
Binding Votes. A Response to the BIS. *

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Abstract

This note argues that, as a mechanism for checking executive pay, there will be a disappointingly modest impact of the proposed change in voting on the future remuneration policy component of the Directors' Remuneration Report (DRR) - even with a very high (90%+) threshold. We also argue that it is a futile hope to rely on a binding vote. Our evidence is based on the recent advisory votes on the DRR and existing binding votes on director re-election and LTIP adoption. Analysis of FTSE 350 companies over the past eight years suggests that there is little connection between the vote against the company and the level of executive directors' pay or the deviation of executive pay from the going rate. Voting on exit payments as a means of checking 'payments for failure' misses the point. Currently, such exit payments are mostly comprised of contractually entitled components of long term incentive payments. While the BIS proposals might successfully negate these, the real 'payment for failure' has mostly already occurred during earlier career years when performance appeared deceptively promising. The authors suggest that it would be more effective in the UK context to focus regulatory efforts on the composition and terms of the long term component of executive directors' pay, through, for example, the issue of 'Career Shares'.

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I Introduction

The BIS proposals on shareholder voting rights (BIS, 2012) place great weight on the transformation of the existing advisory vote on the Directors' Remuneration Report into two distinct votes, one of which is now to be binding. It is also proposed that the required level of vote to approve the DRR be raised (possibly to 75%). This note provides evidence to suggest that such changes are unlikely to have any material impact on the evolution of executive directors' pay. We argue, instead, that reform would be more effective if efforts were focused on the form and terms of the long term component of executive remuneration, through, for example, the issue of 'Career Shares'.

II Data

The data used in the following analysis comprise all companies that that featured in the UK FTSE350 index of top companies between the years 1996 and 2010. Manifest Information Services Ltd, a proxy voting service, is the commercial provider of the data. These data include detail on the governance of each company (number of directors, their age, gender, length of service and executive/non-executive status) and details of the remuneration awarded to each director (including both cash-based and equity-linked incentive awards). Importantly, the data also report on the results of shareholder voting. Once a company enters the sample frame, Manifest continues to follow the company, even if it leaves the FTSE350. The Manifest data set used here extends through to 2010 for remuneration detail, and through 2011 for voting at AGMs. For financial performance and other accounting information, use is made of DataStream.

The data have already been analysed for the period through 2008 by Gregory-Smith et al. (2011), but only in terms of the advisory vote. Since 2006 it has been possible to identify the votes on the re-election of specific directors, in addition to the overall vote on the Directors' Remuneration Report. It is also possible to examine the vote on the adoption of new long-term incentive schemes, as the LSE listing rules require that any remuneration arrangement that involves the issuing of new shares or stretches over more than financial year receives shareholder approval. This arrangement traces back to a recommendation by the Greenbury Committee (Greenbury, 1995):

‘Shareholders should be invited specifically to approve all new long-term incentive schemes (including share option schemes) whether payable in cash or shares in which Directors or senior executives will participate which potentially commit shareholders’ funds over more than one year or dilute the equity (paragraph 5.33).’

The key aspect of both the re-election of directors and the approval of new long term incentive schemes is that the vote is binding and therefore affords shareholders a potent voice if there is any disquiet regarding remuneration arrangements. In the case of director re-election it is possible to link the vote with prior service of that director on the remuneration committee.

Table 1 indicates the level of voting dissent at company meetings over our sample period. Both mean and median levels of dissent are substantially higher on the advisory remuneration report vote than on the binding votes relating to the directors’ elections or the binding vote on company long term incentive schemes. The concern that moving to binding remuneration report vote could discourage shareholders from registering dissent (recall dissent includes abstentions) appears not without foundation in this data.

III Results

Table 2 is a regression of the drivers of voting dissent. In particular, we wish to know whether higher levels of CEO compensation are associated with higher levels of shareholder dissent. $\ln TDCa$ is $\ln(\text{total remuneration awarded})$. $\ln TDCr$ is $\ln(\text{total remuneration realised})$. For example, The coefficient on $\ln TDCa$ implies that doubling of pay increases odds on dissent by 42% in relative terms. At median levels, this would imply that increasing pay from £1.18M to £2.36M would be associated with an increase in dissent from 5.05% to to 7.03%. This is statistically significant increase, but whether a 2% point increase in dissent would deter CEOs and Remuneration Committees from negotiating an additional £1M is doubtful.

Table 3 is a probit regression to predict the impact of different voting requirements on the sensitivity of voting dissent to CEO pay levels. Less than 2% of companies fail to

receive 50% approval for their proposal and in only 17 cases was the proposal defeated (shareholders can abstain). Approximately 10% of companies fail to achieve 75% approval and 30% of companies fail to receive 90% approval. The coefficients on $\ln\text{TDCr}$ implies that approval requirements have to be either 90% or 95% in favour, before pay has a statistically significant impact on the proposal being accepted or rejected. Simply moving to a 75% requirement would retain the status quo whereby the probability of rejecting the remuneration proposal is statistically unaffected by pay increases. The coefficients are recovered from a probit and hence are not marginal effects. For a 95% approval requirement, doubling $\ln\text{TDCr}$ would increase the likelihood of rejection by approximately 7%.

Table 4 is a regression designed to assess whether voting dissent has a moderating effect on future pay awards. The appropriate timing is ambiguous. $\%dissent_t$ captures the contemporaneous level of dissent on pay awards. This variable might capture a moderation of pay if remuneration committees anticipate high levels of dissent at the forthcoming meeting and reduce pay accordingly. However, the coefficient is positive, indicating that high dissent is associated with higher pay, consistent with the tables above (and so, this timing is wrong if we are looking for the impact of the level of dissent on subsequent pay awards). More likely is the possibility that dissent at the prior meetings t_{-1} or t_{-2} moderates current pay levels, as remuneration committees respond to accommodate dissenting shareholders. However, the coefficients on dissent remain positive on the ols estimates, and are insignificant on the fixed effect estimates, indicating that higher dissent continues to be associated with higher pay, implying that committees have not reduced subsequent pay awards upon receiving high dissent.

In order to examine the difference made by having a binding vote (as opposed to the advisory votes examined thus far) we consider the votes on director re-election. These votes have always been binding. We ask whether there is any evidence that shareholders utilise these votes as a channel for disquiet regarding executive pay. Table 5 is a regression of the voting dissent against a director as a function of the characteristics of the director and the performance of the company. Only non-executive directors are considered here. Importantly, we also include the level of remuneration received by the CEO in the period preceding the vote, and whether or not the focal director had served as chair of the remuneration committee in that year. The dependent variable is expressed as the number of votes cast against divided by the number of votes cast (i.e., votes ‘for’ plus votes ‘against’, ignoring ‘abstentions’). In addition to this formulation (label it ‘y’), it is also possible to use a log-odds format, $\log[(‘y’)/(1-‘y’)]$. Finally, the

dependent variable can also be expressed as the number of votes cast against divided by the total number of votes (i.e., votes ‘for’ plus votes ‘against’ plus ‘abstentions’). The final three columns report the more robust fixed effects models (which eliminate any fixed or personal effect relating to the director himself or herself). The coefficient on CEO pay is either perverse (in ‘fe1’) or insignificant. Nor is there any interaction observed between the director in question having served as the remuneration committee chair and the level of generosity of the CEO pay award. This would be a clear channel for shareholder disquiet regarding executive pay (as the press is currently speculating will occur in the case of Alison Carnwarth, Chair of the Remuneration Committee at Barclays). Binding votes do not, therefore, seem to be the answer.

Table 6 the election of executive directors is considered. These are slightly less interesting, in a way, because the signal is more ambiguous (given that these individuals also have an employment relationship with the company) and alternative more direct routes might be favoured over simply expressing dissent through the vote. In this case, it is possible to use the log of the director’s own realised reward in the prior period (‘lnTDCr’). In the fixed effect regressions no sensitivity to own pay is observed.

Table 7 is able to draw on a longer time series albeit on a less frequently observed event. It takes as the dependent variable dissent on the vote for new long term incentive schemes (LTIPs). Again, there is little connection to the level of executive pay in the prior period. Interestingly, column 2 does indicate some push back with a doubling of pay received by the CEO leading to an increase in the odds of dissent on a new LTIP scheme of some 18%. But as Table 1 makes clear, this is on a median level of dissent of 3.9% and so is scarcely an empirically significant impact.

IV Conclusion

In the above brief analyses, we have demonstrated:

- The link between dissent on the Directors’ Remuneration Report advisory vote and excess executive pay is statistically significant but empirically modest (Table 2).

- The probability of defeating the DRR does not become statistically significantly related to the generosity of executive pay until the hurdle reaches 90%, and even then remains empirically weak (Table 3).
- The level of dissent has no significant impact on subsequent pay awards (Table 4).
- The binding vote on non-executive re-elections does not seem to be associated with the generosity of the pay award or service as remuneration committee chair (Table 5).
- No use is made of the binding vote on the re-election of executive directors to express disquiet regarding the level of their pay (Table 6).
- The binding vote on the adoption of a new long term incentive scheme (LTIP) shows only a nominal empirical sensitivity to the level of executive pay received by executives (Table 7).

The evidence presented above demonstrates, fairly conclusively, that shareholders in FTSE350 companies do not, to any significant degree, use binding shareholder votes to express dissent regarding the level of executive pay. It is already known (Gregory-Smith et al., 2011; Armstrong et al., 2012) that shareholder votes are not a robust voice mechanism in terms of dissent over pay. The evidence presented by Ferri and Maber (2012) mainly reflects the anticipated impact of the introduction of legislation rather than the effect of the voting mechanism as such. What has been established above is that the problem does not lie with the vote being advisory or binding. The votes, on director re-elections and LTIP plan adoption, detailed above were of a binding nature. Absent a majority of support, the director would not be re-elected. Absent a majority of support, the new LTIP scheme could not be adopted. In each case, the shareholder voters possessed unambiguous power to prevent a management proposal. In almost all cases, the proclivity to utilise that power was not in any way enhanced by the company having been more generous in the award of executive pay. The sole exception is in the one of the formulations of the analysis of the case of LTIP plan adoption, and even here the impact was empirically modest.

Hopes being pinned on making a vote on a component of the Directors' Remuneration Report binding and on raising the hurdle for acceptance to 75%, or above, are

misguided. A better way forward, as we have tried to make clear in our previous submission to the BIS consultation (Gregory-Smith and Main, 2011), is to target the way in which long term incentives are delivered so as to ensure that they are genuinely long term. To this end we recommend that long term incentives be allowed to vest in the normal way, subject to performance condition if necessary, but that they not be cashed in until at least two years after the executive has left the company. These ideas are fleshed out in Main et al. (2011).

V Tables

Table 1: Summary Statistics

	N	p1	p25	p50	p75	p99	Mean	St. Dev
<i>Executive Directors</i>								
% Dissent	2686	.0000111	.002639	.007216	.0183	.2263	.01917	.04402
TDC Awarded	2686	.05749	.6088	1.066	1.981	9.517	1.776	5.409
TDC Realised	2686	.04414	.4746	.8304	1.527	9.327	1.35	1.891
<i>Non-executive Directors</i>								
% Dissent	5882	.0000177	.003241	.009154	.02984	.3577	.03152	.06489
TDC Awarded	5882	0	.03712	.05303	.08825	.5898	.08524	.1645
TDC Realised	5882	0	.03717	.05303	.08803	.6594	.09058	.2333
<i>Advisory Remuneration Report Votes</i>								
% Dissent	3273	.0002984	.02106	.05053	.1214	.5169	.09348	.1118
% For	3273	.4504	.8712	.9449	.9756	.9994	.8999	.1186
<i>Long Term Incentive Schemes Votes</i>								
% Dissent	1203	.0000673	.01118	.03891	.1018	.4524	.07353	.09557

∞

1. Sample comprises FTSE350 directors standing for election between 2006 and 2011, advisory remuneration votes since their introduction in 2002 and votes on long term incentive plans since 1996.
2. %*Dissent* is the aggregate of abstentions and votes against. It is common practice in the governance industry to combine votes against with abstentions to form a measure of dissent.
3. TDC realised is total compensation realised over the whole career, in Dec 2010 £M. This includes salary, bonuses, perks and the *realised* values from share options, deferred bonuses and vested equity incentives. This is our preferred measure of pay when analysing the drivers of voting dissent. TDC awarded is the same as TDC realised other than grant date values of options, deferred bonuses and vested equity incentives are used instead of realised values. This is our preferred measure when analysing the impact of voting dissent on subsequent pay awards. Non-executive directors are typically paid fees only.

Table 2: Remuneration Report Advisory

	ols1	ols2	fe1	fe2
lnTDCa	0.42*** (5.73)		0.27*** (3.55)	
lnTDCr		0.30*** (5.41)		0.099* (1.78)
alldissent	10.5*** (8.07)	10.7*** (7.94)	9.75*** (10.1)	9.75*** (9.85)
Firm Level Controls	YES	YES	YES	YES
Sector Dummies	YES	YES	N/A	N/A
Year Dummies	YES	YES	YES	YES
Observations	3,274	3,274	3,274	3,274
R-squared	0.168	0.153	0.131	0.125
Number of companyid			587	587

Robust t-statistics in parentheses

*** p<0.01, ** p<0.05, * p<0.1

1. The dependent variable is $\ln\left(\frac{\%Dissent}{1-\%Dissent}\right)$. This gives a ‘log-odds’ interpretation to the coefficients.
2. lnTDCa is ln(total remuneration awarded). lnTDCr is ln(total remuneration realised). For example, The coefficient on lnTDCa implies that doubling of pay increases dissent by 42% in relative terms. At median levels, this would imply that increasing pay from £1.18M to £2.36M would be associated with an increase in dissent from 5.04% to to 7.17%. This is statistically significant increase, but whether a 2% point increase in dissent would deter CEOs and Remuneration Committees from negotiating an additional £1M is doubtful.
3. The left hand columns are estimated with ordinary least squares and therefore capture the between company variation. That is companies with higher pay levels attract moderately greater levels of dissent. However, some high profile companies may attract higher dissent and also happen to pay more. To control for this, the right hand columns incorporate firm fixed effects, which captures the within company variation. The resulting estimates remain statistically significant, so companies receive higher dissent when CEO pay in their company increases, but the magnitude of the effect is even smaller than before.
4. Alldissent captures the mean level of dissent of the other resolutions proposed at the meeting at which the advisory remuneration report was proposed. This captures the general level of shareholder disquiet at the company on issues unrelated to executive compensation
5. Firm level control variables comprise *Size*(turnover (total operating income for financial institutions) in Dec 2010 £M), *Board* (no. of directors at the year end), *%NEDs* (the percentage of the board comprising non-executive directors at the year end) *TSR* (total shareholder return measured over the period between the AGMs), *DPS* (Dividend Per Share) *Profit* (accounting profit before interest and tax), *PTOB* (price to book ratio), *Beta* (the firm’s risk beta), *totalemp* (total employees) and *%IND* (the percentage of the board comprising independent non-executive directors at the year end).

Table 3: Remuneration Report Advisory Probits

	(1)	(2)	(3)	(4)
	for_50	for_75	for_90	for_95
lnTDCr	-0.13 (-1.64)	-0.026 (-0.58)	-0.10*** (-2.62)	-0.17*** (-3.42)
lnTDCa	-0.15 (-1.47)	-0.077 (-1.40)	-0.19*** (-4.08)	-0.26*** (-3.68)
alldissent	-6.12*** (-5.95)	-9.88*** (-8.56)	-11.2*** (-7.04)	-14.8*** (-6.53)
Firm Level Controls	YES	YES	YES	YES
Sector Dummies	YES	YES	YES	YES
Year Dummies	YES	YES	YES	YES
Observations	3,082	3,267	3,273	3,273
No. Failures	56	354	1,032	1,738

Robust z-statistics in parentheses

*** p<0.01, ** p<0.05, * p<0.1

1. The dependent variables from columns 1-4 are binary variables which equal 1 if the remuneration report proposal received 50%, 75%, 90% and 95% approval and zero otherwise. Less than 2% of companies fail to receive 50% approval for their proposal and in only 17 cases was the proposal defeated (shareholders can abstain). Approximately 10% of companies fail to achieve 75% approval and 30% of companies fail to receive 90% approval.

2. lnTDCr is ln(total remuneration realised). The coefficients on lnTDCr implies that approval requirements have to be either 90% or 95% in favour, before pay has a statistically significant impact on the proposal being accepted or rejected. Simply moving to a 75% requirement would retain the status quo whereby the probability of rejecting the remuneration proposal is statistically unaffected by pay increases. The coefficients are recovered from a probit and hence are not marginal effects. For a 95% approval requirement, doubling lnTDCr would increase the likelihood of rejection by approximately 7%

Table 4: Remuneration Report Advisory

	ols1	ols2	ols3	fe1	fe2	fe3
$\%dissent_t$	0.091*** (9.03)			0.027*** (3.61)		
$\%dissent_{t-1}$		0.071*** (7.10)			0.0097 (1.43)	
$\%dissent_{t-2}$			0.072*** (6.04)			0.0097 (1.36)
alldissent	-0.42 (-1.03)	0.11 (0.27)	0.31 (0.79)	-0.43 (-1.21)	-0.11 (-0.25)	-0.68 (-1.34)
Firm Level Controls	YES	YES	YES	YES	YES	YES
Sector Dummies	YES	YES	YES	N/A	N/A	N/A
Year Dummies	YES	YES	YES	YES	YES	YES
Observations	3,274	2,687	2,151	3,274	2,687	2,151
R-squared	0.412	0.448	0.443	0.229	0.201	0.172
Number of companyid				587	536	481

Robust t-statistics in parentheses

*** p<0.01, ** p<0.05, * p<0.1

1. The dependent variable is lnTDCa.
2. $\%dissent$ captures the moderating effect (if any) of dissent on pay awards. The appropriate timing is ambiguous. $\%dissent_t$ captures the contemporaneous level of dissent on pay awards. This variable might capture a moderation of pay pay if remuneration committees anticipate high levels of dissent at the forthcoming meeting and reduce pay accordingly. However, the coefficient is positive, indicating that high dissent is associated with higher pay, consistent with the tables above. More likely is the possibility that dissent at the prior meetings ($t-1$ or $t-2$) moderates current pay levels, as remuneration committees respond to accommodate dissenting shareholders. However, the coefficients on dissent remain positive on the ols estimates, and are insignificant on the fixed effect estimates indicating that higher dissent continues to be associated with higher pay, implying that committees have not reduced subsequent pay awards upon receiving high dissent.

Table 5: Non-executive director Elections.

	ols1	ols2	ols3	fe1	fe2	fe3
CEO lnTDCr	-0.00039 (-1.17)	-0.039*** (-3.92)	0.00017 (0.79)	-0.0028*** (-2.60)	-0.0099 (-0.24)	-0.000069 (-0.27)
Independent?	-0.031*** (-11.7)	-1.31*** (-21.0)	-0.020*** (-11.5)	-0.014*** (-3.03)	-0.76*** (-5.88)	-0.018*** (-9.64)
Rem Co Chair	-0.0015 (-0.26)	0.18 (0.87)	0.000036 (0.011)	-0.042 (-0.77)	-0.19 (-0.14)	-0.0028 (-0.59)
Rem Co Chair * CEO lnTDCr	0.00033 (0.74)	-0.0096 (-0.64)	0.00019 (0.69)	0.0050 (1.38)	0.12 (1.29)	0.00043 (1.09)
Firm Level Controls	YES	YES	YES	YES	YES	YES
Sector Dummies	YES	YES	YES	N/A	N/A	N/A
Year Dummies	YES	YES	YES	YES	YES	YES
Observations	5,921	5,891	5,911	5,921	5,891	5,911
R-squared	0.099	0.162	0.091	0.057	0.135	
Number of newid				3,027	3,018	3,023

Robust t-statistics in parentheses

*** p<0.01, ** p<0.05, * p<0.1

1. Sample comprises FTSE350 non-executive directors standing for election between 2006 and 2011.
2. The dependent variable in columns (1) & (4) is %Dissent
3. The dependent variable in columns (2) & (5) is $\ln(\%Dissent/(1 - \%Dissent))$
4. The dependent variable in columns (3) & (6) is %Dissent * %Turnout. This variable captures dissent as a percentage of the issued share capital.
5. The vote is broadly unresponsive to the pay of the CEO. This is the case, even when the non-executive director is identified as a member or the chairman of the remuneration committee. Rather dissent for non-executives is largely driven by whether they are deemed to be ‘independent’, which non-independent directors receiving more than twice the dissent of an independent the directors, albeit dissent in any case is very low (less than 1% at the median). The fixed effects estimates are to be treated with some caution most directors are only observed twice and hence the scope for within company variation is limited.

Table 6: Executive Director Elections

	ols1	ols2	ols3	fe1	fe2	fe3
lnTDCr	0.00042** (2.03)	0.033*** (3.08)	0.00028** (2.13)	0.00027 (0.52)	0.0066 (0.36)	0.00026 (0.65)
Firm Level Controls	YES	YES	YES	YES	YES	YES
Sector Dummies	YES	YES	YES	N/A	N/A	N/A
Year Dummies	YES	YES	YES	YES	YES	YES
Observations	2,670	2,652	2,659	2,670	2,652	2,659
R-squared	0.042	0.094	0.039	0.030	0.122	0.028
Number of newid				1,532	1,529	1,529

Robust t-statistics in parentheses

*** p<0.01, ** p<0.05, * p<0.1

1. Sample comprises FTSE350 executive directors standing for election between 2006 and 2011.
2. The dependent variable in columns (1) & (4) is $\%Dissent$
3. The dependent variable in columns (2) & (5) is $\ln(\%Dissent/(1 - \%Dissent))$
4. The dependent variable in columns (3) & (6) is $\%Dissent * \%Turnout$
5. Directors who receive higher pay attract nominally higher levels of dissent. A doubling of pay increases dissent by less than 0.1 percentage point. The fixed effects estimates are not statistically significant albeit the scope for within company variation is limited as directors are only observed when they stand for (re)election.
6. Similar results are obtained when restricting the sample to just CEOs

Table 7: LTIP votes

	ols1	ols2	ols3
lnTDCr	0.0029 (0.64)	0.18** (2.47)	0.0032 (1.14)
lnTDCa	0.00094 (0.19)	0.19** (2.11)	0.0025 (0.88)
Firm Level Controls	YES	YES	YES
Sector Dummies	YES	YES	YES
Year Dummies	YES	YES	YES
Observations	1,202	1,202	1,192
R-squared	0.077	0.065	0.091

t-statistics in parentheses

*** p<0.01, ** p<0.05, * p<0.1

1. Sample comprises votes on LTIPs between 1996 and 2011
2. The dependent variable in column 1 is $\%Dissent$
3. The dependent variable in column 2 is $\ln(\%Dissent/(1 - \%Dissent))$
4. The dependent variable in column 3 is $\%Dissent * \%Turnout$
5. Consistent with the pattern above, we observe a statistically significant association between CEO pay and shareholder dissent, but of an insignificant magnitude. Doubling CEO pay corresponds to less than 1% point increase in shareholder dissent on LTIPs, as dissent is low in any case.

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