Financial Reporting Council
8th Floor
125 London Wall
London EC2Y 5AS

codereview@frc.org

13th September 2023

Dear Sirs

UK Corporate Governance Code Consultation

We are pleased to submit our responses to the questions contained in your consultation on the UK Corporate Governance Code.

MM&K Limited (MM&K) is an independent advisory firm, specialising in directors' and executives' remuneration, performance and associated corporate governance. MM&K was established by Morgan Grenfell & Co. Limited in 1973. In our field, we regard ourselves as the longest-serving independent advisory firm operating in the UK.

Whilst our clients include large listed companies, others are mid- and small-cap companies, which are also subject to the Code. We work with private and private-equity-backed companies, some of which will wish to float in due course. Those companies face important decisions about where to seek a listing for their shares. Corporate governance regimes are factors to be considered when making those decisions. Similar considerations face those of our overseas clients which are contemplating a listing.

We believe that all companies, public and private, should operate within a robust corporate governance framework which is appropriate for their business and its circumstances. That means we also believe corporate governance needs to evolve as businesses and the economic, fiscal, political and social environments in which they operate evolve.

We also believe that, in addition to appropriate and proportionate governance frameworks, clear communication and engagement with shareholders and other stakeholders is fundamental to a successful business in the long-term and to the successful implementation of corporate governance codes – and that sustained success requires those communication channels to function in both directions.

A significant proportion of the proposed revisions to the Code relate to restoring trust in audit and governance. Clearly, where trust has been eroded, steps must be taken to restore it. That may take some time. A different but related driver of reform is a widely recognised need to encourage greater numbers of companies to list their shares in London, following the recent exodus and reduction in the numbers of London IPOs. A third factor is concern about the increasing length of annual reports, which makes it difficult for users to glean the information of most interest and importance to them.

The past two years or so have seen a shift in the balance of UK corporate governance legislation and regulation. There is now a clear separation of and a specific focus on the

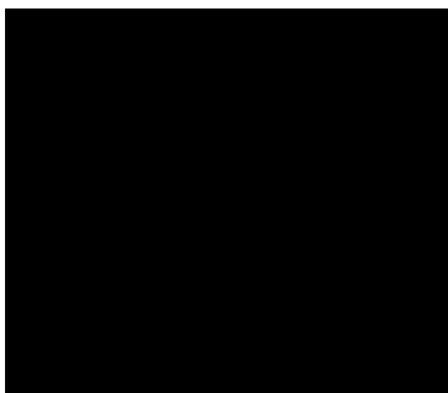
largest companies. Proposed legislation has been developed which is aimed exclusively at those companies, which have the greatest influence on, and present the greatest risks to, the economy. This shift is significant. It provided an opportunity to create a new Code, which recognises distinction between the largest companies and other listed Code.

In our view, that opportunity has not been taken. Moreover, proposed revisions to the existing Code impose additional compliance/reporting requirements for all Code companies by reference to legislation which is not, and was not intended to be, applicable to them. As a result of this and generally, we are concerned that the proposed revisions:

- do not adhere to the principle of proportionality
- will increase the burden of compliance, in terms of both time and costs, for many companies (and, in particular, audit committees) that do not have the resources, and should not be required, to bear it
- risk presenting London as a less attractive market for both existing and prospective listed companies
- are likely to result in yet longer annual reports.

The following pages contain our detailed responses to each of the consultation questions. We hope they will be helpful to the FRC's continuing work on the Code. If there is anything you would like to discuss, please do not hesitate to contact us.

Yours faithfully



MM&K response to FRC consultation on UK Corporate Governance Code 2023
13 September 2023

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?

This is clearly the intention but it is not possible to comment on how successful it may be until after the revised Code has been finalised and implemented. We believe companies should report the outcomes of their actions, in order to provide greater clarity by informing stakeholders of what the company has achieved, not what it hopes to achieve and to enable stakeholders to make decisions about how well management is running the business.

The success of the Code requires constructive engagement between companies and their shareholders (and other stakeholders). The benchmark against which outcomes are to be reported and will be assessed is fundamental.

There has been a shift in the UK corporate governance landscape. A clear distinction now exists which separates the UK's largest companies from the rest. Yet, significant elements of the proposed new Code, which applies to all London premium listed companies require all Code companies to measure themselves against the benchmark set for and intended only to apply to the largest companies.

Comply or explain will not level the playing field or guarantee proportionality if investors (and other stakeholders) as is likely, assess explanations of non-compliance in the context of measures designed only for large companies
.
By applying a top-down approach that measures all Code companies by the rules and regulations designed only for the largest, the revised Code will increase the burden of compliance for companies least equipped to bear it and potentially risk deterring others from listing their shares in London.

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?

ESG policies, including climate-related objectives should be embedded in companies' business strategies. Companies' strategic reports should disclose their climate and transition plans and report on the progress they have made annually in pursuit of those plans, not just their ambitions and not, additionally, within the Code.

Companies that have included climate-related targets in their executive incentives make the relevant disclosures in their directors' remuneration reports.

Proportionality will be a significant factor, as there can be no single benchmark for the impact businesses will have on ESG factors.

A requirement for individual directors to have regard to the impact of the business on the community and the environment is already enshrined in s.172 of the Companies Act 2006, on which all companies, other than small companies, must report in their Strategic Reports. This overlaps with Code provisions requiring similar disclosures in the Annual Report.

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

We believe that constructive engagement between companies and their shareholders (and other stakeholders) is fundamental to the successful implementation of the Code. See our response to Q1 above. All companies can be expected to do is make their best efforts to engage. The proposed amendment to Provision 3 is unnecessarily burdensome and, of itself, is not likely to increase the amount of engagement.

Section 2: Division of responsibilities; Section 3: Composition, succession and evaluation

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?

There is confusion (and overlap) between the requirement in Principle K for board performance reviews to "consider each director's commitments to other organisations and their ability to discharge their responsibilities effectively" and Provision 15, which requires all "significant director appointments should be listed in the annual report, describing how each director has sufficient time to undertake their role effectively in light of commitments to other organisations".

Likely outcomes are Is a greater compliance burden and uncertainty. Foer example, is the reference to "commitments" in both Principle K and Provision 15 intended to be a reference to the same type of appointment, i.e., other directorships, or is the scope of Principle K intended to be wider than the scope of Provision 15?

The language in both Principle K and Provision 15 should be consistent and their scope clarified. The first line of the proposed Principle K refers to performance in its first line. Therefore, in our view, the final sentence of the proposed new Principle K is unnecessary repetition of Provision 15 and could usefully be deleted without detracting from the purpose of Principle K. See also our response to Q5 below.

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?

Whilst we support greater transparency, we do not think that Provision 15 will achieve that goal. It is not clear to us how any company will be able to describe succinctly and with clarity how each director makes the time to fulfil their commitments, providing institutions and agencies which adopt a box-ticking approach to compliance with an incentive to continue that unhelpful practice.

Investors and other stakeholders, who become concerned about directors' other commitments, should have sufficient information from meeting attendance disclosures, engagement practices and disclosures about board and company performance to ask relevant questions of the board.

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

The proposals focus on the importance of diversity and inclusion, about which disclosures are required by the Companies Act and Listing Rules. The proposed amendments do not strengthen those requirements.

Reporting on outcomes, board composition, climate change, board performance and external appointments is relevant and in tune with important issues raised by stakeholders but there is some concern about over-regulation and the burden it places, particularly, on smaller quoted companies that do not have resources in-house to bear the additional load. Neither those companies, nor others deciding whether to choose the UK as the place to list their shares (whilst likely to recognise the need for a governance framework that is fit-for-purpose) are likely to react positively if they perceive that UK corporate governance is set to become disproportionately more onerous and prescriptive.

Perhaps a better question would have been; do the proposals create, without duplication, a Code that is proportionate and more appropriate for the current business landscape than the current Code? We think that an opportunity has been missed to produce a new Code that recognises and reflects the shift which we observe in the focus of UK corporate governance (see our comments in response to Q1) and seeks to impose provisions designed exclusively for the largest companies on all Code companies.

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?

We support the principles that boards should include an appropriate range of diverse personal characteristics and skills and that board appointments should be made without discrimination, either direct or indirect, based on merit and objective criteria.

We support also the principle that a management succession plan should be in place for directors and senior management. Principle I, which substitutes one (broader) list for a list of more closely defined items, does not need to state any more than that.

Board composition is a matter for each company, based on the needs of the business. English law has developed a detailed set of principles and provisions which address discrimination and of which company employment lawyers and HR departments will be fully aware.

There are several sources of guidance on diversity disclosures (Listing Rules, DTR, the Code). Subject to the principle of comply or explain, in scope companies are required to disclose against diversity targets. But, as the FRC has noted, many companies regard those targets as a compliance (box-ticking) requirement and disclose only the numbers.

Narrative reporting would help stakeholders understand how individual companies apply diversity and inclusion to their specific business needs and make decisions accordingly. But there is a risk that annual reports, already considered to be too long may become even longer.

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

In essence, Provision 24 requires the nominations committee to report on the way it has implemented the company's diversity and inclusion policy and succession plans in the relevant financial year for both board and senior management roles.

To comply with the requirements of Provision 24, a company must have a D&I policy and a succession plan in place, or explain why they have not been adopted. We agree this should contribute to transparency on those subjects.

Board performance reviews

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 support the proposed adoption of the CGI recommendations, subject to the application of comply or explain and the principle of proportionality, because it will not be appropriate for all listed companies to carry out performance review of the same breadth and depth or to commission an external review.

It is important that companies understand how their policies are perceived by those who are affected by them, both inside and outside the company. It would be helpful for the revised Code to emphasise the importance of disclosing how the board performance review has taken account of the views of the wider workforce, shareholders and other stakeholders.

Section 4: Audit, risk and internal control

Audit Assurance Policy

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

No. Only PIEs should be required to prepare an AAP (and a Resilience Statement) in accordance with the proposed legislation designed to apply exclusively to those companies. We recognise the importance of the need to restore trust in audits and, where trust has been eroded, it must, of course, be restored. That said, the Code should not be used as a back-door method of extending legislation designed for and applicable to the largest companies to all Code companies. That approach indicates a failure to recognise the shift in focus of the UK's approach to corporate governance (see our response to Q1 above) which now differentiates between the largest listed companies (based on employee numbers and turnover) and other smaller entities.

The principle of proportionality is fundamental to this issue. Trust is at its lowest in relation to the largest companies (PIEs) which pose the greatest risks and have the greatest impact on the economy. The FRC recognises that the legislation applies only to PIEs – it would not be consistent with the principle of proportionality, even allowing for "comply or explain", for this to be extended to non-PIEs, because explanations of non-compliance with the Code will inevitably be judged against a legal framework not intended to apply to a significant number of Code companies.

The argument that a single requirement for all companies would be easier to comply with and monitor is not compelling. If there is deemed to be an overarching reason for all companies to be subject to a standard set of regulations, why is it that the legislation applies only to PIEs? Smaller companies may appoint an audit committee comprising two members (compared to a committee of three in larger companies) yet the requirement for all companies to prepare an AAP would subject a committee of two (whether it complies or explains non-compliance) to a workload of similar magnitude to the workload for a committee of three.

Whilst some might seek to argue that smaller companies could increase the size of their audit committees, the bottom line is that there will be a higher and disproportionate, level of compliance and cost (the more so if proposals for a Minimum Standard for Audit

Committees are adopted) for those companies which are least equipped to bear it and have least impact on the economy.

Audit Committees and the External Audit: Minimum Standard

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?

No. The Minimum Standard applies to FTSE350 companies. Like the AAP and Resilience Statement, it is not intended to apply to all companies. Moreover, Paragraph 3 of the Introduction states "Companies which are not within the FTSE 350 index are not required to apply this Standard."

Both the Minimum Standard and AAP are parts of a process to restore trust made necessary, principally, by the behaviour of a minority of large companies. Bringing greater numbers of smaller listed companies into the ambit of the Minimum Standard increases the regulatory burden on those companies, which represent a lower risk to the economy and are less well-equipped to bear the additional load.
These proposals follow the precedent, referred to above, of seeking to apply regulations designed for larger companies to all Code companies for which they were not designed or intended. Under the banner of avoiding duplication, these proposals sacrifice the principle of proportionality. Please see also our response to Q10 above.

That said, stakeholders need assurance that companies are applying high standards of probity to the management of their financial affairs. There would be no duplication and it would focus compliance requirements appropriate for companies best equipped to bear them (and for which they are most relevant) if the Code were to require audit committees of:

- *PIEs to meet the AAP and Resilience Statement requirements*
- *FTSE350 companies to comply with the Minimum Standard for FTSE350 companies and*
- *all other Code companies to comply (or explain non-compliance) with provisions which are proportionate in relation to their size, status and the risks they pose to the economy reduce the compliance requirements for those companies.*

Sustainability reporting

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. The proposed expansion of the role of audit committees is a burden that audit committees should not be required to bear alone.

Narrative reporting on sustainability and ESG metrics should always be reserved for the whole board, based on information and recommendation of an ESG and sustainability committee, in cases where the creation of such a committee is appropriate and proportionate in relation to the size of the company and the nature of its business.
In our experience (larger) quoted companies have formed ESG committees, reporting either to a non-executive director or the CEO, to formulate and monitor ESG policies. In smaller companies, ESG and sustainability are matters for the whole board.

Our research shows that, across the globe, increasing numbers of companies are incorporating ESG performance targets in their executive incentive plans. It is the responsibility of their remuneration committees to monitor and report on management's performance against those targets and to explain how those targets support business strategy and culture.

These proposed Code changes seem to be based on an assumed connection between the oversight of financial performance and ESG reporting. As a result, the argument goes, audit committees' experience of setting policies and frameworks, which could be adapted to ESG metrics, places them in the best position to assess the soundness of the methodologies and policies management uses to develop its metrics and other ESG disclosures. We do not agree.

ESG targets are not (yet) expressed in financial terms. A similar comment might be made about remuneration committees, which are, increasingly, charged with incorporating ESG targets in incentive plans and reporting on reasons, benefits and results of so doing. We do agree that ESG factors and sustainability have become essential considerations for companies throughout the world. They should be embedded in business strategy, formulated, reviewed and reported on by the entire board.

Risk Management and Internal Controls
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?

Whether these provisions will prove to operate proportionately is likely to emerge over time and will depend on the way in which the revised Code is applied.

For consistent and to avoid further increasing the burden of compliance, the wording of the new Principle N should track the wording in the Listing Principles.

The second part of existing Principle N is unnecessary. Provision 29 requires companies to carry out a robust assessment of their emerging and principal risks (it should be a matter for their boards to decide how best to carry out that assessment) and Provision 32 requires companies to take account of principal risks when assessing their prospects.

Company risk profiles and appetites differ. To make the declaration required by Provision 30, a company will have to apply stress-testing techniques to scenarios in which its principal risks are deemed likely to materialise. Whilst this is common in some sectors, might be new to and burdensome for, smaller quoted companies.

We note that the FRC's intention is that the proposed revisions to risk management and internal controls should fit "within a principles and provisions based 'comply or explain' Code". However, to comply with the Listing Rules, a company must apply the Principles of the Code and may invoke comply or explain only in relation to its Principles
.
Engagement between companies and their shareholders and other stakeholders is fundamental to the success of the Code. Making engagement work is as much the responsibility of shareholders and other stakeholders as it is of boards. If the engagement process works, it should produce proportionate outcomes and clear reporting.

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?

It is important that monitoring is carried out throughout the reporting period and the resulting information fed through to the board as an agenda-item at each board meeting. The most up-to-date information would be provided by a declaration as at the latest practicable date prior to the publication 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?

In accordance with the existing Provision 29, "monitoring and review should cover all material controls, including financial, operational and compliance controls". The list of what is included is not exhaustive. It should be for the board to determine what is material. Shareholders and other interested stakeholders will have an opportunity to challenge the board following publication of the Annual Report, if they are not satisfied with the board's decision or the level of disclosure.
The current wording works. The proposed amendments are likely to increase the burden of regulation unnecessarily and contribute to longer Annual Reports.

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?

This is a difficult question, as what constitutes an appropriate risk management and internal control system will vary depending on the nature of the business and its appetite for risk.

In practice, only high-level guidance on risk management and control is likely to be feasible. Shareholders and other stakeholders are likely to seek to understand that companies have in place a system to:

- *identify risks to the business*
- *prioritise; identify principal risks and the likelihood of those risks materialising*
- *identify the resources needed to manage and control risks*
- *identify the steps to be taken to protect the business if risks materialise*
- *identify and test scenarios illustrating the potential effects on the business (financial, reputational, operational) if risks materialise*
- *continually review the above and report to the board*
- *engage with shareholders and other stakeholders.*

It should be a matter for individual companies to design the system, covering those elements, that works best for them.

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?

An effective risk management and control system or framework might include the elements listed in our answer to Q16 above.

The working definition of a material weakness (i.e., "A fault, deficiency or failure in the design or operation of the risk management and internal control framework, such that there is a reasonable possibility that the company's ability to identify, assess, respond to or monitor risks to its strategic, operational, reporting and compliance objectives is adversely affected") begs a question about who decides what is a "reasonable possibility"?

It should be clear in the revised Code provisions that this is a matter for the board, as indicated in paragraph 66 of the FRC's consultation document?

The board's declaration (Q14) about its risk management and internal controls should contain an explanation of how the board has monitored and reviewed their effectiveness, providing shareholders and other stakeholders with an opportunity to make their own decisions about the appropriateness of the board's approach.

Paragraphs 68 and 69 on Risk and Internal Controls Guidance, which, consistent with the principle of proportionality, explain the purpose of the updated guidance (to be published later this year) is to allow companies flexibility to adapt it to their unique circumstances and characteristics.

The revised Code provisions and related guidance should clearly reflect this intention.

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

There is a tendency to regard risk in the context of its financial impact. Revised Provision 29 requires an assessment of principal risks, without limit, and revised Provision 30 requires the board to review all material controls, including, operational, reporting and compliance controls.

There is no specific reference to reputational risk, which might have a significant financial effect on a company's business.

Increasingly, stakeholders, including those seeking employment with a company, are looking to the company's policies and approach to diversity and inclusion, climate change, the environment and its supply chain. Companies that ignore the current mood of stakeholders/potential stakeholders and are seen as paying only lip-service to these issues, may come to find that they miss-out on talent or investment, to the (financial) detriment of their businesses.

Going Concern

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)?

On balance, we think the current Provision 30 is no longer necessary.

Listed companies incorporated in the UK are required by Listing Rule 9.8.6R (3) to include in their annual financial report a statement that the business is a going concern, together with supporting assumptions or qualifications as necessary. In order to make such a statement, the directors will have considered and discussed with its auditors, whether the company is able to meet its obligations over the next 12 months.

In addition, proposed legislation requires the Resilience Statement to be made by PIEs to include a going concern statement. It is not consistent with the principle of proportionality for the Code to require all Code companies to adopt/report against standards designed for and applicable only to large companies (see also our comments about proportionality in responses to Q1 and Q10).

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

Yes, this is important information for shareholders and other stakeholders.

That said, the proposed Code amendments are not proportionate and would impose a significantly greater compliance burden on small and medium-sized companies. Currently, the Code applies to all premium listed companies, wherever incorporated. The Draft Companies (Strategic Report and Directors' Report) (Amendment) Regulations 2023 will apply only to 750:750 PIEs incorporated under the Companies Act 2006. Overseas companies are not bound by the Companies Act.

The proposals will create a situation in which UK companies that are not 750:750 PIEs and non-UK companies that meet the 750:750 criteria but are not bound by the Companies Act are required to report based on criteria in legislation that is not applicable to them – and, in the case of UK non-PIE companies, that is not proportionate, being designed for larger, more complex businesses.

Comply or explain offers some flexibility in relation to Code Principles but setting the benchmark for all Code companies at the level required for the UK's largest companies is disproportionate and potentially risks deterring companies from listing in the UK. The revised Code provisions should not require Code companies to report and make statements in accordance with laws and regulations that are not applicable to them.

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?

This cannot be known until the new revised Code has been finalised and implemented. Comply or explain and the intention to take a proportionate approach to reported disclosure are helpful. But comply or explain will be no guarantee of proportionality in practice, particularly if the benchmark against which non-PIEs must comply or explain is the standard set for the largest companies and unless there is improved and constructive engagement between companies, their shareholders and other stakeholders.

As it stands, we are concerned that there is a bias towards applying to all Code companies proposed provisions designed exclusively for PIEs. Some of those provisions are based on proposed new legislation, which will not be applicable to non-PIEs and by which overseas companies will not be bound.

This top-down approach, whilst perhaps is understandable based on recent events, may be an attractive means of delivering a strong message. However, it looks heavy-handed, will increase the burden of compliance for many and risks deterring companies from listing in London. Please see also our response to Q20 above.

Section 5: Remuneration

Changes to strengthen links to overall corporate performance

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

Whether those links become stronger and more transparent, will emerge over time but insofar as:

- *Principles O, P and Q emphasise the importance of transparency, links to long-term success, a requirement to report outcomes aligned to performance; and*
- *Provision 34 requires remuneration policy to identify risks and measures to mitigate risks, provide for proportionate outcomes and avoid rewarding poor performance,*

there is a stronger focus in the proposed revised Code on the links between pay and performance and, thereby, an indication that regulators and stakeholders will be taking a closer look at those links.

That said, it is unlikely that companies will be able to make any useful attempts to comply with the requirement in Principle P that remuneration outcomes should be aligned with company values. As this requirement is embedded in a Principle, companies will not be able to explain examples of non-compliance.

A more appropriate requirement, and one with which companies should be able to comply (and make clear disclosures) would be that remuneration policy should be aligned with company values.

Remuneration policy is subject to a binding shareholder vote. Shareholders have an annual opportunity to vote (albeit a non-binding vote) on the application of the approved policy and to challenge companies if outcomes are not aligned with the approved policy.

Malus and clawback

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

Malus and clawback provisions are routinely included in the rules of both cash- and share-based executive incentives. We think this, not service agreements, is the appropriate place for those provisions. We note that there is no requirement in the proposed Provision 39 also to include malus and clawback in directors' service agreements, if malus and clawback provisions are included in "other agreements or documents".

Service agreements are individually negotiated. The rules of incentive plans are applicable to all participants. Whether malus and clawback provisions are applied should be a matter for the remuneration committee to determine, taking into account all relevant facts.

That said, we do not think that including malus and clawback provisions in the annual directors' remuneration report will materially improve transparency. Please see our response to Q24 below.

Changes to include the quality of reporting

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

Yes, the terms of the old (deleted) Provision 40 are reflected elsewhere in the proposed revised Code.

Principle P could usefully include risk in the list of the factors to which remuneration should be aligned but the importance of linking remuneration to risks is covered in Provision 34. Clarity, also referred to in Provision 34, is a better term than simplicity.

The proposed new Provision 40 concentrates exclusively on the requirement for the annual remuneration report to include details of malus and clawback provisions.
In practice, the wording of the first (and, possibly, second) bullet is likely to track the relevant incentive plan rules; useful to avoid having to refer to a second document and to provide context for Information required by the third bullet.

We do not see any value in requiring companies to report a five-year history of the use/non-use of malus and clawback provisions.

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

Remove. English law (Equality Act and Companies Act) requires disclosures on pay gaps and ratios. There is no need for the Code to duplicate those requirements. Relevant information about relative pay levels should be provided through disclosures on diversity and inclusion.

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?

We have no comments at this stage.

MM&K Limited
13 September 2023