



The Higgs Report Transcript



The following document contains the transcript of the Higgs Report event hosted by Harvey Nash plc and ACEVO that took place on the 6th May 2003 at the Institute of Directors, Pall Mall, London.

The following Speakers were present:

- Paul Smith, Harvey Nash plc
- Stephen Bubb, ACEVO
- Derek Higgs
- Lawrence Phillips, Tarlo Lyons
- Patricia Peter, Institute of Directors
- Jonathan Welfare, Elizabeth Finn Trust
- Jane Tozer, 3i European Technology Trust

Paul Smith

Welcome to this Harvey Nash and Acevo event. Harvey Nash is an executive search business specialising in senior management and non-executive recruitment and Acevo is the association for chief executives and voluntary organisations, and we come together to deliver this conference/seminar/debate really to add some value to the whole issue of non-executives and recruiting, and it gives you the opportunity to join the debate about the Higgs Report and some of the recommendations that have been made.

We at Harvey Nash, wish, quite frankly, to add value to our clients and we do that through what we call Thought Leadership, so we run one of these events probably every two months. It gives us an opportunity of meeting our clients and gives our clients an opportunity of developing their business through networking and of learning something about what the issues are from a business perspective, at the time. So we believe it adds some real value, that's why we organise and deliver these events to our clients and our future clients.

What I'd like to do is just thank our two sponsors for the day, that's Tarlo Lyons and Ernst & Young. They've helped us to be able to deliver this event, the venue and the wine and canapés afterwards, and I'd like to just really cover over the agenda that we've got today. Stephen Bubb is going to be chairing the event for us today, he's going to be with us all the way through making sure things are in control, and then managing the debate after the speakers.

Derek Higgs will then talk to us for about 20 minutes, followed by our other speakers, Lawrence Phillips Patricia Peter, Jonathan Welfare and Jane Tozer. That will be followed by our debate, our reception afterwards where it will give you an opportunity to network, to meet each other, and to continue the discussions.

So, I'd like now to hand over to Stephen Bubb, who's going to be your Chairman for this event. Thank you.

Stephen Bubb

Acevo represents 1500 chief executives in an increasingly professional and commercial sector and we're increasingly running more services for government as well as playing, as ever, a crucial role in civil society.

So why did we get involved in this debate? The very first reason was we wanted to challenge assumptions about what we do in the not-for-profit sector, but we don't just run very good raffles or make excellent jam, we also, these days, run pretty serious commercial enterprises for a social purpose. But when we surveyed our membership at the time of the submissions to Higgs, we found that well over 200 of our members wanted actively to be considered for non-executive roles in the wider public and commercial sector. Many of them had tried and had been pushed back, yet of those people 20% were already undertaking non-executive roles, usually in the public sector, very few in the commercial sector.

We also asked company secretaries what they thought of the idea of people from our sector contributing as non-executive directors. We had an extremely poor response, and the general answer to that was, what an odd idea. That's why when the Higgs Review came out, we were particularly pleased that they had taken up one of the suggestions we had made about expanding the pool of talent available.

Derek, I thought the Review would have to be good. Anyone who started off by quoting Walter Baggett, has to be good, and actually reading the Report, Derek, there was a lot of extremely good common sense here, and it has been somewhat surprising the reaction to your Report, and you

said to me when I was asking whether you had any interesting hobbies, you said probably masochism was one of them. Some of the response to this Report has been extraordinary, including some pretty personal abuse - this is an important subject.

I am delighted to see so many people here - we reckon there's about a hundred from each of the two sectors, the commercial sector and the not-for-profit sector, and that's particularly excellent because there is a lot that we can learn from each other.

Derek, you are currently the Chair of Partnerships UK, Senior Adviser to UBS Warburg - considerable experience in this field. I am delighted that you were able to take the time to talk to us about this Report and our particular focus - thank you very much.

Derek Higgs

Thank you very much, Stephen and good evening everybody. In the relatively short time available this afternoon, I want to try and do three things. First is to cast the particular recommendations of the Review under three broad headings, which I hope will give it a shape that is a rather different shape from the way it's presented on the face of the Review.

Second, just to talk very briefly about some of the things that I think read across effectively into the public sector, or is it the non-commercial sector, is it the not-for-profit sector? I don't know, but everything that isn't the listed public company sector.

And then third, just to say what I think happens next with regard to the Review itself.

So let me start with just a reminder of how this all came about. Well, its terms of reference talk about it being a short, independent review of the role and effectiveness of non-executive directors. We all know that it was post-Enron, it was actually pre-World Com and a few others, but I think more important or at least as important, it came four years, now five, after Ronnie Hamphill's committee had produced an updating following, Campion and Greenbury of the combined code on best practice and corporate governance.

And it did fit into a route map, if you like, that the government had in looking at the way in which institution investment was conducted under Paul Myners at the structure of the accounting and auditing professions under the combined group, obviously, the Company Law Review, and this particular focus on the boardroom and through the eyes and functions of the non-executives.

So, I don't think there's a need here, I think it was a considered reaction and I think it was unfortunate. There were three specific tasks given to the reviewer, first to build an accurate picture, one could describe it, of the status quo in the boardroom in the listed public company sector in the UK. Second, to lead a debate on the issues involved, and third, to make recommendations, whether to government or otherwise, as the reviewer saw fit.

And, as I say, it wasn't a committee it was an individual reviewer. That meant that it could be speedy - it took actually eight or nine months to do it - the Hamphill Committee took two-and-a-quarter years - so there was some value in it being a non-committee affair, but it did mean that the research had to be pretty thorough and extensive so that it didn't become the views of any single individual. So there was a consultation document, it did get 250 responses, so there's a lot of research, there's a telephone survey through 600 plus directors - some of you maybe were contacted - there was a lot of statistical work in understanding the structure of boardrooms, the tenure of directors, their age, the background of directors, etc., and there was some more focussed, in-depth research done in terms of face-to-face interviews by a team of academics who have done some excellent work in this subject.

And all this, together with obviously lots of meetings that I had, was I think very helpful. I also had a group of what I called friends and supporters from a range of backgrounds, boardroom, institutional fund managers, head hunters, who were my sounding board for recommendations as they emerged. So it was underpinned by a lot of careful work and it was in no sense as some have tried to characterise it, in my view, unsubstantiated assertion.

And it had three principal objectives - first to evolve the structures and the processes within the boardroom, second and probably the most important of all, to get the right people into the boardroom, and third to try - and perhaps the most difficult - to throw light on and improve boardroom behaviours and practices so as to facilitate both individual and collective board effectiveness. And, fundamentally, to do all that within the existing framework and flexibility of a code which allows for judgement discretion and sets out a template of best practice but doesn't oblige anybody to conform to all of it.

So if I deal fairly quickly with those three key headings, and I think you'll find that 95% of recommendations in the Review could be grouped under one, or in some cases two, of these three headings, and the first, as I say, is to evolve structures and processes.

That's not just housekeeping, that's got as its principal objective to balance power within the boardroom so as to reduce the chances of any individual or group of people within the board, dominating its activities and its decision-making. And under that heading it's possible to find a convenient home for confirmation of the separation of the roles of Chairman and Chief Executive. The proposition for the bigger companies, this should be a, or at least half the board should be comprised of independent, non-executive directors. What hopefully will become a central description of what constitutes independents, encouragement of strong executive representation on the board so that there isn't a bottleneck of information flow to the management - obviously, committee structures in the shape of existence of audit committees, remuneration committees, nomination committees, and the constitution and the functioning of those.

Something that's been described as a meaningless statement of the obvious, but seems to me to have some value, and that is a description between the Chairman and the Chief Executive, of what activities they respectively take the lead in, and a high level statement of how the board operates in terms of what it delegates and what decisions it keeps to itself.

So, this housekeeping, this hygiene if you like, is pretty straightforward, is pretty common sense, largely uncontroversial, but important to position the players on the pitch and describe its shape. But I said earlier that the most important area, I think, is in terms of people because the research did find - whatever some might claim and whatever the anecdote - that there is still a high degree of informality around the way in which appointments are made, particularly to a non-executive component in UK PLC boardrooms. You can find other words, you can find a lot of c-words like cosy, and clubby and casual and so on, let's use informal, but I think we can also use unprofessional.

So, quite a large proportion of the recommendations of the Review are about tightening up that process, about introducing more vigour, more transparency, more professionalism, into the way that boardrooms are populated. And again, it's pretty obvious, common sense stuff in the main, it just is that it doesn't happen all the time at present, and there's no reason at all why it shouldn't. It makes sense to try to describe the qualities of the individual that is being sought for an appointment to a boardroom rather more carefully and helpfully than, a good chap, or lady, so a description of what qualities and backgrounds and attributes to look for before you start the search process, seems to me the sort of thing that Harvey Nash and the head hunters will tell you is just what we do.

Obviously, a process in the nomination committee, publication of its terms of reference and the way that it operates, whether it uses open advertising or intermediaries, clarity in talking to people about the degree of commitment of time that they are expected to give, and their ability to give it, so that there is a match of mutual understanding of what's expected of candidates.

And above all, a defined approach to appointments to boardrooms. Within this, of course, it does make sense to think more broadly than has typically been the case in too many appointments to PLC boards in recent years. The Catch-22 of I can't have somebody who isn't already on a well-known PLC board, is a bit of a nonsense, so there are lots of encouragements. They cannot be more than encouragements, but they are there to consider the right sort of people from the non-commercial sector, to consider people at a level of management just below board level, to consider professionals who have got - if they're any good - very familiar and comfortable with giving the kind of advice, exercising the indirect influence which is at the heart of the effective non-executive director.

It's all about pulling levers, it's not about barking orders, it's about having views and being able to persuade groups of people of the value of them, and to get away from the magic circle, the rounding up of the usual suspects. So that second area of getting the right people on, to me is hardly controversial, but absolutely key to raising the bar to performance generally in the boardroom.

And then the third, which is the most challenging in many respects, relates to behaviours and practices. There's this terrible old saw about beatings will continue until morale improves - well, no chairman is going to have a functioning board if that's the kind of approach that is taken to engaging non-executive directors. So what does it take to create a well functioning, effective boardroom? I don't think anybody is going to argue with the proposition that it's about the climate of openness, of trust, of mutual confidence, of respect, of willingness to challenge, and in that the role of the chairman is absolutely pivotal and crucial in fostering those conditions.

The personal qualities of the Chairman, obviously, are key, but there are things that can be done to support that atmosphere where constructive challenge comes easily to non-executive directors, and those things include making sure that the information flow is appropriate, making sure that there is an extensive and appropriate induction when appointments are made to the board, and that on a regular basis there is an updating of the understanding of the non-executive director about company law, about regulation as it affects the company and its industry, about boardroom practice, and about competition policy, and so on.

And if there's an encouragement to evaluate performance of boards on an annual basis, those companies that already do it are very enthusiastic, many companies get to take the plunge but I have no doubt that as part of the rigour increasing the professionalism in boardrooms, if that is part of updated code it will be seen to make a very valuable thing going forward.

So those are the three areas - I think you can find a place for most of the recommendations - evolving the structure and processes, getting the right people, and fostering the sort of climate in which they can make a difference.

I have been asked - well, as far as the non-commercial sector is concerned - what relevance does all this have? And I think the answer is that it has a considerable relevance when you are talking about the quality of the people and the way in which they are recruited to whatever the entity is, the relationships that they have, the behaviour, all that component of the Review, I think, is relevant to the non-commercial sector, but there are three big differences which make the read across something to be treated with caution.

First, it has to be remarked that there is much more diversity in the non-commercial sector than in the UK listed public company sector, and if you think about civil service, non-departmental public bodies, public corporations, government-owned companies, nationalised industries, the NHS, the Police, regulators, local government, marketing boards, grant-in-aid bodies, etc., and that's before you get to non-profit companies and charities.

If the one size doesn't fit all mantra applies in the private sector, it certainly applies in the public sector, so you can't just take one set of precepts and transfer them outside the listed public

company sector. And second, and probably even more important, the mechanisms of accountability in the non-commercial sector are different. Even if relationships between boards and shareholders are a challenging matter sometimes, then whilst there are straightforward accountabilities in the non-commercial sector, nonetheless some of them are very opaque indeed. Ministers accountable to Parliament is easy, some of the accountabilities of regulators and government-owned companies are much more difficult.

And third, there is obviously a major difference in terms of objectives. Delivering a profit-creating value for shareholders for the fundamental purpose of companies subject to obvious constraints, is easy to state compared to the sometimes very sensitive and complicated relationships between delivery of public services, regulation and administration generally, so some of the issues as they relate to people and behaviour certainly do read across, some I think have to be treated with a little caution.

But after that digression, where do we find ourselves with regard to the Review, as things stand? As I said at the start, I was asked to make recommendations to government, or otherwise, arising from the Review, and my recommendations were for an updated, combined code to be produced. That's certainly not in my gift. Technically, the Financial Reporting Council has had for some time, the custody of the combined code and so it naturally picked up these recommendations with a view to producing a combined code in the summer.

It said that it would consult, in a memorable phrase which no doubt will haunt me and it for some time, it said it didn't expect to reopen the substance of the recommendations but it would look at fatal flaws and drafting matters, and practically there must be, realistically there must be scope for clarification of some of the wording in the first annexe to the Review, which is a suggested revised combined code where there has been some misunderstanding, and expand some of the reaction which I would regard - and why wouldn't I? - as over-reaction, then if that stands drafting, the drafting's got to be sorted out, and I have no pride in any authorship on that.

And that's equally important, because the code has to work, it is a fundamental part of the fact between owners and managers, between shareholders and boards, and it's worked well hitherto and it needs to work well into the future. So if there's some drafting to be done, as I'm sure there is, then that stands for the FRC.

It does take boards to sign up to this, it does take shareholders to play the game in terms of using common sense, using discretion, listening to explanations and not going into a obstructive mood. That debate has perfectly properly and sensibly and mostly constructively raised over the last couple of months. I am hopeful that at the end of the day the way in which the revised code comes out will both incorporate the logic and the substance of the recommendations but will do so in a way which makes it easier for people to have confidence in the way that it will be operated, both by boards and by shareholders.

And that's hugely important, because at the end of the day this isn't about corporate governance as an end in itself - corporate governance is simply a means - the end is the success of the company's that are in public ownership. That matters to all of us as investors, whether we're on boards or not, and hopefully if, at the end of this process the bar has been raised and corporate governance has evolved and in turn the success of UK PLC can be effective, then it will have been a worthwhile exercise. At the very least, I will tell you it has been very interesting.

Thank you very much.

Stephen Bubb

Thank you very much, Derek. As you said, a lot of the recommendations in your Report go to making a more professional appointment system, and if I could point out just one, perhaps pick one quote from your Report it would be this. You said, people are the key, crucial to improving the effectiveness of non-executives is raising the quality of appointees, and I'm sure that's right, and that's right for the commercial sector, but it's also right for us in the not-for-profit sector and the public sector.

But if we aspire - and many of us in this room do - to play that role in the commercial sector, what are the responsibilities, the legal responsibilities, that come with being a non-executive director?

Our next speaker is Lawrence Phillips. He's the Head of Corporate Development at Tarlo Lyons, that's a major lawyer specialising, he tells me, in corporate law and IT, and just so that you don't think we're going to get a completely boring lawyer, if there is such a thing, he also tells me he's into motor racing, so over to you Lawrence.

Lawrence Phillips

Good Afternoon. Basically I've been given five minutes to frighten you a little bit. I am, probably unlike a lot of people in this room, I say with unlimited liability, I am judging companies with my partners, one or two who are here as well, for all of our debts, liabilities and responsibilities - my house is on the line and so are theirs. Now, that's a fairly foolish thing to do in my opinion, but we have to do it.

It was established way back in the 1890s that directors of companies don't have liability for their actions under most circumstances and what I'm going to say to you tonight, I think, is that I think that directors are getting closer to me and my partners all the time with the amount of regulation that's going on.

A bit of very quick run through what sort of liabilities arise and how they arise, and the first thing to say is that for non-executive directors, your liabilities and your obligations are exactly the same as those of executive directors, it makes no difference as far as the law is concerned that you are a non-executive director. You can't possibly have all of the information that executive directors do but you end up with the same degree of liability.

There's a lot of stuff in the law about what you're not supposed to do. The actual obligations of directors are very unclear in fact, it's actually rather difficult to go anywhere and find out what you're supposed to do, but there are two tests, and the first is that your knowledge, skill and experience should be exercised in a way that might reasonably be expected by a person carrying out the duty that you're performing.

So, you'd have to be as good as somebody would be in taking on that role, and that is unless you're an expert. If you are expected to be better than the ordinary person, then you have to behave in accordance with your more extensive knowledge, so if you raise your own bar, if your experience is better then you're expected to perform better in your role.

So what sort of liabilities can arise, and how do they arise? Well, you have liabilities to the company under the common law. You can potentially have liabilities to creditors under insolvency law. You can have liability to your employees under health and safety at work. You can have liabilities to your shareholders under the Financial Services and Markets Act. You can have liability to the public under environmental law. The list is pretty much endless really, you have potential liabilities under the Theft Act, the Criminal Justice Act, the Enterprise Act, the Theft of Software Act

and the Competition Act - all of these things give you, as directors, either civil or - even worse - criminal liability.

So, it's a fairly onerous job, being a director. And being a non-executive director might be described as being even more onerous because you still have that level of liability and you're expected to have that level of knowledge. And you can't possibly be as well informed as your executive directors. I think one or two of the things that perhaps people ought to realise is that once you start getting into the criminal law, your house can be raided, your computers can be taken away... I've been dealing with a case where a clients' child's toys were taken away because they felt that documents might have been hidden in them, so you can have some fairly unpleasant consequences by being a director. Now, clearly, for most people, it's never going to come to that. But one of the things I think that is happening to us is that as we get more codified, as you get statements in the Higgs reports which say what directors ought to be doing, what level of competence you're expecting from non-executive directors. But in fact, it makes directors easier to see rather than more difficult. In the past, when you weren't quite sure what a director should have doing, it was always quite difficult to start actions against them. But I think that your level of responsibility is increasing as these codes of conduct are developed. I think that there is some good news.

I've been saying that actually under the law, your obligations are the exactly the same as executive and non-executive. But actually, there have been one or two recent cases where it's been decided that a non-executive director doesn't suffer as much. There's a recent which can be cited where there was a non-executive director who was treated more leniently. But in those circumstances, the executive director was banned from being a director for nine years. The non-executive director was banned for three years. There's still a fairly important and difficult consequence. As I say, the chances are that that's not going to happen to anybody in this room, who becomes a non-executive director. What is likely to happen to you is probably two-fold. If the guidelines in the Higgs report are not followed, then chances are that the company itself share price will go down. I think that's got to be one of the major responses to the report. And equally well, you as a non-executive director are highly likely to suffer reputational damage if that happens. And a lot of the time people are looking at non-executive directors to expand their career; they are not something that they are going to do full-time. You have to consider, is this actually going to be damaging to me in my main career, by becoming a non-executive director? That's all depressing, really, in lots of ways. What can we do about it? Well, there are guidelines in the Higgs reports, which I think are very sensible ones. But I'll pick out one or two, where I think perhaps you need do a bit more work than has been suggested.

My first point would be to follow the due diligence course, to spend a lot of time and effort looking into the company that you were considering being a non-executive director of. And by that I mean you ought to talk to the board members, you ought to satisfy yourself that they are sufficiently high quality for you to be sitting on a board with them. But I would also go on to say, perhaps you should be talking to the auditors, perhaps you should be talking to the legal advisors. And what I do is document what steps I had taken in arriving at my decision. I would have a clear paper trail set aside for later, if ever there were any problems. And another thing I would say is that if you're not getting the sort of responses that you require and you're not getting the information you require, at the time you require, then I would be considered about sitting down at a board table with people who weren't going to tell you the absolute truth right from the start.

The next thing is director and officer's insurance. It's highly, highly important that you have this. Going back to the case I was talking about before, it's extremely debilitating and extremely expensive to fight court actions. People like the FFO have, essentially, bottomless pockets when it comes to prosecution. So being told that there's director's and officer's insurance isn't enough. You need to examine the level, you need to see what exactly it covers. And another thing you need to do, is you need to make sure that it's on foot. So don't ask a question at the beginning of your non-executive directorship, make sure that you have told at the relevant time that it has been extended when it needs to be extended.

And the final thing I would say about solutions to the problems are, always act quickly. Therefore, sitting on a board and a problem arises, you must take steps to respond immediately. Now that may be the fact that you resigned. You may find yourself in an untenable position and you resign. But if it's not that, then take legal advice, I would say that, wouldn't I? Take legal advice and rapidly. But also act on that advice. You cannot sit, knowing that there's a problem and just thinking that it would sort itself out. And I think that what I was saying before about peoples' liability being extended is, the more that things become codified, and this government is extremely keen on putting more and more regulations in place. The more regulations there are, the more codes of conduct that there are for you to follow, the more chances are that you will be found personally liable for the actions of a company. Which, actually, you may have had no control over. But you need to be extremely careful.

A conclusion, I think the risk and rewards balance for non-executive directors is shifting. I think it's not as clear as it used to be but it was a sensible thing to take. So I would say that you need to be well rewarded for taking on these sorts of liabilities. But given that, and given the fact that we're living in an increasing litigious world, and that's got to be unique to be alive to the fact that these things may happen to you, I think it's still a perfectly reasonable thing to do and I personally approve of the whole idea of improving corporate governance by having well-qualified non-executive directors.

Stephen Bubb

The Higgs report produced some very interesting statistics. It appears that around a half of current commercial sector of non-execs are appointed through personal contacts or friendships. Only four percent have had a formal interview and only one percent came through a formal advertisement. I think there are some issues for the not-for-profit sector in those statistics as well. But if we can improve on that, if the Higgs recommendations are implemented and we get a more meritocratic way of appointing, what can that potential expanded pool expect of the non-executive role? Our next speaker, Patricia Peter, from the Institute of Directors, is very qualified to talk about corporate governance. And she's going to tell us a little about equipping a non-exec for the non-executive challenge.

Patricia Peter

Good evening and welcome to these premises. One thing I was asked to talk about is the challenge given the number of non-executives required. And I think when Derek's report first came out with rather extreme figures bandied around about 5,000 new non-executive directors immediately being required. I think if you look at the statistics that are actually contained in the report, you can see that actually the majority of British boards are already fairly evenly balanced between executive and non-executive boards. And as a Derek also says in his reports, you don't want boards to get too large and too unwieldy. So we don't want to see wholesale appointment of new directors. Also in statistics is this perception that actually a lot of people hold a lot of non-executive director posts. Which, in fact, 80% of non-executive directors only hold one such position. They serve on average between four and five years. So there is a turnover, there are a lot of people who don't hold a multitude of posts. Having said which, there are gaps, huge gaps. Of non-executive directors, only six percent are women and one percent come from black and ethnic minorities. The average age is 59, so we do have a situation where, it has to be said, in their own words, stale, male and pale is the average non-executive director.

Fortunately I see quite a few of you sitting here today, so those of you who don't fit into that category, rise up and try and be seen. One thing that has to be addressed, though, is the independence of non-executive directors. The report mentioned a number of recommendations and lists criteria for a director retaining independence. Mustn't be a former employee of the company until five years after you've left. Not to receive any additional remuneration, no share

options, no pension from the company. Not have close family ties with the company. Not to hold cross directorships with companies you're already involved in. Not to represent a significant shareholder, not to stay on the board for more than 10 years. So we do have to find these new, independent directors. But I hope, and I sincerely hope that shareholders will allow this to create an evolutionary, rather than a revolutionary process. That those who are already on board and who are doing a good job on boards, will gradually come off boards and new people will come in to the boardroom. I think that's what's intended and I hope the shareholders look at it in that light.

I don't think boards need to get significantly bigger. They will get bigger, however, if people, over a long term, are seen to either want to keep a non-independent, non-executive on their board. And basically, people aren't accepting their explanation. Or they wish to increase the number of executive directors on the board, there will be a pressure to match that person with an independent non-executive. But will these new non-executives require qualifications in qualities different from those required now? We've already heard from Lawrence on the legal duties and responsibilities. They stay the same. Your executive colleagues are going to be better paid than you. And yes, you may only be disqualified for three years, instead of nine. But do you want to perform this role? What is the main quality for non-executive director? I think it exhibits that there is actually a distinction between capability and the preparation and training needed to be a director. Capability is something a lot of people, and I would expect that almost everybody in this room, inherently, has the capability to be a non-executive director.

You've got to be able to exhibit sound judgement. You've got to have an enquiring mind, to question intelligently, to debate constructively, to challenge rigorously and to decide dispassionately. You've got to be objective, you've got to be intelligent and you have to have integrity. I don't think, really, those are characteristics that can be assigned to any group of people, people from the public sector, the private sector, the not-for-profit sector, charities, etc. All good directors or equivalent in any position, should have those characteristics. To inject, I think it's Jane's role to inject a note of controversy into these proceedings. But I personally actually think that those are more important than being able to comply with any set definition of independence. Again, Lawrence has explained the level of risk involved, particularly reputational risk. And I think another thing arising out of the report is the increased role from the main board's committees. And they have a much more high profile role. I think non-executives serving on those committees are going to have to display and be able to prove a far higher degree of expertise and probably hold themselves open to a far higher risk of attack because of the new role perceived for those committees.

There's also increasing shareholder activism, this leads to the society in which we live and I think this puts pressures on all directors and companies. But it just inhibits the need for directors to have expertise. As Derek and Lawrence have actually talked at quite some length, and in detail about the need for the appointment process to be absolutely rigorous, to be formalised, to be transparent, to actually have a meritocracy. And the people coming forward from that have got to demonstrate capability, as I said earlier, and that should be formally tested, I believe. But they should also demonstrate knowledge, they must know about the company and the implications from the Higgs Report, it actually set out the issues that you really should look at in a company. You've got to have the knowledge, though, of business issues in general, particularly if you're coming from outside the listed company sector. You should be tested on this knowledge when you put yourself forward to be a director of a company. Companies will look for both of these. Looking outside the traditional sources of non-executive meet these? I think we'll hear from Jonathan and Jane on this aspect, probably one more favourable than the other. But I think it has to be accepted that companies, like any other organisation, will inevitably tend to look to those up-front; whose up-front knowledge is greater and whose experience is more immediate and relevant. But as you get over that first hurdle, if you do get yourself appointed to a board, you then have to go through a proper induction process. And this is really the responsibility of companies, it's the responsibility of companies to bring forward the people they appoint to make them useful and full members of their board. A proper knowledge of the business, its relationships and its constitution. To give the non-executive director an opportunity to meet with management and investors. To understand about the environment in which it operates, the issues facing and, I think, filling in any gaps in individual

knowledge. Particularly for those unfamiliar to the company environment at director level. To understand the purpose and duty to the boards, the difference between management and the board. How you exercise accountability shareholders and what, who are your relevant stakeholders and what are their interests? Obtain as much information as you can. And then, once you're on the board, ongoing development is absolutely vital. The annual assessment must identify the needs and fill in the gaps, particularly when somebody is perhaps taking on a committee role for the first time. You're being appointed to a remuneration committee and you have a limited knowledge of that, you're going to have to have proper training in order to be able to fulfil your role.

Also, it is vital that companies update their directors on more general matters affecting all directors. For example, things like changes in the combined code, changes in company law, changes in the overall regulatory environment. Or the specific regulatory environment for that business. Those things are something which all companies should do for all their directors and need to ensure that it's rigorous, relevant and that all their directors undertake such training. I think it's also important to make sure that, as a company, particularly for a smaller listed company, that you are not relying on another company fulfilling that role for you. You really do have to check where your directors are at. So we've got basic qualities of sound judgement and an enquiring mind. But different criteria apply for different aspirants to the job. There are categories, which we've already said that are under-represented on boards, who may come from the company environment, women and ethnic minorities. For them I think, probably the most important thing, is for there to be a changing company attitude. Secondly, there are those with experience of large non-company organisations, such as those that are represented here tonight. What they need to do is to acquire knowledge about the listed company sector. They must show that they remain suitable once appointed. Of course, they will probably lose the chance to go on to better things. Having said this, I think companies, particularly in difficult times, are reluctant to be not only university but also the university that is paying the student. They're not actually going to appoint people who don't exhibit that they already have a high degree of knowledge. Showing that they are inherently capable is not going to be enough, you've got to show the knowledge. And I think the aspirant must be prepared to put in some effort and at some cost of himself, any necessary training and development. Learn about the roles and duties of directors, learn about company accounts and taxation. Learn about regulatory environment and do this in a way that can be measured and demonstrated.

How do you do that? Well, I will say this, but we here at the IoD deliver a wide range of programmes and short seminars to our charter director programme. Which is the first independently verified with creditors qualifications for directors, in the world. And I think if more directors, both those actively, who are already on boards and those who are aspiring to it, take their own framing seriously, I think the pool would widen because companies would be able to demonstrate they were appointing people to their boards who were proper and fit for the job. Thank you.

Stephen Bubb

Thank you Patricia. As you neatly indicated, the skills required for a non-executive director are not the particular preserve of any particular sector, which is a nice lead-in to the introduction of Jonathan Welfare, the Chief Executive of Elizabeth Flynn Trust, which used to trade as Distressed Gentlefolk's Aid Association. It's a lovely title but an important organisation running 13 residential and nursing homes and he's going to talk a bit about what he thinks those in a similar sector can offer as non-exec's.

Jonathan Welfare

Thank you. Brief commercial, Elizabeth Flynn Trust also looks after professional people who fall on hard times. I'm sure nobody in this room would ever apply, but if you do, you know where to come. The question, the way I prefer to translate it, can the not-for-profit sector provide non-executive directors to the private sector boards? Well, the answer, from where I stand, is a very emphatic yes. I've also, in my career, been non-executive director of a wide range of private equity companies. I've also been the deputy chief executive of one of the large metropolitan county councils. So I can see things in a number of angles and I can certainly see these questions might arise from the two particular sector angles. Patricia Peter told us very clearly what the requirements are in terms of personal attributes. Let me concentrate a bit more on the experience side. Now, there's really no exchange for experience but I would argue that both those requirements, particularly experience, is found in chief-executives and directors of not-for-profit organisations.

I can say very clearly and Steven Bubb has all the figures, that there's a great body of experience in those who've transferred from the private sector to the charitable sector. So what? Well, it's not essentially a black and white transfer experience. But just bear with me a bit and consider the following, I would say, very broadly, I am sure that Jane is going to shoot me down on this one, that there's essentially no difference between the modus operandi of not-for-profits and private sector companies. There's been a real change in the last ten years or so and I think this is now demonstrated by many not-for-profit organisations. And particularly those that provide services. I'm not talking about the campaigning organisation so much, but the not-for-profits for charities which provide services, such as the Elizabeth Flynn Trust, in running care homes. We're really and essentially no different from commercial providers of the same services, except that obviously some of our income may come from donations and all surpluses that we make, providing that we can make them, are re-invested back into the organisation. And the obvious difference is that any surpluses, aka profits, are not distributed as dividends to shareholders.

Most large not-for-profits are now run as businesses and this is where the big changes come in. The care sector's a particularly good example. Many of us have trading arms, commercial subsidiaries and they have been run under the Companies Act and many of the supports are registered as companies as well as charities. We all have to deliver value and that means that in the last few years, we've adopted very much a business culture. I'd be careful who I say this to because the ladies with big hats, who support us with jam and Jerusalem don't like to hear that too much. They think that their role is over. It's absolutely not. But the point is that NFPs are now run on business-like lines. We run as businesses, by professionals. We have to source appropriate staff from the private sector. Jam and Jerusalem has its place but not in running a charity or not-for-profit, nowadays. I think far too many people have got this very out of date perception of what a charity, what it does and more importantly, how it does it. If I can quote from close to home, Elizabeth Flynn Trust, I run an £18 million business, that's my turnover. I've got £18 million worth of fixed assets to look after, 750 staff. All of whom are appropriately qualified and experienced. Just amongst the six directors, my finance director's and FSA were appointed from the private sector.

Even the director of homes, I say even the director of homes, is not something one finds too often in the private sector but there are very successful commercial organisations running residential nursing homes. She has come from the private sector. And obviously the director of property services is a fully qualified FRICS, again recruited from private sector. You can't mess around with assets of the sort that we've got. As I said, I think it was no accident, I like to think that as chief executive I have private, public and charitable sector experience. I have also have 30 years' experience on the other side of the desk as a trustee. So I know what it takes to run a charity, I know what it takes to run a business and I am not alone. I thought that there was nothing more appropriate than to tell you about the Independent Health Care Association, which is an umbrella and a campaigning body, of which I am non-executive director. And I'm one of three or four from

the pure charitable sector. Surrounded by some real heavyweights from the commercial sector. Westminster Health Care, Craig More and others. These are very big companies and when we sit around the board table, we have no difference in our objectives. We're concerned about the same issues, we talk the same language and we have the same things that keep us awake at night. We prepare three-year strategies, business plans, annual budgets, monthly management accounts on a PNL, balance sheets, all these things may be a slight surprise to you. But they're underpinned by rigorous analysis, cost-ratio comparisons, competition, research, market analysis, price product research, the whole lot. Added to which, most large not-for-profits, particularly the service providing ones, have a large majority of businessmen and businesswomen on our boards of trustees. They re-inforce the business culture that we've adopted.

As far as the personal skills are concerned and the juggling that goes on, I think our motto must be to get the right mixture between toughness and TLC. Operating a not-for-profit, as a social enterprise, which is the labile they also get, is actually in many ways, more complex than running a business, a super business anyway. We have to secure a whole series of values for clients, for donors, for volunteer supporters, who No. 11 now refer to as non-paid employees, and the community at large. All those groups have slightly different, disparate objectives, which we have to keep in balance. We have to be, as social enterprises, as public enterprises using money that's given to us, transparent in our operation. We have audit committees, remuneration committees, nomination committees. We have to secure a return on capital, both financial and social. Our governance's are particularly strict. I know Lawrence was scaring the pants off us all earlier. We have to have one eye over our shoulder on the requirements of the Charities Acts. The trustees on the Trustee Act. Also the hound dogs from the Charity Commission, who, at any time, can call us in and give us a very rigorous examination. No, they don't call us in, they descend, like the Syrian on the fold and they take us apart. We don't have to have our business reported to them, they can do it when they wish. Permanently at attention. In many ways, let's be controversial, I would say that the governance's of charities, if properly performed, are more strict in the observance, that is by the Charity Commission and our other bodies, then DTI, the Companies Act. It's only if you go really wrong as a company, then the DTI start striking you off from the roster.

The great thing about the Higgs code, as far as I'm concerned, is that what it aims to do is to make companies more transparent and more accountable. We're actually looking over our shoulder a bit because this is the position we're now in. We're very much policed, and not voluntarily. So certainly not all not for-for profit directors and chief executive would be suitable for non-executive positions in the private sector, not at all. Certainly those with a commercial background will perhaps be further up the field than those who don't, but, we have got a huge reservoir, I think, of very capable, very intelligent, very adaptable people in the charity sector, the not-for-profit sector. They are very fast learners, quick on their feet, will not cease to ask questions when they don't understand something and I think they should be seriously considered.

David Taylor who is a non-Executive Director of the Charity Commission said recently, and I quote, the donating public requires and increasingly expects a professional and business-like approach to charitable work. I think that's what we're striving to achieve. The sector divide is filling and I think in many individuals' cases it no longer exists, thank you.

Stephen Bubb

Thank you Jonathan, and now to our final speaker, Jane Tozer, billed as an alternative view and as Patricia reminded us of those statistics, there'll be something to defend here. Derek you described the characteristic of non-exec white males nearing retirement. I've got nothing against them, in fact, I aspire to that status myself. We don't want to be too PC about this. However, the statistics are not good. Let me remind you, one percent black minority or ethnic, six percent women, less than 20 in the under 45 age bracket and only 2 female chairs in the top 350. Question mark, are we losing out on talent there? Jane who has enormous experience at non-executive level and not

just in the corporate sector at large or small organisations, also in the public sector and indeed as a chair for nearly 10 years of a not-for-profit organisation.

Jane Tozer

Thanks very much. Yes, I was asked to give an alternative view or to comment on what some people think is wrong with Higgs's report. So, just to explain my qualifications, if you like, for daring to make such comments, I have got experience as a Chief Executive for many years of a software company from startup right through to trade sale and various non-executive roles, but not all at once, I'd hate to do that. And, also we've got the co-founder of ITNEA, the IT Non-Executives Association, which is a networking association for non-executives of quoted technology companies and we've got over 250 members. So, I'm using some of the comments and the experience of those people as well in the things that I'm going to talk about.

First of all, let me stress, that I think there's an awful lot right with Derek's Report. Personally I agree with 99% of it, I think it will lead to improved governance. Some people are complaining that it won't improve company performance, they say it might even make company performance worse. Well, I don't think Derek was asked to talk about what would lead to improved company performance, I'm not sure that you can legislate or draw up rules for that. In fact, I'm absolutely sure you can't. But, I think it will lead to improved corporate governance and I do think shareholders deserve improved corporate governance. We are all aware of various scandals and they are a very small number of cases but the point is, if we can reduce those incidences by even one then that is doing shareholders a favour, they do deserve better governance than on average they have had over the past. The single biggest thing I think would be good about the report is the Comply or Explain, which is that it hasn't adopted a prescription approach, you must do this, you must do that but I'll come back to that later on.

So what are the things that either I or other people had said to me they are not very keen on in the report. Well, one of the things that's come up quite often is the fact that the Chairman can't serve as the Chairman of the Nomination Committee. And, I've had many people say to me, this is ridiculous, it's the Chairman's Team. Nobody suggests that a Chief Executive shouldn't lead a process of appointing another Executive Director, why shouldn't the Chairman lead the process of appointing Non-Executive Directors?

Well, the question is, does it make the Chairman too powerful? The Chief Executive is recruiting a full-time person to join a full-time team and they therefore have to listen to the opinions of the other people and make sure that the person that they want to appoint is going to fit into that team. I know from both my own and other people's experience that Chairmen don't always operate that way. Because they're recruiting a part-time person to a part-time team that only meets once or twice a month or whatever some of them do say, "Well, I want Fred and I'm going to have Fred regardless even though I know that so and so is not terribly happy about that person joining the team." It can very easily dominate that process and it is very difficult to stand up against them. So, what's the solution, is it to have an independent Non-Executive Director Chair on the Nomination Committee? Well, that won't necessarily work if they set about fulfilling that role by imposing somebody the Chairman doesn't like, this is not going to be a recipe for a happy or unit reward. Is the solution to the problem to tell the Chairman to be more sensitive, to take into account the requirements of the job and the views of all the other Directors? Well, maybe, but Chairmen are by definition people with strong personalities and sensitivity isn't always of their key features. So, it is a jolly difficult situation. And, I think, both sides need to recognise the issue and personally I see Derek's recommendation there mostly as just a flag. It doesn't really matter who chairs the Nomination Committee. By saying it shouldn't be the Chairman, it's a flag to say change your behaviour. If this is what you have been doing, stop appointing your chums, stop just appointing people in your own mould, in your own likeness and look at it in a rather more challenging fashion.

Another thing that a lot of people have taken exception to is SID, Senior Independent Director, or rather his role in talking to the Institutional Investors. In fact, Norton Rose did a survey recently of reactions amongst non-execs of 50 companies. Reactions to the report and 47% of those surveyed listed this as their main concern. The next main concern was only listed by 13%. So, this is a huge issue in many peoples' minds. The reason that people are taking exception to it is they say it will lead to splits in board unity and it will cause concern and confusion amongst the investors. And, I think there's some truth in that because, the idea is that they should have regular scheduled meeting of institutional investors. I have heard Derek say that those meetings should be reserved only for the institutional investors to say if they are concerned about the Chairman, the Chief Exec, how the company is operating, whatever, as a channel for funnelling in concerns. But, it's terribly difficult to act in receive mode only in a meeting. Somebody is saying, oh, I don't like this and I don't like that, it's terribly difficult to sit there with your mouth zipped and not say anything, you're going to comment. And, if you comment when you're not involved full-time with this company even if you're saying what you believe is exactly the same as what the Chief Exec told this investor a week ago, a month ago. It's so easy to put it in terms that don't appear exactly the same and might cause concern and confusion in that investors mind. That just leads to insecurity, falling share prices and all sorts of other ghastly consequences. So, I think the opportunities for foot in mouth disease in this process of SID talking regularly to the institution investors are huge. I do think this is a serious problem.

For my money if institution investors are unhappy in any way about how the company is being run they should always feel free to call any of the non-executives. They shouldn't feel they could only talk to the Chairman or Chief Exec. And, I would want them to pick up the phone, they can easily get your phone number or write you a letter, they should always feel free to do that and I'd rather have that than the formalised regular meetings between this person which I thought could be divisive and could lead to splits in board unity and confusion. So, personally, I think this issue might well be dead, but only time will tell as to whether or not that actually comes about.

Another thing that some people have got very upset about is the various guidelines on the number and length of appointments, that nobody should be Chairman of more than one FTSE 100 company, that CEOs should not become Chairmen. Interestingly 54% of the people in the Norton Rose survey supported that particular one with either a yes or a slightly qualified yes. That appointments should be made in the light of the workload that person has in terms of other appointments, other non-executive roles and that a Non-Exec should normally serve for say two, three-year terms, maybe in exceptional circumstances for three but after that they should not be regarded as independent. All of this is qualified by Comply or Explain; you can break all of these rules if you explain it satisfactorily.

Well, all of these things are aimed at breaking up this long-standing clique with the management and the golden circle of cross-directorship. Microsoft has gone PC by the way, it is impossible in flip-up to find a picture of a bunch of white men, it just can't be done. So I'm sorry these people are not white but that's basically what it's trying to break up, the stale, pale and male Cabot that Patricia talked about.

So, that's what this is all aimed at doing, breaking that up and remember this is aimed at improving governance, not performance. The person who's been there for 10, 15 years might be contributing enormously to performance because they have such deep knowledge, such continuity but that's not what this recommendation is about and that's why Comply or Explain is there as an escape clause. In my view that long-standing golden circle does need breaking up, we must get away from the approach where the Chairman or any of the other non-execs or executive directors say, "We need another director, Fred's a good guy, let's bring him onto the board". That is not going to produce the challenge to the company that we need if we're going to have good and effective corporate governance. Besides, that process probably means Fred's already on too many boards, he isn't going to have the time to do the job, he is not going to put the time in. I know from what many Chairmen have told me, that is the problem with this approach of recruiting from the golden circle, they don't have the time to do the job properly.

So, all of these recommendations, some people object to them mostly because they're on the receiving end of them and break one or more of those rules themselves. But, I think they have the objective of broadening the pool from where we draw non-executives. And, do I wish to broaden the pool? Absolutely. We have heard from the statistics and Patricia talked about it very well and so did Jonathan, yes absolutely, we should broaden the pool from where we draw non-executive directors.

These blobs are not to scale by the way. These blobs are meant to represent the pools from which we might fish for non-execs. So this world is the outer blob. There's the red blob; the red people are the chief execs of FTSE 100 companies in big names. Those are everybody's favourite at the moment or have been historically. The yellow blob is other directors, whether it is executive and non-executive, whether it be a public or private company. The green blobs are the people from other sources that we've heard about, the not-for-profit organisations, the civil service, the academics and so on and so forth and of course there is overlap between the green blobs and the yellow blobs. Jonathan is a prime example of that overlap; he comes from both the yellow and the green backgrounds.

Now many people are interpreting the report to say there is a shortage of good candidates for non-executive directorship. I don't believe that at all. And, it's not my experience in terms of the people I know or headhunters I talk to who say they've got more people than ever before sticking their hands up and saying, I'd like to be a non-executive director please. The shortage is simply because so many companies and headhunters have got their blinkers on and only look at the red blobs, the only want the red. And, yes there's a shortage of those and they're overworked and they can't put the time in as I mentioned before. But, if we want to broaden the pool, the first place we should look to broaden the pool is the yellow people, there's a huge number of people with an enormous amount of commercial experience, directorship experience, PLC experience, who have that experience, they have the time to put in and they will work damned hard to help the company when they're appointed to be a non-executive director, harder than the red people often work or are able to work.

But many people are saying, there aren't enough people; they're leaping straight from the red to the green. Unless it's in the green overlap I certainly don't have a problem with that but if it's not in the green overlap but the yellow then maybe I do have some problems with that. As Patricia said, if you leap to the people in the green section who do not have commercial experience, hard edged business experience, then certainly they're going to need a lot of training. It's unfair to them or the shareholders to ask them to take on the job without a lot of training in the issues of being PLC Company Director. That takes time and that leads to a corporate governance gap. While they're being trained, your board is not at full strength in terms of corporate governance issues. You can't rely on the others to fill in, the board has collective responsibilities, it's no good one or two non-execs saying, well, I didn't know about that I was relying on Fred, Joe and Harry to make sure we look after that because they're the ones with PLC experience, you can't do that. Also, in my view, they're taking on the role without perhaps really understanding the liabilities and responsibilities that they're taking on. It's all very well talking theory but if you do have that real commercial experience, I don't think it sinks in, I know it didn't with me, just what that responsibility is and what that liability is that you're taking on. You can have presentations from lawyers till you're blue in the face, I still don't think it sinks in until you've had some real experience.

So, again, is that fair to them or to the shareholders? And, in terms of experience, I have said here it takes one to know one. Chief executives and other directors don't always want to do things that are wholly and exclusively in the interest of the shareholders. Sometimes they want to do things because it will make their job more interesting or it will improve their CVs or give them a bigger company to run, which means they will justify a bigger pay package. All these factors do come into play in the Executive Director's mind. With the best will in the world, and, yes I know not-for-profit organisations are running businesses, I don't think people who have got real hard edged commercial business experience necessarily spot that sort of issue. Because, one thing is for certain while CEOs may not always propose things that are wholly in the shareholders' interest

they do always have very good explanations as to why they want to do it, very persuasive explanations. And, it's easy to be taken in by this and carried away with their enthusiasm.

To take another example, an example was mentioned at the Remuneration Committee. Yes, not-for-profit organisations and all sorts of bodies these days have Remuneration Committees but from inside experience sitting on one of those is the same as sitting on the Remuneration Committee of a PLC board. Fighting an ambitious and aggressive chief executive, possibly a greedy chief executive, who is fighting very hard for a package that you think isn't justified in terms of the interest of the shareholders. Now, I don't think that experience is the same as that hard edged commercial experience. You are going to have to fight out of the situation. Once again chief executives are ambitious, persuasive and will have lots of arguments to put forward as to why this pay package is the one that they should have and the one that they're selling the Executive Director.

However, having said that, don't get me wrong, the green people have fantastic experience and we should be tapping into it more in terms of running our company better and getting new challenges to the old established patterns of thought and new ideas. Getting that new experience in is valuable but it's not corporate governance and that's what the report was meant to do, to help improve on corporate governance.

In terms of corporate governance, I want qualified train drivers driving the train. I don't expect a railway company to appoint somebody to be a train driver and then teach them afterwards how to drive the train. Unfortunately some of them seem to have done that in the past, but that's another matter. I want qualified train drivers. Yes, let's get that experience in but maybe the way to get that experience in is to appoint people to advisory boards and use that time to train them in the issues of taking on the responsibilities as PLC Director. That, to me, would be a better solution.

The last point and perhaps the most important point is Comply or Explain, will it really work? I think it's a great idea, I certainly hope it works, but I know that an awful lot of Directors of PLC companies are worried that it won't. That they will not comply in some respects, they will explain their very good reasons for not complying. The institution investors won't have the time or the interest or the enthusiasm to read and take note of those explanations and will mark them down for not complying and their share price and their institution investor base will shrink and suffer as a result.

I think this is a very real concern. It's not a concern with the report, it's a concern with how we as a nation choose to implement that report, and it is very difficult. If everything effectively becomes, well you must do it otherwise you as a company is going to suffer, then there are 55 bullet points in the summary of recommendations. I dread to think of the situation where that effectively just becomes another 55 boxes to tick in order to get the enthusiastic support of institution investors. If that is going to be the case, and I am worried about it, then we need to be careful about how much and how many of those 55 points we put into the combined code, no matter how carefully we word them.

Thanks very much.

Stephen Bubb

Thank you Jane. There are three parts to this evening, first part excellent presentations, second part a chance for you to express a view or ask a question and the third part a drink and networking, and all three are important. I need to now manage this because I know that Derek needs to get away shortly after 7.20 and I'm extremely anxious to get you and I to our drink at around 7.30. So, what I'm going to suggest is, if we can initially take particularly questions or points you want to make to Derek. Can I ask you to say who you are and your organisation and I will take two or three questions to start off, if someone wants to get me going.

- ❑ My name is Martin Groack, I'm with British Energy, I'm an Interim Finance Director, taking over the position of the person who's involved in the restructuring of British Energy. The Analyst will point to three strategic decisions taken by the Board of British Energy, which led to its demise. Two of those decisions came about as a result of the non-executives overruling the management team. Will the proposals to effectively load the board with non-executives not undermine leadership and entrepreneurship within British business and lead to the country having the best-governed but least successful companies in an ever-increasingly-competitive Europe?
- ❑ My query is are there initiatives to adopt these rules across the European Union and what is the approach in Brussels to the Higgs report in converging standards for corporate governance?
- ❑ Mary Chapman, I'm the Chief Executive of the Chartered Management Institute. After your report was published there was the suggestion that there would be a group set up under Laura Tyson to try and stimulate a list or a pool of people from rather more varied backgrounds. I understand, though, that this may already be an early casualty in that I've read, and may have misinterpreted what was in the press that this idea is not going to be taken forward. Do you know if that's the case?

Derek Higgs

The Tyson Task Force is certainly ongoing and stimulating misleading coverage in the newspapers, there was a concern that this would look as though it was a list of 100 people who were being promoted by the Tyson Group. And, that will be detached and may find its way through some separate work through to headhunters and so on. So, when Professor Tyson publishes what I think will be an interesting and fairly short piece of work it will not have a list of 100 attached to it. None-the-less it will continue importantly to focus on the fact that there are very good people with very relevant experience who should be considered outside the round up of the usual suspects approach which has too often been the norm in appointment processes in the last three years.

Stephen Bubb

Thank you Derek. Just worth saying, I'm a member of that Task Force and indeed there's another of my colleagues on that Task Force, Janet Cummins, here tonight as well and for the reasons you've outlined favour wasn't found for publishing a list of 100 individuals given that it would have been difficult for us to have selected them ourselves and indeed then setting up those 100 to be selected. However, there is still a debate in that Task Force about whether perhaps there should be some form of register. We certainly all agreed that the attention of companies and headhunters needs to be directed to the talent that there is. I would be a bit more pro-active than perhaps some of my colleagues but it will be an interesting report. It is due out at some stage at the end of May of June. It is a report to Patricia Hewitt, Secretary Estate, and obviously it is for her to then take this forward and I know that she is extremely keen on the issue on widening the pool and wants to see that taken forward.

Let's take a few more comments.

- ❑ Keith Best, Strategic Executive of Immigration Advisory Service. We are a national charity providing a free legal advice and representation service to immigrants and asylum seekers. You can see I concentrate on popular causes. We have a turnover of about 14 million; we have got 300 staff and 16 offices around the country. I have some excellent trustees but they are worried because we are publicly funded and a condition of our public funds is that we

cannot carry forward more than 2% of our annual grant in aid. So, we cannot build up any reserves whatsoever, that causes them great concern. But, there is also another difference, although they are all trustees they are also company directors because we are a company limited by guarantee. I don't think Jonathan actually mentioned this fundamental difference between the corporate sector and the non-for-profit sector is that my trustees, my board members don't get paid, they cannot be remunerated through charity law. I think frankly the commercial sectors, I may be slightly provocative, have got a very easy run of it with thousands of people queuing up to be non-exec directors whereas most of us in the not-for-profit sector find it very difficult indeed to get some really good trustees onto the board and I just wondered if there was a relationship?

- Jonathan Steele from First Spark. I run a Research Company around the issues of business and technology particularly in business. I hate to change the subject entirely but given that business is about making money I wondered if Derek had some comments on the fact that the area that has produced the greatest increase in shareholder value in the last 30 years is Silicon Valley. It also has a large number of companies who have an incredible complex web of cross-directorships. Their boards are very mixed but many people sit on many boards. I was interested that one of the recommendations is that you shouldn't sit on more than x number of boards particularly if you're an executive director. I wonder is there any lessons we can learn from that in the success of Silicon Valley? I would also point out that neither Enron or Welcome are based in Silicon Valley and the Dot.com collapse is largely the fault of Wall Street not the technology companies as a qualifier.

Jonathan Welfare

If I can just comment on the point about the teams. I can express myself very effectively there because I absolutely 100% agree with everything that you've said. Build and achieve is not about recruiting a bunch of clones of each other it's about having people with complimentary skills, people who sometimes grate against each other, challenge each other and that's how you get the most effective performance. All I was trying to point out was that chief executives do have to think about what they will need to make a team effective. Whether it will be the grit or whatever and they do think about that and increasingly I think they are recognising the value of getting different personality types and diversity into that team. Unfortunately, Chairmen, historically have often not thought about the team that they're building, they've just thought, Fred's a good guy let's get him on board. I think Chairmen need to put more thought into that process and I think Derek's recommendations on the Nomination Committee and the Chairman not being Chair of the Nomination Committee are a flag, a challenge, to get people to think more about that in board competition as they are doing in executive team competition.

Patricia Peter

I think the main thing on the accountability issue, what we're trying to get at is that we have got to have the capacity and the capability in the non-exec and the executive directors, to have people who are all capable of accepting the accountability that they have. You have got to have people who recognise the problems they may encounter and I think it's not time to say non-executives are different from executives in this regard. But, the trouble is if you bring in non-executives, particularly those who are not familiar with listed companies you do have to ensure that you have got people you are not throwing in at the deep end without have the requisite skills. And equally, I don't divorce executive directors from some of the needs as well. I think sometimes people are made executive directors of companies and thrown onto boards with inadequate training and induction into the differences between being a director and being a manager of the company. I think that there is actually quite a big skill set that is often lacking in many executive directors. Perhaps if Derek had been asked to look at the whole of boards and their composition and structure we would have had slightly more said about executive directors, but that wasn't his remit.

Stephen Bubb

Thank you very much. As I said the third part, which is just as important, it's the networking. I think this is a fairly unusual and unique event where there are such a large number of not-for-profit chief executives and directors from the commercial sector, so I actually think this will be quite interesting. There aren't enough opportunities like this for the two groups and so we should take advantage of that.

I want to thank our speakers, but in particular I want to thank Paul Smith who's going to finish the session off for us, particularly just to say thank you to you and to Harvey Nash. An ideal partnership where there is professional association for chief executives. You're there as an extremely well-known and good headhunting and recruitment consultancy. We had an interest jointly in this and in promoting and we're going to do some more work in this area. So, I just wanted to publicly thank you Paul, and hand over to you to finish us off.

Paul Smith

I think the most interesting thing that's come out of this is that there is clearly a very large pool of candidates available out there to assist our public companies and our board of directors in delivering profits and delivering shareholder value. But, the problems are always there, is to how do you find them? Therefore the appointment process has to be exactly the same as it would for an executive director. It's companies like Harvey Nash, with board practice, that are able to provide the advice and guidance both to candidates and to corporate businesses and not-for-profit businesses that can start to help deliver against this pool of executives because that's the most important thing in finding the right person to compliment and fit the board and deliver shareholder value.

I'd like to thank our speakers again, I think it's been a very informative evening. Thank you for the questions and thank you again to our sponsors, Tarlo Lyons and Ernst & Young. I would like personally to thank Eleanor Mayo who did the organisation for this event, and I have to say it's been absolutely splendid. Everything has gone really well and I hope that the wine and canapés in the room next door are going to be going down equally well. So, thank you very much for attending this event and we hope to see you at another event that we will run in the future. Thank you.

A copy of the Higgs Report can be downloaded online at:

http://www.dti.gov.uk/cld/non_exec_review

Should you have any questions or comments concerning this transcript, please contact either Paul Smith or Eleanor Mayo at:

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