

# POLICEMAN OR PLAYER?



NON-EXECUTIVES ARE OFTEN JUDGED ON THEIR ROLE AND EFFECTIVENESS. **BARRY GAMBLE** REVIEWS THE EVIDENCE

**W**hen businesses stumble or fail, the question frequently asked is: 'Where were the non-executive directors?' There is an increasing amount of literature focused on examining the role and responsibilities of non-executive directors, and the part they play in ensuring good governance and defining the linkage through to corporate performance.

Boards of companies that 'tick all the boxes' still continue to encounter governance issues. Even textbook boards, filled with star-studded directors from a range of backgrounds, can struggle in their overall responsibility to safeguard shareholder value. Problems of governance are everywhere in the corporate world and continue to pop up on a regular basis and affect companies of all sizes, from household names to much less well known, smaller companies.

Modern governance thinking stems from the days of corporate abuse when the likes of Robert Maxwell wielded unfettered power. But still some boards go native on the shareholders, perhaps carried along by

the all-too-powerful chief executive, focused on his own agenda, rather than that of the shareholders. In these instances it is extraordinary that the non-executive directors are seemingly able to rationalise to themselves that they're doing a good job for shareholders against the guiding principle of safeguarding and enhancing shareholder value. In such situations, institutional investors can still tend to be somewhat passive or seemingly unable or even unwilling to influence boards.

## **POOR COMMUNICATION**

Last year's exchanges between the board and major shareholders of Marks & Spencer about the elevation of Sir Stuart Rose to executive chairman provide a good working example of governance failure. Whether the M&S board's decision is right or wrong, many would argue there has been a failure simply through the poor communication between the owners of the business and their agent the board. The primary responsibility for such failures in communication rests with the non-executive directors. Where they do not act with sufficient vigour,

their investors are bound to be less inclined to turn a blind eye, and become more proactive in approach. Communication between boards and shareholders clearly needs to be two-way, and more regular than that provided by the formal structure of the annual general meeting. Hence the recent call from leading fund managers for major shareholders to become more publicly engaged with company boards.

Many would argue that the UK corporate governance movement over the last 10 years or so has been effective in overall terms. This may indeed be true, but since the legal responsibilities of non-executive directors are identical to those of executives, more emphasis has tended to attach to the role of non-executive as corporate policeman. Steve Tappin, author of *The Secrets of CEOs*, takes the view that: 'By assuming more of a policeman role, non-executive directors may not be making a big enough commercial contribution. Many non-executives say they are ceasing to enjoy board meetings as they become too constrained by process.'

To leave the non-executive directors solely in the role of corporate policeman is to hugely miss the point about the broader value they can provide.

A well rounded non-executive director, not intent on pursuing a personal agenda, can act as a mentor and sounding board for the executive directors. He or she can also make a major contribution by overseeing strategy and operations in addition to the pure compliance role.

An important test for an effective non-executive director would always be: have they got sufficient space and time available for reflection on the business, and the spare capacity to help address the inevitable problems and crises that may arise periodically in any company? Non-executives taking on too many positions – there are surprisingly still around 20 directors of FTSE 250 and AIM companies with eight or more board seats – reduces effective input and runs the real risk of being damaging to board process.

### A STEP REMOVED

There has been a tendency for non-executives to see their role as being a step removed from the business, lest they 'interfere' with the chief executive as he runs the business. But since even the role of a corporate policeman requires reliable information and good business connections, this somewhat 'aloof' approach can miss the point of the role. It can be really helpful for non-executives to meet with existing customers or introduce new ones, spend time with staff and visit operations.

The non-executive's role and its bearing on share ownership is also often misinterpreted. Some directors take the view that if they own any shares at all then their independence may be compromised. But surely directors owning shares are far more likely, than not, to be capable of thinking like shareholders and acting in their best interests?

Non-executive directors, and in particular the chairman, will try to ensure that the board works as a balanced team. The unbalanced board can too easily lead to executives controlling information flow to the board and, in effect, disabling the non-executive directors. In the right atmosphere, no difficult question need necessarily cause personal offence. Challenge can be constructive. Properly handled, such questioning can lead to a new depth of understanding and a stronger relationship between individual directors.

As in a good marriage, there has to be give and take, empathy and support. But if someone steps seriously out of line, it may be difficult for the relationship – whether board or marriage – to continue without change or some significant adjustment.

Finding and selecting a good non-executive director is an important process with potentially far-reaching consequences. The right appointee can make a major contribution to the standards of governance, integrity and general good practice, and contribute to the entrepreneurial drive.

To a degree, boards still select non-executive directors on the basis of someone known to the chairman or other board members, from the ranks of retired advisers and the great and good.

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There is an increasing trend for the board or nomination committee to instruct a firm of headhunters to undertake a dedicated search. Best practice would be to use the opportunity of an impending new appointment to review the skill-sets of the existing board, the effectiveness of the current non-executive directors, and to seek to identify gaps.

In this way, the profile of the ideal candidate might be determined as a basis for a targeted search process. In devising such a profile, it may be useful to think outside the box.

### LOOK OUT OF THE WINDOW

Will Dawkins, of headhunter Spencer Stuart, advises chairmen not to appoint in the board's own image. 'Rather than look in the mirror, it's better to look out of the window at what is new, interesting and challenging,' says Dawkins.

Good non-executives will always recognise their twin responsibilities by seeking to act as a player as well as a policeman.

But above all they should help build a sense of shared purpose with the executive directors, working to make the company a success.

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