



**Review of the role and effectiveness  
of Non-executive directors:  
A consultation paper.**

Response from GlaxoSmithKline plc

## **SECTION A : ROLE**

### **WHAT ROLE SHOULD NON-EXECUTIVE DIRECTORS PERFORM, AND HOW DOES THIS COMPARE TO THE PRESENT POSITION ?**

#### **1. What is the role of the Board? What is the role of the Chairman and how does it relate to the Non-executive directors?**

##### **Role of the Board**

The Board carries the ultimate responsibility for the performance of the Company.

It has five main tasks:

- a. to set strategy and direction and to maintain an enduring competitive company;
- b. to observe, encourage, advise and appraise management's performance;
- c. to provide for management succession;
- d. to promote good corporate behaviour and accountability and to monitor the company's integrity in the broadest sense; and
- e. to set the tone of the company and provide a conduit to shareholders and other stakeholders.

##### **Role of the Chairman**

The Chairman runs the Board and the Board delegates the day to day running of the Company to the executive management headed by the Chief Executive Officer. The Chairman's role is to ensure that the Board is effective in its tasks of setting and implementing the Company's direction and strategy. In practice this means taking responsibility for the Board's composition, appraisal and development, ensuring that the Board focuses on its key tasks, engaging the Board in assessing and improving its performance and supporting the Chief Executive Officer in his role of managing the day to day running of the Company and promotes an effective relationship between the executives and the Non-executive directors. The Chairman is also the ultimate point of contact for the shareholder, particularly on corporate governance issues. We do not believe that a Non-executive Chairman should be excluded or disbarred from being a member of the remuneration and audit committees.

#### **2. What should be the key roles of Non-executive directors on the Board and what should be the balance between the different components?**

Non-executive directors should provide objectivity, discipline, independence and a wider external perspective. Boards work best when their Non-executive directors pose a constant, friendly but firm challenge to management and management facilitates this by the quality of information, education and explanations it provides to Board members.

The key roles of Non-executive directors include:

**Standards** - to uphold the Company's integrity and standards.

**Strategic direction** - to help provide the Board with a clearer or wider view of external factors affecting the company and its business environment and, after proper discussion; to endorse or otherwise the strategy put forward by the executive.

**Monitoring** - to monitor the performance of executive management in implementing its strategy.

**Communication** - to monitor and assist the Company in its communications with its various constituencies.

**Audit** - it is the duty of the whole Board to ensure that the company accounts properly to its shareholders by presenting a true and fair reflection of its actions and financial performance and that necessary internal control systems are in place and monitored regularly and rigorously.

**Remuneration of executive directors** - it is vital that decisions on executive remuneration, benefits and bonuses are seen to be taken by those who do not stand to benefit directly from them.

**Succession** - to be satisfied that proper steps are being taken to provide for succession to senior management and the Board.

**Within a Board, should all Non-executive directors be expected to fulfil each of the different roles?**

All directors have a role to play in Board deliberations, but each member of the Board will bring different qualities based on their knowledge, experience and judgement.

**3. How does this compare to the present position?**

No difference, although recent events have served to underline the rigor needed by Non-executive directors in fulfilling their role.

**4. How independent do Non-executive directors need to be for the different roles?**

We believe that Non-executive directors should be independent but we do not believe that it is appropriate to judge independence through the use of simplistic methodology. Independence is demonstrated by integrity, competence and quality, which can be found in many individuals who would not be classified as independent if simple tools like payment for other services or past employment were used as exclusionary measures. The problem seems to be more of perception than the reality of the situation.

It is the sincerity and the independence of mind of the Non-executive director which should be measured and not external factors. Although these qualities may be difficult to quantify or to report upon, this does not detract from their importance.

Current law requires directors to declare any conflict of interest and to withdraw from discussions where they have an interest. We would have no objection to a

requirement that potential conflicts of interest between a director and the Board / company should be listed in the company's accounts.

**5. What are the main potential conflicts of interest, which may arise within a company where Non-executive directors can play a role in protecting the interests of the company?**

Executive remuneration, performance measurement and succession.

**What can be done to help Non-executive directors to be effective in relation to these conflicts?**

The Chairman's role is to ensure that the Board operates properly and that its actions are in line with best practice on Corporate Governance. In the event that a Non-executive is unable to resolve an issue via the Chairman, he should take appropriate external legal advice as provided for by the Company under the Combined Code. The ultimate sanction of any director is to resign.

**6. What time commitment is needed for the role of Chairman and for Non-executive director roles, and how far does this vary between different companies?**

Time commitment depends on the size and complexity of the business and its level of external corporate activity. This clearly varies from company to company and there can be no rule of thumb for all.

**Are there any implications for the number of Non-executive posts that one person can sensibly take on?**

Firstly, we do not agree with Lord Young's view that a Non-executive director can only contribute if he is full time and fully involved with the business. Neither do we agree with the National Association of Pension Fund's view that Non-executive directors should be restricted to a maximum of five directorships.

Greater thought should be given to understanding the implications of limiting the number of Non-executive directorships that an individual can hold. We do not believe that this would mean that each Non-executive director would necessarily spend more time on each company. If a limit is imposed and increased time mandated we assume that each Non-executive director would seek increased fees as a result. We do not believe that increasing Non-executive directors' fees on this basis is in the interests of maintaining the independence of the director or to the benefit of the company and its stakeholders. In addition, we believe that each Non-executive director should have a breadth of current business experience. Restricting Non-executive directors to a few directorships means that they are less able to maintain a breadth of understanding of the business world.

Most companies monitor the number of directorships that their directors accept. Many companies include a requirement in each Non-executive director's letter of appointment that they should seek approval or at least notify the Chairman before taking up any new directorships. This gives the Chairman the opportunity to express any concerns over the new appointment.

When appointing new Non-executive directors the Nominations committee, the Chairman and the Board, assisted by the Company Secretary, are able to review the commitments of each new Non-executive director before they are selected and appointed. Companies can and do place expectations on a prospective Non-executive director as to the time commitment the position will demand.

The Chairman, in ensuring the Board operates effectively, should monitor attendance at Board meetings and the level of participation made by each Non-executive director.

**7. Should there be a special role for a “senior independent” Non-executive director?**

We do not believe that it is necessary in all circumstances for companies to appoint a Senior Independent Non-executive director. Having a Senior Independent Non-executive director as well as a Non-executive Chairman may be divisive.

**8. Do you have comments on the proposed statutory statement of directors’ duties, which does not seek to distinguish between the legal duties of executive and Non-executive directors?**

We believe in the concept of a unitary board and support the view that all directors should have the same responsibilities under company law, although the extent of individual liability may differ depending on the facts of the case as determined by the courts. Any distinction would lead to a de facto two-tier board. It would be helpful to codify the main duties of a director (whether executive or Non-executive)

**SECTION B : ATTRACTING AND APPOINTING NON – EXECUTIVES**

**WHAT KNOWLEDGE, SKILLS AND ATTRIBUTES ARE NEEDED, AND WHAT CAN BE DONE TO ATTRACT, RECRUIT AND APPOINT THE BEST PEOPLE TO NON – EXECUTIVE ROLES?**

**9. What are the key skills, knowledge and experience which are needed by Non-executive directors to perform the role effectively, and how is this likely to change over the next, say, 10 years? Are some skills essential and, if so, what are they?**

Each Non-executive director should have :

- proven commercial awareness and financial literacy with relevant business, financial or legal experience;
- integrity and an open mind; and
- the ability to walk away.

**10. What personal qualities and attributes are needed?**

Competence, independence, integrity and the willingness to voice their opinions.

**11. What sort of mix of experience and attributes is desirable on a Board?**

A Board requires a balance of skills and works best with a strong and varied group of Non-executive directors with a wide range of experience and knowledge. A working understanding of the intricacies of how an organisation of equivalent size operates is obviously of benefit to a Non-executive director.

**Specific examples of cases where Non-executive directors have contributed with particular effect to company performance, or to corporate governance, would be helpful.**

The formation of GSK's Corporate Social Responsibility Committee (CSRC), which is composed entirely of Non-executive directors, was suggested by one of the Company's Non-executive directors. Corporate Social Responsibility (CSR) is of great importance to GSK and is inherent in what the Company does. CSR is both about corporate governance and about company performance - the very nature of our business means that commercial success comes from making a positive contribution to society, through the alleviation of disease, while numerous social, ethical, and environmental issues have the potential to seriously impact GSK's business and reputation. Though many of the activities now captured under the CSR "umbrella" have been our standard practice for many years, the CSRC has brought greater focus, gives us greater opportunity to demonstrate the positive contribution we make, and has been well received by the CSR community, by our own staff and shareholders, and by other stakeholders.

**12. How easy is it to recruit Non-executive directors with the right skills and attributes? Could recruitment and appointment mechanisms, including Nomination Committees, be improved?**

The recruitment of effective high calibre Non-executive directors has always been difficult and the approach to doing so is well understood by Nomination Committees.

**13. What could be done to widen the pool of potential Non-executive directors and introduce greater diversity into appointments? What are the constraints on this?**

There are several potential means to widen the pool, but each of these should be viewed in the context of the primary objective of ensuring that UK business is governed well and is commercially successful in a highly competitive environment:

- a. **Drawing from the current pool of Non-executive directors** - The first and easiest means would be to maintain the current position and not to seek to limit the number of Non-executive directorships an individual can hold.
- b. **Drawing from senior executives in larger organisations** - The pool could be widened by encouraging the appointment of senior executives from larger companies to fill Non-executive positions in smaller companies. This would help develop senior executives as well as and providing a wider pool of potential Non-executive talent. Companies who recruit such Non-executive directors would need to ensure that they received adequate training on the roles and responsibilities of a director of a public company.

- c. Drawing from other relevant areas** - Candidates could also be sought from the senior levels of law and accountancy and academia.

We would also add that further attention should be given to the fact that individuals appointed to companies in certain industries, particularly in pharmaceuticals, biotechnology and others involved in or connected with medical research, face the threat of attack and harassment following appointment to their Boards. This is because their personal details are published at Companies House in the UK. Many individuals may be loath to expose themselves to the risk of having to publish their home address details. The introduction of directors confidentiality orders is helpful in this regard, however such an order does not help a director who has previously been a director as his current address details will remain on Companies House's records.

We believe in the unitary Board concept and do not think that Board members should be appointed as "representatives" of special interest groups, whether employees or stakeholders.

**Is there scope for greater international representation on UK Boards?**

It is desirable for global corporations to have international representatives on their Boards. GSK has Non-executive directors from France, Germany and the US. We would question the value of such representation for companies where their main business is in the UK.

**14. Are the rewards for Non-executive directors appropriate, both in terms of levels of pay and the form that remuneration takes – e.g. cash / shares / share options?**

In general remuneration should be sufficient to attract and retain directors of the calibre needed to run a company successfully. Non-executive directors should be rewarded for their skills, experience and the time commitment they make to the company. Non-executive directors should not look to their fees from any one company as their main source of income, as this would impair their independence.

Partly remunerating Non-executive directors in the company's shares is a good means to align their interests with those of shareholders.

**Are current pay levels a significant factor in whether good Non-executive directors can be attracted?**

No, but this might change as the perceived risk of being a Non-executive increases.

**15. Do you have comments on the issue of risks or insurance provision for Non-executive directors?**

Ironically, current UK law can place a greater duty of care on a professionally qualified Non-executive director than on an executive director with no professional qualifications. It is essential for all Non-executive directors to be covered by a comprehensive directors and officers insurance policy. The cost of such policies has increased significantly in recent times.

Of course no insurance policy can provide comfort to a Non-executive director when a company runs into trouble. This can put an individual's whole standing, career and their directorships in other companies in jeopardy.

## **SECTION C : STRUCTURES AND ACCOUNTABILITY**

### **DO EXISTING STRUCTURES AND PROCEDURES FACILITATE EFFECTIVE PERFORMANCE BY NON-EXECUTIVE DIRECTORS ?**

#### **16. How is the Combined Code working in practice? In particular, how are the provisions on the balance between executive and Non-executive directors and the role of independent Non-executive directors working?**

The Combined Code provides a very helpful framework against which companies can measure themselves and be measured. It should be reviewed regularly and updated to keep pace with changes in best practice.

**Is further definition needed of independence in the Combined Code and, if so, what would a sensible definition be?**

We do not think that further definition is needed and we believe that the Board and the Chairman should be able to judge whether an individual Non-executive director is capable of bringing "independent judgement" to bear on deliberations of the Board.

#### **17. Do the recommended structures for Board committees facilitate governance and an effective contribution by Non-executive directors?**

Yes

**Are Board meeting procedures working effectively? Do you have comments on Board size?**

The larger the Board the more complex the logistics of arranging meetings and facilitating open discussions at those meetings. We do not feel it appropriate for limitations to be imposed on the maximum or minimum number of directors each Board should appoint.

#### **18. Do you have comments on the composition and duties of Audit Committees? How effectively are Audit Committees working in practice? Do you see a need to strengthen the existing Combined Code provisions on Audit Committees?**

We believe that under current governance arrangements Audit Committees function in a satisfactory way, although effectiveness is ultimately influenced by the quality and calibre of the individuals involved.

Audit Committees should meet independently (ie without any company executives present) with the Auditors at least once a year and the members of the Audit Committee should have free access to the finance team which prepares

the accounts and to the company's internal audit function and other members of management as it feels appropriate.

**19. Similarly, do you have comments on the composition, duties or operation in practice of Nomination and Remuneration Committees?**

The recent changes in the requirements placed upon remuneration committees when reporting on remuneration will bring changes to the duties of the remuneration and nominations committees. We do not believe that additional change is required at present.

**20. What processes are in place for setting objectives and reviewing performance against those objectives, for the Board as a whole and for individual directors?**

We agree that Board performance and that of Non-executive directors and Executive directors should be reviewed against agreed objectives. The process for achieving performance measurement will vary from company to company.

**21. Could more be done to review performance? Should more information on Board performance be reported to shareholders? Should companies provide more information on the performance of Non-executive directors?**

Board performance is not to be confused with company performance, which should be as transparent as possible to shareholders. To remain effective, measurement of Board Performance, both collectively and by individual Board members, should remain confidential.

**22. Are Non-executive directors able successfully to challenge executive decisions or expose serious problems? Should it be made easier for them to do so and, if so, how?**

Assuming that the right quality of information is provided to them we believe that Non-executive directors who have integrity and independence of mind are more than capable of challenging executive decisions or exposing issues they believe to be pertinent to the company's success. If a Non-executive fails to achieve a satisfactory response then he has one sanction against the rest of the Board - to resign. If a Non-executive director resigns during his term of office he should be prepared to state publicly the reason for his early departure.

**D: RELATIONSHIPS WITH SHAREHOLDERS AND OTHERS**

**DO EXISTING RELATIONSHIPS WITH SHAREHOLDERS OR OTHERS NEED TO BE STRENGTHENED ?**

**23. How well do relationships between Non-executive directors and shareholders and stakeholders work, and could they be improved? For example, we would be interested to hear views on what the relationship might be between Non-executive directors and institutional shareholders. How could this relationship be strengthened?**

Non-executive directors can and do provide a useful conduit to institutional investors for discussing issues and proposals that may be subject to shareholder

voting. Although such contact works best in an informal manner, there can be occasions where a more formal link can be useful. For instance at a recent meeting of GSK's Corporate Social Responsibility a presentation was given by a representative of a well known socially responsible investment fund informing the committee of recent external trends and giving an external perspective on how GSK is perceived, particularly by socially responsible investors.

**24. To what extent are Chairmen creating the conditions for Non-executive directors to be effective? Is there more that they could do, by promoting constructive relationships, managing the discussion processes, encouraging challenging and effective contributions in Board meetings and ensuring appropriate information flows, or otherwise?**

We believe that the Chairman's role in this regard is extremely important. The Chairman manages meetings of the Board to ensure that all matters put before the Board are fully debated. He should also ensure that Non-executive directors are given ample opportunity to raise other matters as appropriate.

Informal meetings of the Non-executives and the Chairman without the executive directors present can help to ensure that all issues are aired in a collegiate manner.

**25. What should be the relationship between Non-executive directors and executive directors, and with senior management? What should their relationship be with the Chairman and the Chief Executive? What should their relationship be with key advisers to the company?**

The relationships between Board members, their advisors and the Company Secretary should be open, honest, collegiate and supportive.

**26. How can Company Secretaries support effective performance by Non-executive directors?**

Under the Combined Code the role of Company Secretaries is to ensure that Board procedures are followed and that applicable rules and regulations are complied with. The Secretary administers the Board and assists the Chairman in ensuring that the Board operates effectively and efficiently.

The Combined Code requires that all directors should have access to the advice and services of the Company Secretary.

If the Company Secretary is to give advice and avail himself of the directors then he must show himself to be knowledgeable, reliable, discreet, an excellent communicator, a good listener and approachable. The directors and senior executives must have confidence in the Company Secretary and they must feel able to consider the Company Secretary their first "port of call" for advice and guidance, etc. The Company Secretary must have the answers or at least know where to find them.

This provision therefore requires the Company Secretary to be on top of his or her job and capable of sharing and imparting information about a whole range of subjects.

## **E: SUPPORT**

### **HOW CAN NON-EXECUTIVE DIRECTORS BEST BE SUPPORTED TO PERFORM THEIR ROLE?**

**27. How much access to information from management do Non-executive directors need to be effective? In practice, are information flows and communication channels sufficiently open and unrestricted?**

Non-executive directors should be provided with a regular defined flow of information covering the company's key activities. This is particularly important if the Board does not meet every month. GSK Non-executive directors are provided with a monthly finance report, CEO's Report, and an external environmental report. Additionally they receive a weekly digest of press cuttings and major analyst reports as they are published. In addition, every effort should be made to let Non-executive directors know when important announcements are to be made and ensure that they receive copies of the announcements in advance.

**28. What training and development opportunities are available? Could they be improved and, if so, how?**

We believe that current training opportunities / facilities are adequate but acknowledge that there is always room for improvement.

**Can induction for Non-executive directors be improved?**

Even the most experienced Non-executive will need to be provided with a high quality induction programme on joining the Board of a new company. It is however a matter for each company to manage this process for which rules are not needed.

**29. Do Non-executive directors get clear guidance on what is expected of them and do they get feedback on whether they are meeting expectations?**

GSK directors do have clear guidance and receive feedback from the Chairman.

## **F: SMALLER LISTED COMPANIES**

### **IN WHAT WAYS IS THE POSITION DIFFERENT FOR SMALLER LISTED COMPANIES ?**

**30. To what extent do different factors apply in the case of smaller listed companies?**

**Is different provision necessary?**

No comment.

**G: INTERNATIONAL CONTEXT**

**WHAT CAN WE LEARN FROM INTERNATIONAL EXPERIENCE ?**

**31. What lessons can be learnt from international experience, either in terms of structures or behaviours?**

We believe that the UK's Non-statutory approach leads the World. We do not believe that the UK should follow the recent US approach and create a statutory model or the continental approach with a two tier model.

**32. Do other models of corporate governance or different boardroom roles or dynamics contribute more to company performance?**

We do not think it would be wise for the UK to abandon the unitary approach that it has developed.

**32. Would it be beneficial to bring UK practice more in line with that in any other countries? If so, why and how?**

We believe that standards of corporate governance in the UK are already very high and that the UK provides other countries with a sensible benchmark.

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Directory: C:\tmp\work\R501110\KAREN\R501110  
Template: C:\Documents and  
Settings\kanese.DEVELOPMENT\Application  
Data\Microsoft\Templates\Normal.dot  
Title: Review of the role and effectiveness  
Subject:  
Author: Victoria Llewellyn  
Keywords:  
Comments:  
Creation Date: 08/10/2002 14:06  
Change Number: 2  
Last Saved On: 08/10/2002 14:06  
Last Saved By: camassey  
Total Editing Time: 1 Minute  
Last Printed On: 11/10/2002 11:00  
As of Last Complete Printing  
Number of Pages: 12  
Number of Words: 3,838 (approx.)  
Number of Characters: 21,882 (approx.)