

Business, Energy and Industrial Strategy Committee

Oral evidence: Corporate governance, HC 702

Wednesday 23 November 2016

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Members present: Mr Iain Wright (Chair); Richard Fuller; Peter Kyle; Amanda Milling; Amanda Solloway; Michelle Thomson; Craig Tracey; Chris White

Questions 73 - 156

Witnesses

I: Professor Vanessa Knapp, Queen Mary University of London; Elizabeth Wall, City of London Law Society; Catherine Howarth, Chief Executive, ShareAction

II: Paul Lee, Head of Corporate Governance, Aberdeen Asset Management; Cliff Weight, Director, ShareSoc; Sarah Wilson, Chief Executive, Manifest; Kerrie Waring, Executive Director, International Corporate Governance Network

Written evidence from witnesses:

- [Professor Vanessa Knapp - written evidence](#) | [PDF version](#)
- [City of London Law Society - written evidence](#) | [PDF version](#)
- [ShareAction - written evidence](#) | [PDF version](#)
- [Aberdeen Asset Management plc - written evidence](#) | [PDF version](#)
- [ShareSoc - written evidence](#) | [PDF version](#)
- [Manifest - written evidence](#) | [PDF version](#)
- [International Corporate Governance Network - written evidence](#) | [PDF version](#)

Examination of Witnesses

Professor Vanessa Knapp, Queen Mary University of London; Elizabeth Wall, City of London Law Society; Catherine Howarth, Chief Executive, ShareAction

Q73 Chair: Good morning. Thank you for attending the Select Committee. We are undertaking an inquiry into corporate governance, and there are various aspects of that. The key thing we would like to cover today is directors' duties, so we will be asking you about that issue. For the purposes of the record, please introduce yourself and tell us the organisation that you are representing, starting with you, Elizabeth.

Elizabeth Wall: My name is Elizabeth Wall and I am here representing the City of London Law Society.

Professor Knapp: I am Vanessa Knapp. I am a visiting professor at Queen Mary University of London, but I am not representing them today. I am here in an individual capacity.

Catherine Howarth: I am Catherine Howarth, the chief executive of ShareAction, which is a registered charity that works on corporate governance and investment governance.

Q74 Chair: May I start with you, Catherine? It is a question to you all. We are trying to ascertain the extent of the problem. Do we have a crisis in corporate governance in the UK and, in specific relation to directors' duties, is the law, both in practice as well as in subscribing to the letter of the law, working well? What is the nature of the problem?

Catherine Howarth: I do not believe we have a crisis of corporate governance. I do believe we have endemic weaknesses in investor governance. Since this is a chain, the weaknesses we see in investment governance—for example, the complete absence of pension fund annual general meetings, which would allow pension savers to engage with their trustees about whether they, in turn, had performed their functions in a satisfactory manner in holding corporate directors accountable—produce problems in corporate governance and outcomes that the Committee is concerned about.

Professor Knapp: No, I do not think there is a crisis in corporate governance or in directors' duties in practice. Corporate governance in the UK is widely regarded around the world as doing a really excellent job and has been widely copied in lots of other jurisdictions. A lot of time was spent on directors' duties when Parliament looked at that for the Companies Act—a lot of evidence was taken by the Government from a whole range of interested parties—and the law that we have at the moment is quite a careful balance between the different competing interests.

Before I turned to the academic world I was a partner at Freshfields Bruckhaus Deringer, and one of the things I did was train directors of companies on what their duties were as directors. My experience was



that the directors took that very seriously and were very interested to understand what it was they were trying to achieve. One of the things that it is very important for the Committee to consider is that the law applies both to the very small companies—so if I set up a company tomorrow and I am a director of it, it applies to me—as well as to the very large listed companies. The law works well at the moment to cover both ranges of that spectrum.

Q75 **Chair:** Thank you. Elizabeth, what is your perspective?

Elizabeth Wall: My perspective is very similar. In my experience, the duties are working very well and they are followed diligently by the vast majority of directors and boards. The duties in the Companies Act on directors are necessarily flexible. Vanessa made the point that they have to apply to both large and small companies and they achieve that in a number of ways. First of all, we have the duty to exercise reasonable care, skill, diligence etc., and that takes account both of the skills that could reasonably be expected of a director in that position at that company and the actual skills of the individual director concerned. You can see the flexibility there and how that works across the board for different types of companies.

We also have the duty to promote the success of the company where the directors have to take into account a whole list—a non-exhaustive list—of different factors. Again, when a board is making a decision it will, of course, have to balance a whole load of competing interests. That is very well set out in the Act and very well understood.

Q76 **Chair:** You just mentioned the Act. You mentioned it several times. I think everybody has mentioned the Act. In our line of inquiry, we have focused, specifically, on Section 172. Does that work? Does that need re-looking at or re-visiting? Is the wording appropriate or, in the light of what has happened since it was passed a decade or so ago, should we be looking at whether that is working properly?

Elizabeth Wall: In my opinion, as I said, the balancing of the various factors that I mentioned was a direct reference to Section 172. Those factors are the right factors, and in the vast majority of cases they are well balanced by boards. I know that there is an interest in discussing long-termism among the Committee, and that is one of the factors to be considered by the directors and it absolutely should be. It should not necessarily be the primary factor, because there will be a whole load of circumstances where there are emergency situations, where there are decisions that need to be made for the short-term good of a company and where there are shareholders who do not necessarily want all decisions to be made in the long term. It is appropriate as it is, and it is functioning well in the vast majority of cases.

Q77 **Chair:** What do other people think? Should we revisit Section 172?

Professor Knapp: I would not. The balance is a good balance and works well in practice. One of the things that you might find difficult is



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ascertaining what you mean by long-term success of the company. If you were a director of a company and you had been told that you had to aim for the long-term success of the company, what would that mean to you? Would it be three years, five years, 10 years, or longer? Would it change depending on what sort of a company you were?

One of the things that companies are doing more and more is reporting on the sort of future prospects for the company and how they see the viability of the company. This last year has been the last year when they have had to do that. A lot of companies have chosen, say, a three-year period for that. Is that what you mean by long-term? As Liz has just said, at the moment it is one of the factors that companies take into account, but it is not always the determining factor.

Chair: Would you accept that one of the structural weaknesses of the British economy is the emphasis upon short-termism, as opposed to, say, patient capital and that this has probably undermined our long-term economic growth trajectory and productivity position? Do we focus too much on what happens next week, or what happens in the next quarter, as opposed to, "Let's think about what happens in the long term," and is that incorporated into the Companies Act?

Professor Knapp: I am not an economist but I do know that is a major concern. You might ask, "If that is the major concern, what is the action that we could take to change that and is the Companies Act and directors' duties the best way of changing that?" The other question is: is that always appropriate for all companies? There are lots of other things that would influence a company as to how to balance what is happening today versus what is going to be happening in two years' time or 10 years' time. These are things like what tax allowances are available for investment in particular things.

Company law is not hampering that. There is no problem for companies that do want to take a long-term view on something, and most of the companies do do that, because they want the company to be successful over the long term. One of the things that you would have to think carefully about is, if you were to change something, would you be creating a problem in maybe a smaller number of cases and forcing something on to companies that might not be the best for all of the companies. There would really be a problem in working out what long term means in any particular case.

Catherine Howarth: I would agree that Section 172 is elegantly formulated and well constructed and conceived, but it has been a real disappointment that 10 years on the symptoms that it was hoped it would address are still very present in the economy. I think that is because Section 172, which relates to directors' duties, makes an assumption that shareholders themselves will have an enlightened perspective. As we have a system of shareholder primacy, in the end directors and companies account, primarily, to shareholders. If Section 172 is to



deliver on its promise, we need investors' duties reformed, and re-imagined and re-discovered, in a way that mirrors the enlightened formulation of Section 172.

In practice, a lot of fiduciary investors continue to think that they have a single overriding duty to maximise short-term profitability. This results in pressures that flow down to companies—constant short-term pressures. There are very weak processes of accountability within the investment chain to actual, real pension savers, in the real economy, who absolutely have a long-term need and perspective. They have no voice, at all, in the system, and no ways of holding the investors who act on their behalf accountable. As such, the whole system is very disappointing in its outcomes.

Q78 Chair: Do you think we should change the principle of shareholder primacy, then?

Catherine Howarth: No. It can work, so long as shareholders are themselves are accountable and shareholders are held to a similar set of obligations to act primarily and exclusively in the best interests of, for example, pension savers, but in a way that takes account of the effect of their decisions on the wider economy and the environment. It is that mirroring of what we have in 172 that would help to unlock the promise that people hoped would be delivered by the Companies Act.

Q79 Chair: Who would shareholders be accountable to?

Catherine Howarth: Institutional shareholders are agents acting on behalf of real risk-taking, working people, who put money into the pension system every month in good faith, in the hope that their agents will act in their best long-term interests. These people are being let down, because asset managers are incentivised in a way that focuses very much on short-term bonuses and so on. Last week we saw a pretty devastating critique from the Financial Conduct Authority about the performance of the asset management industry and the failure of the asset management industry to put its customers' interests first. It is an interim report, but the recommendations they make are ones that this Committee should look at, because they focus on emphasising, and re-emphasising, the best interests of the real risk-takers—working people who put money into the pension system.

Chair: Thank you. We might come back to that.

Q80 Michelle Thomson: I am very interested in what you are saying, Catherine. Although we are going to focus today on 172, and we will probably touch on the Corporate Governance Code, I am interested in the push and pull aspects of both of those, and particularly how it frames out a culture of behaviours in business. You touched earlier on the fact that we all acknowledge that directors have a duty to consider a range of stakeholders. But I am also particularly interested, Catherine, in your considerations of the role of business in community environment and how



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the existing framework, whether it is push or pull, helps support that. Moreover, I am interested in whether the existing framework is sufficient and, if not, what more we can do to try to get back the place of business as an enabler for society and not just an investment vehicle.

Catherine Howarth: At the risk of repeating myself, directors would feel more empowered and enabled to think about these wider factors if they had a set of shareholders who held them to account who were also interested in those things. That would happen if institutional shareholders were themselves accountable to the people who actually put the money in and whose capital is at risk. Pension savers, when they are surveyed, are ever so keen that businesses should think in this more enlightened way. They have a truly long-term perspective. A 25 year-old today, paying into a pension scheme, has a 50-year saving horizon, maybe, or 40 years. Therefore, of course, they are interested in this long-term enlightened perspective.

The problem is we have deeply problematic agency problems in our investment chain. Pension funds should have to hold an annual general meeting where, once a year, they give an account to the real pension savers. I put it to you that if the British Home Store pension savers had had the opportunity to attend an annual general meeting of their pension fund, it might have ended up in a better situation.

Q81 **Michelle Thomson:** How about nominee accounts, such as SIPPs or ISAs, where the end person does not really have a voice at all?

Catherine Howarth: Absolutely. ISAs are a clever tax-wrapper, but they create a completely voiceless set of investors in the economy, similarly for pension savers. They are an excellent, well-conceived tax wrapper. The pension fund is a well-constructed tax arrangement, but pension funds do not account to their pension savers for how they have undertaken this critical stewardship role, which is the other side of the equation that would really make corporate governance work in this country.

Professor Knapp: It would not be fair to suggest no fund managers care about the way that the companies they invest in behave. A lot of them put an enormous amount of time and effort into talking to the companies. It is true to say that tends not to happen at the companies' annual general meetings. It tends to happen in meetings, either one-to-one with the company, before the annual general meeting, or if there is a particular concern about what the company is, or is not, doing. Since the Kay Review there has been much more energy to try to improve that dialogue between companies and shareholders.

The other thing that is important and you should not underestimate is the requirement on companies to report on how they take account of environmental and social factors. If you look at the accounts some of the very large companies put on their websites, they do separate reports on those sorts of things, which are available for everyone to see. You can



see that they take that very seriously, and those groups of people in society who have a particular interest, whether it is climate change emissions or whatever it happens to be, can use the information that is publicly available as a way of questioning the company and raising issues. You only have to look at the papers to see the important effect that that sort of social commentary on what companies do and how they do it can have on businesses.

Companies are not stupid. They can see that if the general public comes to a conclusion about the way they source their goods or materials or whatever it is, or the way they behave in other countries or do not look after people in other countries who provide things that the company then sells or supplies, it does not take very long for that to be generally known and for the company's business to be affected. That is a very important influence on what companies do and the way in which they do it.

Q82 Michelle Thomson: I agree. However, is it enough and is it quickly enough, if we want to drive and foster more positive change of the role of business in society? You are correct. By the time it gets to that point and is becoming potentially an institutional shareholder revolt, it is already too late. The reason I am saying this is, if you look at the recent issues in terms of RBS's Global Restructuring Group, many years on the current chief executive had to be dragged screaming and kicking to acknowledge that, yes, indeed, what many small businesses who had been thrown to the wolves had been saying was absolutely correct. What is that if not a failure in the corporate culture, which, to my mind, should be underpinned by a better framework? Sorry, Catherine—I should be asking questions rather than speaking, I suspect.

Catherine Howarth: I just wanted to reconfirm the point that Vanessa made. There are some very good institutional shareholders, who perform their stewardship duties with great integrity and purpose.

Q83 Chair: Do you want to name them, Catherine?

Catherine Howarth: We rank them. We produce a public ranking, and some of the best are Legal & General, who are very good, Hermes Investment Management, who are really excellent. I think Threadneedle came top of our last ranking of asset managers.

Q84 Richard Fuller: What are you ranking them on? When you say they have a good rating, are you able to give us some context as to what that means?

Catherine Howarth: We are ranking on their performance as stewards in relation to corporate governance issues. We are assessing how well they perform this function of providing oversight, on behalf of people that invest in them through ISAs or through pension funds, in ensuring directors are held accountable for their duties—and hopefully they are holding them accountable to this enlightened perspective that is set out in Section 172.



There are some excellent shareholders in the institutional investment world, and then there is a long tail of asset managers who do a poor job of it because the individuals inside those firms are incentivised to accrue assets into the company and to outperform a benchmark against, perhaps, a one-year time horizon. That is what gets them the bonus. There are, unfortunately, incentives built into the arrangements by which asset managers are remunerated, and this is a much under-examined problem. Corporate pay is looked at to death, and people do not look at asset-management pay. It is a hugely big issue.

Q85 Chair: We have named the good ones. Do you want to name the ones in the long tail?

Catherine Howarth: I do not want to name the bad ones.

Q86 Chair: Why not? In terms of transparency where, if somebody is putting in 30 or 50 quid a month to their pension with that 40-year timescale we were talking about, they want to know, "Who are the good ones? Legal & General sound good. I will think about them." They also want to know, "Who should I avoid?"

Catherine Howarth: It is quite clear from our survey who the bad ones are. I am not going to name them right now, partly because I cannot bring them all to mind, but I can send it to the Committee. I would be very pleased to do that, because it is absolutely right that there should be accountability on poor performance in the asset management industry.

The Prime Minister talks about an economy that works for everyone. The reality is that, thanks to pensions' automatic enrolment, everyone, even the most low-paid workers, has a stake in our economy and in our capital markets. But they rely on very well-paid asset managers to undertake incredibly important stewardship functions on their behalf to protect their assets and to ensure they have got something to retire on, and to ensure we have an economy that is vibrant, dynamic, takes care of the environment and all the rest of it. However, we have a failure of investment governance. It is much more of a severe problem than the failure of corporate governance; however, the whole thing is a system.

Professor Knapp: There are things that could be done that would help that. The Financial Reporting Council is already tiering people who have signed up to its stewardship code, and that will encourage people to aim to be in tier 1. The people who are in tier 3 are going to have to do something or they will not be allowed to remain signatories. But there is much more that could be done by way of some sort of gold star for those managers that really do an excellent job. When people think about how to invest their money in an ISA, do they think about stewardship and engagement and things like that, or do they just think about what the returns are going to be? If you have a way of hallmarking people who do a good job on the engagement front, would that encourage people to take that into account? When you read the Sunday papers about where



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to invest your money in your ISA, is stewardship and engagement one of the topics that the journalist writes about as something that you should care about when you are choosing who to put your money with?

Q87 Michelle Thomson: I am really glad to hear you say that, because it has made me anxious that we have already had a number of witnesses who have turned up and said that everything is just tickety-boo. It abundantly is not tickety-boo when you look at certain measures. It worries me that we have never had any prosecutions under Section 172. It is not that I want to go after people, but you think, "Wait a minute, something is not right there."

Professor Knapp: Section 172 does not result in a criminal offence if you are in breach of it, so there would not be any prosecutions for someone who had not fulfilled a duty under 172.

Q88 Michelle Thomson: Sorry. Thank you for that clarification. That is one side of it. We want to stop things happening in the first place. I am interested in hearing more about how we can make positive changes and push a bit harder. To my mind, good enough is not good enough. What can we do to make it even better, because there are clearly systemic issues in the way we do our business. There are clearly issues with short-termism. There are clearly issues with some of the things you have highlighted, so I am interested in knowing more about what we can do better and really pushing at things a bit. You have not had much chance to come in, Liz. I am interested in your ideas about that.

Elizabeth Wall: As I said before, long-termism is one of the factors that directors must have regard to, and it will be entirely appropriate in many circumstances for them to do that.

Q89 Michelle Thomson: How do we make them do that? At the moment that is just words. They "should have regard". "Yes, I have definitely had regard."

Professor Knapp: At the moment, when somebody becomes a director of a company and they get something from Companies House that tells them a little bit about their duties as a director of the company but, as far as I know, that guidance was never consulted on. I think the Law Society did offer to work with the department on that guidance, but I do not think that was offered as an option. That is a wonderful opportunity when someone first becomes a director to give them a bit more information about the sorts of things they should be thinking about. If we were to look again at that guidance, that might be a useful thing that we could do. It would go to everyone, so you would be hitting a large target audience.

Elizabeth Wall: As part of the Government consultations on the transparency and trust regime, one of the ideas that was put out at that time was that directors did not have enough guidance on what their duties were and how they should fulfil them. There was discussion at that time about some more detailed guidance being put out. When the



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response to that consultation came and the Government reported on it, they said that a vast majority of respondents had agreed that that would be a good thing.

As Vanessa said, there is this short leaflet that is sent out to new directors. There is a very short piece of guidance as well on the Government website. Case studies and more real-life type scenarios would be helpful. Training clearly plays a part in that. Company lawyers are very often involved in training directors on their duties, and the directors take that very seriously. But directors of smaller companies could perhaps benefit from the opportunity to have some training and to have some more guidance. I am aware that bodies like the Institute of Directors supply that, but maybe more publicity of that kind of thing would be helpful.

Michelle Thomson: I think you were going to come back with something, Catherine.

Catherine Howarth: I was. That sounds like a very useful suggestion—and a good one—but improving the leaflet that directors get is not going to capture the full problem here. We do seriously need to think about giving pension savers a voice in the system that looks after their money. Companies must account to shareholders, but institutional shareholders account to nobody today. We need pension fund AGMs. The members of the Universities Superannuation Scheme, which is the biggest occupational scheme in the country, have been petitioning their trustees for some years to hold an annual meeting. This would mean that, much as company directors have to meet the shareholders once a year, the trustees of that pension scheme and all pension schemes should have to do the same.

That would have an enormously positive influence at a time when 4.5 million people so far—and it will be 9 million people by the time we get to 2018—have come into the pension system, have their capital at risk and have no mechanisms by which they can hold accountable the people who exercise these duties on their behalf.

Therefore, investors' duties are the orphaned part of our system. Directors' duties are well described in the Companies Act. They are working well in many ways, as my colleagues on the panel have said, but the system, as you observed, just is not delivering what it ought to. That is because we have these fundamental weaknesses on the other side of the fence. Enlightened shareholder value needs enlightened shareholders, and we do not yet have them.

Richard Fuller: Can I mention the ones that did poorly, or do you want to do that?

Q90 **Chair:** Shall we name and shame the ones at the bottom of the list?

Catherine Howarth: You have got them up, have you? Okay.



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Q91 **Chair:** UBS Global Asset Management, M&G, Santander, Hambro and Wellington Management. Why are they so bad? Why were they bottom of the league for you?

Catherine Howarth: They are less able to give an account, when surveyed, of how they have exercised the oversight of voting at company AGMs, examined the wide range of risks in reading the narrative reporting that comes out of companies, and exercised that scrutiny and oversight function. It is very important they are named in that report. Some of them have improved since then. We had interesting conversations with Santander Asset Management, who are striving to get more towards the middle of that league table. That is a good thing.

Q92 **Chair:** Does naming and shaming help in this regard?

Catherine Howarth: Of course it does, because this is a competitive market. As Vanessa said, when these factors become a source of competition in the market, as they ought to be, that has a very positive influence on the behaviour of institutional shareholders in this respect.

It is not enough on its own. We need a legal regime of investors' duties. They are called fiduciary duties and, unlike having them clarified and codified in the statute as we have with the Companies Act, investors' fiduciary duties are effectively bound up in common law and that is how they are expressed. The Government had a recommendation from the UK Law Commission, who looked at and did a major view of investors' fiduciary duties a couple of years ago, and recommended some reforms and that the investment regulations be reviewed.

The Government then consulted on that, received a lot of support for it from stakeholders, including us, and decided against reviewing the investment regulations to make explicit the interpretation of investors' duties that the Law Commission concluded would be a satisfactory one and one that would allow the Companies Act to really fulfil its potential to produce an economy that has a good balance of factors between profitability, looking after the community, looking after employees and looking after the environment.

Q93 **Richard Fuller:** I would just like to point out that is just one group's rankings. You have own criteria.

Catherine Howarth: Exactly, yes.

Richard Fuller: There is no sense that they are bad asset managers in general. I thought we would come back to shareholders and stewardship, and my colleague Peter Kyle, in a minute. I would like to turn to members of our corporate boards and really cover the areas of the pool of talent from which we have to select and appoint people to both non-executive as well as executive director roles, the training that we give to directors, and the process of evaluating the performance of directors.

I will start with you, Elizabeth. On those issues, do you think there are



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concerns in the United Kingdom? Are we drawing on all the talents? Are we making sure they are trained up and have the skills needed, and are we evaluating whether they are doing a good job?

Elizabeth Wall: We have, of course, nomination committees for our big, listed companies, who will be there and will be trying to bring in people from outside and trying to train up the pipeline to go on to boards. In my experience, once people are appointed to the board, certainly for the larger boards, they do get a lot of support. They do get a lot of training on their responsibilities, and that training is taken very seriously and well received. In terms of performance management, I think that is assessed as well.

Q94 **Richard Fuller:** Is that not some nice gloss: "Everything is okay; look away, look away"? Is it not really the case that boards of directors just choose their mates? It is the same old names, same old faces: "I know him; he is at my golf club."

Elizabeth Wall: Yes. Clearly, there is more that can be done in terms of diversity, and there have been plenty of reports put out recently on that, and nobody would disagree that that is a good thing.

Q95 **Richard Fuller:** You have just disagreed, because you just said everything was fine.

Elizabeth Wall: No. I said the proper processes are there and the proper processes are taken very seriously but there is more that can be done in terms of ensuring diversity.

Q96 **Richard Fuller:** Okay. If the result is that we do not have the outcome that we want but the processes are okay, what needs to change to get the outcome that we want?

Elizabeth Wall: These are issues that companies are thinking seriously about. As more and more is said, and as more and more reports and recommendations are put out on diversity—whether that is ethnic or gender diversity or cultivating the talent pool from within the company—boards are actively moving towards making changes in that regard. Certainly that is my experience. I would not say that all boards are there yet, but it is an issue that is being taken seriously.

Professor Knapp: For me it is a source of great regret that we do not have 50/50 parity of men and women on boards, but if I think back to where we were before the Davies report, when we were below 12% for listed companies, now we are above 25%. At the time the Davies review first set its target—

Q97 **Richard Fuller:** Remind us when the Davies Review was. It was quite recent, was it not? Was it 2012?

Professor Knapp: I think 2011 was the original one.

Chair: 2013.



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Professor Knapp: Therefore, over a relatively short period the percentage has more than doubled, and now we have the Hampton-Alexander review, which is looking more at gender diversity on the executive committee and the pipeline leading up to that. Although I would probably agree with what you are suggesting in terms of where we want to get to, the question is, "What do you best do to get there?" Personally, I am not in favour of quotas, because quotas can force companies into taking action that they do not want to take. It can lead to a lot of resentment in the workforce, where people who are not promoted think that somebody has been promoted just because they are a woman, and the person who has been promoted feels, "It is not clear if I have been promoted because of my abilities or for some other reason." The process of changing the way people think about things and the actions that they take to change the way that they think about things takes longer but I believe results in a longer lasting better change for the organisation as a whole.

Some of the very good things include challenging unconscious bias, getting companies to look at what their diversity is at the point that they recruit people and as people progress up through the organisation, thinking about why there are differences and what we could do differently that would mean that those differences were not there, and taking positive action, mentoring and sponsoring people. Part of the reason the Davies review was so successful in what it achieved was not only was there support for it among the listed companies but the companies knew that this was something that was important to Government and that Government was paying attention to it. In the last year or so progress has stalled a bit on it, and I am hoping with the new review and also with the Parker report that, if there is a real message from Government that this is important and does matter, we will keep the momentum that we have started and make sure that we continue to make progress.

Q98 **Richard Fuller:** Do you think that the executive placement firms have a special responsibility to continue that progress? They are the ones who often the boards rely on to find people.

Professor Knapp: Yes, because there a relatively small number of firms that can be quite influential in the appointments for the listed companies, but a lot of those have signed up to the code of conduct and a lot of those have been very important in the progress we have made so far. When companies come to them and say, "We want to appoint a new director," and give their specification, they have prompted them to look at a long list of candidates, which might have people on it that they might not have considered otherwise. They can be a very important part.

Q99 **Richard Fuller:** Catherine, what are your thoughts on this topic?

Catherine Howarth: We have made good progress on gender diversity on boards, thanks to the Davies review and a very big push, with Government and Parliamentarians consistently giving it focus. An important heroine in this is Helena Morrissey of Newton Asset



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Management, who chaired the 30% Club, and I believe the 30% Club submitted evidence to this review.

Helena Morrissey is that rare beast—a senior woman in the asset management industry. The asset management industry has a far worse diversity problem than the corporate sector. It really does. In addition, these are the people who elect directors on our behalf. At the risk of sounding a bit like a broken record, there are problems up the chain that have an important role to play, and the day when we have a really diverse asset management industry, we are going to see that consistent and helpful scrutiny around boards' performance on diversity. Boards' performance on diversity is incredibly important to our economy. There is more and more evidence of that.

Professor Knapp: I disagree slightly, because it is the listed companies that put forward the people that they want to be their directors. On the whole, it is quite unusual for shareholders to take a view that the person who is being put forward is not a suitable person to be put forward. Typically, if there were particular concerns about who should be appointed, there would be discussions beforehand.

Catherine Howarth: That is right, and it is true that the investment community very rarely does not support a director's election. In fact, that situation is being compared, unfavourably, to some of the more joke parliamentary democracies where there really does not seem to be a real fight. Shareholders clearly have an incredibly important role in challenging companies about board diversity, because they have important influence behind the scenes. There are conversations that take place when new directors are being considered and, of course, quite rightly the chairs of nomination committees bring their thoughts on this to the shareholders who will cast the votes. It is true they do not bring the names forward, but they have an incredibly important role to play in encouraging diverse and healthy corporate boards, and it is unfortunate that they themselves are not standing up to scrutiny.

Q100 **Richard Fuller:** Can I just ask a different area of questions? This inquiry comes out of the inquiries that we did into Sports Direct and, most notably, British Home Stores. In the British Home Store session there was a lot about the role of advisers and the influence that advisers have, and the fact that there was no public disclosure about what their responsibilities were. There was limited, if any, public disclosure about their fees. There was some confusion about who was an adviser and who was not an adviser. There were people who were working for advisory firms who sat on the board of a company that took over British Home Stores and the very next day resigned, and they each pocketed £450,000 for doing that. Is this a one-off or do you think in your experience of boards there are issues to do with the appointment and retention and disclosure of advisers that we should consider?

Elizabeth Wall: As far as advisers are concerned, there are certain circumstances, typically where the shareholders are asked to make a



decision about something, where disclosure of advisers and/or their fees must be made. For example, in a public takeover context where you have got a related party transaction that requires approval under the listing rules, their disclosures about advisers are needed, because the shareholders need to decide whether to go ahead with the transaction. They need full information in order to do that.

In terms of the disclosure of advisers or fees more generally, one would need to be clear about the purpose of that and what one expected to achieve. For example, do you want advisers to be disclosed so that somebody—I am not sure who—can be confident that the company is taking the right advice? Or is it that you want fees to be disclosed so that perhaps the company can be held to account if it is perceived that fees are too high? I am not sure which of those, or whether it is both, this proposal would aim at.

There are other concerns to think about when you are disclosing advisers. You certainly would not want a situation where the fact that advisers or fees had to be disclosed in any way deterred boards from taking the proper advice. There are situations where the very fact that you have taken advice must be confidential—legal professional privilege also plays a part in that—because there will be many sensitive issues on which advice is taken, and in some of those issues it will turn out that that sensitivity was not well founded. Perhaps there has been an allegation of something and it would be disastrous to have to disclose that to the public.

Q101 **Richard Fuller:** Is it a remedy in search of a problem?

Elizabeth Wall: Sorry?

Q102 **Richard Fuller:** The idea of doing this disclosure and the fees etc.—there is not really a hard and fast point that you can say, “I can see it is the reason and that is the good reason for doing it.” It would need more detail.

Elizabeth Wall: That is right. If someone can articulate very clearly the targeted circumstances in which disclosure ought to be required and the reasons for that and what it is trying to aim at, by all means look at those targeted circumstances.

Disclosure of advisers’ fees can be misleading. For example, if a company is doing what might be a relatively small in monetary terms but very strategic transaction and an issue is identified that would put a stop to that transaction if it turned out to be a real issue, legal and other in depth, detailed advice is likely to be needed. That might be quite costly, and when compared with the value of the transaction might seem quite large and therefore may attract public censure, if you like, but that advice may have been absolutely essential so that the company did not make a mistake, either legally, reputationally or commercially.

Q103 **Peter Kyle:** There are so many strands to this conversation that it is



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difficult to find areas where you can put it together and go into it in depth. I am left with the impression that, when you look at the different sectors and the way different sectors are governed, and the way that different sectors are held to account over their governance, it seems very different. For example, in education you have Ofsted, which will go into a school or an educational establishment. Part of that inquiry will be a very thorough look at the way that those schools or educational establishments are governed. There are many instances where governors, trustees and chairs are removed because of a lack of performance.

Similarly, in hospitals you have the CQC. When they do a review, they do a very active and assertive review of the way hospitals and health organisations are governed. Brighton & Hove—the city I represent—had the chair of an ambulance trust removed through lack of performance of the board in scrutinising and challenging the ambulance trust. It was not because anyone was killed; the chair was removed just because of lack of performance. A couple of months ago the chair of a hospital trust in the city was similarly removed, and half the board, simply because of lack of performance.

When I hear about people talking about the way the City is governed and the private sector or listed companies are governed here, I accept the starring point that we are a trailblazer globally and we have the highest standards globally, but it still feels, compared with other sectors, passive. Reams of guidance going out does not mean that reams of guidance is being read, accepted and acted upon. That is what strikes me. Vanessa, do you want to pick up on that?

Professor Knapp: Yes, because one of the interesting differences between the examples you have just given and companies is, in the examples you have just given, it is the taxpayer's money that is paying for those things, whether it is the schools or the hospitals or the ambulance service. The public needs a way of being reassured that people are doing a good enough job.

Q104 **Peter Kyle:** You know what my response is going to be already though, because of the bailouts and because we now have listed companies that are too big to fail, where public money will come in and people's lives are going to be drastically and radically—on the day of the autumn statement—affected for a very long period of time when these companies fail. If we look at some of the companies that failed, governance was front and centre.

Professor Knapp: You have to be proportionate. Think about the number of companies that fail and the number of companies that fail so spectacularly as to be a really large drain on resources, and think about what the cost would be of having some sort of Ofsted equivalent for all companies and what the benefits of that would be. Is it not better that the shareholders, who are the people who have put either their money or the money that they are looking after for the pensioners—



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Q105 **Peter Kyle:** I would posit that the cost would be considerably less than the £150 billion it took to bail out the financial services sector after the crash.

Professor Knapp: Do you really believe that anyone would have spotted it and done something about it? One of the things we have to be careful about with the financial sector crisis is that in hindsight a lot of people stood up and said, "There was something wrong. This was all dreadful", but if you go back to beforehand, it is almost impossible to find a voice that was saying in advance, "This is all wrong and something dreadful is about to happen." The one or two people who did were treated very badly for doing so.

Q106 **Peter Kyle:** Having sat through Ofsted inspections as a chair of governors, they go through past board minutes to see whether the right questions were being asked. If you look at the reported behaviour of people like Fred Goodwin and you see the impact he had in a boardroom was that people failed to challenge him on the record, even a cursory inspection of board minutes would have shown that the right challenge was not happening. Challenge, scrutiny and support—the core functions of a board—were simply not happening in those cases. I think we do not need an Ofsted but we need somebody independent cursorily independently looking.

Professor Knapp: Directors in a sense—and particularly for listed companies the people who are identified as being independent of the executive directors—are there to perform that function.

Q107 **Peter Kyle:** We are going to come to that. I know that both of you will want to say something. Elizabeth and then Catherine, do you want to comment on any of those points? You do not have to.

Elizabeth Wall: Sure. I agree with Vanessa's point that the examples you have given are in the public sector. It would not be appropriate for somebody external to come in and review board minutes, confidential decisions and workings of internal company boards. The shareholders certainly have a role in removing directors when they do not think they are performing well, and no doubt we are going to come on to and talk about enforcement and the like of directors' duties. There are some points to make on that when we get to it.

Q108 **Amanda Milling:** Good morning. One of the things that the BHS inquiry highlighted was the difference between publicly listed companies and private companies and duties and that code of conduct. I am interested to understand whether you feel that the Corporate Governance Code should be extended to private businesses as well publicly listed?

Elizabeth Wall: The Corporate Governance Code is a comply and explain tool. Companies either comply with it or they explain why they have not, and they do that to their shareholders. It is then the shareholders who will take a view whether that compliance or the explaining of non-compliance is sufficient. There are bodies like the Investment



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Association who will make voting recommendations based on the disclosures that are made, particularly the explain disclosures, which their members will take seriously.

In the private sector we have a vast number of companies that either have a single shareholder or a very closely held shareholder base. Often those shareholders will either be closely connected with the directors or there will be some kind of governance arrangement or shareholders' agreement or the like behind the scenes that gives them the rights they need in order to be able to influence corporate governance.

My question would be, first of all, who are you explaining to? The shareholders are often at one with the board anyway. Secondly, most of the provisions of the Corporate Governance Code would simply not have relevance to private company boards.

Having said that, there are a number of adaptations that have been put out to the Corporate Governance Code to suggest a standard of corporate governance that might be applicable to non-listed entities. For example, the Institute of Directors has such a code, which I believe it is in the process of looking at at the moment. There is a European one. The European Confederation of Directors' Associations has one as well. There is some voluntary compliance with that in the private sector. What is appropriate for private companies is very different from public, and it varies very much from company to company as well.

Q109 Chair: Why would it be different? What is the difference between a publicly listed company and, say, BHS, which employed 10,000 people and had 22,000 pensioners? Surely pensioners wanted to see due regard in respect of corporate governance.

Elizabeth Wall: I would say that there are reporting requirements that apply to all companies across the board, and in particular companies other than very small ones are required to put out a strategic report that does explain how the directors have gone about fulfilling their Section 172 duties, and reporting, for example, on certain employment or environmental issues as well. There is a level of reporting that already goes on. A lot of information is already out there.

Q110 Amanda Milling: Are you suggesting that there should be a new code, and maybe not applying the existing Corporate Governance Code that applies to publicly listed companies but another code that would be more appropriate to private businesses?

Elizabeth Wall: I am saying that I do not think you could not have a one-size-fits-all type code. Putting out standards, for example like the Institute of Directors have done, that companies can take on board and adopt as they think appropriate already exists, and there is also a good deal of reporting that goes on alongside.

Q111 Amanda Milling: You were saying one of the issues with private companies is you might have one single shareholder or a small group that



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might be very closely linked. Is this not part of the problem? In the case of BHS, you had a very large workforce and a large group of people in that pension scheme. Surely there needs to be something to ensure that they are being represented at that board level most appropriately.

Elizabeth Wall: That brings us on to the workers' rep discussion, which was part of the consultation or the inquiry. There are ways to give employees a voice and to consult with them. Many companies do have an open forum for consultation with their employees. I am not sure whether giving them a voice in the boardroom is necessarily the right solution. There are a number of issues with that as well.

Q112 **Chair:** In respect of the final question about enforcement, we have never seen any prosecutions under Section 172. Why is that? Is it because it is so difficult? Would judges not want to pre-empt what was in the heads of company bosses when they made decisions and, if so, what is the point of Section 172?

Elizabeth Wall: Section 172 sets out the duties that each director has to their company. They owe that duty to the company. It is the company that can enforce that duty. Shareholders do have a right in certain circumstances to bring a derivative action in the name of the company against directors for breach of duty. Any proceeds from that action would go to the company. They would not in any circumstances go to wider stakeholders.

The courts have been very tempered in ensuring that they respect what is known as the business judgment rule. This rule is not unique to the UK. This rule has application across most legal jurisdictions. What that says is that, where directors have taken proper consideration of the relevant factors and they have not made a decision that is so unreasonable that no reasonable board could have made it and it turns out to be wrong, the courts will not second-guess that decision.

If a decision is terribly bad on the part of a board, often that will lead to one of two things. It might, for example, result in a breach of some other legislation. There are a number of examples of legislation in the UK where not only can the company itself be held liable for breach but so can the directors, either civilly or criminally. Those are things like data protection, tax, environmental and health and safety. There is a whole host of those. Enforcement of those specific issues does take place, and I would suggest that if there are other specific areas where it is thought that companies are not respecting the law, one should have a look at those types of specific targeted measures rather than trying to enforce them via directors' duties.

The other point with that is that those specific legislative measures I have mentioned will more often than not capture action taken within the UK, whereas an amendment or reform of directors' duties will only affect UK companies. That has two consequences. First, there are a lot of



businesses operating in the UK that do not have a UK corporate entity behind them, and so reform of directors' duties will not help you.

Secondly, if the UK is going to be out of line with other jurisdictions in terms of enforcement of directors' duties and the business judgment rule, it is very easy for companies to move their corporate form overseas. We are in a period of massive uncertainty of company law at the moment, given that a lot of it comes from European regulation or directives. One has to be quite careful about not introducing something that is out of step with other countries and would encourage incorporation elsewhere, either in a home member state or, for example, in some offshore jurisdiction.

The other point very quickly to make is that there is a directors disqualification regime, which is very heavily enforced. I had a look at the stats on that, and in the year to the end of March this year, 1,208 director disqualifications were made. Part of the analysis when the Insolvency Service is looking at the public interest in terms of whether it should bring an action to the court for disqualification is directors' duties and how they have been performed. It is not all of the analysis, but that is an active part.

Q113 Chair: In respect of enforcement of corporate governance, whether it is legislation or perhaps more specifically the code, we had the FRC in front of us last week and they said they would like to do more and have their powers widened in order to have a more explicit enforcement role. Do you agree with that? Do you think the FRC should be doing that?

Elizabeth Wall: The Corporate Governance Code as it is—comply and explain—is there for shareholders to see whether certain standards are being met, and to vote appropriately or vote with their money if they wish to exit their investment in the company if they do not believe they are. The FRC reports 90% compliance as opposed to explaining, but explaining is a valid option if compliance for some reason is not appropriate.

Q114 Chair: Would an extension of the FRC's powers and remits in regard of this, Catherine, help break the chain and the weakness of institutional governance that you have mentioned?

Catherine Howarth: It would help and you should take very seriously Stephen Haddrill's position on that. As the regulator, if he is reaching out to say, "We do not have the powers we need to do the job we are tasked with," that is to be taken very seriously.

The Corporate Governance Code has this sister called the Stewardship Code, which was introduced in quite a hurry after the financial crisis. The functioning of the Stewardship Code is critical to the good functioning of the Corporate Governance Code, and it is a much more immature code. It is in need of quite a bit of revision and review. The Corporate Governance Code interestingly is reviewed very regularly. The



Stewardship Code has barely been looked at since it was introduced in 2010.

Vanessa mentioned the tiering that is now being done by the Financial Reporting Council of the performance of signatories to that code. That is a really excellent step, but it is not enough. We really do need that code looked at properly, because the code treats shareholders as if it was their money. It is not their money in almost all the cases. A truly effective stewardship code would recognise that institutional investors are very often agents, and they in turn need to be accountable to the real principals, the real risk takers.

Chair: Thank you very much.

Professor Knapp: Sorry, could I just say something?

Chair: Yes, but very briefly, because we are overrunning a bit.

Professor Knapp: Just on the FRC and what role it might play, I would be quite wary of getting the FRC involved. It depends a bit on what exactly their role would be. For the reasons that Liz was explaining, having someone trying to second-guess judgments that directors make could be very difficult and could make the UK a much less attractive place for people to want to come and do business, because I do not think there has been any discussion about what test they would apply and how they would go about doing their investigation. It would involve a really radical departure from what we have at the moment and would need a lot of careful thinking about.

Chair: Thank you very much. You have given us a lot to think about. Thank you very much for your time.

Examination of Witnesses

Paul Lee, Head of Corporate Governance, Aberdeen Asset Management; Cliff Weight, Director, ShareSoc; Sarah Wilson, Chief Executive, Manifest; Kerrie Waring, Executive Director, International Corporate Governance Network

Q115 **Chair:** Thank you for coming to give evidence. We are looking at corporate governance, in particular directors' duties, in this session. For the purposes of the record, please tell us who you are and which organisation you are representing, starting with you, Paul.

Paul Lee: I am Paul Lee. I am head of corporate governance at Aberdeen Asset Management.

Cliff Weight: I am Cliff Weight. I am the director of ShareSoc, which is the UK individual shareholder's society.



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Sarah Wilson: Good morning. I am Sarah Wilson. I am chief executive of Manifest. We provide corporate governance research services to institutional investors, asset owners and academics.

Kerrie Waring: I am Kerrie Waring, executive director of the International Corporate Governance Network, which is primarily an institutional-investor-led body, and our members collectively represent assets of around \$26 trillion.

Q116 **Chair:** Thank you. I will ask a quick-fire question to start with, which is probably going to take a bit of time, and I apologise for that. Is there a crisis in corporate governance when it comes to directors' duties and, if so, how do we fix it? We will start with you, Paul, because I quite liked your face when you heard my question.

Paul Lee: It is a small question. No, I do not believe there is a crisis. I spend my days talking to the directors of British companies and companies overseas as well, but predominantly UK companies. I hear from them that they are carrying forward their duties to promote the success of their companies in the interests of all their stakeholders and thinking about long-term issues as they should. No, there is not a crisis.

Q117 **Chair:** Cliff, everything is great. The garden is rosy, so what is the problem?

Cliff Weight: Not true. The 2007-08 financial crisis highlighted many of the problems of corporate governance. It was caused by short-termism, greed, irresponsibility and a complete failure of some of the non-executive directors, some fund managers and auditors to highlight the risks that were being created. It was not just CDOs or CMOs. There were also much simpler things like PPI mis-selling and the LIBOR scandal. Yes, there is a financial crisis. It is not just banks. There are examples of many other companies as well.

Q118 **Chair:** How do the people that you represent effect change? Would it be that you vote with your wallets and simply, if you are unhappy with the corporate governance or what you perceive to be poor performance by directors, divest from that company? Is that how it works?

Cliff Weight: Individual investors own 12% of the UK's stock market, but we are disenfranchised by the nominee account system. It means that we cannot effectively work together to raise these issues of corporate governance.

Q119 **Chair:** What is the solution?

Cliff Weight: The solution is to have a shareholder rights directive, so that individual shareholders are able to vote their shares and are able to get together to represent them. Maybe it is a shareholders' committee, as suggested by Chris Philp MP.

Q120 **Chair:** Thank you. Sarah, what is your view?



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Sarah Wilson: I think we have a crisis of trust. We have confusion about roles and responsibilities. We have had culture problems. Perception is reality. Even if lawyers or accountants believe everything in their silo is all hunky-dory, clearly there are communication gaps between the different professionals that advise boards. There is a lot of filtering of knowledge to boards. Many boards have had tin ears. It was very clear there were issues with Sports Direct long before they appeared before you. Only a small and very hardy band of shareholders were bothering to do anything about it. None of us should think that everything is going well. We can all do better.

Chair: That is very helpful. Thank you. Kerrie.

Kerrie Waring: You have just nicked my line. This is really a question of enforcement. We are all aware that the UK system is emulated worldwide. I have just been in Japan. The FSA are looking at taking swathes of our Stewardship Code. We do some great stuff but, yes, there is a problem. Why have Sports Direct not been held to account and had action brought against them because of the treatment of their employees? I have comments on how you might do that in relation to the FRC and inspection—the question that you keep on raising—which is more linked to board evaluation and how we might be able to have more disclosure around that point.

There are two issues that we have with our current system. The first is around capacity and resources. We all rely on sophisticated investors, and Paul is one of those, to engage on our behalf, but they have limited resources. They have thousands of companies within their portfolio.

The second point is around the sophistication of the dialogue. We are all faced with some massive questions right now. How do you talk to boards about whether or not they are climate competent? How do you talk to them about whether or not they understand future demographics and water scarcity? None of us can pretend that we know the answers to these really big questions, so there is a whole educational effort that needs to be undertaken as well on both sides, company and investor.

Q121 **Chair:** Who is responsible for driving forward change when it comes to corporate governance? Is it within the boardroom? Is it outside? Is it Parliament in terms of passing new laws or is it more about culture? We will come on to culture again in a moment.

Kerrie Waring: It is a mix. It is market led and it is you guys. If you think globally, for example, last year the OECD principles carved a specific recommendation for the fiduciary duties of investors, recognising the vital role that they play in holding boards to account. Alongside that we published again an update of our own guidance, which all of our members follow.

Regionally you have the shareholder rights directive coming into play. The shareholder rights directive is very significant because it will soon be



requiring all investors to mandatorily discuss their stewardship obligations. At a national level, they talked about the Stewardship Code earlier. The amount of countries that are adopting stewardship is astounding, and it is a really positive move forward in terms of getting a language and a framework in place for investors to really understand their stewardship obligations, in order to therefore protect and enhance the value of their investments.

Sarah Wilson: We all play a part in driving change. For example, we were analysing lack of diversity in boards 20 years ago. Often information is there. It is in plain sight, as it was with Sports Direct for example. But it is the willingness of people to act and knowing who is responsible for acting. This is where the role of the FRC, for example, as an enforcer is very important. The United Kingdom is signed up to the OECD responsible business principles, but has very little resource allocated to that. The Financial Reporting Council could play an important part in that.

To echo what Catherine Howarth was saying about the Stewardship Code, it should not be down to a handful of tier 1, tier 1 with gold star stewards to get companies to report on these things. We have got a problem of responsibility. Shareholders have very few responsibilities. They have rights, but in terms of where a responsible investor's duties lie, a fund manager's responsibility is to the mandate that they are appointed for. Clarity of responsibilities is very important, because then we know who can drive change.

Q122 **Chair:** That is an important point for me, Sarah. There is no clarity at the moment in terms of various responsibilities.

Sarah Wilson: Section 172 would benefit enormously from being revisited. It is good, but you often hear people trotting out, "The duty of directors is to maximise shareholder returns." You say, "Have you read Section 172?" and they say, "What is that?" There is scope for getting clarity about who should be doing what and who should be responding to what. You often see initiatives coming out from asset owners and asset managers not responding. There is a demand from asset owners for better, long-term investment that takes account of ESG—environmental, social and governance—issues, but some asset managers are very reluctant to take on board those concerns.

Pension trustees and local government officers now have responsibilities to consider environmental, social and governance issues, but asset managers do not and directors do not. We have a misalignment between all the parties in the system. Yes, we have very good laws and the UK Companies Act and Governance Code is something to be very proud. But I am not in favour of new law; I want the existing ones to be enforced correctly.

Q123 **Chair:** It is compliance and enforcement.



Sarah Wilson: Yes.

Q124 **Chair:** Thank you. Paul, have you got a response on this?

Paul Lee: We just need to be very careful in differentiating between the roles and responsibilities of shareholders, on which it is very important to be clear—and our responsibilities to our clients are front and centre in our minds at all times—and the duties of directors. Clearly they interact. Our role as good stewards of companies is to call directors to account and ensure that they are delivering effectively for the long term.

Q125 **Chair:** It is very clearly linked, is it not? You are looking in terms of the calibre of directors and whether they are performing their duties properly and, if they are not, you should vote them out.

Paul Lee: I absolutely agree that it is linked, but we just need to be clear which area we are talking about predominantly. As I said, I do not believe there is a crisis in corporate governance. I do not believe there is a crisis in terms of directors' duties. There are issues around stewardship and effective delivery, but that is not a crisis.

Q126 **Michelle Thomson:** I just want to pick up on something. I may be wrong in this, but I recall reading that Aberdeen Asset Management was one of the companies that were involved in calling out Sports Direct.

Paul Lee: That is one of the occasions when we have gone public in our concerns, yes.

Q127 **Michelle Thomson:** Good. I am glad I recall that correctly. My question is at what point did you become aware of the issues and what actions were you taking behind the scenes? You have personal knowledge of it.

Paul Lee: Clearly these are delicate issues and we need to always be careful and conscious as shareholders that we do not go too far. It is fair to say I personally attended the very first AGM of Sports Direct when it became a public company. We have been engaging with the company over a period of time, both individually and through collective vehicles. The concerns have been there over the governance for some period of time. The concerns over the extent of the mistreatment of employees is much more recent information. We responded to that information when we came upon it—or when it was presented to us.

Q128 **Michelle Thomson:** I am not wishing to have a pop at you personally, but I am trying to probe where everybody was. It took a parliamentary inquiry into Sports Direct for action to be taken, which would suggest to me that real substantive action shaped change within Sports Direct. In the wider context of the Corporate Governance Code or Section 172, it quite clearly was not working in this case. It is your reflections on that, because habitually we have had a lot of panels saying everything is fine, although not this panel—thank you for your contributions so far. Something is not working, and I am trying to get at what was not working.



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Paul Lee: Sports Direct is a very unusual company in the UK.

Q129 **Chair:** Why?

Paul Lee: It has a majority shareholder who happens to be an executive director of the company. I cannot quite say that is unique, but it is very close to unique in this country.

Richard Fuller: Philip Green's wife owns his company.

Paul Lee: That is a private business. That is not a public company.

Richard Fuller: That is an important distinction.

Paul Lee: It is a very important distinction. Therefore, the limits on us as minority shareholders are very significant. There was a good deal of activity going in the background. It clearly was helpful that things became public, not least through this Committee.

Sarah Wilson: Sports Direct is a very good case in point, because sometimes you have these outliers that serve to illustrate a point. I mentioned boards having tin ears and not listening. Often it is assumed that, when there are significant votes against remuneration, somehow investors have been led astray and they are not really thinking about the issues in the way that the board would like. We know that Sports Direct had a very colourful individual and, when that company came to the market, there were some shareholders who did not want to own the shares at all because that was perceived as a risk.

In terms of the board members, it was very clear that this board needed more help. It needed more outside independent directors to help them succeed and for the chief executive to understand that, while he had done a fantastic job to bring this company to the market, now that it had become a public company things had changed and he had to step up to these new responsibilities. They really should have been saying, "We are not going to get the lawyers to look at what is going on here. We need somebody independent. Like Caesar's wife, we have got to be above reproach."

People look up to quoted companies, and the upsets in the political world at the moment are a reflection of the fact that ordinary people do not trust big business, rightly or wrongly. They are a very large part of our society, and boards need to think about what this would look like if it was splashed across the front page of certain tabloids. Sports Direct was a good case in point: there were so many shareholders who were disenchanted. They had sold the shares because they realised that they had no power in that company, and it was the likes of Aberdeen or Royal London Asset Management who were going against the tide and prepared to use their votes. However, some shareholders are not comfortable using their votes negatively.

Q130 **Michelle Thomson:** You touched on something about the role of boards,



which is an area that interests me as well in terms of shaping culture generically, moving away from Sports Direct. I am interested in your thoughts about how the role of non-execs in particular can be tightened up. I keep being shocked and asking myself why I am surprised at how asleep many non-execs appear to be when the shortened acronym of NED in Scotland means “ne’er-do-well delinquents”. In fact, perhaps that is a useful acronym, because the best thing is to have someone who is somewhat troublesome on the board and always asking the difficult questions. Sometimes it is a strength to not have access to the depth of knowledge and information that the full board has, because then they just use their intuition and their long level of experience.

I am interested in your rules about the composite make-up. We may well, in fact, move on to gender and general diversity as well, but how do we ensure that kind of healthy tension is in place with the existing frameworks that we have?

- Q131 **Chair:** Could I ask a supplement to that? Michelle touches on something very important. One of the things that strikes me is that, under companies’ legislation, directors are directors. Michelle quite rightly highlighted the information asymmetry between executives and non-executives. Shouldn’t we have a distinctiveness in law with regard to chairmen, non-executive directors and executive directors in order to show very clearly what the various responsibilities are?

Paul Lee: It is very important that the role of a director or the duties of a director are the same whatever role they carry out within the boardroom. The expectations of what they should deliver need to differ depending on their role, their knowledge and their skills; and that is what happens in practice in the courts and in the enforcement process. Thus, the expectation differs but the duties should be the same. Every director should be charged with promoting the success of the company.

- Q132 **Chair:** There is a common theme in corporate governance scandals, going back many years, including some that we have covered in our Committee, whereby you have a powerful and domineering individual who could be an executive, and you have weak non-exec directors who are, frankly, patsies and who do not challenge and do not scrutinise properly.

Paul Lee: That is often the characterisation when things go wrong. That does occur. That does not mean that all non-exec directors are patsies. One of my jobs is to talk to these people and to assess whether we think they are up to the job and whether we should be comfortable with them.

Kerrie Waring: This is why Michelle’s point is such a good one, because there is a danger that we become too independent. We would not necessarily want to go down the American route, where the board is almost blind to the power of one individual. We have quite a healthy system in the UK with two or three executives on the board. The presence of a senior independent director who has the ear of the investors is, hopefully, also a way of encouraging non-executives to be



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more engaged. Again, however, we get back to diversity. Considering our new target is 33% by 2020, we are doing pretty well on board diversity. I know you think it is way too long in coming.

Richard Fuller: That is on gender, but we are not doing so well on ethnic minority diversity.

Kerrie Waring: Exactly, but that will shake it up, because women bring a different vibe to a boardroom, as would a different make-up of people from all types of societies.

Sarah Wilson: Board diversity is not just about gender and ethnicity; it is about professional experience. It is about not having a one-size-fits-all board where they are all former accountants or former lawyers or former investment bankers.

Chair: There is nothing wrong with former accountants, Sarah.

Sarah Wilson: No, indeed, but it is about what we all learn from one another. It is about groupthink. I go to meetings where I meet lawyers and accountants, and it is very interesting for me, being neither of those, to stand back and say, "They think about things in a slightly different way." It is inevitable that people get in their groove.

Q133 **Chair:** Is there a correlation between diversity of boards—that mix of executives and non-exec directors—and fulfilment of directors' duties?

Sarah Wilson: I know that there will be academics watching today who would be horrified at the idea of us trying to get a correlation out of something. It is true to say that there are successful companies with diverse boards. The numbers are not yet clear as to whether they become successful because the boards are diverse or whether their success allows them to think, "We can be more diverse."

Q134 **Chair:** The point I am trying to get across is that things are a bit cosy, there is groupthink and there is no real challenge whereas, if there is more diversity, people think, "I am going to be challenged and therefore I am going to really step up when it comes to directors' duties."

Sarah Wilson: I absolutely agree that you have got to have diversity; and I disagree with Kerrie in one regard, which is that I think the UK is teetering very close to two-tier boards and that we do not have the protections of other jurisdictions where there are two-tier boards. We have lost a lot of executive directors from boards. We have been tracking this for 20 years and we have seen the number of executive directors go down; and it is very clear that, because all directors, as Paul says, have the same responsibility, a dominant chief executive cannot grandstand in front of other directors around that boardroom table when they all have that same responsibility.

Cliff will probably highlight the disparity in pay between finance directors and CEOs. There are orders of magnitude of difference in pay and that is



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not healthy, but there are not enough HR directors on boards. If there were HR directors on boards, we might see more consideration of the workforce. There are no IT directors on boards. If there were, we might see more consideration of cybersecurity issues. There are no environmental qualified directors on boards. If everyone is a former investment banker or of a certain profession, that is what you think about. Does that mean that we need the next tier down, which is the pipeline for the future, to be more visible? Do we need to say, "If a company wants to experiment with a two-tier board system, go for it but disclose to shareholders who they are"?

There used to be a saying in the City that "we cannot have so-and-so on the board because they do not have City credibility". This whole thing about who appoints directors and how head-hunters look for people is a very important question.

Cliff Weight: It is worth pointing out that the shareholders vote for directors each year in an annual election. I should not be saying "shareholders", because they are not: they are the people who have usurped the power of the beneficial owners of the shares. They are voting for these non-executive directors, even where they are not independent enough or not executing the right roles as a non-executive director. There needs to be more challenge from the fund management industry.

Q135 **Chair:** Paul, how do you respond to that?

Paul Lee: My experience is that there is a good deal of challenge. We work to call the individuals to account and ensure that we are confident that they are delivering their job effectively.

Cliff Weight: I do not want to criticise Aberdeen Asset Management: they are a low-turnover buy-and-hold fund manager that aims for consistent returns. You have a dozen or so people in your corporate governance department.

Paul Lee: Yes.

Cliff Weight: There is a problem that not all fund managers are like Aberdeen: they are under-resourced to deal with these corporate governance issues. Professor John Kay highlighted in his review the issue of active funds that hold too many stocks. If they held fewer stocks, they could spend more time looking at those individual companies.

Q136 **Chair:** I am very keen to bring Amanda and Richard in, but can I just ask a very quick question in response to that, particularly to you, Paul? Is the issue of long-termism against short-termism a problem in the fund management industry? Do people not buy and hold, such as Aberdeen might, and are they not shareholders as such but share traders?

Paul Lee: There clearly is a portion of the market that trades phenomenally quickly and do not see themselves as owners or part-



owners of companies; they see themselves as traders of pieces of paper or bits in a computer.

Q137 **Chair:** How systematic is that? Could you give us an idea of how big that is? Are more people like Aberdeen in respect of buy and hold, and thinking about the long term and the performance of a company and therefore how it is governed? Or is it a case of, "I am going to sell in a week, so I do not give a toss about the corporate governance of a company"?

Paul Lee: I do not have the numbers to hand, but the turnover of the market as a whole is somewhere around 100% in eight months. That is predominantly in the 10% to 15% of the market that is traded very actively. Of the 85% of the market, about half is now passive holding, which is just buy and hold and locked away. Another significant portion of that is active and held not necessarily quite as long as we do but certainly longer than milliseconds.

Sarah Wilson: It is worth pointing out that nearly half of UK plc is not owned by UK institutions. The cultural norms that drive governance in the UK are different from the norms of the US, Europe and Asia. To that extent, we have to ask whether it is reasonable for just the UK community to be burdened with this responsibility or whether all shareholders need to be brought in, which is the role of bodies like ICGN. In the United States, there are enormous polarities in the corporate governance debate.

Q138 **Amanda Milling:** I want to go back to a point that Sarah made. When you talk about the structure of boards, you will have a finance director but there is not always an HR director on a board. My question is: should there be a requirement to have an HR director on a board with a statutory duty? I ask that question because it has manifested itself in two different ways. Look at what we ended up with regarding the working practices at Sports Direct. With regard to BHS, a lot of employees and pension scheme members have been impacted heavily. Did they have a strong enough voice on those boards?

Sarah Wilson: You have different bodies of law here, pensions law and company law, and we need to take a look at the interaction between the two. I cannot comment enough on the private company situation; we look at public companies.

Companies should explain why they do not have more of these different types. We are a "comply or explain" world. Companies should give a reasoned explanation for the composition of the board. There has been an unintended consequence of the Governance Code in that the quote "the majority of the board should comprise outside independent directors" has come to mean that they should all be outside non-execs. Companies should explain why.



The sustainability reporting is a very good example of where there are very good reports that companies make. People like British Land, Anglo American, Mondi and Carillion produce very good reports that touch on some of these factors but they are not up to date. They can sometimes be two or three years out of date. It is often seen as an afterthought. The Financial Reporting Council currently is charged with financial reporting, not these other factors as well. You could have a very strong nudging effect if some of these sustainability governance factors were brought into the remit, and it goes back to the OECD principles of responsible business. It is important for a company to explain why they do not think that they should have executive directors on the board. We would not object to it at all. We are not going to mark a company down because they suddenly have a balance of half execs and half non-exec— not at all.

Q139 Richard Fuller: I want to pick on a theme that we had in the last session about diversity—Paul, I hope you do not mind me asking this. An interesting point was made there that we can do all we like with the boards in terms of diversity but it is the asset managers that are traditional old boys' clubs. Is that the case?

Paul Lee: Not in my experience, no—certainly not at Aberdeen. You mentioned ethnic diversity earlier on. We were proud as an organisation to be listed in the top 10 most ethnically diverse boards in the Parker review that came out recently. We think it is fundamentally important to be open to the world, and that is how we invest and how we build our teams.

Q140 Richard Fuller: It is good for Aberdeen, but what about the rest? Just as we are monitoring what is going on on boards, should we be looking at the asset managers as well? After all, they are closer to the population, if you like, than companies are. Your investors will reflect the country's diversity. Shouldn't we be monitoring the asset management industry for gender and ethnic diversity?

Paul Lee: I cannot speak for the industry as a whole.

Q141 Richard Fuller: What do you personally think?

Paul Lee: These are very important issues across all of British industry that we should all be working to address.

Q142 Richard Fuller: Are you aware of anything that the asset management industry is actively doing about it?

Paul Lee: There are various projects around gender diversity in particular that are actively being pushed across the industry.

Q143 Richard Fuller: Is there an institute that does this? Who are the right people for us to talk to?

Paul Lee: There is, and I ought to be able to name it but I cannot offhand, I am afraid. I will certainly let you know.



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Q144 **Chair:** I have just had a look at your web page, Paul, and at the board of directors. Of 12 directors, three are women, all of whom are non-exec directors. All of your executive directors are men.

Paul Lee: Yes.

Chair: That is good in the fund management industry, is it?

Paul Lee: I do not think that was the question I was being asked. It is well known that we lost our female CIO last year. No, and that is very much an issue that is in the forefront of a lot of people's minds within the organisation: that we need to address gender diversity.

Q145 **Richard Fuller:** We are a bit fed up of hearing that issues are at the forefront of people's minds while nothing seems to change. It seems perverse to me, Chair, that we should have, quite rightly, lots of attention on directors to make sure that the boards of directors represent the population, drawing on all the talents, while not having the same vigorous approach to the asset management industry, who are the people who ultimately are the shareholders in those companies. I have picked on Paul enough.

Kerrie Waring: I agree with what you are saying. I could do a quick poll of our own membership. My sense is that quite a high proportion of women lead the corporate governance team side. I know, for example, that the corporate governance of one of the biggest funds in the world, CalPERS, is led by Anne Simpson. BlackRock is led by Michelle Edkins. These are very prominent, very sophisticated individuals and there are a lot of women all around the world who are leading the CG side. Whether corporate governance is something that is more appealing to women or not, I am not sure; but we could provide you with some quick stats in terms of our own membership that would give you an indication of the make-up. It is not systemic in terms of the whole company, but it will give you an indication, in this area, of the proportion of female to male.

Q146 **Michelle Thomson:** The key point is, though, the role that corporate governance has in shaping the culture of an organisation. That is why it is important that you get this broad consideration. Really, where the power brokers are, they are still predominantly male; and my own personal view is that where we are at the moment, whilst there has been a change, it is nowhere near good enough and it is nowhere near ambitious enough when you look at the contribution that diversity brings. It is about the culture that we still have and the behaviours that it brings to business that we are still reaping the non-rewards of.

Kerrie Waring: That is appropriate. Paul was the pens to this, but I heard Catherine talking earlier about the governance of investors. We have had a code since 2003. The FRC code drew upon the ICGN code and the ISC code. The code that we published this year was approved by our members. The first principle is all about the foundations of effective stewardship. It is all about getting your own house in order first, i.e. do you have independent governance arrangements in place? Do you have



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an effective remuneration system? All of this stuff about the culture and the effectiveness of the investment funds themselves is our first priority, and I think the industry is more cognisant of that and we will be doing more in that space. Educational training is something that we need.

Q147 Richard Fuller: The way that the people who ultimately make the investment decisions look at the things that are important about corporate governance will be different if half of the people in that room making those decisions are women rather than 0% being women. There are also the talents that are drawn upon. Aren't we holding ourselves back if we do not push the asset management side?

Sarah Wilson: One of the things that has been pushed in the last four or five years is closer integration between the ESG teams—that is environmental, social and governance teams—and the investment process. This is an area of further investigation. The Financial Conduct Authority issued its interim study on the asset management industry last Friday and Catherine Howarth mentioned this. In some organisations—and, in fact, you named and shamed a few houses according to ShareAction that were not good stewards—if you were to look at the resources that are applied to the ESG function, you often have maybe one individual who is treated as an afterthought stuck in the corner. Aberdeen is unusual and that is why they get a good rating: because they have invested in people, systems, knowledge and data. That is not true in every organisation.

Being female, I think I am qualified to comment on this. Having been in the City since 1982, it was very pale, male and stale then and there are still pockets of it. I always thought that asset management was a more diverse side of the business than, say, investment banking, so that might be something that you want to task the FCA with in terms of a review of culture and diversity within regulated entities. I am not sure it is something within company law that you can necessarily look at, but it is true to say that not all houses put the same effort into this. We are right at the bottom of the feeding chain in terms of the priorities. Many governance people have to really shout quite loudly inside their organisation in order to be taken seriously. That is not true of everybody.

This goes back to governance being a systemic issue in places where some companies have done better than investors on governance issues. Some companies have done better on their reporting than the investors have. It is not one-size-fits-all, but it is definitely worth looking at why there are so many women in governance and responsible investment. Maybe it is because we feel that there is a need to clear up some of the messes that have been left behind. Perhaps that also means that we are marginalised and that it is not taken as seriously, because it might be seen as—I hate to say it—women's work. I would hate to think that was the case.

Q148 Richard Fuller: Thank you for that. I would like to ask Cliff a question.



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One of our colleagues, Chris Philp, has suggested—and you might have mentioned this in your own comments—that shareholders should have more control over executive compensation and that shareholders should have more authority over nominations of directors and, to that effect, we should mirror the Swedish system, where there is a specific shareholder committee or subcommittee that comprises the top institutional shareholders in each company to fulfil those roles. He believes that that will reduce the excesses in executive compensation and help diversify board appointments. What are your thoughts about that proposal?

Cliff Weight: He suggested a committee of the top five investors—investors who would be willing to act—because a lot of investors will not engage on this and will not be willing to act. If it included a representative of individual shareholders as well, it would enormously empower that committee.

One of the problems for corporate governance is that there is an impasse at the moment whereby things are just carrying on more or less as they are. There are lots of new ideas coming along but not much change. This could help break down the impasse. One of the issues is that, when there is a concern with companies, it is too late by the time you get to the AGM to do anything about it. This shareholders' committee could be consulted earlier and really have some impact on that decision.

Q149 **Richard Fuller:** If the executives consider a certain size of compensation package is right, they could talk to that committee ahead of time and tweak it, i.e. reduce it.

Cliff Weight: At the moment those discussions go on behind the scenes with their leading investors, and Paul can talk about those better than I as to what happens in those discussions. One of the problems is that there is no real commitment from those investors in those discussions. They might then change it when they finally see the final proposition. Chris Philp's proposal would make it not binding but much more effective.

Q150 **Richard Fuller:** That takes two very specific responsibilities out of the hands of directors and into shareholders. Do you not feel that that would set up other unintended consequences of concern?

Cliff Weight: Shareholders need to act much more positively in all of this and they have been failing to fulfil that responsibility. This will force them to fulfil their responsibilities.

Sarah Wilson: I have quite a number of Scandinavian clients and they are not all entirely enamoured of the process. You have to look at why it was introduced in the first place: the culture and the fact that you had a lot of dominant family firms in that market and minority shareholders needed protection. I do not think that we should not look at it, but it goes back to enforcement: shareholders have enormous powers but they are very rarely used. For example, why do we have one candidate for each director election? Why do we not have multiple candidates put forward? Very large organisations such as the National Trust do this: a



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variety of individuals are put forward so that it becomes a little bit more of a competition, as it were. There are lots of things that companies could do.

Richard Fuller: Make that company great again.

Sarah Wilson: Well, there are lots of things companies could do. Company law is tremendously permissive. There is nothing wrong with companies experimenting. There is nothing wrong with companies having different classes of shares with different voting rights for the duration of ownership. The problem with that is that, because of the nominee system that Cliff mentioned earlier, it can very easily disenfranchise shareholders quite unintentionally, because you have the inability to prove that you have been an owner, for example.

Companies could be much more experimental. Stock exchanges could create different tiers. There are lots of things that can be done. You do not necessarily need a new law, because new laws, like the Pensions Act, can have unintended consequences that we do not see for maybe 10 years.

Q151 **Richard Fuller:** Can I very quickly ask a question of Paul? If we were to do this, would you be keen and eager to take up this new shareholder committee role?

Paul Lee: I fear that we would qualify, because of our passive pot of money, to be on a number of these committees, if not all of them. A couple of words have been used in talking about it that do talk to that question that you asked about unintended consequences. You used the word "control" and Sarah used the word "power". I am very clear that shareholders do not have power. We have influence, and it is the job of me and my peers to exert that influence wisely and carefully; but we do not have power unless we were to get to a majority shareholding, which we really do not look to do.

I fear that these sorts of committees start to tread into the territory of shareholders having control and therefore treading into the turf of the directors, disempowering them and making them less accountable. We then risk them having an excuse for not carrying out their duties.

Cliff Weight: Paul has used the word "shareholders" when he should be using the words "fund manager on behalf of the beneficial owners".

Q152 **Chair:** Paul, may I ask you a question? To whom are you accountable?

Paul Lee: I regard my accountability as being to my clients and, indeed, to the individual beneficiaries who sit beneath them. That is hundreds of thousands of people. That is who I work for.

Q153 **Chair:** I do not know if you were here for the first session, but Catherine Howarth said that there is not necessarily a crisis of corporate governance but rather institutionalised governance relating to asset



management, because they are not accountable, and the person who is putting £30 or £50 a month into their pension scheme does not have any degree of being able to hold people to account. Do you recognise that accusation?

Paul Lee: That point is probably around accountability within the pension schemes and the pension structures themselves. As it happens, I am going to see a client for a presentation on Friday to explain our activities around stewardship. I am regularly called to account in respect of that. We report on this activity quarterly to all of our clients. We have improved that over the last year and we are now in a place where I think we are fully accountable for this work, and that is appropriate.

Kerrie Waring: The asset owners hold you accountable. Generally, the current thinking around how you make the asset management industry more accountable is to ensure that you have robust mandates between the asset owner and the manager that properly incorporate issues around stewardship and ESG integration. The evidence is that is pretty standard now. The problem now is in terms of the monitoring of that implementation of those stewardship obligations in those mandates. That came out of the FRC in some observations that they made recently, which is why, again, in terms of accountability on the owners, the FRC tiering system is very interesting and quite innovative. There are methods of accountability and we need to work more on them.

Q154 **Chair:** Kerrie, in terms of those methods of accountability, you have touched upon compliance and enforcement and, in your written evidence, you said that it is not a matter of inadequate legislation that fails to keep UK companies in check but rather a lack of truly effective corporate governance monitoring and enforcement on a systematic level. I have two questions on that in relation to something you mentioned earlier. One is: should we expand the FRC's powers in order to give it a much more robust enforcement and compliance role; and, if not the FRC, then who? The point was also made that there are the UK shareholders, but of course capital is now global. How do you incorporate the fact that there are global capital flows with regard to this?

Kerrie Waring: With regard to the first question, there seems to be a consensus and many of us have responded that there should be a statement of disclosure against 172. My concern about that would be: how do we avoid that being a boilerplate? Having a regulatory body like Ofcom would enable any stakeholder to be able to submit a complaint, if there was one, to that authority and that could then be followed up. I also think that that body should perhaps have some inspection powers, i.e. be able to inspect companies if there were complaints lodged or, even if not, based on the size of the company. That could be housed within the FRC or, as the TUC was suggesting, a corporate governance commission, which is probably also a very good idea. There does need to be disclosure but we need to think very carefully about how that disclosure is put into practice, because we want to avoid boilerplate.



The globalisation of capital is, frankly, the reason we were set up in 1995. 30% of our members are US-based. Any of the guidance that we produce is written by our members, who are here on the panel with me, incidentally, and that is a global piece of guidance. I am not wishing to promote the ICGN, but we need more tools, more education and more professionalisation of the industry in order to help investors to have more resources and capacity to engage with companies worldwide.

Q155 **Chair:** Do you have any comments in terms of what Kerrie said?

Sarah Wilson: We would support the FRC having more resources allocated to it. There were some raised eyebrows about the number of asset managers in tier 1, even inside tier 1 signatories themselves. There was a degree of, "Well, I think we do a better job than they do." There were some concerns that people are very good at disclosure but that, when you peel away the layers, it does not necessarily follow through.

If that is seen as the start of a journey, it is about whether the FRC can follow through on that. It is about capacity building, as Kerrie says, but that inspection helps build the capacity. It is a little bit like the Ofsted approach. Remember that there are not many pension fund trustees left now and that DB schemes are unfortunately on the wane. From that point of view, somebody else has to be there. Asset managers miss opportunities to show off their skills and competencies on ESG factors. They do not advertise it widely. Things like Good Money Week, for example, are trying to raise awareness of asset managers who do a better job in this area, but it is a question that you need to address to the chief investment officers and the chief executives of the asset management industry as to why some take this issue as seriously as Aberdeen does and some do not.

Q156 **Chair:** Cliff, would small shareholders gain reassurance if there was some body, whether it is the FRC or a corporate governance commission, that would have some degree of enforcement, compliance and inspection powers?

Cliff Weight: Yes, small investors particularly would like to see much more reassurance about their money. There have been too many scandals. For example, BEIS probably needs larger resources in order to fulfil its requirements. There was a good programme on BBC radio recently about the London Stock Exchange and its regulation of the AIM market, which highlighted some of the scandals that have occurred. You should ask them why they are not enforcing.

Chair: Thank you very much for your time. We really appreciate it and, again, there is much food for thought there. Thank you again.