

Ms Catherine Horton  
Financial Reporting Council  
8<sup>th</sup> Floor, 125 London Wall  
London  
EC2Y 5AS

22 January 2018

Dear Ms Horton,

**Re: FRC Consultation on UK Corporate Governance Code**

I am writing on behalf of Assura plc to convey the Board's response to your consultation on the proposed changes to the UK Corporate Governance Code.

Assura plc, a constituent of the FTSE 250 index, is a UK REIT and long-term investor in and developer of primary care property. Headquartered in Warrington, we work with GPs, health professionals and the NHS to develop, improve, own and maintain property to facilitate delivery of high quality patient care in the community. As of today, our market capitalisation is £1.5 billion with a property portfolio of £1.6 billion (as at 31/9/17).

**Summary**

We welcome the review of the Code, but we express some concern about the lack of evidence that the proposals will actually address the stated issues or improve governance in general. The FRC notes that it has consulted with Government and that respondents should "bear this in mind if you are making general points". This comment underlines our feeling that the FRC is to a degree reacting to political pressure, rather than its own best judgement.

Our responses to the specific consultation questions are as follows;

**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?**

- No

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

- It is unclear what the objective is of ‘gathering the views of the workforce’. This seems to reflect political pressure, rather than any analysis of how this might help governance. It is also unclear what ‘meaningful engagement’ means, or is intended to achieve. The most likely outcome of this provision will be that companies will go through the motions of somehow ‘gathering views’ and then produce ‘boiler plate’ reporting. Alternatively companies may, as now, place reliance on employee surveys. Either way, the benefit of the new proposal is doubtful.
- Culture is very important to any organisation, and a poor culture is a factor in most business scandals. However, the question here is whether greater workforce consultation would have significantly reduced those failures? We are not aware of any studies of these events that have concluded that the board gathering the views of the workforce (as opposed to normal management engagement) would have helped.
- Culture is largely set day-to-day by the CEO and top executive team. It is not clear how the FRC proposal adds much to this. The FRC is responding to a very real cultural challenge in characteristic regulatory style by requiring more process, without any real insight as to whether this would produce any benefits.
- The onus should be on the FRC to produce evidence that this provision will produce a positive result before it mandates such a major change to governance.
- If the FRC does believe that there is evidence to implement this change, it should allow companies to decide how best to implement it, research the results and then produce a considered recommendation on which options actually produce a discernible benefit.

**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?**

- No

**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?**

- We do not agree that a minority vote against a vote is of itself significant, and accordingly do not agree with any compulsory follow up. If 80% vote in favour and 20% against, this sounds like an overwhelming vote in favour, so it is not clear why this should be treated as inadequate.

- If the FRC decides that a 20% contra vote means that the resolution is somehow faulty, shouldn't it be asking the 80% of shareholders why they support it?
- Whilst 20 % is a material vote against, its significance needs to be qualified by how many shareholders it actually represents. If it is one shareholder, that may represent an issue that is confined to that shareholder, possibly even with a vote that has a motivation not directly related to a specific remuneration policy. On the other hand, five to ten shareholders adding up to 20% is a more significant weight of opinion.

**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.**

- No, we do not agree with removing the exemption for smaller companies. These evaluations are quite expensive (around £20,000-40,000) and very time-consuming. There needs to be a de minimis limit on the size of company for which this is compulsory. FTSE 350 is a reasonable cut-off. Internal board evaluations can be very effective and low cost for companies, especially smaller ones.
- The FRC has produced no evidence, that we are aware of, that external board evaluations are cost effective, compared to internal ones, for small companies.

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

- The FRC appears to be predefining independence as lasting only nine years. Nine years feels that it should be a benchmark maximum period in office, as there is always a need to refresh a team and avoid complacency, but this does not mean necessarily that a director loses independence at that point. The FRC should not confuse these two points.

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

- The FRC could consider a guideline that non-executive directors should not normally serve for longer than nine years.

**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?**

- The provisions in Section 3 are modest and their effect will be likewise. The key to developing long term diversity will be encouraging it in junior and middle ranks of

organisations. The problem with getting more diversity in the board room is currently largely a lack of supply of suitable candidates, rather than discrimination against them by Nomination Committees. The FRC would be better encouraging diversity through the ranks of an organisation, rather than focussing so heavily on boards.

**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.**

- The problem is usually a lack of supply of suitable candidates, not lack of demand (although undoubtedly there are some examples of sex discrimination). This proposal therefore would tend to force the employment of less well-qualified candidates. Having diversity in the boardroom is not an end in itself. Having a diverse group of highly qualified directors will probably enhance board performance, but there is no evidence that having a diverse group of less-well qualified people will assist at all. The FRC should focus its efforts on driving diversity through executive development to increase the supply of well-equipped candidates.

**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.**

- This could help to develop the supply of diverse executives. However, caution will be needed as people will have to self-identify ethnicity.

**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?**

- The current situation seems to work fine.

**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?**

- The FRC has not specified what it really means by ‘oversee remuneration and workforce policies and practices’. What is the objective of this oversight? If the intention is to ensure that diversity, for example, is encouraged at all levels, then this should be explicitly stated. It also risks pushing non-executive directors closer to executive responsibilities, which is surely not the intention. Potentially this is a very significant extra responsibility, not least amongst large, diversified and multi-national groups.
- The Remuneration Committee has to have an understanding of the overall pay structure on order to set the executive pay in context. However, that does not mean that the Committee has to be involved in the executive task of setting general pay strategy.
- The FRC might reflect on the overall value of non-executives not getting involved in executive decisions, as this proposal gives non-execs more executive responsibility. Does the FRC wish to diminish the distinction between executive and non-executive?
- We recommend that the FRC is more specific about what it wants the wider responsibilities to achieve. The FRC should be expected to show that the likely benefit will outweigh the extra responsibility being imposed upon Remuneration Committees.

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

- There is not much evidence that any of these remuneration measures drive long-term sustainable performance. The best thing a Board can do is to attract, retain and motivate talented executives. Some of these measures may not assist that as part of an overall package.
- A five year vesting and holding period has an ‘ethical’ virtue in that it enables short term ‘success’ at the cost of longer term failure to be punished in an executive’s remuneration. This may well discourage short-termism amongst executives, but it may also reduce the incentive value of that remuneration as executives discount future gains. The natural reaction to the latter might be to increase the remuneration.
- Retaining some part of a payout for five years, either by deferring the crystallisation or forcing higher share ownership guidelines is probably helpful, but we would caution against a wholesale minimum five year vesting rule.
- The FRC should reflect on the average tenure for executive directors, which is widely quoted as being only five years. Setting incentive programmes for significantly longer than this seems to defeat the purpose as much of the value creation may happen when the executive is no longer employed.

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

- We would encourage all Remuneration Committees to include discretion on all payouts.

Please do not hesitate to contact me if you would like to discuss any points further.

Yours sincerely

Simon Laffin  
Chairman