Failed reform of say on pay in the UK? The future of shareholder engagement with executive pay

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Abstract

This paper scrutinises shareholders' involvement in shaping the remuneration of executives directors in the UK (so called 'say on pay'). Lately, it seemed that the Government was interested in reforming say on pay. However, unfortunately, most of the proposals were watered down. The aim of this paper is to investigate how shareholders engagement with executive pay could be improved.

1. Introduction

The remuneration of executive directors is a source of continuing controversy. A key complaint is that it is insufficiently focused on the long-term goals and plans, leading to reckless, short-term decision-making by executives, as it pays off for them to secure immediate benefits from short-term focused actions.[2] Another critique relates to the amount of remuneration executives receive. In the UK, the study of pay data reveals that total pay for the median Chief Executive Officer ('CEO') of a FTSE 350 company[3] has increased by 82% in real terms over the period 2003-2014/15.[4] There have been some controversial pay raises among the CEOs recently. For example, remuneration package of Pascal Soriot – a CEO of Astra Zeneca plc – rose by almost £5 million to £13 million in 2016 and pay package of Carnival plc's Arnold Donald rose from £6 million to £22 million in 2016 (despite the fact that Carnival plc was ordered to pay £32 million in penalty charges relating to its deliberate pollution of the seas and intentional acts to cover it up).[5]

One way of tackling the problems connected to excessive executive remuneration is by introducing (or increasing) shareholders' involvement in shaping the remuneration of executives (so called 'say on pay'). Overall, monitoring directors by shareholders, through say on pay is derived from the key role shareholders play in the company as owners and residual claimants.[6] It is based on the proposition that the aim of the remuneration package should be to align the interests of managers with

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[2] D Walker, 'The Challenge of Improving the Long-term Focus of Executive Pay' (2010) 51 BCLRev 435 at 435-436; C Helms et al., 'Corporate short-termism: causes and remedies' (2012) 23(2) ICCLR 45 at 51-52.

[3] Largest 350 companies listed on the London Stock Exchange.

[4] W Li and S Young, 'An Analysis of CEO Pay Arrangements and Value Creation for FTSE-350 Companies' (CFA Society United Kingdom, December 2016) <www.cfauk.org/media-centre/cfa-uk-executive-remuneration-report-2016> accessed 15 March 2018.

[5] CIPD and High Pay Centre, 'Executive Pay: Review of FTSE 100 Executive Pay Packages' (Research Report, August 2017) at 3 <http://highpaycentre.org/files/2016_CEO_pay_in_the_FTSE100_report_%28WEB%29_%281%29.pdf> accessed 15 March 2018.

[6] P Wells, 'Executive remuneration: regulatory reforms in UK company law' (2015) IntJlM 300 at 312.

those of shareholders.[7] However, the effects of say on pay remain heavily debated, as shareholders rarely oppose executive remuneration. Moreover, it is argued that managers have strong incentives to use their powers to influence executive remuneration.[8]

Despite mixed reviews, say on pay is part of the legal landscape in the UK and therefore, the aim of this paper is to investigate how shareholders engagement with executive pay could be improved. Lately, it seemed that the Government was interested in reforming say on pay, as Green Paper on Corporate Governance Reform was issued in November 2016[9] and the Government Response to the Green Paper Consultation was published in August 2017 with reform proposals.[10] Unfortunately, the Government's proposals are now being watered down and the views gathered on this issue in response to the Green Paper are mostly disregarded (250 respondents commented on the executive pay chapter).[11]

This paper argues that the current state of affairs is not satisfactory and the CEOs remuneration is likely to accelerate further, if the Government does not engage properly in reforms. As say on pay has a potential to reduce excessive executive pay, shareholder engagement with executive pay should be strengthened. First, a binding vote on pay supported by a 'supermajority' of shareholders in case of losing advisory vote the year before should be adopted. Secondly, steps suggested by the Financial Reporting Council ('FRC'), when there is a significant opposition to executive pay, should be drafted more clearly. Thirdly, the creation of a public register of listed companies encountering shareholder opposition of 20% or more to executive pay is a welcome development. However, it is argued that it is not a very innovative solution. Finally, mandatory disclosure of fund managers' voting records at AGMs and the extent to which they have made use of proxy voting is recommended.

This paper is structured as follows. Section 2 focuses on the current law on say on pay in the UK. Section 3 presents a commentary on the responses received on the Green Paper regarding shareholders' influence on executive pay (i.e. strengthening shareholder voting rights and encouraging greater shareholder engagement with executive pay), summarises current Government's reform proposals and finally, offers this author's views on the suggested reform proposals. This is followed

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[7] S Bainbridge, *Corporate Governance after the Financial Crisis* (OUP 2012) ch 4.

[8] L Bebchuk, J Fried, 'Executive Compensation as an Agency Problem' (2003) 17(3) JEconPerspect 71.

[9] BEIS, 'Corporate Governance Reform: Green Paper' (November 2016) <www.gov.uk/government/uploads/system/uploads/attachment_data/file/584013/corporate-governance-reform-green-paper.pdf> accessed 15 March 2018.The Government sought views on options for reform regarding, among others, the following five aspects of director remuneration: strengthening shareholder voting rights, encouraging greater shareholder engagement with executive pay, strengthening the role of remuneration committees, including improved engagement with shareholders and employees, further improving transparency on executive pay, and finally improving the effectiveness of long-term pay incentives. This paper focuses on the first two aspects.

[10] BEIS, 'Corporate Governance Reform: The Government Response to the Green Paper Consultation' (August 2017) <www.gov.uk/government/uploads/system/uploads/attachment_data/file/640470/corporate-governance-reform-government-response.pdf> accessed 15 March 2018.

[11] BEIS, 'The Government Response to the Green Paper Consultation' at 1, 8.

by concluding remarks in Section 4.

2. The current law on say on pay in the UK

The board of directors of a UK quoted company[12] has a duty to prepare and approve an annual remuneration report and financial statements.[13] Since 2013 the remuneration report consists of the annual report on remuneration and the directors' remuneration policy.[14] The annual report on remuneration sets out how the remuneration policy was implemented in the previous financial year and contains details of the single total figure of remuneration for each director as well as a reference to all payments made to directors.[15] This part of the report must be produced annually and is subject to an advisory, i.e. non-binding vote by shareholders.[16] The directors' remuneration policy sets out how the company proposes to pay directors (e.g. future policy, approach to recruitment remuneration, service contracts, illustrations of application of remuneration policy, policy on payment for loss of office, statement of consideration of employment conditions elsewhere in company and statement of consideration of shareholder views).[17] The policy must indicate how the components support the short and long-term objectives of the company, the maximum that may be paid in respect of each component, and a description of the framework used to assess performance (which includes among other things details of any performance period).[18] The remuneration policy is subject to a binding vote by shareholders at least every three years.[19] Additionally, the Listing Rules of the Financial Conduct Authority require listed companies to obtain shareholder approval for any long-term incentive scheme in which a director is eligible to participate.[20]

There are mixed views on shareholders' say on pay in the UK. Firstly, it has clearly some positive influence on executive pay, i.e. boards are more likely to adopt reasonable policies, knowing investors have a vote on this matter. Just to give few examples of shareholder activism last year: in case of Imperial Brands Group Plc, investors forced the company to retreat from a big bonus increase for their CEO.[21] BP plc investors supported new pay policy to cut the remuneration of CEO Bob

[12] Under s 385 (2) CA 2006, a 'quoted company' is a company whose equity share capital has been included in the official list in accordance with the provisions of Part 6 of the FSMA Act 2000, or is officially listed in an EEA State, or is admitted to dealing on either the New York Stock Exchange or the exchange known as Nasdaq.
[13] ss 420-422A, s 439-439A CA 2006 (after the changes made by ss 79-82 of the Enterprise, Regulatory Reform Act 2013 c 24) and the Large and Medium-sized Companies and Groups (Accounts and Reports) (Amendment) Regulations 2013 (SI 2013/1981) ('Large and Medium-sized Companies and Groups Regulations 2013').
[14] See especially Part 3 and Part 4 Large and Medium-sized Companies and Groups Regulations 2013.
[15] Schedule 8, Part 3 ibid.
[16] s 439 CA 2006.
[17] Schedule 8, Part 4 Large and Medium-sized Companies and Groups Regulations 2013.
[18] ibid Schedule 8, Part 4, s 26.
[19] s 439A CA 2006.
[20] Listing Rule 9.4.1.
[21] K Burgess, 'Debt misaligns Reckitt's risk profile and shareholder returns' *Financial Times* (13 February 2017) <www.ft.com/content/61ba823e-f1d5-11e6-8758-6876151821a6> accessed 15 March 2018.

Dudley by 40%, following 60% vote last year against the 2015 pay report.[22] Also, Reckitt Benckiser announced cutting its chief executive's 2016 pay by more than a third, denying him a bonus and slashing his long-term incentives, following a fifth of investors voting last year against Rakesh Kapoor's £25.5m pay package.[23] Further, WPP plc decided to appease investors by introducing a new pay policy for chief executive Sir Martin Sorrell that will limit his annual pay package to just over £13m from 2021 (from £70m in 2015).[24]

There is also some evidence of shareholders voting against remuneration reports or policies. For instance, in Thomas Group plc a third of investors voted against the bonus programme, despite concessions to stave off a shareholder revolt over executive pay.[25] In Crest Nicholson plc, 58% of investors had voted against the housebuilder's remuneration report, however, the company did not plan to make changes to the pay scheme in response to this non-binding vote.[26] Moreover, two-thirds of shareholders in Pearson plc opposed the 2016 remuneration report, which included a 20% pay raise for the CEO despite a record £2.5bn loss for the group during the year.[27] Finally, in AstraZeneca plc 40% of investors voted against the company's pay report for 2016 in a non-binding vote, whilst the pay policy was supported by 96% of shareholders in a binding vote.[28]

At the same time, there is evidence that increasing shareholder voting rights does not guarantee improvements regarding executive remuneration. Firstly, as the data above show, shareholders' opposition is not always taken into consideration in case of non-binding votes. Secondly, the Green Paper noticed that since the introduction of the 2013 say on pay reforms, shareholders have rejected pay packages only in a very small number of cases. Average percentage of votes in favour of annual remuneration report was 90% for FTSE100 companies, 93% for FTSE250 and 95% for FTSE Small Cap. With regard to average percentage of votes in favour of remuneration policy, the results were: FTSE100 – 92%, FTSE250 – 94% and FTSE Small cap – 94%.[29] Although there are voices that such high level of support indicates say on pay is working and that shareholders

[22] A Ward, 'Shareholders back BP move to cut chief's pay' *Financial Times* (17 May 2017) <www.ft.com/content/c0924a70-3b0f-11e7-821a-6027b8a20f23> accessed 15 March 2018.
[23] S Daneshkhu, 'Reckitt Benckiser cuts CEO pay after investor revolt' *Financial Times* (31 March 2017) <www.ft.com/content/cc5ac758-1533-11e7-b0c1-37e417ee6c76> accessed 15 March 2018.
[24] D Bond, 'WPP to limit Martin Sorrell's pay to just over £13m from 2021' *Financial Times* (28 April 2017) <www.ft.com/content/f0a65020-2bf2-11e7-9ec8-168383da43b7> accessed 15 March 2018.
[25] M Ahmed, 'Thomas Cook suffers investor protest on executive pay' *Financial Times* (9 February 2017) <www.ft.com/content/af083288-eea2-11e6-930f-061b01e23655> accessed 15 March 2018.
[26] J Evans and K Burgess 'Housebuilder Crest Nicholson loses vote on pay' *Financial Times* (23 March 2017) <www.ft.com/content/5f8a7042-0fe3-11e7-b030-768954394623> accessed 15 March 2018.
[27] J Thompson et al., 'Pearson shareholders vote against CEO pay' *Financial Times* (5 May 2017) <www.ft.com/content/333019b2-3166-11e7-9555-23ef563ecf9a> accessed 15 March 2018.
[28] S Neville, AstraZeneca suffers shareholder rebellion on pay *Financial Times* (27 April 2017) <www.ft.com/content/87377a2a-2b29-11e7-9ec8-168383da43b7> accessed 15 March 2018.
[29] See BEIS, 'Corporate Governance Reform Green Paper' Table 2 and para. 1.29.

engaged fully with executive pay, the others are pointing out that whilst the reforms are only recent, they do not yet appear to have made a really significant change to attitudes.[30]

To conclude, there is still not enough evidence to assess unequivocally whether say on pay is playing a significant role in aligning the interests of directors and shareholders in the UK. However, clearly, shareholder voting has a potential to reduce excessive pay and has other benefits (e.g. increases accountability to shareholders, improves dialogue between shareholders and the board and aligns rewards more closely with performance). Hence, this paper argues that it is worth improving say on pay in the UK. The next section critically analyses responses to the Green Paper and the current Government's reform proposals regarding first, strengthening shareholder voting rights and secondly, encouraging greater shareholder engagement with executive pay.

3. Reform proposals regarding shareholders' influence on executive pay

3.1 Strengthening shareholder voting rights

Green Paper and responses

The Green Paper made various suggestions regarding increasing shareholder voting rights. There were 227 responses to this question and 124 respondents (most of the UK investors groups, business representative bodies and private individual respondents) were in favour of strengthening shareholder voting powers.[31] The main justification for further reform was the perceived unwillingness of some companies to address significant dissent on executive pay and the need of a clear guidance on the steps to tackle such dissent.[32] However, at the same time 103 respondents (most quoted companies who took part in the consultation, some think-tanks and some business representative bodies) argued that the reforms introduced in 2013 already give shareholders sufficient power and oversight over executive pay (high levels of shareholder approval and the fact that average executive pay increases have been broadly in line with inflation over the same period were underlined here). [33]

The following five reform proposals were made in the Green Paper. Option (i) suggested that all or some elements of the executive pay package should be subject to a binding vote. It could be applied annually to all companies or only to companies that have encountered significant shareholder opposition to the remuneration report.[34] This was a very ambitious option, encouraging a stronger accountability for executive performance and was likely to improve transparency on high pay. However, it assumed shareholder activism and it could face practical difficulties (the Green Paper

[30] House of Commons BEIS, 'Corporate Governance Inquiry' (Third Report of Session 2016-2017, April 2017) at para. 100 <https://publications.parliament.uk/pa/cm201617/cmselect/cmbeis/702/702.pdf> accessed 15 March 2018.
[31] BEIS, 'The Government Response to the Green Paper Consultation' Annex B.
[32] ibid at para 1.4.
[33] ibid at para 1.5 and Annex B.
[34] BEIS, 'Corporate Governance Reform Green Paper' at 22.

mentioned e.g. that it might involve requiring businesses not to award pay before shareholder consent has been obtained, or restricting future pay awards[35]). Around one third of respondents commenting on this option was in favour of it. Mostly it was felt that this measure would be disproportionate, given that only a relatively small number of companies have experienced significant shareholder dissent on pay in recent years.[36]

A binding vote was also discussed in options (iv) and (iii). Option (iv) required the existing binding vote on the executive pay policy to be held more frequently than every three years, but no more than annually, or allow shareholders to bring forward a binding vote on a new policy earlier than the mandatory three year deadline.[37] In general, the respondents argued that more frequent binding votes on the pay policy was counter-productive to the longer-term stability and certainty delivered by having pay policies cover a three-year period, as currently.[38] Option (iii), on the other hand, suggested setting an upper threshold for the total annual pay (covering all elements of remuneration) and a binding vote at the annual general meeting ('AGM') where actual executive pay in that year exceeds the threshold.[39] This option seemed attractive from the shareholders' perspective, as it introduced clear pay caps. At the same time, it would allow paying more for exceptional performance, which should work as an incentive for the current directors and could help recruiting and retaining the best talent in the market. It is the view of this author that remuneration cap set up by shareholders could be the most effective and at the same time simplest ways of tackling excessive executive pay. By giving shareholder control over the cap, the Government would also avoid criticism of controlling executive remuneration. However, there were also critical voices among the Green Paper's respondents regarding the total monetary cap. For instance, the Investment Association did not believe that this option would ensure the appropriate levels of remuneration. In their view, it would rather act as a disincentive for management who are meant to deliver share price appreciation to shareholders.[40] Overall, support for options (iii) and (iv) was limited to less than a quarter of those respondents who commented on these options.[41]

Option (ii) proposed stronger consequences for a company losing its annual advisory vote on the remuneration report. A company might be required to find the support of a 'supermajority' of shareholders (e.g. 75%) to approve the next pay policy that must (under the current system) be brought forward within a year where an advisory vote is lost, or, as the Green Paper suggests, a company may

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[35] ibid at para. 1.18.
[36] BEIS, 'The Government Response to the Green Paper Consultation' at para. 1.6.
[37] BEIS, 'Corporate Governance Reform Green Paper' at 24.
[38] BEIS, 'The Government Response to the Green Paper Consultation' at para. 1.7.
[39] BEIS, 'Corporate Governance Reform Green Paper' at 23.
[40] Investment Association, 'Corporate Governance Reform Green Paper – The Investment Association's Response' (17 February 2017) at 2 <www.theinvestmentassociation.org/assets/components/ima_filesecurity/secure.php?f=consultations/2017/20170217-beisgreenpaperoncorporategovernance.pdf> accessed 15 March 2018.
[41] BEIS, 'The Government Response to the Green Paper Consultation' at para. 1.7.

hold a binding vote on pay the following year.[42] This option seems more feasible and less onerous, compared to options discussed above, as the additional action is required only when the company lost its annual advisory vote. It was also very popular among the respondents. They suggested various thresholds for what should be regarded as 'significant dissent', ranging from 10% to 35%.[43] For instance, the Corporate Governance Inquiry was in favour of this escalatory process suggested by the Green Paper, indicating conflicting evidence with regard to a binding vote.[44] On the one hand, the binding votes would provide better accountability, but on the other hand, evidence from other jurisdictions suggested lack of practical effect.[45] They have underlined that the current scale of opposition to remuneration policies and reports (the average vote in favour of both pay reports and remuneration policies in the FTSE 250 is over 90 per cent) does not justify annual binding votes.[46]

Finally, the last option – option (v) – recommended strengthening the UK Corporate Governance Code[47] to provide greater specificity on how companies should engage with shareholders on pay matters, including where there is significant opposition to a remuneration report. It was suggested that the Code be amended to include more guidance to help companies meet their obligations to shareholders when deciding on remuneration.[48] This option was also popular among the respondents. The FRC noted that explanations where there have been significant votes against tend to be poor. They have recommended that the Code should be revised to clarify expectations around shareholder consultation and reporting where there is a single, or recurring, significant vote against resolutions, including, what percentage might be considered significant.[49] Although the Code operates on a 'comply or explain' basis and companies would not necessarily be bound by the guidance, this may not be an issue as the current levels of compliance with the Code are very high.[50]

Government's reform proposals

Among all options with regard to shareholder voting rights, there was greatest support for option (ii), complemented by option (v) – i.e. around two thirds of relevant respondents (including a large majority of investors and most business bodies) supported the escalatory process when a company lost

[42] BEIS, 'Corporate Governance Reform Green Paper' at 23.
[43] BEIS, 'The Government Response to the Green Paper Consultation' at para. 1.9.
[44] House of Commons BEIS, 'Corporate Governance Inquiry' at paras. 104-105.
[45] ibid.
[46] ibid at para. 105.
[47] FRC, The UK Corporate Governance Code ('UK Code') (April 2016) <www.frc.org.uk/Our-Work/Publications/Corporate-Governance/UK-Corporate-Governance-Code-April-2016.pdf> accessed 15 March 2018.
[48] BEIS, 'Corporate Governance Reform Green Paper' at 24.
[49] FRC, 'Response to BEIS Green Paper consultation on Corporate Governance Reforms' (February 2017) at 1 <www.frc.org.uk/News-and-Events/FRC-Press/Press/2017/February/FRC-responds-to-Green-Paper-on-Corporate-Governmen.aspx> accessed 15 March 2018.
[50] In 2016, 90% of FTSE 350 companies reported that they complied with all, or all but one of the Code's 54 provisions. FRC, 'Developments in Corporate Governance and Stewardship 2016' (January 2017) at 6 <www.frc.org.uk/Our-Work/Publications/Corporate-Governance/Developments-in-Corporate-Governance-and-Stewa-(2).pdf > accessed 15 March 2018.

its annual advisory vote combined with the reform of the UK Code.[51] Most respondents backing options (ii) and (v) wanted the escalation mechanism to be triggered after shareholder dissent in any one year, although a few respondents proposed that it should only be triggered if companies had faced dissent two years in a row.[52]

The Government was neither convinced by option (ii) nor by more radical proposals regarding binding pay votes, although the concerns raised by a majority of respondents that shareholders need an enhanced ability to hold to account the small minority of companies that experience significant investor dissent on executive pay were acknowledged.[53] Two measures were suggested to address significant shareholder dissent on executive pay and the intention was to implement the reforms by June 2018. [54]

Firstly, the FRC was invited to revise the UK Code to set out the steps that companies should take when they encounter significant shareholder opposition to executive pay.[55] This proposal was clearly inspired by option (v).[56] The FRC's consultation on proposed changes to the UK Code was open until the end of February 2018 and Provision 6 of the draft Code states that:

> When more than 20% of votes have been cast against a resolution**,** the company should explain, when announcing voting results, what actions it intends to take to consult shareholders in order to understand the reasons behind the result. An update should be published no later than six months after the vote. The board should then provide a final summary in the annual report, or in the explanatory notes to resolutions at the next meeting, on what impact the feedback has had on the decisions the board has taken and any actions or resolutions now proposed.[57]

In principle, strengthening corporate governance through non-legislative means, such as the UK Code, is in line with the UK corporate governance culture. However, this provision could set out more clearly steps where there is a significant opposition to executive pay. First, answering question 5 posed during the consultation period on the draft Code,[58] 20% is a 'significant' dissent, but six months is clearly too long for publishing an update. To improve efficiency, the company should be obliged to issue an explanation within a month. Secondly, not only the company should be obliged to specify what actions it intends to take to consult shareholders in order to understand the reasons behind the vote, but it should be also obliged to report on what steps were actually taken. Currently, it is not entirely clear whether this is necessary.

The second measure was the creation of a public register of listed companies encountering shareholder opposition of 20% or more to executive pay and other resolutions, along with a record of what these companies say they are doing to address concerns. This was a proposal made by the

[51] BEIS, 'The Government Response to the Green Paper Consultation' at para. 1.8
[52] ibid at para. 1.9.
[53] ibid at para. 1.45.
[54] ibid at 6.
[55] ibid at 18.
[56] ibid at 6.
[57] FRC, 'Proposed Revisions to the UK Corporate Governance Code' (2017) Annex A, Provision 6.
[58] FRC, 'Proposed Revisions to the UK Corporate Governance Code' (2017) 9.

Investment Association and they were invited to implement it.[59] This register is already up and running and among other things, it contains data regarding statements explaining what acts it intends to take to understand the reasons behind the vote.[60] In general, this register is a welcome development – a database of companies that fail to secure significant support for their remuneration will be a very useful tool for investors and directors, as all data should now be available in one place. Hopefully, it will work as an additional incentive for the board to take into account shareholders' views. On the other hand, it is not a ground-breaking or innovative reform, as the information about shareholder opposition was already publicly available.

To sum up, despite the Prime Minister's previous announcements to crack down on corporate excess, the Government's proposals are modest at best. It is especially disappointing that the Government ignored the reform suggestions from the industry regarding the 'supermajority' votes (option (ii)). Although the reforms introduced in 2013 already gave shareholders substantial power and oversight over executive pay, a binding vote on pay supported by a 'supermajority' of shareholders in case of losing advisory vote the year before, arguably had a chance to improve practical importance of non-binding shareholder votes.

3.2 Shareholder engagement with executive pay

Green Paper and responses

Moving now to the shareholder engagement with executive pay, the Green Paper pointed out correctly that it is necessary for shareholder voting rights to have an impact on executive remuneration [61] and three reform proposals were suggested here. Only 46% of the respondents (172 out of 375) commented on this question and only one third made remarks on the suggested options.[62] However, among those who answered this question, a vast majority (126 out of 172) was of the view that more could be done to encourage or enable institutional or retail investors to make greater use of their voting powers.[63]

Option (i) proposed mandatory disclosure of fund managers' voting records at AGMs and the extent to which they have made use of proxy voting. [64] This option would be achievable, especially as the UK Stewardship Code (which works on 'comply or explain' basis) already provides that institutional investors should disclose their voting records.[65] Around two thirds of the respondents (mostly wider society groups, private individuals and some representatives of asset owners) were

[59] BEIS, 'The Government Response to the Green Paper Consultation' at 19.
[60] See <www.theinvestmentassociation.org/publicregister.html> accessed 15 March 2018.
[61] BEIS, 'Corporate Governance Reform Green Paper' at para. 1.29.
[62] BEIS, 'The Government Response to the Green Paper Consultation' at para. 1.11.
[63] ibid.
[64] BEIS, 'Corporate Governance Reform Green Paper' at 26.
[65] FRC, UK Stewardship Code (September 2012) at 9 <http://www.frc.org.uk/getattachment/e2db042e-120b-4e4e-bdc7-d540923533a6/UK-Stewardship-Code-September-2012.aspx> accessed 15 March 2018.

supportive of disclosure being mandatory, the main justification for it being better stewardship of companies by institutional investors – i.e. providing greater accountability by asset managers to asset owners.[66] Interestingly, investor groups, some companies and some think tanks were against mandatory disclosure, pointing out that over the last three years disclosure has improved significantly and disclosure is already required under Stewardship Code. There were also voices that mandatory disclosure could lead to a tick-box approach and greater reliance on proxy vote advisory services.[67] On balance, although a bit costly, it seems to be the most efficient way to facilitate voting on pay by individual shareholders and it could also improve transparency at the company level as fund managers would be obliged to disclose voting records.

Establishment of a new senior shareholder committee to engage with executive remuneration arrangements and other vital corporate issues such as long-term strategy and directors' appointments, as suggested in option (ii),[68] could be more cumbersome and costly. On the one hand, the senior shareholder committee would improve communication with the board and the level of shareholder activism. Three in ten respondents who answered this question – mostly retail shareholder groups, some private individuals and wider society groups – supported this idea, arguing that it would drive more informed and pro-active stewardship of companies by major investors (both institutional and retail).[69] On the other hand, institutional investors, companies, most business representative bodies, some think tanks and some private individuals, opposed this option.[70] As in the UK, the shareholder base is fragmented; giving certain shareholders positions on shareholder committees would afford them disproportionate influence in relation to their actual holding. Further, if such committees are allocated based on shareholding size, most committees would consist of the same large institutional shareholders.[71] Hence, as suggested by the Law Society, if introduced, it is vital that the selection procedures to the senior shareholder committee would be transparent and give the opportunity for all shareholders' views to be heard.[72]

The last option – to consider ways to facilitate or encourage individual shareholders (holding their shares in nominee accounts managed by stockbrokers) to exercise their rights to vote on pay and other corporate decisions,[73] was a significant and topical idea, with a potential practical impact. The Companies Act 2006 allows proxy voting[74] and 'passing back' the information rights to the investor. However, there is evidence that in practice many brokers are not very pro-active in sharing the

[66] BEIS, 'The Government Response to the Green Paper Consultation' at para. 1.12.
[67] ibid at para. 1.13.
[68] BEIS, 'Corporate Governance Reform Green Paper' at 26.
[69] BEIS, 'The Government Response to the Green Paper Consultation' at para. 1.14.
[70] ibid at para. 1.15.
[71] Investment Association, 'Corporate Governance Reform Green Paper' at 13-14.
[72] Law Society, 'Green paper on corporate governance reform - Law Society response' (14 March 2017) at para. 20 <www.lawsociety.org.uk/policy-campaigns/articles/green-paper-on-corporate-governance-reform-response/> accessed 15 March 2018.
[73] BEIS, 'Corporate Governance Reform Green Paper' at 26.
[74] See s 285 CA 2006.

information with the shareholders. The following options were suggested to tackle this issue: doing more to clarify and publicise existing options for individual investors to vote, brokers doing more to enable investors to vote, by offering to 'pass back' information rights to investors, and by facilitating electronic voting or amending the Companies Act 2006 to require brokers to offer underlying investors the option to opt-in to voting and wider information rights.[75] According to the Response document, there were not many comments on this issue. However, among those who provided their answers, three quarters believed that more could be done to encourage greater engagement by retail investors.[76] The respondents did not agree on how these investors should be given greater voting rights, there was support for brokers offering 'pass back' of voting rights and there were proponents of the legislative reform.[77] It is difficult to comment on the former solution, as it is quite general – perhaps, some guidance for brokers could be included in the UK Code. The latter option is clearly more specific, but also more costly as it is likely to require legislative intervention. The opponents of this proposal (one quarter of those who commented on it) noted that it would increase the operational costs of holding shares which would be passed on to the underlying, retail investors, impacting negatively on the returns for their investments.[78]

Government's reform proposals

Turning now to the Government's proposals regarding encouraging greater shareholder engagement with executive pay – although the majority of those who commented on this question was of the view that more could be done to encourage institutional or retail investors to make greater use of their voting powers, it must be underlined that sadly none of the proposals received enough support from the Government and there is no recommendation with regard to this issue. As outlined above, this author supports option (i) as a way of improving transparency at the company level and this option could have also a positive impact on executive pay.

4. Conclusions

Altogether it feels that the Government has failed to engage deeply with say on pay and it is a shame that the most of the proposals gathered during the recent consultation have been ditched. Most importantly, the Government ignored the reform suggestions from the industry regarding a binding vote on pay supported by a 'supermajority' of shareholders in case of losing advisory vote the year before. With regard to the suggested reform, it is recommended that the steps suggested by the FRC in the revised Corporate Governance Code, in case of a significant opposition to executive pay, should be drafted more clearly. Moreover, it is argued here that the creation of a public register of listed

[75] BEIS, 'Corporate Governance Reform Green Paper' at 27.
[76] BEIS, 'The Government Response to the Green Paper Consultation' at para. 1.16.
[77] ibid.
[78] ibid at para 1.17.

companies encountering shareholder opposition of 20% or more to executive pay and other resolutions has a potential to be an effective tool. However, at the same time it is not a very innovative idea, as the information about shareholder opposition is already publicly available. Finally, it is disappointing that the Government did not offer any reform on shareholder engagement with executive pay. This author supports mandatory disclosure of fund managers' voting records at AGMs and the extent to which they have made use of proxy voting.