CASE COMMENTARY

CUNLIFFE IN-DEPTH: WHAT THE CUNLIFFE REPORT MEANS AND WHAT COMES NEXT

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INTRODUCTION

It is easy to get lost in headlines about regulators being abolished and water company profiteering. However, the Independent Water Commission's final report, chaired by Sir Jon Cunliffe and published on 21 July 2025, sets out the most ambitious overhaul of the UK water sector since privatisation. With 88 formal recommendations, the *Cunliffe Report* outlines a 'total reset' across regulation, company ownership, system planning, environmental obligations, and investment frameworks.

As lawyers advising clients in infrastructure, utilities, ESG finance, and regulated sectors, it is critical we understand the implications of this (really no pun intended!) watershed document. This commentary focuses on certain of the report's headline proposals, in particular those relating to:

- Reform of the CMA's role in setting the water sector WACC (cost of capital methodology)
- Changes to company ownership and control rules
- The creation of regional water system planners
- Evolution of Direct Procurement for Customers (DPC) and SIPR frameworks
- Legal, regulatory, and policy tensions for investors and the state.

It flags some of the key changes beyond the headlines and some of the challenges and tensions that may arise. Publication of *Cunliffe* is not the end of the discussion. While *Cunliffe* rightly flags a change in the way the water sector is to be regulated it raises as many questions and challenges as it does answers and this article tries to look beyond the headlines to what comes next.

CMA TO SET UK-WIDE WACC METHODOLOGY: CONVERGENCE OR CONSTRAINT?

One notable recommendation is to transfer responsibility for setting the Weighted Average Cost of Capital (WACC) methodology in regulated sectors to the Competition and Markets Authority (CMA). In effect, a single cross-sector approach would be applied across water, energy, and telecoms, rather than each regulator devising its own formula. The goal is to improve consistency, de-politicise the setting of returns, and reduce opportunities for 'sector arbitrage' (where investors seek out whichever sector offers the most generous returns). If implemented, a CMA-set methodology would establish a common baseline for allowed returns.

WHAT ARE THE IMPLICATIONS?

Legal certainty and investor predictability

A unified WACC methodology could provide standardisation across industries and reduce regulatory volatility. Investors could gain more confidence that returns are set by an independent body using transparent criteria, rather than being subject to differing approaches or political pressure in each sector. This consistency is seen as vital for attracting long-term infrastructure investment.

Trade-off in sector-specific discretion

A cross-sector approach means the water regulator might lose some flexibility to tailor returns to water-specific circumstances. For instance, unique water industry risks, such as heavy environmental compliance costs or the financial fragility of certain companies, may not be fully reflected if the same WACC formula is imposed uniformly. There is a concern that what works for energy or telecoms might not perfectly fit water, potentially constraining Ofwat's ability to incentivise investment in areas like pollution control or network resilience. There is a tension here as *Cunliffe* focuses on a need not just to be sector-specific but company-specific in setting prices. This will need to be considered closely.

Preservation of five-year price control cycles

Crucially, the report reaffirms the importance of maintaining the existing five-year price control framework (AMP cycles), which underpins regulatory discipline, customer engagement, and benchmarking. However, investment planning and return expectations are to be extended over longer time horizons, that is, 10, 15 and even 25 years, to give greater confidence to investors funding long-term infrastructure. This hybrid model aims to combine regulatory accountability at five-year intervals with the forward visibility needed for capital planning, especially where projects span multiple AMP periods. Any CMA-led WACC methodology would need to be compatible with this structure, offering both periodic adaptability and durable baseline assumptions that support multi-decade investment models.

Need for legal alignment

Handing WACC methodology to the CMA would likely require statutory amendments and careful coordination among regulators. The price review processes in water, energy and telecoms have different cycles and legal frameworks; a CMA-led approach would have to be reconciled with each to avoid any constitutional or practical conflicts. Legislators would need to clearly delineate the CMA's remit and ensure that sector regulators and the CMA work in tandem (for example, the CMA providing the methodology and each regulator applying it with sector-specific data). This move would essentially formalise the collaborative efforts already underway to align WACC-setting practices across sectors.

COMPANY OWNERSHIP AND LICENCE POWERS: A HARDENING OF CONTROLS

Cunliffe recommends a significant tightening of ownership and governance oversight for water companies. It proposes that the new water regulator should be granted new statutory powers to: (1) block or vet material changes in control of regulated water companies, (2) direct the actions of parent companies and ultimate beneficial owners of those companies, and (3) embed 'public benefit' obligations (currently found in companies' Articles of Association) into the enforceable regulatory licence conditions. Regulators would gain tools similar to those used in financial services supervision to ensure water companies are run in the public interest and remain financially sound – including imposing minimum equity capital requirements so that firms are less reliant on debt financing.

IMPLICATIONS

Positive for the public interest (on paper)

The proposed powers to block ownership changes, direct parent companies, and embed public benefit duties in licences are, in principle, a significant enhancement of transparency and accountability. They are designed to allow regulators to intervene before a water company is placed at risk, preventing acquisitions or structures that might saddle companies with unsustainable debt, divert cash flow away from essential infrastructure investment, or undermine long-term performance through short-term financial engineering. Requiring owners to uphold public benefit duties via enforceable licence conditions, rather than relying on voluntary commitments or corporate articles, could strengthen the legal obligation to prioritise service delivery, environmental performance and infrastructure resilience. Similarly, the introduction of minimum capital thresholds (akin to regulatory capital rules in the financial sector) could, in theory, provide a safeguard against over-leveraging and promote prudent financial management. However, while these powers are well-intentioned, their practical use is far from straightforward. In reality, regulatory interventions in ownership and control are politically and legally sensitive. Blocking a transaction, particularly if it involves institutional capital, international investors, or complex group structures, would likely trigger challenges, not only in terms of litigation or arbitration but also in relation to investor-state expectations. Governments/regulators may find themselves under pressure to justify the use of these powers with detailed evidence that an ownership change poses a clear, quantifiable risk to customers or resilience. This has (historically) not been an area in which governments have performed well.

There is a genuine practical question of competence and institutional capacity. Regulators and government departments may not always be best equipped to assess the nuanced commercial dynamics of investment vehicles, shareholder intentions, or offshore holding structures. Assessing reputational or operational risk at the point of ownership change requires deep financial and strategic insight. This is something that may not currently sit within Ofwat's traditional toolkit, nor comfortably within the broader civil service model. There is a risk that decisions could be delayed, inconsistently applied, or avoided altogether for fear of overreach or judicial review. Equally, public benefit duties, though laudable in concept, risk becoming vague or symbolic if they are not clearly defined and enforceable. Without clear statutory or regulatory guidance on how such duties are to be interpreted and what specific actions would amount to breach, enforcement may prove difficult. Regulators would need to walk a fine line between discretion and legal certainty, particularly if attempting to trigger penalties or licence modifications for breach of such broadly framed obligations. In short, while the expansion of regulatory powers over ownership and control is a strong signal of intent, their effectiveness will depend heavily on resourcing, institutional skill, legal clarity, and the political appetite to exercise them in high-stakes situations. Without this, there is a risk that they remain 'powers on paper' rather than tools used with regularity or precision.

Challenging for deal-making

Tougher ownership controls could complicate mergers and acquisitions in the sector. Prospective buyers (especially infrastructure funds or private equity investors) might face lengthier approval processes or even outright blockage if they don't meet the new fit-and-proper criteria. Valuation models that counted on highly leveraged structures, complex offshore parent companies, or quick investor exits will need revisiting. Investors may also need to factor in possible interventions by regulators at the holding-company level, which is a notable shift from the current model where the regulator's powers largely stop at the operating company's ring-fence. The biggest risk here is uncertainty. The water sector is still to be privately financed. While there are clearly times when intervention would be helpful, it will be critical that investment is not deterred by the shadow of uncertain powers.

Investor need: balancing clarity and fairness

Investors will want clearly defined rules and predictable, proportionate enforcement. If new powers are introduced, they should come with guidance on what thresholds or behaviours might trigger regulatory action (for example, what constitutes a 'material' change of control requiring approval, or how a 'public benefit' clause will be interpreted in practice). A grandfathering or transition period will be important so that existing owners have time to adjust; non-retrospective application of rules would alleviate fears that past transactions or structures will suddenly be deemed non-compliant. In short, the investment community will seek assurance that the goal is to improve governance, not to create arbitrary barriers or expropriate value.

Regulatory need: protecting the system

From the regulator's perspective, these powers are about managing systemic risk and protecting the integrity of licences. They provide tools to intervene early if an owner's decisions threaten a water company's viability or service quality, for example, preventing dividend extractions when a company is financially weak, or stopping sales to unsuitable buyers. The future regulator will need to exercise these powers judiciously to rebuild trust without discouraging the very capital investment the sector requires. Effective use will require developing new skills (similar to financial regulators' oversight of bank holding companies) and perhaps coordinating with government on what 'public benefit' means in operational terms. Powers will also have to be crafted to require Ofwat consent. At present in the water sector a number of matters in corporate ownership are resolved by way of companies electing what to report to Ofwat. This will need to shift.

REGIONAL SYSTEM PLANNERS: A NEW GOVERNANCE LAYER

Perhaps the most massive shift in *Cunliffe* is the creation of Regional Water System Planners for England (likely eight agencies aligned with river basin regions) and a National Water Planner for Wales. This marks a shift toward hydrologically-based, multi-sector planning for water resources. These new bodies would develop integrated 25-year plans for water and wastewater infrastructure, coordinate investment across companies and localities, and align environmental and economic priorities within their regions. They would have authority to direct capital allocations and ensure accountability from all stakeholders that impact water (including agriculture, industry, and local authorities).

IMPLICATIONS

Establishing the regional planners will require a statutory underpinning. Legislation would likely set out their duties, powers, and relationship with existing entities. We can expect amendments to Acts like the Water Industry Act 1991 and the Environment Act 2021 (or their successors!) to accommodate their role in long-term planning (for instance, replacing or consolidating current Water Resource Management Plans and drainage plans into the regional plan framework).

The planners' governing boards are expected to be appointed by ministers or devolved authorities, making these bodies new public law entities subject to governance rules and oversight. This introduces a novel layer of decision-making similar to regional spatial planning in other sectors, which must integrate various interests (water supply, environmental protection, flood control, development needs, and so on) into one strategy.

System-wide integration

By design, the regional planners are meant to take a holistic view of water systems beyond individual company boundaries. This is positive. The current water model is based on closed accidents of geography where there is little actual incentive to prioritise the national or regional view. The new regime will require new obligations to consider cross-cutting issues, for example, ensuring that upstream land use or inter-basin transfers are factored into resource planning, or that climate resilience measures are coordinated regionally. Legally, this is analogous to how spatial planning in housing or the energy system operators work: the planner sets a broad strategy that individual projects and companies must follow. Embedding this will require clear mandates so that the plans have binding force (investment plans that water companies must adopt) rather than being merely advisory.

Avoiding regulatory overlap

A practical challenge will be delineating the authority of these planners *vis-à-vis* Ofwat and environmental regulators. Currently, Ofwat approves infrastructure investments through the price review process, and agencies like the Environment Agency set environmental requirements. If regional planners can direct investments, there is a risk of 'dual control' or conflicting instructions. To prevent confusion and legal disputes, the reforms will need to clarify how a regional plan translates into regulated company obligations and who has final say if there is a conflict. For instance, if a regional planner prioritises a new reservoir but the economic regulator has concerns about affordability, mechanisms must exist to resolve this.

What should be done in the short term

While the proposed Regional Water System Planners are framed around 25-year integrated strategies, the practical reality for companies is that we remain firmly in the five-year regulatory cycle of Asset Management Period 8 (AMP8, 2025–2030). Business plans for AMP8 have already been submitted and final PR24 determinations published. Companies must now operationalise those plans while remaining responsive to both delivery expectations and evolving environmental pressures. At the same time, the proposed planning shift adds complexity to forward-looking strategy. AMP9 planning (PR29) will begin midway through AMP8, and companies will be expected to align future proposals with regional planners' outputs – many of which may still be in formation. This creates a transitional ambiguity: water companies must maintain their current legal duties to develop WRMPs and DWMPs, comply with Ofwat and Defra expectations under PR24, and deliver outcomes approved for AMP8, all while preparing for a new planning regime that may not be fully operational until well into the next cycle. This raises a real risk of misalignment between the timelines for regulated price controls and the slower emergence of regional system planning. Regulators and government must (with all haste) provide transitional guidance to ensure companies are not placed in the invidious position of being expected to comply with two frameworks simultaneously. This will be particularly acute for projects that span AMP8 and AMP9, or where a regional system planner's recommendations conflict with previously approved PR24 programmes.

Separation of planning and delivery

There is much to commend in the desire for strategic, regionally-integrated water planning. However, structural separation between planners and deliverers, with water companies responsible for execution and new public bodies responsible for strategy, introduces its own set of risks. Comparable sectors offer cautionary lessons. In the energy sector, the separation between system operators (for example, the Future System Operator) and network owners has sometimes led to delays and misalignment between planning assumptions and delivery capabilities, particularly where permissions, local consultation, or supply chain readiness are underestimated. In transport, regional spatial strategies have historically struggled to convert long-term plans into implementable, costed capital programmes where responsibility is split between multiple authorities and delivery agents. For water, the legal and commercial challenge is accountability. If a regional system planner identifies a critical investment (for example, an inter-basin transfer or stormwater mitigation scheme) but the water company cannot deliver due to funding, permitting, or technical capacity constraints, who is legally and politically responsible for failure? Without robust governance and shared obligation frameworks, there is a real risk of diffused accountability and programme slippage. There is always risk when planning is separated from delivery. Moreover, water companies, unlike planners, hold licences, revenue controls, and performance penalties. If their AMP9 plans must align with regional strategies, yet the planners have no financial skin in the game or exposure to regulatory enforcement, the balance of responsibility becomes asymmetric. Embedding formal mechanisms for shared decision-making, dispute resolution, and co-owned delivery milestones will be essential to avoid fragmentation and unintended delay. A core part of forming planning bodies will be water company participation.

DPC AND SIPR: COMPETITIVE DELIVERY UNDER SCRUTINY

Cunliffe also weighed in on the frameworks for competitive delivery of infrastructure, namely Direct Procurement for Customers ('DPC') and the Specified Infrastructure Projects Regulations ('SIPR'). These mechanisms, introduced in recent years, allow large projects to be financed and delivered by third parties rather than the incumbent water company – for example, the Thames Tideway Tunnel was delivered via a separate infrastructure provider under the SIPR model. *Cunliffe* supports the continuation of DPC and SIPR, seeing competition as a tool to drive innovation and efficiency. However, it calls for clearer rules and a review of their effectiveness after a period (the report suggests a five-year review cycle).

Refining the framework

The legal and contractual instruments underpinning DPC and SIPR projects will need refinement to incorporate lessons learned so far. This includes how special-purpose project companies are licensed, how risks are allocated between the project and the incumbent utility, and how customers are protected. *Cunliffe* likely heard feedback that while DPC/SIPR can deliver cost savings, the current processes are still emerging. Standardisation of approaches (perhaps even legislative tweaks to the SIPR regulations) could provide more certainty. Notably, *Cunliffe's* call for evidence explicitly sought views on whether DPC and SIPR should be expanded or adjusted.

Clarity in contracts and oversight

Ofwat will need to develop standardised contracts, licences and guidance around DPC and SIPR. This means clearly defining responsibilities for construction, financing, operations and hand-back of assets. Clarity on liability is crucial; for instance, if a DPC-built treatment works fails to meet drinking water standards, the contract must specify who bears legal responsibility under legal obligations (nowhere is this more acute than in respect of drinking water, and *Cunliffe* recognises this). Similarly, interfaces between the project company and the incumbent (for example, for connecting into existing networks or sharing data) should be plainly set out to avoid ambiguity. *Cunliffe* also emphasises post-construction compliance: once a project is up and running, the regulator must ensure the new operator is held to the same performance and environmental standards as any water company.

Investor perspective

Investors and lenders in DPC/SIPR projects will be looking for predictable risk/return profiles. To attract capital at reasonable cost, the allocation of construction risk, regulatory risk, and termination provisions in these projects must be seen as fair and bankable. *Cunliffe* recommendations for clearer frameworks should help reduce the perceived risk of novel procurements. Investors also need confidence that if they perform as contracted, political or regulatory changes will not unravel the deal. Consistency in how projects are tendered and the opportunity to earn a reasonable return (perhaps with allowances for inflation or unforeseen costs) will be key to making these competitive schemes sustainable. Additionally, having a defined review after, say, five years means investors can anticipate that the model will be evaluated and possibly refined – a positive if it leads to improvements, but it also means stakeholders should be ready to engage in that future review to protect their interests.

An opportunity missed

One core problem with DPC/SIPR is staff shortage, that is, there is genuinely a skills gap of those able to deliver major infrastructure. It was possible (amidst legislative change) to consider one single infrastructure provider that could be financed to provide multiple major projects (with a dedicated team) across multiple companies on a portfolio basis. This would tie into the wider nationwide strategic planning obligations. This is not covered by *Cunliffe* but could well emerge as time goes on. However, it seems inevitable that there are savings to be made in having one larger infrastructure provider than seven or eight different ones.

Regulator perspective

For regulators, the priority is that DPC and SIPR deliver value for money and public benefit. That means ensuring robust competition (enough bidders, no collusion) and that contracts do not over-reward the private partner at customers' expense. Ofwat will also remain concerned with compliance and service continuity, even if a separate entity is running an asset, and its failure would still harm customers and the environment. Thus, oversight arrangements (reporting, performance penalties, step-in rights if the project company underperforms, and so on) need to be watertight. *Cunliffe* likely advises that Ofwat build up its capacity to monitor these projects over decades, not just during procurement. In the long run, if DPC and SIPR projects prove successful, they could become a permanent feature of the sector's investment model, but regulators will only allow that if the outcomes in the first few projects are positive for consumers.

REGULATORY REFORM AND CAPACITY: INDEPENDENCE BUT RESOURCED

Perhaps the most commented upon structural change recommended is the creation of a unified 'Integrated Regulator' for water in England, merging the functions of Ofwat, the Drinking Water Inspectorate (DWI) and the water-related roles of the Environment Agency and Natural England. In Wales, the report proposes integrating Ofwat's economic regulation into the existing Natural Resources Wales agency, effectively yielding a single regulator there as well. The idea is to eliminate the fragmentation of oversight. A single body would be responsible for economic regulation, drinking water quality, environmental performance, and asset resilience, allowing a 'whole firm view' of each water company's operations. There is a slight oddity, however: *Cunliffe* emphasises that the independence of economic regulation should be preserved, and that the new regulator must be adequately resourced to handle its broadened mandate.

KEY LEGAL AND GOVERNANCE QUESTIONS

Statutory governance

How will this new regulator be constituted? Options include making it a Crown body (part of government), an independent non-departmental public body (NDPB) like Ofgem or Ofcom, or some hybrid model. This decision will affect how much control ministers have versus the autonomy of the regulator. Legislation will be needed to dissolve or merge existing bodies and to establish the duties and powers of the integrated regulator. Careful drafting is required to merge several statutes into one entity's authority without leaving enforcement gaps or overlaps. Distance from political decision-makers is a must for the regime to have credibility.

Independence of the economic function

One concern is whether the economic regulation aspect (price controls, WACC setting for water, and so on) might be influenced by the other functions or political oversight once under one roof. *Cunliffe* appears to want a ring-fence of the economic regulator's decision-making, to maintain investor confidence. For example, tariff setting should remain technocratic and evidence-based, even if the same organisation is also handling environmental enforcement. Ensuring that the new regulator's governance (perhaps with separate divisions or statutory guarantees of independence for pricing decisions) will be crucial so that it does not become politicised or bogged down by conflicting objectives. This does, however, limit some of the benefits of joined-up regulation.

Accountability and judicial review

Merging agencies raises questions about how the new decisions can be challenged or appealed. Currently, different types of decisions go to different venues, for example some Ofwat decisions can be appealed to the CMA, whereas environmental permitting decisions might be subject to judicial review in the High Court. Under a one-stop regulator, the legal pathways for challenge might need to be consolidated. Will there be a new appeals mechanism for, say, price determinations now that CMA's role might change? And how will the courts view a single regulator that wears multiple hats? There may need to be clear provisions to prevent double jeopardy (for example, a company should not be penalised twice by two arms of the same regulator for essentially the same failing) and to outline how enforcement actions are prioritised. The administrative law framework overseeing this body will adapt as well; Parliament will likely demand strong accountability (annual reporting, audits, perhaps oversight by Select Committees or a new supervisory board) given the breadth of power in one agency.

Shift to supervisory regulation

Perhaps more significant than a corporate merger of regulators is a shift in the nature of regulation. *Cunliffe* reflects a move to supervisory regulation. The proposed shift to a supervisory model of regulation, akin to approaches used in financial services, represents a material change in how Ofwat and other regulators will engage with water companies. Rather than relying solely on econometric benchmarking, this approach demands ongoing, firm-specific oversight, deep understanding of operational risk, and early intervention, making it inherently resource-intensive. Delivering it credibly will require regulators to recruit and retain experienced financial, engineering, and legal professionals, often in competition with the private sector. This necessitates not just one-off funding but a sustained financial commitment from government to ensure regulators are not consistently outgunned by well-resourced companies. Without such backing, the supervisory regime risks being aspirational rather than effective. This is something that has been lacking for years, and while it is easy for any government of the day to blame regulators, it is ultimately government who is accountable for failure to adequately fund regulators.

Transitional challenges

Implementing this reform without disrupting the sector is a major challenge. It could take years to legally abolish or merge organisations, transfer staff, and harmonise different regulatory cultures. During that time, the water companies still must be monitored and held to account. There is a risk that focus could drift during the transition. Some observers have warned that creating an entirely new regulator could be so time-consuming and disruptive that it delays urgent improvements. Mitigating this requires careful planning: possibly a phased approach (for example, initially co-locating or structurally coordinating the existing bodies before full merger) and ensuring that 'business as usual' (like the upcoming price review and ongoing pollution enforcement) continues robustly. The government will need to resource the transition generously, both in funding and in recruiting/retaining skilled staff, so that the expanded regulator can hit the ground running.

TENSIONS AND TRADE-OFFS: WHAT MUST BE BALANCED

The Cunliffe Report stops short of ideology. This is welcome. It does not call for full re-nationalisation or absolve companies of blame. It clearly acknowledges that the system is under strain and that any reform involves balancing competing goals. Key tensions that lawyers, investors, and policymakers will need to keep in mind include the following.

Investor certainty vs environmental enforcement

The public and government are demanding a crackdown on environmental failures (like sewage pollution), which likely means tougher penalties and costly remedial mandates for companies. Yet the sector needs to attract billions in investment for upgrades. This point of tension runs through the heart of the regulatory reform agenda: the fundamental challenge of reconciling environmental and public health ambitions with political and consumer resistance to higher bills. There is broad consensus on the need to reduce pollution, improve river quality and ensure safe and sustainable drinking water, but delivering this infrastructure and compliance comes at significant cost. To date, Ofwat, the Environment Agency and the DWI have struggled to square this circle, often caught between pressure to hold down bills and pressure to enforce higher environmental standards. Unless this underlying contradiction is addressed, either through transparent trade-offs, new funding models, or clearer political mandates, the regulatory framework, however well designed, risks being undermined by conflicting expectations it cannot meet.

Striking a balance is essential

Regulators must enforce environmental laws vigorously without creating so much uncertainty (for example, unbounded fines or threats of licence revocation) that investors shy away from the sector. The report implies that polluters will pay, but also that investors willing to fund improvements should receive stable and predictable returns as an incentive.

Public confidence vs regulatory capacity

There is intense public scrutiny on water companies and a loss of trust that needs rebuilding. The reforms (integrated regulator, regional plans, and so on) aim to show the public that the sector is being 'reset' with greater oversight and transparency. However, delivering on those promises will take time and expertise. Regulators cannot turn around decades of issues overnight, especially if they themselves are reorganising. There is a tension between the speed of response the public expects and the realistic pace at which a regulator can hire skilled staff, implement new processes, and see results. If expectations are not managed, there is a risk of political interference down the line (the 'something must be done' syndrome) that could destabilise the regulatory framework. Building public confidence will require visible short-term actions (like tackling egregious pollution incidents) while laying the groundwork for longer-term improvements.

Short-term affordability vs long-term resilience

Cunliffe underscores the need for a 25-year infrastructure overhaul, new reservoirs, replacing ageing pipes, stopping sewage overflows, and so on. These investments, while essential, will ultimately be paid for by either customers (through bills) or taxpayers. At the same time, households are concerned about rising cost of living, and politicians constantly pressure to keep water bills low. This creates a classic political/legal tension: how to fund massive capital expenditure while maintaining affordability. If not handled carefully, we could see legal challenges (for example, via judicial review of ministerial decisions or even human rights arguments if water becomes unaffordable to some). The new regulatory framework might introduce mechanisms like a single social tariff for vulnerable customers (as recommended by *Cunliffe*) to ease this tension, but the fundamental trade-off remains. Expect intense debates around bill profiles, the extent of government funding or guarantees for green infrastructure, and possibly new financing models (for example green bonds, sovereign support) to square this circle.

National strategy vs regional autonomy

The report calls for both a National Water Strategy (a long-term plan set by government covering all aspects of water use) and empowered regional system planners. While these are complementary in theory, in practice there could be friction. A national strategy might prioritise, say, inter-regional water transfers or large desalination projects for the greater good, while a regional planner might be more focused on local solutions like wetlands restoration or demand management. If a regional plan diverges from the national strategy, whose vision prevails? The legal framework will need to clarify this, likely the national strategy will set high-level objectives and limits, within which regional plans operate. However, navigating this multi-level governance without confusion will be tricky. To avoid conflict, there may need to be formal requirements that regional plans align with the national strategy (and perhaps an approval process by a central authority). Otherwise, disputes could end up in court or cause delays in project delivery. From a business perspective, companies will have to juggle both local and national requirements, which may sometimes pull in different directions.

In summary, these reforms aim to rebuild trust and achieve a more sustainable water sector, but they must carefully balance private investment incentives with public and environmental interests. Many of these tensions will play out through future consultations, regulatory decisions, and potentially litigation as the new regime is implemented. *Cunliffe* suggests the nature of future debate but it has not resolved the problems we face.

WHAT SHOULD CLIENTS AND ADVISORS DO NOW?

For companies, investors, and advisors in the water sector (or those looking to enter it), *Cunliffe* is a signal to start preparing for change. Here are concrete steps to consider in anticipation of the reforms.

Monitor legislation

Keep a close watch on the government's follow-up. A Water Reform Bill is likely to be introduced (the government has signalled it will respond to *Cunliffe's* recommendations). This legislation could overhaul the Water Industry Act 1991 and other laws – affecting everything from licence conditions to enforcement powers. Early awareness of draft provisions will help in assessing impacts on existing assets, contracts, and compliance obligations. For example, if new ownership tests or capital requirements become law, companies might need to adjust shareholder agreements or raise equity. Engaging with the legislative process (through industry groups or consultations) can also be prudent to advocate for workable provisions.

Review ownership and financing structures

Given the proposed powers for Ofwat to scrutinise owners and even block acquisitions, any planned transactions or restructurings in the sector should be re-evaluated. Private equity investors should consider whether their exit timelines and leverage levels align with a regulator expecting long-term, patient ownership. Highly leveraged structures may face regulatory pushback, so exploring ways to bolster equity (or at least having a convincing equity injection plan in distress scenarios) is wise. Corporate groups with complex chains of ownership or offshore elements might anticipate requirements for transparency and clear 'line of sight' for regulators to the ultimate owners, and simplifying ownership structures could get ahead of this. For those planning to bid for assets (for example, if a regional water company is put up for sale), be prepared for a more extensive due diligence by regulators regarding your track record and intentions.

Anticipate a supervisory regime

Firms should expect a shift in regulatory approach, moving away from a purely periodic-review mindset to a more continuous supervisory engagement, akin to how financial regulators oversee banks or insurers. This means boards of water companies should strengthen their governance now. Ensuring that board minutes reflect due attention to customer and environmental outcomes, that risk registers include regulatory and operational risks, and that there are robust systems for regulatory reporting will put companies in a good position. Senior management accountability may also rise (discussions have floated adapting the Senior Managers & Certification Regime). It would be prudent to identify which executives would hold key responsibilities (for asset health, for water quality, for customer service, and so on) and begin instilling a culture of personal responsibility. Enhancing internal audit and compliance functions in anticipation of more stringent oversight is another proactive step. Essentially, assume that everything from financial resilience to environmental performance could now be under one regulatory roof. Integrated thinking and readiness are essential.

Engage in the transition and consultations

The period between this final report and full implementation will feature multiple consultations. These will conducted by DEFRA, by Ofwat (and its successor) and by other bodies on how to execute these recommendations. Companies and investors should not sit on the sidelines. It is important to provide input on practical matters, such as the design of regional planning authorities (for example, what powers they have, how they interact with company business plans), the details of the CMA-led WACC methodology (ensuring it does not inadvertently disadvantage needed investments) or the terms of the new social tariff. Investors in particular might want to engage via industry associations to voice concerns about preserving a stable investment climate. Constructive engagement can help shape regulations that achieve policy goals while still being implementable and fair. Additionally, entities should follow the appointment of key personnel (for instance, who will lead the integrated regulator, or who sits on regional boards). These choices will influence the regulatory philosophy and openness to dialogue. Being part of the conversation early on can also help avoid unpleasant surprises and position your organisation as a collaborative stakeholder in the reform process.

Cunliffe offers hope and a roadmap to a better future for regulated water. But it does not solve some of the biggest challenges facing the industry and there is material room for debate into the future.