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CRITICAL ANALYSIS OF THE UNITED KINGDOM COMPANY DIRECTORS' REMUNERATION AND CORPORATE GOVERNANCE

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ABSTRACT

This paper will examine various mechanisms regulating company directors' remuneration. Based on this, the focus of this paper will be to analyse the relevant reports and committees and recommendations that help to regulate the directors' remunerations in the UK companies, such as the Cadbury Report 1992, the Greenbury Report 1995, Hampel Report 1998 and the UK Corporate Governance Code 2010 which have also been discusse. In addition, it will also consider the Disclosure of Directors' Remuneration. Crucially, the statutory provision currently contained in the 2006 Companies Act, the fiduciary duties of directors, and the common law position, will also be in focus. Finally, evaluated the effects of the various legal mechanisms on the directors' duties in the corporate governance process.

Keywords: Directors, Corporate Governance, Remuneration, United Kingdom
JEL Classifications: K2, G3.

INTRODUCTION

Corporate governance is the structure of rules, practices, and processes by which a company is controlled, directed, managed and made accountable. Director's remuneration is a crucial factor for corporate economic growth for several reasons, but complex and challenging to deal with and even more difficult in a financial crisis. Notably, excessive remuneration is a crucial issue that shareholders are worried about and claim to be evidence of inadequate transparency and liability management. So many reasons led to excessive remuneration. Some were realistic, while others were baseless. Directors' pay was legitimately increased at the time the country was doing financially well until the financial crisis, which led to company failures. After the financial crisis, the huge executive remuneration was shown to be risky. Hence it is economically stressful when a company's share price is dropping, and an offer to increase remuneration has been provided. This implies that the remuneration of the executives increases because the executives focus only on their interests, ignoring shareholders' interest to get a higher remuneration package which creates a severe problem for the sustainability of the entire economy.[1]

[1] Tasnuva J, (2017) Directors Remuneration and Corporate Governance Within the UK, International Journal of Learning and Development. Vol 7, (3)

According to Jill Solomon[2], the overriding issue exacerbated by the current crisis is that executives should be remunerated for their performance. Executives associated with poor corporate financial performance should not receive rises in remuneration.

Similarly, in *Dr Saleem Sheikh's*[3] View, the director's remuneration has led to public outcry in the UK due to substantial financial packages awarded to chairmen and chief executives upon their resigning or leaving the company, mainly when the company has poorly performed during their tenure. Salem Sheikh further stated that usually, this problem arises when the ailing company is seeking to employ a potential chairman or chief executive of high repute of a proven history to revive the fortune of the company[4]. Thus, recruiting such level of officers is prone to be an expensive exercise for the company as to the expectations that such level of officers may have of the financial package to be provided for them[5]. In some cases, the company will have no option but to agree to the financial package a chairman or chief executive may request hence the public concern over the increase in the size of financial packages given to the directors. This has increased awareness among shareholders and increased the need to question the excessive packages as well as the need to put in place effective mechanisms to check these excesses[6].

2. DISCLOSURE OF DIRECTORS' REMUNERATION

There has been much controversy about how much disclosure there should be of directors' remuneration and how useful the detailed disclosure would be[7]. The Cadbury report 1992 devoted some time to executive remuneration, but it was the Greenbury report, and its accompanying code of practice produced in 1995 that devoted its attention specifically to issues relating to directors' pay[8]. The code aimed at establishing best practices in ascertaining and accounting for directors' remuneration[9]. For accountability and transparency, the remuneration committee membership should be disclosed in the company's annual report, and the chairman remuneration committee should attend the company's annual general meeting to answer any questions that the shareholders may want to ask concerning remuneration[10]. Crucially, the Department of Trade and Industry published its Directors' Remuneration Report Regulations 2002[11] which provides that:

- Quoted companies must publish a detailed report on directors' pay as part of their annual reporting cycle. The board must approve this report of directors;
- A graph of the company's total shareholder returns over five years against a computer group must be published in the remuneration committee report;
- Names of any consultant to the remuneration committee must be disclosed;
- Companies must hold a shareholder vote on the directors' remuneration report at each general meeting.

In addition to this regulation, chapter 6 of part 15, CA 2006, covers quoted companies' regulations[12]. Importantly, under section 420 of the Companies Act (CA) 2006 the director's remuneration report should be prepared by the directors of a public company in each

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[2] Jill Solomon, (2010) Corporate Governance and Accountability, Third Edition, Wiley Publishers, p.101
[3] Saleem Sheikh, (2003) A Practical Approach to Corporate Governance, LexisNexis Tolley, p.171
[4] ibid
[5] ibid
[6] ibid
[7] Christine Malin, (2010) Corporate Governance, Oxford University Press, Third Edition, p.197
[8] Jill Solomon, (2010) Corporate Governance and Accountability, third Edition, Wiley Publishers, p.101
[9] ibid
[10] Op cit no 1 p. 197
[11] Op cit, no 10, p. 171
[12] (2006) CA, Ch 6, pt 15

financial year of the company[13]. In addition, section 421 of the Companies Act 2006 stipulates that the secretary may promulgate a regulation for what may be included in the report[14]. Furthermore, by section 422 of the CA 2006, the approval of the remuneration report of the director must be signed by a board and also be signed by a director and the company secretary[15]. The board of directors must approve the report, and copies must be sent to the registrar of companies. Companies must hold a shareholder vote on the report at each AGM[16].

However, it is vital to note that the requirement that the company must hold a shareholder vote on the directors' remuneration is a crucial issue as shareholders have campaigned over this issue for a long time[17]. The vote is an advisory shareholder vote, and the company is not legally binding to act upon it, notwithstanding that the government believes that any company that defies such a vote will face considerable criticism and pressure for change[18]. However, in practice, institutional investors have often tried not to vote, but on some rare occasions, the remuneration report was voted against, which was a vital sign of disapproval of some aspects of remuneration that the directors must not ignore[19]. A clear example is the Royal Bank of Scotland case, where the shareholders vehemently rejected the bank's remuneration committee report at the Annual General Meeting. Although the shareholders' action was, in a way, a protest, it is of no severe effect as it is a non-binding vote. It is submitted, therefore, that the law should be revisited to make the vote binding on the director as that will serve as an effective controlling mechanism to check the excesses of the directors'[20].

Even with the right to vote, the spread of the shareholders would indicate that a vote might not make a difference and, as a result, discourage the shareholders from participating in the shareholders' meetings or taking a keen interest in the report. Thus they may judge that an effortless way of showing disapproval is by selling their shares. Therefore, the remuneration report is better to be accessible and not unnecessarily overloaded.[21]. Indeed, directors' remuneration disclosure report is very lengthy and excessively detailed, which may obscure rather than increase accountability[22].

3. ROLE OF THE REMUNERATION COMMITTEE

When a company director is appointed to act as an agent of the shareholders and to manage the company on their behalf, there is always the danger or likelihood that the director will manage the business in their interest and at the company's expense. This may include awarding them excessive remuneration and 'perks' as well as lavish offices and luxury travel.[23]. The Combined Code has worked towards dealing with this agency problem as it is called by establishing the remuneration Committee saddled with the responsibility of setting the compensation strategy and policy for senior management members of the company. This committee is a measure used to ensure that the director's reward is appropriately set in order to align the interest of the shareholders[24].

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[13] (2006) CA s. 420
[14] (2006) CA s. 421
[15] 2006 CA s. 422
[16] Op cit no 6 p.315
[17] Op cit no 1 p. 197
[18] Op cit, no 6 p. 315
[19] Chris Mallin, (2009), Twenty Steps to Better Corporate Governance available at http://www.csiaorg.com/pdf/researh-paper.pdf assessed on 15th of January 2019
[20] ibid
[21] European Legal News: Directors Remuneration, available at http://www.legalnorms.com/directors assessed on 15th January 2019
[22] European Legal News, Directors Remuneration – Public Company, available at www.http://www.legalnorm.com assessed on 15th January 2019
[23] Finance Matters, Remuneration Committee: Room for Improvement, available at http://www2.accaglobal.com/pubs issues 76, Technical P. 12 Accessed 15th January 2019
[24] ibid

Various committees have been set up to consider corporate governance issues. Some of the committees and reports specifically considered directors' remuneration, and some of their recommendations formed part of the revised combined code[25]. For clarity, these codes are discussed shortly.

3.1 The Cadbury Report 1995

The Cadbury Report devoted some attention to executive remuneration in 1992. The focus of this Report is on the issue of executive remuneration contained in sub-paragraphs 4.40 to 4.46. Para 4.40 of the Cadbury report provides that transparency should be the overriding principle concerning the remuneration of the directors and that the full and clear statement of the directors' present and future benefits should be disclosed to the shareholders[26]. In addition, para 4.41 recommended that future service contracts should not exceed three years[27]. It also recommended that non-executive directors should be appointed as remuneration committee members under para 4.42[28].

Cadbury Report was successful as, at least, larger public companies adopted its recommendation, which was shown in a survey conducted by Cadbury Committee in 1995 examining compliance with the Code. In that survey, it showed that 97 per cent of the top 100 quoted companies had three or more NEDs[29]. However, these recommendations were criticised for being an avenue for the remuneration committee to ratchet up pay[30]. The situation was exacerbated by the privatisation of utilities in the early 1990s, which led to a public outcry about the excessive remuneration being paid to executive directors of many of the utilities and the levels of compensation being paid to non-performing executives[31]. Other abuses included the granting of options at a discount or the grant of options with "soft" performance targets and sufficient information and transparency[32]. In response, a committee was set up in 1995, under the chairmanship of Sir Richard Greenbury, to report on the whole subject of directors' remuneration[33].

3.2 The Greenbury Report (1995)

The Greenbury committee on directors' remuneration chaired by the Chief Executive of Marks and Spencer was set up in January 1995 by CBI as a response to Cadbury shortcomings in the remuneration of the directors[34]. Para A1 of the Greenbury Code of Best Practice provides that to prevent conflict of interest, boards of directors should establish a remuneration committee comprised of non-executive to ascertain the remuneration of executive directors[35]. Para A4 of the Greenbury report later stressed that the remuneration committee members should comprise exclusively of non-executive directors with no personal pecuniary or self-serving interest apart from the interest of the shareholders[36].

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[25] Saleem Sheikh, (2003) A Practical Approach to Corporate Governance, LexisNexis Tolley, p.171

[26] Cadbury Report, Report of the Committee on the Financial Aspects of Corporate Governance, The Code of Best Practice, (1992) P.4.42

[27] Ibid para 4.41

[28] Cadbury Report, Report of the Committee on the Financial Aspects of Corporate Governance, The Code of Best Practice, (1992) P.4.42

[29] Helen Short, Corporate Governance: Cadbury, Greenbury and Hampel – A Review, 1999 P.60

[30] Helen Short, Corporate Governance: Cadbury, Greenbury and Hampel – A Review, 1999 P.60

[31] R Smerden (2004), A Practical Guide to Corporate Governance, Second Edition, P115

[32] ibid

[33] ibid

[34] Eliot Shear, Rob Moulton et al., Corporate Governance in Financial Institutions: Compliance Officer Bulletin, 2010 p.2

[35] Greenbury Report, Director's Remuneration: Report of a Study Group Chaired by Sir Richard Greenbury, Para A1

[36] Greenbury Report, Director's Remuneration: Report of a Study Group Chaired by Sir Richard Greenbury, Para A1

The essence of these provisions is to prevent the executive directors from either fixing or influencing their pay and to also identify good practices in determining directors' remuneration and prepare a code of such practice for use in UK companies[37]. In so doing, the Greenbury report set out to increase accountability and transparency[38].

The Greenbury Committee did not welcome the legislation approach; thus, this code was adopted into the Listing Rules on a comply or explain basis. Although the impact of Greenbury's Report is commendable, however, while acknowledging the immense benefits as a result of the recommendations and codes, they had inadvertently resulted in a so-called box-ticking[39]. The problem with this approach is that there is a tendency for nonchalant directors to arrange for a means of avoiding compliance for no cogent reason[40]. Greenbury's report provided a comprehensive disclosure of various aspects of individual remuneration. However, the comprehensive information has been criticized for being too detailed such that the information has become a barrier to effective communication[41].

On a general note, there are arguments that the way the remuneration committee operates is flawed. Firstly, the committee does not devote sufficient time to carrying out its duties[42]. Another criticism is that in most cases, the chief executive officer and chairman are present in the remuneration committee meetings[43]. Although it might be helpful for the committee to get their input at times, there is a danger that the independence of the committee will be compromised by their continual presence[44]. The discussions of the committee meetings may be inhibited and decisions unduly influenced by having the presence of the senior management team in attendance[45].

There is also the danger that the committee may end up negotiating a reward structure with the CEO and chairman. Further criticism arises from how reward packages and incentives for directors are being developed. For instance, the remuneration committee is not responsible for the initial development of these packages; the time spent by the remuneration committee needs to be increased. Instead, the human resources department will usually gather the data from within the business and commission market data from outside remuneration consultants. Proposals will be produced and sent to the COE and other senior directors for their approval, which may be passed to the remuneration committee for consideration. Thus, it was noted that "the committee only sees plans that have already been blessed by top managers, which creates an environment of abuse and bias."[46].

Furthermore, Chris Malin[47] pointed to the fact that notwithstanding that remuneration committees mainly consist of a majority, or usually entirely, of non-executive directors, these non-executive directors are chosen by, or only with the complete agreement of, senior management. They are usually appointed from the same social, economic and business backgrounds as the executive directors. It was also noted that the executive directors often appoint NEDs that are their confidants and will be loyal to them. There is, therefore, the tendency for the above scenario to erode his objectivity or independence of thought. This can
The fact that the non-executive directors of one company may be executive directors of another (unrelated) company, they may not be willing to state demanding performance criteria because they may have a self-interest in ensuring that they can go on earning a high salary

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[37]ibid
[38]ibid
[39] Op cit no 7, p.17
[40]ibid
[41]ibid
[42] Finance Matters, Remuneration Committee: Room for Improvement, available at http://www2.accaglobal.com/pubs issues 76, Technical P. 12 Accesed 15th January 2019
[43] ibid
[44] ibid
[45] ibid
[46] ibid
[47] Christine Malin, (2010) Corporate Governance, Oxford University Press, Third Edition, p.197

without unduly demanding performance criteria being formed by their own companies' remuneration committees.[48].

Another angle to it is that the remuneration committees will usually not wish the executive directors to be earning less than their counterparts in other companies, so they will be more prone to make recommendations that will put the directors into the top or second quartile of executive remuneration levels[49]. It is undoubtedly the case that executive remuneration levels have increased fairly substantially since remuneration committees were introduced, which was not the intended effect[50].

3.3 The Hampel Report

In response to the criticism made of Cadbury and Greenbury Reports, a committee chaired by Hampel was established in 1998. Para 4.2, there is the need to appreciate the interest of the shareholders[51]. That paragraph emphasised that it is vital to consider that a director's remuneration should be sufficient to motivate and retain competent directors required for the smooth running of the company.

The overriding emphasis of this Report is the need for good corporate governance to be based on principle rather than prescription. The implication is that if the letter of the codes had been observed and 'ticked', the company was deemed to be in good state[52]. It was well known, however, that some companies, including Maxwell companies, could tick every box of the code and yet be fundamentally flawed[53]. The committee suggested, therefore, that there should be a clear shift from the box-ticking system to the application of a general set of principles postulated by a Code dealing with specific items[54]. The report made by the Hampel committee led to the publication of the combined Code of Corporate Governance (1998) which included areas relating to the structure and operations of the board, directors' remuneration, accountability and audit, relations with institutional shareholders, and the responsibilities of institutional shareholders; this effort it is believed can lead to good corporate governance.[55].

4. THE UNITED KINGDOM COMBINED CODE 2008

Paragraph B.2.1 provides that the board should set up a remuneration committee of at least three, or in the case of smaller companies, two, independent non-executive directors. In addition, the company chairman may also be a member of, but not chair, the committee if he or she was considered independent in appointment as chairman. The remuneration committee should make its terms of reference available, explaining its role and the board's delegated authority. Where remuneration consultants are appointed, a statement should be made available of whether they have any other connection with the company.

In setting up a remuneration committee (in the form recommended by the Combined Code), executive directors are prevented from setting their remuneration levels. The remuneration committee measures should also provide a formal, transparent procedure for ascertaining appropriate targets for any performance-related pay schemes. The members of the remuneration committee should be identified in the annual report. The remuneration of non-executive directors is decided by the chairman and the board's executive members.

The Combined Code, therefore, enhanced the amount of disclosure required by companies by requiring disclosure of adherence to the codes contained in the previous Codes.

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[48] Op cit no 6, p.197
[49] ibid
[50] ibid.
[51] Hampel Report, Committee on Corporate Governance, 1998.
[52] ibid
[53] Jill Solomon, Corporate Governance and Accountability, Third Edition, 2009, p.48
[54] ibid
[55] Ibid

However, in line with the Hampel's Report's contention that the broad principles of corporate governance should be applied flexibly to the varying circumstances of individual companies, the Combined Code does stress that shareholders (institutional investors in particular) should take into consideration that the company's explanations for non-compliance to the code provision[56]s. Whether the inclusion of a statement of the company's application of the broad principles on corporate governance will cause both shareholders and directors to refrain from a box-ticking approach to the code provisions remains to be seen[57]. Undoubtedly, the combined code would have improved the corporate governance standard in the UK. However, it is said that company boards could be seen as unaccountable if they adopt the comply or explain the approach.[58].

Furthermore, the Combined Code does not address any directors' duties regarding the "stakeholder" of the company, and instead, Its principles are in favour of the "shareholder value" approach over the "stakeholder value" approach[59]. Although the Hampel Committee acknowledged that the stakeholder interest should be considered for good governance, it was not included in any way in the Combined Code. The risk of "short-termism" to maximize profits is obvious.

5. THE UNITED KINGDOM CORPORATE GOVERNANCE CODE 2010

Concern over the standard of corporate governance in the UK has resulted in the publication of the new edition of the Corporate Governance Code on the 28th of May 2010. The new code re-named and published by the FRC, replaces the combined Code[60]. The effect is that all the listed companies in the UK are required to state in the annual report how they applied the main principles of the Code, and whether they complied with its provision or gave a reasoned explanation where they did not comply[61].

Directors' remuneration is a key change in the UK Corporate Governance Code. Para D.1.1 of the Code recommends that in designing a scheme of remuneration, the pay should be commensurate to the level of performance for executive directors, and the remuneration committee should also adhere to the provisions in Schedule A of this Code[62].

In addition, Para D.1.2 of the Code also recommend that where a company permits an executive director to work as a non-executive director elsewhere, the remuneration report should reflect in the statement whether or not the director will retain such earnings and, if so, then the amount should be reflected[63].

Furthermore, D.1.3 the Code recommended that time devoted to the work and level of responsibilities and roles should reflect in the director's remuneration and based on this, share options or other performance-related elements should not be included[64]. Where options are granted in an exceptional situation, the shareholder's approval should be sought in advance, and any shares acquired by exercise of the options should be held until at least a year after the non-executive director leaves the board. Holding of share options could be vital to the determination of a non-executive director's independence (as set out in provision B.1.1)[65]. It is submitted that this recommendation aims to enhance transparency.

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[56] ibid
[57] ibid
[58] Op cit 7. P.17
[59] ibid
[60] Chris Mallin (2010), UK Corporate Governance Code 2010: Twenty Steps to Good Corporate Governance, available at http//www.csiaorg.com/pdf/research-paper.pdf Accessed 17th January 2019
[61] ibid
[62] Financial Reporting Council: The UK Corporate Governance Code, June 2010
[63] ibid
[64] Financial Reporting Council: The UK Corporate Governance Code, June 2010
[65] ibid

It is important to note that the emphasis on the long-term is a good development, but this is undercut by the new provision for the re-election of directors, which might not encourage the long-term view[66]. Also, it is important to mention that the issue of re-election could lead to conservative decision-making of the directors as they will tend to apply more caution.

6. COMMON LAW AND DIRECTOR'S FIDUCIARY DUTIES CONCERNING DIRECTORS' REMUNERATION

The common law defines "*remuneration as any consideration given in return for service, whether in actual money payment or in any kind of payment."[67]*. The common law position of directors' remuneration was thoroughly considered over the years. Accordingly, *Andrew Hicks and S. H. Goo* stated that equity treats directors as trustees (fiduciaries) and that they are prohibited from making a profit from their position or fixing remuneration without complying with the article. Similarly*, Ben Pettet's,* noted that directors are fiduciaries and not allowed to make a profit in the company by their position; neither are they entitled to any remuneration at all as established in *Guinness plc v Saunder another[68]*. In this case**,** the board of Guinness in 1986 appointed a committee of three directors, Saunders, Roux and Ward, to run the day-to-day decisions for a takeover bid that Guinness had made for another company, Distillers. The bid was ultimately successful. Ward had been paid a fee of £5.2m for his part in the bid, which he said had been accepted by the committee. The company's articles entitled the board of Guinness to fix the remuneration of individual directors and contained several provisions allowing it to delegate several of its functions. The House of Lords declined to construe the articles in a way that invested the committee with the power to pay remuneration to one of its members and ordered Ward to repay the £5.2m[69].

Furthermore, account must be given to the effect that even in cases where under the articles remuneration; the payment made out of proportion to any possible value will amount to a gratuitous distribution of capital in the guise of remuneration and, in such situation, is recoverable[70]. In *Re Halt Garage[71],* Mr and Mrs Charlesworth were the directors and members of the company. Initially, both of them had worked in the business, drawing sums as directors' remuneration under express powers in the memorandum and articles. In 1967 Mrs Charlesworth became sick and stopped taking an active part in the business, but she remained a director and continued to draw remuneration at a reduced rate.

From 1968 onwards, the company was no longer making a profit, and in 1971 it went into insolvent liquidation. The liquidator claimed that Mrs Charlesworth had no right to be paid after she had stopped working and that Mr Charlesworth had been paid more than the market of his services. He sought recovery of the sums allegedly overpaid. The payments to Mr Charlesworth were upheld, even those made after the

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[66] The New Combined Code available at http://www.ey.com/eChannell/publications assessed on 17th January 2019

[67] Legal Norms: Directors Remuneration – Fiduciary Duties, available at http://www.legalnorms.com/directors-remuneration, assessed on the 17th January 2019

[68] (1990) 2 AC 663 HL

[69] (1990) 2 AC 663 (House of Lords)

[70] Ben Pettet, 2009, Pettet's Company Law: Company and Market Law, Third Edition, Pearson Longman, P. 142

[71] 1982 3 All ER 1016 (Ch D)

company had stopped making a profit. However Mrs Charlesworth was compelled to refund that part of the money paid to her, which the judge held was not a 'genuine award of remuneration' but a 'disguised gift out of capital'. This case shows that directors were entitled to continue to pay themselves salaries even when their company was not making profits before its ultimate insolvency.[72]. The case shows that there is only a little restraint upon the directors paying themselves disproportionate amounts even where this may prejudice creditors[73]. Similarly, in *Re Horsley and Weight Ltd*[74] the court did not question the commercial substance of a pension paid at the time the company almost became insolvent. It is submitted that the decision in the above cases is in contravention of 1A 1986, s.214[75], of the wrongful trading provision, which is to the effect that at the time of the company becoming insolvent, the directors' primary duty at this time is owed to the creditors.

This case limits the opportunity of the company or a liquidator to question a transaction such as a pension because it is excessive or disproportionate or not proper in the commercial substance of the transaction[76].Thus, it could be suggested that the common law cases will not be of much help in proffering solutions to the problem of directors' remuneration, especially as some of the cases contradict the statutory provisions, such as the case of Re Halt Garage.

Another Principle of law that concerns the level of remuneration is the duty of the company director to act in the company's best interest. In *Re Lee, Behrens & Co Limited*[77], the company directors had voted an annuity to the widow of the former managing director of the company. The company has express authority to make such a provision. However, Eve J, struck the payment down because the directors' actions were not incidental to the carrying on of the company's business and not the benefit of or for the promotion of the company. If the reasoning, in this case, was intended to relate to the company's capacity, then it would be correct to say that it was inappropriate where there was an express power.

Under S.172 of the Companies Act 2006[78] the director must consider the members' interests, such as employees, or the need to foster relationships with customers when promoting the company's success. This duty may be relevant to remuneration in certain circumstances, as when the directors keep most of the profits, thereby not providing their employees with an appropriate salary or passing on some of the benefits to the customer through lower prices.[79]

The no-conflict duty codified under s. 175-177 of CA 2006 is another common law principle crucial to the director's remuneration issue. A company director "must not have 'a personal interest conflicting… or which possibly may conflict, with the interests of those he is bound to protect…"[80]. One precise instance when a director has a conflicting interest concerning the company is the setting of remuneration. Directors are, however, under a duty to disclose a conflict of interest which is, or should be,

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[72] Andrew Hicks & S.H. Goo, (2008) Cases and Material on Company law, Sixth Edition, Oxford University Press, p.326
[73] ibid
[74] (1982) Ch 422: (1982) 3 All ER 1045 (CA)
[75] (1986) s.214, 1A
[76] ibid
[77] 1932 2 Ch 46
[78] 2006 CAs.172
[79] Op cit, no 44,
[80] ibid

obvious[81]. For larger companies which most often use a service contract when employing a director, the act essentially excludes a requirement to disclose a conflict of interest when negotiating or changing the terms of the service contract. This duty, therefore, appears to apply in minimal circumstances, such as when a committee is setting the remuneration of a director and the director tries to influence the members of the committee without disclosing to them that they are considering his remuneration rather than another director's[82].

One of the most effective duties regarding remuneration is the duty to exercise independent judgement. One instance of this duty being relevant may be when a director persuades another to join the company with generous incentives. The new director might be beholden to this director and thereby unable to exercise an independent judgement in awarding some aspects of his remuneration, such as benefits in kind[83].

The directors' duty to take reasonable care, skill and diligence is another paramount duty touching the remuneration problem. A director is to be compared to a reasonably diligent person with the: "general knowledge, skill and experience that may reasonably be expected of him in relation with discharging his duty as a director to the company.

7. CONCLUSION

This paper considered the problem of excessive director remuneration. The controlling mechanism put in place to check the excesses was also examined. The directors' duties related to directors' remuneration were also examined. The findings are that the new regulation can still not reduce the remuneration package several years after the Cadbury report. It increases pressure on the government, regulators and companies to create new rules for corporate governance.

The findings revealed that executive pay is so robust that remuneration does not correspond with performance and the wealth gaps have widened drastically. Furthermore, the remuneration packages have been flawed as directors are paid huge remuneration and bonuses such as the golden goodbye, even when the company is not making a profit, thereby depleting the shareholder's wealth in an unethical manner. This problem may be connected with the composition of the board, comprised of non-executive directors appointed by the CEO and either friends or confidants. The effect is that they tend to sign in outrageous amounts as a way of payback. So far, it has been submitted that despite all the mechanisms illustrated above, the problem still lingers. There should be a formal and standard criterion for appointing non-executive directors that are indeed independent and competent.

[81] ibid
[82] ibid
[83] ibid