

28 February 2018

Financial Reporting Council
8th Floor
125 London Wall
London EC2Y 5AS

Ladies & Gentlemen:

Comments on the Proposed Revisions to the UK Corporate Governance Code (December 2017) and the UK Stewardship Code

I am writing to the Financial Reporting Council (the “**FRC**”) on behalf of the Steering Committee of the Parker Review (the “**Committee**”) and the purpose of this letter is to provide limited comments and observations on the Proposed Revisions to the UK Corporate Governance Code (December 2017) (the “**Proposed Revisions**”) and the UK Stewardship Code (the “**Stewardship Code**”).

As an initial matter, on behalf of the Committee, I would like to thank the FRC for considering key observations and recommendations set out in the Parker Review related to increasing representation of ethnic minorities on the boards of the FTSE 100 and FTSE 250. As you have noted in the Proposed Revisions, our observations extend beyond the specific recommendations made in our Report and we welcome the efforts of the FRC to embed those observations in the Proposed Revisions.

Beyond that general statement, we have the following specific comments and observations on the Proposed Revisions and the Stewardship Code:

Principle A

As the FRC has noted in paragraph 58 in the Proposed Revisions, “[c]ompanies that focus on increasing diversity in the boardroom in their executive teams and across their workforces as a whole can expect a positive impact on their performance.” We fully agree and endorse that sentiment.

Therefore, we would recommend that “diversity” be included in the specific language in Principle A of the Proposed Revisions. We believe it entirely appropriate to enshrine the importance of diversity (inclusive of all forms; e.g., ethnicity and gender) to promoting the long-term sustainable success of a company, generating value for shareholders and contributing to wider society. We believe that such a change will ensure that companies are led by “effective, diverse and entrepreneurial boards”. As each of us has noted, diversity of thought, experience and perspective is essential to the future success of our companies, and having it embedded in the core principles of corporate governance (with boards ensuring it is delivered) is both necessary and appropriate. We also believe it is important that the FRC also amend the “Provisions” below Principle A accordingly, and reinforce the need for boards to consider “intersectionality” of diversity since the existence of these interconnections can enrich the stewardship of companies even further.

Principles J and K

The Proposed Revisions set out several matters for consideration by commentators pertaining to diversity in the context of board composition, succession and evaluation.

We believe that our comment with respect to Principle A above reinforces the sentiment expressed by the FRC in the above in paragraphs 56-72.

With respect to Question 9, we do endorse the overall approach being outlined by the FRC in Section 3 of the Revised Code. However, we also have the following recommendations to augment that which is described in provisions 17-23 of Section 3:

- Consistent with Principle J, we request that the recommended disclosure in annual reports include a summary description of the terms of reference used for the appointment of directors and senior management positions used during the most recent financial year. We do not believe the description needs to replicate fully the terms of reference for the relevant appointment; however, it should reflect a summary of the attributes (personal and professional) the nominations committee felt were essential for the candidate to exhibit. Not only will this help shareholders and other stakeholders understand how a company is enhancing diversity through its approach to appointments and succession, but also will provide context for why the appointment made was justified and consistent with the terms of reference.
- Given that the universe of the senior management team will by definition be limited, in addition to gender balance as suggested in the Revised Code, we believe that the annual reports should indicate the ethnic composition of senior management and their direct reports. We believe that creating transparency across both gender and ethnic diversity are essential to create the conditions for change and create accountability for the pipeline.¹

Introduction, 2nd Paragraph, Appendix A

We fully endorse the sentiments expressed in the second paragraph of the “Introduction” of Appendix A and paragraph 82 of Appendix B. We too are of the view expressed that diversity enhances competitive advantage by better connecting companies with their stakeholders, including customers, employees and supply chains. Although ethnicity is merely one aspect of diversity, when combined with other differentiating experiences and characteristics, we believe (and as noted by the FRC, studies have shown) companies and their stakeholders are better positioned for long-term and sustainable success.

Paragraph 40, Appendix B – Revised Guidance on Board Effectiveness

We note that “Figure Two”, which describes “tell-tale signs of a culture problem”, includes a reference to a “lack of diversity”. We fully agree with that; however, we would recommend that the reference be rephrased to state “a lack of appropriate diversity across all levels of the company, or a concentration in certain roles or functions”. We made a similar point in the Parker Review; that diversity needs to be reflected at all levels of an organisation, and that “bunching” can occur in specific roles, which can cause the numbers to mask real issues. For example, many companies may have a high number of people who are ethnic minorities in low responsibility or low pay roles, but none in senior management or in the management pipeline. We believe both are problematic.

¹ We would also welcome the FRC asking companies to engage proactively with their employees to self-identify their ethnicity, rather than make assumptions or not report on status and progress. This would also increase the accuracy of the information reported and help to assess whether change is occurring.

Paragraphs 41-46, Appendix B – Revised Guidance on Board Effectiveness

We respectfully draw to your attention that when it comes to setting the framework and monitoring culture, there are no references to the importance of diversity or questions that the board should be asking of management. We would suggest that inclusion and diversity are fundamental to having a strong corporate culture and, therefore, would recommend that these provisions be revised to reflect that imperative (including those relating to “monitoring” and “evidence”).

Paragraph 82, Appendix B – Revised Guidance on Board Effectiveness

Upon reading this paragraph, we would recommend the following amendments be made which we believe are more inclusive, and constructive in tone:

“It is important to consider a diversity of personal attributes among board candidates, including sources of intellect, critical assessment and judgement, courage, openness, honest and tact; and the ability to listen, forge relationships and develop trust. Diversity of psychological type, background, gender and ethnicity is important to ensure that a board is not composed solely of like-minded individuals. A board requires directors who have the intellectual capability to suggest constructive change to a proposed strategy, and to promulgate viable alternatives.”

We believe these changes are supportive of the benefits of diversity, and are inclusive of all bases of meaningful contribution, whether through intellect or experience, or preferably both.

That being said, we do agree with the FRC’s point that while it is important to consider a person’s diverse background because of the differing experience and perspective that they can bring to the table, companies must not get caught in the trap of merely looking at a physical manifestation of diversity to “tick the box”. We believe it is always important to remind our corporate leaders that the arguments for enhancing the diversity of boards and the management pipeline in the UK (including from an ethnicity perspective) are rooted in the fundamental need for our companies to secure competitive commercial advantage on the global stage.

Question 21, The Stewardship Code

As we stated in the Parker Review, we think that discussions related to board composition, senior management, the management pipeline or the general workforce, and the diversity thereof (including the ethnic diversity), should be encouraged to be part of a normal conversation between a company’s management and its investors. We believe that harnessing the full capacity of a leadership team and workforce must reside at the centre of any corporate strategy, and therefore, we request that the FRC reinforce the necessity for modern corporate stewardship to require strategic and shareholder engagement plans that incorporate discussions about the importance of inclusion and diversity to the success of the organisation. We believe that many investors understand the linkage between an inclusive and diverse company and the company’s ability to deliver and secure long-term shareholder value.

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On behalf of the Committee, thank you for considering our observations and comments. Should anyone at the FRC have any questions regarding the foregoing, please do not hesitate to contact the undersigned (tel: 020 7456 3223; e-mail: tom.shropshire@linklaters).

For completeness, the views expressed herein are those held by the Committee members in that capacity only, and do not necessarily reflect the views or opinions of any company, organisation or other body that they (respectively) may be associated with.

Sincerely,



Tom Shropshire
Member, Parker Review Steering Committee

Cc: Sir John Parker
Members of the Parker Review Steering Committee