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The Financial Reporting Council  
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By email to mail to: [codereview@frc.org.uk](mailto:codereview@frc.org.uk)

Dear Sirs,

### **Review of the UK Corporate Governance Code**

Thank you for the invitation to comment on the proposed changes to the Code.

By way of introduction, I was formerly Global Head of Governance and Stewardship at Standard Life Investments, a role that I fulfilled for over 20 years. I closed my chapter with Standard Life two years ago and I am now an Honorary Professor at the University of Edinburgh Business School, a Director of the European Corporate Governance Institute, a member of the Council of ICAS, a member of the Standing Advisory Group of the PCAOB, and an independent non-executive at Mazars LLP. The views expressed in this letter are personal and do not seek to represent those of the organisations with which I am associated.

### **General comment**

I applaud the FRC for proposing to restructure the Code, reduce its size and re-emphasise the importance of applying the proposed principles with a degree of flexibility, using a 'comply or explain' approach commensurate with a company's circumstances and strategy. However, I am concerned that many institutional investors and voting advisory agencies will struggle to embrace the spirit and substance of the proposed approach, especially in the light of the large number of AGMs which they have to process during "the busy season". Therefore, I recommend that:

- when launching the revised Code and throughout its tenure, the leadership of the FRC make regular and repeated reference in their speeches and other public pronouncements to the importance of companies, investors and voting advisory agencies entering into the intended spirit of the Code when fulfilling their respective responsibilities.

- the FRC make formal arrangements to monitor (1) the level of non-compliance by companies, (2) the willingness of shareholders to support such non-compliance, and (3) the approach taken by voting advisory agencies in this regard. The FRC should publish its findings – and in particular, the emerging trends - on a regular basis, say, half-yearly, and if there are concerns arising, it should make known its views. Likewise, it should give due praise if the parties appear to be entering into intended spirit of the Code.

### **Chairman tenure and the application of the nine-year “rule”**

I am concerned that this well-intentioned provision will backfire and give rise to unintended consequences. That said, I do recognise that there need to be more checks and balances to ensure that chairmen do not remain in situ beyond their “sell by date”, However, I believe that the proposed provision is a blunt instrument and will, of itself, deter many potentially good chairmen, especially if they are already on the board. Also, it may result in relatively more short-term decision making. Furthermore, I am sceptical as to whether proxy voting agencies and institutional investors will be willing to be sufficiently flexible when it comes to supporting a board’s explanation of the reasons for the departure from the Code’s provisions.

In the light of my concerns and the importance of the chairman’s role, I recommend the FRC does not proceed with the proposed change. Rather, it should:

- provide in the Code for a more transparent and robust evaluation of the Chairman’s performance than is currently the norm if he or she is intends to serve on the Board for more than 9 years. In my experience, the disclosures relating to the evaluation of the chairman’s performance are often perfunctory and thereby call into question the quality of the evaluation itself.
- undertake to consult further regarding arrangements to improve the checks and balances relating to Chairman’s tenure, with a view to introducing new provisions in the next review of the Code, which you should commit to do in two years’ time, in the absence of other developments.

### **Provisions that are being removed from the Code**

It is appropriate to remove some provisions from the Code and reduce the clutter but, insofar that most of these provisions continue to represent best practice, it is important that they are not lost from sight. Accordingly, I recommend that the FRC invite ICSA to develop and maintain best practice guidance for boards and that the provisions being removed from the Code be considered for inclusion therein.

## **Conclusion**

The UK Corporate Governance Code remains the bedrock of the UK's approach to corporate governance. However, it has come under justifiable criticism in recent years for being excessively long and giving undue weight to detailed provisions such that, taken as a whole, it has morphed over time to become closer to a rulebook than a principles based 'comply or explain' code. This is not, in my view, consistent with the public interest. Accordingly, I warmly welcome the FRC's resolve to grasp the nettle, as reflected in structure and substance of the proposed revised Code. That said, to deliver the desired benefits, it is essential that over time the FRC and its leaders exhort boards, shareholders and voting advisory agencies to embrace the spirit of 'comply or explain' in fulfilling their respective responsibilities.

Yours faithfully,

Guy R Jubb  
Honorary Professor, The University of Edinburgh Business School