

Dear Sirs,

I am responding to the above document. In doing so I would note the following-

-my comments now are largely a repeat of those I have made before to earlier related documents issued by the BEIS and FRC but with added emphasis.

-on 20 July 2023 the FRC issued a bulletin attaching the draft Companies (Strategic Report and Directors' Report) (Amendment) Regulations laid in Parliament on 19 July 2023 by the Department of Business and Trade. This includes some important matters which, I assume, will necessitate further consideration by the FRC and the issuance of yet another draft of the corporate governance code.

Sadly missing from the above was any reference to the much needed and long delayed legislation to reconstitute the successor to the FRC with a wider disciplinary reach over both directors and auditors. I can only express the hope that the current government will find "sufficient parliamentary time" to effect this having undertaken to do so some 4 years ago on 18 July 2019. This timetable was not made any easier by the then Prime Minister's somewhat unfortunate "fuck business" attitude.

On 2 April 2019 the then Hof C BEIS chair (now shadow Chancellor of the Exchequer) stated "...We have called for the Government to introduce legislation necessary to establish the new regulator in the next session of Parliament and will not be letting the Secretary of State rest until he has done that." I am bound to say that it would be somewhat ironic should it be left to the next Government (of whatever political persuasion) to make the changes so urgently required.

When, eventually, draft regulations are issued establishing the new regulator to replace the FRC care will be needed so as to ensure that it has strong, independent powers and is not distracted by the "turf protection" stances adopted by competing bodies such as the FCA, Insolvency Service or the SFO.

With the above comments in mind it is now appropriate to comment on the current underlying mind set being adopted by the Department of Business and Trade and the FRC, namely the oft used banner headline "Restoring trust in Audit and Corporate Governance". To a great extent this mirrors the Kingman recommendation that the replacement body for the FRC should be called ARGAs-a snappy acronym for "Audit, Reporting and Governance Authority". Such a title is ill conceived and, frankly speaking, wrong-it should be called the CGA.

At the risk of stating the blindingly obvious, without accounts prepared by the directors and presented by the directors to the auditors for them to express a professional opinion on them, there is nothing to audit.

I urge the FRC to press the Department of Business and Trade to effect the necessary change and cease using the above mentioned headline.

As a natural follow on to the above it is appropriate to reflect on appendix B of the FRC consultation paper of 24 May 2023, namely the revised code on pages 51 to 62. Whilst there is much to applaud in describing good governance practice, it is only at paragraph 28 that we get to the heart of the matter, namely that "the directors SHOULD explain their responsibility for preparing the annual report and accounts...". This is a clear responsibility placed on them by the Companies Act as is the obligation to confirm that proper books of account have been kept. Thus by implication they must have satisfied themselves that there are, for example, adequate risk management and internal controls in place.

When they sign off the accounts they confirm the above-in this regard I believe that there should be a requirement for the Chair to sign the accounts on behalf of the board in addition to an evolving approach of only the CEO/CFO signing them.

In the process most, but not all, directors confirm in their responsibility statements that all relevant audit information has been supplied to the auditors under section 418(3) of the Companies Act 2006. In this regard I believe that the

FRC should also advise directors that they must be aware of section 501 of the Companies Act referring to making a false or misleading statement to the auditor.

In a significant, but little reported, case a former finance director of Redcentric plc was in 2021 sentenced to 3 years imprisonment for offences under this section. The FCA brought the case but acknowledged the significant assistance and cooperation of the FRC. I find it surprising that the FRC has not given greater prominence to this important case - my researches suggest that this is the first such case being successfully prosecuted.

In conclusion on this commentary I believe that the FRC in reissuing the revised Code should make a clear, bold statement in a preamble emphasising the primacy of the Companies Act and all that flows from it which the directors MUST respect. To all intents and purposes the Code itself represents good governance practice on a "comply or explain" basis.

I now turn to a further specific aspect of the revised draft code namely Section 4 - audit, risk and internal control provisions - para 25 - page 57. It is particularly disappointing that the FRC persists with its weak requirement that "at least one member has recent and relevant financial experience". By way of contrast -

- in the USA section 407 of the Sarbanes Oxley Act of 2006 sets out clearly defined rules/considerations for the designated "financial expert" on the audit committee.

- article 39 of the EU directive 2014/56/EU states that "at least one member of the audit committee shall have competence in accounting and/or auditing" - "auditing" thus becomes the prime characteristic.

The article then continues "the committee members as a whole shall have competence relevant to the sector in which the audited entity is operating". To all intents and purposes this is virtually the same wording as used in para 25 above. Thus the FRC appears to remain content with step 2 of the directive but significantly changes step 1.

In 2015/2016 I corresponded with the FRC regarding the September 2015 consultation on audit committees (inter alia). The consultation document encouragingly referred to the need to have one member "competent in accounting and/or auditing". When the guidance was eventually issued on 27 April 2016 this stipulation was changed back to the current wording as a direct result of very late objections raised by the FCA - errors in the investor briefing note of 27 April showed up this late confusion/change.

I urge the FRC to adopt the wording/requirements which it correctly described in September 2015.

As a final observation on this topic my working assumption is that all Chairs of quoted companies would find their lives far more agreeable having on their audit committee at least one member with the designated qualifications/experience with particularly reference to the statements made by the directors concerning the risks of material fraud and the effectiveness of financial controls over financial reporting, together with overall assurance on the annual accounts and reports sometimes amounting to over 400 pages.

In earlier iterations with the BEIS it was its practice to publish all responses to consultation papers. I trust that that the FRC follows this approach with the current consultation. I confirm that I am content for this submission to be published.

Yours faithfully,

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Life member of the ICAEW