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Financial Reporting Council (FRC)
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12 September 2023

Dear Sir or Madam,

United Utilities Group PLC response to the FRC's UK Corporate Governance Code Consultation (May 2023)

We are pleased to provide a response on behalf of United Utilities Group PLC ('UUG') to the FRC's recent Code consultation.

UUG is the UK's largest listed water and wastewater company. Our purpose is to provide great water for a stronger, greener and healthier North West, with our core activities being the delivery of essential water and wastewater services for household and business customers across the North West of England.

As an organisation we focus on what matters to our stakeholders, and pride ourselves on our high quality and reliable corporate reporting that enables all interested stakeholders to make an informed assessment of our company performance and the governance environment in which we operate.

We welcome the opportunity to contribute to this consultation, and have responded to the questions raised in the consultation document where we have a stronger view or a particular viewpoint. Our responses to these specific questions are set out in the attached appendix. For completeness, we have also contributed to the fuller responses that will be provided by the 100 Group and GC 100.

We hope you find these comments useful in considering next steps for the consultation. Should you have any queries or wish to follow up on any of the points included in our response please do not hesitate to contact either of us.

Yours faithfully,

[redacted]

[redacted]

Section 1 – Board leadership and company purpose

Q1: Do you agree that the changes to Principle D in Section 1 of the Code will deliver more outcomes-based reporting?

We are unsure of the purpose of using both the terms 'governance activity' and 'governance practices' within Principle D as it is not clear what the intention of the different terms is. A better articulation is suggested as follows:

'When reporting on how the Code has been applied, the board should focus on reporting on the outcomes of its governance activities. When the board reports on departures from the Code's provisions, it should provide a clear explanation.'

Q2: Do you think the board should report on the company's climate ambitions and transition planning, in the context of its strategy, as well as the surrounding governance?

Given the reporting requirements of LR 9.8.6(8) to report against the TCFD Recommendations and Recommended Disclosures this should not be included as it is duplicative and potentially unclear as to the requirements of each.

Q3: Do you have any comments on the other changes proposed to Section 1?

We believe Provision 3 should retain the wording '*Committee chairs should seek engagement with shareholders on significant matters*' rather than the proposed *'Committee chairs should engage with shareholders on significant matters*' given the likely limited responses from shareholders on specific issues.

'The chair should ensure that the board has a clear understanding of the views of shareholders, *and report in the annual report on the outcomes of the engagement which has taken place with them during the reporting period*.' Reporting on the outcomes of engagement will only be high level at best given the potential sensitivities involved for both parties, but most likely 'boiler-plate'.

Section 2 – Division of responsibilities

Q4: Do you agree with the proposed change to Code Principle K (in Section 3 of the Code), which makes the issue of significant external commitments an explicit part of board performance reviews?

We do not support the change to Code Principle K, the annual performance review should not formally be required to consider each director's commitments to other organisations – it should be focussed on the director's effective contribution around the Company's board table. If the Chair considered that a director was not contributing effectively then that should be addressed by the Chair with the Director on a timely basis. The capacity to take on directorships/other responsibilities is very much dependent on an individual director's circumstances.

Q5: Do you agree with the proposed change to Code Provision 15, which is designed to encourage greater transparency on directors' commitments to other organisations?

The effectiveness of a director in a role is very dependent on a director's individual circumstances. Most companies would already include what they/the director consider to be the significant appointments in a director's biographical details. Attendance at board meetings is already disclosed, so including a description of how each the director meets the time commitment for each appointment will most likely result in the use of 'boiler-plate' wording.

Section 3 – Composition, succession and evaluation

Q6: Do you consider that the proposals outlined effectively strengthen and support existing regulations in this area, without introducing duplication?

We are not supportive of the proposed re-drafting to include the phrase 'protected and non-protected characteristics' as it is too vague, the existing wording should be retained as it is already 'all-encompassing'.

Q7: Do you support the changes to Principle I moving away from a list of diversity characteristics to the proposed approach which aims to capture wider characteristics of diversity?

Our preference is to retain existing wording for the same reasons as above.

Q8: Do you support the changes to Provision 24 and do they offer a transparent approach to reporting on succession planning and senior appointments?

No comment on this question.

Q9: Do you support the proposed adoption of the CGI recommendations as set out above, and are there particular areas you would like to see covered in guidance in addition to those set out by CGI?

We are supportive of the CGI recommendations.

Section 4 – Audit, risk and internal control

Q10: Do you agree that all Code companies should prepare an Audit and Assurance Policy, on a 'comply or explain' basis?

Yes, and therefore we agree with the associated Audit and Assurance Policy amendments to Provision 25 (proposed Provision 26) and Provision 26 (proposed Provision 27).

Q11: Do you agree that amending Provisions 25 and 26 and referring Code companies to the Minimum Standard for Audit Committees is an effective way of removing duplication?

Yes, supportive, however, we strongly recommend amending the fifth bullet under the new Provision 26 (old Provision 25) to: "seek to engage ~~engaging~~ with shareholders and other stakeholders on the role of the audit committee, the scope of work of the external auditor, and the approach to the audit and assurance policy;"

Q12: Do you agree that the remit of audit committees should be expanded to include narrative reporting, including sustainability reporting, and where appropriate ESG metrics, where such matters are not reserved for the board?

No. It should be for individual companies to establish the appropriate governance arrangements for narrative reporting, using (where relevant) board sub-committees (such as an ESG committee) to provide the appropriate, and often specialist, monitoring and consideration of associated judgements and issues. Furthermore, the assurance of narrative reporting will be covered by the audit and assurance policy, which will be the responsibility of the audit committee to develop, implement and maintain as per the proposed revised Provision 26 (old Provision 25).

Q13: Do you agree that the proposed amendments to the Code strike the right balance in terms of strengthening risk management and internal controls systems in a proportionate way?

No, in the absence of supporting guidance to clearly "frame" the risk and controls declaration, we do not believe the proposed amendments are proportionate.

For example, we note the proposed change of scope within Provision 29 (to be Provision 30) from “financial” controls to “reporting” controls. This represents a significant expansion to cover non-financial reporting as well as financial reporting. As a regulated utility company, we have extensive published non-financial reporting in addition to the “front-end” of the annual report. We understand that the intention is for this scope change to be only applicable to the annual report, although it is imperative that this is made clear by the FRC, for example through guidance.

In addition, we have not seen the outcome of any cost / benefit analysis to demonstrate whether the Code changes strike the right balance in strengthening risk management and internal control without putting undue burden on companies such as ours.

Q14: Should the board's declaration be based on continuous monitoring throughout the reporting period up to the date of the annual report, or should it be based on the date of the balance sheet?

We are of the strong opinion that the board’s declaration on risk management and internal control systems effectiveness should <u>not</u> include the period up to the date of the annual report. Although we have in place mechanisms which provides continuous monitoring of the risk management and internal control systems, this is not “real-time” monitoring and therefore it cannot practically provide the board with sufficient assurances of effectiveness to support a declaration at the annual report date. We understand the FRC’s use of the words ‘continuous monitoring’ to refer to management systems rather than a requirement for boards to monitor controls continuously which would neither be desirable nor practicable. The revised guidance should make this clear.

We recognise the benefit of the board declaration covering the reporting period, rather than just the date of the balance sheet, and therefore propose the following amendment:

- *A declaration of whether the board can reasonably conclude that the company’s risk management and internal control systems have been effective throughout the reporting period~~ and up to the date of the annual report~~;*

Q15: Where controls are referenced in the Code, should 'financial' be changed to 'reporting' to capture controls on narrative as well as financial reporting, or should reporting be limited to controls over financial reporting?

No, we strongly oppose the proposed change in the absence of clear guidance limiting “reporting” to the annual report. As a regulated utility company, we have extensive published non-financial reporting in addition to the “front-end” of the annual report and therefore this change is extremely onerous for us.

We understand that the intention is for this scope change to be only applicable to the annual report - <u>if</u> this was made clear by the FRC, ideally through the Code or supporting guidance, we would be supportive of the Code change.

Q16: To what extent should the guidance set out examples of methodologies or frameworks for the review of the effectiveness of risk management and internal controls systems?

In order to comply with the existing Code, we already have mechanisms in place which enables the board to review the effectiveness of risk management and internal control systems. As such, example guidance setting out example methodologies or frameworks is not necessary, albeit they could provide a good “benchmark” to identify potential enhancements to our approach.

Q17: Do you have any proposals regarding the definitional issues, e.g. what constitutes an effective risk management and internal controls system or a material weakness?

We are of the view that it should ultimately be for our board to determine, in the context of our strategic objectives and situation, whether our risk management and internal control systems are effective and what constitutes a material weakness. However, we would welcome high level guidance on these definitions to enable us to confirm that our judgement is reasonable.

Q18: Are there any other areas in relation to risk management and internal controls which you would like to see covered in guidance?

No further comment to those already raised in response to other questions.

Q19: Do you agree that current Provision 30, which requires companies to state whether they are adopting a going concern basis of accounting, should be retained to keep this reporting together with reporting on prospects in the next Provision, and to achieve consistency across the Code for all companies (not just PIEs)?

Yes, we agree with retaining this Provision unchanged.

Q20: Do you agree that all Code companies should continue to report on their future prospects?

Yes, we agree that all Code companies should continue to report on their future prospects.

Q21: Do you agree that the proposed revisions to the Code provide sufficient flexibility for non-PIE Code companies to report on their future prospects?

No comment.

Section 5 – Remuneration

Q22. Do the proposed revisions strengthen the links between remuneration policy and corporate performance?

No comment

Q23: Do you agree that the proposed reporting changes around malus and clawback will result in an improvement in transparency?

No comment.

Q24: Do you agree with the proposed changes to Provisions 40 and 41?

No comment.

Q25: Should the reference to pay gaps and pay ratios be removed, or strengthened?

No comment.

Other matters for consideration

Q26: Are there any areas of the Code which you consider require amendment or additional guidance, in support of the Government's White Paper on artificial intelligence?

No comment.