

Sir Adrian.

Returned with thanks. I read
with great interest.

18th September 1992

NP
30/10.

Thank you for taking part in our Colloquium last week and helping to make it a success.

Many people have suggested that, while the discussions are fresh in our minds, we should collect some views on the basic points we debated. The result might even give us something useful to pass on to Sir Adrian Cadbury as he assesses the responses he has received.

With this in mind, I enclose a questionnaire. If you are able to spare the time to fill it in, it would be much appreciated. It is deliberately couched in somewhat simplistic terms - any more sophisticated responses would of course be welcome.

Any comments passed on to Sir Adrian (or others) would be given on a non-attributed basis.

Incidentally, if you would like any copies of the papers, please do not hesitate to let me know.

P.R.J. Holland

encs

Corporate Governance

Some questions arising out of the Oxford Law Colloquium 1992

Code of Best Practice

- | | | |
|--|-----|--------------------------|
| 1. In general, do you support the Cadbury recommendations? | Yes | <input type="checkbox"/> |
| | No | <input type="checkbox"/> |
| 2. Should non-executive directors have, as part of their role, a "control" or "monitoring" function vis-a-vis the executive directors? | Yes | <input type="checkbox"/> |
| | No | <input type="checkbox"/> |
| 3. Do you agree that, where the chairman is also the chief executive, there should be independent directors on the board, one of whom is the appointed leader? | Yes | <input type="checkbox"/> |
| | No | <input type="checkbox"/> |
| 4. Do you think that all directors on a board should have the same legal powers and responsibilities (ignoring duties and responsibilities as executives), i.e. that the current legal position should remain unchanged? | Yes | <input type="checkbox"/> |
| | No | <input type="checkbox"/> |
| 5. Do you believe that the proposals in 2 or 3 above, if implemented, would eventually lead to a two tier board system in the UK? | Yes | <input type="checkbox"/> |
| | No | <input type="checkbox"/> |
| 6. Do you see any merit in a two tier board system if introduced in the UK? | Yes | <input type="checkbox"/> |
| | No | <input type="checkbox"/> |
| 7. Do you think that the requirement for at least two independent non-executives is too onerous for the smaller listed companies? | Yes | <input type="checkbox"/> |
| | No | <input type="checkbox"/> |
| 8. Do you share the concerns that the supply of potential non-executive directors may be insufficient? | Yes | <input type="checkbox"/> |
| | No | <input type="checkbox"/> |
| 9. Do you agree with the Cadbury recommendations for | | |
| - remuneration committees | Yes | <input type="checkbox"/> |
| | No | <input type="checkbox"/> |
| - audit committees | Yes | <input type="checkbox"/> |
| | No | <input type="checkbox"/> |
| - committees for the nomination of non-executives | Yes | <input type="checkbox"/> |
| | No | <input type="checkbox"/> |
-

19. Would it result in better governance if the current rules on takeovers were changed radically, e.g. to provide:

- | | | |
|---|------------|--------------------------|
| (i) a bidder is allowed (in the absence of a subsequent competing bid) to make only one offer (i.e. no improvement of a bid during its course); and | Yes | <input type="checkbox"/> |
| | No | <input type="checkbox"/> |
| (ii) an offer must be conditional on a majority vote of independent shareholders in the target given at a general meeting called to consider the offer; and | Yes | <input type="checkbox"/> |
| | No | <input type="checkbox"/> |
| (iii) no share purchases may be made by the offeror or his associates during the offer period without target shareholders' prior consent. | Yes | <input type="checkbox"/> |
| | No | <input type="checkbox"/> |

Auditors

- | | | |
|---|------------|--------------------------|
| 20. Will auditors realistically be able to make a sensible endorsement of a company's statement of the extent of its compliance with the Cadbury Code? | Yes | <input type="checkbox"/> |
| | No | <input type="checkbox"/> |
| 21. Should audit partners within an accountancy firm rotate? | Yes | <input type="checkbox"/> |
| | No | <input type="checkbox"/> |
| 22. Is the decision in <i>Caparo</i> satisfactory? | Yes | <input type="checkbox"/> |
| | No | <input type="checkbox"/> |
| 23. If not, would it be helpful if the auditors had duties of care to potential investors and creditors (as well as to existing shareholders) but, at the same time, their <i>standard</i> of care were reduced to below the current level of negligence? | Yes | <input type="checkbox"/> |
| | No | <input type="checkbox"/> |
| 24. Do you think that the UK accounting standards should be changed to reduce the extent of discretions permitted, i.e. to make the accounting practices used by companies more consistent with each other? | Yes | <input type="checkbox"/> |
| | No | <input type="checkbox"/> |

Yourself

- | | | |
|---|------------|--------------------------|
| 25. Would you, in principle, like to attend another colloquium (in a similar format and style) if Allen & Overy and the Oxford Law Faculty were to organise one in two years' time? | Yes | <input type="checkbox"/> |
| | No | <input type="checkbox"/> |
| 26. Do you have any suggestions for improvements in the Colloquium or other comments? | Yes | <input type="checkbox"/> |
| | No | <input type="checkbox"/> |
| 27. If any of your comments are passed on to Sir Adrian Cadbury or others, do you wish us to attribute them to you? | Yes | <input type="checkbox"/> |
| | No | <input type="checkbox"/> |

Draft: 27.10.92

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THE OXFORD LAW COLLOQUIUM 1992

9th - 11th September

COLLATED ANSWERS TO QUESTIONNAIRES

We received a total return of seventy-two questionnaires including two from GIDE LOYRETTE NOUEL and one from LOEFF CLAEYS VERBEKE. Attached is a collation of the answers including comments from contributors.

1. In general, do you support the Cadbury recommendations?

YES	NO	N/A
65	4	

LOEFF: N/A

GIDE (FW): YES
GIDE (NCN): N/A

Mr. Norman Ireland
Chairman
BOWATER PLC

"I support a number of the Cadbury recommendations but I could not say in principle I give it my support. It needs amendment".

Mr. Edwin Glasgow QC
Chairman
FINANCIAL REPORTING
REVIEW PANEL

"It is surprising to me that so few people had appreciated the fundamental weakness of the Cadbury recommendation in respect of non-executive directors: that those companies and chief executives who need to be kept in line will by definition be the most unwilling and reluctant to allow effective non-executives onto the board, Cadbury offers no practical solution to this.

UNATTRIBUTABLE

Yes: "Up to a point"

2. Should non-executive directors have, as part of their role, a "control" or "monitoring" function vis-a-vis the executive directors?

YES	NO	N/A
59	7	3

LOEFF: YES

GIDE (FW): YES
GIDE (NCN): N/A

UNATTRIBUTABLE

"But the terminology is wrong"

Sir Charles Fraser
LOTHIAN & EDINBURGH
ENTERPRISE LTD.

"That seems to me a Natural and Normal function, but is there confusion in the words "executive directors".

Mr. David W. Watts
Investment Director
GARTMORE INVESTMENT
MANAGEMENT LTD.

"Not so concerned if chairman is separated from chief executive".

Mr. Matthew L. Patient
Senior Technical
Partner, COOPERS &
LYBRAND

"Already implicit, so why not make explicit".

Professor Len S. Sealy
GONVILLE & CAIUS
COLLEGE, CAMBRIDGE

"Depends on the type and size of the company".

Mr. Gordon K. Stevens
Chairman
SCHOLL PLC

"Only to the extent that specific tasks imply this".

Mr Martin Lipton
Senior Partner,
WACHTELL, LIPTON, ROSEN
& RETZ, NEW YORK

"Monitoring only".

Mr. R. Cooper
Chairman
MALLET PLC

"Yes : monitoring ; No : Control".

UNATTRIBUTABLE

"I am strongly against control by non-executives who have little experience of day to day running of the business of their "host company". I believe part of the function of non-executives is to monitor the performance of executives against defined financial targets, in particular annual budgets".

3. Do you agree that, where the chairman is also the chief executive, there should be independent directors on the board, one of whom is the appointed leader?

YES	NO	N/A
53	10	6

LOEFF: NO

GIDE (FW): YES

GIDE (NCN): N/A

Mr. Brian L. Fuller
Chief Executive
THE HOPKINSONS GROUP
PLC

"The last part is impractical in my view".

UNATTRIBUTABLE

"But "recognised" rather than "appointed".

Mr. G. Cardona
Manager Group Head
Office, HSBC HOLDINGS
PLC

"It depends!"

Mr. Gordon K. Stevens
Chairman
SCHOLL PLC

"But prefer separate Ch + C.E.O."

Sir John Riddel
Deputy Chairman
CREDIT SUISSE FIRST
BOSTON LTD.

"Not in so formal a way".

UNATTRIBUTABLE

"Two questions a) There should be independent directors on the board - YES

b) One of whom is the appointed leader
- NO

UNATTRIBUTABLE

"This is two parts; Yes, to independent directors; No, to a leader".

UNATTRIBUTABLE

No: "Leader - of what?"

Mr. Blenyth Jenkins
Director of Corporate
Affairs INSTITUTE OF
DIRECTORS

"Yes, to independent directors on the board; No, to
an appointed leader".

4. Do you think that all directors on a board should have the same legal powers and responsibilities (ignoring duties and responsibilities as executives), i.e. that the current legal position should remain unchanged?

YES

NO

N/A

59

10

LOEFF: YES

GIDE (FW): YES

GIDE (NCN): N/A

5. Do you believe that the proposals in 2 or 3 above, if implemented, would eventually lead to a two tier board system in the UK?

YES	NO	N/A
14	51	4

LOEFF: NO

GIDE (FW): N/A
GIDE (NCN): N/A

Sir Charles Fraser
LOTHIAN & EDINBURGH
ENTERPRISE LTD.

"I trust not!"

Sir Iain Noble Bt.OBE
NOBLE & COMPANY LTD.

No: "not necessarily in the accepted sense but unofficially yes".

Mr. G. Cardona
Manager Group Head
Office HSBC HOLDINGS
PLC

N/A: "probably".

Sir John Riddell
Deputy Chairman
CREDIT SUISSE FIRST
BOSTON LTD.

"But I have "two tier" prejudices".

6. Do you see any merit in a two tier board system if introduced in the UK?

YES	NO	N/A
18	49	2

LOEFF: YES

GIDE (FW): YES
GIDE (NCN): N/A

UNATTRIBUTABLE N/A: "Impossibly wide question!"

7. Do you think that the requirement for at least two independent non-executives is too onerous for the smaller listed companies?

YES	NO	N/A
10	58	1

LOEFF: NO

GIDE (FW): YES
GIDE (NCN): N/A

UNATTRIBUTABLE

No: "Provided criteria are widened; also very modest fees".

Mr. David W. Watts
Investment Director
GARTMORE INVESTMENT
MANAGEMENT LTD.

"Subject to supply".

UNATTRIBUTABLE

"Not necessarily sometimes it may be".

8. Do you share the concerns that the supply of potential non-executive directors may be insufficient?

YES	NO	N/A
28	40	1

LOEFF: NO

GIDE (FW): NO
GIDE (NCN): N/A

UNATTRIBUTABLE

No: "Provided criteria are widened".

Mr. Norman Ireland
Chairman
BOWATER PLC

"My own experience was such that with a little effort I was able to find truly suitable people for the Bowater board. What I feel is missing is that there is not enough communication between industrial concerns who might be wishing to put executive directors on other boards for experience. This does not mean that we need a register and a new organised body. It just means Chairman or Chief Executives have to move around and know outstanding needs".

9. Do you agree with the Cadbury recommendations for

- remuneration committees

YES NO N/A

68 1

LOEFF: YES GIDE (FW): YES
GIDE (NCN): N/A

- audit committees

YES NO1. N/A

63 4 2

LOEFF: YES GIDE (FW): YES
GIDE (NCN): N/A

- Committees for the nomination of non-executives

YES NO N/A

53 12 4

LOEFF: YES GIDE (FW): YES
GIDE (NCN): N/A

Mr. Norman Ireland
Chairman
BOWATER PLC

(Audit Committees)

"In the Cadbury sense I do not support them but I am, in Bowater, having all the directors meet with the auditor twice a year. I believe it is very important that executive directors are aware of the seriousness of the role of the auditor".

Mr. Gordon K. Stevens
Chairman
SCHOLL PLC

"To taste - needs acceptance by whole board".

Mr. Peter S. Barton
Managing Director
LEHMAN BROTHERS

(Audit Committees)

"I agree there should be such a committee but believe the Finance Director should be a member".

INTERNATIONAL
LIMITED

UNATTRIBUTABLE

(Non-executive committees)

No: "Provided selection has participation from and approval of non execs".

10. Should the chairmen of the audit and remuneration committees be required to answer questions at AGMs?

YES	NO	N/A
50	18	1

LOEFF: YES

GIDE (FW): NO
GIDE (NCN): N/A

Mr. Matthew L. Patient "Providing it relates strictly to their role".
Senior Technical
Partner, COOPERS &
LYBRAND

UNATTRIBUTABLE "No: audit; Yes: remuneration".

UNATTRIBUTABLE "Yes, but optional".

Mr. Blenyth Jenkins Yes: "If invited by the Chairman".
Director of Corporate
Affairs INSTITUTE OF
DIRECTORS

11. Should all directors (including executives) have the right to seek independent professional advice at the company's expense, subject to notification to, say the company secretary (or similar procedure), a cap on expenses, etc., but not subject to any prior consent?

YES	NO	N/A
54	14	1

LOEFF: N/A

GIDE (FW): NO
GIDE (NCN): N/A

Sir Charles Fraser
LOTHIAN & EDINBURGH
ENTERPRISE LTD.

"I see nothing revolutionary in this. Non-execs have always been able to do so.

Mr. Norman Ireland
Chairman
BOWATER PLC

"I believe all directors should have the right to seek independent professional advice at the company's expense but it should be, as a matter of courtesy if nothing else, subject to notification to his board colleagues".

Martin Lipton
Senior Partner,
WARDELL, LIPTON, ROSEN
& RETZ, NEW YORK

"Prior consent of the Board".

12. Should remuneration committees be allowed to have an executive director (even the chief executive) as a member as well as non-executive directors or at least to have an executive director in attendance at all meetings?

YES	NO	N/A
53	16	

LOEFF: N/A

GIDE (FW): YES
GIDE (NCN): N/A

UNATTRIBUTABLE

"Only chairman or C/E "in attendance" when remuneration of executive colleagues is discussed. We've found it helpful to have a prior "scene setting" session with only the head of "Human Resources" present - before any specific criteria or actual increments are proposed".

Mr. Matthew L. Patient
Senior Technical
Partner, COOPERS &
LYBRAND

"May attend but not be a member"

UNATTRIBUTABLE

"Chief Executive: He would generally be putting forth their proposals".

UNATTRIBUTABLE

Yes: "At least have an executive director in attendance at all meetings".

13. Is the present level of detail in companies' accounts concerning directors' remuneration and benefits satisfactory?

YES	NO	N/A
26	41	2

LOEFF: N/A

GIDE (FW): N/A

GIDE (NCN): N/A

UNATTRIBUTABLE

"I agree the need to split out results based remuneration".

Mr. Matthew L. Patient
Senior Technical
Partner, COOPER &
LYBRAND

"Length and time of contracts insufficient eg. Ultramar".

Mr. Norman Ireland
Chairman
BOWATER PLC

"The question is rather too sweeping. The information from some companies is satisfactory, from others it is not. However, at the same time I think we must keep in mind that directors contracts for more than one year have to be on show at the annual general meeting".

14. Is the definition of "connected person" of a director (see A&O's Directors' Guides distributed in the Colloquium folder) unnecessarily complicated?

YES	NO	N/A
44	16	9

LOEFF: N/A

GIDE (FW): N/A

GIDE (NCN): N/A

Mr. Andrew L. Wallis
Group Finance
Director AAH HOLDINGS
PLC

"It is very complicated, but needs to be comprehensive to prevent abuse; the suggestion that it is over complicated should be resisted".

15. If a director believes that some of his fellow directors (including his chairman) are materially breaching a third party's rights (but not committing criminal offences), should he be able to "whistle blow" to a particular authority, i.e. should he be protected against claims for breach of confidentiality etc.?

YES	NO	N/A
46	12	11

LOEFF: N/A

GIDE (FW): N/A
GIDE (NCN): N/A

Sir Charles Fraser
LOTHIAN & EDINBURGH
ENTERPRISE LTD.

"There are ways of dealing with this".

Mr. G. Cardona
Manager Group Head
Office HSBC HOLDINGS
PLC

"Within certain institutional frameworks yes".

UNATTRIBUTABLE

"Don't know, but the bottom line is morally yes".

UNATTRIBUTABLE

"Two separate questions".

Mr. Andrew L. Wallis
Group Finance Director
AAH HOLDINGS PLC

"Attention is drawn to IMMACE under the aegis of the ICAEW. Perhaps the IOD could set up a similar service".

16. Is an institutional shareholder with a significant shareholding in a listed company justified in selling out when dissatisfied with the management and/or its performance (rather than attempt to take action to persuade the company to improve itself)?

YES	NO	N/A
57	8	4

LOEFF: YES

GIDE (FW): YES
GIDE (NCN): N/A

Mr. David W. Watts
Investment Director
GARTMORE INVESTMENT
MANAGEMENT LTD.

"He is answerable to his client on performance. I am not saying selling is necessarily the optimal solution".

UNATTRIBUTABLE

" - But it might prefer to take positive action".

Mr. Norman Ireland
Chairman
BOWATER PLC

"I hold the view that institutions are not shareholders, they are investors, and that they really are servants of their own company's shareholders and have to perform to the best of their ability. In correctly run companies they have every right to discuss matters with the company but I fear they don't do it often enough".

Mr. Gordon K. Stevens
Chairman
SCHOLL PLC

"But after reasonable warning".

UNATTRIBUTABLE

"No simple answer - must depend on facts".

UNATTRIBUTABLE

"They MUST do so to discharge duty to client".

UNATTRIBUTABLE

"On occasions, yes".

Mr. Mark D. Knight
Company Secretary
THE THOMSON CORPORATION

"Totally".

17. Do you support the proposals to tighten up insider dealing laws, even if this may endanger the "brokers' lunch" or inhibit discussions with substantial shareholders?

YES	NO	N/A
22	44	3

LOEFF: NO

GIDE (FW): YES

GIDE (NCN): N/A

Mr. G. Cardona
Manager Group Head
Office HSBC HOLDINGS
PLC

"NO, NO, NO,! They already make communication difficult".

UNATTRIBUTABLE

"Difficult - a reasonable information flow is important".

Professor Len S. Sealy
GONVILLE & CAIUS
COLLEGE, CAMBRIDGE

"The present law should be left as is and the resources for making it work should be beefed up".

UNATTRIBUTABLE

"Doubt if they will clarify a very grey area".

UNATTRIBUTABLE

"Problem of enforcement, not law. Present proposals unlikely to help".

Mr. Andrew L. Wallis
Group Finance Director
AAH HOLDINGS PLC

"Analysts and/or substantial shareholders can opt to be made insiders or not. Insider dealing is particularly pernicious and anything that makes it easier to detect and eliminate is to be welcomed".

18. In your view, is the threat of a hostile bid a useful discipline for corporate management?

YES	NO	N/A
56	12	1

LOEFF: YES

GIDE (FW): YES
GIDE (NCN): N/A

Mr. David W. Watts
Investment Director
GARTMORE INVESTMENT
MANAGEMENT LTD.

"In the absence of good corporate governance
i.e. 1-17 above".

UNATTRIBUTABLE

"Sadly! But it should not be!"

UNATTRIBUTABLE

"More useful for shareholders".

UNATTRIBUTABLE

"Depends on the quality of the management".

UNATTRIBUTABLE

"Bids may be contested, not necessarily hostile. It
is the defence that are hostile".

UNATTRIBUTABLE

"What about approvals from the bidders shareholders,
for better governance?"

20. Will auditors realistically be able to make a sensible endorsement of a company's statement of the extent of its compliance with the Cadbury Code?

YES	NO	N/A
29	39	1

LOEFF: N/A

GIDE (FW): NO
GIDE (NGN): N/A

UNATTRIBUTABLE

"Not without a lot more investigation and expense".

UNATTRIBUTABLE

No: "Impossible - other than in simplistic and mechanistic terms!"

21. Should audit partners within an accountancy firm rotate?

YES	NO	N/A
43	22	4

LOEFF: YES

GIDE (FW): NO
GIDE (NCN): N/A

UNATTRIBUTABLE

"Only if merit is seen in a change".

Mr. Gordon K. Stevens "Not by mandate".
Chairman
SCHOLL PLC

22. Is the decision in Caparo satisfactory?

YES	NO	N/A
18	43	8

LOEFF: N/A

GIDE (FW): N/A
GIDE (NCN): N/A

Sir Charles Fraser
LOTHIAN & EDINBURGH
ENTERPRISE LTD.

"Difficult issue - further debate necessary".

23. If not, would it be helpful if the auditors had duties of care to potential investors and creditors (as well as to existing shareholders) but, at the same time, their standard of care were reduced to below the current level of negligence?

YES	NO	N/A
29	17	23

LOEFF: N/A

GIDE (FW): NO
GIDE (NCN): N/A

24. Do you think that the UK accounting standards should be changed to reduce the extent of discretions permitted, i.e. to make the accounting practices used by companies more consistent with each other?

YES	NO	N/A
61	5	3

LOEFF: YES

GIDE (FW): N/A

GIDE (NCN): N/A

Mr. Norman Ireland
Chairman
BOWATER PLC

". . . . it should be up to the auditor on the concept of true and fair to say to the company "Your presentation is incorrect".