



**IN THE MAGISTRATES' COURT SITTING AT PLYMOUTH**

**District Judge (Magistrates' Court) Matson**

**BETWEEN**

**The Environment Agency**

**V**

**South West Water**

**SENTENCING REMARKS**

**Hearing date: 29 September 2026**

1. South West Water ("SWW") have pleaded guilty to a total of 24 charges, relating to conducting activity in contravention of an environmental permit and one offence of failing to comply with an environmental permit. The case relates to a significant number of illegal sewage discharges from seven different sites, Nanstallon, Harlyn, Holywell, Halvarras, Hooe Lake, Polperro and Bodmin Road, Plymouth. The majority of the incidents came to light after SWW produced their Event Duration Monitoring Data ("EDM") over the relevant periods to the EA.

2. In relation to the offending that relates to Holywell, namely charges 13 to 18, I have agreed that those matters should be adjourned and therefore do not include them in my sentence today. I have considered the issue of totality in agreeing to that adjournment and do not find that dealing with all other matters today would make a difference to the sentence on the offences I am dealing with today and, if the Holywell charges proceed, to the sentence for those matters. I have therefore adjourned the charges and I will not sentence those Holywell matters today. The reason for the adjournment is SWW applied for a variation of the permit at Holywell. The EA have refused that application and SWW are appealing against that decision. Both parties agree that Holywell should be adjourned and I have accepted that to be the case.
3. The parties have submitted that this is a matter suitable to be sentenced in the Magistrates' Court and that my sentencing powers are sufficient. I accept that is the case. The parties have also submitted that, despite there being disagreement in terms of the culpability and harm of SWW, it is matter which can be dealt with on submissions. There is an issue as to whether I have in fact conducted a Newton Hearing in this case. This is a matter I discuss in more detail below.
4. I have fully considered the evidence, including the relevant statements, expert reports and exhibits. I set out that evidence below where relevant. I have taken into account the issues in dispute that relate to each site. I make my findings in relation to what I view to be the most significant issues which impact on my sentence.

### **Nanstallon**

5. Charges 1 to 6 relate to Nanstallon waste water treatment works ("WWTW").
6. Nanstallon WWTW and Scarlett's Well sewage treatment works ("STW") treat wastewater from Bodmin and the surrounding villages. There is a splitter chamber at the Scarlett's Well inlet which sends flow to Nanstallon (which also has flows from other sources) and when flows at Nanstallon exceed its volume, flow enters the storm storage and when that is full, settled storm sewage overflows to the River Camel.
7. The EA set out that excess flows from Scarlett's Well STW were to be diverted to Nanstallon if capacity were exceeded. The receiving waters are the River Camel which is a special area of conservation (with Bullhead, Otter and Atlantic Salmon) and has a

shellfish water designation (14km downstream). Atlantic Salmon and Bullhead are sensitive to nutrient enrichment and eutrophication (most notably elevated soluble reactive Phosphorus) can impact on oxygen levels and spawning.

8. The EA states that the permit for Nanstallon (NRA SW 6959 (CB01), “intended temporary”), which was modified on 31 March 2010 included UV disinfection requirements because of the shellfisheries. A permit condition was that there should be no more than 10 significant spills per annum on average over a 10 year period. “Spills” are defined as >50m<sup>3</sup>/day within any 12 hour period or less (with graduated counting for longer durations) and that overflow must be constructed and operated to design specifications.
9. The EA submits that SWW overall permitted a background of non-compliance, providing misleading data, failed to meet technical standards and that there was routine diversion in place from Scarlett’s Well to Nanstallon and this was standard practice in relation to flows > 15 l/s. They state there was storm spill frequency above permitted levels, operational departures from design and that predicted flows were based on incorrect flow to full treatment (“FFT”) and therefore Nanstallon was overloaded by diverted flows and there was a failure to remedy known issues from at least 2011 onwards.
10. In 2012, SWW commissioned Hyder Consulting Ltd who carried out a report. The purpose of the commission was to ensure SWW met their obligations under their AMP5 (asset management plan) programme to satisfy the EA’s requirements in respect of effluent discharges from the identified intermittent discharges to the River Camel shellfish waters. This report followed what should have been a temporary variation of the permit that required SWW to construct and operate the STW such that overflow from the storm tank should be no more than 10 spills per annum on average over a ten year period and there was an acknowledgement that the existing model was old and not adequate for the assessment of the spill frequency and volumes. The Hyder report considered both Nanstallon WWTW and Scarlett’s Well STW due to the relationship between the two. Both sites were required to implement microbial reduction in the form of UV disinfection treatment and to reduce the frequency of storm spills to no more than 10 per annum in ten years on average.
11. The modelling for the Hyder report was based upon the assumed FFT at each sewage works being 96 l/s at Nanstallon WWTW and 47 l/s at Scarlett’s Well STW. It is the

EA's case that Scarlett's Well STW was incapable of operating at 47 l/s. The Hyder report also recommended a new additional 2,000m<sup>3</sup> storm storage tank be provided at Nanstallon WWTW together with works to reduce infiltration (extraneous water entering the sewerage system).

12. It is the EA's case that, at the very least, it is a remarkable coincidence that the Hyder report contained uncorrected information, namely that Scarlett's Well was capable of treating 47 l/s, when in fact it was unable to maintain consistent treatment of sewage above 15 l/s and therefore that the design/recommendation was in fact based on a fictional treatment capacity, making the model appear compliant where realistic capacity would not.
13. Nanstallon's permit was varied on 31 March 2010 which allowed UV disinfected treated sewage to be discharged from 31 March 2013, the intent of this being to reduce E-coli in sensitive waters. Scarlett's Well STW operates under identical provisions of treatment and discharge as Nanstallon. From 31 March 2013, Scarlett's Well STW was no longer authorised for storm discharges. Since then, when treatment capacity at Scarlett's Well is exceeded, excess flows are diverted to Nanstallon.
14. SWW supplied discharge permitting checklists on 19 November 2022 for the "10 spill scheme" envisaged under the permit on 31 March 2010. The document set out the actual site setting was for final effluent FFT of 47 l/s (but as set out above, the EA submit the site was in fact operating under a general restricted flow of 15 l/s since January 2011 and therefore the FFT and likely capacity at Scarlett's Well had been substantially overstated). The EA state that AMP5 works were signed off by them but that was based on the incorrect FFT information they had been provided with (and following a site visit). The EA point out that Guy Doble in a response to PACE questions of interview on 11 December 2020, accepted the Scarlett's Well biological trickling filters media was a smooth flinty gravel that would not meet SWW's technical standards. He also accepted that the hydraulic capacity of Scarlett's Well was in the region of 15 l/s, less than 1/3 of the FFT capacity the Hyder report was based upon and therefore the calculations and assumptions in the Hyder report were undermined by this inaccuracy.
15. It is accepted that within the first 2 years of the 10 year period, there were 100 spills recorded, which exceeded the 10 year allowance. By the end of the first 7 years, there had been 336 spills recorded (as shown as reduced), 264 amounting to 5,691 hours

(equating to 237 24-hour periods) which significantly exceeded the 10 per-annum over 10 years and therefore SWW did not operate under the terms of its permit.

16. The EA set out that the records reveal in around 90% of the time between 2016 and 2020, flows greater than 15 l/s were diverted and that for some periods (for example 24 November 2016 to 9 February 2017) the entire flow for Scarlett's Well was diverted for considerable periods of time. The EA also state that, despite it being readily achievable, SWW did not record spill numbers at Nanstallon, stating frequency was not a direct permit condition. They state the consequence of the flows above 15 l/s at Scarlett's Well meant that Nanstallon was routinely having to treat significantly more sewage than the Hyder report had envisioned. They state there is an obvious and inevitable correlation between the failure to implement the system designed by Hyder, SWW's own consultants, and the subsequent inability of the Nanstallon WWTW to deal with the additional flow. The EA set out that Mr Hillson, in his PACE response dated 29<sup>th</sup> March 2021, accepted this stating 'therefore, it follows that a lower forward flow to treatment undermines the Hyder calculations and assumptions.'
17. The EA also submit that the inability to manage flows greater than 15 l/s would have been known to SWW staff, Mr Doble said the change took place in 2011 and the EA state that it was not a transient operational reason as put forward by SWW that formed the basis of the Hyder assessment and that no work had been done to replace the filter media at Scarlett's Well as at 11 December 2020.
18. The information regarding the number of spills is based upon calculations supplied by SWW from its Event Duration Monitoring ('EDM') data. Modifications were made following a variation of the permit in 2013 and the additional 2,000m<sup>3</sup> storage tank and the stopping up of Scarlett's Well STW storm discharge were made. The EA submit that SWW should have been aware that the implemented scheme was not providing the necessary outcomes (despite no EDM being installed on the new tank in 2018). The EA state there were more than 100 settled storm sewage discharges in the first two years (breaching the permit conditions) and that SWW either did no reviews of the scheme's effectiveness, or that they were aware of the spills and took no action.
19. The EA state that there has been no change to discharge limits for water quality parameters since 1992 and there must have been knowledge by SWW of the insufficient filter capacity since then and, as set out above, they submit by the admissions made, it is clear that it was known that there was the operational FFT limit

of 15 l/s at the time of the Hyder report and the permit variation in 2013 which is evident from the poor performance of Scarlett's Well STW. The EA submit that there has been an avoidance of significant capital expenditure by not addressing the known issues in the biological treatment process at Scarlett's Well and that the Hyder report had identified that the scheme was old and inadequate for the assessment of the spill frequency impacting on shellfish waters and the EA submit this failure is directly linked to under investment and underspend generally.

20. The EA submit the additional issues relating to Nanstallon are in summary:

- (i) Out of date plan of the WWTW and WWT Process Document (for example the new storage tank was not included and it did not show the presence or location of the UV light treatment).
- (ii) The EDM at Nanstallon was not re-configured after the additional storage tank was installed.
- (iii) There was false/misleading responses regarding the EDM by Guy Doble under caution on 21 January 2022.
- (iv) There was a permit breach by failure to install EDM.
- (v) The tanks were open and it would have been clear to the operations team that there was regular spilling taking place.
- (vi) There were issues with the environmental and quality management systems, there being no evidence of clearly defined and fully documented management systems following the permit variation which would have identified failings.
- (vii) The factors set out at paragraph 3.9.5 of the prosecution case summary (which I will not set out in detail here but have considered) including the failure to identify failure of the system in operation for some 7 years.
- (viii) Lack of basic document control to show completed and inaccuracy in completed documentation.
- (ix) The permit variation of 31 March 2010 was temporary and SWW knew it had to operate Scarlett's Well at reduced capacity from 2011 and the AMP5 'sign off' was on the incorrect basis that it could achieve 47 l/s which it could not. There were specific reasons why the permit was not varied further from a temporary one, particularly concerns by the EA regarding the number of spills in 2018.

21. The EA submit that the culpability of SWW is deliberate/reckless. They submit the plant was deliberately operated otherwise in accordance with its permit that required it to remain fully operational and that changes were deliberately not notified to the EA. The EA submit there was a deliberate decision to operated outside the permit and below treatment capacity that the Hyder report stated was necessary to achieve compliance with it. The prosecution also submit this led directly to the offences and that having changed the operation of the STW outside the terms of the permit, there was no action taken to address the failings and that the first 100 spills took place within the first two years of operation of the site and that those, and the additional 236 spills would have been notified by SWW though alarm systems and that the EDM data would also have notified them.
22. In relation to harm, the EA submit that harm is category 2. They state that there was a significant interference with the regulatory regime, given there were hundreds of illegal spills which occurred over a significant period. I have considered the statement of Naomi Beth-Dixon in relation to this issue but will not repeat her evidence here.
23. SWW plead guilty to the charges relating to Nanstallon on a basis. I have considered the basis of plea. They plead guilty to the charges at Nanstallon on the basis that they breached condition 4.4.1 b of the permit, not 4.4.1 a. They submit, because the EA do not seek a Newton Hearing on this issue, then the court must sentence on this basis, them breaching condition 4.4.1(b) of the permit, being that SWW failed to operate the storm overflow in accordance with the design, not a failure to ensue the tank was designed to ensure there would be no more than 10 spills per annum on average over a ten year period.
24. In terms of the design, SWW submit that the condition was to design and build storm apparatus and model that there should be no more than 10 spills a year averaged over a ten year period and the conditions specified the storm apparatus must be constructed in accordance with the design (that apparatus being modelled on a FFT of 47 l/s at Scarlett's Well STW). SWW's plea is on the basis that when the storm apparatus at Nanstallon was in use and flows were below 47 l/s at Scarlett's Well, then the storm apparatus was not operated in accordance with the design. They do not accept that there was a storm frequency threshold permit, as they submit such was only introduced by the EA in January 2026. SWW continue that there was no minimum FFT in storm conditions and there was nothing in the permit to indicate such.

25. In terms of culpability, SWW do not accept that the offending in relation to Nanstallon is either deliberate or reckless. They accept they failed to operate the storm tank overflow at Nanstallon in accordance with the design because Hyder's design assumed they would provide an additional 2,000m<sup>3</sup> of storage, the FFT in a storm event would be 96 l/s, there would be infiltration reduction of 21 l/s and the usual FFT at Scarlett's Well would be 21 l/s but increased to 47 l/s in a storm event. SWW accept the infiltration reduction works were not completed until 2014 (benefits of it not being realised until 2015) and they submit that the first three conditions set out above were complied with. There was a reduction in FFT at Scarlett's Well to 38 l/s (less than assumed by Hyder) and further in 2016 (approximately 25 l/s) to address a further nitrification issue.
26. SWW continue that their expert report of Hugh Corrigan's (paragraph 6.11) explains the reduction in FFT is likely to have had no more than a small impact on the spill frequency and would not account for the frequency of the spills. SWW accepts that they did not take steps to assess any consequential impact, but they do not accept this was a conscious/deliberate decision not to assess the impact and submit that even if they had done so, the issue would not have been identified because the EDM was incorrectly configured. They submit because of this incorrect configuration they did not know until after December 2018 that the overflow was operating frequently which Hugh Corrigan states was a "genuine and unpredictable error in the circumstances and unlikely to have been discovered much earlier than occurred".
27. SWW enters their plea on the basis that the number of spills were primarily by the limitations in the modelling used to estimate the required storage volume, rather than by SWW's operation of Scarlett's Well and that temporarily reducing the FFT to Scarlett's Well would not have had a significant impact on the frequency of spills at Nanstallon. SWW do accept that they should have foreseen some of the impact on spill numbers and that it would have been reasonable to assess the actual impact of any significant changes to FFT levels but that the unidentified error in the EDM data meant the impact would still have likely gone undetected. They do accept the error could reasonably have been detected earlier than it was (I note the evidence of Oliver McFarlane sets out it was first identified in June 2018) but they say not much earlier because the additional stormwater storage had been intended to reduce the number of spills to an average of 10 per year over a 10 year period with fluctuations being inevitable. They do accept it could have been identified in early 2017 (as per the evidence of Mr Corrigan at paragraph 6.22 of his report).

28. In relation to harm, SWW submit that the prosecution have produced no evidence of environmental harm or impact and no evidence has been produced by them that there has been significant interference with the regulatory regime. They refer me to the evidence of Mike Matthews. They state that he undertook a wider review of the water quality, effluent quality and ecological data before, during and after a period of breach and concluded there was no evidence of negative impact and that the data shows there has been an improvement in the water quality parameters. They submit Mr Matthews concludes there is no evidence of actual impact caused by the settled storm sewage discharges either on the River's ability to achieve a favourable condition or on its water quality or ecology and he concludes that the data does not support that there has been an observable impact caused by the spills and the EA base their submissions on the assumption that if the set 10 spills per annum are exceeded it must result in a negative impact on the River and shellfish waters.
29. SWW therefore enters its plea on the basis that the cases falls within harm category 3 within the SCG's. They do not accept there has been any long term identifiable impact but accept that there would have been an adverse impact on water quality at the time of the discharges and immediately afterwards but submit such impact would have been highly localised and short lived with minor impact.

### **Findings on Nanstallon**

30. I accept the submission of the defence that it is for the prosecution to prove their case. It is not for the defence to disprove it or prove their case and that it is not for the court to effectively prefer one expert over another. Having said that, that does not mean that because there is defence expert evidence which challenges the prosecution case, it automatically flows that evidence must be taken as read and that there must be some doubt about the prosecution submissions regarding culpability and harm. I also find that if I do accept the evidence of an expert, that does not mean I must accept the entirety of their evidence on every site and issue, nor because I have found in previous cases that I have not accepted the prosecution expert's evidence I am bound to come to the same conclusions in this case. There are a number of complex issues relating to some of the sites where illegal discharges occurred, and the evidence differs in

relation to those sites. I therefore find it is possible to come to different conclusions on the expert evidence in relation to each site.

31. I also take into account that both parties have submitted there does not need to be a Newton Hearing in this case. It is, however, accepted by all that the differing submissions on culpability and harm are highly likely to make a material difference to sentence. The EA and SWW have accepted that the issues can be determined on submissions alone and consideration by me of the written evidence to come to conclusions regarding culpability and harm. In order to come to conclusions on those issues I have had to consider the differing evidence/expert conclusions and make findings accordingly.

32. In relation to Nanstallon, I firstly consider the relevant permit conditions, namely:

*“4.4.1 a The overflow from the storm tank shall be designed to ensure that there shall be no more than 10 spills per annum on average over a ten year period.*

*A spill is defined as follows:*

*One or more overflow events of total volume greater than 50m<sup>3</sup>/d within a period of 12 hours or less will be considered to be one spill. One or more of such overflow events (extending over a period of greater than 12 hours up to 36 hours will be considered to be 2 spills). Each subsequent 24 hour duration of such overflow events counts as 1 additional spill.*

*b The overflow from the storm tank shall be constructed and operated in accordance with the design.*

*c At the request of the Agency, the Consent Holder shall provide calculations and evidence to confirm that the overflow from the storm tank is designed, constructed and operated in accordance with conditions.”*

33. As set out above, SWW have accepted by their BOP that they breached condition 4.4.1 b of the permit but do not accept they breached 4.4.1 a and they accept they failed to operate the storm overflow in accordance with the design. It is accepted by the EA that a Newton Hearing and findings on the evidence is not required in relation to whether 4.4.1 a was breached and therefore I accept that SWW must be sentenced on the

basis of its breach of 4.4.1 b (failing to operate the storm overflow in accordance with the design).

34. In relation to the issues in dispute between the parties regarding Nanstallon, I make the following findings:

35. I have considered the evidence of Andrea Poole, Simon Roe, Hugh Corrigan, Anthony Griffiths, Oliver McFarlane, Mike Matthews and the relevant exhibits. The evidence, particularly that of Andrea Poole and Hugh Corrigan, is very lengthy and I do not need to repeat it at this stage. I will consider the relevant evidence where necessary below. I have also taken into account and considered the some 14 issues in dispute in relation to Nanstallon.

36. When I consider the challenges made to the submissions regarding culpability in relation to Nanstallon, and the evidence in relation to it, I make the following findings:

- (i) In relation to the number of spills, I note that the spills were taken by Andrea Poole from SWW's own spill data. I accept there was originally some reference by Andrea Poole of some erroneous readings (as set out by Oliver McFarlane in his evidence). However, I accept that these were some 16 readings out of a data set of 105,000 and when that is compared to the huge amount of spill data that has been provided by SWW, it does represent a small number of spills (around 10) over short duration over the period 2016-2018.
- (ii) I note Mr McFarlane's discussions regarding 9 overrange readings from 2013-2015 and I note Ms Poole's conclusions that, when compared to SWW data, at most that would be 4 short duration spills. Therefore, she agrees that, whilst there are a small number of erroneous readings in the data, they are not statistically significant and do not alter her overall opinion. I accept that conclusion. I find that whilst there may be some small differences in the overall number of spills, these are not significant and the spills at Nanstallon during the period in question were clearly still into the hundreds. I accept that there were over 100 spills in the first two years of the permit (which I accept was before the dates in the charges). Whether there was a small difference in the number of spills, which were clearly into the hundreds over a significant period of time, does not make a material difference to my sentence. This was therefore (and indeed SWW accept that to be the case) a clear breach of the permit

conditions which occurred, on its acceptance, in relation to a breach of 4.4.1 b, failing to operate the storm tank in accordance with the design.

- (iii) In considering the issue of reduction in flow at Scarlett's Well, I have taken into account the evidence in relation to this, particularly that of Anthony Griffiths and the point of why this issue arose. There is no explanation by SWW as to why the original issue which arose in December 2010 (regarding the ammonia and nitrification process) was not recoverable from that point onwards, it does not follow that because there was an issue then, it should not have been addressed thereafter.
- (iv) I also note the 2019 Supply and Demand report that was put forward by SWW and the discussions in that and the recommendations (following the issues with alkalinity) and I accept there is no evidence before me that there was capital investment in relation to those recommendations.
- (v) The significant point for me is that, whatever the reasons for the flow being reduced at Scarlett's Well (and I accept there may have been many reasons for that), a flow reduction had been implemented and Hyder completed their design of the storm tanks before that reduction and thus based their design on incorrect flow rates.
- (vi) In terms of the design itself, I note SWW submit that the EA accepted the design by Hyder. I entirely accept that it is not for the EA to "vet" the suitability of equipment and that it is the defendant that has the responsibility for the design and to operate the plant in accordance with the permit and the design of the storm tanks was based on incorrect information. Having said that, as set out above, SWW do not accept that they breached the condition in relation to the design of the tank (4.4.1a) as opposed to its operation of it (4.4.1b) and, given my comments above in relation to no Newton Hearing on that issue, this is not a significant point for me.
- (vii) I have taken into account Hugh Corrigan's evidence in relation to the impact of flow reduction at Scarlett's Well and other potential causes. However, I have also noted the response by SWW to the PACE questions in March 2021 which set out, based on the then current design, the expected spills were 53 per annum. This being at a FFT at Scarlett's Well of 15 l/s, and is far in excess of

the 10 spills per annum on average over 10 years that were allowed under the permit conditions which I do not accept Mr Corrigan has addressed in his report. Whether or not there was an intention to replace the design condition, SWW clearly accepted in their response that the design would not meet the amount of spills “allowed” under the permit conditions and therefore would not be operated in accordance with the design (which, as I have said, was to be within no more than 10 spills pa over 10 years).

- (viii) I also note that Mr Corrigan appears to have made calculations of the impact of the reduction in flow at Scarlett’s Well using inferences from the Hyder modelling report, which were based on inaccurate information. I note that Mr Corrigan has set out that in his report that it would not have been reasonably foreseeable to SWW that temporarily reducing the FFT at Scarlett’s Well would have a significant long-term impact on the frequency of spills at Nanstallon and I accept that, in the short term, that would not have had such an impact. However, as pointed out by Andrea Poole, this was not a temporary short-term reduction, and it being reduced for the significant period of time it did, would clearly have had an impact. I also take into account that there was a “sign-off” document supplied to Ofwat in November 2012 setting out the FFT at Scarlett’s Well was 47 l/s when it was limited before that to 15 l/s.
- (ix) I have noted the response of 11 December 2020 to the PACE questions by Guy Doble. It was accepted on behalf of SWW that the diversion of flows increased the volumes received at Nanstallon and that the additional storm storage was utilised during wet weather conditions and thus there was an increased risk of spills when the additional storage had been utilised.
- (x) I accept the submissions of the EA that at best the scheme was implemented by SWW without conducting reviews as to the effectiveness of the scheme. In considering the standard of proof, being that the prosecution must of course make me sure of their case, I cannot be sure that, as the EA put it “at worst, that SWW were aware of the spill data and matters continued in any event”. It is of course a possibility, but that is not sufficient to make me sure of that latter observation by the EA.
- (xi) I find the fact that such a large amount of spills were not picked up on by SWW to be significant and incredibly concerning. I have taken into account the

evidence of Oliver McFarlane and Hugh Corrigan on this issue. I note Oliver McFarlane explains how SWW came to identify the error in the EDM setting and why it did not realise the discrepancy in the EDM existed, given during the relevant period SWW were still developing systems and best practices and EDM team resources and the reasons for the error in the data, namely when storm tank 2 was installed, the EDM remained as the design for tank 1 and not incorporated to take into account tank 2. I have also taken into account Hugh Corrigan's conclusions that in his view the reasons given by SWW are not unusual and reflect the maturity of EDM installation and testing practices at the time. I note his evidence that more rigorous standards were not introduced by the EA until 2023 and there being no requirement in relation to EDM installation and testing at Nanstallon and that he would expect SWW to prioritise resources at problem sites.

- (xii) I accept that SWW was "ahead of its time" in terms of EDM requirements and I have taken into account the issues over the requirements of EDM in shellfish waters at the time. I also accept that EDM was in the early stages of implementation and practices generally. Having said that, SWW installed EDM but that was then not correctly configured when storm 2 tank was installed. That was a clear issue. There is then the issue of continued monitoring. I note that Oliver McFarlane in his evidence states "the expansion of EDM allowed us to look more closely at trends that were surprising or puzzling and zero spills at Nanstallon was one of these trends and we decided in 2018 to investigate". The data showing zero spills is not complicated. The fact that Oliver McFarlane says that this data was a puzzling trend could and should have been identified earlier. As I have said, I accept this was the early stages of EDM but having installed it (as it transpired configured it incorrectly) there was clearly insufficient monitoring of the trends of that data. I also accept that a water company will prioritise its resources to sites that are problematic but, having installed EDM there should have been proper monitoring of the data and had there been it would have, as Mr McFarlane says, identified any puzzling trends such as here, but they did not. There was a failure to identify the issue with the system for a very significant period of time. Had they done so, this issue could have been identified much earlier.
- (xiii) I have taken into account the evidence of Hugh Corrigan on the issue of when SWW could reasonably have been able to identify the issue but not realistically

until 2017. I do not accept that to be the case. When one considers the evidence of Mr Corrigan at paragraph 2.22 of his report, what he actually says is “in my opinion even with such potent evidence as zero spills, when SWW further reduced the FFT in 2016, this ought to have resulted in a formal investigation which I would expect could be concluded no later than early 2017. I have seen no evidence of such early investigation. Accordingly, I find that by early 2017, SWW had failed to put into effect or enforce appropriate checks that it reasonably ought to have done.

- (xiv) Even if that were not the case, there is still a period of time from early 2017 to then December 2018 when this was not done and the defence’s own expert says it should have been. I accept there was a change in June 2018, but this was done on the papers with no attendance at site. It was only following attendance in December 2018 that there was then a realisation of the issue regarding the EDM on storm tank 2 and measures taken to rectify. However, as I have said, given what Mr McFarlane says that in June 2018 they were identifying puzzling trends, there were clearly numerous spills before any reduction in FFT in 2016 and proper monitoring and overview would have alerted to issues.
- (xv) I also note that despite Mr McFarlane saying SWW identified this issue of zero spills as a “puzzling trend” in 2018, there were still numerous spills outside the permit conditions that followed. It is also concerning that in June 2018 there was a reconfiguration on storm tank 2 (I note on the papers without any site visit and matters would and should have been visible to site operatives) and then it was not until 11 December 2018 that an accurate set point was put in place to detect spills for storm tank 2 (evidence of Oliver McFarlane). I do not accept for a moment, as put by Hugh Corrigan, that SWW not picking up on the issues was a “*genuine and acceptable error*”.
- (xvi) I have taken into account the evidence of Andrea Poole in relation to these concerns of identifying the issue. These were matters that I had considered an issue myself in any event and not a matter that I needed to be an expert to conclude was the case.
- (xvii) I have taken onto account the submissions of the EA that SWW deliberately concealed 2 years of offending, I do not accept that can be proved so that I am

sure. I have already discussed the evidence of Oliver McFarlane and Hugh Corrigan in relation to the reasons behind these issues. I am referred by the EA specifically to the response by Guy Doble to PACE questions of 21 January 2022 and the evidence of Andrea Poole in her addendum report on Nanstallon. Guy Doble stated in response to question (at paragraph 9) *“there were no maintenance scheduled tasks for EDM maintenance or annual verifications. Work orders are raised as required by the EDM team, following scrutiny of the data”*. This is not an admission that there was a deliberate concealment of the fact SWW had failed to correctly configure EDM data on the new tank. Similarly, when I consider the evidence of Andrea Poole on this point (paragraphs 75-81 of her addendum report as I am referred to by the EA on this issue) I do not accept that evidence supports the EA’s contention to the criminal standard of concealment of the incorrect configuration and I find the EA cannot prove this particular issue. Never the less, as set out above, I have grave concerns that the issues were not picked up earlier by SWW when they clearly should have been.

### **Culpability**

37. I must consider the culpability of SWW in relation to the factors set out in the Sentencing Council Guidelines for Organisations: Unauthorised or harmful deposit, treatment or disposal etc of waste/ Illegal discharges to air, land and water.
38. The prosecution submit that the culpability of SWW in relation to Nanstallon is deliberate/reckless. SWW submit the culpability amounts to negligent. I remind myself of what the SCG sets out in relation to each category:

#### **Deliberate**

*“Intentional breach of or flagrant disregard for the law by person(s) whose position of responsibility in the organisation is such that their acts/omissions can properly be attributed to the organisation;*

OR

*deliberate failure by organisation to put in place and to enforce such systems as could reasonably be expected in all the circumstances to avoid commission of the offence.”*

### **Reckless**

*“Actual foresight of, or wilful blindness to, risk of offending but risk nevertheless taken by person(s) whose position of responsibility in the organisation is such that their acts/ omissions can properly be attributed to the organisation;*

*OR*

*reckless failure by organisation to put in place and to enforce such systems as could reasonably be expected in all the circumstances to avoid commission of the offence.”*

### **Negligent**

*“Failure by the organisation as a whole to take reasonable care to put in place and enforce proper systems for avoiding commission of the offence.”*

39. Given my findings above, I do not accept it can be proved, so I am sure that there was an intentional or flagrant disregard for the law by persons in a position or responsibility whose acts can be attributed to the organisation as a whole nor that there was deliberate failure to put in place and enforce such systems as could reasonably be expected in the circumstances to avoid the commission of the offence.
40. I have taken into account that EDM was in the early stages and the requirement issues. However, there was clearly an improper configuration on storm tank 2, there was a significant delay in resolving the issue, even following concerns about the data being a “puzzling trend”, there was reconfiguration done on the papers and it was not until some 6 months after that that it was considered and rectified at site. Had proper monitoring taken place (even with it being early days of EDM) issues would have been raised much earlier. Instead, there were a very significant amount of spills that occurred over a long period of time and I have also noted that there were a significant number of spills that occurred after 2018 to 2020.
41. Whilst I have accepted that the Hyder report was predicated on the basis of the wrong FFT information provided to it by SWW, I do not accept it can be proved, so that I am sure, that this was a deliberate act on the part of SWW, nor that they deliberately concealed the failure of the EDM. Given my findings overall, I accept that the

prosecution cannot prove to the criminal standard that the offending in relation to Nanstallon was deliberate. However, their failings clearly go far beyond that of failing to take reasonable care to put in place and enforce proper systems. Despite, the fact that EDM was not a mandatory requirement in relation to shellfisheries waters at the time, there were a very significant number of illegal spills over a very long period of time which, with proper monitoring and attention by SWW could and should have been apparent and then be avoided. That did not happen. I also note the changes that the company has made since these incidents (which I will of course take into consideration in mitigation) which have put in place systems to avoid such incidents of pollution yet they were not even considered at the time and could no doubt have gone a significant way to preventing the continuation of these events.

42. In the circumstances, I find that there was a reckless failure by SWW to put in place and enforce such systems as could be reasonably expected in all the circumstances to avoid commission of the offence.

### **Harm**

43. In considering harm, the prosecution submit that harm is category 2, SWW submitting harm is category 3. I have taken into account the statement of Naomi-Beth Dixon and the report of Mike Matthews. I have noted Ms Dixon's evidence relating to the River Camel being a Site of Special Scientific Interest (SSSI) and a Special Area of Conservation (SAC). I have also taken into account her evidence regarding Biological Oxygen Demand (BOD) effluent which has been biologically treated. Untreated sewage has a higher BOD and that where BOD is high, oxygen availability for aquatic fauna (such as salmonids) is lower as it is being used by microorganisms in the decomposition of organic matter and that the discharge of untreated effluent into their habitat can negatively impact on the health and survival of these fish and therefore the conservation objectives of the SAC and SSSI. I note she has set out that the BOD target for unit 51 is 1.5mg/l-1 and that the most recent data analysed for the 2024 condition assessment of the River Camel Valley and Tributaries SSSI shows that the 3-year mean for BOD within unit 51 is 1.9mg/l-1, demonstrating that is failing its target.
44. I have also taken into account the evidence of Mike Matthews in relation to the issue of harm and that he has concluded there is no evidence of the actual impact caused by the settled storm sewage discharges either on the river's ability to achieve

favourable condition or on its water quality or ecology and that there is evidence of an improvement in the water quality parameters.

45. I remind myself of the SCG's harm categorisations for harm categories 2 and 3:

### **Category 2**

- Significant adverse effect or damage to air or water quality, amenity value, or property
- Significant adverse effect on human health or quality of life, animal health or flora
- Significant costs incurred through clean-up, site restoration or animal rehabilitation
- Significant interference with or undermining of other lawful activities or regulatory regime due to offence
- Risk of category 1 harm

### **Category 3**

- Minor, localised adverse effect or damage to air or water quality, amenity value, or property
- Minor adverse effect on human health or quality of life, animal health or flora
- Low costs incurred through clean-up, site restoration or animal rehabilitation
- Limited interference with or undermining of other lawful activities or regulatory regime due to offence
- Risk of category 2 harm

46. I accept, having considered the evidence, that it cannot be proved, so that I am sure that there was a significant adverse effect or damage to the water quality, amenity value, or to human health or quality of life, animal health or flora. However, I must put this in the context of hundreds of spills over a significant period of time into the Camel River which is an SSSI and SAC. Whilst I accept the evidence does not substantiate the matters I have set out above, and that Mr Matthews sets out there has been an improvement to water quality, given the number of spills and time they were over, I find that there must have been a significant interference with the regulatory regime due to the offending, despite what is said by Mr Matthews (and his evidence on this particular point is limited), I do not accept his evidence casts doubt, given the number of spills

and the period they were over, in a particularly sensitive area, on what must have been a significant interference with the regulatory regime.

47. I therefore find harm is category 2 in relation to Nanstallon.

48. I will consider aggravating and mitigating features to the case overall when I have set out my findings in relation to all of the sites in this case. However, there are matters which are specific to Nanstallon in terms of aggravating features which I must consider here.

49. In consideration of the SCG's aggravating features, there was a very large number of repeated incidents that occurred over a significant period of time. Whilst I accept the SCG's set out "where not charged separately", I note that, in relation to Nanstallon, there are some 6 charges, covering a period from 2015 to 2020. Thus, although there are some separate charges, the overall picture is of repeated incidents over this significant period of time. I find this is an aggravating feature in relation to Nanstallon. I have, to some extent, considered this as relevant in terms of culpability and harm, but I do not accept that such considerations have been to such an extent that to find this as an aggravating factor would be double-counting but will take into account there has been at least some consideration of the number of incidents and the time period the spills were over in terms of culpability and harm, in considering the extent of these being an aggravating feature.

50. I have already taken into account the sensitive area of the location of the offending in my conclusions on harm and therefore do not consider that as an aggravating feature here and I have found there was no deliberate concealment on SWW's behalf.

51. I will make my findings in relation to financial gain and underspend overall below, when I have considered each site. In considering whether the offending at Nanstallon can be proved to be for financial gain, as submitted by the EA, I find, despite the evidence of Mark Hilson in relation to the costs of replacement of the filter media or alternative forms of treatment, in terms of breaching the permit condition that I am sentencing for, it is a stretch too far to directly link that, to the criminal standard, to show that the offending at Nanstallon was for financial gain.

52. Charges 7 to 12 relate to Harlyn Sewage Pumping Station (“SPS”). It is located in the village of Harlyn in Cornwall which receives foul water from the local catchment area and it is to pump the foul and wastewater uphill to Treceus STW. Flows from St Merryn Combined Sewer Overflow (“CSO”) and from Harlyn Village and holiday parks enter Harlyn SPS and discharge into a wet well. There are two pumps, the duty pump and the other pump which is set as a standby pump to be available if there is a problem with the duty pump. The prosecution submit the design capacity of the pumps is 49 l/s and there is a flow meter on the outlet pipe that measures the flow and volume of sewage that has been pumped. If the flow into the SPS exceeds capacity the SPS is designed so that excess sewage will be released into the watercourse, a stream that flows onto Harlyn beach and into the sea. The standby pump and back-up generator are in place to prevent excess sewage entering the watercourse and a flow control device at St Merryn CSO which should restrict the flow from St Merryn CSO to Harlyn SPS to a maximum of 23 l/s. There is also an alarm system at Harlyn which alerts both the SPS and the SWW Central Control Room.
53. The prosecution case is that during 2016 to 2021, there were 231 illegal sewage spills at Harlyn.
54. The prosecution state that the Harlyn permit authorises the discharge of sewage into the local watercourse and across the beach only in the event of an emergency which is defined as a power failure (not due to acts or default of SWW), mechanical breakdown of duty or standby pumps, rising main failure, blockages of the downstream sewer (not due to acts or default of SWW) and is not reasonably practicable to dispose of the sewage otherwise and there shall be no undue delay in remedying the issue. The permit does not allow discharge for other reasons such as rainfall conditions.
55. The prosecution submit that the 231 spills were recorded as a result of wet weather/heavy rainfall over the five and a half year period. It is the prosecution’s case that the pumps at Harlyn SPS were not functioning to the specification required and the flow control device at St Merryn CSO was not functioning correctly which had a direct impact on the illegal spills.
56. The prosecution submit (as per the evidence of Andrea Poole’s calculations) that the pump flow rates at Harlyn when the pumps were tested in December 2020 was

insufficient to pass forward the required flows which resulted in a higher potential for the wet well to be inundated with sewage and for it to overflow in the way it did.

57. The prosecution also submit that the flow rate of sewage from St Merryn CSO is also relevant as the flow control device should restrict the flow to Harlyn from there to no more than 23 l/s. Two flow meters nearby were used to measure the flow from St Merryn and Mother Ivey Holiday Park to Harlyn. Andrea Poole concludes that on 26.77% of the relevant data points, St Merryn CSO was not discharging to the sea outfall (which is permitted when flows exceed 23 l/s) when the flow entering St Merryn CSO was greater than 23 l/s. The prosecution submit the result of this was that greater volumes of sewage than the 23 l/s were regularly being passed to Harlyn SPS.
58. Andrea Poole, on analysing the data concludes that, using the pumping capacity of 49 l/s (which is set out in the Operations Maintenance and Contingency Plan), that at 5.5% of the time flows through St Merryn CSO exceeded the pumping capacity and in considering the PFF (real-world) tests conducted by Kier on behalf of SWW and taking that into account, the real-world pumping capacity was no more than 40 l/s.
59. In relation to the SCG's and culpability, the prosecution submit that SWW were reckless. They operated a SPS for the whole period of 2016 to 2021 with pumps with inadequate flow rates and this was a significant failing which should have been identified and remedied. They also submit that the flow not being restricted from St Merryn directly contributed to the capacity of Harlyn SPS being surcharged because the central purpose of the St Merryn CSO was to offer protection to Harlyn by removing excess flows.
60. The prosecution submit SWW had actual foresight of the issues to do with the functioning of the SPS and they were prosecuted in 2012 for an illegal sewage spill from Harlyn SPS onto the beach over an August bank holiday and such a prosecution should have registered at board level. They also submit the 231 spills should have been known to SWW through their alarm systems and through analysis of their EDM data from 2016 onwards.
61. They submit SWW, as an organisation, was either fully aware of the issue or failed to put in place systems to identify hundreds of offences being committed in breach of their permit.

62. They state the EA wrote to SWW in October 2019 identifying the offending (based upon information supplied to the EA by SWW) but the offending continued for more than a year and a half after that warning.
63. In relation to harm, the prosecution submit that untreated raw sewage was spilled onto a designated bathing beach illegally on 231 occasions which would have had a significant adverse effect on the amenity of bathing waters and pose a significant risk to human health through potential exposure to E.coli (and they refer to Mr Justice Johnson's conclusions in sentencing Southern Water in 2021 in being able to come to such a finding). The EA submit that harm is category 2.
64. SWW plead guilty to charges 7 to 12 on a basis. They do not accept the calculations of Ms Poole (and refer to the evidence of Hugh Corrigan, particularly at pages 20-22 of his report) as they submit the catchment design flow has been overestimated. They state that Andrea Poole has not applied what is known as the 'population equivalent' figure correctly to the Formula A calculation as her 'population equivalent' accounts for the lesser contribution of tourists compared to residents, which makes a difference of 46 litres per day. They also submit she has incorrectly applied the factor of 6 to the infiltration value which is not the correct approach and the evidence of Hugh Corrigan sets out that she has incorrectly drawn the conclusion that there was insufficient pumping capacity to meet the theoretical Formula A or 6 x DWF flows in circumstances where she has used design flows which are overestimates.
65. Mr Corrigan concludes that the pumping capacity of Harlyn SPS was significantly higher. He states the installed pumping capacity exceeds by some distance the 6 x DWF flow rate and the summer formula A flow rate and the SPS pumping capacity ought to have been adequate during the relevant period. Mr Corrigan also sets out that, whilst he does not disagree with the workings of Ms Poole's analysis in relation to whether St Merryn CSO operated when the flow in the sewer reached the PFF of 23 l/s, he states that there should have been reference by her to output from a verified representative hydraulic model of the sewer network during the relevant period and this she cannot draw the conclusion she does as to whether the operation of the CSO is the cause of inundation. The defence also submit that, for the same reason, she cannot conclude that had the CSO been under the correct hydraulic operation the spills would have been prevented and the malfunction of the flow control at the CSO is the major cause of spillages at Harlyn SPS.

66. In terms of action taken by SWW in relation to the spills, SWW do not accept that they did not take any action in relation to the spills at Harlyn. They submit the evidence of Hazel Tranchant sets out that EDM was installed when not required, that there is a long history of improvement works in what is a complex and challenging catchment and increased maintenance and cleaning was implemented following a report by Arcadis in 2016. It is also submitted that she evidences numerous steps taken over several years to identify and address issues (which I note from her evidence but do not repeat here) and that issues were identified which were not connected to SWW such as an unauthorised connection to the SWW network upstream that, once identified resulted in removal of approximately 24 l/s from the network and long term flow monitors were installed upstream of St Merry in 2020 and at holiday parks nearby.
67. SWW state that by the end of 2019 they had made numerous improvements with expenditure of just over £112,000 in various measures and that since 2019 there have been further projects and works undertaken to reduce spills at Harlyn in what is a complex system. SWW submit they undertook significant investigations and assessments and the surveys and investigations were tasks a reasonably competent company would carry out and they submit this was done in a reasonable period of time.
68. SWW also do not accept Ms Poole's criticism that they did not take action in relation to the CSO soon enough because they submit it does not recognise that the work was being done in 2017 and the steps required to be taken before such work as replacing Hydrobrake flow control and, as per the evidence of Hugh Corrigan, some of the investigations and measures took longer than might have been expected but some of the delays were due to the challenging issues which were essential to developing solutions. Mr Corrigan does not accept that SWW's actions were reckless because some of the investigations could have been undertaken more quickly than they were, but states this was not a case of inaction on SWW's part. SWW submit culpability in relation to Harlyn is negligent.
69. In relation to harm, SWW submit there is no evidence of actual harm but accept there was a risk of category 3 harm and state in the worst case there would have been a *"transitory and relatively short-lived impact"* of category 3 harm. They submit the case comes within harm category 3/4. SWW refer to the evidence of Mr Dannatt who concludes *"there is no clear evidence of environmental impact that can be identified...I have carefully read the expert statement provided by Andrea Poole...and there is no*

*reference that I can see that pertains to the impact or harm at the bathing water...*". He also concludes that the high-quality sampling results and consistent performance of the beach as excellent over several years is evidence of little in the way of bacterial impact of any sort at Harlyn due to the breaches and that lack of spills during formal bathing season will reduce the risk of exposure to raised bacterial levels. He states that the spills identified appear to have had little impact on the performance of the bathing water and that any impacts that might have occurred are likely to be short lived due to dispersal and die-off and are much less likely during the bathing season. Mr Dannatt concludes, in his opinion, there was a risk of harm, rather than actual and therefore states the offending is category 4 harm.

### **Findings in Relation to Harlyn**

70. I accept during the period 2016 to 2021 there were 231 illegal sewage discharges that would have spilled into the watercourse, onto the beach and into the sea at Harlyn. SWW accept that this was in breach of the permit which set out that discharge of sewage into the watercourse could only be done in event of an emergency which it is accepted was not the case in relation to these spills and discharge for other reasons was not permitted under permit conditions. I accept that the spills were recorded as a result of wet weather over the five and a half year period, not allowed under the permit conditions..

71. In terms of whether the spills occurred because Harlyn SPS was not functioning at the required specification, I have taken into account the evidence of Ms Poole and Mr Corrigan. As I have set out in relation to Nanstallon, it is of course for the prosecution to prove their case so that I am sure the relevant culpability and harm exist as they submit. I have also agreed with SWW that it is not for them to prove anything and therefore it is not for me to "weigh up" which expert's evidence I prefer. I have also found above that does not mean I am bound to find the existence of defence experts which disagree with the prosecution case must undermine the prosecution case. Having said that, in relation to the functioning in relation to Harlyn, I accept that the evidence of Hugh Corrigan does cast some doubt on Ms Poole's calculations. I have taken into account he does not disagree with her workings, or her analysis, but does cast some doubt in terms of there not being reference by her to output from a verified representative hydraulic model of the sewer network during the relevant period and

other issues. I make it clear that does not mean I find her evidence overall to not be credible, it means that there is doubt in my mind on this particular issue. Where I find there is some doubt in relation to some of her evidence, that does not mean I cannot accept her evidence in relation to other matters, given the differing, complex and technical nature of many of the issues in dispute.

72. The same applies in relation to the conclusion that if the CSO had been under the correct hydraulic operation the spills would have been prevented and the malfunction of the flow control of the CSO being the major cause of the spillages. I will be frank. The evidence casts some doubt on such conclusions. I do not know which is the case. As SWW have rightly pointed out, it is not for them to prove their version of events, it is for the prosecution to prove theirs. Where there is some doubt, the benefit of that must be given to the defence, which is what I do in relation to this issue of the proper specification and functioning of the SPS (and CSO).

73. However, there were clearly issues identified by Arcadis in 2016 that created a risk. I also note there was telemetry in place for spills, which would have alerted the spills to SWW, in addition to the EDM data. I have already noted (in relation to Nanstallon) that the EDM data and procedures in relation to that were in the relatively early stages, but nevertheless, it was in place and should have also raised concerns. Furthermore, I note that the EA had written to SWW in 2019 setting out issues and it was not until 2021 that Kier identified the issue and action was to be taken.

74. I have taken into account the evidence of Hugh Corrigan on this matter and that of Hazel Tranchant. I accept that some action was and has been taken by SWW and interventions made. I note that Hazel Tranchant sets out in her statement that there has been a programme of investigations and interventions including a capital expenditure by the end of 2019 (in relation to the various measures she sets out which I do not need to repeat here) of £112,337. I also take into account her evidence regarding installation of the new Hydrobrake in 2021 and the enhanced alarm signal being established in 2021. I take into account Hugh Corrigan's evidence that some of the delays in the investigations and measures took longer than might be expected but some of those delays were due to challenging issues.

75. Whilst I accept there were of course challenging issues, Hugh Corrigan also accepts in his evidence that the measures could have been implemented sooner. I agree that this is not a simple and straightforward matter and that significant investigations took

place but one cannot get away from the fact that the Arcadis report was in December 2016 and that significant action in terms of the Hydrobrake was not taken until 2021, despite the challenges. I also note that renewal of the alarm signals to an enhanced warning system did not occur until 2021, which could and should have been implemented far earlier, particularly given the issues known to SWW from 2016 and the warnings given to by the EA from 2019, yet it did not. I also put that in the context of the knowledge of the prosecution as far back as 2012 for an illegal sewage spill from Harlyn SPS.

76. Therefore, despite my findings on the technical findings of Andrea Poole in relation to the issue of functionality and her calculations, and despite the fact that I accept there were complexities that contributed to the delay, that still does not account for the length of time it took for SWW to implement measures to resolve the issues.

77. I therefore find that there was actual foresight of the risk of the offending, but the risk continued and, given the nature of the issues, those in positions of responsibility in the organisation must have been aware of the issues. In any event, there was clearly a reckless failure by SWW to put in place and enforce such systems as could reasonably be expected in all of the circumstances to avoid the commission of the offences.

78. I find the culpability of SWW in relation to Harlyn to be reckless.

79. Turning to the issue of harm under the SCG's, I note that raw untreated sewage was spilled onto a designated bathing beach on 231 occasions during a period of five and a half years. I note the findings of Mr Justice Johnson in his sentencing remarks (albeit a Crown Court case, rather than a Court of Appeal matter) that the offending in that case (Southern Water) had a major adverse effect on or damage to the water quality or amenity value and that he found it is axiomatic that discharging hundreds of thousands of litres of untreated sewage into watercourses would have a major adverse effect on both the water quality and its amenity value. He asked who would venture into the sea knowing a large amount of untreated sewage had been discharged the previous day. He set out he reached that conclusion notwithstanding the expert evidence produced by the defendant in that case. He proceeded on the explicit recognition and acceptance that sewage discharge is damaging to water quality and amenity.

80. I accept that Mr Justice Johnson's sentencing remarks were on the facts of that case and that in the Southern water case, the defendant pleaded guilty to 51 counts of discharging untreated sewage on 6,971 occasions with a total of 61,704 hours (7 years) of discharge and an estimated 1 billion litres of discharge. There was other evidence from local people setting out the impact of the sewage spills, for example a strong smell of sewage, vessels having to be power washed to remove sewage, dogs becoming ill after swimming and the overall impact on local residents and businesses. I accept there is no such evidence in relation to Harlyn in this case.
81. I have considered the evidence of Mr Dannatt in relation to the issue of harm. I note that he concludes that, after weighing all the factors, that there is no evidence of impact at the bathing water and in his opinion there was a risk of category 3 harm and the events should be categorised as Category 4 harm. SWW have submitted they accept the case falls between Category 3 and 4.
82. I accept that the Southern Water case sentenced by Mr Justice Johnson was very specific to the facts of that case and, as I have said, there was evidence from local people as to the impact. Mr Justice Johnson made clear that it was axiomatic that discharging such large amounts of litres of untreated sewage would have a major adverse effect on the water quality and its amenity value. He reached that conclusion despite defence expert evidence to the contrary and the offending related to 17 different sites and found that harm was category 1 not 2.
83. I have also noted Mr Dannatt's evidence in his addendum report that bathing water standards have used three spills per year per bathing season on average as a design guide and an assumption this will protect the environmental standard and he concludes it is clear these spills from intermittent discharges therefore cannot equate to harm having a significant adverse impact on the environment such that it adversely deflected from its normal condition. If that is the case, I ask myself why we have laws to prevent such spills because if numerous intermittent discharges do not have an impact on the water then surely we could just allow such discharges. I note his conclusion is that there was a risk of category 3 harm, not that there was a minor localised adverse effect etc (and despite his evidence to that effect I note that SWW concede that Harm sits between category 3/4).
84. There is a clear known risk that pumping untreated sewage onto our beaches, into our seas and watercourses will of course have an adverse effect on the water quality and

amenity value. I accept that where the spills are going directly into the sea it will be more dispersed and have less impact. However, in this case, the sewage went into the watercourse of a busy beach. There has also been no consideration given to the fact that Harlyn is a beach used regularly by surfers, who surf all year round, not just during the tourist season. Despite the evidence of Mr Dannatt, also taking into account Mr Justice Johnson's findings in Southern Water, given that there were (when taken as an average) some 46 spills per year over a very significant period on a beach which a large number of tourists and surfers use, with the watercourse running through it, I find that the adverse effect on water quality, but particularly amenity value cannot be said to be minor and must be categorised as significant and I find the harm is category 2.

85. In considering aggravating features in relation to Harlyn, I accept there has been a history of non-compliance with EA warnings and have found that action clearly should have been taken sooner and wasn't. I do take into account however, that this is also a matter I have taken into account in my findings regarding culpability. I must be sure not to double-count and therefore do not accept that I can also find this as an aggravating feature in relation to Harlyn.

86. I have also taken into account the prosecution submissions that it is aggravating that the offending took place in a sensitive area but that is also a matter I have already taken into account in my findings in relation to harm and therefore do not find it as an aggravating feature as that too would be double-counting.

87. When considering whether there was a financial benefit in relation to the offending, I note the prosecution's overall submissions on overspend and make a separate finding in relation to that below. In terms of financial benefit from this particular offending at Harlyn, on consideration of the evidence on this issue, given the delay to the solutions being put in place, despite me accepting the location is not straightforward, I find that there was at that time some financial gain from the offending. However, I find that to be not more than £360,000 (the amounts of the delayed expenditure of the new chamber and Hydrobrake) which, although the expenditure was made in the end, the delay itself meant that there must have been some financial gain during the period.

## **Halvarras**

88. SWW have pleaded guilty, also on a basis to one charge relating to Halvarras SPS. There were originally seven charges in respect of Halvarras. The prosecution discontinued six of those charges (charges 19 to 24) with one charge, charge 25 remaining.
89. Halvarras SPS receives pumped and catchment sewage flow into a wet well. It receives combined flow by gravity from the local catchment and pumped flow from Frogmore SPS and that combined flow is pumped to the Newham STW for treatment. There is an EO \*\* that discharges to a tributary named Cowlands Creek that then flows into the Truro River and then to the River Fal and Fal Estuary which is designated shellfish waters area.
90. The prosecution set out that Halvarras has two pump sets, one being a duty pump and the other a standby pump available if there is a problem with the duty pump. The operation of the pump is determined by the level of sewage in the wet well and the pumps activate when the wet well begins to fill up and stop when it is nearly empty. The prosecution submit the designed capacity of the pumps is 20-29 l/s and there is a flow meter on the outlet pipe measuring the flow and volume of sewage that has been pumped.
91. The prosecution set out there are other various safeguards in place such as a diesel generator if there were to be a power failure, the above-mentioned standby pump and telemetry on site which should alert operators onsite and via the control room if there are breaches of parameters. There is also an emergency overflow (as mentioned above) that allows sewage to be discharged into Cowlands Creek (an SSSI, SAC and has shellfisheries) and there is a 30m<sup>3</sup> storm tank which, when it reaches an overflow level, an alarm is raised for the duration of the overflow.
92. The permit in relation to Halvarras (301566 of 1 October 2000) only permits overflow in an emergency that is not the fault of the operator and the only allowed circumstances are electrical power failure, mechanical breakdown of the duty and standby pumps, rising main failure or a blockage downstream of the sewer. The prosecution set out that the EDM data shows there were two illegal spills from the site when the standby pump was not available (as is required under the permit conditions). The prosecution submit that the evidence shows the pump was out of service for 10 months with the single duty pump being the only available pump during that period. The first spill

occurred on 21 September 2018 for 0.86 hours duration and the following day for 6.85 hours when no standby pump was available.

93. The prosecution submit there were failings in the management processes in that there was a failure to implement a proper management system including performance and evaluation which would have readily identified the issue and that a proper maintenance system for the standby pumps was not implemented.
94. In relation to culpability, the prosecution submit the offending was reckless, in that it was as a result of operating the pumping station without a backup pump for some 10 months and that this was apparent from the service records and should have been identified and remedied with proper management oversight.
95. In relation to harm, the prosecution submit harm is category 3 as raw untreated sewage spilled into water containing shellfisheries.
96. In response, SWW point out that there were originally 6 other charges relating to Halvarras that the prosecution withdrew and they submit that, had those charges not been brought, this charge that remains is unlikely to have been prosecuted. SWW accept that the two spills occurred when pump 2 stopped working (first occasion becoming blocked) and on both occasions it is accepted that the second pump (pump 1) was not available, it was awaiting repair following discovery of a fault on 18 June 2018.
97. SWW submit that, having identified the problem with the pump in June 2018, it should have moved more quickly to remedy the issue and accept that the pump could have been replaced sooner than it was. They do not accept the issue arose out of an attempt to save money or that it arose as a consequence of SWW failing to have an appropriate management system in place. They do not accept that the single working pump had insufficient capacity to process the incoming flows as required but they do accept that the spills would not have occurred had there been a fully functioning standby pump as required by the permit. It is also not accepted that throughout the period pump 1 was out of action and the site was left without insufficient pumping capacity (as per the evidence of Andrea Poole). SWW submit that pump 2 alone would have had sufficient pumping capacity in any event. I am referred to and have considered the evidence on behalf of SWW of Hazel Tranchant (in terms of the measures taken) and Hugh Corrigan in this regard.

98. Mr Corrigan sets out he accepts the evidence of Ms Poole to some extent in terms of the increase in the risk of spills during the relevant period. He states he accepts there would have been an increase in risk whilst pump 1 was out of operation but states there was an alarm priority for pump 2 which was P2, meaning that SWW would action any issues within 45 minutes, mitigating the risk and that Ms Poole acknowledges SWW's response to alarms was good.
99. In terms of the timeframe for repairing the pump, Mr Corrigan sets out that it could reasonably have been repaired within 12 to 13 weeks of investigating the issues, rather than 24 April 2019 which overall is generally in line with Ms Poole's conclusions on that issue. He does not agree with her assessment that mitigation measures should have been considered to expedite the replacement work. Mr Corrigan concludes that it is more reasonable to assume that SWWs' contractors (Kier and Clearflow) carried out the work in an efficient and safe manner. In terms of pump 1 being considered as an emergency alternative to pump 2 (which Ms Poole does not accept the logs set out), he states that although that approach was in the end unsound, it does provide a credible explanation as to why SWW delayed replacement of the works as long as it did.
100. In terms of harm, SWW submit there is no evidence of actual environmental harm at the time of the discharges in question but that any harm would have been short-lived, minor impact to water quality and limited to the vicinity of the discharge. They submit harm is no higher than category 3 and that the matter sits between category 3 and 4.

### **Findings in Relation to Halvarras**

101. I find (indeed SWW agree) that SWW, having identified an issue with the pump in June 2018 should have moved far more quickly to resolve the matter. I accept that it cannot be shown, so that I am sure, that the single working pump had insufficient capacity to process the incoming flows required. There was however no standby pump in use. The permit condition sets out that the SPS shall be operated using techniques as in a manner described..." which requires a standby pump to be available, yet one

was not for a very considerable period of time which SWW was fully aware of. Mr Corrigan accepts that there would have been an increase in risk of spills during the period when the pump was out of action (not to the extent that Ms Poole specifies but an increase in risk nonetheless). Of course there would have been; one certainly doesn't need to be an expert to come to that conclusion.

102. I have taken into account SWW's submission that the pump being repaired, due to the time even Mr Corrigan says it would have taken, would be unlikely to have prevented the spills. When I consider the evidence of Hazel Tranchant, it is clear the standby pump failed on 16 June 2018. She says a faulty isolation valve made it impossible to remove it to inspect it. It was decided a tanker would be required (involving Kier and Clearflow) but that the access road was not able to accommodate a tanker as the trees needed cutting back (and permission of the landowner required for that) and the road needed resurfacing. I note a quote was not obtained from Kier for the resurfacing until 2 October 2018, almost 4 months after it became known the pump was faulty. I am amazed that the access road to Halvarras SPS was in such a poor state such that it could not accommodate a tanker. Equipment breaking down and needing repairs is a predictive occurrence, yet SWW's response was reactionary rather than preventative.

103. I do not agree that the delay in rectifying the problem was reasonable. Firstly, as I have said above the access road should have been in a condition that the site could be accessed by larger vehicles as could have been required and secondly, Mr Corrigan accepts that a reasonable timeframe for fixing the pump would usually have been 12-13 weeks. It was known that the pump was faulty on 16 June. Had SWW been in a position (as they should have been) to act straight away, it would of course have prevented the spills on 21 and 22 September were the pump fixed in that time frame. I note too that in actual fact, the issue was not properly rectified until April 2019, a further entirely unacceptable delay.

104. Additionally, whilst I have accepted that I cannot be sure the single working pump had sufficient capacity to process flows, there was clearly an increase in risk of spills when operating one pump, surely that is why a standby pump is required. I also note Mr Corrigan's findings that there was a P2 alarm in place and therefore SWW would respond within 45 minutes to any alarm. I find this 'reactionary approach' to be unacceptable. The matters should be prevented rather than effectively putting forward

that a spill can occur but that is ok because SWW will react to the spill quickly. Such spills should be prevented in the first place.

105. Given the length of time this issue went on and that the standby pump was not fixed, I find that there was clear failures in management and systems, there was clear knowledge of the risk but it continued for a significant period nonetheless.
106. In the circumstances, I find so that I am sure, that there was actual foresight to the risk of offending but it was taken in any event, that management must have been aware of the issue such that their omissions in taking action can properly be attributed to SWW and I find SWW's culpability to be reckless in relation to Halvarras.
107. Turning to harm, whilst I accept there is no evidence put before me of actual harm and I take into account the evidence of Richard Dannatt on the issue, this was two illegal sewage discharges into Cowlands Creek which is an SSI and SAC and contains shellfisheries. There must of course be some adverse impact of raw untreated sewage spilling into a creek in such an area, although, given there were two spills and the area is tidal, given there were two spills over a relatively short period of time, I accept that impact would have been localised and minor in all of the circumstances.
108. I therefore find harm is category 3 in relation to Halvarras.
109. In terms of aggravating features in relation to Halvarras alone, I have taken into account that there was foresight of the risk of offending and do not take into account ignoring risks as identified as an aggravating feature as that would amount to 'double-counting' and I have already taken this into account in my conclusions on culpability.
110. The same applies to the location of the offence, this has been taken into account in relation to harm. In considering whether there has been a financial benefit to SWW from the offending, I accept that this is entirely possible. That is not the criminal standard that I must be satisfied of and, without further specific evidence on this issue any benefit is difficult to quantify and I cannot be sure there was financial benefit and therefore do not find this to be an aggravating feature in relation to Halvarras.

## **Hooe Lake**

111. Hooe Lake relates to charges 26 and 32. Hooe Lake is a SPS located on Hooe Green, near Hooe Lake (a tidal area of the Ricer Plym Estuary, Plymouth). It is a combined system that receives rain, surface and foul water. It operates under permit (032894) which was issued on 12 September 2016. It usually collects sewage from the catchment into the wet well, there are three pumps (operating duty, standby and storm configuration) and the operating of the pumps is controlled by the level of sewage in the wet well and normally flow is passed onto Radford STW.
112. In relation to Hooe Lake, culpability (negligent) and harm (category 3) is agreed by the parties, albeit SWW submit that it is lower end of negligent. The prosecution case is that on Friday 28 August 2020, the pumps at Hooke Lake SPS stopped passing flow forward. A high-level alarm was received at the control room at 12.48 that day and they submit that no action was taken by the Catchment Pilot as they decided the cause of the alarm was wet weather. SWW accepted in their response to PACE questions (Anthony Crawford) that subsequent events have identified that this was a serious error of judgment by the Catchment Pilot and the alarms were indicative of a pump failure at Hooe Lake SPS so should have been forwarded for action by an operator attendance that day.
113. The SPS continued to spill throughout the bank holiday weekend until Tuesday 1 September, the spillage commencing at 16.22 hours on 28 August and stopping at 08.42 on 1 September, a total of 88 hours. This was not a storm discharge in compliance with the permit (which did allow storm discharge in certain circumstances) and the offline storm storage had not been fully utilised before the discharge.
114. The prosecution submit that there have been several instances of pump airlocks and/or no flow reported at the site and that the installation of air release valves at the site would have been prudent. They state that on the first day of the offending period, the Catchment Pilot had more than three hours warning of the sewage spill and that the offence was entirely preventable. They also submit that the descriptions given by SWW in their response to PACE questions do not align with the telemetry shown on SWW's own schematic that has now been indicated as wrong which suggests that the details of the control was not fully clear to SWW, even after the event. They also state that there was no systematic alarm testing process at Hooe Lake and that the

evidence of Andrea Poole states the procedures SWW had in place cannot be described as alarm testing.

115. In relation to culpability, the prosecution state if the site alarm was properly configured it would have identified, by operating a proper testing process, that there was a history of air-locks forming in the pumps at the site and an adequate testing process ought to have identified the P2 storm tank high level alarm was not connected at all.

116. SWW submit the case falls in the lower end of negligent because, as per the evidence of Hugh Corrigan there are other factors which must be taken into consideration, including that the site was visited earlier the same day and the pumps noted to be working, the control room operative responded incorrectly, the schematic was not actually incorrect (and he suggests that Andrea Poole does not understand the configuration of the SPS), the tank operated in accordance with the permit and there was no obvious reason for SWW to have installed air valves as there was no history of pollution incidents at the site and it had appropriate telemetry and the incident occurred despite the systems in place, not because of them.

117. Turning to harm, the prosecution submit that, given the spills continued for some 88 hours and sewage entered a priority habitat area that is also used for recreational boating and water sports. SWW accept harm is category 3.

### **Findings Hooe Lake**

118. Given the general agreement of the parties, I do not to make any significant findings in relation to Hooe Lake. I accept there is some issue as to the actual workings of the SPS and whether the appropriate telemetry was installed. Regardless of that, it is clear to me that there was a clear failure to respond properly to an alarm activation that led to 88 hours of sewage spill. SWW have accepted there was a serious error of judgment of the Catchment Pilot during what was a relatively dry period. The fact that this was able to happen cannot be said to be *“little or no fault on the part of the organisation as a whole”* or that this was a *“rogue employee and despite the presence and due enforcement of all reasonably required preventative measures, or*

*where such preventative measures were unforeseeably overcome by exceptional events*". The fact that such a decision could be taken in these circumstances evidences a lack of proper systems in place to avoid the commission of the offences by the organisation. I therefore accept that culpability sits squarely in negligent and reject the submission that it is "at the lower end".

119. In terms of harm, I entirely agree that the harm is category 3; there was discharge of untreated sewage into a priority habitat area designated as a site of principal importance for preserving biodiversity for a period of 88 hours, and in an area which is used by small recreational vessels, there was minor, localised adverse effect on the water quality and amenity value.

120. In relation to aggravating features, I have already taken into account that the offence took place in a sensitive area in relation to harm and therefore do not count this as an aggravating feature so as not to double-count.

### **Polperro**

121. SWW have pleaded guilty to one offence (charge 28) in relation to Polperro. Polperro is a fishing village in South-East Cornwall with a harbour surrounded by a harbour wall. It has a WWTW which was constructed and commissioned in 2012 and involved excavating into rock of the sea-cliff. The works and screening and pumping facilities are located at the base of the sea-cliffs off Scilly Cove which is outside the harbour and beyond the harbour wall and pier and the site does not have vehicular access. The works provides fine screening if sewage collected from Polperro combined sewer network and the screened sewage is discharged through a pumped marine outlet pipe, located east of Polperro Harbour (outlet A). There is also an emergency stormwater storage tunnel from the works through the cliffs to the sea and after a storm event, storm water is pumped to the head of the process. If the capacity of the storage tunnel is exceeded during a storm event, the surplus is discharged through a short outfall pipe at the end of the tunnel (outlet B). There is an inlet chamber via a concrete trunk sewer which runs under the harbour, the section under the inner harbour is buried below the sea floor and the section that runs through the harbour is laid on the sea bed and encased in concrete and the works themselves run across three levels.

122. On 26 August 2019, the EA was informed that sewage was leaking through the harbour wall at Polperro. They contacted SWW who checked and confirmed there was a problem there. A technician that day identified there had been a pump failure, the pumps being reset and the WWTW returned to normal. The pumps were out of service for 19 hours and the prosecution submit the discharge had been coming through the harbour wall for 10 hours before SWW attended and had not taken action themselves until the EA notified them of the incident.
123. In relation to the cause of the offence, it is submitted that the telemetry shows there were multiple failures of the outfall pumps at around 22.40 on 25 August 2019, outfall pump 1 failing at 23.10 and outfall pump 2 failed alarms activated and at 00.44 on 26 August the FP flow meter discharge value 'no flow' alarm activated and there was a 1 hour 20 minute delay on this alarm which the prosecution say is consistent with the timing of the pump failure alarms.
124. The EA was contacted at 17.14 on 26 August by a member of the public regarding sewage discharging through the harbour wall and they had seen the spill earlier in the morning. When SWW were contacted, the control room noticed there was an issue and a technician was dispatched to site and alarms cleared at 18.12.
125. In response to questions under caution, Mr Rowntree, on behalf of SWW stated that the technician who had arrived at the WWTW identified a pump failure caused by a power failure and the prosecution submit that SWW have not supplied details of the power failure, despite requests but the EA made enquiries with Western Power who confirmed there were no outages during 20 to 28 August 2019. Mr Rowntree also stated that "investigation had shown the pump failure inhibited the ability of the works to pump the incoming flow forward for treatment and incoming flow discharged into the wet well, it filled to the point that the surcharge spread along the incoming main sewer line. At that stage, it was thought that the "flow seeped through cracks in the main sewer and then penetrated the harbour wall". He also stated that subsequent investigations had established that the discharge to the harbour occurred because of seepage through cracks in a lateral sewer that joined the main sewer and CCTV investigation of the pipe had revealed that the discharge on 26 August was a result of exfiltration from the damaged lateral pipe and not the main sewer and that disconnection of that pipe had removed the risk of discharge and that a new lateral

sewer had been constructed to serve the disconnected properties. He then stated that the discharge on this day was not caused by a failure to maintain the pumps.

126. I note there were further questions under caution which were responded to on 16 March 2020 in relation to why the sewage was not discharged through the emergency outfall it was set out this was because the catchment is designed to store flow in the network before building up sufficient head to gravitate out of the emergency outfall. There were further responses by Mr Crawford on 23 June 2020 in which he explained the operation of the WWTW alarms indicating the alarm on the outfall pump had failed. Further questions were asked and responded to on 18 November 2022 in which Mr Doble, on behalf of SWW, set out that the pumps that failed on 26 August 2019 were the three pumps at the outfall pump station and that the “inlet pumps” did not fail as a result of the power outage. He stated “this may indicate that they were not operating at the time of the power cut. As such control circuits were not energised at the time”

127. The prosecution submits that this is in direct contravention of the response initially given by Mr Rowntree as to which pumps had failed and introduced new information (that the inlet pumps were not powered at all on 26 August 2019). The prosecution submit there are no maintenance records to support this contention nor the discrepancy in accounts. They also submit that the accounts given are inconsistent with the plans and documentation supplied as to how the WWTW was to be operated and that the alarm system is not shown on the plans (if the latter response is correct) and they state that Western Power do not support there was any power interruption during that period.

128. The prosecution refer me to the evidence of Andrea Poole (who has considered the inlet and outlet well level data to try and ascertain what happened). She opines that both sets of pumps failed between 22.40 on 25 August and 18.12 on 26 August. She states that if operating correctly, incoming sewage should fill the inlet well and overflow to the storm screen and into the outlet well. If the outlet pumps fail, the sewage should go into the storm tank (having an 80m<sup>3</sup> capacity) and if that fills then discharge via the emergency outlet should occur. The prosecution submit that SWW have stated there was no discharge through the emergency outlet. Andrea Polle also concludes that the weir level (she says set at 75% of the well level) would be achieved when there were greater flows than 51.71 l/s and that it was reached withing an hour of the pump failures and the wet well levels did not exceed the 75% level during the period of the

offending and thus at the time of the offence the “*catchment was no more surcharged than it would be for any normal operation when flows to Polperro WWTW are above 57 l/s.*”

129. She also concludes that, even if there is a power failure to the site, sewage should be able to flow through the works and discharge through the emergency outlet. She states that the discharge in this instance arose from sewage surcharging the incoming network, sewage leaking from the sewers and then finding a route out through the harbour wall and the pump failures should not have resulted in a discharge above the WWTW. She states the surcharging of the catchment would only be possible if the gravitational flow was restricted. She estimates (conservatively) that around 400-600m<sup>3</sup> was discharged through the harbour wall.

130. The prosecution also submit that here is nothing in the telemetry alarm data setting out that a mains failure alarm activate and the response of Anthony Crawford suggests that such an alarm was not fitted until 2020. They refer me to the response of Guy Doble (18 November 2022 response to questions under caution) that there is a site mains supply health alarm and that the short duration of the failure would not have been long enough to generate an alarm and that the alarm would have self-cleared when the power restored. Mr Doble also set out that the pumps did not automatically re-start because the UPS battery became exhausted.

131. Andrea Poole concludes that Mr Doble’s statements cannot be correct because if UPS was present it should have supplied power for a minimum of 30 minutes before becoming exhausted and that would have provided ample power for an automatic restart and the alarm to be raised in the event of a power cut. Andrea Poole opines that the most likely explanation is that given by Anthony Crawford that there was no alarm fitted at the time of the offence and the prosecution submit there is a requirement on SWW to have automatic pump reactivation when power is restored which they say did not happen.

132. Ms Poole accepts it is possible an internal power fault caused the pumps to fail (rather than a general power outage). She is of the view that the site telemetry was inadequate at the time and did not cover all the assets or potential modes of failure and it is unclear which pumps telemetry alarms that did activate related to. She also states that a priority 3 alarm did activate which should have been sufficient to identify

an issue and, following enquiry, would have identified alarms for pump failure and no flow discharge which should have been responded to by 8am the following morning.

133. She states that despite warnings from pump failure alarms they were not responded to and there should have been multiple layers of protection in place and she states the incident was reasonably foreseeable.

134. The prosecution also submit there are issues with the explanation given by Mr Doble that investigations had revealed that the discharge occurred because of seepage through cracks in a lateral sewer that joined the main sewer and that they did not know when the lateral pipe was installed and believed the previous discharges were from the same lateral pipe and not the main sewer and a plan was later supplied which showed the lateral sewer had been replaced by a new diverted sewer. The prosecution submit this is contradicted by the Clearflow and Glanville report of 2016 and 2017 which show the sewer had not previously been identified.

135. The prosecution submit that SWW were very well aware of the issue and refer me to the emails of Cllr Hannaford from 2013 and an incident on 17 June 2017 where there was a multi-pump failure which led to sewage backing up and discharge of sewage into the harbour. A warning letter was also issued by the EA to SWW on 8 September 2017. The prosecution set out that there was also an issue on 24 June 2018 where sewage was gushing through the harbour wall which investigation by SWW showed was caused by a power cable coming loose which in turn caused the pumps to trip which then led to a back up of sewage and discharge into the harbour and another warning letter was sent on 17 September 2018. There was then another similar incident on 25 September 2018 and it was said a failure of the outfall pumps had caused a backup of sewage in the incoming line resulting in the discharge and another warning letter was issued on 5 December 2018.

136. The prosecution submit that had adequate management systems been implemented in accordance with industry standards and policy the pump failure associated with the discharges into the harbour should have been noted with appropriate control mechanisms being put in place and there should have been reviews to identify the shortcomings in plans and documentation eg inaccurate identification of the inlet and outlet pump alarms and the route the sewage travels thought and telemetry issues and alarm systems. The prosecution also submit there

was non-conformity with ISO 14001 standards and that there was not a review and approval for suitability and accuracy.

137. I have considered the permit conditions in place at the time, namely an emergency discharge (to outlet A) is only permitted when the inlet pumping station is inoperative due to electrical power failure or mechanical breakdown of the inlet pumps; emergency discharge (to outlet B) is only permitted when the outlet pumping station is inoperative due to electrical power failure or mechanical breakdown of the outlet pumps; the inlet and outlet pumps should be provided with automatic pump activation immediately when power is restored after an electrical power failure (internal or external but not due to the act or omission of the operator) and response times to the alarms announcing events are required to be responded to as soon as reasonably practicable.

138. The prosecution point out that a local fisherman described sewage leaking out of the wall at the height of roughly three feet from the base of the visible wall and described it as *“being clearly piss and shit and it smelt of sewage, the smell was quite strong from the side of the harbour where it was leaking”* and he could hear the leak. He also stated *“when the sewage leaks through the wall the water in the harbour is milky and smelly for the day”* and he also stated this was not the first time this had happened. He stated that *“a lot of kids use the harbour to jump in the water most evenings”*. He confirmed that not many people were around in the morning, but from 10 am the beach is used by families.

139. I am also referred to the comments made by Mr Pengelly who is Chairman of Polperro Council that the problem with sewage leaking into the Harbour is a major concern, that it has been reported many times and carries on to be a problem *“ever since the new system was put in place at great cost and millions of pounds it does not improve”*. He sets out that the damage to the village, harbour, tourist industry which the village is reliant on is a great problem when incidents happen. He says *“many times I have seen and reported a problem which only gets a temporary fix”*. He also states there have been promises from SWW to resolve the issue but says nothing seems to happen and they never sort it out. Mr Pengelly details previous sewage discharges on 17 June 2017, 24 June 2018, and 25 September 2018. There is also a statement from Cllr Edwina Hannaford who also raised similar concerns and sets out the matter has been a long standing issue with concerns being raised from 2013.

140. In terms of culpability for Polperro, the EA submit SWW were reckless. In terms of harm, the prosecution submit that, on the conservative estimate calculations of Andrea Poole, approximately 400-600m<sup>3</sup> was discharged into the harbour over a bank holiday weekend in waters used by children.

141. In response, SWW submit that Polperro is a highly unusual and complex site, given its location. The works and pumping facilities are located at the base of the sea cliffs off Scilly Cove and they are some distance outside the harbour and the site does not have vehicular access and the existing sewers which were buried below the inner and outer harbours had to be lined in around 2011. They submit that access to the works is challenging and can be dangerous and has to be gained via a narrow coastal path which is closed to vehicular access and there are steps which can be treacherous in wet weather. To get equipment to the site operatives have to use vertical mechanical lift equipment affixed to the rock face. I have considered the photographs supplied in Mr Corrigan's report and that he states the arrangement introduces uncommon operation and reliability challenges at the WWTW and SWW criticise the prosecution for not referring to this in their case. SWW submit that the complex and unusual issues with the location of the site is relevant to culpability.

142. I note the workings of the site and history of it as set out by SWW which I will not repeat entirely here but have considered. I note that sewage enters the works via the 525m sewer running below the outer harbour and into the inlet chamber and the flow passes through a Penstock into the rake screen chamber and then flow passes through a Penstock to a screen feed chamber which houses 2 inlet pumps which operate on a duty/standby basis. Flow is then pumped through 6mm fine screens onto that main outfall chamber which houses 3 outfall pumps (duty/assist/standby) and each have a pumping capacity of 87 l/s. Flow is pumped from that chamber to the main sea outfall.

143. SWW state that if the flow into the inlet pumps exceeds 51.7 l/s the water level in the rake screen chamber rises and excess flow passes through 10mm storm screens and then to the storm outfall chamber where it is pumped out to sea. Where sewage inflow to the main outfall chamber exceeds the pumping capacity of 174 l/s (during a storm event) then excess sewage overflows into the storm outfall chamber and into the storm storage tunnel. If both the inlet and outlet pumps fail together, all of the sewage inflow passes to the main outflow chamber (via the screen) and then to the storm outfall chamber. There is approximately 120m<sup>3</sup> of emergency storage and if

the storm storage tunnel fills up completely then once the discharge chamber is at a certain level it discharges to the marine storm outfall.

144. SWW submit that the background to the incident on 25/26 August is important and state that in May 2013 there was a minor escape of sewage through the harbour wall and SWW responded appropriately and the liner on a lateral connection which was defective was repaired. A further incident occurred again in May 2013 which was attributed to defective mortar at a manhole which was repaired. SWW state that they commissioned a drainage company to undertake a CCTV survey of the sewer where leakage was suspected which showed some leakage in parts and no obvious signs of large defects and that patch repairs would be feasible which they contracted Glanville to undertake.

145. In relation to the matters in 2017 and 2018, SWW state the 2017 incident was caused by a failure of the inlet pumps, June 2018 was following an inlet pump tripping due to a loose power cable and September 2018 was when three outfall pumps failed due to electrical and mechanical failures.

146. They submit following the September 2018 incident the asset management team began work on the re-lining of the sewer solution and to develop a contingency plan and that this incident in 2019 occurred before they had the opportunity to put that in place. They accept that they failed to act quickly to identify the issues and rectify them. They state that it would not have been possible to implement solutions between September 2018 and August 2019 but they accept that work should have been progressing by Spring 2019.

147. The investigations they did following this incident did reveal there were issues with the settings of the inlet chamber duty/standby pump causing surcharging in the primary sewer, a pipe was more extensive than previously understood and was in poor condition and constantly surcharged, there was infiltration via a manhole, there was not infiltration or exfiltration between MH0907 and MH0902 and between MH0902 and the pier in the 525mm sewer (the one that had been re-lined in 2012) and that the pressurised long sea outfall pipe had split.

148. SWW plead guilty on the basis that it was making significant and appropriate efforts over several years to address the issue of sewage leaking into the harbour (including the discussed re-lining of almost the entire length of the sewer under the

harbour wall, but a different liner would have been required due to differing sizes). They also submit that between 2012 and 2017 there was no evidence of a risk of major sewage leakage in the way the EA suggested as they had properly dealt with the previous discharges in a reasonable way. SWW do accept that they could have acted more quickly to address the matters which were subsequently identified as being the cause of the 2019 incident but they do not accept there was a failure to act sufficiently quickly nor that they were reckless and this all occurred in the context of a complex and very unusual site. They do not accept there were significant failings in the plans (as stated by Mr Corrigan at 4.72 to 4.87) and Mr Corrigan concludes that the site was operated with sufficient proper equipment and monitoring.

149. SWW do accept that it would have been reasonable for them to conclude earlier on 26 August 2019 that there was an issue with the outfall pumps and that, although they say they responded relatively quickly, they did not reach the correct conclusion, being that there was an issue at the WWTW causing the pollution. They state they did respond to the alarm within the time required.

150. They state that the site being very unusual and complex is a factor in SWW's understanding and appreciation of all of the incidents and of the explanations given in response to the PACE interviews. SWW accepts there were inconsistencies given in responses but that they were a genuine lack of understanding regarding the cause, rather than any attempt to mislead and that this should be taken into account in relation to Ms Poole's conclusions.

151. SWW refer me to the evidence of Hugh Corrigan who states the cause of the incident is most likely to have been failure of the outfall pumps 1 and 2 at around 22.45 on 25 August (which he says were restored at around 18.12 on 26 August 2019) and that the pump failure is likely to have been caused by external power interruption, an issue with the input/output module of the PLC controller, such that it did not recognise the status of the effluent level in the outfall chamber and the programmed instructions for the pumps to start did not function. He states the fact that pump 3 was not installed at the time was immaterial and would have failed in the same way pumps 1 and 2 had.

152. SWW also do not accept the calculations of Andrea Poole in relation to the amount of sewage discharged during the incident and submit that she has significantly overstated the size of the discharge. I am referred to the evidence of Hugh Corrigan (4.44 to 4.56) having considered the telemetry data he concludes that, given the

changing levels shown in the chambers and, that he says the average daily inflow to the works 3 days before the incident was 745m<sup>3</sup> and 800m<sup>3</sup> six days beforehand, and the tides times in Polperro at the time the amount of sewer infiltration prior to the incident *“would have been around 495m<sup>3</sup> per day if not more and that given the water level in the inlet chamber during the incident was above the high tide level, it is highly unlikely that infiltration could have occurred and this is consistent with the basis of the EA prosecution that exfiltration occurred.”* He estimates that the maximum foul flow arriving at the works during the 10 hour period when the EA allege 400-600m<sup>3</sup> escaped into the harbour there would only have been around 100m<sup>3</sup> and therefore if 60m<sup>3</sup> was stored in the storm storage tunnel, the maximum escape into the harbour wall would be 40m<sup>3</sup> which is also supported by there being no sharp fall in the level in the inlet chamber.

### **Findings Polperro**

153. I accept SWW's submission that this is a complex site and unusual and accept there are difficulties with its location. I accept that this would impact on the operations of SWW at the site, it has no vehicular access and existing sewers buried in the inner and outer harbour and I accept that access to the works can indeed be challenging and at times dangerous. Whilst there are clearly challenges to maintaining and operating the site, that does not mean that exculpates SWW from their responsibilities under the permit and indeed, given the difficulties and the history of issues of sewage in the harbour, that should have meant more endeavours to ensure issues did not continue there. I accept there is some saline ingress at the site of high tide in the harbour wall and that there is a correlation between tide heights and flows and that this is a relevant factor to spill volume.

154. I accept that the likely cause of the incident was indeed the failure of the two outfall pumps but I do not accept that should have resulted in the discharge through the harbour wall. As I have said, I accept that there was salt water ingress in the wall, but if the site was operating in accordance with the permit conditions, the storm storage tunnel should have filled and then discharged out to sea. It was accepted in

response to PACE questions that this did not happen and I accept sewage was pumped around in a circle from the inlet to the outfall chamber and back in again.

155. The failure of the outfall pumps should not have resulted in a spill through the harbour wall had the site been operating in accordance with the permit because the failure should have resulted in discharge through outfall B which did not happen. I note the information that was supplied by SWW regarding the connectivity of the chambers and the storm tank and that the tanks had to completely fill before the storm tank started to fill. It is clear that the sewage surcharged into the incoming network which is what caused the sewage to leak through the harbour wall. It is of significance that once the outfall pumps were restored and cleared the surcharged sewage, the discharge through the harbour wall stopped.

156. The investigations and conclusions that came to light after this incident could and should have been done beforehand. I have taken into account SWW's submissions that they were different in terms of leakages and repairs being done resolving the problem but clearly that did not and when I consider the evidence of the local witnesses and the history there were a number of occasions when sewage had continued to leak through the harbour wall. SWW themselves accept they could have acted more quickly than they did to address the matters that were subsequently identified as being the cause. I do not accept that because the previous matters were thought to be minor issues more significant and speedy action should not have been taken, sewage flooding through the harbour wall into such an area should have meant they investigated much earlier and they did not, despite SWW saying there were remedial works in 2016 and investment and repairs in 2017, clearly this did not resolve the issue and were insufficient.

157. I have also taken into account the criticism of Andrea Poole's evidence that she did not fully understand the operation of the site. It is clear that this was initially because SWW gave inaccurate information and, where appropriate, on consideration of further information she has reviewed some of her conclusions. I note that there was inaccurate information given by SWW on 25 November 2019 that an inlet pump had failed, which was not the case and in a later response of 18 November 2022, it was said that the alarms were effectively wrongly labelled in terms of the inlet and outlet pumps. I also note that there was information provided that there was an unidentified lateral sewer but that sewer had in fact been identified in plans from 2012 so that was clearly not the case.

158. SWW have accepted that there have been inconsistencies in the explanations provided during the investigations and they submit that is because of a genuine lack of understanding of the cause. Whilst I do not find the evidence substantiates that SWW providing inconsistent information was deliberate on their part, it is extremely concerning that there was a very poor understanding by SWW of the plant and its operations, something which should have taken priority to try and resolve incidents, given the history at Polperro. There were significant discrepancies in responses to PACE questions and inconsistencies with plans as to how the WWTW was operated. Regardless of my finding as to cause, the differing responses and issues in understanding the site show there were clearly failings in management systems.

159. In relation to the response to the alarms, I note SWW accept they could have acted in a different way and a different way. Given the location of the spill and history of issues at the Harbour, they should clearly have done so. I note that SWW have stated they responded as soon as reasonably practicable (a condition of the permit). I do not accept that was the case. It was only when they were contacted by the EA that they confirmed they knew there was an issue, yet there had been discharge for some 10 hours before attendance. Despite it being a bank holiday weekend, this was certainly not "*as soon as reasonably practicable*".

160. This incident was also clearly reasonably foreseeable because there had been incidents at Polperro in 2013, 2017 and two in 2018. Despite the significant challenges of the site, it was clear that issues were not properly detected and resolved in a timely manner, the steps taken afterwards confirm this is the case.

161. In considering the estimated amount of sewage that was discharged into the harbour, I do not accept that Hugh Corrigan's evidence and calculations regarding this casts doubt on the prosecution case. On considering his conclusions, I note he has considered the telemetry data but I also note that his calculations are based upon theoretical flows. He has not taken into account all of the available data in coming to his conclusions. There was no emergency overflow discharge. I note the response of Mr Crawford to the questions under caution that the sewage build up did not discharge via the emergency outfall. This was an acceptance there was no emergency spill.

162. The evidence of Andrea Poole sets out that the flow to Polperro was 16 l/s just before this incident on 25 August. The storm tank was just over 20% full (I note it has

a capacity of 80m<sup>3</sup>) and that it was therefore storing approximately 20m<sup>2</sup> of sewage and the flow to Polperro just before the incident was 16 l/s which would mean the storm tanks (when considering the time more would have been added beyond the 80m<sup>3</sup>). As I have said, it was accepted by SWW that no emergency discharge took place and I accept that, given the storm tank only held 20m<sup>3</sup> of sewage, that inflow had to go somewhere and that was out of the harbour wall.

163. I have taken into account the criticism of Andrea Poole's calculations but when I consider her evidence, she states *"it is based purely on the difference between normal daily volumes passing through Polperro STW and the daily volume observed on the day of the incident, 400-600m<sup>3</sup> is missing"* (she accepts not specifically to the 10-hour period the EA refers to) and concludes that the likely period was in fact 18 hours from the point at which the inlet chamber surcharged. She also continues, and I note her calculations, that *"Mr Corrigan does not give any reference to consumption numbers, and they differ from those provided by SWW for Holywell, Halvarras and Harlyn"*.

164. I have also taken into account the evidence of her and Mr Corrigan in relation to the issue of infiltration/exfiltration. However, it makes complete sense that there would be a high saline content in samples from Polperro STW but there is no report of this being the case. I do not accept that Mr Corrigan's evidence undermines Ms Poole's evidence on this issue. As I have already set out, I accept that it is for the prosecution to prove their case and not for me to weigh up whose expert evidence I prefer. Having said that, I find that the conclusions of Ms Poole are borne out by her reasoning and calculation and I find Mr Corrigan's evidence does not cast doubt on her conclusions in this regard. I also note and accept that it would follow that the volume of sewage missing from the normally expected daily volumes at Polperro cannot be explained by tidal infiltration in the small section of the sewer within the harbour and given Ms Poole's evidence in this regard, I accept this must be the case.

165. I also take into account the evidence of the local witnesses. I particularly note the statement of local fisherman Gary Toms who states *"my attention was drawn to the sewage leaking out of the harbour wall because I heard it from the other quay. I could hear it gushing out like a waterfall."* I entirely accept that cannot tell me whether 400-600m<sup>3</sup> of sewage leaked out and I have taken into account SWW's submissions that eye witness accounts would be consistent with 40m<sup>3</sup> of sewage spilling. However, Mr Tom's evidence gives an indication of the speed at which this was gushing out and when I take that into account, in addition to Andrea Poole's conclusions and my

findings on Hugh Corrigan's calculations and the conclusion of the spill lasting 18 hours, I accept the prosecution have made me sure that the amount of discharge was far in excess of 40m<sup>3</sup>. I accept Andrea Poole's conclusions, for the reasons set out above, which is a conservative calculation, of 400-600m<sup>3</sup> during the spill.

166. I have taken into account the issue of saline ingress to the harbour wall in relation to spill volume. Whilst I have accepted there is saline ingress, I find it is not a matter, given my findings on the evidence, that is of significance to the issue.

167. As I have discussed above, there was a delay by SWW in attending the incident. There was clearly an inadequate response to alarms which started at 23.10 on 25 August 2019, yet no one from SWW attended for 10 hours (bank holiday weekend or not, this was not acceptable). They took no action until they were notified of the incident by the EA.

168. I note that SWW have stated their measures adopted in relation to previous issues were reasonable. That is clearly not the case. It is of note that when they did finally carry out proper investigations numerous issues became apparent. The difficulties posed by the uniqueness of the site did not prevent them from later investigating and identifying measures. Given my findings, and the history, I find there was a reckless failure by SWW to put in place measures at Polperro to enforce such systems as could reasonably be expected in the circumstances to avoid the commission of this offence.

169. I therefore find SWW's culpability in relation to Polperro to be reckless.

170. In considering the issue of harm, I have found that there was a conservative estimate of 400-600m<sup>3</sup> of raw sewage spilling into Polperro harbour. The pumps were put out of order for some 18 hours and the discharge had been coming through the harbour wall for some 10 hours before SWW attended. I note the beach is just outside the harbour wall. I also again note the evidence of the witnesses. Mr Toms described being able to hear the sewage gushing out of the harbour wall. His evidence is that there was a quite a strong smell of sewage from the harbour wall. I note SWW in their submissions have said that there is a sign which prohibits swimming in the harbour, that may well be the case but Gary Toms states that lots of children use the harbour to jump into the water most evenings. Whilst he notes there were not many people about

that morning, but from 10am he says the beach is used by families and the dirty water clearly washes around that side.

171. I also take into account the evidence of Oliver Puckey, the Harbour Master. He states there was discolouration in the water and a foul odour. He says it was glorious sunshine and the harbour was extremely busy with families and the beach was at capacity with families and children bathing in the water.

172. I have also considered the evidence of Richard Dannatt on the issue of harm. In considering E.coli concentrations, given the state of the tide and dilutions, he concludes (on a spill volume of 40 or 60m<sup>3</sup>) this would pass the excellent standard and a spill volume of 600m<sup>3</sup> it would just fall foul of the good standard. Mr Dannatt states that the site of the discharge is a short distance away from the breakwater where people jump in the water and that sewage discharge prior to the ebb of the tide may pool in the harbour and then be drawn out at elevated bacterial concentration and a risk of minimum E.coli bathing levels would be exceeded.

173. Mr Dannatt accepts, despite his conclusions regarding the tides on the day and dispersal, that "it is not immediately obvious there was any likelihood of harm but there "may have been an elevated risk of harm" and concludes, as only one sample was taken, the ability to draw conclusions is limited.

174. I have considered everything he says. However, I again consider the sentencing remarks (referred to above in the case of Southern Water) of Mr Justice Johnson. I of course accept that each finding must be on the facts and circumstances of the case. I have found the volume of discharge into the harbour to be a conservative estimate of 400-600m<sup>3</sup>. Mr Dannatt accepts that there was an elevated risk of harm. When I add to that the evidence that people do jump into the harbour (albeit that would be at a higher point in the tide), that this is an enclosed harbour, that there is a beach, which Mr Puckey said was at capacity due to it being a bank holiday weekend, that raw sewage was gushing into the harbour and sounded like a waterfall (as per the evidence of Gary Toms) one does not need to be an expert to understand the significant impact of such an event.

175. When I consider Mr Dannatt accepting there was an elevated risk of harm, and the impact this would have had on the large number of people enjoying the area, even if the prosecution cannot prove, to the criminal standard, significant effect on water

quality, there was clearly a significant impact on amenity value. This cannot be said to be minor, given the length of time of the event, the use of the harbour for jumping in, the beach just outside it and the large numbers of people enjoying the area.

176. I therefore find that harm in relation to Polperro is category 2.

### **Aggravating Features Polperro**

177. In considering aggravating features in relation to Polperro, I note there was sewage spilling from the harbour wall on an august bank holiday weekend and there were three previous formal warnings given to SWW by the EA in relation to the WWTW. Having said that, these are also matters I have already taken into account in my conclusions on culpability and harm so do not find them aggravating features as to do so would be to double-count. The same applies in relation to the previous knowledge of issues at Polperro. This is a matter I have already taken into account in deciding culpability.

### **Bodmin Road**

178. SWW have pleaded guilty to charges 29 and 30 which relate to offences at Bodmin Road where the prosecution set out that sewage escaped from a SWW combined sewer and entered a small stream, Budshead Creek in the Whitleigh area of Plymouth. The sewer serves a residential catchment area which allows passage of sewage to Ernesettle STW. In March 2015, the EA were notified by Plymouth City Council ("PCC") of a possible pollution incident connected to the repair of the sewer. An EA officer attended the site on 30 March 2015. Emails were sent to SWW on 13 March 2015 and again on 31 March 2015, that email warning there was a risk of escalation and stating an EA officer having attended the site and noticed there was still discharge and no repairs had been made. SWW responded to say that Kier were on site and they were hoping a temporary repair would be completed, which was done (I have seen the photo of that temporary repair).

179. On 9 April 2015, a formal warning letter was sent to SWW by the EA, setting out that even though a temporary repair had been made to stop the discharge, the section of the sewer remained vulnerable to further deterioration and should be monitored closely until a permanent solution was in place. On 27 January 2017 another email was sent to SWW (following another site visit from the same EA officer) requesting what works they had planned and SWW responded on 12 February 2017 to say they had instructed Glanvilles to consider a solution.
180. SWW contacted the EA on 29 August 2020 to self-report that a 50m section of the river bank had collapsed and taken a 15-20m section of the sewer into the river, a pipe which carries raw sewage. On 6 September 2020, SWW reported one of the pumping pipes which was designed to pump sewage past the stretch of sewer had collapsed and was discharging into the water. It was confirmed by 30 September 2020 that permanent repairs had been carried out by SWW.
181. The second charge relates to SWW self-reporting on 6 September 2020 that one of the over pumping pipes that was being used to divert sewage while the above repair was being carried out had become blocked and caused a discharge of sewage into the watercourse between 7.45am and 12.45pm.
182. On behalf of SWW in their written response to questions under caution, Anthony Crawford set out that SWW believed “the pipe was operating normally with no history of leaks or discharges until notification was received on 29 August 2020 and the report was initially treated as a flooding event due to recent history of heavy rainfall...subsequent investigation revealed the bank within which the pipe sat had been washed away...”. The prosecution submit this was inaccurate, given the history of correspondence and the fact that there had already been a repair to the pipe. Contractors were mobilised on 29 August and pumps installed to pump the sewage overground, with the discharging stopping at 9.14. Mr Crawford also stated that the bank was believed to be owned by PCC but they had not acknowledged their responsibility as such. The prosecution also state that Mr Crawford stated in his response that the pipe was largely below ground and confirmed some work had been carried in 2015 to it “in the form of cement reinforcement joints” and that there had been monitoring of the pipe afterwards (unfortunately his response is missing a digit as to the actual year it was monitored until). He also states “*SWW assessed that the*

*condition of the pipe had not deteriorated, it was operating correctly and so posed no risk of discharge”.*

183. The prosecution submit that there is a legal duty on SWW to maintain sewers and that it was fully aware of the state of this pipe and the risk posed. They also submit SWW has powers under the Water Industry Act 1991 in any event to enter premises to carry out works and (reasonable notice having been given) to inspect, maintain and repair a pipe.

184. The prosecution submit that they made clear to SWW in their communication in 2017 that there was an obvious risk of deterioration, which SWW acknowledged and it is the prosecution case that the deterioration was entirely foreseeable.

185. In terms of culpability, the prosecution submit SWW were reckless as they were fully aware of the state of the sewerage system at Bodmin Road for years and that, despite warning being given, no proper action or permanent repairs were undertaken.

186. In relation to harm, the prosecution submit harm is category 3 and accept that the impact of pollution in the stream was of a minor localised nature, although E.coli readings were significant, they submit the area is not used for bathing and therefore did not carry the risk of harm to health as it would in other areas and there were no ecologically sensitive areas affected.

187. SWW plead guilty on a basis, that being as set out in the evidence of Hugh Corrigan (paragraphs 4.16 to 4.18 of his report) that SWW did carry out a temporary repair to the pipe promptly initially, which he opines were reasonable measures to manage the risk of pollution and that the sewer and bank were in the same condition in 2017 as they had been at the 2015 repair and that there was no obvious risk of imminent or sudden pipe collapse. SWW accept that being the case, Hugh Corrigan accepts that SWW needed to develop a plan to protect the sewer in the long term and that it would have been reasonable for them to have done that by early 2019 and they do not accept the “turned a blind eye” to an obvious risk.

188. SWW submit that the initial remedial works were appropriate and that they had allocated Glanville in late 2015 and then Barhale in January 2017 to develop a design in collaboration with PCC but that scheme had not been completed before this incident. They state that this is not therefore a case of complete inaction on SWW’s part, they

were taking action, despite them saying there was no imminent risk. They also submit that the condition of the river bank had changed and, as a consequence of a turbulent spell of weather and flooding in late August (Plymouth alone having experienced a total of approximately 80mm of rain), the bank collapsed pushing the sewer pipes into the creek bed.

189. SWW submit their culpability in relation to charge 29 is negligent (lower end).

190. In relation to charge 30, SWW accept that it caused the discharge but state those works would have been undertaken whether or not the bank had collapsed as preventative works and a temporary over-land pipe would have been deployed in such circumstances and it was caused by an unforeseen blockage and thus discharge over a short period of time occurred. They submit their culpability is low in relation to charge 30.

191. Turning to harm, SWW accept that harm for both charges is category 3.

### **Bodmin Road Findings**

192. I have considered the evidence submitted, including the response to questions under caution of Anthony Crawford. I have also considered the statement of Rob Bailey and the report of Hugh Corrigan on this issue. I note that Rob Bailey was not involved in 2015 when the initial repair was done to the pipe but he states *“working on the basis of our standard practice, I would imagine that the 2015 repairs would have been classed as minor to the 2020 works but urgent due to pollution...if the same incident were to occur today, the same repairs would no doubt have been carried out”*.

193. I also take into account Mr Bailey’s evidence regarding the repairs that were done when the sewer collapsed in 2020. I note there was consideration of diverting the pipe, but because there are a number of other pipes which lead to it this was not considered a viable option in terms of costs. I note the works that were carried out in the end was to put in Gabian baskets to stabilise the river bank and Mr Bailey states

re-routing the pipe would cost “5 times more than the cost of repairing the bank”. I note the amount that was spent on stabilising the bank.

194. I have also taken into account the findings of Hugh Corrigan who states in his report “*in my view the repairs by SWW were reasonable initial works to prevent pollution because the sewer was not of imminent risk of failure*”. He also states it was a reasonable approach for SWW to monitor the pipe until 2017. He does go on to say “*however, SWW ought to have been aware that the condition of the sewer was slightly more precarious than in 2015 (when it first became alert to the issue) and that the sewer was at risk of failing in the nearer term (within the next 12 to 14 months) if preventative measures were not taken. I understand the permanent repair work was allocated to Glanville on around 23 October however, on around 23 March 2016 the scheme was on hold. In January 2017, SWW instructed Barnhale to develop a design in collaboration with PCC...this scheme was not approved for implementation in the AMP6 period due to insufficient funding*”.

195. Therefore, even the defence expert accepts that SWW ought to have been aware that the sewer was more precarious in 2017 than in 2015. Indeed, the EA wrote to SWW by email sending photographs and setting out their concerns and asking what they had planned for the site, yet no works were done. SWW responded to say they had instructed contractors (Glanville) yet the works were not done and Mr Corrigan and Mr Bailey both accept this was due to insufficient funding. I note that Mr Bailey sets out the cost to re-route the sewer would be 5 times more than the repair the bank. A repair of the bank clearly would have been an option. I of course take into account that the 2020 offence occurred when the river bank collapsed. When one looks at the photos of the pipe, one does not have to be an engineer to see how precarious that pipe is in the location it is, on an eroding river bank and with the, what appears to be very crude indeed, repairs that were done in 2015. I do not accept the repairs were reasonable. I note Mr Crawford in his PACE response set out there had been a significant amount of rainfall in the period preceding the collapse and Mr Corrigan sets out there was unforeseeable and consecutive storm events soon after SWW commenced their next cycle of investment. Whilst I accept that the 80mm of rainfall is high, this is Devon. It is very predictable that there will often be significant amounts of rainfall and storms at all times of the year and one does not need to be a meteorologist to predict that, one merely needs to spend time in and have knowledge of the area.

196. I therefore do not accept for a moment that the first incident, following collapse of the bank, was unforeseeable. I find that SWW clearly knew this pipe was precarious yet did nothing about it for years until it collapsed in 2020 and raw sewage spilled into the watercourse. It is clear that Gabian baskets (as it did eventually in 2020) would have gone a significant way to preventing the pollution, yet even that does not seem to have been considered until the pipe eventually collapsed. SWW could and should have taken preventative measures after the initial issues in 2015 and the further warning from the EA in 2017. I note SWW submit they instructed Glanville to review and “scope” additional bank works in 2017, but they then did nothing about that. It is clear, when I consider the evidence of Rob Bailey and Hugh Corrigan (defence evidence) that was for financial reasons. I note that SWW submit (and indeed I take into account Hugh Corrigan’s evidence on this point that AMP6 budgets were drawn down drastically) that there was insufficient budget, but had they considered works such as they had no choice to do in the end (the Gabian baskets), that would have been a good solution. There was clear actual foresight of the risk but, never the less that risk was taken and those in a position of responsibility in the organisation were clearly aware of the risk, given the involvement of Glanville and Barhale.

197. I therefore find that SWW’s culpability in terms of charge 29 is reckless.

198. When I consider the evidence in relation to charge 2, I do accept that is in a somewhat different position in terms of culpability to charge 1, given the nature of the event. SWW had taken action in response to the (as I have found foreseeable) collapse of the pipe and had been pumping over ground since 29 August, this blockage in that pipe and discharge occurring on 6 September. I can see no evidence in the bundle (and have certainly not been referred by the prosecution to any specific evidence) that relates to inaction by SWW in terms of overseeing the overground pipe when pumping.

199. I note the evidence of Hugh Corrigan in this regard. He states that incident 2 was indeed a foreseeable blockage in the temporary pumping line and I agree that was the case. He states, and from the evidence of Rob Bailey, I accept it to be the case, that Glanville did appreciate the risk of pump failure (a duty and temporary standby pump being installed) and inspected the operating pump twice per day to mitigate the risk of sudden pump failure which Mr Corrigan concludes were reasonable measures. Given I have seen no evidence to contradict this conclusion (and as I have said numerous times throughout this judgement that I remind myself it is for the prosecution to prove their case not for me to decide which expert I prefer), I accept that it cannot

be shown, in relation to charge 30 of 6 September 2020, that SWW's culpability can be proved to be reckless.

200. Having said that, I must put charge 30 in the context of why the incident happened in the first place. That is because it was necessary to use overground pumps because of what I have found in relation to charge 1, to be the foreseeable and preventable collapse of the pipe. Therefore, overall, in relation to charge 30, I find that there was a failure by SWW as a whole to take reasonable care to put in place and enforce proper systems for avoiding the commission of the offence and I find their culpability for charge 30 to be negligent.

201. In terms of harm, the parties agree that the incidents did not extent beyond short-lived, localised environmental impact and it is agreed there was no risk to health and no loss to amenity or risk of such. I accept that is indeed the case. I therefore find that harm is category 3 in relation to Bodmin Road.

202. In considering aggravating features, I accept there was some financial benefit to SWW by defraying the eventual expenses of £89,238 and I find this to be an aggravating feature.

### **ISO/Management Systems**

203. There are some overall issues which I need to consider in this case. The first of those is the issue in relation to ISO and management systems.

### **Investment & EMS/ISO**

204. I note that since 2015-16, water companies have been required by Ofwat to publish an annual performance report which sets out how the company is delivering against separate price controls and for companies to confirm they have complied with their relevant statutory, licence and regulatory obligations and the steps it is taking to manage risks. The prosecution submit that the SWW board has consistently stated to Ofwat that it has sufficient processes and systems in place to comply with its obligations but that it stated departure from its statement is that it meets its obligations

save for exceptions, listed as including ongoing EA investigations, wastewater treatment works that were identified as potentially non-compliant with their flow management obligations within their discharge permits and prosecutions under Environmental Permitting Regulations 2016.

205. The prosecution states that Ofwat regulates water companies and sets revenue controls every five years through a price review process to ensure that prices charged reflect the balance between prices charged and the deployment of the money for the services. They state that the latest review is PR19 (for 2020-2025) (PR14 was for 2015-2020, most of the period of these charges). The prosecution submit that SWW had a cumulative underspend on its wholesale activities over the 2015-2020 period of 16% overall, amounting to approximately £265m, significantly higher than any other water company and that, whilst there has been a reduction in their underspend, it remained at 2% against its wholesale wastewater allowance for the first three years of 2022-2025.

206. It is the prosecution's case that this offending takes place in the background of this underspend when it was able to apply significant adequate resources which it did not. They refer me to the PR19 process, SWW's document "Accounting for Past Delivery" in which it was noted by Ofwat that the company performed well on costs but fell short on major pollution incidents. *"The company has the worst performance on the most serious incidents in the sector and the company provides insufficient evidence that the plan includes appropriate measures to address this performance"*.

207. The prosecution submit that there are issues overall:

- (i) Delays in or failure to deal with known risks, often in sensitive areas.
- (ii) Absence of clear management or operational oversight and documentation during the offending period in relation to SPSs (a manager being appointed to oversee SPSs towards the end of the offending period).
- (iii) Significant errors in site plans on numerous sites and description of alarm systems.
- (iv) Lack of version control in site plans, thus out of date documents being in existence which did not accurately reflect the current operations.
- (v) Repeated failures to provide consistent/accurate information to the EA, if not deliberate, the prosecution submit implies a failure of management to understand the operation of their assets.

- (vi) Failure by staff to test alarms properly and to respond to alarms.
- (vii) Failure by management to ensure systems that were in place were being implemented by staff and no checking or correction of inaccurate information being supplied by SWW to their consultants (eg Hyder).
- (viii) SWW knowing they were breaching permit requirements through EDM data or a serious management failure to review that data and act accordingly.
- (ix) Provision of inaccurate information to regulators.
- (x) Significant delays in taking action to secure compliance with the permit requirements.
- (xi) Regularly deferring expenditure on sewerage whilst carrying the above-mentioned underspend.

208. SWW do not accept the above issues with management systems exist (nor existed during the offending period), nor do they accept it can be proved there is a link in the underspend to the offending. They submit the prosecution has simplified what are complex issues. The defence have referred me to my previous findings in relation to this issue in the 2023 judgment I gave in an EA prosecution of SWW and the evidence of Mr Foster in that case whose conclusions at the time were that *“it was highly likely that common themes contributed to the breaches in that case”*. I found *“highly likely”* was not sufficient to the criminal standard. The defence submit this case overlaps the same period of offending.

209. My decision in relation to this issue is straightforward. I have considered the evidence of Ms Poole and Mr Foster (who agrees her evidence on the point is correct) and that of Ms Smith, Rowe and Mr Earwaker. In actual fact, regardless of what their evidence is, the issue for me is more simple. That is because I have set out, in relation to the offending at the various sites, where (in relation to some offending) I have found there to be a reckless failure by the organisation to put in place and enforce systems that could reasonably be expected to avoid the commission of the offences. I find that those failing relate to many of the issues set out above (in relation to this issue) by the prosecution and I have, where appropriate, factored that in when finding culpability on SWW's part in relation to the offences. I note the prosecution, in their submissions, refer to the issues relating to those individual sites as relevant to this overall issue. I have taken into account and note with extreme concern that Ofwat noted that SWW had the worst performance on the most serious incidents in the sector. Having said that, again, I have considered its failings in relation to each site in this case, which

overlap and I find it would not be appropriate to then consider this as an overall aggravating feature.

210. For me now to consider those as issues overall as an aggravating feature would be to 'double-count' matters I have already taken into account in my findings on culpability. I therefore find that I do not take these issues into account as an aggravating feature as suggested by the prosecution.

211. In terms of the underspend, this is also a matter I can deal with briefly. I found in my previous judgment in 2023 that the 16% underspend was very concerning but that the evidence directly linking this overall underspend with the offending in that case was lacking and I could not be sure of the link. I also found then that, whilst it was likely this underspend contributed to SWW failing to comply with their permit requirements and thus leading to significant incidents of pollution, I could not be sure of that to the criminal standard. The offending in this case relates generally to the same period. I must of course consider the evidence in this case separately and, just because I came to such a conclusion in 2023, that does not mean I am bound to come to the same conclusion here. Having said that, having considered the evidence, I find that nothing has changed on this issue since my 2023 findings, there is no further development of the evidence linking the underspend directly to the offending to the criminal standard. If I have found an underspend in relation to individual sites, I have taken that into account as an aggravating feature in relation to the particular site, but I find that it cannot be proved, so that I am sure, that there is the overall evidential link in relation to all offences and therefore do not take into account the overall underspend as an aggravating feature.

### **Very Large Organisations**

212. I remind myself of the principles in sentencing very large organisations ("VLOs"). I note that the SCG's assist in incorporating some of the case law in this area. The SCG sets out:

*“Where an offending company’s turnover or equivalent very greatly exceeds the threshold for large companies, courts should consider fines outside the range for large companies it may be necessary to move outside the suggested range to achieve a proportionate sentence.*

*There is no precise level of turnover at which an organisation becomes “very large”. In the case of most organisations, it will be obvious if it either is or is not very large.*

*In the case of very large organisations the appropriate sentence cannot be reached by merely applying a mathematical formula to the starting points and ranges for large organisations.*

*In setting the level of fine for a very large organisation the court must consider the seriousness of the offence with reference to the culpability and harm factors above and the aggravating and mitigating factors below, the purposes of sentencing (including punishment and deterrence) and the financial circumstances of the offending organisation. Regard should be had to the principles set out under “General principles in setting a fine” above and at steps 5 to 7 below.*

*Particular regard should be had to making the fine proportionate to the means of the organisation, sufficiently large to constitute appropriate punishment depending on the seriousness of the offence, and sufficient to bring home to the management and shareholders the need for regulatory compliance.”*

213. In addition to the SCG’s on this point, I also take into account case law in relation to VLO’s and note the cases of *HSE v Places for People Homes Ltd* [2021] EWCA Crim 410, *R v Thames Water Utilities* [2015] EWCA Crim 960, *Whirlpool v HSE* [2017] EWCA Crim 2186 and *R v Tata Steel UK Ltd*, [2017], EWCA Crim 704. I note the relationship between fine and turnover is not purely arithmetic.

214. The case of *HSE v Places for People Homes Ltd* [2021] EWCA Crim 410 set out:

- There has been a conscious choice by the Sentencing Council not to seek to define or provide a table for organisations with a turnover above £50m. It is not for the Court to seek to impose one.
- There is in fact no precise level of turnover at which an organisation becomes “very large”. In the case of most organisations, it will be obvious if it either is or is not very large (here it is accepted that SWW is clearly a very large organisation).

- In the case of VLOs, the starting points and ranges for categorised organisations do not apply. The Court should return to the first principles contained in [now] ss 57 and 63, of the Sentencing Act 2020, with particular emphasis on the need to ensure the penalty is proportionate to the means of the offender and to bring home to management and shareholders the need for compliance.
- When sentencing a VLO, the Court should take the figures in Step Two for large organisations and increase the fine in accordance with well-established sentencing principles until the fine is sufficient to constitute the commensurate punishment but also proportionate with the means of the offender.
- There should be no mechanistic extrapolation from the figures in the table for large or very large companies.
- There is not, and there should not be, a bright dividing line between large and very large companies. The size of the organisation lies on a spectrum - the larger the company, the greater the fine may need to be, depending on the facts of the particular offender.

215. I must consider the culpability and harm of the defendant. I must ensure a fine is sufficient to constitute commensurate punishment and be proportionate to SWW's means. As said above, the larger the company, the greater the fine may need to be.

216. It is not disputed that SWW is a VLO. I accept the defence submissions that SWW, in terms of turnover in comparison to some other water companies, is significantly smaller (I have already referred to Mr Justice Johnson's comments in sentencing Southern Water who had a very significant turnover of £88 billion at the time). SWW's average turnover for the years 2024, 2025 and ending 2026 was just over £800 million. I will discuss the position of the company in terms of profit at steps 5 to 7 of the SCG's below.

### **Starting Point of Financial Penalties for Each Site**

217. Taking into account the seriousness of the offending, all incidents of illegal pollution discharges are incredibly serious. I consider Nanstallon, Harlyn and then

Polperro to be the most serious of the incidents I am sentencing today. Taking that into account, and in due course totality, I consider the following to be the starting point for each location:

**Nanstallon**

**Culpability: Reckless**

**Harm: Category 2**

**Starting Point of Fine: £3.6 million**

**Harlyn**

**Culpability: Reckless**

**Harm: Category 2**

**Starting Point of Fine: £3.6 million**

**Halvarras**

**Culpability: Reckless**

**Harm: Category 3**

**Starting Point of Fine: £500,000**

**Hooe Lake**

**Culpability: Negligent**

**Harm: Category 3**

**Starting point of fine: £360,000**

**Polperro**

**Culpability: Reckless**

**Harm: Category 2**

**Starting Point of Fine: £1.5 million**

**Bodmin Road**

**Culpability: Charge 29 Reckless**

**Charge 30 Negligent**

**Harm: Category 3 in relation to both charges**

**Starting Point of Fine: £250,000 (charge 29)**

**Aggravating Features Overall**

218. I have considered aggravating features in relation to each of the offences and also the statutory aggravating feature of the previous convictions of SWW. I note that they have 21 offences for environmental offences since the SCG's came into force. This is clearly an aggravating feature. I do of course put this in the context of the

considerable infrastructure that SWW have. I have accepted that the issue of underspend cannot be linked directly, to the criminal standard to the offending (save where specified for individual offences). However, it is of grave concern that Ofwat have stated that SWW has the worst performance of serious incidents in the sector.

## **Mitigation**

219. I have considered the mitigation in this case and have viewed the video that Richard Price has made and the mitigation bundle submitted.

220. When I consider the factors in the SCG's (not an exhaustive list of course) and whether there is remorse on SWW's part for such a large number of pollution incidents, I take into account that Mr Price sets out the ethos of the company now being "*one pollution is too many*". It is clear that SWW is taking change seriously and a number of measures have been implemented which I will discuss further below. In terms however of remorse for these incidents, there has been such a significant amount of argument put forward as to their culpability and harm involving a very significant amount of expert evidence. I recognise that these incidents occurred before the changes that have been implemented by SWW. I have found, in almost all instances that the prosecution have proved their submissions regarding culpability and harm. Given those findings, I cannot help but consider SWW, instead of being remorseful and accepting full responsibility for the acts, have tried to, to some extent, minimise their role in the offending.

221. I accept there was self-reporting by SWW in relation to some of the incidents, but they had a duty to do that in any event. In terms of the offending based on EDM data, I have already made findings regarding that (which was in terms of the abuse of process argument) in my judgment of 7 March 2025. I have taken into account that SWW were most certainly "ahead of the game" in terms of installation of EDM but I also put that in the context of the large amount of bathing and shellfisheries areas, which was therefore hardly surprising. I found in my judgment relating to the abuse of process argument that the EA made a decision to prosecute against a background of non-compliance and that they only prosecuted the sites the EA viewed as "*the worst*". I have also found that SWW are not the only water company to be prosecuted on EDM data (although Wessex water was prosecuted in part on EDM). I also found that there was an assumption on SWW's that EDM was to be used for the sole purpose of

calculating the duration of discharge, rather than criminal prosecutions. To suggest such is effectively to say “had we not installed it we would have got away with it” which cannot be right. I have also taken into account the submissions by SWW that EDM was installed under the permit conditions where it was not mandatory at the time (eg shellfish waters). I also found in my judgment on 7 March 2025 that EDM at the sites that were not mandatory was done in any event with the agreement of SWW.

222. Therefore, whilst I take these matters into consideration, I do not find they are matters that are particularly mitigating in the circumstances.

223. I have considered the evidence of Louise Rowe (and Jon Earwaker) regarding the financial position of SWW and that SWW had already returned £20,949,000 to its customers through the Outcome Delivery Incentive penalties (“ODIs”) (as set by Ofwat) as a result of not meeting wastewater performance commitments during the years this offending relates to, which were calculated with reference to the EA’s non-statutory Environmental Performance Assessment (“EPA”) and reflect the permit non-compliance. I accept that the Independent Water Commission review in 2024/2025 raised a number of issues in relation to these ODIs and the overlap with criminal proceedings and that this should be taken into account when a fine has been imposed to avoid any “double-jeopardy” and there is an overlap between the EA’s functions and permit requirements.

224. I have also considered the White Paper “A New Vision for Water” setting out proposals to take forward the findings of the Commission. I note it sets out that where poor performance has been subject to enforcement through other means it is not in the customer interest for companies to be penalised through other means...for the same offences.

225. I have considered the submissions regarding this issue. I have noted the contents of the White Paper and the amount returned to customers by SWW. I note that this was not amounts that have voluntarily been paid by SWW, it has been imposed on them by Ofwat for non-permit compliance. Additionally, I do not know the circumstances of those matters. Even if some/all of these sites were included, the evidence of Louise Rowe nor the report of Jon Earwaker assists me with this. There is nothing I can see to suggest to me that the ODI’s related to this same offending. Even if it did, as the law now stands, ODIs imposed by Ofwat are regulatory matters. This is a criminal prosecution. Despite there being a White Paper which criticises such

overlap, I must apply the law as it stands now. I note that the Water Reform Bill is not anticipated until the 2026/2027 Parliamentary session. In the circumstances I do not therefore take this into account as a mitigating factor.

226. I have mentioned above the mitigation video by Richard Price which sets out the changes that have been implemented since the last time I sentenced SWW in 2023. I take into account their strategy of “*one pollution is too many*”. I take into account the steps that have been taken by the company in an attempt to tackle pollution, which I do not need to set out here having viewed the video. I take into account all mitigation set out in the evidence and submissions.

227. I find that the mitigation does outweigh the aggravation of the previous convictions to such an extent that some downward adjustment of 10% is appropriate.

228. I take into account that the offending pre-dates the sentence of SWW by this court in 2023 and some of the offending relates to the same period as the offences SWW were sentenced. I ask myself had the matters been dealt with at the same time would it have made a significant difference to the sentence that was imposed in 2023 were the matters prosecuted at that time. Given the very serious and extensive nature of some of the offending I sentence today, I find it would have made a very substantial difference and therefore do not consider that SWW have in anyway been prejudiced by offences not being prosecuted at the same time.

229. At steps five to seven of the SCG’s, I must “step back” and review whether the sentence as a whole meets, in a fair way, the objectives of punishment, deterrence and removal of gain derived through the commission of the offence. I must also ensure the combination of financial orders removes any economic benefit derived from the offending and (where economic benefit has been found) that should normally be added to the fine at step four. At step six I must check whether the proposed fine based on turnover is proportionate to the offender’s means and the combination of financial orders must be sufficient to have a real economic impact which will bring home to both management and shareholders the need to improve regulatory compliance. I need to examine the financial circumstances of SWW in the round and, where there is a small or large profit margin, relative to turnover, an upward adjustment may be needed.

230. When I consider the financial position of SWW, I note that there has been a period of financial loss. I take into account that there was a small profit in 2024 and a

loss of £48.6m to the end of 2025. Having said that, I note that in the last financial year, with a turnover of £937.8m, there is a pre-tax profit of £124.2m. In percentage terms in view of turnover, that is a profit of around 13% (albeit I accept pre-tax) which I accept is not hugely high in comparison to other suppliers (particularly some energy companies) but it is never the less, an indication that SWW are back to having a significant profit margin.

231. I have already discussed the issues with ODIs above, and the same conclusions apply at this step of the SCG's. Despite the return to customers of £20,949,000, I do not find it would be appropriate to adjust the fines further at this stage.

232. I have found, in assessing the level of fine at step four, that SWW have a significant turnover, are a VLO and have taken that into account in the level of fine I have considered a starting point. I find that the level of fines I am imposing is sufficient to bring home to the management and shareholders the need to improve regulatory compliance. I have noted the steps SWW have taken following the previous prosecution in 2023 and that these offences pre-date that offending. I also taken into account that SWW were operating at a loss the previous year (and have considered Jon Earwaker's report regarding the reasons for that) but, as I have said, are now back into the realms of significant profit. They are also part of the Pennon Group and I note Louise Rowe says in her statement *"despite this position [in reference to expenditure incurred and operating losses] I can confirm that SWW is able to pay a fine resulting from this prosecution"*. Of course they are.

233. In the circumstances I therefore do not consider it necessary to adjust the fine further at this stage.

234. In considering step seven, I find the level of fine I am imposing will not have an impact on the provision of services. Given the underspend of SWW, I have no doubt the fine will not impact on the organisation's ability to comply with the law nor will it (and certainly should not) impact on its staff or customers.

235. In consideration of the issue of credit for guilty plea, the defence submit that full credit for guilty plea should be given.

236. There was initially an abuse of process argument in this case by the defence. I found there was not an abuse of process. Pleas were entered following that. I accept that the guilty pleas were entered at the first opportunity following that hearing. However, that was on a basis. There has been very significant argument in terms of culpability and harm in relation to all offences save 1 (Hooe Lake).
237. I raised at the sentencing hearing on 30 July 2026, whether full credit for guilty plea should be given where I have found against SWW on the issues. SWW asked for a further opportunity to consider that and make representations on that issue. I have considered the written representations of SWW and the EA that have followed.
238. SWW submit that full credit for guilty plea should be given in this case. They submit that this case was not resolved by way of a Newton hearing and that at no point did the prosecution or defence proceed on the basis that the court was being asked to undertake a Newton hearing and states the documents submitted by the defence were not challenged by the prosecution. They submit that at no point did the EA make any submission that SWW was not entitled to full credit for guilty plea which was entirely consistent with the approach taken in the previous prosecution before this court in 2023 where the court heard submissions, read filed material including expert evidence and made a determination on culpability and harm. The defence accept that in that case, most of the points were resolved in SWW's favour but, in relation to those that were not, the court did not deduct any credit for guilty plea. SWW submit the determinations the court has been asked to make are not factual disputes, rather in relation in relation to the parties' respective submissions on where the charges sit within the SCG's and as such, even if the court determines those matters in the prosecution's favour, absent a Newton hearing, the defendant is entitled to full credit.
239. I take into account the relevant case law referred to by SWW in their submissions (most notably See *R v Newton* (1983) 77 Cr App R 13; *R v Underwood* [2004] EWCA Crim 2256; [2005] 1 Cr App R (S) 90). They submit that in *Underwood*, it was stated that whilst no judge is bound by agreement of the parties, no hearing is required where the dispute is immaterial to sentence or where the issue can properly and fairly be resolved on the papers and on submissions. SWW submit that in this case there was no real dispute as to the primary facts and the issue for the court to determine is culpability and harm categories which are matters of evaluative judgment and could properly and fairly be determined on the material served and submissions and no Newton hearing was necessary or witnesses called.

240. They continue that the burden is on the prosecution to prove, to the criminal standard, their contentions regarding culpability and harm and that, despite there being no burden on the defence to prove otherwise, they have gone to significant lengths to serve both expert and lay evidence to support their position in relation to the facts of each incident and appropriate categories of culpability and harm. They state it was open to the EA to request a Newton Hearing on any issue which it has not done and the court should not be lulled into undertaking a balancing exercise in assessing which case it prefers where the parties differ. They also state that, where they have, for example served expert evidence on an issue, the EA has elected not to serve evidence in response. They submit, unless the expert's evidence is incapable of belief, it is difficult to see how the EA's contrary case, based simply on the submissions of counsel, could be preferred to the expert evidence. The court is reminded that the criminal burden of proof applies to questions of culpability and harm.

241. SWW also refer the court to the SCG's in relation to credit for guilty plea and submit that, after lengthy discussions between the parties, including withdrawal of some of the charges and amendment of others, the defendant had indicated guilty pleas by September 2025 and thus indicated this at the first opportunity and are entitled to a full one-third credit and the EA have not raised any argument to the contrary. In terms of the SCG reference to credit following a Newton hearing, SWW submit this provision is not engaged because there has been no such hearing, no witnesses have been called and the prosecution did not seek one or characterise the hearing as a Newton hearing and SWW did not advance a version of events capable of being rejected as the primary facts were largely agreed and the parties positions were confined to argument and submissions as to how they SCGs falls to be applied. SWW confirm that the value of a guilty plea avoids a trial and saves court and public time, spares witnesses and provides certainty.

242. They refer to the case of *R v Caley* [2012] EWCA Crim 2821. They submit the qualification in section F of the SCG in relation to credit for guilty plea exists because a contested and unsuccessful Newton hearing dissipates part of that value because time is expended, witnesses are called and the plea is shown to have resolve less than had appeared. SWW submit none of that applies in this case and that the contrary is the case, that the course agreed between the parties has saved court time by substituting submissions on served material for a contested evidential hearing.

243. They also submit that credit is not withheld merely because a defendant advances submissions as to categorisation which the court does not ultimately accept. They state a defendant is not to be penalised for the proper exercise of a procedural entitlement; it is the timing of the plea, and not the making of legitimate submissions as to sentence, which determines the level of credit. They submit that any other approach would deter defendant's from assisting the court upon the question which the SCGs requires the court to decided and would penalise the defendant for having adopted the more proportionate of the two available procedures and the position would be otherwise only if the defendant had advanced a basis of plea which it knew to be false or had required factual dispute to be resolved by evidence and had lost which the defence submit neither is the case here.

244. In response, the prosecution submit that F2 of the SCG clearly recognises that a Newton hearing may take place without live evidence being called and continues that where an offender's version of events is rejected at a Newton or special reasons hearing, the reduction which would have been available should normally be halved and a further reduction may be appropriate where witnesses are called. They submit that footnote 3 of the SCG sets out that when an offender pleads guilty but disputes the case as put forward by the prosecution and the dispute would normally make a difference to sentence a Newton hearing is held and the judge will normally hear evidence from witnesses to decide which version of the disputed facts to base the sentence on.

245. The prosecution submit that the court is entitled to take into account:

- (i) The basis of plea submitted by SWW, and the evidence submitted in support of it, constituted a significant challenge to large parts of the prosecution case.
- (ii) The SCG recognises that it is open to the court to resolve the differences between the parties' cases on the basis of the written evidence and submissions, without live evidence being called.
- (iii) The court adopted that practice in the 'Tranche 1' case<sup>1</sup> and, in the current case, expressly referred to the way in which the earlier case had been dealt with, indicating that it intended to deal with the current case in the same way. Although submissions were invited, no disagreement to the course proposed was expressed by or on behalf of SWW. Notwithstanding the

extensive and significant differences between the parties' cases, notably the expert evidence, at no point in the protracted history of this case was any application made by SWW to have live evidence called to resolve those differences. The clear indication was that SWW was content to have matters resolved and dealt with as they were in the 'Tranche 1' case, that is by submission and consideration of the written evidence. It cannot now complain if any issues are so resolved against its contentions and the Guideline is applied accordingly.

- (iv) The failed abuse of process argument on charges 7 - 18 that delayed pleas. The prosecution explicitly raised the question of how the factual and technical differences between the parties were to be resolved. The current defence submissions do not refer to the abuse of process argument and so do not address the effect on any credit to be afforded for the pleas on those charges.

246. Although each case will be fact-specific, some further guidance is provided by recent authorities considering the issues. In *R v Nestle UK* [2021] EWCA Crim 168 credit for plea considered in a case with a protracted procedural history and following a failed abuse of process argument, the court emphasised at paragraphs 43-47 and the high hurdle that a defendant must overcome if it wishes to persuade a sentencing court to work outside the Guideline. In *R v Workchain* [2019] EWCA Crim 1422 20% credit for plea was applied following an abandoned *Newton* hearing on the issue of culpability. They also submit the issues are considered at paragraphs 24-26 and 35-36 in *R v Brown & Anor.* [2026] EWCA Crim 941, where 10% credit for plea applied following a full *Newton* hearing described as 'generous' in circumstances of case.

247. I agree that the case has been dealt with on submissions. However, those submissions have clearly been on the basis that I need to make findings on evidence before me. The defence have, correctly, set out that the prosecution must prove their case and (as I have set out above) it is not for me to "weigh up" the expert evidence and decide which I prefer. I have however, needed to consider the evidence (of the experts and the relevant witness statements submitted) and make findings upon it. That has taken a very substantial amount of time. I note that the defence submit that the prosecution has not asked for a *Newton* hearing. They have also submitted that the defence have gone to significant efforts to submit both expert and lay evidence to support their position "*in relation to the **facts** of each incident and appropriate categories of culpability and harm*". I also note the submissions of the defence that the

prosecution have not elected to serve evidence in response to that. I do not agree that is the case. Following defence evidence being served, in relation to some incidents, the prosecution have served addendum expert evidence from Andrea Poole in response.

248. I have noted that the defence have submitted that, unless the expert's evidence is incapable of belief, it is difficult to see how the EA's contrary case, based on submissions of counsel, could be preferred to the expert evidence. This is effectively SWW saying they have submitted evidence which they submit contradicts the prosecution case and therefore the court must follow that. They have submitted that on the one hand, and on the other have then made very significant written and some oral submissions as to why the defence evidence undermines that of the prosecution. I have found, in most locations and pollution incidents in this case, that I do not accept their submissions.

249. I remind myself of the principles of the case of *R v Newton* that where there is a sharp divergence on a question of fact which is relevant to sentence, the court can usually approach the matter in three ways. In this court however, there being no jury, the judge can either hear evidence on one side or the other to come to a conclusion or to hear no evidence and come to a conclusion on the basis of submissions of counsel, but if he does that, he must come down on the side of the defendant. Where there is a substantial conflict between the two sides, the version of the defendant must be accepted so far as is possible. In *Newton* the judge failed to adopt one of those courses.

250. What is clear to me in this case is that both parties have made submissions to me on the evidence. They have set out (as I had indeed requested they do) the specific issues in dispute and what evidence is relevant for me to consider to decide that issue. That has clearly involved, on the submissions of both parties, some findings of facts on that evidence, being relevant to the issues of culpability and harm and therefore making a material difference to sentence. I note the defence have also submitted that the prosecution have not sought to cross examine the defence experts on their findings. I accept that is the case, but the defence have also agreed that the court could deal with the matters on consideration of the written evidence and submissions and come to a finding and agreed that the case could be dealt with on submissions alone and by considering the evidence before me. They have stated that the submissions of counsel are not evidence. Of course, I agree that to be the case, but

both parties have clearly submitted that I make factual findings on the written evidence before me. Calling those witnesses in person would not have added anything to the written evidence I have considered. Both parties agreed that the evidence would make a material difference to sentence, as have I. I have clearly *heard* evidence in that thousands of pages have been submitted to me by both parties and I have had to make findings on it. The fact that witnesses did not attend to give evidence or be cross examined does not mean I have not done so.

251. I accept that I myself did not direct that a Newton hearing, in terms of hearing oral evidence, was required. I agreed with the parties that a hearing of oral evidence was not required. I accept that the issue of credit for guilty plea it is not a matter I raised with the parties until the matter was listed for sentence on 30 July 2026. I raised this issue at that point having spent many days considering the very significant amount of written evidence, making findings on that evidence and then on the issues of culpability and harm. I agreed to further adjourn the case to allow parties to make submissions on that point, which they have done.

252. I find it makes a complete mockery of credit for guilty plea to submit that one pleads guilty to charges at the first opportunity, that the court needs to make findings on culpability and harm on consideration of the very significant evidence put before me, to litigate almost every point to the nth degree and then still insist on full credit for guilty plea being given. If that is the case what incentive is there for a defendant to accept the matters of the prosecution case? There is none. SWW would have absolutely nothing to lose by litigating everything it possibly could, despite its guilty pleas, which is effectively what it has done. That cannot be correct and the credit must reflect the way SWW have approached this case. I accept this is not a view I took in my judgment in 2023 in a similar prosecution. In that case, I found overall for SWW on the issues of culpability and harm and therefore the issue did not arise. I also note there has been an abuse of process argument put forward by the defence in this case relating to some of the charges, which was unsuccessful.

253. Here, given huge amount and the very complicated nature of the evidence, it cannot be said that SWW have fully accepted their guilt on many of the charges. I have clearly conducted a Newton Hearing, whether or not the experts have been sought to be cross examined. I have been asked to consider and make findings on the evidence before me. Even though the words "Newton hearing" have not been used, that is exactly what has happened. I have made findings on a very large amount of evidence

(which by their very submissions in the BOP SWW accepts was required), the consideration of which and my findings has taken me a very significant amount of time. The fact that evidence wasn't presented in person by witnesses in the actual court room is irrelevant, I have still made factual findings and those findings most certainly make a material difference to my sentence.

254. When I consider the SCG's Overarching Principles on credit for guilty plea, I note they set out that where a Newton hearing has been conducted and an offender's version of events is rejected at a Newton Hearing, the reduction which would have been available at the stage of the proceedings where the plea was indicated (in this case I accept, despite the delays, that would be the equivalent of the first hearing) should normally be halved.

255. I therefore find that SWW are not entitled to full credit for guilty plea in relation to the charges where I have found the prosecution case is proved in terms of culpability and harm which were challenged by the defence. I will reduce credit to 17% (just above half of what it would if full credit were given) where I have found the prosecution have proved culpability and harm and 22% where there has been a finding/agreement on one matter but not the other. This does not impact on credit for the charges where there had been agreement on culpability and harm or where I have not been required to give significant consideration to evidence in order to make a finding.

256. The fines I am therefore imposing, having taken into account the seriousness of the offences, aggravating and mitigating features, credit for guilty plea and totality, are as follows:

### **Nanstallon**

**Culpability: Reckless**

**Harm: Category 2**

**Starting Point of Fine: £3.6 million**

**No specific aggravating features. Mitigation 10%**

**£3,240,000**

**CFGP 17%**

**Total Nanstallon: £2,689,200**

**NSP on remainder of charges**

**Harlyn**

**Culpability: Reckless**

**Harm: Category 2**

**Starting Point of Fine: £3.6 million**

**Aggravating features specific to Harlyn: Financial Benefit of offending of £360,000**

**Mitigation 10%**

**£3,564,000**

**CFGP 17%**

**Total Harlyn: £2,958,120**

**NSP on remainder of charges**

**Halvarras**

**Culpability: Reckless**

**Harm: Category 3**

**Starting point of fine: £500,000**

**No specific aggravating features**

**Mitigation 10%**

**£450,000**

**CFGP 22% (reduced but harm agreed so 22%)**

**Total Halvarras:     £351,000**

**Hooe Lake**

**Culpability:             Negligent**

**Harm:                     Category 3**

**Starting point of fine:     £360,000**

**10% mitigation**

**£324,000**

**Full CFGP (culpability and harm generally agreed)**

**Total Hooe Lake:     £216,000**

**Polperro**

**Culpability:             Reckless**

**Harm:                     Category 2**

**Starting Point of Fine:     £1.5 million**

**10% mitigation**

**£1,350,000**

**17% CFGP**

**Total Polperro £ 1,120,500**

## **Bodmin Road**

**Culpability: Charge 29 Reckless**

**Charge 30 Negligent**

**Harm: Category 3 in relation to both charges**

**Starting Point of Fine: £250,000**

Aggravation of Financial benefit. An uplift for that aggravating feature is made, but given the starting point of the fine, I find it would be disproportionate to make it the total financial gain of £89,238 therefore after that aggravating feature and mitigation the fine is:

**£260,000**

**22% CFGP**

**Total Bodmin Road £202,800 (charge 29)**

**In relation to all other charges on all sites where there are other charges, there will be no separate penalty imposed.**

## **Costs**

257. The prosecution make an application for costs in the total sum of £374,373.45. The power of the court to order costs against a defendant in criminal proceedings is set out in section 18 of the Prosecution of Offences Act 1985. The test in considering whether to order costs is whether the costs to be ordered are *just and* reasonable. I also have in mind rule 45.5 Criminal Procedure Rules 2025 and the Practice Direction (Costs in Criminal Proceedings) 2015 (pt 3). I remind myself of the guidance in *Neville v Gardner Merchant* [1983] 5 Cr App R (S) 349 (DC) in terms of investigation costs.

258. I have considered the submissions of both parties in relation to the costs claimed which I will not repeat at this stage. The defence argue that these costs are not just and reasonable in the circumstances of the case. SWW refer to my previous findings in an EA prosecution of SWW in 2023 where I criticised the EA in relation to their costs incurred, most particularly, the hourly rates charged and the amount of time spent and costs incurred by the experts and the excessive amount of legal preparation and charges, with excessive hours and fees being claimed. I found that the EA had effectively turned that case into a “*super case*” and had that not been done, the costs claimed would have been significantly lower.
259. I must consider the costs application in relation to the circumstances of each case, and I am not bound by my previous finding that the costs in the 2023 prosecution were not just and reasonable and by my reduction in costs in that case. I distinguish this case in some respects. Whilst I found that case was turned into a “*super case*” by the EA prosecuting it in the way they did, I do not accept that is necessarily the case here. Firstly, the prosecution in relation to Nanstallon and Harlyn, involved hundreds of incidents of pollution over many years which came to light after EDM was submitted. There was a very significant amount of data that had to be considered and expert evidence in relation to those sites. There then had to be addendum expert evidence in response to further issues raised with the prosecution case by the defence, all of which necessitated a considerable amount of complex expert evidence and significant work by the prosecution lawyers involved in the case. The expert evidence is not such that it is simple to understand and absorb in which to be able to easily make submissions upon it.
260. Polperro also involved complex expert evidence which had to be considered and responded to by Ms Poole and digested, responded to by lawyers, understood and submissions drafted and made. This was far from a straightforward exercise. I note the submissions of SWW that the extra work was needed by Ms Poole because she did not understand the workings of the WWTW and she therefore had to respond to SWW’s expert evidence because of that but I take into account the representations of the prosecution that there were issues with the contradictory information being given by SWW which then required further investigation/response. I accept that is indeed the case and that did necessitate further expert evidence. I note also that SWW’s submissions regarding volume of spillage at Polperro. I have found that I have accepted Andrea Poole’s evidence in that regard and therefore there was further

consideration of the expert evidence put forward by SWW that was required by the prosecution.

261. I note that SWW submit that the correspondence from them to the EA was 121 emails and letters over a period of 28 months and that firstly that is not excessive, and they submit that correspondence was in an attempt to narrow down the issues. I accept that there was clearly some narrowing of issues, and indeed there were charges withdrawn in respect of Halvarras. Having said that, much of the correspondence also related to SWW contesting many parts of the prosecution case, which required a significant amount of work in response. SWW stated that they were not creating complexity, they were endeavouring to reduce it. Given my findings in this case overall, I do not accept that is the case. I accept that some of the correspondence between the parties did narrow some issues, but there were clear complications created by SWW which went way beyond any narrowing of issues which of course would result in increased costs by the prosecution.
262. In terms of the offending at Halvarras, whilst I accept the prosecution did withdraw charges following representations and submissions, there was still a charge in existence and the costs incurred related to the prosecution at Halvarras overall, and I do not accept it should be broken down into the different charges.
263. I have considered the table set out in the submissions of SWW which gives costs in seven previous prosecutions by the EA of SWW. They submit it is the prosecution bringing this as a “*super case*” that has led to such large costs which would not have been incurred had the cases been brought separately. I found in the 2023 prosecution that, had those cases been brought separately, the costs in those cases would likely to have been around £25-£35,000 per case. I distinguish some of the offences in this prosecution from that, most particularly Nanstallon, Harlyn and Polperro, the first two sites involving huge amounts of data and evidence to consider which necessitated significant expert consideration. I have already set out above the additional matters which necessitated extensive expert evidence in relation to Polperro. The costs in relation to those sites would have been very significant in any event. I accept that in relation to the remaining sites that the issues were less complex, with some agreement between the parties, yet still consideration of and response to expert evidence in relation to some sites was clearly necessary by the prosecution.

264. I make it clear I make no findings at this stage in relation to costs for Holywell and the prosecution have in any event reduced the costs claimed at this stage to remove estimated costs relating to Holywell.
265. In the circumstances of this prosecution, given the overall complexities of some aspects of this case, I do not accept that them being prosecuted separately would have made a significant difference to the costs overall.
266. Having said that, I do accept that some of the costs incurred overall by the prosecution are not just and reasonable.
267. There has been some vagueness in respect of the work done by Atkins and, whilst I recognise that there was complex evidence and issues, particularly in relation to Nanstallon, Harlyn and Polperro, there has been an extremely significant amount of work done overall by Atkins totalling 1,278 hours, some 36 weeks. That is a huge amount of work and whilst I accept that the work was complex and responses/addendum reports were necessary to issues raised by SWW's experts, and those were of particular complexity in some of the sites, that is still a huge and excessive amount of work. I note that the defence experts Sharon Smith and Hugh Corrigan spent some 484 hours in total working on their reports (although I note that figure does not include the experts who dealt with the issue of harm). In the circumstances I find it appropriate to reduce some of the prosecution expert costs. I do not accept the criticism that there have been people named on the invoices that are not the report authors, an expert is entitled to enlist others in the firm to assist with preparation.
268. In relation to legal costs, I accept the submissions of the defence that there were occasions where there was overlap with senior lawyers which was not necessary, despite the complexities of the case. In terms of the fees charged and SWW's submissions that they are excessive, I have found that to be the case before (again, in the 2023 prosecution). I also again accept I am not bound by that decision and we are three years on from there and costs have of course increased in that time. I accept that the rate charged by senior lawyers is just and reasonable, but as I have said, there has been some unnecessary overlap. In terms of counsel, I accept that more time was spent by prosecuting counsel than defence (some 177 hours), but I note that the rate prosecuting counsel charged was reasonable. I do not know what hourly rate defence counsel have charged but I note of course that one of them is a KC, which is not the

case for either prosecuting counsel and who would therefore usually command much less of an hourly rate. In terms of the paralegal, EA officers and support staff hourly rates, I have taken into account that there are also of course administrative costs involved in addition, but I do find that there is a high hourly rate charged in relation to them by the EA. I also accept there has been consideration of some evidence/matters that were not relevant or necessary to this prosecution.

269. I therefore reduce the costs to be paid by SWW in this case to a total of £329,993.
270. There is also a surcharge which is payable. Given the dates of the offending cross a threshold of being before 8 April 2016, but after the surcharge was introduced, the amount payable is £120.
271. Therefore the total amount payable by South West Water is £7,867,733. I order this be paid in full within 56 days.
272. I made it clear in my previous sentencing of SWW in 2023 that incidents of pollution by water companies will not be tolerated and must be taken very seriously by these courts. I have taken into account that these incidents pre-date that sentence and I have also taken into account the changes that SWW have made since then. Only time will tell if those changes are successful, I certainly hope that will be the case. SWW as part of their improvements tell me they have adopted the wording “*one pollution is too many*”. It goes without saying that must be the case. However, in this case there were hundreds of incidents of sewage spills onto our beaches and into our waterways and sea and untreated sewage gushed through the harbour wall into the harbour at Polperro on a bank holiday weekend. SWW need to make sure they carry their new mantra of “*one pollution is too many*” forward from now on to ensure that horrendous, very significant incidents of pollution such as these never happen again.

District Judge (Magistrates’ Court) Jo Matson  
29 December 2026