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IoD & William Fry
UK Corporate Governance Code 2018 –
Key Changes for Directors
11th September 2018



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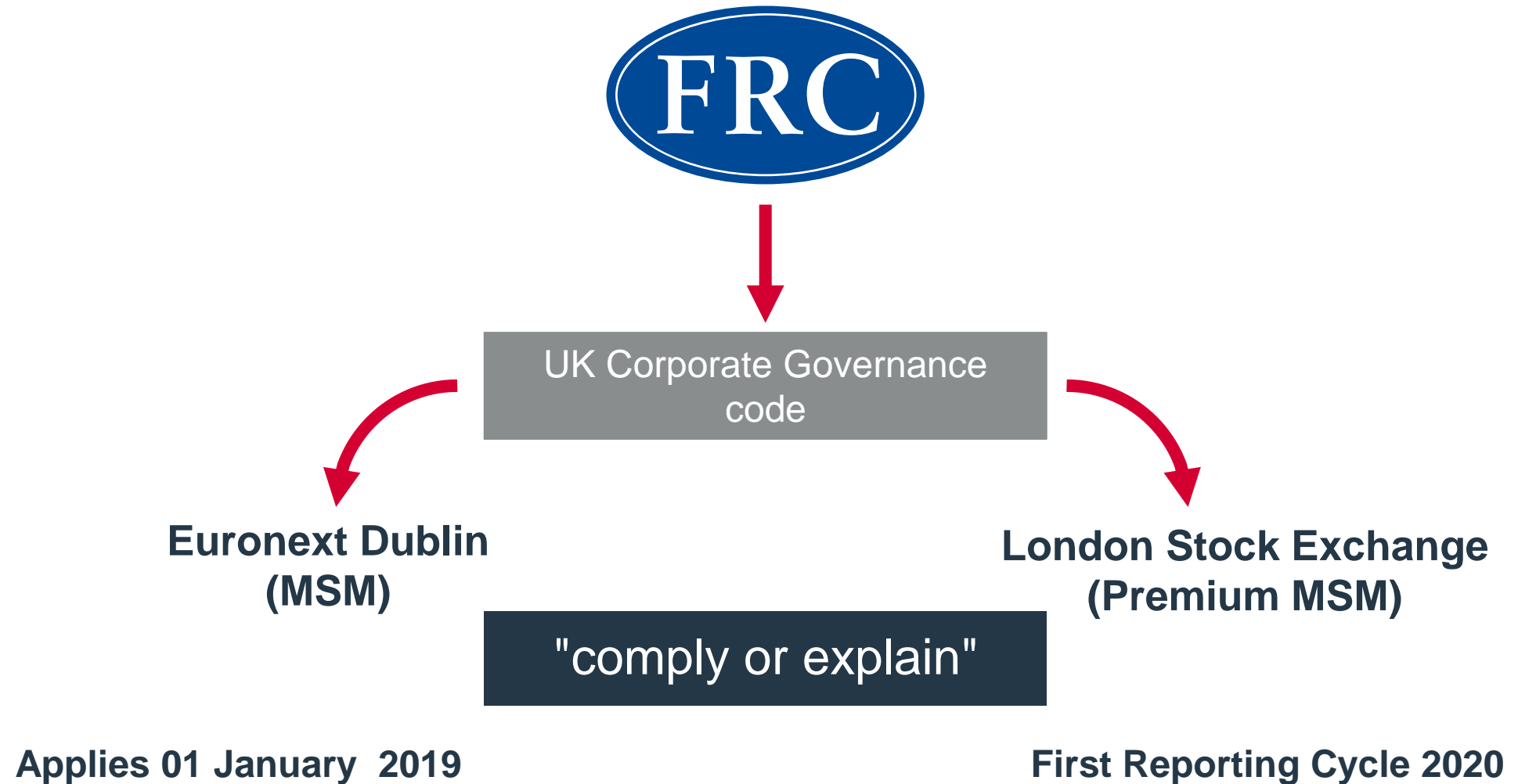
UK Corporate Governance Code 2018

A boardroom fit for the future?

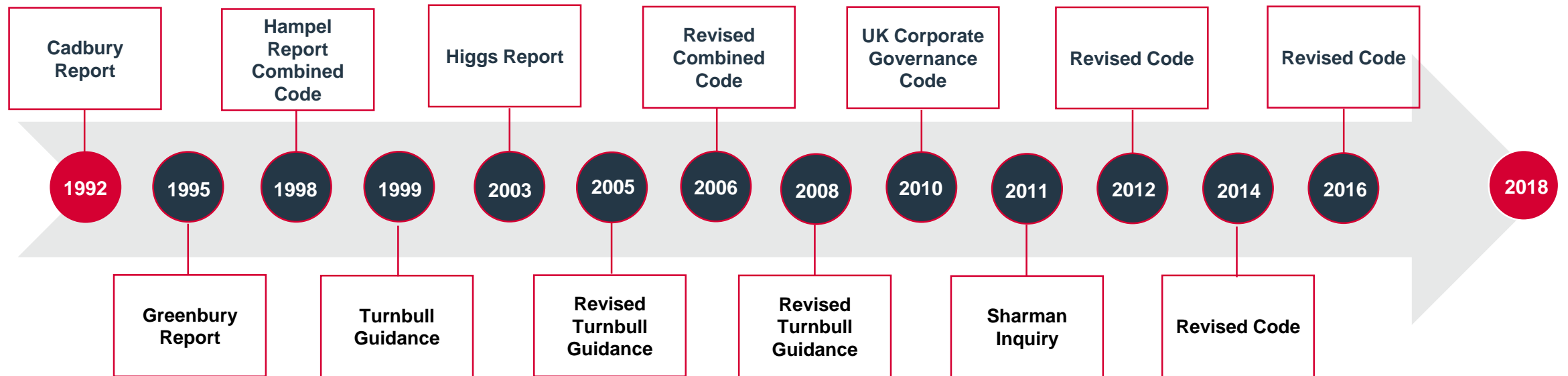
David Fitzgibbon & Mark Talbot

11 September 2018

UK Corporate Governance Code 2018 – Background



Evolution of UK Corporate Governance Regime



UK Corporate Governance Code 2018 – Impetus for change

- Public focus on Culture and Diversity
- Pressure from UK Government
- Corporate Scandals:



- Improve Corporate Governance Practice
- Stimulate Challenges in the Boardroom
- Improve Governance Reporting



Key Changes

Code Structure and Reporting

- 5 core pillars – 18 Principles

1 Board Leadership and Company Purpose

2 Division and Responsibility

3 Composition Succession and Evaluation

4 Audit, Risk and Internal Control

5 Composition Succession and Evaluation

Code Structure and Reporting

- Application of the Principles
 - Principles are more onerous from a reporting perspective than the previous Main Principles – e.g. requirement to articulate company's values and purpose (which are distinct from its strategy)
- Signposting and cross-referencing in annual report
- Provisions - "comply or explain" approach offers flexibility to confirm compliance or explain any non-compliance
- Encouraging companies to think about purpose and core values
- Shadow Exercise during 2019

Code Structure and Reporting

- 5 core pillars – 18 Principles

1 Board Leadership and Company Purpose

2 Division and Responsibility

3 Composition Succession and Evaluation

4 Audit, Risk and Internal Control

5 Composition Succession and Evaluation

Board Leadership and Company Purpose: Workforce Engagement

- New Principle requiring engagement with workforce



- One of the following methods "*should be used*":
 - Director appointed from the workforce
 - Formal workforce advisory panel
 - Designated non-executive director

Board Leadership and Company Purpose: 20%+ Votes Against

- Where 20%+ votes against resolution recommended by the board:
 - Company is obliged to explain (when announcing results) what actions it intends to take to consult with shareholders to understand reasons behind result
 - Company must then provide update within six months, before providing a final summary in the annual report on views received from shareholders and actions taken
- 2016 Code provisions regarding regular engagement with shareholders seem sufficient
- Disproportionate voice to minority?
- FRC expects companies to begin reporting during 2019 and so company secretaries need to begin thinking about this now to avoid scrambling on AGM day

Division of Responsibilities: Independence

- Initial proposals tightening independence provisions withdrawn
- Independence criteria comprise:
 - employee of the company in the last five years
 - material business relationship with the company in the last three years
 - has received additional remuneration apart from a director's fee or participates in company's share option, bonus or pension scheme
 - has close family ties with company's advisers, directors or senior employees
 - holds cross-directorships with other directors
 - represents a significant shareholder
 - has served for more than nine years

but board discretion to determine independence has been retained

Division of Responsibilities: External Commitments

- Changes designed to clamp-down on “over-boarding”
- Directors' other time commitments to be considered before appointment
- Board approval required for additional external appointments
- Approval of significant external appointments must be explained in the annual report

Composition, Succession and Evaluation: The Chair

- Controversial requirement that the chair should not remain in post beyond nine years from date of first appointment to the board
- Following concerns expressed during the consultation, final Code concedes that this period can be extended "*for a limited time*" particularly where the chair was an existing non-executive director on appointment
- This new provision will effect more than 50 companies in the FTSE 350, possibly forcing those companies and others to accelerate succession planning
- Companies need to start looking at this now and decide will they comply (and possibly accelerate succession planning) or explain

Composition, Succession and Evaluation: Succession & Diversity

- Increased workload for Nomination Committee
- Responsible for ensuring plans are in place for orderly succession to board and senior management positions and in overseeing development of a diverse pipeline for succession
- Diversity is defined as "*diversity of gender, social and ethnic backgrounds, cognitive and personal strengths*"
- Boards should consider now whether succession plans need to be developed or updated to reflect incoming requirements

Audit, Risk and Internal Control: Viability Statement

"On the basis of both reasonably probable and more extreme downside scenarios, the Directors believe that they have a reasonable expectation that the Company will be able to continue in operation and meet its liabilities as they fall due over the three-year period to their assessment "

Carillion plc 2017 Annual Report

Remuneration: Persimmon LTIP



Remuneration: Recent Pay Revolts



Melrose

2018



direct line

2018

WPP

2018



2018

Remuneration: Significant Re-casting

- Expanded role of Remuneration Committee
- Remuneration Committee chair should have served on a Remuneration Committee for at least 12 months
- More demanding criteria for remuneration policies and practices now extended to cover senior management
- Clearly linked to delivery of the company's long term strategy
- Mandatory five-year vesting and post-employment holding periods attaching to share awards to executives (up from three years)
- Pension commitments for executives should be aligned with those available to the workforce
- Discretion to override formulaic outcomes – not so easy in practice

"Shorter and sharper"

(Sir Win Bischoff, Chair, FRC, 16 July 2018)

“Shorter and sharper”, yes, but better?

1992
Cadbury Report

"the system by which companies are directed and controlled. Boards of directors are responsible for the governance of their companies. The shareholders' role in governance is to appoint the directors and the auditors and to satisfy themselves that an appropriate governance structure is in place."

- positive relationships between companies, shareholders and stakeholders
- clear purpose and strategy aligned with healthy corporate culture
- high-quality board composition and a focus on diversity
- remuneration which is proportionate and supports long-term success

2018

Next Steps

Practical steps for Boards

Reporting	Consider undertaking shadow exercise during 2019 reporting process
Workforce engagement	Decide what method will be chosen and how it will be implemented and communicated
20%+ votes against	Put in place plan to manage significant votes against
Directors' time commitments	Consider whether directors' external commitments should be reviewed.
Diversity	Reassess your efforts to promote diversity (of all types)
Board evaluation	Review the scope, frequency and process of evaluations for the board, committees and individual directors.
Nomination committee	Review the committee's responsibilities and terms of reference, especially on process for board appointments, board and senior management succession planning, diversity and directors' external commitments.
Remuneration	Future remuneration policies and amendments to existing policies (now including with respect to senior management) should be developed with reference to new Code and Guidance.
Remuneration committee	Review the committee's composition, responsibilities and terms of reference.

WILLIAM FRY



Q&A



David Fitzgibbon
Partner, Corporate

E: David.Fitzgibbon@williamfry.com
T +353 1 639 5154



Mark Talbot
Partner, Corporate

E: Mark.Talbot@williamfry.com
T: +353 1 639 5162