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Dear Ms Horton,

### **UK Corporate Governance Code and Guidance on Board Effectiveness Response**

We are pleased to have the opportunity to provide comments on the FRC's consultation on Revisions to the UK Corporate Governance Code (the revised Code). GSK is a large dual-listed global organisation. Our response is written through this lens and includes potential impacts that the FRC proposals in the revised Code could have on a company such as GSK and our Board.

We strongly support the Code as a framework for raising general standards and continue to believe that this is the right one for the current UK market to encourage high standards of corporate governance and behaviours.

We are firm supporters of the '*comply or explain*' model of reporting. It also recognises that all companies are different and may need to interpret and implement the principles in their own way. We consider that it continues to act as a flexible and effective means of raising the bar on governance and effectiveness and its importance should continue to be safeguarded by the FRC.

This is a particular inflection point in the history of the Code and we support the FRC's approach in undertaking a wide-ranging review to ensure it remains effective. We trust our comments in this reply will assist the FRC in shaping and finalising your important work in setting and enhancing governance standards now and for the future.

#### **Summary of our observations on the revised Code:**

We support the FRC's overarching objective of producing a shorter, sharper and more commercially focused Code, whilst retaining and building on its enduring elements. The FRC has taken a balanced and largely proportionate approach to drafting the revised Code which we support. We do, however, have concerns over a few fundamental areas of substance.

We identify and summarise our main areas of support and concern below before going on to address the specific questions in the consultation.

### Areas of support:

- **The choice of methods of engagement with the workforce** incorporated in the revised Code to achieve a meaningful exchange between the board and its employees. This should enhance and foster greater creativity and optionality in how companies embrace this important area by allowing for a combination of these methods or indeed for companies to be able to design their own channels of engagement to achieve the same objective.
- **Changes in the Code aimed at encouraging companies to intensify their efforts at building diversity in their executive pipeline up to the board.** In terms of gender diversity, we are pleased that the FRC has incorporated the Hampton Alexander Review team's recommendations on:
  - measurable targets for companies combined executive committee and direct reports; and
  - extending the role of nomination committees to exercise oversight of the process.

We are also pleased to see the FRC widen the view of diversity beyond an overarching focus on gender, which we believe to be very important.

### Areas of concern:

- **The interpretation of section 172 of the Companies Act (director duties)** in the revised Code and Guidance on Board Effectiveness. These documents appear to give the impression of tilting the current balance away from shareholder primacy towards an equivalence between shareholder and stakeholder interests. The FRC adopted a similar approach, when consulting on the draft Strategic Report guidance in the autumn of 2017. It was subsequently paused until the Government publishes its proposals in respect of reporting on section 172. It would be preferable if the FRC takes a similar view in respect of the Code consultation. That said, we urge the FRC to revisit its work around section 172 after the Government's position has been published.

Companies are conscious of the role they play in society. As such they realise the importance of weighting the consideration of all their stakeholders. Shareholders are giving more focus to the issues that are important to their clients and ensuring that these are clearly stated to companies. Ensuring this mechanism works well is important to all concerned.

- **Modernising and simplifying the Code with an increased emphasis on reporting against the Principles.** Although this should help companies to concentrate on how the principles inform their governance practices and encourage clearer and more concise reporting for the benefit of shareholders and other interested stakeholders. However, such a radical reshaping of the form of the Code, compared to the previous evolution could result in ambiguities and inconsistencies. It could also create uncertainty around previously settled governance responsibilities. Two examples are given below to illustrate our point:

- **Provision 7** calls for boards to *'take action to identify and eliminate conflicts of interest'*, which is inconsistent with the Companies Act requirements in respect of how conflicts of interest are managed.
- **Provision 10** now calls for the CEO to ensure that *'...timely and balanced information is presented in order for the board to make decisions effectively'*. This appears to imply a change in responsibility from the chairman who, in previous codes, was charged with the responsibility to ensure both *'directors received accurate, timely and clear information'* and the responsibilities of the company secretary which included *'ensuring good information flows within the board and its committees and between senior management and non-executive directors'*.

We urge the FRC to address these and other areas of drafting ambiguities and inconsistencies in the revised Code and Guidelines with law and regulations, prior to publishing the final Code.

- Finally, we note that the FRC considers that the **Stewardship Code** should be reviewed later in the year to examine the role it can play in driving further improvements in best practice. We consider the Code and the Stewardship Code for investors as being different sides of the same coin. Investors have a vital part to play in ensuring that the Government's corporate governance reforms are successful. Elevating the status of the Stewardship Code is important. We understand that a code governing proxy advisers is also to be developed. These three codes operating effectively together should mean that the UK can maintain and develop its leading position in corporate governance.

Yours sincerely



**Victoria Whyte**  
Company Secretary  
GlaxoSmithKline plc

## RESPONSES TO CONSULTATION QUESTIONS

### INTRODUCTION

**1. Do you have any concerns in relation to the proposed Code application date?**

No.

### SECTION 1 – LEADERSHIP AND EFFECTIVENESS

**2. Do you have any comments on the revised Guidance?**

We believe the revised guidance should be helpful to Board and to new Board directors. The points we raise in the questions below should also be considered relevant to the supporting guidance.

We are concerned that the helpful challenge questions provided in the guidance could be taken out of context for example by proxy voting agencies. We would not expect companies to report against each prompt on an annual basis in their annual reports. It would therefore be helpful if the FRC made very clear the context in which the questions are provided.

**3. Do you agree that the proposed methods in Provision 3 are sufficient to achieve meaningful engagement?**

Yes. We are currently looking closely at one, or possibly, a combination of methods as a means of further strengthening existing engagement channels with our "workforce". We believe that it would be very helpful for the FRC to be very clear in this provision that it is a matter of choice for companies as to what method or combination of methods they use. This should illustrate the scope for companies to be more creative in this area. This will further encourage boards to tailor their engagement method to suit their particular needs and circumstances, which they can explain compliance against in their annual reports.

Also, in respect of those individuals whose views companies should solicit, we agree that it is reasonable for the FRC to use the term '*workforce*' rather than '*employee*'.

However, there is strong chance that without guidance from the FRC on the scope of this definition, some companies may wish to apply a very narrow interpretation given employment and tax law risks that could arise. It would be helpful to highlight that no adverse interpretation would be attributed to companies in including outsourced workers and employees of third party contractors in relation to their work supplying services to corporates in this regard.

**4. Do you consider that we should include more specific reference to the UN SDGs or other NGO principles, either in the Code or in the Guidance?**

No. We consider that the references included in Principles A and C are appropriate and proportionate.

**5. Do you agree that 20 per cent is ‘significant’ and that an update should be published no later than six months after the vote?**

Yes, we agree that 20 per cent is ‘significant’. It reflects generally accepted market practice established in The GC100 and Investor Group Directors’ Remuneration Reporting Guidance 2016 in this area. It also aligns to the methodology used for The Investment Association’s newly created Public Register listing FTSE All-Share companies who have received significant shareholder opposition to proposed resolutions.

We do not agree with the proposed six-month update. Timeframes around resolving shareholder dissent on issues can vary widely and this proposal imposes an arbitrary deadline. There tends to be a gap of about nine months between a company’s AGM and the publication its next annual report, which in most cases should provide sufficient time to provide an orderly and considered explanation to shareholders of the outcome of these discussions.

The FRC should re-examine and adjust Provision 6 to provide the Board with the flexibility to report to shareholders earlier than the annual report if it considers that it is the appropriate to do so in the interests of shareholders.

## **SECTION 2 – DIVISION OF RESPONSIBILITIES**

**6. Do you agree with the removal of the exemption for companies below the FTSE 350 to have an independent board evaluation every three years? If not, please provide information relating to the potential costs and other burdens involved.**

As a FTSE 100 company, we are not in position to comment on this.

**7. Do you agree that nine years, as applied to non-executive directors and chairs, is an appropriate time period to be considered independent?**

Yes.

**8. Do you agree that it is not necessary to provide for a maximum period of tenure?**

Yes.

## **SECTION 3 – COMPOSITION, SUCCESSION AND EVALUATION**

**9. Do you agree that the changes proposed in Section 3 of revised Code will lead to more action to build diversity in the boardroom, in the executive pipeline and in the company as a whole?**

Yes, we agree that the changes proposed in Section 3, by creating greater responsibilities and Board-level oversight of diversity up through the company, should lead to more action. A genuinely inclusive and diverse boardroom, executive pipeline and workplace are important success factors for companies. We support the FRC’s efforts, alongside Government-led initiatives.

In respect of gender diversity, we fully support the recommendations made in the Hampton-Alexander Report aimed at raising the proportion of women in the executive pipeline. We agree that it is logical that the Code should be amended to support this

area by asking nomination committees to intensify their efforts in this respect. Increasing the pipeline of female direct reports to our Corporate Executive Team is a particular area of attention for our own Nominations Committee at present.

We support the proposed requirement for nomination committees to oversee the development of a diverse pipeline for succession. However, it would be helpful for the FRC to set out in its Guidance how this is expected to work in practice bearing in mind:

- the constraints on committee members' time and attention; and
- in GSK's case, and other organisations in all probability, all appointments at senior levels of the organisation are normally externally benchmarked and so internal succession planning is only part of the pipeline activities for these roles.

Great care will need to be taken by boards as they tackle and resolve issues that unlock greater diversity in their executive pipelines, that they do not end up creating a *de facto* culture of quotas rather than:

- applying the overriding principle of ensuring the right talent is engaged; and
- that an appropriately inclusive culture exists and is fostered to ensure retention of a diversity of talent.

**10. Do you agree with extending the Hampton-Alexander recommendation beyond the FTSE 350? If not, please provide information relating to the potential costs and other burdens involved.**

We believe that this should be the case, but as a FTSE 100 company, we are not in position to comment on this further.

**11. What are your views on encouraging companies to report on levels of ethnicity in executive pipelines? Please provide information relating to the practical implications, potential costs and other burdens involved, and to which companies it should apply.**

Although we understand and support a widening of focus to encompass ethnicity, in reality measurement poses a myriad of challenges for multinational companies such as GSK, which measuring gender does not. GSK is a global company and our pipeline therefore covers a multitude of different regulations. Ethnicity is measured differently in each country, therefore it is very difficult to have a consistent measure to understand with great certainty whether ethnic diversity is being increased or not. To illustrate our point, the link below documents the different ethnic groups operated across the world.

<https://www.cia.gov/library/publications/the-world-factbook/index.html>

Law and regulations vary around the collection of data around ethnicity and then the availability of such data is also governed and restricted by data privacy laws. In addition, there are questions over whether the workforce on a country-by-country basis is willing to have data on its ethnicity collected and analysed. As a result, it is clearly difficult for global organisations to obtain complete, meaningful and reliable data to appropriately measure and monitor levels of ethnicity.

That said, GSK is motivated to further improve the diversity in all aspects several initiatives designed to achieve this. The reality of collecting data will prove costly and challenging.

## **SECTION 4 – AUDIT, RISK AND INTERNAL CONTROL**

**12. Do you agree with retaining the requirements included in the current Code, even though there is some duplication with the Listing Rules, the Disclosure and Transparency Rules or Companies Act?**

No. Where there is a clear opportunity to remove duplication it should be acted on.

**13. Do you support the removal to the Guidance of the requirement currently retained in C.3.3 of the current Code? If not, please give reasons.**

Yes.

## **REMUNERATION**

**14. Do you agree with the wider remit for the remuneration committee and what are your views on the most effective way to discharge this new responsibility, and how might this operate in practice?**

We agree that the remuneration committee when setting executive pay levels should have a wider remit to take into account the company's remuneration and workforce policies and practices. However, it is unclear from our reading of the revised Code whether the remuneration committee is expected to take responsibility for oversight of all workforce policies and practices or just those relating to pay. It would also be helpful for the FRC to clarify the scope of the remuneration committee's oversight role as there are important issues around expected workload and divisions of responsibility issues to settle before the revised Code is finalised. Our previous comment on the definition of workforce is also important here too!

It is also key to ensure that the remuneration committee does not skip into an executive role here.

We note that the revised Code appears to include non-executive fees within the remuneration committee's remit. This will create a direct conflict with non-executive directors setting their own fees.

**15. Can you suggest other ways in which the Code could support executive remuneration that drives long-term sustainable performance?**

We consider that the elements set out in Provision 40 around clarity, simplicity, predictability, proportionality and alignment to culture are the appropriate ones for the remuneration committee in support of long-term company performance and value creation.

**16. Do you think the changes proposed will give meaningful impetus to boards in exercising discretion?**

It is too early to tell at the moment.