



Executive Pay Discussion Paper
Business Environment
Department of Business, Innovation and Skills
1 Victoria Street
London
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Via email to: executivepaydiscussionpaper@bis.gsi.gov.uk

23 January 2012

Executive Pay

Dear Sirs,

Further to our previous submission to the "Executive Pay Discussion Paper", there have been a number of issues that have arisen in public discussions on this problem. We would therefore like to explain our stance further:

1. We welcome the intention to introduce a binding vote on pay, as stated by Mr Cameron. Some people have suggested this would cause practical difficulties but that is not the case if the system we suggested was introduced – namely a binding vote on total pay of the whole board at the AGM for the current year. This would effectively make it "in advance" rather than retrospective as at present. There could be a "margin" built in to allow for changes of personnel during the year or some exceptional bonus awards. If the vote was lost, then the previously agreed level would persist (or the company could call another vote). We also recommend that the systems used for binding votes in other countries are examined.

2. Some commentators have suggested that as so few votes on existing Remuneration Resolutions are lost (i.e. there are so few votes against), that making them binding would not make much difference. There are three comments we have on that:

A – We agree that without other changes, such a measure might not be particularly effective, but we see this as an element in a "package" of measures that are required to tackle the pay problem. See below for what we perceive to be the required components of such a package.

B – Many people and institutions may not take the trouble to vote, or to vote against, because they know that Remuneration Resolutions are only advisory, so the company can ignore them as they have done in some cases, and the fact that they are retrospective means that past decisions about remuneration would be very difficult to unwind. Why would people bother to study complex remuneration reports when they realise that voting against would be equivalent to shutting the stable door after the horse has bolted? Making a remuneration resolution binding would likely stimulate more attention and voting given that it would clearly have more power than existing remuneration report votes.

C – It is clear that one reason why many institutions do not vote against remuneration reports is because they are reluctant to openly oppose the wishes of board Chairmen and the views of other directors.

They may lose access in future, or have difficulty in influencing the board on other issues that they may consider more important. In addition an employee of an institution who is dealing with corporate governance matters may find that his/her role and competence might be challenged in public, or in private to their superiors, by the board they are challenging. How to tackle these issues is a problem that must be examined.

3. One particular problem is the tendency of institutions to “abstain” rather than vote against – so that they can indicate displeasure without outright opposition. This tendency might actually increase if the vote was binding. The simplest way to tackle this is perhaps to introduce into the Stewardship Code a recommendation that on the remuneration vote there should be no abstentions. If an institution is unhappy with pay recommendations in any respect, then they should vote against.

4. Another, or possibly complementary, approach which has been advocated by others is that **remuneration resolutions should be made special resolutions**. That would mean that a 75% vote in favour would be required to pass it. **We believe that would be a very advantageous additional measure.**

5. It is a truism that a binding vote on pay would not be a problem so long as there was general support from major shareholders on the pay proposals. Indeed we would argue that a fourth major benefit of a binding vote is that it would encourage boards of companies to ensure that full consultation took place before any remuneration policies are set in stone and put to a vote. Boards of directors would surely take more care to ensure that their proposals were acceptable to the majority of shareholders if they knew that a lost vote might be very inconvenient.

It is important to encourage proper consultation on pay, and an agreed consensus on what it should be, before it comes to a vote at an AGM.

6. Even better, of course, if the Remuneration Committee that produces pay recommendations comes up with proposals that are likely to be widely accepted by shareholders. So reform of those committees, as advocated by Mr Cameron, is surely also essential. We would not be having the current public debate on excessive remuneration if remuneration committees had been doing their job properly. ShareSoc has previously suggested that remuneration committees (and nomination committees) should consist of shareholders and other stakeholders, with only one seat occupied by a board director and we stand by that suggestion.

It has been argued that this would be impractical because of the number of investments held by many institutions – they might be required to put a representative forward for each company’s remuneration committee. But that is not the case. Obviously not all institutions could be represented on such committees - there are too many – but it is not necessary for all institutions to be represented on all such committees. All that matters is that there are representatives that have the interests of shareholders at heart and of the wider community, and that the committee is not dominated by the directors who have a vested increase in increasing general levels of board pay.

Another objection raised to these proposals was the issue of “concert parties” and the risk of making committee members “insiders”. However those risks are already present in the extensive consultation that takes place between boards and their major investors – about pay and other matters. The “insider” issue is not a new problem – it is already there but nobody has paid any attention to resolving it, which needs to be done. No practical “engagement” can take place without inside information being disclosed (the “concert party” issue is already being tackled).

7. The problem mentioned in 2C above, of institutions being reluctant to vote against pay, is of course not a problem faced by private investors. They have no need to maintain amicable relationships with boards, or concerns about being publicly challenged. They are their own masters and beholden to nobody else. So they would be a powerful influence to control excessive pay if they had a vote. Unfortunately at present the use of nominee accounts and the other changes to company law over the years have disenfranchised them. This problem needs tackling.

8. To summarise, these are the 5 key elements of a comprehensive solution to the problem of excessive remuneration:

A. A binding and forward looking vote on pay at AGMs via a special resolution.

B. Remuneration and nomination committees should become “shareholder committees”, i.e. the members should be shareholder representatives with some role for individual shareholders who are more likely to take an independent stance.

C. Improved pay reporting with a national body producing comparative data needs to be introduced, so that everyone can see comparative data not just the boards remuneration consultants and a few major institutions.

D. The role of institutional investors and their lack of engagement needs to be tackled.

E. The disenfranchisement of individual shareholders needs fixing where most do not or cannot vote due to the use of nominee accounts.

None of those in isolation are likely to be effective, but together they could be. We hope you will consider these additional comments and take them on board.

Yours sincerely

Roger W. Lawson
Chairman

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