



**ShareSoc**

UK Individual Shareholders Society

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Robin Mueller  
Corporate Governance Reform Team  
Business Frameworks Directorate  
Department for Business, Energy & Industrial Strategy  
1 Victoria Street,  
London,  
SW1H 0ET

Dear Robin,

Thank you for inviting me and my colleagues from ShareSoc and the UK Shareholders Association to meet you and your colleagues on 8<sup>th</sup> January 2019 and the time you spent listening to what we had to say. I thought I should confirm the key points in this letter.

But first we need to recognise and praise the steps that Government has made on corporate governance and in particular pay ratios and diversity differentials, the requirements to report on S172 and employee representation/consultation and the 20% “naughty” register. These all build on previous work starting with the commissioning of the Greenbury report, following on from the Cadbury report. Patricia Hewitt’s reforms in 2002/2003 were a huge step forward in improving the disclosure of directors’ remuneration, and then in 2013 the single figure and perhaps more importantly the ten-year history of CEO pay and TSR performance.

Although we raised many critical points in our meeting, please be rest assured that we are fully aware of what you have done and achieved.

Nevertheless, now is not the time for complacency. Mrs May correctly pitched the mood of the nation as she campaigned to be PM and highlighted the problems of business arrogance and ethics and the hopelessly low levels of trust of the general population in the UK in the leaders of UK business and the FTSE100 in particular.

Hence, we are very disappointed at the lack of attention to the issue of nominee accounts in the Corporate governance review. We are also very disappointed by the BEIS conclusions re shareholder committees. Both of these issues are critical to engagement by individual investors who have been progressively disenfranchised over the years particularly by CA2006 Part 9 S146-153.

There has been a gradual stealth attack on shareholder rights. As a result, only 6% of retail Shareholders vote, on average. Hargreaves Lansdown say they estimate it is less than 1% for their clients. The low voting of retail shareholders reduces the impact of their comments and questions at AGMs. This needs to be reversed to ensure that Boards listen and are held to account.

Large investors continue to be allowed to have cosy chats with company executives behind closed doors. We don’t know what they discuss, but the outcomes at Carillion, Conviviality, Aviva, Unilever, GKN/Melrose (to name just a few) should be sufficient for the Ministers to be squirming.

## **Our goals and roles**

We see our goal as to work with you and BEIS and to help you fulfil your mission to make British business work for everyone.

To this end we will work with you. We can help you to spot and avoid pitfalls and potholes (often caused and driven by those conflicted with self-interest); we will help to educate you and your colleagues on how the markets work in practice.

At the meeting we agreed that the nominee system needs reform and that the Law Commission Review is an important first step. It is the right place for this work to be done as they are respected for their independence and thoroughness.

## **Things have changed**

You asked why **the Minister should be minded to act now** in respect of the nominee issue when he has chosen not to in the past 5 years and more. The answer is that things have changed and as Keynes said when the facts change then I change my opinion. Five things in particular have changed the decision-making landscape:

1. Carillion, Audit Problems, Kingman review, CMA review of auditors, the FRC Stewardship Code review and your own BEIS Corporate Governance Reforms are all a reflection of fundamental problems which were not in the public perception 5 years ago and have significantly changed the environment for the Minister making decisions today.
2. The 20% Naughty register has thrown up many more bad/worrisome cases than expected. The IA and its members have proved spectacularly bad at stewardship. The data shows just how poor their approach is, with 152 companies currently on the register.
3. Aviva and Unilever are damning examples of boards, bankers and lawyers coming up with completely dysfunctional proposals. Without the retail investor backlash, these might have played out quite differently.
4. GKN was taken over by Melrose by a 52.4% vote. We have not been told what percentage of the company's retail investors, including those who held an interest via nominees, actually voted and who is really to blame for the loss of GKN to Melrose (whose share price was ramped up to £2.47 and has since dropped by 35%, thus causing a significant loss to those individual shareholders who took the paper offer).
5. The BEIS Corporate Governance Committee continues to highlight issues and seems to have no shortage of problem cases.

The Law Commission Review of Intermediated Securities mentions the DP19/1 Financial Conduct Authority/Financial Reporting Council Discussion Paper-Building a regulatory framework for effective stewardship, which we think shows that the FCA/FRC are now recognising the importance of this issue. We very much welcome the reference to The Law Commission Review of Intermediated Securities (in para 4.13 on page 17). However, this Review must be given a much higher priority if retail investors are to exercise their role as stewards of the companies in which they invest. Retail investors own, on average, 29% of the shares in AIM companies and 12% of those of main market companies. They are a non-trivial participant in the stewardship issue.

The Government needs to reflect on the way its actions have disenfranchised individual investors and neutered their voice. In most of these corporate governance disasters' cases individual investors have raised their concerns, but have been ignored by Boards who have failed to listen and too often prefer not to listen. The complexity of getting individuals to vote and in contacting other shareholders destroys fundamental rights. The CA2006 S172(f) requirement for companies to act fairly between shareholders is being abused under the very noses of the Government. Government must come clean, recognise the problems, and agree to act.

### **The importance of AGMs**

AGMs are shareholder democracy in action, but are not adequately supported by the Fund Management industry (with notable exceptions, on occasion, by certain institutions such as RLAM, USS, M&G, L&G, Aberdeen Standard Life).

Aviva Chairman Sir Adrian Montague always says at his AGM that he and his Directors regard it as the most important day of the year. His approach should be a beacon for others to follow. Sadly, too many companies and Boards now regard the AGM as little more than an administrative burden.

The AGM is the ideal opportunity to hold the Directors to account. The vast majority of questions (and criticisms) generally come from individual shareholders as so few institutional shareholders attend. Recent examples include Persimmon, WPP, Royal Mail. Executive pay is not the only issue and the AGMs of Unilever, Aviva and BHP Billiton (at which I was present) provided a very clear message from shareholders about their concerns.

It is not only the questions and answers at the AGM, but also the opportunity to mingle with directors before and after the AGM, and probe ones concerns more deeply, that is extremely valuable. A way needs to be found to encourage those with responsibility for stewardship within fund managers to attend more AGMs and engage openly and transparently with directors.

### **Financial Impact on the UK Economy**

The financial impact of ineffective stewardship is immense.

1. Executive pay. The pay gap which has developed between executive teams and their staff is hugely demotivational. This impacts corporate efficiency at all levels. The financial impact on the economy, even if only 1% of GDP, is huge.
2. Unrestrained Boards often pursue value destroying strategies:
  - a. The banking crisis cost \$2 trillion globally, £200 bn plus in the UK.
  - b. Carillion has had a knock-on effect to the UK economy of billions of pounds.
  - c. Beaufort would have cost investors £100 million in fees to PWC, had ShareSoc and others not intervened.
  - d. Aviva's irredeemable preference share saga destroyed millions of value in the prefs sector, which has only partially recovered.
  - e. The costs of the GKN takeover have yet to show through, although the Melrose share price action already reflects value destruction of 35%.

## **To summarise: Ministerial intervention**

There are four threads of logic why the Minister should act now:

- PR headlines. Each time a governance fiasco happens, the press will write it up and headline the impact on individual investors and the need to give them a stronger voice.
- There is increasing evidence of corporate failures associated with failures in governance and in stewardship. The government urgently needs to get ahead if this trend before irreparable damage is done to public trust at home and abroad.
- Intellectual rigour. The erosion of the checks and balances which ensure that UK enterprise is properly managed has been insidious. The key points are above, and the Appendix contains a list of articles providing further evidence.
- Financial impact on the UK economy as outlined above.

Yours sincerely

Cliff Weight  
Director  
ShareSoc

## **Appendix: Background articles and evidence on nominee accounts and shareholder rights**

The 163 page [BIS RESEARCH PAPER NUMBER 261, Exploring the Intermediated Shareholding Model](#), published in Jan 2016 is **essential reading**. The BIS paper is not perfect and many of its pre-conceptions/flaws are noted in [UKSA's review](#) of the *paper* .

Further background is available here in these links:

<https://www.sharesoc.org/campaigns/shareholder-rights-campaign/>

<https://www.uksa.org.uk/voting-rights>

Death of Voting: An UKSA paper surveys the loss of voting rights of beneficial owners by John Hunter, March 2016

The battle over pooled nominee accounts by Eric Chalker, March 2016

Investor rights in ISAs: what you may not know by Eric Chalker, March 2016, which explains some relevant history about the rights investors were meant to have.

These past news items are also worth reading. This last one contains two good links in the bottom sentence.

<https://www.uksa.org.uk/news/2016/10/27/majority-investors-uk-companies-do-not-have-shareholder-rights>

<https://www.uksa.org.uk/news/2015/04/27/share-certificates-give-shareholder-rights-nominee-accounts-do-not>

The Daily Mail is actively campaigning on this issue, see

<https://www.dailymail.co.uk/money/markets/article-6295877/We-launch-campaign-savers-shares-online-fair-say-company-votes.html>