

## **RESPONSE TO MYNERS REVIEW CONSULTATION**

**FROM**

**GEOFF LINDEY**

This submission is made by me, Geoff Lindey, in a personal capacity. My credentials, in the form of a career history, are attached as an Appendix to this submission.

### **DISCLAIMER**

**It should be noted that, although I am employed by the National Association of Pension Funds (NAPF), that employment is in a part-time capacity and relates only to the field of Corporate Governance. I have informed both the Chief Executive of the NAPF and the Chairman of the NAPF's Investment Council of my intention to make this response and have had their agreement that I may do so, provided that I make this disclaimer and also make it clear that they have neither seen this response nor been asked implicitly to approve or disapprove of the sentiments hereunder which are entirely my own.**

**Q1:** *To what extent does the current guidance on corporate governance particularly the Combined Code provide an appropriate framework for mutual life offices? Would another approach be more effective?*

**Q2:** *What is the best way of securing mutual life offices' compliance with corporate governance best practice?*

### ***Answer to Q1 and Q2***

As identified in the preamble of the Consultation Document there is a governance deficit in many mutuals. This is partly caused by the lack of interest of the members who show the same degree of apathy as do private shareholders in proprietary companies, until after some unfortunate event when it is too late. In the case of proprietary companies the apathy of private investors is countered by the vigilance of institutional investors, a phenomenon which cannot occur in mutuals by virtue of their constitution. The governance deficit is also partly caused by the attitude of the Boards of some mutuals. I have seen AGMs of mutual life offices where staff who are also members are "encouraged" to attend in large numbers and to support management. As each member has one vote this generally crowds out any "dissidents". In the absence of any muscle at General Meetings, members have no leverage at any time and so the "comply or explain" regime becomes nonsense. A general practice that the votes should reflect some measure of the value (expected maturity value perhaps) of each member's policy might do something to help but this is unlikely to be very effective in the face of apathy.

It could be argued that mutuals should be required to engage with an independent body which would act on behalf of the members and have the power to advise the members how to vote much as Manifest, PIRC and RREV and possibly others do now for institutions. Thus the mutual would have to comply or explain to the appropriate

body which would then send its views out to members at the company's expense with the notices of the EGM and AGM. The body could be appointed in the first instance by the members or the FSA and thereafter have its mandate renewed annually at each AGM, much as the auditor does at present. **DECLARATION OF INTEREST:** In my capacity at the NAPF, I am currently a Director of RREV.

**Q3:** *In your opinion, should the ownership structure or the nature of the business conducted by a life mutual affect the composition or structure of its board? If so, how?*

**Answer to Q3**

If the above recommendation is accepted, the composition or structure of the Board need not be affected by the ownership structure of the company.

**Q4:** *In your experience, is the information and advice (including actuarial advice) used by the non-executive directors of life mutuals sufficient – in terms of quality and relevance – to enable them to exercise effective oversight of the executive? In what ways might it be improved? If more information and advice is needed, what are the resource implications? Do similar issues arise for the non-executive of other complex businesses, such as wholesale banking or science-based businesses?*

**Q5:** *What is the role of the non-executive director in a complex or technical business? In particular what is their capacity to understand and to challenge the executive over technical aspects of the business?*

**Q6:** *What can the owners of a complex or technical business reasonably expect of its non-executive directors? How would you characterize the practical limitations of a non-executive director? What steps might be taken to codify what is reasonable and realistic in this context? Should executives and non-executives have the same legal duties to the company?*

**Answer to Q4, Q5 and Q6**

My experience is largely historic here but generically the issues for mutual life offices are no different from those which apply to, for example, the NEDs of a pharmaceutical company. The recent history of British Biotechnology (issues about clinical trials of key drugs) and the more distant history of Distillers (Thalidomide) are directly comparable. In addition, the evidence (or lack of it) given by EDs of tobacco companies to their NEDs about their awareness of a link between smoking and cancer is relevant. Similarly there is a need for NEDs of a bank to understand the risks implicit in the derivative positions taken by the bank (Barings springs to mind).

In other words, quite apart from the unusual and difficult governance structure of mutuals as referred to above, the issues of complexity in Boardrooms and how the NEDs handle them are in principle no different for mutual life offices than they are for any complex financial or industrial company. The problem for mutuals generically is not within the Boardroom; the problem is the relationship between the Board and the company's members.

The role of an NED for any company is set by the standard framework in the UK. The context is that the whole Board, led by the Chairman, sets the corporate strategy, the EDs led by the CEO are responsible for implementing that strategy and the NEDs are responsible for overseeing the implementation of the strategy. In that context the NEDs must be people who are knowledgeable in a general sense, who are prepared to take external advice when they are out of their depth on technical matters and who are not afraid to challenge the EDs. This cannot be codified other than in general terms. EDs and NEDs must have the same legal duties to the company but if the EDs wilfully mislead the EDs and/or the NEDs fail to take external advice in technical areas where their expertise is limited, then they will have failed in their duties and must face the consequences.

**Q7:** *What role should policyholders play in the running of mutual life companies? Are there practical barriers to policyholder participation in UK life mutuals? What action would be needed to allow more effective engagement?*

**Answer to Q7**

See the answer to Q1 and Q2.

**Q8:** *Lord Penrose says that in a life mutual “... it is the policyholders who are the source of the risk capital for the enterprise.” (chapter 20, paragraph 51). What does this mean for the relationship between a mutual life office and its policyholders?*

**Answer to Q8**

No comment.

**Q9:** *Lord Penrose acknowledges that the FSA’s work since 1997 “... has sought to anticipate many of the lessons that might be drawn by this inquiry, and it should come as no surprise that it has largely succeeded in that.” (chapter 30, paragraph 3). Insofar as corporate governance is concerned, do you agree?*

**Answer to Q9**

No comment.

**Q10:** *Is there a further role for the FSA to play in improving firms’ corporate governance?*

**Answer to Q10**

No comment.

**Q11:** *Listed companies are subject to the influence of their shareholders, particularly large shareholders, and the risk of takeover. What market forces are most relevant for mutual life offices? How effective are they in promoting good performance and how might they be enhanced?*

*Answer to Q11*

No comment.

G M Lindey  
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