



Barry Walker
Executive Pay Consultation
Business Environment
Department of Business, Innovation and Skills
1 Victoria Street
London
SW1H 0ET

Via email to: executive.pay@bis.gsi.gov.uk

22 April 2012

Executive Pay: Shareholder Voting Rights Consultation

Dear Mr Walker,

Attached are our responses posed to the specific questions posed in the Shareholder Voting Rights Consultation. We do not consider our comments confidential. In addition we would like to highlight certain specific issues in this covering letter:

1. We fully support the proposal to have a binding vote on remuneration policy in advance of it being implemented. But it is not entirely clear how the timescale of voting is to work. Some public companies do not hold their AGMs until many months into their current financial year so in practice it may not enable implementation of any new policy until many months into the year. Are companies expected to commence a new policy which only then gets approved later, or are these recommendations to apply to the next financial year? Perhaps some clarity could be provided on how these proposals are expected to operate within the time scales of the normal reporting and annual meeting calendars.

Note though that we welcome the requirement outlined in paragraph 59 of the consultation document on the proposed content of remuneration policy statements and we ask that this be not watered down in future so that the impact of such votes is maintained.

2. 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. Although a higher percentage approval voting requirement is one way to tackle this, we would like to see a recommendation in the Stewardship Code that on any remuneration votes there should be no abstentions. If an institution is unhappy with pay recommendations in any respect, then they should vote against.

3. As regards the question of a higher level of vote being required on the binding remuneration vote (Question 6 in the attached), we have some additional comments. As is pointed out in the Consultation Document "*...the threat of a binding vote would put pressure on companies to act early to ensure shareholder support and to be more open and transparent...*". We argue that a higher voting level would ensure even more pressure was brought to bear.

There have been two recent cases that help to highlight this issue. That of Easyjet where one shareholder has influence over 38% of the shares, and objected to a recent remuneration report. Although he might be seen as a persistent troublemaker by the company due to other past events, so they have argued that a 75% vote would be too onerous, we do not agree. In our view, the complainant's objections were quite well founded.

In essence the remuneration policy at Easyjet is surely a typical example of what is wrong with pay in public companies at present. Too complex, excessively "bonus" orientated and in summary too large. Sir Stelios Haji-Ioannou argued that the company was manipulating the numbers by using an unusual way of calculating "return on capital" which is an element in the bonus calculations. Whatever the merits of the arguments on this issue from one side or the other, we suggest that an amicable solution that was acceptable to the board, to Sir Stelios and to other shareholders could probably have been achieved if the company had been forced to negotiate in advance of the vote. As it was, it degenerated into a retrospective argument about what should have been done, which forced shareholders to side with one party or the other, which is not the best approach to achieving consensus.

Another recent case was that of RM Plc, a company in some difficulties where a new Chairman was appointed and then took on the role of Executive Chairman. Soon after a new performance bonus scheme was introduced for the Chairman and other managers which is based purely on share price performance. In addition, the option numbers for the Chairman are so large that they breach the ABI guidelines for excessive dilution prevention. These most peculiar arrangements were not supported by 31% and 28% of shareholders on the relevant resolutions. So in essence they passed at the 50% level, but would not have at the 75% level. In our view they should rightly not have passed. In our view, the corporate governance at this company is poor and the AGM to approve these resolutions took place at 9.00 am on a Monday morning in Abingdon which rather suggests an attempt to suppress public dissent on the matter. There has been no indication from the company that these arrangements will be reconsidered (and of course they would be difficult to unwind hence the necessity of a "prospective" binding vote).

4. One issue not mentioned in the consultation document is the question of which companies should be covered by this legislation. We would like Remuneration votes to be taken in all public companies (PLCs) not just "quoted" companies. At present AIM companies are not required to have even advisory remuneration votes so most do not and are not technically "quoted" companies. As a result this is a sector where remuneration abuses are rampant.

There are of course more AIM listed companies than there are companies on the main LSE market, and although AIM companies are generally smaller in size, there is considerable overlap.

5. Another point not considered in the current consultation is the issue of ensuring that Remuneration Committees produce pay recommendations that are likely to be widely accepted by shareholders. So reform of those committees 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.

6. The reluctance of institutions to vote against remuneration policies put forward by directors 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.

7. To summarise, these are the 5 key elements of a comprehensive solution to the problem of excessive remuneration which we have advocated for some time:

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

About the UK Individual Shareholders Society (ShareSoc)

ShareSoc represents and supports individual investors who invest in the UK stock markets. We are a mutual association controlled by the members with "not-for-profit" articles and incorporated as a company limited by guarantee. The organisation is financed by member subscriptions, donations from supporters and by the services it provides to members. More information on ShareSoc can be obtained from our web site at www.sharesoc.org (our objects are fully defined on this page: www.sharesoc.org/objects.html).



Barry Walker
Executive Pay Consultation
Business Environment
Department of Business, Innovation and Skills
1 Victoria Street
London
SW1H 0ET

Via email to: executive.pay@bis.gsi.gov.uk

22 April 2012

Executive Pay: Shareholder Voting Rights Consultation

Dear Mr Walker,

Attached are our responses posed to the specific questions posed in the Shareholder Voting Rights Consultation. We do not consider our comments confidential. In addition we would like to highlight certain specific issues in this covering letter:

1. We fully support the proposal to have a binding vote on remuneration policy in advance of it being implemented. But it is not entirely clear how the timescale of voting is to work. Some public companies do not hold their AGMs until many months into their current financial year so in practice it may not enable implementation of any new policy until many months into the year. Are companies expected to commence a new policy which only then gets approved later, or are these recommendations to apply to the next financial year? Perhaps some clarity could be provided on how these proposals are expected to operate within the time scales of the normal reporting and annual meeting calendars.

Note though that we welcome the requirement outlined in paragraph 59 of the consultation document on the proposed content of remuneration policy statements and we ask that this be not watered down in future so that the impact of such votes is maintained.

2. 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. Although a higher percentage approval voting requirement is one way to tackle this, we would like to see a recommendation in the Stewardship Code that on any remuneration votes there should be no abstentions. If an institution is unhappy with pay recommendations in any respect, then they should vote against.

3. As regards the question of a higher level of vote being required on the binding remuneration vote (Question 6 in the attached), we have some additional comments. As is pointed out in the Consultation Document "*...the threat of a binding vote would put pressure on companies to act early to ensure shareholder support and to be more open and transparent...*". We argue that a higher voting level would ensure even more pressure was brought to bear.

There have been two recent cases that help to highlight this issue. That of Easyjet where one shareholder has influence over 38% of the shares, and objected to a recent remuneration report. Although he might be seen as a persistent troublemaker by the company due to other past events, so they have argued that a 75% vote would be too onerous, we do not agree. In our view, the complainant's objections were quite well founded.

In essence the remuneration policy at Easyjet is surely a typical example of what is wrong with pay in public companies at present. Too complex, excessively "bonus" orientated and in summary too large. Sir Stelios Haji-Ioannou argued that the company was manipulating the numbers by using an unusual way of calculating "return on capital" which is an element in the bonus calculations. Whatever the merits of the arguments on this issue from one side or the other, we suggest that an amicable solution that was acceptable to the board, to Sir Stelios and to other shareholders could probably have been achieved if the company had been forced to negotiate in advance of the vote. As it was, it degenerated into a retrospective argument about what should have been done, which forced shareholders to side with one party or the other, which is not the best approach to achieving consensus.

Another recent case was that of RM Plc, a company in some difficulties where a new Chairman was appointed and then took on the role of Executive Chairman. Soon after a new performance bonus scheme was introduced for the Chairman and other managers which is based purely on share price performance. In addition, the option numbers for the Chairman are so large that they breach the ABI guidelines for excessive dilution prevention. These most peculiar arrangements were not supported by 31% and 28% of shareholders on the relevant resolutions. So in essence they passed at the 50% level, but would not have at the 75% level. In our view they should rightly not have passed. In our view, the corporate governance at this company is poor and the AGM to approve these resolutions took place at 9.00 am on a Monday morning in Abingdon which rather suggests an attempt to suppress public dissent on the matter. There has been no indication from the company that these arrangements will be reconsidered (and of course they would be difficult to unwind hence the necessity of a "prospective" binding vote).

4. One issue not mentioned in the consultation document is the question of which companies should be covered by this legislation. We would like Remuneration votes to be taken in all public companies (PLCs) not just "quoted" companies. At present AIM companies are not required to have even advisory remuneration votes so most do not and are not technically "quoted" companies. As a result this is a sector where remuneration abuses are rampant.

There are of course more AIM listed companies than there are companies on the main LSE market, and although AIM companies are generally smaller in size, there is considerable overlap.

5. Another point not considered in the current consultation is the issue of ensuring that Remuneration Committees produce pay recommendations that are likely to be widely accepted by shareholders. So reform of those committees 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.

6. The reluctance of institutions to vote against remuneration policies put forward by directors 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.

7. To summarise, these are the 5 key elements of a comprehensive solution to the problem of excessive remuneration which we have advocated for some time:

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

About the UK Individual Shareholders Society (ShareSoc)

ShareSoc represents and supports individual investors who invest in the UK stock markets. We are a mutual association controlled by the members with "not-for-profit" articles and incorporated as a company limited by guarantee. The organisation is financed by member subscriptions, donations from supporters and by the services it provides to members. More information on ShareSoc can be obtained from our web site at www.sharesoc.org (our objects are fully defined on this page: www.sharesoc.org/objects.html).