

## **PETER C F HICKSON**

### **SUBMISSION TO THE NON-EXECUTIVE DIRECTOR REVIEW**

This submission is made in a personal capacity and is not connected in any way with any of the corporations where I hold positions or appointments. The views expressed are mine alone.

#### **CREDENTIALS**

I have been a director of public companies since 1985 in both an executive and non-executive capacity. In that period I have been Finance Director of three UK public companies ( two in the FTSE ), a non-executive director of two UK and two overseas quoted companies, and the non-executive Chairman of a newly floated company in Singapore.

My last full-time executive appointment ( until July 2002 ) was as Finance Director of Powergen plc which, until bought by a German company, was ranked 50 in the FTSE. I am currently non-executive Deputy Chairman of AWG plc, and the senior non-executive director of RAC plc. I have been asked by the AWG Board to succeed Robin Gourlay as Chairman of AWG in January 2003.

#### **COMMENTARY**

My intention is to provide my comments in the order in which Mr Higgs has set out his document. I will deal each of the general subjects identified in sections A to G, although not necessarily in the same numerical order. I will deal with a number of the issues raised, but do not intend to comment on every matter in the document.

These comments will reflect my overall views on non-executive responsibilities and, in particular, the key role of the non-executive Chairman.

#### **A : ROLE**

The prime role of the Board is to establish the strategic objectives of the company and ensure there is adequate management to achieve it. The Chairman has a most important role in this regard. He should be non-executive and be responsible for the following :

- ( 1 ) The organisation of the Board including the recruitment of suitably qualified ( executive and non-executive ) directors, the establishment of appropriate agendas and timing of Board meetings

( 2 ) The provision of non-executive support for executive management by ensuring that the Board contains an appropriate range of skills and expertise capable of providing support.

( 3 ) The monitoring and review of the performance of the executive management team generally and the Chief Executive in particular. The Chairman has a lead role with the non-executives in driving through management change if it is required.

( 4 ) An ambassadorial role as the senior Director of the company.

It is important that the Chairman should be non-executive and can take an objective view of the company's performance. He is non-executive in the sense that the Chairman does not have any day to day functional or operational responsibilities. This may require a time input of a number of days a week. It is unlikely that the Chairman's role would be less than one day per week and, depending upon the company's position and complexity, additional days will be needed

Among the non-executive directors, there should be a range both of functional skills and operational responsibilities. A Board will be less effective if all the non-executives have the same discipline, and/or if they are all retired from executive work. An effective Board should have a good mix of skills and operational and non-operational activity. The issue of the " independence " of non-executives is essentially a red herring. The elapse of time ( 9 years ) does not make a good non-executive any less objective and there is a danger that useful input will be lost if independence becomes a time related issue.

The need for a " senior independent " is raised as a question, and it is important to consider how the position has arisen. In many cases it has developed in companies where there is an executive Chairman or, worse, where the role of Chairman and Chief Executive are combined. If it is accepted that the Chairman should be non-executive, the need for a senior director would disappear, although there would still be a need for a Deputy Chairman to stand in when the Chairman is unavailable.

## **B : ATTRACTING AND APPOINTING NON-EXECUTIVES**

As explained above there is a need for a range of skills and experience among the non-executives. At the very least, it is important to have someone with industry knowledge and understanding; and in today's world someone with a financial background to attend to the increasing Audit Committee responsibilities. Boards will also benefit from other disciplines such as marketing, engineering, IT, personnel etc. There is no template – each company will have its own requirement.

In terms of attracting and recruiting, all avenues should be explored. It should not be left in the hands only of head-hunters who may have their own agenda. Professional advisors, existing contacts and word of mouth recommendations are all legitimate means of recruitment. The key is an effective interview and assessment process by the Nominations Committee so the company can recruit people who can contribute effectively to the company's deliberations rather than take on individuals motivated by the objective of " building a portfolio ". The Chairman has the key role in this process by defining the type of person required and using all avenues to find them.

Unless the Chairman and the Nominations Committee have discussed and agreed the candidate specification there is a real danger of making a wrong appointment.

The question of reward is a difficult one. Current levels of fees do not reflect the amount of time and responsibility, but it is hard to make a case for a substantial increase. Companies will become reluctant to pay more for the same time input; and if more time is demanded, it will be increasingly difficult to recruit current executives. The fee levels are therefore likely to move with the market.

The final question is whether the pool of available non-executives can be expanded. The answer is that it can by approaching more managers in public companies below Board level. The problem is whether those companies are prepared to release their senior executives to take a role in another company. Senior managers in other companies may simply be too busy to put aside the time. They are also less likely to have control of their diaries in the way some of their more senior colleagues are.

## **C : STRUCTURES AND ACCOUNTABILITY**

In the main the present committee structures are satisfactory. Where they are not always effective is in their execution. Often, insufficient time is set aside or committees are scheduled poorly. It is for the Chairman to ensure that properly organised and serviced committee meetings take place. It works less effectively if the timing is left to the executive directors, or the Company Secretary, or everyone's secretary !

The Audit Committee is an important Board committee because it provides the opportunity for both non-executive and executive directors to understand more of the detail of the company's accounts. It is up to the Chairman of the Audit Committee to ensure that such detail is made available by insisting on the control of the agenda. This should not be left to the Finance Director. Membership of the Committee should comprise all the non-executives, and the executives should be encouraged to attend.

## **D : SHAREHOLDER RELATIONSHIPS**

There is a natural relationship between a company's executives and leading institutional shareholders. Institutions are greedy for information and the CEO and FD are the best source; non-executives do not possess the detail. Having said that, there is a potential role for the Chairman to play in listening to the concerns of shareholders. The issue is whether institutions wish to be forthcoming or put aside the time. They may prefer the sell option rather than become involved with the risks of inside information restricting their freedom to buy and sell the company's shares. If they are prepared to give the time, there is potentially an important connection between the institutions and the Chairman which could provide important input to the Board's deliberations.

## **E : SUPPORT**

Non-executives may be only as good as the information they are given. Many bad decisions have been taken with insufficient information available to the Board as a whole, not just to the non-executives. In the end this is a matter of professional duty and if there are inadequate explanations then more information must be demanded. And if it is not forthcoming then non-executives should be prepared to resign and have the right to explain their reasons.

As far as non-executive input and performance is concerned, it is important that the Chairman review this with each non-executive at least once a year. The Chairman's role is to organise the Board and part of this includes monitoring non-executive performance.

## **F : SMALL COMPANIES**

The issues for small companies are essentially the same as for large companies. They both have shareholders whose interests need to be protected and the governance issues are the same. The difficulty is that the cost of broad non-executive input may be too high in the context of a small company's profit and there will probably be greater risk of less than adequate governance.

## **G ; INTERNATIONAL CONTEXT**

The American model and the European models both differ generally from the British.

In the United States, Boards tend to comprise only non-executives with the sole executive being the Chairman and Chief Executive ( one person ). Executives who, in the British context would be Board members, are Officers of the company. Moving to such a structure in the UK might run the risk of removing an important managerial motivation – namely the aspiration to get a seat on the Board.

In Europe, the two tier Board involving a Supervisory Board has some merit, particularly in reducing risks and liabilities. It does appear, however, that Supervisory Boards lack initiative powers. They may be able to block executive proposals but they cannot demand alternatives. Potentially this can lead to stalemate which is nobody's interests.

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