

# Subject: Response to the UK Corporate Governance Code Consultation Document 2023

Dear Sir/Madam,

I hope this email finds you well.

On behalf of NEDonBoard, Institute of Board Members, I am pleased to submit our response to the "UK Corporate Governance Code Consultation Document" dated May 2023.

We have consulted with our non-executive director's community and believe our collective feedback encapsulates diverse yet cohesive insights.

We understand the complexities of ensuring the Code remains relevant, robust, and forward-looking. We appreciate the initiatives by FRC to refine the Code continually and seek inputs from the wider industry.

I want to draw particular attention to a few areas:

1. The interlink between corporate performance and remuneration policies.
2. The ever-growing significance of AI in corporate governance and its implications.
3. The importance of clear, actionable, and standardised metrics across various provisions.

While our attached response offers a viewpoint on each question, we remain open to further discussions or clarifications.

Should there be a need, we would be glad to participate in any roundtables, workshops, or one-on-one consultations that the FRC may deem fit.

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In conclusion, I extend our appreciation to the FRC for undertaking this important initiative.

We look forward to seeing the refined Code and how it will shape the UK's corporate governance landscape.

Thank you for considering our feedback, and we hope to continue this valuable collaboration.

Best regards,

Jean-Philippe Perraud  
CEO  
NEDonBoard, Institute of Board Members

A handwritten signature in black ink, appearing to read 'JP Perraud', is placed below the typed name. The signature is written in a cursive style with a horizontal line underneath.



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## About NEDonBoard

[NEDonBoard, Institute of Board Members](#) is the professional body for non-executive directors and board members. We are an independent membership organisation and an authoritative platform made by board members for board members. The Institute maintains the oversight of the knowledge, skills, conduct, practice of non-executive directors and board members. The Institute is a not-for-profit organisation.

## Our mission

The NEDonBoard mission is to accelerate sustainability and development.

NEDonBoard does this by sharing wisdom and insights across generations of board decision-makers.

NEDonBoard supports board members responsible for the strategic direction of businesses. NEDonBoard promotes modern and contemporary business governance practices.

# Consultations questions and our answers

**Q1: Do you agree that the changes to Principle D in Section 1 of the Code will deliver more outcomes-based reporting?**

*Answer:* Yes, we agree with the proposed changes to Principle D. However, we are of the view that clearer guidance on practical measurements would be needed to get the outcome sought after by the FRC.

**Q2: Do you think the board should report on the company's climate ambitions and transition planning, in the context of its strategy, as well as the surrounding governance?**

*Answer:* Yes, we think that boards should report on the company's climate strategy. Social and societal considerations should also be part of the reporting. Nonetheless, it would be beneficial to issue guidance on standardised reporting metrics.

**Q3: Do you have any comments on the other changes proposed to Section 1?**

*Answer:* We commend the holistic approach to company strategy. However, the emphasis should not just be on reporting but on actionable insights to drive sustainable change. Section 1 could be complemented with more prescriptive guidance to prevent varied interpretations.

**Q4: Do you agree with the proposed change to Code Principle K (in Section 3 of the Code), which makes the issue of significant external commitments an explicit part of board performance reviews?**

*Answer:* Yes, we are supportive of the proposed change. Overboarding is a potential issue that needs to be addressed as part of the annual evaluation of the board and its directors.

Unfortunately, the principles of section 3 fail to address the ongoing professional development of directors and non-executive directors as part of the evaluation process.

**Q5: Do you agree with the proposed change to Code Provision 15, which is designed to encourage greater transparency on directors' commitments to other organisations?**

*Answer:* We are supportive of the proposed change because it promotes transparency and allows stakeholders to make an informed view as to whether directors are in a position from a time perspective to discharge their duties. We also believe that the change will increase the accountability of appointed directors.

However, the definition of "significant" is highly subjective. As such, it is unclear whether the change will result in the outcome sought after.

**Q6: Do you consider that the proposals outlined effectively strengthen and support existing regulations in this area, without introducing duplication?**

*Answer:* Yes.

We note that quite a few organisations, falling outside any of the existing regulations, follow the Code. While there may be a perception of duplication in some sectors, such as financial services, we are of the view that the Code should be written considering a range of companies (beyond premium listed or regulated).

**Q7: Do you support the changes to Principle I moving away from a list of diversity characteristics to the proposed approach which aims to capture wider characteristics of diversity?**

*Answer:* Yes. Emphasising the broader scope of diversity ensures a more inclusive and holistic approach to governance.

**Q8: Do you support the changes to Provision 24 and do they offer a transparent approach to reporting on succession planning and senior appointments?**

*Answer:* Yes, we are supportive of the change but we note the focus on gender, as opposed to wide diversity metrics, which are as important.

We would nevertheless welcome that:

- The FRC to highlight those considerations be given to board qualifications and ongoing professional development as part of the work of the nomination committee.
- clear criteria on what constitutes 'transparent reporting' be issued.

**Q9: Do you support the proposed adoption of the CGI recommendations as set out above, and are there particular areas you would like to see covered in guidance in addition to those set out by CGI?**

*Answer:* We support the adoption of CGI recommendations. Guidance on practical implementation, perhaps drawing from recognised standards, would be beneficial.

**Q10: Do you agree that all Code companies should prepare an Audit and Assurance Policy, on a 'comply or explain' basis?**

*Answer:* Yes, this ensures both flexibility and accountability, aligning companies with best practices while allowing for unique circumstances.

**Q11: Do you agree that amending Provisions 25 and 26 and referring Code companies to the Minimum Standard for Audit Committees is an effective way of removing duplication?**

*Answer:* Yes.

**Q12: Do you agree that the remit of audit committees should be expanded to include narrative reporting, including sustainability reporting, and where appropriate ESG metrics, where such matters are not reserved for the board?**

*Answer:* Yes, this expansion ensures a comprehensive oversight. This is subject to clear governance arrangements around matters reserved for the board.

**Q13: Do you agree that the proposed amendments to the Code strike the right balance in terms of strengthening risk management and internal controls systems in a proportionate way?**

*Answer:* Yes, the amendments are balanced. However, continued evaluation and feedback mechanisms can further refine this balance.

**Q14: Should the board's declaration be based on continuous monitoring throughout the reporting period up to the date of the annual report, or should it be based on the date of the balance sheet?**

*Answer:* Continuous monitoring is preferred. It provides a more accurate reflection of the organisation's status and ensures timely interventions.

**Q15: Where controls are referenced in the Code, should 'financial' be changed to 'reporting' to capture controls on narrative as well as financial reporting, or should reporting be limited to controls over financial reporting?**

*Answer:* Changing to 'reporting' captures a broader perspective suggested by the proposals. But additional guidance would be beneficial to organisations applying the Code.

**Q16: To what extent should the guidance set out examples of methodologies or frameworks for the review of the effectiveness of risk management and internal controls systems?**

*Answer:* Providing examples can be very helpful. Providing an avenue for companies to share best practices could further improve this section and NEDonBoard, Institute of Board Members could support this effort.

**Q17: Do you have any proposals regarding the definitional issues, e.g., what constitutes an effective risk management and internal controls system or a material weakness?**

*Answer:* No.

**Q18: Are there any other areas in relation to risk management and internal controls which you would like to see covered in guidance?**

*Answer:* We suggest a greater emphasis on a forward-looking view of risks.

**Q19: Do you agree that current Provision 30, which requires companies to state whether they are adopting a going concern basis of accounting, should be retained to keep this reporting together with reporting on prospects in the next Provision, and to achieve consistency across the Code for all companies (not just PIEs)?**

*Answer:* Yes.

**Q20: Do you agree that all Code companies should continue to report on their future prospects?**

*Answer:* Yes.

**Q21: Do you agree that the proposed revisions to the Code provide sufficient flexibility for non-PIE Code companies to report on their future prospects?**

*Answer:* Yes.

**Q22: Do the proposed revisions strengthen the links between remuneration policy and corporate performance?**

*Answer:* Aligning remuneration with performance and broader goals ensures accountability and stakeholder alignment. The proposed revisions do not strengthen the links between remuneration policy and performance. But we welcome the specific mention of ESG.

We believe that the alignment of remuneration to purpose, values, culture should be re-integrated as not fully captured under the “sustainable long-term success” phrase. ESG consideration should also form part of the policies and practices – not just the outcome.



**Q23: Do you agree that the proposed reporting changes around malus and clawback will result in an improvement in transparency?**

*Answer:* Yes, increased reporting on malus and clawback arrangements will enhance transparency.

Companies should be encouraged to explain their decisions in layman terms for broader comprehension and to make malus and clawback triggers clear.

**Q24: Do you agree with the proposed changes to Provisions 40 and 41?**

*Answer:* Yes, the proposed changes streamline the provisions. We suggest the removal of the term “minimum” in the first and second bullet points. Provision 40 requests companies to report on the use of malus and clawback in the last reporting period and in the last 5 years. The wording could be clearer.

**Q25: Should the reference to pay gaps and pay ratios be removed, or strengthened?**

*Answer:* The reference should be strengthened. While external reports provide data, the Code can guide companies to provide context, justifications, and action plans around these figures.

**Q26: Are there any areas of the Code which you consider require amendment or additional guidance, in support of the Government’s White Paper on artificial intelligence?**

*Answer:* The Code should provide guidance on ethical AI usage, especially around data privacy, algorithmic fairness, and robustness. AI’s role in decision-making and strategy should also be explored further. Continuous education on AI and its governance implications is paramount.