



Board Leadership, Transparency and Governance Consultation  
Ofwat  
21 Bloomsbury Street  
London  
WC1B 3HF

21 August 2018

Dear Sirs

### **Consultation on revised Board Leadership, Transparency and Governance principles**

Thank you for the opportunity to review and comment on this consultation. Following discussion with the Board, I have set out some general observations below and our responses to Ofwat's specific questions are set out in the Appendix to this letter.

We agree with Ofwat that the Board Leadership, Transparency and Governance principles ("BLTG") published in January 2014 have operated well, providing a governance framework for the Boards of regulated companies, alongside their licence condition obligations (in most cases) to operate their appointed business as if it were a separate public listed company, having regard to (what is now) the UK Corporate Governance Code.

Overall, we consider the proposed principles, sub-principles and objectives of the proposed revised BLTG to be a good progression from the existing principles, reflecting recent developments in corporate governance. We believe that we already meet many of the proposed principles and sub-principles and would be in a position to be fully compliant by the end of the proposed transitional period in April 2020.

We welcome the acknowledgement in the proposed BLTG principles that there may be instances where it is appropriate for companies to take an alternative approach to meeting or exceeding the spirit of the principles. This may be for short-term or other longer-term reasons and we agree that companies should take ownership of, and be accountable for, their governance and should therefore explain and justify where they take alternative approaches to delivering the highest standards of accountability and responsibility for their behaviour and outcomes, reflecting their own circumstances.

However, we do not believe it is necessary to modify licences to deliver the proposed objectives and principles as:

- much has been achieved by the industry and Ofwat working together in recent years to improve the governance of companies and the accountability of their boards in this respect. These achievements have been delivered without modification of companies' licences and we see no reason to doubt that the objectives underpinning the revised principles would not similarly be met in this way; and

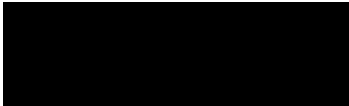
- in addition, the Company Monitoring Framework already gives Ofwat the opportunity to intervene where companies fall short in meeting the BLTG principles, and creates incentives for companies to improve, where appropriate.

We note that Ofwat's 2017 assessment of Affinity Water under the Company Monitoring Framework is that Affinity Water meets Ofwat's expectations with respect to BLTG.

In light of the above, we consider a licence modification to be unnecessary.

Nevertheless, we re-iterate our support for the proposed principles and our intention to meet them fully by April 2020.

Yours faithfully

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**Chairman**

**APPENDIX TO AFFINITY WATER'S CONSULTATION RESPONSE**

**Board Leadership, Transparency and Governance principles**

<b>Consultation Questions</b>		<b>Affinity Water Response</b>
Q1	Do you agree with the objectives for the principles we have set out (in Table 1 of this chapter)?	Yes. In respect of principle 3, it should be noted there may be matters that as a matter of company law require shareholder approval.
Q2	Do you agree with the aim of setting principles that enable autonomy and flexibility for companies to deliver the highest standards of accountability and responsibility for their behaviour and outcomes, reflecting their own circumstances?	Yes
Q3	Do you agree that if companies are unable (exceptionally) to comply with specific principles, they should explain very clearly how their approach meets the spirit of the principles?	Yes
Q4	Do you agree with our proposed principle for purpose, values and culture?	Yes
Q5	Do you agree with our proposed board leadership and transparency principle?	Yes
Q6	Do you agree with our proposed principle for the stand-alone regulated company?	Yes
Q7	Do you agree with our proposed board effectiveness principle?	The terms "independent directors" and "independent members" used in sub-principles (v) and (vi) should be amended to make clear that an independent chair falls within the meaning of these terms.
Q8	Do you think that the requirement for an independent chair should be a stand-alone licence obligation or should we allow some flexibility? If the latter, what mitigations would be appropriate where a company does not have an independent chair?	No, we do not believe a licence obligation is necessary.

Consultation Questions		Affinity Water Response
Q9	Overall, how well do the proposed principles meet the aim of enabling autonomy and flexibility for companies to deliver the highest standards of accountability and responsibility for their behaviour and outcomes, reflecting their own circumstances (rather than setting overly prescriptive rules)?	<p>Overall, the proposed main principles meet this aim effectively.</p> <p>The proposed sub-principles are generally prescriptive rules rather than principles, albeit in most (but not all) cases allowing companies discretion and flexibility as to how those rules are met.</p> <p>The UK Corporate Governance Code (2018) uses the term “Provisions” rather than “Sub-principles” and this may a more appropriate descriptor to be used.</p>
Q10	Do you agree with our proposal to insert a requirement in companies’ licences that they must meet the principles?	No, we do not believe it is necessary to insert a requirement into licences.
Q11	Do you agree with our proposal for an appeal mechanism and a change process in the proposed licence condition to meet the principles?	Not applicable.
Q12	Are there specific instances where individual companies’ licence conditions might conflict or overlap with the revised principles?	Yes. For Affinity Water see Licence Condition F6A.5A and Licence Condition P
Q13	Do you agree that we should insert a requirement in companies’ licences that independent non-executive directors should be the single largest group?	No, we do not believe it is necessary to insert a requirement into licences.
Q14	Do you agree with our proposal to use the criteria for independence as set out in the UK Corporate Governance Code? Do you think that there are any merits in instead setting out an alternative approach whereby we would insert criteria for independence in the licence?	We agree with the proposal for independence to be assessed using the criteria in the UK Corporate Governance Code and for this to be stated in the principles.
Q15	What are your views on the merits of going further than our proposal and instead requiring that independent non-executive directors to be the majority on the board? If we take this approach, should this be a sub-principle or licence requirement?	<p>We do not agree that there should be a requirement for independent non-executive directors to be the majority on the board.</p> <p>If Ofwat takes this approach, it should be a sub-principle rather than a licence requirement.</p>