Written evidence from the Employment Lawyers Association (CGP0023)

Introduction

The Employment Lawyers Association (“ELA”) is a non-political group of specialists in the field of employment law and includes those who represent claimants and respondents in courts and employment tribunals. It is not ELA’s role to comment on the political or policy merits or otherwise of proposed legislation or regulation, rather it is to make observations from a legal standpoint. Accordingly in this consultation we do not address such issues. ELA’s Legislative and Policy Committee consists of experienced solicitors and barristers who meet regularly for a number of purposes including to consider and respond to proposed legislation and regulations.

The Legislative and Policy Committee of ELA set up a sub-committee under the chairmanship of Caroline Stroud of Freshfields Bruckhaus Deringer LLP to consider and comment to the BEIS Committee inquiry on executive pay. The members of this sub-committee are listed below.

What progress has been made on implementing the recommendations on executive pay by the previous Committee in its 2017 report on Corporate Governance?

ELA’s observation is that LTIPs are still regularly used and that investor groups are happy with them so long as the performance conditions are carefully calibrated to sustainable performance.

Some of the recommendations of the Committee in 2017 will be implemented through forthcoming legislation (eg pay ratios) and the revised corporate governance code (eg improved engagement with employees). It is too early to measure the success of these measures.

We have observed that clawback and malus have been introduced into incentive scheme rules but that malus is always used as the first resort and is, in fact, used regularly and in financial institutions routinely. Clawback is not often used in our view partly because the conditions for its exercise are normally prescriptive and malus is always applied first. Clawback is also difficult to enforce in practice and has quite significant, timing, cost and practical challenges.

What improvements have been made to reporting on executive pay in the last 12 months?

We have not observed any significant changes in the clarity of reporting although anecdotally we have heard clients are keen to try to simplify and increase transparency given the political and public sensitivity around executive pay. Companies are, we observe, putting a lot of thought into fully disclosing the alignment between pay and performance.

What steps have been taken by Remuneration Committees and institutional investors to combat excessive executive pay in the last 12 months?

ELA has observed that the application of malus has increased driven by public criticism of excess pay in circumstances where there has been an overall perceived lack of oversight or accountability. In
some circumstances individuals have been encouraged to give up their bonuses voluntarily or, indeed, to leave the company.

**What further measures should be considered?**

The new corporate governance code contains much guidance around stakeholder engagement and culture. The changes that the new corporate governance code will bring will be observed in 2019 after it comes into effect. In addition, pay ratios will also cause changes. Both these steps are already planned and we would think that it would be sensible to wait to observe their impact.

**ELA City and Financial Sub-Committee**

**Chair:** Caroline Stroud, Freshfields Bruckhaus Deringer LLP

Steven Cochrane, Pinsent Masons LLP
Stephen Levinson, Keystone Law
Jane McCafferty, 11KBW
Julie Morris, Slater and Gordon
Tom Ogg, 11KBW
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Andrew Sutton, UBS Investment Bank
Andrew Taggart, Herbert Smith Freehills LLP
Alastair Windass, Clifford Chance LLP
Alistair Woodland, Clifford Chance LLP

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