

Confederation of British Industry
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Director-General
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Deputy Director-General and Secretary
Maurice Hunt



10 July 1991

Sir Adrian Cadbury
Rising Sun House
Baker's Lane
Knowle
Solihull
West Midlands B93 8PT

Dear Sir Adrian

Sir Brian Corby and members of the CBI Steering Group were most grateful to you, Ian Butler and Nigel Peace for your attendance at our recent meeting. It was very nice to make contact again.

I am enclosing the Minutes of the meeting. Rather than burden you with all the attachments to the Minutes I have only enclosed the CBI response to the ABI discussion paper on the role of institutional shareholders. If you are interested in any of the other enclosures referred in the Minutes please do not hesitate to ask me for them.

I will, of course, keep in close touch with Nigel and we can see, closer to the time, whether or not you wish to speak again to our Steering Group at its next meeting, which will be sometime in November.

By copy of this letter and enclosures I am also letting Ian and Nigel see the Minutes of the meeting.

With renewed thanks.

Yours sincerely

G Foster
Secretary
CBI Steering Group on Long-Termism and
Corporate Governance

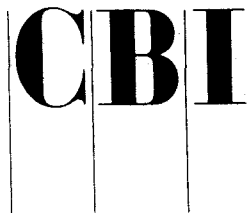
cc: I G Butler Esq CBE
R C Grayson Esq
N Peace Esq

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**RESPONSE TO THE ABI DISCUSSION PAPER
ON THE RESPONSIBILITIES OF INSTITUTIONAL SHAREHOLDERS**

- 1 The CBI welcomes the opportunity to comment on the ABI's Discussion Paper and is grateful for the Association's explanations of the thinking behind it offered in the course of our consultations with members. The Paper was debated in our Companies Committee, several Regional Councils and the President's Committee. Our response was approved by the CBI's national Council on 26 June.

General Approach:

- 2 The CBI welcomes this new contribution to the continuing debate on the issue of corporate governance. As a matter of principle the CBI believes that all shareholders should be involved in effecting a continuing two-way relationship between a company and its shareholders. The paper recognises that institutional shareholders because of their strong position and greater expertise should take a leading role and set an example to the whole body of shareholders, and we support this emphasis. The paper will be helpful to listed companies outside the largest ones in that they will know the basis on which the institutions approach their relationship with boards.
- 3 As in our response to the earlier Institutional Shareholders' Committee paper, the Role and Duties of Directors, the CBI stresses again the importance of flexibility; broad principles for guidance are preferable to tightly drawn rules and codes. We therefore believe that the form of advice proposed by the ABI is the right one and would not support the adoption of a code of recommended or best practice. CBI responses on the substance of the ABI's proposed principles follow.

Principle 1:

Institutional investors should encourage regular, systematic contact at senior executive level for the purposes of an exchange of views and information on strategy, performance, board membership and quality of management.

- 4 The CBI fully supports this principle. It is inevitable that the growth and importance of institutional shareholdings should be matched by responsibilities towards the companies in which they are invested. Those responsibilities should clearly be underpinned by an understanding of the business which can best be developed by a regular exchange of information and views at a senior level on both sides.
- 5 A commitment of this kind implies that the institutions should have access to analysts of a quality and number which enables them to assess the information. We recognise that more institutions are hiring buy-side analysts, but this is expensive and likely to be a limited development. However, the institutions can always influence the quality and amount of expert analysis they receive by the demands they put on brokers. We understand that the Society of Investment Analysts is addressing these types of issues and look forward to receiving a report of their work.

- 6 We refer to the matter of price-sensitive information below but comment now that companies more properly talk to institutional investors about their business philosophy than the detail of their strategy.

Principle 2:

Institutional investors will not wish to receive price-sensitive information as a result of such dialogue, but will accept it on an exceptional basis as the price of a long-term relationship, although this may require that they suspend their ability to deal in the shares.

- 7 Price-sensitive information is given to institutional investors as and when necessary and suspension of dealing is one of the conditions on which they receive it. The ABI Discussion Paper should acknowledge that only in exceptional circumstances would a company wish to divulge price-sensitive information. Experienced practitioners on both sides know the constraints of the law and find the current framework workable with the exercise of due care. It is important that the enactment of the EC Insider Trading Directive into UK law should acknowledge current good practice and not inhibit the proper exchange of information and comment on it. The Irish Companies Act 1990 affords a warning of how the law can make legitimate practice an offence.

Principle 3:

Institutional investors are opposed to the creation of equity shares which do not carry full voting rights.

- 8 We understand the philosophy of the institutions that those who put money at risk (whether theirs or that of others) should have the means of controlling that risk within companies. It would be helpful to receive the ABI's fully developed arguments on the point. However, there will be investors who wish to be passive; and we see no reason why in principle they should not be offered non-voting stock, providing they clearly understand what they are buying. There is no need for uniformity, only protection against abuse in the case a minority with voting control acting against the majority of shareholders. By contrast, it would be wrong to enfranchise those who have not paid for a vote in the share price at the expense of those who have.

Principle 4:

Institutional investors should support boards by a positive use of voting rights, unless they have good (and stated) reasons for doing otherwise.

- 9 We fully support this principle. It follows that trustees of pension fund and unit trusts who give institutions discretion to manage funds should also vest in them the power to vote. When trustees want to keep control of the vote on certain issues (for example, the acquisition of a company in which the fund has a major holding), then they must put in place arrangements that enable consultation to happen between the manager and themselves within the short timescale available.

Principle 5:

Institutional investors should take a positive interest in the composition of Boards of Directors, with particular reference to:

5.1. Concentrations of decision-making power not formally constrained by checks and balances appropriate to the particular company.

5.2. The appointment of a core of non-executives of the appropriate calibre, experience and independence.

- 10 We considered these issues in detail in our earlier response to the ISC paper 'The Role and Duties of Directors'. In sum, we fully support the view that non-executive directors bring valued expertise of a particular nature to the board and that their role is an essential part of their contribution. We are against hard and fast rules on the composition of boards. We support the aim of the ABI in having proper checks and balances by a variety of means which will be shaped by the nature of the business.

Principle 6:

Institutional investors support the appointment of remuneration and audit committees.

- 11 Again, this was an issue for detailed comment in the CBI's response to the ISC paper 'The Role and Duties of Directors'. Our approach is to say that the appointment of such committees should be a matter for boards to decide in the light of the individual company's circumstances. We restate our concern that to prescribe one group of directors should exclusively supervise or monitor the activity of the others will lead to a two-tier structure which is alien to the UK's conception of a unitary board.
- 12 Where remuneration committees are appointed, we support the view that they should be made up wholly or largely of non-executive directors to guarantee the independence of discussions on executive directors' pay.

Principle 7:

Institutional investors encourage disclosure of the relevant details of directors' contracts.

- 13 This issue must be addressed in a practical way. If details of all such contracts were to be shown in annual reports, they would run to many pages; and an adequate summary would not reasonably be brief. There is a case, however, for the principles upon which directors' remuneration is determined to be disclosed in the annual report so that they are understood by shareholders. Also service contracts are available for inspection at annual general meetings; companies should see to it that all essential details in them, including figures, are fully up to date. Pay throughout the company should be related to performance.

Principle 8:

In takeover situations institutional investors will consider all offers on their merits and will not commit themselves to a particular course of action until they have reviewed the best and most up-to-date information available.

- 14 We understand and accept this as a statement of good practice. It needs to be linked, however, with the point in the main body of the ABI Discussion Paper which speaks of the likely support for an incumbent board when good relations have been established. There should be a presumption of such support when the investor understands the business and has shown himself satisfied with the quality and performance of the management.

Principle 9:

In all investment decision-making institutional investors have a fiduciary responsibility to those on whose behalf they are investing, which must override other considerations.

- 15 The CBI accepts that the institutions' primary obligation is their fiduciary duty to their own shareholders and other beneficiaries on whose behalf they act. It is this fiduciary duty which distinguishes an investor from an owner of a business who acts purely in his own interest.
- 16 In the main body of the ABI Discussion Paper the point is made that in the absence of Government action, institutional shareholders cannot allow issues of public interest to dictate their ultimate decision or their investment in the course of a takeover bid. The institutions plainly cannot have a duty to act in the public interest, which is a broad concept likely to be variously defined in different sets of circumstances. However, the ABI text dismisses the concept from the field of shareholders' responsibility absolutely without recognition of the fact that their beneficiaries' interests are likely to converge with the public interest in the long term health of the economy. This derives from good performance by companies over the longer term.
- 17 We understand that the ABI paper will now go to the Institutional Shareholders' Committee. The CBI looks forward to further close consultation throughout the process leading to publication.

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SG 13 91

PRIVATE AND CONFIDENTIAL

**MINUTES OF THE SECOND MEETING OF THE CBI STEERING GROUP
ON LONG-TERMISM AND CORPORATE GOVERNANCE**

held on

Tuesday 25 June 1991

at Centre Point, 103 New Oxford Street, London WC1A 1DU

Chairman:

Sir Brian Corby

Prudential Corporation

Members:

Dr J S Burgess CBE

Mr C M Gilchrist

Mr R C Grayson (for Mr M G Taylor)

Sir David Lees

Mr P Stormonth-Darling (for Mr C K R Nunneley)

Mr T J Palmer CBE

Mr M Smith

Mr B W Willott

Immuno International AG

Argosy Asset Management PLC

British Petroleum Company Limited

GKN PLC

Mercury Asset Management

Legal & General Group PLC

Bank of England

Department of Trade & Industry

Guests:

Sir Adrian Cadbury

Mr I G Butler CBE

Cookson Group PLC

CBI Secretariat:

Professor Douglas McWilliams

Mr G C Mason OBE

Dr Fiona Steele

Mr G D Foster (Secretary)

Chief Economic Adviser

Director, Company Affairs

Head, Technology Group

Senior Policy Adviser

Apologies:

Sir John Quinton

Mr A C Hugh Smith

Mr C K R Nunneley

Mr M G Taylor

Barclays Bank PLC

The International Stock Exchange

Robert Fleming Holdings Ltd

Hanson PLC

Chairman's Opening Remarks:

- 1 The Chairman welcomed members and on members behalf congratulated Sir David Lees on his knighthood in the Birthday Honours. He welcomed Sir Adrian Cadbury and Mr Ian Butler as guests to report on Agenda Item 4, and Mr Richard Grayson (Company Secretary, BP, and a member of the Companies Committee) and Mr Peter Stormonth-Darling (Chairman of Mercury Asset Management and Deputy Chairman of IFMA) as alternatives for Mr Martin Taylor and Mr Charles Nunneley respectively, who had company commitments.
- 2 The Chairman explained that the arrangements for the meeting had been subject to several alterations due to the changing of plans for the launch of the DTI Innovation Booklet. The Innovation Booklet would be considered in detail under Agenda Item 5.

AGENDA ITEM 1 - Minutes of Previous Meeting:

- 3 The Minutes of the meeting held on 19 February 1991 (SG 02 91) were approved.

AGENDA ITEM 2 - Matters Arising:

- 4 Matters arising therefrom were covered in the remainder of the Agenda.

AGENDA ITEM 3 - Progress on Current Initiatives:

- 5 The Steering Group considered progress reports from constituent members.

Confederation of British Industry (paper circulated in advance)

- 6 Mr Graham Mason said that the CBI had responded to the Institutional Shareholders' Committee Statement of best practice on the role of directors. The Statement was published in April and had been circulated to members of the Steering Group. He stated that CBI Council was meeting on 26 June and was being asked to approve a response to the Association of British Insurers (ABI) discussion paper of May on the Role of Institutional Shareholders. The response was broadly supportive of the ABI paper although it did stress the importance of flexibility and argued that broad rules were preferable to tightly drawn rules and codes. Mr Mason outlined to members the detail of the CBI response.
- 7 Mr Joe Palmer, the Chairman of the ABI, welcomed the proposed CBI response to their discussion paper and noted that there were substantial areas of agreement. In general terms, he welcomed the degree of interest and involvement of the CBI in the consultative process. On the point in the CBI paper regarding the institutions' fiduciary responsibilities and 'public interest' issues, he accepted that in the long run there was a substantial overlap and that their beneficiaries interests were likely to converge with the public interest in the long run health of the economy.
- 8 The Steering Group asked that the CBI address again the degree of importance it attached in its work programme to the issue of explaining the legal responsibilities of the trustees of pension funds. The issue was regarded by Steering Group members as being important and was not directly linked to the Barber judgement and work should not, hence, as the CBI paper suggested, be postponed because of uncertainties regarding that judgement.

Secretary's Note: The CBI response to the ABI Discussion Paper on the Role of Institutional Shareholders is enclosed with these Minutes.

Association of British Insurers (paper circulated in advance)

- 9 **Mr Joe Palmer** referred to the paper circulated and the earlier discussion on the CBI response to their discussion paper on the role of institutional shareholders.

The Institutional Fund Managers Association (paper circulated in advance)

- 10 **Mr Peter Stormonth-Darling** said that IFMA were engaged in two initiatives regarding corporate governance. First, on communication of business plans and insider dealing he said that a paper would be released shortly and would be made available to the Steering Group. Second, a paper on voting by institutional shareholders was being prepared and would also be released shortly. This paper would suggest that voting by fund managers was generally desirable although it would recognise that there were practical problems in certain circumstances.

The National Association of Pension Funds

- 11 **Mr Clive Gilchrist** said that the NAPF were also responding to the ABI discussion paper on the role of institutional shareholders. They had also been considering the IFMA paper on voting by institutional shareholders. It was recognised that the voting record of pension fund managers was poor and the NAPF were making efforts to try and change this.

Department of Trade and Industry

- 12 **Mr Brian Willott** reported on a number of strands:
- the Secretary of State for Trade and Industry would be giving evidence to the Trade and Industry Committee on 26 June in relation to their enquiry into public policy on takeovers and mergers;
 - the DTI had supported Sir Adrian Cadbury's Committee on Corporate Governance and would be supplying the Secretary;
 - On communicating business plans to analysts, he said that the DTI proposed to have a second consultation period on proposals to implement the EC Directive on Insider Dealing into UK law.

The Bank of England

- 13 **Mr Michael Smith** stated that the Bank had supported the proposed induction programme for the training of directors and Sir Adrian Cadbury's Committee on Corporate Governance. He said that the Bank would make available to members research by Mr Jonathan Charkham on corporate governance systems in West Germany and Japan, although he noted that this required updating. Shortly similar research by Mr Charkham on France would be available.

Secretary's Note: Research progress by Mr Jonathan Charkham, Bank of England, on West Germany and Japan enclosed with Minutes. This is unpublished research and should be used with discretion.

Other Points:

- 14 The Steering Group expressed concern about what seemed to be a lack of progress by the Hugh Parker project aiming to devise a training programme for Directors of public quoted companies. This was felt to be an important initiative in which practical results could be achieved. It was noted that several business schools were keen to go ahead with training programmes.

- 15 The Steering Group discussed the issue of the involvement and the exercise of control by institutions with companies that were running into difficulties. It was noted that most institutional involvement in this way was "behind the scenes" and this was generally regarded as being more desirable than open debates that were often confrontational and subject to press attention. The Steering Group agreed to keep this matter under review.
- 16 Tabled at the meeting was the Independent's UK R&D Scoreboard. It was noted that this would be widely circulated amongst CBI members and it was advised that this would be regularly published.

* * *

- 17 The Chairman thanked those members who had supplied written comments and for the up-date provided at the meeting.

AGENDA ITEM 4 - Committee on Corporate Governance:

- 18 The Committee welcomed Sir Adrian Cadbury, Chairman of this new Committee on Corporate Governance, and Mr Ian Butler, the CBI representative on the Committee, member of CBI Council and past Chairman of the CBI Companies Committee.
- 19 Sir Adrian Cadbury said that he was grateful for the invitation to the meeting and that he welcomed Ian Butler's membership of his Committee. He was content that there was a strong business representation on the Committee; this being important in terms of making sure that any recommendations made by the Committee were practical and capable of implementation in company practice. Sir Adrian said that he saw some overlap between the Steering Group and his Committee but the essential difference was that his Committee would be concentrating on the financial aspects of corporate governance, whereas this Steering Group had a broader remit. He viewed it as important for both Groups to keep in close contact. He welcomed an earlier CBI study on the Responsibilities of the British Public Company (*Watkinson Report*) and he said it was a useful starting point for his own study.
- 20 Sir Adrian Cadbury said that an important objective of his Committee was to reduce inefficient tensions between the various parties in the debate. The Committee was supported by a wide group of interests. The Committee had not yet met but would be doing so within a month to agree terms of reference and procedures. It was proposed to produce a draft report by the end of this year with the view towards having a final report between March and June 1992.
- 21 The Steering Group welcomed the proposed work of the Committee and noted, in particular, its emphasis on financial aspects of corporate governance. On the question of tensions between various parties a member said that he felt it was a problem to be managed rather than resolved. The Steering Group also debated whether or not it was advisable for the Committee to have an identifiable reporting body. It was noted that those members funding the project would be reported to but there was perhaps merit in having an independent body such as, for example, the CBI and the Bank of England. Sir Adrian Cadbury said that his Committee would consider this point.

- 22 A member expressed concern about the increasing number of codes of best or recommended practice in the area of corporate governance; it was a difficult issue for companies to decide which codes, or which part of a particular code, should be implemented into company practice. Sir Adrian Cadbury said that the CBI Steering Group would make a further useful contribution to the debate if it suggested a working definition of the term 'corporate governance'.
- 23 The Chairman said that the work of Sir Ron Dearing's Financial Reporting Council was relevant to this whole debate and the meeting agreed to invite him to the Steering Group's next meeting.
- 24 The Chairman thanked Sir Adrian Cadbury and Ian Butler for attending the meeting and reporting, and said that he shared their hope that the two groups would keep in close contact.

Secretary's Note: A copy of 1973 "Watkinson Report" is enclosed with the Minutes.

AGENDA ITEM 5 - Launch of DTI Investor/Industry Communications Booklet:

- 25 Dr Fiona Steele reported the apologies of the DTI Action Team on Communications for the very short period of time that members had for comment on an earlier draft of the DTI booklet. Several members did supply comments and after further alterations by the Secretary of State for Trade and Industry it had been agreed to defer publication to a date either in early August or early September.
- 26 The Steering Group were invited to supply any further comments they had on the latest draft, which would be circulated to members with significant changes to the previous draft considered by members being highlighted. Members also suggested that those companies mentioned in the booklet should also have an opportunity to comment on the paper before publication.

Secretary's Note: Draft dated 24 June 1991, with highlighted changes, was circulated to members for comment on 26 June 1991.

AGENDA ITEM 6 - Any Other Business:

- 27 It was agreed to arrange a further meeting of the Steering Group in six months; in between matters would be dealt with in writing.

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