

COMMITTEE
ON
THE FINANCIAL ASPECTS
OF CORPORATE GOVERNANCE

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Sir Adrian Cadbury
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Dear Sir Adrian

Enclosed is a copy of an extract from the NatWest Report and Accounts, which I mentioned to you yesterday. As well as the corporate governance statement, I have copied the directors' details - I like the presentation of the directors' shareholdings and options with the biographical details - it's also nice to note that two Committee members are on the board! I have not forgotten your request for the TSB report, this will follow in due course.

Sir Sydney Lipworth has written to you confirming that the FRC will continue its sponsorship of the Committee through to May 1995.

I have been giving some thought to Sir Ron's letter on the non-executive position in Camelot. It probably is an advantage to me in that I was not in on the Committee discussions surrounding the drafting of the Report and Code, and therefore take what is written very much at face value. The wording of paragraph 2.2 of the Code is as follows:-

"The majority should be independent of management and free from any business or other relationship which could materially interfere with the exercise of their independent judgement, apart from their fees and shareholding. Their fees should reflect the time which they commit to the company."

The words I have highlighted are ones which were added after publication of the draft report, so you will see that the basic premise regarding the need for a majority of independent NEDs was in the May 1992 document. Looking through Committee records, it appears that the original suggestion for a majority of non-executive directors to be independent was put forward in a paper you circulated to the Committee which was discussed at its meeting on 17 October 1991.

Although Camelot obviously have enough independent NEDs to service Audit and Remuneration Committees, they would appear not to comply with the Code in view of the fact that independent NEDs do not outnumber the shareholder NEDs on the board. I am assuming that all five of the shareholder NEDs would fail the test of being "...free from any business or other relationship which could materially interfere with the exercise of their independent judgement, ..".

Compliance with 2.2 is one of the points looked at by the Cadbury/ABI researcher. While being primarily concerned that there are sufficient independent NEDs to service the Audit and Remuneration Committees, he does look to see whether the independent NEDs are in the majority, and this could be something that he either takes up with the company concerned himself, or points out to ABI members who have a significant shareholding to take action as they think fit. In their Shareholder Voting Guidelines, PIRC have made it clear that they will abstain from voting on NEDs where the company does not comply with Code recommendations relating to the number or proportion of independent directors.

I understand that in their latest Report^{*}, Rentokil has made a non-compliance statement on this specific point, ie they do not comply with 2.2 in that the majority of their NEDs are not independent, some of them also being directors of a company which has a 60% odd shareholding in Rentokil.

If my interpretation of Camelot's position is correct, they would appear to have the options of either appointing two further independent NEDs, or making the necessary non-compliance statement. They may wish to defer this decision, however, until after the decision is taken on who should run the lottery as it could of course all be academic.

I am attaching the basis of a draft reply which you could send to Sir Ron if you are in agreement with my view.

With best wishes

Gina

** copy of relevant page attached - interestingly they include going concern and internal control statements.*