

# **Review of the role and effectiveness of non-executive directors**

**Consultation Paper – 7<sup>th</sup> June 2002**

The Committee has observed over a long period the increased emphasis which has been placed on the role of the non-executive director in UK corporate governance. We believe that recent financial scandals mean that a more detailed review of this role is to be welcomed. We welcome the fact that the consultation paper acknowledges the work of the Company Law Review and the Myners Report and believe it is essential that the review should be carried out in the context of these and the recent White Paper “Modernising Company Law”. Developing a separate regime, legal or regulatory for non-executive directors in isolation from these proposals would lead to very considerable confusion.

Attached to this paper is the Committee’s response to the sections of the consultation papers forming part of the Company Law Review which are relevant to this review. The Committee’s broad stance in relation to these issues is unchanged. We continue to support the unitary board and would oppose any move to adoption of a two-tier board structure and we share the reservations of the Company Law Steering Group about the possible disadvantages of this. (These include concerns that that this may inhibit the strategic and relationship roles which form an important part of the non-executives’ role and would not recognise one of the main strengths of the unitary board which is the independent viewpoint brought to matters of strategy by non-executives.) We are also concerned that introduction of a two tier system could cause operational inefficiency by adding an additional tier to the decision making process and feel that its introduction is unlikely to add anything to the monitoring role carried out by non-executives in pursuance of the corporate governance regime which already exists in the UK.

Although a codification of directors’ duties will form part of a new Companies Bill, the Committee has opposed this. The Committee also opposes any statutory distinction between executive and non-executive directors including any statutory delineation of non-executives’ role. We favour the continued use of codes of best practice in the area of corporate governance on the basis that these are flexible, can readily be adapted to companies’ circumstances and are relatively easily amended to reflect changing circumstances. We are also concerned about the potential for contradiction between any legislative formulation of non-executives’ monitoring role and codes of best practice, especially as the latter may be reviewed and updated more frequently than legislation. Our answers to the detailed questions in the consultation paper which are set out below should be read against this general background. The Committee would not oppose the

introduction of best practice guidance in this area although again we think that efforts should be made to prevent a proliferation of codes. We believe that the courts would be likely to treat widely accepted authoritative guidance (on lines similar to the Combined Code) as persuasive in relation to the role of non-executives.

***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?**

We agree with the view of the Cadbury Committee on the role of the board.

“Boards of directors are responsible for the governance of their companies ... The responsibilities of the board include setting the company’s strategic aims, providing the leadership to put them into effect, supervising the management of the business and reporting to shareholders on their stewardship.”

Paragraph 4.1 of the Cadbury Report also refers to the requirement for every public company to be headed by an effective board which can lead and control the company, a requirement which was adopted by the Hampel Committee and which now appears in the Code of Best Practice.

The primary role of the chairman is to ensure the effective operation of the board. Again we agree with the conclusion of the Cadbury Committee that this involves ensuring the correct balance of board membership, that all members of the board play an active part and that all the required matters appear on the agenda. In relation to non-executives, the chairman has a particular obligation to ensure that they play an active role on the board and are adequately prepared for meetings and that they receive the necessary information in good time. There is currently no consensus among Committee Members as to whether there should be a requirement for the roles of chairman and chief executive to be separate, although the majority view is that this is an issue on which shareholders’ views should prevail having regard to the company’s circumstances. Where the roles are combined it may be sensible for a senior independent non-executive to be identified as discussed below.

**2. What should be the key roles of non-executive directors on the board and what should be the balance between the different components? Within a board, should all non-executive directors be expected to fulfil each of the different roles?**

We agree with the general observations of the Cadbury and Hampel Committees on the key roles of non-executives. (These are, in summary, reviewing performance of the board and the executive, taking the lead where conflicts of interest arise and contributing to strategy). We do not think it would be appropriate to prescribe a particular balance between these components. The balance both as regards individual non-executive directors and the non-executive group as a whole will vary, possibly substantially, depending on the circumstances of the company and should be left to individual companies to determine. In practice, in most cases the greatest volume of work will be carried out by non-executives acting in their supervisory capacity on the audit, remuneration and nomination committees, particularly the former. Supervising conflicts of interest seems likely to take the least amount of time, other than in exceptional circumstances such as takeovers. The amount of time spent on strategic issues is most likely to reflect the situation of a particular company.

The question of whether all non-executives should be expected to fulfil each of the roles is, again, one which will inevitably reflect the requirements of the company concerned. In smaller listed companies where the number of non-executives is small, it is likely that they will all be involved in all these key roles. The same is less likely to be true in relation to the largest listed companies where non-executives may have been recruited for their expertise in a particular area, for example, international issues. In this case it is likely that, whilst fulfilling the general duties required of a non-executive, that individual might expect to spend most time acting in a strategic role. Whilst believing that the balance of a non-executive's work should reflect the company's circumstances, the individual must be selected on the basis of his skills and personality to fulfil all these roles as required.

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

We believe that non-executives already carry out these key roles in the great majority of listed companies. It is essential for good governance that they continue to do this and adapt to a changing regulatory environment.

**4. How independent do non-executives need to be for the different roles?**

Although the current recommendation of the Code of Best Practice is that at least a third of the board should be non-executives and a majority of them should be "independent",

the Committee opposes any legal or regulatory requirement either for the board to contain a majority of non-executives or for a majority of these to be “independent”. On the first issue we believe that the scarcity of suitably qualified individuals means that this is a practical impossibility, particularly for smaller companies. We also oppose any requirement for a majority of directors to be independent, however independence is defined. We are aware of the various definitions of independence which have been adopted by various shareholder organisations, but still believe that the Cadbury/Hampel definition of non-executives being “independent of management and free from any business or other relationship which could materially interfere with the exercise of their independent judgment” provides the most realistic, flexible approach. Independence is obviously particularly important in relation to non-executives’ work in dealing with conflicts of interest and their supervisory role. The ability to take a balanced view of what is in the company’s best interests without this being (actually or potentially) altered by the existence of bias in some form or another is crucial in these areas.

Independence may not be as important in non-executives’ strategic role. Previous experience with the company or in the sector concerned may mean a lack of independence in the strict sense but may nonetheless allow an invaluable contribution to the board. The individual qualities of the non-executive concerned are paramount.

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

Key areas where conflicts of interest are likely to emerge are in relation to directors’ remuneration, takeovers and board appointments, particularly the appointment of the chief executive. In relation to directors’ remuneration, the risk is that excessive executive remuneration packages may harm shareholders’ interests and that adverse publicity over remuneration, particularly over termination payments, may harm the company’s interests. The role of non-executives is to ensure that, judged objectively, executive remuneration packages are fair. In other words they must be competitive and allow recruitment and retention of high quality staff, whilst ensuring adequate productivity and performance criteria are applied and shareholders’ interests are protected.

In relation to takeovers, particularly where the company concerned is the target, non-executives again are under an obligation to ensure that shareholders’ interests receive the requisite protection and that the board as a whole fulfils its legal and regulatory

responsibilities. On the issue of succession, non-executives, particularly those on the nomination committee need to ensure that any new chief executive is selected solely on the basis of his ability to lead the company and not as a result of boardroom politics or the 'old-boy' network. Other areas where conflicts can arise are where a director has a personal interest in transactions with the company and where a major shareholder is represented on the board.

Practical steps which can assist non-executives in relation to this type of conflict include allowing them access to external advisers paid for by the company where necessary and ensuring that all the necessary information on these issues is made available to them in a well organised and timely way.

6. **What time commitment is needed for the role of Chairman and for non-executive roles, and how far does this vary between different companies. Are there any implications for the number of non-executive posts that one person can sensibly take on?**

We find it difficult to state with any precision how much time needs to be spent on the role of Chairman and non-executive. This inevitably depends on the type and size of company, the size of the board and the sophistication of its corporate governance structures. It also inevitably depends on the number of board meetings held by the company each year. Although we hesitate to place a minimum amount of time which needs to be spent on either role we find it difficult to see how the relevant information could be assimilated and action taken in fewer than 15 working days each year in most companies.

We are aware of recent guidance from the NAPF ("Independent directors – what investors expect") which suggests that a director holding an executive position should not hold more than one non-executive directorship and that an individual holding exclusively non-executive positions (including on the boards of charities) should be expected to justify the management of more than 5 such posts. Again whilst we believe this should be left to the individual and the companies concerned and not subject to prescriptive regulation, we believe that the NAPF proposals are sensible guidance.

7. **Should there be a special role for a "senior independent" non-executive director?**

In relation to the Company Law Review we noted that a relatively large number of companies have declined to comply with the recommendation of the Combined Code by identifying a senior non-executive other than the Chairman. (This recommendation

applies both where the roles of Chairman and chief executive are combined and where they are separate.) While we see no inherent objection to it in other cases, we consider that identification of such an individual is likely to be more useful (and should possibly be required) where the roles are combined. The role of this senior non-executive is as someone to whom any concerns can be conveyed by other board members. We do not envisage any additional responsibilities for him or her.

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.**

The Committee opposes the proposals for codification. For the reasons set out in detail in the Committee's response we believe that a statutory code will not lead to a clarification of the existing law and cannot be applied in isolation from existing case law. The possibility exists for it to mislead some directors as representing the sum total of these duties. A further, important consideration is that it will remain for the courts ultimately to decide how to deal with the individual director. We also believe strongly, that the current position under which no distinction is drawn in statute between the role of executive and non-executive directors should be maintained. Again, as set out in our response to the Company Law Review, the monitoring function of non-executives as it currently exists has arisen from the various corporate governance codes promulgated over the last decade. The flexibility of these codes and the relative ease with which they can be amended means that they operate effectively which would not necessarily be the case in relation to any legislation. There is potential for contradiction between any form of statutory regulation which deals specifically with non-executive directors and these voluntary codes which, again, should be avoided.

***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?**

As the Hampel Report pointed out (paragraph 3.15) most non-executives are executives or former executives of other companies. This experience should assist them in fulfilling the key roles of the non-executive described above. However, Hampel also points out that

non-executives may be appointed specifically for other skills such as technical knowledge, political contacts or international experience and we agree that these are valid reasons for appointment and that lack of experience as an executive director should not be an absolute bar to appointment. Ideally non-executives should possess at least the knowledge, skill and experience to deal with the issues they are likely to encounter in practice.

We would regard skills in relation to finance, strategy and corporate governance generally as being particularly important, although we could envisage the appointment of a non-executive whose skills in one or more of these areas is deficient if he has other skills which are particularly important for the company's governance and strategy and provided he has a willingness to learn and undertake any training necessary to allow effective performance.

In the present climate it seems likely that increasing emphasis will be placed on non-executives' supervisory role in the future and that as a result, there may be a need for enhanced specialist skills and possibly training in this area. It also seems likely that, given the rapid pace of change in relation to corporate governance and other European and international developments such as the introduction of International Accounting Standards, diligence in keeping up to date with business affairs will become more important.

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

The key personal quality for a non-executive identified by Cadbury and frequently recognised since, is independence of judgment. There are a number of ways in which this essential state of mind should be reflected in a non-executive's behaviour including:

- A willingness to question;
- Keeping an open mind on issues;
- The strength of character to stand up to the executive directors where necessary;
- The ability to communicate effectively at board level, with staff throughout the company any with shareholders where appropriate;
- Integrity and a willingness to resign from the board if necessary;
- Willingness and ability to devote sufficient time to the role and to continuing to learn about the company and the role of non-executive.

11. **What sort of mix of experience and attributes is desirable on a Board? Specific examples of cases where non-executive directors have contributed with particular effect to company performance, or to corporate governance would be helpful.**

A wide range of experience among board members is inherently desirable, particularly if the company concerned is very large or has diverse or international operations. As already discussed, the majority of non-executives will have experience as executive directors but this should not be treated as a pre-requisite where other experience is relevant and important. There will often be a broad correlation between an individual's relevant experience and the role which he or she plays on the board.

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?**

Members of the Committee are aware both from personal experience and from general comment in the press that some listed companies find it difficult to appoint non-executives of the requisite quality. We suspect that the problem does not principally lie with recruitment and appointment mechanisms, but with the size of the pool of potential non-executives. In our response to the Company Law Review we opposed any statutory or Code requirement for non-executives to be appointed by a nomination committee consisting entirely of independent non-executives and strongly favoured a process which involved both executives and non-executives in decision-making.

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

We believe there could be advantages for listed companies to broaden the pool from which non-executives are drawn. This would help to overcome the apparent shortage of non-executives but would also allow the appointment of groups who are currently under-represented on boards (such as women, ethnic minorities and the disabled). Obviously, companies looking to appoint beyond the traditional pool will want to ensure that they attract appropriately qualified individuals and a positive approach would be to institute a transparent process based on a job description. This seems likely to assist companies in finding independently minded board members. (See also our response to Question 15.)

14. **Are the rewards for non-executive directors appropriate, both in terms of levels of pay and the form that termination takes – e.g. cash/shares/share options? Are current pay levels a significant factor in whether good non-executive directors can be attracted?**

We agree with the position adopted by both Cadbury and Hampel that non-executives' remuneration should take the form of cash or shares, but not share options or similar schemes. We are also aware that levels of non-executives' remuneration are increasing but that there has been some comment that a further substantial increases are required given the increasingly complex and time-consuming nature of the role.

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

We believe that the issue of risk and insurance provision are at the front of non-executives' concerns, and more attention appears to focus on this issue than on remuneration levels generally. The costs and extent of available cover seem to be issues of concern in some cases. (We support the retention in any new Companies legislation of a provision equivalent to Section 310 Companies Act 1985 which includes powers for a company to insure and indemnify against the costs of successful defences by directors.) In particular, Committee members are aware of significant new liabilities imposed on directors in a variety of legislative and other measures. These were described in detail in Steven Durno's letter to Andrew Poulson of 9<sup>th</sup> July 2002, but recent examples appear in the Nationality, Immigration and Asylum Bill, the Enterprise Bill and proposals relating to health and safety and corporate social responsibility. We are concerned that this continuing increase in potential liability may have a negative impact on individuals' willingness to accept appointments as non-executives in future.

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

We believe that overall the Combined Code is working well in practice and the decade since the introduction of the Cadbury Code has led to considerable improvement in the

governance systems of UK listed companies. However, major failures of corporate governance leading to insolvency or substantial loss of shareholder value still occur and continuing vigilance to ensure that companies do everything they can to comply with the spirit of the Code, as well as ensuring that it remains up to date with changing circumstances, is still required. The provisions on the balance between executive and non-executive directors appear to be working satisfactorily. We are aware of the increasing emphasis which some institutional shareholder bodies place on the role of the independent non-executive, but Committee members are not aware of significant boardroom tensions resulting from this. As indicated in our answer to question 4 above, we do not believe that a further definition of independence should be included in the Combined Code.

**17. Do the recommended structures for board committees facilitate governance and an effective contribution by non-executive directors? Are board meeting procedures working effectively? Do you have comments on board size?**

We believe that the recommended structures for board committees have facilitated corporate governance and the making of an effective contribution by non-executives. However, we are aware that in many smaller listed companies where there may only be two or three non-executives, the Combined Code recommendations for make-up of the nomination, remuneration and audit committees may be unrealistic, since all non-executives may be required to be appointed to all of them. In addition, for this type of company the requirement for all the non-executives who are appointed to the remuneration committee to be independent may not be achievable.

We believe that in the great majority of cases, board procedures operate effectively. We consider that the size and composition of the board should reflect the requirements of the company and the business, and that this is not an area in which best practice recommendations are likely to be particularly helpful.

**18. Do you have any 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 the Combined Code recommendation for an Audit Committee consisting of a minimum of three non-executives of whom the majority must be independent in the terms described by the Combined Code is broadly correct. We also support the ICSA

guidance (issued in April 2002) for a properly constituted Committee (Terms of Reference-Audit Committee).

Recent financial scandals have focussed attention on the role of the Audit Committee and the relationship between auditors and companies generally. A number of suggestions have been put forward for strengthening the role of the Audit Committee and for reducing the likelihood of fraud and mismanagement in relation to the company's finances. Attention has focussed in particular on a number of issues including:

- appointment of auditors (in particular whether the Audit Committee alone should report to shareholders on the appointment, removal and remuneration of auditors);
- reduction of the period for rotation of audit partners and staff and the rotation of auditors generally; and
- the provision of non-audit services by a company's auditors.

Although under current statutory provisions shareholders are responsible for directors' appointment, removal and remuneration, in practice the key decisions are taken at board level, usually with the involvement of executive directors. We agree with the stance taken by a number of recent commentators (including the Co-ordinating Group on Audit and Accounting Issues – Interim Report, July 2002) that ensuring public confidence in the perception of auditor independence is increasingly important. The involvement of executive management in key decisions about the appointment, removal and remuneration of auditors who are responsible for reviewing the executives' performance in the management of shareholders' funds can be seen as creating an imbalance. We agree that this imbalance could have an adverse effect on the perception of auditor independence and are in favour of proposals for the Audit Committee (in addition to the functions which it already fulfils):

- to be responsible for making recommendations to shareholders on the appointment/reappointment removal and remuneration of the auditors;
- to monitor and to be responsible for approving the level of non-audit services provided to the company by the audit firm; and
- to report to shareholders annually on the Committee's activities, including a review of auditor independence.

If adopted we recommend that these requirements should be incorporated into the Combined Code and would oppose their introduction into legislation. (Although we do not believe this review is the appropriate place for detailed discussion of rotation of audit firms and non-audit work provided by audit firms we support the work being carried on to review the underlying issues in each of these areas.)

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

Again we believe that the composition and duties of the Nomination and Remuneration Committees as set out in the Combined Code are broadly satisfactory. (In the case of the Remuneration Committee further changes have recently been brought about by the Directors' Remuneration Report Regulations 2002.)

Currently, the Combined Code requires a majority of the Nomination Committee to be non-executives with the chairman being either the chairman of the board or another non-executive. In our response to the Company Law Review we opposed any proposal for non-executives to be appointed by a Committee consisting entirely of independent non-executives on the basis that it would be wholly artificial for the Chief Executive to be excluded from this process. We continue to believe that this stance is justified.

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 are strongly in favour of full assessment of both board performance and that of individual directors and note that this was also recommended by the Hampel Committee. We are not aware that these types of procedures have been widely adopted by listed companies although some work is being carried on in this area, for example by the Institute of Chartered Secretaries and Administrators.

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?**

The Committee believes that a genuinely informative review of board performance is desirable as a means of ensuring that the company's objectives are being met and that the performance of executive and non-executive directors is reaching the required standards. However, if "information on board performance" is merely intended to mean some indicator of board performance, we doubt that there can be a clear measure of this

or that it would have practical meaning. We see no reason in principle why information on board performance should not be made available to shareholders (except where commercial sensitivity or similar considerations make this undesirable). We do not consider that this should be a legal requirement, rather a matter of best practice. Given non-executives' role in protecting shareholders' interests, it would be logical for information provided about board performance to give more detailed information about their performance, eg in their capacity as members of the Audit, Nomination and Remuneration Committees.

**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?**

Evidence of non-executives' success in challenging executive decisions and exposing serious problems is frequently anecdotal. In addition, by their nature, these types of situations often do not become public knowledge so it is extremely difficult to answer this question except in the most general terms. We believe that non-executives' ability to perform these important roles varies from company to company and depends on the prevailing culture in the boardroom, the personalities of board members and the strength of character of the non-executives concerned. In a boardroom where a culture of openness and active debate prevails it will be much easier for non-executives both to question the decisions of executive management and to bring major problems into the open. In a culture where the views of non-executives carry little weight, whether because one or more executives dominates the board or because the non-executives' approach to their work is insufficiently rigorous to generate respect, it is much more likely that non-executives views and activities will be accorded insufficient weight. We believe that responsibility for ensuring that the appropriate culture of openness and constructive debate should rest with the Chairman (and this is one of the main arguments against combining the roles of Chairman and Chief Executive). We feel that if the prevailing culture is inimical to openness, introducing formal measures, such as special agenda items or special channels of communication are unlikely to be effective. Resignation remains the ultimate expression of disquiet for non-executives and should normally alert shareholders and others to the issues of concern.

**D. Relationships and 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?**

We believe it is important that non-executives are aware of and responsive to shareholder and stakeholder concerns and are seen to be so. In order to perform effectively, non-executives need as full an understanding of the business as possible and this includes information about and contact with shareholders and stakeholders. We suspect that in many cases communications between non-executives and shareholders/stakeholders are tenuous or infrequent and consider that in some cases it might be helpful if these were formalised, for example, by establishing regular meetings or lines of communication.

We note that NAPF members have recently suggested that independent non-executives should seek opportunities to meet the company's major investors. The NAPF itself contemplates that a newly appointed independent non-executive may wish to meet major investors and encourages communication between them otherwise than through the annual report.

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?**

Generally we believe that Chairmen of listed companies should have a clear understanding of their role and duties in order to achieve a balanced board on which non-executives play a full and constructive role. All the matters mentioned in the question form part of the role of an effective Chairman and every Chairman will have his/her own method of achieving these. We would be opposed to prescription in this area. However, it may be of benefit for a checklist of the types of matters which a Chairman needs to keep in mind when carrying out his/her duties to be available as a matter of best practice.

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

There needs to be a positive, constructive, open relationship between non-executive and executive directors. Their collective responsibility is for the governance of the company and this has to be fulfilled by board members working together in their respective roles. The supervisory nature of non-executives' work should not prevent full and active co-operation and confidence between them and executive directors and senior management. Senior management needs to understand the nature of the non-executives' role and contact between non-executives and senior management is to be encouraged.

The relationship between non-executives and the Chairman and Chief Executive should be one of trust and confidence. The Chairman will be the senior non-executive and will usually be the focus for discussions among the non-executives. The views of the Chief Executive, as those of the senior executive on the board, will carry particular weight. Non-executives need to be aware of this but also of the issues which can arise where the personality and views of the Chief Executive are such that his voice predominates.

We believe that it is helpful for non-executives, as well as getting to know the company's shareholders and stakeholders, to have one-to-one meetings with the company's auditors, lawyers and other key consultants. These provide an opportunity for non-executives to gain information about the company and for issues of concern to be raised where these exist.

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

We agree with the view set out in the Combined Code that the Company Secretary should be responsible for ensuring that board procedures are followed and applicable rules and regulations complied with. The Company Secretary must be able to provide support and advice on an impartial basis to directors. He/she has a particularly important role to play in relation to the non-executives (who may not have the same "inside-out" knowledge of the company as the executives) by providing all necessary information and background and ensuring that they are kept up to date with relevant developments.

**E. Support – How can non-executive directors best be supported to perform this 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?**

One of the things which is most likely to lead to non-executives performing their role ineffectively is inadequate or incomplete information from management. As a minimum they need access to all the information which is relevant to the board's decision-making processes. Material, particularly that for board meetings, needs to be presented so that important issues can be readily understood and are neither obscured by too much information, nor are undetectable because of too little information or slanted analysis. As already mentioned, the company secretary plays a particularly important role in this area in ensuring that board papers meet the standard which good governance requires. The Combined Code also highlights the Chairman's role in ensuring that all directors are properly briefed for board meetings. Non-executives need to be aware of any important issues which may not require board decision but which nonetheless affect the company's governance.

We believe that in general, information flows and communication channels work well. However, the fact that there have been a number of well-publicised cases where a lack of information or its distortion or concealment have led to serious problems for, or failure of, companies means that this cannot be taken for granted. The Combined Code already points out that information volunteered by management is unlikely to be enough in all circumstances and we agree that directors should, as a matter of good governance, seek this out where it appears that this is needed.

We have considered whether the company secretary or a non-executive should act as a conduit for "whistle blowers" to raise governance concerns. In practice, particularly in larger listed companies we believe that company secretaries sometimes act as an informal filter in relation to this type of issue. In smaller companies where the company secretary lacks the requisite degree of independence from the board this may not be a solution. Although we have considered the issue carefully we do not believe that a non-executive should generally take on this role, as the possibility of having to deal with large numbers of relatively trivial issues seems quite high. However there may be a case for this where the company secretary cannot be independent, eg because he/she combines the role with that of executive director. We do not consider that this is an area in which legislation is appropriate but best practice guidance might usefully be developed.

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

We are aware of a number of training courses available for non-executive directors from the Institute of Directors and at some business schools. Good reports of some of these are available, but members of the Committee do not generally have direct experience of their quality. We strongly support training and development for non-executives and agreed with the Combined Code provision (A.1.6) which states that every director should receive training in the first occasion that he or she is appointed to the board of a listed company, and subsequently as necessary.

**29. Can induction for non-executives be improved?**

As indicated above, training for non-executives is important and a key aspect of this is effective induction. Putting a non-executive in a position where he has as full an understanding as possible of the company's business and management and governance structures is essential for effective performance.

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

We would hope that both guidance and feedback would be available to non-executives as part of good practice in corporate governance. As mentioned earlier, are we in favour of formal assessment of board performance, and guidance and feedback should form part of this process.

***F: Smaller Listed Companies – In what way is the position different for smaller listed companies?***

**31. To what extent do different factors apply in the case of smaller listed companies? Is different provision necessary?**

We believe that different factors sometimes apply in relation to smaller listed companies, and have mentioned a number of these throughout this response. Particularly significant is the relatively small numbers of non-executives who may serve on the board of this type of company and the issue of their independence or otherwise from the company. This issue can affect some of the most important aspects of governance and we believe that it would be helpful for the Combined Code to address this – either by additional provisions or by an Appendix setting out further guidance.

**G: *International context – What can we learn from international experience?***

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

We believe that the corporate governance regime implemented in the UK over the last decade has led to an appreciable improvement in listed companies' standards of governance. We also believe that the regime is a strong one by international standards although as indicated in this paper we believe that it can be improved in a number of areas. One of the most striking conclusions drawn in the Comparative Study of Corporate Governance Codes recently commissioned by the European Commission was the similarity of corporate governance codes across Europe and the UK's regime stood out as the most comprehensive of these. We consider that a continual process of review of the regime is required to ensure that it reflects developing ideas and best practice is required.

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

The two main differences between the UK's corporate governance regime and other leading European regimes relate to employee representation at the supervisory level and board structure, i.e. the use of a unitary versus a two-tier board. We have not seen any evidence, and do not believe, that either contributes significantly more to company performance.

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

We are not aware that any major changes are required. We believe that the UK is at the forefront of European practice.

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