

NOT MYNERS PLUS BUT “MYNERS MINUS”

A RESPONSE TO COMMENTS ON THE REVIEW BY THREE AUTHORS
FROM CO-OP UK¹

15th May 2014

There are times when only dramatic change will do – these are the words of three Co-op UK authors in response to the recommendations for governance reform that I set out last week. I fully agree. I welcome their acceptance of the need for radical reforms and the need for these to be put in place rapidly. I also welcome their recognition that the Group faces urgent commercial challenges and that current performance weaknesses are deep-rooted. It is these systemic problems that my Review has set out to address through an integrated set of proposals for reform².

Where I differ from them is in respect of the three specific amendments that they have now put forward. The first of these concerns the leadership of the Board and the NMC. The second is about the link between the Group’s social and economic goals. The third addresses the proposed Nominations Committee arrangements for identifying suitable candidates for the Group Board.

In my judgment the amendments they propose are not Myners Plus but “Myners Minus”. The reasons are straightforward: their first proposal is, even in their own words, internally inconsistent and impossible to implement without intolerable conflicts of interest. Their second proposed amendment appears to be based on a simple misunderstanding of our recommendations. But it is their third proposal that I want to address in considerable detail for this fundamental reason: while it is put forward as an apparently helpful suggestion, it has the potential to serve as essentially a wrecking amendment that would completely undermine the ability to put in place an effective Group Board.

Let me tackle each of their ideas in turn.

Joint Chair concept fundamentally flawed

¹ Co-operatives UK: New Insight 14 Helen Barber, Johnston Birchall and Ed Mayo, writing in their personal capacities.

² It is important to note that the two-tier supervisory board model, enshrined in legislation in various jurisdictions on the Continent, is not formally recognised under English law. It was therefore not an option that the Review could endorse. See Report p.173

Their first proposal is that a single individual should act as Chair of the Group Board and as President of the National Membership Council (NMC) “to save costs” and “avoid a drag on the business when they disagree”. I am surprised to hear this suggestion put forward. I am not sure whether the authors fully appreciate the distinct roles I see for these two important bodies. Nevertheless, let me clarify my position: their proposal, as I see it, has four fundamental flaws:

- First, it personalises the issue around two individuals when in reality the potential for any disagreement would be between the NMC as a whole and the Board as a whole
- Second, the authors’ own paper acknowledges an essential difference of roles between these two entities: "They (the NMC and the Board) have different functions and both bodies will have different requirements in terms of individual and collective expertise"
- Third, having the same individual occupy both roles would correspondingly involve an impossible conflict of interests
- Last, but certainly not least, disagreement between the NMC and the Group Board would not be a sign of failure but of healthy tension in the governance system that would lead to exactly the kind of constructive governance engagement that our proposed framework is intended to encourage

Social and economic goals fully interwoven in Group Purpose and Strategy

Co-op UK’s second observation is that "Social goals are part of everyday business, not an add-on". I agree. Once again, I want to make sure that my position is not misinterpreted. The authors’ concern seems to be based on a misunderstanding of the Review’s recommendations, specifically Recommendation 19 on Social Goals: "Focus social goals on community building activities closely aligned with, and specifically reinforcing the strength of the Group’s franchise and customer base in the marketplace and the communities that it serves. Give members a say in how contributions are channelled." The need to have a natural integration of social and economic goals is at the heart of the Group’s forthcoming Purpose and Strategy work that has informed the Review’s recommendations. These in no way imply that social goals should be seen as separate from the overall purpose and strategy of the Group. Let me state unambiguously that I see values and principles as inseparable from strategy; they form the defining core of the co-operative ownership model in which I strongly believe.

In keeping with this, I view it as important that the NMC should actively engage with the Group Board and Executive on matters related to social goals, not least because the NMC will be the guardian of the Group’s Values and Principles.

NMC members will naturally want to take a close interest in the details of the social goals programme. Similarly, in regard to the Group's policies on ethical matters, as interwoven across the entirety of its strategy and business operations, the Review sees an important ongoing role for the NMC: it can add considerable value by offering sound advice to the Group Board where difficult trade-offs are involved. This is not disconnecting social from business goals: the potential contribution of the NMC is precisely concerned with the integration of these objectives. With regard to this second suggested amendment, therefore, the Co-op UK contributors appear to have misunderstood the purpose of my recommendations. This aspect of the NMC's role will also respond to the frustration expressed to this Review by members who feel that it is often difficult to influence outcomes through the current workings of Values and Principles Committees. The proposed NMC will provide an elevated and influential role for the expression of such views and concerns.

Nominations Committee - an integral component of the Group Board

The third issue raised by the Co-op UK authors is the design of the Nominations Committee. They disagree with the proposal that this should be a committee of the Group Board and instead propose that it should be a committee of the NMC with a majority of NMC designated members. This proposed alternative is not, however, a matter of a slight adjustment in the proposals I have put forward; it is so fundamental a change that this proposal, if adopted, would become tantamount to a wrecking amendment.

The reason is this: the core role of the Nominations Committee is to ensure competence on the Group Board. The Committee's work involves identifying individual board candidates who have the competence to fill specific roles as individual directors. Competence, assessed through strict meritocratic assessment is the pivotal requirement for creating a Board that can help the Group perform effectively against some of the best-managed, most intensely competitive retailers in the world.

In practice, this requires rigorous and objective appraisal. And the individuals who are best equipped by experience and skills to make that evaluation are the Group Board members on the Nominations Committee. They have first-hand knowledge of the balance of skills on the Board and they bring to bear the commercial and professional perspective that is central to any such assessment.

What then is the role of the NMC designated members on the Nominations Committee? The primary one is to build trust in the objectivity of the selection process and to ensure, on behalf of the NMC in the first instance, and ultimately on behalf of the broader membership that due process has been followed in identifying the best candidates. The Review recognises that one of the serious governance problems that currently handicaps the Board and other elected

representatives is lack of trust and overflow of corrosive suspicion - an attitude of 'Them and Us'. It is a crucial part of the proposed governance architecture that it should step by step build trust between the new NMC, the Group Board and the Executive.

The two NMC designated members on the Nominations Committee have a central role to play in that trust-building process. In the event that they are not satisfied with due process in the initial selection of the best candidate for the Group Board, they can take forward their concerns to the Group Chair and Board in the first instance, and subsequently to a meeting between the Board and the Steering Committee of the NMC. Almost certainly, this will be an unlikely occurrence: Group Board members on the Nominations Committee will have no interest in putting forward a candidate who is not the best individual as measured against the carefully designed criteria for a specific board vacancy.

Beyond this trust-generating aspect NMC members on the Committee have a further distinctive role to play. This is to provide their perspective on the commitment to co-operative values and principles of individual candidates under consideration. This is an important dimension of the entire assessment process. However, it must be stressed that it is the entire Nominations Committee that will be applying this criterion in its evaluation of each candidate. Importantly, the Group Board members on the Committee will themselves be members of the Co-operative Group. So every member of the Nominations Committee will have a legitimate voice in contributing to an assessment of each individual candidate's commitment.

To sum up, the Nominations Committee has a crucial professional role to fulfil. It is integral to the effective working of the Group Board and the confidence that individual board candidates will have in the objectivity and rigour of the selection process. The Committee's structure and composition has been designed to provide a trust-generating mechanism for meritocratically identifying the strongest candidates for individual Board positions and for re-assessing on an annual basis the balance of skills and experience on the Board as a whole.

The alternative proposal now being suggested by the Co-op UK authors is that the Nominations Committee should be a Committee of the NMC, with minority Group Board representation. But this suggestion suffers from two severe flaws:

- First, it fails to recognise that the priority task of the Nominations Committee is to identify the best possible candidates to fill quite specific positions on the Board. Constructing a well-functioning Board is not an easy task. To do this effectively requires extensive relevant business experience and skills together with first-hand knowledge of how the Board is working. That is the fundamental reason why the Nominations Committee has to be an integral part of the Board.

- The second flaw with this suggested amendment is that it is predicated on an ongoing lack of trust between members of the NMC and the Group Board. The recommendation is, in effect, stating that the professional members of the Group Board who sit on the Nominations Committee cannot be trusted to apply their experience in a meritocratic way, even when due process is being observed- and participated in- by two designated members of the NMC, and even when safeguard provisions have been put in place in the unlikely but possible event of disagreement. An amendment of this nature would correspondingly embed distrust in the heart of the governance structure, with severe consequences for its future effectiveness.

The implication of this suggested amendment is simple and yet devastating: in essence, the remit of the Nominations Committee would be subject to alteration by the NMC as it saw fit. There would be no checks and balances, as are provided in the Review's recommendations. Changes in remit could, for example, include a redefinition of the skills and experience criteria for specific vacancies on the Group Board to diminish the importance of the requisite professional skills and experience; a redesign of the assessment process; and a decision to introduce, as a regular, rather than an exceptional practice, contested elections for the Group Board. This would completely negate the carefully argued case, advanced in the Independent Governance Review, for the creation of a fully professional Board with the appropriately balanced mix of skills and experience to match the competition.

This proposed amendment is therefore not Myners Plus but "Myners Minus". I believe that if such an amendment were adopted it would seriously impair the chances of putting in place the Board that the Group so very urgently needs. It would at a single stroke undercut the attraction of the Group Board to potential highly talented and qualified individuals.

In this context, the references to continental comparisons are misleading because these fail to account for the urgent need in the Group context for a renewed focus on running a successful business. The Review tackles this long-overlooked deficit by proposing a governance structure that combines a properly professional Board with an innovative representative forum for its diverse membership base and, quite fundamentally, with a democratic commitment to one member one vote in the election both of Group Board members and NMC members. With this structure, each governance element derives its legitimacy from an ultimate level of direct control by the entire membership.

It is therefore disappointing to see the apparent mistrust that is reflected in this third suggested amendment. The Group urgently needs governance reform; that much is common ground. Central to the reform process, however, is the ability to put in place at the earliest opportunity a Group Board that is fit for purpose. I am confident that highly talented individuals can be found who will be attracted by

that potential challenge. Not because they want to make money out of the Co-op or otherwise take advantage of the organisation. The people that the Group should want to attract to its Board are those who feel a genuine and deep affinity with its goals and values. These are not going to be the sharp suited, pin-striped cartoon characters that are being feverishly conjured up in the minds of some co-operators.

Many talented individuals care about the future of the Group and may be willing to dedicate significant time to a Board appointment in this unique co-operative organisation. But they will want to join a Board that works and that develops a professional cohesiveness that can simultaneously achieve two distinct objectives: first, to probe and challenge the Executive team while offering guidance and support; second, to show a deep responsiveness to the concerns of the National Membership Council.

At the end of the day, however, it is the responsibility of the Group Board to act in the best interests of the Group as a whole, having regard to the interests of NMC members, but also the entire body of the membership, as well as the interests of other stakeholders, including the Group's broader customer base and its 90,000 employees. Given these responsibilities, it would in my judgment be completely inappropriate for the composition of the Board and the evaluation of its workings to be under the jurisdiction of the NMC. The proposals that I have set out involve a carefully designed set of checks and balances. Changing the role and position of the Nominations Committee within the governance structure in the way that the Co-op UK contributors apparently envisage would fundamentally wreck the balanced structure I have proposed. It would send an immediate adverse signal to potential Board candidates and would seriously undermine the ability of a new Board to attract the best talent and to help the Group achieve the turnaround in its fortunes that it so urgently needs.