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# Rules of procedure for the Water Services Regulation Authority (Ofwat)

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## **Introduction**

1. The Water Services Regulation Authority (Ofwat) came into being on 1 April 2006 under provisions of the Water Act 2003. The Board has approved these rules of procedure and relevant accompanying annexes.

## **General principles**

2. The Board has adopted the following principles.
  - The Board will operate on the principles of collective responsibility, support and respect. Normally, decisions will be taken by consensus.
  - Board Members should normally speak with one voice in public on Ofwat issues. If a different approach were to be followed, this would first have to be discussed by the Board. A Board Member should inform the Chairman (or Chief Executive in the absence of the Chairman) before making public statements relating to Ofwat business.
  - All decisions will be recorded. Minority views will not normally be made public, although if a vote is necessary, the outcome of this will be recorded in Board minutes. If a Board Member resigns because of disagreement with a Board decision, he or she may state the basis for the disagreement but may not publicly disclose the views of other Board Members.
  - Nominated Board Members (other than those who disagreed with a decision) may be required to explain and articulate specific decisions.

## **Frequency of Board meetings**

3. Board meetings will normally be held ten times a year. Normally, Board meetings will be held at Ofwat's offices in Birmingham or at another convenient location.
4. A Board meeting may be convened by the Chairman or Chief Executive or on request from at least two non-executive Board Members.

## **Notice of Board meetings**

5. Board meetings will normally be convened well in advance and, in any event, with a minimum of five clear working days' notice. A Board meeting may exceptionally

be called at less than five clear working days' notice. Such shorter notice will be valid only if ratified at the Board meeting called at short notice. Notice of a Board meeting will be given to Board Members in writing (including by fax or e-mail). Failure to receive notice of a Board meeting will not invalidate that Board meeting or any business transacted at that meeting.

## **Agenda and papers**

6. The agenda and papers for Board meetings will normally be circulated five clear working days in advance of the Board meeting. Papers may be distributed by e-mail. Non-receipt of papers does not invalidate a Board meeting or any business transacted at that Board meeting.
7. Papers may be tabled at the Board meeting with the Chairman's permission (or, in his absence, the permission of his replacement as Chair of the Board meeting).

## **Quorum**

8. The quorum for Board meetings is four Board Members (including two non-executive Board Members, one of which would normally be the Chairman). Should the need arise, Board Members may attend Board meetings by telephone or video link. Board Members attending by telephone or video link will be considered to be present at the Board meeting.
9. If the Chairman is not present at a Board meeting, he will indicate who will chair the Board meeting. If the Chairman has not given such an indication, those present will elect a non-executive Board Member as a replacement Chair of that Board meeting.
10. A Board Member is not counted in the quorum on an item in respect of which he or she is not entitled to take a decision (see paragraph 13 below).

## **Declaration of conflict of interest**

11. Each Board Member must comply with the procedure for conflicts of interest, which has been approved by the Board and is set out in annex A.

12. Before any item is discussed at a Board meeting, each Board Member must disclose any conflict of interest that he or she believes may arise in relation to that item. If a Board Member is in doubt as to whether a particular matter amounts to a conflict of interest and should be disclosed, he or she should disclose it.
13. The Chairman (or, in his absence, his replacement as Chair of the Board meeting) in his discretion will decide whether any matter disclosed by a Board Member amounts to a conflict of interest that should prevent that Board Member from participating in the discussion of the relevant item.
14. The decisions as to whether to disclose any matter and whether that matter amounts to a conflict of interest should be made having regard to the terms, and the spirit and purpose, of the procedure for conflicts of interest set out in annex A.
15. Where the Chairman (or, in his absence, his replacement as Chair of the Board meeting) decides that any Board Member does have a conflict of interest in relation to any item, that Board Member may not participate in any discussion relating to that item or in any vote taken in relation to it. If requested to do so by the Chairman (or, in his absence, his replacement as Chair of the Board meeting) the Board Member must also absent himself or herself from any discussion of the item.
16. In the event that a Board Member, Ofwat employee or committee member receives any written paper in relation to any matter on which he or she believes that a conflict of interest may arise, they must disclose that conflict of interest to the Chairman at the earliest opportunity.

## **Decision making**

17. Decisions by the Board will normally be made by consensus rather than by formal vote. Failing consensus, decisions will be made by a vote when:
  - the Chairman (or, in his absence, his replacement as Chair of the Board meeting) feels that there is a body of opinion among Board Members at the Board meeting which disagrees with a proposal or has expressed reservations about it and no clear consensus has emerged; or
  - a Board Member who is present requests that a vote be taken and this is supported by at least one other Board Member; or
  - the Chairman feels that a vote is appropriate.
18. When a vote is taken, a decision will be by simple majority. In the case of a tied vote, the Chairman will have a casting vote in addition to his original vote.

## **Procedure for obtaining Board approval between Board meetings**

19. During the normal course of Ofwat's business certain matters may arise between scheduled Board meetings that require urgent Board approval or discussion and cannot be postponed until the next convened Board meeting.
20. Where a Board Member or Ofwat employee considers that it is necessary for the Board to approve or discuss an item before the next convened Board meeting he or she will inform the Board Secretariat.
21. The Board Secretariat will inform the Chairman and the Chief Executive of the request and the item at issue. The Chairman and the Chief Executive will consider the request and inform the Board Secretariat whether or not they agree to the request.
22. The Chairman and Chief Executive will decide whether it is appropriate for the item to be decided or discussed via e-mail or at a Board meeting called at short notice.
23. The Chairman and the Chief Executive may decide that an item can be decided by e-mail without the need for a Board meeting at short notice unless any other Board Member objects.
24. In the case of e-mail approval, in order for a recommendation to be approved:
  - at least four responses must be received from Board Members; and
  - at least two responses must be received from non-executive Board Members; and
  - a majority of all responses received from Board Members must be in favour of the recommendation.
25. If the Chairman and the Chief Executive decide a Board meeting at short notice is appropriate they will instruct the Board Secretariat to convene a Board meeting at short notice.
26. If the Chairman is unavailable then the views of a substitute non-executive will be sought on the issues in paragraphs 21 to 25 above. Similarly, if the Chief Executive is unavailable then the views of a substitute executive will be sought on the issues in paragraphs 21 to 25 above.
27. The Board Secretariat will telephone, e-mail or fax all Board Members without exception to outline the purpose and the proposed time of the Board meeting and to ascertain the availability of Board Members to attend in person or by telephone or video link.

28. The Board meeting at short notice will be convened at the earliest convenient time the quorum rules will apply but Board Members may be present in person or by telephone or video link. Except in exceptional circumstances the Chairman must be present at such a Board meeting.
29. The Board Secretariat will provide a formal agenda and papers for discussion as soon as practicable before the Board meeting at short notice.
30. In so far as is practicable, all Board Members (whether attending or not) will be given an opportunity before such a Board meeting to comment on the items in person or by telephone or e-mail to the Chairman or the Chief Executive.
31. Copies of the minutes of such a Board meeting will be presented for approval in the usual way.
32. If the matter is exceptionally urgent and the Chairman considers that it would not be practicable to call a Board meeting at short notice or to obtain the necessary approvals from Board Members by e-mail, the Chairman (or, in his absence, the Chief Executive) may take the required decision. He, or she, will notify all Board Members at the earliest possible opportunity and report the decision at the next Board meeting.
33. With regards to any financial transaction, in an emergency situation where expenditure is urgently required to safeguard any of Ofwat's operations or to protect its assets, the Chairman (or, in his absence, the Chief Executive) may approve such unbudgeted expenditure on behalf of the Board. He, or she, will notify all Board Members at the earliest possible opportunity and report the decision at the next Board meeting.

## **Minutes**

34. The Chairman (or, in his absence, his replacement as Chair of the Board meeting) will be asked to agree the minutes before they are presented to the Board for approval at the following Board meeting. Once approved by the Board, the minutes will be published on Ofwat's website. Confidential material will be excised.

## **Reserved matters**

35. The matters set out in annex C are reserved to the Board for decision by the Board. This does not preclude other matters being referred to the Board for decision.

36. Where it is a matter of judgment as to whether a matter is reserved to the Board, any Ofwat employee or committee member becoming aware of the matter should inform the Chief Executive. The Chief Executive in consultation with the Chairman (or, in his absence, another non-executive Board Member) will exercise her judgment as to whether the matter is reserved to the Board and whether it should be referred to the Board.

## Delegations

37. The Board may delegate the discharge of a function but the exercise of a delegated power should be in accordance with policies agreed by the Board.
38. The Board delegates to the Chief Executive, in consultation with the Chairman as appropriate, the discharge of all functions of Ofwat other than:
- any matter reserved to the Board; and
  - any matter delegated to a committee of the Board.
39. The Chief Executive, in consultation with the Chairman, may delegate the discharge of some of the functions of Ofwat to one or more Ofwat employees. The Chief Executive will keep a list of such delegations.
40. The Board may make delegations or vary, revoke or add to existing delegations.
41. Any delegation made by the Board may be limited or made subject to any condition. For example, the Board may delegate a function only for a limited period of time or for a particular matter. The nature and scope of new delegations will be recorded in the minutes.
42. The Board may itself discharge a function even though it has delegated the discharge of that function.
43. There is delegated from the Board to each committee of the Board the discharge of those functions, which fall within their respective terms of reference, other than any matter reserved to the Board. The Board may instruct Ofwat staff, or a committee, as to how to exercise a delegated authority.
44. Unless the Board imposes a condition to the contrary, a committee of the Board may delegate the discharge of a function delegated to it by the Board subject to any conditions imposed by the relevant committee.
45. The Board authorises the Chief Executive to sign contracts or other documents on behalf of Ofwat and to delegate this authority to one or more Ofwat employees.

## **Committees**

46. The Board may establish standing committees and ad hoc committees.
47. The Board will appoint members to any committee it establishes, who will either be a Board Member or an Ofwat employee. A committee will include at least one non-executive Board Member.
48. The Board may at any time amend the terms of reference, membership, chair, quorum, frequency of meetings, reporting arrangements and administrative support or any other arrangements of any Board committee.
49. The Board may take advice or consider recommendations from any committee of the Board as set out in the committee's terms of reference.
50. There will be a committee of the Board known as the audit committee to consider matters relating to risk management and internal financial control of Ofwat. The terms of reference of the audit committee are set out in annex D.
51. There will be a committee of the Board known as the remuneration Committee to review and approve the pay awards and consider other matters relating to the pay and conditions of Ofwat employees. The terms of reference of the remuneration committee are set out in annex E.

## **Code of conduct**

52. Board Members will comply with the code of conduct, which has been approved by the Board and is set out in annex F. The code of conduct is published on Ofwat's website.

## **Reviewing the Board's performance**

53. The Board will review its own performance and that of its committees regularly. A summary of its findings will be included in Ofwat's annual report and accounts.

## **Revising the rules of procedure**

54. These rules of procedure will be reviewed as and when required by the Board and may be varied, revoked or added to by the Board as appropriate. No rule of procedure may, however, be suspended, varied, revoked or added to or amended where this would contravene any statutory provision. Annex B – register of disclosable interests will be maintained by the secretariat to the Board.

**Approved by the Board on 6 February 2007.**

## **Annex A: Procedure for conflicts of interest for the Water Services Regulation Authority (Ofwat)**

### **1. Introduction**

- 1.1 This procedure sets out principles for the management of conflicts of interest, and potential conflicts of interest, arising in relation to Board Members.
- 1.2 This procedure is designed to:
  - (a) so far as possible, prevent conflicts of interest from arising; and
  - (b) ensure that any conflicts of interest that do arise are managed in such a way that the independence and integrity of the decisions of the Board are neither compromised nor perceived as being compromised.
- 1.3 While this procedure expressly addresses those conflicts of interest that can be readily anticipated, it is not possible to provide a comprehensive list of all of the conflicts of interest that might arise. Therefore:
  - (a) this procedure must be interpreted with regard to its spirit and purpose;
  - (b) Board Members must comply with this procedure in spirit as well as in letter; and
  - (c) if there is any doubt as to whether a matter amounts to a conflict of interest, it should be presumed to be a conflict of interest until a decision is made to the contrary by an appropriate person.

### **2. Scope**

- 2.1 This procedure applies to Board Members.
- 2.2 Some parts of this procedure require Board Members to ensure certain conduct by, or to make declarations in relation to, their spouses, partners and dependant children.
- 2.3 Provisions similar to those set out in this procedure are also binding on Ofwat employees under the Ofwat staff handbook, so as to ensure so far as possible that the entire advisory and decision-making process of Ofwat is not affected by conflicts of interest.

### 3. Objectives of the procedure

3.1 The objectives of this procedure are:

- (a) to protect the Board corporately and each Board Member individually against the breach of any law, including, for example, offences of insider dealing (the use of privileged information to make a financial gain) under the Criminal Justice Act 1993;
- (b) to protect the Board corporately and each Board Member individually against impropriety or the appearance of impropriety, including risk to its and their reputations; and
- (c) to protect the Board against any conflicts of interest that may be detrimental to the exercise of its functions, by –
  - ensuring so far as possible that Board Members make decisions free from any external influences, whether personal or financial, whilst recognising that it is precisely their position and expertise external to the Board that enables some of the Board Members to make valuable contributions to its work; and
  - adhering to the principle that Board Members should not make a personal profit as a result of their membership of the Board, such as by using confidential information for personal gain.

### 4. Prohibited interests

4.1 No Board Member may at any time have any interests of the type specified in this section (the **prohibited interests**).

4.2 The prohibited interests are any equity or other financial interest in, and any employment, consultancy, directorship or other remunerative agreement with:

- (a) any water or sewerage undertaker appointed for an area in England or Wales, or any affiliate of that undertaker;
- (b) any actual or prospective holder of an inset appointment within the area of an undertaker, or any affiliate of that company; or
- (c) any actual or prospective holder of a licence to supply water within the area of an undertaker, or any affiliate of that company.

4.3 Each Board Member must ensure that no spouse, partner or dependant child of his or hers has at any time a prohibited interest in the form of any equity or other financial interest.

- 4.4 If any Board Member has a prohibited interest, he or she must immediately notify the Chairman and the Chief Executive.
- 4.5 If a Board Member is aware that his or her spouse, partner or dependant child has a prohibited interest in the form of any equity or other financial interest, that Board Member must immediately notify the Chairman and the Chief Executive.
- 4.6 Where a Board Member notifies the Chairman and the Chief Executive of any prohibited interest, he or she shall be excluded from any further participation in the activities or decision-making of the Board, at least until such time as that interest has been terminated.

### **Register of interests**

- 4.7 The Secretary to the Board shall maintain a register to be known as the register of Board Members' disclosable interests (the **Register**).
- 4.8 The Register shall be set out at annex B, shall be a public document, and shall be amended from time to time by the Secretary to the Board so that it remains accurate and up to date.
- 4.9 The purpose of the Register is to ensure transparency in relation to any interests of Board Members – or of their spouses, partners and dependant children – that have the potential, or might be perceived as having the potential, to give rise to a conflict of interest.
- 4.10 The Register must contain, in relation to each Board Member, details of any of the following held or carried on by that Board Member:
- (a) company directorships;
  - (b) memberships of any limited liability partnership;
  - (c) other public appointments;
  - (d) charitable appointments (including trusteeships);
  - (e) employment or consultancy activities;
  - (f) memberships of or offices held within any professional body; and
  - (g) any equity or other financial interest in, or any remunerative agreement with, a contractor (or another significant supplier of goods or services) to any water or sewerage undertaker, inset appointee or holder of a water supply licence in England and Wales.
- 4.11 The Register must also contain details of any employment, consultancy, directorship or other remunerative agreement held or carried on by a spouse, partner or dependant child of a Board Member with:

- (a) any water or sewerage undertaker appointed for an area in England or Wales, or any affiliate of that undertaker;
  - (b) any actual or prospective holder of an inset appointment within the area of an undertaker, or any affiliate of that company; or
  - (c) any actual or prospective holder of a licence to supply water within the area of an undertaker, or any affiliate of that company.
- 4.12 The Register must further contain details of any other matters that have the potential, or might be perceived as having the potential, to influence the judgment of any Board Member in relation to his or her participation in the normal activities or decision-making of the Board. This shall include indirect influences by way of personal or familial connections, as well as direct influences in the form of financial and legal relationships.
- 4.13 It is the duty of each Board Member to declare to the Secretary to the Board and to the Director of Operations any matter relating to him or her that is required to be included on the Register.
- 4.14 If a Board Member is in doubt as to whether a particular matter should be declared, he or she should declare it, and the Secretary to the Board and Director of Operations (in consultation with the Chairman if appropriate) shall decide whether it is a matter that is required to be included on the Register.
- 4.15 A Board Member shall make a declaration of his or her interests for the purposes of the Register immediately on taking up appointment as a Board Member, and shall subsequently declare any new matter that is required to be included on the Register as soon as possible after it arises.
- 4.16 Board Members may be required at any time to confirm to the Secretary to the Board that their current entries on the Register are accurate and up to date, and the Secretary to the Board shall ask them to do so at least once in each year.
- 4.17 Each Board Member must sign a form to confirm the accuracy of his or her entry on the Register if requested to do so by the Secretary to the Board.

## **5. Board meetings**

- 5.1 Board Members must comply with the further requirements as to the disclosure of conflicts of interest arising at Board Meetings, as set out in paragraphs 11 to 16 of the rules of procedure.

## **6. Subsequent appointments**

6.1 Board Members are also subject to the requirement to secure the prior approval of the Chairman and the Department for Environment, food and Rural Affairs (Defra) if, within two years of ceasing to be a Board Member, they wish to accept an appointment with:

- (a) any water or sewerage undertaker (or one of its affiliates);
- (b) a major contractor or supplier to an undertaker;
- (c) an inset appointee;
- (d) the holder of a water supply licence; or
- (e) any firm closely connected to the water industry.

6.2 The purpose of this is to maintain public trust in the work of Ofwat and in particular to avoid:

- (a) any suspicion that the advice and decisions of a Board Member might be influenced by the hope or expectation of future employment with a particular firm or organisation; and
- (b) any risk that a firm might gain an improper advantage over its competitors by employing someone who, in the course of their work, has had access to technical or other information which those competitors might legitimately regard as their own trade secrets or to information relating to the proposed developments in government procedure which may affect that firm or its competitors.

6.3 Any approval of an appointment given by the Chairman may be subject to conditions, which may include the imposition of a waiting period before it can be taken up.

## **7. Audit**

7.1 Information held on the Register will be subject to audit, a summary of which will be published in Ofwat's annual resource accounts.

## **8. Interpretation**

8.1 In this annex, an "equity and other financial interest":

- (a) shall be deemed to comprise shareholdings, debt securities, debentures, bonds, options, rights or future rights to shares, and other securities; but
- (b) shall be deemed to exclude such interest which is managed through Unit Trusts, equivalent managed funds or Blind Trusts and any interest in gilts or other Government securities.

8.2 A Blind Trust is an arrangement by which an individual gives a stockbroker or another professional investment manager absolute discretion to manage his or her investments and under which that individual:

- (a) is not consulted before any dealing in those investments takes place;
- (b) does not instruct the investment manager with regard to any specific securities; and
- (c) is not informed of changes in specific investments or the state of the portfolio other than in an aggregated form or as required for tax return purposes.

**Approved by the Board on 6 February 2007.**

## **Annex B: Register of Board Members' disclosable interests for the Water Services Regulation Authority (Ofwat)**

### **Philip Fletcher (Chairman), appointed 1 April 2006**

- Member of the Archbishops' Council for the Church of England.
- Member of the Advisory Group on Regulation for the Qualifications and Curriculum Authority.

### **Penny Boys (Non-executive Director), appointed 1 April 2006**

- Independent Member of the Horserace Betting Levy Board.

### **Michael Brooker (Non-executive Director), appointed 1 February 2007\***

- Member of the Water Industry Commission for Scotland.
- Non-executive member of the Executive Board of the Natural Environment Research Council.
- Company Secretary (unpaid) for SRB Associates.

### **Peter Bucks (Non-executive Director), appointed 1 April 2006**

- Non-executive Director, Office of Rail Regulation (ORR).
- Honorary Fellow, Securities and Investment Institute and Chair, Editorial Panel, Securities and Investment Review.

### **Jane May (Non-executive Director), appointed 1 April 2006\***

- Non-executive Director, Office of Rail Regulation (ORR).
- Non-executive Director, Department of Constitutional Affairs/Public Guardianship Office.
- Non-executive Director, SITA Trust.

**Gillian Owen (Non-executive Director), appointed 1 February 2007**

- Member of the Fuel Poverty Advisory Group.
- Member of Ofgem's Social Action Strategy Advisory Group.
- Chair of the REAL (Renewable Energy Assurance Ltd) Consumer Code Supervisory Panel.
- Chair of the Public Utilities Access Forum (PUAF).
- Senior Research Fellow, Centre for Management under Regulation, Warwick Business School.
- Policy and Regulation Advisor, Renewable Energy and Energy Efficiency Partnership.
- Energy policy consultant.

**Regina Finn (Chief Executive), appointed 9 October 2006**

None.

**Keith Mason (Director of Regulatory Finance and Competition), appointed 1 April 2006**

None.

\* Having served in the past on the staff of water companies these two members of the Board are members of water company pension schemes. These schemes are administered in line with good practice separately from the regulated companies.

**Approved by the Board on 19 June 2008.**

## **Annex C: Matters reserved to the Board of the Water Services Regulation Authority (Ofwat)**

The following matters are reserved to the Board for decision by the Board.

### **Ofwat policy**

- (a) Approval of Ofwat's strategy and forward programme.
- (b) Approval of decisions on major items of Ofwat policy relating to:
  - decisions which raise new issues of principle or are particularly sensitive;
  - the approach to and decisions on the draft and final determinations at price reviews, interim determinations and substantial effect determinations;
  - enforcement action;
  - significant financial penalties;
  - mergers and acquisitions;
  - major financial restructuring of a company;
  - references to the Competition Commission;
  - infringement decisions and 'no grounds for action' decisions following investigations under the Competition Act 1998;
  - super complaints;
  - approval of charges schemes;
  - recommendations to the Secretary of State about granting or terminating appointments;
  - granting inset appointments;
  - granting and revoking water supply licences;
  - modifications to a condition of appointment or water supply licence; and
  - investigations into company performance.

### **Organisational issues**

- (c) Approval of the annual budget.
- (d) Approval of the annual report.
- (e) Approval of annual accounts.
- (f) Decisions to commence or defend significant litigation and whether to appeal any significant judgement that has been given against Ofwat.

- (g) Approval of the publication of any significant Ofwat consultation paper and any paper issued subsequently in connection with that consultation.
- (h) Approval of Ofwat's response to any significant consultation conducted by the Government or by another body.
- (i) Approval of any delegation in accordance with Ofwat's rules of procedure and the variation or rescinding of any such delegation.

## **Management issues**

- (j) Approval of the appointment of the Chief Executive and the terms and conditions of service.
- (k) Approval of the Ofwat human resources policies and procedures including training and development to ensure adherence with best practice.
- (l) Approval of major changes to Ofwat's structure.
- (m) Approval and strategic monitoring of Ofwat's health and safety policies.
- (n) General oversight of the discharge by the Executive of Ofwat's day-to-day business.

## **Contractual and other obligations with third parties**

- (o) Approval of the principles underlying any contracts not in the ordinary course of business.
- (p) Approval of any major capital projects above £200,000.
- (q) Approval of material contracts in the ordinary course of business above £200,000, for example acquisition or disposal of fixed assets.
- (r) Approval of any Memorandum of Understanding or formal agreement that Ofwat may enter into with a third party including those with a Government department or] other UK regulatory body.

## **Corporate governance**

- (s) Approval of any changes to Ofwat's rules of procedure including this annex and any changes to the terms of reference of any committee.
- (t) Formal annual reviews of the Board's own performance and that of its committees.

## **Communication**

- (u) Approval of key messages in major external statements, responses or other significant communications, such as in response to a statement made by Ministers, Welsh Assembly Government or a report of a Select Committee.

## **Statutory**

- (v) Anything that by law is reserved to Ofwat's Board.

**Approved by the Board on 6 February 2007.**

## **Annex D: Terms of reference of the audit committee of the Water Services Regulation Authority (Ofwat)**

1. The Board has established an audit committee to consider matters relating to risk management and internal financial control of Ofwat.

### **Membership**

2. The members of the audit committee will comprise at least two non-executive Board Members and may include one independent member.
3. A non-executive Board Member will chair the audit committee.
4. The Board will appoint the members of the audit committee for a term of not more than two years, which is renewable.

### **Meetings**

5. The audit committee will normally meet three times a year. The Chairman of the audit committee may convene additional meetings as he or she deems necessary.
6. A meeting of the audit committee will be deemed quorate if one of the non-executive Board Members is present.
7. The Chief Executive (Accounting Officer), the Director of Operations (Finance Director), the Head of Internal Audit (or a representative of any external provider of internal audit services) and a representative of external audit will normally attend audit committee meetings.
8. The audit committee may ask any other Ofwat employee to attend to assist it with its discussions.
9. The audit committee may ask any or all of those who normally attend but who are not members of the audit committee to withdraw to facilitate open and frank discussion of particular matters.
10. The Accounting Officer may ask the audit committee to convene further meetings to discuss particular issues where the Committee's advice is wanted.

11. The audit committee will be provided with a secretariat function organised by the Board Secretariat.

## **Access**

12. The Head of Internal Audit (or a representative of any external provider of internal audit services) and the representative of external audit will have free and confidential access to the Chairman of the audit committee.

## **Reporting**

13. Minutes will be taken of each meeting of the audit committee. The audit committee will formally report back in writing, via its minutes, to the Accounting Officer and the Board after each meeting.
14. The Chairman of the audit committee will report its work regularly to the Board and shall provide a report in writing.

## **Responsibilities**

15. The audit committee will advise the Board and the Accounting Officer on the following.
  - The strategic processes for risk, control and governance and the Statement of Internal Control.
  - The accounting policies, the accounts and the annual report, including the process for review of the accounts prior to submission for audit, levels of error identified and management's letter of representation to the external auditors.
  - The planned activity and results of both internal and external audit.
  - Whether the management response to issues identified by audit activity, including external audit's management letter is adequate.
  - Assurances provided by management relating to the corporate governance requirements for Ofwat.
  - Proposals for tendering for either internal or external audit services or for the purchase of non-audit services from contractors providing audit services.

## Information requirements

16. For each meeting the audit committee will be provided with the following.
- A report summarising any significant changes to the risk register.
  - A progress report from the Head of Internal Audit (or a representative of any external provider of internal audit services) summarising:
    - work performed (and a comparison with work planned);
    - key issues emerging from internal audit work;
    - management response to audit recommendations;
    - changes to the periodic plan;
    - any resourcing issues affecting the delivery of internal audit objectives; and
    - a progress report from the external audit representative summarising work done and emerging findings.
17. As appropriate the audit committee will be provided with:
- proposals for the terms of reference of internal audit;
  - Ofwat’s internal audit strategy and the periodic audit plan;
  - the Head of Internal Audit’s (or a representative of any external provider of internal audit services) annual opinion and report;
  - quality assurance reports on the internal audit function from the NAO;
  - Ofwat’s draft accounts;
  - Ofwat’s draft statement on internal control;
  - a report on any changes to accounting policies;
  - external audit’s management letter;
  - a risk management report;
  - a report on any proposals to tender for audit functions; and
  - a report on co-operation between internal and external audit.

**Approved by the Board on 6 February 2007.**

## **Annex E: Terms of reference of the remuneration committee of the Water Services Regulation Authority (Ofwat)**

1. The Board has established a Remuneration Committee to consider matters relating to the pay and conditions of employment.

### **Membership**

2. The Members of the Remuneration Committee will be two non-executive Board Members and the Board Chairman.
3. A non-executive Board Member will chair the Remuneration Committee.
4. The Board will appoint the members of the Remuneration Committee for a term of not more than two years, which is renewable.

### **Meetings**

5. The Remuneration Committee will normally meet twice a year. The chairman of the Remuneration Committee may convene additional meetings as he or she deems necessary.
6. A meeting of the Remuneration Committee will be deemed quorate if two Remuneration Committee members are present.
7. The Chief Executive and Director of Operations will normally attend Remuneration Committee meetings except for its discussions of matters directly affecting their personal remuneration.
8. The Board Chairman or Chief Executive may ask the Remuneration Committee to convene further meetings to discuss particular issues where the Committee's advice is wanted.
9. The Remuneration Committee will be provided with a secretariat function organised by the Head of Human Resources.

## **Reporting**

10. Minutes will be taken by each meeting of the Remuneration Committee. The Remuneration Committee will formally report back in writing, via its minutes, to the Board.
11. The Chairman of Remuneration Committee will report its work regularly to the Board.

## **Responsibilities**

12. The responsibilities of the Remuneration Committee are to:
  - decide on the annual pay award for the members of the Senior Civil Service and other Ofwat staff;
  - follow the guidance on pay and related matters issued by HM Treasury and the Cabinet Office;
  - decide on the payment of any performance bonuses;
  - consider new and existing SCS posts and decide on the job weight and salary levels. This will follow the Cabinet Office Job Evaluation of Senior Posts (JESP) system;
  - review SCS succession planning; and
  - consider any other issues relating to the pay and conditions of employment.

**Approved by the Board on 8 May 2008.**

## **Annex F: Code of conduct of the Water Services Regulation Authority (Ofwat)**

### **Introduction**

1. Board Members will at all times abide by this code of conduct. References in this code of conduct to Board Members should also be taken to refer to other attendees at Board meetings and, where relevant, to Ofwat employees generally.
2. The highest standards of propriety involving integrity, impartiality and objectivity will be maintained in relation to the stewardship of public funds and the management of Ofwat.
3. Board Members are required to maximise value for money through ensuring that the Board operates in the most efficient and economical way, according to the principles of good regulation and within available resources. The Board will seek to ensure an external element of validation of Ofwat's and its own performance where appropriate.
4. The Board is accountable to Parliament for the activities of Ofwat, its stewardship of public funds, and the extent to which key performance targets and objectives have been met. In order to promote accountability, Board Members will seek to carry out their functions transparently and to follow best practice.

### **Confidentiality**

5. Board Members and employees are subject to a general duty of confidentiality in relation to the conduct of the affairs of Ofwat.
6. The Criminal Justice Act 1993 (CJA) makes it a criminal offence for an individual who has information as an insider to deal in securities (including shares, debentures, warrants and options) on a regulated market. A Board Member or Ofwat employee who gains access to price sensitive information through their duties will be considered an insider under CJA. A Board Member or Ofwat employee who has unpublished price sensitive information on any company and either deals in the securities themselves, arranges for someone to deal in the securities on his or her behalf or passes the information on to someone or encourages someone else to deal will be committing an offence.

7. Particular care should be taken to avoid disclosing to any person (or otherwise acting on) any discussions relating to price sensitive decisions that have not yet been made public.
8. Even where disclosure would not breach the insider dealing rules, a Board Member or Ofwat employee will ensure that he or she does not disclose outside Ofwat information received during the course of his or her duties where such information has been provided on a confidential basis.

## **Relationship with Government**

9. The Secretary of State is responsible for appointing the Chairman and Board Members. The Board will consist of a Chairman and at least two other Board Members appointed by the Secretary of State. The Secretary of State may also remove Board Members from office on the basis of any of the circumstances of incapacity or misbehaviour. Ofwat's decisions are taken independently of Ministers, taking account where relevant of published ministerial guidance.
10. Communications between the Board and Ministers will normally be through the Chairman, and as appropriate the Chief Executive, except where the Board has agreed that an individual Board Member should act on its behalf. Nevertheless, an individual Board Member has the right of access to Ministers on any matter, which he or she believes raises important issues relating to his or her duties as a Member of the Board. In such cases, the agreement of the rest of the Board Members should normally be sought.
11. The main point of contact between Ofwat and Defra, the Welsh Assembly, Environment Agency and other Government departments on day-to-day matters will normally be the Chief Executive or other members of staff.

## **Criminal and civil liability**

12. Although any legal proceedings initiated by a third party are likely to be brought against Ofwat as a corporate entity, in exceptional cases proceedings (civil or, in certain cases, criminal) may be brought against the Chairman or other individual Board Members. For example, a Board Member may be personally liable if he or she makes a fraudulent or negligent statement, which results in loss to a third party. A Board Member may also be liable for breach of confidence under common law or under insider dealing legislation if he or she misuses information gained by virtue of his or her position.

13. However, individual Board Members who act honestly, reasonably and in good faith and without negligence will not have to meet any personal civil liability (including costs) which is incurred in execution or purported execution of their Board duties. The Government will indemnify Board Members against claims in these circumstances.

### **Accountability to Parliament**

14. Ofwat is responsible for providing Parliament with such information as may be requested concerning its policy decisions and actions. The Chairman or Chief Executive will aim to respond positively to any request to appear before an elected body. Appearance before Select Committees is an essential part of demonstrating our accountability. Ofwat is under a specific duty under section 192B of the Water Industry Act 1991 to present its annual report to Parliament. Accounts are subject to audit by the National Audit Office. A copy of the statement of accounts will be published.

### **Concerns about propriety**

15. Ofwat employees may raise any concerns that they have about the propriety of the Board, or any Board Member or Ofwat employee, confidentially with the Chairman, or another Board Member, or the Director of Operations, who will be under a duty to investigate and will guarantee anonymity. If an issue of propriety is raised with the Director of Operations, then he is under an obligation to inform the Chairman and/or Chief Executive about the issue unless both those individuals are the subject under discussion, in which case the Director of Operations is under an obligation to inform another executive or non-executive Board Member. If the employee remains dissatisfied he or she can raise the concern with Defra. Ofwat employees are able to make such complaints without going through the normal management structure. This is in accordance with recommendation 53 in the 'Report of the Committee on Standards in Public Life' (the Nolan Report).

### **Role of Board Members**

16. The collective responsibilities of Board Members include:

- the discharge of Ofwat’s duties under the Water Industry Act 1991 (as amended) and any other relevant legislation;
- establishing the policy and resource framework for the operation of Ofwat and its overall strategic direction within that framework;
- ensuring that the highest standards of corporate governance are observed at all times; and
- ensuring that Ofwat operates within the limits of its statutory authority and that Ofwat employees operate within the limits of delegated authority.

### **Gifts and hospitality**

17. Board Members are required to comply with the Ofwat Finance guidance letter on the policy for accepting entertainment, gifts and hospitality.
18. Board Members will inform the Director of Operations of all offers of gifts and hospitality. He will record the offer on the Register and give guidance to Board Members on whether they can or cannot accept any offer. This process is not intended as a censoring mechanism. Rather, it seeks to avoid unnecessary Board representation at events and functions and that there can be no suggestion of actual or perceived bias towards any particular stakeholder.
19. The Director of Operations will keep a register of all declarable gifts and hospitality (both given and received by Board Members and senior staff). This register will not be published but will be available for public inspection on request.

### **Exit restrictions**

20. On termination of office, Board Members will return all property (including, but not limited to, documents and software, credit cards, computer equipment, keys and security passes) belonging to Ofwat. The duty of confidentiality owed by Board Members continues to apply after they have left office.

### **Public speaking and journalists**

21. Board Members should normally speak with one voice in public on Ofwat issues. If a different approach were to be followed, this would first have to be discussed by

the Board. A Board Member should inform the Chairman (or Chief Executive in the absence of the Chairman) before making public statements on Ofwat business.

22. Particular care should be taken about any invitation to speak publicly, including speaking to journalists, in the capacity as a Member of the Board. Care will also be taken in the publication of any articles. In any such instance, Board Members should consult the Chief Executive, or in her absence the Head of Corporate Affairs as appropriate. Personal views may be expressed so long as it is made clear that the Board Member is speaking or writing in a purely personal capacity and stating his or her own private opinion. In general, Board Members are not restricted from access to the media in their personal, non-Ofwat capacity, or in pursuit of a professional interest, for example as performers, experts, critics, or commentators.

### **Attendance at conferences and stakeholder events**

23. All invitations to attend or speak at industry or stakeholder events should be referred to the Chief Executive, or in her absence the Head of Corporate Affairs, for advice. Care will be taken to ensure there is appropriate Board representation at events, and that Board Members are properly briefed in advance of attending.

### **Political activities**

24. To comply with Ofwat's status as independent of government, it would be inappropriate for any Board Member to engage in active politics. This includes:
- membership of the House of Commons, of the Welsh Assembly or of the European Parliament;
  - seeking adoption or selection as candidates or prospective candidates for those bodies;
  - membership of or candidacy for local authorities other than parish councils; and
  - acting as a party spokesman in the House of Lords.

There are other situations which merit special consideration. For instance, in the case of a former elected representative who had lost office, the main factor would be whether such a person intended to seek re-election or adoption as a candidate at the next opportunity. Or in the case of a person holding office in a party political organisation, the main consideration would be whether this was regarded as a step towards selection as a candidate. Board Members should in case of doubt consult the Chairman.

## Expenses

25. Expenses are only recoverable if the expenditure is reasonably and necessarily incurred on behalf of Ofwat. Receipts will, wherever practicable, accompany claim forms. Claims should be submitted to the Finance Department as soon as possible after they have been incurred. Board Members should refer to the finance guidance letter on travel and subsistence.
26. A laptop and printer will be supplied to those Board Members who need them in order to receive Ofwat papers and related work. These will remain the property of Ofwat.

## Travel

27. When on Ofwat business, Board Members are entitled to travel normally by standard class, or first class if required for work purposes, where available within the UK, and to claim expenses accordingly. Travel and accommodation may be arranged through the Board Secretariat.

## Data protection

28. For the purposes of the Data Protection Act 1998 (as amended), Board Members give their consent for all purposes to the holding, processing and accessing of personal data about them held by Ofwat.

## Principles of public life

29. Board Members will abide by the seven principles of public life as follows.

**Selflessness:** Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

**Integrity:** Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.

**Objectivity:** In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

**Accountability:** Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

**Openness:** Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

**Honesty:** Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

**Leadership:** Holders of public office should promote and support these principles by leadership and example.

The seven principles of public life were endorsed in 'Spending Public Money: Governance and Audit Issues', Cm 3179, March 1996.

**Approved by the Board on 6 February 2007.**





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