

Financial Review Council
5th floor, Aldwych House
71-91 Aldwych
London WC2B 4HN

9th October, 2009

Dear Mr. Hodge,

Re: FRC Review of the Combined Code

Our experience as a firm offering strategic advice to FTSE 100 and FTSE 250 clients has given us exposure to a range of plc boards. We therefore welcome the opportunity to participate in the consultation process surrounding the Combined Code and UK corporate governance best practice.

At JRBH we broadly support the comply/explain model that underpins the Code. As the Code has to serve a wide range of companies, of all industries and market capitalisations, a one-size-fits-all alternative may be inappropriate. We also agree with the Code on the importance of information provision. In our capacity as corporate advisors, we understand that the flow of information to non-executives is crucial to their contribution to boardroom debate. Yet in its present guise the Code doesn't go far enough in detailing how information should be administered and accessed. Consequently companies may claim compliance while doing little to actively improve the flow of information.

We feel the onus should be on the company to provide such information, within a framework that the NED can readily and confidently access. Hence we advocate strengthening the principles governing the scope, quality and objectivity of the information made available to board members, the channels through which they access that information, and the subsequent disclosure to shareholders of what mechanisms are in place.

Our contribution focuses on the sections in the Code entitled '*The Board*', '*Board balance and independence*' and '*Information and professional development*', their interpretation and implementation.

The recommended changes would strengthen the clarity and purpose of the Combined Code, yet it would remain applicable to a wide range of listed companies. We hope you find our contribution to the consultation constructive, and we would welcome a meeting to discuss our recommendations in greater detail.

Please feel free to contact me to discuss any points raised in this letter.

Yours sincerely,

[Sent electronically]

Pippa Croney
Director, Board Consulting

FRC Review of the Effectiveness of the Combined Code

JRBH's Response to the Consultation

JRBH's response to the Combined Code is focused on the obligations surrounding the provision of information to board directors.

This document sets out the role of information in board effectiveness, the Combined Code's current principles and provisions governing the supply of information, and the steps we believe should be taken to strengthen them.

JRBH's view on the importance of information

Boards exist to supervise and steward, but their effectiveness depends on the scope, quality and objectivity of the information they receive. As the executive is typically the principal and often sole provider of such information, the independence and impartiality that NEDs bring to the boardroom can be compromised.

Furthermore, every board director shares responsibility for board decisions and strategic direction. However it can be difficult for NEDs to comfortably and confidently assume a position of equal liability when their access to information is limited.

The Combined Code's reference to information provision

The current principles and provisions laid out in the Combined Code already reference the importance of information.

"The board should be supplied in a timely manner with information in a form and of a quality appropriate to enable it to discharge its duties. All directors should receive induction on joining the board and should regularly update and refresh their skills and knowledge."

"The board should ensure that directors, especially non-executive directors, have access to independent professional advice at the company's expense where they judge it necessary to discharge their responsibilities as directors."

In its current form the Code allows companies to claim compliance while doing little to actively improve the flow of information. NEDs may be aware of their right to request information, but lacking encouragement to do so, or a mechanism designed for that purpose, they can easily be deterred.

The wording of the Code should be tightened to specify how such knowledge and advice should be provided, as well as how much. It should also assign responsibility to the company for making sure this is happening, and for disclosing to shareholders exactly what is being done to provide such information.

JRBH recommendations to strengthen the Combined Code

Our recommendations are summarised below. Further detailed recommendations on specific points raised in the Code are provided in **Annex A**.

1. Improved access to information

i. Provision of independent, on-demand information and analysis

All board directors, including NEDs, should be able to access independently sourced information to supplement the information they receive via the executive. The provision of an on-demand service would promote and empower NEDs in regular constructive questioning and debate. The chairman should encourage the active use of such a service to ensure NEDs have sufficient knowledge to fulfil their duties.

ii. Improvements to the induction of NEDs

We advocate a more holistic approach to the induction of new directors, going beyond corporate governance requirements to include a more thorough briefing on company and industry issues. This would enable new directors to contribute to boardroom debate fully from an early stage.

2. Effective mechanism for implementation

i. Responsibility

For the principles and provisions to be interpreted correctly and effectively we believe that there must be clear responsibility, accountability and liability on the part of the company to provide sufficient information. Independent information should form a regular and accessible component of the material provided to the board. The company secretary and chairman must be responsible for ensuring this is the case and that there is a clear process in place for directors to readily access independent information. Furthermore, the chairman should encourage the regular use of such a resource.

ii. Disclosure

Shareholders must be informed of the resources that have been made available to all board directors. Such disclosure would allow shareholders to better understand the scope of provisions, in turn strengthening investor confidence.

Annex A: Recommended amendments to the Combined Code

Ref	Current wording	Recommended changes	Rationale for our recommended changes and how it will strengthen the code
A.1 The board - SPs	"All directors must take decisions objectively in the interests of the company."	"All directors must take decisions objectively in the interests of the company and sufficient independent information should be provided to facilitate the decision making process. "	An independent information resource should be readily accessible to all board directors and uptake should be frequent and encouraged, to improve decision making and the quality of boardroom debate.
A.1.3 - CP	"The chairman should hold meetings with the non-executive directors without the executive present."	Add..."At these meeting routine matters such as information provision and training and development should be discussed."	Extend provision to encourage regular discussion of information and training requirements.
A.5 Information & professional development - SP	"Management has an obligation to provide such information but directors should seek clarification or amplification where necessary."	"Management has an obligation to provide such information and the chairman should ensure there is also a readily accessible mechanism in place for board directors to seek amplification and external clarification. "	The wording should be amended to make the provision of information the explicit responsibility of the chairman and company secretary. Furthermore, a readily accessible and dedicated information-resource would encourage board directors to access independent intelligence more frequently.
	"The chairman should ensure that the directors continually update their skills and the knowledge and familiarity with the company required to fulfil their role both on the board and on board committees."		As prescribed in our recommendations on other areas of the Combined Code, the chairman should work with the company secretary to ensure that a knowledge resource is available for directors and that they are provided with sufficient company, industry and regulatory updates to fulfil their duties.
A.5.1 - CP	"The chairman should ensure that new directors receive a full, formal and tailored induction on joining the board."	"The chairman should ensure that new directors receive a full, formal and tailored induction on joining the board. The induction should cover corporate governance responsibilities, the operating structure of the company and an overview of the company and industry. "	This provision should be made more prescriptive to specify that a full formal induction should include corporate governance responsibilities, the operating structure of the company and a company and industry overview. This ensures that the induction is thorough and will increase director speed to competency, especially for board directors without sector experience.
A.5.2 - CP	"The board should ensure that directors, especially non-executive directors, have access to independent professional advice at the company's expense where they judge it necessary to discharge their responsibilities as directors."	"The board should ensure that directors, especially non-executive directors, have readily available access on demand , to independent professional advice at the company's expense where they <i>[judge it necessary to discharge their responsibilities as directors - delete]</i> would like further information on an issue or independent analysis. "	The final phrase of this sentence needs to be amended to ensure that directors are encouraged to access independent information at any time, and not only where deemed absolutely necessary. This will promote directors sourcing more information prior to issues arising, it would enable them to research and substantiate matters of interest and it would avoid any stigma surrounding the commissioning of independent advice or research.

C.1 Financial reporting			A supporting principle should be added to state that financial strengths and risks should be highlighted to ensure that directors are forward-looking rather than purely retrospective in their analysis of financial information.
C.2 Internal Control			The main principle should be extended to cover strategic and forward-looking risk analysis rather than just assessing existing risk controls and needs.
D.1 Dialogue with institutional shareholders	"The chairman should ensure that the views of shareholders are communicated to the board as a whole."	"The chairman should ensure that the <i>[views of shareholders are communicated to the board as a whole]</i> board is provided with regular shareholder sentiment updates and any specific key shareholder views."	Strengthening the requirement to communicate shareholder sentiment as well as any specific views will increase the quality of shareholder relations and the ability of the board to assess shareholder interests.
Schedule B: Guidance on liability of NEDs	2(ii) Non-executive directors should themselves: - Undertake appropriate induction and regularly update their skills, knowledge and familiarity with the company. (A.5.1)	Reposition this clause within 2(i), to read: "It is the chairman and company secretary's responsibility to ensure that new non-executive directors receive the appropriate induction and regularly update their skills...."	To provide an effective mechanism for director induction the chairman and company secretary should be responsible for the quality of each director's induction and training.