

# A

## SUMMARY OF THE FINDINGS OF THE PENROSE INQUIRY INTO EQUITABLE LIFE

---

**A.1** In his report Lord Penrose exposes a number of lessons to be learned from the events at Equitable Life, which is among the largest mutual life offices in the UK. In doing so he is clear that, while some of the specific issues he addresses are peculiar to past events at Equitable Life,

*“There is, however, nothing in the structure of a mutual life office to prevent a similar problem emerging.” (chapter 9, paragraph 196).*

**A.2** There was, in his view, ineffective scrutiny and challenge of the executive of the Society:

*“The critical responsibilities for valuing liabilities, assessing the liability implications of new products, and identifying and monitoring risk generally were discharged by a discrete part of the organisation that was not subject to effective scrutiny or challenge.” (chapter 20, paragraph 50)*

### THE ROLE OF THE BOARD

---

**A.3** The report highlights the characteristics of Equitable’s Board during the period covered by the inquiry, noting that at critical points in the Society’s history it

*“...had insufficient knowledge and skills to provide an effective challenge to the executive in critical areas.” (chapter 19, paragraph 240).*

As a consequence:

*“...the Board’s dependence on actuarial advice was total. None of the non-executive directors had relevant life office experience or relevant qualifications.” (chapter 9, paragraph 30).*

More specifically:

*“None of the non-executive members of the Board had relevant skills or experience of actuarial principles or methodologies” (chapter 19, paragraph 89).*

**A.4** The Board also failed, according to Lord Penrose, to put in place appropriate mechanisms to see that it had the information and advice to exercise its responsibilities:

*“The Board relied on reports made directly to them by the Society’s senior actuarial staff...without instituting and maintaining any committee system to consider in detail and report on actuarial management.”(chapter 19, paragraph 104).*

As a consequence:

*“...the Board was never fully advised of the financial implications of the decisions that were said to be open to them.” (chapter 19, paragraph 84).*

**A.5** He also raises interesting questions about the relationship between the Board and specialist members of the executive, as well as the extent to which non-executive directors can, or should be expected to, gain a true understanding of a complex business such as Equitable Life:

*“The Board at no stage got fully to grips with the financial situation faced by the Society: information was too fragmented, their collective skills were inadequate for the task, and there were no effective arrangements for ensuring that there was detailed examination of, and onward reporting to the Board on, actuarial reports. Equitable’s non-executive directors were so wholly dependent on actuarial input from the executive and in particular from the chief executive/actuary that they were largely incapable of exercising any influence on the actuarial management of the society.” (chapter 20, paragraph 50).*

He reports that Equitable’s own non-executives made the point that:

*“...as generalist non-executive directors, the individuals in question were incapable of addressing independently such fundamental aspects of the firm’s business as its actuarial management and liability valuation.” (chapter 20, paragraph 53).*

## **THE ROLE OF POLICYHOLDERS**

---

**A.6** The report also asserts that the Board itself was not subject to effective external scrutiny or discipline. In doing so, it compares the situation of mutual life offices with the position of proprietary firms:

*“In the case of proprietary firms, the primary responsibility for the selection of directors and calling the board to account for its direction of the business must continue to rest with the shareholders of the company, whose capital stands at risk in the event of mis-management. However, the position is different for a mutual like Equitable, where it is the policyholders who are the source of the risk capital for the enterprise.” (chapter 20, paragraph 51).*

**A.7** Although they were the owners of the Society, it was difficult for policyholders to call the board to account:

*“Under the Society’s articles policyholders were effectively powerless, and the Board was a self-perpetuating oligarchy amenable to policyholder pressure only at its discretion.” (chapter 20, paragraph 51).*

Contributing to the problem was the complexity of policyholders’ relationship with Equitable Life. Not all policyholders were members, and their status as members could change over time:

*“...the relationship between the members and the company is unique. A basic characteristic of mutual business is the identification of membership of the company with the contractual relationship between the holders of participating contracts and the office already mentioned. Membership is typically defined in terms of participation in the profits of the distributable surplus of the office. Non-participating contracts, for example a fully guaranteed policy providing a fixed obligation to pay a specified sum of money on a contingency, and linked contracts may not qualify the policyholder for membership. Policyholders may be members or may be creditors of the company or both, with those relationships arising from*

*their policies and defined in the constituent documents of the office by reference to those policies. This makes the application of common rules and principles of governance difficult.” (chapter 9, paragraph 13).*

## THE ROLE OF THE FSA

**A.8** Lord Penrose acknowledges that the FSA’s work:

*“...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 20, paragraph 3).*

**A.9** He nonetheless envisages some further scope for the FSA to be involved in improving the effectiveness of the boards of life mutuals. In particular he suggests the

*“FSA consider how their powers may be exercised to address the problem of unbalanced or ineffective boards.”*

Adding that:

*“...the regulators should be confident that where necessary they are able to require changes to the board to address major gaps or imbalances in directors’ collective skills or experience.” (chapter 20, paragraph 52).*

**A.10** Lord Penrose identifies a need to improve participation by policyholders, but sees:

*“...no ready means by which regulators could force the remaining mutuals to adopt articles that facilitated policyholder action” (chapter 20, paragraph 54).*

**A.11** He speculates that, to protect policyholders’ interests, the FSA’s role might be extended:

*“...it might be acceptable for the regulator to have power to appoint from a panel of experts an adviser to the board of a life office in case of need, with access to all board papers and to the board itself, and with power to report to FSA on management. This would fall short of the formal appointment of an independent reporter. It could be more flexible. And if it failed to produce results FSA’s subsequent formal action would be facilitated. A power to report to FSA rather than an obligation would improve the prospects of acceptance of the adviser as a source of support to the board rather than a threat to current management. An occasion for the appointment of such an adviser would be recognition of a risk that the firm might be in danger of failing in its obligation to treat policyholders fairly.” (chapter 20, paragraph 55).*

Though he recognises that:

*“There would be resistance to direct involvement of regulation in management for understandable reasons.” (chapter 20, paragraph 55).*



# B

## LIST OF MUTUAL LIFE OFFICES

---

### **Firms incorporated by Special Act or Royal Charter<sup>1</sup>**

Standard Life Assurance Company \*

Wesleyan Assurance Society \*

Customs Annuity and Benevolent Fund Incorporated \*

### **Companies Act companies (Companies limited by guarantee)**

Marine and General Mutual Life Assurance Society \*

The Royal London Mutual Insurance Society Limited \*

Reliance Mutual Insurance Society Limited \*

CUNA Mutual Insurance Society \*

National Farmers' Union Mutual Insurance Society Limited \*

London Aberdeen and Northern Mutual Assurance Society Limited \*

Society for the Benefit of the Widows of the Officers and Warrant Officers of the Royal Regiment of Artillery Limited \*

### **Companies Act company (Unlimited liability)**

The Equitable Life Assurance Society \*

### **Companies incorporated under the Industrial & Provident Act**

Co-operative Insurance Society Limited \*

UIA (Insurance) Limited \*

### **Directive Friendly Societies**

British Benefits Friendly Society Limited \*

Cirencester Friendly Society Limited \*

Communication Workers Friendly Society Limited \*

Dentists' and General Mutual Benefit Society Ltd \*

Dentists' Provident Society Limited \*

Esano London \*

Family Assurance Friendly Society Limited \*

---

<sup>1</sup> The offices marked with an asterisk are on the Standard & Poor's Synthesis Life database. The list is correct as at the end of 2003.

Hearts of Oak Friendly Society Limited \*

Homeowners Friendly Society Limited \*

Liverpool Victoria Friendly Society Limited \*

Metropolitan Police Friendly Society Limited \*

National Deposit Friendly Society Limited \*

Pioneer Friendly Society Limited \*

Police Mutual Assurance Society Limited \*

Royal Liver Assurance Limited \*

Scottish Friendly Assurance Society Limited \*

Scottish Legal Life Assurance Society Limited \*

Teachers Provident Society Limited \*

The Ancient Order of Foresters Friendly Society Limited \*

The Pension Annuity Friendly Society Limited \*

The Shepherds Friendly Society Limited \*

Transport Friendly Society Limited \*

Tunbridge Wells Equitable Friendly Society Ltd (renamed The Children's Mutual in 2004) \*

Tunstall Assurance \*

### **Non-directive friendly societies**

Anglo-Saxons Friendly Society

Braemar Royal Highland Society

Bus Employees' Friendly Society

Choir Benevolent Fund

Compass Friendly Society Limited \*

Coventry Assurance Society

Druids Sheffield Friendly Society

Goodyear Relief Society

Grand Lodge of the United Kingdom Independent Order of English Mechanics Friendly Society (Preston Unity)

Grand United Order of Oddfellows Friendly Society

Health Shield Friendly Society \*

Hunt Servants' Benefit Society

Independent Order of Oddfellows Kingston Unity Friendly Society \*

Independent Order of OddFellows Manchester Unity Friendly Society \*

Lancashire and Cheshire Miners' Permanent Relief Society

Leek Assurance Collecting Society

Lindsey House \*

Lonach Highland and Friendly Society

Merseyside Police Funeral Society

Methodist Ministers' Annuitant Society

Midland Counties Colliery Officials' and Staff's Friendly Society

Midland District Miners' Fatal Accident Relief Society

Millbrook Permanent Annuitant Society

National Independent Oddfellows Friendly Society

New Tab Friendly Society

Nottingham Oddfellows Assurance Friendly Society Limited \*

Pharmaceutical and General Provident Society Ltd \*

Preston Operative Assurance Collecting Society

Railway Enginemen's Assurance Society Limited \*

Railway Friendly Society

Rational Shelley Friendly Society Limited \*

Ronald Moore Sickness and Benevolent Association

Royal Standard Friendly Society

Sheffield Mutual Friendly Society

Sons of Temperance Friendly Society

South Yorkshire Police Benevolent Friendly Society

St Andrew's Society of Aberdeen

St John's Burial Society Burscough Bridge

Staffordshire Police Widows' and Benevolent Fund Friendly Society

Teesside Workmen's Welfare Fund Friendly Society

The Church Burial Society of St Alban the Martyr, Holborn

The Ideal Benefit Society \*

The Kensington Friendly Collecting Society Ltd \*

The London Midland and Scottish Railway Running Department Insurance Society

The National Bank Staff Life Assurance (London) Society

The Original Holloway Friendly Society Limited \*

The Ramsbottom Friendly Burial Society

The Rechabite Friendly Society Limited \*

The Red Rose Friendly Society Limited

The Schoolteachers Friendly Society \*

United General Sea Box of Borrowstounness Friendly Society

Universal Brotherhood of Speculative Mechanics

Widow & Orphan Fund of the Woolwich District

Wiltshire Friendly Society Limited \*

# C

## ECONOMIC RELEVANCE OF THE LIFE MUTUAL SECTOR

**Table C.1: Table of life demutualisations<sup>1</sup>**

Mutual Office	Date	Premiums (€m, 1998)	Purchaser
Scottish Mutual	1992	1,594	Abbey National
Scottish Equitable	1993	4,312	Aegon
Provident Mutual	1995	800	General Accident
Clerical Medical	1996	4,098	Halifax
Scottish Amicable	1997	877	Prudential
Norwich Union	1997	8,661	Flotation
NPI	1999	1,957	AMP
Scottish Widows	2000	3,549	Lloyds TSB
Scottish Provident	2001	1,421	Abbey National
Scottish Life	2001	1,312	Royal London
Friends Provident	2001	3,099	Flotation
National Mutual	2001	752	GE Capital

### DETAILED DATA ON MUTUAL AND PROPRIETARY LIFE OFFICES

**C.1** The data in the below tables was provided by the Centre for Risk and Insurance Studies at the Nottingham University Business School. The data was derived from Standard & Poor's Synthesys database and refers to 31 December 2003. The data represents 53 of the 91 mutual life offices in the UK, and excludes only the small, non-directive friendly societies. Annex B contains a list of all 91 offices.

**Table C.2: Data comparing mutual and proprietary life offices**

	All mutual life offices	All friendly societies	Non-directive friendly societies	Proprietary life companies
Assets (£bn)	161,027,858	16,094,208	489,142	815,169,340
Premiums UK (£bn)	13,251,235	1,113,659	32,922	93,092,658
New business APE UK (£bn)	1,557,873	122,733	3,197	10,255,666
Proportion of new business that is with-profits	30.28%	59.71%	55.00%	6.53%
Proportion of liabilities that is with-profits	55.48%	67.03%	36.64%	33.87%

<sup>1</sup> Source: ICMI, "Valuing Our Mutuality".

**Table C.3: Life mutual sector as a proportion of the total life market**

	<b>All mutual life offices</b>	<b>All friendly societies</b>	<b>Non-directive friendly societies</b>
Assets	16.45%	1.64%	0.05%
Premiums UK	12.43%	1.04%	0.03%
New business premiums	13.12%	1.03%	0.03%
With-profits liabilities	23.50%	2.67%	0.03%

# D

## DRAFT ANNOTATED COMBINED CODE FOR LIFE MUTUALS

---

## **The Combined Code on Corporate Governance An Annotated Version for Mutual Life Insurers**

### **Introduction**

This document is a copy of the July 2003 version of the *Combined Code on Corporate Governance* to which annotations have been added. The annotations, as with this Introduction, are given in boxes. The original text of the Code itself has not been amended. It does not, however, include the additional material appended to the full Combined Code under the heading *Related Guidance and Good Practice Suggestions and Useful Web Links*. The *Related Guidance and Good Practice Suggestions* includes *Guidance on internal control (The Turnbull Guidance)*, *Guidance on audit committees (The Smith Guidance)* and *Suggestions for good practice from the Higgs report*. The original version of the Combined Code including this additional material can be found at <http://www.frc.org.uk/corporate/>.

The guidance in this document, which comprises this Introduction and the annotations, is intended to assist life mutuals in having regard to the Combined Code on Corporate Governance of July 2003. The annotations follow a 'by exception' approach, in that they are given only for those elements of the Combined Code that either raise particular issues for life mutuals or are not considered to be relevant to life mutuals. All parts of the Code are regarded as being appropriate in their present form unless annotations indicate otherwise. The annotations are not intended to alter the principles of the Code but rather to promote interpretations that should best uphold these principles in this sector. Code provisions that are not annotated should not be regarded as any less important than those that are.

Where the Code refers to the Board of the company, this should be taken as meaning the governing body of the undertaking. Similarly, "directors" can be read as "members of the committee of management" and "Articles of Association" can be read as "Rules" and "company" as "society" as appropriate.

The Combined Code makes several references to "shareholders" "the major shareholders", "principal shareholders" and "institutional shareholders" (A1, A2.2, A3.3, A5.1, A7.1, A7.2, B1.1, B2, B2.3, B2.4, C2.1, C3.7, D1, D2.4). Although life mutuals do not have shareholders, the principles underpinning the relevant provisions of the Code are relevant and in most cases members can perform a similar function.

The Combined Code follows a "comply or explain" approach. This implies dialogue between the firm and its members. An important element for listed proprietary companies adhering to the Code is the disclosure statement

required by the UKLA Listing Rules 12.43A (which is discussed in the Preamble to the Code and elaborated upon in Schedule C to the Code). Although mutuals, even those with listed debt securities, are not bound by this Rule, a governance statement of this form in the Annual Report should be seen by all firms as a necessary part of the operation of “comply or explain”. Moreover, although this disclosure plays an important part in ensuring that a firm is accountable to its members on governance matters, it may not alone be sufficient. It may be appropriate, for example, to discuss governance arrangements directly with member representatives as part of the dialogue discussed in the annotations to section D.1 of the Code. Firms should also anticipate that the FSA would wish to discuss compliance and their explanations for departures from the provisions of the Code in the context of a risk assessment or other supervisory work.

The FSA has been consulted about the development of the annotated Combined Code for life mutuals and has welcomed this initiative. The FSA expects that such guidance will be helpful in identifying the issues to be considered by life mutual boards when seeking to apply the latest version of the Combined Code to the different circumstances of a life mutual and to their particular firm.

Some of the draft annotations to the Code suggest alternative approaches to those set out in the text of the Combined Code itself. The FSA awaits the outcome of the consultation by the Association of Mutual Insurers (AMI) and the Association of Friendly Societies (AFS) with their members on the draft. However, it has said it shares our objective that, by following such guidance in the annotations, firms should be able to demonstrate that they have had regard to the FSA’s own high-level guidance relating to corporate governance<sup>1</sup>. The Review recommends, therefore, that the AMI and the AFS should consult the FSA on this point in respect of the version of the annotated Code that they adopt for implementation by their members. The consultation would also need to seek views from the Financial Reporting Council (FRC) on any changes to the annotations to avoid any unintended consequences for the Code as it applies to listed companies.

It is intended that the annotated Code should apply to all of the forms of mutual undertaking engaged in life insurance business in the UK, including small friendly societies. While small firms will tend to operate under greater cost constraints than larger firms, the governance principles of the Code, such as independence, transparency and the separation of function are applicable to all. The flexibility inherent in the principle of “comply or explain” should enable any firm to achieve a manner of adherence appropriate to its circumstances, taking into account its size, legal form and the Rules of the society or the Articles of Association of the company.

---

<sup>1</sup> Including, for example from the prudential sourcebook for insurers, IPRU(INS) Guidance Note P.3, paragraph A3. “In managing its affairs, a firm should have regard to such generally accepted principles of good corporate governance (including the Combined Code on Corporate Governance where appropriate) as it is reasonable to regard as applicable to it.”

It is expected that this best-practice guidance will evolve as thinking on these issues continues. It is hoped that it will be updated in step with the periodic reviews of the Code itself that are to be undertaken by the FRC.

The Combined Code is reproduced by kind permission of the FRC.

**THE COMBINED CODE ON  
CORPORATE GOVERNANCE**

**July 2003**

# CONTENTS

*Pages*

## **The Combined Code on Corporate Governance**

---

Preamble

Section 1 COMPANIES  
A Directors  
B Remuneration  
C Accountability and Audit  
D Relations with Shareholders

Section 2 INSTITUTIONAL SHAREHOLDERS  
E Institutional Shareholders

Schedule A Provisions on the design of performance related remuneration

Schedule B Guidance on liability of non-executive directors: care, skill and diligence

Schedule C Disclosure of corporate governance arrangements

## **Related Guidance and Good Practice Suggestions**

---

Guidance on internal control (The Turnbull Guidance)

Guidance on audit committees (The Smith Guidance)

Suggestions for good practice from the Higgs report  
Guidance for the chairman  
Guidance for non-executive directors  
Summary of the principal duties of the remuneration committee  
Summary of the principal duties of the nomination committee  
Pre-appointment due diligence checklist for new board members  
Sample letter of non-executive director appointment  
Induction checklist  
Performance evaluation checklist

## **Useful Web links**

---

## CODE ON CORPORATE GOVERNANCE

### PREAMBLE

1. This Code supersedes and replaces the Combined Code issued by the Hampel Committee on Corporate Governance in June 1998. It derives from a review of the role and effectiveness of non-executive directors by Derek Higgs<sup>1</sup> and a review of audit committees<sup>2</sup> by a group led by Sir Robert Smith.
2. The Financial Services Authority has said that it will replace the 1998 Code that is annexed to the Listing Rules with the revised Code and will seek to make consequential Rule changes. There will be consultation on the necessary Rule changes but not further consultation on the Code provisions themselves.
3. It is intended that the new Code will apply for reporting years beginning on or after 1 November 2003.
4. The Code contains main and supporting principles and provisions. The existing Listing Rules require listed companies to make a disclosure statement in two parts in relation to the Code. In the first part of the statement, the company has to report on how it applies the principles in the Code. In future this will need to cover both main and supporting principles. The form and content of this part of the statement are not prescribed, the intention being that companies should have a free hand to explain their governance policies in the light of the principles, including any special circumstances applying to them which have led to a particular approach. In the second part of the statement the company has either to confirm that it complies with the Code's provisions or - where it does not - to provide an explanation. This 'comply or explain' approach has been in operation for over ten years and the flexibility it offers has been widely welcomed both by company boards and by investors. It is for shareholders and others to evaluate the company's statement

The importance for life mutuals of including a corporate governance statement of the type required by the Listing Rules in the Annual Report is discussed in the Introduction.

5. While it is expected that listed companies will comply with the Code's provisions most of the time, it is recognised that departure from the provisions of the Code may be justified in particular circumstances. Every company must review each provision carefully and give a considered explanation if it departs from the Code provisions.

---

<sup>1</sup> "Review of the role and effectiveness of non-executive directors", published January 2003.

<sup>2</sup> "Audit Committees Combined Code Guidance", published January 2003.

6. Smaller listed companies, in particular those new to listing, may judge that some of the provisions are disproportionate or less relevant in their case. Some of the provisions do not apply to companies below FTSE 350. Such companies may nonetheless consider that it would be appropriate to adopt the approach in the Code and they are encouraged to consider this. Investment companies typically have a different board structure, which may affect the relevance of particular provisions.

The application of this guidance to small mutuals is discussed in the Introduction.

7. Whilst recognising that directors are appointed by shareholders who are the owners of companies, it is important that those concerned with the evaluation of governance should do so with common sense in order to promote partnership and trust, based on - mutual understanding. They should pay due regard to companies' individual circumstances and bear in mind in particular the size and complexity of the company and the nature of the risks and challenges it faces. Whilst shareholders have every right to challenge companies' explanations if they are unconvincing, they should not be evaluated in a mechanistic way and departures from the Code should not be automatically treated as breaches. Institutional shareholders and their agents should be careful to respond to the statements from companies in a manner that supports the 'comply or explain' principle. As the principles in Section 2 make clear, institutional shareholders should carefully consider explanations given for departure from the Code and make reasoned judgements in each case. They should put their views to the company and be prepared to enter a dialogue if they do not accept the company's position. Institutional shareholders should be prepared to put such views in writing where appropriate.
8. Nothing in this Code should be taken to override the general requirements of law to treat shareholders equally in access to information.
9. This publication includes guidance on how to comply with particular parts of the Code: first, "Internal Control: Guidance for Directors on the Combined Code"<sup>3</sup>, produced by the Turnbull Committee, which relates to Code provisions on internal control (C.2 and part of C.3 in the Code); and, second, "Audit Committees: Combined Code Guidance", produced by the Smith Group, which relates to the provisions on audit committees and auditors (C.3 of the Code). In both cases, the guidance suggests ways of applying the relevant Code principles and of complying with the relevant Code provisions.

---

<sup>3</sup> "Internal Control: Guidance for Directors on the Combined Code", published by the Institute of Chartered Accountants in England and Wales in September 1999.

10. In addition, this volume also includes suggestions for good practice from the Higgs report.

As is noted in the Introduction, this document does not include the Turnbull or Smith guidance or the suggestions for good practice from the Higgs report but they should nevertheless be regarded as an integral part of the Combined Code as it relates to life mutuals.

11. The revised Code does not include material in the previous Code on the disclosure of directors' remuneration. This is because "The Directors' Remuneration Report Regulations 2002"<sup>4</sup> are now in force and supersede the earlier Code provisions. These require the directors of a company to prepare a remuneration report. It is important that this report is clear, transparent and understandable to shareholders.

Although the Directors' Remuneration Report Regulations 2002 apply only to quoted firms, all life mutuals should aim to produce a remuneration report equivalent to that described in Schedule 7A<sup>†</sup> of the regulations and hold an advisory vote on the report at the AGM (as per S241A).

<sup>†</sup> Those sections of Schedule 7A relating to share options will not be relevant to life mutuals (unless directors of mutuals are involved in ownership schemes involving subsidiaries). These are Section 3 subparagraph(2)(a)(i), all of Section 4 (relating to the Performance Graph), Sections 7, 8 and 9 (the treatment of Share Options in the information subject to audit) and Section 11 subparagraphs (2) and (3).

---

<sup>4</sup> The Directors' Remuneration Report Regulations 2002, S.I. no.1986

# **CODE OF BEST PRACTICE**

## **SECTION 1 COMPANIES**

### **A DIRECTORS**

#### **A.1 The Board**

##### **Main Principle**

**Every company should be headed by an effective board, which is collectively responsible for the success of the company.**

##### **Supporting Principles**

The board's role is to provide entrepreneurial leadership of the company within a framework of prudent and effective controls which enables risk to be assessed and managed. The board should set the company's strategic aims, ensure that the necessary financial and human resources are in place for the company to meet its objectives and review management performance. The board should set the company's values and standards and ensure that its obligations to its shareholders and others are understood and met.

All directors must take decisions objectively in the interests of the company.

As part of their role as members of a unitary board, non-executive directors should constructively challenge and help develop proposals on strategy. Non-executive directors should scrutinise the performance of management in meeting agreed goals and objectives and monitor the reporting of performance. They should satisfy themselves on the integrity of financial information and that financial controls and systems of risk management are robust and defensible. They are responsible for determining appropriate levels of remuneration of executive directors and have a prime role in appointing, and where necessary removing, executive directors, and in succession planning.

##### **Code Provisions**

- A.1.1 The board should meet sufficiently regularly to discharge its duties effectively. There should be a formal schedule of matters specifically reserved for its decision. The annual report should include a statement of how the board operates, including a high level statement of which types of decisions are to be taken by the board and which are to be delegated to management.
- A.1.2 The annual report should identify the chairman, the deputy chairman (where there is one), the chief executive, the senior independent director and the chairmen and members of the nomination, audit and remuneration

committees. It should also set out the number of meetings of the board and those committees and individual attendance by directors.

The role of the senior independent director is discussed below in the guidance to Section A.3.3.

A.1.3 The chairman should hold meetings with the non-executive directors without the executives present. Led by the senior independent director, the non-executive directors should meet without the chairman present at least annually to appraise the chairman's performance (as described in A.6.1) and on such other occasions as are deemed appropriate.

The role of the senior independent director is discussed below in the guidance to Section A.3.3.

A.1.4 Where directors have concerns which cannot be resolved about the running of the company or a proposed action, they should ensure that their concerns are recorded in the board minutes. On resignation, a non-executive director should provide a written statement to the chairman, for circulation to the board, if they have any such concerns.

A.1.5 The company should arrange appropriate insurance cover in respect of legal action against its directors.

## **A.2 Chairman and chief executive**

### **Main Principle**

**There should be a clear division of responsibilities at the head of the company between the running of the board and the executive responsibility for the running of the company's business. No one individual should have unfettered powers of decision.**

### **Supporting Principle**

The chairman is responsible for leadership of the board, ensuring its effectiveness on all aspects of its role and setting its agenda. The chairman is also responsible for ensuring that the directors receive accurate, timely and clear information. The chairman should ensure effective communication with shareholders. The chairman should also facilitate the effective contribution of non-executive directors in particular and ensure constructive relations between executive and non-executive directors.

### **Code Provisions**

A.2.1 The roles of chairman and chief executive should not be exercised by the same individual. The division of responsibilities between the chairman and chief executive should be clearly established, set out in writing and agreed by the board.

A.2.2<sup>5</sup> The chairman should on appointment meet the independence criteria set out in A.3.1 below. A chief executive should not go on to be chairman of the same company. If exceptionally a board decides that a chief executive should become chairman, the board should consult major shareholders in advance and should set out its reasons to shareholders at the time of the appointment and in the next annual report.

### **A.3 Board balance and independence**

#### **Main Principle**

**The board should include a balance of executive and non-executive directors (and in particular independent non-executive directors) such that no individual or small group of individuals can dominate the board's decision taking.**

#### **Supporting Principles**

The board should not be so large as to be unwieldy. The board should be of sufficient size that the balance of skills and experience is appropriate for the requirements of the business and that changes to the board's composition can be managed without undue disruption.

To ensure that power and information are not concentrated in one or two individuals, there should be a strong presence on the board of both executive and non-executive directors.

The value of ensuring that committee membership is refreshed and that undue reliance is not placed on particular individuals should be taken into account in deciding chairmanship and membership of committee.

No one other than the committee chairman and members is entitled to be present at a meeting of the nomination, audit or remuneration committee, but others may attend at the invitation of the committee.

#### **Code provisions**

---

<sup>5</sup> Compliance or otherwise with this provision need only be reported for the year in which the appointment is made

A.3.1 The board should identify in the annual report each non-executive director it considers to be independent<sup>6</sup>. The board should determine whether the director is independent in character and judgement and whether there are relationships or circumstances which are likely to affect, or could appear to affect, the director's judgement. The board should state its reasons if it determines that a director is independent notwithstanding the existence of relationships or circumstances which may appear relevant to its determination, including if the director:

- has been an employee of the company- or group within the last five years;
- has, or has had within the last three years, a material business relationship with the company either directly, or as a partner, shareholder, director or senior employee of a body that has such a relationship with the company;
- has received or receives additional remuneration from the company apart from a director's fee, participates in the company's share option or a performance-related pay scheme, or is a member of the company's pension scheme;
- has close family ties with any of the company's advisers, directors or senior employees;
- holds cross-directorships or has significant links with other directors through involvement in other companies or bodies;
- represents a significant shareholder; or
- has served on the board for more than nine years from the date of their first election.

A.3.2 Except for smaller companies<sup>7</sup>, at least half the board, excluding the chairman, should comprise non-executive directors determined by the board to be independent. A smaller company should have at least two independent non-executive directors.

Boards, their chairmen and their nominations committees should, when assessing the overall composition of the board and whether there is an appropriate number of independent non-executives, take account of the level of external oversight in mutual life firms (for example the absence of large shareholders, the lack of a market in corporate controls and the difficulties faced by members in holding management to account).

A.3.3 The board should appoint one of the independent non-executive directors to be the senior independent director. The senior independent director should be

---

<sup>6</sup> A.2.2 states that the chairman should, on appointment, meet the independence criteria set out in this provision, but thereafter the test of independence is not appropriate in relation to the chairman.

<sup>7</sup> A smaller company is one that is below the FTSE 350 throughout the year immediately prior to the reporting year.

available to shareholders if they have concerns which contact through the normal channels of chairman, chief executive or finance director has failed to resolve or for which such contact is inappropriate.

Firms that do not appoint a senior independent director may want to consider whether it is necessary to offer members an alternative mechanism for the handling of their concerns (i.e. to the arrangements envisaged in Section A.3.3) that acknowledge that members may not always wish to contact the chairman or an executive director.

The annual appraisal of the chairman should be led by an independent non-executive even if there is not an appointed senior independent director (see A.6.1).

## **A.4 Appointments to the Board**

### **Main Principle**

**There should be a formal, rigorous and transparent procedure for the appointment of new directors to the board.**

### **Supporting Principles**

Appointments to the board should be made on merit and against objective criteria. Care should be taken to ensure that appointees have enough time available to devote to the job. This is particularly important in the case of chairmanships.

The board should satisfy itself that plans are in place for orderly succession for appointments to the board and to senior management, so as to maintain an appropriate balance of skills and experience within the company and on the board.

### **Code Provisions**

A.4.1 There should be a nomination committee which should lead the process for board appointments and make recommendations to the board. A majority of members of the nomination committee should be independent non-executive directors. The chairman or an independent non-executive director should chair the committee, but the chairman should not chair the nomination committee when it is dealing with the appointment of a successor to the chairmanship. The nomination committee should make available<sup>8</sup> its terms of reference, explaining its role and the authority delegated to it by the board.

---

<sup>8</sup> The requirement to make the information available would be met by making it available on request and including the information on the company's website

A.4.2 The nomination committee should evaluate the balance of skills, knowledge and experience on the board and, in the light of this evaluation, prepare a description of the role and capabilities required for a particular appointment.

A.4.3 For the appointment of a chairman, the nomination committee should prepare a job specification, including an assessment of the time commitment expected, recognising the need for availability in the event of crises. A chairman's other significant commitments should be disclosed to the board before appointment and included in the annual report. Changes to such commitments should be reported to the board as they arise, and included in the next annual report. No individual should be appointed to a second chairmanship of a FTSE 100 company<sup>9</sup>

A.4.4 The terms and conditions of appointment of non-executive directors should be made available for inspection<sup>10</sup>. The letter of appointment should set out the expected time commitment. Non-executive directors should undertake that they will have sufficient time to meet what is expected of them. Their other significant commitments should be disclosed to the board before appointment, with a broad indication of the time involved and the board should be informed of subsequent changes.

The Higgs best-practice guidance appended to the Combined Code includes a sample letter of appointment for a non-executive director in which a commitment is made to allow access to external advice as and when required – see Provision A.5.2.

A.4.5 The board should not agree to a full time executive director taking on more than one non-executive directorship in a FTSE 100 company nor the chairmanship of such a company.

A.4.6 A separate section of the annual report should describe the work of the nomination committee, including the process it has used in relation to board appointments. An explanation should be given if neither an external search consultancy nor open advertising has been used in the appointment of a chairman or a non-executive director.

In life mutuals, the recruitment process should involve appropriate sources of objective external opinion. When seeking to appoint independent directors, as well as considering the use of external recruitment consultants to lead the process, the nominations committee may wish to seek other outside views, for example by involving member panels. The advertising of posts may also be considered as a way of reducing the reliance on the personal connections of existing board members.

---

<sup>9</sup> Compliance or otherwise with this provision need only be reported for the year in which the appointment is made.

<sup>10</sup> The terms and conditions of appointment of non-executive directors should be made available for inspection by any person at the company's registered office during normal business hours and at the AGM (for 15 minutes prior to the meeting and during the meeting).

## **A.5 Information and professional development**

### **Main Principle**

**The board should be supplied in a timely manner with information in a form and of a quality appropriate to enable it to discharge its duties. All directors should receive induction on joining the board and should regularly update and refresh their skills and knowledge.**

### **Supporting Principles**

The chairman is responsible for ensuring that the directors receive accurate, timely and clear information. Management has an obligation to provide such information but directors should seek clarification or amplification where necessary.

The chairman should ensure that the directors continually update their skills and the knowledge and familiarity with the company required to fulfil their role both on the board and on board committees. The company should provide the necessary resources for developing and updating its directors' knowledge and capabilities.

Under the direction of the chairman, the company secretary's responsibilities include ensuring good information flows within the board and its committees and between senior management and non-executive directors, as well as facilitating induction and assisting with professional development as required.

The company secretary should be responsible for advising the board through the chairman on all governance matters.

The secretary of a friendly society should endeavour to fulfil an equivalent role. If the same person holds the positions of secretary and chief executive, ideally the roles should be split. Otherwise, the responsibility of ensuring good information flows to the board and its committees and between senior management and non-executive directors should be delegated to an individual reporting to the chairman.

### **Code Provisions**

A.5.1 The chairman should ensure that new directors receive a full, formal and tailored induction on joining the board. As part of this, the company should offer to major shareholders the opportunity to meet a new non-executive director.

A.5.2 The board should ensure that directors, especially non-executive directors, have access to independent professional advice at the company's expense where they judge it necessary to discharge their responsibilities as directors. Committees should be provided with sufficient resources to undertake their duties.

Boards should establish clear procedures through which non-executives can obtain advice from independent external advisers at the company's expense when required. The availability of independent sources of advice should be made clear at the time of appointment (using, for example, the draft non-executive's letter of appointment in the Higgs best-practice guidance appended to the Combined Code in which a commitment to allow access to external advice is made). The website of the Institute of Chartered Secretaries and Administrators (ICSA) also gives a sample board motion to establish the availability of this facility (see <http://www.icsa.org.uk/news/guidance.php>).

Non-executives need not seek to appoint a relevant adviser for each and every subject area that comes before the board. When difficult issues arise, the first course of action should always be to encourage further and deeper analysis to be carried out within the firm. But it is important that any non-executive can access advice at the firm's expense from a source that is independent of the executive when there is an important issue on which he or she does not feel comfortable despite having sought clarification and amplification from within the firm.

A.5.3 All directors should have access to the advice and services of the company secretary, who is responsible to the board for ensuring that board procedures are complied with. Both the appointment and removal of the company secretary should be a matter for the board as a whole.

Additional guidance on the support for independent directors will be made available on the ICSA website.

## **A.6 Performance evaluation**

### **Main Principle**

**The board should undertake a formal and rigorous annual evaluation of its own performance and that of its committees and individual directors.**

### **Supporting Principle**

Individual evaluation should aim to show whether each director continues to contribute effectively and to demonstrate commitment to the role (including commitment of time for board and committee meetings and any other duties). The chairman should act on the results of the performance evaluation by recognising the strengths and addressing the weaknesses of the board and, where appropriate, proposing new members be appointed to the board or seeking the resignation of directors.

### **Code Provision**

A.6.1 The board should state in the annual report how performance evaluation of the board, its committees and its individual directors has been conducted. The non-executive directors, led by the senior independent director, should be responsible for performance evaluation of the chairman, taking into account the views of executive directors.

The appraisal of the chairman should be led by an independent director even if a senior independent director has not been appointed.

## **A.7 Re-election**

### **Main Principle**

**All directors should be submitted for re-election at regular intervals, subject to continued satisfactory performance. The board should ensure planned and progressive refreshing of the board.**

### **Code Provisions**

A.7.1 All directors should be subject to election by shareholders at the first annual general meeting after their appointment, and to re-election thereafter at intervals of no more than three years. The names of directors submitted for election or re-election should be accompanied by sufficient biographical details and any other relevant information to enable shareholders to take an informed decision on their election.

A.7.2 Non-executive directors should be appointed for specified terms subject to re-election and to Companies Acts provisions relating to the removal of a director. The board should set out to shareholders in the papers accompanying a resolution to elect a non-executive director why they believe an individual should be elected. The chairman should confirm to shareholders when proposing re-election that, following formal performance evaluation, the individual's performance continues to be effective and to demonstrate commitment to the role. Any term beyond six years (e.g. two three-year terms)

for a non-executive director should be subject to particularly rigorous review, and should take into account the need for progressive refreshing of the board. Non-executive directors may serve longer than nine years (e.g. three three-year terms), subject to annual re-election. Serving more than nine years could be relevant to the determination of a non-executive director's independence (as set out in provision A.3.1).

## **B REMUNERATION**

### **B.1 The level and Make-up of Remuneration**

#### **Main Principles**

**Levels of remuneration should be sufficient to attract, retain and motivate directors of the quality required to run the company successfully, but a company should avoid paying more than is necessary for this purpose. A significant proportion of executive directors' remuneration should be structured so as to link rewards to corporate and individual performance.**

#### **Supporting Principle**

The remuneration committee should judge where to position their company relative to other companies. But they should use such comparisons with caution, in view of the risk of an upward ratchet of remuneration levels with no corresponding improvement in performance. They should also be sensitive to pay and employment conditions elsewhere in the group, especially when determining annual salary increases.

#### **Code Provisions**

##### **Remuneration policy**

- B.1.1 The performance-related elements of remuneration should form a significant proportion of the total remuneration package of executive directors and should be designed to align their interests with those of shareholders and to give these directors keen incentives to perform at the highest levels. In designing schemes of performance-related remuneration, the remuneration committee should follow the provisions in Schedule A to this Code.
- B.1.2 Executive share options should not be offered at a discount save as permitted by the relevant provisions of the Listing Rules.
- B.1.3 Levels of remuneration for non-executive directors should reflect the time commitment and responsibilities of the role. Remuneration for non-executive directors should not include share options. If, exceptionally, options are granted, shareholder approval should be sought in advance and any shares acquired by exercise of the options should be held until at least one year after the non-executive director leaves the board. Holding of share options could be relevant to the determination of a non-executive director's independence (as set out in provision A.3.1).

<p>Long-term incentive schemes should use performance criteria that properly reflect the best interests of members. Members of mutual life firms, as policyholders and providers of risk capital to the firm, will have different interests from shareholders in equivalent proprietary companies. The strategies that mutual life firms pursue and therefore the performance criteria</p>
--

that will be used in long-term incentive schemes may both be different from those of equivalent proprietary firms.

B.1.4 Where a company releases an executive director to serve as a non-executive director elsewhere, the remuneration report<sup>12</sup> should include a statement as to whether or not the director will retain such earnings and, if so, what the remuneration is.

### **Service Contracts and Compensation**

B.1.5 The remuneration committee should carefully consider what compensation commitments (including pension contributions and all other elements) their directors' terms of appointment would entail in the event of early termination. The aim should be to avoid rewarding poor performance. They should take a robust line on reducing compensation to reflect departing directors' obligations to mitigate loss.

B.1.6 Notice or contract periods should be set at one year or less. If it is necessary to offer longer notice or contract periods to new directors recruited from outside, such periods should reduce to one year or less after the initial period.

## **B.2 Procedure**

### **Main Principle**

**There should be a formal and transparent procedure for developing policy on executive remuneration and for fixing the remuneration packages of individual directors. No director should be involved in deciding his or her own remuneration.**

### **Supporting Principles**

The remuneration committee should consult the chairman and/or chief executive about their proposals relating to the remuneration of other executive directors. The remuneration committee should also be responsible for appointing any consultants in respect of executive director remuneration. Where executive directors or senior management are involved in advising or supporting the remuneration committee, care should be taken to recognise and avoid conflicts of interest.

---

<sup>12</sup> As required under Directors' Remuneration Report Regulations

The chairman of the board should ensure that the company maintains contact as required with its principal shareholders about remuneration in the same way as for other matters.

## **Code Provisions**

- B.2.1 The board should establish a remuneration committee of at least three, or in the case of smaller companies<sup>13</sup> two, members, who should all be independent non-executive directors. The remuneration committee should make available<sup>14</sup> its terms of reference, explaining its role and the authority delegated to it by the board. Where remuneration consultants are appointed, a statement should be made available<sup>15</sup> of whether they have any other connection with the company.
- B.2.2 The remuneration committee should have delegated responsibility for setting remuneration for all executive directors and the chairman, including pension rights and any compensation payments. The committee should also recommend and monitor the level and structure of remuneration for senior management. The definition of 'senior management' for this purpose should be determined by the board but should normally include the first layer of management below board level.
- B.2.3 The board itself or, where required by the Articles of Association, the shareholders should determine the remuneration of the non-executive directors within the limits set in the Articles of Association. Where permitted by the Articles, the board may however delegate this responsibility to a committee, which might include the chief executive.
- B.2.4 Shareholders should be invited specifically to approve all new long-term incentive schemes (as defined in the Listing Rules) and significant changes to existing schemes, save in the circumstances permitted by the Listing Rules.

---

<sup>13</sup> See footnote 7

<sup>14</sup> See footnote 8

<sup>15</sup> See footnote 8

## **C ACCOUNTABILITY AND AUDIT**

### **C.1 Financial Reporting**

#### **Main Principle**

**The board should present a balanced and understandable assessment of the company's position and prospects.**

#### **Supporting Principle**

The board's responsibility to present a balanced and understandable assessment extends to interim and other price-sensitive public reports and reports to regulators as well as to information required to be presented by statutory requirements.

#### **Code Provisions**

C.1.1 The directors should explain in the annual report their responsibility for preparing the accounts and there should be a statement by the auditors about their reporting responsibilities.

C.1.2 The directors should report that the business is a going concern, with supporting assumptions or qualifications as necessary.

### **C.2 Internal Control<sup>16</sup>**

#### **Main Principle**

**The board should maintain a sound system of internal control to safeguard shareholders' investment and the company's assets.**

#### **Code Provision**

C.2.1 The board should, at least annually, conduct a review of the effectiveness of the group's system of internal controls and should report to shareholders that they have done so. The review should cover all material controls, including financial, operational and compliance controls and risk management systems.

---

<sup>16</sup> The Turnbull guidance suggests means of applying this part of the Code.

## C.3 Audit Committee and Auditors<sup>17</sup>

### Main Principle

**The board should establish formal and transparent arrangements for considering how they should apply the financial reporting and internal control principles and for maintaining an appropriate relationship with the company's auditors.**

### Code provisions

C.3.1 The board should establish an audit committee of at least three, or in the case of smaller companies<sup>18</sup> two, members, who should all be independent non-executive directors. The board should satisfy itself that at least one member of the audit committee has recent and relevant financial experience.

C.3.2 The main role and responsibilities of the audit committee should be set out in written terms of reference and should include:

- to monitor the integrity of the financial statements of the company, and any formal announcements relating to the company's financial performance, reviewing significant financial reporting judgements contained in them;
- to review the company's internal financial controls and, unless expressly addressed by a separate board risk committee composed of independent directors, or by the board itself, to review the company's internal control and risk management systems;
- to monitor and review the effectiveness of the company's internal audit function;
- to make recommendations to the board, for it to put to the shareholders for their approval in general meeting, in relation to the appointment, re-appointment and removal of the external auditor and to approve the remuneration and terms of engagement of the external auditor;
- to review and monitor the external auditor's independence and objectivity and the effectiveness of the audit process, taking into consideration relevant UK professional and regulatory requirements;
- to develop and implement policy on the engagement of the external auditor to supply non-audit services, taking into account relevant ethical guidance regarding the provision of non-audit services by the external audit firm; and to

---

<sup>17</sup> The Smith guidance suggests means of applying this part of the Code

<sup>18</sup> See footnote 7

report to the board, identifying any matters in respect of which it considers that action or improvement is needed and making recommendations as to the steps to be taken.

- C.3.3 The terms of reference of the audit committee, including its role and the authority delegated to it by the board, should be made available.<sup>19</sup> A separate section of the annual report should describe the work of the committee in discharging those responsibilities.
- C.3.4 The audit committee should review arrangements by which staff of the company may, in confidence, raise concerns about possible improprieties in matters of financial reporting or other matters. The audit committee's objective should be to ensure that arrangements are in place for the proportionate and independent investigation of such matters and for appropriate follow-up action.
- C.3.5 The audit committee should monitor and review the effectiveness of the internal audit activities. Where there is no internal audit function, the audit committee should consider annually whether there is a need for an internal audit function and make a recommendation to the board, and the reasons for the absence of such a function should be explained in the relevant section of the annual report.
- C.3.6 The audit committee should have primary responsibility for making a recommendation on the appointment, reappointment and removal of the external auditors. If the board does not accept the audit committee's recommendation, it should include in the annual report, and in any papers recommending appointment or re-appointment, a statement from the audit committee explaining the recommendation and should set out reasons why the board has taken a different position.
- C.3.7 The annual report should explain to shareholders how, if the auditor provides non-audit services, auditor objectivity and independence is safeguarded.

---

<sup>19</sup> See footnote 8

## **D RELATIONS WITH SHAREHOLDERS**

### **D.1 Dialogue with Institutional Shareholders**

#### **Main Principle**

**There should be a dialogue with shareholders based on the mutual understanding of objectives. The board as a whole has responsibility for ensuring that a satisfactory dialogue with shareholders takes place.<sup>20</sup>**

The boards of life mutuals should consider how dialogue with members can best be facilitated, drawing on best practice guidance by the AMI and the AFS. Their policy for doing this should be clearly articulated to members in the Annual Report and on the firm's website. Where, in accordance with that guidance, life mutuals have established policyholder panels or delegate systems, they should be regarded, insofar as it is possible, as performing the same role as institutional or major shareholders in the Combined Code.

#### **Supporting Principles**

Whilst recognising that most shareholder contact is with the chief executive and finance director, the chairman (and the senior independent director and other directors as appropriate) should maintain sufficient contact with major shareholders to understand their issues and concerns.

The board should keep in touch with shareholder opinion in whatever ways are most practical and efficient.

#### **Code Provisions**

D.1.1 The chairman should ensure that the views of shareholders are communicated to the board as a whole. The chairman should discuss governance and strategy with major shareholders. Non-executive directors should be offered the opportunity to attend meetings with major shareholders and should expect to attend them if requested by major shareholders. The senior independent director should attend sufficient meetings with a range of major shareholders to listen to their views in order to help develop a balanced understanding of the issues and concerns of major shareholders.

---

<sup>20</sup> Nothing in these principles or provisions should be taken to override the general requirements of law to treat **shareholders** equally in access to information.

D.1.2 The board should state in the annual report the steps they have taken to ensure that the members of the board, and in particular the non-executive directors, develop an understanding of the views of major shareholders about their company, for example through direct face-to-face contact, analysts' or brokers' briefings and surveys of shareholder opinion.

## **D.2 Constructive Use of the AGM**

### **Main Principle**

**The board should use the AGM to communicate with investors and to encourage their participation.**

### **Code Provisions**

D.2.1 The company should count all proxy votes and, except where a poll is called, should indicate the level of proxies lodged on each resolution, and the balance for and against the resolution and the number of abstentions, after it has been dealt with on a show of hands. The company should ensure that votes cast are properly received and recorded.

D.2.2 The company should propose a separate resolution at the AGM on each substantially separate issue and should in particular propose a resolution at the AGM relating to the report and accounts.

D.2.3 The chairman should arrange for the chairmen of the audit, remuneration and nomination committees to be available to answer questions at the AGM and for all directors to attend.

D.2.4 The company should arrange for the Notice of the AGM and related papers to be sent to shareholders at least 20 working days before the meeting.

The Friendly Societies Act 1992 Schedule 12 states that a meeting of a friendly society or registered branch must be called by not less than 14 days notice to members, or such longer period as the rules may require, expiring either with the date of the meeting or where proxy voting is permitted, with such earlier date as may be specified by the society, under its rules, as the final date for the receipt of instruments appointing proxies to vote at the meeting.

## SECTION 2 – INSTITUTIONAL SHAREHOLDERS

### E. INSTITUTIONAL SHAREHOLDERS<sup>21</sup>

#### E.1 Dialogue with companies

##### Main Principle

**Institutional shareholders should enter into a dialogue with companies based on the mutual understanding of objectives.**

##### Supporting Principles

Institutional shareholders should apply the principles set out in the Institutional Shareholders' Committee's "The Responsibilities of Institutional Shareholders and Agents - Statement of Principles"<sup>22</sup>, which should be reflected in fund manager contracts.

#### E.2 Evaluation of Governance Disclosures

##### Main Principle

**When evaluating companies' governance arrangements, particularly those relating to board structure and composition, institutional shareholders should give due weight to all relevant factors drawn to their attention.**

##### Supporting Principle

Institutional shareholders should consider carefully explanations given for departure from this Code and make reasoned judgements in each case. They should give an explanation to the company, in writing where appropriate, and be prepared to enter a dialogue if they do not accept the company's position. They should avoid a box-ticking approach to assessing a company's corporate governance. They should bear in mind in particular the size and complexity of the company and the nature of the risks and challenges it faces.

---

<sup>21</sup> Agents such as investment managers, or voting services are frequently appointed by institutional shareholders to act on their behalf and these principles should accordingly be read as applying where appropriate to the agents of institutional shareholders.

<sup>22</sup> Available at website: [www.investmentuk.org.uk/press/2002/20021021-01.pdf](http://www.investmentuk.org.uk/press/2002/20021021-01.pdf)

### **E.3 Shareholder Voting**

#### **Main Principle**

**Institutional shareholders have a responsibility to make considered use of their votes.**

#### **Supporting Principles**

Institutional shareholders should take steps to ensure their voting intentions are being translated into practice.

Institutional shareholders should, on request, make available to their clients information on the proportion of resolutions on which votes were cast and non-discretionary proxies lodged.

Major shareholders should attend AGMs where appropriate and practicable. Companies and registrars should facilitate this.

## **Schedule A: Provisions on the design of performance related remuneration**

1. The remuneration committee should consider whether the directors should be eligible for annual bonuses. If so, performance conditions should be relevant, stretching and designed to enhance shareholder value. Upper limits should be set and disclosed. There may be a case for part payment in shares to be held for a significant period.
2. The remuneration committee should consider whether the directors should be eligible for benefits under long-term incentive schemes. Traditional share option schemes should be weighed against other kinds of long-term incentive scheme. In normal circumstances, shares granted or other forms of deferred remuneration should not vest, and options should not be exercisable, in less than three years. Directors should be encouraged to hold their shares for a further period after vesting or exercise, subject to the need to finance any costs of acquisition and associated tax liabilities.
3. Any new long-term incentive schemes which are proposed should be approved by shareholders and should preferably replace any existing schemes or at least form part of a well considered overall plan, incorporating existing schemes. The total rewards potentially available should not be excessive.
4. Payouts or grants under all incentive schemes, including new grants under existing share option schemes, should be subject to challenging performance criteria reflecting the company's objectives. Consideration should be given to criteria which reflect the company's performance relative to a group of comparator companies in some key variables such as total shareholder return.
5. Grants under executive share option and other long-term incentive schemes should normally be phased rather than awarded in one large block.
6. In general, only basic salary should be pensionable.
7. The remuneration committee should consider the pension consequences and associated costs to the company of basic salary increases and any other changes in pensionable remuneration, especially for directors close to retirement.

## **Schedule B: Guidance on liability of non-executive directors: care, skill and diligence**

1. Although non-executive directors and executive directors have as board members the same legal duties and objectives, the time devoted to the company's affairs is likely to be significantly less for a non-executive director than for an executive director and the detailed knowledge and experience of a company's affairs that could reasonably be expected of a non-executive director will generally be less than for an executive director. These matters may be relevant in assessing the knowledge, skill and experience which may reasonably be expected of a non-executive director and therefore the care, skill and diligence that a non-executive director may be expected to exercise.
2. In this context, the following elements of the Code may also be particularly relevant.
  - (i) In order to enable directors to fulfil their duties, the Code states that:
    - The letter of appointment of the director should set out the expected time commitment (Code provision A.4.4); and
    - The board should be supplied in a timely manner with information in a form and of a quality appropriate to enable it to discharge its duties. The chairman is responsible for ensuring that the directors are provided by management with accurate, timely and clear information. (Code principles A.5).
  - (ii) Non-executive directors should themselves:
    - Undertake appropriate induction and regularly update and refresh their skills, knowledge and familiarity with the company (Code principle A.5 and provision A.5.1)
    - Seek appropriate clarification or amplification of information and, where necessary, take and follow appropriate professional advice. (Code principle A.5 and provision A.5.2)
    - Where they have concerns about the running of the company or a proposed action, ensure that these are addressed by the board and, to the extent that they are not resolved, ensure that they are recorded in the board minutes (Code provision A.1.4).
    - Give a statement to the board if they have such unresolved concerns on resignation (Code provision A.1.4)
3. It is up to each non-executive director to reach a view as to what is necessary in particular circumstances to comply with the duty of care, skill and diligence they owe as a director to the company. In considering whether or not a person is in breach of that duty, a court would take into account all relevant circumstances. These may include having regard to the above where relevant to the issue of liability of a non-executive director.

## **Schedule C: Disclosure of corporate governance arrangements**

The Listing Rules require a statement to be included in the annual report relating to compliance with the Code, as described in the preamble.

For ease of reference, the specific requirements in the Code for disclosure are set out below:

The annual report should record:

- a statement of how the board operates, including a high level statement of which types of decisions are to be taken by the board and which are to be delegated to management (A.1.1);
- the names of the chairman, the deputy chairman (where there is one), the chief executive, the senior independent director and the chairmen and members of the nomination, audit and remuneration committees (A.1.2);
- the number of meetings of the board and those committees and individual attendance by directors (A.1.2);
- the names of the non-executive directors whom the board determines to be independent, with reasons where necessary (A.3.1);
- the other significant commitments of the chairman and any changes to them during the year (A.4.3);
- how performance evaluation of the board, its committees and its directors has been conducted (A.6.1);
- the steps the board has taken to ensure that members of the board, and in particular the non-executive, develop an understanding of the views of major shareholders about their company (D.1.2)

The report should also include:

- a separate section describing the work of the nomination committee, including the process it has used in relation to board appointments and an explanation if neither external search consultancy nor open advertising has been used in the appointment of a chairman or a non-executive director (A.4.6);
- a description of the work of the remuneration committee as required under the Directors' Remuneration Reporting Regulations 2002, and including, where an executive director serves as a non-executive director elsewhere, whether or not the director will retain such earnings and, if so, what the remuneration is (B.1.4);

- an explanation from the directors of their responsibility for preparing the accounts and a statement by the auditors about their reporting responsibilities (C.1.1);
- a statement from the directors that the business is a going concern, with supporting assumptions or qualifications as necessary (C.1.2);
- a report that the board has conducted a review of the effectiveness of the group's system of internal controls (C.2.1);
- a separate section describing the work of the audit committee in discharging its responsibilities (C.3.3);
- where there is no internal audit function, the reasons for the absence of such a function (C.3.5);
- where the board does not accept the audit committee's recommendation on the appointment, reappointment or removal of an external auditor, a statement from the audit committee explaining the recommendation and the reasons why the board has taken a different position (C.3.6); and
- an explanation of how, if the auditor provides non-audit services, auditor objectivity and independence is safeguarded (C.3.7).

**The following information should be made available (which may be met by making it available on request and placing the information available on the company's website):**

- the terms of reference of the nomination, remuneration and audit committees, explaining their role and the authority delegated to them by the board (A.4.1, B.2.1 and C.3.3);
- the terms and conditions of appointment of non-executive directors (A.4.4) (see footnote 10 on page 9); and
- where remuneration consultants are appointed, a statement of whether they have any other connection with the company (B.2.1).

**The board should set out to shareholders in the papers accompanying a resolution to elector re-elect:**

- sufficient biographical details to enable shareholders to take an informed decision on their election or re-election (A.7.1).

- why they believe an individual should be elected to a non-executive role (A.7.2).
- on re-election of a non-executive director, confirmation from the chairman that, following formal performance evaluation, the individual's performance continues to be effective and to demonstrate commitment to the role, including commitment of time for board and committee meetings and any other duties (A.7.2).

**The board should set out to shareholders in the papers recommending appointment or reappointment of an external auditor:**

- if the board does not accept the audit committee's recommendation, a statement from the audit committee explaining the recommendation and from the board setting out reasons why they have taken a different position (C.3.6).

ISBN 1-84532-073-5



9 781845 320737 >