

6th October 2009

Chris Hodge
Corporate Governance Unit
Financial Reporting Council
Fifth Floor
Aldwych House
71-91 Aldwych
London WC2B 4HN

Sent by email to: codereview@frc.org.uk

Dear Mr Hodge

Review of the effectiveness of the Combined Code - Second consultation

I am a Chartered Accountant and am responding as an individual rather than on behalf of an organization.

My feedback is particularly focused on the behaviour and culture of the board and the impact this can have on governance, risk and organizational performance. This is referred to in the "summary of feedback to date" (Page 3) and in other parts of your consultation document, including; "the responsibilities of the chairman and non-executive directors", "board evaluation" and "risk management and internal control".

I very much agree with the third bullet point in the summary on page 3 where there is a recognition that the quality of corporate governance ultimately depends upon behaviour not process. In particular I wanted to emphasize the point that the board set the culture for the organization and in particular the culture of the board is usually set by one or a combination of the Chairman, CEO, Finance Director. However I feel that your consultation document skirts around what can often be described as bullying behaviour by charismatic leaders and directors.

For example from what I have read about the banking collapses, boardroom bullying has been reported as an important factor in the lack of effective challenge by both executive and non-executive directors over key elements of strategy, internal control and taking on risk, yet this issue is rarely discussed or highlighted in the context of corporate governance. The problem I see is that regulators, standard setters, shareholders, directors and others don't really want to admit that it is a real problem and even when they do it is a difficult one to deal with.

Whilst there have been a number of research projects into the cost of bullying in the UK (which tend to range between £3bn and £5bn), these calculations are based on the impact on staff morale, staff turnover and on days sick. Whilst this is a very important issue, my view is that the impact and cost of bullying on decision making, risk taking and overall organisational performance is far more significant.

However this major impact has not to my knowledge been effectively researched. If the dominant behaviours of Chairmen, CEOs or other members of the board are key

factors in the lack of effective challenge to organisational strategies, and hence have allowed high risk or poor strategies to be pursued, then one can see how the impact of bullying can have major costs which far outstrip that measured using the more staff focussed approaches.

For the avoidance of any potential misunderstanding, I am not talking about the more traditional approach to looking at work place bullying. The impact on staff including on morale, sickness levels, productivity and staff turnover are real and serious issues, however my feedback to this consultation is really about the impact of bullying behaviour on corporate decision making, attitudes to risk and significant organisational performance. A senior director who forces through a poorly thought through or high risk strategy using bullying behaviour overriding internal controls and proper governance, and which subsequently leads to major organisational and stakeholder costs, is what I am really talking about.

It is therefore my response and feedback to your consultation that the Combined Code should both recognise bullying and its impact on risk, internal control and corporate governance and that the code should also set out some measures to address it. It would be good to see bullying recognised as being far more widespread than is often made out to be and that it affects the boardrooms of many organisations including many listed companies.

Some specific points for consideration are:

- That bullying behaviour should be seen as one of the top risks of an organisation and that it should be monitored and treated as such, including by any risk committee and internal audit function.
- Companies should set out a clear definition of bullying in an “anti-bullying policy” with examples of what is acceptable and not acceptable for members of the board. There will need to be safeguards in place for people to report bullying without feeling that there may be potential repercussions on themselves. There needs to be a clear distinction between proper management and leadership and what would be considered as bullying behaviour. The current lack of clarity allows some leaders and directors to justify bullying behaviour which ultimately is to the detriment of the company and its stakeholders.
- As part of the evaluation of board performance an independent assessment should be done of the compliance of each board member with the policy and their views of compliance of others. This could also be part of proper 360⁰ feedback for every board member (including NEDs).
- For companies to publish their anti-bullying policy (at least on their websites) as well as the summaries of the 360⁰ feedback of board members. They could also publish figures of bullying complaints made against directors (whether formally investigated or not) by (and categorised by) fellow directors, staff, shareholders and other major stakeholders.
- To support directors as part of their own development to both identify and deal with bullying issues including how to ensure that appropriate challenges of

organisational strategy, decisions, risks and issues of internal control are made, especially where directors and other stakeholders may otherwise feel that challenges would not be welcomed or could be seen as unconstructive criticism.

- A periodic review of major board decisions including whether there was effective debate, understanding and challenge and whether boardroom behaviour by dominant individuals may have affected that decision.

In summary I believe that bullying can override almost all other issues in terms of having effective governance in practice and your review of the Combined Code is great opportunity to really understand the impact of bullying on corporate governance, risk, and organisational performance and hence to recommend appropriate changes.

I hope you will find my comments constructive and I would be happy to discuss any of them in more detail.

Yours sincerely

Neal Trup