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Dear Catherine

Proposed Revisions to the UK Corporate Governance Code

We welcome the opportunity to respond to the FRC's consultation on revisions to the *UK Corporate Governance Code*. Our key observations on the content of the consultation are outlined below and we provide our responses to the consultation questions in Appendix 1 with additional comments in Appendix 2.

Throughout this response, we have used the terms:

- "Current Code" to mean the extant 2016 Code;
- "Draft Code" to mean the proposed revised Code which the FRC is seeking comments on; and
- "Draft Guidance" to mean the proposed revised Guidance on Board Effectiveness which the FRC is also seeking comments on.

Expanded remit of remuneration committees

1. The expanded remit of remuneration committees for **setting** (emphasis added) the remuneration of senior management is not appropriate as it blurs the line between executive responsibility and oversight. Responsibility for **setting** (emphasis added) must remain the role of the CEO (with the HR director where appropriate), with the remuneration committees providing challenge and oversight e.g. as to whether the incentive structures proposed by the CEOs are stretching, aligned to the delivery of strategic objectives of the company as well as those of the executive board members. They should then provide their final approval. This would also ensure there is a "second review" i.e. similar to how the remuneration of executive board directors is subject to final approval by shareholders, the CEO's proposals would be approved by the remuneration committee. We recognise that the FRC may wish to make a step change with what is in Provision D2.2 of the Current Code, i.e. "The committee should also **recommend and monitor** the level and structure of remuneration for senior management". If this is the case, we believe this objective can be achieved by wording along the lines of "The committee should **review and approve** (emphasis added) proposals from the CEO (and where relevant the HR director) on the level and structure of remuneration for senior management". In fulfilling this role, it should ensure that the incentive structures meet the factors set out in Provision 40 and specifically are aligned to those of the executive board directors, are sufficiently stretching and will incentivise senior management to deliver the

long term strategic objectives and promote the culture of the company. In our view this would be stronger than the requirement in the Current Code to “recommend and monitor” but a) will not blur the lines between the role of executive management and the oversight role of the board and its committees and b) provide a “second review” mechanism.

2. On the role of the remuneration committee regarding oversight of remuneration and workforce policies and practices described in Provision 33 of the Draft Code, it should be clear that this is a responsibility of the board that it **may** (emphasis added) delegate to the remuneration committee or, where appropriate, another committee with relevant responsibilities. This will ensure the overall responsibility for oversight remains with the board, whilst allowing the board the flexibility to choose to delegate some of these responsibilities to a committee, being the remuneration committee or another committee, where appropriate, e.g. delegating responsibility to the nomination committee for issues relating to talent development.

Stakeholder and workforce engagement

3. Principle C of the Draft Code refers to the board’s role in ensuring a company meets its responsibilities to shareholders **and stakeholders (emphasis added)**. We believe that it is not appropriate to link the responsibilities of the board to these two groups in an equal manner. Under current company law, directors have a prima facie duty to promote the success of the company for the benefit of its members but in doing so need to have regard to a number of factors. We recommend that Principle C is reviewed to take into account the current construct of UK company law i.e. for the board “to have regard to” [stakeholders] in discharging their primary duty to shareholders.
4. The Draft Code seeks to encourage companies to adopt one of three possible methods of engaging with the workforce. However the wording in Provision 3 should be improved to ensure companies are clear on the flexibility available to them to adopt alternative methods to those listed, or a combination of methods. This is referenced in Paragraph 35 of the Draft Guidance, but there is merit in more explicit reference in the Draft Code itself. We provide our suggested wording in Appendix 2.
5. The FRC also poses a specific question on whether the methods in Provision 3 are sufficient and will achieve meaningful engagement. It is for each board to determine what is sufficient and appropriate, given a company’s specific circumstances. We are unable to judge whether the methods listed will achieve meaningful engagement - this will be tested with time and with feedback from the stakeholders and workforce concerned. Additionally we feel that the language used in the Draft Guidance on what boards should engage on with their workforce is focused on managing risk or protecting workers interests as opposed to the positive contribution workers could bring to the company on, for example, operational matters.

6. As worded, Provision 4 provides for the board to report on **how (emphasis added)** it has gone about engagement with the workforce and other stakeholders and **how (emphasis added)** their interests have influenced the board's decision making. This could encourage companies to provide disclosures on the **processes (emphasis added)** of engagement rather than the more important issues of: the topics of actual engagement in the reporting period, what the board did to consider these issues and the outcome of taking into account the feedback from the engagement. We recommend that the FRC reviews the wording of Provision 4 to ensure companies provide meaningful disclosures that are focused on specific actions and outcomes rather than processes.

Independence and tenure of chair and non-executive directors

7. While we recognise that nine years has become the de facto ceiling, we are concerned that the Current Code Provision B.2.3 referring to engaging in a "particularly rigorous review" when a director has served for six years has been removed. This Provision in the Current Code has, in our view, been helpful in encouraging a particularly rigorous assessment of individual directors and led to rotating directors off the board at six years where appropriate. In our view, independence is eroded over time and having a specific reflection point (six years) is helpful. It has also encouraged refreshment of the board and may have indirectly assisted with diversity. Its removal may also tend to suggest that nine years is a standard expectation for board appointments and we believe this would be a backward step. We are also concerned that as currently drafted there is no emphasis on the need for the board to assess the independence of non-executive directors on an ongoing basis. We recommend the six year reference be restored in the Draft Code or at the very least, emphasis be placed on doing a rigorous review as part of the annual board effectiveness review.
8. In relation to the proposed changes allowing the chair to remain independent following appointment, we are unclear what the FRC is trying to achieve. We recognise the importance for all directors, including the chair, to maintain an objective mind set and demonstrate challenge. However, as stated in the Higgs Report¹, given the chair's extensive involvement with the company and the chief executive in particular and the level of the chair's remuneration, the ongoing independence of the chair is not as clear cut as that of other non-executive directors. We are unclear why this widely accepted understanding that the chair, by nature of the role, is not independent is now being revisited and do not support the proposed change. We are also concerned that this change could have a substantial effect on chair succession. For example, succession often involves elevating the senior independent director (SID) to the board chair. However, if a SID succeeds the chair after a significant period on the board, the remaining term of office may be so short as to not be meaningful enough to be effective. If the FRC proceeds with its plan to assess chair independence on an ongoing basis, and nine years becomes the de

¹ Review of the role and effectiveness of non-executive directors, January 2003, paragraphs 5.8-5.9
<http://www.ecgi.org/codes/documents/higgsreport.pdf>

facto term limit, the independence period for a chair who takes the role during their tenure on the board should be able to continue beyond the nine-year independence limit to an overall period of (for example) twelve years. Otherwise, there is a risk that most chair appointments will in practice come from people outside the existing board.

9. Even if the FRC includes such a change, we believe that the chair should be excluded from the “count” of independent directors (as per the Current Code) as their role is distinct from that of other independent non-executive directors. By including the chairman in this “count”, levels of compliance with the Code may increase at face value, but practically and behaviourally, there will not be a change, i.e. independence may increase in form but not in substance. Also we do not believe it is appropriate for the chair to sit on the remuneration committee. We understand there would be occasions where the Remuneration Committee Chair would want the Board Chair to attend (for example to discuss CEO performance) but they can attend by invitation. The FRC is still able to emphasise the importance of demonstrating a lack of bias and maintaining objectivity of mind-set and in character, on an ongoing basis without requiring companies to classify their chairs as independent (or not).
10. We note from the consultation document, the change in emphasis regarding the factors in Provision 15 but we are unclear whether the factors listed in Provision 15 are (or should be) “hard and fast” i.e. if one or more is met, a director is automatically not independent. This is because the discussion in the consultation document implies they are not “hard and fast” and an explanation can be offered to conclude that a director is indeed independent notwithstanding having “met” a factor in Provision 15. If this is the case, this would not represent a change to the requirements under the Current Code, so it would be more transparent to keep with the current requirements but be more discouraging in the language in Provision 15 to give the change of emphasis. If the FRC intends the factors in Provision 15 to be “hard and fast” i.e. akin to a rule, then we are unclear how this is reconciled with the reference to being able to offer an explanation.
11. We are also concerned that the factors in Provision 15 are of a binary and tick-box nature and do not provide a qualitative assessment of objectivity. We do not believe that simply because a director does not meet a factor in Provision 15 that makes them independent. In our view the Draft Code creates confusion on this point and we believe there is a need for the FRC to reinstate the over-arching test in Provision B.1.1 of the Current Code: “The board should determine whether the director is independent in character and judgement and whether there are relationships or circumstances which are likely to affect, or could appear to affect, the director’s judgement”. We encourage the FRC to clarify what they are seeking to achieve and to emphasise the qualitative aspects of independence. In our view, the FRC would be better able to achieve their objectives by i) strengthening the Draft Code’s **Principles** (emphasis added) regarding independence, ii) emphasising ongoing objectivity of mind-set and character (as per Provision B.1.1 of the Current Code), iii)

requiring companies to provide specific and robust explanations with reference to factors which may impact on a director's ongoing objectivity.

Timing/Implementation of the Draft Code and Guidance

12. In general, we support the proposed effective date (accounting periods beginning on or after 1st January 2019) as long as the FRC publishes the Draft Code by June 2018. The June timing is critical and any slippage would cause difficulties for companies with 2019 calendar year ends to implement it effectively. Were this to happen, the FRC should consider delaying the implementation date.
13. Secondly, even if published by June 2018, it is likely that some companies will not be able to claim compliance for the full calendar period i.e. from 1 January and will therefore need to explain non-compliance for part or all of the first accounting period. It would be helpful for the FRC to explicitly acknowledge this expectation when it publishes the final version and set the right tone with investors and proxy advisers to encourage them to exercise appropriate discretion when companies have been unable to comply but have offered meaningful explanations on the progress they have made.

Shorter and sharper

14. We agree with the FRC's objective to shorten and sharpen the Current Code. One way this has been achieved is by moving aspects where "the practices are well embedded in company behaviour" to the Draft Guidance. We disagree with this rationale as there are some areas of best practice that are so important that they should remain in the Draft Code, and moving them to the Draft Guidance, which is non-mandatory, reduces the incentives to adopt and maintain good governance practices. For example, unlike Current Code Provision B2.1, the Draft Code no longer requires that the board chair or an independent non-executive director should chair the nomination committee, which should be restored.
15. It is also important to recognise that we have a dynamic capital market in the United Kingdom. For example, in 2017 there were over 60 new listings on the Main Market of the London Stock Exchange. Given these are new entrants and most are unlikely to have complied with the Current Code (or an equivalent governance code) in the past, they would not necessarily be aware of what established good practices they should/must follow as compared to long standing listed companies. In our view, the Draft Code should continue to contain the most important elements regardless of whether they are well embedded.
16. We also note that the section on Audit, Risk and Internal Control has been left unchanged. We believe the FRC should take the opportunity to make it shorter and sharper in

alignment with the rest of the Draft Code. We provide suggestions in our response to Q12 in Appendix 1.

Focus on application of Principles versus comply or explain with Provisions

17. We agree with the re-focus on the application of the Current Code's principles. Perhaps the focus has over time become skewed too far towards complying or explaining against the Provisions, even though under the Listing Rules companies have always been required to make *"a statement of how they have applied the Principles in a manner that would enable shareholders to evaluate how the principles have been applied"*, so in theory this should not represent a change. With this re-focus on the Principles which companies have to apply and the Provisions which remain 'comply or explain' we encourage the FRC to clarify that their expectation is not that companies have to comply with every Provision in order to move beyond the 'tick box' approach. Alongside this, we strongly recommend that there be a mirror obligation on investors (e.g. within the Stewardship Code) and their proxy advisers to focus on the application of the Principles and for a qualitative view on a Company's explanations rather than following a binary approach, and issuing voting recommendations on the basis of, a company's compliance with the Provisions. This would further encourage companies to comply with the true spirit of the Code rather than applying a 'tick box' approach.
18. We also note that the Draft Guidance states in Paragraph 8 that *"[it] could be drawn upon to illustrate in the annual report how the Principles have been applied"*. Nevertheless, we feel given the conceptual nature of some of the Principles there is benefit in the FRC providing illustrative guidance on how it sees these disclosures working in practice. By way of example, below are some Principles which we feel companies may struggle to disclose against in a manner that would enable shareholders to evaluate how they have been applied (emphasis added):
- Principle A, first sentence - A successful board is led by an effective and entrepreneurial board whose function is to promote the long term success of the company.
 - Principle D, first sentence - All directors must act with integrity and lead by example in the best interests of the company.
 - Principle E - The chair should demonstrate independent and objective judgement, and promote a culture of openness and debate by facilitating constructive relations between directors.
 - Principle G - Non-executive directors should provide constructive challenge, strategic guidance, offer specialist advice and hold management to account.

We feel that in the absence of such illustrative disclosure/worked examples, companies may simply repeat these statements as statements of fact.

Significant votes cast against a resolution

19. We support the proposal to define what constitutes a “significant” vote by using a 20% threshold in Provision 6 of the Draft Code. This will provide clarity for companies and shareholders. However, the FRC may wish to consider shareholder proposed resolutions (e.g. to remove a director) and how such resolutions should be treated under Provision 6.
20. In addition, in a situation where a company has a significant shareholder, the 20% threshold may be too high to represent a significant dissenting vote by independent/minority shareholders. Given the objective of Provision 6 is to ensure that companies take significant dissenting votes seriously and address the concerns raised by such votes, we encourage the FRC to consider how best to safe guard minority shareholders in these cases.
21. As a suggestion it may be appropriate to use the Listing Rules definition of a “controlling shareholder” (controlling 30% or more of the voting rights in the company, with a requirement for the company and the shareholder to enter into a “Relationship Agreement”) in carrying through on the intention of Provision 6. For example, under these “Relationship Agreements” the election and re-election of independent directors are subject to a separate vote by both the shareholders as a whole and the independent shareholders. Another approach where there is a “controlling shareholder” might be to determine the 20% threshold based on 20% of the independent shareholders instead.

Culture

22. We agree with the emphasis on culture in the Draft Code. However, as drafted we feel that most references to culture are risk management led. We recognise culture has an important role in risk management/risk culture but it would be helpful to provide a more holistic reference to culture in supporting delivery of strategy and operation of the business model, along with providing opportunities for business success. See further our comments in Appendix 2.

Viability statements

23. We note that the FRC is strongly advocating a two-stage assessment process for the viability statement in the Financial Reporting Lab report, the consultation document (paragraphs 76 and 77) and the Draft Guidance (paragraph 100) and this is also strongly supported by investors. If it is the FRC’s intention for companies to report separately on prospects and viability it should clarify this in the Draft Code Provision 31, as the wording of the Current Code has not achieved this.

Consistency across multiple guidance documents

24. We note there is limited content in the Draft Guidance on Audit, Risk and Internal Control relating to the viability statements with a cross reference to separate Guidance on Audit Committees (GAC) and the Guidance on Risk Management Internal Control and Related Financial Business Reporting (GRM&IC). Subject to our comments in paragraph 22 on viability statements, we recommend that these Paragraphs of the Draft Guidance be integrated into the GRM&IC such that from a user perspective all guidance on viability statements is contained in one place.
25. Given the wholesale and fundamental review that the FRC has undertaken, we believe that:
- a. The GAC and GRM&IC should also be reviewed to be consistent with the format, tone and structure of the Draft Guidance.
 - b. In the long run, the various guidance documents should be integrated into a one all-encompassing document supporting the entire *UK Corporate Governance Code*. Given the latest round of proposed revisions ranging across all board committees, there will be an increased imperative for these committees to liaise and coordinate their work, and from a board member's perspective it would be helpful to have one holistic, self-contained document that contains guidance on all three of the main board committees.

Stewardship Code

26. There is a lack of context in the preliminary consultation on the Stewardship Code regarding how the questions posed have been chosen and whether there are other issues that should be considered. In addition, the Shareholder Rights Directive is due to be transposed into UK law and this should be taken into account in preparing a new draft of the Stewardship Code. That will also provide an opportunity to engage with signatories in ensuring key issues are aired in preparing the full consultation on changes to the Stewardship Code. We have provided comments on some of the questions posed, but look forward to the full consultation later in 2018 when the context of these issues should be clearer.

In conclusion, we support the overall approach to the revisions, but subject to the suggestions we have made here. It is important to ensure the final revisions are published in a timely manner to ensure companies have time to implement them in the true spirit of good governance.

I would be very pleased to engage with you further on this important consultation and please feel free to contact me if you have any questions on the points raised in this letter or you would like to discuss other matters related to the Draft Code and Guidance.

Yours sincerely

Eamonn McGrath
Partner, UK Head of Regulatory & Public Policy

Appendix 1

Responses to Questions Raised in the Consultation

Question	Response
Application of the Code	
<p>1. Do you have any concerns in relation to the proposed Code application date?</p>	<p>No, subject to the comments in paragraphs 12 and 13 in our letter.</p>
Guidance	
<p>2. Do you have any comments on the revised Guidance?</p>	<p>Yes, there are a number of areas where we suggest improvements.</p> <p>Paragraph 9 - Whilst we agree that the board should develop the vision and values it wishes to promote, the relationship between these and the setting of strategy is not correct in the first sentence. We believe the board should set “a strategy to deliver its vision and ambition, underpinned by the culture and values.”</p> <p>Paragraph 9 - The last sentence should, in addition to events and developments, include explaining how principal risks have been addressed.</p> <p>Paragraph 13 (box) - Questions for boards</p> <ul style="list-style-type: none"> • Reference should be made to “principal” rather than significant risks. • There should be explicit reference to assessment of viability in this box. • In the fourth bullet point, it is not clear what “its” is referring to. • It is unclear what is meant by ‘behavioural performance management’ in the fifth bullet point. <p>In the final bullet point, we don’t think culture can be “led”, so it would make more sense to change the use of “we are leading” to another term like “we are promoting”.</p> <p>Paragraph 15 - In the eighth bullet point, should the reference be to “board culture” rather than “organisational culture” given that this section is focusing on board decision-making?</p>

	<p>Paragraph 19 - As stated in paragraph 6 of our letter, we believe the wording in Provision 4 of the Draft Code can be improved.</p> <p>The FRC should consider how it incorporates the wording in Paragraph 19 of the Draft Guidance (“how input from the workforce and other stakeholders was taken into account and the impact it had on decision making”) into Provision 4, as this is likely to result in more meaningful reporting.</p> <p>Paragraph 24 - The first word in the second sentence should be “It”.</p> <p>Paragraphs 26 to 30 - The environment is not referred to in Paragraph 27, which discusses board engagement with stakeholders. Although this makes strict sense (as the environment itself is not a stakeholder), the company’s engagement in relation to its impact on the environment should be picked up within Paragraphs 26 to 30.</p> <p>Paragraph 27 - In the third sentence, the words “ensure <u>they</u> have a rounded view of how the company does business” are unclear. Presumably “they” here refers to the board and not stakeholders, but this should be clarified.</p> <p>Also, the use of the phrase “impact of its activities” is not very clear. In particular, Paragraph 27 does not say what it is that the activities might impact. This appears to be language used in the European Union’s Non-Financial Reporting Directive, but appears a little out of place here, at least without further elaboration.</p> <p>Paragraphs 31 to 34 - The ordering of these Paragraphs can be improved to be more logical and aid with the flow. Paragraph 34 should precede Paragraphs 32 and 33, as it is more introductory in nature. The FRC could also consider merging Paragraphs 32 and 33, as these are somewhat repetitive.</p> <p>We also think the wording here could include more positive aspects of engagement, such as ensuring the workforce understands/buys into the strategy, generating ideas for operational effectiveness, innovation, etc. This might set a better balance, rather than focusing mainly on wording such as “voicing concerns”, “early warning”, “feeling safe”, etc.</p>
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	<p>Paragraph 35 - In the fifth line, the words “open innovative alternatives” should be changed to “open <i>to</i> innovative alternatives”.</p> <p>Paragraph 36 -</p> <ul style="list-style-type: none"> • First bullet point: we suggest referring to “mechanism(s)” rather than “forum”, given the flexibility companies can take advantage of. In addition, reference should be to “workforce” rather than “employees” • Second bullet point: refers once again to “employees” rather than “workforce” and it would be helpful to emphasise the importance of communicating outcomes back to the workforce • Third bullet point: what does “colleagues” mean in this context? Should this also refer to the “workforce”? <p>Paragraph 42 - We don’t believe you can embed strategy, and suggest the wording of this para is changed to “Boards should seek assurance that management has put appropriate mechanisms in place to implement the strategy and embed purpose and values.</p> <p>Paragraph 42 - Questions for boards to ask management</p> <ul style="list-style-type: none"> • Fifth bullet point: it seems incongruous to specifically refer to tax policy rather than policies in general. Tax policy could be an example of such a policy. • Sixth bullet point: relationships with suppliers are two-way. There may also be concerns that a company’s own relationship with its suppliers may not live up to its stated values, for instance in being late in paying invoices, which can have a significant effect on a company’s reputation. <p>Paragraphs 43 to 46 - References to culture here are largely as seen through a risk management lens rather than a holistic consideration of the board’s monitoring of how culture supports the delivery of strategy and operation of the business model, including the opportunities it can give rise to. For example, if a company relies on innovation as a core part of its strategy, the</p>
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	<p>board would want to ensure that the culture allows innovative thinking and working in support of that strategy.</p> <p>Paragraph 50 - In the fourth bullet point, reference should be to “principal risks” rather than “significant risks”.</p> <p>Paragraph 95 - The references to ‘challenges and opportunities’ could be expanded and at least refer to principal risks. We also believe there should be explicit reference to “developing and delivering the strategy”.</p>
Leadership and purpose	
<p>3. Do you agree that the proposed methods in Provision 3 are sufficient to achieve meaningful engagement?</p>	<p>We are unable to determine if the proposed methods are sufficient as noted in paragraph 5 of our letter. In addition we have specific comments regarding the flexibility available to companies in paragraph 4 and suggestions on how the FRC could encourage better reporting in paragraph 6 of our letter.</p> <p>Separately the FRC needs to clearly define the term “workforce” within the Draft Code itself. Currently there is an inferred definition in the consultation document in paragraph 32 as follows: “all those paid to work for the company”. This is a very broad definition and could incorporate consultants as well as potentially staff at an outsourced service provider who perform work solely for a specific company. The FRC should clearly define the term within the Draft Code including clarifying how far reaching this could be, and whether it is bound geographically e.g. to a company’s UK workforce.</p> <p>Care needs to be taken not to make the objective of engagement with the workforce and oversight of workforce policies so burdensome as to become difficult in practice. We also suggest that some of the wording in paragraph 33 of the consultation document on the term “workforce” be incorporated into the FRC’s definition to be contained within the Draft Code.</p>
<p>4. Do you consider that we should include more specific reference to the UN SDGs or other NGO principles, either in the Code or in the Guidance?</p>	<p>No. In our view, consideration of wider society is sufficient within the Draft Code.</p>
<p>5. Do you agree that 20 per cent is ‘significant’ and that</p>	<p>Yes, subject to some considerations, which we detail in paragraphs 19 to 21 of our letter.</p>

<p>an update should be published no later than six months after the vote?</p>	<p>We agree that companies should provide an update on actions taken in response to a significant vote to be published no later than six months after such vote. It would be helpful for the FRC to clarify how they expect companies to publish this update, e.g. through an RNS statement, press release or some other format. We also believe that investors should have a mirror requirement in the Stewardship Code to engage with companies when they have voted against a resolution.</p>
<p>Division of responsibilities</p>	
<p>6. Do you agree with the removal of the exemption for companies below the FTSE 350 to have an independent board evaluation every three years? If not, please provide information relating to the potential costs and other burdens involved.</p>	<p>Yes. The distinction between companies in the FTSE 350 and those below is somewhat artificial in any case, as there are often movements in the FTSE 350 index, for example due to changes in commodity prices impacting the market value of extractive companies.</p> <p>In addition, the opportunity to “comply or explain” allows companies to provide an explanation of the reasons for non-compliance. This could include where independent board evaluation has not been completed because it is not appropriate for the company’s circumstances or is cost prohibitive.</p> <p>Ultimately, we believe a periodic independent evaluation is good practice for any listed company.</p>
<p>7. Do you agree that nine years, as applied to non-executive directors and chairs, is an appropriate time period to be considered independent?</p>	<p>Yes, however see paragraph 7 to 11 of our letter. In our view, the longer a non-executive spends on a board, the more challenging it is for them to maintain their independence. However, we have concerns about including ongoing assessment of chairs for independence and also do not believe it would be helpful for nine years to become the ‘default’ period of time a non-executive spent as an independent director on a board. Emphasis should be placed on doing a rigorous review as part of the annual board effectiveness review, particularly at the six year mark of a directors’ term.</p> <p>As mentioned in paragraph 8 of our letter, if the FRC proceeds with its plan to assess chair independence on an ongoing basis, and nine years becomes the de facto term limit, the independence period for a chair who takes the role during their tenure on the board should be able to continue beyond the nine-year independence limit to an overall period of (for example) twelve years.</p>
<p>8. Do you agree that it is not necessary to provide</p>	<p>Yes, we agree that there should not be a maximum period of tenure. The nine year limit on independence is likely, in practice,</p>

<p>for a maximum period of tenure?</p>	<p>to act as a ceiling on tenure other than in exceptional circumstances, however, as expressed in our response to Question 7, we have concerns about this.</p>
<p>Composition, succession and evaluation</p>	
<p>9. Do you agree that the overall changes proposed in Section 3 of Revised Code will lead to more action to build diversity in the boardroom, in the executive pipeline and in the company as a whole?</p>	<p>Yes, overall, other than with reference to our comments in Paragraph 7 of our letter re i) the removal of the six year reflection point which in our view has indirectly assisted with diversity ii) our concern that nine years may become a standard expectation/default period for board appointments, which in our view would reduce opportunities for board refreshment and hence diversity.</p> <p>The board/nomination committee oversight of the executive pipeline is a positive step and one we have advocated for a number of years.² The combination of the reference in the Draft Code alongside the various diversity aspirations and targets set in industry led reviews (e.g. on gender, ethnic representation on boards, race in the workplace etc.) which are now being brought together by the Government under the recently created Business Diversity and Inclusion Group should help build diversity. However, realistic expectations need to be set on outcomes as these initiatives will take time to filter through.</p> <p>It should also be noted that 7.2.8A of the Disclosure Guidance and Transparency Rules (“DTR”) requires the disclosure of a diversity policy, objectives and results (and an explanation if no diversity policy exists). However, Provision 23 of the Draft Code removes the previous requirement to highlight measurable objectives for implementing a diversity policy, and the progress made in meeting those objectives. Although Provision 23 requires new disclosures on diversity, these are not linked to the company’s diversity policy. In particular, ‘an explanation of how diversity supports the company in meeting its strategic objectives’ is difficult to explain without reference to a diversity policy.</p> <p>It would also be helpful if the Draft Code’s Provisions were sufficient to cover compliance with similar requirements in DTR 7.2 (as is the case for the Current Code). While some companies will be required to make the new diversity policy disclosures in DTR 7.2.8A, this will not impact all companies applying the Draft Code. The FRC should replicate the requirement for disclosure of a</p>

² See our report [“The nomination committee - coming out of the shadows”](#) for further details.

	diversity policy in the Draft Code with appropriate further detail in the Draft Guidance.
10. Do you agree with extending the Hampton-Alexander recommendation beyond the FTSE 350? If not, please provide information relating to the potential costs and other burdens involved.	Yes. However, we note that the definition of a senior manager used in Principle J and defined in footnote 3 of the Draft Code differs from the statutory definition in Subsection 414C (9), which is used for disclosures in the Strategic Report. As a result, this distinction should be explained in the Draft Code, and disclosures encouraged if there are differences in the data reported for senior managers.
11. What are your views on encouraging companies to report on levels of ethnicity in executive pipelines? Please provide information relating to the practical implications, potential costs and other burdens involved, and to which companies it should apply.	Given the FRC are seeking to encourage companies to report on ethnicity rather than mandating it, we support this approach. As with the Lord Davies recommendations for women on boards, which were not mandatory but seen as aspirational “targets” we believe that this reporting (over time) will have positive effects.
Audit, risk and internal control	
12. Do you agree with retaining the requirements included in the current Code, even though there is some duplication with the Listing Rules, the Disclosure and Transparency Rules or Companies Act?	<p>Yes, provided that the Draft Code does not conflict with any future revisions to the Listing Rules, DTR or Companies Act 2006.</p> <p>Separately, just as the rest of the Draft Code has been made shorter and sharper, we note that there is scope for doing the same in this section and have set out our suggestions below.</p> <p>We have labelled our comments as “Clarification” to denote wording that can be clarified or “Shorter and Sharper” to denote wording that can either be removed or made more concise.</p> <ul style="list-style-type: none"> • Clarification - Footnote 6 to Principle M - this should refer to “under statutory requirements” rather than “by statutory instruments”. • Clarification - Principle M - we believe that a board’s responsibility is wider than just financial information and should also cover the integrity of narrative statements. For example principal risk disclosures and the viability statement are key disclosures that the board should be satisfied with.

	<ul style="list-style-type: none"> • Clarification - Provision 25, fourth bullet point - we believe that in line with the recent changes introduced under the EU Audit Reform the wording could be clearer on the role of the audit committee (AC) to conduct the tender process rather than just making a recommendation to the board on appointment of the auditor. • Shorter and Sharper - Provision 25, last bullet point- we recommend the FRC remove this as a) it pre-dates the extended public reporting that ACs are required to provide in the annual report and b) no other board committee has a similar requirement and we are unable to see why it is only required for the AC - if retained, then all board committees should report to the full board in this way. • Shorter and Sharper - Provision 25 - fifth and sixth bullet points - we would suggest that one bullet point deals wholly with independence including referring to the need for i) the AC to assess how the auditor demonstrates professional scepticism (as emphasised in the recent Audit and Assurance Lab on Audit Committee Reporting); and ii) the need for “developing a policy on engagement of external auditor to supply non-audit services (NAS) ...”; and a separate second bullet deals with the AC’s review of the effectiveness of the external audit process. The latter is much wider than just a review of independence and as worded the bullet points mix the two and detract from the essence of a broad review of effectiveness of the audit process. • Shorter and Sharper - Provision 25 bullet point re policy on NAS. If the FRC’s stated rationale for moving items to the Draft Guidance or removing them altogether i.e. where “the practices are well embedded in company behaviour” holds (which as stated in paragraph 14 of our letter, we do not agree with as a rationale), it is now established practice for ACs to have a policy on NAS so in theory this could be moved out to the Draft Guidance. Alternatively the FRC could allow companies to include the NAS policy on their website, with the disclosure in the AC’s report (within the annual report), focusing on the application of the NAS policy in practice, including the actual level of fees for NAS and the ratio of audit fees to NAS.
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	<ul style="list-style-type: none"> • Clarification - Provision 31 - we refer to the comment in paragraph 23 of our letter. Given the FRC's and investors' desire for companies to report on prospects and separately on viability we believe that there is benefit in the FRC clarifying (within the Draft Code) the two-stage assessment process described in the Financial Reporting Lab's recent report as well as paragraphs 76-77 of the consultation document. • Shorter and Sharper - Section 4: Audit, Risk and Internal Control - we refer to paragraph 24 of our letter, relating to the need to consolidate all guidance related to the viability statement.
<p>13. Do you support the removal to the Guidance of the requirement currently retained in C.3.3 of the current Code? If not, please give reasons.</p>	<p>Yes. It has been our long held belief that it was adequate for terms of reference to be made available publically e.g. on the website and for the AC's report (in the ARA) to concentrate on how those terms of reference were operationalised during the year by giving an account of what the AC <i>did</i> (emphasis added) during the year as opposed to its general role.</p>
<p>Remuneration</p>	
<p>14. Do you agree with the wider remit for the remuneration committee and what are your views on the most effective way to discharge this new responsibility, and how might this operate in practice?</p>	<p>Setting remuneration for senior management</p> <p>As mentioned in paragraph 1 of our letter, we are concerned about the widening remit of the remuneration committee to include setting senior management remuneration. We propose that the remuneration committee takes an oversight role only rather than being responsible for actually setting remuneration.</p> <p>Overseeing broader remuneration and workforce policies and practices</p> <p>As mentioned in paragraph 2 of our letter, it is important to emphasise the primary role of the board in overseeing broader remuneration and workforce policies and practices, but expressly recognise that this may be delegated to relevant committees, including the remuneration committee. We also welcome the fact that the Draft Code recognises that not only pay and incentives but also other workforce policies have an impact on the experience of the workforce, their engagement and behaviours. The Draft Guidance provides useful examples of the workforce policies that may be in scope.</p>
<p>15. Can you suggest other ways in which the Code</p>	<p>Yes. The linkage between remuneration policy and long-term sustainable outcomes is important. However, more</p>

<p>could support executive remuneration that drives long-term sustainable performance?</p>	<p>encouragement should be given to remuneration committees to consider flexible pay structures, which support better the achievement of business strategy and the promotion of an organisation's culture and values. We see an increasing level of convergence in pay composition across companies in different sectors, business cycles and growth trajectories, which is unsustainable and not always appropriate. This has often been driven by investor expectations that remuneration policies should be consistent with 'established' market practice, even though circumstances in different companies can be quite different. This may be deterring some remuneration committees from introducing more innovative practices, which may be aligned more effectively with the realisation of long-term business strategies of their companies. Therefore, the Draft Code is the right medium to focus on long term success of the company and help promote different approaches depending on the strategy of the company to achieve long term sustainable performance and success with room for some divergence in market practice.</p> <p>The desire for simplicity has formed part of the executive remuneration debate for quite some time now. Whilst we acknowledge the reference to the "avoidance of complexity" in Principle 40, the Draft Code could take a stronger stance on what simplicity may look like and provide some guidance on how this can be achieved in a compliant way.</p> <p>We also note there has been a considerable and understandable focus on the quantum of pay and the remuneration of CEOs. However, in our view, there should be an equal, or arguably greater, focus on the bottom quartile and how much a company's lowest paid workers are earning.</p> <p>Finally, there seems to be less emphasis placed on termination payments and on addressing the issue of rewarding failure (previously in Code Provisions D1.4 and D2.2). This issue continues to be a matter of public interest following recent corporate failures. Overly generous termination plans can affect behaviour and have the potential to unduly influence decision-making.</p>
<p>16. Do you think the changes proposed will give meaningful impetus to boards in exercising discretion?</p>	<p>It is unclear if this will necessarily make a meaningful difference. Remuneration committees already have the ability to apply discretion and judgement. However, the degree of impetus for boards to demonstrate greater use of discretion, with the necessary changes in behaviour, may end up being attributed to a</p>

	<p>combination of developments already in play than the proposed changes in the Draft Code. For example, during the 2017 AGM season a number of companies applied discretion and reduced incentive pay-outs and forward looking opportunities. However, the proposed changes could provide an additional boost to boards to revisit its exercise of discretion.</p> <p>In some cases, the lack of a perceived link between pay levels and company performance has prompted shareholder dissent, with opposition registering 20% plus of votes cast. No doubt increased pressure from investors and proxy advisers has influenced this situation, and initiatives such as the Investment Association’s public register of companies experiencing significant shareholder dissent will also help. A number of these developments are already starting to have some effect and can be expected to increase consciousness about the exercise of discretion.</p>
Stewardship Code	
<p>17. Should the Stewardship Code be more explicit about the expectations of those investing directly or indirectly and those advising them? Would separate codes or enhanced separate guidance for different categories of the investment chain help drive best practice?</p>	<p>It would be better to maintain one Stewardship Code containing high level principles for the different parts of the investment chain. Examples of how these high level principles can be applied by different participants in the investment chain could be provided in supporting guidance in a similar way to how the Guidance on Board Effectiveness, GAC and GRM&IC support the Corporate Governance Code.</p>
<p>18. Should the Stewardship Code focus on best practice expectations using a more traditional ‘comply or explain’ format? If so, are there any areas in which this would not be appropriate? How might we go about determining what best practice is?</p>	<p>Yes, we support aligning the Stewardship Code with the Corporate Governance Code approach.</p> <p>Best practice can be determined by looking at the practices of a number of the top tier signatories. Although such an exercise may take a little time, it will be informative. The FRC should not shy away from looking to stretch practices to get desired improvements, as has been done over the various revisions to the Corporate Governance Code.</p> <p>Care should be taken in documenting “best” practice to ensure it remains current - practice can and does evolve and while it may be considered “best” at date of publication, it can become out of date quickly. We suggest using terminology like “good practice” at</p>

	<p>this stage of development of the Stewardship Code, particularly as it is expected to change nature as a result of the FRC's review.</p>
<p>19. Are there alternative ways in which the FRC could highlight best practice reporting other than the tiering exercise as it was undertaken in 2016?</p>	<p>Yes. Highlighting good practice and using the "comply or explain" approach may be more meaningful than the tiering exercise and is more likely to encourage improved practices across the board.</p> <p>In the context of tiering, it may be possible to have a more granular scoring of performance against each of the seven principles to provide more transparency of an overall score. Firms (and end user investors) are likely to want a method that is transparent and easily comparable across firms.</p>
<p>20. Are there elements of the revised UK Corporate Governance Code that we should mirror in the Stewardship Code?</p>	<p>Yes.</p> <p>In particular, it would be helpful to incorporate some reciprocal obligations for investors to engage with companies where companies are expected to engage with investors, in order to ensure two-way dialogue. For example, where there is a "significant vote" under Provision 6 of the Draft Code or in relation to the engagement contemplated under Provision 41 of the Draft Code.</p>
<p>21. How could an investor's role in building a company's long-term success be further encouraged through the Stewardship Code?</p>	<p>It is important for the FRC (and the wording within the Stewardship Code) to acknowledge that investors cannot be categorised as one homogenous group, so will not always have a role in a company's long term success. However, those who are long term investors should be encouraged through the Stewardship Code to engage with boards to ensure boards are acting to oversee the long-term success of companies and support efforts towards that goal. For example, such investors could be encouraged to focus on measures relating to strategic objectives rather than those related to short term outcomes.</p> <p>We recognise that the nature of certain non-equity investments (for example, where security is taken over particular assets) may lead to misalignment (or the perception of misalignment) between investors in such investments and the long term success of companies. As a result, the FRC should consider addressing variations in the application of the Stewardship Code for situations like this when it conducts its review.</p>
<p>22. Would it be appropriate to incorporate 'wider stakeholders' into the areas of suggested focus for monitoring and engagement by investors? Should the</p>	<p>As with our response to Question 21, for long term investors, the focus should be on engaging with boards on how they oversee the long term success of the company, which includes how they have regard to wider stakeholders. How this is undertaken and details about engagement on ESG factors and social impact can be</p>

<p>Stewardship Code more explicitly refer to ESG factors and broader social impact? If so, how should these be integrated and are there any specific areas of focus that should be addressed?</p>	<p>elaborated on in accompanying guidance to the Stewardship Code.</p>
<p>23. How can the Stewardship Code encourage reporting on the way in which stewardship activities have been carried out? Are there ways in which the FRC or others could encourage this reporting, even if the encouragement falls outside of the Stewardship Code?</p>	<p>Such reporting could be encouraged through such mechanisms as independent inspections. This would align with Principle 1 in particular, for example, reporting performance vs. policy over the period. Given the desire to move closer to the approach in the UK Corporate Governance Code, consideration could be given to setting some minimum standards to be met by signatories going beyond disclosure.</p>
<p>24. How could the Stewardship Code take account of some investors' wider view of responsible investment?</p>	<p>Approaches to responsible investing will vary across investors, funds and asset classes. The Stewardship Code could encourage transparency around the ways that these approaches are disclosed, particularly as it relates to indirect versus direct investments.</p>
<p>25. Are there elements of international stewardship codes that should be included in the Stewardship Code?</p>	<p>Whilst we have not conducted an analysis of individual elements of individual international codes, these could be helpful. It may also be useful to refer to our August 2017 publication <i>Q&A on stewardship codes</i>³, which provides information about stewardship codes, principles and guidelines adopted around the globe.</p> <p>However, in looking at various international stewardship codes, it is important not to incorporate every approach and, thereby, have the Stewardship Code become unwieldy.</p>
<p>26. What role should independent assurance play in revisions to the Stewardship Code? Are there ways in which independent assurance could be made more useful and effective?</p>	<p>We do not have a comment on this question.</p>

³ [http://www.ey.com/Publication/vwLUAssets/ey-stewardship-codes-august-2017/\\$FILE/ey-stewardship-codes-august-2017.pdf](http://www.ey.com/Publication/vwLUAssets/ey-stewardship-codes-august-2017/$FILE/ey-stewardship-codes-august-2017.pdf)

<p>27. Would it be appropriate for the Stewardship Code to support disclosure of the approach to directed voting in pooled funds?</p>	<p>We do not have a comment on this question.</p>
<p>28. Should board and executive pipeline diversity be included as an explicit expectation of investor engagement?</p>	<p>We would expect investors to pay attention to how companies are following Draft Code Principles I, J and K and their accompanying Provisions. The level of engagement necessary will depend on how well a company is doing in promoting diversity and where engagement will be most effective. It would not be necessary to explicitly provide for this engagement in the Stewardship Code, given the range of other issues for engagement around such issues as delivery of strategy, operation of the business model, etc, but accompanying guidance could elaborate on ways in which investors could engage on diversity where this is an area of concern.</p>
<p>29. Should the Stewardship Code explicitly request that investors give consideration to company performance and reporting on adapting to climate change?</p>	<p>Similarly to our answer to Question 28, this will depend on the level of importance of climate change to the business of the company and accompanying guidance could elaborate on ways in which investors could engage where appropriate.</p>
<p>30. Should signatories to the Stewardship Code define the purpose of stewardship with respect to the role of their organisation and specific investment or other activities?</p>	<p>It is useful to describe the purpose of stewardship as seen by a signatory. However, each signatory may undertake several investment approaches through various different funds, which necessitate different stewardship approaches, particularly depending on whether such funds are of a long term nature or not. Therefore, it is important to keep the burden of reporting reasonable, so firms are not expected to report on every nuance in their approach to stewardship for each fund managed. Reporting on an overall approach, and broadly how these might differ across different funds, would seem to be the most effective way to provide this insight without creating undue burdens.</p> <p>If the disclosure requirements become more detailed and granular for firms, then the benefits of this to end users should be carefully considered as the costs of demonstrating compliance with the Stewardship Code will also increase. The burden of this may well fall upon end users.</p>
<p>31. Should the Stewardship Code require asset managers to disclose a fund's purpose and its</p>	<p>See response to Question 30.</p>

<p>specific approach to stewardship, and report against these approaches at a fund level? How might this best be achieved?</p>	
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Appendix 2

Additional comments

1. Independence

Our key comments regarding independence are in paragraphs 7 to 11 of our letter and we reiterate the need for the FRC to clarify its overall intentions in this area. In addition we have the following specific comments.

- Given the criteria in Provision 15 are now in the nature of 'rules' rather than indicators, if the first two bullet points are read literally a non-executive director (and now chairman) could become independent through the passage of time, e.g. if a director was an executive immediately before appointment, they would become independent five years after appointment which we are not convinced would be appropriate. Subject to the comments in our letter, if the FRC proceeds with this change, we would amend the first two bullet points to refer to the situation on appointment as a non-executive director, e.g. "~~is or has~~ was or had been an employee of the company or group within the ~~last~~ five years prior to appointment"?
- The 2nd bullet point in Provision 15 refers to 'material business relationship'. It is unclear whether this means material to the company, or material to the individual director (or either).
- The 5th bullet point in Provision 15 refers to "holds cross directorships..." - again given these criteria are more than just indicators, this could be problematic as there are numerous UK boards where there are cross directorships. Provided the appointment process has been transparent and objective we do not believe such cross directorships in themselves impact a director's independence. The FRC should clarify this bullet point.
- If the FRC proceeds with the approach in the Draft Code to provide for assessment of the chair's independence after appointment, we suggest changing the wording of the first sentence of Provision 11 to "Independent non-executive directors (which may include the chair) should constitute the majority of the board".
- As stated in paragraph 11 of our letter, there is a need for the FRC to reinstate Current Code Provision B.1.1 in Provision 11, which would support Principle F of the Draft Code. There are a number of other areas in the Draft Code where the decision on independence has an effect (for example, Provisions 17, 24 and 32 on committee independence) and including a definition of independence (and clear criteria where a director is not independent) strengthens those Provisions. In addition, we note that the Glossary to the Financial Conduct Authority's Handbook defines an "independent director" as a "a director whom an applicant or listed company has determined to be independent under the UK Corporate Governance Code", so it is important that the Draft Code is clear as to what "independent" means.

2. Information flows

There are several inconsistencies between the Draft Code and the Draft Guidance relating to information flows which merit attention:

- Provision 10 refers to the chief executive ensuring that timely and balanced information is presented to the board.
- Paragraph 50 of the Draft Guidance states “the chair’s role includes...timely flow of accurate high quality and clear information...”
- Paragraph 69 of the Draft Guidance states that “under direction of the chair, the company secretary’s responsibilities include ensuring good information flows...”

We believe there are two separate issues: firstly the board, led by the chair, should determine what information it requires to discharge its responsibilities and secondly executive management should be responsible for the provision of this information. The Draft Code needs to be clearer (as it is in the Current Code) on this distinction. We also believe it is the company secretary’s role to support the board in providing this information.

Separately the wording in paragraph 67 of the Draft Guidance can be improved where it refers to “non-executive directors should insist on receiving high quality information...”. Rather than insisting on receiving high quality information which at first glance sounds somewhat combative, non-executive directors should firstly inform/debate with the executive what information they need in order to discharge their duties. They should then on a periodic basis review with the company secretary whether the information they are receiving is of a good quality, thorough, timely etc. and, if not feedback to executive management what changes are needed.

3. Workforce engagement

With reference to paragraph 4 of our letter, we suggest the first two sentences of Provision 3 be re-worded as follows: “The board should establish ~~a method~~ mechanisms for gathering the views of the workforce. ~~This would normally be~~ These may include a director appointed from the workforce, a formal workforce advisory panel or a designated non-executive director. **Boards should implement alternatives to these mechanisms if they believe these would be more appropriate given the company’s specific circumstances.**”

4. Shareholder engagement

We support the integration of requirements on shareholder engagement throughout the Draft Code. However, the Draft Code now appears weaker as a result of some of the changes proposed. For example:

- Provision 5 of the Draft Code and the Paragraph 50 of the Draft Guidance place less emphasis on the importance of discussing governance and strategy.
- Paragraph 22 of the Draft Guidance states “**When called upon** the SID should seek to meet a sufficient range of major shareholders...” We are unclear about the need for the wording “when

called upon” because we believe that boards should proactively engage with shareholders at all times rather than just when called upon/requested to do so.

5. Culture

Paragraph 24 of the consultation states that a “healthy culture should mean one that reflects the skills and abilities of the workforce”. We believe that culture should determine or influence the required skills and abilities of the workforce rather than the other way around. For example, if a company’s business model and strategy rely on there being an innovative and entrepreneurial culture, the company should recruit employees with skills and abilities to match.

- Section 1, Provision 2 of the Draft Code: We suggest the following modification, which incorporates material presently contained in the Draft Guidance:
 - “Directors should embody and promote the desired culture of the company. The board should monitor and assess the culture to satisfy itself that behaviour throughout the business *does not present unmitigated risk and* is aligned with the company’s *purpose, values and long-term strategy*. Where *the board* ~~it~~ finds *cultural issues or* misalignment it should take corrective action. The annual report should explain the board’s monitoring activities, the outcomes from that monitoring and any action taken.”

6. Applicability to non-UK incorporated companies

The Draft Code and Guidance make some references to UK company law, for example to section 172 in Provision 4. However, there are a significant number of companies which are premium listed but not UK incorporated, and therefore not subject to UK law, so these references may lead to different approaches to the Draft Code. We bring this to the attention of the FRC as a matter to clarify.

7. Other detailed drafting comments on the Draft Code

- **General** - Disclosure requirements are currently spread throughout the Draft Code. It would be useful to either summarise these in an appendix or use a specific symbol/prefix to differentiate them.
- **General** - given the change in the numbering conventions used in the Draft Code, the move of certain Provisions in the Current Code to the Draft Guidance and our suggestions in this response regarding further opportunities to shorten and sharpen the section on Audit, Risk and Internal Control, we note that consequential amendments will need to be made to Listing Rules and ISAs (UK and Ireland) where they refer to an auditor’s duty relating to specific Code Provisions.
- **Principle A** - In our view an “entrepreneurial” board may not be appropriate for all companies. It is not clear why this reference has been added.
- **Principle A** - This Principle refers to the duty of a Board to ensure a “**contribution to wider society**”. While we agree in spirit with the Draft Code being focused on purpose and stakeholder outcomes, we feel that this wording elevates something boards did previously because it also contributed to shareholder value to an equal requirement. In our view, as worded, this is not

appropriate as it goes beyond a board's duty under UK company law. Subject to our comment in section 1 of this Appendix, we believe that Principle A should be framed in the context of current UK directors' duties.

- **Principle C** - Similarly, "responsibilities to...stakeholders" seems to be a further step removed from section 172. It would be better to say "...to meet its responsibilities to shareholders and have regard to other stakeholders..."
- **Provision 1** - Unlike previous Code Provision C1.2, this no longer specifically refers to the disclosure of the business model and strategy. A clear description of this is necessary in order to put the new disclosures in Provision 1 and indeed the rest of the Current Code (e.g. regarding the viability statement) in context. Under law, only quoted and traded companies are required to include this information in the Strategic Report whereas the *UK Corporate Governance Code* applies to a wider set of companies as well as being voluntarily applied by a selection of companies.
- **Provision 2** - The Draft Guidance refers to "setting the framework to implement company purpose, strategy and values". This is alluded to in Principle A but not specifically in a Provision. A Provision based on Paragraph 42 of the Draft Guidance may be more effective than the requirement in Provision 2 that "directors should embody and promote the desired culture of the company".
- **Provision 13** - We do not agree that non-executive directors are responsible for appointing/removing executive directors. This is the proper role of the Nomination Committee (as referenced in the previous Code) subject to approval where required, by members in general meeting.
- **Provision 14** - Reference to "reasons explained in the annual report" is unclear and we believe will result in boiler plate rather than useful information for readers as the likely reasons for approving external appointments will converge around i) talent development and providing stretch opportunities, ii) learning gained by the "host" company where the individual is an executive and iii) broadening overall pool of directors in the market.
 - We are unsure what this will achieve and the FRC should consider whether such reporting in the annual report is indeed needed.
 - If the FRC wishes to retain this in the Current Code, the wording needs to be clarified to make it clear what reasons are being explained, e.g. is it reasons for approval or reasons for individuals taking on the other appointment?
 - In addition, the implication in Provision 14 that FTSE 100 board roles are more onerous than other board roles is not universally true. For example a non-executive director on a FTSE 350 board which is in difficulties is likely to be spending considerably more time discharging their duties than a non-executive director at a well-run FTSE 100 company that is not in difficulty.
- **Principle J** - The Preface to the Current Code refers to rationale for board diversity of avoiding "groupthink". This is no longer referred to in the Draft Code, but this important premise for board and management diversity should not be lost. We suggest the FRC consider bringing this language into Principle J or the Provisions in Section 3 of the Draft Code.
- **Provision 21** - This should explicitly refer to an evaluation of committees as well (as in Current Code Provision B6).

- **Provision 40** - In relation to the last bullet point, we agree with the need for executive remuneration to be aligned to strategy and culture. However, alignment to purpose while laudable is potentially difficult and could lead to “retro fitting”. The purpose of organisations are often broad aspirational statements and it would be difficult and sometimes impossible to demonstrate alignment between remuneration and purpose.
- **Provision 41** - It is not clear to us what the requirement to explain the ‘reasons why the remuneration is appropriate using internal and external measures’ means.
- **Provision 41** - The 4th and last bullet points can be combined as the discretion applied by the remuneration committee is part of the 4th bullet point. In addition, the last bullet point should refer to discretion applied by the remuneration committee rather than the board.

- END OF RESPONSE -