For the attention of:

David Styles
Director, Corporate Governance and Stewardship
Financial Reporting Council
8th Floor
125 London Wall
London, EC2Y 5AS

13 September 2023

RE: UK Corporate Governance Code Consultation 2023

Dear Mr Styles

I write in response to the FRC's UK Corporate Governance Code Consultation Document, published on 24 May 2023.

We welcome the opportunity to provide our response to the FRC's recommendations. The specific concerns that we have are set out in the remainder of this document wherein we provide responses to several of the FRC's consultation questions.

Consultation responses

Question numbers in the following table correspond to the FRC's UK Corporate Governance Code Consultation Document.

Consultation Question		Comments
2	*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?*	We would support the amended principle 1 to the extent that it brings environmental and social matters into strategy reporting. Reporting on activities in these areas is on the rise and the expansion of this provision would encourage linkage to strategic objectives. However, the term 'environmental' encompasses climate and we believe the addition of 'including climate ambitions and transition planning' here becomes too prescriptive. It should be for Boards to determine which environmental and social matters are most material to the organisation. Climate reporting should be addressed so far as it contributes to a 'fair, balanced and understandable' Annual Report. Calling out these matters in the Code may lead to disproportionately high reporting in these areas that inadvertently detracts from or obscures the wider strategic message. In addition, a distinct framework for climate reporting is evolving and companies are already making very specific and technical disclosures in relation to climate (for example under TCFD). There is a risk of confusing or duplicating this narrative by introducing it specifically here.

3	*Do you have any comments on the changes proposed to Section 1?*	**Proposed changes to provision 3:** The addition of a requirement to report on the outcomes of shareholder engagement appears superfluous to the s172(1) statement and the related stakeholder engagement reporting that has developed in recent years. For companies to comply with the proposal that Committee Chairs be required to 'engage' rather than 'seek engagement' with shareholders, relies on reciprocal engagement from shareholders. This may not always be feasible in practice and could result in non-compliance through third-party action that is outside the Board's control (e.g., lack of available resource to engage). Furthermore, this doesn't account for the shift in the investment market towards an increase in index funds that are passive by design. Companies with a large number of this type of corporate shareholder are at a disadvantage when it comes to scope for active engagement.
4	*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?*	We are generally in favour of this addition and think this an appropriate response to investor concerns about overboarding. However, in our view, external appointments are not the sole, or necessarily the most significant, determinants of director performance and should form part of individual director evaluation discussions but not be an ongoing reporting requirement (as per question 5).
5	*Do you agree with the proposed change to Code Provision 15, which is designed to encourage greater transparency on directors' commitments to other organisations?*	We do not agree that this would enhance existing disclosures and could quickly become boilerplate for longstanding directors. Boards are required to consider and approve the new external appointments of its members on an ongoing basis. The context for these decisions will differ and decisions are taken on balance for the company's best interest. It may not be appropriate to explain the full context of these decisions in an Annual Report and disclosures around director time may therefore lack the required nuance for true understanding. It is not clear how companies would approach the explanation of 'how' an individual director manages his/her external commitments. This would require companies to disclose a certain amount of information about other organisations; how much detail should be in one company's report about how a director spends time at another? Would companies need to consult with one another? The term 'significant appointment' is open to interpretation across reporting companies and so disclosures may not be comparable.
7	*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?*	The introduction of equal opportunity is positive and in keeping with the FRC's aims of a high-level directional Code. It seems that the remainder of the overarching principle need not be so explicit as to list protected and non-protected characteristics, particularly in light of the introduction of statutory diversity targets. More prescriptive requirements tend to lend themselves to boiler-plate or 'tick-box' responses.
8	*Do you support the changes to*	Generally, yes, however the third bullet point contains the

	Provision 24 and do they offer a transparent approach to reporting on succession planning and senior appointments?	phrase, 'adherence to established initiatives' which is ambiguous and we would request further guidance on its meaning. For example, is this organisational adherence to its own diversity initiatives, or to applicable external initiatives? What would constitute 'established' in this context?
12	*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?*	We have concerns with provisions 26 and 27 as drafted. The term ‘narrative reporting’ has potential to be very broad. Guidance and clear parameters will be needed here to clarify which disclosures fall under this oversight. We question whether the Code should be so prescriptive as to assign responsibility for narrative reporting (and ESG matters) to the Audit Committee by default. This is a significantly broader remit than the metrics already in scope and a Board may reasonably consider it appropriate to retain collective authority, or to delegate all or part of the oversight to one or more of its committees. As noted by the FRC in its consultation document, companies are ‘building experience in different ways’ and may already have established committees suitable for the task. While deviations from the Code can be explained, they may may perceived by some parties as indicators of poor governance (notably by proxy advisors). Boards may subsequently feel compelled to work around this provision rather adopt a different structure that better suits the organisation’s governance framework.
14	*Should the board’s declaration [that the company’s risk management and internal control systems have been effective] 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?*	To avoid confusion or inconsistency with the US SOX regime, we suggest that the declaration should be based on the date of the balance sheet. It is not clear how Boards would approach ‘continuous monitoring’ in order to make this make this declaration. We believe that Board monitoring on a regular basis, in addition to a formal annual review (as advocated by the FRC in its November 2022 Review of Corporate Reporting) offers a more proportionate mechanism.
15	*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?*	The accompanying guidance needs to establish the reporting that falls into scope of this provision. Is it only the Annual Report, or all statutory disclosures? Or would it also cover non-statutory disclosures? We hold the view that the focus should be on reporting material that can be objectively analysed and submitted to metric reporting as we believe that this would be most reliable and beneficial. At present there are not the established frameworks for narrative controls that there are for operational and financial metrics. It will take time for these to bed in and we urge the FRC to recognise there is disparity in maturity of the frameworks underpinning reporting. We believe that a phased implementation for this declaration (for example, limiting the declaration initially to ICFR) may reduce the initial burden. Companies who are in a position to do so may voluntarily comply early. There may be occasions where an overall declaration is not

		possible, due to weakness in only one element. It may be helpful if guidance could allow for a split declaration covering each control element separately.
16	*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?*	We are of the the view that any such guidance should not be prescriptive so that companies retain freedom to use their own methodologies and frameworks as deemed appropriate by the Board.
17	*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?*	We advocate that, as far as possible, definitions align to existing international standards, including US SOX and auditing standards.

Yours sincerely

[redacted]

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