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A joint submission on behalf of Private Investors from ShareSoc and UKSA

Corporate Governance Reform Team
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Response to BEIS Consultation on Green Paper on Corporate Governance

Dear Sirs,

This response to the Green Paper has been developed jointly by The UK Shareholders' Association (UKSA) and the UK Individual Shareholders' Society (ShareSoc). Both organisations represent the interests of private shareholders who invest (directly or indirectly via nominee accounts) in public companies or in other forms of equity-based investment. Both are independently funded by concerned individuals who pay a membership fee.

Fundamental Issues

1. **Engagement between shareholders and companies is not working.** Shareholders are not exercising effective stewardship and control, and boards are failing to fulfil their fiduciary obligations to members. As a result, public trust in business is low. This is bad for business and for long term investors. It needs to be addressed.

2. **The ownership structure of public corporations means that the views and interests of ultimate beneficial owners are not given sufficient weight.** The bulk of public company shares are controlled by institutions whose interests are often not aligned with those of the beneficial owners. BEIS (when it was BIS), to its credit, addressed this in its recent report on share ownership (Research Paper 261).

3. **Shareholder Committees:** We strongly support the concept of Shareholder Committees, provided that they represent the interests of all shareholders, including private investors and investors in employee share plans. Our recent very disappointing experience with the Board of the Royal Bank of Scotland Group plc suggests that UK boards are unlikely to implement shareholder committees unless these are mandatory.

4. **Problems of the voting chain:** This is not highlighted in the Green Paper. The proliferation of shareholders who are not directly interested in the companies in which they own shares– for example, intermediaries, ETFs, tracker funds and other index-related funds - corrupts the governance and stewardship process and the associated governance checks and balances. This is exacerbated by stock-lending – a process which is actually a sale-and-repurchase in which ownership rights (including the right to vote) pass to the 'borrower' for a fee. This prejudices the concept of corporate governance based on shareholder oversight, and places too much influence over our companies in the hands of traders - the ultimate cause of short-termism.

5. **Disenfranchisement of individual shareholders:** The Green Paper recognises the problem that most private investors are now obliged to hold their shares in pooled nominee accounts wherein shares are legally owned by an intermediary. The ability and rights of informed individual investors to influence the affairs of companies in which they have invested is fundamental to good governance. With current digital technology, it should be feasible to ensure that, at a minimum, the names of beneficial owners are placed on the share registers of the companies in which they invest so that they can receive normal shareholder communications and voting rights.

6. **Complexity of boardroom pay:** Systems of remuneration for directors have become excessively complex, as a result of the structural governance weaknesses identified in the Green Paper. The mechanisms for triggering bonus payments have become opaque, the quantum of the payouts is often impossible to predict, the true motivational impact has become questionable while the reporting to shareholders has become cumbersome and often obscure to the point of incomprehension.

7. **Weaknesses of long-term incentives:** Boards and their advisors have taken advantage of the lack of voting integrity to implement complex LTIPs as a major part of the overall remuneration package. It is widely accepted that the longer a reward is deferred the less motivational impact it has on the recipient. It is also accepted that for performance incentives to work, the achievement of outcomes must be within the control of the recipient. The current system of long-term incentives fails both these tests. The current system to a large degree reflects guidance from institutional investors (who via engagement and voting have insisted companies pay directors this way). We take a simple view: the use of complex financial incentives to do a responsible and challenging job properly is inappropriate. It can also encourage perverse behaviour which we do not want from those who run our companies.

Shareholder Committees are a core part of the solution to the problems of corporate governance. There are many other elements of governance and control that can be improved and we have commented in our response on those where we have specific knowledge. However, without Shareholder Committees, and concomitant reform to restore the rights of individual shareholders, other changes to corporate governance are unlikely to produce meaningful change.

Our responses to the specific questions set out in the Green Paper are given below. ShareSoc and UKSA would be pleased to discuss these and the summary above in more detail with the Department.
Please note although we remain separate organisations, UKSA and ShareSoc are working increasingly closely together. In recognition of this we have decided that we should each submit a response to BEIS but that the response should be exactly the same, in each case. We would however like to be listed separately on your list of those organisations who have responded to the Green Paper.

Yours sincerely,

Mark Northway, Chairman, ShareSoc
Cliff Weight, Director, ShareSoc

We have responded below in more detail to the specific questions from the point of view of our members, who are individual shareholders.

Responses to specific questions

Executive Pay

Q1 Do shareholders need stronger powers to improve their ability to hold companies to account on executive pay and performance? If so, which of the options mentioned in the Green Paper would you support? Are there other options that should be considered?

The current system of having a binding vote on the pay policy and an advisory vote on the actual pay award after it has been made is not effective for the following reasons:

- The pay policy is exactly what it says: a broad statement of the underlying principles upon which the company plans to base its boardroom pay; it will often state the main components of the pay package but it is clear that there have been a number of cases where even the Remuneration Committee has no idea what the ultimate outcome might be in terms of the size of future pay awards which could result from the policy. For shareholders the implications of the policy are often very opaque. At the heart of this problem is the fact that directors' pay has become far too complex. If directors' pay consisted of just an annual salary with no bonus elements the policy might be more transparent and a binding vote might be effective. Under the current circumstances this is not the case.
- The advisory vote on pay is little more than a charade; the pay award has already been made and, even in cases where there is a serious revolt from shareholders, practical and contractual considerations mean that the pay cannot realistically be clawed back.

Our views on each of the three options are:

We support option (i) the binding vote. Delaying bonus payments until after AGM approval is not a problem.

Votes on remuneration should be special resolutions and require a 75% majority.

We would like to see:

- Both the pay policy and the pay package in any year subject to a binding vote;
- The performance-related element of the annual pay award to be paid only after it has been approved at the AGM;
- These rules applied to all listed companies.

The proposed pay for directors (certainly for FTSE 100 companies) is known well before the AGM and is often the subject of discussion between the company and the major shareholders. It is often well covered in the press and media. A vote against a pay award should not come as a surprise to the company and the knowledge that a vote on pay will be binding might encourage them to reconsider a pay award that investors consider excessive.

To make this system work there should to be a binding vote on each of the main elements the pay award – for example, salary, the short-term bonus and the LTIP award and pension (unless the value as % of salary is the same as for the general workforce of the company).

Option (ii): Stronger consequences if advisory vote is lost. We are not in favour of this. Options 1 and 2 are mutually exclusive and we believe that Option 1 which makes provision for a binding vote on pay provides a much better solution.

Option (iii): Upper limit on total pay: We would support a system whereby the company's pay policy specified an upper limit or cap on total pay that the CEO (and other directors) could earn. The cap could be reviewed each year and there should be a binding annual vote by shareholders on the pay policy. The current system allows Sir John Hood, Chair of the remuneration Committee at WPP, to claim that he might have reconsidered the WPP pay policy had he realised that it might pay out over £70m in a single year to CEO Sir Martin Sorrell. This is as absurd as it is unacceptable.

The very fact that it would be difficult to implement a cap on total pay with current approaches to pay performance related pay is, paradoxically, one of its attractions. One of the effects that it is likely to have is to force a return to compensation packages that are less opaque and less complex and which are based on 'cash' amounts rather than awards of shares and options. Achieving a share price target can be set as a performance objective for which directors could receive an agreed bonus. There is no need for opaque systems. If directors want shares they can buy them in the market like everyone else. If companies want executives to own shares they can encourage or mandate it.

It is already the case that the remuneration policy is required to illustrate the potential payments. The heart of the problem of concealed rewards is DRRS SI 1906 para 34(1)(c) "not allowing for any share price appreciation". This should be redrafted as illustrating the impact of share price movements, e.g. if share price doubles or trebles, as suggested in the ShareSoc Remuneration Guidelines.

Option (iv): Binding vote on pay policy to be held, say, annually. We would not oppose this but nor would we strongly support it. It is not clear what the benefit of this option would be. If companies want to change their pay policy they can do so at any time and put the new policy to a vote at the AGM.

Regarding Option (v) engagement and need for more guidance in the Code, we would recommend changing the Code so that if a vote for Remuneration or the reappointment of the director who was/is Chair of the Remuneration Committee is less than [90%] in favour, the company should be required to implement a Shareholder Committee for a minimum of 5 years.

We would like to see public companies implement Shareholder Committees voluntarily. Our experience with RBS makes it very clear that this will not happen. We think BEIS should mandate this now for FTSE100 companies, then revisit the concept in 2 years time and, if deemed appropriate, mandate Shareholder Committees for all listed and AIM companies.

The informal nature of most current engagements, of meetings (cosy chats?) behind closed doors, does not work. It is not clear whether different investors are being given the same information, or whether complete or only partial information is being provided. Inevitably investors will ask different questions during their engagement meetings and so may develop a different interpretation of what the company is trying to achieve. Ad hoc engagements tend to only occur when a problem arises, and too often fan conflicts rather than resolving them.

Currently, when a large number of investors are "consulted", it is difficult to have the same conversation with each investor and the proposal often changes as the engagement process is carried out. Currently, the different views of different investors create a very "messy" backcloth in which to engage. Companies complain they have to trade off one investor's requests against another and the result is too often an unsatisfactory compromise rather than what is needed.

For example, in relation to a remuneration proposal, there is no audit trail of the initial proposal though to the final version voted on by shareholders (we do not mean this in the forma audit sense, but those engaged cannot follow the trail of the initial proposal though to the final version voted on by shareholders, with explanations of the changes and who had asked for them).

The case of BP (where the advisory vote was 60% against the $20 million remuneration package of Bob Dudley, but he was still paid it) is an example of where engagement went wrong.

Another more recent example of engagement producing negative headlines is Imperial Brands, http://www.thetimes.co.uk/article/imperial-on-the-rack-over-bosss-bonus-bonanza-3brgvtzr3 Sunday Times 14 Jan 2017. And Daily Mail http://www.thisismoney.co.uk/money/markets/article-4161632/Boss-tobacco-giant-Imperial-Brands-loses-3m-pay-rise.html

Voting happens too late in the process. The vote at the AGM is too late, as institutions do not like to vote against the directors' recommendations. This impasse can be broken - through the introduction of Shareholder Committees, who will be able to engage much earlier in the process.

A more professional and systematic process is required.

We suggest a Shareholder Committee is a simple way to break the current impasse and is the answer (or part of the answer) to many of the questions you have posed in the green paper.

The benefits of having a Shareholder Committee include:

i. Systematic briefings between the company and knowledgeable Committee members. In contrast, currently many engagements today are ad hoc, often when a crisis or problem occurs, with little time to understand each side's opinion and too often presented as a fait accompli or as a negotiating stance. Currently NEDs only get involved when it is too late.

ii. Committee members will develop good background knowledge, relationships and trust with the company over time.

iii. Committee members will be presented with consistent information and explanations, and members will have a forum for the exchange of questions and views. Each Committee member will be presented with the same information and hear the same explanations. Members would hear each other's questions and views. In contrast, currently, when a large number of investors are "consulted", it is difficult to have the same conversation with each investor and the proposal often changes as the engagement goes along. Currently, the different views of different investors create a very "messy" backcloth in which to engage. Companies complain they have to trade off one investor's requests against another and the end result is too often a camel rather than what is needed.

iv. Increased transparency.

(a) For example, in relation to a remuneration proposal, there will be an audit trail of the initial proposal though to the final version voted on by shareholders (not in the formally auditing sense, but anyone could if they wished and were allowed to follow the trail of the initial proposal though to the final version voted on by shareholders).

(b) The Committee will report to all shareholders via the annual report, AGM and other means as necessary. Currently, the so called cosy chats are not recounted to the outside world and occasionally an investor may brief (off the record) a friendly journalist if they have a concern, which results in bitter rows, public spats and ill feeling all round.

v. Results briefings from the CEO and Finance Director will continue.

vi. The Shareholder Committee will focus on governance and strategy issues, and will not interfere with the day-to-day management of the company

vii. Where there are serious concerns about the practical implementation of a Committee, these can be countered by limiting its powers to providing a report and recommendation to shareholders. It is also harder to argue against the Shareholder Committee if it does not have a veto, but is merely advisory. It is hard to argue against serious oversight from well-informed Committee members, on an organised and systematic basis.

viii. It is unlikely that the cases of BP, BHS and Sports Direct would have occurred if such a committee had existed at those companies. And the problems would surely have been resolved quicker if they had had a Shareholder Committee.

We have proposed a Shareholder Committee for RBS, but they have done everything in their power to avoid this initiative. They have turned down an opportunity to pioneer the concept; others could then be learning from their experience. The board or RBS has rejected a properly presented members' resolution on a very tenuous technical argument. **Our experience with RBS, who have resisted our shareholder committee proposal, underlines the fact that companies will not embrace any change that will increase engagement and influence by shareholders. Shareholder Committees will have to be mandated by law.**

We encourage BEIS to take note of the approach to remuneration in the ShareSoc Remuneration Guide and the QCA approach to remuneration in the QCA Remuneration Committee Guide. In particular, we encourage BEIS to assess the approach taken by ShareSoc and the QCA take regarding the application of the 2013 remuneration reporting regime into small and mid-size quoted companies.

We note that remuneration arrangements for executive directors are an important factor in ensuring that they are motivated to create value for shareholders. Companies of all sizes face many choices in tackling issues of remuneration; this is particularly true for small and mid-size quoted companies.

Thus, we believe that companies should approach matters of remuneration in a way that is proportionate, rational and measured. Equally, companies should be clear and transparent when setting executive pay, in order to nurture the development of trust between companies and shareholders. Models of remuneration should support the sustained alignment of interests between directors and shareholders which should help to deliver long-term growth in shareholder value.

As to the need to strengthen the corporate governance code, we would support this. The exact way in which the consultation process would work needs to be agreed. A system of shareholder committees might be one approach. However, as a matter of good practice we would like to see remuneration committees engaging effectively with investors and shareholders. This engagement should address:

- Concerns about the effectiveness and / or appropriateness of the existing pay policy;
- discussion about proposed changes to the pay policy;
- use of external remuneration consultants;
- recommendations and proposals on pay and pay policies from external consultants.

Three other options to be considered are:

i. to change the DRRR so the remuneration policy must include a maximum share dilution (of new issue, those from treasury and any bought in the market to satisfy awards) and a maximum run rate (% of shares potentially awards in any one year).

ii. To combine the three current votes on remuneration (policy, remuneration report and new long term incentive schemes) into a single binding vote. (Please note: point i. above would be a necessary precondition for this.) This could be an alternative to the detailed votes we have suggested above.

iii. To change the DRRR so that the single total figure of remuneration is changed to include the amounts the executive actually receives. In addition, the total remuneration awarded should also have to be disclosed.

Q2 Does more need to be done to encourage institutional and retail investors to make full use of their existing and any new voting powers on pay? Do you support any of the options mentioned? Are there other ideas that should be considered?

More is now being done to encourage institutional investors to exercise their votes at company AGMs. Given their voting power, it is certainly unacceptable that they should not exercise their votes or that they should simply vote in favour of any resolution put to them by the company's directors. However, still more needs to be done. The major institutional investors need to be held to account and need to say in advance of the AGM which way they plan to vote and, most importantly, why. This information needs to be publicly available.

In the case of retail investors the situation is very different. Most are obliged to hold their shares in nominee accounts. Nominee accounts have, as the Green Paper acknowledges, many administrative benefits. However, the way they operate in the UK means that the investor or beneficial owner of the shares has none of the rights that are normally associated with share ownership. They do not receive notifications of the company's AGM, they do not receive notification that the Annual Report (or any other documentation) has been published and they have no right to attend the AGM and vote. Retail shareholders have become completely disenfranchised. They can, of course, put in a request to the nominee but the nominee can refuse the request or can make a charge for allowing the shareholder to attend the AGM and vote. (It is worth noting that some nominees, e.g. TD Waterhouse, have a good system and customers can opt to receive notices of AGMs and annual reports, vote shares and they will issue proxies at no cost.)

In the age of digital technology it should not be difficult to create a system which allows companies to know who their beneficial shareholders are, to communicate with them and which allows the beneficial owner to exercise the rights that normally go with share ownership. Our views on each of the three options are:

We support option (i) mandatory disclosure of fund managers' voting records.

We note that the current disclosure regime of votes as required by the Stewardship Code fails to provide useful data because it is disclosed in pdf form and different asset managers use different formats and different frequency of reporting. Thus, it has not been possible to see if institutional investors have made full use of their powers on pay and if they have had a positive influence on executive pay. We recommend that asset managers are required to report in a standard format, in excel.

We support option (ii) Shareholder Committee, but only if it has a representative of individual shareholders.

We would be in favour of this but any system of shareholder committees must include a representative of the retail shareholders. We would also strongly favour specific representation for the employee shareholders in cases where the company operates an Employee Share Scheme and/or where employees (including former employees but excluding directors) have significant combined share ownership. It is not entirely clear what is meant by the 'senior shareholders' but we assume that this means the largest shareholders. We see no value in creating a shareholder committee for them alone as they already have ready access to the senior management of the companies in which they are invested. Such a system simply perpetuates and strengthens their power. The power of institutional shareholders vis a vis individual shareholders and the ultimate beneficial owners needs moderating not strengthening. In any event, shareholder committee members should be required to act for all shareholders under a fiduciary responsibility. Changes must not reinforce the behind-closed-doors system of chats and informal compromises on pay and other matters that already exists.

As noted, one potential solution might be for a shareholder committee (perhaps drawn from the largest four/five willing shareholders, plus representation of individual shareholders) to provide a framework for engagement and, where appropriate, challenge. This will be a more professional and systematic process than currently happens.

Such a solution is required as, quite frankly, the informal nature of most current engagements, of cosy chats behind closed doors, does not work. It is not clear if different investors are being told the same information, or if it is being spun a different way, or if complete or only partial information is given out. Inevitably investors will ask different questions during their engagement meetings and so may develop a different interpretation of what the company is trying to achieve. Ad hoc engagements tend to only occur when a problem arises, and too often fan conflicts rather than resolving them.

The Shareholder Committee members will be presented with consistent information and explanations, and members will have a forum for the exchange of questions and views. Each Committee member is presented with the same information and hears the same explanations. Members will hear each other's questions and views. In contrast, currently, when a large number of investors are "consulted", it is difficult to have the same conversation with each investor and the proposal often changes as the engagement goes along. Currently, the different views of different investors create a very "messy" backcloth in which to engage.

We think this will lead to increased transparency. For example, in relation to a remuneration proposal, there will be an audit trail of the initial proposal though to the final version voted on by shareholders (not in the formally auditing sense, but anyone could if they wished and were allowed to follow the trail of the initial proposal though to the final version voted on by shareholders).

We believe that shareholders should trust directors to do what is right and that good directors deserve such trust. Shareholders should not be taking responsibility for making decisions that ought to be taken by directors. However, there need to be appropriate feedback mechanisms, so that shareholders can inform directors how well they think directors are performing and where they believe there is room for improvement, and to inform the AGM vote.

We have proposed this type of committee to RBS and have requisitioned an AGM resolution to implement such a committee. It is our intention to encourage other companies to follow in the footsteps of the pioneering RBS.

If the RBS grounds prove to be valid for rejecting our resolution (they have said "your reference to s172 in the resolution is problematic, which is in addition to the vagueness of the resolution more generally.", but refused to be more specific than this), then it calls in to question the effectiveness of the Companies Act. Section 153 which permits shareholders to requisition shareholder resolutions would need revising. Section 172 which is meant to require companies to act fairly between shareholders would not be effective and would also need rewriting. So, either RBS is hiding unreasonably behind legal niceties or the Companies Act needs changing, or possibly both.

Section 808 should be revised. Currently the preferred format that the company must respond to a S808 request is in pdf and the order tends to be extremely complicated, mostly date dependant. S808 does not specify how the company has to deliver the data and allows them to respond in a very unhelpful way. We have evidence of this from RBS and others and can share this with you if you wish. The data should be provided in an easy to use format, e.g. EXCEL spreadsheet.

Option (iii): Facilitate / encourage individual shareholders to exercise their voting rights.

We support option (iii) and the three ways suggested to encourage individual retail shareholders to exercise their rights.

In addition, we recommend:

- The name on register should be the ultimate beneficial owner of the shares. Currently the name on the register is the name of the nominee. This creates a whole host of problems (which are laid out in Appendix 1).
- Retail investors should be represented on the Shareholder Committee (as suggested for Option 2 above). This would be an effective way of achieving greater engagement from retail shareholders.
- An easy and cost-effective means by which a group of shareholders can get in touch with other shareholders for a recognised purpose. "Recognised" in this sense would be when the group of shareholders is undertaking some action that is deemed to be a suitable purpose. Currently, the company must respond to a S808 request and they tend to do so in pdf format and the order tends to be extremely complicated, mostly date dependant. The adoption of a name on register (as opposed to the current name of nominee approach) will be one step. However, the inclusion of the email address of all shareholders on the register and making this available for "recognised" purposes would greatly assist in individual shareholders being able to communicate and act together. Currently there is no cost-effective means to get in contact with shareholders and so individual shareholders are effectively disenfranchised and ignored. We have had direct experience of these issues in our RBS Shareholder Committee Campaign.
- A system which makes it easy for retail investors to engage. One of the factors which reinforces disengagement among the retail investors is the fact that few have the time or the inclination to plough through the report of the remuneration committee to try and decipher the finer points of the pay package, how it has been computed and whether it is justified. A way needs to be found therefore of ensuring not only that the retail investors are able to exercise their votes but that, when they do, their decisions are well informed. One option might be for them to vote through a proxy voting agency, such as Manifest. One of the roles of the proxy agency would be publish a voting recommendation giving brief reasons for the recommendation. Investors should be able to access this on-line and, armed with the relevant information, decide how they want their vote cast. The cost of this could be funded by a very small levy of less than 0.001 basis points on quoted companies
- There should be new provisions in the Corporate Governance Code to ensure that private shareholders enjoy the same rights and treatment as institutional shareholders (see next page)

Private Shareholders

Main Provision

Private shareholders should have the right, in practice, to equality with other shareholders, as owners of the business. This means collectively in proportion to their number, as regards influence, distribution of a company's earnings and wealth and participation in new fund raising.

Supporting Principles

Company boards should ensure that all private shareholders are given access to information that is equal to that given to other shareholders.

Company reports must not only meet statutory and regulatory requirements, but must also ensure that all information which may be relevant to the company's future solvency and profitability which is known or should be known by the board is presented clearly for all shareholders to see.

The importance of the AGM to private shareholders must be recognised by company boards and chairmen, in particular, being the only forum in which they can be heard and call directors to account. Its importance should be enhanced rather than diluted, to ensure that private shareholders collectively are given full opportunity to exercise their rights.

Company boards should seek opportunities to meet one or more representative groups of private shareholders other than at the AGM, to provide them collectively with an opportunity to influence matters of concern to them equivalent to that which is given to institutional and other major shareholders meeting in private.

When a placement is proposed, part shall be reserved for private shareholders, on similar terms as other shareholders [In order to implement this, it may[will?] be necessary to amend the Listing Rules so that in such circumstances a full prospectus is not required if it would not otherwise be required for the placing to a limited group.]

Pre-emption rights for existing shareholders, when new shares are issued at a price below that of existing shares, must be preserved.

Objectives

1. At any general meeting, each agenda item should be dealt with separately, with questions invited and comments allowed, a hand vote taken and the result declared, before there is any question of moving to a poll or to the next item. Voting by show of hands must be retained and votes cast at a meeting should be distinguished from those cast by proxy.
2. All general meetings must be run in such a way that members present can question any director on any relevant matter, which should be supplemented by each company establishing a practicable method of answering and publishing the answers to all pre-submitted questions.
3. Where a group of private investors formally requests the establishment of a representative private shareholders' committee, the board should facilitate this, through access to the share register for the purposes of election, the provision of appropriate meeting facilities, use of secretarial facilities and the availability of one or more directors to meet the committee, to enter into a continuing dialogue with it based on the mutual understanding of objectives and to ensure that all members of the board are aware of that dialogue.

Another option to consider is insisting that the London Stock Exchange properly regulate the AIM market. There is a particular problem in relation to some AIM companies. The AIM market, which is run by the London Stock Exchange (LSE), has been frequently criticised for the quality of some companies listed on the market and for the way it operates. ShareSoc, UKSA and their Members think that some reform is necessary.

Q3 Do steps need to be taken to improve the effectiveness of remuneration committees, and their advisers, in particular to encourage them to engage more effectively with shareholder and employee views before developing pay policies? Do you support any of the options set out in the Green Paper? Are there any other options you want to suggest?

The effectiveness of remuneration committees will be best enhanced by better engagement and demonstrations of support from shareholders. Shareholders need to not only say that they are against high pay, but also be prepared to vote against the re-election of directors who demand high pay and of the Rem Com Chairs who give overgenerous awards.

It seems clear that the performance of some remuneration committees leaves much to be desired. One of the problems is that, all too often, non-executive directors (NEDs) are chosen because their 'face fits'. They are people who are already well known to the executive directors and there may already be strong social relationships between them before the NED's are invited to join the board (notable examples are BP and WPP). In other words, these are not people who are going put up a serious challenge to the executive directors on matters such as pay. Another factor which makes us very doubtful about the basis on which they are selected and leads us to believe that this a sort of directors alumni network is that many NEDs appear to have no experience of the industries in which they are being invited to work. It seems curious that Whitbread, for example, has no NEDs with experience in the hospitality business.

We also have concerns about the role played by remuneration consultants. They are paid by the companies they advise and this means that their fees, **for non-remuneration committee work**, are sanctioned by the executive directors. These are the people whose pay schemes the consultants are being paid to devise. It will be attractive to the consultants to ensure that they develop pay schemes which will result in more work for them in future. In other words, they are not impartial.

We have stated above that many performance-related pay schemes for directors fail to meet the most basic requirements as effective motivators:

- the true link between performance and reward is often opaque,
- the performance metrics used, such as EPS, are often easy to manipulate and are at best a proxy measure for just some of the commercial objectives of the business
- the use of long-term incentives (LTIPs) means that rewards are deferred to a point which blunts their effectiveness as incentive
- some of the outcomes (for example, total shareholder returns) may be influenced by factors that are beyond the control of the person receiving the award.

It is hard to understand how organisations which are supposed to be experts in devising incentive schemes can devise something so manifestly inappropriate as a means of incentivising and rewarding directors.

Turning to the specific options in the Green Paper our response is:

Option (i),

Consultation with investors would be welcome. However, consultation does not mean that the remuneration committee will necessarily take any notice of the feedback. Indeed recent experience at BP where major investors warned the Company of an impending revolt over the CEO's pay fell on deaf ears. This tends to reinforce the belief that remuneration committees are unduly influenced by pressure from the executive directors.

We believe that the adoption of a Shareholder Committee could achieve this goal in a systematic way. Benefits include:

i. Regular and systematic briefings between the company and the Committee members.

ii. Members will develop good background knowledge, relationships and trust with the company over time.

iii. Committee members will be presented with consistent information and explanations, and members will have a forum for the exchange of questions and views.

iv. Increased Transparency.

v. In relation to a remuneration proposal, there will be an audit trail of the initial proposal though to the final version voted on by shareholders.

vi. The Committee can provide an independent report to all shareholders via the annual report, AGM and other means as necessary.

vii. Results briefings from the CEO and Finance Director could continue. The Shareholder Committee would focus on governance and strategy issues, and would not interfere with the day-to-day management of the company

Option (ii): Remco chairs to serve at least twelve months on remuneration committee before taking up post. We believe that this would be good practice, although it is likely to have limited impact on controlling directors' pay.

Other options:

Fees paid to consultants for other services to the company should be disclosed as well as fees for advice to the remuneration committee. This will highlight potential conflicts of interest. The Waxman enquiry found that fees for other services averaged 11 times the fees for advice to the remuneration committee - this highlighted how difficult it can be for some remuneration consultants to give advice that the executive management may not like!

The cost impact of such transparency to companies would be minimal. (The cost of compliance for consultants who provide multiple service lines may be larger) The benefits to business in the UK would be substantial in relation to the costs to quoted companies. Avoiding just one corporate governance disaster could be a huge saving and cost benefit.

Q4 Should a new pay ratio reporting requirement be introduced? If so, what form of reporting would be most useful? How can misleading interpretations and inappropriate comparisons (for example, between companies in different sectors) be avoided? Would other measures be more effective? Please give reasons for your answer.

Ultimately, publishing pay ratios is unlikely to tell investors anything very meaningful. There is already far too much information in company reports which is of doubtful usefulness to investors without adding to it. Organisations like Manifest already provide this analysis to investors who want it, without duplicating it in the Annual Report.

We are not supportive of this idea for the reasons that the Green Paper identifies. There could be many legitimate reasons why different companies might have different ratios. It would be logical for pub, restaurant and brewing business like Greene King with many relatively low-paid people (possibly with some on zero-hours contracts) to have a higher ratio of CEO pay compared to a company like WS Atkins which employs significant numbers of highly qualified and professional staff.

It would be difficult for pay ratio measures to take account of companies which have significant operations in countries like India and China where wages are much lower. A manufacturing company with operations in these countries might be expected to have different pay ratios to a company which did most of its manufacturing in the UK, the USA and / or Europe – particularly if it used high levels of automation and employed mainly skilled technicians in its production operation.

The issue of outsourcing is another factor which could distort pay ratios, as mentioned in the Green Paper.

Even if one takes pay ratio measures as an indicator of how CEO pay in a company has changed over time in relation to average pay in the business, there are many legitimate factors that could cause significant changes including:

- Acquisitions and divestments;
- Decisions to outsource activities or, conversely, to bring them back in-house;
- Changes in the business mix – particularly for complex service companies such as Capita, Serco or G4S.

We consider that introducing a legislative requirement for companies to publish pay ratios would exert an administrative burden on small and mid-size quoted companies – both in terms of time and cost. We also note that there is no evidence that indicates systemic high executive pay within the small and mid-size quoted company sector. We would therefore not wish to see a pay ratio reporting requirement introduced for small and mid-size companies.

If you do implement disclosure of pay ratios, it must be reported over 10 years. If so, we recommend requiring companies to disclose the Pay Ratios over the previous 10 years of the CEO to the average employee and of the CEO to the second-highest paid employee. The 10-year disclosure creates the right long-term emphasis on this ratio, in a similar way to the TSR graph and table of CEO remuneration. We note there is pressure for this from many sources, e.g. High Pay Centre, TUC, The Guardian. The Investment Association has recommended as best practice that companies disclose pay ratios between the CEO and median employee, and the CEO and the Executive team. So, the nudge from Government seems to be having the desired effect and further legislation may be unnecessary. We note however that disclosing Pay Ratios is no substitute for addressing the real fundamental problems we have highlighted (and may divert attention away from those), but disclosing pay ratios might provide a little moral pressure (but only if based on a 10 year timeframe). There is a danger of unintended consequences and problems of definition, which are good reason for doing this via best practice or the FRC Code and not via legislation.

It would be more cost effective to report the average employee pay rather than the median. There is no need for the ratio to be audited, and certainly it would not be cost effective to regulate it as so.

Q5 Should the existing, qualified requirements to disclose the performance targets that trigger annual bonus payments be strengthened? How could this be done without compromising commercial confidentiality? Do you support any of the options outlined in the Green Paper? Do you have any other suggestions?

We support both proposals. The GC100 and Investor Group produced guidelines on disclosure which have too much wiggle room. They should be asked (firmly) to revisit their guidance. Companies should be asked to disclose in line with the spirit of the legislation and not hide behind the letter of the law.

Option (ii). Disclosure of bonus targets. We would strongly support this. The setting of performance targets is central to the whole concept of performance-related pay. In this respect we would like to see details of the performance targets that are to be set for the coming year. In the meantime, we would certainly support the view that retrospective disclosure of all bonus targets within a specified timeframe (which should be the end of the year to which they relate) should be a reporting requirement.

It is not acceptable that companies should be able to hide behind the smokescreen of commercial sensitivity. There will always be commercially sensitive issues that a CEO has to manage successfully to ensure the success of the business. However, it is very rare that these need to be spelt out in detail as one of the performance targets. It is not appropriate that companies, such as Smiths Group in its 2015 annual report, should be able to say:

'2014/15 targets are not disclosed in this report as they are considered commercially sensitive by the Board, given the close link between performance targets and Smiths longer-term strategy……..The Committee will disclose targets at such a time as they will no longer be deemed to affect the commerciality of Smiths Group'.

The 'nonsense' is laid bare when the company then goes on to disclose the longer term performance targets for 2012 which were based on:

- Group ROCE
- Group EPS growth
- Total shareholder returns versus the FTES 100 (excluding financial services)
- Average cash conversion.

These are all relatively benign measures of corporate performance. Directors should have no difficulty in revealing to shareholders the specific targets that are to be set against each of these criteria as part of the remuneration scheme for the coming year. In the 2016 annual report the wording on 'Personal Objectives' for the CEO of Smiths has changed but the message of obfuscation is the same. This deliberate misuse of the guidelines to avoid saying anything meaningful about the performance targets is not acceptable when Smiths paid its outgoing CEO over £4m in 2015 and its incoming CEO who joined in September 2015 almost £3m.

A further concern for shareholders is the suspicion that the targets set are often not sufficiently stretching. In many cases large pay awards are being achieved because directors are consistently beating the most stretching targets that they have been set – particularly for the long term awards which often trigger very large bonus payments. This has certainly been true of the house builders such as Taylor Wimpey and Persimmon. It is notable that they, like others, have enjoyed a 'fair wind' in commercial terms. Their pay policies were typically set in the period around 2010 when, due to the effects of the banking crash, their share prices and general performance had been decimated. Since then initiatives such as 'Help to Buy' and very low interest rates have given them a very significant boost. Their CEO's have seen their future targets set on the basis of a very low starting point and then been rewarded for supposedly spectacular performance which owed significantly less to their own endeavours than to market factors. This is another reason why performance measures for the coming year should be made clear to shareholders and why, ideally, shareholders should have the opportunity to challenge them.

It is worth adding that the setting of performance targets that are not sufficiently stretching is extremely damaging for shareholders because it means that the directors have no real incentive to ensure that the company achieves its full potential.

One final point to bear in mind is that the role of the CEO and other directors is a complex one in which outcomes, particularly over the long term, are difficult to define precisely in advance and to measure. Many measures, such as total shareholder returns (TSR) and earnings per share (EPS), are actually proxy measures. It is this very problem of actually measuring what the CEO is achieving which calls in to question the appropriateness of using performance related pay schemes as a method of remuneration.

Q6 How could long-term incentive plans be better aligned with the long-term interests of quoted companies and shareholders? Should holding periods be increased from a minimum of three to a minimum of five years for share options awarded to executives? Please give reasons for your answers.

The question conflates the issue of CEO pay and pay of other executives. CEO's are more able to influence company performance than other executives and should have more of their remuneration linked to it than other executives.

The Green Paper appears to make a number of unwarranted assumptions about the justification for long term incentives and the use of shares or share options as a way of making pay awards related to long term performance measures.

Our belief is that LTIPs (and other similar long term awards) have only come into being as a rather crude attempt to counter what is popularly known as ‘short-termism’. Pressures on management constantly to achieve short term improvements in performance at the expense of the longer term success of a business are certainly undesirable. However, these pressures come from outside the company - typically from the institutional investors, many of whom are measured on the short term performance of their funds and investment portfolios. It is in this area that the problem of short-termism needs to be addressed.

Long term incentives are in general a very poor idea because:

- It is commonly accepted that the longer a reward is deferred the less motivational impact it has;
- The longer the timeframe for objectives and performance measures the greater the level of uncertainty that they will remain appropriate and challenging
- Over the long term there is significant likelihood that results and outcomes will be influenced by factors over which the company’s directors have little or no control.

Despite all these fundamental objections to long term incentive plans, LTIPs still make up the largest single element of pay for most CEOs.

We would favour the abolition of separate long term measures of success (many of which are just a long term reworking of short term measures such as EBIT, EPS and TSR). It would be far better if fund managers were to set meaningful long term measures for themselves and then engage properly with the companies in which they are invested so as to be able to understand, comment on and challenge the business strategies that are being implemented by the directors. It is notable that many in the asset management industry appear to have little experience of actually managing a business.

In terms of the way in which long-term pay awards are made, the Green Paper appears to make the assumption that these must be paid in the form of shares or share options. As explained above (Q1; Option3) we see no reason to resort to a form of payment-in-kind in the form of shares or share options and we think this point should be debated further, for example if the payout had to be converted into shares at the date of vesting, there might be a perverse incentive to keep the share price low around that time. Both shares and share options are difficult to value and share options have the added drawback of being dilutive for the ordinary shareholders.

It should be relatively simple to agree a target for the share price or TSR (or whatever the measures are to be) over three years, five years or whatever period is considered appropriate and to agree a cash bonus that will be paid for achievement of the target. The recipient would know what they were going to get and the shareholders would know what they were going to pay.

Directors should certainly be encouraged to buy shares of their own in the market like anyone else. With specific reference to remuneration options, a cost effective approach would be for Directors to receive their long term incentive payout (net of tax) converted into shares at the date of vesting via new issue shares (thereby saving stamp duty and the bid offer spread) and such shares should be retained until up until they leave the company and for up to at least 2 years afterwards (so that any issues which were not apparent at the time of their departure would have time to get known by the market and influence the share price. Clawback for up to 7 years would also apply.).

The current system of payment in shares is a legacy from when remuneration paid in shares was more tax effective than payment in cash. There is now no tax bias in favour of remuneration in shares and so no logical reason for executive share schemes, for listed companies, with the minor exceptions of the HMRC approved schemes (£30,000 CSOP, EMI, SIP and SAYE share options).

Executive Directors should continue to be allowed to participate in the HMRC approved schemes (£30,000 CSOP, EMI, SIP and SAYE share options).

This is a radical change which we think deserves wide debate.

Further we note that there is a need to clearly define what the long-term interests of companies and shareholders are. Only then can alignment be sought. This is not a case of one size fits all. In most circumstances, long term interest is for a growing and financially secure business. (However, for many small companies the plan is for them to grow to a size at which they become takeover targets.)

Having accepted that directors would receive a cash amount which was to be converted into shares, we would like to see longer holding periods. We recognise the trade-off that longer holding periods reduce the perceived value of equity incentives but we believe that a drawback worth accepting.

LTI awards should reward long term growth in sustainable shareholder value. The principles and culture of long term share ownership should be encouraged and the way in which directors are rewarded should align their interests with those of the shareholders.

We support the concept of 5+ years for LTIPs. We note that LTIPs are the heart of the problem as the favoured vehicle for distributing excessive and concealed rewards (e.g. DRRS SI 1906 para 34(1)(c) “not allowing for any share price appreciation” should be redrafted as illustrating the impact of share price movements, e.g. if share price doubles or trebles as suggested in the ShareSoc Remuneration Guidelines). But we point out the exam question is the wrong one. What is most important is the total wealth of the CEO that is tied up in the company and how this goes up and down in line with changes in the share price (and dividends). There should be more emphasis on the impact of all the CEO's LTI awards (not just the one in the latest year), and on lifetime earnings.

Options usually have a ten-year life. Executives tend to hold them until the end of the period. Making some not exercisable until after 5 years can be correct in specific circumstances. It should be for the remuneration committee to decide and they may find discussion with the Shareholder Committee on this point (which may go to the very fundamental discussion of the strategy of the company) useful.

Further comments on the issue of conflating the CEO versus other executive directors and other executives.

The CEO is the person most able to influence the share price. His or her alignment depends at any one time on his or her shareholding and the value and potential value of existing long-term incentive awards (some of which may have vested and some may not have vested) and potential future long-term incentive awards. Performance conditions may be appropriate but should focus on his or her specific circumstances. Other executives will have different timescales and motivations.

Other executive directors may have different timescales and motivation than the chief executive.

Below the board, LTIPs may not be the best approach. It may be better to award restricted stock or to award shares linked to the size of the person's annual bonus.

The key is that executives build up and retain a significant stake in the company over the long-term and are not too overly focused on any set of 3-year LTIP targets.

Strengthening the employee, customer and wider stakeholder voice

Q7 How can the way in which the interests of employees, customers and wider stakeholders are taken into account at board level in large UK companies be strengthened? Are there any existing examples of good practice that you would like to draw to our attention? Which, if any, of the options (or combination of options) described in the Green Paper would you support? Please explain your reasons.

We feel that any response from us on this question will detract from our other responses. We have no strong view on this question.

Q8 Which type of company do you think should be the focus for any steps to strengthen the stakeholder voice? Should there be an employee number or other size threshold?

We have no strong views on this. We do not wish to detract attention from our important points regarding other questions.

Q9 How should reform be taken forward? Should a legislative, code-based or voluntary approach be used to drive change? Please explain your reasons, including any evidence on likely costs and benefits.

We have no strong views on this. We do not wish to detract attention from our important points regarding other questions.

Corporate governance in large, privately held businesses

Q10 What is your view of the case for strengthening the corporate governance framework for the UK's largest, privately-held businesses? What do you see as the benefits for doing so? What are the risks to be considered? Are there any existing examples of good practice in privately-held businesses that you would like to draw to our attention?

There are two main reasons for strengthening the corporate governance requirements for larger privately-held businesses:

- It is unlikely that the average 'man-in-the-street' makes a distinction between, say, BHS and Marks and Spencer or Sports Direct in terms of the way in which the company is owned and run. In this respect, if a privately-held company adopts poor corporate governance practices which result in adverse publicity this is seen as another example of the 'unacceptable face of capitalism'. The media thrives on such stories and is unlikely to spend time explaining the intricacies of company ownership to the public. Similarly, there is rarely any attempt to remind people that egregious failures of corporate governance are fairly rare. It is tempting to say that the owners of privately-held companies should be free to run them in whatever way they see fit (provided that they are not doing anything illegal). However, there are very good reasons for wanting to ensure that maverick owners do not recklessly tarnish the good name of British industry.

- It is not appropriate that owners of privately-held businesses and their advisors should be able to leave behind them a trail of liabilities which ultimately have to be made good by the tax-payer. This is true of BHS. It was also true of MG Rover. In this case, the then government's actions favouring and encouraging the bid from the Phoenix consortium over that of Jon Moulton's Alchemy Partners was as self-interested, foolish and ill-judged as Sir Philip Green's decision to sell a near-insolvent BHS to a twice-bankrupted former racing driver with little experience of running a retail business. It is worth noting that Sir Philip Green's decision was supported and encouraged by Goldman Sachs and other city advisers, who received large up-front fees and have avoided retribution, although they did not avoid the embarrassment of having to try to explain themselves to Iain Wright's excellent Select Committee Enquiry.

The risks of trying to strengthen the corporate governance framework for the UK's largest privately owned businesses is that it could be construed as unwarranted intervention in how groups of investors / entrepreneurs and their families run their own affairs. In general, the corporate governance code for listed companies exists to help protect large numbers of investors (and in the case of collective funds, savers) who are essentially at arm's length from the business. In most private businesses the managers and the owners are to a large extent one and the same. Other differences between publicly quoted companies and private companies are:

- The shares in private companies are not tradable on a day-to-day basis; issues of an orderly market do not arise.
- There is no independent mechanism for valuing the shares on a regular basis; management action is not influenced by considerations of the impact on the share price.
- The shares are often concentrated in the hands of a few people who effectively have control of the business and issues of good governance are generally accepted as being a matter of common sense and good judgment on their part.
- Reporting requirements are much more limited in terms of the level of detail that is likely to be put into the public domain. Public interest in the running of private companies, therefore, is only aroused when disaster finally strikes and truly egregious examples of poor governance come to light.

It would be possible to apply a corporate governance code of good practice for private companies but one has to question the practical impact that this would have. It would, presumably, be nothing more than advisory.

An alternative might be to legislate so that private companies and their owners:

- Had to ensure that any defined benefit pension fund was fully funded or that any deficit was covered by cash in the business and that the cash was ring-fenced for this purpose. Given that most pension funds now are of the defined contribution type, pension scheme funding is likely to become a less critical issue in future.
- Became directly liable for losses suffered by customers, suppliers, employees and other stakeholders where poor governance played a major part in the failure of the business.

One problem with this is that there are already rules in place to make directors liable for the consequences of their own reckless behaviour. One has to ask what more can realistically be done. Furthermore, over the last thirty years or so the UK has sought to emulate countries like the USA where entrepreneurship and risk taking are applauded and encouraged. Any move to reduce limits of liability for owners of private business could be seen as a move back to a bygone era when bankruptcy was stigmatised and risk-taking was discouraged.

Q11 If you think that the corporate governance framework should be strengthened for the largest privately-held businesses, which businesses should be in scope? Where should any size threshold be set?

See comments in response to Question 10 above with regard to the practicalities of applying a more demanding corporate governance framework for privately held companies.

Q12 If you think that strengthening is needed how should this be achieved? Should legislation be used or would a voluntary approach be preferable? How could compliance be monitored?

No comment.

Q13 Should non-financial reporting requirements in the future be applied on the basis of a size threshold rather than based on the legal form of a business?

The question is ambiguous. We have no particular views on the non-financial reporting requirements for privately held businesses. However, we do believe that there are strong arguments for strengthening the non-financial reporting requirements for listed companies. The FRC through its reporting Lab has done some excellent work looking at issues such as how companies report on their business model. Clear and accurate articulation of a company's business model is vital to investors. If investors cannot understand how the company works, what markets it serves, what its competitive advantages are and how it makes its money (revenue and profit) they are in no position to decide whether it represents a sound investment at the most basic level. Too much business model reporting is seriously deficient - to the point where it is sometimes unclear whether even the directors understand properly what the business is about.

We believe that the FRC should have greater oversight over non-financial reporting by companies. We would refer you to comments made by Mr Stephen Haddrill, CEO of the FRC, when giving evidence to the BEIS Select Committee on corporate governance last November. As a starter we suggest that this oversight should apply to FTSE 100 and FTSE 250 companies.

Other issues

Q14 Is the current corporate governance framework in the UK providing the right combination of high standards and low burdens? Apart from the issues addressed specifically in this Green Paper can you suggest any other improvements to the framework?

i. **The UK Corporate Governance Code**

The UK Corporate Governance Code, with its focus on the secondary issues of structures and processes, needs radical reform. A revised code is required focusing on the qualities of the individuals, the culture that they engender, and how well they complement each other and work together to achieve the objectives of the organisation.

There should be a new page for Code principles for Private Shareholders (see our answer to Question 2).

ii. **AGMs**

Directors' duties are to promote the success of the company for the benefit of its members as a whole. The members (shareholders) are therefore the most appropriate group to scrutinise and challenge the decisions of directors. In order to do this effectively shareholders need good quality, timely, information, and a venue or format (such as an AGM, investor meetings or a Shareholder Committee) in which that challenge can take place.

Our members attend many AGMs and ask questions and our websites contains write-ups of members' visits to AGMs. The AGM itself and the opportunity to mingle with directors before and afterwards are great opportunities to question and gather explanations of concerns and if need be to challenge Boards. **It is very disappointing that so many Fund Managers do not attend AGMs.**

Revitalising AGMs should be a priority. Whilst some AGMs are well run, well attended, interesting and provide a lot of information to shareholders (Aviva and WPP were good examples in 2016), far too many are poorly attended with little attempts from boards to impart information to shareholders. Companies should be encouraged to produce real time webcasts and videos of their AGM. Allowing questions via the web should also be encouraged. This will help in holding boards to account.

Many of the corporate governance issues that have arisen in quoted companies are because of a lack of challenge by those people that the companies' boards listen to, i.e. shareholders and to an extent sponsors, nomads and brokers.

The creation of shareholder committees will increase, through the committee's report, the information available to investors ahead of AGMs and will clearly identify contentious resolutions. We believe this is a major building block in increasing shareholder engagement and in revitalizing AGMs.

iii. **Red lines**

The Red Line voting project of the AMNT needs to be progressed faster. See http://redlinevoting.org/what-is-red-line-voting/ for more information on this.

There should be an obligation on fund managers to reflect the views of beneficial owners. The Times Money "Shareholder Democracy Campaign" is worth considering, as is the DSW model in Germany where they have collective representation of all their members. Currently, in the UK, it is not possible for third parties to collect proxies from beneficial owners (only the nominee operator can effectively do so and they have little interest in encouraging voting), Company law should be changed to permit anyone to collect proxies as well as specifically requiring nominee operators to offer voting and other rights to their beneficial owners as part of the reform to shareholder rights.

iv. **Financial Education**

ShareSoc/UKSA, if sufficiently well resourced, can play a role by ensuring that individual shareholders are educated about their rights and how to exercise them. There should be government and/or NGO support for UKSA/ShareSoc, in particular for our educational work (especially on/via the website).

v. **Agency Model breakdown**

Individual investors do not, in most cases, have effective power to challenge boards or curb directors' pay. Fund managers, who are merely intermediaries in the ownership chain, have usurped this power and have failed to challenge boards. They are responsible for creating the current problems, yet to date seem to have avoided blame. Why should we expect them to suddenly change their behaviour? It is time for a strong input from Government and regulators of the London stock exchange to change the framework in which we are currently operating. The goal should be to get more power back to the ultimate investors.

It is the role of NED to provide challenge in the first instance, but in many cases, we see a lack of effective independence and challenge on UK boards, leaving the Executives without effective control. **Shareholders (i.e. primarily fund managers), as the group with the most interest in controlling the Executives, should also be providing effective challenge.** They either need to allocate more resource to this task, or hold shares in fewer companies to focus their existing resources more effectively and in more depth. A shareholder committee (of the top four or five willing shareholders plus a representative of individual shareholders), as suggested by Chris Philp MP, may be useful in providing a framework for discussions and challenge. Better reporting of their corporate stewardship actions by fund managers to their investor clients would improve accountability and encourage a more active role.

Fund Managers have failed to do what we expect of them. The main factor influencing executive pay over the past 30 years is the fund managers who approved the remuneration plans. The other main factors influencing executive pay over the past 30 years were the "best practices" guidance of the ABI, the NAPF and some of the leading fund managers. These encouraged the use of performance related pay, but said little about quantum of pay. As a result, companies introduced bonus and long term incentive plans in addition to existing remuneration and/or increased the potential payments. Throughout this period most shareholders did not object to remuneration increases. Indeed, it is arguable that up until 2003, most shareholders and fund managers did not have the technical capability to calculate the total remuneration awarded (i.e. the expected value of awards) or the total remuneration received (i.e. the amounts received that you must pay tax on, except for pension which is counted differently). Only recently have the Working Party set up by the Investment Association identified the problem of "remuneration creep". This matter is important as it is symptomatic of a gradual breakdown of the agency model.

vi. Enforcement

Should Government regulate or rely on guidance and professional bodies to ensure that Directors fulfill their duties effectively?

We find it difficult to envisage how the Government can regulate to ensure that Directors fulfill their duties (as set out already in regulation) effectively.

Guidance (from professional bodies or others) can help directors fulfill their duties effectively, but cannot and should not replace individual judgment. Guidance is too often interpreted as rules and followed to inappropriate conclusions.

Increasing regulation does little to discourage crooks from breaking the law, but instead makes life more difficult for the honest.

More, and higher quality, feedback from investors is the best way to promote improvement in performance. If shareholders are perceived not to care, regulation will just create compliance activity rather than meaningful change.

Very, very few people in the UK have gone to jail as a result of their actions that led to the 2007/08 Financial Crisis, yet millions of people have suffered severe hardship as a result. The SFO and the Crown Prosecution Service should be asked to explain why they have not been able to prosecute and why more examples have not been made.

On the 27th September 2016, the BBC broadcast an analysis of AIM and asked whether enough is being done to protect investors. ShareSoc was involved in supplying some of the evidence for the programme and ShareSoc director David Stredder spoke on it. See our blog for a report on it here: BBC-File-On-Four . ShareSoc has held meetings recently with the management of AIM and we hope more will come of that in due course. An update on that and the BBC programme was sent to our contacts on the AIM campaign.

vii. Executive Pay

Generally, executive pay has become massively complex. The reporting requirements have resulted in investors being given long-winded remuneration reports with plenty of scope for companies to be selective about what information they provide. Even when companies comply fully with all aspects of the reporting code, some of the information provided (such as the pay scenarios for the coming year) can be misleading. The governance surrounding directors' pay therefore is cumbersome and unsatisfactory. Tinkering at the edges by, for example, adding a little more information on pay ratios, is not going to solve the problem. It is likely to make it worse. More fundamental reform is necessary.