Water UK's response to Ofwat's Water Governance Code Rule Consultation

Water UK

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www.water.org.uk

Executive Summary

Water UK is the trade association for the water industry across the United Kingdom. We represent all regulated water and wastewater companies in England, Northern Ireland, Scotland and Wales. This is our response to Ofwat's consultation on its proposed Water Governance Code, which would replace the existing board leadership, transparency and governance principles.[1]

We are concerned that Ofwat's proposals go significantly beyond the Independent Water Commission's recommendation for governance rules to be "in line with the UK Corporate Governance Code". This is despite Ofwat stating that the UK Corporate Governance Code is "widely recognised as being comprehensive" and they are seeking further alignment with its provisions.[2] Currently, the UK Corporate Governance Code applies to companies listed in the UK, but many other companies choose to report against its provisions and [3] it is widely recognised as the "gold standard" of corporate governance.[4]

Examples of where Ofwat's proposals go beyond those requirements set out in the UK Corporate Governance Code include:

- the definition of the independence of non-executive directors and chairs,
- the composition of regulated company boards,
- reporting on reserved matters, and
- the composition of remuneration committees.

Most fundamentally, Ofwat proposes to depart from the 'comply or explain' approach used for provisions in the UK Corporate Governance Code. For example, Ofwat proposes that its definition of independence for non-executive directors be an 'apply and explain' requirement, rather than be 'comply or explain'.

We are concerned that as they stand, Ofwat's proposals:

- **Depart from well-establish governance rules that apply to other regulated sectors, potentially making the water sector relatively unattractive to investors**. Ofwat states that divergence is required as water companies are "public utilities and stewards of a natural resource[s], … have a vital role in our communities and society, … [and] also have multiple stakeholders to whom they need to be

[1] 'Board leadership, transparency and governance – principles', *Ofwat,* (January 2019).
[2] 'Consultation – Water Governance Code Rule', pg.4, *Ofwat,* (July 2026).
[3] 'UK Corporate Governance Code 2024', *Financial Reporting Council*, (January 2024).
[4] 'Unthinking stewardship: real influence takes more than ticking a box', *Schroders,* (2024).

accountable".[5] While that is true, it is not clear that these characteristics are not also shared by firms in other sectors that report against the UK Corporate Governance Code, such as major energy networks, bus operators and globally systemic banks. Why shouldn't the same corporate governance framework apply?

- **Create 'one-size-fit-all' governance requirements that are inconsistent with the views of Sir Jon Cunliffe and the approach taken by the Financial Reporting Council, which oversees the UK Corporate Governance Code.** Ofwat's proposal for many of its requirements to be 'apply and explain' does not deliver the kind of flexibility that is required given the different characteristics and ownership models across the water sector. As Sir Jon Cunliffe observed, "one-size-fits-all governance may not suit every organisation".[6] Furthermore, the Financial Reporting Council has said "a departure accompanied by a clear and transparent explanation should be seen as a positive indicator of a board engaging seriously with its governance responsibilities".[7]

- **Misses an opportunity to streamline regulation and make regulation more consistent across sectors, in line with the UK Government's targets on reducing regulatory burdens**. Replacing the board leadership, transparency and governance principles creates an opportunity to streamline and simplify regulation. This is a priority of the UK Government across regulated sectors and would support Ofwat in meeting the government's commitment, recently reaffirmed by the Chancellor of the Exchequer,[8] of reducing the burden of regulation by 25% by the end of the parliament.[9]

- **Create additional costs and complexity, seemingly requiring some water companies to set up entirely new regulated company boards and recruit many more non-executive directors**. We estimate that Ofwat's proposals could create additional costs of £23.2 million over five years from recruiting 58 additional board members, adding further to customer bills or reducing the financial resources available to deliver on other priority areas.

Our proposed approach

Ofwat should carry out the recommendation of the Independent Water Commission and align its corporate governance framework for water companies in England and Wales with the UK Corporate Governance Code.

Our recommendations are as follows:

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[5] 'Consultation – Water Governance Code Rule', pg.5, *Ofwat,* (July 2026).
[6] 'Independent Water Commission, Final Report', pg.76, *Independent Water Commission,* (July 2025).
[7] 'FRC publishes guidance to help investors and advisors recognise the value of flexible governance reporting', *Financial Reporting Council,* (March 2026).
[8] 'Chancellor takes axe to delays holding back growth', *HM Treasury and The Rt Hon John Healey MP,* (September 2026).
[9] 'New approach to ensure regulators and regulation support growth', *HM Treasury and Department for Business & Trade,* (March 2025).

- **Recommendation 1:** Ofwat should clarify its approach to enforcement. We recommend Ofwat requires water companies to make a statement that they have fully complied with the UK Corporate Governance Code or make a statement per provision explaining where and why they have diverged.
- **Recommendation 2:** Ofwat should fully align with the provision of the UK Corporate Governance Code on the definition of independence of non-executive directors – on a 'comply or explain' basis.
- **Recommendation 3:** Ofwat should fully align with the provision of the UK Corporate Governance Code for the chair to be independent on appointment – on a 'comply or explain' basis.
- **Recommendation 4:** Ofwat should fully align with the provision of the UK Corporate Governance Code on boards being comprised of a majority of independent non-executive directors – on a 'comply or explain' basis.
- **Recommendation 5:** Ofwat should fully align with the provisions of the UK Corporate Governance Code on the structure and composition of the audit, nomination and remuneration committees – on a 'comply or explain' basis.
- **Recommendation 6:** Should Ofwat seek to include a provision on reserved matters, it should only require the reporting of instances where parent companies have overruled or altered the decisions of regulated companies.

Should Ofwat proceed with creating a Water Governance Code, we would expect to see further engagement and a formal consultation under Section 35C of the Water Industry Act 1991, including an assessment of impacts.

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1. Introduction

Ofwat is consulting on introducing the Water Governance Code, which will replace the board leadership, transparency and governance principles from 2019.

The Water (Special Measures) Act 2025 amended the Water Industry Act 1991 to allow Ofwat to introduce new rules on governance.[10] The Independent Water Commission subsequently recommended that "the regulator […] should continue current plans to strengthen governance standards and bring its principles in line with the UK Corporate Governance Code. Rules should apply to all water companies, listed and unlisted, and create a level playing field in governance and transparency across all companies".[11]

In January 2026, UK Government's Water White Paper stated that "Ofwat is already working to better align governance in the sector with the UK Corporate Governance Code".[12] In February 2026, The Welsh Government's Water Green Paper also stated, "aligning governance standards with the UK Corporate Governance Code would create consistency and strengthen accountability across the sector".[13]

In the rest of our response, we set out our concerns with Ofwat's proposals, as well as our recommendations.

2. Recommended approach to developing the code

2.1 Ofwat's proposals

- Question 1: Are there particular aspects of the existing BLTGPs [Board Leadership, Transparency and Governance Principles] or other sector codes which would be useful to consider?

Ofwat proposes that its new Water Governance Code would replace the existing board leadership, transparency and governance principles and incorporate elements of the UK Corporate Governance Code.[14] However, we are concerned that Ofwat's proposals go significantly beyond the Independent Water Commission's recommendation for governance rules to be "in line with the UK Corporate Governance Code".[15] This is despite Ofwat stating that the UK Corporate Governance Code is "widely recognised as being comprehensive" and they are seeking further alignment with its provisions.[16]

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[10] 'Water (Special Measures) Act 2025', s.35B, *UK Government,* (February 2025).
[11] 'Independent Water Commission, Final Report', pg.310, *Independent Water Commission,* (July 2025).
[12] 'A New Vision for Water', pg.22, *UK Government,* (January 2026).
[13] 'Green Paper: Shaping the Future of Water Governance in Wales', pg.62, *Welsh Government,* (February 2026).
[14] 'Consultation – Water Governance Code Rule', pg.1, *Ofwat,* (July 2026).
[15] 'Independent Water Commission, Final Report', pg.310, *Independent Water Commission,* (July 2025).
[16] 'Consultation – Water Governance Code Rule', pg.4, *Ofwat,* (July 2026).

Examples of where Ofwat's proposals go beyond those requirements set out in the UK Corporate Governance Code include (considered in detail in the rest of this response):

- the definition of the independence of non-executive directors and chairs,
- the composition of regulated company boards,
- reporting on reserved matters, and
- the composition of remuneration committees.

Most fundamentally, Ofwat proposes to depart from the 'comply or explain' approach used for provisions in the UK Corporate Governance Code. For example, Ofwat proposes that its definition of independence for non-executive directors be an 'apply and explain' requirement, rather than be 'comply or explain'.

2.2 Water UK's assessment

We are concerned that as they stand, Ofwat's proposals:

- **Depart from well-establish governance rules that apply to other regulated sectors, adding unnecessary costs and potentially making the water sector relatively unattractive to investors**. Ofwat has not justified why divergence from the UK Corporate Governance Code, which the Independent Water Commission recommended aligning with,[17] is necessary. Ofwat states that divergence is required as water companies are "public utilities and stewards of a natural resource[s], … have a vital role in our communities and society, … [and] also have multiple stakeholders to whom they need to be accountable".[18] While these statements are true, it is not clear to us how these characteristics are not also shared by firms in other sectors that report against the UK Corporate Governance Code such as: UK Power Networks, an electricity distribution network operator that serves 19 million people in London and the South East;[19] First Group, which operates 6,000 buses across Great Britain;[20] and HSBC, a globally systemic bank.[21,22] Given those firms share the same characteristics that Ofwat identifies for water companies, why shouldn't the same corporate governance framework apply?

- **Create 'one-size-fit-all' governance requirements that are inconsistent with the views of Sir Jon Cunliffe and the approach taken by the Financial Reporting Council, which oversees the UK Corporate Governance Code.** Ofwat's proposal for many of its requirements to be 'apply and explain' does not deliver the kind of flexibility that is required given the different characteristics and

[17] 'Independent Water Commission, Final Report', pg.310, *Independent Water Commission,* (July 2025).
[18] 'Consultation – Water Governance Code Rule', pg.5, *Ofwat,* (July 2026).
[19] 'UK Power Networks Holdings Limited Annual Report and Financial Statements', pg.2, *UK Power Networks Holdings Limited,* (July 2026).
[20] 'FirstGroup plc Annual Report and Accounts 2026', pg.1, *FirstGroup plc,* (June 2026).
[21] 'HSBC Holdings plc Annual Report and Accounts 2025,' pg.200, *HSBC,* (February 2026).
[22] '2025 List of Global Systemically Important Banks (G-SIBs)', *Financial Stability Board,* (November 2025).

ownership models across the water industry in England and Wales, and indeed relative to other regulated sectors that are competing for capital. As Sir Jon Cunliffe observed in his review of the water industry in July 2025, "one-size-fits-all governance may not suit every organisation".[23] Furthermore, the Financial Reporting Council recently issued updated 'comply or explain' guidance, and stated that "a departure accompanied by a clear and transparent explanation should be seen as a positive indicator of a board engaging seriously with its governance responsibilities".[24] Indeed, the CEO of the Financial Reporting Council praised companies that depart from the code and offer clear explanations as an example of good governance.[25]

- **Misses an opportunity to streamline regulation and make regulation more consistent across sectors, in line with the UK Government's targets on reducing regulatory burdens**. Replacing the board leadership, transparency and governance principles with the Water Governance Code creates an opportunity to streamline and simplify regulation. This is a priority of the UK Government across regulated sectors and would support Ofwat in meeting the government's objectives of reducing the burden of regulation by 25% by the end of the parliament.[26] This commitment was reaffirmed by the Chancellor of the Exchequer on 7th September 2026.[27]

2.3 Recommended alignment with the UK Corporate Governance Code

For these reasons, we believe Ofwat needs to change its approach. We recommend that Ofwat adopts the recommendation of the Independent Water Commission to "create a level playing field in governance and transparency across all companies".[28] In our view, the most effective way to achieve that objective would be to align the Water Governance Code with the UK Corporate Governance Code, including by adopting the 'comply or explain' basis for all detailed requirements to enable the flexibility that is required for the water sector.

We believe such an approach would be appropriate because it would:

- **Create greater consistency across sectors, avoiding any potential damage to investability of the water sector compared to other sectors.** Removing unnecessary differences and improving transparency would make it easier for investors to compare investment opportunities and ensure that the water sector is able to operate on a level playing field with other sectors. Where Ofwat deems it appropriate to go further, it has other regulatory tools available to it, such as the Fitness

[23] 'Independent Water Commission, Final Report', pg.76, *Independent Water Commission,* (July 2025).
[24] 'FRC publishes guidance to help investors and advisors recognise the value of flexible governance reporting', *Financial Reporting Council,* (March 2026).
[25] 'FRC publishes guidance to help investors and advisors recognise the value of flexible governance reporting', *Financial Reporting Council,* (March 2026).
[26] 'New approach to ensure regulators and regulation support growth', *HM Treasury & Department for Business & Trade,* (March 2025).
[27] 'Chancellor takes axe to delays holding back growth', *HM Treasury and The Rt Hon John Healey MP,* (September 2026).
[28] 'Independent Water Commission, Final Report', pg.310, *Independent Water Commission,* (July 2025).

and Propriety Rule implemented following the Water (Special Measures) Act 2025.[29] We note that some economic regulators have chosen to set prescriptive requirements that differ from the UK Corporate Governance Code. For example, through their licence conditions, Ofgem requires Distribution Network Operators to have a minimum of two "sufficiently independent" non-executive directors on their boards.[30] However, this requirements are not as stringent as those proposed by Ofwat. As a result, even though there is a strict requirement, energy companies have the flexibility to go further than it, including by aligning with the UK Corporate Governance Code if that is appropriate, and so are not outliers compared to other sectors.

- **Provide the flexibility that is needed in the water sector**. Water companies have different ownership models and group structures that mean a 'one-size-fits-all' approach would not be appropriate. As we set out further in Section 3.3, there are differences between listed and unlisted companies that warrant different approaches, particularly the role of independent non-executive directors with respect to dispersed investors in listed companies, and concentrated investors in unlisted companies. Numerous governance codes (such as those listed in Section 3.3) recognise this distinction and the need for flexibility. Investors have told us that governance arrangements are most effective when they focus on ensuring competence, responsible behaviours and sound judgment rather than applying frameworks that are prescriptive and restrictive. As the Financial Reporting Council has said, "the UK Corporate Governance Code is a global standard precisely because it offers companies the flexibility to govern in a way that suits their circumstances".[31]

However, for this approach of aligning to the UK Corporate Governance Code to be successful, clarity is needed on how the 'comply or explain' approach would be enforced by Ofwat.

2.4 Recommended approach to enforcement

In the consultation, Ofwat states "it is intended that the Water Governance Code will provide the foundation for more transparent and effective reporting, through expanded explanations including for noncompliance".[32] Under section 35B of the Water Industry Act 1991,[33] Ofwat may direct a water company if it considers the company contravenes a rule. Failure to comply with the direction could lead to enforcement, including fines.

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[29] 'Fitness and propriety rule', pg.1, *Ofwat,* (December 2025).
[30] 'Modification of the Standard Conditions of Electricity Distribution Licences Granted or Treated as Granted Under Section 6(1)(C) Of The Electricity Act 1989', pg.36, *Ofgem,* (February 2013).
[31] 'FRC publishes guidance to help investors and advisors recognise the value of flexible governance reporting', *Financial Reporting Council,* (March 2026).
[32] 'Consultation – Water Governance Code Rule', pg.5, *Ofwat,* (July 2026).
[33] 'Water (Special Measures) Act 2025', s.35B., *UK Government,* (February 2025).

We have stated above that all detailed requirements of the Water Governance Code should be made 'comply or explain'. However, Ofwat does not clearly set out how it intends to enforce a 'comply or explain' requirement. Given this ambiguity, it is possible that Ofwat could require a company to:

1. Make a statement that it has fully complied with the UK Corporate Governance Code or make a statement per provision explaining why the company has diverged.
2. Make a statement that they have fully complied with the UK Corporate Governance Code or make a statement per provision explaining why the company has diverged ***and Ofwat deems that the explanation is appropriate*.**

We are concerned that the second approach would introduce substantial uncertainty for companies and investors, since it would give Ofwat the ability to exercise significant discretion. In practice, it would likely make 'comply or explain' act like a strict requirement, effectively removing any flexibility and as such undermining a core aspect of the UK Corporate Governance Code. Such an approach would make a 'comply or explain' framework unworkable.

As of 2025, around a quarter of companies in the wider economy offer explanations against one or more provisions of the UK Corporate Governance Code, demonstrating the use of flexibility in practice – although that proportion is down from nearly three-quarters in 2022.[34] The Department for Business, Innovation, Science and Trade (BIST) recently noted this decline in the use of explanations, and in recognising the benefits of flexibility provided by the 'comply or explain' approach is consulting on how to encourage companies to "make better use of the Code's flexibility, recognising that flexibility can help companies demonstrate and communicate good governance."[35]

Investors have told us they value regulatory frameworks that are consistent and predictable, therefore Ofwat should clarify which approach it intends to take. We agree with Ofwat that it is important for companies to provide clear explanations in the event of divergence from the code. Indeed, the Financial Reporting Council says that "a well-reasoned explanation for departing from a provision is not a red flag — it is evidence of a board thinking seriously about what good governance means for their company".[36]

To align with the approach of the Financial Reporting Council, and other regulators such as the Financial Conduct Authority,[37] when they consider compliance with the UK Corporate Governance Code, we therefore support a statement-based compliance framework, which would require a company to either:

a) make a **statement that it has fully complied** with the UK Corporate Governance Code, or

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[34] 'Annual Review of Corporate Governance Reporting 2025', pg. 6, *Financial Reporting Council,* (November 2025).
[35] 'Consultation on modernising corporate reporting to support long-term economic growth', pg. 51, *Department for Business, Innovation, Science and Trade,* (September 2026).
[36] 'FRC publishes guidance to help investors and advisors recognise the value of flexible governance reporting', *Financial Reporting Council,* (March 2026).
[37] 'UKLR UK Listing Rules sourcebook', *Financial Conduct Authority,* (April 2026).

b) make a **statement for each provision explaining where and why the company has diverged**.

Our recommended approach would enable the transparency that Ofwat seeks as well as being consistent with the recommendation of the Independent Water Commission and the approaches taken by other regulators. It would also limit the unpredictability of the enforcement risk associated with the new framework so that is manageable, removing open-ended uncertainty that would otherwise damage investor confidence. Crucially, it would enable the enforcement approach for the Water Governance Code to be compatible with supervisory regulation; instead of a narrow 'tick box' approach to individual provisions, companies' explanations should be a valid input into a "a comprehensive 'whole firm' view of a company" as envisaged by Sir Jon Cunliffe in his review of the water sector. [38]

Recommendation 1: Ofwat should clarify its approach to enforcement. We recommend Ofwat requires water companies to make a statement that they have fully complied with the UK Corporate Governance Code or make a statement per provision explaining where and why they have diverged.

3. Proposed principles and provisions

3.1 Definition of independence

- Question 3: Do you agree that it is important to have a definition of independence for INEDs?
- Question 4: Do you agree that the independence of an INED who also sits on the board of another company in the same group may be compromised? Do you agree with our proposal to prohibit individuals from being an INED on the board of a water company if they sit on the board or boards of other companies in the same group?
- Question 5: Can share ownership impede actual or perceived independence? Should future allocations of shares to INEDs be prohibited?
- Question 6: Do you agree with the characteristics which we think should prevent an individual from being independent and therefore being an INED? Should characteristics be deleted, or other characteristics added?
- Question 7: Do you agree with the characteristics which we think may impair independence, and which should therefore be subject to careful consideration by boards, and reported by companies if applicable? Should some characteristics be deleted, or other characteristics added?

In the consultation, Ofwat proposes that the Water Governance Code should have a bespoke definition of independence, which would apply to non-executive directors and water company chairs. Ofwat proposes that this definition would be based on the UK Corporate Governance Code but include 'enhanced

[38] 'Independent Water Commission, Final Report', pg.195, *Independent Water Commission,* (July 2025).

provisions' specific to the water sector. Currently, the board leadership, transparency and governance principles do not define independence.

In Table 1 below, we set out the precise differences between the definition of independence in the UK Corporate Governance Code and Ofwat's proposed definition. Ofwat states that the new definition of independence would have the following notable effects:

1. **Anyone who "sits on the board of another company in the same groups" (excluding financing subsidiaries) would be prevented "from being an INED in a water company"**.[39] Currently, the board leadership, transparency and governance principles do not include a definition of independence and there are no restrictions on multiple appointments within the same group.[40]

2. **Companies would be unable to make "future allocations of shares to chairs or INEDs, however acquired"**. [41] Currently, the board leadership, transparency and governance principles only require that companies "take action to identify and manage conflicts of interest, including those resulting from significant shareholdings".[42]

We do not support the definition of independence as proposed by Ofwat. That is because strictly applying the definition as it stands would:

- **Potentially undermine the investability of the water sector as it compares to other sectors, making investment programmes harder or more expensive to finance**. More than £550 billion of private capital needs to be raised over the next decade, including the water industry in England and Wales.[43] In a competition for capital, any sector that is less attractive for investors may struggle to meet its capital needs.

- **Create additional costs and complexity, seemingly requiring some water companies to set up entirely new regulated company boards and recruit many more non-executive directors**. For example, the requirement for no shared membership of boards within the same group would be entirely disproportionate for companies where the activities of a holding company are substantially aligned with that of the regulated company. For example, the activities of Severn Trent Water make up 88% of the group's overall revenue.[44] As we set out in Annex A, Ofwat's proposals could create additional costs of £23.2 million over five years from recruiting 58

[39] 'Consultation – Water Governance Code Rule', pg.9, *Ofwat,* (July 2026).
[40] 'Board leadership, transparency and governance – principles', pg.6, *Ofwat,* (January 2019).
[41] 'Consultation – Water Governance Code Rule', pg.9, *Ofwat,* (July 2026).
[42] 'Board leadership, transparency and governance – principles', pg.5, *Ofwat,* (January 2019).
[43] 'UK Infrastructure: A 10 Year Strategy', HM Treasury, (June 2025); plus estimates of upcoming determinations for Heathrow, NATS and Northern Ireland Energy Networks.
[44] 'Annual Performance Report – Severn Trent Water 2025/26', pg.16, *Severn Trent Water Limited,* (July 2026).

additional board members, adding further to customer bills or reducing the financial resources available to deliver on other priority areas.

- **Wider requirements and recent changes have already strengthened the independence, integrity and accountability of non-executive directors of water companies**. That includes:
    - Board leadership, transparency and governance principles requirements for new non-executive Directors to "meet Ofwat ahead of a formal appointment being made".[45] We would support this practice being continued.
    - Sections 172 and 175 of the Companies Act 2006 already oblige directors to "promote the success of the company" and "avoid conflicts of interest" at companies where they are directors.[46] Directors therefore have a duty to consider conflicts of interest caused by multiple board appointments and must take steps to address and report on them.
    - The new Fitness and Propriety Rule introduced in April 2026 as a result of the Water (Special Measures) Act 2025 covers "any person who is a member of the undertaker's board". [47] This new, legally enforceable rule, ensures that companies have:[48]
        - *"Established procedures to assess the fitness and propriety of applicants and current senior role holders.*
        - *Started to evaluate candidates for new appointments using the fit and proper person test covering honesty and integrity, knowledge and experience, and financial soundness, and undertake that assessment on existing staff in preparation for 1 April 2027.*
        - *Report assessment processes and results to Ofwat, including annual compliance and reassessment if circumstances change."*

- **The UK Corporate Governance Code's definition already provides a sufficient definition of independence, with the proposed divergence through the Water Governance Code not justified or proportionate**. As our analysis below shows, Ofwat's proposed wording substantially overlaps with the UK Corporate Governance Code's provisions. It is therefore not proportionate to diverge.

We strongly recommend that Ofwat adopts the definition of independence in the UK Corporate Governance Code. Our analysis in Table 1 shows that the requirements of the UK Corporate Governance Code are comprehensive and closely align with Ofwat's stated objective of defining independence.

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[45] 'Board leadership, transparency and governance – principles', pg.6, Ofwat, (January 2019).
[46] 'Companies Act 2006', s.172, s175., *UK Government,* (November 2006).
[47] 'Fitness and propriety rule', pg.1, *Ofwat,* (December 2025).
[48] 'Water company execs now required to pass fit and proper person test', *Ofwat,* (December 2025).

Table 1: Ofwat's proposed independence definition compared to the UK Corporate Governance Code

Part one: Ofwat Proposed Code Principles – these would prevent an individual from being an independent non-executive director because they are 'apply and explain'	**Related provision in the UK Corporate Governance Code** – 'comply or explain'	**Sufficiently covered in the UK Corporate Governance Code?**	**Rationale**
I. sits on the board of another company in the same group	• has, or has had within the last three years, a material business relationship with the company, either directly or as a partner, shareholder, director or senior employee of a body that has such a relationship with the company *and* Where any of these or other relevant circumstances apply…	Yes	Appointment to multiple boards in a group would be covered by one, or both, of these sections of the UK Corporate Governance Code.
II. represents a shareholder of the company or group company	• represents a significant shareholder	Yes	Wording functionally the same, though we note the addition of "significant" in the UK Corporate Governance Code.
III. is or has been an employee of the company or group within the last five years	• is or has been an employee of the company or group within the last five years	Yes	Wording exactly the same.
IV. has or has had within the last three years, a material business relationship with the company, either directly or as a partner, director or senior employee of a body that has or has had such a relationship with the company within the last three years	• has, or has had within the last three years, a material business relationship with the company, either directly or as a partner, shareholder, director or senior employee of a body that has such a relationship with the company	Yes	Wording functionally the same, though we note the addition of "shareholders" in the UK Corporate Governance Code.
V. directly and personally accrues shares in the company or in other companies in the same group	• has, or has had within the last three years, a material business relationship with the company, either directly or as a partner, shareholder, director or senior employee of a Body that has such a relationship with the company	Yes	The UK Corporate Governance Code definition mentions having a "business relationship with the company … as a shareholder". However, unlike Ofwat's proposal, it recognises that it may impair independence only when a shareholding is "material". In addition, the Financial Reporting Council's own guidance for the UK Corporate Governance Code states that "many companies encourage non-executive directors to build a personal shareholding in the company. This practice is intended to foster alignment between independent non-executive directors and shareholders, reinforcing long-term commitment and

			engagement".[49] However, we accept that significant, material share accrual could result in either actual or perceived conflicts of interest – particularly if it leads to some form of control by virtue of those shareholdings. As such, the UK Corporate Governance Code should be sufficient to address this risk.
VI. has close family ties with any of the company's advisers, directors or senior employees	• has close family ties with any of the company's advisers, directors or senior employees	Yes	Wording exactly the same.
Part two: Ofwat Proposed Code Provisions – 'comply or explain'	**Related provision in the UK Corporate Governance Code** – 'comply or explain'	**Sufficiently covered in the UK Corporate Governance Code?**	**Rationale**
I. holds cross directorships or has significant links with other directors through involvement in other companies or bodies	• holds cross-directorships or has significant links with other directors through involvement in other companies or bodies	Yes	Wording exactly the same.
II. has received or receives additional remuneration from the company (or from companies in the same group) apart from a director's fee, participates in a performance-related pay scheme, or is a member of the company's pension scheme	• has received or receives additional remuneration from the company apart from a director's fee, participates in the company's share option or a performance-related pay scheme, or is a member of the company's pension scheme	Yes	The only difference is the addition of remuneration potentially coming "from companies in the same group". Because directors are obliged under Section 175 of the Companies Act 2006 to act in the interests of the company where they are a director [50], Ofwat's proposed addition is not required.
III. has served on the board for more than nine years from the date of their first appointment	• has served on the board for more than nine years from the date of their first appointment	Yes	Wording exactly the same.

Recommendation 2: Ofwat should fully align with the provision of the UK Corporate Governance Code on the definition of independence of non-executive directors – on a 'comply or explain' basis (see Box 1).

Box 1 – UK Corporate Governance Code definition of independence [51]

The board should identify in the annual report each non-executive director it considers to be independent. Circumstances which are likely to impair, or could appear to impair, a nonexecutive director's independence include, but are not limited to, whether a director:

[49] 'Corporate Governance Code Guidance', *Financial Reporting Council,* (January 2024).
[50] 'Companies Act 2006', s175., *UK Government,* (November 2006).
[51] 'UK Corporate Governance Code 2024', pg. 8-9, *Financial Reporting Council,* (January 2024).

- *is or has been an employee of the company or group within the last five years;*
- *has, or has had within the last three years, a material business relationship with the company, either directly or as a partner, shareholder, director or senior employee of a body that has such a relationship with the company;*
- *has received or receives additional remuneration from the company apart from a director's fee, participates in a performance-related pay scheme, or is a member of the company's pension scheme; or*
- *has close family ties with any of the company's advisers, directors or senior employees;*
- *holds cross-directorships or has significant links with other directors through involvement in other companies or bodies;*
- *represents a significant shareholder; or*
- *has served on the board for more than nine years from the date of their first appointment.*

Where any of these or other relevant circumstances apply, and the board nonetheless considers that the non-executive director is independent, a clear explanation should be provided.

3.2 Applying the definition of independence to chairs

- Question 8: Do you agree that the definition of independence, and associated reporting obligations, should be consistent for INEDs and chairs?
- Question 9: Do you agree with our proposals relating to multiple chair appointments? Are there other measures we should consider?

Ofwat proposes that the definition of independence should be applied consistently for chairs and independent non-executive directors, and that "one of the practical outcomes arising from our proposed ban on cross directorships, between water companies and companies in the same group, is that the chairs of the boards of water companies cannot chair other companies in the same group".[52] Currently, the board leadership, transparency and governance principles only require the chair to be independent on appointment.[53]

We do not support Ofwat's proposal as it is written. It goes beyond the UK Corporate Governance Code, which includes a provision for the chair to be "independent on appointment".[54]

[52] 'Consultation – Water Governance Code Rule', pg.9, *Ofwat,* (July 2026).
[53] 'Board leadership, transparency and governance – principles', pg.6, *Ofwat,* (January 2019).
[54] 'UK Corporate Governance Code', pg.8, *Financial Reporting Council,* (January 2024).

Water companies are already transparent about the independence of their chairs in their annual reports. In some cases, investor-nominated chairs reflect significant shareholdings, and different approaches can be taken to ensure a level of independence at the level of the regulated company. For example:

- Wessex Water has a single shareholder and the company has outlined that although its chair is "not independent of investors", he "has demonstrated objective judgment throughout his tenure, and the Board is satisfied that the chair leads the Board in a way that encourages all Directors to participate fully in Board discussions". Wessex Water has also put mitigations in place "to ensure there is an independent link with regulators that is separate from management or the shareholder", through the appointment of a Deputy Chair.[55]

- Northumbrian Water outlined that "the Chairman was not independent of investors on appointment when the Group had a single ultimate controlling shareholder", but the board has a "strong group of INEDs" and "the recent externally facilitated Board evaluation noted that that the Chair was regarded as highly skilled in facilitating Board meetings and with a strong independent non-executive element of the Board, the Board continued to function very effectively".[56]

We are concerned that strictly enforcing this requirement would have the unintended consequence of reducing the attractiveness of investing in the water sector for global investors.

We also disagree with Ofwat that chairs must "achieve and sustain credibility with customers, communities, directors, employees, investors, regulators and others".[57] The Financial Reporting Council produced guidance on "the role of the chair" which includes ensuring that the board is run effectively, there is robust discussion and challenge and that directors have the skills and integrity to "discharge their statutory duties".[58] The role of the chair is therefore about the effective functioning of the board, not about external stakeholder management.

We recommend that Ofwat aligns with the UK Corporate Governance Code's Provision 9 which states "the chair should be independent on appointment". This would ensure that unintended consequences are avoided, while maintaining accountability through transparent explanations where the chair is not independent.

Recommendation 3: Ofwat should fully align with the provision of the UK Corporate Governance Code for the chair to be independent on appointment – on a 'comply or explain' basis.

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[55] 'Wessex Water's Annual Report and Accounts 2025-26', pg.96, *Wessex Water,* (July 2026).
[56] 'Northumbrian Water Limited Annual Report and Financial Statements', *Northumbrian Water,* (July 2026).
[57] 'Consultation – Water Governance Code Rule', pg.10, *Ofwat*, (July 2026).
[58] 'Corporate Governance Code Guidance', *Financial Reporting Council,* (January 2024).

3.3 Proportion of independent non-executive directors

- Question 10: Do you agree with a requirement for all water companies to have boards which include a greater proportion of INEDs? Is an implementation date of 1 April 2028 appropriate for companies which currently have a lower proportion of INEDs on their boards?

Ofwat proposes "a requirement" for "at least half the board, excluding the chair" to be independent non-executive directors.[59] That would be a more stringent requirement than in the board leadership, transparency and governance principles, which only require independent non-executive directors to be the largest single group.[60]

Currently, 9 water companies would comply with this requirement while 7 would not.[61]

We are concerned that implementing this requirement with no flexibility could reduce the effectiveness of company boards. When Ofwat consulted on the introduction of the board leadership, transparency and governance principles in 2018, it said that "any requirement for a majority of independent directors could lead to unwieldy board sizes".[62] Research also suggests that larger boards are associated with poorer communication and decision making.[63] As the Higgs review into the role and effectiveness of non-executive directors, which contributed to the modern UK Corporate Governance Code, concluded, "boards should not be so large as to become unwieldy".[64]

Increasing the size of water company boards will also increase costs and complexity, which are ultimately paid for by customers. We estimate that a strict application of Ofwat's majority proposal would require nine additional independent non-executive directors to be recruited, over a short time, adding costs of £3.6 million over a five-year period. If this change were implemented in conjunction with the independence criteria, we estimate companies would have to recruit 58 additional independent non-executive directors, at a cost of £23.2 million over five years (See Annexes A and B for further details). In addition, necessitating a wave of board recruitment and restructuring would be expected to take up board time, just as the water industry finances and delivers the industry's largest investment programme in more than a century.[65]

Consistent with our recommendation of aligning the Water Governance Code with the UK Corporate Governance Code, we recommend that Ofwat adopts, crucially on a comply or explain basis, Provision 11:

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[59] 'Consultation – Water Governance Code Rule', pg.7, *Ofwat,* (July 2026).
[60] 'Board leadership, transparency and governance – principles', pg.6, *Ofwat,* (January 2019).
[61] Water UK internal analysis.
[62] 'Consultation on revised Board Leadership, Transparency and Governance principles', pg.22, *Ofwat,* (July 2018).
[63] 'The impact of board size on firm performance: evidence from the UK', *Paul M. Guest,* (June 2009).
[64] 'Review of the role and effectiveness of non-executive directors', pg.22, *Derek Higgs,* (January 2003).
[65] 'Government unveils biggest overhaul to water in a generation', *Department for Environment, Food & Rural Affairs,* (January 2026).

"at half least the board, excluding the chair, should be non-executive directors whom the board considers to be independent".[66]

This flexibility is vital to ensure that the UK Corporate Governance Code can operate effectively for both listed and unlisted companies. Independent non-executive directors carry out different functions in listed and unlisted companies. As recognised in the original Cadbury Report, non-executive directors were intended to represent the interests of dispersed shareholders and be independent of management.[67] Over time, that led to the UK Corporate Governance Code's provision for there to be a majority of independent non-executive directors, but still in the context of listed companies with dispersed shareholders (and on a 'comply or explain' basis). In contrast, unlisted companies with large private shareholders on the board are able to directly challenge management. As such, independent non-executive directors in unlisted companies help to augment investor-nominated non-executive directors but the rationale for a majority of them on the board is much weaker. This distinction was most prominently recognised in the development of the Wates Corporate Governance Principles for Large Private Companies,[68] which ultimately concluded that a majority of independent non-executive directors should not be required on the boards of large private companies.

The need for flexibility over the proportion of independent non-executive directors on boards is well-recognised in a wide range of governance frameworks, including:

- the Principles of Corporate Governance for G20 and OECD countries, which simply say that there should be a "sufficient number" of independent board members;[69]
- the rules for companies listed in Hong Kong and Singapore, which only require that a third of the board be independent non-executive directors;[70,71]
- the governance code for listed companies in France, which says that half of the board should be independent non-executive directors in "widely held corporations without controlling shareholders" but that only at least one third of the board should be independent non-executive directors for "controlled companies" (i.e. those with major shareholders that are present);[72]

[66] 'UK Corporate Governance Code', pg.12, *Financial Reporting Council,* (January 2024).
[67] 'The Report of the Committee on the Financial Aspects of Corporate Governance', pg.22, *The Committee on the Financial Aspects of Corporate Governance,* (December 1992).
[68] 'The Wates Corporate Governance Principles for Large Private Companies', *Financial Reporting Council,* (December 2018).
[69] 'G20/OECD Principles of Corporate Governance', *OECD,* (June 2023).
[70] 'Directors, Company Secretary, Board Committees, Authorised Representatives and Corporate Governance Matters', *Hong Kong Stock Exchange,* (June 2025).
[71] 'Code of Corporate Governance 2018', *SGX Group,* (August 2018).
[72] 'Corporate Governance Code of Listed Corporations', pg.14, *AFEP,* (December 2022).

- the Bank of England's expectations on the governance of recognised payment system operators, which state that "no single group should be able to dominate the board" and that "a minimum of a third of the board will comprise [independent non-executive directors]";[73] and
- electricity distribution network operators in Great Britain are required through their Ofgem licence to have at least two non-executive directors, who are deemed "sufficiently independent directors" when assessed against the independence criteria, on their boards.[74]

Given their different ownership models and structures, water companies are understandably concerned by a strict application of either Ofwat's proposal or the UK Corporate Governance Code without a recognition of the need for flexibility. For this reason, we recommend that Ofwat clarifies in the final Water Governance Code that it would apply this requirement on a 'comply or explain' basis, and that it would expect to see different approaches taken by listed and unlisted companies, including that it would be acceptable for fewer than half the board to be independent directors.

Recommendation 4: Ofwat should fully align with the provision of the UK Corporate Governance Code on boards being comprised of a majority of independent non-executive directors – on a 'comply or explain' basis.

3.4 Separation and composition of committees

- Question 11: Do you agree with the principle that audit, remuneration and nomination committees of water companies should not also serve the boards of other companies?

In the consultation, Ofwat proposes:

- that the boards of water companies "have their own dedicated audit, remuneration and nomination committees".[75]
- that the remuneration section of the UK Corporate Governance Code,[76] which states that "the board should establish a remuneration committee of independent non-executive directors with a minimum membership of three, or in the case of smaller companies, two";[77] be [an] apply and explain requirement".[78]

[73] 'Governance: recognised payment system operators', *The Bank of England,* (June 2026).
[74] 'Modification of the Standard Conditions of Electricity Distribution Licences Granted or Treated as Granted Under Section 6(1)(C) Of The Electricity Act 1989', pg.36, *Ofgem,* (February 2013).
[75] 'Consultation – Water Governance Code Rule', pg.12, *Ofwat,* (July 2026).
[76] 'Consultation – Water Governance Code Rule', pg.14, *Ofwat,* (July 2026).
[77] 'UK Corporate Governance Code', pg.12, *Financial Reporting Council,* (January 2024).
[78] 'Consultation – Water Governance Code Rule', pg.14, *Ofwat,* (July 2026).

Currently, Ofwat's board leadership, transparency and governance principles require that there be "a majority of independent members on the audit, nomination and remuneration committees and the audit and remuneration committees are independently led".[79]

We do not support Ofwat's proposal. Where the interests of group and regulated companies are materially aligned, it is likely to be proportionate for there to be shared membership of committees. Establishing dedicated committees at the regulated company level, with distinct membership, would create unnecessary duplication.

Furthermore, there are benefits from shared membership of committees at group and regulated company levels. For example, removing investor-nominated directors would make remuneration committees unable to commit to pay water company executives out of shareholders' funds rather than customer bills.

For these reasons, we support incorporating UK Governance Corporate Governance Code provisions on a 'comply or explain' basis within the Water Governance Code.

Recommendation 5: Ofwat should fully align with the provisions of the UK Corporate Governance Code on the structure and composition of the audit, nomination and remuneration committees – on a 'comply or explain' basis.

3.5 Decision-making by group companies

- Question 2: Do you consider that there should be a comprehensive transparency requirement covering reserved matters? Or can other measures be used to generate greater clarity and understanding in this area?

Ofwat proposes that water companies will have to report in 'theory and practice' on the following areas:[80]

- *what matters the company cannot decide itself, explained specifically and clearly;*
- *why a different company or shareholders are better placed to decide on a matter rather than the water company itself; and*
- *which matters were decided by shareholders or other companies, and when and how the relevant decisions were reached, for example, whether the water company provided the group company or shareholder making the decision with a recommendation.*

[79] 'Board leadership, transparency and governance – principles', pg.5, *Ofwat,* (January 2019).
[80] 'Consultation – Water Governance Code Rule', pg.7, *Ofwat,* (July 2026).

Currently, through the board leadership, transparency and governance principles, the regulated company "sets out any matters that are reserved for shareholders or parent companies (where applicable); and explains how these are consistent with the board of the regulated company having full responsibility for all aspects of the regulated company's business, including the freedom to set, and accountability for, all aspects of the regulated company's strategy".[81]

We support the principle of transparency over how a group company interacts with the regulated entity. However, we are concerned that the above proposals would lead to companies reporting on immaterial, hypothetical scenarios. For the reasons we have set out above, we consider that alignment with the UK Corporate Governance Code is desirable, although it no longer includes a specific provision on reserved matters. While the provision was removed in the 2018 update of the Code,[82,83] the current guidance on decision-making suggests maintaining a "formal schedule of matters reserved". [84]

Should Ofwat seek to include a provision on reserved matters, we recommend that it focuses on requiring the reporting of instances where parent companies have overruled or altered the decisions of regulated companies only. Investors have told us that transparency is better than overly restrictive governance arrangements, and our proposal would ensure that outcome while avoiding unnecessarily restrictive or burdensome rules.

Recommendation 6: Should Ofwat seek to include a provision on reserved matters, it should only require the reporting of instances where parent companies have overruled or altered the decisions of regulated companies.

4. Timelines and next steps

- Do you have views as to whether any of the proposals set out above would reasonably take longer than 1 April 2028 to implement?

Unless Ofwat's proposals change, given their scale, it would not be feasible to require companies to report against the proposed code by 1st April 2028.

Should Ofwat proceed with creating a Water Governance Code, we would expect to see further engagement and a formal consultation.

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[82] 'The UK Governance Code', pg.7, *Financial Reporting Council,* (April 2016).
[83] 'The UK Corporate Governance Code', *Financial Reporting Council,* (July 2018).
[84] 'Corporate Governance Code Guidance', *Financial Reporting Council,* (June 2026).

We also request clarity on the statement in the consultation that: "responses to this consultation will inform a subsequent statutory consultation to implement a rule on governance (referred to here as the Water Governance Code) under **Section 35D** of the Act". [85]

Section 35D(1) of the Water Industry Act 1991 states that:[86]

> *This section applies if the Authority proposes to issue revised rules under section 35B and, in the view of the Authority, the revision or each of the revisions proposed to be made is—*
>
> *(a) a revision for which consultation is unnecessary, or*
>
> *(b) a revision that it is necessary or desirable to make without delay.*

Given that Ofwat's proposed Water Governance Code would be a new rule issued under Section 35B, rather than a revised rule as referred to in Section 35D(1), we would expect Ofwat to follow the process set out in Section 35C of the Water Industry Act 1991 and conduct a further consultation if these proposals proceed, including an assessment of impacts. We welcome clarification from Ofwat on this matter.

[85] 'Consultation – Water Governance Code Rule', pg.7, *Ofwat,* (July 2026).
[86] 'Water (Special Measures) Act 2025', s.35D., *UK Government,* (February 2025).

Annex A: Analysis of additional recruitment cost of independent non-executive directors

Water UK estimate of INEDs needed under various scenarios				
Scenarios		**Assumptions**	**Estimated number of new recruits required**	**Costs over a five-year period[87]**
A	Ofwat requires companies to have a board where independent non-executive directors are more than half (excluding the chair).	Companies recruit the minimum number of independent non-executive directors required to ensure that independent non-executive directors are more than half of the members of the board (excluding the chair).	Nine independent non-executive directors	£3.6 million
B	Ofwat implements its proposed requirements that: (a) independent non-executive directors must be more than half of the board (excluding the chair). (b) independent non-executive directors cannot serve on multiple boards in a group.	Current independent non-executive directors remain on the regulated company boards but lose their independent status. Companies then recruit the minimum number of independent non-executive directors required to ensure that independent non-executive directors are more than half of the members of the board (excluding the chair).	58 independent non-executive directors	£23.2 million

[87] This figure assumes an annual salary of £80,000, over a 5-year period.

Annex B: Analysis of additional recruitment of independent non-executive directors

Company	Existing board				Scenario A: >50% INEDs		Scenario B: >50% INEDs + proposed independence definition			
	Current INEDs	Other directors	Chair	Total size of current board (including chair)	Additional INEDs required to ensure at least 50% (excl chair)	Total size of new board (including chair)	Total INEDs after proposed independence requirements applied	Net change in INEDs vs existing boards	Additional INEDs required to ensure at least 50% (excl chair)	Total size of new board (including chair)
Anglian Water Services Limited	4	6	1	11	2	13	4	No change	2	13
Dŵr Cymru Cyfyngedig	6	2	1	9	0	9	0	-6	8	17
Hafren Dyfrdwy Cyfyngedig	4	2	1	7	0	7	4	No change	0	7
Northumbrian Water Limited	5	4	1	10	0	10	5	No change	0	10
Severn Trent Water Limited	5	2	1	8	0	8	0	-5	7	15
Southern Water Services Limited	4	5	1	10	1	11	4	No change	1	11
South West Water Limited	5	3	1	9	0	9	0	-5	8	17
Thames Water Utilities Limited	8	3	1	12	0	12	4	-4	3	15
United Utilities Water Limited	8	2	1	11	0	11	0	-8	10	21
Wessex Water Services Limited	5	6	1	12	1	13	5	No change	1	13
Yorkshire Water Services Limited	5	6	1	12	1	13	3	-2	5	17
Affinity Water Limited	3	5	1	9	2	11	3	No change	2	11
Portsmouth Water Limited	2	3	1	6	1	7	2	No change	1	7
South East Water Limited	3	4	1	8	1	9	3	No change	1	9
South Staffordshire Water plc	4	3	1	8	0	8	3	-1	1	9
Sutton and East Surrey Water plc	5	3	1	9	0	9	0	-5	8	17
	76	**59**	**16**	**151**	**9**	**160**	**40**	**-36**	**58**	**209**