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By email

The Rt Hon Liam Byrne MP
Chair of the Business and Trade Committee
House of Commons
London
SW1A 0AA

8 September 2025

OFFICIAL – SENSITIVE

Dear Mr Byrne

Thames Water Utilities Limited

Further to David Black's appearance before the Business and Trade Committee ("**BTC**") on 15 July 2025 and your letter of 20 August 2025 (the "**BTC letter**"), I am writing to set out details of Ofwat's current assessment of the Ultimate Controllers of Thames Water Utilities Limited ("**TWUL**") and to outline the steps Ofwat has taken, and will continue to take, to monitor whether there is a change in TWUL's Ultimate Controllers.

Introductory comments

The BTC letter makes two observations regarding Ofwat's assessment which I would like to take the opportunity to clarify as they are important for understanding the Ultimate Controller assessment:

1. The BTC letter refers to TWUHL's (as defined in the BTC letter) evidence to the EFRA Committee during oral evidence given on 15 July 2025 and that TWUHL stated that *"its (and therefore TWUL's) economic owners were the Class A creditors not the shareholders and that its directors owed duties to act in the interests of the former not the latter*". Having reviewed the transcript of the evidence given, while there is reference by a representative of the Company to the creditors being "*essentially the economic owners*", it is not clear to Ofwat that the evidence given was that TWUHL or TWUL's directors owe duties to act in the interests of the creditors and not the shareholders.

Moreover, I understand that this would not be a correct reflection of the scope of TWUL directors' duties as a matter of law. I understand that TWUL's directors are required, amongst other duties, "*to promote the success of the company*".[1] With respect to a financially distressed company such as TWUL, this involves balancing the interests of shareholders against the interests of creditors as a whole (and not a sub-set of creditors) where there may be a conflict. This is a nuanced exercise to undertake, but it is my understanding that it is not the case that TWUL's directors must solely act in the interests of creditors, or a sub-set of them.

2. The BTC letter also states that:

> *"The only example you gave for this in evidence was that 'they are not formally co-ordinating together. The creditors have informal collective mechanisms, but still retain the ability to act alone'. However, that is also true of the indirect shareholders, so this cannot be sufficient reason for reaching a different conclusion as between the shareholders and the creditors."*

During the hearing, David indicated that this was one example and was one of a number of the issues that Ofwat was considering. The statement David gave during the Committee hearing was not intended to, nor does it, describe all of the factors taken into account by Ofwat during its extensive enquiries and the careful fact-based analysis that Ofwat has undertaken.

Ofwat undertook a comprehensive assessment earlier this year to assess whether there had been a change in the Ultimate Controllers of TWUL, or whether there would be such a change if the amendments to TWUL's finance documents as proposed by its restructuring plan were implemented. At that time, Ofwat concluded there had been no such change. Since then, Ofwat has regularly reviewed that assessment, having regard to all relevant circumstances, including information received from TWUL and Akin Gump LLP ("**Akin**"), legal adviser to a group of more than 100 financial institutions that are senior creditors of the company, holding over £13 billion of Class A and super senior debt (the "**Akin represented Creditors**"). I understand that the Akin Represented Creditors are referred to in the BTC letter as the Ad Hoc Group.

Ofwat's assessment of the Ultimate Controller position has been undertaken with its legal advisers and various internal documents relating to its assessment are subject to legal professional privilege. While I am not able to share such internal documents, I seek, in this letter, to provide the BTC with a detailed account of why Ofwat considers there has been no

[1] Pursuant to section 172 of the Companies Act 2006.

change in the Ultimate Controllers of TWUL to address the Committee's questions.

As I explain in more detail below, Ofwat has separately assessed the position of TWUL's shareholders and creditors. These stakeholders' positions are different and there are a number of reasons why Ofwat's conclusions in respect of each set of stakeholders are different.

The regulatory regime

To assist the Committee in understanding the Ultimate Controller assessment Ofwat has undertaken, I outline below relevant aspects of the regulatory regime. As the Committee is aware, TWUL holds an Instrument of Appointment (the "**Licence**") which sets out a number of conditions that TWUL must comply with, including conditions which apply with respect to the role of TWUL's Ultimate Controllers and the United Kingdom Holding Company of TWUL. An Ultimate Controller under the Licence is defined as:

> "*any person which, whether alone or jointly and whether directly or indirectly, is, in the reasonable determination of Ofwat, in a position to control or in a position to materially influence the policy or affairs of the Appointee or any Holding Company of the Appointee*".

Ofwat considers that the reference to policy or affairs of the Appointee in this context means the strategic operations of TWUL, such as the company's strategy and business plans.

Ofwat has published guidance on its approach to assessing whether an entity is in a position to materially influence a regulated water company.[2] The guidance provides that Ofwat takes a "*case-by-case approach*" and does not consider there to be a single definition of material influence. It goes on to state that in determining whether an entity has material influence for the purposes of identifying the Ultimate Controller(s), Ofwat:

> "*will take into account the specific circumstances and governance arrangements of each Appointee including those set out in a shareholders' agreement (if any). Examples of the circumstances that we are likely to consider as conferring material influence are:*
>
> - *An ability to appoint a director onto the Appointee's board*
> - *Existence of any special voting or veto rights at the Appointee level or holding company level where they relate to the Appointee*
> - *Any arrangement allowing one or more shareholders to influence the Appointee's*

[2] *Change of control – general policy and its application to Thames Water (May 2018)*. See also: *Thames Water: Conclusions on Change of Control and Modification of Instrument of Appointment (November 2018)*.

board"[3]

It is also important to note that the Ultimate Controller assessment is based on whether an entity is in a *position* (i.e. *able*) to control or materially influence the policy or affairs of TWUL. Whether, or in what way, that entity chooses to use (or not use) such a position (or ability) is not the question that Ofwat is required to consider in the context of assessing who the Ultimate Controller(s) is/are, in accordance with TWUL's Licence.

Ofwat recognises that Ultimate Controllers are typically shareholders of a company. Nonetheless, a case by case assessment is undertaken in respect of other stakeholders, including creditors. In this context, Ofwat considers whether stakeholders have contractual or other governance rights, or are otherwise in a position to materially influence the policy or affairs of TWUL, including TWUL's strategy or business plans.

In addition, the Licence contains provisions which outline TWUL's obligations to Ofwat with respect to the identity of Ultimate Controller(s) and the requirement to obtain an undertaking from any such Ultimate Controller(s). These provisions include requirements that:

- TWUL immediately informs Ofwat in writing if it becomes aware that an Ultimate Controller undertaking has ceased to be legally enforceable or there has been a breach of its terms - Condition P9. I confirm that, as at the date of this letter, Ofwat has not received such a notification from TWUL; and
- TWUL informs Ofwat as soon as reasonably practicable if it becomes aware that arrangements have been put into effect which might be considered to have led to a change to its Ultimate Controller(s) - Condition P10.2. Again, as at the date of this letter, Ofwat has not received such a notification from TWUL.

Failure to comply with these conditions of the Licence (as with any others) can lead to enforcement action. Ofwat has made clear to the Company, through its legal advisers, that it expects the Company to continue to monitor whether there is, or may be, a change in the Ultimate Controller position and to inform Ofwat of any such developments.

Ofwat's current and ongoing assessment of the Ultimate Controller(s) of TWUL

Ofwat's assessment of the Ultimate Controller(s) position has been regular and ongoing. In January 2025, in the context of TWUHL's restructuring plan, Ofwat sought submissions from TWUL on whether that process, if successful, would lead to a change of TWUL's Ultimate Controllers.

[3] *Change of control – general policy and its application to Thames Water* (May 2018), page 9.

TWUL wrote to Ofwat in January 2025 explaining why it considered that such a change of Ultimate Controllers had not occurred and would not occur as a result of TWUL's proposed restructuring plan. We reviewed the submission, together with the financing agreements filed with the Court in connection with the proposed restructuring plan. Based on the information available to us at the time, Ofwat formed the view that no change of Ultimate Controllers had occurred or would occur in respect of TWUL should the financing agreements become effective following sanction of the proposed restructuring plan.

This was confirmed in our letter of 28 January 2025 to TWUL, which was submitted to the High Court as part of those proceedings. A copy of the letter to TWUL is enclosed.

Since January 2025, Ofwat has been engaging with TWUL and seeking further information from the Company on factual issues which are relevant to this assessment and has received a number of detailed responses from the Company's legal advisers. Ofwat has also received information in relation to the TWUL creditors and the creditors of Kemble Water Finance Limited from the Company, and information about the Akin represented Creditors.

Ofwat's assessment of TWUL shareholders as Ultimate Controllers

Following our letter to TWUL in January 2025, Ofwat has, on various occasions, made a number of further enquiries, in particular in relation to the position of existing shareholders by reference to the Company's underlying governance arrangements. We recognise that certain shareholders have withdrawn their directors from TWUL's board, and understand from TWUL that currently they are not taking an active role in the Company's affairs. As a result, we understand that the Company is no longer consulting its shareholders in the way that it used to. We therefore wished to test whether these circumstances had led (or may lead) to a change in TWUL's Ultimate Controllers.

On balance, the additional information provided has not changed Ofwat's view. Ofwat continues to consider that Kemble Water Holdings Limited ("**Kemble**") (as the United Kingdom Holding Company) and the entities set out at Annex 1 below remain *in a position* to materially influence the policy and affairs of TWUL, whether or not certain rights are in fact being exercised, and therefore remain Ultimate Controllers for the purpose of TWUL's Licence. This conclusion is based on Ofwat's assessment of the ownership structure and governance arrangements put in place by the owners of TWUL, which Ofwat has been informed are still in place.

In this regard, Ofwat notes that the BTC letter indicates that neither the creditors nor the shareholders are "formally co-ordinating". While the individual shareholders do of course (like the individual creditors) retain the ability to reach their decisions relating to TWUL independently, unlike the creditors, the shareholders do have formal arrangements in place (including a shareholders' agreement) under which they have agreed certain matters relating to TWUL's governance.

Finally with respect to the shareholders, Ofwat does not consider the fact that, given TWUL's financial distress, its directors are required to have regard to creditor interests as well as shareholder interests, is in itself a reason to determine that the relevant shareholders are no longer Ultimate Controllers.

I note that whether the shareholders of Kemble are considered to still be in a position to control or materially influence the policy or affairs of TWUL does not necessarily have a bearing on whether a creditor, or group of creditors, might be reasonably determined to be in such a position. Ofwat has therefore considered separately whether or not this is the case, as explained below.

Ofwat's assessment of the position of TWUL Creditors

Ofwat has assessed whether TWUL creditors (or one or more of them) may be in a position to materially influence TWUL's policy or affairs such that any individual creditor or group of creditors jointly could properly be considered Ultimate Controllers of TWUL. To inform Ofwat's assessment, Ofwat has received information from TWUL and Akin.

Ofwat understands that the Akin represented Creditors have established an informal and representative coordinating committee (the "**CoCom**") to represent them in their dealings with TWUL and its other stakeholders. Certain members of the CoCom holding over £8 billion of Class A and super senior debt are in the process of submitting a long-term proposal for the comprehensive recapitalisation and operational turnaround of TWUL. However, Ofwat understands that all of the Akin represented Creditors would vote on, and may participate in, any final version of the recapitalisation plan.

As part of our continued evaluation of the Ultimate Controller(s) of TWUL, Ofwat has considered whether the following may be in a position to materially influence TWUL's policy or affairs such that they could be considered Ultimate Controllers of TWUL:

- Those members of the CoCom that are in the process of resubmitting a bid for the recapitalisation and operational turnaround of TWUL (the "**Restricted CoCom Members**"),[4] and/or
- the Restricted CoCom Members *plus* the large number of other creditors providing liquidity and other debt facilities to TWUL, including the Akin represented Creditors (the "**Creditor Group**").

[4] We refer to these creditors as the Restricted CoCom Members as we understand they have restricted themselves from trading in TWUL's public debt in order to participate in due diligence and various meetings, and to formulate proposals, relating to the bid.

Ofwat has assessed these groups separately as, while the Restricted CoCom Members are all creditors of TWUL, not all creditors of TWUL are Restricted CoCom Members.

Restricted CoCom Members

There are a number of reasons why Ofwat does not consider the Restricted CoCom Members, or any potential sub-set of the Restricted CoCom Members, to be in a position to materially influence the policy or affairs of the Company at this time. Clearly, the Restricted CoCom Members (like the other Akin represented Creditors) are not currently TWUL shareholders, and nor do any of them (i) have the right to appoint directors to the board, or (ii) hold any governance rights or veto rights over TWUL's business plan or other strategic decisions the TWUL board is making. TWUL has also confirmed to Ofwat that its directors are not acting at the request of, or on behalf of the creditors generally, or any potential subset thereof, including the Restricted CoCom Members (or any of them).

In addition, TWUL has confirmed to Ofwat that its board of directors has independently determined the business plan for TWUL and that it continues to operate to this plan. Ofwat understands that TWUL's current business plan is separate from the Restricted CoCom Members' proposal for the recapitalisation and operational turnaround of the company should they (and other Akin represented Creditors) ultimately become shareholders.

Ofwat acknowledges that there are discussions with TWUL, which Ofwat understands are almost exclusively led by advisers, relating primarily to the recapitalisation and operational turnaround of TWUL. In Ofwat's view, those types of discussions as to future arrangements are normal for any prospective owner of a business, and do not place the Restricted CoCom Members, or a sub-set of those creditors (including any individual creditors who attend discussions with TWUL and/or Ofwat), in a position to materially influence the current affairs or strategy of TWUL.

I note that it would be very unusual in the ordinary course to find that an equity bidder is an Ultimate Controller prior to the conclusion of the equity raise process and the bidder holding any equity.

Akin have confirmed that as far as they are aware, there is no agreement, formal or otherwise, as to the way in which the Restricted CoCom Members are managed. Ofwat has also been informed by Akin that it is common for there to be a range of views and debate amongst the Restricted CoCom Members on various issues.

Ofwat is aware that not all of the Restricted CoCom Members are involved in all discussions. Ofwat understands from Akin that this is for efficiency purposes, due to the number of Restricted CoCom Members (and the number of the Akin represented Creditors more generally). However, Ofwat understands that those members who are involved are not entitled to take any decisions on behalf of the rest of the Restricted CoCom Members, or other members of the senior creditor group. Accordingly, the fact that not all representatives attend all meetings does not change Ofwat's view that neither the Restricted CoCom Members as a group, nor any specific Restricted CoCom Members, are in a position to materially influence the company at this time, for the reasons set out above.

Clearly, if TWUL's equity raise process results in significant changes to TWUL's shareholder composition, this would likely lead to a change in TWUL's Ultimate Controllers (and some or all of the existing shareholders would be expected to cease to be Ultimate Controllers). However, we do not consider the Restricted CoCom Members (or any of them) are currently in a position to materially influence TWUL's policy or affairs for the purpose of the Licence, as a result of participating in the equity raise process.

Ofwat will keep this position under review. At the appropriate time, Ofwat will take action to ensure that any new Ultimate Controllers provide suitable undertakings in accordance with TWUL's Licence.

Creditor Group

Ofwat notes that creditors are entitled to information under the finance documents and are engaging with the Company as regards the Company's liquidity position. The creditors' entitlement to information in itself is not sufficient to place the creditors, or a sub-set of creditors, in a position to materially influence the policy or affairs of TWUL.

Ofwat also notes that the Class A Creditors are a very large and disparate group. As noted above, Ofwat understands that even the Akin represented Creditors comprise more than 100 financial institutions. Also as noted above and as reflected during David's evidence before the Committee, Ofwat understands that the Akin represented Creditors have no formal legal standing and each creditor retains a unilateral ability to make independent decisions based on their own commercial interests. Ofwat further understands that the Akin represented Creditors, including the CoCom, do not have rights to appoint board members, veto TWUL decisions or other governance rights that put them in a position to materially influence the policy and affairs of TWUL.

As noted above, Ofwat understands that the Akin represented Creditors have established a CoCom to liaise with the Company on behalf of the broader group, but this is an informal arrangement and members of this group are not, as Ofwat understands it, entitled to take any decisions on behalf of the Akin represented Creditors, nor any other creditor interests.

Ofwat's review of the relevant evidence has led it to conclude that, at present, there are no individual creditors, or group of creditors jointly (including the CoCom or Akin represented Creditors), that are in a position to exert material influence over the decisions of TWUL in such a manner that they can be considered Ultimate Controller(s).

TWUL's assessment regarding its Ultimate Controllers

TWUL has informed Ofwat (through its legal advisers) that it is also of the view that there has been no change in its Ultimate Controllers (including as regards the creditors), and has assured Ofwat that it continues to review the identity of its Ultimate Controllers based upon the circumstances as they develop. In this regard, I note that, as mentioned above, in addition to Ofwat's continued monitoring of the situation, TWUL has a positive obligation under its Licence to notify Ofwat of any potential change in its Ultimate Controllers.

More specifically, consistent with Condition P10.2 of its Licence (referenced above), TWUL has confirmed that it will update Ofwat if it considers that arrangements have been put into effect which have led to a change in its Ultimate Controllers. Notwithstanding TWUL's assurances, Ofwat requests periodic updates from the Company to allow Ofwat to undertake its own assessment.

We will continue to keep the position of TWUL's Ultimate Controllers under review. As stated above, if the equity raise process proceeds, we anticipate that there will be a future point in time where TWUL's Ultimate Controllers will change. Ofwat is alive to this and will take appropriate action if events arise that are likely to result in a change to the Ultimate Controllers of TWUL.

I trust that the response above addresses the Committee's questions.

Yours sincerely

Helen Campbell
Executive Director, Delivery
Encs.

cc Rt Hon Alistair Carmichael, Chair Environment Food and Rural Affairs Committee

Annex 1

Ultimate Controllers (as defined in the Licence)

1. Infinity Investments S.A
2. bcIMC WCBAF SIIF101 2006 Investment Corporation
3. Cicero Investment Corporation
4. OMERS Infrastructure European Holdings B.V.
5. BriTel Funds Limited
6. Church Water Investment Limited