

Now is the time for Burnham to plan for the Thames Water...

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The [Guardian](#) has noted this morning that:

Andy Burnham has told officials to rip up their plans for how to fix Thames Water and present him with more radical options for what to do with the stricken company.

In an early test of his promise to bring “the essentials of life” under public control, the prime minister is urging his advisers to go back to the drawing board and create a new list of policies for the utility.

I am unsurprised that Andy Burnham is concerned about the quality of the advice that he is receiving from his advisers and officials. No doubt each and every one of them is well-versed in the ways of neoliberalism, and the necessary respect for markets that they must provide.

This, however, is not the moment when respect for markets is the priority. It may, in fact, be the moment when a UK government finally realises it has reached a point where it must ignore market pressures, even if supposedly backed by legal claims, and put the needs of people in this country first.

The people of Greater London and the Thames Valley cannot survive without water. Thames Water is the monopoly supplier of that water. The company has also admitted that it is in such deep financial crisis that it now needs more than £2 billion of emergency additional funding from its creditors, and the latest announcements suggest that not all the creditors in question have agreed to the required arrangements to keep the company afloat, if that is the appropriate term in this case.

The fact is that, although, as I understand it, the Prime Minister’s advisers are saying that a situation has not yet been reached where a special administration arrangement for Thames Water should be entered into, as provided for in the legislation that privatised the water industry, I think he has no choice but to act now.

Thames Water is, in my opinion, and by its own admission, financially insolvent, with there being real doubt about whether it can survive into early 2027. I know that

creditors could still provide it with a lifeline, but the evidence is that another crisis would then occur soon after, and this is part of a repetitive process, with ever-increasing amounts of dependence upon expensive debt, which is the only solution that the company can find for itself, providing it with no opportunity for long-term survival.

More importantly, Thames Water is failing in its regulatory obligations, including to maintain clean water supplies and clean rivers and beaches.

Simultaneously, as I explored [in a report written a couple of years ago](#), it has no prospect of becoming more broadly environmentally sustainable within a net zero environment, as is required by 2050, given UK legal requirements and international undertakings provided by the UK.

Put it all together, and this company is bust. If a technical legal definition of being so, created by legislation that never anticipated a situation of this sort, has not been met, I would suggest that a wise Prime Minister would say, "So what?" The job of those in power is to deal with the situation they face, not a legal construct which has been untested in any court. That is particularly true when the literal survival of millions of people within the country might be in doubt, and the economy would be massively imperilled if action was not taken to guarantee continued water supplies throughout the Thames Valley and in London.

So what should Andy Burnham be doing? I have a series of suggestions.

First of all, he should plan to go to Parliament now, without waiting for any further developments to arise, to secure legislation to nationalise Thames Water on terms that the government alone determines. There is a precedent. The [1971 Act of Parliament](#) that nationalised the Rolls-Royce aeronautical engineering company provides it. The Act in question was just one page long, and provided ministers with powers to put into place measures required to deliver the desired outcome that the national interest deemed essential, which was state ownership of Rolls-Royce. A similar national emergency exists now.

If time is exceedingly pressing, I would go for this one-page option.

If there was time for a little elaboration, I might go a little further because primary legislation is important in this situation, as it should reduce the capacity for legal challenge, which secondary legislation makes easier to mount.

First of all, I would make it clear that the nationalisation is of the assets and undertaking of Thames Water, and not of the company itself. This is an option always available in a takeover. Whenever one company takes over another, it can either buy the second company in its entirety, or it can take over its trade and selected assets and liabilities, leaving the existing owners to sort out the affairs of the company that once

undertook that trade. Given the total financial mess Thames Water finds itself in, a takeover of the trade and undertaking is the only obvious route the government should take.

What the Act of Parliament should then provide is that the assets and trade being taken over must be valued at current fair value in the activity they are being used to undertake. Hypothetical alternative values should not be considered. On the other hand, all potential liabilities associated with the assets in question should be taken into consideration, including the cost of making them fit for purpose, and the cost of making them environmentally sustainable. Their potential net revenue-generating potential must also be considered.

If some of the property in question has what are called legal charges, or, in more common parlance, mortgages, on them, the Act should make clear that these are not a reason to leave the assets outside nationalisation. I very strongly suspect that a great many of the physical assets inside Thames Water have some such legal charge on them.

Again, however, the practical question that any wise Prime Minister must ask is, "So what?" A legal charge protects a creditor, but only to the value of the asset in question, and so the basis of the Act must be that value will be paid, but nothing more, with value taking into consideration the environmental and net zero obligations as well as net revenue generating potential in their current use, noted above. If, as a consequence, a payment of less than the sum secured on the asset is deemed appropriate, the payment of that reduced sum will be considered full and final settlement of the charge in question.

This suggestion is absolutely fundamental to determining the liabilities to be settled as a consequence of this takeover, the outcome of which will, at the time the takeover takes place, necessarily be uncertain. The Prime Minister will have to be happy with that, be willing to defend that, and to say that this is required if the interests of the people of the UK as a whole, and those who need water, are to be given priority.

It is also important that other essential assets be taken over, such as the stocks of all materials on hand, to ensure that water supply can take place. Trade debts, net of potential bad debts, could also be purchased.

There will, however, be an offset against these costs in the fact that the government would have to take over some of the liabilities of the existing company. In particular, it would be essential that all trade suppliers whose goodwill must be maintained to ensure that water can continue to flow must be paid in full.

Similarly, all wages must be paid. And pension obligations must be respected.

It is critical that this takeover take place without disruption to either the supply of

essential materials or to the supply of labour by people who work for Thames Water. Without either, the risk of water disruption would be substantial.

All financial liabilities of Thames Water would, however, be left for the old company to settle. The government should not acquire them. It should agree to make fair payment for what it does buy, taking into consideration the trade's future prospects of profitability, paying fair value as a result, but nothing more, and it will be for the liquidator of the company to determine if anyone else then gets a payout from the old company, having in that situation taken into account all the points I make above about claims supported by legal charges over property owned by the company.

It would be wise for all of these considerations to be included in any legislation if at all possible, and the drafting of appropriate schedules to achieve this goal could be done in a few hours, I suspect. If the government wants to give me a call about how to do this, my number is readily available, and I might delay work on my book for a day or two to help them out.

What else needs to be put in place now? The new company needs to be structured within days. There is no time to wait. There cannot be procrastination on this issue. Establishing any company takes time, and there can be no possibility of taking over the existing structure of Thames Water, I suggest. The assumption of its liabilities by the government should not happen.

Instead, a new state-owned company, with a management team in waiting, must be created, and they must take all the necessary steps to take over the existing company's systems, which would be amongst the assets that they acquire.

They should, simultaneously, ensure that their own financial structures are put in place, and that all necessary arrangements, like insurance, can be secured at a moment's notice.

Failing to plan for this means that the government might, instead, be forced into buying Thames Water, and that would be a disaster given the mess that it is in and the financial liabilities that it has, with the chance that creditors might succeed in enforcing financial claims increasing if the government actually takes ownership of that entity.

There are, of course, a myriad of micro-decisions to be made as a consequence of these suggestions, but the point is that a strategy is required, and an end goal must be anticipated. If Thames Water is sending out distress signals, and it very clearly is, and there is no sign of a lifeboat at present, then the required alternatives have to be considered. I have set out what they are. Practicality requires this approach.

There are also political issues to consider as well. A Prime Minister who cannot deliver water to maybe a quarter of the UK's population would not be someone to be trusted with anything else. Andy Burnham has no choice but to address this matter, now.

There is, however, a bigger consideration to address as well. As I [noted elsewhere this morning](#), protests in France and elsewhere show that people are running out of tolerance for financial markets that are denying them their well-being. We have not seen those protests in the UK yet, but Thames Water might be the point where the decision has to be made by government as to whether it serves the people of this country or the interests of financial markets.

To date, it has been assumed that financial markets will prevail. This can no longer be the case when the real risk is that people will not have running water available in their houses, and so great will be the shortfall in supply that there is no viable alternative supply for something so essential to human well-being.

This, then, is the moment when people have to come ahead of financial interests. In that case, Andy Burnham has to walk the talk of ending the power of neoliberalism, and putting in its place the power of government to deliver for people. This is what is required.

The decision is his to make. But if he does not start putting in place the arrangements I have suggested, we will know that he has already surrendered to the interests of the City of London, the creditors of Thames Water, and financial interests.

He wanted to be Prime Minister. He wanted to face the challenges inherent in the job. This might be one of the biggest challenges that he faces, and it is up to him to rise to it by taking the necessary actions to prepare, at the very least, for the worst possible outcomes, because if he does not, a quite literal disaster could follow.