Submission to the Financial Reporting Council's Review of the Effectiveness of the Combined Code

FairPensions™

The campaign for **responsible** investment

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1. About FairPensions

FairPensions is pleased to have this opportunity to make this submission to the consultation paper entitled *"Review of the Effectiveness of the Combined Code"* issued by the Financial Reporting Council *("The Consultation Paper").*

FairPensions is the operating name of Fairshare Educational Foundation, a registered charity[1] that aims to persuade UK pension funds and fund managers to adopt an effective responsible investment *("RI")* capability and to monitor and manage environmental, social and governance *("ESG")* risks.

RI requires the integration of ESG considerations into investment policy. For this purpose, investment policy includes engagement with investee companies i.e. shareholder activism through dialogue, reinforced by the potential exercise of shareholder powers.

FairPensions believes that RI practices help to safeguard investments and to promote better corporate governance, as well as securing other environmental and social benefits.

FairPensions is supported by a number of leading charities and trade unions, including ActionAid, CAFOD, Community, CWU,, ECCR, EIRIS, GMB, NUJ, Oxfam, Traidcraft, Unison, Unite and WWF. We are also supported by almost 5,000 individuals.

Further information about FairPensions and about our approach to RI can be found on our website.[2]

2. Executive Summary

General Comments

(1) This submission focusses on suggested changes to the Combined Code designed to encourage corporate responsibility on the part of companies and responsible investment on the part of institutional shareholders. These changes would also improve governance standards in general.

(2) The current financial crisis has revealed severe shortcomings amongst company boards and institutional shareholders alike. The starting point of any review of the Code should therefore be a recognition of these failures and a readiness to consider any changes which might help prevent such mistakes recurring.

(3) It is important that the question of governance be dealt with in a consistent manner across the entire investment chain, from the boards of investee companies, through the fund managers and their institutional clients and on to the "ultimate owners", the beneficiaries of pension schemes and other individuals who have entrusted their savings to the market.

(4) Under such an integrated approach, the overriding objective should be to align the interests of the various participants with the long-term interests of the company and of its ultimate owners. This requires in particular (i) the elimination of any structural conflicts of interest and (ii) the greatest possible transparency at every level, so that the performance of all parties can be monitored and, where necessary, improved.

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[1] Registered charity number 1117244

[2] www.fairpensions.org

<u>Specific Suggestions</u>

<u>Section 1 of the Code: Companies</u>

(5) The provisions of the Code relating to independent non-executive directors should be amended so as to tighten the criteria for independence and so as to strengthen their position relative to the executive directors

(6) The provisions relating to multiple directorships should be tightened.

(7) The Code should contain further guidelines in respect of the level of expertise on the board

(8) There should be specific targets in the Code to encourage more diversity amongst directors.

(9) The Code should contain further provisions to equip non-executive directors with adequate resources; institutional shareholders could be encouraged to provide such resources.

(10) The Code should recommend that all directors submit to annual re-election.

(11) There should be changes to the guidelines on remuneration so as (i) to increase the influence of shareholders and the accountability of the remuneration committee and (ii) to reward long-term and responsible practices.

(12) Consideration should be given to prohibiting auditors from carrying out non-audit work. There should be an advisory shareholder vote on the report of the audit committee

(13)The provisions relating to the board's relations with shareholders should recommend a more structured process for dialogue and give greater emphasis to the role of the independent non-executive directors.

<u>Section 2 of the Code: Institutional Shareholders</u>

(14) This section of the Code should be expanded so as to be of comparable length and detail to Section 1, in recognition of its importance in the overall promotion of corporate governance.

(15) Important areas to be covered include (i) changing the prevalent culture of short-termism in relation to investment performance (ii) promoting active share ownership, including coordination between shareholders and (iii) promoting transparency in relation to investment and engagement activities, including that between pension scheme trustees and their beneficiaries and that between fund managers and their trustee clients.

(16) In view of the imminent publication of the ISC's review of the financial crisis, we look forward to having an opportunity to comment separately on the review, especially in relation to any revisions to the ISC statement of principles, to which the Code currently refers.

<u>3. General Comments</u>

<u>3.1 Scope of this Submission</u>

Most of FairPensions' research and campaigning has focussed on the role of pension schemes as institutional investors. (For this purpose, we include not only trust-based occupational schemes but also the providers of contractual personal pension arrangements, such as insurance companies.) We therefore particularly welcome the FRC's request for views on the content and effectiveness of Section 2 of the Code relating to institutional shareholders, especially as this currently consists of a mere two pages, whereas Section 1, relating to companies, runs to sixteen pages, a disparity which we hope is now to be corrected.

None the less, we wish to comment also on such of the provisions of Section 1 of the Code as we think have a bearing on RI. We would emphasise that, in our view, the suggestions that we make below would also improve corporate governance not just in relation to RI but also more generally, since all the proposed changes are designed to promote the long-term interests of the company.

In compiling this submission we have had regard to various recent public analyses and suggestions in relation to the current financial and economic crisis and in particular to the indications of Government thinking afforded by some recent speeches of Lord Myners.

3.2 A Presumption for Change

Although it is acknowledged that the review of the Code has been occasioned by the banking crisis and the resulting recession, paragraph 6 of the Consultation Paper states that *"there is no assumption that the Combined Code is fundamentally flawed, or that a different regulatory framework for corporate governance could have prevented some of the current problems".*

We would, however, suggest that the review should start with the presumption that significant changes are likely to be needed. The Code covers the respective roles of company boards and institutional shareholders in corporate governance and it is widely recognized that in both cases there have been severe failures that have contributed to the present problems. For example, the most recent Treasury Select Committee report on the banking crisis found that :

"The current financial crisis has exposed serious flaws and shortcomings in the system of non-executive oversight of bank executives and senior management in the banking sector."[3]

and that:

"Institutional investors have failed in one of their core tasks, namely the effective scrutiny and monitoring of the decisions of boards and executive management in the banking sector, and hold them accountable for their performance."[4]

We would also refer here to the recent remarks of Lord Myners that:

"In the past year and a half , shortcomings in a number of areas have become clear:

Failures in the boards of our banks – whether through incompetence or poor practice.

Failures in companies' understanding and oversight of risk management.

Failures to exercise effective control over remuneration policies, so as to prevent excessive risk taking or activities inconsistent with corporate well-being.

And failures by institutional investors to adequately scrutinise and monitor the decisions of boards and executive management and hold them accountable for their performance."[5]

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[3] *Banking Crisis: reforming corporate governance and pay in the City* 15 May 2009, page 107, paragraph 24

[4] *ibid* page 108, paragraph 29

[5] Speech to the NAPF Annual Investment conference, 12 March 2009, paragraph 9, http://hm-treasury.gov.uk/speech_fsst_120309.htm

As to whether a better corporate governance framework could have prevented some of the current problems, we would again quote Lord Myners:

"The OECD has stated – and I agree with them – that while corporate governance deficiencies were not the sole or direct cause of the financial crisis, they undoubtedly facilitated, or did not prevent, practices that resulted in misjudgement, poor performance and failure to anticipate risk."[6]

It could be argued that these corporate governance problems were not attributable to shortcomings in the Code but to non-compliance with its guidelines, or, as Lord Myners expressed it (in the context of the duties of institutional investors):

"I don't believe that the recent major corporate failures we have seen are representative of a problem with our principles of corporate governance - which are respected internationally. Rather, they are a result, frankly, of failures to do what is required by the principles in a professional way that acknowledges the responsibility of investors to their clients and beneficiaries." [7]

Even this reading of events, however, points to the need for a more effective mechanism to enforce the principles of the Code. If that mechanism were to be a strengthened version of *"comply or explain",* this would imply more specific guidelines in the Code, against which compliance (or non-compliance) could more easily be demonstrated. The alternative approach, based on more mandatory regulation, would likewise require more detailed provisions.

Although there are some features of banking, and especially investment banking, that distinguish it from other sectors (e.g. a more prevalent bonus culture and the esoteric complexity of some of the activities that led to the crisis), there can be little doubt that the governance failings that have been exposed have more general relevance. As Lord Myners put it, in referring to Sir David Walker's review on bank governance:

"It is of course fair to assume that the recommendations in Sir David's review... will have wider resonance in the field of corporate governance. This is particularly the case in respect of the work he will be doing on the role of institutional shareholders."

We are therefore pleased that the Government has now extended Sir David's terms of reference so that his review can also identify where its recommendations are applicable to other financial institutions.

3.3 The Need for an Integrated Approach to Governance

It is important that the question of governance be dealt with in a consistent manner throughout the investment chain, from the boards of investee companies, through the fund managers and their institutional clients and on to the "ultimate owners", who will often be the beneficiaries of pension schemes or other individuals who have entrusted their savings to the market.

Under such an integrated regime, the overriding objective should be to align the interests of the various participants with the long-term interests of the company and of its ultimate owners. This requires in particular (i) the elimination of any structural conflicts of interest at each level and (ii) the greatest possible transparency between all parties, so that the performance of all actors can be monitored and, where necessary, improved. The specific suggestions for changes to the Code that are made below are mainly intended to give effect to these two imperatives.

We believe that this unified approach requires that, in the exercise of their powers as shareholders, institutional investors should be guided by *"stakeholder"* fiduciary principles similar to the duties of company directors that are set out in section 172 of the Companies Act 2006, that

[6] *ibid*, paragraph 10
[7] *ibid*, paragraph 22

is, to have regard (amongst other matters) to:

"(a) the likely consequences of any decision in the long term,

(b) the interests of the company's employees,

(c) the need to foster the company's business relationships with suppliers, customers and others,

(d) the impact of the company's operations on the community and the environment,

(e) the desirability of the company maintaining a reputation for high standards of business conduct, and

(f) the need to act fairly as between members of the company".

Moreover, in relation to the directors' overriding statutory duty *"to promote the success of the company for the benefit of the members as a whole",* the Government's expectation that *"for a commercial company, success will normally mean* ***long-term*** *increase in value"*[8] (emphasis added) should also be read across to institutional investors.

In due course, we should like to see this definition of institutional investors' duties enshrined in legislation but in the meantime we see no reason why it should not be reflected in guidelines such as the Code: as it can be justified on the grounds of enlightened shareholder value, there should be no conflict with established legal principles either in the case of trust-based pension schemes or of insurance companies and other contractual providers. As the original Myners review put it:

"The most powerful argument for intervention in a company is financial self-interest, adding value for clients through improved corporate performance leading to improved investment performance. One would expect that for institutional investors with long-term liabilities, such an approach to investing would appeal". [9]

Indeed, the case for long-termism is even more compelling in relation to pensions schemes and similar investors than in relation to individual companies. This is not only because of their long-term liabilities, referred to in the above quotation, but also because, being typically *"universal owners"* with interests across the entire investment spectrum, they have even less to gain, and even more to lose, from short-term, unsustainable business models. Such models may derive much of their profits from the off-loading of externalities onto other sectors in which the schemes are also invested. They may further cause more general economic or environmental harm, to the long-term detriment of scheme beneficiaries. The widespread destruction of value in pension fund assets brought about by the reckless destabilisation of the financial system is a salutary example of this vulnerability.

4. Specific Suggestions

In this part of the submission, we wish to make some specific suggestions for changes to the Code in order to give effect to the principles outlined above. For this purpose, we shall broadly follow the order in which the subjects in question appear in the Code and shall generally adopt the headings and numeration of the Code.

Section 1 Companies

A. Directors

8 Lord Goldsmith, Lords Grand Committee, 6 February 2006, *Hansard* column 255

9 *Institutional Investment in the United Kingdom; a Review,* Paul Myners, March 2001, Chapter 5, paragraph 5.76

A.3 Board balance and independence

In view of the concerns expressed about the perceived failings of non-executive directors *("NEDs")* and particularly independent NEDs, we suggest that the board as a whole should no longer identify which NEDs it considers to be independent (A.3.1). We believe that it is wrong in principle for executive directors to participate in this decision, given that the independent NEDs will have the prime role in overseeing the executive directors, in determining their remuneration and, where necessary, in removing them.

Instead, the identification of independent NEDs could be determined exclusively by the existing independent NEDs (together, perhaps, with the chairman, if he or she was considered independent on appointment as chairman). In that case, however, there would need to be additional safeguards (which we believe there is a case for adopting in any event):

Firstly, if any of the relationships or circumstances listed in paragraph A.3.1 of the Code apply to an NED, specific shareholder approval of the NED's independent status should be sought in advance.

Secondly, there should be an absolute prohibition on any NED being regarded as independent if any other director of the company is also a co-director of the NED in another company and that co-director has any role in determining the NED's remuneration in that company (i.e. whether as a member of the other company's remuneration committee or as a member of its board). Thirdly, the shareholders should determine the remuneration of the NEDs, even where this is not required by the Articles of Association. (We think that the Code should recommend this - paragraph B.2.3 refers).

If these changes were adopted, then, as a transitional measure, existing independent NEDs could retain their status, subject to shareholder approval.

The issue of board balance and independence is closely linked with the policy relating to appointments to the board, which is considered in the next section.

A.4 Appointments to the Board

Here again, we suggest that there should be changes in relation to NEDs.

The Treasury Select Committee report referred to above identified three main problems affecting NEDs in the banking sector:

"the lack of time many non-executives commit to their role, with many combining a senior full-time position with multiple non-executive directorships; in many cases, a lack of expertise; and a lack of diversity".[10]

In relation to multiple directorships, we suggest that the Code be strengthened in the following ways:

Firstly, the only quantitative restriction currently in the Code is the provision in paragraph A.4.5 that the board should not agree to a *"full time executive director"* taking on more than one non-executive directorship in a FTSE 100 company nor the chairmanship of such a company. We suggest that *"full time executive director"* should mean what it says and that holding such an office should normally preclude other paid employment, including any non-executive directorship in any listed company. This would seem to be in the interests of both the companies in question. Any exception to this rule should require shareholder approval in both companies.

[10] Page 107, paragraph 24

Secondly, in respect of plural non-executive directorships, we suggest that the Code set out specific limits that should normally be considered appropriate. These limits could be a function of the aggregate of the expected time commitments that paragraph A.4.4 of the Code already requires to be set out in an NED's terms and conditions of appointment and of the time commitments of any other employments. Again, any proposed breach of the specified limits should require shareholder approval in all the companies concerned.

With regard to the problem of a lack of expertise, the Code could require the board to identify the precise expertise, whether particular professional qualifications or relevant business experience, that they considered it requisite for the board to possess and for the annual report to show the extent to which the actual composition of the board complied with these targets and to explain the steps being taken to rectify any shortcomings.

Lack of diversity seems likely to be a key factor in the failure of NEDs to ask searching questions of their executive colleagues. The Code's Main Principle governing board balance and independence (A.3) states that the balance between executive and non-executive directors should be *“such that no individual or small group of individuals can dominate the board's decision taking”* It is, however, not enough to guard against the dominance of a single person or group; it is equally important to prevent the dominance of a single mode of thinking. As the Treasury Committee report observed:

“We.... received evidence that the pool from which non-executive directors in the banking sector were recruited was far too narrow. Lord Myners was of this view, arguing that if boards consisted of people who read the same newspapers, went to the same universities and schools and have the same prejudices and views to sit (sic) round a board table you do not get diversity of view and input.” [11]

As one possible solution to this hitherto intractable problem, we agree with the suggestion in a recent *Financial Times* editorial that the FRC's review of the Code offers an opportunity to increase the proportion of women directors and that

“there is a strong case for a voluntary time-limited quota. A declaration that at least 30 per cent of board members should be female, applied for the next 10 years would attest to serious intent. Using the “comply or explain” principle, companies with a lower proportion would have to explain if they proposed to fill a vacancy with a man. Chairmen of companies with all-male boards - a fifth of the FTSE 100 – should explain in the annual report why they think this is acceptable”.[12]

Consideration should also be given to similar measures in relation to ethnic diversity.

<u>A.5 Information and professional development</u>

In order to help directors, and especially NEDs, to become both more diverse and more effective, there should be a strengthening of the Code's provisions relating to their induction and subsequent professional development and to the professional advice and secretarial support available to them. In particular, we agree with the Treasury Select Committee's report that

“there is a strong case for non-executive directors ....to have dedicated support or a secretariat to help them to carry out their responsibilities effectively” [13]

We were also pleased to note Lord Myners' recent remarks on the same subject:

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[11] Page 55, paragraph 150

[12] *“How to build diversity in boards”, Financial Times,* 18 May 2009

[13] Page 55, paragraph 153

"I am keen that Sir David [Walker] should consider.....whether there is a case for Non-Executive Directors to have dedicated support and resources to help them carry out their responsibilities and commission reports independent of management. I feel there is, for example, potentially scope for expanding, in this respect, the role of the company secretary".[14]

We also think that the Code should encourage institutional shareholders, especially where they are acting in coalition, to allocate resources to NEDs to help them discharge their responsibilities in the interests of the company and of its members as a whole.

A.7 Re-election

We believe that, in the interests of greater accountability to shareholders, the Code should provide that all directors should be subject to re-election annually.

B. Remuneration

We suggest that the provisions of the Code in relation to remuneration should be amended to reflect the following changes:

(1) A shareholders' advisory vote on directors' pay under section 439 of the Companies Act 2006 should be treated as binding. (We believe that in due course the Act should be amended to this effect.)

(2) The remuneration of senior management below board level which is recommended and monitored by the remuneration committee under paragraph B.2.2 of the Code should likewise be submitted to shareholders for approval, with the vote again being treated as binding.

(3) Disclosure of remuneration should be sufficiently detailed to allow shareholders to make an informed judgement. This principle should apply to pension arrangements and to any other benefits where the actual or potential cost to the company may not be apparent without full information.

(4) Where shareholders reject the remuneration report in respect of directors or senior management , the chairman of the remuneration committee should resign (as recently suggested by PIRC).

(5) As already suggested above, the remuneration of NEDs should in any case always be determined by shareholders, whether or not this is required by the Articles of Association.

(6) The existing provision in the Supporting Principle under B.1 (The Level and Make-up of Remuneration) that the remuneration committee should be *"sensitive to pay and employment conditions elsewhere in the group"* should be more fully reflected in the relevant provisions of the Code, which should require formal consultation with group employees or their representatives, as recently suggested by Lord Myners.[15].

(7) The remuneration committee should also establish formal consultation procedures with shareholders and their representatives.[16]

(8) The references in this section of the Code to the need for remuneration policy to be designed so as to align the interests of executive directors with those of shareholders should apply to senior

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[14] Speech to the Association of Investment Companies, 21 April 2009, paragraph 18. http://www.hm-treasury.gov.uk/speech_fsst_210409.htm

[15] Speech to NAPF, 12 March 2009, paragraph 62

[16] *ibid*

management also.

(9) The Code should explicitly state that the interests of executive directors and senior managers should be aligned with the ***long-term*** interests of the company and its shareholders. Whilst a comprehensive definition of *"long-term"* may be impracticable, some indications could be given as to what might constitute long-term interests for these purposes. Such indications should take into account the fact that, by the nature of their liabilities, many institutional shareholders have perspectives measured in decades rather than years. Against this background, and by way of example, the minimum vesting period of three years for a long-term incentive scheme, which is specified in paragraph 2 of Schedule A (Provisions on the design of performance related remuneration) seems much too short.

(10) Apart from specifying longer periods before the vesting of shares or the exercise of options, the Code should encourage other safeguards against perverse, short-term incentives. Such safeguards could include claw-back or forfeiture provisions.

(11) As a more fundamental change, the Code could also require remuneration committees to consider incentives that are directly linked to business models and management processes which have due regard to the company's long-term social and environmental impacts. The approach taken here could be consistent with any *"key performance indicators"* relating to environmental and other relevant matters that are included in any business review prepared in accordance with section 417 of the Companies Act 2006. There could also be taken into account the related concerns of shareholders, such as pension schemes that are required to include in their statements of investment principles their policies in relation to social, environmental and ethical considerations.

(12) To help counter what Lord Myners has called *"the insidious influence of executive benefit consultants",*[17] any external benefit consultants whose advice is sought should report to the remuneration committee and / or the shareholders exclusively. They should have no other current or recent connection with the company.

C. Accountability And Audit

In our view, the most important issue in this context is the potential for conflicts of interest where the company's auditors are also retained to carry out non-audit work. We have noted the review of this question in Treasury Select Committee's report,[18] including their conclusion that:

"Although independence is just one of several determinants of audit quality, we believe that, as economic agents, audit firms will face strong incentives to temper critical opinions of accounts prepared by executive boards, if there is a perceived risk that non-audit work could be jeopardised. .... This problem is exacerbated by the concentration of audit work in so few major firms. We strongly believe that investor confidence, and trust in audit would be enhanced by a prohibition on audit firms conducting non-audit work for the same company, and recommend that the Financial Reporting Council consult on this proposal at the earliest opportunity."[19]

We do not know whether the FRC intends to carry out the suggested consultation but at this stage our inclination would be to support such a prohibition.

The Code might also recommend the appointment of an independent adviser to the audit committee. As Lord Myners has suggested, the adviser's role could include engaging with external

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[17] Speech to Investment Management Association, 19 May 2009, paragraph 35 http://www.hm-treasury.gov.uk/speech_fsst_190509.htm

[18] Pages 82-84, paragraphs 233 - 237

[19] *ibid* paragraph 237

auditors, developing agendas, providing technical briefing and recommending when a second opinion should be obtained. [20]

We agree with the suggestion made by PIRC that consideration be given to introducing a statutory requirement for an advisory shareholder vote on the report of the audit committee. The Code could in any event recommend this.

D Relations With Shareholders

As will be apparent from some of the comments and suggestions made above, we think that this part of the Code should place greater emphasis on the role of the NEDs, and in particular the senior independent director, in the dialogue between the company and institutional shareholders. This dialogue should be placed on a more structured and proactive basis and should, for example, include the formal consultation procedures on remuneration already referred to.

Section 2 Institutional Shareholders

As we have already indicated, we hope that, following the current review, the Code will give an equivalent degree of guidance to institutional shareholders as it does to companies. It would clearly be inappropriate for us to attempt to detail here all the points that an expanded Section 2 of the Code might cover, as that would effectively amount to a full redraft. We shall therefore restrict our comments to what we consider to be the three most important areas which an expanded Section 2 should cover:

(1) ***Short-termism*** Although the need to change the culture of short-termism among institutional investors was one of the main themes of the Myners Review, eight years on it remains a problem, as Lord Myners has recently observed:

"Short termism, as practised by pension funds, is self-defeating for those charged with delivering pensions over many decades in to the future, and yet it remains a predominant form of behaviour.

A focus on "shareholder value", as measured by relative share price performance over quite short time periods lies at the heart of a number of behaviours which have delivered less than ideal outcomes, such as:

the ascendancy of momentum investing which discourages contrarian thinking by all but a small minority;

a partiality to merger & acquisition activity which so often fails to deliver the outcomes promised;

the adoption of aggressive and inappropriate capital structures to fend off predatory activity by private equity and others ; and

a failure to take account of the longer-term consequences of investment activity, including impact on the broader economy and society". [21]

The Code could give detailed guidance to all institutional investors on how to help bring about the requisite change in culture. We would suggest that particular attention be given to the relationship between professional fund managers and their clients, including pension funds, and to the terms of the mandates given to fund managers, so that, for example, performance measurement is recalibrated to encourage long-term perspectives.

(2) ***Active share ownership*** We welcome Lord Myners' revival of the suggestion, originally made

[20] Speech to NAPF, 12 March 2009, paragraph 57
[21] Speech to IMA, 19 May 2009, paragraphs 27 & 28

in the Myners Review, that professional investors should have an express statutory responsibility to seek to enhance the quality of investment and governance to promote value creation, based on the United States' ERISA model. [22] We think that this would fit well with the kind of redefinition of fiduciary duty which we have already suggested above. Here again, we would suggest that the Code should specifically endorse such an approach in any event, since there would be no conflict with existing law.

We also agree with Lord Myners that particular emphasis should be placed on encouraging institutional investors to coordinate their efforts to improve corporate governance, so as to maximise their influence and more effectively counter the syndrome of the *"ownerless corporation".* [23] The Code could usefully give support and guidance in this respect.

(3) ***Transparency*** In our view, lack of transparency throughout the investment chain remains one of the key problems to be addressed. Our own research in this area has consistently revealed serious failings, starting with inadequate disclosure by scheme trustees to their members and continuing through inadequate reporting of engagement activities by fund managers to their trustee clients.[24]

We believe that that the reserve powers under section 1277 of the Companies Act 2006 should be activated so as to require institutional investors to provide information about the exercise of voting rights and also that the disclosure regulations for occupational and personal pension schemes (which are currently under consultation) should be strengthened in these respects. Once again, however, we suggest that in any event the Code could provide encouragement and specific guidance on this issue.

Turning to the existing provisions of Section 2, we would normally wish to comment in some detail on the Supporting Principle under E.1, which provides that the Institutional Shareholders' Committee's *"The Responsibilities of Institutional Shareholders and Agents - Statement of Principles"* should be reflected in fund manager contracts. (This is not least because we think that there are significant shortcomings in the wording of the ISC statement, as well as in its application in practice.)

We note, however, that in early June the ISC is due to publish, in Lord Myners's words, *"its reflections on the financial crisis and its key conclusions in respect of shareholder responsibility and governance".*[25] We have therefore concluded that there would be little point in commenting on the current Statement of Principles (or on the related *Voting Disclosure Framework*). As the ISC's review will be issued after the closing date for this consultation, we trust that there will be an opportunity to comment on the outcome of the ISC review, whether in the course of the further consultation later this year that is envisaged in paragraph 8 of the Consultation Paper, or otherwise.

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22 Speech to NAPF, 12 March 2009, paragraph 57 & speech to IMA, 19 May 2009, paragraph 29

23 Speech to NAPF, 12 March 2009, paragraphs 69 -72, & speech to IMA, 19 May 2009, paragraph 24

24 See, for example, our reports *Responsible Pensions? UK Occupational Schemes' Responsible Investment Performance* 2009 (April 2009) and *Investor Responsibility? UK Fund Managers' Performance and Accountability on "Extra-Financial" Risks* (November 2008). Both reports can be downloaded from our website www.fairpensions.org

25 Speech to IMA, 19 May 2009, paragraphs 31 & 32