



Financial Reporting Council

# **CORPORATE GOVERNANCE** **AGMs: AN OPPORTUNITY** **FOR CHANGE**

## **OCTOBER 2020**

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# EXECUTIVE SUMMARY

The Annual General Meeting (AGM) is an essential governance event for companies and their shareholders. It should provide transparency, accountability and integrity, to company governance and decision-making. It is an opportunity for:

- The board to present the company strategy and performance, and other matters to investors.
- Shareholders to hold the board to account through Q&A and discussion.
- Shareholders to exercise their vote after consideration of the information presented.

The COVID-19 pandemic challenged UK listed companies to hold an AGM at a time when social distancing rules meant that the traditional approach to an AGM (a meeting where shareholders and members of the board met in a large conference centre or meeting space) was no longer permitted.

In March the FRC supported guidance issued by the Chartered Governance Institute which set out how companies could hold a legal AGM during the pandemic. Additional guidance promoted the importance of shareholder engagement and in June the introduction of the [Corporate Insolvency and Governance Act 2020](#) gave companies additional certainty on how AGMs could be held.

As the ‘AGM season’ progressed it became apparent that companies took very different approaches to holding their AGMs. Many held meetings with only one or two members present (usually the company secretary and the chair), while others embraced technology to ensure that shareholders were able to participate effectively.

We found that of 202 AGMs held between March and August, 30 did not enable any shareholder engagement through Q&A before or during the AGM. Whilst other companies were

able to facilitate AGMs with on the day audiocasts or webcasts and live voting.

Principle D and Provisions 3 and 4 of the UK Corporate Governance Code set out good practice for engagement with all stakeholders including shareholders. To achieve good governance, especially during difficult times such as the pandemic it is critical for boards to continue to engage and where possible increase engagement activities, as business models and long-term strategy come under increasing pressure.

Therefore, we have suggested a number of ways that such engagement might be improved and made more effective.

## Best Practice For Companies:

Annex 1 includes best practice guidance that companies should consider when planning and conducting future AGMs.

In addition, we believe that there should be a significant increase in the use of technology to facilitate robust virtual interaction during an AGM enabling greater access for all shareholders to ensure there is an opportunity to hold boards to account.

All shareholders should have the ability to hear from the board before voting on resolutions, therefore it is best practice for companies to make every effort to ensure that shareholders should have the ability to vote following presentations from the board.

#### **For Shareholders:**

Engagement between companies and shareholders would be improved if all shareholders are asked to provide an email address when purchasing new shares and the address passed on to companies.

We ask all shareholders to ensure that they respond to requests to move to electronic communications where possible.

To improve flexibilities, we encourage proxy advisors and investors to support resolutions to amend Articles of Association where clarity on the use of such flexibilities is built into the resolution and supporting documents.

#### **For Stakeholders:**

We propose to bring together a Stakeholder Group on this matter which includes government, companies, and investors and their representatives to consider recommendations for legislative change, propose alternative means to achieve some of the flexibilities whilst maintaining the integrity and objective of the AGM.

#### **The FRC will also continue to work with BEIS on the following matters:**

Consider what measures may need to be brought forward to ensure that AGMs can take place either virtually or as a hybrid during 2021 and how additional clarity can be provided on the interpretation of s.311 and s.360A of the [Companies Act 2006](#) to introduce flexibilities for all companies.

#### **Review**

For this review, we spoke with a cross-section of stakeholders, shareholder organisations, companies, company secretaries, technology providers, registrars, legal representatives, proxy advisors and others. We would like to thank all participants for taking the time to engage with this work.

There was general agreement that maintaining shareholder engagement and democracy is critical to maintaining the UK's reputation for setting high standards for corporate governance. Whether the AGM as a yearly physical meeting remains to be the right approach in its current format is an issue that needs further debate.

We have highlighted those practices that did not support good shareholder engagement – namely 'closed meetings' consisting of a small quorum with

no shareholder engagement prior to, during or after the meeting. We have also considered how companies can embrace different levels of new technology to improve the experience for both companies and shareholders and build on the public's acceptance of conducting business via digital channels.

One size does not fit all companies and all shareholders, the aim of this report is to open up a further debate between stakeholders to determine how future AGMs can be conducted to ensure that the maximum number of shareholders can engage if they choose to do so, and to encourage companies to consider a mixture of approaches in line with their size and shareholder base.

For some, this might be a fully virtual meeting, a hybrid meeting is something that may well be suitable for the majority, while others may decide that a traditional physical only meeting is the most effective way of engagement. We hope that ultimately companies will take an approach that is most effective and efficient for both the company and all shareholders.

The report recognises that some time will be needed for everyone to be confident in the technology, and in the long-term clarity on the interpretation of the law will be necessary.

# INTRODUCTION

The COVID-19 Pandemic presented substantial obstacles to the organisation and holding of Annual General Meetings. Despite the severe restrictions on public meetings the legal requirement to hold an AGM remained. This presented challenges to listed companies, forcing them to undo and reorganise arrangements already underway for the 'AGM season'.

The period from March to June drew significant attention not only to AGM arrangements but to the role of the AGM itself. The 'AGM Season' usually receives publicity when there are significant votes against management resolutions on remuneration or board membership, or where there are high-profile campaigns relating to environmental, social and governance issues affecting company stakeholders. This year the purpose of the AGM, the importance of shareholder engagement and the role of technology came to the fore.

Companies needed to ensure that the business of the AGM took place, that votes were cast, and that business continuity was assured. Companies should be applauded for achieving this under very trying circumstances. Nevertheless, the differing approaches taken by companies drew both support and criticism from investors and other stakeholders.

We now have a unique opportunity to consider the purpose of the AGM, what it offers a company, its shareholders, and other stakeholders. We can learn lessons from this difficult period and look at how best the AGM can serve the interests of individual companies and shareholders in the future.

This report and best practice guidance has been produced by undertaking desk research and discussions with a cross-section of stakeholders, all who have an interest in AGMs, including but not limited to companies, shareholders, technology providers, registrars and representative bodies of those stakeholders. It considers the approaches companies took, how shareholders interacted with the AGM, and what makes an effective AGM for companies and shareholders. We also look at how the UK can benefit from the significant improvements in technology, especially our newfound ability to embrace digital meetings.

## The purpose of the AGM

The Companies Act 2006 requires a UK-incorporated public company to hold an AGM within six months of its financial year-end. The notice of an AGM must be sent at least 21 days in advance of the meeting being held. The law sets out some requirements for the meeting arrangements and certain resolutions that must take place, but it does not specify what matters should be put before the meeting. Nevertheless, there will necessarily be several issues that must be dealt with each financial year and dealt with at the AGM.

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We now have a unique opportunity to consider the purpose of the AGM, what it offers a company, its shareholders, and other stakeholders.

These include:

- presenting the annual accounts and reports;
- re-electing/appointing directors;
- appointing/re-appointing the company's auditors;
- authorising the directors to allot shares and disapplying pre-emption rights;
- authorising the purchase by the company of its own shares;
- if a final dividend has been recommended by the directors, declaring that dividend; and
- voting on the directors' remuneration report and policy

The UK Corporate Governance Code 2018 emphasises the importance of engagement with shareholders. All companies that follow the Code should apply the Principles and report against the Provisions. This includes ensuring effective engagement with, and encouraging participation from shareholders as set out in Principle D and associated Provisions.

We recognise that many institutional investors regularly engage with large companies through investor relations teams, and usually, these investors will vote in advance of the AGM, as they have had access to directors and other company officials.

The AGM offers all shareholders an opportunity to question the board, directly engage with management, hear the views of other shareholders, and seek further information prior to voting. Currently, it is largely retail shareholders who attend and vote at AGMs, but should they wish to there remains an opportunity for all investors to attend. In some cases, companies extend the invitation to attend the AGM to guests – who could be other interested stakeholders.

The AGM is not simply about voting – although exercising a right to vote is essential to uphold good governance – it is also about gaining an understanding of board decision-making in relation to company strategy, the culture of the board, and in some cases hearing the views and perspectives of others attending the meeting. It is an opportunity to see how the board interact and respond to questioning, demonstrating that they as directors are 'on top' of company matters. For retail shareholders, in particular, it is right that they have the opportunity like institutional investors, majority shareholders, or private equity investors, to receive information openly and transparently.

The FRC serves the public interest by setting high standards of corporate governance and stewardship. We support the AGM as an important tool for the board of directors to demonstrate transparency, accountability, and integrity in the governance of the company, and for all investors to exercise their right to attend and vote.

Although concerns have been raised about the way some companies held their AGMs this year, many introduced innovative approaches, and for the first time, approached the meeting in a very different way.

We have an opportunity for all parties to look back at this AGM season and consider how both companies and shareholders can improve the AGM and take on board different approaches, and as a result encourage more engagement from all shareholders including those who are unable to attend physical meetings due to their own location or working patterns.

It is easy to envisage a new era for AGMs which incorporates some of the technologies that we have all adapted to and become reliant on, whilst keeping those elements of the AGM that make it an important event for companies and investors.

An effective AGM offers opportunities for:

- The board to present the company strategy and performance and other matters to investors.
- Shareholders to hold the board to account through Q&A and discussion, prior to voting.
- Shareholders to exercise their vote after consideration of the information presented.

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# THE 2020 'AGM SEASON'

## How were AGMs conducted during the 'AGM Season'?

By March, many companies had already issued their notice of meeting, assuming that AGMs would go ahead as normal. As the pandemic began to impact company business and restrictions on public gatherings came into force, companies had to consider the implications quickly; and make changes that both complied with the law and ensured that the board had investor approval to continue with company business into the next year.

Companies adopted different approaches to their AGM, and these can be grouped into the following broad categories:

### 'Closed' meetings with a quorum in attendance

- Shareholders were not offered an opportunity to ask questions prior to or during the meeting. All shareholders requested to vote in advance via proxy.
- Shareholders were invited to submit questions in advance of the AGM with some or all answers placed on the company website following the AGM. All shareholders requested to vote in advance via a proxy.

### Meetings with some shareholder engagement

- Board members available on the day to present company information via audiocast or webcast, shareholders able to submit questions prior to the AGM, selection of questions answered during the AGM, others answered on the website following the AGM. All shareholders requested to vote in advance via a proxy.

### Meetings with more shareholder engagement

- Shareholders were able to engage virtually with board members on the day of the AGM. This predominantly included an option to submit questions just before the start of the meeting and an option to submit questions during the meeting. Shareholders were able to vote on the day via a voting app.

## Analysis of AGMs March – July 2020

We have undertaken some internal analysis of the types of meetings held during the 'AGM season'.

## Methodology

- The latest available 'Notice of AGM' or 'Update on AGM' provided by the company, as per the database Practical Law, was used to identify the company's plans for 2020 AGMs.
- A sample of 202 FTSE 350 companies who published a notice of AGM from 10/03/2020 to 30/07/2020 was analysed.
- A 'closed meeting' was identified if the company expressed either one or all of the following sentiments:
  - Explicitly restricting shareholders from attending the AGM with no webinar or audiocast alternative.
  - Providing a live webinar or audiocast be provided but without the ability to partake in live voting and Q&A.
  - Describing the AGM as a 'closed meeting'.
  - Strongly encouraging shareholders to not attend or vote by proxy.<sup>1</sup>
- An 'open meeting' was identified as a company that expressed either one or all of the following sentiments:
  - Allowing shareholder access to the AGM as normal.
  - Providing a live webinar or audiocast **with** the ability to partake in live voting and Q&A.
- If a company did not mention COVID-19 or a disruption to the normal proceedings of the AGM, it was noted as such, and not in the open meeting category.
- If a company decided to adjourn their AGM as a result of COVID-19 it was noted as such.

<sup>1</sup> Despite not explicitly refusing shareholder entry to the AGM, we have considered these sentiments as a legal interpretation of the law and that shareholders should not or will not be able to attend the AGM

## Results

80.7% of FTSE 350 sampled companies held closed meetings due to COVID-19.

**Table 1**

Number	Percentage (%)
Number of open meetings	
30	14.9
Number of closed meetings	
163	80.7
No mention of COVID-19 or disruption to AGM	
8	4.0
AGM Adjourned	
1	0.5
<b>Total</b>	
<b>202</b>	<b>100</b>

Of the 163 companies that held closed meetings, 81.6% made arrangements to allow for shareholder Q&A with the board (Table 2). This was facilitated mainly through questions emailed to the company in advance of the AGM to either be answered at the AGM or have the answers posted to the website post-AGM.

**Table 2**

Number	Percentage (%)
Number of closed meetings that did mention Q&A arrangements	
133	81.6
Number of closed meetings that did not mention Q&A arrangements	
30	18.4
<b>Total</b>	
<b>163</b>	<b>100</b>

Of the 30 companies that held open meetings, 60% were facilitated through webinars or audiocast with live voting capabilities (Table 3).

**Table 3**

Number	Percentage (%)
Number of open meetings that were facilitated through webinar/audiocast	
18	60.0
Number of open meetings that were not facilitated through webinar/audiocast	
12	40.0
<b>Total</b>	
<b>30</b>	<b>100</b>

It is disappointing that 30 companies appear to have not made any arrangements for shareholders to ask questions of the board prior to or during the AGM. This has led to concerns that any move to fully digital meetings could disenfranchise retail shareholders.

30 companies held closed meeting and did not mention Q&A arrangements or other shareholder engagement opportunities before or during the AGM.

## Company Law Framework

The Companies Act 2006 sets the legal framework for company meetings, Jimmy Choo held the UK's first wholly virtual AGM in 2016. Since then there has remained some uncertainty as to whether s.311 (1)(b) along with s.360A of the Companies Act 2006 (set out below) supports virtual only AGMs.

The City of London Law Society Company Law Committee notes that there is uncertainty over whether a company can validly hold a general meeting on an entirely virtual basis. This stems from concerns over the interpretation of section 311(1)(b) which requires the notice of a meeting to state the "place" of the meeting. The meaning of this requirement is not clear:

### Companies Act 2006

#### 311 Contents of notices of meetings

- 1 Notice of a general meeting of a company must state
  - (a) the time and date of the meeting, and
  - (b) the **place** of the meeting.

#### 360A Electronic meetings and voting

- 1 Nothing in this Part is to be taken to preclude the holding and conducting of a meeting in such a way that persons who are not present together at the same **place** may by electronic means attend and speak and vote at it.
- 2 In the case of a traded company the use of electronic means for the purpose of enabling members to participate in a general meeting may be made subject only to such requirements and restrictions as are—
  - (a) necessary to ensure the identification of those taking part and the security of the electronic communication, and
  - (b) proportionate to the achievement of those objectives.

- If "place" can be interpreted as including an electronic platform, then a meeting could validly be held on a purely virtual basis.
- If, however, the courts were to interpret the requirement to state the "place" of a meeting as a requirement to state a physical place of the meeting, then a purely virtual meeting would not be valid. This interpretation is supported by the argument that the intent behind the EU Shareholders Rights Directive and the CA 2006 changes implementing this Directive (section 360A), was to facilitate electronic participation in meetings (but not to allow companies to remove from members the ability to attend a meeting at a physical place).
- Section 360A might be construed as allowing purely virtual meetings to validly be held. It states: "Nothing in this Part is to be taken to preclude the holding and conducting of a meeting in such a way that persons who are not present together at the same place may by electronic means attend and speak and vote at it." However, it could also be read as dealing with people who are at different physical locations (for example, in an overflow room), and it is not necessarily safe to assume that this provision would override the express requirements of section 311(1)(b) referred to above.

**These uncertainties have not been tested in court.**

Along with the Companies Act a company's Articles of Association may govern when a meeting can be adjourned or postponed, they state the number of people required for a quorum (usually two), and in many cases have similar references to a place or physical location required to host an AGM.

Without clarity on the interpretation of the relevant sections of the Companies Act 2006 and the lack of flexibilities within many existing company articles, companies were left unsure how their AGM could be validly held once the government introduced the strict stay at home measures. Most were left with no option than to hastily move their meeting to a location where the quorum could safely meet, normally company head office.

Therefore, many AGMs that took place in March and April were 'closed meetings', often with only the Company Secretary and one or two members of the board who held shares in attendance.

# TYPES OF AGM

## Closed meetings

The use of closed meetings without any additional opportunities for shareholders to engage - although legal – effectively disenfranchises retail shareholders, from their right to hold boards to account, and such meetings are not aligned with the importance of shareholders engagement set out in the UK Corporate Governance Code.

Companies whose AGMs were scheduled for later in the year had more time to consider how engagement could be encouraged and were able to benefit from the [Guidance issued](#) by The Chartered Governance Institute (supported by the FRC and BEIS), which clarified how companies could undertake a legal meeting without holding a physical meeting.

Updates to the guidance also highlighted the need to engage with shareholders.

Many companies chose to engage with their retail shareholders by asking them to submit questions prior to the AGM. This offered a way for shareholders to raise matters of importance to them and seek additional information on the company Annual Report and Accounts. However, this approach was generally inferior to the usual approach where questions can be asked following presentations from the board. The AGM is one of the few occasions when the whole board is able to gain a full understanding of the views of all shareholders. The AGM offers the final piece of the picture following any previous engagement with major shareholders. It is just as important for the board to hear and understand the views of minority shareholders as it is major investors. Engaging with all shareholders demonstrates application of the Principles of the Corporate Governance Code.

The process of submitting questions also differed between companies.



## Poor practice

Examples of poor practices included:

- Questions submitted were subject to a cap on the number of characters allowed;
- Only allowing ‘mailed in’ questions rather than by email, in advance of the meeting;
- Unrealistic time frames being set to submit a question;
- Questions being grouped under one heading (with one generic answer), without additional input or clarification from the shareholder;
- Companies choosing not to respond to all questions.



## Good practice

There were examples of good practice:

- Enabling shareholders to submit questions electronically to a dedicated website or email address, along with mailed in questions;
- Allowing sufficient time for shareholders to submit questions, or not asking for questions to be submitted too far in advance;
- Making it clear on what basis questions would be grouped;
- Some companies contacted each shareholder who submitted similar questions to inform them that the questions would be grouped but still included a written response to the individual questions on the website;
- All questions and answers were posted on the company website following the AGM.

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## Meetings with some engagement from board members and shareholders

The introduction of the [Corporate Insolvency and Governance Act](#) in June 2020 disapplied requirements to hold physical meetings; permitted meetings to be held and votes to be cast by electronic means, and provided that those participating in the meeting did not have to be in the same place together. The provisions were also applicable retrospectively.

Those companies that held hybrid or virtual meetings enabled the board and shareholders to take part in an AGM that retained many of the benefits of a traditional physical meeting. These meetings allowed shareholders to ask questions and receive answers on the day of the meeting.

Shareholders have specifically noted the importance of asking direct questions to the board at the meeting in order to receive a reply which is not prepared or rehearsed. How the board responds to questioning can demonstrate the degree to which the board individually and collectively are aware of any current issues or concerns.

To achieve the optimum engagement, we would suggest that a balance is struck between calling for questions in advance and allowing time in a meeting to take questions on the day. Board presentations will inevitably lead to additional questions that cannot be anticipated in advance.

Many different technological solutions are available to enable shareholder engagement in meetings by virtual means, including platforms that we have become used to; for example, Zoom, BlueJeans, and Microsoft Teams which allow for discussions and provide a chat function. Those companies with fewer retail shareholders may be able to achieve similar interactions via an open telephone link rather than a full audio/visual experience.

Some companies went further and enabled real-time voting, generally via an app. This approach closely mirrors the traditional approach of an AGM. Using real-time voting in such a way requires additional technological support which in turn increases company costs.

Additional security measures for ‘real-time’ electronic voting generally require shareholders to pre-register for the AGM. We are aware that this approach and the use of codes or reference numbers can be complex. Care should be taken by providers to ensure the system offers clarity and simplicity to assist shareholders.

# LESSONS LEARNT

Shareholder rights are best served by companies that provide highly effective and clear communication before, during, and after the meeting, and allow full participation from those shareholders that wish to attend, either in person (when this is possible) or virtually.

It is possible that we will be living with restrictions on public gatherings and movement at least into the next AGM season. Companies must therefore be prepared to move away from the traditional AGM form that has been in place for many years and embrace change for both the immediate future, where it is a necessity, but also for the longer term.

There is no one-size-fits-all approach. We are aware that there are companies that host AGMs where few shareholders attend, whilst others have thousands in attendance where the costs, both financial and in the use of resources, can be very high.

**Annex 1 offers some practical advice for companies to consider for future AGMs whether or not there are restrictions on social gatherings and social distancing.**

The extent of any future departure from the traditional approach of purely physical attendance at AGMs is dependent on an agreed understanding of the relevant sections of the Companies Act.

**The FRC will work with the government to consider how clarity on the interpretation of s.311 and s.360A can be achieved. This could be a clarification to the law or perhaps a non-legislative solution. Any amendment to the Companies Act would be subject to the legislative timetable.**

Companies will need to assess their appetite for change, and this will depend not only on costs but also on the relationship between companies and their shareholders and the make-up of the shareholder register.

Some companies have already made amendments to their Articles of Association to allow for greater flexibility, though we understand that this may not be straightforward. Some proxy advisors have concerns that a virtual only meeting, if not subject to additional guidance and agreements as to how retail shareholders will be appropriately

engaged, could lead to reduced transparency and accountability, and the disenfranchisement of shareholders. In such circumstances they have advised against supporting changes to company Articles.

Those companies that have been successful in amending their Articles have engaged in constructive dialogue with all shareholders and proxy advisors and reached agreement which offered reassurance that all shareholders would continue to be effectively engaged in meetings.

Alternatively, restricting amendments to Articles to provide for only hybrid meetings is likely to garner support.

**To improve flexibilities we encourage proxy advisors and investors to support resolutions to amend Articles of Association where clarity on the use of such flexibilities is built into the resolution and supporting documents.**

The FRC will work with the government to consider how clarity on the interpretation of s.311 and s.360A can be achieved.

# A NEW APPROACH?

## Fully Digital

A fully virtual AGM is where both board members and shareholders attend the meeting to engage in discussion and vote remotely. This is usually achieved by using one, or a combination of, methods such as webinars or conference calls where electronic voting is possible, whilst retaining the programme and organisation of a physical AGM.

Unlike some other countries, particularly the US, the UK has not embraced virtual meetings; this is due to a number of factors including the different approaches to company law, different shareholder bases and the availability of, and confidence in, the technology.

However, as part of this review, we have found that there are many stakeholders who believe that now is the time to move away from the current approach, stating that ‘A revolution in shareholder meeting has been long overdue’ and that ‘the current format is no longer relevant’, whilst others remain convinced that purely physical meetings should be returned to as soon as possible.

A well organised and executed virtual meeting can, in many cases, enable increased participation from shareholders whilst reducing costs overtime for the company.

The benefits for shareholders will generally be related to savings in travel time and costs. The ability to only take the time to attend the meeting virtually rather than time travelling to the meeting is attractive to many people. Those with investments in several companies may find that AGMs fall on the same day. Virtual meetings would enable them to ‘attend’ both events. Others may only wish to ‘attend’ for one or two items on an agenda rather than sitting through all the proceedings.

Global companies may also have shareholders located in countries across the world. A virtual meeting enables them to attend a meeting that in most cases would not have been practical to attend in person.

Others have highlighted environmental concerns related to unnecessary travel.

Some shareholders hold deep rooted concerns that a virtual meeting will lead to disenfranchisement. The ability to engage directly with company directors, ‘see the whites of their eyes’, and

understand the ‘mood of the room’ are all matters that are important to many and it is difficult to replicate such things in a virtual meeting. Although we acknowledge that it is difficult to see the face of a director from the back of a large conference centre, and a video link might be clearer.

Other concerns are related to ‘the management of meetings’, for example where responses to submitted questions are rehearsed in advance, while others questions are either filtered or grouped – this can lead to a general answer to multidimensional questions.

There may be a good reason for companies to undertake any of these actions, for example, time management, to not dwell on one issue at the expense of another, or to remove inappropriate issues.

It is commonplace at physical meetings for the chair to identify in advance ‘issues of the day’ that need to be addressed and therefore will pre-empt many questions (a form of ‘grouping’). However, a physical meeting will offer shareholders the opportunity to clarify or raise a related point. This should not be lost in a virtual meeting and can only be undertaken effectively with real-time shareholder engagement.

Marks and Spencer Group hosted a fully digital meeting this year. Shareholders were able to participate in the AGM via the Lumi platform, questions and votes could be submitted both in advance and during the AGM using the dedicated app or website.

Marks and Spencer saw a huge increase in engagement with shareholders using the virtual method; over 1,500 people engaged with their digital platform (either to vote, submit questions or to view the broadcast), while only 561 shareholders attended the physical AGM last year. Over 86 questions were put forward at the AGM, an increase of 28 from the previous year, 13 were answered in the meeting, addressing the key themes raised by more than half of the total questions received. The remaining questions that were not addressed at the meeting were posted and answered on the company website and the individual shareholders also received a direct response from the company secretarial team.

We note that only 13 questions were answered during the meeting, this appears to be a low number but at a physical meeting, there are also time restrictions which may mean that questions remain unanswered. We were pleased to see that in this example, and there are others, that all questions

received answers that were made available for everyone to see, including those who did not attend the meeting. At a physical meeting, the additional questions would have remained unheard.

This example demonstrates that virtual meetings can result in increased engagement. There can be other benefits too. For those companies with a very large retail shareholder base, the cost of hiring a venue, organising the logistics of the AGM including internal and external resources such as security leading up to, and on the day is costly.

Many companies have board members who are based overseas, and a virtual meeting could negate the need for everyone to travel to one venue.

Companies considering future virtual AGMs will need to determine whether it is right for them. For example, whether the potential cost savings outweigh any additional expenses. For some companies with a relatively small retail shareholder base, the costs of technology including voting on the day may be at present prohibitive. There are also additional security matters to be considered when enabling electronic voting. Normally a reference number or passcode would be required to facilitate this function. This could be complicated for some shareholders.

## Technology

‘Is the technology stable?’ and ‘What happens if the technology fails mid-meeting?’ were frequently asked questions by both companies and shareholders when discussing the use of technology at important meetings.

Digital meetings can take many forms and if voting via a specific app is not required there are a number of providers who can support a digital meeting, this includes supporting electronic AGM notices, registration of shareholders, and providing telephone audio or a visual webcast on the day.

In the UK there is currently only one provider (Lumi) who offers a package which includes a voting app. Should the UK market signal that it is ready to move towards embracing the use of some of these technologies, we would expect there would be increased competition which should result in lower costs.

There is always a risk that technology will fail, companies are adept at mitigating any risks at physical meetings. Determining an approach should the technology fail for some or all participants will need to be worked out with the technology provider. With details of any backup plan communicated clearly to participants prior to the event.

## Hybrid Meetings or partially digital meeting

A hybrid meeting - one that enables shareholders to attend either in person or virtually - offers additional flexibility and can be applied in different ways, depending on the approach best suited to individual companies and their shareholder base.

A hybrid meeting could be a meeting where a small number of individuals gather in one physical location, with most shareholders joining and/or voting remotely with proceedings being simultaneously delivered by a webcast. This was the case of Man Group plc who held a hybrid meeting this year. Proxy voting was still required in advance of the meeting, but a full Q&A function was enabled via electronic means.

Shareholders were able to access the meeting via the WebEx platform, and instructions to access the platform were provided through a stock exchange announcement. All directors were present at the meeting either in person or virtually, and despite shareholders being unable to speak at the meeting, they were all able to submit written questions and receive answers in real-time without limitations.

Other companies used different approaches for example enabling shareholders to listen to the proceedings of the meeting via the telephone dial-in facilities. Shareholders were later given the opportunity to raise questions to the board members using the dial-in facility provided by the company.

Once the rules on social distancing are relaxed we expect many companies to continue to support physical attendance at AGMs. However, this can be complemented by any of the virtual means that have been highlighted in this paper. The extent to which companies move towards embracing digital technology for their AGMs and undertaking live voting will be determined by the size of the company and its shareholder register. Maintaining a physical presence at least in the immediate future may allow both companies and shareholders an opportunity to familiarise themselves with the technological options.

Companies have rightly raised concerns that hybrid meetings require double resources, one for the digital AGM, the other for the physical attendees. Companies may have to 'hold' space in venues which remain unused on the day of the AGM as many shareholders choose to attend remotely.

The law does not allow a company to restrict the number of people who may attend a meeting. Undertaking a 'first come first served' approach is not one that should be promoted. Companies already predict attendance levels at physical AGMs, and as shareholders become more accustomed to attending virtually overtime companies will better understand the likely levels of physical attendance.

**We are aware that companies are currently holding venues for the 2021 AGM season. Therefore, we will engage with the government to consider what measures may need to be brought forward to ensure that AGMs can take place either virtually or as a hybrid during 2021.**

# VOTING AT MEETINGS

The make-up of a company's shareholder base will determine access to the board outside of the AGM. For example, companies with one or two significant investors or those funded by private equity, along with institutional investors will gain more access through investor relations events throughout the year. Thus, giving these investors the necessary information to determine their vote prior to the AGM. For retail shareholders, this is generally not the case. Throughout 2020, retail shareholders have expressed their dismay that they have been asked to vote prior to hearing some of the facts required to make their decisions.

We accept that voting via an app during an AGM may be expensive for some companies and could be considered not a good use of shareholder funds. However, companies should carefully consider the implications of requiring sometimes a considerable number of retail shareholders to vote prior to hearing presentations and asking pertinent questions related to the company's management and approach over the previous year.

All shareholders should have the ability to hear from the board before voting on resolutions, therefore it is best practice for companies to make every effort to ensure that shareholders should have the ability to vote following presentations from the board.

To achieve this particularly in the current climate, companies and shareholders may wish to consider whether there is merit in splitting the traditional AGM into two events. One for presentations, Q&A, and consideration of matters in the annual report, and the second for voting on resolutions raised. The first event could be delivered via an audio or visual presentation with the facility for questions the second could be a much smaller event held with a quorum if necessary.

This approach is one that has gained some support amongst shareholders and companies. This would be a significant departure from the current way AGMs are organised but this in turn would ensure, that like institutional investors, retail shareholders gain similar access to information prior to a vote.

For the longer term, and in the context of engaging with a wider range of stakeholders, further consideration might be given to whether more regular information giving sessions for shareholders may be appropriate for some companies.

We are aware that a number of guests are invited to AGMs. If the traditional AGM were split into two events companies could consider engaging with shareholders and other stakeholders. This would of course need careful handling as shareholder interests and motivations may not be aligned to other stakeholders. Using a digital approach for such a meeting could make it easier to organise and manage different stakeholders.

This approach would ensure that key company information could be delivered but also provide opportunities for shareholders/stakeholders to raise matters as they are relevant throughout the year rather than waiting until the AGM.

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# HARD COPY COMMUNICATIONS

Changing the approach to AGMs should not be done in isolation. The amount of work that companies invest in preparing for an AGM should not be forgotten. Equally, individuals who attend these events need to ensure that they receive information on the venue, attendance, and voting procedures in good time and in an effective manner.

In the same way as enabling digital interactions at the AGM we should also consider whether other necessary supporting information can be delivered electronically for example proxy voting forms and letters pointing to the availability of information on the website. A barrier to this is that electronic addresses for shareholders are not routinely collected.

There is no requirement for shareholders to give an email address for contact purposes on the purchase of shares. This means that some documents are required to be sent out in hard copy, both delaying information and in some cases duplicating information that the shareholder has already accessed via the web.

We acknowledge that some people have good reason to request hard copy information and need to be contacted by post. However, as more and more people are now content with digital interactions, electronic communications are becoming the principal form of contact.

**Engagement between companies and shareholders would be improved if all shareholders are asked to provide an email address when purchasing new shares.**

**We ask all shareholders to ensure that they respond to requests to move to electronic communications where possible.**

# CONCLUSION

The traditional approach to AGMs is a straitjacket to progression. The pandemic has raised issues related to AGMs that the UK was already failing to address. The approaches taken in 2020 have not always been the right ones either for companies and their shareholders, but there have been some excellent practices that can be translated into next year's AGM season, whether or not we are subject to restrictions.

More importantly, this allows policymakers, investors, companies, advisors, and other stakeholders to make changes that will offer both short and long-term benefits for all.

To ensure good governance, enable transparency and enable all shareholders to hold the board to account in line with good practice set out in the UK Corporate Governance Code, we hope that next year, we will see the end of the AGM where retail shareholders are unable to ask questions of the board. By using even relatively basic audio and web technologies companies should be able to offer some engagement on the day of the AGM.

Moves away from the traditional meeting should proceed with the support of shareholders to ensure that any change does not lead to disenfranchisement. In many cases, this will require the introduction of appropriate checks and balances.

**There should be a significant increase in the use of technology that facilitates robust virtual interaction during an AGM providing greater access for all shareholders and ensuring there is an opportunity to hold the board to account.**

Many of the matters raised in this report may need the government to offer additional flexibilities or clarity on the interpretation of the Companies Act. Any changes to the Companies Act will be subject to the formal legislative procedures. This will take time and input from a wide range of stakeholders. Increased interest surrounding this issue from a cross-section of stakeholders has demonstrated that there is a desire for change and an enthusiasm to engage on this issue.

**Therefore, the FRC proposes to bring together a Stakeholder Group on this matter which includes government, companies, and investors and their representatives to consider whether there is a need for legislative change, propose alternative means to achieve some of the flexibilities whilst maintaining the integrity and objective of the AGM.**

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# ANNEX 1

## BEST PRACTICE GUIDANCE FOR AGMs – LEARNING FROM THE 2020 AGM SEASON

The report considered a number of matters that had an impact on the '2020 AGM Season'. As a result, we expect many companies to consider how their AGM will be conducted in 2021.

It is unlikely that AGMs will not be affected in some way by COVID-19 during 2021, and each company will need to decide on its approach taking into account the size of the organisation, the number, type and location of shareholders and the options open to it.

Our report has highlighted many ways companies can achieve effective shareholder engagement, even if the pandemic continues to make it difficult for shareholders to attend in person.

We have assumed that most companies will wish to increase shareholders' ability to engage virtually either before or during an AGM or both. We also recognise that a company's ability to act on the guidance will depend to some extent on the make-up of the shareholder base.

### Prepare Now

- Consider what changes you might want to make for next year.
- If you want to use technology more effectively talk to the experts now, assess the options and the costs.
- Consider whether your Articles need amending and consult with investors and your legal team to see what is possible.
- Discuss options with your Registrar.
- Consider a plan if any of the virtual solutions being offered fail for some or all of the participants before or during the meeting.

## Prior to the meeting

- Dedicated areas of the company website should be frequently updated so shareholders can access the latest information regarding the status of the AGM.
- If a company decides to proceed with a digital element to the meeting, clear and timely instructions on how to join a meeting should be published in the notice of the meeting.
- If there is an option to ask a question prior to the meeting, additional information on how to submit questions for the AGM should be provided within the notice.
- If registration and verification is required to access a digital meeting (i.e. Shareholder ID) shareholders should be provided with access codes via their preferred method of communication in advance of the meeting. Instructions should be clear and concise.
- Companies could consider the use of a dedicated contact area/email address to allow shareholders to ask any questions about the status of the meeting.
- A dedicated AGM email address and a contact number for the registrar should be provided to shareholders.

- Although audio-only calls are relatively easy to use, we recommend that companies use a webcast to enhance the shareholder experience.

## Questions at the AGM

- Questions should be facilitated in real-time, both for those shareholders who attend in person and those who choose to attend remotely.
- Companies should upload Q&A transcripts of all submitted questions onto the company website following the conclusion of the AGM.
- If no questions or queries are submitted to the company prior to the AGM, a Q&A providing useful information could be published on the company website.
- Enough time should be given for shareholders to submit questions. Best practice companies allowed emailed in questions up to the morning of the AGM.
- If a company is considering grouping the questions received from shareholders. It should be made clear in advance that questions may be grouped with reasons for this approach.

- Best practice would be to contact those shareholders who have submitted similar questions to ensure they are content that their question being grouped prior to the meeting.
- Unreasonable limitations on the number of characters in a question should be avoided.
- If a live question facility is facilitated shareholders should be made aware that questions are moderated.
- If possible, the questions submitted at the AGM along with answers should be visible to all members that attend the AGM.
- If technologically possible, written Q&A functions should be activated by the start of the meeting to ensure shareholders have sufficient time to submit questions.
- Opportunity for shareholders to follow up on the given answer, particularly in a virtual format could be enabled to ensure that matters raised at the AGM have been properly addressed.

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### **Webcast (without voting)**

- Companies should try to limit the need to download specific software to view or participate in the AGM. However, if specific software is required, information on how to obtain such software should be specified in the notice of meeting and companies should highlight that support is available to help if there are technical issues.
- If no specific log-in details are required to participate in the AGM a note should be provided on the company website. Companies should be aware of the potential security risk this may impose.
- Audiocast and webcasts should be supported with other materials with clear links to additional material, such as full statements and transcripts used at the AGM.

### **Webcast with voting**

- Explanations on how to vote should be provided to shareholders before the meeting, links to the FAQs and instructions on how to use this facility should be provided within the notice of meeting. Companies can also consider resending instructions one hour before to ensure the event takes place as a reminder.
- On occasion where there are two facilities to log in (as a shareholder or as a guest), clear instructions on the distinction should be made to avoid shareholders from accessing the wrong feature to avoid the chance of them not being able to vote or put forward questions.
- Where the technology allows, shareholders, should be informed that votes can be changed during the meeting.

### **Voting by Proxy**

Best efforts should be made to ensure that those who wish to vote following Board presentations and Q&A are able to do so. Where this is not possible:

- Ensure that guidance on proxy voting is clear and issued in good time.
- Consider using both paper and electronic forms for instructing a proxy vote.
- Issue an electronic reminder of the deadlines for engaging a proxy vote.
- Where there is a facility to vote via an app on the day – enable the ability for shareholders to change their vote.



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