

Blueprint for Water response: Ofwat consultation on ‘new rules on remuneration and governance provided for in the Water (Special Measures) Bill’

19th November 2024

This consultation response is on behalf of Wildlife and Countryside Link (Link), a coalition bringing together over 80 organisations to campaign for the natural world.

This response is supported by Friends of the Earth, Froglife, Institute of Fisheries Management, Marine Conservation Society, Paddle UK, The Rivers Trust.

Summary

Blueprint for Water welcomes the opportunity to respond to this consultation on new rules on remuneration and governance provided for in the Water (Special Measures) Bill.

We welcome that the Water (Special Measures) Bill will empower Ofwat to set new rules on remuneration and governance for all companies to follow, and we broadly welcome Ofwat’s proposals for what these new rules should be. However, we are concerned that the current state of the water environment – and the strength of public feeling regarding the water industry’s consistently poor performance – are not yet adequately reflected in the new rules.

Performance related pay should be dependent on the delivery of statutory obligations to customers, communities and the environment, *and* stretching performance. Focusing solely on ‘serious pollution incidents’ is not sufficient as a metric for company environmental performance, nor for environmental outcomes. Pay rewards should be a tool to drive ambition, not to reward basic compliance in one aspect of company operations whilst overall environmental performance remains inadequate.

Environmental issues are a significant driver of consumer dissatisfaction and distrust in the water industry; consumers expect good environmental outcomes as part of the service they receive from their company, and research shows that consumers are willing to pay more on

their bills if environmental benefits can be delivered. This must be acknowledged, and well within scope for customer engagement and representation under the rules.

We would be pleased to discuss any of the points in this consultation response further.

Questions

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?

Yes, we agree with Ofwat's proposal that the Rule should apply to chief executives and both executive and non-executive directors.

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?

Yes, we agree that Performance Related Pay (PRP) should be prohibited when companies have been fined by Ofwat for breach of a principal duty. If companies are not compliant with their legal duties, they should not be eligible for PRP. This must include compliance with environmental duties and permits. PRP must be clawed back for all years that the breach has been found to have occurred.

We suggest that the definition of consumer matters should include compliance with requirements to protect and support customers in vulnerable situations, in particular communication, access and safety needs.

Reporting by the [Consumer Council for Water in 2024](#) highlights that consumer trust in the water industry has reached its lowest level since surveying began 13 years ago, with falls in trust reported for all water companies. Given their importance in assessing the performance of monopoly providers of essential services, we suggest that Ofwat should consider whether consumer trust and/or approval ratings could be factored into PRP Rules.

Companies such as the energy network company, UKPN, who have performed well under UK Customer Satisfaction Index, reportedly built in consumer and stakeholder satisfaction scores into their PRP and staff performance frameworks with very positive impact. Ofwat should consider this simple step.

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?

Yes, we agree that PRP should be prohibited where the company has had a serious pollution incident in the previous calendar year. However, we are concerned that the occurrence of ‘serious pollution incidents’ alone is not sufficient as a metric or ‘proxy’ for a company’s overall environmental performance, or indeed a company’s impact on the environment.

A focus on solely ‘serious pollution incidents’ would ignore all Category 3 pollution incidents (and the cumulative impact of these incidents), and any aspects of environmental harm broader than pollution – for example, relating to unsustainable abstraction and water use. For example, whilst none of England’s Water Only Companies (WOCs) are recorded as having a serious pollution incident in the period 2023-2024, none of these companies achieved the top category of ‘leading’ in Ofwat’s industry performance report for 2023-2024.

Furthermore, a focus on ‘serious pollution incidents’ does not consider wider company (in)action with regards to the environment, or environmental outcomes. For example, work to resolve Reasons for Not Achieving Good Status (RNAGS) under the Water Framework Directive Regulations, to invest sufficiently in infrastructure to ensure long-term resilience and sustainability, or to otherwise tackle poor water quality and drive species and habitat restoration. Just because a company is not responsible for a serious pollution incident does not mean it is taking sufficient action to restore water health and drive nature’s recovery.

We understand that Ofwat has selected ‘serious pollution incidents’ on the basis that this measure needs to be ‘severe, clear and unambiguous’ to ensure that prohibiting PRP is merited and proportional. However, under this approach, companies with poor environmental performance will still be permitted to award PRP. This is not appropriate given the current poor state of waters, or the strength of public feeling regarding the water industry’s (poor) environmental performance.

The Rules should make the rewarding of PRP dependent on the delivery of statutory obligations and commitments, *and* stretching performance delivery. Pay rewards should be used to drive exemplary environmental performance, not to reward companies for basic compliance in one area of operations, or to create a perverse situation whereby PRP is awarded based on what companies can “get away with” – for example, Category 3 pollution incidents.

We would welcome the opportunity to discuss further with Ofwat what an alternative approach for an environmental standard could look like. For example, this could take inspiration from frameworks such as the Environmental Performance Assessment (EPA), which considers company performance across different metrics in order to generate an overall star rating. A 1-star rated company should expect to award less (if any) PRP compared to a company with a higher star rating.

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?

As environmental stakeholders we do not have a strong view on a specific standard for financial resilience. However, as a company’s financial footing can have serious impacts upon its ability to invest in environmental delivery, as well as impacting on customers since billpayers’ money will be diverted to servicing expensive debt, we agree that some measure of financial resilience should feature in the PRP requirements.

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

Yes, we agree with Ofwat’s view that the serious nature of criminal convictions means that prohibiting PRP is proportionate, and therefore that the Rule should cover all criminal convictions.

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

To address the time lag between incidents and convictions, PRP must be restricted for all years that the breach has been found to have occurred, not just the year of conviction or one nominal year. This should be achieved via a clawback mechanism.

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

Ofwat must set a clear expectation that companies must recover PRP payments when a rule breach occurs. The consultation document suggests that companies “should undertake best efforts to recover payment of PRP”. We argue that this expectation should be made firmer and more specific, to guard against companies failing to recover PRP on the basis of inconvenience.

For example, alternative wording could include “must undertake all available efforts”, and examples or expectations should be included, such as updating clawback provisions in employment contracts.

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?

We do not have a view regarding what could be considered an exceptional circumstance. However, it is vital that any decisions from Ofwat regarding exemptions are fully transparent and made publicly available, to allow for stakeholder scrutiny. Consumer representatives should be involved in these decisions.

We agree with Ofwat’s assertion that any case for exemption submitted by a company must be compelling and fully evidenced. We would welcome further detail from Ofwat to clarify the high standard of evidence required.

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?

Yes, we agree that the standards proposed could be suitable for the proposed fit and proper persons test.

We agree that it would be appropriate to include ‘That a relevant individual must have adequate knowledge and understanding of the duties of the undertaker under the relevant laws and licence conditions’ within the test. In particular, we emphasise that the individual should have relevant knowledge and understanding of the environmental duties and obligations that the company has to meet.

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.

Yes, we agree with Ofwat’s proposal that the fit and proper persons test should be applied to chief executives and to other individuals appointed as directors to the board, including both executive and non-executive directors.

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?

Yes, we agree that companies should as a minimum provide assurance to Ofwat through their annual reporting process.

We are also supportive of the ‘alert system’ proposed in the consultation document, whereby companies must proactively inform Ofwat when an individual fails to meet this test, rather than waiting for annual reporting. This would boost transparency and accountability to consumers and wider stakeholders, and should be part of the minimum expectation on water companies.

However, we suggest that Ofwat should explore a more proactive approach to monitoring and enforcing this rule. To enable this, we agree that company information about relevant individuals should be made available to Ofwat, such that an inspection could take place at any time.

Furthermore, we suggest that this reporting should be made available to stakeholders, including consumers, to ensure transparency of information and accountability.

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.

Yes, we agree with the core principles proposed for effective consumer representation.

However, these should go further, in line with the previous minimum challenge and engagement standards [outlined in PR24](#). In particular, that engagement must be robust and timely, to ensure stakeholders can genuinely shape proposals early in the process and that views on performance can be transparently shared.

We are supportive of the Consumer Council for Water's (CCW) proposals for consumer panels and that these would be run by CCW, to ensure sufficient independence from water companies. These consumer panels should be distinct from any existing consumer and stakeholder forums already run by water companies. These groups should also be able to have an independent voice from CCW, for example to reflect that views may diverge between panels dependent on the region and their priorities.

As discussed previously, the state of the water environment and the industry's environmental performance are integral to consumer trust and satisfaction. Therefore, environmental performance, impacts, and outcomes must be within scope for consumer engagement and representation.

Given the importance of environmental delivery to customers, consumer panels should include at least one member with environmental expertise and with an understanding of the environmental obligations of the sector and the processes (e.g. Price Review) by which these are agreed and delivered, to ensure that panels are able to sufficiently scrutinise information

provided to them by the company, and to hold them to account on environmental ambition. Consumer reps must also have access to independent environmental expertise, including to any independent company forums such as sustainability, climate or environment panels.

Whilst the importance of accessibility and representation are acknowledged in the core principles, recognition of equity, diversity and inclusion are missing. Alternative wording to incorporate these principles could be “The need for consumer representation methods to be appropriately accessible, equitable and inclusive such that they are representative of the diversity of either the company’s whole customer base or the relevant segment”.

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.

Yes, we agree that the consumer rule should require companies to take appropriate account of consumer views with regards to:

- The development of company plans and strategies.
- Retrospective reflection on company performance.
- Shorter term or more reactive decision-making which could reasonably be considered to have a material impact on consumers.

As discussed, environmental performance, impacts and outcomes are core areas of concern for consumers and should therefore be within scope for consumer engagement. For example, the inclusion of consumer preference within business planning and investment decisions¹, or consumer dissatisfaction with the poor state of waters and poor company performance in addressing these concerns.²

¹ For example, research from CCW suggests a consumer preference for the use of nature-based solutions by water companies, and a willingness to pay more on their bill if these approaches can be used to deliver better outcomes. CCW (2023), ‘Keen to go Green? Customer preferences and priorities for waste water solutions.’

<https://www.ccw.org.uk/Keen-to-go-green-research-report.pdf>

² For example, research from CCW shows that consumer satisfaction and trust in the water industry is at an all-time low, largely due to environmental concerns. CCW (2024), ‘Water Matters’.

<https://www.ccw.org.uk/app/uploads/2024/05/Water-Matters-2024-Data-Report.pdf>

The inclusion of environmental concerns should be explicitly stated. This could be incorporated across all three bullet points, or could be included as a fourth bullet point, acknowledging the relevance of environmental concerns across these areas.

Furthermore, we encourage the inclusion of communication and behaviour change programmes and companies' high level engagement strategy. Consumer panels should be well placed to review communications, for example linked to water efficiency and how consumers can support water companies' initiatives to safeguard the environment. This could include giving views on tone, jargon, messaging, and general accessibility; many water companies continue to struggle with these basics.

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.

Yes, we agree with the proposal to take an outcomes-based approach to this element of the rule and allowing companies flexibility in how they engage. However, some prescription will be needed, in particular relating to the reporting of views and performance.

Companies should be required to demonstrate how they have listened to consumer views on an annual basis in a relatively common format and to report that to Ofwat. Furthermore, Ofwat should build a relationship with panel and challenge group chairs, and to facilitate the flow of information between the groups and the regulator. This will help to strengthen the independence of the groups, and the regulator's insight and understanding of consumer concerns.

As stated, we are supportive of CCW's proposals for consumer panels.

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.

The list of engagement mechanisms should be viewed as illustrative only; there are a number of other options that could be considered. For example, online and social media-based platforms could be explored as a means to engage with consumers on an ongoing basis. This would help ensure that consumer engagement is not restricted only to formal meetings, or to when the company would like to raise a topic or seek feedback on a proposal.

We suggest that Ofwat should strengthen its proposed principles, learning lessons from PR24 and previous engagement. Ofwat should also more clearly define the outcomes it is looking for, including being explicit about the culture and behaviour change it is looking for and how it expects these Rules to support that. Ofwat should articulate what it believes to be the drivers of trust and how improved engagement can help deliver that. Better clarifying this would improve the design of the Rules and the scope of where engagement focuses.

It is important that the definition of consumer also includes community and environmental impacts of water company activity.

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

As stated, we are supportive of CCW's proposals for consumer panels, including that these should be run by CCW to ensure independence from companies. A trusted voice will be essential to ensure effective engagement.

Furthermore, consumer reps should have access to independent expertise to inform views and decision making across key areas, for example environmental issues.

We are supportive of further measures set out by Ofwat within the consultation document, including full transparency of any payments, independent selection processes, and robust conflict of interest policies.

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 there are alternative mechanisms that should be considered.

If options are provided for water companies, these must be of an equivalent standard. The purpose of options should be to ensure that arrangements can be specific to the context of the company and therefore be successful, not to provide an 'easier' or less rigorous option to be compliant with the rule.

Further clarity is needed regarding the proposed mechanisms to ensure that this would be the case. For example, the mechanisms listed involve different levels of seniority, which could

result in different outcomes depending upon which approach, or combination of approaches, a company selected. Mechanisms 1 and 2 directly involve CEOs and board members, whereas mechanism 3 would delegate this responsibility to a Director. Similarly, only mechanism 3 mentions company responsibility to ensure compliance with the rule.

In particular, we suggest that the approach taken by each company should include some element of direct access to the CEO and / or board; it is important that those with ultimate responsibility for the company's actions hear directly from customer representatives, so that those reps have confidence that their input is not being sanitised or misinterpreted before it reaches those most senior within the company.

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

Yes, we agree with the proposed assurance mechanisms. As discussed, all reporting should be made accessible to stakeholders to ensure full transparency and accountability.

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?

Yes, we agree with the proposed means of raising concerns on behalf of consumers who do not consider the rule is being adequately followed. However, we suggest that Ofwat should explore further mechanisms to ensure that this is fully comprehensive.

For example, relying solely on annual reporting could result in significant periods of inadequate consumer involvement, if poor practice cannot easily be flagged and dealt with as it occurs.

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?

Yes, we agree that the rules should apply to new appointees. Ofwat's website states that "A new appointee has the same duties and responsibilities as the previous statutory water company" so the proposed rules, which speak to a need to operate in the interests of

customers and the environment, should also apply. We acknowledge that the small size of most NAVs may mean that the logistics of applying these rules may need to differ – for example, arrangements for customer representation may need to be less extensive – but the rules and broad principles should still be adhered to. This is particularly important given policy that encourages small water and sewerage undertakers into the market, as a divergence in approach now may see an increasing gap in environmental scrutiny and performance between NAVs and the existing WASC and WOC providers. The environment does not care about the size of the company which caused it harm.

We also suggest that consideration should be given to how such measures could promote better environmental performance from the retail market. Although retailers do not *directly* harm the environment (in the sense of causing pollution incidents for example), their policies can contribute to environmental harm. For example, if they employ water supply charging tariffs which do not promote water efficiency, then their practices may be contributing to unsustainable abstraction, and are certainly counter to the need to reduce demand as set out in the Water Resources National Framework. As such, elements such as environmental limitations on PRP, and consumer and environmental representation, should be considered for the retail market as well as for the wholesale providers.

Wildlife and Countryside Link (Link) is the largest nature coalition in England, bringing together 86 organisations to protect the natural world. Wildlife and Countryside Link is a registered charity number 1107460 and a company limited by guarantee registered in England and Wales number 3889519.

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