

**PENSIONS AND
LIFETIME SAVINGS
ASSOCIATION**

**FINANCIAL REPORTING COUNCIL: CORPORATE GOVERNANCE CODE
CONSULTATION**

**“IT IS VITAL THAT PENSION
FUND INVESTORS’ VIEWS
ARE TAKEN SERIOUSLY
WHEN CONSIDERING THE
CORPORATE GOVERNANCE
REGIME”**

February 2018

INTRODUCTION

We're the Pensions and Lifetime Savings Association; the national association with a ninety year history of helping pension professionals run better pension schemes. With the support of over 1,300 pension schemes and over 400 supporting businesses, we are the voice for pensions and lifetime savings in Westminster, Whitehall and Brussels.

Our purpose is simple: to help everyone to achieve a better income in retirement. We work to get more money into retirement savings, to get more value out of those savings and to build the confidence and understanding of savers.

INTRODUCTION

This document sets out the Pensions and Lifetime Savings Association's response to the Financial Reporting Council's consultation on reforms to the corporate governance and stewardship codes.

UK pension funds represent approximately 60 per cent of the institutional investment money managed in the UK. This represents about £2.2 trillion. The PLSA represents 1,300 pension schemes, responsible for the pension savings of around 20 million members. The culture, strategy and performance of the companies in which scheme members are invested determines their incomes in retirement. Therefore it is vital that Pension Fund investors' views are taken seriously when considering the governance regime overseeing those companies.

Our response to the FRC's consultation welcomes the measures to incorporate stakeholder perspective in corporate governance structures. We have made this argument for a number of years now through our programme of work on the governance of employment models, incorporating:

- ▶ our discussion paper on the importance of the workforce to long-term company performance and the need for this to be reflected in corporate reporting;
- ▶ our stewardship toolkit for pension funds on engaging with companies over workforce-related issues;
- ▶ and our analysis of the current levels of workforce-related reporting across the FTSE 100.

The response also sets out our views on the various characteristics that different vehicles for stakeholder representation should include. It includes recommendations to enhance the stewardship code, including clearer guidance for asset owners that invest in companies through an asset manager, rather than directly, and enhanced provisions relating to the social and environmental impact of investments.

We hope that the response will be a helpful contribution to the FRC's work and will make a persuasive case on behalf of pension funds and the millions of savers for whom they work.

We would welcome the opportunity to discuss the response with the FRC and other stakeholders in more detail – please contact Luke Hildyard, Policy Lead for Stewardship and Corporate Governance on luke.hildyard@plsa.co.uk if this would be of interest.

CORPORATE GOVERNANCE CODE CONSULTATION

DO YOU HAVE ANY COMMENTS ON THE REVISED BOARD EFFECTIVENESS GUIDANCE?

Stakeholder voice

The most prominent changes to the code and associated guidance involve the introduction of the new mechanisms designed to incorporate ‘stakeholder voice’ into corporate governance structures. The PLSA has consistently highlighted the importance of corporate culture and employment practices to long-term investors, having produced three papers on this subject since 2015. As such, we welcome these changes. We also note that the guidance currently focuses on the practices of stakeholder engagement, but not how this is communicated back to investors and other stakeholders.

Our most recent report, [*Hidden Talent: An Analysis of the FTSE 100*](#), undertaken with the Lancaster University Management School found that reporting of workforce-related issues was highly varied. For example:

- ▶ Despite recent public interest in precarious working and controversies involving the use of ‘flexible’ employment terms used by a number of companies, just 4% of FTSE 100 companies provide a breakdown of workforce by full-time and part-time workers. In addition, only 7% provide data or policies on their use of agency workers.
- ▶ Only 18% of companies provided any figures on staff turnover – a clear indication of a company’s stability and corporate culture.
- ▶ Just 21% provide concrete data in relation to investment in training and development of their workforce or the number of workers trained.

Throughout the course of our work in this area, investors have told us that this is materially important information, and that companies should provide clear, narrative reporting explaining how the composition, stability, skills and capabilities and engagement levels of their workforce relate to the wider strategy. This narrative reporting should be underpinned by concrete data.

We believe it would be helpful to make the importance of good quality reporting clear, in relation to the activities of the new mechanisms for stakeholder voice.

The role of the Chair and Executive Directors

The section on the role of the Chair rightly highlights the importance of the Chair in setting the direction and culture of boardroom discussions. The Chair's responsibilities include ensuring that the board's agenda is:

'primarily focused on strategy, performance, value creation and accountability, and ensuring that issues relevant to these areas are reserved for board decision.'

These are sensible areas for boards to focus on, however the current wording implies that other parts of the company beyond the board should have no insights to offer in terms of these themes.

We do not think that this is the intention of the guidance, but there is a risk of the current wording being misread in this way. The passage could be rephrased to state that board decisions are reserved for issues relevant to these areas, rather than these issues being reserved for the board.

We also note that the guidance recognises that *'the executive directors have a greater knowledge of the company and its capabilities'* on account of their day-to-day work. Despite this, it has become commonplace for boards to be comprised mainly of non-executive directors. This does not necessarily have to be the case, and it could be worth explicitly stating that executive representation at board level does not have to be limited to the Chief Executive and the Finance Director.

Viability statements

Viability statements are a welcome addition to corporate disclosures, however there are concerns that too many companies produce boilerplate disclosures that cover a short timeframe (commonly three years) not aligned with company's longer term planning periods.

Fossil-fuel dependent companies, for example, will be significantly affected by policy measures designed to safeguard against dangerous levels of climate change. These companies can understand potential scenarios resulting from greenhouse-gas reduction efforts and the impact they will have on their business models over the coming decades.

Similarly, various sectors, particularly retailers, have experienced significant disruption as part of the transition to a digital economy. Again, these ongoing changes in consumer habits are likely to have a profound impact on business models over a period of many years.

Therefore, companies should be detailing their plans to ensure their ongoing viability in the face of these changes over a longer-term timeframe.

Climate change is relevant to so many companies that we believe it should be specifically referenced as a long-term factor that will, in many cases, be appropriate to include in viability statements in the FRC’s guidance. More generally, we think the guidance could be phrased in such a way as to make clear the need for longer-term viability statements than is currently the case.

Remuneration

The guidance on remuneration places considerable emphasis on ensuring a relationship between pay and performance – but while ‘rewards for failure’ are particularly egregious, there is widespread concern that executive pay is too high more generally. When we surveyed pension fund investors on this topic, 87% said they were concerned by pay gaps between the executives and the wider workforce.

How concerned, if at all, are you by the extent of the pay gap in listed companies between executives and their wider work force?	
	%
NET CONCERNED	85%
Very concerned	48%
Fairly concerned	37%
NET NOT CONCERNED	13%
Not very concerned	10%
Not concerned at all	3%
Don't know	2%

Similarly, by a margin of two to one, those that agreed with the statement said that they felt that executive pay was too high for all executives, not just those who had performed poorly.

If you had to choose, which of the following statements best reflects your opinion on executive pay levels	
	%
Large pay packages for under-performing executives are particularly inappropriate, but executive pay is disproportionately high across the board	63%
There is nothing wrong with large pay packages for successful executives, but they are too often awarded regardless of performance	37%

This should be reflected in the guidance. It should be communicated more clearly that companies should pay no more than is necessary to incentivise and reward a

suitable candidate for the job. The board should take a sceptical approach to pay awards that appear to most workers to be highly generous. They should question whether pay packages are unduly large and whether generous performance incentives are really necessary; the extent to which company performance (for better or worse) can really be attributed to a single individual or small executive team (as opposed to the broader economic context or the work of the wider workforce); and whether or not a particular individual candidate rewarded with a high pay package is truly the only person under whose leadership the company could thrive.

The guidance also encourages boards to ‘explain’ their pay awards to the wider workforce. Communication should work two ways in this respect. Overly-generous CEO pay awards and wide pay gaps within organisations can foster resentment and weaken commitment towards corporate goals, particularly against a backdrop of long-term wage stagnation for the UK economy as a whole. Therefore, it is useful for the company to listen to how the workforce feel about executive pay, as well as having the board explain their approach to the workforce.

DO YOU AGREE THAT THE STAKEHOLDER ENGAGEMENT MECHANISMS IN PROVISION 3 ARE SUFFICIENT TO ACHIEVE MEANINGFUL ENGAGEMENT?

As previously noted, our analysis of FTSE 100 companies reporting of the composition, stability, skills and capabilities and engagement levels of their workers is highly varied, both in terms of the metrics used and the quality of narrative reporting.

This suggests that some boards lack understanding of what is happening on the ‘shopfloor’ of their companies and that communication channels between different levels of the company are not necessarily in place.

The proposed mechanisms for stakeholder engagement represent a welcome recognition of this problem. However each mechanism presents its own challenges.

Worker directors

The introduction of ‘Member Nominated Trustees’ (MNTs) have been helpful to pension funds, and ensures that the experience of scheme membership is reflected in board decision-making. We believe that worker directors could play a similarly useful role in board deliberations. However MNTs require considerable training and support. There could be a role for regulators and other potential partners – for example, trade unions or business groups – in developing adequate training programmes for worker directors.

The election of workers for organisations with global operations would also need to be carefully considered. Direct elections would create the risk of permanent representation for workers from the largest single operating centre to the exclusion of all others. At the same time, any form of appointment system whereby the company leadership had the power to appoint or summarily dismiss the worker director would greatly undermine their capacity to ‘speak truth to power.’

Responsibilities of worker directors would also need to be clarified. They should not be representatives of the workforce elected to the board to push for worker interests, but rather should have the same legal duty as other directors, to promote the long-term success of the company, and to use their deep understanding of the company’s workings and workers in order to do so.

Designated director with responsibility for stakeholder affairs

Expertise on human resources, people management and organisational culture is perhaps under-represented at boardroom level. The same challenges in relation to worker directors and directors’ duties apply to proposed non-executive directors with responsibility for stakeholder affairs.

They would need to be subject to the same duty to promote the success of the company. At the same time, in order for their roles to be considered meaningful, particularly by the stakeholder constituencies themselves, they would need to have meaningful responsibilities and concrete means of accountability to stakeholders. Simply appointing a director and designating them as the voice of stakeholder affairs would be insufficient.

Stakeholder committees

Again, the powers and responsibilities of stakeholder committees will be critical to their success.

Giving the company the power to publish an unvarnished public report on its activities and on the state of the key stakeholder relationships at the company would give it meaningful powers. The board should meet with the stakeholder committee or its chair regularly – involving both the presence of board members at stakeholder committee, reporting on their own activities and hearing the views of stakeholders, and updates from stakeholder committee meetings.

The guidance refers to a number of important stakeholder constituencies that the board should seek to engage. However, we believe it is an oversight not to specifically cite the corporate pension fund.

The pension fund will be a key stakeholder constituency for most major companies to whom the code applies. Though pension fund membership will overlap considerably with the company's workforce, the two constituencies and their interests are not identical.

Recent events at a number of companies have shown the vital importance of pensions-related issues to their long-term sustainability. Therefore all boards should exert appropriate oversight of their company's pension arrangements and engage with the representatives of the pension fund.

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?

Yes - companies' social license to operate depends on them acting in the long-term interest of wider society and the environment. How the company effects the achievement of the Sustainable Development Goals provide a useful framework for understanding the company's broader impact. This also relates to company directors responsibilities under section 172 of the 2006 Companies Act to have regard for all stakeholders including wider society and the environment –how the company has helped/hindered the achievement of the SDGs can help to inform understanding of how effectively these responsibilities have been fulfilled.

Measuring and reporting against this framework could help investors develop a useful, comparable insight into the holistic impact that companies have on the lives of their ultimate beneficiaries (for example, pension savers). Comparable information on how companies affect the SDGs could also provide investors with information on companies enduring relationships with key stakeholders, including regulators, workers, their surrounding communities and civil society groups.

Paragraph 10 and Figure One and box one relates to a company's impact and the outcomes it delivers for different stakeholder constituencies. A section here highlighting the value of the SDGs as a framework for assessing impact valued by investors and international governments would be helpful.

DO YOU AGREE THAT 20% IS 'SIGNIFICANT' AND THAT AN UPDATE SHOULD BE PUBLISHED NO LATER THAN SIX MONTHS AFTER THE VOTE?

Yes – 20% is the long-standing threshold for 'significant' dissent that the PLSA has endorsed in our annual review of AGM voting trends. It is also the level set for publication on the new register of companies attracting 'significant' dissent – it is important that the code maintains consistency with other related initiatives.

DO YOU AGREE WITH THE REMOVAL OF THE EXEMPTION FOR COMPANIES BELOW THE FTSE 350 TO HAVE AN INDEPENDENT BOARD EVALUATION EVERY THREE YEARS

Yes – the code operates on a ‘comply or explain’ basis. Periodic board evaluations represent good practice. Where companies feel that they represent a disproportionate burden compared to the value that they generate, they can explain why this is the case.

DO YOU AGREE THAT NINE YEARS AS APPLIED TO NON-EXECUTIVE DIRECTORS AND CHAIRS IS AN APPROPRIATE TIME PERIOD TO BE CONSIDERED INDEPENDENT?

This requirement should balance the need to guard against complacency or over-familiarity with the need to preserve institutional knowledge and prevent excessive boardroom turnover. We are concerned that it could be interpreted to mean that directors should step down after nine years. Clearly, this would not be desirable – many directors could continue to contribute a great deal of expertise, particularly long-standing knowledge of the company. Nine years is a sensible upper limit for qualifying as independent, but the guidance should make clear that the independence of the board and its committees as a whole should be regularly evaluated. Passing the nine year limit may be the appropriate point at which to resign certain committee positions or memberships, but should not automatically result in departure from the board.

DO YOU AGREE THAT IT IS NOT NECESSARY TO PROVIDE FOR A MAXIMUM PERIOD OF TENURE?

Yes – there is no need for an inflexible cap that would prevent long-serving and effective board members from serving when they have the support of the relevant stakeholders

DO YOU AGREE THAT THE OVERALL CHANGES PROPOSED IN SECTION 3 OF THE REVISED CODE WILL LEAD TO MORE ACTION TO BUILD DIVERSITY IN THE BOARDROOM, IN THE EXECUTIVE PIPELINE AND IN THE COMPANY AS A WHOLE?

DO YOU AGREE WITH EXTENDING THE HAMPTON-ALEXANDER RECOMMENDATION BEYOND THE FTSE 350?

WHAT ARE YOUR VIEWS ON ENCOURAGING COMPANISE TO REPORT ON LEVELS OF ETHNICITY IN EXECUTIVE PIPELINES?

It is vital that boards are able to draw upon a broad range of backgrounds and perspectives and take decisions in a rigorous, reflective environment in order to operate effectively. The

Code and supporting guidance rightly recognises this and will hopefully accelerate the diversification of UK companies' leadership.

The proposed changes to the code and guidance currently focus heavily on the board and executive pipelines – however, in order to generate the widest pool of potential skilled workers and thrive in the long-term, a company needs to be welcoming to people of all backgrounds, and to maximise the skills and capabilities of their workers. Our *'Hidden Talent'* analysis found that just 15% of companies report on ethnic diversity throughout their organisations. Just 9% report their internal hire rate. For many smaller companies it may prove disproportionately burdensome to produce this data – however, if the guidance is intended to encourage reporting of diversity and people development throughout the company as this question suggests, it seems unlikely to achieve that, given that it only directly relates to the board and senior management.

With regard to extending the Hampton-Alexander recommendations beyond the FTSE 350, we support this proposal. As with board evaluations, ensuring a pipeline of diverse candidates is important to getting the right balance of skills and capabilities at boardroom level. It ought not to prove burdensome for companies to report on the diversity of direct reports to the executive committee, given the limited number of people that this will comprise, however if companies have valid reasons for not doing so, they have the option to 'explain' rather than 'comply.'

DO YOU AGREE WITH THE WIDER REMIT FOR THE REMUNERATION COMMITTEE AND WHAT ARE YOUR VIEWS ON THE MOST EFFECTIVE WAY TO DISCHARGE THIS RESPONSIBILITY AND HOW MIGHT THIS OPERATE IN PRACTICE?

CAN YOU SUGGEST OTHER WAYS IN WHICH THE CODE COULD SUPPORT EXECUTIVE REMUNERATION THAT DRIVES LONG-TERM SUSTAINABLE PERFORMANCE?

DO YOU THINK THE CHANGES PROPOSED WILL GIVE MEANINGFUL IMPETUS TO BOARDS IN EXERCISING DISCRETION?

We believe further clarity is necessary on the extended remit for the remuneration committee. The term 'oversee' implies that the remuneration committee could have ultimate responsibility for pay policies across the company, including factors such as collective bargaining agreements, pensions provision or incentive structures.

Given the importance of these issues to the culture, workforce well-being and long-term sustainability of the company, there is some argument that a board-level committee should have some responsibility for these areas. However, this would represent a major expansion in the committee's remit, and would require significant adaptation. We are unsure whether remuneration committees as currently comprised

have particular specialist expertise in this area. Such a change in responsibilities might act as a spur to appoint a more diverse range of professional backgrounds including people management or industrial relations to board level – particularly if encouraged in the guidance. The extent to which a committee of non-executive directors with responsibilities for ‘oversight’ should intervene on these type of interventions would also require clarification.

For the committee ‘to take workforce pay and conditions into account’ as suggested in provision 33, they will need accurate information. The best way to understand workforce pay and conditions and the impact the executive remuneration has on the morale of wider workers is to consult with the workforce over their views on executive pay and the distribution of pay throughout the organisation. This should be included, at least in the guidance, or ideally as a provision in the code itself.

As previously noted, we are concerned that the proposals are overly focused on the challenging task of linking pay to performance. There is substantial evidence that for complex roles such as a leading company executive, performance-related pay has limited effectiveness either incentivising or rewarding good performance.

In contrast to the structure, the guidance and the proposed code itself make no mention of the size of executive pay packages, a key source of stakeholder concern in recent years. We would be supportive of stronger language in relation to the need to avoid pay packages that are not disproportionately or unnecessarily large, and proper interrogation by the board of whether or not it would really be disadvantageous to the company to reduce pay to more societally acceptable levels.

We welcome the additional emphasis on the committee’s power to exercise discretion. It is to be hoped that this will have some effect, however we are sceptical, given that this is something that committees have struggled with historically.

STEWARDSHIP CODE CONSULTATION

SHOULD THE STEWARDSHIP CODE BE MORE EXPLICIT ABOUT THE EXPECTATIONS OF THESE 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?

The Stewardship Code has established prominence domestically as well as serving as the inspiration for similar codes in other countries. Even in the asset owner sector, there are several dozen signatories. Setting up a separate code might cause confusion or even put this substantial progress at risk.

However, the current iteration of the code is clearly of less relevance to asset owners that outsource most of their asset management than to those institutional investors that invest directly. Only two of the seven provisions of the code (provisions 1 and 7) specify how they might apply differently to, for example, a pension fund and a commercial asset manager. The relevance to other key parties, such as investment consultants, is unclear throughout the code.

Therefore, it would be sensible to introduce specific guidance for different parties. This need not always be a complicated exercise. For example, provisions 3-6 currently set out expectations in terms of monitoring investee companies, escalation of stewardship issues, collective engagement and AGM voting. Most pension funds would delegate this work to an asset manager so may deem the provisions irrelevant to them. However, good stewardship on the part of asset owners should involve scrutinising their asset managers' monitoring, escalation, collective engagement and AGM voting, and many pension funds already do so. Our stewardship survey found that 71 per cent of respondents incorporate stewardship criteria into their asset manager selection and review processes, for example.

It would be simple to include specific guidance under each of these provisions setting out how the asset managers (or direct investors) should carry out these activities and how the asset owners should hold them to account, without having to make wholesale revisions to the code.

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?

If it is the intention of the FRC to attract more Code signatories from the asset management sector, then increasing the prescriptive nature of the code may be counter-productive.

Mandating certain practices beneath each of the principles-based provisions of the code is likely to be perceived as being prohibitively onerous. Non-signatory PLSA members have told us that they support and apply most of the code's provisions, through oversight of their asset managers and setting stewardship criteria in mandates, for example. But many are reluctant to sign for fear of inhibiting a more flexible approach to stewardship as a result of the increased expectations of signatories, and the resource implications of monitoring all their stewardship activities for the purposes of full compliance, rather than for good stewardship and the value it generates for their members.

At the same time we recognise that there are certain specific practices that investors should undertake. This could include publishing AGM voting records (asset

managers); advising clients to avoid overly-frequent turnover of asset managers (consultants); or setting stewardship-related criteria for prospective asset managers (asset owners).

It is also the case that the current iteration of the Stewardship Code has been in place since 2012. The concepts of stewardship and responsible investment have become much more embedded over this period. It is therefore logical to raise expectations of signatories. The tiered structure could be useful in this respect, with higher, more specific standards more akin to the provisions of the Corporate Governance Code set for tier one signatories, while tier two signatories comply with more general principles.

ARE THERE ELEMENTS OF THE REVISED UK CORPORATE GOVERNANCE CODE THAT WE SHOULD MIRROR IN THE STEWARDSHIP CODE?

The PLSA response to the FCA's consultation paper CP 17/18 on the governance of authorised fund managers (AFM) issued as part of the asset management market study recommended that AFMs 'value for money' assessments should discuss their culture and working practices.

The Corporate Governance Code rightly recognises that, for example, remuneration and diversity are absolutely critical to a company's culture and long-term performance. The investment industry has been subject to criticism in relation to its pay practices and its diversity record, with a major campaign launched recently by senior industry figures to improve the industry's record in the latter respect.

It's easy to see how these key elements of corporate culture are particularly relevant to stewardship activities. The different backgrounds of people that work for institutional investors and how and how much they are paid are likely to greatly influence how seriously they take stewardship and responsible, long-term investment practices. Given that these are such important tenets of good corporate governance that investors increasingly require investee companies to report on, it would be consistent to include provisions on culture in the Stewardship Code as well.

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??

There is a growing recognition of the effect that Environmental, Social and Governance factors can have on investment returns. Investors - and businesses more

generally - are also under increasing pressure to align their practices with the interests of wider society. It therefore makes sense for this to be recognised in the Stewardship Code.

It is also important to be able to access robust information about the 'impact' of asset owners, asset managers and advisers alike. We believe that (environmental and social) 'impact' would be the most appropriate terminology to use in a new provision in the Code. This could require signatories to explain what impact they have had and how they have measured it.

Impact investing approaches are of growing interest to pension funds and other investors, particularly in relation to the Sustainable Development Goals, which provide a useful framework for measuring impact.

Impact is also relevant to a wider range of stakeholders than the related concept of 'ESG', which refers solely to environmental/social/governance considerations shaping investment returns. This may not necessarily cover all the ways in which an investment decision has an environmental/social impact.

Finally, the term 'impact' is also likely to have long-term applicability and cover emerging environmental/societal concerns (eg the use of plastics). We therefore prefer using this broader term, rather than directly referring to individual issues. However, it may be useful to provide examples of common ways in which an investment may have an environmental or social impact – eg the pay practices or greenhouse gas emissions of their investee companies.