



## **Unite Response to the Ofwat Consultation on revised Board Leadership, Transparency and Governance principles**

### **1 Introduction**

- 1.1 This response is submitted by Unite the Union, the UK's largest trade union with 1.4 million members across the private and public sectors. The union's members work in a range of industries including manufacturing, financial services, print, media, construction, transport, local government, education, health and not for profit sectors. The subject matter is of special relevance to Unite given its significant membership in this industry.
- 1.2 In this response Unite intends to stress the importance transparency in the governance of the water companies, which has been sadly lacking in recent years. Members of the public have the right to know where their hard earned money is being spent especially in a utility that can have such a massive effect on their day to day lives.

### **2 Key issues**

- 2.1 Unite believes that for too long the water companies have been in a position of power with little or no effective oversight. Too many assets vital to the future of the industry have been sold off, or squandered leaving in their wake an industry heavily burdened by debt yet where huge profits are paid to shareholders and senior executives. Too many staff have left, leaving the existing workforce to pick up the pieces. This has resulted in situations where there are fewer inspections and consequently fatbergs, a phenomenon that has only recently become so prominent in the news. While customers of the water companies face the prospect of hosepipe bans, the network is leaking like a sieve. And yet when it does rain only 2% of the rainfall is captured and treated while sewage works are overwhelmed, resulting in raw sewage being dumped into major rivers<sup>1</sup>.
- 2.2 Unite believes that a root and branch investigation needs to be carried out on the failings and asset stripping exercise that has transpired over the last 29 years with far greater access given to the general public of the details of the industry and where their money has been spent.
- 2.3 The provision of clean water is vital for life, not a luxury product or activity that individuals can decide to do without. Without effective waste management, we as a nation would be facing serious health problems. For far too long, corporate greed has failed to look after the future of our nations water needs and cut corners in order to make their shareholders money and their executives rich.

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<sup>1</sup> See [HTML](#) [HTML](#) & [HTML](#)

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**3 Consultation Questions**

***Q1: Do you agree with the objectives for the principles we have set out (in Table 1 of this chapter)?***

- 3.1 Whist Unite, agrees with the general content of these objectives for the principles, we would argue that these are far too weak on firm commitments which the water companies must comply with and repercussions if they fail to do so. The Water industry has a history of non-compliance with vague objectives and whilst laudable, Unite fears that these will simply head in the same direction and repeat the failings of the past.
- 3.2 All too often decisions are made by senior management of water companies with zero regard as to the real implications on the ground. For this reason Unite supports the idea of worker representatives on the board to highlight the real world impacts. As this is one of three suggested options in the most recent Financial Reporting Council (FRC) draft guidance, we would strongly suggest that this guidance be turned into an obligation.

***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?***

- 3.3 As highlight above Unite strongly believe that, given the history of the water companies, “principles that enable autonomy and flexibility” will not result in high standards and defiantly not responsible behaviour. These principles need to be obligations with zero flexibility. The Water companies operate in a monopoly and hence do not have to worry in the least about competition or achieving high than required minimum standards.

***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?***

- 3.4 Unite feels that requiring companies to explain themselves is no punishment. Talk is cheap but requirements that hit the pockets of shareholders provide a much stronger inducement to comply with requirements. Unite would caution that such repercussions need to be in a fashion that cannot be added to the burdens of already hard working, underpaid and overworked staff.

***Q4: Do you agree with our proposed principle for purpose, values and culture?***

- 3.5 Unite does not agree with the proposed principles. We believe it is far too weak and will simply be ignored by companies. There needs to be an obligation requiring engagement at board level with stakeholders. As stated earlier this should include, at the very least, a permanent seat for a worker representative. The representation on the board should also include customers and given the growing need to address the issues of climate change.
- 3.6 For some years Unite has campaigned for environmental representatives to be recognised and provided with release to carry out audits and staff training. This would have the potential to significantly improve the sustainability of the industry if it became a recognised obligation.
- 3.7 Unite believes that the boardroom has made decisions that favour a desire for profit over the needs of its customers and ecology. Therefore there is a need for change at the top to those less isolated from the day to day impacts of boardroom decision making.

***Q5: Do you agree with our proposed board leadership and transparency principle?***

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- 3.8 Whilst we are pleased that there are obligations which specifically reference employees, we do believe that this will result in changes or transparency. Given that four water companies had until recently subsidiaries in the Cayman Islands to actively avoid any transparency over its finances, we do not believe that simply requiring them to explain how they are asset stripping and fleecing the industry to pay senior executives ridiculously high wages and massive dividends is no punishment. If there is to be true transparency, there should be details of who voted for what amendments at board level and full accounting information details provided to the public so that they can see where the money that flows into these companies goes.

***Q6: Do you agree with our proposed principle for the stand-alone regulated company?***

- 3.9 Unite does agree with this proposal, although Unite would prefer that company to be in public ownership.

***Q7: Do you agree with our proposed board effectiveness principle?***

- 3.10 Unite does not agree to this proposal as the principle needs to be more strongly worded. We would suggest that there should be an independent evaluation provided by an entity appointed by OfWat to identify their comparative performance against a range of criteria. Unite would prefer it if this auditing entity was the same one for every water company in this country. Unite fails to see how “independent” a scrutineer can be, when the water companies can pick anyone, from anywhere, to mark the work of the water company who is paying them to do so and say how well they have performed against criteria that they have set. This hardly instils confidence or provides criteria which can be utilised as a comparator. Alternatively, trade unions could perform this function.
- 3.11 Further Unite would suggest that any future board appointments should be from an Ofwat approved list of candidates. As stated earlier, Unite favours worker representation on the board as well as individuals representing other interest groups.

***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?***

- 3.12 Unite fails to comprehend why there should not be an independent chair. There is no need for any flexibility. As clearly directed by such scholars as Walter McLennan Citrine, 1st Baron Citrine of Wembley, and his classic ABC of Chairmanship<sup>2</sup> and others, the chair sets the agenda and guides a meeting to ensure a fair debate where everyone has their chance to make their contribution, regardless of the chair's personal views. If the chair is not independent then those views that are in opposition to those of the chair will not be heard or indeed discussed, as the chair can rule points raised under any other business are out of order. Board members will therefore not hear the entirety of an argument and would be making decisions regarding the direction of travel while wearing blinkers. Hardly a balanced way to operate a monopoly business.

***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)?***

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<sup>2</sup> See [HTML](#)

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- 3.13 Unite would argue that Ofwat have failed to understand the crisis of public acceptability, or how to address this matter in a fashion which will be acceptable to the general public. These are monopolies that provide a resource and remove human waste. Not every customer has access to water pumped from their own well or decide that they like the taste of Scottish Water more than that supplier through the tap and hence have tankers deliver water to Kent. Equally it would be difficult for those residing in a Tower block to have access to a septic tank.

**Q10: Do you agree with our proposal to insert a requirement in companies' licences that they must meet the principles?**

- 3.14 Whilst Unite agrees that these points should be in the license requirements of the water companies, Unite believes that these should not be principles but obligations.

**Q11: Do you agree with our proposal for an appeal mechanism and a change process in the proposed licence condition to meet the principles?**

- 3.15 Given that Ofwat is supposed to defend the customers of these monopoly's rather than act in a fashion that panders to corporate desires to make a profit, it should not be for the water companies to have any say in variations to these obligations. Unite believes that there should always be the option appeals but these should take the form of full stakeholder engagement with the corporate perspectives having little or no weight in the decision-making. This infinitesimal influence should only take the form of reality checks that can be fully substantiated by independent scientific evidence which all parties should be provided with in advance. Such evidence should be provided in such time as to allow a contra opinion to be gleaned if such an opinion exists.

**Q12: Are there specific instances where individual companies' licence conditions might conflict or overlap with the revised principles?**

- 3.16 Unite is not aware of any conflicts or overlaps.

**Q13: Do you agree that we should insert a requirement in companies' licences that independent non-executive directors should be the single largest group?**

- 3.17 Unite believes that the strongest or influential rather than loudest are customers, interest groups, and as stated earlier from the workforce. The voices of the corporation should be secondary.

**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?**

- 3.18 Unite believes that neither the UK Corporate Governance Code nor the FRC definition would be appropriate in the circumstances. Both set criteria which, whilst appropriate for the corporate world, where there is competition, are not appropriate for a monopoly that provides an essential service necessary for life. Unite would be open to discussions over how a bespoke definition of this criteria could be arrived at.

**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?**

- 3.19 Unite would favour such an approach where the independent non-executive directors have the strongest or influential voice rather than loudest. Unite believes that this should be a licence obligation but recognises that these directors should have background knowledge of the industry.

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**4 Summary**

- 4.1 Unite believes that rather than principles the changes should impose obligations on the governance of the boards.
- 4.2 Unite feels that the strongest or influential voices should be from interest groups including representation from the workforce.
- 4.3 The service provided by the water industry is vital for life and provided in a monopolistic environment. As such, to regain the trust of the general public, especially after the excesses of the past, Unite believes that the water companies are seen to act in the interests of the customers not corporate profits.

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