Corporate Governance: Change, or else

Launching her leadership campaign last July, the then Home Secretary, and frontrunner to become the new Prime Minister, Theresa May, called for a "bold positive vision" for a country that works for not just "the privileged few". However, the Prime Minister has since found turning rhetoric into policy harder than originally envisaged. Eight months on, has the Government lost its zeal to deliver the corporate revolution it promised?

> *"We have seen an irresponsible minority of privately-held companies acting carelessly – leaving employees, customers and pension fund beneficiaries to suffer when things go wrong*
>
> - Rt. Hon Theresa May MP, Prime Minister, 28th November 2016.

Last summer, Theresa May, who had suddenly emerged as the new frontrunner to become Prime Minister after a particularly bloody episode of Conservative internecine warfare, launched her leadership with an audacious pitch. The rhetoric, of shifting towards a fair corporate system, was designed to pitch May as a One Nation Prime Minister in waiting whilst at the same time distancing her from the Thatcher years by tackling the markets and individualism so closely associated with the imagery of her party.

The launch also served another purpose; having been Home Secretary for six years, May had a reputation as a steely and somewhat aloof politician. The speech was designed to show that behind the chilly façade, the emerging frontrunner had a strong moral compass and a belief in tackling corporate abuse in the wake of the high-profile and shocking collapse of BHS, and the undercover reports that shined the light on Sports Direct's 'medieval practices'.

May did not hold back in outlining exactly how she believed the UK company law framework should be reformed, and indicated that changes were required not only in relation to the way in which businesses were run, but how workers were remunerated; enhanced transparency on pay ratios; changes to board compositions to include workers and consumers; binding annual votes and proposals to entrench social mobility so that professions were no longer a closed shop.

Fast forward to 2017 and the subsequent publication of a *Green Paper*, the Prime Minister is already finding that turning rhetoric into policy is harder than it looks. May's signature policy, to put workers and consumers on company boards, supported by both Labour and the trade unions, was ditched even before the *Green Paper* appeared, after opposition from business and some in her own party. Other proposals, often extremely mild, are still in the Paper, but even they have been watered down. The early brandishing of reformist credentials, and of tapping into public indignation, now seems unlikely to bring about any substantive change in how businesses are run and conduct themselves in the UK. The opportunity to tackle corporate mismanagement, and develop a distinct brand of Mayism has been lost, and with it a lesson of rhetoric over prose.

Corporate Governance: The Promise

In her opening gambit of reforming corporate governance, May has been mindful of two specific public concerns: excessive pay and corporate misconduct. Pay for CEOs in the UK has dramatically outstripped average earnings over the past two decades. According to the Government, in 1998 the ratio of average CEO pay at a large company to the average full-time employees pay was 47:1. In 2016, it stood at 128:1. Big pay awards at companies such as BP, even when the oil giant was losing money and sacking workers, have stuck in the public's craw.

Meanwhile companies such as Tesco, BHS and Sports Direct have been embroiled in scandal. BHS was forced to close in August of last year with the loss of 11,000 jobs, leaving behind a huge pension-fund deficit. Sir Philip Green was rightly vilified and Parliament had to conduct detailed investigations into the practice of Sir Philip and demand he pay contributions to a pension black hole that had left thousands of former employees and their families without a pension.

With these but three examples, and after the financial crisis and numerous corporate scandals, improving the standards of businesses behaviour – which were increasingly perceived by the public as having deteriorated to an all-time low – was deemed paramount. To policymakers, it seemed, the idea that company directors would act purely according to enlightened self-interest was on its deathbed.

Take the idea of binding shareholder votes on executive pay, intended to give shareholders more power to curb apparent excesses. Few would quibble with this, as since 2013 only six companies have lost advisory votes on pay and only once has a company lost a binding vote, forcing it to come back with new proposals. Yet the *Green Paper* suggested that not all "elements" of executive-pay packages should be subject to a vote, and that votes need not be binding in every case. The Paper also suggested that, instead of putting workers on boards, there should be something called "stakeholder advisory panels".

In a direct nod to BHS, the Paper dwelt on the idea of extending formal corporate governance and reporting standards from listed companies to 2,500-odd large private companies. But there was little on the problem of how BHS' owners managed to run down its pension scheme with apparent impunity.

Corporate Governance: The Reality

Theresa May promised radicalism on executive pay and boardroom behaviour, but her *Green Paper* was palpably not that. Most of the proposals were simply tweaks of the existing corporate framework. The Prime Minister had seemingly performed linguistic gymnastics to promise one thing and quite clearly deliver another. None of the new proposals look to be terribly effective, and muddying the waters further is the complexity of the *Green Paper*'s proposals.

None of the proposals would have stopped Sir Philip Green running BHS into the ground and leaving its workforce to its fate, for instance. Nor would Mike Ashley, who infamously gave a bombastic and contrite performance in front of MPs, have had to change the working conditions and pay of his staff if even the most stringent of the Paper's proposals come to pass.

That the Government needs to intervene to improve standards of business behaviour in the UK is something of which all boards should be ashamed. But the Prime Minister does not seem clear as to who her targets are. Successive governments have thought that sunlight is the best disinfectant to malpractice, but merely printing pay ratios will do nothing in itself to change the culture – and finances – of how businesses are run.

What is sadly lacking from the emerging proposals is how to strengthen legislation already in place, or how to empower institutions and practices that are already aiding corporate governance in the UK. Rather than consulting workers on senior executives' pay deals, why not roll back some of the trade union restrictions that restrict recruitment on business premises. And rather than being beholden to shareholders and the bottom line, in a circular, reinforcing, process of remuneration – why aren't businesses in the UK already adhering to Section 172 of the 2006 Companies Act, which says a company director must "have regard" to "the likely consequences of any decision in the long term", as well as "the interests of.. employees.. suppliers, customers and others"?

Conclusion

Developing an integrated approach to corporate governance that takes the UK towards the second half of the twenty-first century is long overdue. It is just a shame that it is the actions of the very worst of a very few businesses which brings the issue to the political fore.

The debate has, however, shifted in recent years. A couple of years ago, the notion that workers might have a say on the pay of their CEO would have been dismissed as Marxist or, at the very least, Ed Miliband-ite. Now it comes from the leader of the Conservative Party and from leaders of businesses.

The potential of the *Green Paper* has been drastically revised downwards since the Prime Minister first spoke of her vision last summer. If the objective was to focus the minds of the UK's leading businesses, then it has succeeded. If it was to deliver a deep-rooted, substantial and long-lasting change to corporate governance behaviour, then even before it has reported – it has failed.

David Talbot, Director, Public Affairs

+44 (0)203 727 1225

david.talbot@fticonsulting.com