ANATOMY 002 - Research Notes

Supporting material - *Thames Water and the Cost of Being the One Who Decides*

Sourcing + mechanism behind the piece, minus narrative framing. Case file, then mechanism, then assumption audits.

1. Legal framework

- **s.24 Water Industry Act 1991** - only SoS or Ofwat (with SoS consent) has standing to petition SAR; two separate grounds (insolvency + performance/licence breach). Statute: https://www.legislation.gov.uk/ukpga/1991/56/section/24 · River Action press release: https://riveractionuk.com/news/river-action-launches-legal-challenge-against-the-government-over-thames-water-failures/ · Octus briefing: https://octus.com/resources/articles/briefing-thames-water-and-the-shadow-of-special-administration/
- **Part 26A Companies Act 2006** - restructuring plan (informal name; statute heading is "Arrangements and reconstructions: companies in financial difficulty"), cross-class cram-down. Statute: https://www.legislation.gov.uk/ukpga/2006/46/part/26A · CoA press summary: https://www.judiciary.uk/wp-content/uploads/2025/04/Kington-S.A.R.L.-Thames-Water-and-another-v-Thames-Water-Utilities-Holdings-and-others-press-summary.pdf
- **CIGA 2020, Part A1 moratorium** - 20 business days initial period, auto-lapses unless actively extended. GOV.UK guidance: https://www.gov.uk/guidance/applying-for-a-moratorium-under-the-corporate-insolvency-and-governance-act-2020 · Statute (s.A9, "End of the moratorium"): https://www.legislation.gov.uk/ukpga/1986/45/section/A9
- **s.153 Water Industry Act 1991** - SoS power to fund directly during a SAR (requires HMT consent), government debt repaid preferentially. Octus briefing (above).
- **Water (Special Measures) Act 2025, s.14** - shortfall recovery mechanism, in force since June 2025. Octus briefing (above).
- **"Guardians of the public interest" quote** - verbatim from Court of Appeal judgment, 15 April 2025, not an academic paraphrase. Full judgment: https://www.judiciary.uk/wp-content/uploads/2025/04/Kington-S.A.R.L.-Thames-Water-and-another-v-Thames-Water-Utilities-Holdings-and-others-judgment.pdf - case citation [2025] EWCA Civ 475.

2. Thames Water timeline

- **Oct 2024** - £3bn emergency financing plan first announced. Guardian: https://www.theguardian.com/business/2024/oct/25/struggling-thames-water-pushes-for-lifeline
- **18 Feb 2025** - Leech J sanctions RP1, [2025] EWHC 338 (Ch). Judgment: https://www.judiciary.uk/wp-content/uploads/2025/02/Re-Thames-Water-Utilities-Holdings-Ltd-CR-2024-007540-Sanction-Approved-Judgment-18.2.25.pdf

- **17 Mar 2025** - Court of Appeal announces outcome (appeal dismissed), reasons not yet given. Guardian: https://www.theguardian.com/business/2025/mar/17/appeal-court-rules-in-favour-of-3bn-bailout-for-thames-water
- **15 Apr 2025** - Court of Appeal reasoned judgment, [2025] EWCA Civ 475. Judgment: https://www.judiciary.uk/wp-content/uploads/2025/04/Kington-S.A.R.L.-Thames-Water-and-another-v-Thames-Water-Utilities-Holdings-and-others-judgment.pdf
- **13 Jun 2025** - Maynard MP seeks Supreme Court permission to appeal. Thames Water investor update: https://www.thameswater.co.uk/news/2025/aug/liquidity-extension-update-transaction-effective-date
- **30 Jul 2025** - Supreme Court refuses permission, closing off all RP1 appeals. Same source as above.
- **14 Aug 2025** - RP1 Transaction Effective Date. Same source as above.
- **Mid-2026** - RP2 still pre-litigation, in-principle negotiation, slipped to H2 2026. CreditSights: https://know.creditsights.com/insights/emea-special-situations-thames-water-creditors-seek-in-principle-takeover-agreement-in-coming-weeks-rp2-could-slide-into-h2-2026/
- **19–21 Jul 2026** - creditors negotiate a "golden share" + pollution-fine leniency with government. FT: https://www.ft.com/content/da46f288-a9a4-443f-81e2-7b08a054b7b3?syn-25a6b1a6=1 · Telegraph: https://www.telegraph.co.uk/business/2026/07/21/thames-water-lenders-launch-last-ditch-bid-to-avoid-nationa/

3. River Action litigation

- **JR filed 30 Jul 2025** against Environment Secretary Steve Reed. Press release: https://riveractionuk.com/news/river-action-launches-legal-challenge-against-the-government-over-thames-water-failures/
- **3 grounds**: (1) failure to publish an existing policy (s.24 WIA 1991); (2) failure to have one at all, potentially breaching Regulation 9(3) of the Conservation of Offshore Marine Habitats and Species Regulations 2017; (3) potential breach of s.85(A1) Countryside and Rights of Way Act 2000, as amended by s.245 Levelling-Up and Regeneration Act 2023. Same source.
- **Original request to SoS, 7 Mar 2025 -** asked whether the department had considered whether it would be appropriate to apply for a SAR. Same source.
- **Minister Emma Hardy, EFRA committee, Sept 2025** - described the SAR threshold as "as serious as water not flowing from taps," listed performance metrics, said Thames Water had not yet met the threshold. The Water Report: https://www.thewaterreport.co.uk/single-post/mps-press-the-water-minister-for-clarity-on-integrated-regulation-and-thames

4. Financial disclosures

- **£2bn taxpayer exposure within a year** - BBC: https://www.bbc.co.uk/news/articles/cx278ed09nzo
- **RP2 proposal terms** — 25% write-off on Class A (£16bn), 100% write-off on Class B (£1bn), £2.5bn subordinated debt write-off. CreditSights (above).

- **Class B near-zero recovery under both scenarios (RP2 and SAR)** - Dieter Helm: https://dieterhelm.co.uk/publications/the-next-episode-in-the-thames-water-saga/ · Guardian: https://www.theguardian.com/business/2025/jun/30/what-would-happen-if-thames-water-is-temporarily-renationalised
- **Population served**: 16 million combined (water + wastewater) vs 10,068,000 for drinking water specifically. Thames Water: https://www.thameswater.co.uk/about-us · DWI: https://www.dwi.gov.uk/thames-water-utilities-ltd/
- **No liquid CDS market for Thames/Kemble** - S&P Global Market Intelligence confirms no tracked pricing due to insufficient liquidity. IFR: https://www.ifre.com/bonds/2056732/trading-in-thames-water-bonds-jumps-as-firm-teeters · S&P CDS product page (general): https://www.spglobal.com/market-intelligence/en/solutions/products/pricing-data-cds
- **S&P downgrades Class A/B to 'D'**, 25 Feb 2025: https://www.spglobal.com/ratings/en/regulatory/article/-/view/type/HTML/id/3328765 — earlier downgrade of Class A specifically: https://www.spglobal.com/ratings/en/regulatory/article/-/view/type/HTML/id/3256918 — original ratings slash, Sept 2024: https://www.theguardian.com/business/2024/sep/26/thames-water-credit-ratings-slashed-to-lower-levels-of-junk-as-default-fears-grow
- **Liquidity extension history** (multiple STID proposals / consent requests, Oct 2024 → 2026). Thames Water investor page: https://www.thameswater.co.uk/about-us/investors/liquidity-extension-update
- **Kemble default notice to creditors** (parent company): TradingView/Reuters: https://www.tradingview.com/news/reuters.com,2024:newsml_L3N3GE2BP:0-thames-water-owner-kemble-sends-notice-of-default-to-creditors/

5. Supporting references

- **Bulb Energy (2021)** - energy-sector SAR precedent, Energy Act 2011. GOV.UK (24 Nov court order): https://www.gov.uk/government/news/bulb-energy-limited-information-for-interested-parties · BBC News, 22 Nov 2021 (Ofgem's application announced, two days ahead of the order): https://www.bbc.co.uk/news/business-59373198
- **Ofwat abolition** — announced in principle 21 Jul 2025, formal White Paper 20 Jan 2026. GOV.UK announcement: https://www.gov.uk/government/news/ofwat-to-be-abolished-in-biggest-overhaul-of-water-since-privatisation · White Paper: https://www.gov.uk/government/publications/a-new-vision-for-water-white-paper
- **Polus Capital** - Class B leader, litigious posture (submitted a rival £3bn financing offer). Sky News: https://news.sky.com/story/thames-water-bondholders-submit-rival-3bn-financing-offer-13249806 · Evening Standard: https://www.standard.co.uk/business/thames-water-financial-restructuring-court-of-appeal-administration-b1217111.html

6. Mechanism mapping

The core asymmetry

- Two routes out of the same crisis
- Route 1 (Part 26A): company initiates, court reviews. Government doesn't have to act at all.
- Route 2 (SAR): only SoS/Ofwat can initiate. → not "same choice, different economics." Structurally different attribution from the start.
- One-way valve: one path requires a named public act, other doesn't.

Why delay isn't obviously irrational

- Actor with initiation power weighs cost(act) vs cost(wait)
- Act → cost concentrated, immediate, attached to a name
- Wait → cost dispersed, gradual, spread across creditors/regulators/market
- Rational actor under this asymmetry delays - independent of the actual economic merits
- Doesn't require assuming bad faith. Follows from the incentive structure alone.

Attribution ≠ one number

- At minimum: legal component (can I be sued) + political component (will I be blamed)
- These don't move together
- Legal shields exist and work: BJR for directors, good-faith statutory defences, qualified immunity
- None of them touch political exposure
- Statute can stop a lawsuit. Nothing stops tomorrow's headline → this is why corporate/admin-law fixes don't transplant cleanly here

Why River Action ≠ "forcing a decision"

- Doesn't need to trigger SAR to matter
- Function: attach a cost to not acting
- Silence goes from costless default → something that has to be justified against a checkable standard, but only if the standard is actually checkable
- "Published" ≠ "observable" ≠ "falsifiable" - need all three
- "When appropriate" satisfies a duty to publish without creating anything to hold anyone to
- Whether real wording (if it comes) clears that bar: unknown, not yet testable

7. Assumption audits

A1 - creditor unity (assumed, probably wrong as stated)

- Piece treats "creditors" as one bloc for narrative purposes
- Reality: ≥2 structurally different classes, different incentives
- Explored: hidden subclass w/ inverted incentive via CDS exposure → tested, doesn't hold. No liquid CDS market for Thames/Kemble (§4 above)
- Still relevant: UK law resolves this via cram-down (supermajority + no-worse-off test for dissenters), not unanimity → legal compression mechanism, not a resolution of actual preference differences

A1b - what "failure" of the negotiated route looks like (corrected)

- Earlier assumption: main risk = dissenting class failing no-worse-off test
- Correction: junior creditor recovery estimated near-zero under BOTH negotiated deal and SAR (§4 above) → that test is easy to pass, not hard
- Real friction reported at time of writing: political standoff over regulatory concessions (pollution fine leniency ↔ government influence), not a valuation fight (§2, 19–21 Jul 2026)

A2 - reliability of the company's own disclosed numbers

- Liquidity position restated multiple times over ~2 years (§4, liquidity extension history)
- Each restatement extends runway
- None framed publicly as "correcting an earlier error"
- Consistent with, does not prove, strategic timing
- Keep the distinction: "system permits managed timing" (structural claim) ≠ "company/government is deliberately manipulating disclosure" (intentional claim) - piece and this note both hold the weaker claim only

A3 - has any proposed fix been stress-tested?

- No. Not systematically.
- Open risk not yet modelled: government satisfies a transparency requirement with deliberately vague language - gets the appearance of reform, none of the substance
- Flagged, not resolved

Scope note - what's deliberately left out

- Creditor-by-creditor composition / debt-holding strategy detail
- Recovery-rate modelling
- Total company debt figures
- Formal mathematical treatment of the incentive structure

Reason: pulls toward financial-restructuring detail, away from the institutional-design question the piece is actually about. Full working document available on request.