

# ARE REMUNERATION CONSULTANTS INDEPENDENT?



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## About the High Pay Centre

The High Pay Centre is an independent non-party think tank established to monitor pay at the top of the income distribution and set out a road map towards better business and economic success.

We aim to produce high quality research and develop a greater understanding of top rewards, company accountability and business performance. We will communicate evidence for change to policymakers, companies and other interested parties to build a consensus for business renewal.

The High Pay Centre is resolutely independent and strictly non-partisan. It is increasingly clear that there has been a policy and market

failure in relation to pay at the top of companies and the structures of business over a period of years under all governments. It is now essential to persuade all parties that there is a better way.

The High Pay Centre was formed following the findings of the High Pay Commission. The High Pay Commission was an independent inquiry into high pay and boardroom pay across the public and private sectors in the UK, launched in 2009.

For more information about our work go to **[highpaycentre.org](http://highpaycentre.org)**

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**June 2015**

## Introduction

There is a clear conflict of interest involved in providing advice on matters that could be of direct personal benefit to directors whilst at the same time providing services to the company which are commissioned by these same individuals.

In October 2013 new UK pay regulations came into force which required UK-listed companies to disclose previously undisclosed details of the consultancy arrangements in place for supporting their executive pay structures.<sup>1</sup> A new requirement was imposed forcing companies to state whether and how the remuneration committee satisfied itself that advice received that assisted the committee's considerations was objective and independent.<sup>2</sup>

The inclusion of new disclosure requirements was inspired by concern over the independence of the advice being received and new requirements were introduced to disclose how the remuneration committee satisfied itself that the advice was independent.

The same concerns over independence of advice by remuneration consultants had been expressed in 2009 by the Walker Review,<sup>3</sup> a review of corporate governance in UK banks and other financial industry entities, following the earlier banking crisis. The Walker review's consultation paper from July 2009 provided a summary of the perceived problems around remuneration consultancy. Amongst these concerns Sir David Walker cited *"possible conflicts of interest and concerns as to independence where the consultant is part of a group that has other fee-paying relationships with the entity to which remuneration advice is being provided"*

In response to an explicit recommendation in the review, the firms providing remuneration services drew up a code of best practice.<sup>4</sup> Members of the Remuneration Consultants Group (RCG) were expected to sign up to a set of best practice principles providing they fulfilled the group's eligibility criteria.<sup>5</sup> ■

<sup>1</sup> Large and Medium Sized Companies and Groups (accounts and reports) amendment regulations 2013. Schedule 8 Part 3 Para 22.

<sup>2</sup> *ibid*

<sup>3</sup> [http://webarchive.nationalarchives.gov.uk/20130129110402/http://www.hm-treasury.gov.uk/d/walker\\_review\\_consultation\\_160709.pdf](http://webarchive.nationalarchives.gov.uk/20130129110402/http://www.hm-treasury.gov.uk/d/walker_review_consultation_160709.pdf)

<sup>4</sup> <http://www.remunerationconsultantsgroup.com/assets/Docs/RCG%20Code%20of%20Conduct%202013.pdf>

<sup>5</sup> Any consulting firm, or individual acting as a sole trader, named in the relevant Directors' Remuneration Reports of at least one FTSE350 company is eligible to become a registered member of the Remuneration Consultants Code (RCG)

# Executive Summary

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- > Almost all of the companies buying remuneration services from Remuneration Consultant Code (RCG) signatories were also employing the same firm to provide additional services.
- > The value of these other commercial relationships is unclear, due to poor disclosure of fees.
- > Some companies fail to disclose a fee for each of the firms providing services to the remuneration committee. This appears to be in direct contravention of the legal requirement to do so.
- > More than half the companies in our sample used an audit firm to provide remuneration services.
- > Some companies fail to identify all of the firms whose services were relied upon for remuneration advice.
- > Not all organisations providing services to remuneration committees are RCG code signatories.
- > Five cross-selling remuneration consultants accounted for 84% of all fees paid by sample companies for remuneration services. The five firms that only provided remuneration advice accounted for just 13% of fees paid. ■

## Independence of remuneration advice

2014 was the first year in which the new independence and fee disclosure requirements for remuneration consultancy operated. Companies reporting against the new regulations (some have now reported twice) commonly cite use of an RCG code signatory as sufficient evidence to satisfy the legal requirement to report that “the remuneration committee has satisfied itself that the advice received was objective and independent”. Experian’s 2014 disclosure was typical:

**“Towers Watson, Kepler and Deloitte LLP are members of the Remuneration Consultants Group and as such voluntarily operate under the Code of Conduct in relation to executive remuneration consulting in the UK. Accordingly the Committee was satisfied that their advice was objective and independent.”**

2013 Annual report Experian.

The RCG code is accompanied by good practice guidance which directly addresses the conflict of interest issue. In an acknowledgement that fees earned from work unrelated to remuneration may represent a conflict of interest, the guidance calls for disclosure of all costs related to work done by a remuneration service provider including costs of services provided other than to the remuneration committee.

Paragraph 11 of the RCG good practice guidance states:

**“In order to be aware of and mitigate any potential conflicts of interest, when the Consultant is appointed as principal advisor to the Remuneration Committee, the Committee Chair should agree with the Consultant a set of disclosures.....”**

The RCG Guidance goes on to say that;

**“Information should be available on: the areas on which the Consultant is engaged to advise the Remuneration Committee and any areas where it has been agreed that the Consultant should not provide advice;**

**the scope and cost of work provided by the Consultant’s firm to the company, or senior executives of the company, in addition to work performed directly for the Remuneration Committee. The Consultant should normally report on an annual basis the approximate split of the value of the work done for the Remuneration Committee and for executive management to the Remuneration Committee”**

It is worth noting that the RCG guidance limits recommended disclosures to the remuneration committee, which leaves open the possibility that the guidance allows for shareholders to be unaware of the information provided.

It is also worth noting that the guidance is careful to give responsibility for these disclosures only to the “principal advisor.” As

can be seen from the table below, half of the sample companies used more than one advisor and it is not always clear which advisor should be considered as the firm to which the RCG guidance applies.

### **Upselling by professional service firms**

A High Pay Centre study of the new disclosures by UK FTSE Eurofirst 100 constituents reveals that despite legislation and the adoption of the voluntary RCG code, the extent of commercial relationships between firms which are cited as providers of remuneration services to remuneration committees and the companies to which services are provided, remains undisclosed. Almost all of the companies buying remuneration services from code signatories were also employing the same firm to provide services other than remuneration services.

### **Hidden links**

The value of the other commercial relationships evident from Table 1 on pages 8-10 is unclear due to poor disclosure of fees which either omits some of the work done by a provider to the remuneration committee, or fails to confirm whether the fee disclosed represents all of the work done by a provider.

Disclosed remuneration-related fees reported by sample companies in aggregate amounted to £5.6m. It is impossible to tell accurately if this figure is significant in the context of the total revenue that remuneration consultants received from sample

companies. However it is possible to make some informed assumptions.

For example, it is safe to assume that the non-audit fees received by audit firms from companies which also use them for remuneration services are far higher than the fees paid for remuneration work. Deloitte's relationship to Rio Tinto in 2013 appeared normal in the context of fees paid to other remuneration advisers for similar work. However in addition to the US\$200,000 paid for remuneration advice between January and June 2013, Rio paid Deloitte US\$8.9m for non-audit services. The Rio Tinto disclosure is unusual. Non audit fees are simply not reported in the UK other than those paid to the reporting auditor. The Rio Tinto disclosure resulted from Deloitte's being the reporting auditor for part of the financial year being reported on (the company changed auditors in the year).

In another example from FY 2014 British American Tobacco disclosed that PWC were paid £10,870 for help with calculating bonuses, but were also paid £4.9m for non-audit or audit-related services.

58% of the sample companies used an audit firm to provide remuneration services to whom they also paid non-audit fees. Due to the absence of disclosure it is hard to know how the remuneration fees compare to the non-audit fees for these firms. The PWC ratio at BAT is likely not representative as the remuneration related fee was only a fraction of total remuneration fees paid by the company and was for a

**table 01 Companies and their advisors**

Company	Remuneration Service Provider in most recent FY reported	Company uses remuneration service provider to provide other services
Anglo American	PWC, Linklaters, Towers Watson	Y
Astrazeneca	Deloitte	Y
Aviva	Deloitte	Y
BAE	Kepler, Linklaters, PWC, Hewitt NBS	Y
Barclays	Towers Watson	Y
BG Group	Towers Watson, Kepler, Alithos, Slaughter & May	Y
BHP Billiton	Kepler	Company states that other external firms did provide certain information to management to assist them in deliberations however the firms are not named which prevents an assessment of whether these firms provided services other than remuneration services
BP	Gerrit Aronsen, Towers Watson	Y
British American Tobacco	Deloitte, PWC	Y
British Sky Broadcasting	Towers Watson	Y
BT Group	Deloitte	Y
Centrica	Deloitte	Y
Compass	PWC, Alithos	Y
Diageo	DeloitteKepler, Linklaters	Y
Experian	Towers Watson, Kepler	Y
Glaxosmithkline	Deloitte, Towers Watson	Y



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<b>Company</b>	<b>Remuneration Service Provider in most recent FY reported</b>	<b>Company uses remuneration service provider to provide other services</b>
Glencore	FIT	N There is a clear statement that FIT are considered independent because they do not perform other services for the group
HSBC	In 2013 the committee decided not to use external advisers	N/A
Imperial Tobacco	Towers Watson, PWC, Aon Hewitt, NBS, Alithos	Y
Kingfisher	PWC, Allen & Overy	Y
Lloyds	Deloitte	Y
Marks & Spencer	Deloitte, Aon Hewitt NBC, PWC, KPMG, Towers Watson	Y
National Grid	Aon Hewitt NBS, Alithos, Linklaters, KPMG	Y
Pearson	Towers Watson	Y
Prudential	Deloitte	Y "a number of other providers" but providers not disclosed
Reckitt Benckiser	Deloitte	Y
Reed Elsevier	Towers Watson	Y
Rio Tinto	Towers Watson	Y
Rolls Royce	Deloitte	Y
Royal Dutch Shell	N/A	N/A no evidence that external advisers are used

Continued overleaf

Company	Remuneration Service Provider in most recent FY reported	Company uses remuneration service provider to provide other services
SAB Miller	Towers Watson, Mercer, Hay Group	Y
Sainsbury	Deloitte, Towers Watson	Y
Shire	PWC	Y
Standard Chartered	PWC, Towers Watson, Clifford Chance, Slaughter & May	Y
Tesco	Deloitte, Towers Watson	Y
Unilever	Deloitte (since replaced)	Y
Vodafone	PWC, Towers Watson	Y
WPP	Towers Watson	Y other providers used but undisclosed

The data relates to the remuneration consultant that was disclosed as providing services during the latest reported financial year according to the latest annual report available as at April 2015 for UK constituents of FTSE Eurofirst as at August 2014

niche service.(disclosure obscures whether the remuneration fee is already included in the non-audit fee disclosed) However If the 44 to 1 ratio at Rio Tinto is anything like representative of typical non-audit fee to remuneration consultancy fee ratios, it suggests that the commercial ties that exist between companies and their remuneration advisers are significant, unreported and relevant to the independence of the provider.

### Fee ratios

The ratio between fees for prescribed work and other work

is commonly used by companies and investors to judge whether the work of auditors is considered independent. The principle that fees for one type of work has an impact on the independence of another, is recognised widely including by companies themselves.

For example, Glencore explicitly cites the absence of other commercial relationships as the reason why it is satisfied that the advice received from its remuneration consultant was independent.

The Ethical Standards which audit firms are expected to adhere to are promulgated by the Auditing Practices Board. These standards recognise that an auditor's objectivity and independence can be threatened where an audit firm has a financial interest that may make it reluctant to take actions that are adverse to the interests of the audit firm *"for example where the auditor is seeking to provide additional services to the audited entity."*<sup>6</sup>

This principle also underpins legislation at a European level. New EU rules<sup>7</sup> limit the fees an audit firm can generate from non-audit services in the fourth year of its engagement to 70% of the average audit fees paid in the prior three years. Additionally, the regulation prohibits the audit firm from providing certain non-audit services; the provision of which is considered to affect auditor independence and is incapable of mitigation (although only within the EU).

Without disclosure of all fees paid, the extent of the potential conflict of interest remains undisclosed despite the new UK remuneration disclosure requirements.

Examples of poor clarity over what is or is not covered by the disclosed fee since the regulations came into effect include Lloyds 2013 annual report. Lloyds disclose a fee to Deloitte of £324,300 for 2013. Lloyds also state that Deloitte *"provided information on behalf of the Committee for the testing of Total Shareholder Return (TSR) performance conditions for the*

*Group's long term incentive plan,"* clearly this is remuneration related work. However, Lloyds also state that Deloitte *"provided the Group with advice on taxation and other consulting services, and assurance services"*. It is not clear that this work is related to remuneration. So the extent to which the disclosed fee covered each category of work is unclear.

### **Independent because we say so**

The reporting auditor is obliged to audit certain parts of the remuneration report<sup>8</sup> and to give an opinion as to whether the part of the remuneration report to be audited has been properly prepared in accordance with the 2006 Companies Act. However beyond this any remuneration-related work which an audit firm gets paid for is discretionary. Any contribution by an auditor towards determining the figures in the relevant parts of the remuneration report will clearly weaken the auditor's ability to provide an objective opinion on the preparation of the pay figures

For this reason, the involvement of audit firms in remuneration consultancy carries risks for conflicts of interest that do not affect consultants who perform no audit services. Despite these added risks, the Big 4 audit firms provide remuneration-related services to 66% of the companies in the sample. Some audit firms even provide audit-related services and remuneration services to the same company.

<sup>6</sup> [https://www.frc.org.uk/Our-Work/Publications/APB/ES-1-\(Revised\)-Integrity,-objectivity-and-independ.pdf](https://www.frc.org.uk/Our-Work/Publications/APB/ES-1-(Revised)-Integrity,-objectivity-and-independ.pdf)

<sup>7</sup> EU Audit Directive and Regulation Directive 2014/56/EU amending Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts . Regulation 537/2014 on specific requirements regarding statutory audit of public-interest entities

<sup>8</sup> The information required by paragraphs 4 to 17 (inclusive) of Part 3 of Schedule 8. This information includes the single total figure table of remuneration Large and Medium sized Companies and Groups (Accounts and Reports) (Amendment) regulations 2013 Para 22 1) c) iv)

For example, in its 2014 annual report Anglo American states that PWC, one of the firms providing services to the remuneration committee, also provides “audit related services” to “overseas operations within the group”. In another example, Imperial Tobacco uses its auditors PWC to help calculate earnings per share (EPS) in relation to its share plan performance criteria.

Under the 2013 pay rules, remuneration received to which performance criteria are attached, is part of the single figure that must be disclosed for executive pay. These disclosures must be audited by the reporting auditors. It is therefore hard to see how either the relevant audit work or the remuneration advice can be considered independent.

### **Both sides of the negotiating table**

Not only do remuneration consultants also carry out audit-related work, but some companies use the same audit firm for remuneration consultancy as is used by their executives for personal tax planning advice. Where remuneration is one of the terms and conditions of employment this comes close to acting on behalf of both contracting parties especially if the executive concerned is an officer of the company. In 2014 Ernst & Young provided executives at British American Tobacco with personal pension and tax planning advice at the same time as providing group companies with tax, corporate finance and consulting

services. Deloitte provided remuneration advice to both the remuneration committee and to the management at Prudential.

In all of these examples the company is keen to point out in its disclosures that its remuneration consultant is a signatory to the RCG code.

### **Compliant, not clear**

Despite compliance with the disclosure regulations, some companies fail to identify all the firms whose services management relied upon when deliberating on remuneration.

For example, BHP Billiton stated that “other external firms did provide certain information to management to assist them in deliberations.” These firms were not identified and the fees paid were not disclosed. At Prudential, management received external advice and data “from a number of other providers”. These providers were not identified. Rio Tinto stated that “Other services and publications were received from a range of advisers in relation to remuneration data”. The advisers were not identified.

It is possible that this absence of disclosure was permissible under the new regulations as the remuneration services concerned were not provided directly to the remuneration committee although it is possible that information was subsequently available to the committee.

## **Consultants who are not signatories**

The High Pay Centre study also reveals that not all organisations providing services to remuneration committees are RCG code signatories.

Twenty one per cent (8/38) of the sample companies used a provider in the most recently reported financial year which was not listed amongst the RCG signatories (as at 16th January 2014). Of the six non-RCG firms that provided remuneration-related services to sample companies, four were legal firms. Legal advice provided to remuneration committees is explicitly exempted under the

disclosure regulations. However, five companies: National Grid, Diageo, BAE, BG Group and Anglo American all went beyond the legal minimum and established best practice disclosure by providing the fee paid to their legal adviser as a separate item, although none of the companies disclosed fees paid to legal advisers other than the fees related to remuneration.

Several companies which confirmed they had used legal advice for remuneration purposes fell short of this best practice standard. For example, Freshfields, Herbert Smith, Clifford Chance and Allen & Overy were all used for remuneration-related work by companies in the sample, but no evidence was provided of the fees paid to any of these firms. ■

## Disclosure of remuneration consultancy fees

The second new requirement in the November 2013 UK pay regulations was a requirement to disclose the fees paid by companies for advice or services provided to their remuneration committees.<sup>9</sup>

As can be seen from the table below fees paid to the firms providing remuneration advice for services unrelated to remuneration are being under-reported. There is a clear distinction to be drawn between those remuneration consultants which have commercial relationships with a company outside the sphere of remuneration and those which do not. The five cross-selling remuneration consultants accounted for 84% of all fees paid by sample companies for remuneration services. The five firms which did not act in any other capacity accounted for just 13% of fees paid. The remaining fees were paid to legal firms.

The cross-selling providers are: Deloitte, PWC, Towers Watson, Aon Hewitt NBS

The remuneration only providers are: Kepler, Gerrit Aronson, Alithos, FIT, KPMG

All the cross-selling providers are signatories to the RCG code.

Deloitte was used by more committees which disclosed a fee than any other adviser in the sample and received the greatest fee income from remuneration services. In fact, all of the companies that used Deloitte for remuneration services also used Deloitte for other consultancy services for which

no fees were disclosed. The work for which fees were not disclosed includes taxation advice; advice in relation to regulations; corporate finance; share scheme advice; pension advice; management consultancy; and internal audit advice.

Towers Watson was used by 18 committees, more than Deloitte but four of these did not disclose a fee. The work performed by Towers for companies for which no fees were disclosed differed from that performed by Deloitte. This other work included advice on health, compensation and benefit provision; assistance and technology support for employee surveys and performance management; pensions advice and administration services to corporate pension funds; actuarial advice; advice on employee engagement; market data; and survey and benchmark data

The services performed by PWC for companies for which no fees were disclosed included non-audit consultancy; tax advice; pensions advice; expatriate advice; internal audit advice; merger and acquisition consultancy; share plan advice; survey and benchmark data; assurance services and due diligence for which no fees were disclosed.

Aon Hewitt NBS provided HR-related services; insurance services; and survey and benchmark data.

Our examination of these disclosures shows that; not only are fees paid to firms providing

<sup>9</sup> Large and Medium sized Companies and Groups (Accounts and Reports) (Amendment) regulations 2013 Para 22 1) c) iv)

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**table 02** Remuneration consultants and their fees

Provider to the remuneration committee	Disclosed fees £	Signatories to the RCG*	Used by remuneration committee and fee disclosed	Used by remuneration committee but no fee disclosed	Also used for other work but no fee disclosed	Also used for other work and fee disclosed
Deloitte	2107288	Y	15	0	15	0
Towers Watson	1130033	Y	11	4	14	0
PWC	904220	Y	8	1	8	0
Aon Hewitt/NBS	564606	Y	3	1	2	0
Kepler	483021	Y	6	0	0	0
Gerrit Aronson	140000	N	1	0	0	0
Linklaters	136174	N	4	0	1	0
Alithos	95750	N	4	0	0	0
KPMG	72000	Y	1	1	0	0
FIT	21883	Y	1	0	0	0
Slaughter & May	2500	N	1	1	0	0
EY	0	Y	0	1	1	0
Hay	0	Y	0	1	1	0
Mercer	0	Y	0	1	1	0
MM&K	0	Y	0	0	0	0
Patterson	0	Y	0	0	0	0
Strategic	0	Y	0	0	0	0
Freshfields	0	N	0	1	2	0
Herbert Smith	0	N	0	1	0	0
Clifford Chance	0	N	0	1	0	0

\* as at 29th April 2015

remuneration services to committees being under-reported, but it is possible that even fees paid for remuneration services are being under-reported.

For example, at Barclays the fee disclosed for 2013 shows that Towers Watson was paid for “work relating to executive directors, either exclusively or along with other employees within the committee’s terms of reference”. This leaves open the possibility that Towers provided remuneration-related services to Barclays for employees outside the committee’s terms of reference.

In other examples no itemised fees were disclosed by companies for the provision of benchmark and survey data to their remuneration committees.

Disclosures are often unclear with regard to the fees paid for work for the remuneration committee and fees paid for work for the Group or Company. For example, BG Group disclose a fee paid to Towers Watson and state that Towers provided “information for the committee” together with “general compensation and benefits information, general consultancy services to the Company,”. The reader has to assume that the fee is for the committee work not the company work however this is not made explicit.

The gaps in disclosure mean that we do not have the full picture of all fees paid to a remuneration adviser.

This lack of disclosure significantly alters the impression of the nature of the relationship between company and adviser.

### **Emerging best practice for disclosure**

Although all the companies we looked at make some effort to discuss the nature of any advice provided during the remuneration-setting process, there was substantial divergence in the quality of disclosures provided.

Amongst the most transparent companies were those which disclose in a tabular format the fees paid for all remuneration committee services; the nature of those services (for example fees paid to a law firm for advice on service contracts); and a separate column detailing all other work done by the advisory firms (for example work by an audit firm on pension matters). Anglo American disclosures exemplify best practice in this respect.

Amongst the poorest disclosures were those by companies that confirm their use of consultants for remuneration-related services, but then fail to identify the firms used or the fees paid. For example, Prudential states that “In addition, management received external advice and data from a number of providers.”

UK fee disclosure regulation is focused on the provision of advice. It is clear that other material such as benchmarking data or publications on trends



and developments affecting remuneration are also widely used by remuneration committees in their work. However, not even the best-of-class disclosure identifies fees corresponding to this kind of service provision.

Rio Tinto states that “Other services and publications were received from a range of advisers in relation to remuneration data.” No charges were disclosed for these services despite the comprehensive disclosure of all fees to all firms involved in remuneration. The lack of fee data may be an indication that remuneration consultants and other professional services firms in the remuneration space are willing and able to provide free research and data to their clients and prospective clients as part of their marketing strategy. ■

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## Conclusion

Assertions of independence by reference to a voluntary code is a poor substitute for information which allows users of remuneration reports to understand the commercial ties that bind companies with the providers of remuneration services.

The lack of disclosure of all fees paid to a remuneration adviser significantly alters the impression given by disclosures of the nature of the relationship between company and adviser.

The fact that disclosing such fees is the right thing to do is not disputed by remuneration consultants. The industry's own code considers disclosure of all fees to be good practice.

Specific changes could be made to UK legislation that make disclosure of all fees paid to remuneration advisory firms mandatory. Given that wholesale changes in this area occurred recently this may remain an aspiration for some time to come, however, nothing prevents adoption of this principle by those companies which seek to shape best practice in this area and demonstrate a practical and valuable commitment to transparency. ■

# Appendices

## Remuneration Consultants Group - Good Practice Guidelines January 2014

### General

**1** Consultants should encourage Clients to ensure that pay is properly linked to the long-term performance of the business. Consultants should also encourage Clients to consider the full implications of their decisions. This should include but not be limited to helping Clients reach a rounded and balanced view and to be sensitive to the potentially inflationary impact of market data.

**2** Consultants should encourage Clients to consider fully the implications of complex design both on the motivation of executives and on the transparency of arrangements to shareholders and other stakeholders.

**3** Where appropriate, Consultants should seek to help Remuneration Committees to take into account talent and succession planning when making decisions on pay.

**4** Consultants should make the Remuneration Committee aware of the likely views of shareholders on the Client's executive remuneration with a specific emphasis on major shareholders where appropriate.

### Transparency

**5** Reports prepared by Consultants should explain the context in which advice is provided and, when advising on potentially significant changes in policy, they should comment on how

any proposals compare with best practice and published guidance.

**6** Selection of an appropriate comparator group for benchmarking purposes requires careful judgment. Any report should be clear on the types of companies comprised within the comparator group(s) used and the rationale for their selection and summarise the methodology used to value different elements of the remuneration package.

**7** Reports and other written documents should identify the sources of information used. It should be made clear where the Consultant is relying on information provided by management or from other consulting firms. Where the Consultant contributes to a joint report with management, it should be clear in the report what is the Consultant's opinion and what is management's opinion.

**8** Recognising that internal advice or other Consultants' (e.g. advisors to management) advice may be presented by others to the Remuneration Committee and relied on by it, Consultants should be particularly careful to ensure that their written advice is capable of being read and understood by the Remuneration Committee without the advisor present.

**9** All appointments should be governed by an engagement letter between the Consultant and the Client and should make clear to whom within the Client the Consultant is providing advice, i.e., whether to the Remuneration Committee, CEO or the executive

management of the company or otherwise.

**10** There should be a clear understanding of the role the Consultant is expected to play when appointed to advise the Remuneration Committee and, specifically, whether the role is to be a principal advisor to the Remuneration Committee on a range of remuneration-related issues (as opposed to providing data or advice on an ad hoc basis or just on specific topics).

**11** In order to be aware of and mitigate any potential conflicts of interest, when the Consultant is appointed as principal advisor to the Remuneration Committee, the Committee Chair should agree with the Consultant a set of disclosures at the outset of the engagement and annually thereafter. The precise nature and frequency of the information to be provided should be agreed by the Consultant with the Chair of the Remuneration Committee. Information should be available on:

> the areas on which the Consultant is engaged to advise the Remuneration Committee and any areas where it has been agreed that the Consultant should not provide advice;

> the scope and cost of work provided by the Consultant's firm to the company, or senior executives of the company, in addition to work performed directly for the Remuneration

> Committee. The Consultant should normally report on an annual basis the approximate split of the value of the work done for the Remuneration Committee and for executive management to the Remuneration Committee;

> The Remuneration Committee should have oversight of all the work that the Consultant carries out for the Company;

> the safeguards in place to ensure that information provided by the client company are kept confidential and separate both from information of other clients and from other departments within the Consultant's wider firm;

> the Consultant's code regarding ownership of, and dealing in, the shares of client companies;

> the way in which the personal remuneration of the principal Consultants engaged in advising on executive remuneration issues is affected, if at all, by the cross-selling of non-related services;

> the process for maintaining quality assurance, ensuring that work covered by this Code is kept independent of any other services provided by the Consultant's firm and for dealing with complaints;

**12** Consultants should encourage their Clients to include in their Directors' Remuneration Report a statement of whether they are using Consultants who are members of the RCG.

## Integrity

**13** When they are appointed as principal advisors to the Remuneration Committee, Consultants should alert the Chair of the Remuneration Committee when they become aware that their advice is being presented in the context of reports, communications or other information where they believe that the information is false or misleading or omits or obscures required information where such omission or obscurity could be misleading.

**14** In relation to shareholders' engagement, the Remuneration Committee is responsible for explaining the Company's pay arrangements to shareholders. Where Consultants are involved in this process, their primary responsibility should be to support in the communication process, to set out the Remuneration Committee's proposals to shareholders and to represent fully to the Remuneration Committee all the views expressed to the Consultant in their capacity as agent for the Committee.

**15** Consultants should only market their services to both current and prospective clients in a responsible way. Bespoke pay benchmarking reports require Remuneration Committee input into the selection of comparator groups and should not be sent to clients or non-clients on an unsolicited basis.

## Objectivity

**16** When the Consultant is appointed as principal

Remuneration Committee advisor, there are a number of protocols and processes which should be established from the outset to ensure that the Consultant is able to provide best advice in a manner which meets the Remuneration Committee's requirements.

These include:

- > agreeing a process to ensure that the Consultant has sufficient information to provide advice in context (which may be achieved by providing for the Consultant to receive copies of all or most Remuneration Committee papers and minutes, not just those relating to matters upon which he or she is specifically being asked for advice);
- > an agreement that the Consultant meets at least annually with the Remuneration Committee Chair in order to review remuneration issues and any implications of business strategy development and market change;
- > clarity on the extent to which the Consultant should have access to and/ or provide advice to management;
- > confirmation of the process by which any information and recommendations relating to the Chief Executive Officer and other executives are to be communicated to the Remuneration Committee and the manner and extent to which such information and recommendations should also be communicated to executive management;

- > agreement on the flow of papers and, in particular, whether draft papers may be sent to management to check facts and understanding of context prior to being sent to the Remuneration Committee Chair;
- > agreement of an annual review of the Consultant's performance and of roles and responsibilities. This should be led by the Chair of the Remuneration Committee but may be initiated by the Consultant. The review of performance should also include an assessment of the extent to which there is a potential conflict of interest which may be perceived to affect the independence and objectivity of the advice provided, where, for example, the Consultant's firm provides other services to the Company or the work provided by the Consultant accounts for a significant proportion of the firm's total revenue.

### Competence and Due Care

- 17** 17. The right for Clients to have confidence in a Consultant's work means that if work which a Consultant considers necessary is precluded by cost or time constraints, then they must either decline to act or qualify the advice.
- 18** 18. Where a Consultant is aware of any limitations in their advice, they should make their Client aware of such limitation.

### 2013 UK disclosure regulations

(1) If a committee of the company's directors has considered matters relating to the directors'

remuneration for the relevant financial year, the directors' remuneration report must—

- (a) name each director who was a member of the committee at any time when the committee was considering any such matter;
- (b) state whether any person provided to the committee advice, or services, that materially assisted the committee in their consideration of any such matter and name any person that has done so;
- (c) in the case of any person named under paragraph (b), who is not a director of the company (other than a person who provided legal advice on compliance with any relevant legislation), state—
  - (i) the nature of any other services that that person has provided to the company during the relevant financial year;
  - (ii) by whom that person was appointed, whether or not by the committee and how they were selected;
  - (iii) whether and how the remuneration committee has satisfied itself that the advice received was objective and independent; and
  - (iv) the amount of fee or other charge paid by the company to that person for the provision of the advice or services referred to in paragraph (b) and the basis on which it was charged.

## 2008 UK disclosure regulations

(1) If a committee of the company's directors has considered matters relating to the directors' remuneration for the relevant financial year, the directors' remuneration report must—

(a) name each director who was a member of the committee at any time when the committee was considering any such matter;

(b) name any person who provided to the committee advice, or services, that materially assisted the committee in their consideration of any such matter;

(c) in the case of any person named under paragraph (b), who is not a director of the company, state—

(i) the nature of any other services that that person has provided to the company during the relevant financial year; and

(ii) whether that person was appointed by the committee. ■

