Neutral Citation Number: [2026] EWHC 586 (Admin)

Case No: AC-2025-MAN-000149

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

Manchester Civil Justice Centre
1, Bridge Street West, Manchester. M60 9DJ.

Date: 13/03/2026

Before

MR JUSTICE SWIFT

- -

Between

THE KING

on the application of

RIVER ACTION UK

Claimant

- and –

WATER SERVICES REGULATION AUTHORITY

Defendant

- and –

(1) UNITED UTILITIES WATER LIMITED
(2) ENVIRONMENT AGENCY **Interested Parties**

- -

David Wolfe KC and Nicholas Ostrowski (instructed by **Leigh Day, solicitors**) for the **Claimant**
Ravi Mehta and Hugo Murphy (instructed by **Dentons, solicitors**) for the **Defendant**

The Interested Parties did not appear and were not represented.

Hearing dates: 4 – 5 and 17 November 2025

- -

Approved Judgment

This judgment was handed down remotely at 10.00am on 13 March 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE SWIFT

A. Introduction

1. This case arises from decisions taken by Ofwat in December 2024 to set levels of recoverable expenditure for water and sewerage undertakers (referred to as "expenditure allowances" and "the water companies", respectively). The expenditure allowances that Ofwat sets serve to control what each water company may charge its customers. The particular focus of the Claimant's challenge is Ofwat's decision on the conditions attaching to permitted expenditure allowances for work on storm overflow arrangements. Storm overflows operate as safety valves in the sewerage system. They comprise parts of the sewerage system that permit excess wastewater and rainwater to be discharged into rivers, lakes or the sea. Storm overflow arrangements operate in conjunction with parts of the sewerage system (referred to as "assets") which have the purpose of collecting, storing or treating wastewater (for example, a sewage treatment works). When the capacity of such asset to deal with wastewater is reached or exceeded, for example because of a storm, a "storm overflow spill" will occur when the storm overflow diverts the excess wastewater etc. from the asset and discharges it into open water. The Claimant's particular interest is in the arrangements made by United Utilities Water Limited ("United Utilities"), which is the water and sewerage undertaker for northwest England, however, the grounds of challenge pursued are generic and would affect each of the water companies.

(1) The legal framework

2. The context for this claim is the statutory and sub-statutory framework within which Ofwat and the water companies, including United Utilities, operate. The statutory provisions relevant to the decision in issue in this case are contained in the Water Industry Act 1991 ("the 1991 Act"). The Water Services Regulation Authority, more commonly known as Ofwat, is established under section 1A of the 1991 Act. By section 6 of the 1991 Act, Ofwat has the power to appoint companies to be water undertakers or sewerage undertakers (or both) for any area in England and Wales. Appointments are made by written instrument (section 6(3) of the 1991 Act), and an appointment may be on such terms as either Ofwat or the Secretary of State consider appropriate (section 11 of the 1991 Act).

3. The remainder of Ofwat's powers to control charges made by water companies are contained in the instruments of appointment made with each such company. The provisions in the Instrument of Appointment made with United Utilities, so far as they concern Ofwat's power to set expenditure limits and the issues in this case, are in common form with the provisions that apply to the other main water and sewerage undertakers. By Schedule 2, Condition B of the instrument, Ofwat has the power:

> "… to make determinations setting controls in respect of the charges to be levied by [United Utilities] for the supply of water and sewerage services."

The "charges" are those which the water companies may make of their customers for the provision of water and sewerage services. The "controls" are referred to as "price controls". By clause 9.1, each water company is required to levy charges on its customers "… in a way best calculated to … comply with the Price Control …". Thus,

in practice, Ofwat's decisions on price controls restrict what each water company may charge its customers.

4. By clauses 9.3 and 9.4 of the Instrument of Appointment (so far as material), Ofwat is required to:

> "9.3 … determine…
>
> (a) what is the appropriate nature, form and level of one or more Price Controls …
>
> (b) how [the appointed company] shall in respect of each Price Control applicable to it, demonstrate [compliance]; and
>
> (c) for how long each …Price Control … shall last ...
>
> 9.4 (1) In respect of the Appointed Business's Water Resources Activities, Bioresources Activities, Network Plus Water Activities and Network Plus Wastewater Activities except for those activities for which there are Excluded Charges or, to the extent that CAP Charges are recoverable in accordance with a DPC Allowed Revenue Direction, those activities that constitute a DPC Delivered Project, the Water Services Regulation Authority shall determine separate Price Controls in accordance with this sub-paragraph (having regard to all the circumstances which are relevant in the light of the principles which apply by virtue of Part I of the Water Industry Act 1991 in relation to the Water Services Regulation Authority's determinations, including, without limitation, any change in circumstance which has occurred since the last Periodic Review or which is to occur)."

Drawing these points together, the way in which Ofwat's power to set price controls and to set the criteria for compliance with those controls is formulated, is such that when Ofwat takes such decisions, it has significant latitude, so far as concerns any assessment of the legality of those decisions. This is entirely unexceptional given both Ofwat's responsibilities as a regulator and the nature of the function being performed in exercise of these powers.

5. The premise for the regular determination of price controls is provided by clauses 9.5 and 9.6 of the Instrument of Appointment. These refer to periodic reviews of price controls. Absent reconsideration, price controls remain in force for no more than five charging years. A charging year is any year commencing 1 April. The decision challenged in these proceedings came at the end of one of these exercises.

(2) Price Review 24

6. Ofwat's Price Review 24 exercise (also referred to as "PR24") set the charges that the sixteen largest water companies could make in the period 1 April 2025 – 31 March 2030. The nature of the process followed to reach these decisions has been explained in the witness statements of Chris Walters, Ofwat's senior director with responsibility for price reviews. The purpose of the process was to set what were referred to as "expenditure allowances" together with the service levels and objectives that the water

companies were expected to deliver in exchange for the permission to charge in accordance with those expenditure allowances. The requirements imposed on water companies came in two forms referred to as "performance commitment levels" and "price control deliverables".

7. The PR24 process took place over an extended period. It started in July 2022 when Ofwat published a draft methodology for consultation. The consultation response period closed in September 2022. The final methodology statement was published in December 2022. Following that, the water companies were invited to submit business plans which included their applications for expenditure allowances. Those plans were provided in October 2023 and, in the months that followed, various supplementary information was provided in response to queries raised by Ofwat. Ofwat published draft decisions in July 2024. The water companies were then given an opportunity to comment on the draft decisions before Ofwat took and published its final decisions, in December 2024.

8. The final methodology statement published in December 2022 had set out how Ofwat would assess applications for expenditure allowances made by the water companies. Expenditure that could be authorised was divided into two types. The first was "base expenditure" this was described as,

> "… routine, year on year expenditure which companies incur in the normal running of their businesses to provide a base level of good service to customers and the environment. It includes expenditure to maintain the long-term capability of assets, as well as expenditure to improve efficiency."

The second type of expenditure was "enhancement expenditure", which would be incurred,

> "… generally, where there is a permanent increase or step change in the current level of service to a new "base" level and/or the provision to new customers of the current service. Enhancement funding can be for environmental improvements required to meet new legal obligations, improving service quality and resilience, and providing new solutions for water provisions in drought conditions."

9. The final methodology statement identified the general principles that would be applied when applications for expenditure allowances were assessed. Chapter 6 of and Appendix 9 to the final methodology document are relevant for present purposes. In Chapter 6 under the heading "Key Messages", Ofwat referred to the need for water companies: to deliver "step changes" in efficiency; to deliver "resilient services"; to make and implement long-term plans; to make "fast progress towards government targets and deliver a transformative change in performance levels"; to develop "price control deliverables" to act as measures of successful performance; and to provide best value.

10. Appendix 9 contained further detail of the approach that would be taken when assessing applications from water companies for expenditure allowances. This referred to five principles: (1) efficiency "so that customers do not pay more than they need to"; (2) sufficient funding to ensure resilience and "maintain good asset health"; (3) the need to provide an improved service; (4) the need for efficient long-term investment; and (5) that any proposals for enhancement expenditure should ensure best value, taking account of "wider environmental and social benefits, costs, risk and affordability of customers' bills."

11. One theme running through the entire document, was the notion that customers should "not pay twice". For example, this point was made in the context of the need to ensure that enhancement investment was efficient. In the section on resilience, it was stated that the customers should not "pay twice for mains renewals previously funded". When considering the improved performance principle, it was stated "we do not want to risk compensating individual companies for poor performance through customers paying twice for performance improvements". The same point also occurs in the sections on the need for efficient long-term investment and best value.

12. The final methodology statement also included specific reference to storm overflows in the context of the need to set long-term targets, the need to deliver those targets effectively and the requirement to meet government targets:

> "The impact of storm overflows on our rivers is not acceptable. We expect all companies to reduce their use of storm overflows and where appropriate go beyond an annual average of 20 spills per overflow from 2025 onwards without additional expenditure allowances. We will provide extra funding to reduce harm from storm overflows, where government targets demonstrably go beyond current legal requirements."

13. These final words proved prescient. In September 2023, the Department for Environment, Food and Rural Affairs published its "Storm Overflows Discharge Reduction Plan". This set new storm overflow targets for water companies. The Discharge Reduction Plan document included the following:

> "The government and regulators have been clear to water companies that the current use of storm overflows is unacceptable. In the Environment Act 2021, the government placed a legally binding duty on water companies to progressively reduce the adverse impacts of discharges from storm overflows. This is in addition to the legal duties on water companies under the Urban Wastewater Treatment Regulations 1994, and under the Water Industry Act 1991 to effectually drain their areas.
>
> Work to reduce sewage discharges from storm overflows has already started. By 2025, water companies will have reduced storm overflow discharges from 2020 levels by around 25%.

> In this Plan, we are setting new targets which will revolutionise our sewer system and generate the most significant investment and delivery programme ever undertaken by water companies to protect people and the environment:
>
> • By 2035, water companies will have: improved all storm overflows discharging near every designated bathing water; and improved 75% of storm overflows discharging into or near 'high priority sites' (as defined in Annex 1)
>
> • By 2045, water companies will have improved all remaining storm overflows discharging into or near 'high priority sites'
>
> • By 2050, no storm overflows will be permitted to operate outside of unusually heavy rainfall or to cause any adverse ecological harm
>
> In addition to these specific targets, the Plan also sets out our wider expectations for the water industry. We expect water companies to ensure their infrastructure keeps pace with increasing external pressures, such as urban growth and climate change, without these pressures leading to greater numbers of discharges."

14. The Discharge Reduction Plan noted that certain water companies (including United Utilities), by reason of the infrastructure they managed, accounted for a disproportionate number of storm overflow events. This meant that the burden arising from the need to meet the new targets would not fall evenly across the water companies. The plan further stated that Ofwat would need to work with water companies to incentivise them appropriately to meet the new requirements.

15. Ofwat published its final decisions on the PR24 process in December 2024. Several decision documents were published: some were generic decisions; others were decisions specific to applications made by one or other of the water companies. So far as concerned storm overflows, one of the generic decision documents ("Delivering Outcomes for Customers and the Environment") stated that while the performance commitment level was to be set company by company, English water companies would be required to achieve a minimum "… 5% stretch spill reduction from base expenditure beyond the 20 average spills level expected to be reached by 2025".

16. Expenditure Allowances were considered in another of the decision documents ("PR24 Final Determination: Expenditure Allowances"). Overall, Ofwat authorised expenditure allowances of up to £104 billion, split approximately 60-40 between base expenditure and enhancement expenditure. For present purposes, the relevant part of this document is the part concerning enhancement expenditure for storm overflows:

> "**3.3.2 Storm overflows**

The impact of spills from storm overflows on our rivers is not acceptable. There is a need to significantly improve river and bathing water quality by reducing spills and ecological harm from storm overflows.

Storm overflow improvements are the largest area of the WINEP/NEP, accounting for around £12 billion of proposed expenditure. Most of this expenditure is to reduce the impacts of spills from storm overflows but it also includes expenditure for continuous water quality monitors and event duration monitors. This enhancement investment will address spills at 2,884 overflows and combined with our expected improvements from base expenditure will lead to a reduction in spills of 176,590 per year over the next five years.

For PR24, storm overflow improvements in England are largely driven by new requirements introduced by the Environment Act 2021, in particular the requirement for Defra to have a plan to reduce the number and adverse impact of discharges from storm overflows of companies in England. Defra's Storm Overflows Discharge Reduction Plan sets several targets for water companies, including to only discharge from a storm overflow where they can demonstrate that there is no local adverse ecological impact. This target must be achieved for at least 75% of storm overflows discharging into or near 'high priority sites', and all designated bathing waters by 2035, for 100% of storm overflows discharging into or near 'high priority sites' by 2045, and for all remaining storm overflows sites by 2050. The Plan includes a further target that storm overflows must not discharge above an average of ten rainfall events per year by 2050. All storm overflows are also required to have screening controls that avoid pollution by limiting the discharge of persistent inorganic material and of organic solids. Investment to meet these targets is included within the WINEP.

These targets are in addition to (and in many cases overlapping with) the existing legal requirements that apply to all companies set out in the Urban Waste Water Treatment Regulations (England and Wales) 1994, The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 (WFDR) and requirements related to Bathing Waters and Shellfish Waters.

…

As set out in our PR24 methodology we expect all companies to reduce their use of storm overflows and, where appropriate, reduce spills below an annual average of 20 spills per overflow a year from 2025 onwards, without additional expenditure allowances. We stated that we would provide extra funding to

> reduce harm from storm overflows where government targets demonstrably go beyond current permit requirements. This protects customers from paying twice for companies to comply with their existing permit obligations."

The final part of the passage quoted is significant as it repeats the approach Ofwat took to give effect to its policy that the water companies' customers should not pay twice.

17. Further details of the approach Ofwat had decided to take to ensure customers should not pay twice for the provision of storm overflows was set out in another decision document, the Price Control Deliverables Appendix. This is the key document for the purposes of the Claimant's claim:

> "**4.2.3 Our assessment and reasons**
>
> **Need for PCD**
>
> We are setting enhancement allowances to support storm overflow investments required to achieve a target spill frequency. For most storm overflow improvements under the Storm Overflows Discharge Reduction Plan (SODRP) the target is 10 spills. Storm overflow investments typically involve adding storage capacity in the network and at sewage treatment works ["STW"]. We will apply a PCD for all wastewater companies for PR24 storm overflows enhancement schemes.
>
> ...
>
> **Flow to full treatment**
>
> As set out in the PR24 final determinations: Enhancement cost modelling appendix (section 3), we use scheme level econometric cost models to assess flow to full treatment (FFT) solutions. FFT schemes have different characteristics compared to storage schemes as they represent additional treatment capacity at STWs. They reduce storm overflows spills as following the capacity increase, the STW can treat higher sewage flows before discharging to the environment that might otherwise spill as untreated sewage.
>
> We assess costs of FFT solutions through a standalone scheme level econometric FFT model. We use the increase in litres per second (l/s) as our key cost driver. This PCD holds companies to delivering the schemes and capacity increase with allowances set using these econometric models and deep dives. To implement the approach set out in section 4, we propose to track delivery of schemes and litres per second increase.
>
> Engineering rationale suggests that the capacity increase is the key driver of FFT enhancement expenditure. The driver captures

the additional hydraulic capacity added at the STW to avoid sewage spills to the environment either through additional treatment capacity or the ability to drain down larger storm tanks in between storm events. All FFT funding provided through the enhancement allowance is for enhancing the functioning of the asset beyond the level set out it its environmental permit, or beyond that which could be achieved through maintenance. There is no scope for using the enhancement funding for regaining compliance with environmental permits. Ensuring compliance with existing permits is funded through base expenditure only.

…

Other conditions

The allowance is conditional on the company demonstrating to Ofwat that all of the named storm overflows have undergone further investigation to determine the root cause of spills and to identify the best value solutions required to address them.

The allowance is conditional on the company evidencing to our satisfaction that all funding is for enhancing the functioning of the asset beyond permit compliance. This includes demonstrating that: the company is operating the assets in compliance with its permits, the funding is for enhancing functioning beyond the level which could be achieved through maintenance, and relevant outcomes should not have been already delivered through funding under past enhancement schemes. This test for "compliance" is for the purposes of the price control deliverable only. Whether a company is actually compliant or not with the conditions in its environmental discharge permits is a matter for the Environment Agency, not Ofwat.

Similarly, this test should not be read as in any way indicating Ofwat's views on the compliance standards required by section 94 of the Water Industry Act 1991 as supplemented by the provisions of Regulation 4 of the Urban Waste Water Treatment (England and Wales) Regulations 1994 (which Ofwat and the Secretary of State enforce). The evidence must be aligned to the permit requirements, and include, but may not be limited to, hydraulic simulation modelling of the asset operation pre- and post-completion of the enhancement scheme, including the downstream network to the point of hydraulic discontinuity, and an explanation of the methodology and assumptions underpinning both sets of modelling. For pumping stations, monitoring of pass forward flow and / or pump drop tests can be used. If there is currently no permit in place, then the company should evaluate the enhancement scheme on the basis of an

> assumed set of permit conditions that may typically be expected (e.g. the pass forward flow being set using formula A). It should provide the reasoning underpinning these assumptions."
>
> [Emphasis added]

(3) The Claimant's Case

18. The Claimant's case falls into two parts. The first part is that there is an inconsistency between the formulation of the price control deliverable for enhancement funding for storm overflows and Ofwat's policy that customers should not pay twice. As set out in the passage above, one condition to be met is that "all funding is for enhancing the function of the asset beyond permit compliance". For this purpose an asset could be, for example, a sewage treatment plant, and "permit compliance" is a reference to such conditions as have been imposed by the Environment Agency when it granted a permit to allow water to be discharged from the treatment plant into (again, for example) a river or the sea, together with any other requirements arising under the general law.

19. The Claimant contends that Ofwat has acted inconsistently with its policy that customers should not pay twice, by stating that this condition could be met by "hydraulic simulation modelling of the asset operation pre- and post-completion of the enhancement scheme" (i.e., the words underlined in the passage quoted above). The Claimant's case is that regardless of any modelling, compliance with the policy against double-payment should also require proof that in practice the asset had operated in accordance with any/all conditions in the relevant discharge permit and all further requirements under the general law, before the enhancement work was undertaken. Absent this additional requirement, the Claimant contends that because of the water companies' well-known previous failures to comply with statutory obligations, a risk approaching a certainty that customers will pay twice inevitably exists. In this regard the Claimant points to evidence that water companies had, so far as concerns storm overflows, been in breach of obligations under regulation 4 of the Urban Waste Water Treatment (England and Wales) Regulations 1994 concerning discharge of waste water from sewage collecting systems and treatment plants.

20. The second part of the Claimant's case concerns what are described as "clawback" provisions and again, the focus is on those referred to in the part of the Price Control Deliverables Appendix that concerns storm overflows. In substance, two matters are referred to in that document. The first is the need to ensure that any expenditure incurred meets Ofwat's best value requirement:

> "… The company must deliver a best value solution to meet all investment drivers and provide detailed evidence to show how the company has assured itself that the solution chosen is best value, including but not limited to evidence that the company assessed the compliance status of the asset in advance and evaluated options on the basis of that assessment. Insufficient evidence may be grounds for clawback."

The second is the need to ensure that funding obtained through enhancement allowances is not spent on matters that ought to be funded from base allowances:

> "Where an element of a scheme is to address either maintenance or regain compliance with existing environmental permits then the company should proportionally allocate cost between base and enhancement and explain that apportionment, as allowances will only be made for those elements considered enhancement expenditure, with any residual funds clawed back. Where flow to full treatment schemes are to be delivered, any funding to regain compliance, or overlap with growth at sewage treatment works schemes, needs to similarly be apportioned between base and enhancement. Where these schemes have been apportioned, the company must explain how the apportionment has been calculated and applied."

21. The Claimant's general submission is that the clawback provision is insufficiently formulated to show that it will operate to give effect to the principle that customers should not be charged twice. In particular, the description of the clawback does not refer to any requirement that enhancement allowance funds should not to be used to fund work required to meet present permit conditions and/or requirements arising under the general law, and that any such expenditure will be within the scope of the clawback.

22. However, it is unnecessary to explain this ground of challenge in any further detail. During the hearing it became apparent that any complaint about the clawback arrangements was premature. The arrangements referred to as "clawback" arrangements will not fall to be applied until the end of the 2025-2030 period; most will be applied in the final year of that period. In substance these provisions are not so much clawback provisions as ones that permit Ofwat to adjust any price control specified for the 2025 – 2030 period in the absence of evidence that promised enhancements have (or by the end of the 2030 period will) be provided. Be that as it may, it is clear from the decision documents that although the principle of clawback was part of the decisions taken by Ofwat in December 2024, the full details of the arrangements have yet to be set. The arrangements that will apply, including those concerning the storm overflow price control deliverable, have been the subject of a further consultation that opened in September 2025. The rules that will determine whether any clawback should occur have yet to be set.

23. All this being so, the Claimant was content not to pursue Ground 2 in these proceedings, and instead to await any decision taken as a result of the September 2025 consultation which sets out the detail of the way in which Ofwat will seek to recover enhancement allowance spending that is inconsistent with requirements set out in any relevant price control deliverable. For the same reason, it is unnecessary to reach any decision on the application made by the Claimant on the first day of the hearing to amend its Statement of Facts and Grounds. That proposed amendment addressed the possibility that Ground 2 of the claim, as originally pleaded, was premature. Since the Claimant is content to await Ofwat's future decision on the final details of the clawback arrangements, that proposed amendment falls away.

B. Decision

24. Ofwat accepts that for the purposes of its PR24 decisions it adopted, as a general approach, a policy that customers should not pay twice. In his evidence Mr Walters summarised the approach as one to ensure:

> "… where customers have already paid for companies to provide certain services (i.e. to attain certain permit levels) they should not have to pay again by way of the prices charged under the PR24 price control in order for companies to regain compliance with their environmental permits."

Thus, and for the purposes of its approach to applications for enhancement expenditure allowances, Ofwat's objective was to permit enhancement expenditure allowances to enable water companies to meet, for example, any new legal requirements, but it did not want such allowances to raise money which was then used to meet the cost of remedial work arising from existing non-compliance.

25. I accept as a general proposition that having set a policy objective for itself, it would be unlawful for Ofwat to act contrary to that policy without good reason. However, it is Ofwat's case that its decision on the price control deliverable for storm overflows was entirely consistent with its policy that customers should not pay twice. Since this is so, the question that arises is how the court should assess whether the decision is consistent with the policy. This claim is a claim for judicial review; the only question for the court is whether, applying well-established public law principles, Ofwat has acted unlawfully. The question for the court can only be whether Ofwat's conclusion was not one reasonably open to it. In context, and while it is possible that there may be clear-cut examples at either end of a spectrum, applying the "don't pay twice" principle is not a hard-edged matter. In most cases, and the present is such a case, the relevant question should be whether there was a sufficient logical basis for the conclusion that Ofwat reached.

26. The Claimant's submission tacitly accepts this approach since it seeks to identify a clear-cut error in Ofwat's decision, namely the failure to draw the line between base expenditure and enhancement expenditure by reference to whether the asset served by a storm overflow was compliant with all conditions stated in the relevant discharge permit issued by the Environment Agency and any/all other requirements of the general law. Based on this, the Claimant contends that Ofwat's error was to consider only modelling data to the exclusion of actual performance, an omission which, the submission runs, cannot stand with the "don't pay twice" policy.

27. Ofwat's response to the Claimant's case on Ground 1 is set out in Mr Walters' evidence. The two material matters are as follows. The first concerns the significance of whether existing assets in the sewerage system operate consistently with the relevant Environment Agency permit for the purposes of deciding whether money spent in relation to the asset should be classified as base expenditure or enhancement expenditure. Permit compliance is not synonymous with a spill-free sewerage system because most permits have an "overflow setting" that specifies the forward flow rate that must be exceeded before a spill can be allowed to occur. Conversely if a spill does

occur it may not be evidence that the asset lacks appropriate capacity. It might instead be evidence only of a short-term problem such as the failure of a piece of equipment either within that asset or within another, connected, asset in the sewerage system. In any event, permit compliance will always be a matter apart from whether existing assets should be upgraded to meet new requirements arising from new legal standards.

28. The second matter is his explanation for Ofwat's resort to hydraulic modelling. His overarching point is that there is no clear distinction between "abstract" hydraulic modelling and "real-world data". Hydraulic modelling is a well-established process that includes consideration of actual performance data. As described in Mr Walters' evidence, the modelling process includes the following. At the beginning, data concerning the performance of the existing asset is collected. This information forms a premise for the model. The model created from the data collected is then verified "… by simulating actual recorded storms through the model and assessing predicted flow and depth against recorded flow and depth at various locations". This results in a model referred to as the "as is" model. Next, the "as is" model is modified to create a "basis of design" model by removing the effect of any temporary operational matters such as events requiring repairs. The basis of design model is then used as the premise to decide what hydraulic improvements are required. It is important to note that by this stage temporary impairments such as might require routine maintenance, have been disregarded so they do not feed into the decision on what must be funded by enhancement expenditure. The assumption is that all steps necessary to remediate such matters will be met from the base expenditure.

29. I accept Mr Walters' evidence on both these matters. Taken together they provide a sufficient basis for the approach Ofwat has taken to distinguish between base and enhancement expenditure, consistent with its "don't pay twice" policy. The second matter is, for this purpose, particularly significant. The consequence of starting from a "basis of design" model rather than an "as is" model is that consideration of permit compliance data becomes redundant because the assumption that an asset operates in accordance with the requirements of its permit is inherent in the "basis of design" model. On this point, the worked example at paragraph 48 of Mr Walters' witness statement is compelling.

30. Mr Walters' evidence goes on to refer to further steps taken by Ofwat during the PR24 process to seek to ensure applications for enhancement expenditure funding were not used to meet the cost of compliance with existing permit conditions: (a) by requiring relevant water companies to provide evidence to that effect as part of the application process; (b) by requiring companies to ensure that all modelling exercises conform to the standards in the Code of Practice prescribed by the Chartered Institute of Water and Environment Management; and (c) by requiring independent verification that the requirements in the storm overflow price control deliverable were met.

31. Drawing matters together it is clear that the statement made in the Price Control Deliverables Appendix that evidence of compliance "must … include, but may not be limited to, hydraulic simulation modelling of the asset operation pre and post completion of the enhancement scheme", was an approach that was legally permissible. There is a clear and sufficient logical connection between the requirement for proof in that form and Ofwat's stated objective that customers should not be required to pay twice.

C. Disposal

32. For the reasons above the Claimant's application for judicial review fails and is dismissed.