Feedback Statement

UK Corporate Governance Code

January 2024

The Financial Reporting Council Limited is a company limited by guarantee.
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1. Executive Summary

1. This statement sets out the Financial Reporting Council (FRC)'s revisions to the UK Corporate Governance Code (the Code). The revisions are the result of our Consultation on the proposal to revise the Code which ran from 24 May 2023 until 13 September 2023.

2. The purpose of the FRC is to serve the public interest by setting high standards of corporate governance, reporting and audit and by holding to account those responsible for delivering them. Our key objectives in revising the Code are to secure high quality governance outcomes through the most proportionate and effective manner, in support of the competitiveness of UK financial markets and economic growth. Key to this are measures to improve the quality of companies' risk management and internal controls, and boards' consideration of corporate governance activity to achieve their company's strategic objectives. We consulted on several other changes to the Code aimed at removing duplication and strengthening or streamlining reporting.

3. We received 226 written responses to our Consultation. Over 5,000 stakeholders also took part in roundtables and other events and the feedback received at these events was incorporated in our analysis. The table below provides an overview of the stakeholder groups which replied to the consultation.

Table 1: Overview of responses received

Category of Respondent	Percentage of Responses
Companies	38%
Investors	14%
Advisers	16%
Associations	23%
Other	9%

4. We are grateful for the time which respondents have taken to consider our proposals, and for the high quality, considered and detailed feedback we have received. Our stakeholders clearly place great value on the Code and are keen to work with us to ensure that its position as a highly effective and internationally recognised driver of good governance, as a key enabler of growth and competitiveness, is safeguarded.

5. Many respondents highlighted the value of the flexibility which the principles-based, 'comply or explain' framework of the Code offers, and welcomed the fact that this approach will be retained, and that we will seek to further clarify that giving a high-quality and transparent explanation in the context of the Code is not weaker or poorer than asserting compliance.

6. Some respondents expressed concern that aspects of our proposals could add to the regulatory burden on companies listed in the UK. We have listened carefully to these concerns and have made changes to our proposals in response to them. Our aim is to achieve the benefits the Government asked us to deliver in terms of strengthening risk management and internal controls while avoiding unnecessary additional reporting.

7. Some stakeholders suggested that a more significant review of the Code, like the one that supported the 2018 Code changes, would be appropriate, but balancing this against the strong support for the Code evidenced in many responses, we do not believe now is the right time for a more comprehensive review. A significant change to the Code would bring with it additional transitional costs for business.

8. The final Code has been published alongside this Feedback Statement. This Code will apply to accounting years commencing on or after 1 January 2025, except for Provision 29 related to risk management and internal controls, which will apply to accounting years commencing on or after 1 January 2026. This is to allow companies additional time to prepare for this Provision, in light of feedback received in the Consultation.

2. Introduction and Background

9. The purpose of the FRC is to serve the public interest by setting high standards of corporate governance, reporting and audit and by holding to account those responsible for delivering them. The Code has a key role in this and is designed to support high quality corporate governance and corporate reporting, whilst offering the flexibility of a principles-based approach which allows companies to comply with the provisions of the Code or explain any departures.

10. The 2023 Consultation on the Code focused on the governance reforms proposed by the Government in the Restoring trust in audit and corporate governance. The main proposed changes concern those parts of the Code which deal with the need for a more robust framework of prudent and effective risk management and internal controls. They are aimed at providing a stronger basis for reporting on, and evidencing the effectiveness of, the framework during the reporting period.

11. The Consultation also proposed Code changes which were in response to secondary legislation being prepared by the Government at the time of the launch of the Consultation. This was to require the introduction of a Resilience Statement and an Audit and Assurance Policy for large companies, as proposed by the Brydon Review. As the Government has decided not to proceed with this legislation, subsequent changes to the Code will no longer be needed.

12. Additional changes were suggested in the Consultation, aimed at removing duplication and strengthening and streamlining reporting. Many of these changes were based on the findings of our Annual Review of Corporate Governance Reporting and supported by research conducted by the FRC.

13. We chose to consult for an extended period to ensure all our stakeholders had sufficient time to respond during the busy AGM season. The Consultation was supported by an extensive programme of stakeholder engagement events during which we reached just under 5,000 stakeholders. Feedback received at events was recorded carefully and has been taken into consideration in the development of our response to the Consultation.

Table 2: Stakeholder Engagement

Event	Number
FRC-hosted roundtable discussions	12
FRC-hosted webinars	2
External events	32

14. In total, 226 responses were received from stakeholders. The breakdown of respondents is shown in Table 1. We have reviewed all of the responses in detail and are grateful for the time and consideration many of our stakeholders gave to our proposals. We were encouraged to see a high degree of support of the Code and the flexible, principles-based approach it offers, and welcome the suggestions made by stakeholders to improve our proposals.

15. We have listened to those stakeholders who flagged to us the risk of increasing what they considered to be unnecessary regulatory burden. We believe the changes to our proposals address this commentary and deliver the benefits which the Government and the FRC set out to achieve as part of Restoring trust in audit and corporate governance.

3. Summary of Responses

Section 1: Board Leadership and Company Purpose

Initial Proposals

16. We consulted on several changes to Section 1 of the Code, some of which were consequential to changes to Section 4 in relation to risk, aimed at bringing all Code references to risk together in one Section. The most significant change to Section 1 in the Consultation was the introduction of a new Principle which set out our expectation that companies should focus on outcomes in their reporting, to demonstrate the impact of governance practices. We identified this as an area for improvement in our annual Review of Corporate Governance Reporting. If companies report effectively on outcomes, this will reduce the burden of reporting by eliminating the need for lengthy annual report sections on policies and procedures.

17. We also suggested changes which were intended to bring more focus to environmental and social matters, including climate ambitions and transition planning, and to encourage companies to report on the effectiveness of embedding their culture. We consulted on moving a reference to investing in and rewarding the workforce to Section 5 of the Code on Remuneration, and on introducing a new reporting requirement regarding the outcomes of engagement.

Feedback Received

18. We received detailed and useful feedback in response to our consultation question on outcomes-based reporting. Overall, stakeholders were supportive of the introduction of a new Principle in this area, welcoming the move towards more concise and company-specific reporting. Some minor concerns were raised around definitional issues, with respondents requesting that further guidance would be provided on what was meant by 'outcomes'. Some stakeholders also flagged that there may be governance activities undertaken which do not have an outcome, or which do not have an outcome which can be observed in the same financial year. Finally, some respondents commented that the language used in the draft new Principle could be duplicative with the Listing Rules.

19. The feedback received on the proposed changes in relation to environmental and social matters was more mixed. Although stakeholders emphasised the importance of this area of work and supported the FRC's proposals in principle, concerns were raised about the fragmented reporting landscape in relation to environmental and social matters and some stakeholders commented that the proposed changes to the Code might be seen as duplicative. The importance of reporting on business relevant environmental and social matters only was highlighted.

20. Including a reference to the embedding of culture in the Code was widely supported by those who responded to the Consultation, although some stakeholders commented that

non-executive board members who are somewhat removed from the day-to-day operations of the business, may not be able to verify the effectiveness of the embedding. There was limited support for moving the reference to investing in and rewarding the workforce to Section 5, as stakeholders considered it a helpful reminder of this board-level responsibility. Stakeholders were also generally not supportive of the additional reporting requirements around engagement.

FRC response

21. In response to the comprehensive and helpful feedback received from stakeholders, we have adjusted and simplified the changes to Section 1. The introduction of a Principle on outcomes-based reporting has been retained, and we have sought to make the language of the new Principle clearer. The updated guidance to the Code will provide additional support to companies in their reporting against this new Principle.

22. We have taken on board the concerns raised by many stakeholders regarding the risk of duplication in the environmental and social regulatory reporting landscape and are not proceeding with changes to the Code in this area. In this context, it should be noted that Principle 1 already highlights the importance of promoting the long-term sustainable success of companies. We will include a reference to the embedding of culture but have amended the language to reflect comments received. Finally, given the limited support from stakeholders as set out in paragraph 20 above, we are not proceeding with the proposed change of moving the reference to investing in and rewarding the workforce to Section 5, nor with the additional reporting requirement around engagement.

Section 2: Division of Responsibilities

Initial Proposals

23. The consultation contained one proposed change for this section. In response to increased concern from investors about the number of board positions held by executive and non-executive directors of companies listed in the UK, we invited stakeholder views on the merits of adding a requirement to list all significant director appointments in the annual report. As part of this proposal, current Provision 15 would be amended and companies would be asked to describe, in the annual report, how each director had sufficient time to undertake their role effectively in light of commitments to other organisations. In addition, we consulted on making director capacity a formal part of the board performance review, a change to current Principle L in Section 3 of the Code.

Feedback Received

24. Many stakeholders commented positively about the fact that the FRC had considered director capacity as part of the Consultation, and expressed strong support for our decision, outlined in the Consultation, not to place further numerical limits on the number of board positions held by directors.

25. Stakeholders expressed some hesitation about the suggestion that boards should list all significant director appointments and make a statement about director capacity, with less than half of respondents fully supportive of this proposal. There were concerns that this change could result in boiler-plate reporting, and/or significantly add to the length of annual reports.

26. There was support for the proposal that director capacity should be considered as part of the board performance review. However, many stakeholders commented that director capacity is already covered in board performance reviews. Some queried whether it was necessary to single out director capacity as a factor for board performance reviews, when there are many other important topics which need to be considered but which are not listed in the Code. There was also some feedback around the importance of giving companies flexibility to focus on different areas of interest or concern in the board performance review each year.

27. Although not directly related to the two proposals described above, in a more general sense some stakeholders highlighted the difficulties associated with recruiting board directors and expressed some concern about anything that might be seen to impose further hurdles in this area. The benefits of being a member of more than one board, including in terms of transferable skills and experience, were also mentioned by some of the respondents.

FRC response

28. After giving careful consideration to the feedback received from stakeholders in relation to the proposed changes to current Provision 15 and Principle L, we have decided not to proceed with these changes.

29. Having listened to concerns raised by respondents around the fact that a statement on directors' other appointments and their capacity to discharge their role effectively could lead to boilerplate and/or lengthy reporting, we will not include this requirement in the revised Code. We encourage companies to continue to make information about significant other appointments available in director profiles in annual reports and/or on their website. Often, this does not currently include committee positions, which we believe would be a helpful addition.

30. We can see the benefits of including director capacity being included in board performance reviews but agree with feedback received that this is one of many areas which should be included and that the majority of board performance reviews already cover this area.

Section 3: Composition, succession and evaluation

Initial Proposals

31. Aside from the change in relation to director capacity described in more detail under Section 2, the main proposals included in the Consultation regarding Section 3 relate to diversity and inclusion. We proposed an amendment to Principle J to include a reference to inclusion, and to give equal weight to all protected and non-protected characteristics, to encourage

companies to consider diversity beyond gender and ethnicity. We also proposed a number of amendments to the Provisions in this Section, which were aimed at placing diversity and inclusion at the heart of succession planning and appointments processes.

32. A further minor amendment to this Section which we consulted on was to change the phrase 'board evaluation' to 'board performance review', based on a recommendation from the Chartered Governance Institute (CGI). The CGI's advice was that the term 'board performance review' more accurately reflects the fact that this is a continual exercise of self-improvement, rather than a backward-looking assurance function.

Feedback Received

33. We received a significant amount of feedback in the Consultation on the way in which diversity characteristics are described in the Code, with a wide range of views expressed. There was broad support for encouraging companies to think beyond gender and ethnicity, although some respondents did emphasise the importance of not losing focus on these two important areas. Some stakeholders favoured the inclusion of a list of non-protected characteristics alongside the mention of protected characteristics in the Code, while others highlighted the risk that naming certain characteristics might result in those characteristics not named seeming less important. The term non-protected characteristics itself was seen as potentially confusing by some respondents unless further guidance was produced.

34. Although stakeholders recognised that disclosures on succession plans were currently often boilerplate in nature, some commented that in many cases reporting was affected by confidentiality constraints, which limit what companies can include in their reports. Stakeholders expressed some concern that the proposed amendments in this area would place a greater burden on companies and their nomination committee in terms of reporting requirements. There was therefore only partial support for these proposals, with a number of respondents suggesting that the changes were not necessary to achieve better disclosures on the approach to succession planning.

35. There was strong support for the change of name from 'board evaluation' to 'board performance review' and for referencing the CGI guidance in our Code guidance, which continues to be our plan.

FRC response

36. We have taken on board the feedback received from many stakeholders that listing non-protected characteristics in the Code risks inadvertently not prioritising important groups. We have simplified the changes to Principle J and ask companies to promote diversity, inclusion and equal opportunity, without referencing specific groups. The changes to the Provisions in this Section have been minimised to avoid the unnecessary reporting burden which many stakeholders expressed concern about in their response to the Consultation. A minor amendment to the third bullet point of Provision 24 has been retained to reflect the fact that companies may have additional initiatives in place alongside their diversity and inclusion policy.

37. The proposed renaming of ‘board evaluation’ to ‘board performance review’ has been retained in the final Code.

Section 4: Audit, risk and internal controls

Changes related to secondary legislation

Initial Proposals

38. The Consultation contained several proposals linked to the proposed introduction of secondary legislation on corporate reporting by the Government. Firstly, we included amendments to the Code to reflect the fact that large Public Interest Entities would be required to produce an Audit and Assurance Policy (AAP), and to suggest that all Code companies would adopt this approach, on a ‘comply or explain’ basis, to ensure a consistent approach for all Code companies.

39. Secondly, considering the draft secondary legislation’s proposal to introduce a Resilience Statement requirement for large Public Interest Entities, in place of the viability statement, we consulted on amendments to Provision 31 of the Code. We also asked stakeholders whether, given these developments, Provision 30 about ‘going concern’ should be retained.

Feedback Received

40. Respondents to the Consultation were generally supportive of the introduction of an AAP requirement, commenting that this would provide valuable information for shareholders and other interested parties. There were requests for further guidance on the approach to the AAP for those Code companies not subject to the secondary legislation, and some stakeholders highlighted possible difficulties in engaging with shareholders on the AAP.

41. There was also broad support for the proposal that Code companies who are not large Public Interest Entities should be directed to the Resilience Statement for guidance on their reporting on future prospects. Stakeholders generally agreed that this would simplify the regulatory landscape, but again asked for further clarification and guidance to ensure this could be done in a proportionate way. There was strong support for retaining Provision 30 on going concern.

FRC response

42. After the Consultation closed, the Government withdrew the draft secondary legislation. All Code changes related to the AAP and Resilience statement have been removed from the final Code.

Audit committees

Initial Proposals

43. Several of the proposed changes in the Consultation concerned the role of the audit committee. We consulted on giving the audit committee a role in overseeing the integrity of

narrative reporting, including sustainability reporting, to reflect the increasing importance attached to these aspects by investors and other stakeholders, and to enable consistency in the approach to oversight of all reporting.

44. In addition, we proposed to remove duplication from the Code where there was overlap with the 'Audit Committees and the External Audit: Minimum Standard' (the Minimum Standard), instead referring all Code companies directly to the Minimum Standard. We explained that Code companies which were not FTSE 350 companies (to whom the Standard currently applies) should follow the Standard on a 'comply or explain' basis. We also included an additional sentence in the Code about the engagement between audit committees and shareholders and other stakeholders.

Feedback Received

45. We received extensive feedback on our proposals regarding expanding the audit committee responsibilities to include integrity of narrative and sustainability reporting. Stakeholders in general recognised the increased importance of narrative reporting. However, they raised concerns about the scope of work of the audit committee, and the skill set of audit committee members in the context of narrative reporting. There were also many respondents to the Consultation who said that boards should be able to decide where such responsibilities were delegated, and in some cases board-level sustainability committees had been set up specifically for this purpose.

46. Respondents were broadly supportive of the proposals around the Minimum Standard and welcomed the removal of duplication and simplification of the Code. Some stakeholders requested guidance on the extent to which non-FTSE 350 companies should follow the Minimum Standard. The main concerns were about the proposal that audit committees should engage with shareholders and other stakeholders on a range of topics, with many stakeholders commenting that there was limited appetite for such engagement.

FRC response

47. Having considered the response to expanding the audit committee's role to include oversight of narrative reporting, we have decided not to implement this change. Principle M, which gives the board responsibilities for the integrity of narrative as well as financial reporting, will remain in place and it will be for boards to decide how this responsibility is delivered.

48. We will implement our proposals in relation to the Minimum Standard, as these were supported by stakeholders and remove duplication. We will provide targeted guidance to support audit committees of non-FTSE 350 companies to enable them to apply the Minimum Standard in a proportionate manner. We will not proceed with the proposal for audit committee engagement with shareholders and other stakeholders on a number of specific matters, as stakeholders commented there was limited appetite for such engagement.

Risk and internal controls

Initial Proposals

49. The proposed changes to Section 4 in relation to risk and internal controls were at the heart of our Consultation. The FRC was invited by the Government, in Restoring trust in audit and corporate governance, to make amendments to the Code which strengthen board accountability and reporting in relation to internal controls. Our proposals consisted of several aspects, central to which was a declaration, to be made by the board, regarding the effectiveness of the company's risk management and internal controls systems. In the Consultation, we asked questions about the controls and the period to be covered by the declaration, as well as the approach to monitoring and definitional issues and guidance.

Feedback Received

50. Respondents to the Consultation provided extensive, detailed and helpful feedback on the proposals in this area. It is clear from the responses received that many stakeholders are strongly supportive of ensuring that Code companies have a robust framework for risk management and internal controls. There were, however, some concerns raised about the declaration to be made by the board. Many stakeholders who raised such concerns provided insightful suggestions as to how the proposals could be modified to reduce any resulting burden and drive high quality governance outcomes, and we have considered these carefully.

51. Areas in which stakeholders provided comments included the scope of the controls, with a request for greater clarity on what constitutes a material control, and a request to not use terminology from the US SOX regime. Respondents also indicated that it would be difficult to provide a declaration for the whole period up to the date of the annual report. Feedback was received on the extent to which boards would be able to explain the basis for the declaration in the annual report. There were comments on the suggestion that companies should declare any material weaknesses found, with some stakeholders concerned that this would lead to a higher volume of additional reporting. Finally, several respondents indicated to us that they agree that the declaration should cover all material controls, however, they explained that while their controls over financial reporting are well-developed, other controls are, currently less mature and still developing. They suggested that more time than envisaged in the Consultation would be needed to prepare for the introduction of these changes. Many stakeholders also indicated that they would like to see more detailed guidance on risk management and internal controls in preparation for compliance with the new the Code.

52. Some of the stakeholders asked the FRC to continue emphasising that the new Code requirements are not intended to replicate the US's SOX requirements, and that companies should utilise the comply-or-explain nature of the Code.

FRC response

53. We have given careful thought to the feedback received from our stakeholders. We remain of the view, as supported by many of our stakeholders, that ensuring companies operating in the UK have a robust framework for risk management and internal controls is of great importance. However, we are keen to ensure that this ambition is delivered in a way that is proportionate and does not lead to unnecessary burdens on businesses operating in the UK. We have therefore made several amendments to our proposals.

54. In the final Code, we retain the proposed board declaration in relation to all material controls, but rather than requiring an underpinning explanation for the basis of the declaration, we ask for a description as to how systems have been monitored and reviewed. We have changed the reporting period covered by the declaration, which will be the reporting period up to the date of the balance sheet, not the date of the annual report. We have removed the suggestion that companies report all material weaknesses identified during the reporting period, and instead referred to material controls which have not operated effectively. Finally, we propose delaying the introduction of the revised Provision by one year, to accounting years commencing on or after 1 January 2026. This will give companies more time to prepare for these changes.

55. We will review and update our Code guidance to provide companies with advice and suggestions in relation to the implementation of this new Provision in early 2024.

Section 5: Remuneration

Malus and clawback

Initial Proposals

56. At the Government's request, the FRC consulted on strengthening those Provisions of the Code which relate to malus and clawback, with the aim of creating more transparency in this area. The proposed changes introduced a specific mention of malus and clawback into the Code, and to reflect the fact that malus and clawback arrangements are not always included in employment contracts, the phrase 'other remuneration agreements' was suggested.

57. We also consulted on asking companies to include additional information in their remuneration report, including a statement on whether the company has malus and clawback arrangements in place, the minimum conditions in which these would apply, the minimum period for applying them and why the selected minimum period is best suited to the organisation, as well as whether they have been used in the last financial year. Finally, there was a suggestion that a five-year look-back on use of malus and clawback provisions would be included in annual reports.

Feedback Received

58. There was broad support for the changes proposed related to malus and clawback, with many respondents welcomed the additional clarity that the new wording would provide. Some respondents who were otherwise supportive of the proposals expressed some concern that the five-year look-back disclosure would not add value to the annual report, as the information on use of malus and clawback in previous years was already in the public domain. A small number of stakeholders also commented that the word 'minimum' included in this Provision was not necessary and could be unhelpful. The small number of respondents who were not supportive of the proposals mostly raised concerns regarding the enforceability of clawback arrangements.

FRC response

59. Given the supportive feedback received from our stakeholders and the Government's commitment to ensuring transparent reporting in this area, we will proceed with our proposals in relation to malus and clawback. Having taken into consideration comments from some of the respondents that the five-year look-back would constitute additional reporting of with limited value, we have removed this aspect of the proposals, and we have adjusted the language around the use of the word 'minimum'.

Other remuneration proposals

Initial Proposals

60. In addition to the changes related to malus and clawback outlined above, we proposed several further changes to Section 5 of the Code on remuneration. These included an amendment to the Principles in this Section to strengthen links between companies' remuneration policies and corporate performance in the wider sense, including ESG objectives. We also included a more specific reference to company and workforce pay and conditions as a factor which remuneration committees should have regard to in determining executive pay.

61. Some amendments were also proposed to the Provision in this Section, including a suggestion that Provision 40 should be removed as our annual Review of Corporate Governance Reporting indicate that this Provision results in lengthy and boiler-plate reporting. We also consulted on whether the reference to pay ratios and pay gaps in Provision 41 should be strengthened or removed, in light of regulation which exists outside of the Code.

Feedback Received

62. Although respondents were generally in agreement with the fact that there should be links between executive remuneration and wider company performance including in terms of environmental, social and governance (ESG) objectives, several respondents commented that it was not necessary to include this phrase within the Principles of the Code. Views were given on ESG metrics which are currently being developed and their materiality and

reliability, and there was some concern that the amendments to the Code Principle would mean that linking remuneration to such metrics would become mandatory.

63. A significant majority of respondents welcomed the proposed simplification of the Code by removing Provision 40, expressing the view that this was likely to result in more specific and concise reporting. A small minority considered that Provision 40 as currently included in the Code provided useful guidance to them, and we have incorporated these comments in the development of the guidance which will support this Section of the Code. In relation to pay ratios and pay gaps, respondents in general sounded a cautionary note, and suggested that removing this reference could be seen as a backwards step, and a signal that sufficient progress had been achieved in this area, which is not the case.

FRC response

64. As many of our stakeholders indicated that the proposed changes to the Principles in Section 5 could have unintended consequences, and result in reporting that is not as meaningful as it could be in terms of ESG metrics, we have decided not to pursue these changes and revert to the current Code text in this area.

65. Given the support received for the simplification of this Section of the Code by removing Provision 40, we have incorporated this change in the final version of the Code. The change will result in more concise and company-specific report, with less reliance on boiler-plate text.

66. Having considered comments from respondents in relation to pay ratios and pay gaps, we have decided to retain this aspect of Provision 41.

Guidance

67. Many stakeholders have indicated to us that updated and expanded guidance would be helpful to support the proposed changes to the Code, but that we should not be seen as trying to impose additional requirements on reporters where guidance may be seen by some stakeholders as prescriptive.

68. We have worked to ensure the updated guidance is as user-friendly as possible, creating an online resource which aligns clearly to relevant sections of the Code, and which provides links to other FRC or external resources which stakeholders may find useful. This guidance will be a 'live' resource, which means we will keep it up to date with future legislative and other developments. Any future updates to the guidance will be clearly communicated and sign posted.

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