

**Citation for published version:**

Ernestine Gheyoh Ndzi, 'UK Shareholder Voting on Director's Remuneration: Has Binding Vote Made any Difference?', *Company Lawyer*, Vol. 38 (5): 139-149, 2017.

**DOI:**

Not available. The definitive published version is available online on [Westlaw UK](#) or from [Thomson Reuters DocDel service](#) .

**Document Version:**

This is the Accepted Manuscript version.

The version in the University of Hertfordshire Research Archive may differ from the final published version.

**Copyright and Reuse:**

This manuscript version is made available in accordance with the Creative Commons Attribution Non Commercial (CC BY-NC 4.0) license, which permits others to distribute, remix, adapt, build upon this work non-commercially, and license their derivative works on different terms, provided the original work is properly cited and the use is non-commercial. See:

<http://creativecommons.org/licenses/by-nc/4.0/>

**Enquiries**

If you believe this document infringes copyright, please contact Research & Scholarly Communications at [rsc@herts.ac.uk](mailto:rsc@herts.ac.uk)

## Company Lawyer

2017

### UK shareholder voting on directors' remuneration: has binding vote made any difference?

Dr Ernestine Ndzi\*

**Subject:** Company law

**Keywords:** Directors' remuneration; Shareholders' rights; Voting rights;

**Legislation:**

[Companies Act 2006 \(c.46\)s.439A](#)

#### **\*Comp. Law. 139 Introduction**

The [Companies Act 2006 s.439A](#) highlights shareholders as being responsible for monitoring directors' remuneration by providing that quoted companies should put their directors' remuneration policy to a three-year binding vote of shareholders. The implementation part of the remuneration report should be subject to an annual shareholder non-binding vote. Director remuneration emerged as a controversial issue during the early 1990s. Directors of privatised utility companies received pay increases which were condemned by the public and the media as having no corresponding link to the performance of the company. The criticism of directors' pay by the public and the media came under headlines such as "Fat Cats in the Dock",<sup>1</sup> "Executive Gluttony under Attack"<sup>2</sup> and "Derailing the Gravy Train".<sup>3</sup> More than two decades later, directors' pay continues to be a prominent issue of corporate governance in the UK. First, there is continued concern that directors are receiving excessive pay packages with no corresponding link to company performance.<sup>4</sup> Secondly, directors' pay seems to be increasing even when company performance<sup>5</sup> is falling. Thirdly, directors' pay (bankers' bonuses) was considered as partly responsible for the financial crisis in 2008<sup>6</sup>; and lastly, the pay gap between directors and average employees of the company continues to widen.<sup>7</sup>

The objective of giving members of the company voting rights on remuneration issues is for members to be able to hold the directors to account over the structure and levels of directors' remuneration. This voting right enables the members to prevent reward for failure and make sure that pay is more closely linked to company performance. Members' vote on directors' remuneration may also increase transparency in remuneration reporting, as it indicates what directors are earning and how it is linked to the company's strategy and performance. It is also intended to encourage a stronger relationship between the company and its members. If the shareholders vote against the remuneration report, the remuneration committee would have to redress the situation by reconsidering how the remuneration package was set.

#### **Shareholders' vote before the Enterprise and Regulatory Reform Act**

## 2013

Under [s.439 of the CA 2006](#), shareholders were entitled to a non-binding vote on the remuneration report. This meant that if the shareholders voted down the remuneration policy of a company, that company was not compelled to act on it. An example is Grainger Plc: in 2010 the shareholders voted down the company's remuneration report on the grounds that a £2.9 million payoff offered to the former CEO of the company was too generous, but the company did not reduce the payoff. Even though companies were not compelled to act on the non-binding votes, many companies did react to the shareholders' votes cast against the remuneration report to correct the point of disagreement. This was because members of the company could pass an ordinary resolution to remove the directors if they were not satisfied with their performance.[8](#)

Table 1 gives examples of companies whose remuneration reports were voted down by the shareholders and the reaction of the company to that effect. The table also details the principal issue that caused the remuneration report to be voted down, and whether the company reacted to the shareholders' votes (if any changes were made). *\*Comp. Law. 140*

Table 1: Voted down remuneration reports from 2003 to 2013

Company	Year	Principal issue	Reaction
GlaxoSmithKline	2003	£22 million severance payment to the then CEO.	The remuneration committee was replaced and the CEO termination provisions reduced.
Aegis Group	2004	24 months' service contract.	CEO resigned, and the contract term reduced.
United Business Media	2005	£250,000 retirement bonus.	Money voluntarily handed back to the company by the CEO.
Goshawk Insurance	2005	£100,000 payment made to the CEO.	None.

MFI Furniture Group	2005	A parachute clause of 18 months liquidated damages.	Provision removed from the remuneration policy.
Lonmin	2005	£500,000 ex gratia bonus to a retiring non-executive.	None.
Croda International	2006	CEO's contract provided for termination payment in excess of one year's salary and benefit.	CEO's contract reviewed.
Bellway	2008	Bonuses paid despite not meeting targets set.	More objective future arrangements made although the remuneration committee still have some discretion over it.
RBS	2009	Large pension for outgoing CEO while the company was experiencing a £40 billion loss.	Pension payment re-negotiated and resulted in a lump sum payment.
Shell	2009	Awarding bonuses as part of LTI despite missing performance targets.	Additional performance measures introduced in the remuneration policy.
Provident Financial	2009	High base salary increase for its executives and	None.

		introduction of deferred bonuses.	
Punch Taverns	2009	Increased pension contributions and 9 times basic salary as payoff to departing directors.	Increased communication with shareholders.
Grainger	2010	£2.9 million payoff to former CEO.	None.
SIG	2010	Increase in CEO's basic salary.	None.
21st Century Technology	2010	Generous bonuses to its directors.	None.
Easyjet	2011	£1 million fixed cash payment to the CEO.	The CEO left the company.
Robert Walters	2011	Awarded bonuses above its self-imposed guidelines.	None.
Aviva	2012	Increase in CEO basic pay and "golden handshake" bonus to new executives	Review of "golden handshake" packages, and CEO stood down.
Cairn's Ernergy	2012	Bonus pay of £3 million to the chairman.	Chairman voted out; increased dialogue with shareholders

WPP	2012	Increase in pay packet of CEO.	None.
Pendragon	2012	Proposal to raise performance related pay to 150% of base salary.	Remuneration policy was not implemented; further consultations made with the shareholders.
City of London Investment Group Plc	2013	Payment to former CEO and finance officers leaving the company after three months of service.	None.

As shown in Table 1, 22 companies saw their remuneration report voted down within the period 2003–2013. About 59 per cent of the 22 companies reacted to the shareholders' remuneration votes, demonstrating that even though the shareholder vote was non-binding, companies still reacted to it, consequently influencing the pay-setting process of the company. Some companies still changed their remuneration policy even after the remuneration policy was approved. For example, in 2009 the shareholders of Marks & Spencer's voted against the re-election of Louise Patten, the then chairman of the RC, after the company saw 10.41 per cent of votes cast against the remuneration report and 89.59 per cent **\*Comp. Law. 141** votes cast in favour of the remuneration report.<sup>9</sup> This therefore implies that, although shareholder votes were non-binding, they had a notable impact on the remuneration-setting process as the directors were trying to avoid shareholders voting against their re-election in the annual general meeting.

The [CA 2006](#) requires the results of shareholder voting in the annual general meeting to be published on the company's website.<sup>10</sup> Companies need to disclose votes for and against, and withheld votes, on all resolutions.<sup>11</sup> Before 2013, companies were not required to disclose withheld votes, making it difficult to assess shareholder involvement in the remuneration-setting process. This disclosure of withheld votes, particularly on resolutions on directors' remuneration, will make it easy to assess shareholder engagement in monitoring this remuneration. The percentages of the votes for and against published on the company's website are calculated based on the total votes cast for and against the remuneration report and do not include the withheld votes. This means that companies with a high percentage of votes in favour of their remuneration report could have a significant number of withheld votes, which could mean many things. For example, if at the time the shareholder vote on the remuneration report was non-binding, withdrawal from voting could mean that shareholders are against the remuneration report but do not see the need to vote because directors were not obliged to react on it. It could also mean that

shareholders did not want to get involved in the directors' remuneration issues. This second assumption could be supported by the fact that some of the companies used to have more withheld votes on the remuneration report than shareholder votes on any other resolution in the same annual general meeting. For example, in 2010, Tesco Plc recorded abstention votes of 741,134,361 on the remuneration report, and the highest abstention votes on other resolutions were just 64,244,132. Morrison Plc in 2006 saw abstention votes on the remuneration report of 400,565,945, and the second highest abstention votes on one of the company's resolutions was just 19,183,330. Between 2003 and 2013, most of the FTSE 100 companies had more than 70 per cent of votes in favour of the remuneration report, despite the fact that directors' pay levels continued to increase. For example, FTSE 100 directors experienced a 50 per cent pay rise in the year 2010,<sup>12</sup> and the British prime minister, David Cameron, reacted by calling on the big companies to be more transparent when they were deciding on directors' pay.<sup>13</sup> Directors' remuneration has even been termed as "corrosive" to the UK economy.<sup>14</sup> The scepticism expressed by the Cadbury Committee in 1992 over the shareholders' ability to monitor and curb directors' remuneration seems to be upheld by the fact that shareholders simply did not want to vote on directors' remuneration despite the fact that their votes had an impact on directors' pay.

Furthermore, some of the companies experienced abstention votes that were more than the votes cast against the remuneration report. For example, in 2009, the voting of the shareholders of Antofagasta on the remuneration report revealed that 930,856,310 votes were cast in favour of the remuneration report, 10,366,043 votes against and 106,877,823 abstentions. The abstentions were more than 10 times the votes cast against. Disclosing this information could make the company's directors consider why more than 10 times the number of shareholders who voted against abstained from voting. The point to note here is that the withheld votes on the remuneration report were more than the withheld votes on other resolutions for that company. This result could mean that the shareholders did not want to get involved in director remuneration matters generally, or that they did not see the need to vote considering that voting outcome was non-binding.

In a study carried out by Ian Gregory-Smith et al.,<sup>15</sup> they considered abstention votes to broadly mean dissenting votes in remuneration report resolutions. They made this assumption as many shareholders felt reluctant to vote considering that the company was not compelled to act on the outcome of the vote. Consequently, shareholders demonstrated this dissatisfaction and frustration with an act of withdrawal, as they felt that voting or withdrawal did not have any effect on the implementation of the remuneration policy. Gregory-Smith et al. worked with the dissent (votes against and abstention votes) to find out the effect of shareholder outrage on directors' pay. They found out that shareholder dissent did not have an impact on the levels of directors' pay. This contention of attributing abstention votes to dissent votes was followed by BIS.<sup>16</sup> BIS<sup>17</sup> pointed out that it was common for shareholders to abstain from voting on remuneration report to signal their dissatisfaction. It went further to say that abstention votes were very important as they could represent a large number of shareholders refusing to vote for the remuneration report. The consultation paper also indicated that

"between 2007 and 2011, there were 11 companies in the FTSE All-Share Index that saw 50% of votes cast going against the remuneration report, but including abstention shows that 19 companies actually failed to get a simple majority of all **\*Comp. Law.**

**142** shareholders. In one FTSE 250 example, the company ostensibly received 97% support for its remuneration report at the 2011 AGM. However, a closer look at the figures shows that a substantial number of shareholders abstained and taking this into account, almost one third of shareholders failed to back the report".[18](#)

If this assumption of Ian Gregory-Smith and BIS is true, then the number of abstention votes would be expected to reduce with the provision of the new law giving the shareholders a binding vote on remuneration policy.

Even though non-binding shareholder votes had a huge impact because of directors' fear that shareholders could vote against their re-election in the annual general meeting, it was not enough to motivate the shareholders to engage in the monitoring of directors' remuneration. Since the introduction of the non-binding shareholder vote on the remuneration report there was not much downward adjustment in remuneration level. Directors' remuneration continued to increase on a yearly basis. Table 2 indicates directors' pay increases between 2002 and 2014, which represents the period within which shareholders had been voting on the directors' remuneration report.

Table 2: Trend of directors' pay rise from 2002 to 2014

<b>year</b>	<b>Percentage (%) increase</b>
2002	23 <u>19</u>
2003	13 <u>20</u>
2004	16 <u>21</u>
2005	28 <u>22</u>
2006	37 <u>23</u>
2009	10 <u>24</u>
2010	55 <u>25</u>



2011	49 <sup>26</sup>
2012	12 <sup>27</sup>
2013	14 <sup>28</sup>
2014	15 <sup>29</sup>

The table indicates that directors' remuneration has continued to increase over the sample period. However, the highest pay increases were seen in 2010, with a 55 per cent increase, and 2011, with a 49 per cent pay increase. There are no hard facts or evidence to justify the high pay increases. However, the study by Ferri and Maber<sup>30</sup> on the effect of the non-binding shareholders' vote and CEO pay revealed that shareholders' say on pay reduced "reward for failure" by strengthening the pay-performance relationship.<sup>31</sup> This finding demonstrated the fact that, even though the shareholders' vote was non-binding and companies were not compelled to act on it, companies still acted upon the outcome of the vote. One reason why companies reacted on the voting outcome was because the shareholders could vote against their re-election in the AGM if they were dissatisfied with the directors' performance. Therefore, directors acted on the shareholder vote on the remuneration report as a security measure to prevent the shareholders from voting against their re-election. The study by Carter and Zamora<sup>32</sup> suggested that the board responded to shareholder votes by strengthening the pay for performance link, but not changing the salary. Although the shareholder vote was only an advisory vote, evidence suggests that voting on the remuneration report had an influence on the determination of company's directors' remuneration. As demonstrated in Table 1, most of the companies responded to the shareholder votes by reviewing the remuneration policy where necessary. Deloitte's<sup>33</sup> study on the impact of the non-binding shareholders' vote found that there had been enhanced disclosure and accountability by the companies on remuneration issues, with some changes in policies and practices on directors' remuneration (e.g. a greater percentage of the directors' pay package made up of more performance related pay). There has been a significant increase in the level of variable pay in companies, with meaningful performance conditions attached to incentive remuneration in the UK because of shareholders' say on pay. Most companies replaced share options with share grants tied to performance, with a drop in pay-out for average performance in response to investor pressure.<sup>34</sup> Limits to **\*Comp. Law. 143** the amount of share options any one director may be granted and golden parachute packages shrank to the equivalent of one year's pay. The quality of reporting on pay improved, with more explanation and disclosure.<sup>35</sup> However, there seemed to be no corresponding leap forward in company performance, which was described by Ed Miliband, the then leader of the Labour Party in the UK, as a "something for nothing".<sup>36</sup> Carter and Zamora<sup>37</sup> found that shareholders disapproved of

higher salaries and weak pay for performance sensitivity in bonus pay, and in response companies responded to negative shareholder votes by reducing excess salary and improving the pay-performance relationship. Companies react to adverse shareholder votes on the remuneration report in different ways. This indicates that although shareholders' voting powers were non-binding, they had a great impact on the remuneration determination process.

### **Shareholder voting after 2013**

The response to the non-binding shareholder vote was not impressive (as noted above, only 22 remuneration reports were voted down within the period 2003–2013). It was argued that there was therefore a need to strengthen shareholders' voting rights in order to encourage shareholder activism in directors' remuneration.

[Section 439A of the Companies Act 2006](#) requires that the remuneration policy of quoted companies be approved by the members of the company by an ordinary resolution. The outcome of the shareholders' non-binding vote was not very impressive, and the Government wanted to improve shareholder involvement in voting on directors' pay by giving the shareholders a binding vote on remuneration policy.

Shareholders have been given a binding vote only on the policy part of the remuneration report. The policy part of the remuneration report sets out the remuneration policy of each director for the future. All quoted companies are required to give notice to their members of their intention to move an ordinary resolution to approve the directors' remuneration policy at the annual general meeting.[38](#) The main aim of the binding votes on remuneration policy is to encourage better-quality engagement between companies and shareholders at an early stage in the process of devising policy.[39](#) Quoted companies are expected to seek shareholder approval on the remuneration policy at least every three years, or at the next meeting following the one where the advisory vote on the remuneration report was not passed,[40](#) or where the remuneration policy has been amended.[41](#)

The original BIS consultation paper[42](#) was for the shareholder vote to take place annually. This was changed to three-yearly when the [Enterprise and Regulatory Reform Act 2013](#) was passed. The proposal of a one-year voting right was watered down by BIS with the hope that allowing companies and shareholders the option of agreeing a three-year remuneration policy would encourage longer-term thinking on pay.[43](#) Companies will also have the option of an annual vote if that is what the companies and shareholders want.[44](#) Annual votes as opposed to three-yearly votes might destabilise management teams and encourage short-term thinking, which would consequently affect the long-term success of the company.[45](#) Annual voting might cause shareholders to be more cautious about voting against pay schemes to avoid a destabilised management, thereby risking their investments in the company.[46](#) This three-year flexibility over binding votes would allow companies to demonstrate how remuneration is aligned with company strategy.[47](#) Furthermore, three-yearly shareholder voting is intended to link pay to the success of the company as a whole and reduce the annual ratcheting up of pay.[48](#)

This deviation from the original proposal has been criticised[49](#) on the grounds that shareholder activism will be diluted in the long run, and a three-yearly remuneration report

might be difficult for shareholders to understand in terms of what directors were paid annually and why. The Labour Party criticised the deviation on the grounds that the three-yearly shareholder vote would not achieve the purpose of giving shareholders a binding vote on pay. It was argued that the shareholders' vote on pay should be held annually to be able "to hold directors' feet to the fire and ensure there is constant engagement with shareholders".<sup>50</sup> More worries were expressed that such votes might degenerate into a box-ticking exercise, with *\*Comp. Law. 144* shareholders voting on vague policies rather than policies on specific elements.<sup>51</sup> Furthermore, it was argued<sup>52</sup> that the administrative costs involved in arranging a general meeting for the board to re-submit a remuneration report that had failed might cause shareholders to vote in favour of remuneration policies just to avoid the cost. This is a change that could be regarded as unmerited because the three-yearly binding vote might not be able to curb director remuneration as expected. The three-yearly binding vote on remuneration policy might make companies draw up policies that are broad and generous as a means of avoiding any significant changes to the remuneration policy that might require a shareholder vote within the three years.<sup>53</sup> This reaction by the directors could only lead to greater increases in remuneration levels. Furthermore, within three years directors might have come and gone from the company. If the shareholders do not approve the remuneration report, the company is required to continue to use the last approved remuneration policy and seek a separate approval for any specific remuneration or loss of office payment which are not consistent with the policy; or call another meeting and put the remuneration policy to shareholder approval.<sup>54</sup> Companies are required to abide by the approved remuneration policy and to change it only with the approval of the shareholders. Any director of the company who goes contrary to this provision would be liable to account to the company for any loss, and the director who receives any payment must hold it on trust for the company.<sup>55</sup>

The BIS consultation paper<sup>56</sup> on directors' pay suggested that a threshold of between 50 and 75 per cent of the shareholder vote be required in favour of the remuneration policy before it can be approved.

However, the BIS proposals were criticised by the CBI, which warned that giving the shareholders too many voting rights would be damaging, as strategic decision-making would be left in the hands of the minority rather than the majority.<sup>57</sup> It argued that giving the shareholders a 75 per cent vote on remuneration policy would mean that decision-making about the company strategy would be in the hands of a minority of shareholders who might not represent the wider group of shareholders. The Government also recognised that, in a very small number of UK quoted companies, a single shareholder owns 25 per cent or more of the total share value and could, potentially, singlehandedly reject a special resolution on remuneration policy.

Considering the analysis made above on the effect of the non-binding shareholder vote, it could be argued that a 75 per cent shareholder voting right might not have made any difference to the ordinary shareholder resolution on directors' remuneration policy. This is because the percentage of the votes cast for or against the remuneration report were calculated only based on the total number of votes cast for and against the remuneration report. Abstention votes were not included, which as seen earlier were very high in some companies. Consequently most of the companies recorded votes in favour of the remuneration report of more than 75 per cent. For example, a study conducted by

Deloitte<sup>58</sup> revealed that, in 2013, all the FTSE 100 companies received more than 75 per cent votes in favour of their remuneration policies. The problem faced by shareholder voting is simply the fact that shareholders do not want to be involved in directors' remuneration, and it is not about the nature or level of voting percentage required to pass a resolution on directors' remuneration.

Although shareholders have been highlighted by the [Companies Act 2006](#) as being responsible for the monitoring of directors' remuneration, the effect of the binding shareholder vote has not been different from the effect of the non-binding shareholder vote. Although the binding shareholder vote forms part of the major changes on directors' remuneration made by the [Enterprise and Regulatory Reform Act 2013](#), its effect on remuneration levels has not been different from the shareholders' voting attitude experienced when shareholders had only a non-binding vote on the remuneration report. As discussed above, the non-binding vote had a notable impact on directors' remuneration, but the problem was shareholder non-activism. Even though binding shareholder votes mean that the company must act on the outcome of the voting, the voting outcome has been the same as with the non-binding vote, and shareholders' engagement does not seem to have improved. It is two years since shareholders were given a binding vote on directors' remuneration policy and a non-binding vote on the implementation report. However, since the introduction of the binding shareholder votes on directors' remuneration policy, one company (Kentz Plc in 2014)<sup>59</sup> saw both its remuneration policy and remuneration report voted down by the company's shareholders. The shareholders of Burberry Plc in 2014 also voted down its remuneration report even though the votes were non-binding.<sup>60</sup> Apart from these two companies, most of the FTSE 100 companies received more than 75 per cent **\*Comp. Law. 145** of votes in favour of their remuneration policy and the remuneration report. However, the same shareholder voting attitude witnessed when the shareholder vote was only non-binding is still repeating itself, even with the binding shareholder vote. Shareholders continue to abstain from voting on directors' remuneration. Although shareholders may have many reasons to abstain from voting on a resolution, the number of abstentions on directors' remuneration tends to suggest that shareholders do not generally want to be involved in this remuneration. For example, in 2014, Antofagasta Plc saw abstention votes of 30,654,717 and the second highest abstention votes the company saw in other resolutions was 4,341,604. Also in 2015, Tesco Plc saw abstention votes of 444,864,254 for its remuneration report and 473,362,689 for its remuneration policy, followed by only 41,064,289 abstention votes on another resolution. This article argues that, although the [Companies Act 2006](#) highlights the shareholders as being responsible for the monitoring and curbing of excessive directors' remuneration, the shareholders are unwilling to be involved in matters of director remuneration. Consequently, the desired outcome of shareholders influencing directors' remuneration has not been achieved. The Cadbury Committee's<sup>61</sup> scepticism over giving shareholders more powers on remuneration issues is seen to be justified. They predicted that many of the shareholders would simply abstain from voting, and those that voted would defer in almost every case to the judgment of directors and the remuneration committee.

## **Reasons why shareholders cannot effectively monitor directors' remuneration**

Shareholders' abstention from engaging in directors' remuneration could be explained in terms of the quantity of share ownership, the difficulty in understanding the complexity of the remuneration package and the factors that drive remuneration levels generally.

### **Ownership of UK shares**

The binding shareholder vote given to the shareholders under the [CA 2006](#) represents an important mechanism of the shareholders' voice in the UK. This is to enable shareholders of quoted companies to have a direct voice on the determination of directors' pay. The increased power given to the shareholders is aimed at encouraging the engagement of the shareholders in decision-making on directors' pay, and also at improving dialogue between the shareholders and the directors. However, the shareholders need to understand the remuneration report in order to be able to make an informed decision when voting on remuneration issues. Directors' remuneration packages are complex in nature, and the remuneration report will be made up of expert knowledge and terminology. For a shareholder to fully understand the remuneration report, they will have to either possess the expert knowledge or pay for experts to read and interpret the report for them. This comes at a cost to the shareholders, as many of them lack the time and expertise needed to understand the report. Consequently, an average shareholder who owns a small percentage of the company's shares will need to incur the cost (time and money to pay experts to interpret the report) to be able to make an informed decision on the remuneration policy when voting or, as is most likely, will simply abstain from voting.<sup>62</sup> Shareholders who do not understand the remuneration process would probably only look at the level of remuneration and what they get as dividends in order to cast a vote for or against a remuneration report. This means that for the shareholder to have a reasonable understanding of the remuneration report, information must be disclosed and in a way that will ease his or her understanding. The 21st-century remuneration packages have developed to become more complex and technical as opposed to the past century's remuneration packages. The complexity and technicality of these remuneration packages almost defeats the very purpose of the disclosure requirements, which was to provide shareholders with information on directors' remuneration. This complexity of the remuneration package is further compounded by the drivers of directors' remuneration, which include directors' peer benchmarking, the use of incentive pay, board independence, etc.

The remuneration committee and remuneration consultants have expert knowledge in the field, and they have spent a lot of time on this, meaning that it cannot be easily understood by shareholders unless they have some expert knowledge or pay experts to explain the remuneration report to them. Further, before the enactment of the [Enterprise and Regulatory Reform Act 2013](#), the absence of a standard format disclosure meant that companies could swamp shareholders with complex information.

Furthermore, shareholders' ability to have an influence on the remuneration report will depend on the proportion of the votes which they hold. Shareholder voting is therefore predominantly aimed at institutional investors because they hold large numbers of shares in a company, much more than an ordinary shareholder. Institutional investors have an advantage over individual investors because they have the expertise needed to understand the remuneration report, and if not they will be capable of incurring the cost of hiring an

expert. Also, institutional investors are able to form a coalition with other institutional investors to use their votes for or against the remuneration report of the company.

However, despite the concentration of equity ownership in the hands of institutions, shareholder voting on the directors' remuneration report has not increased. Only a small proportion of FTSE 100 companies shares are held *\*Comp. Law. 146* by UK long-term investors. The majority of FTSE 100 companies' shares are in the hands of overseas shareholders (as shown in Table 3) or short-terminist investors such as hedge funds.[63](#)

Table 3: Beneficial ownership of UK shares by value (2014)

<b>Sector</b>	<b>All companies</b>
Rest of the world	53.8
Insurance companies	5.9
Pension funds	3.0
Individuals	11.9
Unit trust	9
Investment trusts	1.7
Other financial institutions	7.1
Charities, churches, etc.	1.2
Private non-financial companies	2.0

Public sector 1	2.9
Banks	1.4
Total	100.0
<i>Source: Office for National Statistics — UK share ownership 2014</i>	

Table 3 indicates that more than 50 per cent of UK shares are held by overseas shareholders, who may not be able to monitor directors' remuneration in all companies because of the large number of companies they may have in their portfolio. Dong and Ozkan,<sup>64</sup> studying institutional investors' and directors' pay in UK companies, found that there exist two classes of institutional investors, one dedicated and the other transient. Their findings showed that the dedicated institutional investors do restrain the level of directors' pay and strengthen the pay-performance relationship. These dedicated institutional investors use their expertise and votes to monitor the management. The transient institutional investors make no appreciable difference either to the pay levels of the director remuneration or to strengthening the pay-performance relationship, indicating that they have failed to regulate director remuneration.<sup>65</sup>

Shareholder pro-activism can greatly reduce the influence shareholders could have on the pay determination process in a company. This disengagement by the shareholders also reduces the importance of the voting powers vested in the shareholders on remuneration matters. Consequently, a binding shareholder vote may not be more effective than a non-binding shareholder vote, and the setting of directors' remuneration would still be inappropriately regulated. There is no significant change in shareholders' voting attitude on directors' remuneration resolutions in the annual general meeting. This could be taken to mean that shareholders do not simply want to get involved in matters as complex as directors' remuneration.

### **Complexity of directors' pay package**

For shareholders to be able to make an informed decision on directors' remuneration and to vote in the general meeting, they have to understand the remuneration report, how pay is set, the technicalities, and how it translates into the final amount that directors receive at the end of the year. The directors' remuneration package is made up of several components,<sup>66</sup> the main ones being base salary, annual bonuses and long-term incentive plans. A base salary is the contractual amount paid to a director on a monthly basis, and in the case of an executive director, it includes directors' fees, even if these are decided and disclosed separately.<sup>67</sup> This element is not related either to performance of the company or to the performance of the individual director.<sup>68</sup> Base salary is a key component in



directors' pay because most components of the remuneration package are measured relative to base salary. For example, Tesco Plc's remuneration policy for annual bonuses is to award up to 250 per cent of base salary.

Annual bonuses were and still are used as a motivation for directors to achieve a higher level of performance.<sup>69</sup> Annual bonuses are obtained upon achieving a performance target set by the company for the directors.<sup>70</sup> Bonus schemes provide directors with the incentive to perform better and therefore are regarded as a mechanism for improving directors' performance. Director performance can be difficult to determine, but bonus remuneration must reflect some kind of performance criteria for it to be meaningful. The company would have to set a performance target which the directors would have to achieve, and a performance measure with which the performance would be determined. However, for the shareholders to understand annual bonuses and how they are set, they will have to understand performance measures, considering that there are many that exist. Having to understand all the performance measures and judging whether the company has chosen the appropriate measure and whether they have set the right target will require expert knowledge. Some of the shareholders can find the information overwhelming, and because they cannot understand it they decide to abstain from voting. **\*Comp. Law. 147**

There has been a massive increase in bonus payments over the years, ranging from practically nothing to millions of pounds.<sup>71</sup> Directors can receive bonus pay that is more than 100 per cent of the base salary,<sup>72</sup> although there are EU rules that have stopped this, primarily in the banking sector. Annual bonuses can have a massive effect on the total remuneration package of a director as they can increase directors' remuneration significantly. For example, in 2013, Gulliver Stuart Thomson, the CEO of HSBC Holdings Plc, had a base salary of £1,250,000 and a bonus pay of £6,428,000, which was 514.24 per cent of his base salary.<sup>73</sup>

Long-term incentive plans (LTIPs) take the form of cash or a grant of shares that become transferable to the director only upon attainment of certain performance objectives.<sup>74</sup> Companies use LTIPs as a means to encourage and reward long-term performance, and thus align the interest of the directors more closely with those of the shareholders.<sup>75</sup> LTIPs require the fulfilment of certain performance criteria over a period of time.<sup>76</sup> The difficulty with understanding LTIPs is based on how the performance targets are set and the performance measures used in measuring performance. For example, in 2003, HSBC Banking Group had an LTIP scheme that rewarded directors if the firm could clear a performance hurdle of earnings per share (growth 2 per cent above an average earnings per share rate) adjusted upwards for inflation in Hong Kong (50 per cent weighting), UK (35 per cent weighting), and the US (15 per cent weighting). If the hurdle was cleared, the number of shares distributed to the director would depend upon total shareholder return in a comparator group of nine companies (50 per cent weighting), a "top 20" of banks (25 per cent weighting) and an index of 300 other banks (25 per cent weighting). If the HSBC's total shareholder return performance was above the 50th percentile of the composite group, the director received shares in full, with an additional 20 per cent of the full award if the performance was in the top quartile. Understanding the complexity of this LTIP required the shareholders of the HSBC to track the share prices of 329 companies to estimate the relative performance of HSBC's total shareholder return in the past, which was a very difficult task that no shareholder would be willing to do, except maybe institutional investors.<sup>77</sup> Shareholders would need to possess expert knowledge to be able



to understand this report or pay for an expert to read and interpret the report for them.

### **Drivers of directors' remuneration**

One of the reasons why shareholders may not want to get involved in directors' remuneration is because of the drivers of that remuneration. Shareholders are expected to have a good understanding of all the factors that drive directors' remuneration so as to be able to make an informed judgment in the annual general meeting. Among the drivers of directors' remuneration are globalisation and the director labour market, board independence and the remuneration disclosure requirement.

The first factor to be discussed is globalisation and the director labour market. The globalisation of the labour market, business operations and capital markets produces incentives that result in a convergence in remuneration practices worldwide.<sup>78</sup> Directors in the US are the highest paid in the world.<sup>79</sup> This means that any non-US company facing US competitors, possessing US operations, employing a CEO capable of managing a US corporation or exposed to the US legal environment has incentives to align their pay practices with those of the US companies.<sup>80</sup> The UK and other countries pay their directors less than their US counterparts; however, their interaction with their US market pushes up director remuneration levels. Gerakos et al.,<sup>81</sup> studying 416 publicly traded UK companies over 2003–2007, found that UK firms that interact with the US market are influenced by US pay practices, with total remuneration increasing in firms exposed to the US market and the presence of US-based operations. They found that the total remuneration of these companies had a direct relationship with the percentage sales derived from the US market, with firms with greater sales using more incentive-based pay.

It has been argued that the trade of UK companies with US companies puts pressure on the UK companies to offer similar pay packages to their directors to prevent them from taking up similar positions in peer companies with lucrative firms. However, a study by the High Pay Centre found out that only 0.8 per cent of UK companies recruited directors from outside the UK, while 80 per cent of the directors were promoted from within the company.<sup>82</sup> Although the use of international talent is very limited, it might still have an impact on directors' remuneration \***Comp. Law. 148** levels. One reason why US directors are the highest paid in the world is because US directors' pay packages are highly incentivised as opposed to non-US companies.<sup>83</sup>

The growing internationalisation of the director labour market also accounts for increases in director pay packages.<sup>84</sup> The international director community has produced examples of directors using their business skills in countries other than their own. This is very common in companies of dual/cross-listing in two or more share markets. Directors will generally want a remuneration package that is at least equivalent to what they can get elsewhere.<sup>85</sup> Bebchuk and Fried<sup>86</sup> viewed this design of directors' remuneration packages as the result of opportunistic exploitation of managerial power. They suggested that directors' remuneration was subject to manipulation by the directors, using the managerial labour market to justify their pay package. The study by Gregory-Smith and Main,<sup>87</sup> considering the participation constraint in the director labour market using a sample of 953 UK companies over the period 1995–2008, demonstrated that directors are more likely to move company when their pay is low. The mobility of directors is more particular when

they are paid less than prevailing market conditions suggest is possible. The mobility of directors leads to increases in remuneration levels, with the greatest improvement falling on the directors that switch companies. For example, in 2010, Marc Bolland left his former company (Morrisons Plc) to join Marks & Spencer Plc after the latter offered him a more lucrative pay package of £15 million. In his first year, he was to receive at least £8.5 million, a sum that included £7.5 million compensation for lost bonuses and shares that he would have received in his old job. On top of his basic salary, he could earn a bonus worth up to £2.5 million. The package also included an "exceptional" award of shares worth nearly £4 million.[88](#)

The fear of companies losing top management directors as a result of the global director talent market can increase the level of director pay in the UK. For example, in 2012 the Royal Bank of Scotland (RBS) awarded its then CEO, Mr Hester, a £963,000 bonus that was regarded as excessive and undeserving (he eventually gave it back), on top of his £1.2 million base salary. The company justified the bonus award by arguing that there was a real fear of losing Mr Hester and the rest of the board members had they been paid less.[89](#) However, a report by the High Pay Centre on the contrary found out that lower pay does not drive directors overseas, as 80 per cent of director appointments were promotions from within the company.[90](#)

UK companies recruiting from the US will definitely pay more to attract, motivate and retain their directors, and this could ratchet up director pay. The reason why the UK would want to recruit directors from the US is because the US has a comparatively deep talent pool of directors, and UK companies might want to take advantage of highly talented and experienced directors.[91](#) The study by Gerakos et al.[92](#) found that UK companies with directors that have US board experience tend to pay directors more than companies without directors with that experience. The internationalisation of the labour market has caused a significant convergence in directors' pay between the UK and other countries.[93](#) UK companies, as well as other non-US companies, may use the fear of losing their directors to defend and justify the significant increase in directors' pay.[94](#)

The second factor driving directors' remuneration is board independence. Increases in director remuneration are also driven by a weak or compromised board, as they might give in to the directors' demands for higher pay as opposed to an independent and competent board.[95](#) In the UK, the board contains sub-committees that are responsible for different areas of the company. Among these committees is the remuneration committee. The remuneration committee is responsible for setting the pay of all directors and the chairman of the company.[96](#) This committee should be made up of independent non-director directors (NEDs). The independence of the NEDs has been criticised, on the grounds that the appointment of NEDs is still largely in the hands of the board as a whole, even though the nomination committee is supposed to make the appointment process more transparent and independent.[97](#) Furthermore, the articles of many companies (including the model articles[98](#)) allow the board to appoint a director, indicating that the board still **\*Comp. Law. 149** ultimately appoints the NEDs. In some cases NEDs are appointed by the management, and this makes them susceptible to management as they owe their pay to the directors.[99](#) NEDs feel a sense of divided loyalty as they attempt to fulfil their fiduciary duty to the company while maintaining an amicable relationship with the directors as a result of whose opinion they are appointed to the board.[100](#) The effect of this on directors' pay will be an increase in pay levels as the NEDs try to please the directors and protect their

position on the board.[101](#)

The last factor to be discussed that drives directors' remuneration is remuneration disclosure. It has been argued by Iacobucci[102](#) that the enhanced requirement for the disclosure of directors' remuneration in the company's annual report has been a significant contributor to pay increases. Shareholders will need to read many other companies' remuneration reports to inform themselves about pay levels across other companies. This is because remuneration disclosure improves access to market comparator information for both the director and the board, and could strengthen directors' bargaining power.[103](#) Disclosure requirements increase the pressure on directors to set pay packages that are more sensitive to the company's performance.[104](#) The remuneration committee uses directors' remuneration data from different companies to make their own assessment of appropriate external relativities to benchmark their directors' pay levels. Disclosure makes this data available, and each company aims to reward its directors at the median or upper quartile, which places autonomous pressure on the remuneration levels of directors in all companies. The media, newspapers and magazines always list the remuneration of the top-earning directors, and directors use this information to establish their respective expectations and negotiating stances.[105](#)

## **Conclusion**

Directors' remuneration has been a contentious issue in the UK since the early 1990s. The [Companies Act 2006](#) is reticent about the regulation of directors' remuneration as it avoids involvement in the management issues of a company. The [Companies Act 2006](#) makes provisions that place the responsibility for the monitoring and curbing of excessive directors' remuneration on the shareholders. It vests the shareholders with a binding vote on remuneration policy and a non-binding vote on the remuneration report. Since 2002, when shareholders were given a non-binding vote on the remuneration report, they have consistently demonstrated a rather uninterested attitude. This can be demonstrated by the number of shareholders abstaining particularly from resolutions at the annual general meetings that are concerned with the remuneration report. Between the years 2002 and 2013, shareholders had only non-binding votes on remuneration reports. Although it was only an advisory vote, companies reacted on the outcome of the votes to prevent the shareholders from voting the directors out of the company. Despite this outcome, shareholders were reluctant to use the powers they had to monitor and curb excessive directors' remuneration. This non-involvement made the Government give the shareholders a three-year binding vote on remuneration policy, hoping to motivate the shareholders to become more involved. Since that time, voting results and shareholder involvement have not improved. Shareholders continue to abstain from voting on pay resolutions at the annual general meeting. The scepticism expressed by the Cadbury Committee in 1992 about giving shareholders powers to make decisions on directors' remuneration has been confirmed. They predicted that most of the shareholders would simply abstain from voting, and abstention votes are very high in some companies, those votes mostly only recorded in resolutions on directors' remuneration. This article suggests that the [Companies Act 2006](#) should make basic provisions on directors' remuneration because the shareholders will not be able to. The shareholders' inability to monitor directors' remuneration is a result of the complexity of the remuneration package and the

technicalities involved in determining pay, as well as the drivers of directors' remuneration.

### **Dr Ernestine Ndzi**

Comp. Law. 2017, 38(5), 139-149

---

- \*. University of Hertfordshire, Email: e.ndzi@herts.ac.uk.
- 1. *"Fat Cats in the Dock", The Economist, 4 March 1995.*
- 2. *D. Cohen, "Executive Gluttony under Attack", Financial Times, 26/27 November 1994, p.3.*
- 3. *"Derailing the Gravy Train", Sunday Times, 22 January 1995.*
- 4. *"Why is Chief Executives' Pay not Linked to Performance?", BBC News, 9 February 2012.*
- 5. The results of the activities of an organisation or investment over a given period of time.
- 6. Paul Gregg, Sarah Jewell and Ian Tonks, "Executive Pay and Performance: Did Bankers' Bonuses Cause the Crisis" (2012) 12(1) I.R.F. 89; Charlotte Villiers, "Controlling Executive Pay: Institutional Investors or Distributive Justice?" (2010) 10(2) J.C.L.S. 309, 310.
- 7. *"Pay Gap between Executives and Employees is 'Widening'", BBC News, 18 November 2013.*
- 8. [CA 2006 s.168.](#)
- 9. *J. Finch, "Race Hots Up to Succeed Stuart Rose as Marks & Spencer's Chief Executive", Guardian, 9 September 2009.*
- 10. [CA 2006 s.341.](#)
- 11. [Large and Medium-size Companies and Groups \(Accounts and Reports\) Regulations 2008, Sch.8, Pt 3, reg.23.](#)
- 12. *"Directors' Pay Rose 50% in Past Year, Says IDS Report", BBC News, 28 October 2011.*
- 13. *"Directors' Pay Rose 50% in Past Year, Says IDS Report", BBC News, 28 October 2011.*
- 14. *"High Pay of UK Executives Corrosive, Report Says", BBC News. 22 November 2011.*
- 15. I. Gregory-Smith, S. Thompson and P.W. Wright, "Outrage or Mild Irritation: Don't Shareholders Care About CEO Pay?", Paper Presented at the 9th International Corporate Governance Conference, Birmingham (2010).
- 16. *BIS, "Executive Pay: Shareholder Voting Rights Consultation" (2012).*
- 17. *BIS, "Executive Pay" (2012), para.87.*
- 18. *BIS, "Executive Pay" (2012), para.87.*
- 19. *Julia Finch, "Britain's Soaring Boardroom Pay Revealed", Guardian, 2 October 2006.*
- 20. *Finch, "Britain's Soaring Boardroom Pay Revealed", Guardian, 2 October 2006.*
- 21. *Finch, "Britain's Soaring Boardroom Pay Revealed", Guardian, 2 October 2006.*
- 22. *Julia Finch, "The Boardroom Bonanza, Vote: Are They Worth It?", Guardian, 29 August 2007.*
- 23. *Finch, "The Boardroom Bonanza", Guardian, 29 August 2007.*

24. *Julia Finch and Simon Bowers, "Executive Pay Keeps Rising Guardian Survey Finds", Guardian, 14 September 2009.*
25. *"FTSE 100 Executive Pay Rise 55% Survey Says", BBC Business News, 29 October 2010.*
26. *Jill Treanor, "FTSE 100 Directors' Earnings Rose by Half Last Year", Guardian, 28 October 2011.*
27. *"Executive Pay: UK's Top Bosses 'See 12% Rise'", Sky News, 3 December 2012.*
28. *High Pay Centre, Has Excessive Pay Gone Too Far? (High Pay Centre, 2014).*
29. *Eddie Keogh, "British executive salaries surpass average worker's 'over 160 times'" (14 July 2014), Reuters, <https://www.rt.com/uk/172716-income-inequality-widening-gap/> [Accessed 9 March 2017].*
30. *F. Ferri and D. Maber, "Say on Pay Vote and CEO Compensation: Evidence from the UK" (2013) 178 Review of Finance 527, [http://www.nber.org/public\\_html/confer/2008/si2008/CL/ferri.pdf](http://www.nber.org/public_html/confer/2008/si2008/CL/ferri.pdf) [Accessed 9 March 2017].*
31. *Ferri and Maber, "Say on Pay Vote and CEO Compensation" (2013) 178 Review of Finance 527, [http://www.nber.org/public\\_html/confer/2008/si2008/CL/ferri.pdf](http://www.nber.org/public_html/confer/2008/si2008/CL/ferri.pdf) [Accessed 9 March 2017].*
32. *Mary Carter and Valentina Zamora, "Shareholder Remuneration Votes and CEO Compensation Design" AAA Management Accounting Section Meeting Paper (2008), pp.1-37.*
33. *Deloitte, "Report on the Impact of the Directors' Remuneration Report Regulation: A Report for the Department of Trade and Industry", Deloitte, Research Report (2004), [http://www.deloitte.com/view/en\\_GB/uk/services/tax/c2ef344d9a0fb110VgnVCM100000ba42f00aRCRD.htm](http://www.deloitte.com/view/en_GB/uk/services/tax/c2ef344d9a0fb110VgnVCM100000ba42f00aRCRD.htm) [Accessed 20 November 2011].*
34. *S. Davies, "Does 'Say on Pay' Work? Lessons on Making CEO Compensation Accountable" (2007) 1 Policy Briefings 1, 11.*
35. *Davies, "Does 'Say on Pay' Work?" (2007) 1 Policy Briefings 1, 11.*
36. *"Directors' Pay Rose 50% over Past Year, Says IDS Report", BBC News, 28 October 2011.*
37. *M.E. Carter and V. Zamora, "Shareholder Remuneration Votes and CEO Compensation Design" (1 November 2007). AAA 2008 MAS Meeting Paper. Available at <https://ssrn.com/abstract=1004061> [Accessed 29 March 2017].*
38. [Companies Act 2006 s.439A.](#)
39. *BIS, Executive Pay (2012), para.65.*
40. [Companies Act 2006 s.439A\(1\)](#) and [\(2\)](#).
41. [Companies Act 2006 s.439A\(7\)\(ii\)](#).
42. *BIS, Executive Pay (2012), para.94.*
43. *Nick Thornsby, "Shareholders to get Binding Votes on Executive Pay under Cable Reforms", Liberal Democrat Voice, 21 June 2012.*
44. *Thornsby, "Shareholders to get Binding Votes on Executive Pay under Cable Reforms", Liberal Democrat Voice, 21 June 2012.*
45. *Kate Burges, "ABI Backs Plan for Binding Vote", (2012), Financial Times, <https://www.ft.com/content/afacd8fe-93a5-11e1-baf0-00144feab49a> [Accessed 23 January 2014].*
46. *David Oakley and Jim Pickard, "Cable to Water Down Top Pay Plan", FT Business, 9 June 2012.*
47. *Oakley and Pickard, "Cable to Water Down Top Pay Plan", FT Business, 9 June 2012.*

48. Catherine Potter, "Binding Shareholder Vote on Executive Remuneration — Do the Government's Recent Proposal Go Far Enough?" (13 November 2012), <http://prezi.com/nd8gjdzhgf77/binding-shareholder-vote-on-executive-remuneration-do-the-governments-recent-proposals-go-far-enough/> [Accessed 9 March 2017].
49. Potter, "Binding Shareholder Vote on Executive Remuneration" (13 November 2012), <http://prezi.com/nd8gjdzhgf77/binding-shareholder-vote-on-executive-remuneration-do-the-governments-recent-proposals-go-far-enough/> [Accessed 9 March 2017].
50. Steve Tolley, "Labour Says 'Crafty' Cable is Watering down Shareholder Power Rules", *Money Marketing*, 13 June 2012.
51. Thornsby, "Shareholders to get Binding Votes on Executive Pay under Cable Reforms", *Liberal Democrat Voice*, 21 June 2012.
52. Potter, "Binding Shareholder Vote on Executive Remuneration" (13 November 2012), <http://prezi.com/nd8gjdzhgf77/binding-shareholder-vote-on-executive-remuneration-do-the-governments-recent-proposals-go-far-enough/> [Accessed 9 March 2017].
53. Ruth Sunderland, "Three-year Binding Votes Won't Curb Executive Pay, But Public Outrage Just Might" (21 June 2012), *Mailonline*, <http://www.dailymail.co.uk/debate/article-2162707/Three-year-binding-votes-wont-curb-executive-pay-public-outrage-just-might.html> [Accessed 9 March 2017].
54. [Companies Act 2006 s.439A\(2\)](#).
55. [Companies Act 2006 s.226E](#).
56. BIS, *Executive Pay (2012)*, para.94.
57. States News Service, "CBI Responds to Launch of BIS Executive Pay Consultation" (4 March 2012), <https://www.highbeam.com/doc/1G1-282950209.html> [Accessed 29 March 2017].
58. Deloitte, "Directors' Remuneration in FTSE 100 Companies — The Story of the 2013 AGM Season So Far" (2013), p.4
59. Jill Treanor, "Kentz shareholders first to vote down pay policy and remuneration report", *Guardian*, 16 May 2014.
60. Zoe Wood, "Burberry shareholders revolt over Christopher Bailey's pay package", *Guardian*, 11 July 2014.
61. Committee on the Financial Aspects of Corporate Governance, *Report of the Committee on the Financial Aspects of Corporate Governance (London; Gee Publishing, 1992)*, para.4.43.
62. Lee Roach, "The Directors' Remuneration Report Regulation 2002 and the Disclosure of Executive Remuneration" (2004) 25 *Company Lawyer* 141,144.
63. Sunderland, "Three-Year Binding Votes Won't Curb Executive Pay, But Public Outrage Just Might" (21 June 2012), *Mailonline*, <http://www.dailymail.co.uk/debate/article-2162707/Three-year-binding-votes-wont-curb-executive-pay-public-outrage-just-might.html> [Accessed 9 March 2017].
64. M. Dong and A. Ozkan, "Institutional Investors and Director Pay: An Empirical Study of UK Companies" (2008) 18 *J. of Multi. Fin. Manag.* 16.
65. Villiers, "Controlling Executive Pay" (2010) 10(2) *J.C.L.S.* 309.
66. Which includes benefits and perks; dividends, restricted shares, etc.
67. A.P. Williams, *Just Reward? The Truth about Top Executive Pay (Clays Ltd, 1994)*, p.107.

68. *Christine A. Mallin, Corporate Governance, 4th edn (Oxford: Oxford University Press, 2007), p.204.*
69. *Williams, Just Reward? (1994), p.109.*
70. *M. Conyon, Directors' Pay in UK Plcs: A Guide to Executive Pay Determination (Chartered Institute of Personnel Development 2000), p.2.*
71. Alistair Bruce, Rodion Skovoroda, Jay Fattorusso and Trevor Buck, "Executive Bonus and Firm Performance in the UK" (2007) 40(3) L.R.P. 280, 282.
72. *Nick Fletcher, "Executive pay rises while shareholder earnings fall, says MM&K survey", Guardian, 5 July 2010.*
73. Details obtained from the Morningstar Company Intelligence database, <http://companyintelligence.morningstar.com/guru/searching/directors/remuneration.do> [Accessed 10 March 2017].
74. *Peter Pope and Steven Young, "Executive Remuneration: an Investor's Guide", [http://www.manifest.co.uk/reports/remuneration/pope\\_and\\_young\\_executive\\_remuneration.html#The Components of Executive Pay](http://www.manifest.co.uk/reports/remuneration/pope_and_young_executive_remuneration.html#The%20Components%20of%20Executive%20Pay) [Accessed 13 March 2011].*
75. Christopher Pass, Andrew Robinson and Damian Ward, "Performance criteria of corporate option and long-term incentive plans: a survey of 150 UK companies 1994–1998 (2000) 38(2) Management Decision 130.
76. Trevor Buck, Alistair Bruce, Brian G.M. Main and Henry Udueni, "Long-Term Incentive Plans, Executive Pay and UK Company Performance" (2003) 40(7) J.O.M.S. 1709, 1710.
77. Buck et al., "Long-Term Incentive Plans, Executive Pay and UK Company Performance" (2003) 40(7) J.O.M.S. 1709, 1711–1712.
78. *Richard Higgott and Simon Reich, "Globalisation and Sites of Conflicts: Towards Definition and Taxonomy", CSGR Working Paper No.01/98 (1998), pp.1, 7.*
79. Brian Cheffins and Randall Thomas, "The Globalisation (Americanization?) of Executive Pay" (2004) 1(2) Berkeley Bus. L.J. 223, 243.
80. *Joseph Gerakos, Joseph Piotroski and Suraj Srinivasan, "Globalisation and Executive Remuneration: An Analysis of Pay Practices in UK Companies" (2009), <http://www.hbs.edu/units/am/pdf/Srinivasan.pdf> [Accessed 31 October 2011].*
81. *Gerakos, Piotroski and Srinivasan, "Globalisation and Executive Remuneration" (2009), <http://www.hbs.edu/units/am/pdf/Srinivasan.pdf> [Accessed 31 October 2011].*
82. *High Pay Centre, "The Myth of Global High Pay Talent Market" (11 February 2013).*
83. *Towers Perrin, "Worldwide Total Remuneration, 2001–2002" (2002).*
84. Brian Cheffins and Randall Thomas, "The Globalisation (Americanization?) of Executive Pay" (2004) 1(2) Berkeley Bus. L.J. 223, 256.
85. *Marc Gabarro, "Top Executive Mobility and Firm Specific Skills", Job Market Paper (2010), [http://phd.london.edu/mgabarro.phd2006/JMP\\_Gabarro.pdf](http://phd.london.edu/mgabarro.phd2006/JMP_Gabarro.pdf) [Accessed 10 March 2017].*
86. *Lucian Bebchuk and Jesse Fried, Pay Without Performance: The Unfulfilled Promise of Executive Compensation (Cambridge, MA: Harvard University Press, 2004); see also Bebchuk and Fried "Pay Without Performance: The Unfulfilled Promise of Executive Compensation: Part II: Power and Pay", UC Berkeley Public Law Research Paper No.537783 (February 2004).*
87. *Ian Gregory-Smith and Brian G.M. Main, "Testing the Participation Constraint in the Executive Labour Market" (2013), [http://homepages.ed.ac.uk/mainbg/Files/jobmoves2013\\_08\\_27.pdf](http://homepages.ed.ac.uk/mainbg/Files/jobmoves2013_08_27.pdf) [Accessed 10 March*



- 2017].
- [88.](#) Zoe Wood and Jill Treanor, "The £15m Shopkeeper — Golden Hello for New M&S Boss Marc Bolland", *Guardian*, 1 February 2010.
  - [89.](#) "RBS Chief Stephen Hester's £963,000 Bonus Criticised", *BBC News*, 27 January 2012, <http://www.bbc.co.uk/news/uk-politics-16752358?print=true> [Accessed 10 March 2017].
  - [90.](#) High Pay Centre, "Global CEO Appointments: A Very Domestic Issue" (12 February 2013).
  - [91.](#) Cheffins and Thomas, "The Globalisation (Americanization?) of Executive Pay" (2004) 1(2) *Berkeley Bus. L.J.* 223, 256.
  - [92.](#) Gerakos, Joeph Piotroski and Srinivasan, "Globalisation and Executive Remuneration" (2009), <http://www.hbs.edu/units/am/pdf/Srinivasan.pdf> [Accessed 31 October 2011].
  - [93.](#) Cheffins and Thomas, "The Globalisation (Americanization?) of Executive Pay" (2004) 1(2) *Berkeley Bus. L.J.* 223, 257.
  - [94.](#) Peter Martin, "More Than Their Job's Worth", *Financial Times*, 15 May 1993, p.8.
  - [95.](#) Productivity Commission, "Executive Remuneration in Australia", Report No.49, Final Inquiry Report (Melbourne, 2009), p.91.
  - [96.](#) FRC, *The UK Corporate Governance Code (FRC, 2012)*, para.D.2.2.
  - [97.](#) David Kershaw, *Company Law in Context: Text and Materials (Oxford: Oxford University Press, 2012)*, p.292.
  - [98.](#) [Companies \(Model Articles\) Regulations 2008, Pt 2, reg.17\(1\)\(b\).](#)
  - [99.](#) R. Esen, "Managing and Monitoring: The Dual Role of Non-executive Directors on UK and US board" [2000] *I.C.C.L.R.* 202, 205.
  - [100.](#) Esen, "Managing and Monitoring" [2000] *I.C.C.L.R.* 202, 205.
  - [101.](#) Esen, "Managing and Monitoring" [2000] *I.C.C.L.R.* 202, 211.
  - [102.](#) Edward Iacobucci, "The Effects of Disclosure on Executive Compensation" (1998) 48(4) *U. Tor. L.J.* 489, 503.
  - [103.](#) Iacobucci, "The Effects of Disclosure on Executive Compensation" (1998) 48(4) *U. Tor. L.J.* 489.
  - [104.](#) Iacobucci, "The Effects of Disclosure on Executive Compensation" (1998) 48(4) *U. Tor. L.J.* 489, 505.
  - [105.](#) Productivity Commission, "Executive Remuneration in Australia", Report No.49, Final Inquiry Report (2009), p,97.