

Environmental Audit Committee

Oral evidence: The environmental protection work of the Environment Agency, HC 702

Wednesday 24 April 2024

Ordered by the House of Commons to be published on 24 April 2024.

[Watch the meeting](#)

Members present: Philip Dunne (Chair); Duncan Baker; Barry Gardiner; Chris Grayling; Cherilyn Mackrory; Jerome Mayhew; Cat Smith; Claudia Webbe.

Questions 1 - 66

Witnesses

I: Philip Duffy, Chief Executive, Environment Agency, and Alan Lovell, Chair, Environment Agency.

Examination of witnesses

Witnesses: Philip Duffy and Alan Lovell.

Q1 Chair: Welcome to the Environmental Audit Committee for our oral evidence session today where we scrutinise the work of the Environment Agency. We are very pleased to be joined by the Chair, Alan Lovell, and the Chief Executive, Philip Duffy. I think Alan was appointed about 18 months ago and Philip about nine months ago, so you both come to this with fresh eyes. I will start by asking Alan to give us a short overview of what you found in the agency that you felt was not up to scratch and what you are doing about it.

Alan Lovell: I am delighted to be here and happy to take that for a start. If I may say very briefly what I found that was working well, in general our flood programme has been effective. It has stood up to the last six months of challenge pretty robustly and I think we deal with incidents pretty well. That is point one. Point two is that the people are wonderful at all levels. One of the great pleasures of my job has been going around the country and seeing work in progress. It never fails to be an inspirational experience. One other thing that I think is very strong is they are very good at climate change. They set a good example within the public service by setting a tight net zero challenge and setting out upon it.

I found, though, that there was not enough emphasis on the day job of running the organisation. Philip and I have both been involved in running serious businesses before, the Border Force in Philip's case. I think that has made a bit of difference. There was not enough attention on delivery and there were aspects where we were falling behind where we should have been. In particular, we were very behind on permitting, which was most unfortunate for business and people looking for permits. I was warned very early on that our water regulation was not where it should be. That has been an area of focus for me and certainly for Philip after he started.

The other thing is that the board did not have sufficient visibility of some of those issues and did not dig deep into some of the critical matters in front of us. On the latter, digging deep, we had a water industry transformation project review in December, for example, which was quite transformational in terms of our approach and how we will take that forward. I think that has been very important.

Q2 Chair: Thank you. Philip, you have also arrived recently. What are your impressions?

Philip Duffy: It is good to be here. Like the Chair, I think that the calibre and depth of work on flooding has been very impressive and we can talk a bit about the programme if it comes up. I have had the opportunity to look at lots of big capital programmes across government in my career and I think the way we are handling this is definitely above average.



HOUSE OF COMMONS

There is always room for improvement but I think it is a very solid way of thinking about flood risk.

Secondly, on the good, the quality and calibre of criminal work done by the agency is very high. In the last year we have strengthened that with the Joint Unit for Waste Crime and new funding from Government to tackle waste crime more effectively, new partnerships with the National Crime Agency and HMRC. I think that is working very well.

On areas for improvement, as the Chair has said, basics is probably one of the key things. Everything from answering letters, dealing with customer inquiries, and making sure that we are meeting our turnaround times for decision making needs to improve. It is improving but it has taken a lot of focus to get there.

Secondly, I think there is something about the agency's regulatory mindset that needs a bit of a boost. It has slightly lost confidence as a regulator and a lot of the casework that I see and casework that Members of Parliament raise with me is about times when permits are not being adhered to. There is a slight sense that that is drifting a little bit and we need to redraw expectations about what is happening. We are doing that noticeably in our practice on landfill and waste, where we have been a much more forward-leaning regulator in recent months, and I think that is paying dividends.

Lastly, we have really good IT workers and a lot of IT-qualified staff but we are not at the forefront of using modernised technology in our work, whether that is in publishing data that is geographically available, using AI to streamline our processes and reduce the workload of our staff. I think there is a lot to be done to improve our basic IT and transformation. That will improve the efficiency of the business. It is quite a staff-focused business compared to those I have worked in previously. We are trying to think about how we turn that around and try to bring in some modernised IT.

I am very struck by feedback I have had from stakeholders that says that they want to see us publishing more data and being more transparent. They rely upon us for data for their work in the area and they want to see more of it and they want to see platforms where they can interrogate that data and see it being very visible. We have just started that effort. We published the storm overflow data a few weeks ago and we did that in a mapped form, which is very open. I want us to go further on that, a bit more like you see in Wales where our colleagues in Natural Resources Wales have a better platform for their IT work, to try to make sure that people can get the information they need about the environment and casework directly.

On basics, it is worth noting that we have 48,000 FOI requests a year. I think that is equal to the whole of the rest of Whitehall and that is in part because we do not publish enough material easily, so people have to go



with FOI because they cannot get hold of things they want to know. There are quite a lot, I think, for us to work on.

As Alan said, the calibre of staff has taken me aback. They are very motivated, very knowledgeable. We have a genuine depth of expertise in the many things they do and they work incredibly hard, so that is a great place to start my tenure.

Q3 Chair: Thank you. On behalf of the Committee, we all come across members of your staff in our local constituencies and in regional fora and I am sure colleagues would agree—people are nodding—with what you have just said about the quality of your staff and their diligence. Certainly, on flood response, whenever the warnings are out they are out there throughout all weathers at all times of day and night. I think we should put on record that that is testament to their commitment to the role. I am grateful for your comments about that. So that is the good news. There are lots of criticisms about the performance of the EA and we will be coming on to some of them during the course of this session.

Before I get into that, I would like to pick up your comment on landfill and waste. I have recently had representation made by the methane processors who own and operate landfill sites that the ROCs regime is expiring in less than five years' time, in 2027, with no sign of a replacement scheme and that there is a risk to what happens to methane, which obviously is a multiple times worse greenhouse gas than carbon dioxide. Are you familiar with this challenge? Are you doing anything about mitigating it or talking to Government about a refresh of such a ROCs scheme or some other means of managing that problem?

Alan Lovell: The ROCs regime is not primarily our concern, of course, but I completely agree with the point you make. At a time when we are encouraging the capture of methane to prevent damage from that, for us to be talking of making the collection of gas—not having ROCs would make it non-economic and, therefore, for it to become a cost to the operator instead of a benefit does not feel like the right thing to me. We have not yet but it is certainly something on which we should join in the requests for reconsideration.

Q4 Chair: I would urge you in your regular discussions with the right Departments to say that we do something about it. I think it would be just flared off and that would damage the environment. It would lose the baseload electricity that is currently generated, and that would require replacement. Of course, a lot of it would just leach into the atmosphere, which we obviously do not want to happen. I am glad you take that view, Alan.

On the role of the regulator, you mentioned permitting, Philip, as an area that you need to look at. We will be coming on to this for water in particular, but many of the NGOs have expressed their concerns about the lack of rigour in maintaining licence conditions, in particular for the water companies but not exclusively. You, with Ofwat and DEFRA, are



HOUSE OF COMMONS

currently subject to an OEP investigation into this issue. Is there anything you can say to us, bearing in mind there is such an investigation, about what you are doing to change the permitting regime or your monitoring of performance against licences?

Philip Duffy: The story of permitting is a difficult one for the agency. It had a genuine collapse in performance over the last two years and there are lots of factors behind that. We had a range of staff move and it is very technical work. We also had a significant rise in applications as the economy reopened following Covid that I do not think were planned for or foreseen properly. In the last year we have been, frankly, throwing resources at it to try to recover the situation and we have recovered the situation to some degree; 80% of people get their permit on time currently. Scratch beneath the surface of those numbers and you will see that for water in particular, where we have a lot of permit renewal work coming up, we are still struggling to get through the workload in a timely way.

One of the features of water, where I have a lot of sympathy with NGOs, is how many permits are very aged, going right back in some cases to the 1960s, and no longer reflect modernised environmental practices. I have been looking at some of those personally and I can see the need for them to be rewritten, but that is not a fast process. I think there is a slight difference between that point and the point about whether we think the permits are set at the right level or calibrated appropriately. We have to apply the law as it is, not as some people might like it to be. I think there is a debate to be had about whether the permit emission standards are tough enough, but we are applying the law fairly and accurately in our permits as they are being issued. There is then a question, which no doubt we will come on to, about whether people inspect against the permits so that we are confident that water companies in particular are operating their installations in line with their permits, and we are not asleep at the wheel at all on that either.

For the year ahead we are trying to recover further our service standards and we are doing three things on that. The first one is there we are modernising the IT that underpins it. At the minute there is no pre-application stage in the permit process and we find that some applicants, particularly for more complicated schemes, do not provide adequate information for us to make a judgment. We will have a pre-application checklist to make sure that the applications that come to the officers are in good shape. Secondly, we are going to maintain a high level of resourcing for the year ahead, which we will have to recover in fees in subsequent years to make sure we catch up and maintain our flow of work. Thirdly, we are looking at whether we can standardise the publication of permits and simplify them.

I heard from some water company executives, and I have some sympathy with this point, that there are times where our permits are so complex that it is very hard to know whether an installation is compliant



HOUSE OF COMMONS

or not because they put so many conditions on them. We need to look very critically at what we are putting in permits to make sure we put the legally required numbers in and we do not overload the permitting system with a series of requirements that can't effectively be managed or monitored. There is lots to do on permitting.

There are also, of course, a number of permits coming through that are for very complex schemes; we call this category 5. These are the most complex schemes. For those, we are raising our income through the NSIP regime and we will have dedicated teams. If you are working on a major rail, road or energy scheme, you get dedicated service. That will make quite a big difference to getting those permits cleared. Our performance problem is in the middle. It is the central water company permits that we are lagging in.

Q5 Chair: On your overall purpose of trying to protect the environment, do you regard yourselves as doing a good job? How do you measure your performance?

Alan Lovell: I don't think we can say that we are doing a good job at the moment. We have a lot to learn. We are improving in some areas significantly and within a measurable three or four-year period I think you will see us able to answer that question more positively. How do we judge it? Clearly, we need to have better performance from the water companies in particular. That is very visible but it is not just that. We need to do more on pollution from other sources, including agriculture and highways, and we can talk more about that. That is the main one.

There are, equally, some places where I think we are very good regulators. I think we do a good job on nuclear, for example, in conjunction with the other nuclear agencies. As Philip mentioned earlier, we generally are doing a good job on waste overall, although again it is a very difficult area, increasing in challenge as organised crime becomes more engaged in it. We have to keep going, keep improving to keep up. Inevitably, it is patchy but because water is not in a good shape at the moment, our main emphasis has to be on improvement there.

Philip Duffy: I think the agency had a good end of year. You have to remember that we have just gone through—pick your superlative. We had a very wet winter. We don't have completely parallel staff who deal with the floods. The people who you are meeting in your constituency are taken off other regulatory work and they have been working as volunteers at weekends and nights week after week through the winter.

Despite that, the focus we brought to performance across the executive team in the last year has driven up performance against our metrics. We have about 65 metrics in total for the agency; it is a big complicated agency. This time last year only 21% of them were green and now 49% of them are green. This time last year 55% of our metrics were red, not being met, and now 27% are red. If you look at the 27% that are not being met, there are things of concern in there. I might highlight



HOUSE OF COMMONS

maintenance of flood assets, public safety reviews for locations, but there has been real progress on things like COMAH, control of major accidents and hazards; 21% will be green for the first year in six years. I mentioned progress on permitting and compliance.

We are building an agency that is more performative. It is focused on delivering its metrics and I pay tribute to my staff who are working incredibly hard to get those numbers and results. As Alan said, we have some structural problems. We are not approaching water regulation in the right way. Secondly, I don't think we have the right evidence base and a strategy of published data that would support the effort more generally. Then there are issues around the regulation of waste and water and how we enforce against those things, which I think we need to discuss, but there are some positive signs there. The performance improvement has not come about through any great transformation. We have not transferred or put more resources in or changed how we do it. It has come about because we have just stayed very focused on it.

One thing we are quite keen to do for next year, when we are going to try to publish a business plan that covers this, is agree with the Secretary of State a series of much more meaningful metrics about whether you can say the agency is performing. Currently, for example, in our headline metrics there is not really anything that covers whether water industry permits are compliant or not, which is an obvious thing to ask. That needs to change, so we are going to try to evolve that a bit so that we have a set of targets we can work to. I think people are up for it in the agency. They want to be more forward leaning and they want to be delivering for the public, so if we get those metrics right I am confident we can move the dial.

Q6 Chair: That is at the heart of the OEP investigation, isn't it, whether you are monitoring against the permits from the overflows? Has the investigation led you proactively before it concludes to review what you are doing and change the way you are doing things?

Philip Duffy: Honestly, it is not because of the OEP investigation. It is because anyone who comes into a job like this will be focused on water quality. Let's just comment on where we started. There are 91 staff in an agency of nearly 13,400 who are qualified to do water inspections and yet this is the top priority issue, or certainly in my inbox, maybe in yours as well. There was a withdrawal successively in 2009 and again in 2015 from regular investigations into compliance. Previously, there were only 900 inspections of water installations and there are 16,000 regulated installations.

Chair: By 91 people?

Philip Duffy: By 91 people. Last year we did 1,420, so an improvement. If you look at monitoring, we significantly reduced the level of monitoring we were doing against the water framework directive, partly because of budgetary constraints. We are starting on the back foot. I am very



HOUSE OF COMMONS

pleased to say we had a lot of support from the Government in turning that around.

If I may, I would like to say a bit about how we are approaching that. There are three big things we need to do. First, we need to make sure we have good enough data that is published and widely available. Secondly, we need to do more than 1,400 inspections. The Secretary of State, at our request, has agreed to increase our fees and we will have 500 qualified water inspectors appointed in the course of this year. We will do 4,000 inspections this calendar year and we will do over 10,000 the following year. Our intention is to publish those inspections, just as peer regulators in Wales and Scotland do.

We will use that to drive a much more risk-based approach about whether the water companies are abiding by their obligations and delivering what they said they will do. As you know, we are in the middle of this price review. I think it will be a question of making sure the water companies deliver the investment that they have agreed to do with our colleagues in Ofwat. We will come on to the water industry later no doubt, but that is a start of a real change of gear from the agency and the focus we put on water. It will not be an instant change but if we have this conversation in a year's time you will have a lot more evidence in front of you about how the industry is performing than you currently do.

Chair: I am sure the successor Committee will have a conversation like this in a year's time.

Q7 Duncan Baker: I represent north Norfolk and it has a heavy chunk of the Broads in it, so I can certainly reiterate what the Chair has just said. My constituency had huge amounts of flooding from the Norfolk Broads and the EA has been excellent over the last few months. That includes the area director Graham Verrier and multiple officers who came to an open public meeting that I held. They have been extremely helpful, so thank you for that.

I want to move on to particularly how the goals are aligned between the Environment Agency and the Government's objectives and to see how strategically they fit together and marry up and how effectively, therefore, that is also reviewed and managed. To what extent does the Government's Environmental Improvement Plan 2023 underpin the agency's own goals? How do they fit and marry up together?

Alan Lovell: We have certainly sought to ensure that our principal objectives are directly aligned with the EIP. We are very conscious that progress against the EIP is not where it should be. The OEP has been clear on that and we need to play our part in doing something about that, but the fundamental corporate scorecard elements are all mapped against relevant sections of the EIP and we care deeply.

Q8 Duncan Baker: How do you deal with the differences between Government plans and Environment Agency plans, for instance, over air



HOUSE OF COMMONS

quality? What processes are there behind the scenes that try to align those to Government plans and to your plans?

Philip Duffy: We have a very good relationship with DEFRA. We have various joint committees that look at these areas. I think we are pretty well aligned on the goals. There are times when they have different perspectives about what can be done and the cost of doing things to us. We give them technical advice on those areas. If you take waste, for example, which is a huge part of the plan and then we have the waste resources plan, we are currently doing 13 separate projects on waste to help the Government deliver their vision for waste. They have an extremely radical vision for waste and those projects are complicated and not straightforward to deliver, but I think there is good history of alignment between those areas. Biodiversity net gain is another one. Chemicals regulation is another one. I would say that our policy partnership with DEFRA, and with other Departments—DESNZ as well—is pretty strong right now and I don't see much evidence of us being at sixes and sevens on issues.

Q9 **Duncan Baker:** Despite me being very complimentary about my regional team, and I genuinely mean that, who gives you oversight and regulates that you are performing to the appropriate levels? If I have a particular grievance with the EA locally—flooding could be at one level and I could be pleased with that, or I could be dealing with a constituent. I had a case recently of a gentleman who wanted to try remove invasive species from a river system and the EA was not interested in supporting and helping him at all. I had no route to complain about that process or what I felt was a wrong decision. How do I go about doing that? Where is the oversight mechanism of your work?

Alan Lovell: It is a combination of internally from our board, as you would expect, from DEFRA and from the OEP, but if there are issues where you think we are not doing the right thing, feel free, and we will always be happy to—you can come to me or Philip and we will do our best, is all I can say.

Q10 **Duncan Baker:** Who has oversight above the Environment Agency? With the greatest respect, often a board will protect its own employees.

Alan Lovell: I think this is a pretty robust board but I take your point. Clearly, the OEP is our formal regulator and I have my appraisal with the Secretary of State next week on performance over the last year. I think those are the three elements.

Q11 **Duncan Baker:** This is a warm-up tickle then to next week. Okay. Lastly, when will you be providing an update on the EA's achievement of its 2022-23 targets under EA2025?

Philip Duffy: We aim to publish a business plan in the next month. That will include the outcome of the targets performance last year. There is only one metric we have not yet resolved, where we are just waiting for the last journals from finance, but we are almost there.



- Q12 Cherilyn Mackrory:** If I can open the questioning on water quality and water quality monitoring, I will start with a general question on how the monitoring of storm overflows and emergency overflows will be conducted under the Environment Act requirements that you have.

Philip Duffy: The Environment Act 2021 provides for obligatory monitoring publication. It is a slightly strangely worded Act in that clause 83 provides for the water companies to publish the data rather than the Environment Agency. I don't quite understand that. There is no reason why we can't scrape that material to our own systems, but they are doing the publication, not us, in the first instance.

It is worth taking a little step back and contextualising what we need to do with this data, first because a storm overflow itself is not necessarily unlawful. There are conditions—excessive weather, rain and snow melt—where that would be lawful. The raw data does not show whether we would regard that as a breach or not because flow-through times between heavy rain and when we would allow an overflow vary around the country based on the system. There is not one easy answer to whether a particular overflow is lawful or unlawful in the current legal framework.

One of the things that campaigners have challenged the regulators on, which I think is right, is clarity on when we start looking in more detail at a particular overflow. The current threshold for that is 60 spills a year, which is the waste water treatment directive threshold. That reduces to 50 in year 2 and 40 in year 3 and we are working with DEFRA and Ofwat to see whether those are still appropriate thresholds for investigation in future. That data is already available. It will be available in near to real time shortly via water company publication. We are collaborating quite well with Water UK on how that data should be made available, making sure it is genuinely transparent, reliable and interoperable. I think users of the data want to put that data next to our inspections and other data so they get a complete picture.

- Q13 Cherilyn Mackrory:** For members of the public, they just want to have one transparent place that they can go to and rely on. Sometimes it is campaigners—it is certainly not the water companies, sadly—but potentially it could be you. How can you help manage that so that if you go to a bathing beach you know that you are going to see accurate data? I will come on to what that data says in just a second.

Philip Duffy: I would encourage everyone to have a look at what we did with the data we published recently on last year's overflow data. That was mapped to quite a high degree of definition so you can see your local area, and where the regulations are. If you click through on a particular asset you will see the number of spills, when they took place and the frequency. You will also see information like who owns the asset, what the permit number is, what is permitted under the permit. You have much more value-added information. I think we should overlay more information on that.



Q14 **Cherilyn Mackrory:** Yes. What kind of information?

Philip Duffy: For example, could we combine that with near to real-time reporting of overflows? Could we put more data on the inspections we are taking forward? Could you see those on the data so you have that picture? Could you combine that with data on bathing water information? How much in one place could we achieve? I entirely agree with your vision for how we do that. That is not far away from where Natural Resources Wales is and I think that is a much better system for transparency. That is where I would like us to get to in the future.

Q15 **Cherilyn Mackrory:** Do you have the capability to be able to tell people what is in the water in real time? Even though it might not be widespread yet, is it there? At the moment, people see headlines about storm overflow when we get rain. I am a Cornish MP. My constituents see every time it rains and then they tend not to go to the beach because they know there will be a sewage overflow.

However, having done a lot of work on this, we know that 95% of it is rainwater or runoff. Only 5% is raw sewage, but people do not know that. How can you help make that data transparent so that people can see what they are potentially bathing in?

Philip Duffy: I will split your question into two because it is about monitoring and about bathing water. They are a little bit different.

The monitoring programme has been cut back considerably in recent years. We are doing only about a third of the water framework directive monitoring checks we were doing four years ago. That worries me. It is not right. No one else can provide this information apart from the EA. We need to think about the prioritisation of this within our programme.

A lot of the databases are not published in real time because they are ecological studies about invertebrate numbers, seasonal pollution cycles and river health. It is not that information. There is no reason we cannot publish that information in map form as well.

For some things we monitor—for example, in the Lake District—we have real-time sondes in the watercourse looking at levels of pollutant and NMP and you could publish that in real time, but that is a different set of issues.

On bathing water, there has been a lot of controversy recently about this. If I may, I will just explain our thinking about it. We follow the bathing water regulations. They are built on the EU bathing water directive transposed into UK law, so we do exactly the same as our peer regulators across Europe. We talk to them about how they do it.

A big area of controversy is our models. We model potential turbidity or poor bathing water quality on days where there has been bad weather—a storm or very heavy rain. To be clear, that is modelled so that is not the same as saying there has been a spill or sewage pollution. That is not



HOUSE OF COMMONS

what we are saying at all. Anglian Water challenged that methodology in court. The EU looked at it. It is a good methodology. We are pretty confident in it, but like all models, it has to be open for conversation and for scientific rigour.

Some pressure groups—Surfers Against Sewage, for example—think we undersell the pollution risk. The counterargument is that we put out warnings for bathing water based on modelled weather conditions. It may look to the public like a pollution incident. It is not a pollution incident. It is a model of a storm or high flow. It probably does correlate to high levels of turbidity and runoff, which can include E. coli from farms, for example. We have tried to make that clearer on Swimfo, our website. We are, under the directive, required to alert swimmers to days when there could be poor bathing water quality. We do what the regulation says, but that is not the same as saying that there is definitely pollution. You are right about that.

This debate is quite tricky for us. We are happy to have scrutiny of our modelling or how we publish that information. We are not trying to be too leading in either direction. We try to plot a midpoint in those areas.

There is good evidence that when there has been heavy rain or a storm, the water may be more polluted. That is a reasonable point to make for the public. Certainly, if I swim in the sea, I check Swimfo to see whether an alert is out because that it is telling me something useful that I would not necessarily know.

- Q16 **Cherilyn Mackrory:** That is all very helpful. If I go back to the monitoring, I am visualising the beach where Surfers Against Sewage is based in my constituency. It has a South West Water asset on it, which contributes a lot of the time to the overflow, but it is not the whole story. The campaigners will see it as a potential South West Water and it is an easy target to go after. I would not stop them doing that if that is the right thing to do. But an awful lot of runoff also comes on. The rest of my constituents want to see transparent, factual data that does not lean to one side or the other so that we can all see what is what.

Philip Duffy: Is this Porthtowan?

Cherilyn Mackrory: No, St Agnes.

Philip Duffy: I was at Porthtowan doing a sample last year. Our scientists say that particularly in seawater—rivers are a different matter—human pathogens like E. coli can be quite hard to find even after a spill or a wash-off and they do not necessarily last particularly long in the watercourse, unsurprisingly. It is a large amount of water with high levels of UV. The water in Cornwall is clean as it comes from the Gulf Stream. I understand why that is the case. They worry about the position taken by some lobbyists and Surfers Against Sewage who say, “There is two days’ worth of beach closure here.” The evidence does not necessarily support that.



We do not take, to be clear, the regular sampling at these beaches that would enable us to see, day after day, how the E. coli levels change. We are not funded to do that and it is not our requirement. We could put more money into it if we had more money and we could spend more on doing daily or hourly monitoring, but we do not currently have that. Our current procedure for human pathogens is to collect water and take it to labs with quite a high level of rigour. Our labs for Cornwall are in Exeter. It is not practical for us to do more regular monitoring. There is an interplay between this modelling and our monitoring levels.

We try to have a dialogue with the NGOs about the underlying science here. I am personally sceptical about this two-day principle that Surfers Against Sewage advocates. We try to make sure that we communicate what we say. We say, "There has been a storm today. You may have turbidity in the water", which is a more accurate way of putting it.

Q17 Cherilyn Mackrory: If we recommended to the Secretary of State about funding for such real-time testing, particularly of bathing waters, is that ambition realistic with extra funding? Or are you saying that you cannot do it because you need the funding when actually, even if we gave you the funding, you still could not do it? Is it a realistic ambition?

Philip Duffy: We spend nearly £70 million a year on monitoring, but we have cut back considerably on some areas of monitoring because of budgetary constraints. It is no secret that money is tight across all the public sector. This would be revenue spending. We cannot always recoup it from fees. Ministers have to think quite hard about how they would pay that off against other pressures they would face.

The monitoring also has to have a high level of rigour. There are questions about ongoing lab space, for example. To give you a sense of the scale we need, to put back the water framework directive cuts is about £4 million a year, but on this we face about £9 million of pressure just from inflation—that is the cost of fuel to drive things to and from our labs, and the cost of lab space. It is an expensive thing to do, to monitor with that level of regularity. We do not do nutrient monitoring or chemical monitoring with a sonde in the watercourse. We do a test for human pathogens. It is more complex to monitor bathing water than to monitor pollution from a wastewater treatment plant.

Q18 Cat Smith: Tell us a little bit more about any newly certified monitoring instruments. Can you reassure the Committee that you are not locked into using old technology?

Philip Duffy: No, we are not. We are thinking quite hard about how we can modernise our monitoring. I will say three things about monitoring that I think are difficult.

First, this debate is, in the water domain, particularly sensitive. Even choices about what you monitor become controversial. We are currently debating phosphorus levels with a number of NGOs, not because we have



HOUSE OF COMMONS

a plan to reduce monitoring but because we are trying to work out what the current market can offer on phosphorus monitoring, which makes it quite challenging.

Secondly, we are bringing in new automated monitoring, including remote monitoring that we can put into watercourses. We have been driven to that by DEFRA, which wants in future to make sure that upstream and downstream from regulated water treatment plants we have nutrient monitoring, which we can map and share in real time. We are looking at that. We are pretty active in the market, seeing what products are out there both with water companies and with air quality.

It is difficult for us to make sure that any new monitors we bring are quality assured and that the supply chain is good enough to make sure that the numbers we give are accurate. We have seen in the last year, particularly in the air quality domain, real problems getting standardisation and calibration right for some of these monitors. We are a bit nervous about rushing too quickly to bring in technology we have not had properly assured.

Q19 Chair: Sorry to interrupt but, specifically on that, I have been approached by a whistleblower who is concerned about the technology being tested precisely for the reasons you have described, to ensure proper QA and that the capability works, but this relates to the near real-time monitoring of the four parameters on water quality consulted on by DEFRA following the Environment Act. It was alleged that Atkins, which you use to advise on this and to undertake the equipment testing, is being steered towards a single capability and a single supplier and is not making innovation available for the water companies to use for the sondes out there.

I do not expect you to know about that over this session but, if you do know about it, perhaps you could respond. If you do not, perhaps you could look into it and write back to me about it.

Philip Duffy: I am happy to look into it. There is a balance between allowing innovation from the market with lots of different monitors and making sure that all the monitors are proven to deliver a common standard of reading. We have to strike that balance. I am happy to look at that particular issue.

Q20 Cat Smith: A lot of your answers have talked about the near real-time monitoring data. How do you envisage the EA using that? Who do you expect to access this? The public? Regulators? The water industry?

Philip Duffy: All of them.

Q21 Cat Smith: How will they use them differently and how do you envisage the user end looking?

Philip Duffy: I guess the question for most of the public or campaigners looking at this is the worry about so-called dry spills. They want to match



the weather to the spill data they see. We share that aspiration. This debate can be heated, but the truth is that the focus brought by a lot of citizen scientists and campaigners has raised this up the agenda. Many people in the agency who have spent years working on water quality are grateful for efforts made to raise this up the agenda. We have to have a shared view of those areas.

A genuine question for us all is what we will do if we see significant noncompliance because we are limited in how often we can enforce and how often we can prosecute. We must be realistic about that. The water companies I talk to, in the main, are committed to getting that feedback on spills and fixing it. That is a principal issue in the price review process. A platform to see it in real time and map it is critical for everybody.

- Q22 **Cat Smith:** That leads to another question. Are you looking at open-source data that the public and campaigners can pull out and manipulate to potentially crossmatch it with weather events?

Philip Duffy: Our first principles obligate us to publish as much as possible as an environmental regulator. Therefore, I cannot see why we would not make public this information.

The counterargument that I hear from some water companies is that it will be misused and people will say, "This water company is working illegally", and it will be untrue because that spill of sewage is completely compliant with the regulations. I hear that argument, but surely we should deal with that argument by having the debate rather than not providing the data in the first place. A mature way to take the argument forward is by having that data from everybody and then working through allegations as they come in.

- Q23 **Cat Smith:** Is that a commitment from the Environment Agency to work constructively with citizen analysis if it suggests a deficiency in enforcement?

Philip Duffy: Yes, we would work constructively with them on that basis. We work pretty well with citizen scientists and campaigners up and down the country, many of whom have taught us a few things. We have no monopoly on wisdom in the Environment Agency and we need to listen to what people say to us about our operations. Are we asking for the right things in the right way?

I would like to make that more of a partnership and less oppositional. I have asked some of the campaigners to talk to our new inspectors and share their perspectives on what they should do and share tips they see from the data. I have also had the benefit of data releases from a number of campaigners and retired academics, who have sent me interesting analyses of the data, which is all for the good and helps us with our investigations.

I do not mean to be defensive about that. We need to get the data out there and get that dialogue going.



Q24 Cat Smith: The Government have set a target that water companies should eliminate adverse ecological impact from sewage discharges at all sensitive sites by 2035 and at all other overflows by 2050. Does the EA monitor that? How do you determine an adverse ecological impact?

Philip Duffy: It depends on the site. At the minute, our focus is on the water framework directive and, in particular, the 2027 non-deterioration clauses of the water framework directive, which is the first milestone we have to meet under the legislation.

Then we have the question of prioritising investment in storm overflows. Fixing those overflows will take investment. We are working with our colleagues in Ofwat to prioritise which overflows to target first. Why might you target an overflow? Because it touches on a SSSI or a SAC or because you are particularly concerned about the high level of nutrients it puts into an overall catchment. Not all overflows are the same. Some are higher risk and lower risk. That is a sensible way of looking at the problem and prioritising the work.

The cost is extremely high and we will have to make some choices. It is not only about money and bills. It is also about the delivery capability of the water companies to make these investments over that time. We are trying to pick our way through that.

It is worth saying that between now and 2035, a lot of the critical deadlines in the water framework directive come true. I mentioned 2027 for the non-deterioration clause. Then the requirement to reduce abstraction to maintain good ecological status comes in 2030. Right now, the task for us is to work out what must be done in what order for the water companies to meet those deadlines as they come up.

Q25 Cat Smith: Are you confident of meeting the deadlines?

Philip Duffy: Honestly, I worry that we have smaller water companies now who are significantly behind on their AMP7 current price review work, for PR19. That situation is pretty unprecedented. The agency has not been in that situation before. Water companies have not delivered things they said they would do in PR19, which means they are at significant risk missing the deadlines for the non-deterioration water framework directive measures.

The question then is what we do as a regulator about that. The truth is that those water companies—and I have been transparent with them about this—will face enforcement action after 2027. They need to make sure they meet those targets.

Shortly after that, of course, are further deadlines, although they normally come about through a reduction in abstraction permits for the 2030 period. Doing that will be challenging for the sector and those companies.

All that said, many companies do well on PR19. It is a mixed picture.



HOUSE OF COMMONS

Q26 **Cat Smith:** Would you like to perhaps name any of the companies you are particularly concerned about?

Philip Duffy: I do not think I need to.

Alan Lovell: Our EPA announcement in July will give a pretty clear view that there are, in a sense, two tiers of water companies at the moment and will give a good reading to that answer.

Chair: I am conscious that we have a little over half an hour left and we have at least six sets of questions. Try to keep yourselves to five minutes for each set.

Q27 **Chris Grayling:** I am worried about the comment you made about the need to enforce and how sometimes you can act and sometimes not. My direct experience in my constituency is that as an organisation you are very ineffective at enforcement and it is easy for rogue operators to run rings around your team. If the word from the boss is, "We have to be tough and deter but we will not always be able to take action", those rogue operators will run rings around you still.

Philip Duffy: Since I have been in this role, I have taken a much more forward-leaning view on enforcement, particularly in the waste industry. We have issued some suspensions. They have proven effective.

Your criticism has some truth to it because, in one case, an operator had been in band F, the lowest level of compliance, for several years. When we suspended it, it quickly moved to comply with its permit.

I have also said and I will repeat here that a suspension is a journey. Just because you have complied with a suspension, we do not wipe the slate clean and forget your previous noncompliance.

The agency has never closed a waste site. It has never used the EPA like that. A good reason for that is that it is risky. We should do it only when all other options are exhausted. If we have very noncompliant businesses who, even after suspension, still do not comply, we will consider not only prosecution but closure orders.

I hope you will recognise that that is a distinct change of tone from the agency. So far, that has gone quite well for the agency. From the three most difficult waste sites we have suspended recently, the boost in compliance has been almost immediate.

There is also a question for the agency about legal risk. The agency is proud that it wins almost 100% of its court cases. I question whether that is too many—

Q28 **Chris Grayling:** I will pick up that point. This applies to water enforcement. It applies to waste enforcement. I have dealt with the agency over three years with a major problem. Behind a small number of frontline staff who clearly want to do the right this, there is a team of



lawyers saying, "Oh, this is all a bit risky." You are strong enough and muscular enough, more so than small local authorities, to put the boot into rogue operators, whether in water, waste or elsewhere. My sense is that the organisation is just too timid—and your point about legal risk is at the heart of that—unless you are 100% certain that you will win and it is clearcut. You have the power to rewrite permits unilaterally when an operator of whatever sorts behaves unacceptably, but it does not happen because of that legal risk.

Philip Duffy: As you say, frontline staff in the agency want to do the right thing for the community. They live in the community, in the main, so they understand why a site is problematic.

Of course, as a regulator we want to be fair, transparent and evidence based. We do not want to make capricious legal decisions, particularly in litigious areas like water and waste. You are right that there is a risk that people regard their permit conditions as optional because nothing happens if they do not meet them. They are not optional. They are obligatory and not meeting them has consequences, not only personal consequences and a risk of prosecution but also the risk that your business will be suspended until you comply or closed if you do not comply. That is, of course, how Parliament conceived the EP regulations. That is not how they have lived, recently.

Hopefully, I have given you some reassurance of the mindset we are taking. Internally, we have to have better conversations about risk as a regulator. Are we prepared for the day when we may lose a court case and the blowback we may get in that situation? Does the chief executive support staff who might be taking those risks?

Q29 **Chris Grayling:** Last year, there were 15,000 apparent breaches on the waterfront. I do not know how many of them were permit breaches. It would be useful to know. Of all the 15,000, probably only a relatively small number are actionable. If you do not act robustly when the situation arises, even if just a warning letter goes across, the operator calms down for a bit and then starts again.

Alan Lovell: We need to use the full panoply of enforcement measures. In some cases, that will be a letter. Also, we are delighted with the removal of the cap on variable monetary penalties. Certainly, we have asked in due course to be able to apply the civil standard of justice, the balance of probabilities, which Ofwat has, to those penalties, as opposed to beyond reasonable doubt. That makes enforcement much quicker and more effective and would be a material change. Then we would carry forward a smaller number of issues where we believe prosecution is appropriate and we will investigate those properly. We need to use the range. We are set on doing so.

Q30 **Chris Grayling:** Do you have sufficient power to rewrite permits when you feel that the conditions attached to the permit are not strong enough to deal with the behaviour of the organisation you are dealing with?



HOUSE OF COMMONS

Philip Duffy: A permit is not normally about behaviour. We do have good powers to rewrite them. We have to make sure we apply the law to the particular behaviour. There are limits on what we can do. Communities complain about lorry movements and noise, which are not permissible issues. Ventilation in a waste site is, for example.

To build on what the Chair was saying, which is important, our lack of ability to make swift decisions at the civil justice level makes us less effective. Having to do everything under PACE 84 is bureaucratic and expensive. It is completely appropriate for criminal prosecutions but not necessarily for strict liability environmental offending, which means a long time lag between the offending taking place and the penalty.

Waste is slightly different because this year, with our partners in the NCA and HMRC, we are exploring a much wider range of interventions on waste crime including travel bans, POCA and asset seizures. It turns out that there are quite a lot of things we can do that would make quite a big difference.

We are too slow for corporate offending, in part because we work to this criminal threshold. Bringing a prosecution against a company is a slow process. I entirely feel the frustration of people in communities who were told this could take years. Of course, we have to get court slots for those cases and the courts have other things in their in-trays. We need to resolve that issue.

Q31 **Chris Grayling:** Finally, can I ask you in the constituency case to embolden your team to rewrite permits?

Philip Duffy: I will look at your constituency case.

Q32 **Chris Grayling:** Lastly, from the point of view of the team, just a quick one to put it on the record: of the 15,000 storm overflows we have had in the past 12 months, do you know how many were in breach of permit conditions?

Philip Duffy: No. We will look and we are looking in this operational standard at how one combines the millions of bits of data we have. Actually, it is over 2 billion in the operating standard for one year. We have to combine meteorology, flow pattern and permit to understand whether it is lawful. It is easier to look at how many permits spill more than 60 times a year and which should be targeted and prioritised. We are doing that in the price review.

Q33 **Barry Gardiner:** I wanted to ask about your role in adaptation because the EA plays an important role in delivering the third national adaptation programme. Mr Duffy, set out for us the five key areas where it says that action is required.

Philip Duffy: There are rather more than five in the NAP that cover us.

Barry Gardiner: It sets out five key areas.



Philip Duffy: Let us start with water management first. There is quite a well joined-up architecture to look at adaptation planning under the plan.

In particular, there is a question for the agency about how far it wants to lean into not only traditional pluvial and coastal flooding issues but also surface water flooding and summer flooding. We are taking a slightly more forward-leaning approach on that. We have opened new advisory services to local authorities on it. We are being quite proactive on that.

The second area is about improving the planning process. We share the concern listed in the NAP about the quality and calibre of planning for infrastructure and whether particular areas of infrastructure are critically at risk from further climate change. The obvious case is rail but energy takes quite a lot of our time just now with the siting of energy plants and whether we are happy with the enhanced grid. Nature is quite important—more than that.

Barry Gardiner: That is the first one you have that correlates with one of the five. The five set out are infrastructure, natural environment, health—and communities and built environment are included in that—business and industry, and international dimensions.

Philip Duffy: What is your question?

Q34 **Barry Gardiner:** First, what are they? If you do not know what they are, it is difficult to know how you are contributing to them.

Secondly, the Climate Change Committee told us that we lack the framework to track adaptation and climate change risk and that that hampers the ability to monitor progress and drive delivery. What frameworks do you want to put in place to do that that are currently lacking?

Philip Duffy: I will do my best. I do not quite understand the question. Let me start by trying to answer whether we know about adaptation risk. Is that the question?

Barry Gardiner: The Climate Change Committee said we lack the frameworks to assess it. How are you addressing that criticism? What frameworks do you believe we need to put in place? It said that in July last year. What frameworks have you now put in place to give you a better understanding of how to track the adaptation and climate change risk?

Philip Duffy: We speak to the CCC quite regularly. Our major contribution to understanding that risk, which we share with the CCC and which it uses in its reports, is our modelling on flood risk, NaFRA, which will be republished this year as NaFRA2.

NaFRA2 is a much more sophisticated study than NaFRA originally was and it will provide modelling down to two square metres. The map covers rain risk allied to the CCC's work on future climate scenarios and coastal



risk is also mapped along those scenarios. It offers groundwater flooding risk, which is particularly difficult for local government to model. It provides both depth of water and speed of water modelling in those areas.

That is a major undertaking. It is due to be published in October this year. It will put quite a new colour on the matter because it will signal to many communities that may not be aware that they face significant risks of climate change. It will highlight in particular in urban areas how much work we have to do on surface water and summer flooding. It will show the locations that could get serious risk. It is harder to forecast storm cells compared with frontal rainfall, but it will give a signal about those areas to local government.

The next question is what we do about that. The agency has traditionally done a study for the Government of the investment needed to maintain a constant level of risk to households and businesses given the CCC's view of the evolving climate risk. We last did this ahead of the last spending review and we said it was about £1 billion a year. We got that funding from the Government for our current programme. That is the main thing.

I am not aware whether in the agency we do any modelling on health. It has come up before. Perhaps we should look at extreme heat, for example. We are discussing with the UKHSA whether we should take a work programme forward together on heat because it normally leads on health issues. Does that help?

Q35 Barry Gardiner: It does. Certainly the framework you have identified will improve the understanding of flooding resilience and inundation.

Let me challenge you. You outlined the increase in your performance in areas earlier in your remarks, but you have gone from 96% of adaptation actions on track in Q4 last year to 80% on track this year. Why has adaptation suffered like that? What problems have you encountered that have not kept those things on track?

Philip Duffy: Yes, I looked at that before I came to this Committee. The work programme that my predecessor established is quite interesting and comprehensive. A lot of those 96 items are about internal processes, making sure, for example, that our flood schemes and regulatory decisions take into account adaptation risk. There are bits of guidance on that and training issues.

I am told that we will be below 80%; 78% is the number I have in mind for the end of the year, which will not be great, but we are only 2% below. Frankly, it has just been resources and in some areas we are dependent on other pieces of technical analysis for it. The programme is good and robust to raise our capability internally in those areas and you are completely right to raise it. I am told that in quarter one next year we will catch up considerably on the remaining outstanding items on that work programme.



HOUSE OF COMMONS

Q36 Barry Gardiner: In 2021, the publication you put out on adaptation said that “regulation is not yet ready for a changing climate”. Is it now? What progress has been made to get regulation ready for a changing climate?

Philip Duffy: Only very partly is it ready. We have just gone through a cycle of looking in particular at the future water resource management plans. Last month we published a summary of the plans that Ofwat is currently considering, which is worth reading because from that we get the number of 5 billion litres a day that we think we will be short by 2050.

Dig into those numbers a little bit and you will find that it is not so much population growth or business growth driving that, although they do drive some of it, but the choice we face as a country is whether we can continue to abstract so much water from chalk streams and aquifers, which drives about two thirds of that number, nearly 3 billion litres, mainly in eastern England and south-east England.

Do you want to confront that choice? The measures you need to take to confront that choice are expensive. We detail in that publication all the investments we think you need to close that gap of 5 billion litres a day. You will all have heard of some of these schemes, some controversial, some less so, such as Abingdon, Wisbech and Teddington. You probably have to do most of them to close that gap. That is a great example. Is regulation thinking about the reality of living in a world that is hotter when, in summer in particular, those levels of abstraction are no longer tenable? That is just one example in one domain.

Q37 Barry Gardiner: Mr Lovell, I know you want to come in there. Because this Committee is focused on recommendations to the Government, what recommendations do you believe should follow that this Committee could make to improve that situation? If I can try to lead the witness, what need is there for the Government to be clear about priorities?

Alan Lovell: I am happy to have a go at that because I am delighted we have got on to water resources, which we are—and should be—most worried about. Certainly, a proper long-term plan for water resources is a fundamental requirement for the Government.

On flood, we have a 50-year plan. We have done good work under the various innovation programmes and on shoreline management and particularly on estuaries with Thames 2100 and the Humber. On flood, we are relatively well positioned for adaption.

However, on resources we have a long way to go. We are all familiar with the fact that the last new reservoir in this country was built in 1991, which does not feel right. More needs to be done. The Thames Tideway has been an interesting and well-constructed financing model, which certainly should be looked at for further investment in that field.

Barry Gardiner: Give me some solid recommendations.



HOUSE OF COMMONS

Philip Duffy: Let me have a go at this. We support most of the measures in the water resource management plans. Some of them we have pushed back on for ecological reasons, which is right. It is time to get on with constructing, as the Chair has said, many reservoirs across the piece. That would be a core recommendation.

Alan Lovell: Any reduction in the current business plans for the next five years from the water companies should not be in the field of water resources.

Q38 **Claudia Webbe:** I want to ask some questions about staffing matters and staffing issues. Start by reminding us of your staffing levels and retention levels and that sort of thing at the moment.

Alan Lovell: Yes, sure. I will make a start and Philip will pick up. First, the full-time equivalent numbers increased by 2,000 during my 18 months in office from about 11,400 to 13,400, which has been appropriate and mostly covered under the spending review of 2021. It included extra people administering a bigger flood programme and the recruitment of people for agricultural regulation, increased permitting and other things.

Let me be clear about this. We have reached a level where we, broadly, can do the job. We are about to set out—and indeed have made a good start—on recruiting people for enhanced water industry regulation. We will look to take on 600 people over the next 15 months for that.

We also feel that opportunities for increasing the efficiency of the organisation will cover, roughly, an approximate number by natural wastage over that time. We are at approximately the level of employment that we should be at.

A remarkable factor of the agency is how long people stay. They are tremendously loyal. It has dropped a little bit but we are still at an average of over 15 years. Turnover is relatively low. It has sat between about 4% and 6% over the past three years.

In making this recruitment and retention effort, we have centralised more of our recruitment, which has also enabled us to focus on a more balanced workforce. We have given good focus to minority ethnicity and have improved that position quite considerably. We aim to continue that.

Q39 **Claudia Webbe:** Let me ask about some specifics. In February 2023, when you reported to this Committee, you said that retention levels had been affected by salary levels with a real terms decrease of 20%. What progress has been made to address that?

Philip Duffy: I will answer that. You are right. In 2021 our turnover was 3.9% and it rose to 6.1% in the following year, 2021-22. Last year it was 5.6%.



HOUSE OF COMMONS

We entered a prolonged period of both industrial dispute and negotiation on pay with the Government last year, which we regretted. In particular, we were on a “work to rule” and a lot of our staff would not volunteer to respond out of hours to flood risk. They are not obliged to under their contracts. I am pleased to say that the Prime Minister agreed our pay remit, which enabled us to increase our pay bill by about 1.35%. We targeted that pay increase on the areas we were struggling most to recruit: our lowest-paid staff who work in the field, many of whom you will have seen in your constituencies, and certain specialists, particularly mechanical and electrical engineers, where we were really struggling to recruit.

We have seen a modest drop in turnover. Since the economy reopened, turnover has been quite high, but currently it is only 5.4%, which is pretty reasonable.

Alan Lovell: It is a healthy level. That is absolutely fine.

Q40 **Claudia Webbe:** You indicated your average tenure at the agency. Is that 15 years or has that changed?

Alan Lovell: Sorry. Has it come down?

Philip Duffy: It has dropped to 11. It is 11.4 years.

Alan Lovell: It was 15, but it has dropped to 11.4.

Q41 **Claudia Webbe:** The average tenure is 11.4 years. What about an agency employee?

Philip Duffy: Do you mean a temporary employee? We have some on fixed-term contracts and we have 400 contractors in our supply chain. They will work with us only while they do their project—a flood defence scheme, for example. They are normally in engineering.

Q42 **Claudia Webbe:** What is the average tenure? My colleague is saying it would depend on the project, but what has been the average?

Philip Duffy: I cannot give you an answer to that because it depends on what they build.

Q43 **Claudia Webbe:** Do you have something you can send us?

Philip Duffy: I am not sure I have it, but I will look.

Claudia Webbe: Chair, we will accept that in writing, if that is okay.

Chair: If they have it.

Q44 **Claudia Webbe:** If they have it, yes. How has your incident response been affected by your staff shortages?

Philip Duffy: Certainly, last year, when we had industrial action, some areas of the country had thin cover because they had only those volunteers who were willing to come on duty on the weekend. If you



HOUSE OF COMMONS

recall the winter, for some reason the storms came at weekends. Babet was on a weekend. Henk was on a weekend, if I recall correctly. We had to move staff and managers around the country to respond to that.

That industrial dispute is in the past and has been resolved. For the latter part of the winter, we had good cover levels. I am grateful to all those staff who volunteered to come in over Christmas, New Year and the weekends in January to provide that cover.

Alan Lovell: We are, however, looking at that area. We have a voluntary system at the moment, which can mean that a few people deal with emergencies on a regular basis. We would like to extend that so we will be looking at that area.

Q45 **Claudia Webbe:** I am trying to understand that. Your latest corporate performance card in March 2024 assesses incident responses as “red”. Your quarter 2 figure was 86% against a target of 96%. Is that affected by your staff—

Philip Duffy: Yes. The proportion of properly qualified and fully available staff has dropped, partly because we have a training backlog.

My general comment on this would be that the system would work fine if we had one or two serious national storms a year. That would be okay because, with those few storms, people would still have had time to train. They would not be working weekend after weekend. However, we have just gone through seven named storms—A, B, C, D, E, F, G—and many other incidents such as the April coastal flooding in southern England, which meant that the same pool of people came in week in and week out. We see some lower levels of volunteering and people not completing their mandatory training for those schemes, hence the rating you will see in our performance card.

The way through that would be to negotiate a different approach with our staff. I used to work in the Home Office. It was quite standard to have different terms and conditions. People worked out of hours and worked a complete roster through evenings and weekends. It is not great, given the importance of the agency, that we have a volunteer model when we have these serious incidents.

Q46 **Claudia Webbe:** It seems like the trajectory of incidents will go up but you are also saying you have now, you believe, a reasonably good complement of staff. Am I hearing that correctly?

Philip Duffy: You are, but you are also correct that, with rising levels of heavy rain caused by climate change, we need to look at the model and check that the model is resilient for the future. If you look at the pressure on some of our volunteers and some of the wellbeing issues reported by our trade unions over the winter, there are question marks over whether this model is right.



HOUSE OF COMMONS

Our project called IMX is looking at the future of incident response, the IT, the rostering and how we reward our staff for doing incident response. We are looking broadly at what we should do to make sure we are resilient for the future. Currently, this winter has stretched us quite hard.

Q47 Claudia Webbe: In your announcement, repeated today, on the planned increase in water company inspections, Alan, you said 600. We thought we were having an increase of 500. How confident are you that you will be able to recruit the staff needed to meet the planned increase?

Alan Lovell: Very confident. We have got off to a terrific start. We are currently ahead of our plan. People are keen to work on this. Yes, we are confident.

Philip Duffy: To give you a sense of scale, we went to the market for our first 79 officers and we had over 1,000 applications.

Chair: It is of great interest to the public. Large numbers of citizen scientists are doing the monitoring for you and are not being paid. We are encouraged to hear that. A final question.

Q48 Claudia Webbe: My final question relates to your measures to improve your workforce diversity. What does your senior management team look like? Your latest charts indicate that you have not quite matched the diversity of the population. How is that going?

Philip Duffy: I have good news first of all. Over the last decade, the proportion of black, Asian or minority ethnic staff plateaued at 4.5%, which is very low for a public body. In the last year, largely because we centralised recruitment and did much greater outreach to under-represented groups, we managed to improve that to a bit above 6%, which is positive. We set a target for this year to improve that by a further 1.5 percentage points, taking it to 7.5%. That is still a low number compared with the proportion of black, Asian and minority ethnic people living in the UK, which is nearer 18%, but it is a tangible sign that we are making progress. We had to work hard to achieve that progress.

The problem is not just about recruiting people. They need to thrive when they get to the agency and stay with the agency and then they need to get promotions. We have good news on retention. We can now show that staff from black, Asian or minority ethnic backgrounds who join us are more likely to stay for longer than their white counterparts, but we have a real problem in getting people in the pipeline of talent to more senior grades.

I am genuinely shocked that the agency does not have a talent programme in line with those right across the public sector and the civil service to provide sponsorship and develop opportunities for people from under-represented groups to make it into senior management. We are not surprised, therefore, that the diversity level at the executive manager grade is much worse than for more junior staff and it needs to be



HOUSE OF COMMONS

corrected. We have made some good external hires in the last couple of years at EM level but we have not seen the flow-on into promotions. That worries me. It is one reason why we see a race pay gap across the agency, which I do not think is tolerable.

We will act on that. It will start by developing an appropriate talent offer to make sure we get those promotions through, which is the task for next year. You have put your finger on a genuine performance problem that we need to address.

Q49 Barry Gardiner: I wanted to focus now on biodiversity and the agency's contribution to our biodiversity goals. If you look at your responsibility for preventing harm to wildlife and nature by habitat creation and improvement, I have worked out that you will have achieved your target, on present form, by 2094. You have managed to create 823 hectares of your goal for 2028, which is 140,000 hectares. It ain't looking very good, is it?

Philip Duffy: Let me give you the numbers I have. Our corporate goal is to restore 20,000 further hectares by 2030. This year, we will have reached 1,912 hectares of priority habitat—

Barry Gardiner: Sorry, I have a different figure in front of me.

Philip Duffy: I hear that, yes, but that is the one I have.

Q50 Barry Gardiner: "To provide opportunities for biodiversity to flourish, the Government's goal under the EIP 2030 is to restore or create 140,000 hectares of wildlife-rich habitats outside protected sites."

Philip Duffy: That is the Government's goal and the Government have many routes to doing that, principally through their principal regulator on biodiversity, Natural England, our colleagues, with whom we work closely. We in the agency also have a target to contribute towards that, and our target is 20,000 hectares. We are doing fairly well against that.

It might be worth me saying a bit about the challenges in that. This year, the greatest contribution towards that 1,912 hectares was on blanket bog and lowland peatland, where we are doing a lot, linked—if I am wholly frank with you—to our work on flood prevention, which is often the method through which we drive biodiversity. Across our 300 projects delivered this year, we have a further 155 hectares of coastal and floodplain grazing marsh, 114 hectares of woodland, 53 hectares of lowland meadow and 35 hectares of intertidal mudflats. That is a pretty positive offer. We are worried about this—

Q51 Barry Gardiner: Sorry, can I just stop you for a second? You said that 20,000 is your target by 2030. On your present rate, then, you will take 24 years to achieve that.

Alan Lovell: Last year we did 1,900, as the Chief Executive—

Barry Gardiner: According to this, 823—



HOUSE OF COMMONS

Philip Duffy: No, 1,912 is the number I have for 2023-24 target, which we met.

Barry Gardiner: Sorry, I am looking at 2022-23. You have upped your rate but it will still take a lot longer than 2030.

Philip Duffy: It will take 10 years at 2,000 hectares a year, yes. Our current target of 20,000 hectares—

Barry Gardiner: You will not achieve it until mid-decade next decade.

Philip Duffy: The honest answer is that we do not know. We are not regulating other people's land. When we do this, we construct flood defences and we do it in a biodiversity net gain manner. It is the principal route through which we deliver improvements. The scale and rate of our work will depend very much on the nature of the floods programme, which, as you know, finishes in 2027. Depending on the shape of the next programme, which is as yet unagreed, we do not know how much we will be doing on flood defences.

Barry Gardiner: Sorry, you wouldn't be telling me that you had a target that you hadn't worked out that you could achieve?

Philip Duffy: I would be telling you that. That is what I just said. We have a target but it depends on future spending decisions. That is the accurate position. That is not unusual in government and not unusual in DEFRA, either. Future Governments will have to work out if they wish to proceed with that target. If they do, they will need to finance the work required.

Q52 **Barry Gardiner:** Do you have the finance in place to do that?

Philip Duffy: We have finance until 2027 under the SR. That programme is under some pressure, as you know, but the good news is that we have moved more money into nature-based solutions, which will mean that we will deliver our flood protection and greater hectares of protected land.

Q53 **Barry Gardiner:** I think this is an area where you would have to agree that there is more work to be done.

Philip Duffy: I am not sure I do. You have to look at the Government's strategy as a whole on biodiversity net gain. We are a small part of that picture.

Barry Gardiner: As you pointed out, we are talking about your contribution to it. At the moment, it is not on track.

Philip Duffy: It was on track last year, but you make a good point that we do not have a fully funded plan to 2030.

Alan Lovell: It was a 10-year programme at 2,000 a year and it was 20,000 hectares from 2021 to 2030.



HOUSE OF COMMONS

Barry Gardiner: You have only just got up to 2,000. You are behind.

Alan Lovell: Yes, I agree. We are a bit behind. But for the year 2023-24, we were on the average rate required. We need to do better, yes.

Q54 **Barry Gardiner:** Tell me about the situation with local authorities. Do you believe they have the capacity to carry out their biodiversity net gain and local nature recovery strategies? How do you work with them to enhance their work for biodiversity net gain?

Alan Lovell: My instinct is that that is not a part of our remit because, as the Chief Executive said, Natural England is the prime driver of biodiversity net gain and it would work with the other agencies. We are targeted with our part of that but not with the broader position.

Philip Duffy: We come across them, of course, because our flood defence schemes require both BNG and planning consent. It is an early stage for the new regime. We are providing to Natural England, as it prepares the local nature recovery strategies, significant input on how BNG might be measured in the water environment.

If you look at some schemes we have delivered recently, the market is immature and a lot of authorities struggle with how they would take off sites and qualify them. It is a real challenge.

Q55 **Barry Gardiner:** Forgive me but every question seems to come back to water. While I appreciate it is a huge amount of the work of the Environment Agency, it is not the only element of the work. On pollution, waste and the impact on biodiversity, can we broaden out the sight a little? Sorry, am I being unreasonable?

Alan Lovell: I do not think that the discussion has gone regularly to water except in response to specific questions. Certainly on this one, I think it is more of a question for Natural England. I share one element of your question. I can imagine that the local authority funding position may put this under some challenge, but we are not responsible for that.

Philip Duffy: We find this hard to answer, Mr Gardiner, because we look at installations. Of course, you are right. Ammonia, for example, has profound implications for nature and for plant life. The agency, as the regulator of ammonia emitters, plays a critical role in protecting nature by enforcing rules on ammonia. That is arguably true for methane and in other areas. We clearly have a critical role to play.

We think about the limit for ammonia emissions from regulated installations. We do not think about it necessarily in terms of hectares of land improved unless we actually work on that land ourselves, which we do occasionally through our flood defence schemes. We are looking through a different lens to the local nature-based recovery schemes.

If my colleague Marian Spain from Natural England were here, you would hear about the importance Natural England places on making sure that



HOUSE OF COMMONS

those persistent pollutants are under control. The agency can make a contribution to biodiversity recovery by making sure that some of those pollutants reduce consistently—volatile organics, ammonia, you know the list.

That make explain why we struggle to answer your question about hectares in that way because it is not—

Barry Gardiner: The hectares was a separate question. I then asked about the relationship with local authorities and so on. Okay. I will leave it there, Chair.

Chair: Very good. I am conscious we have run over time. Are you okay for another 10 minutes and then we will be clear? Thank you.

Q56 **Jerome Mayhew:** Apologies for being late. I had to be somewhere else first. I will talk about whistleblowing, just to give a flavour of how you are going there. Large organisations, for some reason, massively struggle with whistleblowing right across the public sector. Mark your own homework. How are you doing on whistleblowing?

Philip Duffy: Let us start with the good. Protection of sources is good. We had a review by Sir Brian Leveson on how we handle confidential sources. We are looking hard at making sure that if you whistleblow to us, you can be confident that your identity and your information will be adequately protected through layers of appropriate controls. That, I hope, reassures you that we take that seriously.

You may ask why we need such protection, but often we receive whistleblowing from people involved in industries where organised crime is involved. Therefore, fully protecting the identity of whistleblowers is imperative. It can at times make it hard to act on the whistleblowing because we cannot ever share with anyone that we know, but we look after that intelligence.

Secondly, we make sure that the water industry understands its obligations on whistleblowing. One is to make sure that staff know they can whistleblow to the company they work for or they can whistleblow to us. They can whistleblow to—

Q57 **Jerome Mayhew:** Are you happy with that? Is that the right approach?

Philip Duffy: It is in line with generalised Government guidance on whistleblowing. When we look at what comes through the whistleblowing portal, we do not get much formal whistleblowing where someone working for a company tells you something about the company they work for. That betokens the fact that a lot of other things go on in the water environment. We have complaints. We have people dissatisfied with decisions. We are working through all those areas. Making sure that everyone knows they can let us know about malpractice is valuable.



HOUSE OF COMMONS

We have also taken action, particularly on water company malpractice. We will act if we hear that—

Q58 Jerome Mayhew: On the action taking, to become a whistleblower is a big decision. You are worried about your future career. You are worried about your relationships with your co-workers. You can become a pariah in your industry. There are far too many examples of that taking place, which begs the question why you would be a whistleblower.

One reason you would be a whistleblower is if you thought you would do the hard yards because action would be taken to rectify the wrong. If you look at the whistleblowing history at the Environment Agency, the data here from April 2022 to 31 March 2023 shows that of 15 whistleblowing disclosures, only one disclosure led even to a new inspection. If your test to pass is, "Do not worry. We will back you if you are a whistleblower. We will make your whistleblowing count", you fail, don't you?

Philip Duffy: No, because your numbers are not right. Let me give you other numbers. Since it opened, 16 whistleblowers came into our portal. Only two technically qualified as whistleblowers because they related to former employees talking about their previous employer, which is the definition of whistleblowing. They reported historical events from employment that happened nine and 15 years ago. Discussing what happened 15 years ago has merit but is unlikely to lead to an immediate prosecution.

Of the remaining reports we received, five related to alleged waste activities. They will go into our intelligence picture. Quite often we were aware of those waste activities. Two were people talking about water pollution. It is useful and we have a portal for reporting water pollution, but it is not whistleblowing. Both occasions related to sewerage. Others related to other environmental health matters at a local authority level.

The picture you paint of lots of genuine whistleblowers reporting serious malpractice and us ignoring their activities is not accurate. If we had reports of that sort, we would have acted on them. We have in the past. I can assure you we will act on whistleblowing of that sort.

To be clear, I do not want to be at all derisory towards the other reports we had. They are valid reports of environmental harm. They deserve respect and we will act on them, but they are not prosecutions or enforcements against water companies. They are a different sort of allegation.

Q59 Jerome Mayhew: It sounds like a case where the papers that we have seem to have different figures. I will not challenge you on those because you have your view, and perhaps as a Committee we will look into which are the right figures.

Let us say you are right, which I am sure you are. You are saying that no significant whistleblowing activities come from water companies to the Environment Agency. Isn't that a bad news story? Are you drawing the



HOUSE OF COMMONS

conclusion that these are wonderfully operated businesses with no malpractice needing exposure?

Philip Duffy: I do not draw that conclusion. I don't think it means that it is a bad news story or that all the water companies are perfect. It is early days—

Jerome Mayhew: We are only three weeks in.

Philip Duffy: We have not had long on this. You would not expect that many reports of serious corporate malpractice in a regulated industry but there may be some. I do not expect huge volumes to come through the whistleblowing portal. We will see how that regime develops in the course of the year ahead.

Q60 **Jerome Mayhew:** On the training of your staff to deal with this—as you say, it is a new system—are you confident that you are in a good position to respond to what comes in through the front door?

Philip Duffy: Yes. We handle this completely separately to the rest of our work via a specialised team, which is necessary because they have to have certain protections.

Q61 **Chair:** I have a couple of questions to conclude on waste crime. Alan, you mentioned earlier that the cap on fines for water companies has been removed. It was also removed in December for waste crime. Has that impacted yet your ability to manage waste crimes? Do you use those powers?

Alan Lovell: No, I don't think we have. We have a decent level of prosecutions in the waste sector but, as I mentioned earlier, they too often go to magistrates courts and get a trivial fine. We need to look at further education of the court system to improve that. Certainly, we need to do more in this space. We agree with that. Equally, we get after a good number of the right people. Of course, these are criminals, no doubt. This is different from the water space, where a lack of investment and other things have affected what happens. In the waste space, these are criminals and we are set on getting after them with all the measures that we have.

Q62 **Chair:** You have referenced a lack of officers or the difficulty in recruiting officers to manage waste crime. Is that changing? Are you focused on this now?

Philip Duffy: We have put £15 million more, with the Government's support, into waste crime, which means we have the specialist teams we require.

To do the trick, we need to attack this problem from every direction. We need to use proceeds of crime orders to seize illegally acquired benefits. We need a great partnership with HMRC to make sure that the tax evasion is dealt with. I am pleased to say that has improved recently. We



HOUSE OF COMMONS

need to look at travel bans and driving licence bans, which make it harder to commit these kinds of offences.

We need to use prison. We are getting prison sentences of two or two and a half years. That is probably not a huge deterrent for people involved in organised crime. We need to do that on the more difficult end. Some good evidence shows that the number of illegal waste sites is stable or slightly falling, which is positive.

The unlimited penalties may come in for the non-compliant, non-criminal sector and may be a more credible threat to make sure they comply. In the last few months, we have been using suspension. Suspension, of course, gives them a chance to correct the problem, which is only right, and denies them income while they are correcting it because they cannot use the site during that time. That has focused the minds of the non-compliant legal operators.

Q63 Chair: In my county a consultation is going on at the moment about the potential closure of recycling centres, which may or may not happen. Do you notice that around the country? If so, do you notice an increase in fly tipping as a consequence?

Philip Duffy: That is a great question, but I do not know.

Alan Lovell: I do not know the answer.

Q64 Chair: It would be helpful to me locally—which perhaps might be slightly unfair, using my position—if you asked the relevant officer to drop me a note about that.

We had the Secretary of State for DEFRA before the EFRA Committee, which I attended. He confirmed that the DRS is likely to be implemented in 2027. Do you have a view about whether that will make your life more difficult?

Philip Duffy: Can I give an operational view? The complexity and ambition of what the Government are trying to achieve on waste are phenomenal. This year's big task is to get the extended producer responsibility for household packaging done. We have opened registration for that. More than 5,000 people are registered. That is good progress towards that scheme. The Government are right to ensure that each stage of this journey and each of these 13 measures is timed so that it works properly.

We have been involved with the deposit return scheme and looking at how to mitigate the fraud risk, how to manage the money, how to define what is in scope, and how to work across the four nations and regions to make that work. That policy work is all going quite well. It is not unreasonable for the Government to pause and check that the go-live date will work and it will be secure when it starts.



HOUSE OF COMMONS

Getting next year the go-live date for the extended producer responsibility is a massive milestone and that is our focus. We will need to bring in more staff to do that as well.

Alan Lovell: We have been working closely with DEFRA on the waste reform programme as a whole throughout the period. We are ticking off bits of it. We would love to have had it all done by now. It needs to remain front and centre of the Government's effort through the next five years and we can clear off this and other points.

Q65 **Chair:** We had a hearing on electronic waste recently, where there has been much less progress than we had hoped for. We will write to the Government about that. Would you like us to emphasise any recommendations in that area to the Government?

Philip Duffy: They are thinking about the routine kerbside collection, which would be a major step forward. They are looking at all the definition issues, particularly around battery recycling, which is important. The Government have a credible plan. The difficulty is operationalising that huge change.

Q66 **Chair:** Finally, have either of you asked between yourselves or among the board whether the EA is fit for purpose?

Alan Lovell: I cannot say I have asked that specific question around the board, but the board is a good organisation now. It is a strong body. I am confident that it would respond positively to that.

We hired two new people who started on 1 April. They are about to come to their first meeting. Both will help us in the digital and innovation sphere. As Philip said earlier, that is one of the areas where we think we need to do more. One was, for 10 years, the head of IT digital at American Airlines. The other is a 31-year-old young lady with fantastic innovation potential and will be full of good news and good ideas for us. I am confident in the answer to that, but I also recognise that there is a lot more we can do.

Philip Duffy: For the country, having 1,400 scientists who deeply understand and care about ecology, having this level of engineering expertise so that we know how we run and manage our assets and keep London safe every day with the Thames Barrier, and having a depth of data are huge assets for the nation.

Your question does not have one answer. In areas—we have mentioned water today—we have not been doing our job well enough and we will correct those areas. People who work in those areas can be proud of their achievements and I am proud of what they do every day. That is not a question we will answer quite yet.

Chair: That concludes our session. Thank you very much, Alan Lovell and Philip Duffy from the Environment Agency.