



## Independent NEDs enhance productivity

*“The people who run big businesses are supposed to be accountable to outsiders, to non-executive directors, who are supposed to ask the difficult questions, think about the long-term and defend the interests of shareholders. In practice, they are drawn from the same narrow social and professional circles as the executive team, and their scrutiny is just not good enough.” Theresa May (July 2016)*

### **The Forum is campaigning for professional firm leaders to serve as non-executive directors**

The UK's corporate governance system places considerable reliance on NEDs. However it is not working, according to a report from Tomorrow's Company<sup>1</sup>. An over-focus on risk mitigation and value protection has led to insufficient attention being paid to value creation. “Occasional corporate scandals may be the price of more success stories.”

Suggested solutions in the TC report include: a clearer Board mandate; more time allocated to NEDs; building in a contrarian voice for major decisions (to reduce group think); and more diversity in the Boardroom. Andrew Hill, Management Editor of the *Financial Times*, has called for NEDs to be abolished to “force investors to do their job<sup>2</sup>”. This paper advances a novel solution involving professional firm leaders.

### **Leaders as NEDs**

It is common for CEOs at corporates to serve as NEDs at non-competing organisations. Exposure to distinct leadership styles and strategic challenges is seen as beneficial for the leader (and therefore their organisation) as new ideas and connections broaden perspectives and generate insights. It also reduces the likelihood that the CEO will devote time to issues that are best handled by COOs and others on the management team.

By contrast, Forum research confirms that it is unusual for former leaders, and virtually unheard of for current leaders, at professional firms (law, accountancy, property, engineering, consultancy etc) to serve as NEDs at corporates, despite their firms constituting easily the largest sector in the UK and most other developed economies. A former law

firm leader, who has already made the leap to the NED world, observed that she had been “told on many occasions that her law firm business career was irrelevant to a Board appointment at a corporate, and by implication that she did not know about running a business.”

This paper contends that a business career at a professional firm is highly relevant to serving as a NED, and urges corporates and recruiters to revisit their selection criteria for NED positions. It further urges governance committees at professional firms to issue waivers to their partnership agreements to permit members of their current leadership team to serve as NEDs.

### **Employee engagement and UK productivity**

Professional firms enjoy exceptionally high levels of profitability and growth compared with other sectors. They attract large numbers of the brightest graduates, and are hugely influential. Their success is neither due to cartels nor to financial wizardry, but comes from a unique business mix of leadership, culture, purpose, values, relationships and long term thinking. A key performance indicator is the level of employee engagement - typically over 80% at professional firms, yet under 30% at most corporates (according to Gallup). There is plenty of evidence that high levels of engagement foster high levels of productivity, and vice versa.

Ipsos MORI research indicates that there is no consistent definition of productivity among ‘captains of industry’. UK productivity is significantly below international levels according to the Bank of England and other respected bodies. High dividends and low levels of investment are seen as contributory factors. Although most Boards challenge investment and distribution decisions, this is likely to prove more effective when a Board includes independent NEDs with the mindset, expertise and experience to

<sup>1</sup> [\*UK Business: What's wrong? What's next?\*](#)

<sup>2</sup> [\*Sack NEDs to force investors to do their job\*](#)

analyse strategic opportunities and ask pertinent questions.

### **Nine drivers of productivity**

The Forum brings together and represents management experts working for professional firms and fee earners in leadership positions, including CEOs, managing partners, chairs, senior partners, and business unit leaders. Its members typically combine an independent mindset with the ability to ask the difficult questions, based on extensive hands-on experience of nine drivers of productivity:

- We practise a 'challenge & support' style of leadership in lieu of the 'command & control' common at corporates
- We appoint more women into leadership roles than other sectors
- We scale businesses whose product is people
- We work across frontiers to build genuinely multi-national businesses
- We foster high levels of employee ownership, with the power to elect their leaders
- We select leaders from technical experts who really understand the product and how best to sell it
- We live by a transparent code of ethical values
- We develop relationships based on reciprocity and trust
- We take a long term perspective based on 'naked in, naked out' equity structures

### **Improvements to UK productivity**

Our insight is that Forum members would make ideal NEDs at corporates as this would not only be beneficial for them and their firms, but could also result in measurable improvements to UK productivity. We therefore urge corporates and recruiters to revisit their selection criteria for NED positions to focus on those with hands-on experience of 'challenge & support' leadership. On hearing the insight, the former law firm leader commented that it will "inspire her to do a better job at her next NED interview at articulating why her law firm experience is a relevant business career."

### **Governance hurdles**

Current leaders face a further hurdle. Post Cadbury, firms took the view that it would be unethical for a partner or employee to serve as a NED at a company to which their firm gave advice, given the potential conflict between the interests of the company and those of the firm. Reputational risks were also raised, for example a partner being a director of a

company that became insolvent or was subject to a hostile takeover by a client company. As a result, partnership and employment agreements make little or no distinction between those whose time is primarily chargeable to clients, and those in leadership or management positions with little or no client work.

Some cracks are starting to appear. Firms now recognise that partners who aspire to NED roles will be more credible if they have served on their own firm's board, or have taken on charity trustee roles. But there is still strong resistance to anything that hints at conflict.

### **Conflict v independence**

The distinction between conflict and independence is important. Auditors believe that conflict is endemic to their role so focus on retaining independence from both management and shareholders, with materiality used as the litmus test. Lawyers prefer to avoid any possibility of conflict and are less concerned over materiality.

Serving as an NED requires an independent mindset so conflict rules should be less relevant. We therefore urge governance committees at professional firms to issue waivers to their partnership agreements to permit members of their current leadership team to serve as independent NEDs at corporates.

### **Diverse perspectives face-to-face**

Change is never easy. Papers, articles, blogs, press and social media are useful in raising issues. However, behavioural change is most likely to take place when those holding diverse perspectives come face-to-face on a regular basis to debate common issues. The Forum's Productivity & Government Liaison Club facilitates this interaction.

Organised by the Forum, the Club brings together senior management at professional firms and corporates, Government, business schools and professional bodies to explore ways of boosting productivity. Club membership is free.

Club meetings will take place across the UK. A secure, private hub is also provided.

### **Lend your support**

If interested in serving as an NED or just to lend your support to the campaign, please contact Richard Chaplin, Forum founder & CEO, at [richard@pmint.co.uk](mailto:richard@pmint.co.uk) or on 020 7786 9786.