



**CONSULTATION ON THE WATES CORPORATE
GOVERNANCE PRINCIPLES FOR LARGE PRIVATE
COMPANIES**

USDAW RESPONSE

September 2018

Usdaw welcomes the opportunity to submit comments to the FRC consultation on the draft Wates Corporate Governance Principles for Large Private Companies.

Usdaw is the UK's fifth largest trade union and operates solely within the private sector. The Union has over 436,000 members across many sectors including retail, warehousing, transport, food manufacturing, call centres and wholesale. Usdaw membership has grown by more than 17% in the last five years and by nearly a third in the last decade.

Usdaw represents members in many large private companies that will come under the proposed reporting requirements.

Usdaw welcomes the proposal to introduce a set of principles of Corporate Governance for Large Private Companies. However, the current drafted principles are not robust enough to bring about effective change in business practices in the companies where it will apply.

This is the first time that such a code will apply to private companies. It should be seen as an opportunity to establish a code that is effective, fit for purpose, rigorous and that will stand the test of time. The code as it currently stands does not achieve this and does not set a particularly high bar for companies to cross. It is therefore questionable as to how effective it will be at achieving its aims.

The following responses outline Usdaw's concerns about the proposals as they stand and suggestions for improvements to the code.

1. Do the Principles address the key issues of the Corporate Governance of Large Private Companies? If not, what is missing?

The overarching principles do attempt to address the areas of concern; however they are not robust enough as to be effective.

Stronger workforce engagement and representation, fair remuneration policies at all levels of the business and proper enforcement and monitoring are all necessary to implement effective change. Responses to the following questions will go into these points in more detail.

The number of businesses that will fall under the reporting requirement is relatively small. Only the largest private companies will be required to report on their Corporate Governance practices. Businesses of this size will likely have large workforces, customer bases and supply chains, which need to be properly represented in the code.

2. Are there any areas in which the Principles need to be more specific?

Principle 1 talks about the board promoting the values and culture of the organisation, however there is no objective benchmarking for what good values and culture look like. A number of industries have voluntary charters that businesses can adhere to, eg in retail supply chains. The guidance to the principles should set out in more detail the culture and values of a good organisation.

Principle 2 should require the presence of a workforce representative on the board. There should also be a place for an independent board member.

Principle 5 should include specific reference to remuneration of the lowest paid workers in an organisation. This should be fair, sufficient and enough to ensure a minimum living standard. There should be a place for a workforce representative on the remuneration committee. The guidance could include reference to the Real Living Wage as an absolute minimum.

Principle 6 should include reference, perhaps in the guidance, as to what meaningful engagement is, how companies should report on that engagement, and how it has impacted their decision-making processes. The guidance should include reference to trade unions as the preferable model for workforce engagement.

3. Do the Principles and guidance take sufficient account of the various ownership structures of private companies, and the role of the board, shareholders and senior management in these structures? If not, how would you revise them?

Udaw acknowledges that the range of ownership models of private companies could make it difficult to adopt a one size fits all approach. However, good business practice and culture, employment practices and employee experience should not be determined by ownership structure.

The principles as they stand could certainly be applied to a range of businesses, but Usdaw believes that they could be stronger and still have broad scope for application.

4. Do the Principles give key shareholders sufficient visibility of remuneration structures in order to assess how workforce pay and conditions have been taken into account in setting directors' remuneration?

No. There is no requirement to report on pay levels, pay gaps or pay ratios. There should be a requirement to report openly and transparently on pay at all levels in the organisation.

There should also be a requirement to include members of the workforce on the remuneration committee.

The board take decisions on remuneration of the whole workforce, not just the directors and therefore the Corporate Governance Principles should include reference to decision-making on remuneration at all pay levels.

The principle of 'taking into account pay and conditions elsewhere in the company' has been shown to be ineffective in curbing excessive executive pay in listed companies. Therefore a different approach needs to be taken. The focus of the remuneration policy should be on lifting up the level of pay at the lowest levels in a company. The duty on the board to maintain the sustainable long-term success of the company would still apply and therefore would see a rebalancing of pay ratios.

5. Should the draft Principles be more explicit in asking companies to detail how their stakeholder engagement has influenced decision-making at board level?

Yes. In particular, there should be more focus on workforce engagement. There should be a requirement to engage directly with the workforce on issues that affect them. The best method of workforce engagement is through trade union recognition, and the guidance to the Principles should encourage this.

The workforce can provide a different perspective on a range of business decisions. As a Union, Usdaw has many examples of good business practice involving the workforce in decision-making that has benefitted the company and workforce alike.

The workforce should be seen as the primary stakeholder in any business. Every decision that a board takes directly impacts on the workforce, and equally a business is not able to function without its workforce. Therefore the code must make specific reference to the workforce as a primary stakeholder that should be consulted on and involved in decision-making processes.

Boards should report on exactly what engagement has taken place, how often, and what the outcomes of that engagement were.

6. Do the Principles enable sufficient visibility of a board's approach to stakeholder engagement?

No. There is no definition of 'meaningful engagement' or guidance on how this can be achieved.

For engagement to be meaningful, it must be measurable with tangible examples of the outcomes of that process. Companies should be required to demonstrate that they have structures in place to engage with their workforce, when and how often this takes place and what action was taken on the basis of that engagement.

The FRC Guide to Board Effectiveness includes guidelines on workforce engagement, which could be referenced in the principles. The guidance to the code should provide examples of good practice in terms of stakeholder engagement. A primary example of this in relation to the workforce should be through trade union recognition.

7. Do you agree with an 'apply and explain' approach to reporting against the Principles? If not, what is a more suitable method of reporting?

Whether or not 'apply and explain' will be effective depends largely upon the monitoring regime and its ability to challenge non-compliance effectively. If a rigorous monitoring regime is in place, this approach should be acceptable.

8. The Principles and the guidance are designed to improve Corporate Governance practice in Large Private Companies. What approach to the monitoring of the application of the Principles and guidance would encourage good practice?

Monitoring and enforcement should be robust. There needs to be a legislative backing to the code. Without there being a requirement many companies will not apply it. Good companies will apply the code, however bad companies, where Corporate Governance practices need to be improved are unlikely to comply if there are no consequences for not doing so.

The UK Corporate Governance Code relies to a large extent on shareholder scrutiny. While there are questions over the effectiveness of this approach, it is clearly not applicable to private companies. Therefore there is a clear requirement for an independent body to carry out this role. The FRC would be the obvious option for this. However, to be effective they would need to have the powers and, importantly, the resources to properly monitor compliance and to challenge non-compliance.

9. Do you think that the correct balance has been struck by the Principles between reporting on Corporate Governance arrangements for unlisted versus publicly listed companies?

No. The recently published new code for listed companies goes far further, particularly in relation to workforce engagement.

The ownership model of a business should not impact on the employee experience or employment practices.

Usdaw can see no reason why this code should not mirror the limited code – at least in regard to those sections that refer to workforce engagement.

Specific sections that should be adopted in relation to workforce engagement would include:

- Principle 1, point E, provisions 2, 5 & 6

The UK code also introduces more demanding criteria in relation to executive remuneration, in Principle 5, which should be adopted in these principles.

The code should also make reference to the FRC Guidance on Board Effectiveness which accompanies the UK code as a best practice model that has many areas of relevance to private companies.

10. We welcome any commentary on relevant issues not raised in the questions above.

The code only makes passing reference to issues of diversity and equality monitoring. If real change is to be brought about in relation to things such as equal pay, including the gender, race and disability pay gaps, inclusion and improving levels of diversity in the workplace and particularly in managerial and board level positions, this needs to be directly addressed in any guidance, code or legislation of this sort. It is therefore disappointing that the proposed principles do not address these issues more directly.

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