

## Walker Review of Corporate Governance of UK Banking Industry

Response by UNISON's Capital Stewardship Programme

Contact: C. Meech, National Officer, [c.meech@unison.co.uk](mailto:c.meech@unison.co.uk)

### 1. Introduction

UNISON's Capital Stewardship Programme is pleased to be able to respond to the Walker Review on Banking and other Financial Industry Entities (BOFI). UNISON represents 1.3 million members, many of whom contribute to funded occupational pension schemes, or have savings with commercial providers - making them a significant section of the UK's beneficiary owners of banking stock.

Following the 2004 Pensions Act, the trust boards of occupational pension funds must now include at least one-third of their number from scheme members, nominated by election or by representative bodies. UNISON is one such legally recognised sponsoring body for "member-nominated trustees" (MNTs) on occupational pension boards covered by the Act.

UNISON is also a sponsor of scheme member representatives on the funded and statutory Local Government Pension Scheme (LGPS), whose 101 individual funds collectively own up to 6.75% of the ordinary shares of UK listed banks.

Bank	Number of funds invested	Cash value	Ownership	Total estimated of all funds
Barclays	77	401,755,057	1.36	1.98
HBOS	67	329,032,332	1.57	2.29
HSBC	76	116,206,7089	1.18	1.73
RBS	101	635,850,339	1.87	2.73
Totals		<b>2,126,949,761.36</b>	<b>6.6</b>	<b>6.75</b>

UNISON's Capital Stewardship Programme was begun in 2007 to provide a forum and supporting materials for member nominated trustees (MNTs) and on pension boards, and member representatives on LGPS investment panels and committees.

The Programme is in direct and regular communication with more than 350 MNTs and branch representatives concerned with pension fund investment on a collective investment of more than £145bn at 2008 values. In its communications with MNTs, the Programme has both highlighted and sought views on the ISC principles for shareholder responsibility and the Myners Code.

This submission contains a brief outline of the concerns of the union's sponsored MNTs and members regarding corporate governance, and then addresses each recommendation of the Review in turn. Proposals are indicated in italics.

## **2. Overview**

We believe the Review represents significant progress in improving the alignment of incentives within the investment chain and improving the obligations on companies, fund managers and trustees to consider the impact of BOFI governance on other assets, stakeholders and the economy as a whole. We believe also that MNTs and scheme members can be important advocates for improved governance practice, but that this role can be enhanced if the Review ensures it has taken into account particular issues faced by them.

### **Closing the “Governance Gap”:**

We entirely agree with the Review that improved governance of banking, and companies in general, implies an alignment of the duties throughout chain of governance – in particular, Trustees (legal owners), Fund Managers and Company boards – in the interests of beneficiary owners and the broader public interest an ongoing dialogue between regulators and the above to ensure that there is no area of BOFI practice whose oversight has been overlooked

It is useful that the Review spells these differing duties in the investment chain out to some degree. It is our experience that trustees are generally unclear about their duties and powers in regard to governance, and where regulation ends and active ownership should begin.

It would be very useful if regulators, and the ISC and other associated quasi-regulatory bodies could provide clear guidance to trustees on their obligations and powers regarding corporate governance, and that this should be included in the Trustee Understanding required by the Pensions Regulator.

#### ***Targeting the legal owners:***

***We believe that regulators would be more successful in encouraging active ownership if the legal owners of assets were recognized in consultation and guidance as those with the clearly highest legal duty and power regarding governance. Legal owners, typically trustees, and not their fund managers, are the shareholders. Trustees are bound by fiduciary law, but their agents only by contract law.***

***Though trustees are not involved in investment management day-to-day, and represent a difficult group to address, they set the contractual terms for Fund Manager activity, and retain the legal power to intervene in company practice. Unless trustees are specifically addressed regarding their duties, and targeted with guidance, inefficiencies and vested interests cannot be expected to be actively eliminated.***

We believe that the understanding and active role of trustees is essential if the other agents in the investment and ownership chain (fund managers, advisors, etc) are to be encouraged to change their behaviour regarding oversight and governance of the BOFI sector.

In our efforts to assist MNTs in understanding their obligations as legal owners, we would be grateful if the Review not only explicitly acknowledge that the ultimate legal owners of BOFI shares are the trustees of pensions and insurance funds, but also ensure that where advice or obligations are directed at “investors” that a clear distinction is made between the legal owners and their agents.

For instance, trustees have a duty to formulate a Statement of Investment Principles, and to draw up mandates and remuneration agreements for Fund Managers, and to monitor and report to scheme members regarding Fund Manager performance. These are not mentioned in recommendations.

We believe that unless trustees formally mandate their Fund Managers to adhere to best practice, the Review’s recommendations will lose effectiveness. It would be very useful therefore if the Review could indicate clearly what its recommendations imply for trustees as distinct from Fund Managers – in particular, where trustees are encouraged to include declarations regarding their

Statement of Investment Principles, Investment Management Agreements, and any further appropriate disclosures (see below). A similar distinction between duties expected of trustees as opposed to Fund Managers would also assist in any changes recommended to the Combined Code, the Pensions’ Regulators guidance to trustees, the FRC and ISC.

### **Member Representation:**

Changes in the law regarding member representation on occupational pension schemes are recent, and are not reflected adequately in the composition of committees within the National Association of Pension Funds, and therefore not within the ISC.

UNISON has elsewhere argued, especially in response to Pensions Regulator consultations, that MNTs need to be given special consideration in regard to training, support and consultation. As a minority on boards, they are typically not represented in affiliate bodies such as the NAPF and ISC.

MNTs are also typically not involved with investment matters as part of their employment, unlike many employer-nominated trustees. Nevertheless, MNTs are the only trustees directly representative of the ultimate beneficial owners of fund assets – the scheme members.

Among the observations of the Myners Review is that MNTs are the most likely of any in the investment chain to press for best practice. Not only are they the only trustees subject to nomination and removal by members, but they are scheme members themselves and the most likely board members to press for the greatest scrutiny of investment practice and corporate governance.

Where possible, therefore, we have urged regulators to ensure that scheme members and MNTs are not overlooked as potentially the most important agents for improvement in investment practice.

Some consideration in the Review's recommendations might be given to the duties of trustees to communicate and consult adequately with members regarding governance of BOFI stock, and to ensuring that these views are adequately represented on industry bodies tasked with maintaining and monitoring the effectiveness of the Review's recommendations.

### **Long-term funds, Engagement and Fund Manager Remuneration:**

We welcome the observation in the Review that there is little evidence and little justification for long-term funds, whether from an investment or governance standpoint, to employ a selling strategy. This is a point made repeatedly in the literature, but still rarely acknowledged in practice by fund trustees and Fund Managers.

Fund Managers are typically remunerated as a share of the market value of the funds, and where a performance element has been negotiated, it is often based on a comparison of annual gross investment returns against a benchmark. This clearly encourages Fund Managers to engage in high levels of brokerage activity, which as the Review points out, hinders engaged investment, and also discourages Fund Managers from being active agents in corporate engagement.

***We believe the Review should consider in its recommendations that trustees should be placed under an obligation to consider very carefully how Fund Managers are remunerated. Trustees on long-term funds should be encouraged to ensure that Fund Managers are incentivised to enhance their engagement and research services, and reduce unnecessary churn of stock.***

***This encouragement could include a requirement that long-term funds be obliged to declare their "Principles of Fund Manager Remuneration", indicating what share of Fund Manager remuneration is based on active engagement activities and research, and what share on brokerage or nominal market value. Trustees could also be obliged to declare the total sales and purchases of equities during each year, and to be obliged to declare also the net loss or gain of such activity and its relevance to fund obligations to members. Trustees could also be obliged to report on the***

***engagement activity carried out on their behalf. These obligations could also apply to long-term funds in the commercial sector in reports to policyholders.***

We believe these requirements would complement the recommendation that Fund Managers themselves declare their approach to engagement. Regardless of a general approach declared by Fund Managers, it is the contract with trustees that determines the degree of engagement actually carried out.

#### **Collaboration between funds:**

We welcome the Review's recommendations that investors and their agents be encouraged to collaborate in governance activity. The experience of the union's nominated representatives, however, is that researchers and others providing corporate information of relevance to governance are restricted from sharing information by confidentiality agreements with the companies responding to research requests.

It hardly seems just that funds should be obliged to pay many times over for information from companies which they partly own, and which is an impediment to collaboration in active governance, especially for smaller funds. Some consideration might therefore be made, probably in the Combined Code, that companies should be discouraged from imposing confidentiality agreements on information they disclose to researchers and Fund Managers regarding the legitimate governance interests of shareholders.

This may not be an appropriate formulation, but we nevertheless believe that the costs and restrictions on research information are a potentially serious difficulty for collaboration over engagement.

#### **Banking as a special case for diversified funds:**

The majority holdings in listed BOFI companies are typically funds with highly diversified portfolios in multiple asset classes, and with multiple holdings within each asset class. We believe, as the Review indicates regarding the current crisis, that the BOFI sector represents a special case for corporate governance, in that its ability to issue or withdraw liquidity to and from the economy, and to direct or withhold lending to specific sectors, impacts on the economy as a whole and therefore the performance of all other assets held by diversified funds.

***It may be worth considering whether trustees should be obliged to make specific reference to their attitude towards banking governance in their fund's Statement of Investment Principles.***

#### **Banking as a special case for trustee understanding:**

The role of banks in the creation and withdrawal of credit is very poorly understood by trustees, despite the fact that they are ultimately partly responsible

for banking governance. It would be helpful if the Review could consider how such understanding can be encouraged and improved.

This might include the preparation by regulators and industry bodies of explanatory material for trustees, to be included in Pensions Regulator required Understanding, regarding banking operation, and the key indicators of banking operations (as opposed to non-BOFI companies) of significance for investors.

### **Overseas holders of UK banking stock:**

The Review makes the point that overseas investors cannot be expected to comply with UK-based guidance on governance. Nevertheless, in an environment of global ownership, and recollecting the problems imposed in the Lehmans failure by which national government was going to underwrite the attempted Barclays acquisition, the existence of foreign ownership of UK banks poses potential broad economic risks where non-UK owners are disinterested in governance.

The publication of the voting records of legal owners in addition to Fund Managers (see below) would assist in the identification of overseas holders, both for regulators and other investors interested in encouraging collaboration in engagement matters.

### **Voting records:**

We welcome the obligation proposed in the Review for Fund Managers to publish voting records. However, if collaboration between funds, i.e. legal owners, is to be encouraged, it would be useful for the legal owners to be identified as well as their Fund Managers in the publication of voting records. This would permit the legal owners to easily identify and engage in debate with fellow owners who may have taken opposing views on resolutions.

### **Voting:**

The literature suggests that company procedures for recording of shares voted are inconsistent and sometimes subject to inaccuracy. Some consideration might be given to ensuring that company procedures for voting shares are as similar as possible, and subject to some form of external scrutiny.

Many funds hold pooled funds, and Fund Managers typically manage stock in one company on behalf of several clients. We would ask whether the Review is confident that Fund Managers are capable of segregating stock on behalf of clients for voting purposes.

### **Composition of BOFI Boards:**

We welcome the Review's proposals to strengthen the independence of NEDs and board committees regarding risk and remuneration. We also accept that most NEDs in the BOFI sector should have adequate financial sector experience and be subject to a necessary standard of ability.

However, there is a danger that where all board members come from the financial sector alone, that they may fail to understand the broad impact bank behaviour has on the performance of other assets in the portfolios of their shareholders. The recent period has demonstrated that the sole pursuit of profit in the banking sector – ostensibly in the interests of shareholders – can produce exactly the opposite result.

Most bank shareholders are shareholders of other assets, and recent banking practice has had a disastrous effect not only on bank share prices, but also on investment income and market values of all other assets.

We believe therefore that there is a strong argument that banking boards should carry at least one NED with experience of managing a broad investment portfolio, and with an understanding of the impact that inappropriate banking governance can have on diversified funds. Such a requirement would open an opportunity for retired trustees or investment managers to use their experience to curb the financial “group-think” discussed in the Review.

### **Remuneration:**

Scheme members and MNTs have expressed disgust at the extraordinary remuneration packages available to senior banking executives and managers. Many would like to see remuneration capped, and in the event of failure, clawed back.

***We appreciate that the Review has rejected this approach, and assume that addressing excessive remuneration, and excessive disparities between executives and ordinary staff is an issue that regulators are implicitly placing at the door of shareholders. If this is the case, then we believe this implicit obligation on shareholders to tackle excessive remuneration should be made explicit in the Recommendations, because it is a matter of great concern to scheme members, MNTs and the public at large.***

Our agreement to the Recommendations regarding remuneration should therefore be understood not as the preferred position of this submission, but as a step in the right direction.

### **Whistleblowing:**

Evidence given to the Treasury Select Committee, as well as newspaper reports, indicates that banking managers who raised concerns about capital inadequacy, overly aggressive sales strategies, acquisitions and leverage, were isolated and in some cases appear to have been constructively dismissed. Is the Review confident that banking managers with genuine concerns regarding the legality or appropriateness of BOFI practice with respect to guidance, have adequate protection if, after going through normal internal routes, they find themselves obliged to speak to regulators or investors of their concerns?

### **The Local Government Pension Scheme (LGPS):**

The LGPS is the largest funded pension scheme that is not established under trust law. Where guidance regarding the investment and governance duties of legal owners of shares is indicated in the Review and Recommendations, it may need to be made clear that this applies also to the LGPS and other funded statutory schemes recognized as “Institutions for Occupational Retirement Provision” (IORPs) by European and UK law.

### **Monitoring the effectiveness of the Review Recommendations:**

Previous Reviews of investment practice have included recommendations that have been ineffective at changing behaviour in the investment chain. We believe it is essential that the Review include a recommendation for monitoring the uptake of its proposals by Trustees, Fund Managers and Companies alike.

### **3. The Review’s recommendations in turn:**

#### **Board size, composition and qualification**

**Recommendation 1:** Agree. To ensure that NEDs have the knowledge and understanding of the business to enable them to contribute effectively, a BOFI board should provide thematic business awareness sessions on a regular basis and each NED should be provided with a substantive personalised approach to induction, training and development to be reviewed annually with the chair.

**Recommendation 2:** Agree. A BOFI board should provide for dedicated support for NEDs on any matter relevant to the business on which they require advice separate from or additional to that available in the normal board process.  
Agree

**Recommendation 3:** Agree. NEDs on BOFI boards should be expected to give greater time commitment than has been normal in the past. A minimum expected time commitment of 30 to 36 days in a major bank board should be clearly indicated in letters of appointment and will in some cases limit the capacity of the NED to retain or assume board responsibilities elsewhere.

**Recommendation 4:** Agree. The FSA’s ongoing supervisory process should give closer attention to both the overall balance of the board in relation to the risk strategy of the business and take into account not only the relevant experience and other qualities of individual directors but also their access to an induction and development programme to provide an appropriate level of knowledge and understanding as required to equip them to engage proactively in board deliberation, above all on risk strategy.

**Recommendation 5:** Agree. The FSA's interview process for NEDs proposed for major BOFI boards should involve questioning and assessment by one or more senior advisers with relevant industry experience at or close to board level of a similarly large and complex entity who might be engaged by the FSA for the purpose, possibly on a part-time panel basis. We believe that this assessment should not exclude the appointment of at least one NED with experience of responsibility for a diversified portfolio, either as a trustee or as a fund manager.

## **Functioning of the board and evaluation of performance**

**Recommendation 6:** Agree. As part of their role as members of the unitary board of a BOFI, NEDs should be ready, able and encouraged to challenge and test proposals on strategy put forward by the executive. They should satisfy themselves that board discussion and decision taking on risk matters is based on accurate and appropriately comprehensive information and draws, as far as they believe it to be relevant or necessary, on external analysis and input.

**Recommendation 7:** Agree. The chair should be expected to commit a substantial proportion of his or her time, probably not less than two-thirds, to the business of the entity, with clear understanding from the outset that, in the event of need, the BOFI chairship role would have priority over any other business time commitment.

**Recommendation 8:** Agree. The chair of a BOFI board should bring a combination of relevant financial industry experience and a track record of successful leadership capability in a significant board position. Where this desirable combination is only incompletely achievable, the board should give particular weight to convincing leadership experience since financial industry experience without established leadership skills is unlikely to suffice.

**Recommendation 9:** Agree. The chair is responsible for leadership of the board, ensuring its effectiveness in all aspects of its role and setting its agenda so that fully adequate time is available for substantive discussion on strategic issues. The chair should facilitate, encourage and expect the informed and critical contribution of the directors in particular in discussion and decision-taking on matters of risk and strategy and should promote effective communication between executive and non-executive directors.

The chair is responsible for ensuring that the directors receive all information that is relevant to discharge of their obligations in accurate, timely and clear form.

**Recommendation 10:** Agree. The method of access should be made clear to both legal owners (fund trustees) and fund managers  
The chair of a BOFI board should be proposed for election on an annual basis.

**Recommendation 11:** Agree. The method of access should be made clear to both legal owners (fund trustees) and fund managers. The role of the senior independent director (SID) should be to provide a sounding board for the chair, for the evaluation of the chair and to serve as a trusted intermediary for the NEDs as and when necessary. The SID should be accessible to shareholders in the event that communication with the chair becomes difficult or inappropriate.

**Recommendation 12:** Agree. As indicated earlier however, we believe that trustees should be the primary representatives of “investor” input, and that MNTs should be included as well as employer-nominated trustees. The board should undertake a formal and rigorous evaluation of its performance with external facilitation of the process every second or third year.

The statement on this evaluation should be a separate section of the annual report describing the work of the board, the nomination or corporate governance committee as appropriate. Where an external facilitator is used, this should be indicated in the statement, together with an indication whether there is any other business relationship with the company.

**Recommendation 13:** Agree. As indicated earlier however, we believe that trustees should be the primary representatives of “investor” input, and that MNTs should be included as well as employer-nominated trustees. The evaluation statement should include such meaningful, high-level information as the board considers necessary to assist shareholders understanding of the main features of the evaluation process.

The board should disclose that there is an ongoing process for identifying the skills and experience required to address and challenge adequately the key risks and decisions that confront the board, and for evaluating the contributions and commitment of individual directors. The statement should also provide an indication of the nature and extent of communication by the chair with major shareholders.

### **The role of institutional shareholders: communication and engagement**

**Recommendation 14:** Boards should ensure that they are made aware of any material changes in the share register, understand as far as possible the reasons for changes to the register and satisfy themselves that they have taken steps, if any are required, to respond.  
Agree

**Recommendation 15:** Agree. As indicated earlier however, we believe that trustees should be the primary representatives of “investor” input, and that MNTs should be included as well as employer-nominated trustees.

In the event of substantial change over a short period in a BOFI share register, the FSA should be ready to contact major selling shareholders to understand their motivation and to seek from the BOFI board an indication of whether and how it proposes to respond.

**Recommendation 16:** Agree. As indicated earlier however, we believe that trustees should be the primary representatives of “investor” input, and that MNTs should be included as well as employer-nominated trustees.

The remit of the FRC should be explicitly extended to cover the development and encouragement of adherence to principles of best practice in stewardship by institutional investors and fund managers. This new role should be clarified by separating the content of the present Combined Code, which might be described as the Corporate Governance Code, from what might most appropriately be described as Principles for Stewardship.

**Recommendation 17:** Agree. As indicated earlier however, we believe that trustees should be the primary representatives of “investor” input, and that MNTs should be included as well as employer-nominated trustees. The present best practice “Statement of Principles – the Responsibilities of Institutional Shareholders and Agents” should be ratified by the FRC and become the core of the Principles for Stewardship.

By virtue of the independence and authority of the FRC, this transition to sponsorship by the FRC should give materially greater weight to the Principles.

**Recommendation 18:** *Agree. With the proviso above that the ISC is encouraged to reflect both the superior legal standing of trustees, and that MNTs are appropriately represented* The ISC, in close consultation with the FRC as sponsor of the Principles, should review on an annual basis their continuing aptness in the light of experience and make proposals for any appropriate adaptation.

**Recommendation 19:** Agree. We also propose that Funds be obliged to declare the principles of their remuneration contracts with Fund Managers regarding the balance of time and cost devoted to engagement rather than stock churning. We also endorse the points made in Fair Pensions submission.

Fund managers and other institutions authorised by the FSA to undertake investment business should signify on their websites their commitment to the Principles of Stewardship. Such reporting should confirm that their mandates from life assurance, pension fund and other major clients normally include provisions in support of engagement activity and should describe their policies on engagement and how they seek to discharge the responsibilities that commitment to the Principles entails.

Where a fund manager or institutional investor is not ready to commit and to report in this sense, it should provide, similarly on the website, a clear explanation of the reasons for the position it is taking.

**Recommendation 20:** Agree. The FSA should encourage commitment to the Principles of Stewardship as a matter of best practice on the part of all institutions that are authorised to manage assets for others and, as part of the authorisation process, and in the context of feasibility of effective monitoring to require clear disclosure of such commitment on a “comply or explain” basis.

**Recommendation 21:** Agree. To facilitate effective collective engagement, a Memorandum of Understanding should be prepared, initially among major long-only investors, to establish a flexible and informal but agreed approach to issues such as arrangements for leadership of a specific initiative, confidentiality and any conflicts of interest that might arise. Initiative should be taken by the FRC and major UK fund managers and institutional investors to invite potentially interested major foreign institutional investors, such as sovereign wealth funds and public sector pension funds, to commit to the Principles of Stewardship and, as appropriate to the Memorandum of Understanding on collective engagement.

**Recommendation 22:** Agree. We believe that the Fund Manager voting records should also disclose the legal owners of stock whose votes they have cast. Voting powers should be exercised, fund managers and other institutional investors should disclose their voting record, and their policies in respect of voting should be described in statements on their websites or in other publicly accessible form.

## **Governance of risk**

**Recommendation 23:** The board of a BOFI should establish a board risk committee separately from the audit committee with responsibility for oversight and advice to the board on the current risk exposures of the entity and future risk strategy. In preparing advice to the board on its overall risk appetite and tolerance, the board risk committee should take account of the current and prospective macro-economic and financial environment drawing on financial stability assessments such as those published by the Bank of England and other authoritative sources that may be relevant for the risk policies of the firm.

**Recommendation 24:** In support of board-level risk governance, a BOFI board should be served by a CRO who should participate in the risk management and oversight process at the highest level on an enterprise-wide basis and have a status of total independence from individual business units. Alongside an internal reporting line to the CEO or FD, the CRO should report to the board risk committee, with direct access to the chair of the committee in the event of need.

The tenure and independence of the CRO should be underpinned by a provision that removal from office would require the prior agreement of the board. The remuneration of the CRO should be subject to approval by the chair or chair of the board remuneration committee.

**Recommendation 25:** Agree. The board risk committee should have access to and, in the normal course, expect to draw on external input to its work as a means of taking full account of relevant experience elsewhere and in challenging its analysis and assessment.

**Recommendation 26:** Agree. In respect of a proposed strategic transaction involving acquisition or disposal, it should as a matter of good practice be for the board risk committee to oversee a due diligence appraisal of the proposition, drawing on external advice where appropriate and available, before the board takes a decision whether to proceed.

**Recommendation 27:** Agree. The board risk committee (or board) risk report should be included as a separate report within the annual report and accounts. The report should describe the strategy of the entity in a risk management context, including information on the key exposures inherent in the strategy and the associated risk tolerance of the entity and should provide at least high level information on the scope and outcome of the stress-testing programme. An indication should be given of the membership of the committee, of the frequency of its meetings, whether external advice was taken and, if so, its source.

## Remuneration

**Recommendation 28:** Agree. The remit of the remuneration committee should be extended where necessary to cover all aspects of remuneration policy on a firm-wide basis with particular emphasis on the risk dimension. We believe some standards for comparison should be available for shareholders.

**Recommendation 29:** Agree. The terms of reference of the remuneration committee should be extended to oversight of remuneration policy and remuneration packages in respect of all executives for whom total remuneration in the previous year or, given the incentive structure proposed, for the current year exceeds or might be expected to exceed the median compensation of executive board members on the same basis.

**Recommendation 30:** Agree. In relation to executives whose total remuneration is expected to exceed that of the median of executive board members, the remuneration committee report should confirm that the committee is satisfied with the way in which performance objectives are linked to the related compensation structures for this group and explain the principles underlying the performance objectives and the related compensation structure if not in line with those for executive board members.

**Recommendation 31:** Agree. The remuneration committee report should disclose for “high end” executives whose total remuneration exceeds the executive board median total remuneration, in bands, indicating numbers of executives in each band and, within each band, the main elements of salary, bonus, long-term award and pension contribution.

**Recommendation 32:** Agree. Major FSA-authorized BOFIs that are UK-domiciled subsidiaries of non-resident entities should include in their reporting arrangements with the FSA disclosure of the remuneration of “high end” executives broadly as recommended for UK-listed entities but with detail appropriate to their governance structure and circumstances agreed on a case by case basis with the FSA. Disclosure of “high end” remuneration on the agreed basis should be included in the annual report of the entity that is required to be filed at Companies House.

**Recommendation 33:** Agree, and endorse the points made in Fair Pensions submission. Deferral of incentive payments should provide the primary risk adjustment mechanism to align rewards with sustainable performance for executive board members and executives whose remuneration exceeds the median for executive board members. Incentives should be balanced so that at least one-half of variable remuneration offered in respect of a financial year is in the form of a long-term incentive scheme with vesting subject to a performance condition with half of the award vesting after not less than three years and of the remainder after five years. Short-term bonus awards should be paid over a three-year period with not more than one-third in the first year. Clawback should be used as the means to reclaim amounts in limited circumstances of misstatement and misconduct.

**Recommendation 34:** Agree. Executive board members and executives whose total remuneration exceeds that of the median of executive board members should be expected to maintain a shareholding or retain a portion of vested awards in an amount at least equal to their total compensation on a historic or expected basis, to be built up over a period at the discretion of the remuneration committee. Vesting of stock for this group should not normally be accelerated on cessation of employment other than on compassionate grounds.

**Recommendation 35:** Agree. The remuneration committee should seek advice from the board risk committee on an arm’s-length basis on specific risk adjustments to be applied to performance objectives set in the context of incentive packages; in the event of any difference of view, appropriate risk adjustments should be decided by the chair and NEDs on the board.

**Recommendation 36:** Agree, and endorse the points made in Fair Pensions submission. If the non-binding resolution on a remuneration committee report

attracts less than 75 per cent of the total votes cast, the chair of the committee should stand for re-election in the following year irrespective of his or her normal appointment term.

**Recommendation 37:** Agree. The remuneration committee report should state whether any executive board member or senior executive has the right or opportunity to receive enhanced pension benefits beyond those already disclosed and whether the committee has exercised its discretion during the year to enhance pension benefits either generally or for any member of this group.

**Recommendation 38:** Agree, and endorse the points made in Fair Pensions submission. The remuneration consultants involved in preparation of the draft code of conduct should form a professional body, which would assume ownership of the definitive version of the code when consultation on the present draft is complete. The proposed professional body should provide access to the code through a website with an indication of the consulting firms committed to it; and provide for review and adaptation of the code as required in the light of experience.

**Recommendation 39:** Agree and endorse the points made in Fair Pensions submission. The code and an indication of those committed to it should also be lodged on the FRC website. In making an advisory appointment, remuneration committees should employ a consultant who has committed to the code.