

**Can Bosses be made accountable ?**  
**CEIG Open Meeting : 13 November 2001**  
**Summary of points made**

**Background**

*The subject for this meeting arose from one CEIG member's concern that highly publicised corporate failures seemed to leave those responsible not only suffering no reprimand but often heavily enriched. His concern was heightened when a close relative was in – and survived – the Ladbroke Grove disaster. Individuals, even when shareholders, seem unable to be able to correct such injustices.*

*The meeting focused on what could be done whether as shareholders, or having an indirect shareholding stake (for example through a Pension Fund) or just as concerned citizens (and electors).*

**Gavin Oldham**

*Chief Executive, The Share Centre*

1. **Current Concerns** Considerable concerns and worries about Corporate Governance in Companies. Many investors feel too distant and lose touch with the companies – as shares are held through PEPs, ISAs, Unit Trusts (and similar).
2. **Company Law** The law regarding companies should help to facilitate corporate governance but too often Company Law seems to be archaic. Directors for instance are appointed by shareholders and are only answerable to shareholders. *There is currently a major review of Company Law under way and one of the most important recommendations from the shareholders point of view is that those who hold shares through nominee arrangements (sometimes involuntarily) will have the rights to exercise their votes as if their beneficial shareholding was entered onto the register.*
3. **Fats Cats and Failures** Fat Cats – Newspapers love them. There have been well published Golden Handshakes that appear quite unrelated to performance. In the case of RailTrack that was a terrible situation which was very poorly managed. Their problem was that they sub-contracted out everything and had no decent handle on the actual situation on the ground.
4. **What does it feel like to be a director ?** For a major company it can be very vulnerable. The directors of Huntingdon Life Sciences have high visibility and have been the subject of action groups. Directors' home addresses can be obtained as they are on the public record.

5. **Floating a company** If Directors look to float their company then they are subject to very significant disclosure about their background, financial dealings which may have a bearing and other matters in the prospectus and the details of the annual reports and accounts. All this information is in the public domain. *See Model Listing Rules for the London Stock Exchange. In the USA the rules are even tougher.*

6. **Increased Duties which cannot be delegated** There are many areas in which Directors have significant responsibilities placed upon them. These include increased fiduciary responsibilities towards the company together with supplementary duties of loyalty, honesty and propriety. Directors must not fetter their discretion. *They are in breach of duty if they simply follow another's instructions without considering and deciding what is proposed is in the interests of the company.* Many companies have restrictions against companies delegating their discretion.

Certain onerous restrictive covenants (like non-competition and confidentiality) which must be followed in the event of a director's departure from the Board whether willingly or not.

7. **Specific areas of duties.** These are in areas such as health & safety, personnel and employment, data protection, and also specific rules applying in specific industries (*eg telecommunications, financial services, regulated utilities*).

8. **Related transactions** Disclosure of related transactions (where a director has been involved with another side of a transaction which affected the company), share dealings with the company *These are watched carefully as investors have the question of 'What do they know that we don't?' at the back of their mind even though directors are precluded from trading when they have price sensitive information.* Loans to directors are prohibited and a director is not able to profit personally from his dealings with the company.

9. **Responsibilities of individual directors** The situation now is that individual Board members have to retain their individuality and – if necessary – act as whistleblowers. *They are not excused from not bringing their own critical judgement into the Board room. That particularly applies to the role of Non-Executives.*

### **Anne-Maree O'Connor**

*Associate Director – SRI Research Morley Fund Management*

*Morley Fund Management manage some 2.7% of the UK Stock Market (£100 bn)*

1. **Voting Matters.** In almost all companies the turn-out at general meetings is very low. The effect is that – through proxies and the larger institutional investors – the directors usually command 80% to 95% of the votes available. Morley was looking

to be more proactive. For example they will vote against the annual report of any FTSE 100 company that does not include an environmental report.

2. **Sustainability matrix.** Morley are looking at these issues across all funds.

They have developed a sustainability matrix rating core business against management vision and strategy.

**Core Business** goes from A (*business is the sustainability solution – eg wind turbines*) to E (*business is fundamentally in conflict with sustainable development – eg tobacco*).

**Management vision and strategy** is rated from 1 (*Excellent – clear vision of sustainable development and actively working to achieve it*) to 5 (*Poor – company is unreceptive to the concept of corporate social responsibility*).

Morley's approach is to encourage companies to move from the direction of E5 towards A1. *This approach is applied across all portfolios and not just the Ethical funds.*

3. **Looking into the future** Sustainability helps to look into the future for the business. What would have happened if one had looked at the future for T&N (Turner & Newall) 30 years ago? The product (*asbestos*) was just not sustainable.

Looking at social equity of a business and its resource use builds up a consistent picture of its long-term viability.

4. **Human Rights** This is an area where there needs to be improvement. Not many companies have a policy in this area.

### ***Points made in General Discussion***

1. **Ethics and the Social Contract**

One's heart bleeds in some of these cases. Railtrack is culpable and it should be held accountable for the mistakes made.

A concern is that business schools do not teach Business Ethics in the curriculum. There needs to be an understanding of the Social Contract between society and business.

2. **ABI Guidelines** *ABI = Association of British Insurers*

Anne Maree noted the recent introduction (October 23<sup>rd</sup> 2001) of the ABI Guidelines for Socially Responsible Investment. This should help focus all companies on SRI issues.

*For more detail and the research background use the following web link.*

[www.abi.org.uk/ResearchInfo/SocialResponsibility](http://www.abi.org.uk/ResearchInfo/SocialResponsibility)

### **3. Licence to operate**

Companies need a licence to operate and that framework should be provided by Company Law. This is where the government needs to act.

- 4. Is there sign of improvement ? - Incentive schemes** *AM O'C* There are instances where SRI issues are being taken into key areas of the business. For example a major financial services company is revamping its incentive bonus scheme. One of the criteria is that the company should have an exemplary regulatory record. In another instance (major consumer branded goods company) has similarly targeted Health and Safety at Work. A death or a major Health & Safety incident results in the whole team affected losing its right to bonus in that year.

- 5. Remuneration and Share Ownership** One important area is share ownership and it is a strategy that significant number of companies should have a significant share of employee ownership *both in terms of the total size of the participation and the level of participation by the work force*. Employees are therefore going to be significant force as potential whistle blowers, union reps etc.

This might help reduce the differentials between the highest and lowest paid in an organisation. It was suggested that maybe 7:1 was a correct norm but that nowadays the figure was nearer to 25:1 (maybe even that's low). On one side the argument is that the quality of management requires scarce resources and, in effect, top management is a global market. On the other hand the remuneration packages are set by the non-executive directors but these are likely to be executives in other companies. *A case of an Old Boys' Club ?*

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*This note is a summary of the main points made at the session and has been cleared for publication by the main speakers. None of the above necessarily represents the official policy of the Christian Ethical Investment Group and should not be taken as such.*

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