water (“SEW”), the water undertaker for Kent, Surrey, Sussex, Hampshire and Berkshire. The investigation was into SEW’s compliance with its duties under s. 37 of the Water Industry Act 1991 and under Condition P12 of its licence, which requires it to act in a manner best calculated to ensure that it has in place adequate financial resources and facilities, management resources and systems of planning and internal control.
4. On 18 February 2026, officials from Ofwat spoke to some of SEW’s senior staff and told them that they would shortly be publishing a proposed decision and that they would be proposing to impose a penalty. On 19 February, a draft proposed decision was provided to SEW for a confidentiality review. The amount of the proposed penalty has not yet been specified.
5. On 24 February, SEW filed a claim for judicial review, challenging Ofwat’s decisions to propose an enforcement order and financial penalty and to publish notice of these proposals. They also applied for an interim injunction to prevent publication of the proposals pending determination of the claim.
6. On 26 February, I directed that the application for interim relief should be considered at a hearing today. I asked that the parties’ attention be drawn to the Court of Appeal’s decision in *R (Governing Body of X) v Office for Standards in Education, Children’s Services and Skills* [2020] EWCA Civ 594, [2020] EMLR 22 (“the *Governing Body of X* case”).
7. Ofwat informed SEW of its intention to publish the proposals on 3 March, at 7am, unless the court made a contrary order.

### The hearing

8. SEW did not seek an order that the hearing be listed anonymously. It was accordingly listed in the usual way.
9. Written and oral submissions were made by Nicholas Gibson for SEW and Tom Cleaver for Ofwat.

10. The hearing began in public, but Mr Gibson and Mr Cleaver agreed that the court should sit in private. I was satisfied that this was necessary under CPR 39.2(3)(a), because the object of the application was to prevent publication of Ofwat’s proposals and maintain their confidentiality. A restricted reporting order would not prevent a loss of confidentiality in the underlying matters if the hearing was in public. The hearing therefore proceeded in private. I also made a temporary order restricting public access to the case papers.

### **The test for interim relief**

11. In his skeleton argument for SEW, Mr Gibson submitted that the test for interim relief is that set out in *American Cyanamid Co v Ethicon Ltd* [1975] AC 396, as modified for the public law context. Reference was made to “a particular line of authority in relation to the grant of injunctions to restrain public bodies from publishing decisions or reports” and to the decision of Stuart-Smith J in *R (Interim Executive Board of X) v Ofsted* [2016] EWHC 2004 (Admin), [2017] EMLR, where interim relief was granted against Ofsted to prevent publication of a report critical of a school.
12. Mr Gibson now accepts, however, that this leaves out of account the effect of s. 12 of the Human Rights Act 1998 and the decision of the Court of Appeal in the *Governing Body of X* case and that I should adopt the approach described in the latter case. I can explain that approach in the following way.
13. Although public authorities generally do not enjoy ECHR rights, the right to freedom of expression guaranteed by Article 10 ECHR includes the right to “receive” as well as to “impart” information and ideas. Members of the public have a right to receive information which a public authority wishes to publish. An order which prevents them from doing so interferes with their Article 10 rights. By s. 12(3) of the Human Rights Act 1998, the court cannot make such an order on an interim basis unless it is “satisfied that the applicant is likely to establish that publication should not be allowed”.
14. I drew attention to this in my decision in *R (Barking and Dagenham College) v Office for Students* [2019] EWHC 2667 (Admin), where I refused an application by a college for interim relief to prevent “widespread and irreparable harm” which it said would be caused by publication of a critical report by the Office for Students. I said this:

“30. I consider that the relief sought would affect the right of members of the public – in particular, existing and potential students of the College – to receive information which Ofsted wishes to communicate to them in the exercise of its statutory functions. For that reason, I consider that s.12(3) [of the Human Rights Act 1988] applies. That means that I have no power to grant relief unless satisfied that the College is ‘likely’ to establish at trial that publication should not be allowed. In this context, ‘likely’ usually means ‘more likely than not’, but may mean something less than that, for example in a case where the consequences of publication would be very severe: *Cream Holdings v Banerjee* [2005] 1 AC 253, [22] (Lord Nicholls).

...

35... Where a public authority has the function of publishing a report, that function will often be conferred for the benefit of a specific section of the public. Ofsted's reporting powers are conferred primarily for the benefit of pupils and parents (existing and prospective) of the inspected schools. The Advertising Standards Authority's powers are conferred primarily for the benefit of consumers (existing and potential) of the products or services advertised. In each case there is a specific section of the public with an interest in receiving the information in question. This interest is protected by Article 10 ECHR, which confers the right not only to express but also to receive information. The right of a section of the public to receive information which a public authority wishes to communicate to them in what it regards as their interest must carry very substantial weight in the balancing exercise.

36. On the other side of the scales, the weight of the Claimant's and any third party's interest relied upon to oppose publication will vary. Sometimes, the interest relied upon to restrain publication is limited to the private interest of a corporate entity. In other cases ... damage to third party or public interests is also relied upon. But even so, it is important not to lose sight of the fact that, if interim relief is refused and the Decision is published, those to whom it is published can be told that the Decision is the subject of legal challenge... I accept that there will be some who will not be prepared to suspend judgement pending the resolution of the claim, but a fair-minded observer learning of a decision critical of the Claimant would factor in the existence of a pending challenge before reacting to it.

37. In these circumstances, and other things being equal, the authorities rightly impose a high hurdle ('pressing grounds', 'the most compelling reasons' or 'exceptional circumstances') for the grant of interim relief to restrain publication of a report by a public authority."

15. At [38], I went on to consider *Interim Executive Board of X*, which, I said had a "constellation of unusual factors". At [39], I said that the heightened test applied whether the public authority had a statutory duty, or merely a power, to publish.
16. In the *Governing Body of X* case, the Court of Appeal endorsed my approach and said that it was "highly unlikely that the kind of circumstances justifying the grant of injunction that arose in *Interim Executive Board of X* will often occur; they were indeed exceptional": see [77]-[79] (Lindblom LJ, with whom Henderson LJ and Sir Geoffrey Vos C agreed).
17. The position is summarised as follows at paragraph 16.6.3 of the Administrative Court Judicial Review Guide:

"Where a claimant seeks to restrain publication of information by a public authority which is obliged or empowered to do so, the Court must consider the rights of those who would otherwise be entitled to receive the information. These rights are protected by Article 10 of the ECHR and section 12 of the Human Rights Act 1998. This means that interim relief will

only be granted for ‘the most compelling reasons’ or in ‘exceptional circumstances’.”

### **SEW’s submissions in support of interim relief**

18. Mr Gibson for SEW submitted that there are “compelling reasons” to restrain publication in this case. The grounds on which the decision is challenged include predetermination (ground 2). So long as there is a serious issue to be tried on this ground, it is precisely the kind of “exceptional” reason that justifies restraint: *R (Birmingham City College) v Ofsted* [2009] EWHC 2373 (Admin), [30]. That is so even if the Court “cannot make any findings about whether the Claimant’s allegations are in fact well founded” until the final hearing: *Interim Executive Board of X*, [45]. In any event, the challenged decision is “riddled with errors” – which is one of the scenarios in which interim injunctive relief may, exceptionally, be granted.
19. Furthermore, the damage to SEW from publication is likely to be irreparable. SEW’s case in this regard is set out in two witness statements of Andrew Farmer, its Chief Financial Officer. He explains that SEW’s shareholders “target a strong investment grade credit ratings”. Maintaining these ratings has been and continues to be challenging. Both Moody’s and S&P currently give SEW their lowest investment grade rating. SEW is therefore formulating a plan to seek additional financing to further secure its liquidity position and to further improve its operational resilience, thereby reinforcing its investment grade credit ratings.
20. Mr Farmer says this in his first witness statement:

“36. In summary, based on my many years’ experience of dealing with investors and rating agencies, and for the reasons which I expand on more fully in the remainder of this part of my statement, I consider it very likely that publication of Ofwat’s legally flawed proposed decision, and therefore the detailed findings in the 240-page decision, would seriously damage confidence in SEW among those working in the finance sector with the following very serious adverse consequences for SEW’s business.

  - a. Publication could very well result in a downgrade in SEW’s credit ratings, which would cause SEW to fall below investment grade rating.
  - b. Publication would make it much harder for SEW to secure the additional financing which it requires for the reasons set out above; and/or, even if and to the extent that SEW were able to secure some of that additional financing, publication would mean that the terms of that financing would be much worse for SEW. The effect of this will be felt particularly acutely during the period in which SEW needs to raise additional financing...
  - c. Publication would also threaten SEW’s ability to retain existing sources of investment, particularly from investors who require the issuing entity (i.e., SEW) to hold an investment grade rating. For example, this might arise in a scenario where existing lenders refuse to renew or significantly reduce their exposure to SEW.

d. Publication would also threaten SEW's ability to comply with its regulatory obligations... in terms of both SEW's Board's ability to provide the assurance required regarding SEW's outlook over the following 12 months; and SEW's ability to satisfy the requirement to have two investment grade ratings.

e. Further, these consequences of publication are also likely to compound one another, with a serious risk that they create a 'doom spiral' from which SEW is unable to extract itself."

21. Mr Farmer says that the suggestion that there has been a breach of the general duty in s. 37 of the 1991 Act is likely to create widespread concern and uncertainty among investors and rating agencies in particular because this is one of the "principal" duties which can trigger an application for a special administration order without the need to show non-compliance with an enforcement order.
22. Against this, there is more limited prejudice to Ofwat or the public interest from granting interim relief. The injunction would hold the ring for a comparatively short time, i.e. until a substantive hearing fixed on a speedy timetable. The current proposal is that there should be a rolled-up hearing in mid-June. Allowing some time for judgment, this would give rise to a delay of about 4 months. This is a short time in the context of Ofwat's multi-year investigation. Ofwat will be entitled to publish any decision reached, if the threshold condition for the power to publish is found to be met on a valid legal basis.

## **Discussion**

### The test

23. As I have explained, the first condition for the grant of interim relief is not simply that there is a serious question to be tried, but that SEW is "likely to establish that publication should not be allowed". In current circumstances, where interim relief is being determined after a half-day hearing fixed on several days' notice, "likely" means "more likely than not".
24. I have serious doubts that SEW can surmount that hurdle in respect of any of its grounds, but I do not need to reach any concluded view about that. It is sufficient to explain in outline why, in my judgment, SEW's case is far from compelling. Forming a general impression of the merits of the case is necessary when deciding where the balance of convenience falls.

### Ground 1a

25. Ground 1a is, in essence, that Ofwat cannot establish a breach of the general duty in s. 37 of the 1991 Act without first showing that SEW failed in a specified way to meet one or more of its specific obligations under Part III of that Act. It is necessary for Ofwat to establish a causal connection between the failing or failings said to constitute the breach of s. 37 and a past breach of one or more specific duties in Part III.

26. The suggested need for a causal connection of this kind does not seem to me to have any obvious anchor in the language of s. 37. In any event, however, I am not convinced that this point avails SEW on the facts of this case, because the proposed decision makes clear that Ofwat has, in fact, reached a provisional view that specific breaches of Part III obligations were caused by failings said to amount to a breach of the general s. 37 duty (see e.g. p. 3 of the Executive Summary and paragraph 3.200).
27. The complaint that no specific breach of the Part III duties is identified may be difficult to advance, given that the proposed decision includes specific reference to the obligation under s.52 to provide to domestic premises “such a supply of water as (so far as those premises are concerned) is sufficient for domestic purposes”). Ofwat’s findings, as set out in the Executive Summary of the proposed decision, include that SEW failed to maintain its key water supply assets in certain respects and that those failures resulted in the Claimant’s customers being “disproportionately affected by supply interruption incidents since 2020 which were attributable to and/or exacerbated by these failures of South East Water”. The failures affected a total of 286,645 customers. In the light of these findings (which are apparently not challenged), it seems far from obvious that Ofwat lacked jurisdiction to conclude that SEW had breached the general duty in s. 37.
28. The complaints about the misconstruction of the licence condition are similar to those about the alleged misconstruction of s. 37 of the 1991 Act. The answer is likely to turn on a consideration whether the findings contained in the 240-page decision document can rationally sustain the conclusion that the condition was breached. It is far from obvious that they cannot.

#### Ground 1b

29. Ground 1b is that Ofwat’s decision fails to articulate with sufficient precision how SEW contravened s. 37 and Condition P12 and, therefore, how it could secure compliance in the future.
30. It is not possible to reach a concluded view about this sub-ground of challenge at this stage, but it is worth pointing out that the Executive Summary of the decision (which summarises the detail contained in subsequent parts of the 240-page report) contains the following:

“South East Water has failed to maintain key assets including its boreholes, service reservoirs and trunk mains which meant that its asset base in the Eastern region was not sufficiently resilient to adequately perform when demand increased. Further, it failed to have adequate proactive maintenance plans and to increase storage levels at service reservoirs in the lead up to critical periods.

Regarding its systems planning, we found that South East Water failed to manage its supply demand balance and headroom which resulted in the company being with less headroom and less able to respond than we would expect a reasonable company to have be able to in the lead up to, and during periods of high demand. This included failing to effectively use planning tools available to it (such as area plans, peak week production capacity

(PWPC), up-to-date hydraulic models, root cause analysis) and to mitigate known risks posed by extreme weather and climate change.

This has had a detrimental effect on South East Water's customers. Compared to its Western region and other companies in the south east of England, South East Water's Eastern region has been disproportionately affected by supply interruption incidents since 2020 which were attributable to and/or exacerbated by these failures of South East Water. These events affected a total of 286,645 customers, with some customers being affected by repeat incidents. Our investigation makes no findings with respect to the Western region (which was not covered by this investigation). To the extent that specific actions by South East Water are company-wide, we find that it has failed to take appropriate action with respect to the vulnerabilities that existed and were known in its Eastern region.

Further, South East Water's operational response to incidents has been poor, it had insufficient incident and emergency response, particularly with respect to availability of bottled water, mutual aid, tankers and for the support for vulnerable sites within its emergency plan. In general, we observed a failure by South East Water to learn relevant lessons from past incidents and implement actions identified following those incidents.”

31. These summaries do not seem to me to be obviously vague.

## Ground 2

32. Ground 2 is that the proposed decision was predetermined. The bases for alleging this are: first, that Ofwat did not properly engage with SEW's representations that Ofwat lacks a proper legal basis for enforcement action; secondly, some remarks made at a meeting in July 2025; and third, the change in the temporal scope of the investigation.
33. In my judgment, none of these seems especially promising as a way of showing that the decision was predetermined. The case law on predetermination shows that a claimant needs good evidence to suggest that a public decision-maker has approached his or her function with a closed mind. The court will bear in mind that decision-makers, particularly those involved in long-running investigations, will form provisional views as they go. There is no prohibition on forming such views, provided that the decision-maker is open to the possibility of a change of mind.
34. As to the first of Mr Gibson's bases for alleging predetermination, regulators have to decide points of law all the time. In general, their obligation is to get the law right, not to engage in lengthy correspondence with regulated entities about it. Thus, even if SEW could establish a failure properly to engage with a point of law made by it, that would be very unlikely to provide a basis to infer predetermination.
35. As to the second basis, the July 2025 meeting took place after Ofwat had sent SEW a “minded to” decision and considered detailed representations on it. It would not be at all surprising if Ofwat had reached some firm provisional views. The comments at the meeting are set out at paragraph 18.6 of Ofwat's skeleton argument. When read in full,

and in the context I have described, these supply a very thin basis for alleging predetermination.

36. As to the third basis, the change in the temporal scope of the investigation may or may not give rise to some separate public law challenge. But the allegation is of the type which is commonly made in challenges of this kind. Even if it were made out substantively, and formed a separate basis for impugning the decision (as to which I reach no concluded view), it does not seem to me to indicate predetermination.

### Ground 3

37. Ground 3 is that Ofwat acted procedurally unfairly by denying SEW “an opportunity to be heard on a confidential basis by undertaking a further minded-to process, upon reaching provisional findings; and prior to making and publishing the proposed decision” (paragraph 90 of the Statement of Facts and Grounds).
38. The difficulty with this is that Ofwat did produce a “minded to” decision and did invite SEW to comment on it, confidentially. It is by no means obvious that it was obliged to give SEW another opportunity to comment in advance of publishing its proposals. It is true that substantial further material was gathered after that, in part by the exercise of Ofwat’s powers under s. 203 of the 1991 Act. But it is not at all obvious that—having already given SEW an opportunity to be heard—it was incumbent upon Ofwat to offer a further such opportunity before publishing the proposed enforcement order.
39. In this regard, it should be pointed out that the publication of the proposals in any event triggers a further opportunity for SEW to make representations prior to any final decision, though of course such representations would have to be made in a context where the proposed decision is public.

### Ground 4

40. Ground 4 is that Ofwat breached its duty to “ask itself the right question and take reasonable steps to acquaint itself with the relevant information to enable it to answer it correctly” (*Tameside MBC v Secretary of State for Education* [1977] AC 1014, 1065). The principal breaches relied upon are Ofwat’s failure to take into account its general duties under s. 2 of the 1991 Act and its failure to allow SEW to obtain an expert report from its consultants AtkinsRéalis.
41. As to the alleged failure to take into account the general duties in s. 2, the proposed decision does in fact mention and set out these duties (see paragraph 2.90). Mr Gibson’s response is that this is cosmetic. That will have to be carefully considered in due course, but the express reference to the relevant duties in the proposed decision does suggest that SEW may have an uphill struggle on this point.
42. As to the expert report, this is not a statutorily mandatory consideration. Thus, SEW would have to establish that it was irrational to proceed without an expert report from it. As acknowledged in its Statement of Facts and Grounds, “it is for the decision-maker to determine the manner and intensity of the inquiry, subject to the rationality standard of review”. It does not seem obviously irrational for Ofwat to refuse to allow SEW to procure and submit an expert report at this very late stage, when it chose not to do so

earlier and in any event could do so when making its representations in response to the enforcement notice.

#### Ground 5

43. Ground 5 is that Ofwat acted unlawfully by failing to publish a policy indicating how it will enforce breaches of s. 37 of the 1991 Act.
44. One difficulty with this is that Ofwat was not exercising a statutory discretion. A further difficulty is that, as the Statement of Facts and Grounds acknowledges, there is no general duty to formulate a policy governing the exercise of a statutory power: *R (Northumbrian Water Ltd) v Water Services Regulation Authority* [2024] EWCA Civ 842, [2024] 4 WLR 82, [59]-[67].

#### Ground 6

45. Ground 6 alleges that the decision breaches SEW's property rights under Article 1 of Protocol 1 to the ECHR ("A1P1").
46. Insofar as it is alleged that the decision breached SEW's A1P1 rights because it was contrary to domestic law, this ground adds nothing to grounds 1-5. Insofar as it is said that the decision, though compliant with domestic law, is disproportionate, success will depend on showing that Ofwat exceeded the generous margin of discretion which must be accorded to an expert regulator. It is far from obvious that it did.

#### Balance of convenience

47. Because I have not reached a concluded view about whether any of SEW's grounds of challenge meets the threshold of being "likely to succeed", I have gone on to consider whether the balance of convenience favours the grant of interim relief. In performing this balance, I start by applying the approach in the *Governing Body of X* case, which recognises that, ordinarily, it will be in the public interest to allow a body charged by Parliament with performing regulatory functions to proceed to perform those functions while a decision is challenged in the courts, unless a compelling case is made out for the court to take the exceptional course of granting injunctive relief.
48. Mr Farmer's evidence about the anticipated adverse effects of publication relate principally to the likely effect of publication of the proposals on SEW's credit rating and the knock-on effect of a credit rating downgrade on SEW's ability to secure additional financing (whether at all or on advantageous terms) and on its ability to retain its existing investors.
49. In my judgment, it is far from clear that the publication of the proposed decision will cause harm that is "grave" or "irreparable", as alleged. Publication of the proposed decision triggers a right in SEW to make further representations. Ofwat may be persuaded by these to withdraw or alter the decision. Even if it does not, ratings agencies, potential lenders and existing investors can, in general, be presumed to act rationally. They are likely to fall into the category of the "fair-minded observer learning of a decision critical of the claimant", who "would factor in the existence of a pending challenge before reacting to it": see [36] of my decision in the *Barking and Dagenham*

*College*, approved by the Court of Appeal at [77] of its judgment in the *Governing Body of X* case. I accept, however, that publication of the proposed decision may cause some harm to SEW in the scenario where interim relief is refused and the claim later succeeds.

50. That harm must, in my judgment, be balanced against three other types of harm which would be caused in the scenario where interim relief is granted but the claim later fails.
51. The first category of persons who would or could suffer such harm are potential and existing lenders and investors. Mr Farmer's second witness statement makes clear that potential and existing lenders and investors (but not the general public or the credit rating agencies) would be told about the proposed decision, presumably on confidential terms. Mr Gibson invited me to accept Mr Farmer's evidence, based on his extensive experience of raising funds in the market, that potential and existing lenders and investors would be prepared to proceed on this basis.
52. In my judgment, however, there is a real incoherence in this part of Mr Gibson's case. Given that (on SEW's own case) these lenders and investors regard it as necessary for the entity they are dealing with to have an investment grade credit rating, it is unclear to me why they would be content to rely on a rating based on materially incomplete information. There is no evidence, apart from Mr Farmer's say-so, to explain why they would. To put the point another way: either the view of the credit ratings agencies is important to them (in which case they would be likely to wish that view to be fully informed of all material facts) or it is not (in which case the proposed interim relief will do no good to SEW, which promises to disclose the proposed decision to them in any event).
53. More generally, relief designed to keep the credit ratings agencies in the dark seems to me to be objectionable in principle. The reason why potential and existing lenders and investors pay attention to credit ratings is that they reflect a trusted agency's informed judgment about the credit risk posed by a company. If, as Mr Farmer fears, publication could prompt a credit rating downgrade, that is because the proposed decision is material to SEW's credit rating. On that basis, the effect of the interim relief sought by SEW would be to bring about a situation in which SEW's credit ratings are based on materially incomplete information. In this situation, potential lenders might enter into contracts which they would not otherwise have entered into and existing investors might decide to retain their investments in circumstances where they would otherwise have exited.
54. Mr Gibson's answer is that this is acceptable in circumstances where the proposed decision is, as he contends, arguably (or strongly arguably) unlawful. The problem with this is that credit ratings are based on a holistic assessment of the risks facing a company. This includes litigation risks. Whatever criticisms may be directed at Ofwat, it has, in fact, decided to publish the proposed decision. On SEW's case, that fact is potentially material to SEW's credit rating. Even if SEW has a 60% chance of success in its claim for judicial review (and I am very doubtful that its true prospects are anything close to that), it has a 40% chance of failure. The grant of interim relief would prevent the agencies from taking account of this risk and deprive potential and existing lenders and investors of the opportunity to take rational decisions in their own interests based on the agencies' assessment of it.

55. Mr Gibson’s plea that SEW should be allowed to control when and to whom the proposed decision is disclosed also seems to me objectionable in principle. Since it was envisaged that the proposed decision would be disclosed only some time after initial discussions and negotiations had commenced, counterparties might incur costs in the period before the proposed decision is disclosed to them. Mr Gibson said that SEW was not at this stage in a position to offer any undertaking in damages to them. Even if he were able to procure instructions to do so, it is not obvious how valuable such an undertaking would be to them, given that the proposed decision may be relevant to SEW’s solvency.
56. The second group whose interests must be taken into account are SEW’s customers. According to Ofwat, they have suffered in the ways described in the excerpt from the Executive Summary which I have set out at [30] above. Ofwat says that 286,645 customers were affected, with some customers being affected by repeat incidents. Interim relief would delay publication of the proposed decision, and therefore the point at which (if the claim fails) a final decision can be made imposing remedial obligations on SEW, by around 4 months. I accept that the investigation has taken more than two years so far, but I do not accept that an additional four months can therefore be regarded as relatively insignificant. The potential cumulative impact of such a delay on so many customers is a consideration which, in my judgment, attracts very considerable weight.
57. Finally, it is necessary to consider the effects of the relief sought on the way this claim would have to be litigated. As I have said, the interim relief hearing was conducted in private. Mr Gibson accepted in argument that the final hearing would also have to be conducted in private, to avoid undermining the purpose of the interim relief. There would be no opportunity for any other party (e.g. a group representing customers or consumers) to apply to file evidence or make submissions as an intervenor pursuant to CPR 54.17. Important litigation concerning the powers and duties of a public regulator and the construction of general legislation would be conducted in the absence of the press and public. This would represent a very substantial derogation from the principle of open justice, which itself would give rise to significant damage to the public interest.
58. For all these reasons, any harm that would be caused to SEW in the scenario where interim relief is refused and the claim later succeeds is very firmly outweighed by the harm that would be caused to potential and existing lenders and investors, customers and the public interest generally in the scenario where interim relief is granted and the claim otherwise fails. On no view does SEW’s claim and evidence establish the “pressing grounds” or “most compelling reasons” needed to justify the grant of interim relief to restrain publication of a regulatory decision which (given its provisional findings) Ofwat is under a statutory duty to publish.

## **Conclusion**

59. For all these reasons, the application for an interim order restraining Ofwat from publishing the proposed decision is refused.
60. A version of this judgment was handed down at 4pm on 2 March 2026. That was done in private to give SEW the opportunity to consider whether to apply for permission to appeal. SEW confirmed to the Court of Appeal on 3 March 2026 that it did not intend to do so.

61. When handing down the private version of this judgment, I indicated that I would allow SEW to identify any passages which it contended should be removed from the public version, on grounds of commercial confidentiality. Two suggestions for minor modifications were made in writing on 3 March. I accepted one of these on the ground that the information which SEW said should be removed was commercially confidential and its inclusion was unnecessary for members of the public to understand either the basis of the application for interim relief or the reasons for its refusal. I rejected the other suggestion. Although this information was commercially sensitive, SEW had chosen to deploy it in support of its failed application for interim relief; the information formed a central part of that application; and it was necessary to include it in the judgment to ensure that members of the public understand the reasons why the application was refused.