



COMMENTS ON THE GUIDANCE AND STEWARDSHIP CODE

PROVIDED BY

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CODE AND GUIDANCE COMMENTS

UK Corporate Governance Code and Guidance on Board Effectiveness Questions

Q1. Do you have any concerns in relation to the proposed Code application date?

No

Q2. Do you have any comments on the revised Guidance?

Why is there no reference at all to ethics when referring to culture i.e. ethical culture e.g. What about ethical leadership, a Code of Ethics, or inclusion of ethics in corporate values? In fact why is there no reference to ethics at all?

Q3. Do you agree that the proposed methods in Provision 3 are sufficient to achieve meaningful engagement?

Yes. I think that any one of the offered options and/or a combination is sufficient to ensure that the employee voice is heard. At all costs a quota-based system should be avoided.

Q4. 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?

I think there should be reference to the SDGs in the Guidance. These could change or be amended in the relatively near future, so rather than having to amend/update the Code, changes to the Guidance would be much easier. Referring to the SDGs will assist in driving companies to identify and relate to specific SDGs and provide some focus and clarity.

Q5. Do you agree that 20 per cent is 'significant' and that an update should be published no later than six months after the vote?

Yes

Q6. 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.

Yes. There are online board evaluation options that offer evaluations at a dramatically reduced costs e.g. our own. Can't provide costs as it might be deemed to be advertising. By conducting evaluations online the invasiveness and inconvenience of the engagement is significantly reduced as is the time taken by Directors to attend to the same making the process far more efficient and cost effective. Furthermore through engagement with the Chairman, the scope of the evaluation can be tailored to focus on specific problems/ difficulties or issues of concern rather than a generalised exercise.

Q7. Do you agree that nine years, as applied to non-executive directors and chairs, is an appropriate time period to be considered independent?

Yes, coupled with the fact that there will be annual re-elections and that the company can motivate special circumstances should they wish to extend the classification beyond 9 years.

Q8. Do you agree that it is not necessary to provide for a maximum period of tenure?

A 'de facto' period, yes, but left open to possible motivation for extended period.

Q9. 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?

Yes.

Q10. 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.

Q11. 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.

I think it's sufficient that they report on what actions have been taken to increase diversity in the pipeline. The overriding motivation is to increase the pool of resources in order to be more inclusive, but not at the cost of skills and expertise i.e. we must avoid it becoming a quota system.

Q12. 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?

Yes

Q13. 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.

Yes

Q14. 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?

Q15. Can you suggest other ways in which the Code could support executive remuneration that drives long-term sustainable performance?

- Expanded vesting periods for share options
- Remuneration and bonuses linked to strategic sustainability factors as well as financial

- Ensuring bonus targets on sustainability issues are properly measured and achieved before approving bonus
- Published comparison of pay ratio between top and bottom salaries
- Claw-back options should payments prove to be unjustified
- Relation of payments to company performance – board oversight welcomed.

Q16. Do you think the changes proposed will give meaningful impetus to boards in exercising discretion?

Not infallible, but will assist the process.

Stewardship Code Questions

Q17. 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?

Yes, I think this would be useful. Enhanced guidance for different categories would be my preferred option.

Q18. 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?

The problem is that implementation in the asset management sector is not always straight forward. Other than equities, there are a number of investment classes that are much more difficult to apply a general standard. Equities would appear to be the easiest, but how do you establish best practice for classes such as futures, derivatives, hedge funds, funds of funds etc.? Are exclusions via filtering sufficient compliance on their own e.g. "we don't invest in companies manufacturing land mines."? Therefore, it's better to let asset managers formulate their own approach within broadly stated guidelines that are measurable and reportable. With time these criteria can be clarified and developed.

The reality is that asset managers invest on behalf of clients in order to maximise returns. It's far easier for them to simply sell out of an investment than to bother with signatory requirements and consumes less resources. The main, and arguably the sole, motivation for them to meet signatory requirements is if the investment mandate from asset owners requires them to meet responsible / sustainable (ESG) criteria.

The reporting standards of UNPRI can serve as a good guideline.

Q19. Are there alternative ways in which the FRC could highlight best practice reporting other than the tiering exercise as it was undertaken in 2016?

At present I think the Tiering exercise is a good idea – can be reviewed on a regular basis. The level of detail in reporting can be dynamic i.e. they are reviewed annually to assess areas for improvement in standards as you learn through implementation.

Q20. Are there elements of the revised UK Corporate Governance Code that we should mirror in the Stewardship Code?

Some focus areas could be included e.g. remuneration / climate change/ diversity and board composition issues. These could be included in guidelines which are updated from time to time.

Q21. How could an investor's role in building a company's long-term success be further encouraged through the Stewardship Code?

Through following a principle of responsible/sustainable investment. This implies considering factors beyond the bottom line (ESG) and beyond short term considerations.

I can't express it any better than the preamble to the South African Financial Services Board's Regulation 28 (which regulates investment limits), which reads as follows:

*"A fund has a fiduciary duty to act in the best interest of its members whose benefits depend on the responsible management of fund assets. This duty supports the adoption of a **responsible investment approach** to deploying capital into markets that will earn adequate risk adjusted returns suitable for the fund's specific member profile, liquidity needs and liabilities. **Prudent investing should give appropriate consideration to any factor which may materially affect the sustainable long-term performance of a fund's assets, including factors of an environmental, social and governance character.** This concept applies across all assets and categories of assets and should promote the interests of a fund in a stable and transparent environment."*

It's important to bear in mind the critical role asset owners can play in enforcing the principles of the Stewardship Code by incorporating conformance in their mandates to asset manager signatories. Asset managers in turn play an important role in driving conformance by issuers to the Governance Code by pressurising them to report in a manner that enables the asset managers to measure and report conformance to asset owners. This highlights the importance of the link between all three sectors in driving adherence to good governance principles.

Q22. Would it be appropriate to incorporate 'wider stakeholders' into the areas of suggested focus for monitoring and engagement by investors? Should the 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?

Most definitely – I think it is imperative that the definition of what is meant by 'Stewardship' should be clarified and expanded to include responsible investing and ESG! In fact based on the Freshfields Report (see below) this shouldn't be optional.

The 'Freshfields Report'¹ (the 'Report') was released by UNEP FI² in October 2005 with relatively limited fanfare, but with potentially huge implications for the asset management industry. It made the startling finding that if asset managers didn't take ESG factors into consideration in their investment strategy there "was a very real risk that they will be sued for negligence."³ Paul Clements-Hunt, Head UNEP FI, commented that "The Fiduciary II report

¹ The full name of the Report is "A legal Framework for the Integration of Environmental, Social and Governance issues into Institutional Investment." - drafted by a firm of attorneys in the USA known as Freshfields.

² Asset Management Working Group of UNEP Finance Initiative

³ "In tendering for investment mandates, it would be expected that the investment consultant or asset manager would raise ESG considerations as an issue to be taken into account and discussed with the client even if the

provides the legal ESG keys for those institutional investors wishing to enter the responsible investment arena. There is no legal excuse now not to invest responsibly.”

The Association for Savings and Investment in South Africa (ASISA) defines responsible Investment as follows: “Responsible Investment is a set of investment and ownership practices that intentionally integrates any factor that may materially affect the sustainable performance of a fund’s assets, including factors of an environmental, social and governance character.

Responsible investment and ownership practices:

- build wealth in a sustainable manner and thereby preserve long-term value for the ultimate beneficiaries.
- help to align investor’s objectives with stakeholders and the broader developmental needs of society.
- apply individually and collectively in the United Kingdom and global context.
- enhance delivery of long-term returns while reducing down-side risk.
- provide transparency to stakeholders regarding the manner in which ESG factors are integrated into investment and ownership practices.

Responsible Investment and ownership practices are informed by investment philosophy or specific client mandate requirements.”

We participated in developing the above definition, which took almost a year to agree as it had to be able to be relevant to all asset classes.

Responsible investment (including ESG) should be incorporated into the definition of ‘Stewardship’.

Q23. 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?

Signatories to the UNPRI are obliged to report on how they’ve implemented their principles. Their reporting procedures and mechanisms have been developed over a number of years and may serve as a useful guideline.

Q24. How could the Stewardship Code take account of some investors’ wider view of responsible investment?

See above – especially Q21

pension fund had not specified ESG considerations as material to the tender. If the investment consultant or asset manager fails to do so, there is a very real risk that they will be sued for negligence on the ground that they failed to discharge their professional duty of care to the client by failing to raise and take into account ESG considerations.” Mr Watchman, a representative of Freshfields clarified this position by saying, “As professional investment advisers, investment consultants and asset managers are under a contract for services rather than a contract of service. They are professional advisers to the client, not employees of the client; hence in exercising significant professional discretion...investment consultants and asset managers must be proactive rather than reactive.”

Q25. Are there elements of international stewardship codes that should be included in the Stewardship Code?

See answer to Q21 above.

I think that the option of collaboration is something that needs work. I don't have access to statistics of example of asset managers' collaboration initiatives, but would bet money on the fact that they're few and far between. The main reason being that asset managers are terrified of being accused of collusion and the concomitant putative consequences. Clear guidelines need to be drafted to define the process, approved by the relevant regulators, to provide assurance that collaboration will not result in such consequences. Secondly, from our experience, there is often an unspoken reluctance for asset managers to participate in such exercises due to inter-professional jealousy / one-upmanship and/or fear of disclosing proprietary governance 'intelligence'. Accordingly it will be useful for an independent non-financial management entity to establish a forum for collaborating discussion and related joint initiatives.

Q26. 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?

Independent assurance providers can possibly play a role in assisting signatories to meet FRC reporting standards. However, at this stage I would think it to be too early in the formation of the issues highlighted herein, for the industry to be subjected to such assurance. Furthermore, I think that at this relatively early stage of the Code, some signatories would consider the costs involved as a deterrent to becoming a signatory.

Q27: Would it be appropriate for the Stewardship Code to support disclosure of the approach to directed voting in pooled funds?

A difficult issue. My suggestion is that they disclose what they have advised those managing the pooled funds to vote on specific issues.

Q28: Should board and executive pipeline diversity be included as an explicit expectation of investor engagement?

I'm not convinced it should. Purely for the reason that this could have the unintended consequence of effectively encouraging quotas as an easy means of measurement on an issue that should rather be encouraged and supported.

Q29: Should the Stewardship Code explicitly request that investors give consideration to company performance and reporting on adapting to climate change?

Although there will be differing opinions on this issue, I am of the view that the situation is of sufficient international environmental importance to warrant consideration.

Q30: 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?

Yes. As mentioned above, I think it should be made clear that 'Stewardship' of a fund includes the fiduciary duty to consider issues of responsible investment and ESG factors as defined in the statement quoted in Q21 above:

"A fund has a fiduciary duty to act in the best interest of its members whose benefits depend on the responsible management of fund assets. This duty supports the adoption of a responsible investment approach to deploying capital into markets that will earn adequate risk adjusted returns suitable for

the fund's specific member profile, liquidity needs and liabilities. Prudent investing should give appropriate consideration to any factor which may materially affect the sustainable long-term performance of a fund's assets, including factors of an environmental, social and governance character. This concept applies across all assets and categories of assets and should promote the interests of a fund in a stable and transparent environment."

Q31: Should the Stewardship Code require asset managers to disclose a fund's purpose and its specific approach to stewardship, and report against these approaches at a fund level?

How might this best be achieved?

The answers provided above will provide the necessary guidelines.



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