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Introduction

- This response will be succinct and bulleted
- In all three editions of the above book, I have described the role of the NED and their interaction with the FD, which I regard as critical.
- The FD is the third most important role in the company (after Chairman and CEO), but uniquely, the FD has to be able to think like both an Executive and a Non-Executive Director, so as to anticipate likely challenges from the Board.
- FDs have not always accepted this responsibility in the past. It can lead to a challenge to the CEO/MD.
- NEDs have also not always kept their side of the ‘bargain’ either, often having inadequate financial understanding to challenge and deferring to the FD’s apparent expertise. This and the broader state of affairs has to change.
- The present comments are directed to the basic NED role, the need for more change, the desirable skills, the process by which they are appointed and the manner and diligence with which they go about their duties
- These comments may appear general by nature and they therefore do not apply to those NEDs and FDs who perform their duties outstandingly well. Among those former colleagues to whom this applies, Sir John Sparrow was outstanding.

General and Executive Summary

- Corporate governance and its need are not new, only the title and collected processes and procedures are.
- Very little of the burgeoning panoply of CG regulation, legislation and recommended best practice would be necessary, if only companies would regulate themselves better.
- Auditors, the professional accounting bodies and the accounting profession are all partly implicated in the failures of the past. If auditors are to be truly independent, they should be prepared to resign more frequently where they come across dubious or unacceptable practice. If not, there may need to be another process by which they are deselected.
- Cross-selling ‘consultancy’ and other advisory services will always present a risk to impartiality.
- The ICAEW has established itself as prospectively the pre-eminent accounting body in the world. It therefore needs to take a harder line on malpractice and poor practice than it may sometimes have done, as with the GMC in the NHS.
- The accounting profession has been too dominated by major firms and too introspective. As a professional coach to the professions and top business people and also as a trained Chartered Accountant, I am still concerned that auditors and executives alike can find themselves into senior corporate roles in directing and

auditing major organizations with relatively little direct corporate experience and often poor interpersonal or people management skills.

- As to NEDs themselves, they are still far too often appointed from within or by a privileged elite. As the FD of a FTSE 100 company put it to me while researching the 3rd edition, “we have been trying to find a NED for months and the headhunters keep offering us the same old tired faces.” As I responded to him, despite the breadth and depth of my private and public sector experience and professional qualifications and being an acknowledged ‘expert’ on Risk/Treasury and ‘bestseller’ on the Financial Direction of companies, I have never once been approached even to be interviewed for a NED role.
- There are two appropriate sayings:

“If it aint broke, don’t try and fix it.” It is – and it badly needs fixing!

“If you always do what you always did, you’ll always get what you always got.”

- It is now being said that there is a declining number of people ready to consider the role of NED due to very public corporate failures, the litigious consequences of the Health and Safety Act and the growing risks. Nevertheless, there is a huge and untapped market of good people ready and willing to be asked and to accept the risks, in the pursuit of good corporate governance and the re-establishment of corporate reputation. Furthermore, there has never been a greater need for the role
- Protection of shareholder interest is in potential disarray. The NEDs of a growing number of highly visible corporate failures have let them down; the markets are losing confidence (hence the savaging of prices on profit warnings and the demise of such as Marconi); and institutional shareholders in particular have failed to live up to their own responsibilities, preferring to sell shares rather than challenge the Boards in a meaningful way.
- All this argues towards more diligent and protective corporate governance, rigidly policed and enforced, with public accountability and public appointment of NEDs

A The NEDs’ role

- We do not need the two-tier board in the UK; we just need the NEDs to carry out all their legal and regulated duties and especially to regulate themselves.
- NEDs have shied away from customer, shareholder and employee representation on the Board, too often suggesting that such aspirants would not be able to understand the complex matters of state by which a company is run. Given that sometimes these latter appear to have been too much for the NEDs themselves to manage in the past, maybe this is true. The answer, however, is for the NEDs themselves to challenge for greater simplicity and transparency. Terry Smith is far from alone in believing that Accounting Standards have made company accounts relatively impermeable and valuation pretty meaningless. It need not be so.
- First and foremost the inalienable role is to protect and create shareholder value. Why is it that NEDs have not only kept their jobs, but also gone on to direct and even chair other companies where they have clearly failed to do this, based on the

- principle of collective corporate responsibility? Why is there not tougher policing of company failure and more frequent disqualification, on the basis of fit for role?
- The modern role is to look after the interests of all stakeholders: shareholders, customers, the public, government and taxpayers, employees, suppliers, etc. Given that NEDs can now be sued or prosecuted on the basis of various forms of legislation, their role must also extend to these responsibilities.
 - One of the fundamental challenges therefore is how a privileged few can hold and adequately perform their duties in so many different companies.
 - The role is not, nor ever should be, full time, but that of the Chairman at least must surely involve several days a month, commensurate with remuneration, in order to perform it satisfactorily, especially with the critical and intimate relationships with CEO/MD and FD. That of the Chair of the Audit Committee comes close. Indeed, with the raging debate about whether governance is failing, it could be suggested that the Chair of the Audit Committee has the most important role in this respect.
 - In my experience, many NEDs were diligent and others much less so. The latter turned up only for Board meetings (unless there was a dinner the night before), clearly hadn't considered their Board papers in depth, asked one token question at most and never 'walked the shop' in the organization. These were the worst. Where people have many directorships, they may not have sufficient time to do much more than this. In which case why are they allowed so many appointments and/or why are they remunerated so well?
 - Every NED should also double up on at least one of the Board committees and ideally should take turns as members of the Audit Committee.
 - Among their other governance roles should be:
 - approving strategy, policy, corporate standards and standing procedures, and the top level business management processes;
 - understanding all they need to know to recommend, implement and review the best international standards of governance;
 - appoint and agree the remuneration of the Executive Directors;
 - appoint a Chairman, Committee Chairmen and participate in the public appointment of new NEDs;
 - appoint, review and change auditors; understand and direct the implementation processes for accounting and other standards and relevant legislation and regulation;
 - oversee shareholder and investor communication and relationships;
 - understand, approve, audit and review high level corporate communications processes, major capital expenditure and the brand and image of the company.
 - The time involved in being a NED should ordinarily take up at least 3 to 5 days a month, including preparation for and attendance at Board meetings and Committees and time spent in and around the organization. As mentioned below, this would include 'shadowing' and/or coaching at least one Director or Executive
 - The Chairman is the spiritual and strategic leader of the Board and ultimately accountable with their job. When things go wrong they should honourably resign.

B Knowledge, skills and attributes; recruitment and appointment

- The primary skill of the NED is ‘to be able to ask the right questions and not take rubbish for an answer’. Of course, if they had relevant industry or sectoral experience this would help, but how can they properly do it unless they establish an intimate understanding of the organization and the people who manage it, while retaining their necessary objectivity and ‘gravitas’?
- Every NED should be numerate, whether by training or experience, otherwise how else can they ask the right questions, as eventually every management decision distils down to financial consequences?
- Every NED should have consummate people and interpersonal skills, whether acquired by experience or through training.
- Every NED should have sufficient general understanding or awareness of IT, HR, Marketing and the practical workings of Stock and Capital Markets to also be able to ask the right questions.
- Every senior Executive role should be ‘shadowed’ by at least one NED, i.e. at least one NED should have a specialist understanding for each of the key areas of Strategy, Finance, Marketing and Brand, Corporate Communications, IT, IR, eBusiness, Treasury and Markets and Risk.
- Specialist industry or sectoral experience is not necessary for all NEDs, indeed some breadth and diversity is highly desirable, but there should be a core of such knowledge among the NEDs.
- The values and integrity of an NED should be beyond question and even allowing for protection against discrimination, it would be difficult to see how a NED with a criminal record or previous disbarment as a director could assure such integrity.
- The attributes would include:
 - impartiality (including declaring vested interest whenever relevant and never promoting one’s own, connected or associated interest);
 - courage without recklessness;
 - an ability to manage with an awareness of risk;
 - right as well as left brained skills (i.e. creativity and people centredness as well as logical and rational argument – this argues strongly for many more women directors, especially in female employment intensive or retail industries);
 - the ‘emotional intelligence qualities of leadership and self-leadership, empathy and awareness of others, self-direction and self-control;
 - unqualified loyalty and commitment; etc.
- UK and global industry is rapidly changing. A NED needs the time and commitment to one company to keep up with this change. More Boards could do with team building among themselves. Organisations are becoming more holistic. A NED needs to be able to think globally and specifically across a range of topics
- Every NED should have coaching skills and/or experience, in order to individually or collectively promote best business and personal practice, make difficult though appropriate personal challenges, and collectively and individually bring out the best in the top team and its individual members and the ‘marzipan layer’ who would succeed them.

- The Chairman, CEO and FD all have in common a need for numeracy and a basic understanding in each of the core disciplines of modern business: Strategy; Marketing, Sales; Brand and Corporate Communications; Finance and Treasury; Risk; HR; IT, the Internet and eBusiness.
- The Chairman above all should have the skills and qualities described earlier. Fundamental among these would be:
 - Leadership and self-leadership;
 - Coaching and mentoring;
 - Communication, presentation and interpersonal skills;
 - The ability to relate to most people and especially to build partnerships with fellow directors;
 - ‘Whole-brained’ thinking skills;
 - People management skills;
 - Integrity, dedication and hardwork;
 - The ability to ask the right questions, gravitas and intellectual honesty;
 - Sufficient understanding of the key aspects of the business as described above;
 - An ongoing hunger for knowledge and personal development;
 - Youthfulness and energy (still possible at 70 or even 80).
- More prospective NEDs would be attracted if it were not seen largely as a ‘closed shop’ or elite ‘club’, chosen substantially by influence, association or acquaintance. There are far more able, willing and appropriately skilled and experienced prospects outside the current narrow recruitment processes.
- From my personal experience, executive headhunters are increasingly being used as the filtering process. Despite several attempts to put myself forward, I have without exception received a response equivalent to “we do not have appointments at present but we should like to keep your details on file”. Companies hardly ever advertise publicly for NEDs. I have never to date been invited for interview, despite being corporate coach for several ‘blue chip’ names at Executive Director or Partner level.
- As with Chairman/CEO/MDs, there appears to be an element of recycling. Far too often, a top man (yes, man) who has palpably failed in another role, reappears at Chairman/CEO level elsewhere, sometimes in a completely different industry. Are similar processes of recycling a select few occurring with NEDs also?
- Far too many NEDs are too old or appear to have little contact with corporate life other than their directorships. This is of particular concern in respect of the Executives that they should be working with and whether the NEDs are up to date with modern practices and trends.
- There is still demonstrative discrimination, especially against women and black and ethnic minorities. More than half the working population is now female and a rapidly growing proportion comes directly or by descent from black and ethnic minority groups and yet, frankly, the representation of both at Board level is appallingly low. All organizations with retail customers (including financial services) and all service industries have diverse customer bases. How can the NEDs properly understand customer, business and marketing strategy for these groups without any intuitive understanding or relevant colleagues on the Board?

- Some years ago, as a member of Thomsons Founders Club, I spoke to the Company Secretary about there being no woman on the Board, despite most of their employees being female. He said they had looked but could not find a woman good enough. I offered to put three top candidates in front of him immediately, but he declined. Val Gooding and Marjorie Scardino have shown that women can be highly successful and bring a much wider range of qualities to the table. It is biologically proven that women engage both sides of the brain all the time, while men only one at a time and usually the logical rational side.
- The way to access this needed diversity is to make the processes more thorough (as with Executive recruitment), more open and more publicly accountable. The present processes are highly discouraging and often actually discriminating against the huge pool of talent that could liven up corporate Britain. This will not change as long as the present group largely continues to appoint in its own image.
- A succession of high profile failures have shown that the Board either did not know what was going on, or failed in their duties. Hardly anyone has lost their job; many have retained or acquired directorships elsewhere.
- Why aren't similar recruitment processes used for NEDs as for Executives? The use of assessment centers and psychometric tests are regarded as desirable or mandatory at all senior levels below NED, so why not in the Board also? How thorough is the search and selection process? When Boards fail, why is there no postmortem into how well they were selected in the first place? What are the institutional shareholders doing? Why aren't they more involved in the process?
- The best people for NED roles are rounded, with substantial general and specific experience, with coaching and interpersonal skills and a hunger to keep up to date. They are challenging and objective, with good numeracy and in this day and age, an understanding of technology and telecommunications. They are impartial and objective and especially hardworking and committed over and above the call of duty. They are networkers and ambassadors across the business they direct.
- Remuneration is often already far too high. Many talented people would accept much less and work far harder than some of the incumbents.
- There will always be risk attached to the role of NED and that is how it should be. As far as practicable this should be insurable, with the exception of incompetence or dishonesty.
- It may be that we need something equivalent to a 'driving test' for some of them to ensure they have the basic prerequisites. It would also be desirable that more were publicly appointed. Maybe a public NED appointments Board, with open and above board recruitment and selection processes, publicly accountable to shareholders is a way forward?
- The IOD has a worldwide reputation. Maybe it is time that they, like other professional bodies, required the majority of their members to qualify by examination. They could at the very least combine in the process of determining the skills, abilities and qualifications necessary to be a director of a company, whether Executive or NED.
- In summary, therefore, for as long as headhunters with a financial self-interest, or NEDs from among their acquaintances, are a primary source of NEDs, there will continue to be the risk that the rounded, skilful, modern Board will remain a

dream. Some other, publicly visible, demonstrably more egalitarian process is desirable. Mistakes and misjudgments will still occasionally occur. Accountability should extend to directors being deselected, or even disbarred, as appropriate, especially where they are involved in more than one such corporate failure.

C Structures and procedures

- Existing structures and procedures can be effective if they are made to work. Institutional shareholders, auditors and the DTI have key roles to play. The public has become cynically dismissive of the worst excesses of corporate Directors, whose remuneration increases faster than inflation and is often perceived to be excessive for the manner, as much as the content of responsibilities. Marconi failed miserably, but how many NEDs resigned? The Board was collectively responsible for the state of affairs. If it truly didn't know, why not? Which planet were they on, when the rest of the market knew, weeks before any profit warning was made public. At Barings, any examination of the cash position would have flashed a warning light. What happened to separation of function? At Energis, the Board approved new 10-year bank loans, including stiff covenants on profit and revenue. Little more than a month later, Energis faced a breach of these. Which way was the Board facing?
- If one change could be made it would be that NED and auditor appointments were no longer sinecures. I recently coached a Big 4 Audit Team on their bid to retain the audit of a FTSE 350 company. The directors felt it was time for a change. Do they ever consider it is time for a change in their own ranks, before retirement age? Masses of companies have failed, under performed or issued one or several profit warnings in recent years. Many of those Boards have continued to award themselves increasing levels of remuneration. Who is policing all this?
- The present structures can be made to work if they are policed and enforced. The ideal media are the auditors, the DTI and the Board themselves. Health and Safety is being taken much more seriously as a result of prosecutions for corporate manslaughter. What measures are going to make NEDs take their financial, fiduciary and treasury responsibilities equally seriously? There are over 2,000 members of the Association of Corporate Treasurers. How many of these have been approached to be NED with specialist treasury responsibility at another company? Derivatives can bankrupt a company, as many case studies have shown.
- There should always be at least as many NEDs as Executive Directors, to ensure paralleling can take place. The optimum number for a Board is 10-15. Beyond that the team becomes difficult to manage. Perhaps one way forward in larger companies is to have a different type of two tier approach, with a second layer who populated the Board Committees while acquiring experience to succeed their top tier colleagues.
- Board meeting procedures will only ever work as well as the people who manage and participate in them. No amount of skilled leadership can make up for inherent or persistent incompetence. So why Directors who have palpably failed ever find appointments elsewhere?

- I can see no reason why the objective setting, performance review and reward processes should be any different than the best practice being employed by management itself. There is a groundswell view that all public servants should be subject to regular appraisal and performance review, so why not NEDs. ‘Walk the talk!’
- If NEDs do not feel able to challenge management, either key information is being withheld (and when it emerges, management should resign), or they are not competent to be in the Board room in the first place. It’s bad enough carrying passengers in the workforce, let alone on the top floor. What kind of leadership can be achieved where the NEDs do not lead by example?
- So the existing appointment, reappointment and remuneration processes need to be made to work. The people to do that are the institutional shareholders and the auditors. If auditors were made routinely publicly accountable where corporate misreporting occurs and a process to ensure and test independence was instituted and policed, they could become the prime agents for corporate accountability. As Enron and World.com have shown, the auditors may find their independence compromised when a stream of corporate fees is dependent on their continuing relationship. Maybe it’s time for a mandatory change of auditors every three years or so, to ensure independence. While we’re at it, maybe NEDs could have finite contracts of say 5-7 years also. Given the rate of turnover of Executive posts, it is somewhat surprising that NED posts do not rotate so frequently.

D Shareholder relationships

- Ordinary shareholders have largely felt powerless in the corporate governance process of companies. A notable exception was British Gas some years ago, when 6,000 turned up at NEC to vent their spleen. Largely, though, they feel they have no power against the might of the directors and institutional shareholders. If the latter are not prepared to carry through their responsibilities, preferring to sell their shares when things go wrong, rather than rock the boat, then we may eventually need publicly appointed directors. Customers also feel powerless. BT, for example, is still being run as if it were a state monopoly, with a growing and deep unrest by customers, many of who again feel they have no power to change Board policy. They are not alone in becoming increasingly out of touch with customers. As one after another company under-performs or even fails, both the British economy and our pensions are at risk. The response of Boards is to abandon company pension schemes. “Our employees are our greatest asset.”
- Make it mandatory for significant shareholders to appoint directors. Make these directors just as accountable as their colleagues.

E NED support

- The best way to support NEDs in doing their role as they should be, is to make the entire processes more public: from appointment, through remuneration to rotation or even removal where things go wrong; from appointment of auditors to remuneration and removal, especially where things go wrong. More director

disbarment, prosecution of them or the auditors, would send a shock wave through corporate complacency. Many NEDs might resign. There will never be a shortage of people willing to take on the challenges, accept the risks and the responsibility, especially at the current levels of remuneration. If the headhunters and Boards themselves continue to insist that they can't find the right candidates, then make the recruitment and selection processes more public and if necessary establish a public appointments board to find them in the first place.

- The auditors, DTI, Government, London Stock Exchange, FSA, Accounting Standards Board, Accountancy profession and many others can all help to ensure that the best NEDS are appointed to do the best job. The whole process just needs to be more public and publicly accountable.
- Take the whole business of Accounting Standards. With the increasing instance of failure and consequent public outcry, there will be an escalating raft of regulation. Eventually, it must become self-defeating. So why not take most of it away, and establish a widely accepted norm for public reporting. Then require directors to justify to their auditors any change they propose to that norm. Finally, make the auditors justify such departures that they approve, to the ASB. Some departures from Standard Accounting Practice are due to new products, new business, or the idiosyncrasies of a particular industry or sector. Most others are because the company does not want a particular transaction to be transparent or on the balance sheet. As the justification process took hold, there would be less and less dubious accounting practices and we can return to understanding the real meaning of the accounts. (All this assuming the auditors do their job properly). If they also are culpable in e.g. 'misstating revenue as capital', take away that partner's licence to audit and if necessary throw them into jail also.
- The fundamental point here is that bad or dubious practice is always driven by a vested interest. If that interest is financial and big enough, it will produce the most likely undesirable response. What is needed is a real sanction that overrides the vested interest. If that sanction takes away livelihood, freedom, ill-gotten gains or public reputation, it will usually be more powerful than the alternative malpractice or negligence.
- NEDs should be able to determine what information they need for themselves. Where management is found to have withheld key information, there are natural remedies. Lack of trust cannot be tolerated in the Boardroom.
- In summary, therefore, we must be moving towards more public processes, properly and more publicly policed and enforced, supported by real sanctions. If I drink and drive I shall lose my licence. If I commit more than three lesser driving offences, I shall similarly be deprived of my right to drive. My livelihood may well depend on it so I give it serious consideration. Parallel processes do not seem to operate in the case of corporate irresponsibility or wrongdoing. For as long as directors think they can put two fingers up to public concerns and corporate governance, we shall never solve the problems.
- After Cadbury was published, corporate Britain and the accountancy profession combined to damn it as too draconian, unworkable, etc. Look what's happened since. Some people are driven towards success and excellence; some are driven away from the fear of loss of livelihood or reputation. NEDs should be no less

than ordinary mortals. Many of us would be delighted to accept the challenge, however draconian the policing and enforcement procedures.

F Smaller listed companies

- Smaller companies are more often guilty of nepotism and association in the appointment of NEDs. They are particularly hit by the raft of legislation, regulation and red tape. But that is the price of being in the game. If a business chooses to incorporate, it is to take advantage of limited liability. The price should be that it is regulated no less hard than their bigger elders.
- Both the complexities of governance and the demands of modern business practice and accounting make it even more imperative that the NEDs should be carefully selected. Apart from anything else, there are likely to be less of them in number and therefore they need to be multiskilled. It should neither be a sinecure nor an amateur pursuit. The majority of British industry is made up of SMEs, as is the seed corn of its future regeneration.
- The other difference is that smaller enterprises may be the ideal medium for Executive Directors and managers in larger companies to ‘cut their teeth’. Once again, the process should be highly public.

G International experience

- I propose no comment here, other than the lessons to be learned from the mass of grossly unacceptable cases in the US during my career and the opportunity for the rest of the world to learn from the best of our own best practice.

Footnote and declared interest on training and development

- My business is about coaching, motivation and personal development of teams and individuals to be the best they can be. This is based on ‘the best of the best’ of leading edge personal growth technologies that create lasting change. We are already successfully using these with a raft of ‘blue chip’ companies and professional firms at Executive and Partner level.
- These same processes could be applied to Boards of Directors. We have demonstrated that with the best approach and an openness to change and grow, even the most intransigent of senior people can be transformed in a matter of days. We are applying the same techniques to recruitment and personal skills training, with lasting success.
- The old adage has been that behaviours and patterns have become too entrenched and that there is neither enough time nor money to transform possibilities. We have shown these entrenched attitudes to be rubbish. The businesses that are adopting these new technologies are demonstrating ‘groundbreaking’ changes in how they behave, how they perform and especially how they optimise the myriad of relationships that make a modern enterprise successful.

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