

Chris Hodge  
Corporate Governance Unit  
Financial Reporting Council  
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Friday 29 July 2011

Dear Chris,

**FairPensions Response to FRC Consultation Document: ‘Gender Diversity on Boards’**

FairPensions welcomes this opportunity to respond to the Financial Reporting Council’s Consultation Document “*Gender Diversity on Boards*”. We comment below under the two main headings in the Consultation Document.

**POSSIBLE CHANGES TO THE UK CORPORATE GOVERNANCE CODE**

In principle, we fully support the proposal canvassed in the Consultation Document that the Corporate Governance Code be amended in accordance with the recommendation of Lord Davies of Abersoch in his report “*Women on Boards*”. We agree that this change is needed for the reasons given in the Davies Report which are reproduced on page 1 of the Consultation Document. We also think that such an amendment will help to address the FRC’s concerns about the implications for board effectiveness of the low percentage of women directors, as set out on page 3 of the Consultation Document.

We have, however, some comments on the wording of the amendments which are suggested in the Consultation Document:

As stated on page 1 of the Consultation Document, the relevant recommendation in the Davies Report was:

*“The Financial Reporting Council should amend the UK Corporate Governance Code to require listed companies to establish a policy concerning boardroom diversity, including*



*measurable objectives for implementing the policy, and disclose annually a summary of the policy and the progress made in achieving the objectives”.*<sup>1</sup>

The Consultation Document, however, suggests (on page 5) amending Provision B.2.4 of the Code as follows:

*“A separate section of the annual report should describe the work of the nomination committee, including the process it has used in relation to board appointments. This section should include a description of the board’s policy on gender diversity in the boardroom, including any measurable objectives that it has set for implementing the policy, and progress on achieving the objectives. An explanation should be given if neither an external search consultancy nor open advertising has been used in the appointment of a chairman or a non-executive director.”* (amendment underlined)

There are thus at least two material differences between the respective wordings:

- (1) The reference in the Davies Report wording to “*diversity*” has been changed in the FRC wording to “*gender diversity*”. We agree that is desirable to have a specific reference to gender diversity in order to reflect its particular importance. We do not, however, think that the wording should be so narrow as to exclude other forms of diversity which could also contribute to boardroom effectiveness. (We appreciate that, given his particular remit, Lord Davies may well have had in mind only gender diversity but we do not consider that this detracts from the need for the Code to adopt wider wording.) We suggest, therefore, that a preferable formulation would be “*diversity, including gender diversity*,”. This would be consistent with the approach already taken in the first Supporting Principle under Section B.2 of the Code, with its reference to “*the benefits of diversity on the board, including gender*”.
- (2) The Davies Report recommendation would require listed companies to establish and report on a policy concerning boardroom diversity that would include “*measurable objectives for implementing the policy*”. The FRC wording, however, contains no such requirement, referring as it does only to “*the board’s policy on gender diversity in the boardroom, including **any** measurable objectives that it has set for implementing the policy*” (our emphasis). We do not think that the Davies Report recommendation should be watered down in this way. It is hard to imagine circumstances in which it would be justifiable to have a policy on diversity without also having measurable objectives for implementing the policy. Moreover, even if a board did consider that there were good reasons not to set such objectives, it would be free to explain these under the Code’s “comply or explain” regime. We therefore suggest the deletion of “*any*” before “*measurable objectives*”.

Taking into account the above two comments, we would suggest that the amendment to Provision B.2.4 be worded as follows:

*“A separate section of the annual report should describe the work of the nomination committee, including the process it has used in relation to board appointments. This section should include a description of: the board’s policy on diversity, including gender diversity; measurable objectives that it has set for implementing the policy; and progress on achieving the objectives. An explanation should be given if neither an external search agency nor open advertising has been used in the appointment of a chairman or a non-executive director.”*

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<sup>1</sup> *Women on Boards*, page 19

Similarly, we agree with the idea of a new Supporting Principle on board evaluation under Section B.6 of the Code which would include a reference to gender diversity but we suggest that in the draft Principle on page 6 of the Consultation Document the words “*the board’s policy on gender diversity,*” be changed to “*the board’s policy on diversity, including gender diversity,*”.

We should also like to suggest a related further amendment to the Code, aimed specifically at the nomination committee. It is widely recognised that one of the obstacles to achieving more boardroom diversity is the natural tendency of even well-intentioned boards to appoint in their own image. It follows that one of the most effective ways of promoting diversity is to ensure that the nomination committee is itself diverse. We suggest, therefore, that as Provision B.2.1 already deals with the composition of the nomination committee, it be amended as follows:

*“B.2.1. There should be a nomination committee which should lead the process for board appointments and make recommendations to the board. So far as practicable, the composition of the nomination committee should be consistent with the board’s policy on boardroom diversity, including gender diversity. A majority of the members of the nomination committee should be independent non-executive directors. The chairman or an independent non-executive director should chair the committee, but the chairman should not chair the nomination committee when it is dealing with the appointment of a successor to the chairmanship. The nomination committee should make available its terms of reference, explaining its role and the authority delegated to it by the board.”*

(Alternatively, the suggested new wording could be in a separate Provision, for instance, a new Provision B.2.5.)

Finally, we think that it would indeed be helpful if, as suggested on page 5 of the Consultation Document, the FRC were to set out some of the key elements to be covered by a gender diversity policy (or, preferably, by a diversity policy including gender). To be clear, such guidance need not prejudge *how* those issues should be addressed, or act as a ‘template’ which could encourage boiler-plate. Rather, an indication of the issues that an adequate policy should cover would help to encourage meaningful and comparable disclosures. We have previously made a similar suggestion in relation to investors’ conflicts of interest policies disclosed under the Stewardship Code.

As to the question asked in the Consultation Document of whether this should be done in the Code or elsewhere, that would presumably depend on the nature of any such guidance and in particular on its length and detail. If these were such as to make its inclusion in the Code inappropriate, the FRC might wish to incorporate the guidance in the next version of its “*Guidance on Board Effectiveness*”, which already contains references to the importance of diversity (for example, in sections 1.3 and 4.3).

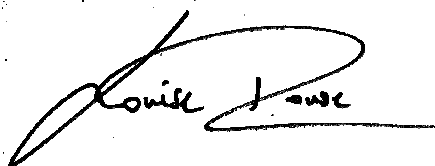
## **THE TIMING OF ANY CHANGES TO THE CODE**

Of the four options for bringing into effect any changes to the Code that are listed on pages 7 and 8 of the Consultation Document, we would favour the first and earliest: that the revised Code would apply to accounting periods beginning on or after 29 June 2011. As the Consultation Paper indicates, early implementation would not only best meet the recommendations in the Davies Report but could also be helpful in the context of the current debate at EU level.

Furthermore, we do not think that there is much force in the objection that companies may have concerns about changes to the Code being made when they may still be coming to terms with the changes introduced in 2010. If it is accepted that these additional changes will contribute to better corporate governance then it is reasonable to expect boards to be ready to embrace them, especially as the new provisions will merely set in motion a process of gradual change that will take some years to make a significant correction to current imbalances.

Likewise, we do not see that there would be much merit in deferring these changes to the Code on account of other possible regulatory changes, the details and timing of which are at present uncertain.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Louise Rouse". The signature is fluid and cursive, with a large loop at the end.

Louise Rouse,  
Director of Engagement, FairPensions







