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4 September 2026

Dear Ofwat,

Thames Water ("Thames")

We refer to our letter of 26 March 2026 and prior correspondence on the related subjects of the merits of special administration as a resolution option for Thames; Ofwat's ongoing discussions with Thames and London and Valley Water ("**LVW**") about an alternative resolution; and Ofwat's duty to consult on any proposal in that context. We attach this correspondence for ease of reference.

We are very concerned about reports in the media which reflect material misunderstandings on the part of "officials" of the legal position relating to special administration and the undertakings given by Thames to Ofwat over two years ago: https://www.ofwat.gov.uk/wp-content/uploads/2024/08/Undertakings-for-the-purpose-of-Section-19-of-the-Water-Industry-Act-1991-1.pdf

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These undertakings are, of course, the substratum on which Thames's operation outside of formal insolvency over the past two years has been dependent, as they were accepted by Ofwat in lieu of the enforcement action that it was entitled to take as a result of Thames's loss of its investment grade ratings (an indisputable breach of its licence which of course still subsists). Had Ofwat not elected to take the undertakings, it would have been entitled to issue an enforcement notice to Thames which would not have been remedied, with the result that Ofwat or the Secretary of State would have been able to petition the High Court to have Thames placed in special administration.

Against this background we refer to a Guardian article of 25 August 2026 which stated:

> "*… officials say there are two big problems with the special administration regime as it stands*
>
> *The first is that companies can only be taken into administration if they are insolvent or unable to provide a basic level of service. Owing to continued support from a group of creditors hoping to take ownership of the company, neither of these are the case.*
>
> *The second is that once a company enters administration, the administrator is under a legal duty to maximise returns to the creditors, meaning that it will be difficult for the government to take ownership without paying a significant price."*

The two points are fundamentally wrong:

1. Ofwat is <u>not</u> bound to continue to allow Thames to operate under the undertakings referenced above on an open-ended basis, regardless of whether Thames can source further liquidity to keep its operations running:

    1.1. As Ofwat stated at the time that it agreed the undertakings in 2024, Thames's primary "remediation objective" under the undertakings was to "*take all reasonable steps to address the concerns raised by its credit ratings agencies and to restore two Investment Grade Ratings in line with Condition P26 of the Licence*". To that end, amongst other things, Thames was to "*dedicate appropriate resources and take all reasonable actions to establish long term financial resilience and with the objectives to deliver a successful*

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outcome to the Equity Raise, to maintain access to debt capital markets and to ensure it has funding and plans in place to enable [it] to meet its statutory and regulatory obligations over the long term".

1.2. As Ofwat said at the time, "*Thames Water must take responsibility for developing its plans to turn around its operational performance and to address its financial position, and must do so at pace and with urgency, if the company is to put itself in a position where it can meet the needs of customers and the environment in both the short and the long-term*." Thames formally acknowledged that "*Ofwat may propose that the Remediation Steps … are either modified or supplemented and/or additional Undertakings are provided … if Ofwat considers that the current Undertakings (or [Thames's] performance of or compliance with them) will not be, or are unlikely to be, sufficient to achieve the Remediation Objective, and without prejudice to Ofwat's duty to take enforcement action.*" In this respect, Ofwat stated that it was "*<u>under a duty to pursue an enforcement order where a water company fails to comply with the undertakings it has provided</u>*".

1.3. In the circumstances it cannot be the case that Thames is allowed to stumble on indefinitely under the current undertakings in circumstances where it has consistently failed to generate a proposal that satisfies the remediation objective set by Ofwat - or, indeed, is fit to "*meet the needs of customers and the environment in both the short and the long-term*". The reality is that Ofwat can now bring the current undertaking regime to an end so as to reactivate its right and duty to take enforcement action.

1.4. That would in turn crystallise a state of insolvency for Thames. It is, in any event, obviously the case that Thames can only fix its profound balance sheet insolvency if it is able to restructure on a basis that achieves the remediation objective and enables it to operate in compliance with its statutory obligations. Absent the likelihood of such a proposal, there is no sound basis on which Thames can rest a claim that it is not insolvent in the statutory sense, regardless of whether it can source further liquidity to continue to operate (which it is currently doing in a way which isn't in

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compliance with its statutory obligations, including with respect to the environment).

1.5. The Guardian has quoted Angela Eagle this morning as stating that "*whatever people think of Thames at the moment, it isn't technically insolvent*". That statement fails to have regard to the point made above. Thames's alleged solvency is wholly conditional on it being permitted to continue under the current undertakings notwithstanding that it is in breach of its licence and broader statutory obligations, and is failing to achieve the remediation objective and related purposes for which the undertakings were taken. It is obvious from the terms of the undertakings that Ofwat has the power to bring that state of affairs to an end. It is telling in this respect that there was nothing in Ofwat's 2024 publications with respect to the undertakings that disclosed or supported the notion that they would remain in place merely because, and for so long as, Thames could continue to source liquidity from creditors whose own economic interests favour continuing to lend.

1.6. For these reasons, any assertion that the enforcement and insolvency triggers for special administration are unavailable is misconceived.

2. Special administrators are <u>not</u> under a simple duty to maximise returns to creditors:

2.1. Special administration is not the same as ordinary administration proceedings, in which administrators will seek to deal with the company and its assets on the basis that provides the best recovery for creditors. Instead, the overriding purpose of special administration is to ensure that a water company is restructured on a basis that enables it to comply with its licence and properly and lawfully carry out its statutory duties (in Thames's case) as a supplier and maintainer of water supply and sewerage systems under the Water Industry Act 1991 and related legislation.

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2.2. As section 23 of the 1991 Act makes clear, the fundamental purpose of special administration is to ensure that the functions which have been vested in the company by virtue of its appointment will be properly carried out. There is a "best price" component relating to special administrators' duties, as reflected in the definition of "appropriate value" in Reg. 40 of the 2024 Regulations, but as the relevant definition makes clear, it is one that is wholly subservient to the need to be consistent with the achievement of the purposes of the special administration, i.e. to ensure the functions of supplying and maintaining water and sewerage systems are properly and lawfully carried out.

2.3. It follows that even if LVW (or any other party) were to be a bidder in a special administration of Thames, and able to offer the "best price" in monetary terms (given, in LVW's case, the ability of its stakeholders to benefit from a distribution of excess proceeds to the creditor group), that would be irrelevant if the bid was incapable of satisfying the special administrators that the fundamental purpose of special administration - as referenced above - will be achieved.

We reiterate that Ofwat must undertake a public consultation if it is to consider agreeing to any proposal for a resolution of Thames outside of special administration. In both that context and more generally, please confirm that Ofwat will take appropriate steps to ensure that the public are not misled by legal inaccuracies with respect to the availability, purpose or mechanics of the special administration process for Thames.

We look forward to receiving your response to the above, at the earliest opportunity.

Yours faithfully,

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Encl. Bundle of previous correspondence