

Response Form – "Rules on Remuneration and Governance" consultation

Please send your responses to: RemunerationGovernanceRules@ofwat.gov.uk by 19 November 2024

Name / Organisation: Afonydd Cymru

Sector: Charity

Date: November 2024

Rule: Performance related executive pay (PRP) prohibition

Question 1: Do you agree with our proposal in terms of which individuals the Rule would apply to? And what considerations do you think should be taken into account in designing the application of the Rule to different types of performance related pay?

Response:

We agree that all executive and senior directors should be linked to PRP and we agree with the four areas for consideration under PRP.

Question 2: Do you agree that PRP should be prohibited if a company has been fined by Ofwat for a breach of a principal duty? Are there any alternatives or additions you would suggest for the "consumer matters" standard?

Response:

We agree that PRP should be prohibited on breach of duty. This should be subject to clawback provisions.

Question 3: Do you agree that PRP in any given year should be prohibited where the company has had a serious pollution incident in the previous calendar year? Are there any alternatives or additions you would suggest for the "environment" standard?

Response:

We do agree that PRP should be prohibited where a serious pollution incident has occurred and we agree with the approach outlined.

Question 4: Do you agree that the standard for financial resilience should be a minimum required credit rating and if so, at what level? Are there any alternatives or additions you would suggest for the financial resilience standard?

Response:

We agree with the application of a minimum credit rating but we are not qualified to set that rating.

Question 5: Do you agree that this Rule standard should cover all criminal convictions? Please explain the reasons for your view.

Response:

We agree it should cover all criminal convictions, as we see no reason to differentiate conviction types.

Question 6: How can Ofwat best address the risk of the time lag between an incident and conviction?

Response:

We would suggest that Executive contracts need to include clawback arrangements such that if an individual changes roles within the time lag period, PRP can still be clawed back. We would welcome independent boards to be set up to determine how and where these funds are spent, this could, for example, be a role for the independent panel or the customer group.

Question 7: What type of arrangements (e.g. clawback) should companies be required to have to recover PRP payments when a Rule breach occurs?

Response:

We agree with the application of the UK Corporate Governance Code.

Question 8: What do you think should be considered an exceptional circumstance for when PRP could still be paid despite the company appearing to breach one or more of the Rule's standards?

Response:

Exceptional circumstance is an appropriate allowance but water companies should be expected to provide clear and documented evidence of the exception. This could include third party impact which results in a pollution incident or impacts a performance metric. We consider that Ofwat should publish a clear definition of the circumstances.

Rule: Fitness and propriety
Question 9: Do you agree that the types of standards proposed above (under Standards for Consideration) could be suitable for the proposed fit and proper persons test? What other (if any) criteria should be considered?
Response: Yes we agree with the application of FPPT.
Question 10: Do you agree with the proposal that the fit and proper persons test should be applied at this stage to chief executives and other individuals who are appointed as directors to the board, including both executive directors and non-executive directors? If not, please explain why.
Response: We agree. We also agree that this requirement should be demonstrated through the appointment process of the individual.
Question 11: Do you agree with the approach that companies should as a minimum provide assurance to Ofwat through their annual reporting process? What other mechanisms of assurance and information provision could be considered for monitoring compliance of the rule?
Response: We would expect to see transparent reporting by the companies annually to meet this criteria. Where individuals become subject to removal of PRP, this should also be reported annually in the company pay report.
Rule: Consumer involvement in decision-making
Question 12: Do you agree with the core principles proposed for effective consumer representation? Please explain the reasons for your view and tell us if you consider there are any other core principles that should be included.
Response: We agree with the principles but we would need to understand how this would operate over and above activity already undertaken in Wales. We believe much of the process is already established in Wales, that the companies already independently undertake customer surveys and independent challenge is already provided. We do not consider

this warrants additional new groups so we need to understand how existing groups could be modified to deliver this function. Due to the unique operating model in Wales, OfWat should consider how the independent Glas members play into this process.

Question 13: Do you agree the consumer rule should require companies to take appropriate account of consumer views in these areas, or if any of them should be limited or otherwise defined? Please explain the reasons for your view and tell us if there are any other areas that should be included.

Response:

We believe consumer views should be accounted for but that under some circumstances the company may have made technical or financial judgement (sometimes imposed by regulators including Ofwat) which results in a different decision to what consumers may wish. For example, 100% removal of sewer overflows may be an ideal by consumers but may be practically and financially impossible to achieve by water companies. Therefore, water companies should be required to justify why and when consumer views cannot be explicitly accounted for and CCW could undertake an independent part in this process.

Question 14: Do you agree with our proposal to take an outcomes-based approach to this element of this Rule? If not, please explain why.

Response:

We agree.

Question 15: Are there any other mechanisms or channels for the consumer voice that should be considered? Please explain the reasons for your view and tell us whether there are any consumers under our definition who may need a different type of approach.

Response:

We believe the proposals identify a wide range of different types of input. We do not think the mechanisms should be limited as bespoke or new mechanisms may arise going forward.

Question 16: What are the most effective ways for ensuring these mechanisms or channels are sufficiently independent from the company?

Response:

A regular independent review could be undertaken. We would suggest these needs to be separate to all organisations involved in the process.

Question 17: Do you agree that the Rule should provide options for water companies in terms of how they establish appropriate arrangements? And do you agree with these proposed mechanisms? If not, please explain why and if are there alternative mechanisms that should be considered.

Response:

We agree that the Rule should allow options and flexibility as some options may be appropriate to certain circumstances and application.

Question 18: Do you agree with the proposed assurance mechanisms described? Do you have any other suggestions on assurance mechanisms for monitoring compliance?

Response:

We agree.

Question 19: Do you agree with the proposed means of raising concerns on behalf of consumers who do not consider the Rule is being adequately followed?

Response:

We agree and welcome this mechanism being included.

New appointees

Question 20: Do you have any views on whether the rules should apply to new appointees, and if so, whether the same or different rules should apply?

Response:

We do not believe new appointees can be held to account for the failure of others and we consider that this would not attract appropriate individuals to roles. However, we do think mechanisms need to be in place to ensure that penalties are applied and these are covered in responses to previous questions.

Responding to this consultation

We intend to publish responses to this consultation on our website at www.ofwat.gov.uk. Subject to the following, by providing a response to this consultation you are deemed to consent to its publication.

If you think that any of the information in your response should not be disclosed (for example, because you consider it to be commercially sensitive), an automatic or generalised confidentiality disclaimer will not, of itself, be regarded as sufficient. You should identify specific information and explain in each case why it should not be disclosed and provide a redacted version of your response, which we will consider when deciding what information to publish. At a minimum, we would expect to publish the name of all organisations that provide a written response, even where there are legitimate reasons why the contents of those written responses remain confidential.

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