



Sir Adrian

Remember curious that the ICSA intend to submit their thoughts to us before taking their members' views!

I have explained that you are not available on the 13th, but would be pleased to meet a deputation on the morning of the 14th. They would settle for this, but would much prefer to change the date of their evening bash and have you present if you would be agreeable. They would be willing to make the timing 5pm to 7pm sharp.

I promised to relay the letter to you.

NAJ
5/6

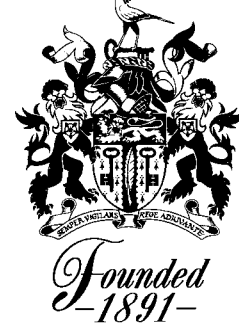
Corporate Governance

I feel I ought to introduce a committee which have previously dealt with the Secretary of Allied Lyons plc and the Law Panel, I am writing to the Secretaries Group of The Institute. The Institute is charged with the promotion of best practice and at the Institute is narrow-minded of its own members, I am sure that members of our Company and public companies are not interested in our rules to allow all to contribute to the professional development of the fact that many lawyers are members of public companies and we will be of policy on behalf of the

Having completed the introductions, I would now like to turn to the purpose of this letter. I was pleased to read in the recommendations of your Committee that you had reached very much the same conclusions as the Institute with respect to board structures and procedures, and particularly pleased to read paragraph 4.21 of the report which recognised the importance of the role of the company secretary.

However, whilst we are aware that you have already agreed to speak at a conference for company secretaries organised by IIR, we would appreciate it if you could spare the time to do so at an evening meeting which we will be organising for the company secretaries of listed public companies. The reasons why we think it appropriate to ask you to spend more of your time with the company secretarial profession are threefold.

CAD-2193



Sir Adrian Cadbury
Chairman of the Committee on the Financial
Aspects of Corporate Governance
PO Box 433
Moorgate Place
London EC2P 2BJ

2nd July 1992

Dear Sir Adrian,

The Role of the Company Secretary in Corporate Governance

Before appraising you of the purpose of this letter, I feel I ought to introduce myself as I am aware that both you and your Committee have previously dealt with my predecessor. Although I am the Group Secretary of Allied Lyons plc and am a member of the Financial Reporting Review Panel, I am writing to you in my capacity as the Chairman of the Company Secretaries Group of The Institute of Chartered Secretaries and Administrators. The Institute is charged under its Royal Charter with responsibility for the promotion of best practice in company secretaryship. However, lest you think that the Institute is narrow-minded and that it seeks only to protect the interests of its own members, I feel I ought to point out that many of the members of our Company Secretaries Group who are company secretaries of public companies are not actually members of our Institute. Last year we revised our rules to allow all company secretaries to participate in and contribute to the professional activities of the Group. We did so in recognition of the fact that many lawyers and accountants also act as the company secretary of public companies and that they had a right to participate in the framing of policy on behalf of the company secretarial profession.

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However, whilst we are aware that you have already agreed to speak at a conference for company secretaries organised by IIR, we would appreciate it if you could spare the time to do so at an evening meeting which we will be organising for the company secretaries of listed public companies. The reasons why we think it appropriate to ask you to spend more of your time with the company secretarial profession are threefold.

Firstly, IIR has organised its conference on a commercial basis over two days. I have no idea how many company secretaries will attend the IIR conference. However, I do know that many company secretaries, including myself, were not able to justify spending over £500 to attend the IIR conference or to spare two days out of the office to do so. The Institute, on the other hand, proposes to organise an evening meeting which will be open to all company secretaries of public listed companies and be free of charge. At that meeting we propose to debate the role of the company secretary in the promotion of effective corporate governance.

Secondly, before that meeting takes place, the Institute will almost certainly have written to you with its comments on the role it thinks the company secretary should play. A series of proposals will be put to the policy-making committee of the Company Secretaries Group on Monday, 8th June. From the soundings we have taken from the members of that committee to date, I am confident that the spirit, if not the precise wording, of these proposals will be adopted. We have already sent Nigel Peace a copy of a section of the agenda papers for that meeting which contain these basic proposals and a rough outline of the philosophy which lies behind them. At the risk of being embarrassed by my own Committee, I have also enclosed a slightly amended copy of these papers with this letter. I am sure that you will find these proposals interesting. If they were adopted, they would strengthen the links between the company secretary and the non-executive directors. Strengthening these links would strengthen the independence of the non-executive directors and the company secretary, enabling both to play a more effective role in the governance of the company. Each of our proposals is designed specifically to cement that relationship.

It has never been easy to define the role of the company secretary precisely. The secretary's duties have never been codified properly in UK law or in any recognised Code of Practice. The Institute has recently issued a document (*The Duties of the Company Secretary*) which seeks to define those duties which every company secretary must attend to and those which they may or may not be required by the directors to do. Whilst we do not believe it would be appropriate for your Committee to include the contents of this document in its Code of Best Practice, we do believe that it would be advantageous for companies to be given guidance on the relationship that should ideally exist between the company secretary and the board of directors.

We would wish therefore to give you the opportunity to attend our meeting to hear the reaction of members of the company secretarial profession to our proposals. Unfortunately there will be no opportunity to have this debate at the conference organised by IIR.

Thirdly, whether or not you agree with the reasoning behind our proposals, I know that you are aware that the Chairman normally turns to the company secretary for a first opinion on how any change in law or practice will affect the company. Company secretaries are by nature a cautious breed. They tend to approach issues from a practical and pragmatic point of view and, although I have no doubt that each individual company secretary will have a view on the merits of your recommendations, we intend to concentrate at our meeting on the practical implications by addressing what companies would need to do to comply with the spirit of the Code.

In the hope that I have already induced some measure of sympathy for our position, I would like to outline how we would propose to run this meeting/debate. First of all I should tell you that it would be held in London at one of the larger hotels. If the decision was totally in our hands, we would choose 5.30pm on Monday, 13th July as the time and date of the meeting. We would, however, be happy to arrange the meeting to fit in with your timetable. My ideal scenario would be for you, or if you were unable to attend another member of your Committee, to make a fairly short presentation (say 30-40 minutes) on any aspect of your Committee's recommendations which you felt it appropriate to address. We would have already sent copies of our proposals to every company secretary before the meeting, so that I or another member of the Company Secretaries Panel would only need to speak very briefly to introduce them at the meeting. After doing so, we would throw the floor open for discussion.

After your presentation, you could either simply attend as an observer or could remain on the top table as an active participant in the ensuing debate. I have no desire to place you in an awkward or defensive position - it would be unseemly for a company secretary to do that to a chairman! If you agreed to attend, we would, of course, respect your wishes in this regard.

My main purpose in writing to you with this request is to try catch up for lost time on an issue which we believe is a self-evident truth. It is unfortunate that it is difficult for us to express this self-evident truth without it sounding like special pleading. I sincerely hope that we already have gone some way towards proving that there is merit in our proposals.

I thank you for your kind attention and look forward to hearing from you.

Yours sincerely,



D S Mitchell
Chairman
Company Secretaries Group

Cadbury Committee - Proposals for debate by the Company Secretaries Panel

The Company Secretary

According to the report of the Cadbury Committee, "The company secretary has a key role to play in ensuring that the board procedures are both followed and regularly reviewed. The chairman and the board will look to the company secretary for guidance on what their responsibilities are under the rules and regulations to which they are subject and on how those responsibilities should be discharged. All directors should recognise that the chairman is entitled to the strong and positive support of the company secretary in securing the effective functioning of the board."

The Institute welcomes this statement but believes that more can and should be done to ensure that the company secretary is able to make an effective contribution to the improvement of corporate governance. Any Code of Best Practice on good corporate governance will, by its nature, merely reflect what is already established and best practice in well-managed companies, and the proposals which we have put forward would do likewise. They would not require well-run companies to make any significant changes in their day-to-day operations. They would, however, require companies to examine the reality of the relationship that exists between the company secretary and the board of directors. It is in the creation and formal recognition of the secretary's relationship with the various categories of director that the most benefit can be gained in terms of corporate governance.

The value of defining, as a matter of best practice, the role and status of the company secretary is that it would help to establish in the minds of the directors, but particularly the non-executive directors, what the company secretary is employed by the company to do. The company secretary has been bestowed by the law with the status as an officer of the company. It has failed, however, to give a clear message as to why this was done and what the secretary's relationship with the directors should be. The Cadbury Committee has an unprecedented opportunity to give firm guidance on the nature of this relationship and we would be disappointed if it did not take the opportunity to do so. Non-executive directors should be given a clear message that there already is a person in the company whose services they have a right to utilise and whose integrity and independence it is in their own interests to protect.

Our aim in making these proposals is therefore to bring the company secretary and the non-executive directors closer together. Our proposals on the removal of the company secretary reinforce this link as they seek to ensure that the non-executive directors participate in the decision to remove the secretary. Any procedure which does not allow them to participate in that decision must be deficient because the non-executive directors would never really be sure why the secretary was removed. Was it really because he was incompetent or nearing retirement? Or was it because he refused to be a party to a course of action which the non-executive directors should have been made aware of?

The question which begs to be answered is, of course, why the company secretary should be given special treatment. To some extent the answer to that question can be found in the Cadbury Committee's own report. However, it is also important to recognise that the secretary is an officer of the company who shares with the directors responsibility for compliance with many of the requirements of the law. The secretary already has a personal interest in the standards of governance within the company. It seems sensible therefore to seek to utilise this personal interest and to protect the independence and integrity of the company secretary. The non-executive directors can play a crucial role in offering the company secretary this protection. The fact that, by doing so, they might be able to perform their functions as non-executives more effectively (by being able to rely on the services of the company secretary) merely closes the circle. The proposals that we have put forward are, we believe, self-evident truths. If adopted, they would undoubtedly be to the benefit of good corporate governance in the UK.

Suggestions for proposals on the role of the company secretary for inclusion in the Institute's submission to be made by the Panel to the Cadbury Committee

- 1 The board should establish written procedures for the conduct of its business and a copy of these written procedures should be given to each director and the company secretary.
- 2 The company secretary should be responsible to the board of directors through the chairman for the proper administration of meetings of the board. To carry out this responsibility the company secretary should attend and prepare (or arrange for the preparation of) minutes of the proceedings of all such meetings.
- 3 It is the duty of the directors to establish adequate procedures and arrangements for complying with the internal and external regulations relating to the proper administration and governance of the company.
- 4 The company secretary should monitor and report on compliance with these procedures and arrangements to the chairman or, if the chairman is also chief executive, the appointed leader of the independent non-executive directors or the audit committee. Serious breaches should be reported to the board by the chairman or the board's nominee to enable the directors to consider whether the procedures and arrangements need to be amended or reinforced.
- 5 The company secretary should be appointed as the secretary of any committee of directors which derives its power to make *decisions* on behalf of the company from the board.
- 6 The company secretary should be appointed as the secretary to the audit committee and the remuneration committee.
- 7 The articles of association should prescribe the procedures for the removal of the secretary from office. As a minimum, these procedures should ensure that **all** the directors participate in the decision to remove the secretary by requiring the decision to be made by the directors at a scheduled board meeting for which proper notice has been given of the intention to propose that the secretary be removed from office.
- 8 As a basic principle, the company secretary should be entitled to receive notice of and make representations at any meeting of directors at which a proposal that he be removed from office is to be considered.
- 9 Before combining the office of secretary with that of a director, careful consideration should be given to the effect that this may have on the company's internal governance procedures. If a director is appointed as the secretary (or vice versa), the company's procedures may need to be modified to ensure that conflicts of interest are avoided. For example, it would not be appropriate for the finance director/secretary to act as the secretary to the audit committee.