

2 December 2013

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Dear sirs

The FRC has invited comments on its consultation paper of October 2013 regarding three specific proposals. This is Next plc's response.

1 *Extended clawback provisions*

We believe that it is reasonable for the Code to require companies to state whether or not they have clawback and/or withholding provisions in respect of variable pay and what arrangements they have in place to avoid 'payments for failure'. We would hope investor pressure, and the specific circumstances of each company, should be sufficient to ensure that directors implement appropriate measures. For instance, companies which undertake 'long tail' business, and where profit may have to be a best estimate in any year, (e.g. banks, insurers and long term construction contractors), have entirely different financial and risk profiles from companies engaged in much shorter term businesses, e.g. retailers, where profit and cash flow is more immediately generated and rarely subject to post facto adjustment.

Adoption of terminology consistent with the Regulations would be welcomed although the Code should avoid unduly prescriptive specification of potential circumstances that might trigger clawback and/or withholding. This is an area which should be left to common sense and Remuneration Committee discretion as it is quite possible that over-prescription could give rise to unanticipated consequences or an overly legalistic approach by all parties.

There are practical considerations relating to the application of clawback: does the employee/director concerned have the resources to pay back the money? Is the money repaid net of tax or gross? Can the employee/company recoup PAYE or NIC from HMRC? On this point, sensible action by HMRC to repay automatically such deductions would clarify and give certainty.

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If the person involved is still employed it would seem sensible to leave it to Remuneration Committee discretion and professional advice to allow a fair judgement to be made on each case and whether a withholding of potential future bonus payments, or unvested LTIPs, might not be a better means of achieving an end result that was fair to shareholders.

2 Appointment of executive directors to other listed Remuneration Committees

We believe that company boards benefit in a wide variety of ways from having the expertise and current knowledge that executive directors from other companies can bring. We do not believe that there is any evidence to suggest that an executive director on another board's Remuneration Committee can be perceived to have a 'personal interest in maintaining the status quo in pay setting culture and pay levels'. And in any event no executive from the same industry should serve on the Board or Remuneration Committee of a competitor in the same sector. We also note that numbers of 'executive NEDs' have generally declined over the last decade and there is no statistical linkage over the same period between the level of votes against remuneration reports and the presence of an 'executive NED'.

We are also concerned that it is dangerous for governments and regulators to interfere with the precise membership of boards or committees. Once it is accepted that outside authorities (rather than investors) have the ability to determine which NEDs may serve on the Remuneration Committee, where else might it be thought that perceived conflicts of interest may lie? Might a serving FD be an unsuitable NED on an Audit Committee?

Appointments to Remuneration Committees, and to other Committees and to Boards, should be left to company Nomination Committees and to the proprietors of those companies to judge who is or is not suitable. The intervention of government or regulators to 'fix' a matter that is not in need of repair is at best an unhelpful distraction.

3 Votes against remuneration resolutions

We believe that there is no need to make any additional Code provision in this area. It is important that the principle of one share one vote is maintained and that no additional weight is given to the interests of minorities who fail to secure the support of their fellow shareholders on AGM or EGM votes. There is a material danger that, by setting an artificial threshold as to what is considered to be a 'substantial' level of dissent, the minority are effectively given a higher level of potential influence. In the real world of company ownership and governance a sensible chairman will always seek to discuss with all institutional shareholders any matters of concern that they may voice throughout the year. Indeed, with annual director elections this is the natural course of action. However, there may be many reasons why a remuneration resolution attracts a material adverse vote, and not all shareholders follow the same approach. There is nothing inherently wrong with dissent, indeed it may spark constructive challenge.

It is artificial to determine that e.g. 20% represents a 'significant' vote against. Where there is, for example, an entrenched large shareholder with diametrically opposed views to those of the board it may be the case that a remuneration resolution that secures 'only' a 60% majority is in fact a fair expression of the will of the bulk of the shareholders. Minority interests must be respected and protected, as they are under the Takeover Code, but they must not be permitted to have a greater level of influence than their investment in the company. It must also be sensible to ensure that regulations do not provide a platform for minority dissenters to tie up a lot of company and management resource to no good effect.

It follows from this that we oppose any specific Code requirement to report to the market in circumstances where the views of a minority of shareholders on a remuneration matter are not generally supported by the majority of shareholders.

4 Other possible changes

We do not consider it is necessary for further revisions to be made to section D of the Code. In our view it works reasonably well. Time should be given to the market to allow practice to evolve both to meet specific company requirements and also to meet the needs of company proprietors.

Yours faithfully

A handwritten signature in black ink, appearing to read 'A J R Mckinlay', written in a cursive style.

A J R Mckinlay
Company Secretary
Next plc