

SURREY COUNTY COUNCIL

PENSION FUND COMMITTEE

DATE: 14 SEPTEMBER 2018

LEAD OFFICER: KEVIN KILBURN, ACTING SECTION 151 OFFICER

SUBJECT: CORPORATE GOVERNANCE SHARE VOTING



SUMMARY OF ISSUE:

This report provides a summary of the Fund's share voting process in Q1 of 2018/19 (1 April 2018 to 30 June 2018). The report also includes a class action against BHP who is a firm Surrey had investment in.

RECOMMENDATIONS:

It is recommended that the Pension Fund Committee:

- 1 Note the report.

REASON FOR RECOMMENDATIONS:

The Pension Fund Committee must be aware of the voting actions pertaining to the segregated portfolios of shares held within the pension fund.

DETAILS:

Background

- 1 The informed use of shareholder votes, whilst not a legal duty, is a responsibility of shareholders and an implicit fiduciary duty of pension fund trustees and officers to whom they may delegate this function. Such a process requires the adherence to an approved share voting policy and the advice of a consultant skilled in this particular field.
- 2 The Surrey Pension Fund appointed Manifest in 2013 to provide consultancy advice on share voting and the whole spectrum of company corporate governance. Manifest has assisted in ensuring that the Fund's stewardship policy reflects the most up-to-date standards and officers learn of the latest developments and can reflect these developments in the Fund's share voting policy and the Statement of Investment Principles (SIP).
- 3 Annex 1 contains a list of terms and abbreviations used in the report and Annex 2 shows the Fund's latest approved responsible investment and stewardship (and share voting) policy.

Meetings Voted: Q1 2018/19

- 4 Table 1: Meetings Voted below shows that 99 meetings were voted in total, comprising entirely AGMs.

Table 1: Meetings Voted

Region	AGM	EGM	GM	Court	SGM	Total
UK and Ireland	56	-	3	-	-	59
Asia and Oceania	2	-	-	-	-	2
North America	23	-	-	-	-	23
Europe	9	1	-	-	-	10
Japan	4	-	-	-	-	4
Africa	1	-	-	-	-	1
Total	95	1	3	0	0	99

Resolutions

- 5 Table 2: Resolutions Voted shows the total number of resolutions voted by region, broken down by meeting type. During Q1, 1,781 resolutions were voted, with the bulk of these in UK and Ireland.

Table 2: Resolutions Voted

Region	AGM	EGM	GM	Court	SGM	Total
UK & Ireland	1,205	-	4	-	-	1,209
North America	326	-	-	-	-	326
Asia & Oceania	23	-	-	-	-	23
Europe	150	4	-	-	-	154
Japan	54	-	-	-	-	54
Africa	15	-	-	-	-	15
Total	1,773	4	4	-	-	1,781

- 6 The table shows the majority of the meetings were held in May, reflecting the relatively condensed AGM season for UK and North American companies.

Table 3: Meetings Voted per Month (April to June)

Event	Apr	May	Jun	Total
AGM	23	61	11	95
EGM	-	-	1	1
GM	-	2	1	3
Court	-	-	-	-
SGM	-	-	-	-
Total	23	63	13	99

Votes Against Management

- 7 The data in Table 4 (Votes Against Management By Resolution Category) show some important perspective on the type of voting decisions being made. As a part of the research analysis of meetings, each resolution is categorised according to the governance considerations to which they relate.
- 8 Table 4 shows the total number of resolutions which Surrey was entitled to vote along with the number of contentious resolutions voted during the quarter. Surrey voted against management on 15.7% of the resolutions for which votes were cast during Q1.
- 9 Remuneration and Board resolutions accounted for the majority of all resolutions to be voted on with 76 voted against, 74 resolutions sought remuneration report approvals with the remaining two resolutions related to overall remuneration policy. Surrey voted against Remuneration resolutions in 51.0% of cases.
- 10 60.2% of Shareholder Rights-related resolutions were voted against, 49 out of 50 were resolutions to approve 14-day notice periods for ordinary general meetings (other than AGMs).

Table 4: Votes Against Management By Resolution Category

Resolution Category	Total Resolutions	Voted Against Management	% votes Against Management
Board	915	50	5.5%
Capital	357	59	16.5%
Remuneration	149	76	51%
Audit & Reporting	227	12	5.3%
Shareholder Rights	83	50	60%
Sustainability	42	32	76.2%
Corporate Actions	7	-	0%
Other	1	1	100%
Total	1,781	280	15.7%

Shareholder Proposed Resolutions

- 11 Thirty resolutions voted during the period were proposed by shareholders. Shareholder proposed resolutions often attract relatively high levels of votes against management; especially where the matter at hand is one on which investors have strong views. The tabling of a shareholder proposal is one way in which shareholders can put pressure on a company, by highlighting an issue and potentially garnering public support for their cause. However, the flipside danger is the possibility of lack of shareholder support from other shareholders.

- 12 Two shareholder resolutions passed in Q1; the management-supported proposal to amend the Articles of Association in relation to the election procedure on directors representing employees at Orange and the proposal at Gilead Sciences to amend the bylaws to provide that shareholders may act by written consent.
- 13 A significant proportion of shareholder resolutions received more than 25% shareholder support in the quarter, relating mainly to shareholder rights requests or requests to amend governance practices.

Remuneration

- 14 Votes against remuneration resolutions in Q1 reflected the principles advocated in Surrey's policy. 31 distinct resolutions informed Surrey's remuneration voting and the chief concerns as measured by the number of resolutions associated with remuneration issues were:
- **Bonus Caps:** The upper bonus cap for any of the executive directors exceeds an acceptable multiple of salary. This was a factor in 44 of the remuneration resolutions opposed by the fund;
 - **Alignment:** where there is misalignment between the incentive scheme performance measures and key performance indicators used by the company. This was a factor in 43 of remuneration resolutions opposed by the fund;
 - **Remuneration Committee Composition:** The composition of the remuneration committee was of concern in 12 remuneration resolutions opposed by the fund
 - **Assessment:** In 19 remuneration resolutions opposed by the fund, the company had received a low Manifest Remuneration Assessment Grade;
 - **Severance Provisions:** Contract provisions for executives provided for potentially excessive severance payments. This was a factor in 13 remuneration resolutions opposed by the fund;
 - **LTIP Vesting:** The minimum performance period and/or vesting period was considered too short. This was a factor in 12 of the remuneration resolutions opposed by the fund;
- 15 All remaining concerns featured in less than 10 remuneration resolutions opposed during Q1. These concerns included: a lack of disclosure of the performance targets under the annual bonus; all awards not being subject to performance conditions; executive pensions accruing at a preferential rate compared to ordinary employees; a bonus payment awarded despite a loss being recorded; awards could partially vest for below median performance; and various disclosure concerns.

Table 5: Remuneration

Resolution Category	Total Resolutions	Voted Against Management
Remuneration – Amount (Total, Collective)	1	0
Remuneration – Amount (Total, Individual)	11	0
Remuneration – Report	79	75
Remuneration - Policy (Long-term incentives)	14	0
Remuneration – Non-executive	6	0
Remuneration - Policy (Overall)	29	1
Remuneration - Policy (All-employee Share plans)	4	0
Remuneration - Policy (Contracts)	2	0
Remuneration – other	3	0
Total	149	76

Monitoring and Review

- 16 The share voting policy is kept under constant review.

Class Actions

- 17 Surrey county council has recently entered into a class action against BHP Billiton Limited (BHP) and will be represented by Phi Finney McDonald.

Claim Overview

- 18 The class action relates to the collapse of the Fundão tailings dam at the Germano mine in Minas Gerais, Brazil, on 5 November 2015. The dam released between 32 and 62 million cubic metres of waste (the largest tailings dam rupture ever recorded), killing 19 people and creating a catastrophic and enduring impact on the surrounding communities and the environment.
- 19 The Germano mine was operated by Samarco Mineração SA (Samarco), a joint venture of BHP and Vale SA (Vale). BHP's stock prices declined significantly in the days following the disaster.
- 20 The claim alleges that, from at least 21 October 2013, BHP knew that there was a material risk that the dam would collapse, and of the likely consequences of such a collapse. On that basis, the claim will allege that BHP breached its continuous disclosure obligations and engaged in misleading or deceptive conduct by failing to disclose this risk to the market

(the Claims). These Claims may be amended over time, particularly after receipt of discovery.

Funding Agreement

- 21 Under the proposed agreements, Surrey would not have any obligation to pay any legal fees and expenses of the Phi Finney McDonald law firm that will be representing plaintiffs. The firm's fees and expenses will be paid by a litigation funder, G&E KTMC Funding.
- 22 If the litigation is successful, the funder would receive a payment of 18%, plus certain other expenses.
- 23 Governed by the laws of Victoria state, Australia, where the case will be tried.
- 24 Disputes will be dealt with by arbitration in New York. Surrey are responsible for its own costs in any dispute should it escalate.
- 25 The Funder will lead the case on our behalf.
- 26 In the event of a conflict of interest between Surrey and the Funder, the lawyers will act for Surrey.

CONSULTATION:

- 27 The Chairman of the Pension Fund has been consulted on the current position and has offered full support for the proposals.

RISK MANAGEMENT AND IMPLICATIONS:

- 28 There are no risk related issues contained within the report.

FINANCIAL AND VALUE FOR MONEY IMPLICATIONS

- 29 There are no financial and value for money implications.

DIRECTOR OF FINANCE COMMENTARY

- 30 The Acting Section 151 Officer is satisfied that the share voting policy offers an effective framework for the sound share voting of the pension fund, subject to reviews of the policy being presented on a regular basis.

LEGAL IMPLICATIONS – MONITORING OFFICER

- 31 There are no legal implications or legislative requirements.

EQUALITIES AND DIVERSITY

- 32 The approval of a share voting policy will not require an equality analysis, as the initiative is not a major policy, project or function.

OTHER IMPLICATIONS

33 There are no potential implications for council priorities and policy areas.

WHAT HAPPENS NEXT

34 The following next steps are planned:

- Share voting policy be kept under review

Contact Officer:

Neil Mason, Head of Pensions

Consulted:

Pension Fund Committee Chairman

Annexes:

Annex 1: List of abbreviations

Annex 2: Latest approved Responsible Investment and Stewardship Policy

Sources/background papers:

None

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