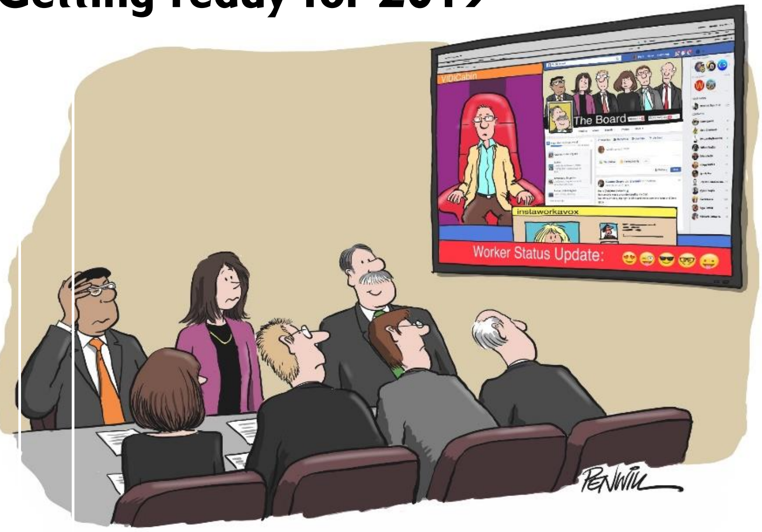
The Effective Board

INDEPENDENT AUDIT
BOARD REVIEW

January 2018

New Code: Getting ready for 2019

Just ahead of the Oscars, coming your way in "early summer" from the FRC, is the new release of the [Corporate Governance Code](). Unlike the Academy members, you don't get to vote – but you do get a preview and a chance to participate in the consultation, which ends on 28 February.



HEARING THE WORKFORCE 2019-STYLE?

The FRC has done a good drafting job in restructuring the Code, to base it more around the Principles and to put more of the detail in the Guidance. So it's shorter – but contains some significant new ideas. We're not setting out here to air our views on the changes. But, on the realistic assumption that the political environment means it's unlikely the whole thing will just go away, we thought it would be helpful to highlight what the proposed changes around people, behaviours and stakeholders might mean for good (and not so good) board practice.

Good practices to consider...

See the positives. Most boards would agree that valuing your people, making sure behaviours are sound, and working constructively with stakeholders are vital components of strategic success. Therefore, as long as the board's discussions and the new reporting that might be required are linked to strategic goals and drivers, there should be business benefit. So make your changes in order to maximise their usefulness to the board.

Things to avoid...

Making any changes in grudging acquiescence to a new governance burden. Yes, it can feel as though governance codes and regulation are constantly distracting boards from focusing attention on delivering the strategic objectives. But as long as the proposed push in the Code around people, behaviours and communication is linked to driving strategic results, there should be plenty of benefit to be extracted from the Code's new direction. And if that isn't a good enough reason to take it seriously, think through the possible ramifications if you don't: the politicians and media are waiting to jump on any company who opts for form over substance or, worse, looks the other way.

Good practices to consider...	Things to avoid...
You'll be expected to have a much more structured approach to "gathering the views of the workforce". It's unlikely, given the political environment, that this one will go away – or that "explain" will be a good option. Three options are currently set out: a "workforce appointed director", an advisory panel, or a designated NED. It's going to get a lot of attention come your 2019 Annual Report so you're going to need to have a convincing story. So, start thinking now, with the aim of an agreed plan by the summer as it is likely to take a few months to get under way.	Leaving it until after the summer. The revised Code won't be published before then – but you will need to hit the ground running if you're going to have your chosen plan in place in 2019. Management needs plenty of time to think through the options, the possible consequences and the optimal approach. And boards will probably want a couple of bites at this one – it has all sorts of implications.
Agree at an early stage your definition of "workforce". The FRC proposal goes much wider than contracted employees: it might include agency workers and self-employed contractors. And what about the workers of your major contractors? How you interpret this will have a big impact on your approach. Many boards already take the wider view when it comes to Health & Safety, which shows it can be done…	Just assuming "direct employees only" will do. Of course, that remains an option under "comply or explain" – and you might get some leeway in bringing in the wider cross-section a bit later. But a narrow approach might be risky, especially if it's inconsistent with how you look at H&S.
It's early, but think through the practical implications at board level. Planning for changes in composition or roles should start months or years ahead – so your likely approach should soon start to be a consideration in succession planning and committee chairman appointments. If you're going to need structural changes (eg a panel), planning now for kick-off early in 2019 would make sense. Also start thinking now about how agendas and reporting might be affected, and how views might be captured in a coherent and reliable way.	Leaving it all until late in the day. Board changes take a long time – especially if it involves a new type of appointment (election?) or a different role for an existing NED. If you're relying on reporting from a "panel", how can this be incorporated into the agenda in a meaningful way, rather than popping up as a formal item once a year? How will "the voice" be incorporated into CEO Reports and other board papers? What will be the communication channels for a "designated director"? Will "voices" need to be heard directly at board meetings? If so, who and how? There are many practical angles to think through; some will be frustrating and best not done in an irritated rush.
Think more imaginatively abut how the Board is going to "monitor and assess the culture to satisfy itself that behaviour throughout the business is aligned with the company's values" and "satisfy itself that the company's purpose, strategy and values… are aligned with the culture". Staff surveys and visits are a very good place to start, but not the whole story. For a board to "satisfy itself", multiple indicators and other sorts of evidence should be brought into one place to take a look through a "culture lens".	Keeping it completely informal. You might feel that the old "smell test" is what works best – the chats during visits and meetings outside the boardroom, the insights you get from the staff survey. These are indeed valuable – but the boards that get the most from them have some degree of structure around how they're planned and feeding back what's been learned. And there's a lot more boards can use to get comfort, without having to go down the "audit" route. Some of that will mean putting a picture together on paper – there's already a lot of information you can use. But whatever your approach, it's going to have to sound convincing when you set it out.

Good practices to consider…	Things to avoid…
Do more than say "we have the right CEO in place" to ensure we have the right culture. That CEO selection – and subsequently how she or he drives the message down through the team – might well be the most important influence on behaviours. But the proposed Code change is setting out a greater expectation of boards themselves – including "monitoring and assessing".	Just seeing it as a problem for the CEO to deal with. Or letting it slip into the "too much governance" category, to be addressed by ticking a box somewhere. There are things that can be done without it becoming yet another "non-business" item on the agenda. Ask us and we'll share our ideas on how to bring a picture together.
Take stock of how far you already have a shared and stated view of "the company's purpose, strategy and culture". You're probably discussing the strategy each year. But when did you last discuss all three elements as a board – and come out with an agreed and meaningful statement that can actually be understood and taken seriously by the workforce and other stakeholders?	Letting "of course we do" or "it's what we do all the time" pass without challenge. You might have a statement – but is it "alive", is it used, is it understood? Or does it just slip into the corporate language that leads to contagious yawning or worse, cynicism, when it pops up on internal communications?
Start thinking through the practical implications of the company "meeting its responsibilities… to stakeholders" through "engagement with, and encouraging participation from, them". It's clear the FRC intends this to apply fully to workforce, customers, suppliers and other stakeholders, shifting the balance from the present dominance given to shareholders. Boards should be putting together a structured approach to this so that, in future, they'll be able to tell the "story" of how they do it. It may not involve a lot more action – but the doing and telling probably needs to be tightened up.	Carrying on as before on the assumption that we "sort of do it anyway". The company law requirement has been in place for a while, but not the obligation to report – and not all boards can tell a convincing story. A clear and agreed map of stakeholders setting out the potential impact (in both directions) of the relationship and each other's interests is a good place to start. Thinking through the risks and benefits also helps bring it alive rather than it becoming a paper exercise. At least then you have a better view of "how much is enough".

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