

Ofwat's response to issues raised in consultation responses to the draft board leadership, transparency and governance holding company principles

Issues raised	Ofwat response
General Issues	
<p>A concern about how board leadership principles can be policed in practice.</p> <p>For governance, Ofwat should provide utilities with financial boundaries within which utilities should operate.</p>	<p>We will continue to shine a light on this area. We will publish examples of good practice and also those areas where we consider some companies need to take further steps to meet our minimum expectations and the spirit of the principles. We are seeking a self-regulatory approach, but will consider the options open to us, including licence modifications, should any company fail to meet our minimum expectations.</p>
<p>It would be helpful to have a clear statement of Ofwat's expectation at the holding company level in regard to these principles.</p>	<p>We expect companies and the groups to which they belong to take accountability and transparently demonstrate how they meet the principles. We are not going to take a prescriptive approach to specifying what holding companies should do. We are pleased that the responses that we have received to our principles from the holding companies indicate that they will take steps to demonstrate how they meet the principles.</p>
<p>Although Ofwat does not have jurisdiction over the holding company, the group is willing to consider additional disclosures on a voluntary basis if they can be shown to be in the interests of customers.</p>	<p>As set out in the principles, we do not consider that customers are the only audience for this information.</p>
<p>Some owners of regulated companies are already subject to extensive governance and disclosure obligations, and it would be difficult for such entities to assume further reporting obligations as a result of these principles.</p>	<p>We are looking for transparency, not multifarious approaches, so we expect companies to take an approach that aligns with best practice. Where companies are already subject to governance and disclosure obligations we do not consider it is onerous to link to this and add to this reporting where current disclosures do not pick up the Ofwat principles – which are in accordance with wider governance principles.</p>
<p>Although the licensed companies within the sector have, generally, responded positively to the regulated company principles, it is not the case that all companies are in a position to comply with all the principles. The licensed entity has agreed to put in place a code which is appropriate to its ownership structure.</p>	<p>The principles recognise that not all companies are the same and reflect this. However, we do expect that holding companies of regulated companies operating in this sector will demonstrate high standards of governance and transparent disclosures, as set out in the principles.</p>
<p>It would be very helpful to number the principles and sub-sections for ease of reference.</p>	<p>We have numbered the principles and sub-sections.</p>
Principle 1: Transparency – the key to maintaining customer legitimacy and confidence	
Principle 1.1: The holding company structure should be transparent, and explained in a way that is clear and simple to understand	
<p>The holding company should be fully defined for the purposes of these principles.</p> <p>Defining exactly which companies must make which disclosures for the purposes of the principles might simplify matters for customers.</p>	<p>We expect each company to determine how it describes its structure in a way that is transparent and meets the spirit of the principles.</p>

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A company expressed a concern that customers are not primarily interested in ownership structures or governance and do not tend to equate ownership structures or governance with the legitimacy of regulated companies or the water sector as a whole.	We consider that identifying the holding company and transparency of the ownership structure reinforces the legitimacy of the sector for customers and other stakeholders with an interest in the sector. CCWater has told us, in its response to the principles, that it considers transparency to be of great importance in demonstrating that owners are acting in the best interests of their customers.
Clarification of drafting required to ensure consistency when referring to the “group”.	We have clarified the text in the final principles.
Clarification of scope of “investors” – does this relate to the immediate investors in the UK holding company?	For the purposes of these principles we consider that investors are the funds which invest in water companies, rather than the investors in these funds.
Principle 1.2: The holding company will provide information on debt and equity structures	
Debt and equity structures are already and will continue to be clearly disclosed, however we consider that customers are primarily focused on the quality and price of its services rather than the upward structure of the group	We acknowledge the comment about customers’ priorities, but consider that there is a wider stakeholder interest in the financial structure and transparency of the holding company and the regulated company in order to maintain the legitimacy of the sector.
Unclear how the proposed disclosure of all companies with “links” to the regulated company would benefit customers.	It is for the holding company to define and explain the ‘links’ that it has determined to be relevant for the purposes of meeting this principle.
Principle 1.3: The holding company will transparently demonstrate directors’ interests and the nature of those interests (other than where they are declared at the regulated company level)	
No specific comments received.	
Principle 1.4: The holding company will explain which matters that impact on the regulated company are reserved to the holding company board	
No specific comments received.	
Principle 1.5: The holding company will transparently demonstrate the governance standards that it applies, including how it meets these principles	
No specific comments received.	
Principle 2: Managing risk – the holding company will manage its risks in such a way that the regulated company is protected from risk elsewhere in the group	
Principle 2.1: The holding company will not put the obligations and requirements of the regulated company at risk	
No specific comments received.	

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Principle 2.2: The holding company should provide the regulated company with the information that it requests about the activities of the wider group	
<p>Not in agreement with the principle that the regulated company requires the right to seek access to the detailed arrangements of companies elsewhere in the wider group, at its own discretion.</p>	<p>The regulated company should have access to the information that it legitimately needs about the wider group to assure itself that it is not at risk from activities elsewhere within the group.</p> <p>We have re-drafted the principle in response to this comment:</p> <p>“The holding company should provide the regulated company with the information that it reasonably requests about the activities of the wider group.”</p>
Principle 2.3: The holding company should disclose any issues at the group level which may impact on the regulated company	
<p>In favour of transparency, but consider that the ultimate controllers can comply fully with their undertakings without publishing all the information the principle suggests.</p>	<p>Unclear which of the principles are counter to the interests of the regulated company and its customers, particularly as wider stakeholders are increasingly aware of the reputational impact upon companies of a lack of transparency.</p>
<p>Though Ofwat has no jurisdiction over the holding company, additional disclosures will be made on a voluntary basis if they can be shown to be in the interests of customers. Financial statements may include much of this information.</p>	<p>We welcome willingness to make additional disclosures. We will follow up with companies where we consider their disclosures fall short of our reasonable expectations.</p>
<p>This is a matter for the holding company to decide how to demonstrate this. Furthermore, it is too widely drafted.</p>	<p>The holding company should disclose any material issues which may impact on the regulated company, with an expectation of an explanation of the materiality that has been applied.</p> <p>We have re-drafted the principle:</p> <p>“The holding company should disclose any issues at the group level which may materially impact on the regulated company.”</p>
Principle 2.4: The holding company should allow the board of the regulated company to run the business as if it is a separate, public limited company	
<p>This principle does not reflect the limited control that the holding company board is likely to have over the regulated company board. It would be better to say that the holding company will “support” the regulated company board in running the business as if a separate plc.</p> <p>Also important to recognise the role of shareholders in relation to regulated companies.</p>	<p>We have re-drafted the principle:</p> <p>“The holding company should support the board of the regulated company so that it is able to run the business as if it is a separate, public limited company.”</p>

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Principle 3: Support long-term decision making	
Principle 3.1: The holding company should support the regulated company in operating in a sustainable way (including making long-term decisions) in line with the long-term nature of the water sector	
The holding company does not “enable” the regulated company to meet operational challenges as it is a ring-fenced from the holding company, with specific obligations under its licence.	We have clarified the drafting of the principle to reflect that, “The long-term provision of a public service is an important focus for the regulated company and it should be in a position to meet the medium to long-term challenges which it faces (for example, population growth, climate change).”



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