

About Social Enterprise UK

Social Enterprise UK (SEUK) was established in 2002 as the national body for social enterprise in the UK. A social enterprise is a business that trades for a social or environmental purpose and reinvests its profits in that mission.

Social enterprises are businesses driven by social or environmental objectives, whose surpluses are reinvested for that purpose in the business or in the community. They operate across a wide range of industries and sectors from health and social care, to renewable energy, recycling and fair trade and at all scales, from small businesses to large international companies.

They take a range of organisational forms from co-operatives and mutuals, to employee owned structures, Community Interest Companies, and charitable models. SEUK's members come from across the social enterprise movement, from local grassroots organisations to multimillion pound businesses that operate across the UK.

SEUK is a membership organisation. We conduct research; develop policy; campaign; build networks; support individual social enterprises; share knowledge and understanding; support private business to become more socially enterprising; and raise awareness of social enterprise and what it can achieve.

Introduction

Few BHS pension holders, Sports Direct staff, Carillion employees and clients, or workers sacked by text would agree that UK Corporate Governance is in a good place. There is an almost tangible sense that we have reached a watershed moment: reform of corporate governance is necessary if the UK is to recapture its reputation for good governance. As the FRC itself acknowledges “Over the last few years, governance within the largest companies has been subject to heightened public scrutiny due to their impact on a wide range of stakeholders globally, nationally and locally. In some high-profile cases the quality of governance has been poor.”

There is a widespread, cross-sector support for the creation of mechanisms for businesses to demonstrate their commitment to transparency on tax, pay ratios, diverse boards, and social and environmental impact.

Government needs not only to improve the corporate governance framework, but also enable investors to fully take into account companies’ behaviour. The UK lags behind other countries in terms of pension fund-holders’ ability to take into account, for instance, ethical investment because of the myopic interpretation of fund-holders’ fiduciary duty; whilst other countries fund-holders are divesting in unethical areas, fund-holders in the UK are hamstrung by out of date notions of value.

Overall, we support the new Code and Guidance. We welcome the emphasis on the wider responsibilities businesses have to society, and in particular the importance of establishing and embedding the company’s purpose. We primarily concern ourselves with Question 2 and principle A in the revised Guidance.

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

In recent decades, there has been a widespread misconception that in UK law directors owe their duty only to shareholders, and that this duty is to maximise shareholder value. Neither is true. It is extremely important that the new code makes clear that in UK law the duty of directors is to the company itself. It is in discharging this duty to the company that they have to take due account of the benefit to the members and have regard to those others affected by the company's actions.

So recognition that “the primary duty of directors is to promote the long-term success of the company” is extremely important. As the FRC itself makes clear “The primary duty of directors is to promote the long-term success of the company. Companies can do more to recognise that other stakeholders, particularly their own workforces, play a significant part in that success. Therefore, the revised Code encourages corporate governance policies and practices that generate value for shareholders and aim to benefit society.”

We note that s172 of the 2006 Companies Act does not define the “success of the company”. It therefore leaves room for the directors to define and articulate a purpose for the company which should guide and direct its strategy to create value. The revised code offers an important opportunity to clarify and reinforce the true obligations of directors.

The Code must also explicitly allow for companies to which S172(2) applies. Some companies wish to define the purpose and success of the company and/or set the relative prioritisation of shareholder versus other stakeholder interests differently to the default expressed in S172(1), and that the code and guidance should explicitly allow for this.

The proposed Principle A says that “ A successful company is led by an effective and entrepreneurial board, whose function is to promote the long-term sustainable success of the company, generate value for shareholders and contribute to wider society.” This is, however, misleading.

Value needs to be defined since value is broader than financial value. While many shareholders may want to generate – and not necessarily maximise - *financial* value, this is not true for all shareholders. Some may embark on an enterprising or investment journey in order to have fun, to solve a social problem or invent a new environmental technology, for instance. For them, their objective may be to generate social, cultural or environmental value for society more widely. Whereas the current unqualified use of the word “value” risks suggesting that *financial* value is the only preoccupation of all shareholders. This needs to be adjusted accordingly, as success for the company and shareholders may be something other than financial value.

The Code also refers to the potential role of a designated non-executive director for gathering views of the workforce. This guidance should be further developed, especially with regard to how these duties relate to other responsibilities.

We also suggest that the guidance on board effectiveness could include a reference to the possibility of embedding the purpose in the company's constitution as well as in policies and practice.

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?

While we welcome the idea of explicit mention of the SDGs in the Code and Guidance as a tool for businesses to use when developing their purpose and long-term sustainable strategy, the wording here is unfortunate. The SDGs were unanimously adopted by 193 global Heads of State and Government in September 2015, agreeing to set the world on a path towards sustainable development. They are not “NGO principles”.

For more information

James Butler

Public Affairs Manager

Social Enterprise UK

T: 020 3589 4953

E: james.butler@socialenterprise.org.uk