

The Pensions Regulator

Catherine Horton
Financial Reporting Council
8th Floor
125 London Wall
London EC2Y 5AS

28 February 2018

Dear Ms Horton,

Response from The Pensions Regulator (TPR) to FRC's Proposed Revisions to the UK Corporate Governance Code

1. TPR regulates occupational pension schemes in the UK, with objectives including protecting the benefits of scheme members, reducing calls on the Pension Protection Fund (PPF), promoting good administration of pension schemes and making sure employers balance the needs of their defined benefit (DB) pension scheme with growing their business.
2. Pension schemes are integral to the UK's financial system. They are stakeholders of their corporate sponsors, reliant on company directors to treat them fairly when acting for the long-term success of the company. At the same time, pension scheme trustees are supposed to have a shared stewardship role in the companies they invest in, holding directors to account for the fulfilment of their responsibilities.
3. Our response considers the roles of pension schemes as both stakeholders and stewards of UK companies.

Expanding directors' s172 duties to stakeholders to include pension schemes

4. Over recent years, a number of failures of large UK companies, both listed and privately-owned, have resulted in uncertainty for defined benefit (DB) pension scheme members. Some of these schemes were underfunded and so entered the Pension Protection Fund (PPF). These events inform our response.
5. Pension scheme members and beneficiaries rely on the long-term success of the company to deliver promised pensions where the company sponsors a defined benefit (DB) pension

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scheme. Our data shows there are 348 UK listed companies sponsoring pension schemes with defined benefits¹.

6. S172 of the Companies Act sets out that the directors' duty is to promote the long term success of the company for the benefit of members (shareholders) while having regard to other stakeholders, including company employees who are pension scheme members and beneficiaries.
7. The Corporate Governance Code (the Code) and FRC's Strategic Reporting Guidance currently do not make mention of pension scheme members, beneficiaries or trustees as stakeholders of the company, although the stakeholder list is not intended to be exhaustive.
8. We consider that boards should be required to explain how they have considered the interests of pension scheme members and beneficiaries, and how these have been reflected in financial decisions in pursuit of the long-term success of the company.
9. The revised Code should specifically refer to pension schemes (or pension scheme trustees) as stakeholders under Principle 1.
10. The Code and associated guidance should also encourage directors to include a section in annual reports detailing how companies are conducting engagement with pension scheme trustees who are stakeholders of the company.
11. Further data shows 490 large privately-owned UK companies sponsoring DB pension schemes². This expansion of directors' duties to include pension schemes as stakeholders should also be reflected in proposed governance principles for privately-owned companies.

Stewardship Code

12. We agree that pension schemes can play a role in improving the accountability of directors and helping improve long-term risk-adjusted returns to shareholders through stewardship and engagement with companies. We also recognise the role the FRC's Stewardship Code has played in encouraging this behaviour.
13. Our engagement suggests the Stewardship Code can be seen as "the icing on the cake" by many trustees and their investment advisers, or as a burden or additional cost. We want the Stewardship Code to become a tool to improve investment governance and risk management while driving long-term success of companies, rather than something seen as an "extra" or a burden on trustees.

¹ UK listed entities identified via direct participation and ownership; employers required to report on their DB schemes in their accounts (subsidiaries or group).

² Large employers defined as having either 2,000 employees; or turnover above £200 million and a balance sheet over £2 billion.

The Pensions Regulator

14. A clear framework for asset owners and specific guidance for those using pooled funds, which are used by many pension schemes, could help with broader adoption and implementation of the Stewardship Code.

We very much appreciate the opportunity to respond to this important consultation. We are committed to working with you as you seek to raise standards of governance across UK companies.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Anthony Raymond', with a horizontal line underneath.

Anthony Raymond

**Acting Executive Director for Regulatory Policy, Analysis and Advice and General Counsel
The Pensions Regulator**