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CONFIDENTIAL

PC 27 92 (Summary)

TO THE PRESIDENT'S COMMITTEE FOR THE MEETING ON 20 JULY 1992

SUMMARY OF THE CBI RESPONSE TO THE CADBURY COMMITTEE DRAFT REPORT ON THE FINANCIAL ASPECTS OF CORPORATE GOVERNANCE

1. The CBI welcomes the Cadbury Committee's draft Report as an important contribution to the debate on corporate governance. A great deal of constructive discussion has been stimulated by the Committee's proposals both amongst CBI members and elsewhere in the business and professional community. We give below the main points of the CBI response (elaborated in the attached commentary) which we offer at this stage of the Committee's enquiry.

2. CBI members accept the need for continuing efforts to improve standards of corporate governance, so that the generality of businesses match the level practised by the best companies. The means chosen to achieve this end should recognise that not all of the practices advocated will be relevant to the smaller company.

3. Cadbury is right to reject further major intrusion of the law into corporate governance. The Code put forward by the Committee, by contrast, offers flexibility; and the CBI finds many positive features in it. A good deal of what it says represents what member companies consider to be best practice.

4. We do, however, have major reservations about making a statement of compliance a listing obligation as a way of sharpening accountability to shareholders. This requirement is likely to produce over-elaboration of the Code and proliferating bureaucracy. Where investors intervene with a board, they will invoke the Code as part of their case, and use it in line with the company's circumstances, without the need for an annual statement of compliance.

5. We support the view of the Committee that non-executive directors have an important role to play in companies. Perhaps because of its terms of reference, the Committee has focused narrowly on their monitoring role. We think this is

unfortunate, because it understates the contribution which the non-executives can make to the growth of a business: their different experience brings a fresh eye to problems and the development of strategy. Moreover, the concept of the unitary board is based on all directors being equally responsible for its actions; its effectiveness depends on members of the board as a whole working together. It is for the board to distribute functions to its members; attempts to reserve tasks to one class of directors will create the danger of opening the way to a two-tier system. For this reason, whilst we support a recommendation to establish audit committees, which we consider should not be mandatory, we do not believe the membership should be restricted to non-executive directors.

6. We support the recommendation to identify the performance-related element of directors' remuneration and note that many companies find remuneration committees useful.

7. In principle, we support the Committee's proposals for strengthening the scope and quality of audit work in relation to financial reporting, including comment on internal financial controls and the 'going concern' basis of accounts, and will offer views on the profession's ideas for giving effect to them. However, we have serious misgivings about extending the auditor's functions to review of compliance with the Code: on some issues this would take the profession outside its sphere of competence.

8. It is clearly proper that users of accounts should have confidence in the objectivity of the auditor, but in deciding whether measures are needed to reinforce it, we ask the Committee to consider that the effectiveness of an audit is enhanced by a close knowledge of the business. We do not, therefore, believe that the rotation of the audit partner should be a requirement. Equally, companies find that a close professional knowledge of their affairs is a benefit when seeking other advice from the firm conducting the audit. We would not want to see any restriction on the sources to which companies may turn for advice and believe that a requirement for a firm to declare non-audit fees is sufficient disclosure for users of accounts.

9. The CBI urges the Committee to give more attention to the role of shareholders in its final Report. We believe it should offer guidance on ways of sharpening their responsibilities as owners of the business, for example, through the use of voting rights.

10. The work of the Cadbury Committee has lent fresh impetus within CBI member companies to the process of assessing procedures and making changes. It is important that this should continue and, as the Committee has identified, its Code should be updated to embody new developments and best practice. For this reason the 'ownership' of the Code should be clearly established; and we invite the Committee to make firm arrangements for the review body in its final recommendations.

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Draft Report and Code paragraphs

CODE OF BEST PRACTICE

11. The Code of Best Practice forms the heart of the Committee's recommendations and, as indicated above, we support this approach. If the Code is to be supported and be a success it must satisfy the criteria set out in the following three paragraphs.

12. The provisions of the Code must be capable of broad support and compliance by all listed companies and companies generally. The Code is a statement of the principles of good corporate governance which, as identified by the Committee, should be based upon openness, integrity and accountability but these must be sufficiently flexible to allow for differences in companies' needs. A manufacturing company will not have the same board and management structure as a financial services business.

13. The draft Code is inconsistent with the UK structure of a unitary board, whereby all directors, both executive and non-executive, are jointly and collectively responsible for the management and stewardship of a company. We believe there is over-emphasis of part of the role and responsibilities of non-executive directors which gives the impression of support for a continental style two-tier board structure.

14. The draft Code is too prescriptive of how boards should manage their affairs and their fiduciary and stewardship functions on behalf of shareholders. If the requirements are too prescriptive many companies will find themselves in contravention of some of its provisions whilst at the same time being perfectly financially sound, successful and reputable.

15. As presently drafted, it is also not clear, when the Code cross-refers to a paragraph in the draft Report, whether that paragraph is intended to be incorporated in the draft Code. The point is important because the paragraphs in the draft Report often deal with additional recommendations and generally discuss a range of matters which go much wider than the provisions of the Code itself. Whilst a particular provision of the Code may be supported we do not necessarily accept all that is said in the draft Report to which cross reference is made. If the recommendations and the supporting argument are there to help define the spirit rather than the letter of the Code that should be made clear.

16. We prefer that the Code contain no cross references to the Report or the recommendations. The Code should stand, and be capable of standing, on its own.

Statement of Compliance

17. More guidance needs to be given to boards as to the precise form and nature of the statement they are expected to make. Indeed, if the Code is restricted, as we propose, to being a statement of principles, the compliance statement will be easier to prepare and to understand. We believe in its Final Report the Committee should produce a text of a sample compliance statement by way of illustration and guidance.

Paras 3.7 - 3.11

18. The only recommendation should be for directors to make a statement of their compliance with the Code in the Annual Report. It will then be for shareholders and potential investors to decide whether the extent of a company's compliance affects their judgement to buy, retain or sell the shares.

19. We consider that it is not appropriate for the compliance statement to be reviewed by the auditors. The Code is primarily concerned with management and stewardship issues and board structures which auditors have no means of assessing. Auditors may be capable and qualified to comment on financial matters and on matters of fact - e.g. existence of non-executive directors and board committees - but there are matters of judgement - e.g. independence - which the auditor is not able to assess. Whilst the auditors would no doubt comment if they felt the compliance statement was patently false or misleading, auditors cannot be expected to comment on the calibre, qualifications and experience of the non-executive directors. Auditors do not attend board or committee meetings and cannot comment as to how the board conducts itself.

Para 3.10

20. We also believe more time should be allowed to boards before they are asked to publish a statement of compliance. The present proposal affects companies with year ends on or after 31 December 1992. However, by then the Committee's final report will at best only recently have been published. This will give companies little or no time for consideration of the Final Report to arrange compliance with its recommendations. Furthermore companies are to be given two years to put into effect some provisions e.g. the establishment of an Audit Committee, which are not however during that time removed from the compliance statement.

21. A later date of, say, 31 December 1993, or possibly 31 December 1994, may be appropriate for the introduction of the statement of compliance. The Committee can still recommend that companies comply with the Code as soon as possible and disclose the level of their compliance in the meantime.

Stock Exchange listing requirement

22. It seems that the proposed Stock Exchange listing requirement is intended to be one of disclosure, with the sanctions of public warning and adverse press comment. If listed companies persistently fail to make a statement of compliance, there is the ultimate sanction of de-listing when shareholders have had sufficient opportunity to express their disapproval at the AGM and thereafter to sell their shares. De-listing is a draconian remedy especially if shareholders are unable to dispose of their shares. If the Code forms part of the Stock Exchange's listing requirements it will be less capable of flexible change and interpretation. If it is to apply generally, as the Committee hopes, such a sanction will obviously not apply to non-listed companies.

23. We therefore consider that a Stock Exchange listing requirement is not appropriate.

24. We support the approach of the Institutional Shareholders Committee Statements of Best Practice on The Role and Responsibilities of Directors and on The Responsibilities of Institutional Shareholders. These are put forward as models of good practice which companies and shareholders should seek to follow, and they assist by setting out clearly what is expected. The sanction as against the company is of public adverse comment and shareholder disapproval. We consider that this is the way which the Cadbury Code should be taken forward.

Review of the Code

25. We support the regular review of the Code and suggest it will need to be kept under constant review in the light of EC or other developments affecting companies. We belive that "ownership" of the Code needs to be clearly established and urge the Cadbury Committee to propose firm arrangements for a review body in its final Report.

Paras 3.12-3.13

DETAILED CRITIQUE OF THE CODE OF BEST PRACTICE

1 THE BOARD

Board Structures and Procedures

Code 1.1 **The board must meet regularly, retain full and effective control over the company and monitor the executive management.**

26. We agree that boards should meet regularly with due notice of the issues to be discussed and should record their conclusions. It is also vital that Minutes are circulated promptly, particularly to those directors unable to be present at the meeting. We oppose the words "monitor the executive management" as importing a supervisory role inappropriate to a unitary board.

Code 1.4 **Boards should have a formal schedule of matters reserved to them for decision to ensure that the direction and control of the company is firmly in their hands. (Paragraphs 4.19, 4.20)**

27. We would formulate in another way the recommendation that boards should have a formal schedule of matters reserved to them. The board is responsible for the management of the company and it is a matter for the board what powers, responsibilities and duties they delegate, not what they retain. Such delegation should be subject to appropriate systems of internal control as with all other aspects of the management of the company. Any list of issues reserved to the board should be illustrative; and all will have to use their common sense in interpreting such a list. A better approach, more consistent with the unitary board, would be to have a list of issues/decisions expressly delegated.

Paras 4.19 & 20

capable of acting in the interests of co.

Combined Roles of Chairman and Chief Executive

Code 1.2 **There should be a clearly accepted division of responsibilities at the head of a company, which will ensure a balance of power and authority, such that no one individual has unfettered powers of decision. Where the chairman is also the chief executive, it is essential that there should be a strong independent element on the board, with an appointed leader. (Paragraph 4.6)**

28. Para 4.6 We agree that the combination of the roles of chairman and chief executive may represent a strong concentration of power, although the Committee is right to recognise in the proposed Code that company boards may, where appropriate, wish to combine the roles. Companies are now tending to reorganise their structures on this basis as existing incumbents filling dual roles retire. An appropriate part of the checks and balances in companies which combine the two offices would be to have a suitable number of strong independent non-executive directors. On such boards a non-executive director is often appointed deputy chairman. The use of the term "leader" in Para 4.6 and Code 1.2 is inappropriate in a unitary board.

29. There may well be a need for a rallying point for directors with concerns about the operation of the board; such a person will emerge and indeed may be the non-executive deputy chairman. It is the term rather than the concept which we oppose.

2 NON-EXECUTIVE DIRECTORS

Code 1.3 **The calibre and number of non-executive directors should be such that their views carry significant weight in the board's decisions. (Paragraph 4.6)**

Code 2.1 **Non-executive directors should bring an independent judgement to bear on issues of strategy, performance, resources, including key appointments, and standards of conduct. (Paragraph 4.8)**

Code 2.2 **The majority should be independent and free of any business or financial connection with the company apart from their fees and shareholding. Their fees should reflect the time which they commit to the company. (Paragraphs 4.9, 410)**

Comments on Code 1.3, 2.1 and 2.2

We fully support these statements.

30. We agree that non-executive directors are an important part of the board team. In general however we consider

Para 4.7 & 4.8 that the Committee's recommendations and Code provisions of non-executive directors and are thus divisive and contrary to the underlying tenets of a unitary board, a better approach would be to emphasise the distribution of responsibilities is a matter for the board. For some board committees it may be appropriate to have a majority of non-executive directors but functions should not be reserved to them.

31. There is concern that the traditional source of high calibre non-executive directors (from the ranks of senior executive Board members of substantial quoted companies) is both insufficient and inappropriate. Insufficient, because there are simply not enough such executives available to fill the many more posts envisaged by the Code, and inappropriate, because it is difficult to see how a busy full-time senior executive director can devote sufficient time to make the demanded contribution as a non-executive director of (probably) several quoted companies. This dilemma was discussed at the CBI Conference on 10 June 1992, and the Committee might like to review their recommendations in the light of the comments made.

32. As to whether the acceptance of share options affects their independence there is a view that, as non-executive directors are being expected to take on increasing responsibility, they should be treated on the same basis as executive directors with respect to share options: boards should be able to offer reasonable share options if they so determine on the ground that they are a long term incentive, and much of the non-executives'

Para 4.10 role is concerned with the long term strategic development of the company. As there is a division of opinion on the advisability of giving share options and its affect on independence, it should be a matter left to the company, subject to disclosure in the accounts.

Code 2.4 There should be an agreed procedure for non-executive directors to take independent professional advice if necessary, at the company's expense. (Paragraph 4.12)

33. The proposal that non-executive directors should be entitled to take separate independent advice, if appropriate, at the company's expense and under agreed procedures, should be extended to every director on the

Para 4.12 board. The Committee should also give guidance as to what the appropriate procedures should be. Where more than one director wishes to take separate advice on an issue, should directors where feasible seek advice jointly, in the interest of saving costs?

Code 2.3 **They should be appointed for specified terms and reappointment should not be automatic. (Paragraph 4.14)**

Code 2.5 **Non-executive directors should be selected through a formal process and their nomination should be a matter for the board as a whole. (Paragraph 4.13)**

34. As to terms of appointment and re-appointment we agree with this provision. We suggest that all directors, executive and non-executive, should be subject to retirement and re-election by rotation at intervals of not longer than 3 years. We agree with the suggestion
Para 4.14 in paragraph 4.14 that their letter of appointment should set out their duration, terms of office, remuneration and its review.

35. The nomination of all directors, not just non-executives, should be a matter for the board as a whole and subject to a formal selection process. Para 4.13
Para 4.13 appears to make the use of a nomination committee mandatory, which we oppose, whereas Para 4.24 says it is
Para 4.24 "one approach". We support the 4.24 line, although this is not reflected in the wording of Para 2.5 of the Code. There is no reference to this point in the list of Recommendations. This is an example of the lack of clear relationship between the different sections of the Report and the Code.

3 **EXECUTIVE DIRECTORS**

Board Remuneration

Code 3.1 **Directors' service contracts should not exceed three years without shareholders' approval. (Paragraph 4.33)**

We agree with this provision.

36. We suggest that all directors including executive directors should be subject to retirement and
Para 4.14 re-election by rotation at intervals of not longer than 3 years.

Code 3.2 **Directors' total emoluments and those of the chairman and highest paid UK director should be fully disclosed and split into their salary and performance-related elements. The basis on which performance is measured should be explained. (Paragraph 4.32)**

37. We agree that the principles upon which directors remuneration is determined, including basic salary, performance related bonus, profit sharing elements and share option rights, should be disclosed in the Annual
Para 4.32 Report, so that they are fully understood by shareholders. Paragraph 4.32 refers to "directors" whereas Code 3.2 lists the disclosure provisions under "executive directors". This inconsistency should be clarified by the Committee.

Remuneration Committees

Code 3.3 **Executive directors' pay should be subject to the recommendations of a remuneration committee made up wholly or mainly of non-executive directors. (Paragraph 4.34)**

38. Paragraph 4.34 sets out in detail the recommendation that companies should appoint remuneration committees, the composition and chairman, its disclosure in the Annual Report and the final point that the committee chairman should be responsible for answering questions at the AGM. We deal with this latter point in paragraph 46 of this Response.

Para 4.34

39. We consider that the usefulness and need for remuneration committees must be determined by boards themselves. Smaller companies (and some larger ones) will often consider that they can well manage their affairs without the need for a formal remuneration committee. In practice, many companies have established remuneration committees because they are sensitive to the opinions of the institutions and the public that there should be formalised procedures and independent assessment for determination of board remuneration. This should not be prescribed; the wording of Para 3.3 of the draft Code and paragraph 4.34 of the Report read together would make the appointment of such a remuneration committee mandatory; this should be amended to make it clear that it is not a mandatory provision either before or after the two year period proposed in para 4.29 has elapsed.

Para 4.34

40. In the event that the appointment of remuneration committees is prescribed, then we believe that, as with audit committees, there should be a two year period for compliance. During that period the appointment of such a committee should not be the subject of the certificate of compliance and during that two year period the requirement should be deleted from the Code.

4 CONTROLS AND REPORTING

Audit Committees

Internal Controls

Code 4.1 **Boards must establish effective audit committees. (Paragraph 4.29)**

41. We support the recommendation to establish audit committees but not as a mandatory requirement; it must remain a matter of judgement for each company.

42. If it is to remain as a mandatory provision, we think the requirement that listed companies which have not already established audit committees should do so within two years is over-prescriptive.

Paras 4.27-31

43. As to the further detailed recommendations for audit committees in para. 4.29 of the draft Report these should not be prescribed; it is imperative that the Code should not imply or facilitate derogation by the board as a whole of its responsibility for the management and stewardship of the company. This would undermine the concept of the unitary board.

Para 4.29

44. Membership of the audit committee should not as recommended be restricted to the non-executive directors. Boards will often consider it appropriate that one or more executive directors, in particular, the finance director and perhaps the chief executive, be members of the audit committee. We do not agree that the latter should only attend if invited.

45. Both the external auditor and the head of internal audit should be invited to attend meetings of the committee. Both should in any event be entitled to make representations to the committee and have access to the committee chairman.

Code 4.7 **The chairmen of the audit and remuneration committees should be responsible for answering questions at the Annual General Meeting. (Paragraphs 4.29, 4.34)**

46. Nothing should derogate from the ultimate responsibility of the board as a whole for the stewardship of the company and the company chairman's responsibility to conduct the AGM. The committee chairman should, unless unable to attend the AGM for any reason, be available to respond to questions about its work at the Annual General Meeting upon the invitation of the chairman. If a question were directed to the company chairman (or other board member), he should reply, although we would expect the company chairman to invite the committee chairman to add any further comments he wished to make.

Para 4.29

Code 4.2 **Directors should report on the effectiveness of their system of internal financial control. (Paragraph 4.26)**

47. We accept the principle that companies should have appropriate and effective internal control systems, but we consider that there are important questions of definition to be resolved. We are concerned as to how these are defined, how companies and boards will in practice demonstrate that they are effective and report on their systems. What internal control systems are

Para 4.25

companies to have, how are they to be reviewed by the auditors and what form of statement will directors be asked to make? We believe the Committee should give more guidance on these issues, which will also be a matter for the Accounting Standards Board and the Auditing Practices Board. This provision of the Code should not come into effect until detailed recommendations and guidance have been established by the professional and regulatory bodies. It should be deleted until these have been established, especially in view of the provision for the certificate of compliance to operate from December 1992.

Para 5.16

Reporting Practice

Code 4.4 **It is the board's duty to present a balanced and understandable assessment of their company's position. (Paragraph 4.41)**

48. We consider the Code should be specific in its provisions; Code 4.4 is too general a statement to be helpful and needs to be expanded, particularly if it is to be interpreted by reference to para 4.41 in the Report which is incorporated by reference in the Code.

Para 4.41
Paras 4.45-49

The recommendations in 4.41 that:

- the report and accounts should contain a coherent narrative, supported by figures, of the company's performance and prospects, on the basis that "words are as important as figures";

- setbacks as well as successes should be dealt with

are all statements that make the Code provision more intelligible. To avoid incorporation by reference these could usefully appear in the Code itself. Indeed the suggestion in paragraph 4.42 - inclusion of a forward looking Operating and Financial Review **(OFR)** - and the suggestions and recommendations in paragraphs 4.45-50, (interim reports, balance sheet and cash flow information, an expanded chairman's statement and simplified reports) should form part of any Code, if it is intended that they are to be part of the suggested interpretation of 4.4. We do not now comment separately on all these suggestions but reiterate that the Code must stand alone for companies to know what it is that compliance entails.

49. As to the **OFR** suggestion, we support the adoption in the UK of a practice on the broad lines of the US SEC requirements for Management Discussion and Analysis and are currently considering the recent proposals in this context from the Accounting Standards Board for an
Para 4.42 Operating and Financial Review. We support the flexible approach proposed by the Accounting Standards Board rather than the rigidly structured approach of the SEC requirements.

50. We consider that **quarterly reporting** for all listed companies should not be mandatory. Not only does this involve additional costs for companies, it also has the
Para 4.47 effect of extending the "close season" when directors and other insiders cannot deal in a company's shares, and there is the further risk that it tends to focus attention on short-term results. Quarterly reporting, as with much of corporate governance, should be a matter for individual boards.

51. The proposal that **balance sheet information** be included in the half yearly interim report will involve additional cost as will also the review of such a report by the auditors. Although it may not be a formal audit, the auditors' guidance will be needed on the nature and
Para 4.47 format of such report. Additional costs must be kept to the minimum so as not to affect the international competitiveness of UK companies.

Code 4.5 **The directors should explain their responsibility for preparing the accounts next to a statement by the auditors about their reporting responsibilities. (Paragraph 4.22)**

52. We agree that such a statement should be made, as a counterpart to a statement by the auditors of their
Para 4.22 accounting responsibilities. There should be a provision of the Code to cover the auditors' statement.

Auditing

Quarantining Audit from Other Services

Code 4.3 **Boards should ensure that an objective and professional relationship is maintained with the auditors. (Paragraph 5.7)**

53. This is too general a statement. We note that in paragraphs 5.7-5.9 of the Report in support of Code 4.3 the Committee states:

Paras 5.7-5.9
- shareholders require auditors to work with management and remain professionally objective;

- maintaining this professional and objective relationship is the responsibility both of boards and auditors;

- an essential first step is the development of effective accounting standards.

- the second step should be the formation by every listed company of an audit committee which gives auditors direct access to the board members.

54. We do not consider that the Code provision 4.3 adequately reflects this dual responsibility, as there are no provisions as to auditors' own responsibility. We further consider that in view of the fundamental changes that are being made in accounting standards and practices by the Accounting Standards Board and other bodies it is premature at this stage to address the matter until the basis on which companies can address compliance is settled. The provision should be deleted until the ASB's work is done and companies can be clear as to the compliance standards and whether they can achieve it and so complete the compliance statement.

55. As to the further statement in paragraph 5 of the Report we are opposed to any restriction being placed on the freedom of auditors to carry out **non audit services** for their clients. Companies find it beneficial and cost
Para 5.10 effective through their auditor's knowledge of their business to make use of consultancy and other services. We therefore welcome the fact that the Committee does not make any recommendations to restrict the ability of audit firms to provide such services.

56. We agree that fees for non-audit work should be
Para 5.11 disclosed.

Rotation of Auditors

57. We oppose the mandatory **rotation of audit firms.** We would however support a non-prescriptive recommendation for the regular rotation of audit partners and indeed of audit managers, to ensure continued independence. With
Para 5.12 larger companies using the larger audit firms, there is normally more than one partner involved in any event, so the rotation can be achieved smoothly. The team should however be kept as stable as possible in order that the audit be carried out effectively, efficiently and at acceptable cost.

Responsibilities of auditors

58. We note that at paragraph 5.14 the Report states: "Auditors' reports should state clearly the auditors'
Para 5.14 responsibilities for reporting on the financial statements, as a counterpart to a statement of directors' responsibilities for preparing the financial statements (paragraph 4.22)".

59. We support this suggestion and consider that it could be reflected as a provision in the Code as is the case with the complementary recommendation as to the statement of directors' responsibility - Code 4.5. This would go some way to redressing the lack of balance in the Code which does not include any provisions for auditors' role in corporate governance.

Going Concern

Code 4.6 **The directors should state in their report that the business is a going concern, with supporting assumptions or qualifications as necessary. (Paragraph 5.23)**

60. Recent proposals on this have been published by the Auditing Practices Board and the Accounting Standards Board may also publish proposals on behalf of preparers of accounts. As with the question of internal controls, we consider this provision should be withdrawn until these proposals have been worked out.

Para 5.18-23

Fraud and Other Illegal Acts

61. We do not support the recommendation (para 5.28) that consideration should be given to extending **statutory protection** for auditors under the banking and financial legislation to embrace all auditors generally. Claims against auditors who failed to discover and report fraud could complicate the issue of responsibility. If auditors suspect fraud and cannot ensure its redress by the Board, the proper step is for them to resign.

Para 5.24-28

OTHER MATTERS

Directors' Training

62. We strongly support the establishment of training programmes for all directors, in particular as directors' legal duties and responsibilities increase. Both existing and well established directors as well as newly appointed and prospective directors should have such training.

Para 4.15
Para 4.16

The Shareholders

63. There are no Code provisions on the issue of board communication with shareholders although the Committee considers the question in the Report. Strengthening the accountability of boards of directors to their shareholders is important. Regular communications between institutional and private shareholders and a company should be maintained and material information should be made public and be distributed to all shareholders promptly.

Paras 4.45-4.50
Paras 6.1-6.12

64. We consider there is room for improvement in the quality and style of communication with, and the involvement of, private shareholders, in the companies in which they invest. Many companies produce magazines, newsletters etc for their employees and this style of communication (and indeed the same communication itself) could be developed to send to private shareholders as well. Companies have made progress in this area but we believe more could be done. Cost is a difficulty but this would be mitigated if the same publication was appropriate to send to both employees and shareholders. We would welcome any initiatives and ideas the Committee is able to make following responses to its draft Report.

65. The views of PROSHARE would be relevant on whether or not private shareholders would welcome further and swifter information communication to make them participate more actively in the affairs of companies in which they have an investment.

66. We consider that the Code should expressly state that institutional shareholders should have a policy on the
Para 6.8.2 use of their voting power, either by proxy or by attending AGMs, and should publish their policy. The Code could usefully also incorporate the conclusions set out in paragraph 6.8 of the Report, taken from the Institutional Shareholders' Committee guidelines, on the positive use by institutional investors of their voting rights, which the Committee endorses. This would go some way to redress the balance between the three groups - boards, shareholders and professional advisers - which the Report states in its conclusion have a common
Para 7.5 interest in corporate governance. This view is not reflected in the provisions of the Code, which are directed solely to boards.

July 1992