

UKSA's BRITISH GAS INITIATIVE - ARTICLE BY DONALD BUTCHER

(from Spring 1995 Edition of Update)

The only mention of British Gas in our last edition was carried in a re-print of our Chairman's letter to the FT - "No link between pay and performance". Since then the company has rarely been out of the news and has been on the receiving end of a veritable barrage of negative publicity mainly concerning directors' remuneration but also including direct debits, lower spend on maintenance, cuts in staff numbers and reducing showroom staff salaries. Some would argue that the well focused media attack owes more to politics than to bad governance. However, even the company acknowledged the serious mistakes it made in public relations terms. So what should be the response of private shareholders concerned about their ownership responsibilities?

Firstly, we had to remember that our main concern as shareholders had always to be the well-being of the company as a whole. The directors are not the company. Neither is the well-being of the directors necessarily the same thing as the well-being of the company. Perhaps British Gas might prove to be a good example of this point. So, as Roger Jackson points out in his article in this issue, we went 'back to basics' and read the Articles of the company in order to discover what 'rules' we had agreed to be bound by when we decided to become members of British Gas. Just in case some of us may have forgotten!

Put briefly, our reading of the Articles with the recent decisions of the directors ringing in our ears made us resolve to draft a resolution to amend just one Article, as further described below. We concluded that the result of the change we were proposing would be wholly beneficial for the company in that governance would be improved by virtue of the fact that the accountability of directors to shareholders regarding their own remuneration would in the future be made more explicit. In the short term, the proposed resolution also offered the directors an opportunity to counteract all the negative publicity and thus to restore the standing and reputation of the company - a very *proper* concern of responsible shareholders.

Resolution and statement

UKSA member, Roger Jackson, then set to work and drafted a statement and resolution. The main body of the statement, the purpose of which is to explain the resolution to all members of British Gas, read as follows:-

Existing Article No. 81 of the Company's Articles of Association allows and authorises the amount of fees paid to individual directors for the performance of duties as Directors to be decided by the directors, subject however to a ceiling limit of £300,000 in aggregate per annum. The expenditure of monies in excess of this amount as remuneration to directors (for their services as directors) requires the prior sanction of the shareholders in general meeting.

Existing Article No. 101 - however - of the company's Articles of Association allows and authorises the amount of remuneration paid to directors for the performance of Duties as holders of executive offices under the company to be decided solely by the directors themselves. There is no ceiling figure specified, either in respect of an individual director or for the board as a whole, and there is no requirement for the directors to seek any shareholder approval - or indeed to consult the shareholders in any way.

Accordingly, as the Articles of the Association stand at the present time, the shareholders cannot in law exert any control whatsoever upon the remuneration which the directors decide is payable to those of their number who hold executive offices under the company. It therefore follows that the shareholders (the true owners of the company) currently have absolutely no control over overall boardroom remuneration costs; this irrespective of howsoever high these costs are raised by the directors.

It is the view of the requisitionists - who are supported in this view by the United Kingdom Shareholders' Association - that it is neither logical nor reasonable for the Articles of the company to specify a ceiling figure upon the aggregate amount of fees which may be paid to the directors (which fees constitute a low proportion of boardroom remuneration costs) yet for there to be no ceiling figure whatsoever upon the value of directors salaries and like benefits (which constitute a high proportion of boardroom remuneration costs).

It is acknowledged by the requisitionists that the Board of Directors - so as to be enabled to properly exercise its governance role - must be accorded a reasonable degree of latitude and flexibility with regard to the fixing of executive remuneration. The resolution tabled does not seek to remove such a proper degree of latitude and flexibility but does seek to specify 'reasonable maxima' above which, in future, the directors must seek (as is presently the case regarding fees) the approval of shareholders in general meeting.

In tabling the resolution, the requisitionists have regard to various recent statements by members of HM Government to the

effect that the control of (or the restraining of excessive) boardroom remuneration is not a matter for HM Government but is a matter for action by shareholders."

The resolution read as follows: -_

THAT the Articles of Association of the Company be amended by the deletion of existing Article No. 101 in its entirety and the substitution thereof of a new Article No. 101 as set out hereunder:

"101 (1) The directors may appoint one or more of their number to the office of chief executive director or to any other executive office under the Company and may enter into an agreement or arrangement with any director for his employment by the Company or for the provision by him of any services outside the scope of the ordinary duties of a director. Subject to the provisions of the Act, any such appointment, agreement or arrangement may be made on such terms, including terms as to remuneration, as the directors think fit provided however that the said remuneration shall not, unless otherwise determined by the Company by ordinary resolution, exceed the amounts stated hereunder.

(a) For each director who holds any such executive office under the Company or who holds any position of employment by the Company or who otherwise undertakes services outside the scope of the ordinary duties of a director - a maximum amount of £650,000 per annum, which amount shall be deemed to accrue from day to day.

(b) For all directors, collectively, who hold any such executive offices under the Company or who hold any positions of employment by the Company or who otherwise undertake duties outside the scope of the ordinary duties of director - a maximum sum of £2,850,000 in aggregate in any financial year of the Company.

(2) In the interpretation and application of paragraph (1) of this article, the following shall apply:

(a) The maximum remuneration amounts stated shall be -

(i) inclusive of any and all emoluments, benefits in kind and all performance bonus payments (and similar type payments) and shall also be inclusive of any and all pension scheme contributions paid by the Company in respect of, or equitably attributable to the holding of the executive offices or to the otherwise employment of, the directors concerned,

and (ii) exclusive of such fees as are paid, in accordance with the provisions of article No. 81, for services in the office of director and which are, accordingly, decided by the

directors or are determined by the Company by ordinary resolution.

(b) In the event of any director holding more than one executive office under the Company and/or holding more than one position of employment by the Company, the maximum amount stated under (a) of paragraph (1) of this article shall apply to such director notwithstanding the fact of his holding more than one executive office and/or more than one position of employment.

(c) Where in any financial year of the Company a director devotes in excess of fifty days to the performance of duties, whether such duties are in the office of director or in any executive office under the Company or in otherwise undertaking duties outside the scope of the ordinary duties of a director, such director shall - for the purposes of this article - be deemed to hold an executive office under the Company."

To lodge or not to lodge?

Before seeking signatures for our resolution and statement, we had had two meetings with the company secretary and his stated expectation was that "no costs would be incurred" in circulating the documents to the company's some 1.9 million shareholders provided that the requisitions were lodged with the company not later than Wednesday, the 22 February. The expectation that "no costs would be incurred" is important since the Companies Acts require the company to charge to the requisitionists all costs incurred by the company in circulating both documents. The company secretary did not, of course, at that time know with certainty whether the company would or would not incur costs as he did not know how many other requisitions would be lodged. Accordingly he could not then know the extent to which the company would be involved in, for example, additional printing and postage costs.

On the day that we intended to lodge the documents, the company secretary said that costs could well be incurred. We were, therefore, faced with a situation whereby the some 130 private shareholders who had signed the documents could be charged with costs which the company secretary said he was unable to estimate. Further to this, the company had sought legal advice which warned the requisitionists that if the documents were lodged with the company, then they could not be withdrawn without the express permission of each requisitionist. This was plainly impossible. To put the requisitionists in a situation whereby they might well be charged with unquantifiable costs at some uncertain future date, all to be decided by British Gas, was clearly an unacceptable risk. We decided, therefore, not to lodge the requisitions.

Although this was a great disappointment, there are two positive results. Firstly, there will be a resolution on the AGM agenda

drafted by an adviser, PIRC, to a number of pension funds which will call for British Gas to review its remuneration policy in accordance with best principles and report back to shareholders. We are sure that UKSA members will wish to vote for this resolution. Secondly, the Employment Select Committee which recently interviewed both the Chairman and the the Chief Executive of British Gas, has requested myself and Professor Lamb (now an UKSA member) to answer questions on the 25 April and we expect the committee members to be very interested in UKSA's initiative.

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