

**Institute of Advanced Legal Studies  
School of Advanced Study  
University of London**

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**PROMOTING HIGHEST PROFESSIONAL STANDARDS IN UK REMUNERATION  
COMMITTEE ADVISORY SERVICES**

**Volume 1 of 2**

**(Thesis)**

**Thesis submitted to the University of London for the degree of Doctor of Philosophy**

**PROMOTING HIGHEST PROFESSIONAL STANDARDS IN UK  
REMUNERATION COMMITTEE ADVISORY SERVICES**

**This thesis is in fulfilment of part of the requirements for the degree of Doctor of Philosophy**

**Institute of Advanced Legal Studies**

**University of London**

**November 2019**

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Date of submission: November 2019.

I declare that this thesis is my own work and that all sources quoted, paraphrased or otherwise referred to are acknowledged in the text as well as in the Bibliography. My previously published work is referred to in the same way as that of other authors cited.

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Word count (excluding the Title pages (ie., up to and including page 2) plus the Statement of Authorship Form (ie., page 3) and the Bibliography and Appendices): 109,997.

*(In May 2019 the Academic & Quality Standards Committee (SAS) acceded to an application for this thesis to exceed by up to 10,000 words the standard word count limit of 100,000).*

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## ABSTRACT

This thesis concerns a specific aspect of executive remuneration; namely, the 'professional standards' of UK executive remuneration consultants (ExecRemConsultants) and companies' in-house executive remuneration specialists (CoyExecRemSpecialists), in providing remuneration committee advisory services (RemCoAdvisory Services). It builds on the author's previous research that had identified and made recommendations regarding the 'Big Six Issues' (BSI) in executive remuneration - such as 'short-termism', incentive plan design and corporate behaviours/ethics. In line with such previous research however, the hypothesis adopted for this thesis is that further regulatory changes regarding the issue of the 'professional standards' of those concerned is currently unwarranted – with such hypothesis being tested in this thesis via an empirical qualitative programme of semi-structured 'elite interviews' comprehensively covering the issue of 'professional standards'. These interviews involved a selection of key participants in UK executive remuneration policy and practice.

The objective was to complement existing qualitative academic research on ExecRemConsultants/CoyExecRemSpecialists - in the line of Bender, Adamson et al, Bender & Franco-Santos and de Gannes, who did not focus extensively on 'professional standards' - and also to formulate conclusions that could be used to the benefit of UK practice.

The Research Interview Programme (RIP) was conducted with 53 ExecRemConsultants, CoyExecRemSpecialists, RemCo chairs/members and representatives of Relevant Other Organisations - such as, regulators, proxy advisors and institutional shareholder representative bodies. These interviews were carried out between September and December 2016.

The RIP included a Research Interview Consultants Background Questionnaire, together with a Research Interview Topics Guide and Supplementary Topics. The RITG covered the working relationship between RemCos and ExecRemConsultants, 'independence', 'conflicts of interest' (COI), the respective roles of the Big Four Chartered Accountants, Actuarial & Benefits Consultancies and Boutiques (the latter being consulting firms focused mainly or exclusively on providing RemCoAdvisory Services), the UK self-regulatory regime for ExecRemConsultancy and the ongoing operation of the Remuneration Consultants Group (RCG), with particular reference to the 'professional standards' of ExecRemConsultants - including the possibility of introducing a specialised RemCo advisory accreditation/qualification and/or a 'licence to practise' regime, CoyExecRemSpecialists' working relationship with RemCos and ExecRemConsultants, RemCo advisory documentation circulation protocols and managing CoyExecRemSpecialists' COI.

The RITGST focused on the Government's 2016-17 corporate governance inquiry and subsequent proposals, such as pay ratio disclosure and worker representation on the Board. Also included was the respective potential for (i) an annual binding shareholder vote, (ii) a shareholder vote on the appointment/retention of ExecRemConsultants and/or (iii) the disclosure to shareholders of fees charged by professional services firms for the provision of 'Other Services' (eg., taxation and accountancy) as well as RemCoAdvisory Services.

**The results of the RIP and the other research findings of this thesis provide very significant support for the adopted hypothesis. However, certain proposals for change are made in this thesis for RCG's consideration in respect of the ambit of its activities and the scope of its Voluntary Code of Conduct.**

**This thesis is ordered as: Chapter 1 Introduction, Chapter 2 Context: UK Executive Remuneration Scene and Literature Review, Chapter 3 Research Methods, Chapter 4 Findings, Chapter 5 Discussion and Chapter 6 Conclusions – followed by the Appendices and the Bibliography. It covers the state of research, policy and practice as of 31 July 2018.**

## ACKNOWLEDGEMENTS

I am grateful to Professor Brian Main of Edinburgh University Business School, with whom I (and two other ExecRemConsultant former colleagues, John Pymm and Vicky Wright) collaborated in 2006/2007 on the research for, and preparation of, three papers; namely, 'Questioning the Remuneration Committee Process', 'The Remuneration Committee and Strategic Human Resource Management' and 'The Remuneration Committee Process – Some Questions Regarding Remuneration Committee Decision Making'.

Working with Professor Main and such colleagues made me appreciate how much the process/results of academic research could contribute to the effectiveness of the provision of ExecRemConsulting advisory services to RemCos - and, indeed, to my former career as an appointed ExecRemConsultant to RemCos around the world.

I am grateful as well to another ExecRemConsultant former colleague, Katy Bennett, for collaborating with me on the 2009 WW article 'Executive Pay Practices Around the World', and on a further two-part article published in 2009 in Benefits & Compensation International magazine: 'Executive Pay Practices Globally – Is convergence on its way?' These brought home to me just how much the governance of executive remuneration in various territories has both key similarities and salient differences.

I acknowledge the contribution of Dr Mahmood Bagheri of IALS, for encouraging me to undertake the ICGFREL LLM course in 2013.

I also sincerely thank my PhD Study Supervisor at IALS, Professor Kern Alexander, for his direction, support and wise counsel since I started my PhD Study in 2015. His assistance has been invaluable. I should make it clear however, that I am responsible for any errors or inaccuracies in this thesis.

I am grateful to my wife Caroline for being so supportive regarding my wish to pursue further academic studies at the same time as practising at the Bar. I am also indebted to Caroline, and to my administrative assistants, Amanda Freeman and Marie Yaucat-Guendi, for working on the innumerable typing, 'footnoting' and bibliographical 'iterations' of the various drafts of this thesis.

I record my sincere appreciation of, and thanks to, the 53 interviewees who participated in the research interviews. Literally, this thesis could not have been undertaken without them. For reasons of confidentiality I cannot thank the interviewees by name, but I am truly grateful for their contribution.

Lastly, I acknowledge all proponents everywhere of 'responsible capitalism' and salute their endeavours.

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## LIST OF ABBREVIATIONS, ACRONYMS AND DEFINITIONS USED IN THIS THESIS

<b>ABC</b>	<b>Actuarial &amp; Benefits Consultancy(ies)</b>
<b>ABI</b>	<b>Association of British Insurers</b>
<b>Actuary</b>	<b>Member/Fellow of Institute or Faculty of Actuaries</b>
<b>AGM</b>	<b>Annual General Meeting</b>
<b>AH</b>	<b>Aon Hewitt Ltd (AH New Bridge Street Consultants or AHNBSC)</b>
<b>Big Four</b>	<b>Deloitte, EY, KPMG and PwC (Chartered Accountants)</b>
<b>Big Six Issues</b>	<b>The six aspects referred to in the IALS ICGFREL LLM dissertation (September 2014)</b>
<b>BEIS</b>	<b>Department of Business, Energy and Industrial Strategy</b>
<b>BOD</b>	<b>Board of Directors (or Board, Boardroom)</b>
<b>Boutiques</b>	<b>Primarily ‘monoserviceline’ ExecRemConsultancies</b>
<b>BSB</b>	<b>Bar Standards Board</b>
<b>CA</b>	<b>Members/Fellows of Chartered Accountant Bodies (ACCA, CAI, CIMA, CIPFA, ICAEW and ICAS)</b>
<b>CEO</b>	<b>Chief Executive Officer</b>
<b>CIPD</b>	<b>Chartered Institute of Personnel and Development</b>
<b>CFA</b>	<b>Chartered Financial Analyst</b>
<b>CFO</b>	<b>Chief Financial Officer</b>
<b>CGI</b>	<b>UK Corporate Governance Inquiry (2016/2017)</b>
<b>CMA</b>	<b>Competition &amp; Markets Authority</b>
<b>CMC</b>	<b>Chartered Management Consultant</b>
<b>COI</b>	<b>Conflict(s) of Interest</b>
<b>CompCo</b>	<b>Compensation Committee (US, particularly)</b>
<b>CompCoAdvisor</b>	<b>Compensation Committee Advisor</b>
<b>CompCoAdvisoryServices</b>	<b>Compensation Committee Advisory Services (US)</b>
<b>CompCoAdvisoryProtocols</b>	<b>Compensation Committee Advisory Protocols (US)</b>
<b>CompCoChair</b>	<b>Compensation Committee Chair (US, particularly)</b>
<b>CoyChair</b>	<b>Company Chair</b>

<b>CoyExecRemSpecialist</b>	<b>Company Executive Remuneration Specialist</b>
<b>CoySec</b>	<b>Company Secretary</b>
<b>CPA</b>	<b>Certified Public Accountant (US, particularly)</b>
<b>CPD</b>	<b>Continuing Professional Development</b>
<b>CTA</b>	<b>Member/Fellow of Chartered Institute of Taxation (Chartered Tax Advisor)</b>
<b>DDT</b>	<b>Doctors Disciplinary Tribunal</b>
<b>Deloitte</b>	<b>Deloitte LLP</b>
<b>DFA</b>	<b>Dodd-Frank Wall Street Reform and Consumer Protection Act 2010</b>
<b>Director</b>	<b>Member of BOD (whether ED or NED - including RemCoChair/Member)</b>
<b>DRR</b>	<b>Directors' Remuneration Report</b>
<b>DSOtherServicesFees</b>	<b>Disclosure to Shareholders of 'Other Services' Fees</b>
<b>ED</b>	<b>Executive Director</b>
<b>EPP</b>	<b>Established Practitioners' Programme</b>
<b>EPS</b>	<b>Earnings Per Share</b>
<b>E/PS</b>	<b>Ethical &amp; Professional Standards</b>
<b>EQTSL</b>	<b>EQ Transcription Services Limited</b>
<b>EU</b>	<b>European Union</b>
<b>EY</b>	<b>Ernst &amp; Young LLP</b>
<b>ExecRemConsultant</b>	<b>Executive Remuneration Consultant</b>
<b>ExecRemConsultancy</b>	<b>Executive Remuneration Consultancy(ies)</b>
<b>ExecCompConsultant</b>	<b>Executive Compensation Consultant (US, particularly)</b>
<b>FAANG</b>	<b>Facebook, Apple, Amazon, Netflix and Google</b>
<b>FCA</b>	<b>Financial Conduct Authority (previously FSA)</b>
<b>FINRA</b>	<b>Financial Industry Regulatory Authority (US)</b>
<b>FIT</b>	<b>FIT Remuneration Consultants LLP</b>
<b>FC</b>	<b>Frederic W. Cook &amp; Co., Inc</b>
<b>FRC</b>	<b>Financial Reporting Council</b>

<b>FSA</b>	<b>Financial Services Authority (now FCA)</b>
<b>FTE</b>	<b>Full-Time Equivalent</b>
<b>GC</b>	<b>General Counsel</b>
<b>GFC</b>	<b>Global Financial Crisis 2007/2008</b>
<b>GI&amp;O</b>	<b>Genuinely Independent &amp; Objective</b>
<b>GMC</b>	<b>General Medical Council</b>
<b>Hermes</b>	<b>Hermes Investment Management</b>
<b>HC</b>	<b>House of Commons</b>
<b>HPC</b>	<b>High Pay Centre</b>
<b>HRD</b>	<b>Human Resources Director</b>
<b>IA</b>	<b>Investment Association</b>
<b>IALS</b>	<b>Institute of Advanced Legal Studies (SAS)</b>
<b>ICAEW</b>	<b>Institute of Chartered Accountants of England and Wales</b>
<b>ICGFREL</b>	<b>International Corporate Governance, Financial Regulation and Economic Law</b>
<b>ICGN</b>	<b>International Corporate Governance Network</b>
<b>ICSA</b>	<b>Institute of Chartered Secretaries and Administrators</b>
<b>IICF</b>	<b>Informed Interviewee Consent Form (SAS)</b>
<b>IMRO</b>	<b>Investment Managers Regulatory Organisation</b>
<b>IOD</b>	<b>Institute of Directors</b>
<b>IPPR</b>	<b>Institute for Public Policy Research</b>
<b>ISS</b>	<b>Institutional Shareholder Services Inc.</b>
<b>IVIS</b>	<b>Institutional Voting Investor Services</b>
<b>LGIM</b>	<b>Legal and General Investment Management Limited</b>
<b>KFH</b>	<b>Korn Ferry Hay Group</b>
<b>KPMG</b>	<b>KPMG LLP</b>
<b>Lawyer</b>	<b>Qualified solicitor, barrister or other relevant body of legal practitioners</b>
<b>LBS</b>	<b>London Business School</b>

<b>LTI</b>	<b>Long-Term Incentive</b>
<b>LTIP</b>	<b>Long-Term Incentive Plan (performance shares)</b>
<b>LTP</b>	<b>Licence to Practise</b>
<b>MM&amp;K</b>	<b>MM&amp;K Limited</b>
<b>Mercer</b>	<b>Mercer UK Limited</b>
<b>NAPF</b>	<b>National Association of Pension Funds</b>
<b>NED</b>	<b>Non-Executive Director</b>
<b>NPP</b>	<b>New Practitioners' Programme</b>
<b>OECD</b>	<b>Organisation for Economic Co-operation and Development</b>
<b>OFT</b>	<b>Office of Fair Trading</b>
<b>Other Services</b>	<b>Professional services provided by Big Four, ABC or Boutiques in addition to, or alternatively from, RemCo/CompCoAdvisory Services</b>
<b>P/E</b>	<b>Price/Earnings</b>
<b>PM</b>	<b>Pearl Meyer and Partners LLC</b>
<b>PwC</b>	<b>PricewaterhouseCoopers LLP</b>
<b>PLSA</b>	<b>Pensions and Lifetime Savings Association</b>
<b>PIRC</b>	<b>Pensions Investment Research Consultancy</b>
<b>PRD</b>	<b>Pay Ratio Disclosure</b>
<b>RCG</b>	<b>Remuneration Consultants Group Limited</b>
<b>REC</b>	<b>Research Ethics Committee (SAS)</b>
<b>RemCo</b>	<b>Remuneration Committee</b>
<b>RemCoAdvisor</b>	<b>Remuneration Committee Advisor</b>
<b>RemCoAdvisory Services</b>	<b>Remuneration Committee Advisory Services</b>
<b>RemCoChair</b>	<b>Remuneration Committee Chair</b>
<b>RemCoMember</b>	<b>Remuneration Committee Member</b>
<b>RIP1</b>	<b>RIP letter to prospective RIP participants, enclosing RIInviPack</b>
<b>RIP2</b>	<b>RIP pre-interview letter to confirmed RIP participants, enclosing RIInfoPack</b>
<b>RIP3</b>	<b>RIP post-interview letter to RIP participants, enclosing draft transcript of interview</b>

<b>RIInviPack</b>	<b>RIP ‘Research Interview Invitation Pack’</b>
<b>RIInfoPack</b>	<b>RIP ‘Research Interview Information Pack’</b>
<b>RIP</b>	<b>RIP ‘Research Interview Programme’</b>
<b>RIC</b>	<b>RIP ‘Research Interview Checklist’</b>
<b>RICBQ</b>	<b>RIP ‘Research Interview Consultants Background Questionnaire’</b>
<b>RITG</b>	<b>RIP ‘Research Interview Topics Guide’</b>
<b>RITGST</b>	<b>RIP ‘Research Interview Topics Guide Supplementary Topics’</b>
<b>ROO</b>	<b>Relevant Other Organisation</b>
<b>RPP</b>	<b>RIP ‘Research Project Plan’</b>
<b>RREV</b>	<b>Research Recommendations Electronic Voting</b>
<b>SAS</b>	<b>School of Advanced Study, University of London.</b>
<b>RIPMS</b>	<b>RIP ‘Research Interview Programme Master Schedule’</b>
<b>RIPIRL</b>	<b>RIP ‘RIP Interview Responses Log’</b>
<b>RPIML1</b>	<b>RIP ‘Research Post-Interview Master Log 1’</b>
<b>RPIML2</b>	<b>RIP ‘Research Post-Interview Master Log 2’</b>
<b>SA/Q</b>	<b>Specialised Accreditation/Qualification</b>
<b>SABV</b>	<b>Shareholder Annual Binding Vote</b>
<b>SDT</b>	<b>Solicitors Disciplinary Tribunal</b>
<b>SEC</b>	<b>Securities and Exchange Commission</b>
<b>SOX</b>	<b>Sarbanes-Oxley Act 2002</b>
<b>SRIF</b>	<b>RIP ‘Summary of Research Interview Findings’</b>
<b>SRO</b>	<b>Self-Regulatory Organisation</b>
<b>STEM</b>	<b>Science, Technology, Engineering and Mathematics</b>
<b>STI</b>	<b>Short-Term Incentive</b>
<b>SVExecRemConsultants</b>	<b>Shareholder vote on appointment and retention of Executive Remuneration Consultants</b>
<b>TC</b>	<b>Treasury Committee (HC)</b>
<b>TE/E</b>	<b>Technical Expertise/Experience</b>

<b>TPF&amp;C</b>	<b>Towers, Perrin, Forster &amp; Crosby</b>
<b>TSR</b>	<b>Total Shareholder Return</b>
<b>TW</b>	<b>Towers Watson</b>
<b>UKCGC</b>	<b>UK Corporate Governance Code</b>
<b>UKRemCoAdvisoryScene</b>	<b>UK Remuneration Committee Advisory Scene</b>
<b>UKSA</b>	<b>United Kingdom Shareholders Association</b>
<b>UKSC</b>	<b>UK Stewardship Code</b>
<b>USCompCoAdvisoryScene</b>	<b>Compensation Committee Advisory Scene (US)</b>
<b>USCOI/CoyExecCompSpecialists</b>	<b>Conflict(s) of Interest/Company Executive Compensation Specialists (US)</b>
<b>USDSOtherServicesFees</b>	<b>Disclosure to Shareholders of 'Other Services' Fees (US)</b>
<b>USE/PS</b>	<b>Ethical &amp; Professional Standards (US)</b>
<b>USGI&amp;O</b>	<b>Genuinely Independent &amp; Objective (US)</b>
<b>USLTP</b>	<b>Licence to Practise (US)</b>
<b>USRCG</b>	<b>Concept of self-regulatory body for Executive Compensation Consultants (US)</b>
<b>USSABV</b>	<b>Shareholder Annual Binding Vote (US)</b>
<b>USSA/Q</b>	<b>Specialised Accreditation/Qualification (US)</b>
<b>USSVExecCompConsultants</b>	<b>Shareholder vote on appointment and retention of Executive Compensation Consultants (US)</b>
<b>USVCC</b>	<b>Self-regulation/Voluntary Code of Conduct for Executive Compensation Consultants (US)</b>
<b>VCC</b>	<b>Self-regulation/RCG's Voluntary Code of Conduct for Executive Remuneration Consultants</b>
<b>VOSG</b>	<b>Virtual Office Services Group</b>
<b>WOB</b>	<b>Workers on BOD</b>

**WorkingRelationshipsRemCo/  
ExecRemConsultants**

**Working Relationships between Remuneration  
Committee and Executive Remuneration Consultants**

**WorkingRelationshipsCoyExecRemSpecialists/  
ExecRemConsultants and RemCo**

**Working Relationships between Company Executive  
Remuneration Specialists and Executive  
Remuneration Consultants/Remuneration  
Committee**

**WTW Willis Towers Watson**

**WW Watson Wyatt**

# CHAPTER 1

## 1. INTRODUCTION

### 1.1. Background/Context (including Research Hypothesis)

This thesis concerns a specific aspect of executive remuneration; namely, the 'professional standards' of UK executive remuneration consultants (ExecRemConsultants) and their corporate in-house counterparts, company executive remuneration specialists (CoyExecRemSpecialists). It examines how best to promote highest 'professional standards' on the part of ExecRemConsultants and CoyExecRemSpecialists, when carrying out their respective roles in advising remuneration committees (RemCoAdvisory Services). The hypothesis adopted for this thesis is that further regulatory changes in such regard are currently unwarranted. The underpinning research methodology and empirical qualitative research interview programme (RIP) were specifically designed to test such hypothesis, via examination of the appropriate extent of regulation in this regard.<sup>1</sup>

Accordingly, this thesis provides a detailed examination of the 'professional standards' of those providing RemCoAdvisory Services – by undertaking an empirical qualitative RIP comprising 53 semi-structured 'elite interviews' with a selection of key protagonists on the UK executive remuneration scene. The timeframe for undertaking, completing and then submitting this thesis was September 2015 to November 2019.

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<sup>1</sup> The author is a now retired 'veteran' ExecRemConsultant (see Appendix 1 for Biographical Note, together with Appendix 5.1). His previous research had identified what he termed the Big Six Issues (BSI) in executive remuneration (such as, 'short-termism', incentive plan design, pay disclosure and corporate behaviour/ethics), but this thesis focuses particularly on the single issue of the 'professional standards' of ExecRemConsultants/CoyExecRemSpecialists. Although the BSI include specific aspects of the UK remuneration scene which entail proposed changes to hard/soft law regulation, it was concluded that the then current regulation applicable to ExecRemConsultants in particular was broadly appropriate. See Calvin Jackson, 'Do the Benefits of the Current UK Regulatory/Compliance Regime Regarding Remuneration Committees' Determination of Executive Pay Outweigh the Obligations Imposed?' (LLM dissertation, IALS ICGFREL 2014).- Appendix 2 to this thesis and <<https://sas-space.sas.ac.uk/6343/>> accessed 3 December 2018.

An empirical qualitative research methodology was specifically chosen for the RIP because this provided the best potential for yielding worthwhile results. 'Elite interviews' would provide an appropriate forum for exploring the so-called 'black box' of the 'inputs' into the RemCo pay determination process (whereas quantitative research generally focuses on the 'outputs' of such process, such as levels of remuneration actually paid).

Indeed, this proved to be the case in practice. The result of the RIP, and the other research findings contained in this thesis, provide very significant support for the research hypothesis adopted. For example, RIP interviewees expressed little appetite for possibly introducing a specialised accreditation or qualification (SA/Q) for ExecRemConsultants appointed to provide RemCoAdvisory Services and/or whether such provision might only be rendered on a 'licence to practise' (LTP) basis – with disciplinary sanctions being available against individual ExecRemConsultants.<sup>2</sup>

The overall consensus view of RIP interviewees was that further regulation of ExecRemConsultants is not required at the present time, given existing regulations and the present state of UK practice. Having said this, certain interviewees evidenced a desire for changes to the current self-regulatory regime regarding the Remuneration Consultants Group (RCG) and its Voluntary Code of Conduct (VCC). Proposals are put forward in this thesis regarding changes that RCG should consider making to the ambit of its activities/VCC.

The research methodology adopted for this thesis builds on the work of Edmans, Gosling and Main et al,<sup>3,4,5</sup> who stress the value of bringing to bear

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<sup>2</sup> See Jackson (n 1, 42 & 52) for previous discussion of SA/Q and LTP issues.

<sup>3</sup> Alex Edmans (LBS), *Written evidence from Alex Edmans submitted to HC BEIS Select Committee on Corporate Governance* (GV0173, 31 January 2017) < <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/business-energy-and-industrial-strategy-committee/corporate-governance/written/45115.html> > accessed 3 December 2018.

<sup>4</sup> Tom Gosling (PwC), *Written evidence from Tom Gosling submitted to HC BEIS Select Committee on Corporate Governance* (CGV0176, 21 February 2017) <<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/business-energy-and-industrial-strategy-committee/corporate-governance/written/46832.html>> accessed 3 December 2018. Note too Gosling, 'Seeking equality in executive pay is not always a fair solution' *Financial Times* (London, 29 May 2017).

both academic/technical and practitioner insights to promote innovative, robust and 'real-world effective' advice that is focused on enabling RemCos to make their pay determination decisions on a fully informed basis. This thesis employs the research approach used by Edmans, Gosling and Main et al - to provide novel research on the important related issue of the 'professional standards' of ExecRemConsultants and CoyExecRemSpecialists.

'Professional standards' are a vital part of the key advisory role played by ExecRemConsultants and CoyExecRemSpecialists in the RemCo pay determination process. Promoting highest 'professional standards' on the part of those providing RemCoAdvisory Services can not only assist in the overall goal of RemCos making appropriate decisions on a fully informed basis, it can also be a factor in successfully countering potential criticism of the activities of such advisors. It is submitted that the novel academic and UK practice findings arising from this thesis represent a significant contribution regarding the appropriate extent of regulation in respect of those providing RemCoAdvisory Services.

The state of executive remuneration more generally triggered much debate at the time of the 2007/2008 global financial crisis (GFC) and thereafter. Even 10 plus years since the GFC initially struck, society is still coming to terms with the GFC's overall effects - with a renewed emphasis now on the corporate sector's 'licence to operate' - entailing limited liability being increasingly predicated upon engaging in 'responsible capitalism', which provides

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<sup>5</sup> Brian Main, Calvin Jackson, John Pymm, & Vicky Wright, 'The Remuneration Committee and Strategic Human Resource Management', (2008) 16(3) *Corporate Governance: An International Review* 225-238 <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1236264](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1236264)> accessed 5 June 2019. Note the pagination of the Main et al article referred to in subsequent footnotes of this thesis under 'Main (n 5)' relates to the pagination used in the article held under Edinburgh Research Explorer (as opposed to that in the *Corporate Governance: An International Review* article). See also Main et al, 'Questioning the Remuneration Committee Process' (*University of Edinburgh*, 21 February 2007) <<http://www.homepages.ed.ac.uk/mainbg/Files/questioning%20the%20remuneration%20committee%20process%20-%20%2021%20feb%202007.pdf>> accessed 13 February 2019. Additionally, Main et al 'The Remuneration Committee Process – Some questions regarding remuneration committees' decision-making' (*University of Edinburgh*, 5 October 2006) <<http://homepages.ed.ac.uk/mainbg/Files/LSE%2012%20October%20Lecture%20background%20paper.pdf>> accessed 13 February 2019. The author in 2006/2007 had been part of a combined academic and practitioner project team involving three of his Actuarial & Benefits Consultancy (ABC) firm's ExecRemConsultants (including himself) collaborating with Edinburgh University Business School on an empirical qualitative research study based on 22 semi-structured 'elite interviews' with NEDs serving on the RemCos of publicly quoted companies.

worthwhile employment that generates the taxes required to pay for good public services.<sup>6</sup>

This carries with it strong elements of 'social cohesion' and 'public consent' being needed for it to work effectively. HPC considers that the ongoing 'UK high executive pay' controversy/debate 'leaves many feeling the system is rigged by a greedy business elite that has imposed globalisation and trade liberalisation on a populace that discerns no benefits'.<sup>7</sup> Where, using Miles & Yates's words, such perception causes a 'drift away from capitalism'<sup>8</sup> - as currently seen in the UK (and even USA) - this is a real cause for concern.

According to Miles & Yates:

Capitalism generates some bad outcomes and some very bad ones (...) the record of where private enterprise is driven towards the fringes could hardly be clearer. It is a disaster.<sup>9</sup>

In an executive remuneration context, this highlights the importance not only of effective regulation (both legislation and soft law codes) but also of publicly listed companies and shareholders discharging appropriately the crucial responsibilities of their 'licence to operate'.

It can be argued that perceived instances of 'outlier behaviour' from companies such as Persimmon,<sup>10</sup> Carillion,<sup>11</sup> WPP<sup>12</sup> and even Royal Mail<sup>13</sup>

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<sup>6</sup> John Kay, *Written evidence from John Kay submitted to HC BEIS Select Committee on Corporate Governance* (CGV0174, 17 January 2017) <<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/business-energy-and-industrial-strategy-committee/corporate-governance/written/45174.html>> accessed 3 December 2018.

<sup>7</sup> Deborah Hargreaves (of HPC) quoted by John Plender, 'Business has broken its social contract' *Financial Times* (London, 26 July 2018).

<sup>8</sup> David Miles & Tony Yates, 'The drift away from capitalism should be a cause for concern' *The Times* (London, 24 July 2018). This point is underlined by Philip Aldrick, 'Tide has turned against capitalism; but socialism is a failed alternative' *The Times* (London, 4 December 2018).

<sup>9</sup> *ibid.*

<sup>10</sup> Oliver Shah, 'A house built on shareholder value alone' *The Sunday Times* (London, 11 November 2018).

<sup>11</sup> Matthew Vincent, 'Carillion shows why it pays to make executives wait for their bonuses' *Financial Times* (London, 17 July 2018). Note too regarding Carillion, Douglas Turner, 'Governance failures at heart of Carillion's demise', Letter to Editor *Financial Times* (London, 21 May 2018). See also Camilla Cavendish, 'Your pay is indefensible, boss; a backlash is near' *The Sunday Times* (London, 31 December 2017).

<sup>12</sup> Jonathan Ford, 'Boardroom clemency towards chiefs is bad for capitalism' *Financial Times* (London, 23 April 2018).

that give rise to allegations of a 'pay/corporate governance scandal' may be construed as an affront not just to the overwhelming majority of publicly listed companies, where executive remuneration has in fact been reasonably stable (or falling) since GFC and the 2013 executive pay regulation reforms (2013 Reforms), but also to the UK electorate more generally. The respective sides in the ongoing debate can be broadly characterised as the 'UK executive pay problem' stance versus the 'UK executive pay is stabilised/reducing' one.

Omerod paraphrases Rouen's finding that 'unwarranted executive pay levels adversely affect firm performance', as 'people do not mind high pay - when it can be justified. It is when the snouts are in the trough that resentment rises and performance suffers'.<sup>14</sup> Accordingly, even in a UK environment where the Gini coefficient (of income inequality) has fallen since the 1980s, Omerod argues:

The perception that executives are receiving unfair levels of compensation is undermining belief in capitalism itself. This is the externality [arising from the behaviour of UK and US BOD members].<sup>15</sup>

Plender refers to executive pay and other such issues as 'business has broken its social contract',<sup>16</sup> whereas Hosking makes the point in relation to *Cadbury* and subsequent UK corporate governance developments (despite referring to George (of FRC) describing the latter in terms of 'corporate governance in the UK remains the international gold standard') as:

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<sup>13</sup> Michael Pooler & Attracta Mooney, 'Royal Mail shareholders stage revolt over Greene payout and Back's salary' *Financial Times* (London 20 July 2018). Note too regarding Royal Mail; Matthew Vincent, 'Royal Mail: postal votes' *Financial Times* (20 July 2018) and Josh Mines, 'Shareholders vent fury over Royal Mail pay' *City A.M.* (London, 20 July 2018).

<sup>14</sup> Paul Omerod, 'Investors should intervene to stop high executive pay, before the regulator does' *City A.M.* (London, 18 July 2018).

<sup>15</sup> *ibid.*

<sup>16</sup> John Plender, 'Business has broken its social contract' *Financial Times* (London, 26 July 2018). Plus *Financial Times* Leader Editorial, 'Top US executive pay deserves greater scrutiny: companies need to accept that remuneration is now a public issue' *Financial Times* (London, 8/9 August 2015). See Martin Wolf, 'Rethink the purpose of the corporation' *Financial Times* (London, 12 December 2018) for his view that despite the business corporation being 'among the most remarkable of all human innovations... (...)...incomplete markets and the idea that companies' only purpose is to pursue profits leads to dire outcomes'. Wolf argues that 'capitalism is substantially broken' and suggests that 'we must fix the corporation and competition together'. Also *Financial Times* Leader Editorial, 'A better deal between business and society' *Financial Times* (London, 2 January 2018). Additionally, Meryn Somerset Webb, 'Time to reboot shareholder capitalism' *Financial Times* (London, 30/31 December 2017).

The safety valve of the comply or explain regime and the non-binding nature of some company resolutions mean that nothing much changes, whatever the fine intentions of 26 years ago.<sup>17</sup>

These are serious criticisms of UK corporate governance - and 'high executive pay' features well up such agenda.

## **1.2. RemCoAdvisory Services: Law/Regulation**

UK executive pay determination processes (and accompanying 'disclosure' aspects) are governed by a combination of hard and soft law regulation. Key provisions are set out below in this Chapter 1.2. Prior to the GFC, the focus was on soft law institutional shareholder representative body guidelines, plus legislation regarding 'pay disclosure' and shareholders' annual advisory vote on Directors' remuneration. Subsequently, further detailed legislation was enacted in respect of the disclosure of the identity of RemCo's appointed ExecRemConsultancy firm, the fees charged for such RemCoAdvisory Services, plus the broad nature of any additional advisory services (Other Services) provided to the client company concerned by the ExecRemConsultancy firm. Since 2009/2010 the RCG (and its VCC) has played a key role in the voluntary self-regulatory regime that covers ExecRemConsultancy firms (and their ExecRemConsultants).

The US, on the other hand, does not operate the equivalent of the UK's RCG (and VCC), but shortly after the GFC detailed legislative provisions were put in place regarding (1) fee disclosure - unless CompCoAdvisory Services are the only ones provided to the relevant client company by the ExecCompConsultancy firm concerned or the fees charged in respect of any Other Services provided by such ExecCompConsultancy firm fall below a

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<sup>17</sup> Patrick Hosking, refers to Cadbury Committee, *Cadbury Report: Report of the Committee on the Financial Aspects of Corporate Governance* (Gee Publishing 1992) in 'Rocketing pay and scandals persist despite regulators' best intentions' *The Times* (London, 17 July 2018).

stipulated annual value, and (2) 'independence' of ExecCompConsultancy firms/ExecCompConsultants.

Accordingly, in a similar way as the overall financial services sector in the UK/US moved post-GFC to a stricter regulatory regime, the regulatory environment for ExecRemConsultancy/ExecRemConsultants has become significantly more structured/onerous.

The process by which UK publicly listed company Directors' remuneration is determined (and its subsequent disclosure) is highly regulated via legislation, listing rules, UKCGC,<sup>18</sup> institutional shareholder representative body guidelines (eg., IA Principles of Remuneration)<sup>19</sup> plus the RCG and its VCC.<sup>20</sup> However, with certain exceptions applicable in a financial services sector context, the level of basic salary, combined level of short and long-term incentives (STI and LTI, respectively) expressed as a multiple of the applicable basic salary, and the overall financial quantum of remuneration packages, are not specifically addressed.

For this thesis, it was decided that the 'law/regulation' aspect should be divided into three categories (ie., Levels 1, 2 and 3) situated in a figurative 'funnel'. Whereas Level 1 comprises 'law/regulation' applicable to Directors' remuneration as a whole, Level 2 covers aspects of particular relevance to the activities of ExecRemConsultants, and Level 3 those applicable to their 'professional standards' (with Level 1 being at the top/broadest part of the 'funnel', Level 2 in the middle and Level 3 at the bottom tip/narrowest part). Although Level 3 is the most relevant in respect of this thesis,

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<sup>18</sup> 'United Kingdom Corporate Governance Code' (July 2018) <<https://www.frc.org.uk/getattachment/88bd8c45-50ea-4841-95b0-d2f4f48069a2/2018-UK-Corporate-Governance-Code-FINAL.pdf>> accessed 17 January 2019.

<sup>19</sup> IA 'Principles of Remuneration 2018' (November 2018) <<https://www.ivis.co.uk/media/13548/Principles-of-Remuneration-2018.pdf>> accessed 17 January 2019. Note the reference (on page 4, 'Remuneration Committees') to 'Remuneration Committees need to exercise independent judgment and not be over-reliant on their remuneration consultants'.

<sup>20</sup> RCG 'Voluntary Code of Conduct in Relation to Executive Remuneration Consulting in the United Kingdom' (RCG, December 2017) <<http://www.remunerationconsultantsgroup.com/assets/Docs/April%202018%20Code%20of%20Conduct.pdf>> accessed 1 May 2019.

elements/components of 'law/regulation' situated in Levels 1 and 2 are also applicable.

Readers of this thesis are referred to Petrin,<sup>21</sup> Bender<sup>22</sup> and the author's previous research,<sup>23</sup> for discussion of the development of Directors' remuneration legislation and practices in the UK; however, in order to set the scene for subsequent discussion, some key Level 1 'law/regulation' applicable to UK Directors' remuneration as a whole is set out below;

- Shareholder voting powers, such as the annual advisory vote on the DRR,<sup>24</sup> the triennial binding vote on remuneration policy,<sup>25</sup> the annual election of Directors,<sup>26</sup> and Listing Rule requirements for the introduction of LTIs,<sup>27</sup>
- Pay disclosure provisions, such as 'single total figure' of Directors' remuneration,<sup>28</sup> and pay ratio disclosure (PRD – i.e, the ratio between the level of CEO pay and that of the workforce generally),<sup>29</sup> and
- UKCGC 'comply or explain' provisions, such as splitting the respective roles of CoyChair and CEO,<sup>30</sup> and engagement between the BOD and the workforce (referred to as 'Workers on the Board' – WOB).<sup>31</sup>

Level 2 covers 'law/regulation' that is wholly or in part referable to ExecRemConsultants. An example is the statutory regulation concerning the

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<sup>21</sup> Martin Petrin, 'Executive Compensation in the United Kingdom - Past, Present, Future' (2015) 36(7) *The Company Lawyer* 195

<sup>22</sup> Ruth Bender, 'Paying For Advice, The Role of the Remuneration Consultant in UK Listed Companies' (2011) *Vanderbilt Law Review* 361-396

<sup>23</sup> Jackson (n1).

<sup>24</sup> Companies Act 2006 s 439.

<sup>25</sup> Companies Act 2006 s 439A.

<sup>26</sup> 'UKCGC 2018', Provision 18 (n 18) 8.

<sup>27</sup> Listing Rule 9.4 Documents Requiring Prior Approval, LR 9.4.1 Employee Share Schemes and Long-Term Incentive Plans, plus LR Appendix I Definition of 'Long-Term Incentive Schemes' (Release 35, January 2019) <<https://www.handbook.FCA.org.uk/handbook/LR/9/4pdf>> accessed 14 January 2019.

<sup>28</sup> The Large and Medium-Sized Companies and Groups (Accounts and Reports) (Amendment) Regulations 2013, SI 2013/1981, Part 3 Annual Report on Remuneration, para 4.

<sup>29</sup> The Companies (Miscellaneous Reporting) Regulations 2018, SI 2018/860.

<sup>30</sup> 'UKCGC 2018', 'Division of Responsibilities', Provision 9 (n 18) 6.

<sup>31</sup> 'UKCGC 2018' 'Board Leadership and Company Purpose', Provision 5 (n 18) 5.

annual disclosure publicly listed companies must make in respect of matters such as:

- The name(s) of those who have provided advice that has 'materially assisted' the RemCo in its consideration of Directors' remuneration (primarily, the appointed firm of ExecRemConsultants),
- The nature of the services provided,
- By whom appointed (ie., RemCo or otherwise) and how selected,
- Whether and how the RemCo has 'satisfied itself that such advice was objective and independent', and
- The level of fees charged by the RemCoAdvisors, for the advice concerned.<sup>32</sup>

Level 3 comprises 'law/regulation' applicable specifically to the 'professional standards' of ExecRemConsultants. Although the RCG's ongoing monitoring and review role, plus its VCC, are somewhat broader in scope in certain respects, the fundamental focus is on the way in which ExecRemConsultants conduct business and their standards of behaviour. A self-regulatory regime is in place for firms providing RemCoAdvisory Services. Aspects include:

- Protocols for dealing with conflicts of interest (COI),<sup>33</sup>
- 'VCC training requirements' for ExecRemConsultants employed by RCG member firms,<sup>34</sup>
- Billing practices,<sup>35</sup>
- Protocols for circulation of RemCoAdvisory reports,<sup>36</sup> and
- Other 'good practice' provisions; namely, 'transparency', 'integrity', 'objectivity', 'competence', 'due care' and 'confidentiality'.<sup>37</sup>

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<sup>32</sup> 2013 Regulations, para 22 (1) (a) for disclosure of the name of those who provided advice; 1 (b) for 'materially assisted'; 1 (c) (i) for 'nature of the services'; (1) (c) (ii) for 'whom appointed and how selected', (1) (c) (iii) for 'objective and independent'; (1) (c) (iv) for 'fees charged'.

<sup>33</sup> RCG'S VCC, 'Good Practice Guidelines 12 & 17' (n 20) 5,6.

<sup>34</sup> RCG's VCC 'Compliance', (n 20) 2.

<sup>35</sup> RCG'S VCC, 'Objectivity' and 'Good Practice Guideline 12' (n 20) 3,5.

<sup>36</sup> RCG'S VCC, 'Good Practice Guideline 17'; (n 20) 6.'

However, without consideration of certain aspects falling within Levels 1 and 2, those in Level 3 rather lack 'contextual grounding'. For this reason, whereas the ongoing activities of RCG, and the operation of its VCC, are discussed in detail in this thesis, there is also appreciable coverage of Levels 1 and 2 issues.

The activities of ExecRemConsultants are addressed via soft law codes/guidelines, rather than legislation (this position can be contrasted against the detailed statutory rights and obligations of the appointed external auditor, for example).<sup>38</sup> The UKCGC and IA Principles of Remuneration exemplify this position. In the latter, there is no explicit mention at all of ExecRemConsultants (let alone their 'professional standards').

The only relevant reference in UKCGC is Provision 35:

Where a remuneration consultant is appointed, this should be the responsibility of the remuneration committee. The consultant should be identified in the annual report alongside a statement about any other connection it has with the company or individual directors. Independent judgment should be exercised when assessing the advice of external third parties [eg., ExecRemConsultants] and from receiving views from executive directors and senior management [eg., CoyExecRemSpecialists].<sup>39</sup>

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<sup>37</sup> RCG'S VCC, 'Fundamental Principles', 'Good Practice Guidelines 5-21' (n 20) 4-7.

<sup>38</sup> See the relevant provisions applicable to an external auditor (n 275). The consensus view of RIP interviewees was that the description 'third party business advisor' can appropriately be ascribed to ExecRemConsultants whose employing firm has been appointed to provide RemCoAdvisory Services. This position can be contrasted against that of a client company's appointed external auditor or credit rating agency. Both of the latter can be classified as 'gatekeepers' of the company concerned. Charles Goodhart & Rosa Lastra suggest that their 'insider' categories 'might be capable of extension to audit firms and credit rating agencies', but it is submitted that it is unlikely they would include ExecRemConsultancies/ExecRemConsultants in such category (similar considerations apply to a client company's appointed proxy advisory firm). See Charles Goodhart & Rosa Lastra, 'Equity Finance: Matching Liability to Power', 6 & 29 <eprints.lse.ac.uk/100058/1/Goodhart\_CEPR\_DP13494.pdf> accessed 16 July 2020.

<sup>39</sup> UKCGC 2018', 'Remuneration', Provision 35 (n 18) 13.

With the exception of RCG's VCC, the conduct of ExecRemConsultants in their role does not particularly feature in the relevant hard and soft law regulation. This is why there is such a strong focus in this thesis on the behaviours of ExecRemConsultants within their self-regulatory regime. Similar behavioural considerations apply to CoyExecRemSpecialists - there is even less regulation of their activities in hard and soft law regulatory terms than in respect of their ExecRemConsultant counterparts. For example, CoyExecRemSpecialists are exempted from the 'naming' and 'objective and independent' disclosure requirements applicable in respect of the RemCo's appointed ExecRemConsultancy firm.<sup>40</sup>

### **1.3. Research Approach**

The research approach selected was to conduct empirical qualitative 'elite interviews' using a semi-structured format – based on a Research Interview Topics Guide (RITG) and Supplementary Topics (RITGST), which gathered data enabling the research hypothesis to be tested.

#### *ExecRemConsultants, CoyExecRemSpecialists, RemCoChairs/Members*

The most senior UK ExecRemConsultants probably number fewer than 50. Accordingly, it is submitted that the RIP could be truly representative in this regard. In relation to CoyExecRemSpecialists, the overall number of UK CoyExecRemSpecialists - and, indeed, RemCoChairs/Members - is far larger than that of senior ExecRemConsultants. Therefore, the cohort of CoyExecRemSpecialist and RemCoChair/Member RIP interviewees was selected on the basis of anticipating that their views would be relevant and interesting in the relevant context, rather than considering that they would be completely representative of the entire relevant UK population of such 'job roles'.

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<sup>40</sup> 2013 Regulations, paragraph 22(2)(3) (n 28).

## *Relevant Other Organisations*

Regarding Relevant Other Organisation (ROO) interviewees, such as regulators, proxy advisory firms and institutional shareholder representative bodies, a fully representative cross-section of what are generally referred to by commentators as 'corporate governance groups' were interviewed (within the limitations referred to in this thesis). The number of such bodies is small, and overall they were happy to engage in the RIP.

Institutional shareholder body views (which include the various remuneration policies/guidelines of individual members of such bodies) were 'captured' in the RIP – including in particular the remuneration guidelines of a really significant UK institutional shareholder representative body, together with those of a major proxy advisor and an influential professional membership organisation. It will be appreciated that the respective views of institutional shareholders/shareholder representative bodies can also be gathered from RIP comments provided by the interviewee population as a whole. Although these may be based on individual experience/perception, they contribute to the overall picture collated by the RIP. Institutional shareholder views are also contained in exhaustive detail in the numerous institutional shareholder representative body guidelines/reports referred to in this thesis.

The views of institutional shareholder bodies are particularly salient because these are representative of the overall cohort of their respective individual member institutional shareholders (ie., 'speaking for multiple shareholders'). Indeed, institutional shareholder body RIP comments are more representative of institutional shareholders views as a whole than would have been achieved by simply selecting some major institutional shareholders to participate in the RIP.

Accordingly, a key institutional shareholder representative body, plus a major proxy advisor (and other ROOs) expressed their views/perspectives in RIP interviews. In respect of ExecRemConsultants in particular, the shareholder representative body concerned provided a mixture of favourable and less complimentary comments. An example of the former being that ExecRemConsultants were prepared to resign if RemCo did not follow their advice and, of the latter, that there remained some unwelcome practices/mindset amongst ExecRemConsultants. There was also though the comment that 'to blame everything on consultants is maybe a step too far'.

The research hypothesis selected is important in terms of both potential academic and UK practice contributions. As regards the former, qualitative past studies of ExecRemConsultants include those of Bender,<sup>41</sup> Adamson et al<sup>42</sup> and, most-recently, Bender & Franco-Santos<sup>43</sup> and de Gannes.<sup>44</sup> However, none of these focuses specifically on the 'professional standards' of ExecRemConsultants, nor those of CoyExecRemSpecialists – indeed, Bender & Franco-Santos are probably correct in asserting that their research was the first to cover in detail any aspects of the latter.<sup>45</sup>

Accordingly, the RIP is not only complementary to previous studies on ExecRemConsultants but it fills a 'gap' in the existing academic literature - as examination of the 'professional standards' of ExecRemConsultants and CoyExecRemSpecialists had previously been rather nascent/tangential. In essence, the RIP interviews/this thesis not only provide a novel academic contribution by examining the 'professional standards' of

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<sup>41</sup> Ruth Bender, 'Executive Compensation Consultants' in Randall Thomas & Jennifer Hills (eds), *The Research Handbook on Executive Pay* (Edward Elgar 2012). This chapter includes a useful list of quantitative and qualitative research studies on ExecRemConsultants/ExecRemConsultancies - initially contained in Table 3.2 of Bender's paper 'Executive Compensation' (presented at the Executive Compensation and Corporate Governance Conference, University of Genoa, 12 March 2011) <<http://ssrn.com/abstract=1788322>> accessed 5 December 2018.

<sup>42</sup> Maria Adamson, Stuart Manson & Idran Zakaria, 'Executive Remuneration Consultancy in the UK: Exploring a Professional Project Through the Lens of Institutional Work' (2015) 2(1) *Journal of Professions and Organization* 19-37 <<https://doi.org/10.1093/jpo/jou007>> accessed 13 February 2019.

<sup>43</sup> Ruth Bender & Monica Franco-Santos, *Executive Remuneration: Factors Influencing Consultants' Advice* (ICAEW 2017) <<https://www.icaew.com/-/media/corporate/files/technical/research-and-academics/executive-remuneration-factors-influencing-consultants-advice.ashx>> accessed 5 December 2018.

<sup>44</sup> Nadine de Gannes, 'The Emergence and Work Processes of Executive Remuneration Consultants' (Doctoral thesis, LSE Department of Accounting, March 2018) <<http://etheses.LSE.ac.uk/3704>> accessed 4 December 2018.

<sup>45</sup> Bender & Franco-Santos (n 43).

ExecRemConsultants (and their in-house counterparts) but are also a complementary extension of previous related empirical qualitative research studies.

The RIP also had the potential to be a valuable contribution to UK practice - in that ExecRemConsultants and CoyExecRemSpecialists are key players regarding the 'inputs' into the RemCo pay determination process - which usually takes place behind 'closed doors' (as opposed to quantitative studies which tend to focus on the 'outputs' of the process - eg., Directors' remuneration figures actually disclosed in the DRR).

It would explore the implications of the UK and US taking such radically different routes in recent years on RemCo/CompCoAdvisory Services provision. Although the Big Four in the US - as in the UK - offer CompCoAdvisory Services (provided they are not the appointed external auditor of the company concerned),<sup>46</sup> the dominant providers of such services in the USA are Boutiques and those Actuarial & Benefits Consultancy (ABC) firms that have not spun-off much of their CompCoAdvisory Services capability into Boutique firms.<sup>47</sup> The UK RemCoAdvisory marketplace though, is dominated by the Big Four - again, provided they are not the appointed external auditor - and ABC firms (which have acquired the leading UK Boutiques).<sup>48</sup>

The RIP provided an opportunity to garner RIP interviewees' views on the self-regulatory regime applicable to UK ExecRemConsultancy - with RCG operating its VCC for member firms,<sup>49</sup> together with opinions on the

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<sup>46</sup> As is the case in the UK, CompCoAdvisory Services are not offered by the Big Four in the US to their external audit clients. An ExecCompConsultant RIP interviewee's experience was that the Big Four in the US do though routinely take on CompCoAdvisory appointments in respect of their non-audit clients. The US CompCoAdvisory market is dominated however by ABC and Boutique firms – as opposed to Big Four ones.

<sup>47</sup> Bender (n 41).

<sup>48</sup> HPC, 'Are Remuneration Consultants Independent?' (HPC, 24 June 2015) 5, 14 <<http://highpaycentre.org/pubs/are-remuneration-consultants-independent>> accessed 28 January 2019.

<sup>49</sup> RCG (n 20).

comparative merits of whether a SA/Q and/or LTP might be introduced for ExecRemConsultants (on an individual basis).

#### **1.4. The RIP**

Once SAS REC agreement had been secured for the RPP, the next step was to finalise invitations to prospective interviewees. A total of 59 invitations were sent, which secured the agreement of 56 interviewees.

The interviewees were assured of anonymity, and they went to extraordinary efforts to complete the RIP process - even when subsequent work commitments supervened. All the interviews were conducted personally by the author, within a four-month period. The interviews were digitally recorded in almost all cases (with a contemporaneous note of interview being taken). These were uploaded as digital files for transcription. The resulting documentation was then coded and analysed, based on the relevant responses of RIP interviewees to the semi-structured research interview questions set out in the RITG and RITGST, respectively. RIP interviewees were subsequently sent transcripts for their comment/amendment/approval. The RITG contained semi-structured questions on, respectively:

- RITG1: The working relationship between RemCos and ExecRemConsultants, including ExecRemConsultant 'independence'/COI issues,
- RITG2: The Big Four, ABC firms and Boutiques, plus managing COI,
- RITG3: The UK self-regulatory regime and the ongoing operation of RCG (and its VCC),
- RITG4: The 'professional standards' of ExecRemConsultants, including the potential for SA/Q and/or LTP regime, and

- RITG5: The working relationship between CoyExecRemSpecialists, RemCos and ExecRemConsultants, including RemCoAdvisory protocols (eg., advisory documentation circulation) and managing CoyExecRemSpecialist COI.

The RITGST questions largely concerned the issues covered by the Government's CGI and mooted proposals - ie., regarding WOB, PRD and an annual binding vote by shareholders on Directors' remuneration (SABV). The RIP also covered the issues of possible disclosure to shareholders of fees charged for Other Services (far more relevant to Big Four and ABC firms than 'monoserviceline' Boutiques),<sup>50</sup> and also Labour's 2008/2009 and 2013 proposals for the appointment of RemCo advisors to be subject to binding shareholder vote (Labour's SVEExecRemConsultants Proposals).<sup>51</sup>

In addition to the RITG/RITGST, there was a questionnaire for RIP interviewee ExecRemConsultants and CoyExecRemSpecialists to complete regarding their respective academic and professional qualifications (RICBQ). Whereas virtually all the present generation of really senior/'star' ExecRemConsultants are professionally qualified (as CA, CTA, Actuary or Lawyer, or holding an MBA or PhD), and/or had relevant work experience prior to becoming ExecRemConsultants, it is now increasingly common for individuals to become ExecRemConsultants as bachelors degree 'direct entrants' - so the latter have neither professional qualifications nor relevant prior work experience.

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<sup>50</sup> HPC (n 48).

<sup>51</sup> Labour's 2008/2009 proposals regarding SVEExecRemConsultants applicable to RemCos of 'Big Banks', plus Labour's 2013 proposals applicable to UK publicly listed companies more generally (see Cathy Jamieson, Shadow Treasury Minister, 'New Clause 6', Public Bill Committee 16 April 2013) at the committee stage debate of the Financial Services (Banking Reform) Bill 2013. The latter proposal was to 'provide for a requirement that the remuneration consultants advising on remuneration policy shall be appointed by the shareholders of the relevant body corporate' - proposed amendment lost, 8:10) <<https://publications.parliament.uk/pa/201212/cmpublic/financialservices/120308s01/pm/120308s01.htm>> accessed 20 May 2019.

Certain RIP ExecRemConsultant interviewees mentioned that, in their experience, the Big Four usually channel their 'direct entrants' into gaining CA or Actuary qualifications whilst 'in post' as junior ExecRemConsultants, whereas the ABC firms have previously not taken this route. However, at the 'mid-level' of seniority ABC firms have often transferred into ExecRemConsultancy their qualified Actuaries who want to move to a more 'pure consultancy career' or, alternatively, have hired in ExecRemConsultants who already possess professional qualifications and/or have directly-relevant work experience (such as, having been employed as CAs, Lawyers or CoyExecRemSpecialists).

## **1.5. Research Considerations**

This thesis has been written on the basis of being mindful throughout of Roiter's comment on executive compensation that:

Anyone approaching this topic should do so with humility. It's daunting and complex. I think we can all agree that we ought to pay for performance. We ought to align senior executives' interests with the company's longer-term interests by, for example, requiring the ownership of real shares with extended holding periods.<sup>52</sup>

The RIP design was formulated and actually conducted from this perspective. The author has no current links to any ExecRemConsultancy firm, no longer offers ExecRemConsultancy/RemCoAdvisory Services in any capacity and did not seek funding for his research - to avoid any potential allegations of COI (or of having been 'captured' by his previous career).

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<sup>52</sup> Eric Roiter speaking in 'What's wrong with executive compensation? A roundtable moderated by Charles Elson' (2003) 81(1) Harvard Business Review 68-77 <<https://hbr.org/2003/01/whats-wrong-with-executive-compensation>> accessed 5 December 2018.

## 1.6. Thesis Organisation

This thesis comprises six chapters:

- Chapter 1 Introduction,
- Chapter 2 Context: UK Executive Remuneration Scene and Literature Review,
- Chapter 3 Research Methods,
- Chapter 4 Findings,
- Chapter 5 Discussion, and
- Chapter 6 Conclusions.

There are voluminous Appendices. Appendix 2 comprises the Summary of Research Interview Findings (SRIF). The latter is an extensive compilation of the 53 RIP interviewees' comments. Appendix 3 contains the relevant LLM dissertation. Appendices 4 through 8 (inclusive) set out the RIP documentation, including the 'invitation pack' for prospective interviewees, the 'interview pack' for 'signed-up' interviewees and the 'interview process management' documentation.

It is proposed in due course to offer explanatory/discussion sessions with RIP interviewees, to thank them for their kind participation in the RIP - and to seek to embed into UK practice the conclusions arising therefrom. Set out in this thesis are two other potential areas identified for further research. In line with de Gannes,<sup>53</sup> it is considered that CoyExecRemSpecialists are a significantly under-researched population. Proposals are made in this regard, as well as for research specifically on emerging RemCo practices in the financial services sector in key territories. Lastly, it needs to be remembered that the

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<sup>53</sup> de Gannes (n 44) 214.

present research covers just one of the BSI – accordingly, additional fruitful lines of research are available.

This thesis covers the state of research, policy and practice as of 31 July 2018.

## CHAPTER 2

### 2. CONTEXT: UK EXECUTIVE REMUNERATION SCENE AND LITERATURE REVIEW

#### 2.1. Introduction

Any examination of executive remuneration involves a sustained exercise in how best to hit a rapidly moving target. Indeed, the scholarly and UK RemCoAdvisory practice equivalent of sophisticated deflection shooting is needed if worthwhile results are to be achieved. Petrin refers to executive remuneration as being ‘a constant work in progress, influenced by the ebb and flow of corporate and financial crises, political agendas and academic and popular commentary’.<sup>54</sup>

In short, executive remuneration is a governance issue of both academic and practical concern, but it is also one of the most controversial aspects of modern society - which is of justifiable interest to citizens generally. Perceptions of ‘high pay’ and ‘rewards for failure’ are important. They affect the sense of ‘fairness’, ‘equal chances’ and ‘just deserts’ that is arguably crucial for ‘social cohesion’. The latter can influence the outcome of elections/referendums in the developed world, and is also seen as being of real relevance amongst emerging nations.<sup>55</sup>

Not only is executive remuneration a constantly changing topic, it also has many facets, such as:

- Pay regulation/disclosure,

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<sup>54</sup> Petrin, (n 21).

<sup>55</sup> For a definition of ‘social cohesion’ see OECD, *Perspectives on Global Development 2012: Social Cohesion in a Shifting World* (OECD Publishing 2011) 52.

- RemCo pay determination processes,
- Remuneration package quantum and design (eg., ‘pay benchmarking’ methodology, STIs and LTIs),
- Psychology of incentive arrangements,
- Institutional shareholder interests and ‘short-termism’,
- ExecRemConsultants (ie., those appointed to advise RemCos) and their in-house counterparts, CoyExecRemSpecialists, and
- Corporate ethics/behaviour.

Just by way of illustration, a review of media coverage in the month of October 2017 revealed 11 predominantly negative newspaper articles/comments on executive remuneration/corporate governance - one on LTIPs,<sup>56</sup> four on FRC,<sup>57, 58, 59, 60</sup> four on ‘capitalism requiring reform’,<sup>61, 62, 63, 64</sup> one on ‘conflicts in the Big Four’<sup>65</sup> and another on ‘institutional shareholders’.<sup>66</sup> The month was capped by a Leader Editorial in the *Financial Times* on 1 November 2017.<sup>67</sup> Such activity was against a background not only of a comparatively quiet 2017 AGM Season (showing falls in executive remuneration levels),<sup>68,69</sup> but also the anodyne *Government Response*<sup>70</sup> (compared to its original *Green Paper* published earlier in the CGI process).<sup>71</sup>

<sup>56</sup> Simon Duke, ‘How to stop bosses making out like bandits’ *The Sunday Times* (London, 1 October 2017).

<sup>57</sup> Jonathan Ford, ‘British Accountancy’s Watchdog is Lacking Bark and Bite’ *Financial Times* (London, 9 October 2017).

<sup>58</sup> Guy Jubb, ‘Restoring Regulatory Bark and Bite’, Letter to Editor *Financial Times* (London, 12 October 2017).

<sup>59</sup> Patrick Hosking, ‘What’s to fear from watchdog that doesn’t have bite’ *The Times* (London, 16 October 2017).

<sup>60</sup> Mark Kleinman, ‘FRC has its plate full’ *City A.M.* (London, 18 October 2017).

<sup>61</sup> Patrick Jenkins, ‘Greed and tax dodgers leave capitalism ripe for reform, say business leaders’ *Financial Times* (London, 23 October 2017).

<sup>62</sup> Financial Times Leader Editorial, ‘Business must help fix the failures of capitalism’ *Financial Times* (London, 24 October 2017).

<sup>63</sup> Financial Times Lex, ‘UK capitalism: more please’ *Financial Times* (London, 24 October 2017).

<sup>64</sup> Helia Ebrahimi, ‘Forget capitalism – profit will soon be a dirty word’ *The Times* (London, 25 October 2017).

<sup>65</sup> Iain Dey, ‘Will the Big Four break up to avoid conflicts?’ *The Sunday Times* (London, 29 October 2017).

<sup>66</sup> Rana Foroohar, ‘Investors pass the buck on governance’ *Financial Times* (London, 30 October 2017).

<sup>67</sup> Financial Times Leader Editorial, ‘On executive pay, incentives have limits’ *Financial Times* (London, 1 November 2017).

<sup>68</sup> PwC Press Release, ‘Mid-season executive pay snapshot shows continued restraint’ *PwC* (London, 21 April 2017).

<sup>69</sup> Deloitte Press Release, ‘FTSE 100 CEOs see pay decrease by almost 20% after calmer than expected 2017 AGM Season’ *Deloitte* (London, 21 August 2017).

<sup>70</sup> BEIS, *Corporate Governance Reform: The Government Response to the Green Paper Consultation August 2017*. According to the Government, ‘a world-leading package of corporate governance reforms’.

<sup>71</sup> Government launches review (*Green Paper Consultation Process*) of corporate governance on 29 November 2016, and BEIS, *Corporate Governance Reform Green Paper* (November 2016). The BEIS Select Committee, *Corporate Governance House of Commons Third Report of Session 2016-17* (2016-17, HC 702).

The role played by ExecRemConsultants in RemCo determination of remuneration package quantum and design is somewhat controversial (expressing things in neutral terms, for the moment). The academic and other literature cited below varies between ExecRemConsultants being seen as a useful and, indeed, necessary part of the process of RemCos being fully informed on market practice/shareholder policy stances and guidelines, to viewing them as being significant contributors to the perceived problems of executive pay. Accordingly, on the one hand, Voulgaris et al,<sup>72</sup> together with Bender,<sup>73</sup> are broadly or explicitly positive about the role of ExecRemConsultants, whereas others, such as Lawson<sup>74</sup> and Buffett,<sup>75</sup> are very negative.

This Chapter 2 sets out the rationale for selecting the research topic concerned, why that particular subject and the matters covered in the RIP are important, and how/the extent to which the particular research carried out addresses the issues raised in the relevant academic literature and current UK RemCoAdvisory practice.

The research topic was purposefully chosen to have dual academic and UK practice aspects. The RIP adopted a qualitative empirical approach (building on the work of Bender in particular), with 53 semi-structured 'elite interviews' being undertaken. The aim was to address certain 'lacunae' in the relevant

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<sup>72</sup> George Voulgaris, Konstantinos Stathopoulos & Martin Walker, 'Compensation Consultants and CEO Pay: UK Evidence' (2010) 18(6) *Corporate Governance: An International Review* 511-526, 514 <<https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1467-8683.2010.00822.x>> accessed 13 February 2019. Voulgaris et al state 'overall, our results cast doubt on the conclusions of the MPA [ie., 'management power approach'] regarding the role of compensation consultants. Their role can be better explained within the optimal contracting framework'.

<sup>73</sup> Bender, (n 22) 367,370. Bender's findings provide some support for the proposition that ExecRemConsultants are not so much part of the agency problem, as argued by the managerial power hypothesis, but part of the solution - contributing towards the achievement of the optimal contract (with ExecRemConsultants being seen as an integral part of determining pay in large listed companies, acting as experts, providing market data, and advising on plan design and implementation, plus liaising with institutional shareholders).

<sup>74</sup> Lord Lawson, *Oral evidence taken before Parliamentary Commission on Banking Standards* (HC606-xxx, 30 January 2013) 2, Q3196 ('My knowledge of remuneration consultants, which is from a company not in the financial sphere, is that they are a profession that makes prostitution seem thoroughly respectable') <<https://publications.parliament.uk/pa/it201213/itselect/jtpebs/uc606-xxx/uc606xxx.pdf>> accessed 16 February 2018.

<sup>75</sup> Akin Oyedele, 'BUFFETT: Here's the kind of person I'd like to head up Berkshire Hathaway when I'm gone' *Business Insider UK* (London, 22 February 2018). Buffett added 'If the board hires a compensation consultant after I go, I will come back mad' <<https://www.businessinsider.com/warren-buffett-succession-compensation-berkshire-hathaway-annual-meeting-2017-5?r=US&IR=T>> accessed 23 January 2019. See also, in relation to ExecCompConsultants, Robert Monks: 'one needs to suspend disbelief as to the appetite of personal service organizations to bring unwelcome advice to their clients', 'Executive and Director Compensation - 1984 REDUX' (1998) 6(3) *Corporate Governance: An International Review* 135-139,137.

academic literature and also to explore how UK RemCoAdvisory practice might be further improved. For transparency and completeness, the following is stated:

- The research covers just one of what the author had previously identified as the BSI in executive remuneration,
- Although certain aspects regarding US, EU, for example, are referred to, this thesis does not claim to be a 'full-blown' comparative study, and
- This thesis covers UK publicly listed companies in general, as opposed to focusing on any particular industry sector (such as, financial services).

Chapter 2 covers first the current scene regarding UK RemCoAdvisory Services, then moves to the rationale for selecting the research topic concerned and the design of the qualitative 'elite interview' programme. The RIP is then put into the context of the relevant academic literature, together with Governmental and institutional shareholder reports/guidelines, respectively, and current UK RemCoAdvisory practice.

## **2.2. The UK Executive Remuneration Scene**

Boardroom pay is a matter of legitimate public interest and real importance. According to Kay, capitalism's role includes the provision of:

- Goods and services that people want to buy,
- Financially and emotionally satisfying employment,
- Earning profits that reward entrepreneurship and innovation (which underpin returns to long-term savings), and

- Improved social and economic life to the communities in which companies operate.<sup>76</sup>

It is now 27 years since the *Cadbury Report* and despite the UK being generally regarded as a world leader in sound corporate governance considerable concerns remain (and, indeed, grow). Government's *Green Paper* issued as part of CGI process set out how FTSE 100 CEO average total pay had increased from around £1million in 1998 to £4.3million in 2015 (slightly down on a peak of £4.75million in 2011) - this quadrupling being largely accounted for by the growth in payouts from both STI and LTI arrangements. It states that in 1998 the ratio of average FTSE 100 CEO pay to average pay of full-time employees was 47:1, whereas in 2010 it was 132:1 and stood at 128:1 in 2015.<sup>77</sup>

A point to bear in mind though is that RemCos and their appointed ExecRemConsultants use median data for 'pay benchmarking' purposes, rather than average data (the latter is invariably considerably higher, as it is 'dragged-up' by outliers at the top of the data range).

Arguments range as to whether UK executive pay structures are 'broken' and/or pay levels are 'out of control' or, alternatively, that the 2013 Reforms are actually working reasonably well but need further time to bed-down in practice (and that the problems regarding executive pay lie particularly in highest paying FTSE 100 companies).<sup>78</sup> However, even commentators who consider that since the 2013 Reforms there has been a gradual trend for the most egregious 'high pay scandals' to ameliorate – as seen in the 2017 AGM

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<sup>76</sup> John Kay, *Written evidence from John Kay submitted to HC BEIS Select Committee on Corporate Governance* (CGV0174, 17 January 2017) <<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/business-energy-and-industrial-strategy-committee/corporate-governance/written/45174.html>> accessed 23 January 2019.

<sup>77</sup> *Green Paper* (n 71) para 1.2, 16.

<sup>78</sup> The relevant legislation is The Large and Medium-Sized Companies and Groups (Accounts and Reports) (Amendment) Regulations 2013/1981 and Enterprise and Regulatory Reform Act 2013. See Gosling (n 3) for 'highest paying' and 'outlier' issues. Also see AHNBSB, *Written evidence from AHNBSB to HC BEIS Select Committee on Corporate Governance* (CGV0093, 1 November 2016) <<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/business-energy-and-industrial-strategy-committee/corporate-governance/written/41921.html>> accessed 3 December 2018. AHNBSB considers the 2013 Reforms are broadly working satisfactorily and 'we have left behind the most aggressive years of inflation in executive pay, but we recognise the desire to prevent their return'.

Season<sup>79,80,81</sup> - can still be wrong-footed by newly emerging ones, such as the Persimmon LTIP payouts highlighted in the 2018 Season.<sup>82,83,84</sup>

Although there may well be considerable merit in the arguments put forward by senior ExecRemConsultants that on a generalised basis the 2013 Reforms are actually working reasonably well, it is not difficult to find commentators who believe that ongoing 'high pay scandals' have the potential to be one of the factors in determining the outcome of the next UK general election.<sup>85</sup>

Kay, in his written submission to CGI, argued that:

The state of executive remuneration in the UK today is a mess, whose results are damaging to the proper stewardship of companies and the perceived legitimacy not just of corporate governance but of corporate organisation itself.<sup>86</sup>

He considers 'the key problem is not that senior and especially CEO pay is insufficiently related to performance, but that it is too high'.

Edmans (of LBS) and Gosling (of PwC) stress in their respective written submissions to the CGI, the importance of paying due regard to rigorous academic research (which in many cases demonstrates causation, rather than just correlation) that uses large scale datasets and which is published in leading peer reviewed journals - as opposed to the media in particular reporting on the most egregious cases, with 'confirmation bias' lying behind

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<sup>79</sup> Ben Chapman, 'Executive pay: shareholders flex their muscles in 2017 AGM season to reduce ballooning salaries' *Independent* (London, 16 August 2017) <<https://www.independent.co.uk/news/business/news/executive-pay-shareholders-flex-muscles-2017-agm-season-reduce-ceo-remuneration-investment-a7895191.html>> accessed 21 January 2019.

<sup>80</sup> Karolin Schaps, 'BP cuts CEO's pay after shareholder backlash' *Reuters* (London, 6 April 2017) <<https://www.reuters.com/article/us-bp-salary-idUSKBN178186>> accessed 21 January 2019.

<sup>81</sup> Joshua Thurlston, 'Shareholders take aim at FTSE 250 bosses' pay' *CityWire* (London, 16 August 2017) <<https://citywire.co.uk/funds-insider/news/shareholders-take-aim-at-ftse-250-bosses-pay/a1042020>> accessed 21 January 2019.

<sup>82</sup> Paul Merison, 'Persimmon shareholders should take responsibility', Letter to Editor *Financial Times* (London, 30 April 2018).

<sup>83</sup> Luke Hildyard, 'Governance system needs fixing in big business', Letter to Editor *Financial Times* (London, 30 April 2018).

<sup>84</sup> Oliver Shah & Simon Duke, 'Fresh wave of anger over FTSE bonus deals, including £75m for Persimmon boss Jeff Fairburn' *The Sunday Times* (London, 22 April 2018) <<https://www.thetimes.co.uk/article/fresh-wave-of-anger-over-ftse-bonus-deals-including-75m-for-persimmon-boss-jeff-fairburn-02gt63jks>> accessed 25 January 2019.

<sup>85</sup> William Turvill, 'These pop star-style pay deals for bosses may give Corbyn the keys to Downing Street' *Mail on Sunday* (London, 1 April 2018). Note too Miles & Yates (n 8).

<sup>86</sup> Kay (n 76).

the selection of evidence/a couple of ‘case studies’ that support a particular point of view.<sup>87,88</sup>

Both Edmans and Gosling contributed to Purposeful Company Executive Remuneration Report, which referred to relevant academic and practitioner papers.<sup>89</sup> They do not argue that current UK executive pay levels and structure are perfect - very far from it - but would claim that their views are more nuanced and grounded in academic research.

Gosling, for example, argued in his CGI submission that one needs to recognise that FTSE 100 companies have become far larger, more complex and international, and there was evidence that:

CEO pay trends have reflected broader economic forces across a range of occupations (such as, sports, media and entertainment, asset management, private medicine, professional services and so on) where individuals with scarce talent are able to command high wages in a modern economy.

Edmans maintains:

- High pay ratios do not ‘demotivate staff and reduce productivity’,
- ‘Short-term investors significantly improve labour productivity (without reducing wages or increasing hours)’ - provided they trade on long-term information (not whether they hold for the short or longer term), and

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<sup>87</sup> Edmans (n 3).

<sup>88</sup> Gosling (n 4).

<sup>89</sup> The Purposeful Company, ‘Executive Remuneration Report’ (2017) <[http://www.biginnovationcentre-purposeful-company.com/wp-content/uploads/2017/11/feb-26\\_tpc\\_exec-rem-final-report\\_v3-tg.pdf](http://www.biginnovationcentre-purposeful-company.com/wp-content/uploads/2017/11/feb-26_tpc_exec-rem-final-report_v3-tg.pdf)> accessed 25 January 2018. See ‘Reference List’ on pp 62-65 (inclusive), together with 5 (covering the view that ‘best results arise when academic and practitioner insights are brought together in a complementary way’), 9 (criticisms of PRD) and 13 (STIs ‘consistently pay out at 75% of the maximum on average’). See also Will Hutton, ‘Companies with a declared purpose perform better’ *Financial Times* (London, 6 March 2017). For a trenchant (and, it is submitted, atypical) comment on this Report, see Neil Austin, ‘Those at the top are still way out of touch on pay’ [referring to ‘Brexit vote and Donald Trump’s election’]...(...)...the self-justified tone of this report, and its failure to respond in a manner that is even close to the degree of change that is needed, demonstrates that this group of the “haves” just hasn’t been listening’, Letter to Editor *Financial Times* (London, 29 November 2016).

- ‘Employee representation in governance reduces firm values and productivity, growth and new job creation (...) but long-term value maximisation requires the consideration of all stakeholders’.<sup>90</sup>

Barty & Jones posed the challenge faced by companies in a UK business environment, where despite underlying corporate profits increasing on average threefold in the period 2000-2010 share prices had remained level (or had indeed decreased).<sup>91</sup> In effect, this reduction in the level of P/E ratios reflected that each unit of profit increase was not mirrored by a commensurate rise in market capitalisation. Their conclusion was broadly that ED remuneration had not risen by more than profits had increased.

Gosling stresses the importance of academic studies and practitioner insight being combined. Additionally, he argues that the academic evidence points more to CEO pay being well correlated (ie., 80% correlation) with business/company performance (both in the US and UK) when adjustments are made for company size and also shareholdings from prior LTI awards.<sup>92</sup>

The overarching UK theme though is that the present situation is at best unsatisfactory and at worst is a potential danger regarding the electorate’s acceptance that the capitalist system warrants their continued support.

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<sup>90</sup> Edmans (n 3).

<sup>91</sup> James Barty & Ben Jones, ‘Executive Compensation Rewards For Success Not Failure’ (*Policy Exchange*, 4 July 2012) 15 <<https://policyexchange.org.uk/publication/executive-compensation-rewards-for-success-not-failure/>> accessed 4 December 2018.

<sup>92</sup> Gosling (n 4).

One only has to see the *Financial Times*'s articles/letters for the three-day timeframe 9 - 11 April 2018 (inclusive) for examples of active debate in progress. Brown's criticisms of 'lazy fund managers', together with Dunbar's views on 'short-termism' amongst fund managers, and Geffen's suggestions regarding 'stakeholder panels', are all attempts to remedy what, in the opinion of the writers concerned, is currently not working well and what might be done to promote 'responsible capitalism'.<sup>93,94,95</sup>

There are considerable differences in approach though – for example, Philp's support of SABV in 2016 was not reflected in the *Government Response* to CGI, and that despite the Government having subsequently enacted PRD legislation (in line with Philp, for example)<sup>96</sup> there is only marginal acceptance amongst UK business that PRD will be helpful in practice.<sup>97,98</sup>

The combination of the fading of the almost 'missionary enthusiasm' in the 1980s for employee share ownership (where employees might see the potential benefits arising from capitalism working in their favour) with the rise of the 'UK executive pay controversy' is a feature of the UK remuneration scene that makes it all the more important for 'responsible capitalism' to be higher up the agenda for all stakeholders concerned.

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<sup>93</sup> Tom Brown, 'Lazy fund managers lead to lousy returns' *Financial Times* (London, 9 April 2018).

<sup>94</sup> Stuart Dunbar, 'Short-term approach is foisted on management', Letter to Editor *Financial Times* (London, 11 April 2018).

<sup>95</sup> Charlie Geffen, 'Auditors should answer to stakeholder panels', Letter to Editor *Financial Times* (London, 11 April 2018).

<sup>96</sup> Chris Philp, 'Restoring Responsible Ownership: Ending the Ownerless Corporation and Controlling Executive Pay' (*HPC*, September 2016) <[http://highpaycentre.org/files/Restoring\\_Responsible\\_Ownership\\_-\\_Chris\\_Philp\\_HPC\\_copy.pdf](http://highpaycentre.org/files/Restoring_Responsible_Ownership_-_Chris_Philp_HPC_copy.pdf)> accessed 21 January 2019.

<sup>97</sup> *ibid* 18; *Government Response* (n 70).

<sup>98</sup> The Companies (Miscellaneous Reporting) Regulations 2018, SI 2018/860, Regulation 17

<<https://www.legislation.gov.uk/ukdsi/2018/9780111170298>> accessed 29 January 2019. Also Simon Patterson, 'Chief executive pay ratios may end up muddying the water' *The Daily Telegraph* (London, 18 May 2018). There is even less enthusiasm from business regarding Labour's proposal that British companies should allocate 10% of their equity to workers – see Jim Pickard, 'Hand 10% of equity to workers, Labour to tell major UK companies' *Financial Times* (London, 23 September 2018). This would not actually be 'employee share ownership', but a split of dividends between workers (up to £500 a year per employee) and the balance going to 'public coffers'.

### 2.3. RemCoAdvisory Services

ExecRemConsultants are a key part of the executive pay determination process undertaken by RemCos - providing the latter with the market information and remuneration package design experience and expertise that enables all relevant aspects to be considered for sound decisions to be made by the RemCo concerned. Accordingly, the provision of RemCoAdvisory Services should not be seen as simply being a technical, transactional role to be undertaken in return for fee income. RemCos need comprehensive advice to make pay determination decisions on a fully informed basis.

On occasion, an ExecRemConsultant's advice on a specific issue might not be welcome to a particular RemCo - usually when experience leads that ExecRemConsultant to believe the RemCo concerned is contemplating a course of action where justifiable criticism from institutional shareholders or other stakeholders might follow, or where the best commercial result might not be achieved.

Indeed, sometimes an ExecRemConsultant knows that in bringing concerns (however tactfully) to RemCo's attention there is an appreciable risk that his/her firm's advisory appointment(s) might be imperilled. Duty lies though in ensuring that RemCo has the information and advice considered to be needed. This approach differs rather from Ndzi's finding that:

The nature of RCON's [ie., ExecRemConsultants'] advice depends on whether the consultants have a balance of portfolio of companies (self-interest) and whether they have the courage to stand up to confrontation from the executives.<sup>99</sup>

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<sup>99</sup> Ernestine Ndzi, 'Remuneration Consultants: Benchmarking and its Effects on Pay' (2015) 57(6) International Journal of Law and Management 637-648.

In September 2013, the author joined the IALS ICGFREL LLM course, which he completed in September 2014. The dissertation component was an opportunity for him to cover executive pay regulation. It concluded that UK pay regulation had been greatly beneficial and did indeed justify the obligations imposed. However, in light of UK corporate governance failures regarding executive pay, due to a combination of the applicable statutory regime with other factors, recommendations for further improvement concerning the BSI were developed.

These covered (1) executive pay regulation, (2) institutional shareholders and 'short-termism', (3) RemCos, (4) ExecRemConsultants/CoyExecRemSpecialists, (5) remuneration packages (LTI design, in particular), and (6) corporate ethics/behaviour. It was concluded however, that further research was needed to formulate robust improvement recommendations that secured the buy-in of key parties.

A proposal was subsequently developed for PhD Study at IALS, on executive pay regulation. It was eventually decided to focus on just one aspect of the BSI; namely, the 'professional standards' of ExecRemConsultants in providing RemCoAdvisory Services (together with those of their CoyExecRemSpecialist counterparts).

Although it is very common for senior ExecRemConsultants to be professionally qualified, this is often not the case with their less senior consultant colleagues, who may be 'direct entrants' from university (and the same frequently applies to their CoyExecRemSpecialist counterparts). There is currently no formal RemCoAdvisory professional qualification available in the UK (or US, for that matter), but various 'accreditations' do exist.

In the past, the vast majority of senior ExecRemConsultants have been qualified as a CA, CTA, Actuary, Lawyer or, alternatively, hold an MBA or PhD

- but it was decided to conduct research into the implications of ExecRemConsultancy increasingly being regarded as a knowledge-intensive service in its own right, and what might be the consequences in respect of 'professional standards' of more ExecRemConsultants now not being qualified in one of the professions mentioned above (as a precursor to, or at the same time as, working as an ExecRemConsultant). This thesis' research methodology and RIP were formulated accordingly.

To provide some context regarding RemCos in particular, the typical BOD of a UK publicly listed company has two EDs (CEO and CFO), together with three or four NEDs and a CoyChair. The BOD has Nomination, Audit and Remuneration Committees. RemCo is composed entirely of NEDs, one of whom will be the RemCoChair. The CoyChair will frequently be a RemCoMember. RemCo is responsible for determining the pay of EDs (and usually that of the Executive Committee of management - comprising CEO, CFO, Business Heads, CoySec/GC and HRD).

RemCos are advised by ExecRemConsultants, whom they appoint to provide expert advice/trusted counsel on pay package design and quantum, and for assisting on liaison with key institutional shareholders. ExecRemConsultants work for Big Four firms (eg., Deloitte and PwC), ABCs (eg., AH, Mercer and WTW) or a dwindling number (in the UK) of Boutique firms (eg., FIT, KFH and PM).

According to HPC, it would appear that Deloitte can claim to be the UK market leader in terms of the value of fees charged for advising RemCos, with WTW and PwC being broadly joint second (with aggregate fees being at about half those of Deloitte) and AH and Mercer (now Kepler has been acquired by the latter) being broadly joint next (with aggregate fees being about half of WTW's and PwC's).<sup>100</sup>

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<sup>100</sup> HPC (n 48), 15.

This is only a very broad indication of the actual size/fees charged. Ho assesses the FTSE 350 RemCoAdvisory model 'for Britain's largest companies' as generating £28million of fees annually in its entirety.<sup>101</sup> The ExecRemConsultancy firms concerned do not actually publish figures, and they also provide varying amounts of other remuneration advice/pay data. Additionally, there does not appear to be a commonly agreed methodology for disclosing to shareholders the fees that may relate partly to EDs and partly to other staff (eg., in respect of LTI design and implementation).

The 'inputs' into the pay determination process take place in a closed environment - in RemCo meetings (with even the appointed ExecRemConsultants not always in attendance) - whereas the 'outputs' (eg., amounts paid) are far more visible (with disclosure in DRR of the amounts paid to Directors). In the UK, there is a triennial binding shareholder vote on pay policy and an annual advisory one on amounts actually paid.

The topic of 'professional standards' of ExecRemConsultants is a considerably under-researched academic field. It is submitted that ExecRemConsultants' practical experience as 'insiders/practitioners' can potentially add appreciably to such academic research as exists (see below for Literature Review). The role and activities of ExecRemConsultants both in the UK and elsewhere (particularly the US) have been subject to considerable criticism. The objective in undertaking the present research was to review the existing academic studies and to complement these - with accompanying potential for further improvements in UK RemCoAdvisory practice.

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<sup>101</sup> Geoff Ho, 'Consultants paid £28m to determine executive remuneration' *Sunday Express* (London, 7 January 2018) <<https://www.express.co.uk/finance/city/901324/consultants-paid-28m-determine-executive-remuneration>> accessed 4 December 2018.

## 2.4. Research Programme

The RPP was successfully submitted to SAS REC in March 2016 for an empirical exercise of semi-structured ‘elite interviews’ with individuals having the ‘job roles’ mentioned already, plus City Lawyers and ROOs. Potential interviewees were then identified and were sent a total of 59 invitations to participate (the invitations being issued in two ‘waves’, 50 in April 2016 and the balance two months later).

The response was overwhelmingly positive, with 56 interviewees ‘signed-up’ (with completed IICFs) – and 53 completed interviews in due course. This ‘conversion rate’ can be contrasted against Ndzi’s understandably exasperated comment that ‘access to participants [ie., ExecRemConsultants] was very difficult due to their busy schedules’. This resulted in her actually conducting just six research interviews.<sup>102</sup>

The RIP started in mid-August 2016 and by mid-December 2016 had been completed (with 53 interviews having taken place - two ‘signed-up’ interviewees left their then current roles, and another one could not find a suitable diary date). Severe ‘diary compression’ had resulted, as interviewees deferred/rescheduled their planned interview dates due to supervening work commitments.

The 53 interviewees held various ‘job roles’:

- ExecRemConsultant (19),
- ExecCompConsultant (4),
- NEDs – RemCoChair/Member (6),

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<sup>102</sup> Ernestine Ndzi, ‘The Regulation of the Determination of Executive Remuneration’ (Doctoral thesis, University of Portsmouth 2014) 2, 5, 69, 71,72  
<[https://researchportal.port.ac.uk/portal/files/5948571/The\\_Regulation\\_of\\_the\\_Determination\\_of\\_Executive\\_Remuneration.pdf](https://researchportal.port.ac.uk/portal/files/5948571/The_Regulation_of_the_Determination_of_Executive_Remuneration.pdf)> accessed 8 April 2019.

- CoyExecRemSpecialist (12),
- City Lawyer (4), and
- ROO (8).

The interviews were based on a RICBQ (see Appendix 7), and RITG/RITGST (see Appendix 7). The RICBQ collated details of ExecRemConsultants' and CoyExecRemSpecialists' academic and 'professional' qualifications, plus years of relevant experience. The vast majority of really senior ExecRemConsultants (as mentioned already) are qualified Actuaries, CAs, CTAs, Lawyers, MBAs, or hold a PhD and/or have a STEM bachelors degree.

The RITG comprised five key aspects; namely,

- RITG1: How are UK RemCoAdvisory Services currently working in practice? What is ExecRemConsultants' working relationship with UK RemCos? Is the advice provided by ExecRemConsultants genuinely independent and objective?
- RITG2: Views on Big Four, ABC and Boutique firms? Are potential/actual COI satisfactorily addressed?
- RITG3: RCG - is the voluntary self-regulatory regime working satisfactorily in practice?
- RITG4: What are the professional and ethical standards of ExecRemConsultants appointed to advise UK RemCos? What is the technical expertise/experience level of ExecRemConsultants? Should there be a RemCoAdvisory SA/Q and/or a LTP regime (with disciplinary sanctions)?
- RITG5: CoyExecRemSpecialists' working relationships/ interaction with appointed ExecRemConsultants and RemCo? Are potential/actual COI satisfactorily addressed?

Supplementary aspects (RITGSTs) of topical relevance were also included, in respect of each interviewee. For example, Government's CGI proposals regarding SABV, WOB and PRD. Also covered were whether the appointment/fees of ExecRemConsultants should be subject to shareholder vote (SVExecRemConsultants), and the issue of fee disclosure to shareholders where the appointed firm of ExecRemConsultants also provides Other Services to the company concerned (such as, accounting, tax, pensions or other HR-related services) – DSOtherServicesFees.

Four leading US ExecCompConsultants were included in the RIP - not to undertake a comparative study but rather to garner US views on how the move to CompCos becoming predominantly advised by Boutiques had come about and issues relating to disclosure to shareholders of fees charged for Other Services. The latter had been proposed in the UK at the draft stage of the 2013 Reforms<sup>103</sup> and also in 2016 in ERWG Interim Report<sup>104</sup> - but had not been included at the respective final versions of these.

Also for discussion were the various implications of the UK having separate CoyChair and CEO roles, plus having a 'comply or explain' regime, compared to the US practice of, usually, a joint role of CoyChair and CEO, and more 'formalised' legal regulation (compared to the UK's predominantly soft law approach). The US reluctance to adopt a 'comply or explain' route is sometimes given by UK commentators as a reason why DSOtherServicesFees was introduced in the US but is not appropriate in a UK context.

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<sup>103</sup> BIS, *Directors' Pay: Consultation on Revised Remuneration Reporting Regulations* (June 2012). Draft Statutory Instrument 2013 No. xxxx Clause 15 (1)(b) and (c)(i), (ii) and (iii). Final Regulations (n 78) Clause 22 (i)(c)(16).

<sup>104</sup> IA, 'Executive Remuneration Working Group Interim Report' (April 2016) 3.

## 2.5. Literature Review (1): Overview

Set out below is a broad overview of the relevant academic and other literature, as an introduction to the more extensive literature review detailed in Chapter 2.6 below. It will be appreciated that the selected research topic (ie., 'professional standards' in UK RemCoAdvisory Services) can at one and the same time be viewed as research that is part of the broader academic literature on executive remuneration and also as a contribution to the far more narrowly focused academic research area of ExecRemConsultants (and CoyExecRemSpecialists).

Although there are elements of the broader relevant context incorporated into this thesis (eg., ExecRemConsultants' advice to RemCo forms part of the pay determination process addressed in Main et al's 2006 study of RemCo activities),<sup>105</sup> the potential for this thesis to be a significant contribution to the academic literature rested to a considerable extent on the fact that it would be a qualitative exercise conducted by a true 'insider' regarding the 'inputs' to the pay determination process.

The role of ExecRemConsultants can be viewed from differing perspectives/theories of the executive remuneration determination process - such as 'rents capture', whereby ExecRemConsultants are part of executive remuneration's problems, and 'optimal contracting', in which they are part of the solution to these.<sup>106</sup> Under the former, it is argued that ExecRemConsultants are in effect complicit in enabling EDs to be paid excessive pay packages, whereas the latter stresses the value of ExecRemConsultants in assisting RemCo in the design of market-competitive packages (with incentive arrangements which align the interests of EDs with

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<sup>105</sup> Main et al (n 5) 19.

<sup>106</sup> Ian Gregory-Smith, 'Chief Executive Pay and Non-Executive Director Pay in the UK: Optimal contracting Vs. Rent Extraction' (2009) Nottingham University, NUBS Research Paper 2009-02.

those of shareholders and promote enhanced levels of business and share price performance).

Much of the academic literature focuses on these aspects, with a strong emphasis on quantitative studies concerning COI, associations between ExecRemConsultants being appointed to advise RemCo and higher remuneration, together with whether ExecRemConsultants are ‘to blame for high CEO pay’/‘enable higher CEO pay’/‘the incentives of compensation consultants and CEO pay’/‘conflicted consultants’.<sup>107</sup>

As stated by Conyon:

The role of executive compensation consultants is seemingly uncontroversial. The consultants’ task is purely functional, ensuring that pay is effectively linked to performance and that shareholder interests are optimised. Consultants *are* controversial, however, and are frequently blamed for contributing to excessive pay. The core criticism is that consultants are not sufficiently independent or impartial and this leads to pay packages that are not optimal from the shareholders’ perspective.<sup>108</sup>

There are various threads that run through the academic literature, besides the ‘rents capture/optimal contracting debate’. For example, does cross-selling by ExecRemConsultants who provide ‘Other Services’ advice to client companies, as well as advising RemCo, lead to ‘independence problems’ (what might be called the ‘Waxman issue’, in a US context)?<sup>109</sup> Indeed, could the simple wish on the part of ExecRemConsultants to generate ‘repeat

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<sup>107</sup> Martin Conyon, Simon Peck & Graham Sadler, ‘Compensation Consultants and Executive Pay: Evidence From the United States and the United Kingdom’ (2009) 23(1) *Academy of Management Perspectives* 43-55. See also Conyon, Peck & Sadler, ‘New Perspectives on the Governance of Executive Compensation: An Examination of the Role and Effect of Remuneration Consultants’ (2011) *Journal of Management and Governance* 29-59, 29. ‘CEO pay is positively associated with peer firms that share consultants, with higher board and consultant interlocks, and some evidence that where firms supply other business services to the firm, CEO pay is greater’.

<sup>108</sup> Martin Conyon, ‘Executive Compensation Consultants and CEO Pay’ (2011) 64 *Vanderbilt Law Review* 399-428, 408.

<sup>109</sup> Henry Waxman, ‘Executive Pay: Conflicts of Interests Among Compensation Consultants’ (United States House of Representatives Committee on Oversight and Government Reform Majority Staff, December 2007).

business' from those they are appointed to advise be a problem (what might be called a 'Bebchuk and Fried allegation')?<sup>110</sup>

Conyon summarises the various academic studies (eg., Armstrong et al;<sup>111</sup> Conyon et al;<sup>112</sup> Cadman et al;<sup>113</sup> Goh & Gupta;<sup>114</sup> Kabir & Minhat<sup>115</sup> and Murphy & Sandino<sup>116</sup>) and stresses:

Some limitations, especially when thinking about using the cross-section data to identify consultant effect on CEO pay. In particular, the retention of the consultant is endogenous, and missing explanatory variables may plague model estimation.<sup>117</sup>

Conyon illustrates the impossibility of using randomisation techniques (ie., 'randomly assigning compensation consultants to organisations') in the real world of RemCo' determination of executive pay.

He then concludes:

There is some support for the idea that conflicted compensation consultants are associated with higher CEO pay at client firms.

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<sup>110</sup> Lucian Bebchuk & Jesse Fried, *Pay Without Performance: The Unfulfilled Promise of Executive Compensation* (Harvard University Press 2004) and 'Executive Compensation as an Agency Problem' (2003) 17(3) *Journal of Economic Perspectives* 71-92. See also Lucian Bebchuk, Jesse Fried & David Walker, 'Managerial Power and Rent Extraction in the Design of Executive Compensation' (2002) 69(3) *University of Chicago Law Review* 751-846 <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=316590](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=316590)> accessed 14 February 2019.

<sup>111</sup> Christopher Armstrong, Christopher Ittner & David Larcker, 'Corporate Governance, Compensation Consultants, and CEO Pay Levels' (2012) 17(2) *Review of Accounting Studies* 322-351 <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1145548](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1145548)> accessed 13 February 2019. 'Governance differences explain much of higher pay in clients of compensation consultants'. Additionally, 'no support for claims that CEO pay is higher in potentially "conflicted" consultants that also offer additional non-compensation services'.

<sup>112</sup> Conyon (n 107).

<sup>113</sup> Brian Cadman, Mary Carter & Stephen Hillegeist, 'The Incentives of Compensation Consultants and CEO Pay' (2010) 49(3) *Journal of Accounting and Economics* 263-280.

<sup>114</sup> Lisa Goh & Aditi Gupta, 'Executive Compensation, Compensation Consultants, and Shopping for Opinion: Evidence From the United Kingdom' (2010) 25(4) *Journal of Accounting, Auditing and Finance*. 'Overall, we do not find evidence suggesting that potential conflicts of interest between the firm and its consultant are a primary driver of excessive CEO pay' <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1577925](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1577925)> accessed on 14 February 2019.

<sup>115</sup> Rezaul Kabir & Marizah Minhat, 'Multiple Compensation Consultants and CEO Pay' (2010) University of Twente Working Paper Series <<https://research.utwente.nl/en/publications/multiple-compensation-consultants-and-ceo-pay>> accessed 13 February 2019. They observe that 'market shares of compensation consultants are positively related to CEO compensation. The finding is consistent with the conjecture that compensation consultants act to survive competition from other consultants'. Also by Kabir & Minhat, 'Compensation Consultants and CEO Pay' (2014) *Research in International Business and Finance* <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1646926](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1646926)> accessed 13 February 2019.

<sup>116</sup> Kevin Murphy & Tatiana Sandino (i) 'Executive Pay and "Independent" Compensation Consultants' (2010) 49(3) *Journal of Accounting and Economics* 247-262. Also Murphy & Sandino (ii), 'Are Consultants To Blame for High Executive Pay?' (2012) *Management Accounting Section Meeting Paper* <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2133059](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2133059)> accessed 22 December 2015.

<sup>117</sup> Conyon (n 108) 424.

However, the evidence from various studies is somewhat mixed, suggesting that further research is warranted.<sup>118</sup>

The more recent study of Chu et al is another quantitative exercise - it reflected the impact of changes in US fee disclosure provisions.<sup>119</sup> Its conclusion was that these reforms acted as a 'separating mechanism' – distinguishing 'rents capture' ExecCompConsultancy firms from 'optimal contracting' ones - but that 'not all multi-service consultants are conflicted while not all specialist consultants are guardians of shareholder value'.<sup>120</sup>

Bender has been something of a pioneer in using a qualitative research approach, rather than a quantitative one, for examining the work of RemCos and ExecRemConsultants.<sup>121</sup> She recognises the qualitative work of, for example, Conyon,<sup>122</sup> Main,<sup>123</sup> Ogden & Watson<sup>124</sup> and Perkins & Hendry,<sup>125</sup> but emphasises that she was the first to use a qualitative approach regarding CoyExecRemSpecialists in particular.

It is submitted that Bender's view is correct. Whatever the merits of quantitative exercises (and there are many of these), the qualitative approach has the potential to gain real life insights into the 'input' process referred to above. Bender also acknowledges the prior work of

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<sup>118</sup> *ibid* 426, 427 in respect of 'the inability to perform randomised tests'.

<sup>119</sup> Jenny Chu, Jonathan Faasse & P.Raghavendra Rau, 'Do Compensation Consultants Enable Higher CEO Pay? New evidence from recent disclosure rule changes' (Conference Paper, June 2015) <<http://www.fmaconferences.org/Orlando/Papers/ExecPayandCompConsultants.pdf>> accessed 16 June 2016. Later published as 'Do Compensation Consultants Enable Higher CEO Pay? A Disclosure Rule Change As a Separating Device' 2018 64(10) *Management Science* 4915-4935.

<sup>120</sup> *ibid* 6, 22 & 24.

<sup>121</sup> Bender (n 22).

<sup>122</sup> Conyon (n 108).

<sup>123</sup> Main et al (n 5).

<sup>124</sup> Stuart Ogden & Robert Watson, 'Remuneration Committee Pay Consultants and the Determination of Executive Pay' (2012) 23(4) *British Journal of Management* 502-517 <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2178854](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2178854)> accessed 13 February 2019. This paper explores how RemCo 'decisions about executive pay are influenced by pay consultants'. Ogden & Watson maintain that 'in contrast to "managerial power" arguments...RemCos are proactive in managing pay policy, conscientious in seeking to ensure pay is appropriate and not over-generous, and that pay consultants are independent and take their instructions entirely from the Remco'. See also Ogden & Watson, 'Executive pay and the search for legitimacy: An investigation of how UK Remuneration Committees use corporate performance comparisons in long-term incentive pay decisions' (2008) 61(5) *Human Relations* 711-739.

<sup>125</sup> Stephen Perkins & Christopher Hendry, 'Ordering Top Pay: Interpreting the Signals' (2005) 42(7) *Journal of Management Studies* 1443-1468. This paper focuses on RemCos, but Perkins & Hendry note in relation to 'pay benchmarking' that the role of ExecRemConsultants 'provides a salutary reflection on complexity of the market-making process, involving a variety of bargaining agents, which is a far cry from the picture of single buyers and sellers and of non-executives tasked with resolving inherent agency problems'.

ExecRemConsultants/ExecCompConsultants, such as Crystal,<sup>126</sup> Williams<sup>127</sup> and Hodak,<sup>128</sup> which has provided a ‘practitioner perspective’.

Bender’s research explores the way in which ExecRemConsultancy works as a business, together with the use of ExecRemConsultants to ‘legitimise’ RemCo decisions. Her latest qualitative exercise (in collaboration with Franco-Santos) examined the factors influencing ExecRemConsultants’ advice.<sup>129</sup> There is some discussion of the role of ExecRemConsultants (and rather more on ‘independence’) and their career background.

The qualitative studies Bender refers to in her 2011 paper are specifically on ExecRemConsultants,<sup>130</sup> but Bender & Franco-Santos’s more recent research is broader than simply ExecRemConsultants.<sup>131</sup> It covers both them and CoyExecRemSpecialists, plus the ‘early days’ of RCG (whereas Adamson et al’s qualitative study is limited to ExecRemConsultants, plus the ‘post-early days’ ongoing operation of RCG).<sup>132,133,134,135</sup>

Bender & Franco-Santos stress ExecRemConsultants’ diverse routes into ExecRemConsultancy, for example, and that ‘this did not seem to be an influence’, together with the ‘house-style’ of particular firms (‘orthodox’, ‘creative’, ‘richer-schemes’). However, Bender & Franco-Santos did not research in detail the way ExecRemConsultants see themselves as providing

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<sup>126</sup> Graef Crystal, ‘Why is CEO Compensation So High?’ (1991) 34(1) California Management Review 9-29; *In Search of Excess: The Overcompensation of American Executives* (Diane Publishing Company 1991).

<sup>127</sup> Anthony Williams, *Just Reward? The Truth About Top Executive Pay* (Kogan Page 1994); *Who Will Guard the Guardians? Corporate Governance in the Millennium* (Management Books 2000 1999).

<sup>128</sup> Mark Hodak, ‘Alignment Exposed: How CEO’s are Paid, and What Their Shareholders Get For It’ (2014) 16(2-3) Journal of Applied Corporate Finance 111-121, 111,112.

<sup>129</sup> Bender & Franco-Santos (n 43).

<sup>130</sup> Bender (n 22).

<sup>131</sup> Bender & Franco-Santos (n 43); Bender (n 22).

<sup>132</sup> Bender & Franco-Santos (n 43)

<sup>133</sup> *ibid.*

<sup>134</sup> Bender & Franco-Santos (n 43); Bender (n 22).

<sup>135</sup> Adamson et al (n 42).

a 'new professional service' in the same way as is done by, for example, Adamson et al.<sup>136</sup>

The latter also contains more detail of the ongoing operation of RCG and its VCC.<sup>137</sup> It concludes:

Despite the individual scepticism of the possibility of the RCG to strengthen the professional project of the ERC [ie., Executive Remuneration Consultancy], the RCG's activities and development continue to be supplied by consultants at the level of collective action.<sup>138</sup>

Interestingly, Adamson et al observe that ExecRemConsultants with a traditional background (eg., Lawyer, CA or Actuary) 'were reluctant to "give up" their initial professional identification in favour of a new one'.<sup>139</sup> This is reinforced by de Gannes's 2018 doctoral thesis.<sup>140</sup> Her view is that in the 'early days' in particular of UK ExecRemConsulting the senior practitioners' professional qualifications (eg., as CA, CTA, Actuary or Lawyer) gave them a 'first order professional claim'.<sup>141</sup> They had a 'source of identity, which had already achieved status in society'.

The qualitative research carried out by de Gannes comprised 44 interviews with ExecRemConsultants, plus 18 with a broader population of 'job roles', such as CoyExecRemConsultants – she, in an ethnographic sense, temporarily 'embedded' herself in a UK ABC firm, to observe and, indeed, participate in the ExecRemConsultants' work.<sup>142</sup> Although de Gannes's

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<sup>136</sup> *ibid.*

<sup>137</sup> Remuneration Consultants Group, 'Voluntary Code of Conduct in Relation to Executive Remuneration Consulting in the United Kingdom' (RCG, December 2015) and Remuneration Consultants Group: 'Review of Effectiveness of Code' (RCG, December 2015). Since its inception in 2009, RCG has yet to receive a complaint regarding the activities of a member firm of ExecRemConsultants. See RCG Website, 'Downloads' <<http://www.remunerationconsultantsgroup.com/?P=DOWNLOADS>> accessed 16 May 2019.

<sup>138</sup> Adamson et al (n 42).

<sup>139</sup> *ibid.*

<sup>140</sup> de Gannes (n 44).

<sup>141</sup> *ibid.*

<sup>142</sup> *ibid.*

doctoral thesis did not focus on the 'professional standards' of ExecRemConsultants (nor CoyExecRemSpecialists, for that matter), her research is simultaneously a contribution to the academic literature and has practice implications for UK ExecRemConsultancy/RemCoAdvisory Services.

## **2.6. Literature Review (2): Critical Analysis and Discussion**

The academic literature on executive remuneration ranges from examining the overall conceptual/theoretical framework (such as, the comparative merits of agency theory, whether in pure or modified form, or a managerial power approach) to research into particular aspects of executive remuneration that may give rise to concern (such as, 'high pay', 'rewards for failure' or 'short-termism'). In respect of both however, ExecRemConsultants can be variously seen as a significant part of the 'executive pay problem' or, alternatively, potentially key contributors to its solution.

In relation to agency theory for example, the role of ExecRemConsultants can be accused under the managerial power approach of lacking independence, being conflicted, and in effect abetting powerful CEOs in securing egregious remuneration packages. Alternatively, ExecRemConsultants can be seen as assisting RemCos in the design and implementation of optimal remuneration packages that lower 'agency costs' (ie., successfully aligning the interests of shareholders and senior management - addressing issues rising from the separation of corporate ownership and control).

Regarding particular problematic aspects of executive remuneration, such as 'high pay', ExecRemConsultants may be seen as either behaving poorly by recommending inappropriate comparator companies for 'pay benchmarking' purposes and/or an 'aggressive market positioning' of remuneration components (or the package overall) or, alternatively, providing RemCo with much valued expertise in the difficult process of executive pay determination.

Whether one looks at the 'big picture' or particular aspects though, ExecRemConsultants are viewed in the academic literature as being key players in the remuneration determination process. As mentioned earlier they are also seen as being controversial in their role. Accordingly, the activities of ExecRemConsultants are both important and open to question.

Indeed, when considering which of the BSI to address in this PhD Study it was concluded that research into the role of ExecRemConsultants (and CoyExecRemSpecialists) had considerable potential for supplementing the existing academic literature and also in formulating recommendations for suggested enhancements in UK RemCoAdvisory practice.

Academic research into executive remuneration issues generally is very frequently highly quantitative in nature (eg., examining the association between the executive pay levels and corporate performance). This is hardly surprising. Executive remuneration has both academic and practical aspects that make it an attractive and worthwhile/rewarding subject for research by business school academics in particular.

This is reflected in the body of academic work carried out to date on ExecRemConsultancy. Although both Conyon<sup>143</sup> and Bender<sup>144</sup> note the 'dual streams' of quantitative and qualitative studies, the dominant prevalence of the former studies is clear. Accordingly, in terms of research studies on executive remuneration there are comparatively few on the role/influence of ExecRemConsultants, and of these quantitative studies are by far the most numerous.

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<sup>143</sup> Conyon (n 108).

<sup>144</sup> Bender (n 22).

Larcker & Tayan<sup>145</sup> cite quantitative studies regarding their conclusion that ExecCompConsultants do not inflate CEO pay (eg., Conyon et al);<sup>146</sup> plus Cadman et al,<sup>147</sup> in respect of their view that it is uncertain whether ExecCompConsultants are subject to CEO influence (CEO pay higher when ExecCompConsultants are retained by BOD - found by Murphy & Sandino;<sup>148</sup> whereas CEO pay lower when ExecCompConsultants retained solely by BOD - found by Chu et al)<sup>149</sup> and also regarding their view that pay levels are influenced by governance, not ExecCompConsultants (found by Armstrong et al).<sup>150</sup>

Larcker & Tayan<sup>151</sup> additionally cite contrasting quantitative studies in relation to whether the large differentials (between CEO and senior management more generally) reflect economic incentives (Kale et al)<sup>152</sup> or CEO 'rent extraction' (Bebchuk et al).<sup>153</sup> They do the same as well regarding benchmarking peer groups - whether selected to set competitive pay levels (Bizjak et al)<sup>154</sup> or, alternatively, to inflate them (Faulkender & Yang).<sup>155</sup>

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<sup>145</sup> David Larcker & Brian Tayan, 'CEO Pay Levels: Research Spotlight', Stanford Corporate Governance Research Initiative <<https://www.grb.stanford.edu/science/gsb/files/publication-pdf/cgi-quick-guide-16-CEO-pay-levels.pdf>> accessed 7 November 2017. See slide 15 for Larcker & Tayan's references to Murphy & Sandino and Chu et al, respectively.

<sup>146</sup> Conyon (n 108).

<sup>147</sup> Cadman et al (n 113).

<sup>148</sup> Murphy & Sandino (n 116). (i) But 'no evidence that the higher pay is related to conflicts of interest: CEO pay is higher (and not lower) in companies where the consultant works exclusively for the compensation committee rather than management, and CEO pay does not increase where the consultant provides actuarial or other services to their client firms', plus (ii) 'firms that start to use consultants pay more to their CEOs than firms that do not retain consultants *before* the hiring of the consultants takes place, and do not increase pay levels *after* retaining their consultants, more than do other firms not changing the use of consultants'. In their latest article (HBS 2017 Working Paper) Murphy & Sandino, according to Hassan Enayati in 'The Relationship Between Exec Comp Consulting and CEO Pay: It's Complicated' (<<https://www.worldatwork.org/workspan/articles/the-relationship-between-exec-comp-consulting-and-ceo-pay-it-s-complicated>> accessed 22 May 2019), found 'shrinking pay premiums in firms with consultants providing other services and expanding pay premiums in firms using only executive compensation consulting services' (during the period 2006-2014). Enayati concludes 'as with most things in life, the relationship between growth in CEO pay and compensation consultants is not simple'. Murphy & Sandino's 2017 paper is entitled 'Compensation Consultants and the Level, Composition and Complexity of CEO Pay' <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3041427](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3041427)> accessed 22 January 2019.

<sup>149</sup> Chu et al (n 119).

<sup>150</sup> Armstrong et al (n 111).

<sup>151</sup> Larcker & Tayan (n 145).

<sup>152</sup> Jayant Kale, Ebru Reis & Anand Venkateswaran, 'Rank Order Tournaments and Incentive Alignment: The Effect on Firm Performance' <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1742423](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1742423)> accessed 9 February 2018.

<sup>153</sup> Lucian Bebchuk, Martijn Cremers & Urs Pyer, 'The CEO Pay Slice' (2011) 102(1) *Journal of Financial Economics* 199-221.

<sup>154</sup> John Bizjak, Michael Lemmon & Lalitha Naveen, 'Does the Use of Peer Groups Contribute to Higher Pay and Less Efficient Compensation?' (2008) 90(2) *Journal of Financial Economics* 152-168.

<sup>155</sup> Michael Faulkner & Jun Yang, 'Is Disclosure An Effective Cleansing Mechanism? The Dynamics of Compensation Peer Benchmarking', (2013) 26(3) *Review of Financial Studies* 806-839.

Indeed, Conyon points out the limitations of quantitative studies (see Chapter 2.5. above).<sup>156</sup> This does not mean for a moment that quantitative research should be in any way decried or ignored. It simply means that findings need to be interpreted with care. For example, Tong & Cen<sup>157</sup> find in one of their quantitative studies ‘strong evidence that executive compensation consultants’ conflicts of interest are associated with higher CEO pay’, but in another quantitative study (using data that pre-dates the SEC 2009 ‘fee disclosure’ reforms that have now resulted in the US CompCoAdvisory market being dominated by Boutique firms) they assert that ‘Big Consultants’ (assessed as potentially more conflicted/less independent than Boutique firms) tend to design more optimal contracts - due to their regard for the reputational cost to themselves of giving poor advice.<sup>158</sup> In other words, the position is more nuanced than it might seem.

This is supported by Chu et al’s study in that although it found (in a quantitative exercise) that the introduction of the 2009 SEC reforms served to distinguish ‘rents capture’ ExecRemConsultancy firms from ‘optimal contracting’ ones, the picture in reality was far more subtle (see Chapter 2.5. above).<sup>159</sup>

An illustration of the inherent practical limitations/frustrations of quantitative research into the effect of ExecRemConsultants - despite having been carried out with strong methodological attempts to control for standard economic and human capital variables - is Alagla’s 2012 doctoral thesis,<sup>160</sup> in which he finds that ExecRemConsultancy firms with greater market share are associated with

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<sup>156</sup> Conyon (n 108) 424, 427.

<sup>157</sup> Wei Cen & Naqiong Tong, ‘Compensation Consultant Independence and CEO Pay’ (2011) Peking University HSBC Business School <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1735506](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1735506)> accessed 29 May 2017.

<sup>158</sup> Naqiong Tong & Wei Cen, ‘Big or Small: Compensation Consultant Selection, Switch and CEO Pay’ (2011) Peking University HSBC Business School <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1735511](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1735511)> accessed 7 November 2017.

<sup>159</sup> Chu et al (n 119).

<sup>160</sup> Saleh Alagla, ‘The Role and Effect of Remuneration Consultants on CEO Compensation: Empirical Evidence From UK Companies’ (Doctoral thesis, University of Durham 2012) <<http://etheses.dur.ac.uk/3481/>> accessed 13 February 2019.

lower total compensation for CEOs<sup>161</sup> but also that ExecRemConsultancy firms that provide Other Services are associated with higher CEO pay.<sup>162</sup> This implies that the paradigm ExecRemConsultancy firm would have high market share but be highly specialised. In effect, large Boutique firms. These simply no longer exist though in a UK context, and significant change in this area would probably require a variant of the same sort of DSOtherServicesFees legislation that brought this about in the US.

It was mentioned in Chapter 2.2 above that Gosling stresses the importance of academic studies and practitioner insight being combined.<sup>163</sup> Practitioner experience can shed light on the 'real life' validity of particular academic studies. For example, the quantitative studies on the use of multiple remuneration consultants by RemCo (such as, Minhat and Kabir & Minhat)<sup>164,165</sup> need to pay due regard to the fact that a particular UK RemCo tends to retain the services of its sole ExecRemConsultant, and the involvement of other ExecRemConsultancy firms is usually limited to the provision of remuneration data or, reasonably commonly, where the RemCo concerned considers that a particular aspect of the remuneration package, such as LTIs, would benefit from a 'new eyes' review which is then provided to the RemCo (and its appointed ExecRemConsultants).

Another issue is that quantitative studies explore and present particular statistical associations between independent and dependent variables. They do not reflect what may actually have happened in a specific RemCo meeting, where perhaps the RemCo for business reasons it considered were entirely appropriate and justifiable not to accept the advice of its retained ExecRemConsultants.

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<sup>161</sup> *ibid* 209.

<sup>162</sup> *ibid* 208.

<sup>163</sup> Gosling (n 4).

<sup>164</sup> Marizah Minhat, 'The Role of Compensation Consultant in Executive Pay Governance' (British Accounting Association Conference, 23 October 2008) <<https://pdfs.semanticscholar.org/d77c/4751281b6e22d60212c7e14670ae6d9c34dc.pdf>> 'I find that in the pursuit of the largest market share, these consultants have contributed to the unintended consequence of an upward ratcheting of the overall level of the CEO pay', 1.

<sup>165</sup> Kabir & Minhat (n 115).

Accordingly, quantitative studies – even when conducted in a methodologically rigorous manner (see Conyon’s comments referred to in Chapter 2.2. above) - can leave the reader with a sense of frustration - because of the difficulties involved in numbers/associations capturing ‘real life’ nuances/subtlety of what actually happens in practice. Also, quantitative studies can be vulnerable to commentators with a particular political, media, academic view rather ‘hijacking’ the results for use in a tendentious manner (on the basis that the ‘numbers speak for themselves’).

In the same way best results can emerge when combining academic research with practitioner insight, quantitative and qualitative studies are essentially complementary in nature - qualitative research has the potential to add a special, additional perspective to quantitative studies.

The reason the author adopted an empirical qualitative approach is that he considered his experience as an ExecRemConsultancy practitioner (and collaborator with Main in the latter’s 2006 qualitative study),<sup>166</sup> combined with access to prospective ‘elite interviewees’ and total independence from career considerations and funding ones, meant that he considered he was ideally placed to examine ‘gaps’ in the qualitative academic literature.

Whereas the quantitative academic literature on ExecRemConsultants is extensive - and addresses really important issues such as ‘independence’ and its effect on CEO pay (see Chapter 2.5. above) - the qualitative literature is far less so. This is even more the case where the topic of ExecRemConsultants is narrowed down further to ‘professional standards’ in the provision of UK RemCoAdvisory Services.

Looking at the broad picture first, Conyon - after dealing with quantitative studies - refers to Bender’s qualitative work as ‘providing rich detail on the

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<sup>166</sup> Main et al (n 5).

process of setting boardroom pay and in particular the role of the consultant'.<sup>167</sup> Bender herself provides a useful table of quantitative and qualitative studies, showing just how few of the latter had been carried out.<sup>168</sup> She lists two of her own studies (ie., dated 2003 and 2011, respectively),<sup>169,170</sup> plus Kostander & Ikaheimo's 2009 research, on ExecRemConsultants.<sup>171</sup> Whereas Bender's 2003 research involved ten interviews, her 2011 study covered 40 of these, and Kostander & Ikaheimo's study contained 44 interviews.

Bender does refer to qualitative studies on executive compensation more generally in her 2011 academic article, citing Conyon,<sup>172</sup> Main,<sup>173</sup> Ogden & Watson,<sup>174</sup> and Perkins & Hendry.<sup>175</sup> However, none of these studies focus specifically on ExecCompConsultants. Having said this, Bender's most recent research (with Franco-Santos) covers both ExecRemConsultants and CoyExecRemSpecialists (indeed, the academic literature on the latter is even more sparse than that covering the former - Bender & Franco-Santos consider that their recent study is the first to include CoyExecRemSpecialists)<sup>176</sup> and de Gannes considers that 'the internal Reward function is not sufficiently investigated' by reference in particular to comparing 'HR's professionalisation project against the development of ExecRemConsultancy'.<sup>177</sup>

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<sup>167</sup> Conyon (n 108) 416.

<sup>168</sup> Bender (n 41). For further details of her qualitative research on ExecRemConsultants, see Ruth Bender, 'The Determinants of Executive Remuneration and Consultants' Advice' (British Academy of Management annual conference, Liverpool, September 2013) <<https://www.bl.uk/britishlibrary/~media/bl/global/business-and-management/pdfs/non-secure/d/e/t/determinants-of-executive-compensation-consultants-advice.pdf>> accessed 20 February 2019. This focuses more on the way ExecRemConsultants go about providing their advice, rather than specifically on 'professional standards'.

<sup>169</sup> Ruth Bender, 'How Executive Directors' Remuneration is Determined in Two FTSE 350 Utilities' (2003) 11(3) Corporate Governance 206-217 < [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=465517](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=465517)>.

<sup>170</sup> Bender (n 41).

<sup>171</sup> Leena Kostander & Seppo Ikaheimo, 'Independent Consultants' Role in the Executive Remuneration Design Process Under Restrictive Guidelines' (2012) 20(1) Corporate Governance: An International Review 64-83.

<sup>172</sup> Conyon (n 108).

<sup>173</sup> Main et al (n 5).

<sup>174</sup> Ogden & Watson (n 124).

<sup>175</sup> Perkins & Hendry (n 125).

<sup>176</sup> Bender & Franco-Santos (n 43) 10.

<sup>177</sup> de Gannes (n 44) 219.

Bender and Adamson et al's respective studies on ExecRemConsultants alone do arrive at findings that highlight the potentially conflicted but important role played by the latter – whose persuasion and influencing skills are key to providing excellent RemCoAdvisory Services.<sup>178,179</sup>

It is important to note anyway that all academic research is a product of its particular time - this is as true of qualitative work as of its quantitative counterpart. For example, Bender's 2011 study features interviews carried out comparatively soon after the establishment of RCG, whereas Adamson et al's qualitative study on ExecRemConsultants contains interviews (20) carried out some years later - when RCG had become more established.<sup>180</sup>

It will be seen therefore that the qualitative studies on executive remuneration are comparatively few in number, and those specifically devoted to ExecRemConsultants (or, indeed, CoyExecRemSpecialists) are far less prevalent. When one factors in a focus on 'professional standards' then the subsisting literature becomes even narrower.

Although Bender's and Adamson et al's respective studies do cover 'professional standards' to some extent, it is hard to find other work on the subject - save as passing references or vague allusions. For example, Ndzi's doctoral thesis contains a very limited qualitative exercise - where she interviews six ExecRemConsultants - but this is more in the context of the approach adopted by ExecRemConsultants to 'remuneration benchmarking' rather than their 'professional standards' (and, in fact, Ndzi makes reference to just how difficult she found it to persuade any ExecRemConsultants to participate in the interview process, citing 'lack of time to be interviewed, due to work pressures').<sup>181</sup>

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<sup>178</sup> Bender (n 22).

<sup>179</sup> Adamson et al (n 42).

<sup>180</sup> *ibid.*

<sup>181</sup> Ndzi (n 102) 71.

Accordingly, the author concluded that not only, for the reasons given above, was he ideally placed to carry out qualitative work on the 'professional standards' of ExecRemConsultants (and their CoyExecRemSpecialist counterparts) but also that the RIP could potentially complement/address 'lacunae' in the currently limited qualitative academic literature. The RIP could cover ExecRemConsultants, CoyExecRemSpecialists and the more recent RCG activities. Additionally, when one factors in the focus on 'professional standards' (of ExecRemConsultants and their in-house counterparts), the potentially complementary nature of the RIP is even more marked.

Although Bender's and Adamson et al's respective studies cover 'professional standards', it was anticipated that the RIP would add further nuance and depth to the picture they revealed. Anyway, apart from those studies it is hard to find reference in academic papers to other work on such 'professional standards'. The RIP, comprising a qualitative approach involving a series of semi-structured 'elite interviews' of a broad range of key players in the UK executive remuneration scene, and the 'professional standards' of ExecRemConsultants (and their in-house counterparts), would be arguably unique in covering all the chosen RITG/RITGST topics (and in the depth of detail concerned).

To adopt the phrase used in certain other academic studies, structuring the RIP to examine the selected topics through the lens of 'professional standards', would have considerable potential for adding to the existing academic studies and also for formulating conclusions regarding possible further improvements in UK practice.

Bender<sup>182</sup> cites a number of ExecRemConsultants/ExecCompConsultants who had written books or academic papers about executive compensation (for example, Crystal,<sup>183</sup> Williams,<sup>184</sup> Liberman<sup>185</sup> and Hodak<sup>186</sup>), but none of these featured qualitative research work. The RIP was designed to supplement the relevant academic literature (ie., a qualitative study undertaken by an ExecCompConsultant on the subject of 'professional standards').

The reasoning in this regard was that whereas Bender, Adamson et al and Bender & Franco-Santos had to varying degrees addressed matters such as the heterogeneity of ExecRemConsultants' professional and work backgrounds, they had covered neither SA/Q nor LTP aspects. Accordingly, it was important to find out whether RIP interviewees expressed an appetite/desire for SA/Q and/or LTP. If they did not, then this might answer at least in part why such aspects had not been covered previously in the academic literature.

As part of the process of deciding whether to carry out the present research exercise, selecting an appropriate research topic and methodology, plus undertaking a review of the relevant academic literature, consideration was given to the fundamental issue of why it was assessed to be important both in academic and in UK practice terms for the research to be carried out. A qualitative semi-structured 'elite interview' programme (comprising 53 completed interviews) is a time-consuming process, particularly for someone to conduct on their own (with digitally recorded interviews, the subsequent preparation of transcripts plus the coding and analysis of such).

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<sup>182</sup> Bender (n 22).

<sup>183</sup> Crystal (n 126).

<sup>184</sup> Williams (n 127).

<sup>185</sup> Vadim Liberman, 'It's Not Our Fault – Usually' (*Across the Board*, 2002) <<https://vadimliberman.journoportfolio.com/>> accessed 18 February 2018.

<sup>186</sup> Hodak (n 128).

The matters covered in the interviews would be representative of a specific position/situation at a particular point in time (eg., the CGI and Government's proposed corporate governance reforms were very much a live issue at the time, with new legislation in prospect). As pointed out by Petrin, executive remuneration is constantly changing and evolving (with governance codes etc.).<sup>187</sup> Accordingly, it was determined that in order for the RIP's results to be of value in both academic and UK practice terms it would be necessary to complete this thesis on a timely basis.

The proposed topic of 'professional standards' of ExecRemConsultants (and CoyExecRemSpecialists) would be covered in a series of semi-structured 'elite-interviews' covering the RITG/RITGST aspects referred to previously. The plan was to offer prospective interviewees a 'menu' of topics that they would find sufficiently relevant, interesting and worthwhile to justify the time they were being asked to devote to the exercise - and the trust they would need to have that their confidentiality would be protected and the results used in a way that best contributed to the academic literature and UK RemCoAdvisory practice more generally.

It was apparent from the RIP's success in recruiting prospective interviewees, and the latter being committed to following through with the interviews themselves, that there was real interest and, indeed, enthusiasm on the part of the interviewees concerned. They perceived the topic of 'professional standards' of ExecRemConsultants (and CoyExecRemSpecialists) to be of real importance and were keen to play their part in bringing the RIP to fruition.

Although the interviewees were a mix of ExecRemConsultants, CoyExecRemSpecialists, RemCoChairs/Members and ROOs, the take-up rate for invitations and the completion figures for interviews conducted in due course was most gratifying. Interviewees frequently referred to the

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<sup>187</sup> Petrin (n 21).

'responsible capitalism' issues raised in Chapter 2.1 above and the part that promoting highest 'professional standards' in UK RemCoAdvisory Services could play in this.

A dual track approach was taken with the RIP. First, reviewing the academic literature to locate and analyse the relevant existing books and papers (particularly those using qualitative methodology). Secondly, designing the RIP and formulating semi-structured interview guidelines, plus a questionnaire on the academic and professional qualifications and years of relevant experience of ExecRemConsultants and CoyExecRemSpecialists. Both routes were pursued contemporaneously because the information gleaned from the academic literature review would be helpful when conducting the RIP.

The academic and practical literature on qualitative research methodology for semi-structured interviews includes Brinkmann & Kvale,<sup>188</sup> Harrell & Bradley<sup>189</sup> and Maxwell,<sup>190</sup> with the focus being on the meaning the interviewees themselves attribute to their experiences - Ndzi refers to such approach as 'the notion that knowledge lies in the minds of individuals, who construct what they know as the basis of their own experiences'.<sup>191</sup> The literature stresses that 'sampling methodology' is important if one is to be able to move from mere inferences to generalisable claims. Reference is made to 'judgement' or 'purposeful' sampling, as opposed to the 'opportunity' or 'convenience' variety.

Whereas the relevant literature contains many allegations of ExecRemConsultants failing to manage COI appropriately, being complicit in the 'ratcheting up of pay levels', and generally being significant contributors to

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<sup>188</sup> Svend Brinkmann & Steinar Kvale, *InterViews: Learning the Craft of Qualitative Research Interviewing* (3<sup>rd</sup> edn, SAGE 2014). See also Steinar Kvale, *Doing Interviews* (SAGE 2007).

<sup>189</sup> Margaret Harrell & Melissa Bradley, *Data Collection Methods: Semi-Structured Interviews and Focus Groups* (RAND Corporation 2009). See also Eike Adams, 'The joys and challenges of semi-structured interviewing', *Community practitioner: the journal of the Community Practitioners' and Health Visitors' Association* 83(7) (July 2010) 18-21.

<sup>190</sup> Joseph Maxwell, *Qualitative Research Design* (SAGE Publications 2005).

<sup>191</sup> Ndzi (n 102) 50, 51.

the 'executive pay problem' (see Crystal's comment that 'the first culprits in what will be a litany of culprits is compensation consultants'),<sup>192</sup> it is much harder to find criticism of ExecRemConsultants' technical competence.

Some might argue that this makes ExecRemConsultants' alleged shortcomings even more culpable, as these must be deliberate/purposeful rather than mere incompetence. But a more balanced assessment could be that the very nature of ExecRemConsultants' role as appointed RemCoAdvisor inevitably involves potential COI/ethical challenges. They are appointed to advise RemCos - which are themselves intermediaries in the principal-agent situation existing between shareholders on the one hand and senior executive management on the other.

Selecting potential interviewees on the basis of their particular 'job role'/experience/assessed willingness to be interviewed due to prior participation in research interviews, is inherently more likely to yield valuable (ie., generalisable) data than simply choosing prospective interviewees based on convenience/availability (which would support inferences alone).

Other important issues were the 'spread' of 'job roles' of interviewees (for example, ranging from RemCoChairs through ExecRemConsultants to institutional shareholder bodies - in the present context) and also the number of interviews to be carried out, with the overall aim being to elicit a detailed understanding of a broad spectrum of varying experiences/viewpoints from which generalisable claims could legitimately be drawn.

Bender<sup>193</sup> refers to a number of 'qualitative studies of executive compensation practices'; namely, Conyon,<sup>194</sup> Main et al,<sup>195</sup> Ogden & Watson<sup>196</sup> and Perkins

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<sup>192</sup> Graef Crystal, 'Why is CEO Compensation So High?' (n 126) 9.

<sup>193</sup> Bender (n 22).

<sup>194</sup> Conyon (n 108).

<sup>195</sup> Main et al (n 5).

<sup>196</sup> Ogden & Watson (n 124).

& Hendry.<sup>197</sup> None of these studies specifically focus on ExecRemConsultants (nor CoyExecRemSpecialists, for that matter). In Conyon's paper on the structure of UK executive compensation contracts,<sup>198</sup> the research was conducted on both quantitative and qualitative bases - with interviewees being RemCoMembers and 'senior human resource personnel' (ie., CoyExecRemSpecialists).

It covered the role of ExecRemConsultants in 'setting compensation' and whether their use 'can result in upward pressure on executive pay'. Views expressed by RemCo members in this regard varied between ExecRemConsultants playing a useful role in pay data provision, and comparator company performance as well, to some scepticism regarding the information provided, suggesting that ExecRemConsultants' involvement 'helps to "ratchet-up pay levels" (...) and promoting what they think is the industry norm'.

Main's qualitative study (22 semi-structured interviews undertaken with RemCoChairs/Members) was carried out in conjunction with ExecRemConsultants, but focused very much on the difficulties faced by RemCo in playing its 'strategic human resource management' role.<sup>199</sup> The overall RemCo pay determination scene was seen as being replete with COI/promises, with the protagonists involved (including ExecRemConsultants) using their best endeavours to balance the multiple interests concerned.<sup>200</sup> Main et al's study concluded that 'rarely has so much in the way of well-intentioned effort resulted in such general overall dissatisfaction'.<sup>201</sup>

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<sup>197</sup> Perkins & Hendry (n 125).

<sup>198</sup> Conyon (n 107).

<sup>199</sup> Main et al (n 5) 10, 20, 22, 34, 39.

<sup>200</sup> Main et al (n 5).

<sup>201</sup> *ibid.*

Ogden & Watson's study involved five of the ten water companies that were privatised in 1989.<sup>202</sup> There were 26 semi-structured interviews in total, comprising 13 with RemCo Members, four with CEOs, two with other senior management members, five with senior managers responsible for servicing RemCo activities and attended their meetings, plus two with ExecRemConsultants.

ExecRemConsultants (and CoyExecRemSpecialists) are mentioned in that study, which was devoted to corporate performance comparisons in LTI pay decisions. It is particularly interesting the way Perkins & Hendry cite earlier exhortation (ie., Pettigrew)<sup>203</sup> to avoid 'over-ambitious attempts to demonstrate causality in the area of the executive management and firm performance'.<sup>204</sup> This links back to the discussion referred to already about quantitative studies designed to explore/show/prove causative effect.

Perkins & Hendry used qualitative interviews of NEDs in their search to open up 'the black box' of BOD behaviour - with descriptive findings that identify the conflict NEDs face in being intermediaries in the principal-agent relationship and also being expected to play a team role in the overall strategy and operation of the company.

Accordingly, none of these qualitative studies is specifically devoted to ExecRemConsultants/CoyExecRemSpecialists, Bender however, has been something of a pioneer in this regard. As already mentioned, she cited just three qualitative studies on executive compensation (ie., on ExecRemConsultants); two of which were her own work<sup>205,206</sup> and the third was Kostander & Ikaheimo's.<sup>207</sup> Bender's 2003 study explored how ED's

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<sup>202</sup> Ogden & Watson (n 124).

<sup>203</sup> Andrew Pettigrew, 'On Studying Managerial Elites' (1992) 13 Strategic Management Journal 163-182.

<sup>204</sup> Perkins & Hendry (n 125) 1443.

<sup>205</sup> Bender (n 22).

<sup>206</sup> Bender (n 41).

<sup>207</sup> Kostander & Ikaheimo (n 171).

remuneration was determined in two FTSE 350 utilities, rather than being specifically on ExecRemConsultants/CoyExecRemSpecialists; however, the research interviewees included the appointed ExecRemConsultant to each of the RemCos concerned, plus the 'human resources director' (ie., CoyExecRemSpecialist), CEO and RemCoChair, plus a RemCoMember.<sup>208</sup>

This meant that in respect of the two companies concerned, Bender captured 'the full picture' in terms of the determination of ED pay. This makes the study more detailed than its 'only 11 interviews' might suggest. Indeed, Bender refers in her 'discussion and conclusions' to further interviews in more companies being undertaken, and these formed the basis of her 2011 study - '35 interviews conducted in 2001-2003 with protagonists in the pay-setting decision in 12 FTSE 350 companies'.<sup>209</sup>

Accordingly, Bender's 2003 study was somewhat ground-breaking in examining the advisory reports prepared by ExecRemConsultants for the RemCo and 'the processes used'. Bender's 2011 paper puts ExecRemConsultants at its focus - covering 'the consultant as an expert', 'remuneration consultants and the level and structure of the executive pay', 'using consultants to confer legitimacy', 'the potential for conflict of interest' and 'impression management'. The semi-structured interviews concerned comprised a CoyChair, RemCoMembers (10), four CEOs, CoyExecRemSpecialists ('12 HR professionals plus three company secretaries') and five ExecRemConsultants. The paper does not really cover the 'professional standards' of ExecRemConsultants (nor those of CoyExecRemSpecialists), but it contains references such as a RemCoChair's:

[A]nd by the way; one of them [ie., an ExecRemConsultancy firm]  
- and I'm not going to say which - is a firm that I think never

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<sup>208</sup> Bender (n 169).

<sup>209</sup> Bender (n 22).

ceases to give information that you are underpaying. That's their stock in trade.<sup>210</sup>

It needs to be remembered though that the interviews concerned were carried out in 2001/2003 - so they do not reflect the effects of the 2002 and 2008 pay disclosure regulations. Additionally, in light of the considerable period of time that elapsed between Bender's interviews and the publication of her 2011 study (no doubt the delay was for good reasons - no criticism is implied), it was concluded that the results of the RIP should be published as quickly as practicable.

Bender's conclusion was that:

The use of compensation consultants can best be explained using theories of legitimacy: by taking outside advice, the compensation committee legitimises its decisions in the controversial area of executive pay.<sup>211</sup>

Her inclusion of Kostander & Ikaheimo's 2009 study<sup>212</sup> in the canon of qualitative research is justified in that it involved 44 interviews 'with participants in pay-setting in 23 state-owned enterprises'. The conclusions of this study were that ExecRemConsultants 'are not independent of management and work creatively to increase remuneration'. It could well be argued though that the special situation involved (ie., State-owned enterprises in Finland) significantly limits the generalisability of that study. For example, the companies concerned would not have been subject to monitoring by institutional shareholder bodies nor proxy advisory agencies.

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<sup>210</sup> Bender (n 22) 381.

<sup>211</sup> Bender (n 22) 364.

<sup>212</sup> Kostander & Ikaheimo (n 171).

Since Bender's 2011 study, there have been four additional qualitative research papers of particular note; namely, Ogden & Watson's 2011 study,<sup>213</sup> Adamson et al's 2014 one,<sup>214</sup> Bender & Franco-Santos's 2017 paper<sup>215</sup> and de Gannes' recent doctoral thesis.<sup>216</sup> Whereas the first two of these have an exclusive focus on ExecRemConsultants, the Bender & Franco-Santos study is broader in scope in that it covers ExecRemConsultants and CoyExecRemSpecialists (but only ExecRemConsultants were actually interviewed, whereas de Gannes includes CoyExecRemSpecialists in her interviewee cohort).<sup>217</sup>

Rather as Bender's 2011 paper was built around interviews conducted as a 'follow-on' from her 2003 study, Ogden & Watson's 2011 paper employed interviews carried out between 2004 and 2006 following their 2000 study.<sup>218</sup> Having said this, Ogden & Watson returned to the same companies involved in their earlier work (five privatised UK water companies), whereas Bender's 2011 work included a broader range of organisations than those originally covered.

Ogden & Watson's 2011 study comprised 26 interviews, with seven NEDs, four EDs, two 'managers supporting the RemCo' (ie., CoyExecRemSpecialists), 11 members of senior management and two ExecRemConsultants. The focus is very much on how ExecRemConsultants influence RemCo decisions. The paper's conclusions are generally favourable towards ExecRemConsultants:

In contrast to 'managerial power' arguments, it demonstrates that RemCo are proactive in managing pay policy, conscientious in seeking to ensure that pay is appropriate and not over-generous

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<sup>213</sup> Ogden & Watson (n 124).

<sup>214</sup> Adamson et al (n 42).

<sup>215</sup> Bender & Franco-Santos (n 43).

<sup>216</sup> de Gannes (n 44).

<sup>217</sup> *ibid.*

<sup>218</sup> Ogden & Watson (n 124).

and that pay consultants are independent and take their instructions directly from the RemCo.<sup>219</sup>

Having said this, it concludes ‘RemCos come to perceive a need for periodic upward pay adjustments to ensure that executive remuneration is consistent with external benchmarks if they are to avoid recruitment and retention problems’.

There is tangential reference to ExecRemConsultants’ ‘professional standards’ - ‘they have commercial incentives to maintain their reputations as independent experts and providers of impartial professional advice’.<sup>220</sup> One can see therefore a consistent theme in the nascent qualitative research literature being rather more nuanced and coming more to ‘ExecRemConsultant-friendly’ conclusions than some of the qualitative literature cited previously.

This stance is maintained in the more recent qualitative research literature of Adamson et al<sup>221</sup> and also Bender & Franco-Santos.<sup>222</sup> The former is particularly interesting because it discusses ExecRemConsultants in the context of ‘the development of professionalism’. Adamson states:

We show that the institutional work of creating the new professional project is contested and that the ERC [ie., ‘Executive Remuneration Consultancy’] development may be better understood as part of broader efforts to create and maintain the institution of executive pay-setting practices.<sup>223</sup>

The study involved 19 semi-structured interviews of ExecRemConsultants, from a broad range of ExecRemConsultancy firms (ie., Big Four, ABC and

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<sup>219</sup> ibid 502.

<sup>220</sup> ibid 503.

<sup>221</sup> Adamson et al (n 42).

<sup>222</sup> Bender & Franco-Santos (n 43).

<sup>223</sup> Adamson et al (n 42) 13.

Boutiques). Adamson et al assessed that the 19 interviewees are representative, particularly as 'the sampling frame is very small - around 50 senior consultants in the UK'.<sup>224</sup>

The diverse professional backgrounds of ExecRemConsultants is noted, together with discussion of RCG (and its operation since formation in 2009/2010). ExecRemConsultants - particularly more senior ones - tended to be 'anchored' in their original 'traditional' professional background (such as, CA, Actuary or Lawyer) and this means that although they might well buy into the 'big picture' goals of RCG there was, at the individual/micro level, an inherent resistance to being 'ready to embrace and actively champion their new identity'.<sup>225</sup>

There is some discussion of 'professional standards' but 'individual scepticism' about the possibility of RCG 'strengthening the professional project of ERC' - stressing that 'market forces' and original professional qualifications are the most powerful influencers of ExecRemConsultants' behaviour.<sup>226</sup> The Adamson et al study uses the terms 'professional occupation' and 'professional service' to refer to 'new less-established knowledge-intensive occupations' that have developed within, for example, Big Four and ABC firms, and compares these against 'traditional' or 'liberal' professions (ie., law, medicine and the clergy).

It is submitted that the strength of the Adamson et al research lies not only in the breadth and seniority of the ExecRemConsultants interviewed but also in the way the research explores:

The relationship between macro-scale occupational/organisational and micro-scale individual-led dynamics of the ERC

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<sup>224</sup> ibid 24.

<sup>225</sup> ibid 27.

<sup>226</sup> ibid 32.

project situate its development in relation to the broader field of executive remuneration practices.<sup>227</sup>

The study is recent enough (the interviews were probably carried out in 2012/2013) to include the ongoing operation of RCG. This means that 'professional standards' come onto the agenda, due for example to RCG's power to expel member ExecRemConsultancy firms (a power which has yet to be exercised - RCG mentions that no complaints against member firms have ever been received).<sup>228</sup>

Bender & Franco-Santos's 2017 paper again focuses on ExecRemConsultants and the factors that influence their advice, but is broader in that it covers RemCo's 'internal HR advisors' (ie., CoyExecRemSpecialists) and CEOs. The study involved interviewing 20 senior ExecRemConsultants (from nine firms).

Although the timing of these interviews is not stated in the paper, it can be estimated that these would have taken place in 2012/2013. The study is particularly interesting in two respects. The first is that, in the same way as in Adamson et al's paper, all the interviewees were ExecRemConsultants. Second is Bender & Franco-Santos's view that they were the first to cover the role of CoyExecRemSpecialists. There is also discussion of 'consultant independence' and CoyExecRemSpecialists COI. An example of the latter is the interview comment concerning 'HR directors' – 'their job is there to sort of basically provide for the CEO. That sounds blunt but it boils down to that's what they do'.<sup>229</sup>

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<sup>227</sup> *ibid* 13.

<sup>228</sup> RCG's 'expulsion power' in 'VCC' (n 137) 6.

<sup>229</sup> Bender & Franco-Santos (n 43) 11.

The interviewee concerned points out that this can cause tension/conflict between ExecRemConsultants and CoyExecRemSpecialists because the former's primary duty is to advise RemCo. The views of ExecRemConsultants on their CoyExecRemSpecialist counterparts was by no means all negative though - the criticism was directed towards HRDs rather than CoyExecRemSpecialists generally. Indeed, there is actually reference to the professional satisfaction felt by ExecRemConsultants when they have the opportunity to work with 'high calibre' CoyExecRemSpecialists ('whether or not the fees were high').<sup>230</sup>

Bender & Franco-Santos conclude by stating:

Although many client companies will be sophisticated purchasers of consultancy services, one implication is that remuneration committees should take the time to understand and appreciate the characteristics and preferences of the individuals and firms advising them.<sup>231</sup>

The extensive de Gannes interviewee cohort of 44 ExecRemConsultants and 18 'other job title holders' (ie., 62 research interviews), plus being temporarily 'embedded' in an ABC firm's ExecRemConsultancy practice, is comprehensive regarding ExecRemConsultants. Although her focus was not explicitly on 'professional standards', she concluded that 'ExecRemConsultancy is much like management consulting (...) and lacks the corpus of abstract knowledge that differentiates and defines a profession'.<sup>232</sup> Her conclusion is basically that ExecRemConsultants are business advisers – and she takes a generally favourable stance towards their activities/work practices.

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<sup>230</sup> ibid 11.

<sup>231</sup> ibid 19.

<sup>232</sup> de Gannes (n 44) 166.

The quantitative research studies on ExecRemConsultants' influence on pay are balanced between those concluding that ExecRemConsultants are a significant part of the 'executive pay problem', others adopt a far more nuanced interpretation (ie., these are more 'ExecRemConsultant-friendly'). The position regarding qualitative research studies though is generally far more favourable overall to ExecRemConsultants. Arguably this is because the inherent complexity/conflicts involved in the ExecRemConsultancy role become more palpably apparent when viewed through a qualitative lens.

The RIP was an opportunity to complement the qualitative academic work referred to above, for the reasons already mentioned. The objective was to move the debate forward, by exploring the 'professional standards' of ExecRemConsultants and their CoyExecRemSpecialist counterparts - because if there is one thing the quantitative and qualitative research studies agree on it is that the ExecRemConsultants/CoyExecRemSpecialists play a key role in the RemCo pay determination process - and the 'professional standards' of the individuals/firms involved comprise a major component of this.

Whereas Anderson et al, and Bender & Franco-Santos, interviewed only ExecRemConsultants, the RIP also included CoyExecRemSpecialists, RemCoChairs/Members, institutional shareholder representative bodies, regulators, proxy agencies and also the relevant civil service department, on such 'professional standards'. This would be rather broader than Adamson et al's, Bender & Franco-Santos's and even de Gannes's respective research papers, so far as 'professional standards' were concerned - and with implications for potentially addressing 'gaps' in the academic literature and also further improving UK RemCoAdvisory practice.

Returning to the specific research topic, 'professional standards' means the nature/content of the advice concerned plus the way in which such services

are provided. This encompasses the ethical and technical training and actual service delivery, together with whether an ExecRemConsultant SA/Q might be appropriate and/or possible LTP regulation of their activities.

Although certain aspects of all these issues were covered in the academic literature, there was not a body of easily categorisable research sources. It was necessary to explore the general academic literature on 'professions'/ 'professionalism'/ 'accreditation and professional qualifications'/ 'regulation and sanctions for non-compliance with code of ethics/conduct'. This process, far from being concerning, gave confidence that the research topic chosen, whilst being grounded in key respects in existing academic literature, had considerable potential for being an original contribution both in academic and UK RemCo practice terms.

The author's natural starting point, being a Lawyer by training and currently practising at the Bar, was to review the relevant academic literature on the legal profession. Apart from the fact that in the 'early days' of UK ExecRemConsultancy (ie., the late 1970s and during the 1980s) it was common for Lawyers wishing to enter the field of ExecRemConsultancy to do so via advising on tax-efficient remuneration and the preparation of incentive plan documentation (this was his chosen route). Law is one of the three 'liberal professions' (ie., medicine, law and the clergy).

It was quickly apparent though on reading Twining,<sup>233</sup> Burger,<sup>234</sup> Cummings,<sup>235</sup> Sherr<sup>236</sup> and Webley<sup>237</sup> that Lawyers have a dual duty - ie., to their clients and to the public generally, as an 'Officer of the Court'. This differs from

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<sup>233</sup> William Twining, 'Pericles and the Plumber' *Law in Context* (Queen's University 1967).

<sup>234</sup> Warren Burger, 'The Decline of Professionalism' (1995) 63(4) *Fordham Law Review* 949-958.

<sup>235</sup> Scott Cummings (ed), *The Paradox of Professionalism: Lawyers and the Possibility of Justice* (Cambridge University Press 2011).

<sup>236</sup> Avrom Sherr, Robert Moorhead & Hilary Sommerlad, *Legal Education at the Crossroads: Education and the Legal Profession* (Routledge 2017).

<sup>237</sup> Lisa Webley, 'Legal Professional De(Re)Regulation, Equality and Inclusion, and the Contested Space of Professionalism Within the Legal Market in England and Wales' (2015) 83(5) *Fordham Law Review* 2349 <<https://ir.lawnet.fordham.edu/flr/vol83/iss5/8/>> accessed 15 January 2019.

ExecRemConsultants appointed to provide RemCoAdvisory Services. The way this is usually expressed is that the ExecRemConsultant's duty/obligations are to the company concerned, in the form of advising its RemCo. Put shortly, practising Lawyers have a wider duty not to harm the public (as is the case with medical practitioners) - and this attracts a particular regulatory framework and disciplinary sanctions.

Having said this, it is interesting to note the posed tension between practising law as a business (although Burger argues that practising law is not a business)<sup>238</sup> and the public's need for legal services (eg., in Crime, Family, Housing and Employment) requiring Lawyers who are primarily vocationally-driven. This is the conundrum where on the one hand it is suggested that there are too many Lawyers and on the other evidence is provided of limited access to justice for the part of the poor and even middle classes (see Abel).<sup>239</sup>

It was clear anyway to the author from reading the relevant academic literature, and also his experience of being at varying times an ExecRemConsultant appointed to advise RemCos and a practising Lawyer, that the duties/obligations of the two roles were very different. This has implications when considering the ethical and technical training of ExecRemConsultants, together with the possibility of accreditation/specific qualification and regulation of activities (including disciplinary sanctions).

However, practising law and working as an ExecRemConsultant do have in common the requirement/need for 'working professionally' in a 'professional occupation'/'professional service' context. In other words, whether a particular advisory activity is 'professional' is a different issue from ensuring that the activity itself is carried out 'professionally'/'in a professional manner'. One

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<sup>238</sup> Burger (n 234) 949.

<sup>239</sup> Richard Abel: *English Lawyers Between Market and State: The Politics of Professionalism* (OUP 2004).

does not have to take Twining's 'Pericles and the Plumber'<sup>240</sup> too literally to be able to distinguish between the lofty lawmaker/lawgiver/law upholder role and the client advisory activity undertaken by practising Lawyers. The same applies with even more force to the new knowledge-intensive occupations, such as ExecRemConsultancy.

The RITG and RITGST were designed to capture interviewees' views on where they saw ExecRemConsultancy lying on a continuum having the 'liberal professions' at one end and 'management/strategy consultancy' (eg., services offered by Bain, McKinsey and divisions of the Big Four) on the other, with the 'new professions' (eg., CA, CTA, Actuary, surveyor or architect) being placed in the middle of the respective ends of such continuum.

This approach was somewhat foreshadowed in the respective works of Bender and Adamson et al, but the RIP was designed to elicit views in this regard, not just of ExecRemConsultants but also of other protagonists in the executive pay determination process (eg., RemCoChairs/Members, CoyExecRemSpecialists, regulators and institutional shareholder representative bodies).

Also mentioned by Bender and Adamson et al, respectively, was the establishment of RCG, and various interview comments and discussion around this. Again, the aim of the RIP was to open up the issues of regulation and RCG to a broader population of interviewees than simply ExecRemConsultants. Accordingly, the RITG included semi-structured questions on how the UK's self-regulatory regime for ExecRemConsultants, embodied in RCG and its VCC, was working in practice (in line with Bender and Adamson et al's approach) but putting these to a far broader range of interviewees than most previous research.

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<sup>240</sup> Twining (n 233).

Although the core focus in this thesis is the 'professional standards' of UK RemCoAdvisory Services, it was considered that the appropriate starting point in examining these was the wider contextual picture of what is meant by 'professional' and 'professionalism'. This sets the scene for looking at the specific 'professional standards' of ExecRemConsultants and CoyExecRemSpecialists, then in turn whether there might be a SA/Q and/or a LTP regime (with disciplinary sanctions for individual advisors).

Adamson et al refer to 'the concept of a profession is highly debated', citing Evetts<sup>241</sup> - who prefers to concentrate on 'professionalism' as the key concept rather than on 'professions' or 'professionalisation'. Evetts also makes the distinction between 'professionalism' from 'within' the organisation by 'the workers' ('where it can be a successful manipulation of the markets by the occupational group concerned') or 'imposed from above' ('where managers promote and facilitate organisational change as a disciplinary mechanism').<sup>242</sup> She notes the particular potential power of the former, but in any event discusses how 'professionalism' can be a vehicle for enlightened self-interest 'in pursuit of occupational and practitioner interests but sometimes as a way of promoting and protecting the public interest'.<sup>243</sup>

Any dividing line between a 'liberal profession' and 'professional occupation'/'professional service' is not easy to draw, save at the respective ends of the continuum concerned. On the one hand, law, medicine and the clergy are the 'traditional' professions, and on the other management/strategy consultancy can clearly be put into the category of 'business advice'. The middle ground, however, is rather more contested/debatable. For example, CA, CTA, Actuary, can be referred to as 'professions' (or 'new professions'), whereas other 'professional occupations'/'professional services' (such as,

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<sup>241</sup> Julia Evetts, 'A New Professionalism? Challenges and Opportunities' (2011) 59(4) Current Sociology 406-22.

<sup>242</sup> *ibid* 407, 408.

<sup>243</sup> *ibid* 408.

landscape architecture or conservation - see Lester)<sup>244</sup> are seen as less likely candidates for the category of 'professions'.

It was considered it would be valuable to explore where RIP interviewees would place ExecRemConsultants and CoyExecRemSpecialists on the continuum concerned. Particularly of interest would be finding out RIP interviewees' views concerning RemCoAdvisory Services in the context of being a 'professional project' - as Adamson et al express it 'a more or less systemic collective endeavour of an occupational group to translate resources into social and economic rewards'.<sup>245</sup>

This builds on Larson's 'I see professionalism as the process by which producers of special services sought to *constitute* and *control* a market for their expertise'.<sup>246</sup> Also interesting is Groß & Kieser's concept of 'new professionalism' (concentrating on 'work behaviour', rather than the 'classic concept of professionalism').<sup>247</sup>

Adamson et al 'explore the development of executive remuneration consultancy in the UK through the lens of institutional work'. They note how 'empirical studies of the institutional work of creation of new professional projects are still relatively scarce', but of particular interest was the way in which Adamson et al examined not only the macro level way in which professionalism develops, but also at the micro service level the way in which ExecRemConsultants behave, together with their attitudes towards macro level developments/institutions regarding their role and activities.<sup>248</sup>

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<sup>244</sup> Stan Lester, 'The Development of Self-Regulation in Four UK Professional Communities' (2016) 6(1) Professions and Professionalism <<http://devmts.org.uk/profreg.pdf>> accessed 7 January 2019.

<sup>245</sup> Adamson et al (n 42).

<sup>246</sup> Magali Larson, *The Rise of Professionalism: A Sociological Analysis* (University of California Press 1997).

<sup>247</sup> Groß C, & Kieser A, 'Are Consultants Moving Towards Professionalization?' (2010) 24 Research in the Sociology of Organizations 69-100.

<sup>248</sup> Adamson et al (n 42) 32.

Adamson et al note the tension between ExecRemConsultants appreciating the commercial and other advantages of a collective body/persona but at the same time being anchored to their original 'professional backgrounds' as, for example, CA, CTA, Actuary or Lawyer.<sup>249</sup> Again, this was seen as being a potentially fruitful avenue to explore in the RIP - garnering the respective perspectives not only of ExecRemConsultants/CoyExecRemSpecialists but also those of other key protagonists in the executive remuneration scene.

This difference between macro and micro level attitudes/behaviours is noted by Adamson et al in their comments on McCann et al's research into paramedics.<sup>250</sup> This is not to compare the 'professionalism' of paramedics against that of ExecRemConsultants, but rather to show how 'the agency of individual workers may become more significant than the collective efforts of professional elites in shaping the development of the professional project'.<sup>251</sup>

It could be argued that this merely demonstrates the subtlety and complexity of the various issues involved, and are areas in respect of which the present research could potentially add to the existing academic literature - including:

- The extent to which the ExecRemConsultancy may be a 'profession' or, alternatively, a 'professional activity/service',
- Whether the development of ExecRemConsultancy as a knowledge-based occupation is to varying degrees in the interests of ExecRemConsultancy firms, ExecRemConsultants, RemCo/client companies and the public more broadly, and

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<sup>249</sup>ibid 27.

<sup>250</sup> Leo McCann, Edward Granter, Paula Hyde & John Hassard, 'Still Blue-Collar After All these Years? An Ethnography of the Professionalisation of Emergency Ambulance Work' (2013) 50 Journal of Management studies 750-756.

<sup>251</sup> Adamson et al (n 42) 15.

- Whether the extent to which the macro level activities promoted (eg., the introduction and ongoing operation of RCG) are ‘bought into’ by individual ExecRemConsultants as being their ‘profession’ (as opposed to ExecRemConsultants being somewhat ‘anchored to’ their original heterogeneous professional backgrounds).

Commentary/views on ExecRemConsultants’ ‘professional standards’, whether contained in the academic literature or more broadly, ranges from how they manage COI/ethical challenges inherent in consultancy work to the technical quality aspects of their advice. As regards the former, the ‘managerial power approach’ includes ExecRemConsultants in its criticisms. Waxman,<sup>252</sup> Myners,<sup>253</sup> HC TC’s *Ninth Report*<sup>254</sup> and Lawson<sup>255</sup> take a similar approach. Business leaders can also be critical. For example, Buffett (‘If the board hires a compensation consultant after I go, I will come back mad’)<sup>256</sup> and Munger (‘I would rather throw a viper down my shirt front than hire a compensation consultant’).<sup>257</sup> The press too is replete with articles commenting negatively on ExecRemConsultants; for example, Russell,<sup>258</sup> Treanor,<sup>259</sup> Wile<sup>260</sup> and Goodley.<sup>261</sup> Indeed, *The Economist’s* Buttonwood is far from complimentary.<sup>262</sup>

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<sup>252</sup> Waxman (n 109).

<sup>253</sup> Paul Myners, ‘Speech to the Investment Management Association’ (Annual IMA Conference, London, 19 May 2009) <[http://www.hm-treasury.gov.uk/speech\\_test\\_190509.htm](http://www.hm-treasury.gov.uk/speech_test_190509.htm)> accessed 6 November 2017.

<sup>254</sup> HC TC, *Banking Crisis: Reforming Corporate Governance and Pay in the City Ninth Report of Session 2008-2009* (2008-09 HC 519).

<sup>255</sup> Lawson (n 74).

<sup>256</sup> Oyedele (n 75).

<sup>257</sup> Charlie Munger at the Berkshire Hathaway Annual Meeting 2004, quoted in Tren Griffin, *Charlie Munger: The Complete Investor* (Columbia Business School Publishing 2015).

<sup>258</sup> Jonathan Russell, ‘In the corporate pay row consultants are the arms dealers’ *The Daily Telegraph* (London, 2 June 2012) <<https://www.telegraph.co.uk/finance/jobs/9307599/In-the-corporate-pay-row-remuneration-consultants-are-the-arms-dealers.html>> accessed 14 January 2019.

<sup>259</sup> Jill Treanor, ‘Investors Seek Curb on Pay Advisors’ *The Guardian* (London, 15 September 2009).

<sup>260</sup> Rob Wile, ‘Compensation Consultants Meet the Conflicted Advisors Behind Ginormous CEO Salaries’ (*Business Insider*, 8 May 2012) <<http://www.businessinsider.com/compensation-consultants-2012-4?IR=T>> accessed 27 October 2015.

<sup>261</sup> Simon Goodley, ‘Pay consultants accused of conflict of interest’ *The Guardian* (London, 4 June 2012).

<sup>262</sup> Buttonwood’s Notebook, ‘If you hire them, pay will come’, *The Economist* (London, 20 November 2014). For discussion of executive remuneration factors that ‘will keep pay high, and the debate toxic’, see ‘Neither rigged nor fair’ *The Economist* (London, 25 June 2016) <<http://www.economist.com/news/briefing/21701109-bosses-pay-rich-world-not-fix-it-flawed-neither-rigged-nor-fair?frsz=dg%7Ca>> accessed 14 February 2019.

As mentioned earlier though, the quantitative academic literature somewhat struggles in showing negative associations arising from ExecRemConsultants' involvement - even one study entitled 'Compensation Consultants Lead to Higher CEO Pay', and arguing that the use of ExecCompConsultants is a 'justification device for higher executive pay', is in fact more nuanced in its conclusions.<sup>263</sup>

Although one does not have to look far to find criticisms of other 'professionals' (eg., Mitchell et al's attack on the UK accountancy profession),<sup>264</sup> there was a stream of criticism of ExecRemConsultants in the evidence given to the HC TC by, for example, ShareSoc,<sup>265</sup> Hermes,<sup>266</sup> PIRC,<sup>267</sup> Local Authority Pension Fund Forum,<sup>268</sup> TUC,<sup>269</sup> LGIM<sup>270</sup> and UKSA<sup>271</sup> - concentrating mainly on COI/lack of 'independence'/ethical issues.

One needs to remember though that these comments pre-date the 2013 Reforms. Having said this, see Collins and Bow, respectively, for far more recent criticisms of ExecRemConsultants.<sup>272,273</sup> It can be argued that some of this is due to a misunderstanding of the scope of ExecRemConsultants' duties/obligations when appointed to advise RemCos. Read (Chairman of RCG) explains though that 'consultants' input on pay is purely advisory'.<sup>274</sup>

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<sup>263</sup> Chu et al (n 119).

<sup>264</sup> Austin Mitchell, Tony Puxty, Prem Sikka & Hugh Willmott, 'Ethical statements as smokescreens for sectional interests: The case of the UK accountancy profession' (1994) 13(1) *Journal of Business Ethics* 39-51.

<sup>265</sup> ShareSoc's submission to *Corporate governance and remuneration in the financial sector: Written Evidence*, 88 <<https://publications.parliament.uk/pa/cm201213/cmselect/cmtreasy/writev/72/73.pdf>> accessed 19 May 2019.

<sup>266</sup> Hermes's submission (n 265) 119.

<sup>267</sup> PIRC's submission, 'favours remuneration consultants being subject to a shareholder approval vote, as is the case with audit firms' (n 265) 142.

<sup>268</sup> LAPFF's submission, 'remuneration consultants should be forbidden from acting in any other capacity for a company and should not conduct engagement with investors on executive pay issues' (n 265) 159.

<sup>269</sup> TUC's submission, argues for prohibition of Other Services advice (n 265) 218.

<sup>270</sup> LGIM's submission, 'prevent remuneration consultants from acting in any other capacity' (n 265) 232.

<sup>271</sup> UKSA's submission, 'there should be little or no role for remuneration consultants and reports should be available to shareholders' (n 265) 239.

<sup>272</sup> Neil Collins, 'Let's Face It, CEOs Don't Face a Tough Choice on Pay' *Financial Times* (London, 1 September 2017) <<https://www.ft.com/content/7aa0f612-8e78-11e7-9580-c651950d3672>> accessed 16 February 2018.

<sup>273</sup> Bow M, 'Business Focus: FTSE Pay Consultants Step Out of the Shadows as Remuneration Row Heats Up' *Evening Standard* (London, 22 March 2018) <<https://www.standard.co.uk/business/business-focus-ftse-pay-consultants-step-out-the-shadows-as-remuneration-row-heats-up-a3496416.html>> accessed 18 January 2019. Note though, Gosling's comment that 'consultants spend a lot of time arguing pay down rather than arguing it up'.

<sup>274</sup> Martin Read, 'Pay consultants' input on pay is purely advisory', Letter to Editor *Financial Times* (London, 5 May 2016).

Interestingly, the view of one RIP ExecRemConsultant on the 'it's just advice' issue was that in relation to RemCos: 'we do lead them towards certain conclusions and help them build a consensus around a certain course of action so I think that to label that purely as advice, I think I would step away from that defence'. However, the ExecRemConsultant concerned went on to state: 'I do take the point that we do not have the same statutory responsibilities or duty in the same way that auditors do'.

The differences between the position of an external auditor appointed by a publicly listed company and that of its RemCo's appointed ExecRemConsultant are all too apparent when one considers matters such as that the auditor:

\*(1) Is appointed by ordinary resolution of the shareholders in general meeting (whereas the ExecRemConsultant is simply appointed by RemCo),

\*(2) Has its remuneration fixed by ordinary resolution of shareholders in general meeting (whereas the fees of the ExecRemConsultant are a matter for RemCo)

\*(3) Must be eligible for appointment, by holding an appropriate qualification in accountancy (whereas there is no 'appropriate qualification' for the provision of RemCoAdvisory Services),

\*(4) Will generally be considered by the court as an 'officer' of the company concerned (unless appointed for a more limited purpose),

\*(5) Has certain specific statutory rights; for example, rights of access at all times to the company's books/accounts and to the information it considers necessary for the performance of its duties,

\*(6) Has certain specific statutory duties; for example, to make a report to members on the annual accounts, plus an obligation to ensure the accounts give a true and fair view of the profit or loss and financial position of the company,

\*(7) On resignation, must make a statement of the circumstances surrounding such ceasing to hold office and must notify the appropriate audit authority (ie., the FRC), and

\*(8) On resignation, has the right to require that a general meeting of the company be convened so that it can bring to shareholders' attention the matters concerning such resignation (it is worth mentioning that the auditor's appointment can be terminated at the behest of shareholders, by way of an ordinary resolution in general meeting).<sup>275</sup>

ExecRemConsultants' obligations are very much focused on their advice to RemCo. Some of the traces of misunderstanding about this can arguably be detected in Labour's SVExecRemConsultants Proposals (ie., mirroring the position regarding the appointed external auditor).<sup>276</sup>

ExecRemConsultants' position is to some extent just a reflection of the fact that RemCos are themselves conflicted/torn between their monitoring role and business strategy development and implementation duties. This obviously does not mean however, that ExecRemConsultants do not have an obligation

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<sup>275</sup> The Companies Act 2006 sections respectively referable to points (1), (2), (3), (4), (5), (6), (7) and (8) above are (1) s 489; (2) s 492; (3) ss 1212 & 1219; (5) s 499; (6) ss 437 & 393; (7) ss 519 & 522, and (8) ss 518 & 510. Point (4) is discussed by Brenda Hannigan, *Company Law*, (5<sup>th</sup> edn OUP 2018) 541. She also discusses an appointed auditor's rights and duties more generally at 483-502, as does *Boyle and Birds' Company Law*, John Birds et al (eds), (9<sup>th</sup> edn Jordan Publishing 2014) 525-547. Such discussion includes the extent of the auditor's duty of care owed to the company, its shareholders, and others who read and rely on the audited accounts. Hannigan notes at page 491 the 'courts are reluctant to find that a professional advisor owes a common law duty of care to a non-client'. She sets out two possible types of claims: 'straightforward claims in contract... (...) since the auditors owe the company appointing them a duty to exercise reasonable care and skill in performing their contractual obligations' and 'claims in tort by third parties who are not in any direct relationship with the auditors, but who claim damages for losses arising from reliance on negligently audited accounts'. Hannigan cites at pages 492-499 the leading cases regarding the latter, including *Hedley Byrne & Co Ltd v Heller & Partners Ltd* [1963] 2 ER 575, *Caparo Industries plc v Dickman* [1990] 1 ER 568, *Barings plc v Coopers & Lybrand (No 1)* [2002] 2 BCLC 364, *Stone & Rolls Ltd v Moore Stephens* [2009] 2 BCLC 563 and *Jetivia SA v Biltal (UK) Ltd* [2015] UKSC 23.

<sup>276</sup> Labour's SVExecRemConsultants Proposals (n 51).

to manage effectively the COI they face. Indeed, they need to take all steps they can to avoid wherever possible such conflicts arising. In cases where potential conflicts/ethical challenges are inevitable they need to handle these appropriately. The academic literature is replete with quantitative studies exploring whether the appointment of ExecRemConsultants or changing the ExecRemConsultancy firm concerned, are associated with higher pay levels.

Additionally, the literature examines whether hiring ExecRemConsultants from Big Four, ABC or Boutique ExecRemConsultancy firms, respectively, is so associated. As mentioned previously, the results are by no means clear - due to the fact that the appointment of ExecRemConsultants is endogenous, plus the variables measured/controlled for may not capture the full picture. The qualitative literature on the other hand (with the exception of Kostander's & Ikaheimo's research on atypical organisations)<sup>277</sup> tends to focus far more on the strong technical expertise of ExecRemConsultants and the useful role that they perform.

Brown describes the skills he considers ExecRemConsultants need to possess:

Good technical knowledge of benefits but also good people skills, be persuasive and authoritative. There is no professional association for consultants [Brown's comment pre-dates the inception of RCG] or a specific qualification. They have a general HR background or from general consultancy work. More and more are bringing MBAs with them. Basic skills are maths, legal and accounting knowledge.<sup>278</sup>

The ERWG Final Report's comments on ExecRemConsultants reflect its view that RemCos should not be over-reliant on ExecRemConsultants (particularly in consultation meetings with shareholders) and that RemCos - to ensure

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<sup>277</sup> Kostander & Ikaheimo (n 171).

<sup>278</sup> Peter Brown, 'Possible conflict of interest over remuneration', Letter to Editor *Financial Times* (London, 21 November 2011).

independent advice is maintained - should regularly put out to tender the appointment of their ExecRemConsultants.<sup>279</sup> Again, this shows the emphasis on what ExecRemConsultants do in going about their advisory role rather than arguing that they lack the mix of technical and personal skills Brown considers they need to have.

Even Ndzi, who is critical about the way she finds ExecRemConsultants carry out 'pay benchmarking', focuses on the methodology used by ExecRemConsultants to select comparator companies and the like (indeed, she finds that ExecRemConsultants' advice on executive remuneration is not always objective),<sup>280</sup> as opposed to arguing that ExecRemConsultants lack the technical skills required to carry out their advisory role appropriately.<sup>281</sup>

In key respects this general consensus on technical skills is not really surprising given that the current leaders/most senior ExecRemConsultants constitute a tiny cadre/cohort of professionally well-qualified and experienced individuals. On this point, see the findings set out below from the RICBQ responses, together with the data in this regard collated by RCG. Almost all the present UK ExecRemConsultancy leaders possess one (or more) of the following qualifications; CA, CTA, Actuary, Lawyer or (plus in some cases) holding an MBA or PhD.

Having said this, it is becoming increasingly common for 'direct entrants' into ExecRemConsultancy to start directly after completing a bachelors degree, and (save in the Big Four) not to undertake professional qualifications thereafter (such as, becoming CAs, Actuaries, CTAs or Lawyers). It was decided to explore in the RIP the influence (if any) this trend might have on ExecRemConsultants' professional standards. This would be part of the

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<sup>279</sup> IA, 'Executive Remuneration Working Group Final Report' (July 2016) Recommendation 4, 18  
<<https://www.theinvestmentassociation.org/.../erwg%20Final%20Report%20July%202016>> accessed on 22 January 2019.

<sup>280</sup> Ndzi (n 102).

<sup>281</sup> *ibid.*

broader RITG aspects covering also whether there might be a SA/Q available to ExecRemConsultants (whether on a voluntary, or compulsory LTP, basis).

Although in terms of his literature review it might seem logical to deal next with that issue, it was considered that it would in fact be more appropriate to cover the topic of regulation first. The reasoning was that until the relevant literature on regulation had been addressed there would not be the right contextual background for considering accreditation/qualifications. It was determined that the best order for the literature review would be; regulation, followed by SA/Q and then LTP (including disciplinary sanctions).

Regarding the review of the academic literature on regulation the RIP focused on 'professional self-regulation' - to provide the context for research into the 'professional standards' of ExecRemConsultants, together with assessing how RCG had been working since its formation in 2009/2010. In order to do this, it was considered worthwhile and instructive to explore the way in which the UK financial services sector had operated on a largely self-regulatory basis prior to Big Bang (1986), to establishing SROs (a halfway house / quasi self-regulatory position), and then moving to formal State regulation by 2000 (ie., FSA, now PRA and FCA) covering both organisations and their staff.

Also of importance was to examine how the regulation of ExecRemConsultants/CoyExecRemSpecialists might 'mesh' with the regulation of UK executive remuneration more generally. As Main observes, although the level and structure of UK executive pay is not regulated (save for financial services, in certain respects), the process by which executive remuneration is determined is highly regulated both by legislation and soft law codes/guidelines.<sup>282</sup>

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<sup>282</sup> Main et al (n 5).

In the latter sense, ExecRemConsultants are ‘regulated’ in the broader meaning of the word. For example, UKCGC stipulation (D.2.1) that ‘where remuneration consultants are appointed, they should be identified in the annual report and a statement made as to whether they have any other connection with the company’. Although it could justifiably be argued in this case the relevant statutory provision is merely repeated in slightly different form.<sup>283</sup>

Another example is IA's remuneration guideline provision (1d) ‘remuneration committees need to exercise independent judgment and not be overly reliant on their remuneration consultants’.<sup>284</sup> The ERWG's Final Report adds (Recommendation 4) that the latter:

Should apply particularly during engagements with shareholders. To ensure independent advice is maintained, remuneration committees should regularly put their remuneration advice out to tender.<sup>285</sup>

Recommendation 10 states that ‘remuneration committees and consultants should guard against the potentially inflationary impact of market data on their remuneration decisions’.<sup>286</sup> Interestingly, the ERWG Final Report puts Recommendation 10 in the context of exhorting poor practice to be ‘called out’ by RemCos and investors - in referring to reports to it (ie., ERWG) of ExecRemConsultants sending unsolicited ‘pay benchmarking’ reports to EDs indicating that they are ‘paid behind the median’.<sup>287</sup> RCG had subsequently not been able to find any named examples of this happening (and ERWG declined to divulge the source(s) of the intelligence concerned), so RCG

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<sup>283</sup> ‘The UK Corporate Governance Code 2016’, D.2.1 <<https://www.frc.org.uk/getattachment/ca7e94c4-b9a9-49e2-a824-ad76a322873c/UK-Corporate-Governance-Code-April-2016.pdf>> accessed 17 January 2019. (Now ‘UKCGC 2018’, Provision 35).

<sup>284</sup> ‘IA Remuneration Guidelines 2017’, Remuneration Policies 1(d). Now ‘IA Remuneration Guidelines 2018’, Para 2(b) <<https://www.ivis.co.uk/media/13548/Principles-of-Remuneration-2018.pdf>> accessed 17 January 2019.

<sup>285</sup> ERWG Final Report (n 279) 18.

<sup>286</sup> *ibid* 22.

<sup>287</sup> *ibid* 21.

simply amended its VCC expressly to prohibit such practices (Good Practice Guideline 16).<sup>288</sup>

Accordingly, although there is much legislation and soft law regulating the determination of executive pay (an example of the former is the 2013 Reforms, and of the latter, the UKCGC and IA Remuneration Guidelines), there is relatively little regulation regarding ExecRemConsultancy firms or ExecRemConsultants themselves (let alone CoyExecRemSpecialists). Viewed from the perspective that firms in the ExecRemConsultancy business (whether Big Four, ABC or Boutiques) are providers of knowledge-intensive business advice, this is not altogether surprising.

The situation is complicated though by the fact that the Big Four are very frequently the appointed external auditor to publicly listed companies, plus often provide the company concerned with Other Services (not RemCoAdvisory Services). Broadly analogous considerations can also apply to ABC firms, but not usually to Boutique ones (where the provision of RemCoAdvisory Services is generally their 'monoline' advisory service).

This issue is important in relation to potential COI (for example, the fees charged for 'Other Services' may completely dwarf those charged for ExecRemConsultancy/RemCoAdvisory Services.<sup>289</sup> Accordingly, any 'regulation' applying to ExecRemConsultancies/ExecRemConsultants needs to encompass not just the particular RemCoAdvisory Services provided but also pay due regard to any Other Services supplied by the advisory firm concerned (whether that firm is Big Four or ABC).

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<sup>288</sup> RCG, Good Practice Guideline 16 <<http://www.remunerationconsultantsgroup.com/?P=DOWNLOADS>> accessed

<sup>289</sup> HPC (n 48). The example given is Deloitte at Rio Tinto, 7.

This involves consideration of the type of firm providing the services and the nature of the specific advisory services concerned. Another layer of complexity is the size/business sector of the company whose RemCo is being advised by particular ExecRemConsultants. An example of this could be Labour's SVExecRemConsultants Proposals.<sup>290</sup>

A further factor is that the UK ExecRemConsultancy business is tiny by the standards of global, multi-service professional advisory firms - with a breakdown of RCG member firms showing that there are around 250 ExecRemConsultants operating in the UK - of whom just one-third (ie., about 75 ExecRemConsultants) having '9 + Years' of experience.<sup>291</sup> The latest RCG Review of Effectiveness of Code shows an 'uptick' in members completing the 'consultants of RCG member firms' questionnaire from 236 previously, to 265 – but such increase was at the intermediate level only (ie., '3 - 6 Years' of experience).<sup>292</sup>

RIP interviewees indicated that just a 'handful' of individual ExecRemConsultants are regarded by RemCoChairs/Members, and CoyExecRemSpecialists, of FTSE 100 companies as having the appropriate combination of reputation/experience/technical and personal skills to be included in RemCoAdvisory 'shortlists for appointment'.

Even when such tiny number of individual ExecRemConsultants is 'bulked-out' by adding other senior ExecRemConsultants in a particular firm's consulting team, far fewer than one-third of the 75 or so figure mentioned above could justifiably regard themselves/would be seen by others as being 'industry stars'.

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<sup>290</sup> Labour's SVExecRemConsultants Proposals (n 51).

<sup>291</sup> RCG, 'December 2015 Review of Effectiveness of Code' (n 137) Appendix B, Q1, 17 and RCG, 'December 2016 Review of Effectiveness of Code', Appendix A, Q1, 11 <<http://www.remunerationconsultantsgroup.com/?P=DOWNLOADS>> accessed 14 June 2019.

<sup>292</sup> RCG, 'December 2018 Review of Effectiveness of Code', Appendix B, Q2, 11 <<http://www.remunerationconsultantsgroup.com/?P=DOWNLOADS>> accessed 14 June 2019.

This has important implications in reviewing the relevant academic literature on 'regulation'. Another feature to consider is the situation in the UK where almost all the ExecRemConsultant 'stars'/Practice Leaders possess professional qualifications (eg., as Actuary, CA or Lawyer) or hold higher degrees (eg., MBAs or PhDs). Although there is no in depth specialised ExecRemConsultancy accreditation (at the firm or individual level) nor discrete qualification (ie., neither SA/Q nor LTP), the current 'stars'/Practice Leaders generally have a professional advisory background (or MBA) and/or have held senior HR/Executive Reward roles (ie., have been CoyExecRemSpecialists before becoming ExecRemConsultants). It is worth mentioning that the internal and external advisory roles are somewhat fungible, with considerable interchange of positions over the course of careers.

In summary, the context for examining ExecRemConsultancy and ExecRemConsultants in terms of 'regulation', and the relevant academic literature, is that the ExecRemConsultancy business is arguably a 'competitive oligopoly' of a few ExecRemConsultancy firms, employing a very small number of highly-qualified individuals who provide their services at BOD level (with RemCo effectively selecting an individual ExecRemConsultant to advise them, just as much or more than the ExecRemConsultancy firm that employs that particular ExecRemConsultant).

Such ExecRemConsultants are personally 'regulated' already by their relevant professional body (eg., as CA, CTA, Actuary or Lawyer), plus covered by their employing firm's code of business conduct and the specific terms of business/engagement agreed with the RemCo concerned. Additionally, their employing firm will be a member of RCG, and signed up to its VCC - subject to the potential sanction of expulsion of the firm from RCG if a serious lapse occurs.<sup>293</sup>

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<sup>293</sup> RCG's 'Articles of Association', Article 17(5)(i) <<http://www.remunerationconsultantsgroup.com/?P=DOWNLOADS>> accessed 14 June 2019.

The financial services sector is of interest regarding 'regulation' in respect of two aspects in particular. The first is the way in which UK financial services regulation has operated since Big Bang in 1986 - with the previous very largely self-regulatory regime becoming 'State-sponsored' self-regulation via the SROs and subsequently being replaced by State regulation in 2000, in the form of FSA (subsequently, FCA in 2012). Second, regarding the regulation of remuneration in the UK financial services sector - which, since GFC, has become far more prescriptive (even in respect of package structure, with 'deferrals', 'malus/clawback' of incentives and the introduction of 'EU bonus cap' provisions) than in relation to UK executive pay regulation generally for premium listed companies.

One can detect, even in Kay writing in 1988,<sup>294</sup> and Baggott a year later,<sup>295</sup> a thread of suspicion that financial services self-regulation in the form of SROs was not going to be the end result. Indeed, it quickly became clear that the SROs were 'trainer-wheels' regulation, as it were.

Certain SRO aspects, such as the way in which an independent judicial figure determined allegations of misconduct, survived in recognisable form into FSA (and now FCA) regime. Others, such as having five SROs (which soon became three) each with their own rule book (which was alleged to encourage 'regulatory arbitrage'), were being seriously questioned by the early to mid-1990s (with the Maxwell scandal and pensions mis-selling).

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<sup>294</sup> John Kay, 'The Forms of Regulation' in Arthur Seldon (ed), *Financial Regulation – or Over-Regulation* (London Institute of Economic Affairs) 33-42.

<sup>295</sup> Rob Baggott (1989), 'Regulatory Reform in Britain: The Changing Face of Self-Regulation' (1989) 67(4) Public Administration 435-454.

Ogus in 1995,<sup>296</sup> and Black a year later,<sup>297</sup> explored the way in which the UK financial services self-regulatory regime was working and its inherent limitations, whereas Llewellyn writing in the FSA's First Occasional Paper (1995) discussed that the economic rationale underlying financial regulation was the FSA being established as a State-sponsored regulator.<sup>298</sup>

Having said this, IOSCO's SRO Consultative Committee (in 2000) was firmly 'pro-SRO' (but this was largely in a different context from the UK SROs established in 1986).<sup>299</sup> The State-sponsored FSA approach was questioned by Baldwin in 2004,<sup>300</sup> together with Bartle & Vass in 2007,<sup>301</sup> plus Black in 2008 (as the GFC developed).<sup>302</sup> With the onset of GFC, criticism of principles-based regulation and, indeed, self-regulation itself, grew apace (see Dignam writing in 2007,<sup>303</sup> Buiter in 2008<sup>304</sup> and Omarova<sup>305</sup> in 2011 - the latter provides a US perspective). The present UK financial services regulatory architecture, with PRA/FCA shows a far more rules-based regime than previously applied, and is very different from that in place immediately after Big Bang.

Similar dramatic change can be seen in UK financial services remuneration regulation, which itself overlays very considerable amendments to the general UK executive remuneration regulation regime. The provisions of PRA/FCA Remuneration Codes focus very much on the reduction of risk, and in that

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<sup>296</sup> Anthony Ogus, 'Rethinking Self-Regulation' (1998) 15(1) Oxford Journal of Legal Studies 97-108.

<sup>297</sup> Julia Black, 'Constitutionalising Self-Regulation' (1996) 59(1) Modern Law Review 211-225.

<sup>298</sup> David Llewellyn, 'The Economic Rationale for Financial Regulation' (1999) FCA Occasional Paper Series 1.

<sup>299</sup> IOSCO, 'Model For Effective Self-Regulation' Report of the SRO Consultative Committee of International Organisation of Securities Commissioners (May 2000).

<sup>300</sup> Robert Baldwin, 'The New Punitive Regulation' (2004) 67(3) Modern Law Review 351-383.

<sup>301</sup> Ian Bartle & Peter Vass, 'Self-Regulation and the Regulatory State – A Survey of Policy and Practice' (2007) CRI Research Report 17.

<sup>302</sup> Julia Black, 'Forms and Paradoxes of Principles-Based Regulation' (2008) LSE Law Society and Economy Working Paper 13/2008 <<http://www.lse.ac.uk/law/working-paper-series/2007-08/WPS2008-13-Black.pdf>> accessed 25 June 2019.

<sup>303</sup> Alan Dignam, 'Capturing Corporate Governance: The End of the UK Self-Regulating System' (2007) Journal of Disclosure and Governance, Palgrave Journals.

<sup>304</sup> William Buiter, 'Self-Regulation Means No Regulation' <Blogs.FT.com/maverecom/2008/04/self-hyphen-regulation-means-no-regulation/7kax22129TSAraw6> accessed 23 May 2016.

<sup>305</sup> Saule Omarova (2011), 'Wall Street as a Community of Fate. Towards Financial Industry Self-Regulation' (2011) 159 University of Pennsylvania Law Review 411.

regard may well have been successful, but as pointed out by Kleymenova - 'while regulation [eg., UK Remuneration Code and EU bonus cap] may have had the desired effect in terms of risk-taking it may also have given rise to some unintended costs (ie., higher CEO turnover)'.<sup>306</sup>

It is interesting to note though that certain measures introduced for the financial services sector in particular, have now found their way into mainstream premium listed companies - such as 'malus/clawback' and longer deferral/vesting periods for incentives.

The regulation of UK executive remuneration generally has been a 25 year plus process of statutory provision (eg., the 2002, 2008 and 2013 disclosure regulations, together with the Companies Act 2006 and ERRA 2013), plus UKLA rules and soft law guidelines (eg., UKCGC, IA Remuneration Guidelines and GC100 and Investor Group Guide), which underpin the 'comply or explain' regime. The determination of executive remuneration is now a highly regulated process, with an annual advisory shareholder vote on the implementation aspect of Directors' remuneration and a triennial binding vote on remuneration policy for Directors. Additionally, the identity of ExecRemConsultancy firm(s) appointed to provide RemCoAdvisory Services is disclosed (together with the fees charged for such advice) and the nature of any Other Services provided to the company concerned by the appointed firm(s).<sup>307</sup>

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<sup>306</sup> Anya Kleymanova & Irem Tuna, 'Regulation of Compensation and Systemic Risk: Evidence From the UK' (2016) Chicago Booth Research paper No 16-07, 3 <<https://papers.ssm.com/2013/papers.cfm?abstractid=2755621>> accessed 10 May 2017.

<sup>307</sup> 2013 Reforms (n 78).

However, the fees charged in respect of such Other Services do not have to be disclosed to shareholders - unlike in the US, where if in the fiscal year concerned Other Services fees exceed USD120,000 then not only are such fees disclosable but also the fees charged for advising the CompCo (whereas disclosure is not mandated if ExecCompConsultancy advice provided to CompCo is the only advice provided to the company concerned by a particular ExecCompConsultancy).<sup>308</sup>

It has been argued that the introduction of the relevant US provisions in 2009 was the determining factor in some of the US ABC firms spinning-out many of their senior ExecCompConsultants into new Boutique entities (to supplement already existing Boutiques, such as PM and FC). Although there are frequent calls for the UK to introduce mandatory fee disclosure for Other Services (for example, ShareSoc and PIRC),<sup>309,310</sup> and in fact provisions to this effect featured in the draft 2013 Reforms<sup>311</sup> and, indeed, in ERWG Interim Report<sup>312</sup> – but they were not carried through to the respective final versions.

The difference between the applicable US and UK disclosure provisions remains stark. There is no shortage of calls for this to change, in favour of ‘synchronizing’ the position in favour of the US approach – eg., Gupta et al (2016) stating: ‘strong governance justification for disclosing monetary rewards to consultants’ [for Other Services] and ‘as firms are not required to disclose the fees paid to remuneration consultants for other services it is difficult to gauge the consultants’ independence’.<sup>313</sup>

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<sup>308</sup> Amended Item 407 (e) 3 of SEC Regulation S-K: 16 December 2009 Adopted Final Rules, SEC Release No. 33-9809.

<sup>309</sup> ShareSoc, *Written evidence submitted by ShareSoc to HC BEIS Select Committee on Corporate Governance* (GV0021, 1 November 2016). See (n 2) for access details.

<sup>310</sup> PIRC, *Written evidence submitted by PIRC to HC BEIS Select Committee on Corporate Governance* (CGB0154, 1 December 2016 and CGV0169 14 December 2016). See (n 2) for access details.

<sup>311</sup> BIS *Directors’ Pay Consultation* (n 103).

<sup>312</sup> ERWG Interim Report (n 104).

<sup>313</sup> Aditi Gupta, Jenny Chu & Xing Ge, ‘Form Over Substance? An Investigation of Recent Remuneration Disclosure Changes in the UK’ (2016) <<https://ssrn.com/abstract=2798001>> accessed 9 February 2017.

This argument is the same as HPC's (2015) finding that 'cross-selling firms' in aggregate charge 84% of the fees in its FTSE 100 sample, whereas the five Boutique ones charge just 13%,<sup>314</sup> and that more than half of the RemCos concerned used an external audit firm (obviously not their appointed external auditor though) to provide RemCoAdvisory Services.<sup>315</sup>

The point being made is that, as originally raised in Waxman,<sup>316</sup> COI arising from 'cross-selling', and the consequent SEC regulations, led to a wholesale re-ordering of the US ExecComConsulting business - with Boutique firms now holding the overwhelming majority of CompCoAdvisory appointments. Chu et al (2015) posed the question why fee disclosure to shareholders for Other Services is not made mandatory in the UK.<sup>317</sup>

Accordingly, the majority of US publicly listed companies avoid disclosing to shareholders the fees paid to their ExecCompConsultants, because their CompCos are advised by Boutique firms, and such firms do not provide Other Services. Therefore, disclosure to shareholders of these is not a relevant issue. The UK on the other hand, has disclosure to shareholders of the fees charged by ExecRemConsultants appointed to provide RemCoAdvisory Services but not in respect of any Other Services provided (only broad details of such Other Services need to be disclosed to shareholders). Another area where the US and UK differ is that the UK operates voluntary self-regulation of ExecRemConsultancy firms (and, only indirectly, ExecRemConsultants who work for such firms), whereas the US does not.

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<sup>314</sup> HPC (n 48) 14.

<sup>315</sup> *ibid.*

<sup>316</sup> Waxman (n 109).

<sup>317</sup> Chu et al (n 119).

HC TC's *Ninth Report* noted the 'upward ratcheting of pay for senior executives in the banking sector' and 'potential conflicts of interest where the same consultancy is advising the company management and a remuneration committee'.<sup>318</sup>

Peter Montagnon<sup>319</sup> (then at ABI) had argued that a Code of Ethics for ExecRemConsultants was necessary. TC found this proposition 'attractive' and urged Sir David Walker to look at this in his ongoing Review.<sup>320</sup> TC stated:

Given the important role these consultants play and the inherent contradictions in their business model between seeking to supply independent advice while having a vested interest in creating more complexity in change, we believe that there should be a Code of Ethics.<sup>321</sup>

This Code of Ethics, according to TC, should cover how to manage COI, a 'prohibition on working both for NEDs and management', together with a 'commitment to responsible marketing and using benchmarks with integrity'.<sup>322</sup>

The *Walker Review Interim Consultation* showed that Sir David had indeed taken up the challenge, suggesting the establishment of a Remuneration Consultants Group (ie., RCG - member firms being ExecRemConsultancy firms, rather than individual ExecRemConsultants), with a VCC and a degree of independent supervision.<sup>323</sup>

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<sup>318</sup> HC TC (n 254) 105.

<sup>319</sup> Peter Montagnon, Oral evidence to Treasury Committee (HC 2012-13, 72-I) <<https://publications.parliament.uk/pa/cm201213/cmselect/cmtreasy/uc72i/uc72i.htm>> accessed 15 February 2018.

<sup>320</sup> HC TC (n 254).

<sup>321</sup> *ibid* 32, 33.

<sup>322</sup> *ibid* 33.

<sup>323</sup> HM Treasury, *A review of corporate governance in UK Banks and Other Financial Industry Entities (Walker Review Interim Consultation*, 16 July 2009) <[http://www.hm-treasury.gov.uk/walker\\_review\\_information.htm](http://www.hm-treasury.gov.uk/walker_review_information.htm)> accessed 17 January 2019.

A process of discussion between the ExecRemConsultancy organisations resulted in a more worked-up approach appearing in the *Walker Review Final Recommendations*.<sup>324</sup> It referred to 'access to external advice has effectively become essential at any rate for a FTSE 100 remuneration committee'.<sup>325</sup> There was 'increased reliance' on ExecRemConsultants, but questions regarding the quality and independence of their advice. *Walker Review Final Recommendations* stated:

One ingredient of the much-needed restoration of quality in remuneration processes will be the greater confidence in the integrity and professionalism of remuneration consultants, integrity of the advisory process, professional capability and competence of the advisor, total clarity as to the nature of the remit of the advisor and the identity of the client within the firm.<sup>326</sup>

Additionally, *Walker Review Final Recommendations* stated that 'professional standards' would be monitored by 'an independent chairman and other independent review committee members'.<sup>327</sup> It concluded 'the development of a remuneration consultancy code (...) is a significant step for a hitherto unregulated profession (...) this is a very welcome development'.<sup>328</sup>

*Walker Review Final Recommendations*' 'Best Practice Standards for Remuneration Consultancy' resulted in the first regulatory provisions on how ExecRemConsultancy firms (and by implication, their ExecRemConsultants) should behave. It underlined the important role played by ExecRemConsultants in the pay determination process - even though some would argue about the reasons given for Sir David's conclusions regarding ExecRemConsultancy/ExecRemConsultants (it repeated Myners's 'insidious

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<sup>324</sup> A Review of Corporate Governance in UK Banks and Other Financial Entities (*Walker Review Final Recommendations*, 9 November 2009) <<http://webarchive.nationalarchives.gov.uk>> and at <<http://www.hm-treasury.gov.uk/walkerreviewinformation.htm>> accessed 17 January 2019.

<sup>325</sup> *ibid* 123.

<sup>326</sup> *ibid* 124.

<sup>327</sup> *ibid* 121.

<sup>328</sup> *ibid* 125.

influence of benefit consultants’).<sup>329</sup> The result of the establishment of RCG is that a self-regulatory regime has operated for 10 years.

This can be contrasted against the chorus of demand - in admittedly a different context - for consideration to be given to the Big Four being ‘broken-up’ – with press articles by Harris, Marriage, the *Financial Times*’s Lex Column and a Leader Editorial in *The Times* just in the period 20 June to 31 July 2018.<sup>330, 331, 332, 333, 334</sup> A typical criticism of the Big Four, as expressed in *The Times*<sup>335</sup> is that ‘the Big Four do too much’ and Harris’s ‘if splitting the Big Four is unpalatable their non-audit activities should be limited to services that are either closely related to or incidental to auditing’ (which would presumably exclude the provision of RemCoAdvisory Services).<sup>336</sup>

Although, even in 2012, UKSA was arguing ‘there should be little or no role for remuneration consultants, they have a clear incentive to maximise executive pay’,<sup>337</sup> and that some industry participants still press for the (re)appointment of ExecRemConsultants by the RemCo to be subject to annual shareholder approval (in the same manner as a company’s external auditor). This demonstrates considerable stability in the UK scene - and, arguably, a certain faith in the concept of self-regulation as currently applicable to ExecRemConsultancy.

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<sup>329</sup> *ibid* 123.

<sup>330</sup> Steven Harris, ‘Watchdogs need to remind auditors of their proper role’ *Financial Times* (London, 4 July 2018).

<sup>331</sup> Madison Marriage, ‘Watchdog holds talks with big auditing firms’ *Financial Times* (London, 3 July 2018).

<sup>332</sup> Madison Marriage, ‘The Big Flaw: Auditing in Crisis’ *Financial Times* (London, 31 July 2018).

<sup>333</sup> Financial Times Lex, ‘KPMG: death wish’ *Financial Times* (London, 21/22 July 2018).

<sup>334</sup> The Times Leader Editorial, ‘Hold to Account’ *The Times* (London, 4 July 2018).

<sup>335</sup> *ibid*.

<sup>336</sup> Harris (n 330).

<sup>337</sup> BIS, *Executive Remuneration Discussion Paper 2012: Summary of Responses* (UKSA’s response, January 2012) <<https://www.gov.uk/government/publications/executive-remuneration-discussion-paper-summary-of-responses>> accessed 21 January 2019.

Having said this, according to Black's definition of a 'regulated profession' as being one where professional regulation falls under State oversight,<sup>338</sup> the establishment and ongoing operation of RCG does not make ExecRemConsultancy a regulated profession. On the basis of Scott & Black's taxonomy of 'self-regulation' (ie., 'sanctioned', 'mandated', 'coerced' and 'voluntary'),<sup>339</sup> RCG would appear to be situated between the latter two categories.

RCG was 'coerced' in the sense that its inception arose from the *Walker Review* (and the implicit threat of formal State regulation if ExecRemConsultancy firms did not take up the *Walker Review Interim Consultation's* exhortation to set up a body such as RCG) and 'voluntary' in Scott & Black's sense that 'the State neither encouraged or facilitated it'<sup>340</sup> - unless one takes the view that HC TC's comments regarding a Code of Ethics for ExecRemConsultants as being 'an attractive proposition' or, indeed, the fact that *Walker Review* itself was set up by the State/Government, amounts to such encouragement or facilitation. Anyway, it could well be argued though that the introduction of RCG was not an entirely spontaneous form of 'self-government'.

RCG is not subject to oversight or supervision. Indeed, FRC could have sought such control/influence over RCG in 2009 /2010 - but would appear to have decided that the CA and Actuary professions should be the only ones its activities should cover.

RCG asserts firmly that it 'is not a trade body'. Equally, RCG is not a formal State-sponsored/encouraged 'regulator' - but it has certain aspects in common with the latter, such as the power to expel members (ie., ExecRemConsultancy firms) if such members (or their ExecRemConsultants)

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<sup>338</sup> Black (n 297).

<sup>339</sup> Colin Scott & Julia Black, *Cranston's Consumers and the Law* (3<sup>rd</sup> edn, Butterworths 2000).

<sup>340</sup> *ibid.*

'have failed to meet the standards which (...) it is reasonable to expect of a member'.<sup>341</sup>

Scott & Black make the point that 'trade associations promote the interests of members, whereas regulators impose requirements upon members'.<sup>342</sup> Their four tests for 'effective self-regulation' can be posed as a 'standard' against which RCG might be measured : (i) sufficient incentive for potential members to join, (ii) minimise tendencies to dilute standards, (iii) system of effective sanctions, and (iv) separate disciplinary body. It could be argued that RCG satisfies the first two of these, rather better than the latter ones. Although all the 'serious players' in the UK ExecRemConsultancy sector are RCG members (so (i) and (ii) above are addressed), the system of sanctions (ie., (iii)) is something of an 'all or nothing situation'. There is not the graduated approach (ie., warnings, fines, temporary suspension and expulsion) seen in the State-sponsored regulated profession regime (which is not altogether surprising as individual ExecRemConsultants are only indirectly covered by RCG - any 'expulsion' will affect simply a member ExecRemConsultancy firm).

Additionally, in respect of (iv) above, RCG has only a nascent separate disciplinary body. The articles of association provide for at least one-half of its maximum of seven Directors to be present when an 'expulsion resolution' is being considered (ie., four Directors).<sup>343</sup> Accordingly, in theory the four RCG Directors who are not independent (RCG has an independent Chair and two independent Directors) could decide on whether to expel an RCG member firm.

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<sup>341</sup> RCG (n 293).

<sup>342</sup> Scott & Black (n 339).

<sup>343</sup> RCG (n 293).

This clearly does not meet the Scott & Black test of a 'separate disciplinary body', but one needs to bear in mind that *Walker Review* promoted an element of independent review/involvement - and RCG as currently constituted actually reflects this.

Scott & Black accept that their four tests can rarely be satisfied by what they call a 'sectoral regulator'. Also, 'professional regulation' itself is seen as a form of 'consumer protection', with a clear distinction being drawn between customers/clients, who are sophisticated enough to make informed decisions, and members of the public at large - who may not be.

Accordingly, medicine and the law fall into the latter camp, whereas any imbalance of power/lack of ability to evaluate competence is likely to be far less applicable in a 'business-to-business' situation. Having said this, certain of the latter relationships, such as external auditor, are subject to the full panoply of State supervision/oversight of the activities of 'regulated professions'. Presumably this is because of the perceived harm that could result from problems arising.

A professional regulatory body will have Scott & Black's complete set of 'regulation and certification, code of ethics or conduct, public register of practitioners, and independent body to investigate complaints and discipline members'. In a sense, 'monopoly powers' are granted in return for ensuring public protection/confidence. The governing/regulatory body is sanctioned by law to govern or regulate the profession concerned. This is the situation in respect of medicine and the law, as 'real' professions, as opposed to 'self-declared' ones.

As mentioned above, it was considered that the RIP had the potential to add to Adamson et al's, and Bender & Franco-Santos's, research regarding RCG - for two reasons in particular. The first is that as a 'veteran'

ExecRemConsultant, the author had been a long-term participant in/held a 'ringside seat' on the development and ongoing operation of UK ExecRemConsultancy and, second, his RIP interviewees were not limited simply to ExecRemConsultants. Views were sought from a far broader constituency in the UK executive remuneration determination process.

Adamson et al state:

The formation of the RCG creates certain hierarchies in the field of executive pay setting by giving member participants a certain status - that of legitimate members of the community of advisors and executive pay. The RCG and the Code do so by clarifying to the outside world the ways and standards by which they operate and create a visible (although not necessarily fully-functioning) structure of self-regulation.<sup>344</sup>

The RIP examined the extent to which a broader constituency of industry protagonists would support this view. It was suspected that such support might well be forthcoming, but it was considered to be a worthwhile exercise to conduct a series of research interviews with a more complete population of those involved (eg., RemCoChairs/Members, CoyExecRemSpecialists and institutional shareholder bodies).

Similar considerations applied in respect of Bender & Franco-Santos's research, as with Adamson et al - they interviewed solely ExecRemConsultants. It is submitted that the Bender & Franco-Santos research helpfully supplements Bender's earlier qualitative work on ExecRemConsultants/ExecRemConsultancy, but it is particularly interesting in that the most recent paper also covers CoyExecRemSpecialists. Its treatment of RCG is not as comprehensive however, as Adamson et al's.

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<sup>344</sup> Adamson et al (n 42) 32.

This may be due in part to two matters. Firstly, Bender & Franco-Santos's research interviews may have been carried out earlier than Adamson et al's (even though the latter research was published two years before the former). Secondly, Adamson et al's work was focused very much on the 'professional project' of ExecRemConsultancy (viewed from an 'institutional work perspective'), whereas Bender & Franco-Santos's research examined the far broader topic of factors influencing ExecRemConsultants' advice (covering subjects such as RemCos, CEOs, and CoyExecRemSpecialists).

Accordingly, the RIP included detailed open questions to interviewees regarding RCG (and how it is working in practice). To put the RIP into appropriate context though, the development of UK self-regulatory organisations during the past 30 years was reviewed (ie., a similar timeframe to that of the development of the UK RemCo pay determination regime).

Thomas (1986) sees regulation as a means of achieving goals, shaping conduct, controlling behaviour with a machinery to enforce rules.<sup>345</sup> However, a starting point is to ask why particular regulation is needed in a particular situation:

What is the mischief we need to deal with? What standards do we need to raise? What policy objective are we pursuing? What public good do we seek? What do we want rules to achieve?<sup>346</sup>

In other words, one should only intervene in markets if regulation is required/justified - and in appropriate cases, those whose behaviour is to be regulated/governed can be the best constituency to involve in the process of developing rules and enforcing them.

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<sup>345</sup> Richard Thomas (Clifford Chance), writing in the draft National Consumer Council Paper, 'Self-regulation of Business and the Professions' (1986), acknowledged and referred to in National Consumer Council, *Models of Self-regulation: An overview of models in business and the professions* (2<sup>nd</sup> edn, National Consumer Council 2000) 2.

<sup>346</sup> *ibid.*

Different types of self-regulation may be best in fitting particular circumstances. Thomas's work was acknowledged by the National Consumer Council (2000) in its 'eight types of self-regulatory arrangements', ranging from 'unilateral codes of conduct' ('customer charters'), through 'trade association codes approved by the OFT' to 'official codes and guidance' and then formal 'legal codes'.

The NCC model notes that the voluntary self-imposed collective code concept is nearly extinct, whereas codes negotiated or at least discussed either 'formally or informally' between an industry body on the one hand and Government and consumer organisations on the other, were more common. In other words, industries discussed/consult on possible codes with the 'outside world'.<sup>347</sup>

Bartle & Vass see a continuum ranging from 'no regulation', through to 'self-regulation' (where regulations are specified, administered and enforced by the regulated organisation) to 'co-regulation' (where the State and regulated organisation combine efforts) and finally 'statutory regulation' (where regulations are specified, administered and enforced by the State).<sup>348</sup>

Lester, on the other hand, examined the development of self-regulation in four of what he calls 'professional communities' or 'smaller UK professions' (eg., landscape gardening and architectural conservation).<sup>349</sup> The examination of 'professions' that have limited membership has some relevance to RCG, the number of ExecRemConsultancy RCG members is just 11 and was only 13 at the outset of the RIP, plus ExecRemConsultants belonging to ExecRemConsultancy firms in RCG number approximately 250 – including a very significant proportion of 'analyst/junior consultants'. However, the nature

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<sup>347</sup> Ibid.

<sup>348</sup> Bartle & Vass (n 301) 1.

<sup>349</sup> Stan Lester, 'Association and Self-Regulation in Smaller UK Professions' (2014) Project 2015-17 <<http://devmts.org.uk/professions.htm>> accessed 8 November 2015.

of the businesses examined by Lester is really very different from ExecRemConsultancy.

The effect of GFC on the self-regulatory organisation concept has been significant. RCG itself arose from a post-GFC examination of financial services and its remuneration arrangements, and although some still maintain pre-GFC optimism regarding self-regulation (eg., Asby et al's pre-GFC conclusions and DeCovny's post-GFC ones)<sup>350,351</sup> these refer to self-regulation situations where the State has taken an oversight/control position (eg., in relation to Asby et al, advertising standards, and in respect of DeCovny, US financial services self-regulatory agencies (eg., FINRA)).

Additionally, even in respect of self-regulation situations where the State has control/oversight, for example, external auditors, one does not have to look hard to find criticism - eg., Mitchell et al's regarding the UK accountancy profession.<sup>352</sup>

Regarding the financial services sector, it is submitted that Buiters's strong concerns over self-regulation,<sup>353</sup> and Dignam's views on the end of the UK self-regulating system,<sup>354</sup> represent something of a high water mark of negative comments made at the height of GFC, and are completely understandable in that context, but should not be taken as being applicable across the board to all UK industry sectors/self-regulated organisations.

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<sup>350</sup> Simon Ashby, Swee-Hoon Chuala & Robert Hoffman, 'Industry Self-Regulation: A Game-Theoretic Typology of Strategic Voluntary Compliance' (2004) 11(1) *International Journal of the Economics of Business* 91-106.

<sup>351</sup> Sherree DeCovny, 'The Future of Self-Regulatory Organisations', *CFA Institute Magazine* (May/June 2014) <<https://www.cfapubs.org/doi/pdf/10.2469/cfm.v25.A3.18>> accessed 12 February 2019.

<sup>352</sup> Mitchell et al (n 264).

<sup>353</sup> Buiters (n 304)

<sup>354</sup> Dignam (n 303).

There may be situations where a particular industry sector may be too new, small and/or not involved in producing goods and services that directly impact on a potentially unsophisticated public, to merit the full application of State-sponsored review/oversight.

In an RCG context, the RIP was designed to examine whether the interviewees considered that the RCG falls into such category or, alternatively, that the importance of ExecRemConsultants in the UK executive remuneration determination process (and the significance of 'high executive pay' in social cohesion terms), warrants the activities of ExecRemConsultancy and ExecRemConsultants being brought under State oversight/control.

The comparative merits of whether self-regulation is appropriate for ExecRemConsultancy/ExecRemConsultants can be considered in the context mentioned already (ie., the importance in UK pay determination and/or that of 'high executive pay'), but another factor is the actual 'professional standards' of ExecRemConsultants, their technical competency and behaviour in ethical terms.

Adamson et al, together with Bender & Franco-Santos, note the heterogeneity of career/professional backgrounds of ExecRemConsultants, and the tendency for them to be somewhat 'anchored' at the individual level in their original professional qualification(s) - if they had one (eg., 'I'm still an accountant, I still pay my dues (...) I suppose it's a bit of my identity').<sup>355</sup> However, Adamson et al note that:

Those ExecRemConsultants with non-professional backgrounds and backgrounds in less-established professions, such as HR, were more eager to associate themselves with the new industry.<sup>356</sup>

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<sup>355</sup> Adamson et al (n 42) 32.

<sup>356</sup> *ibid* 27.

The RIP explored whether the interviewees considered it would be appropriate for there to be a SA/Q for ExecRemConsultants, plus their views on the comparative merits or otherwise of the provision of ExecRemConsulting/RemCoAdvisory Services becoming a LTP profession.

It was anticipated that, these aspects would be fruitful ones for the proposed RIP. Firstly, due to the fact that the relevant academic literature hardly covers the issues at all. For example, Bender & Franco-Santos state that ‘of all the consultants interviewed, only one had actually intended to become an executive pay consultant, and had tailored his career choices to this end’. They then note that ExecRemConsultancy had not existed when the ‘older generation’ of ExecRemConsultants had started and that they had ‘entered the profession from a variety of other disciplines’.

However, Bender & Franco-Santos do not discuss whether an ExecRemConsultant SA/Q and/or LTP might be appropriate. Adamson et al emphasised ExecRemConsultants’ internal tensions of identity creation and reluctance for further professionalism and that ExecRemConsultancies’ collective work of reaffirming their identity (eg., RCG) may be therefore better understood as part of the work of creation and maintenance of the institution of executive pay-setting practices.<sup>357</sup> In other words, Adamson et al focus on the way ExecRemConsultants see themselves in their work and in the context of the part they play in the executive remuneration determination process, rather than exploring whether the introduction of a SA/Q and/or a LTP might be appropriate.

This may be, of course, because Adamson et al detected no appetite/desire for such provisions on the part of their ExecRemConsultant interviewee population. The argument may run that as most ExecRemConsultants already have a professional qualification (defined for such purposes as CA,

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<sup>357</sup> *ibid* 13.

CTA, Actuary, CFA or Lawyer, for example), they do not see the need to acquire another one - and that they (and their employing firms, if Big Four or ABC) are 'regulated' by the professional body(ies) they already belong to - so do not need a LTP/disciplinary sanctions. Alternatively, ExecRemConsultants may consider as being sufficient the existence of RCG, employing firms' internal codes of business conduct and engagement terms agreed with the RemCos they advise.

Those ExecRemConsultants who do not possess a professional qualification may simply not feel the need to have one, let alone a specific ExecRemConsultancy/RemCoAdvisory SA/Q. In either case (ie., whether ExecRemConsultants have an existing professional qualification or not) they may consider their work to be more akin to management consultancy/business or strategy consulting advice, as opposed to that of one of the 'new professions' (eg., CA or Actuary) or even a traditional 'liberal profession' such as law.

These are all issues that the RIP was designed to investigate with the interviewee cohort (who were a far broader population than simply ExecRemConsultants). For example, whether such broader population would express the desire for ExecRemConsultants to possess a SA/Q and/or LTP.

It was particularly relevant to examine what RemCoChairs/Members, institutional shareholder bodies and regulators, thought of the matter, plus whether CoyExecRemSpecialists saw any value/necessity in ExecRemConsultants having such SA/Q and/or LTP, and also in respect of CoyExecRemSpecialists themselves. It might be, for example, that CoyExecRemSpecialists who do not already possess a 'professional' qualification would express the view that it would be helpful to have one (whether a 'new profession' qualification or a specific ExecRemConsultancy one).

Given the ‘fungibility’ of ExecRemConsultants and CoyExecRemSpecialists, there might be the same syllabus or, alternatively, a ‘core curriculum’ with specific ExecRemConsultant and CoyExecRemSpecialist modules (rather like the WorldatWork accreditations discussed below).

Another variant might be that whereas ExecRemConsultants could operate on a specific LTP basis (with disciplinary sanctions), CoyExecRemSpecialists might operate in like manner or, alternatively, be subject to the CIPD disciplinary regime (which is not LTP in nature, but provides for reprimands, temporary suspension and individual member expulsion for infractions of relevant CIPD Codes).

The RIP questions on the key issues concerned, were designed with a view to eliciting interviewees' views on such issues. With regard to the taxonomy of ‘liberal profession’ (ie., law for present purposes, but otherwise law, medicine and the clergy), ‘new professions’ (ie., CA, CTA, Actuary - what Adamson et al call ‘new, knowledge-intensive professional occupations’) and ‘business/strategy advisors’ (eg., management consultancy, and strategy advisors – eg., Bain, Boston Consulting and McKinsey), RIP interviewees were asked for their assessment of where ExecRemConsultancy/ExecRemConsultants were placed on this continuum. Additionally, also covered in the RIP was the way that ‘liberal professions’ and ‘new professions’ operated their respective LTP regimes (plus other LTP professions, such as teaching).<sup>358,359</sup>

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<sup>358</sup> Department for Education, Eligibility for Teacher Training, Qualified Teacher Status (with or without Post-Graduate Certificate of Education). Application through Education Training Foundation for the QTLS licence to practise in the sector <<https://getintoteaching.education.gov.uk/eligibility-for-teacher-training>> accessed 23 January 2019.

<sup>359</sup> The Teaching Regulation Agency operates professional conduct panels to hear allegations of serious misconduct (The Teachers' (England) Disciplinary Regulations 2012, No. 560). This is applicable to teachers in schools, 6<sup>th</sup> form colleges, childrens' homes and youth accommodation.

The RIP questions also included the SA/Q and LTP matters referred to already, with a twofold objective in this regard. First, to address the previously mentioned ‘lacunae’ in the existing academic literature. Secondly, as with other aspects of this research, to explore the potential for improvements in current UK practice.

By way of providing context for this research, the following were examined (i) the accreditations offered by WorldatWork,<sup>360</sup> (ii) the CIPD Advanced Awards and Diplomas (Level 7),<sup>361</sup> (iii) the ICSA's Certificate in Employee Share Plans,<sup>362</sup> and (iv) the newly-introduced Chartered Manager Qualification (ChMC-Level 7), together with its Diploma in Strategic Management and Leadership (Level 8 - ie., Doctorate level).<sup>363</sup>

The issues of SA/Q and LTP (including disciplinary sanctions) are all clearly connected with those of self-regulation (whether State sponsored or in a ‘purer’ form) and ‘professionalism’. Taking the legal profession as an example, Abel (2003),<sup>364</sup> Moorhead (2001 & 2014)<sup>365</sup> and Webley (2015)<sup>366</sup> expressed criticisms (to varying degrees) of professionalism and self-regulation.

Abel states that ‘the justification that professional self-regulation ensures quality and competence is backed by little empirical evidence (and, indeed, some evidence to the contrary)’.<sup>367</sup> The point is made by Moorhead that ‘specialisation, rather than professional affiliation, appears to be the key to

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<sup>360</sup>WorldatWork, ‘Certification’ <<https://www.worldatwork.org/certification/>> accessed 9 February 2018.

<sup>361</sup>CIPD ‘Qualifications’ <<https://www.cipd.co.uk>> accessed 9 February 2018. For Government’s categorisation of ‘Levels’, see (n 385).

<sup>362</sup>ICSA: The Governance Institute, ‘Certificate in Employee Share Plans’ <<https://www.icsa.org.uk/professional-development/study/certificate-in-employee-share-plans>> accessed February 9 2018.

<sup>363</sup>CMI, Chartered Manager Qualifications <[www.managers.org.uk/education-provides/higher-education-partners/products-and-services/chartered-manager](http://www.managers.org.uk/education-provides/higher-education-partners/products-and-services/chartered-manager)> accessed 9 February 2018.

<sup>364</sup>Richard Abel, *English Lawyers Between Market and State: The Politics of Professionalism* (OUP 2004).

<sup>365</sup>Richard Moorhead, ‘Third Way Regulation? Community Legal Partnerships’ (2001) 64(4) *Modern Law Review* 543-562.

<sup>366</sup>Webley (n 237) 2358.

<sup>367</sup>Richard Abel, *The Legal Profession in England and Wales* (Blackwell 1988).

quality'.<sup>368</sup> The argument is that Lawyers can sometimes behave more like 'hired guns' and less as Officers of the Court. Moorhead et al in 2014 also looked at the ethics of in-house Lawyers and studied the ethical capacities of new advocates.<sup>369</sup>

Webley poses the challenge of 'further entrepreneurialism in the legal services market while regulating services to provide a measure of consumer protection'.<sup>370</sup> There are a number of issues to unpick here. One is that law is a traditional, liberal profession with practitioner duties both to clients and also to the Court. Second, law is similar to medicine (another traditional, liberal profession) where there is a strong need for public protection. Lawyers, and medical practitioners, can cause serious public harm as well as doing great good.

Third, both Lawyers and medical practitioners are subject to State regulation and oversight (such oversight being via authority delegated by the State). Fourth, these are classic LTP professions, with disciplinary sanctions available (via independent bodies). Law and medicine arguably represent the apogee of regulatory control and oversight (save for certain nuclear and pharmaceutical regulations - see below).

The 'new professions' also contain elements of this but in diluted form. For example, CA, CTA and Actuary are all LTP professions, with independent disciplinary bodies. However, there is very arguably less risk of serious public harm than in the case of law or medicine.

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<sup>368</sup> Richard Moorhead, 'Precarious Professionalism – Some Empirical and Behavioural Perspectives of Lawyers' (2014) HLS Program on the Legal Profession Research Paper No 2014-17  
<<https://papers.ssm.com/5013/papers.cfm?abstractid=2407370>> accessed 9 February 2018.

<sup>369</sup> Richard Moorhead, Steven Vaughan & Cristina Godinho, 'Mapping the Moral Compass' (2016)  
<<https://www.legalfutures.co.uk/latest-news/shedding-some-in-house-layers-find-ethics-under-pressure>> accessed 16 February 2018.

<sup>370</sup> Webley (n 237).

It is worth mentioning too that other LTP professions, such as teaching, have an independent disciplinary body. There are also occasional calls for other professions/occupations to become LTP ones; for example, Purchasing & Supply (to protect the public from food chain contamination practices)<sup>371</sup> - and certain other occupations do require regulation and accreditation (eg., gas fitters). Some industries (eg., nuclear, chemical and pharmaceutical) are subject to very strict regulation - for obvious public protection reasons.

Turning to the management consultancy/business or strategy consultant end of the continuum, it would appear that ChMC status (with Level 7 standard, or even Level 8 with the Doctoral level course - 'suited for C-Suite senior managers'),<sup>372</sup> is not a LTP profession. However, there will be an independent disciplinary body (or at least a body comprised as to a majority by independent members).

This shows a clear 'professionalisation path'. Having said this, ChMC status would appear similar to CIPD in that an adverse CIPD Disciplinary Panel finding can entail a warning, suspension or expulsion but it is not necessary/essential to be a CIPD member to work in the HR field.

What all the above professional occupations have in common is that they are on an individual membership basis. If one were to consider this in ExecRemConsultancy/RCG terms, the individual ExecRemConsultants would be members of RCG, as opposed currently to the ExecRemConsultancy firm concerned being the RCG member.

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<sup>371</sup>Chartered Institute of Purchasing & Supply, 'The Chartered Institute of Purchasing & Supply Calls for a Professional Licence to Practise to Avert Future Crisis and Protect the Public' (CIPS, 14 October 2016) <<https://www.cips.org/en-GB/who-we-are/news/the-chartered-institute-of-purchasing-supply-calls-for-a-professional-licence-to-practise-to-avert-future-crises-and-protect-the-public/>> accessed 7 December 2017.

<sup>372</sup> Chartered Manager (n 363).

It was concluded that in both academic literature and also UK practice contexts, there has not been given extensive consideration to whether it might be appropriate for ExecRemConsultancy/RemCoAdvisory Services to have a SA/Q (on a voluntary or even mandatory basis) and/or whether it should become a LTP profession.

It could be maintained that the reason these issues have not previously come to the fore is that ExecRemConsultancy is far too small a professional service/occupation to warrant having a formal professional body for individual ExecRemConsultants, with examinations and the award of qualifications. Traditional arguments might be that ExecRemConsulting is in essence the provision of business advice to a highly sophisticated business clientele, that mainstream management consultancy is not a LTP service/profession, and that the operation of the market applies to ExecRemConsultancy and ExecRemConsultants.

As regards the latter, it is straightforward for a RemCo to dispense with the services of an ExecRemConsultancy/ExecRemConsultant if it considers this is appropriate for one reason or another and so the availability of disciplinary sanctions is not strictly required. Additionally, the vast majority of 'star'/Practice Leader ExecRemConsultants are in any event already members of a LTP profession.

It was considered important though to explore the issues involved, in order to determine whether this thesis' hypothesis was supported (or otherwise). For example, if it were shown that changes to hard and soft law regulation/guidelines/codes in respect of ExecRemConsultants (including whether ExecRemConsultants should have a SA/Q and/or operate on a LTP basis) were unwarranted, there would be consequential benefits in terms of supplementing the current academic literature and indeed for UK practice itself.

For example, there might come a time when future events dictate a change in practice. A Government of a particular political persuasion might take the view that ExecRemConsultancy/ExecRemConsultants should be more highly regulated. Hendry refers to the ‘wicked problem’ of executive compensation and suggests that solving this may require political intervention rather than leaving remuneration industry participants to employ ‘best practice’ solutions.<sup>373</sup>

Political parties may hold widely-differing views. For example, there were Labour’s SVExecRemConsultants Proposals. The subsequent Conservative – Liberal Democrat Coalition decided in 2013 not to introduce SABV; however, the current Conservative Government put this back on the agenda at the start of CGI but then subsequently withdrew it.

Accordingly, the RIP questions for interviewees were designed with the objective of examining/exploring the matters discussed above. Chapter 3, following, covers ‘Research Methods’.

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<sup>373</sup> Stephen Perkins, ‘The “Wicked” Problem of Regulating Executive Remuneration’ (*Global Policy Institute*, 28 July 2017) <[www.gplondon.com/publications/wicked/problem-of-regulating-executive-remuneration](http://www.gplondon.com/publications/wicked/problem-of-regulating-executive-remuneration)> accessed 28 September 2017.

## **CHAPTER 3**

### **3. RESEARCH METHODS**

#### **3.1. Overview**

This Chapter 3 builds on the discussion in Chapter 2 of the process by which potential research topics were considered and the subject and title of this thesis were determined, by describing the chosen research methodology (ie., qualitative, semi-structured 'elite interviews'), together with how the 53 RIP interviews were actually conducted (ie., digital recordings that were subsequently coded, analysed and compiled into RIP findings). Included in this Chapter 3 are details of how potential RIP interviewees were selected, canvassed and recruited, plus the relevant documentation involved and the attendant timelines.

The objective throughout is to provide sufficient detail for readers of this thesis (or any who might be minded to replicate the RIP in due course) to follow the entire RIP from its inception through to its conclusion.

#### **3.2. Review of Potential Research Topics**

The 2014 dissertation written as part of the IALS ICGFREL LLM course covered aspects of executive pay regulation. It was concluded that although the results of UK executive remuneration regulation had been very beneficial overall (ie., the benefits did indeed justify the obligations imposed), particular UK corporate governance failures regarding executive pay had arisen/continued due to the applicable regulatory regime and other factors.

Despite very considerable progress (since the 1992 *Cadbury Report* and subsequently)<sup>374</sup> on accountability and transparency in particular, much remained to be done regarding, for example, the pay-performance linkage, 'rewards for failure', the need for a longer-term time horizon and LTI design generally. The dissertation contained the BSI recommendations for further improvements to UK practice

These BSI could well ground a textbook on UK (and, indeed, international) executive pay regulation/practice. For the purpose of choosing a subject for PhD Study however, the fourth BSI aspect was selected (ie., RemCos` appointed ExecRemConsultants and in-house CoyExecRemSpecialists). The rationale in this regard was that politicians, press, media and institutional shareholders tend to focus on the 'outputs' (eg., Directors' pay figures subsequently disclosed) from the pay determination process, rather than the 'inputs' (ie., the processes and factors contributing to the determination process itself). This is hardly surprising, as what happens in RemCo meetings is something of a 'black box' to outsiders.<sup>375</sup>

Previous researchers in the area make frequent reference to their very real difficulties both in persuading 'elite interviewees' to agree to be interviewed, and also actually following through in completing their scheduled interviews.<sup>376</sup> However, for the reasons mentioned previously, it was considered that the RIP would attract participation of interviewees and potentially make a significant contribution on both the academic and UK practice fronts. The key focus throughout was obviously on the former; but the RIP was designed to identify potential aspects for further improvements in UK RemCoAdvisory practice.

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<sup>374</sup> *Cadbury Report* (n 16). *Cadbury Report* was followed three years later by *The Greenbury Report* of a Study Group Chaired by Sir Richard Greenbury, which focused on executive pay and was published by the Confederation of British Industry.

<sup>375</sup> Main et al (n 5) 6. Refers to how 'several authors have attempted to look inside the "black box" of the executive remuneration process'. Perkins & Hendry make a similar 'black box' comment (n 125) 1.

<sup>376</sup> Ndzi (n 99).

It was decided that it would be best for the RIP to have a far narrower field of research than would have been the case if it covered all the BSI. Focusing on just one of these would give the best chance of the research being sufficiently focused and academically rigorous to yield really worthwhile results. Accordingly, it was determined that the RIP would cover the ‘professional standards’ of ExecRemConsultants appointed to advise RemCos, and their CoyExecRemSpecialist counterparts.

Although it would have been perfectly possible to focus on ExecRemConsultants alone, it was decided that to do so would be a missed opportunity. Firstly, because the prospective interviewees would include ExecRemConsultants and also CoyExecRemSpecialists, as both parties work with RemCos. Second, the external and in-house roles, despite their separate (but complementary) nature, are somewhat fungible in that it is common for mid-level ExecRemConsultants (and, sometimes, senior ones) to ‘go in-house’, temporarily or permanently, in their career, and vice versa. So there is considerable commonality in the challenges faced, together with the professional/ethical skills and experience required.

### **3.3. Selection of Thesis Title**

By February 2016, the rather ‘iterative’ process of determining the research topic and formulating an appropriate thesis title had been completed. It was considered worthwhile and practicable to examine the five RITG aspects set out in Chapter 2.4 above.

Although certain facets of the above had been reviewed/researched previously (whether in the UK or elsewhere), the author considered that using the particular advantages he felt he could bring to the table, coupled with the fact that the ‘input’ aspect (as opposed to the result or ‘output’ one) was

considerably under-researched, meant that this promised to be a worthwhile research area from the academic perspective and also UK practice.

Indeed, regarding the latter, Theresa May's views on corporate governance expressed when she formed her Conservative Government in July 2016 (and the subsequent CGI) reinforced the view that UK companies were about to face not just continued 'populist pressure' but also regulatory change.

The timing of the RIP was of considerable importance. The process of formulating the RIP started in late in 2015, with the detailed subsequent timeline set out below. The UK 'executive pay scene' was in some turmoil even before Theresa May entered office (eg., the 2016 AGM Season had seen the BP and Weir controversies).<sup>377,378</sup>

The process accelerated once the new Prime Minister announced in July 2016 that she would launch a CGI (following the BHS and Sports Direct debacles),<sup>379</sup> through the remainder of 2016 (when the RIP was being conducted) when a BEIS written submission process was ongoing, with oral evidence also being taken by BEIS Select Committee, and further consultation was ongoing regarding the *Green Paper* published by the Government.<sup>380</sup> The fact that executive pay was so much in the headlines/front of mind probably assisted in the RIP securing 53 completed 'elite interviews'.

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<sup>377</sup> Kiran Stacey, Ed Crooks & Stephen Foley, 'BP revives investor fury on executive pay' *Financial Times* (London, 14 April 2016).

<sup>378</sup> Greig Cameron & Robin Pagnamenta, 'Weir controversy 2016: Weir Group pay deal rejected by investors' *The Times* (London, 29 April 2016).

<sup>379</sup> Sarah Gordon, David Oakley & Jim Pickard, 'Business resists May's plans for "responsible capitalism"' *Financial Times* (London, 30 September 2016). This article shows how Theresa May's corporate governance proposals ran into headwinds from the outset in 2016.

<sup>380</sup> *Green Paper* (n 71).

### **3.4. RIP Development**

The thesis' title had been selected by February 2016. The next stage was to decide how best to conduct the research into the matters covered by the title. It was concluded that a programme of qualitative semi-structured 'elite interviews' (that capitalised on the author's 'practitioner perspective' and his rather unique potential for securing RIP interviewees) was the most promising way to proceed. The reasoning was that a qualitative methodology had the best chance of yielding worthwhile results. The alternatives of a quantitative approach, or a mixed quantitative/qualitative one, seemed far less attractive. The former because, as has been pointed out in the academic literature, quantitative research exercises usually focus on RemCo 'outputs', and have been by far the most popular/numerous, whereas qualitative studies on ExecRemConsultants appointed to advise RemCos have been far fewer in number.

A factor weighed in the scales was that quantitative research would have entailed analytical measurement, and assessment, of matters that were fundamentally based on human interaction and behaviour in a Boardroom context. All in all, a purely qualitative approach seemed to be by far the best route to select.

Once it had been determined that a qualitative approach would be used, the next stage was to formulate the RPP for the consideration and approval of SAS REC. The RPP was submitted in March 2016, describing the population of prospective interviewees, in terms of 'job roles', such as ExecRemConsultants appointed to advise RemCos, CoyExecRemSpecialists and ROOs. At that stage, the specific names of prospective interviewees were not identified, merely the respective 'job role' categories into which they fell.

The documentation submitted to SAS REC included drafts of the following documentation:

- RIP1 (see Appendix 4) – Letter of Invitation to prospective interviewees to take part in the RIP, enclosing the Research Interview Invitation Pack ('RIInviPack'), and
- RIInviPack (see Appendix 5), comprising: biographical details, SAS Code of Practice in Research, Research Ethics Policies and IICF.

The aim regarding the ethics review process was to ensure that SAS REC had before it the objectives of the proposed RIP, how it was going to be carried out and the likely output/deliverables from the exercise. Of particular concern was to demonstrate to SAS REC that preserving confidentiality was a key consideration – in terms of not identifying the respective names of interviewees, their employing organisations nor, indeed, anyone/or organisation referred to in the interviews, and also providing details of how the interviews would be digitally recorded, transcribed and written-up in a confidential manner.

It was decided to use the services of a professional UK-based transcription firm and professional typists to assist on certain stages in the process. After a selection programme, EQTSL were retained for the former task and VOSG for the latter - complemented by support typing/administrative services being provided by dedicated typists/assistants during the latter stages of writing-up and finally submitting this thesis.

Another consideration was to undertake to SAS REC that the relevant data would be destroyed once the RIP, and subsequent writing of this thesis, had been concluded (subject to retaining confidentially certain data that might be of value in further work in due course).

### 3.5. Invitation to Interview Process

SAS REC approved the RPP in April 2016. The job roles submitted to SAS REC were then reviewed, with a view to identifying prospective interviewees. In terms of identifying ExecRemConsultants appointed to advise RemCos, the chosen approach was to review all RCG member firms (13 in 2014, but 12 by April 2016)<sup>381</sup> and then to collate information on the most senior of their respective Heads of Practice/‘lead’ or ‘star’ ExecRemConsultants - usually, ‘Head of Executive Remuneration/Reward’ and their next most senior report(s).

The author knew well all the major member firms of RCG, together with their most senior consultants. He collated the names of some RemCoChairs/Members he had known in his ExecRemConsulting career, whom he had found from past experience had been willing to participate in research interviews. He repeated this process with CoyExecRemSpecialists and certain City Lawyers.

A list of ROOs was also compiled. It was decided to complement the list of ExecRemConsultants appointed to advise RemCos by including four senior ExecCompConsultants advising US CompCos. The aim was to garner the perspectives of some really senior US ExecCompConsultants on the issues concerned (in a US context, advising US CompCos, as opposed to UK RemCos).

Also decided was that it would be appropriate to contact RCG to ascertain whether its Chairman, or one of its two independent Directors, would be prepared to participate. There was not too much optimism though that such

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<sup>381</sup> RCG, ‘December 2014 Review of Effectiveness of Code’ 4  
<<http://www.remunerationconsultantsgroup.com/?P=DOWNLOADS>> accessed 14 June 2019. Note that the number of RCG members has now fallen to 11. See ‘December 2018 Review of Effectiveness of Code’ 4. See (n 292).

participation would be forthcoming, due to the extremely 'low profile' adopted by RCG.

Overall the aim was to avoid sending out so many invitations that the likely number of interviews held in due course would exceed about 50 to 55. This was the maximum number it was considered could be managed in terms of time commitment devoted to conducting and analysing the interviews. A good 'spread' of interviewees between the various 'job roles' was needed. In the paradigm scenario, the interviewee population would comprise 20 - 25 ExecRemConsultants, 10 - 15 CoyExecRemSpecialists, 5 - 10 RemCoChairs/Members, 4 City Lawyers and 5 - 8 ROOs. The actual RIP outcome was set out in Chapter 2.4 above.

It was determined that RIP1 letters would be sent out in two 'waves' (the second 'wave' used slightly revised documentation, to reflect minor revisions in SAS REC protocols), so that an assessment could be made on an ongoing basis concerning progress in securing agreement to participate in the overall RIP. The first wave of RIP1 letters was sent out in late April 2016 (50 invitations) and the second wave (9 invitations) in June 2016. The vast majority of the RIP1 letters and RInviPacks were sent out by post, but a few were dispatched by e-mail.

The results were highly gratifying in that 56 of the 59 invitees indicated that they would be prepared to participate, including 'lead' ExecRemConsultants from all but two RCG member firms (one of the latter did initially indicate agreement to participate, but left the RCG member firm concerned soon after). Participation was explicitly offered in all cases on a totally confidential basis. Although some interviewees indicated that they would be happy to be quoted by name, it was determined that the subject matter was so sensitive it would be safest not to attribute comments to any of the interviewees.

The eventual 'tally' was that 53 RIP interviews were conducted – most interviews lasted for just over an hour, with the shortest being 45 minutes and the longest 90 minutes (see below for details of the three 'dropouts'). Given the difficulties reported by other researchers in securing participation (and converting such into completed interviews in due course), it was considered that the chosen methodology secured a strong result. This demonstrated the advantages of combining the route of approaching all RCG member firms (ie., the whole available 'universe') with a parallel track of approaching ExecRemConsultants, RemCoChairs/Members, City Lawyers and CoyExecRemSpecialists.

It might be argued that the interviewees were merely a group selected because it was considered likely that they would participate/hold particular views. However, it is submitted that the chosen approach was the best way effectively to secure 'elite interviewee' participation and to achieve completed interviews. Absolute best endeavours were made to be entirely neutral and objective in the process of capturing interviewees' particular views (being well aware of the danger of 'confirmation bias').

It would not be claimed – save in respect of the cohort of ExecRemConsultant and ROO interviewees - that the particular selection of interviewees is completely representative of all the views 'out there' on the issues examined in the RIP. It is submitted however, that the process adopted to identify and secure the participation of RIP interviewees was sufficiently robust and objective to enable the interviewees' comments to be of real interest and value for academic purposes and for UK ExecRemConsultancy/RemCoAdvisory practice.

### **3.6. Research Interview Process (1): Confirming Interviewee Participation and Arranging Interviews**

By early July 2016 it was clear that there were sufficient 'confirmed acceptances' to ensure that the RIP was viable in terms both of the number of interviewees and also the range of 'job roles'. There had been just a handful of 'decliners/non-responders'. As anticipated, RCG's Chairman fell into that category (in both his capacity as Chairman of RCG and also in a personal one), which in light of RCG's general approach of 'keeping below the radar', caused neither surprise nor disappointment.

The Secretary to RCG was kind enough to suggest writing to one of the two independent Directors of RCG to invite participation in their personal capacity. Accordingly, an invitation was subsequently issued to one of RCG's independent Directors. That individual generously agreed to participate, but subsequently resigned from RCG - so the interview was not actually carried out.

In July 2016 RIP2 was prepared for confirmed RIP1 participants, together with a RIInfoPack. The latter comprised RIC, RITG, RITGST and RICBQ. For ease of accessibility for any researcher who may wish to replicate the RIP, a complete set of the RIP2 and RIInfoPack is set out in documentation in Appendices 6 and 7, respectively.

The objective was to convert the interviewees' 'confirmed acceptances' into committed agreement on actual dates, times and venues for interview. This was achieved via the RIC, which enabled interviewees to give their preferences in this regard. The interviewer offered to conduct all interviews in person, with a visit by him to interviewees' respective office premises (or elsewhere, if an interviewee preferred).

Given the 'elite' status of the interviewees, it was concluded that offering to conduct the interviews at interviewees' respective offices would be appropriate. In fact, eight of the interviews took place at IALS (in a dedicated 'interview room'), two at other locations and eight via Skype/telephone conference calls.

The interviewees were advised that as well as a contemporaneous manuscript note being compiled, all interviews would be digitally recorded and then transcribed for their review (unless they preferred the interviewer simply to take a contemporaneous manuscript note and prepare a typed note of interview for their review). A significant number of 'confirmed interviewees' immediately returned their completed and signed IICF at the same time as they notified their willingness to participate, whereas others were 'tracked down' subsequently at the RIP2 stage (or even later).

Chapter 2.4 above referred to the five RITG aspects (see Chapter 4 and Appendix 7.2 for specific wording of the RITG). In fact, as will be seen, each RITG topic was divided in turn into a number of open questions. The aim throughout was to prompt discussion without in any way leading interviewees to particular views. 'Woven' into the discussion were five supplementary questions (namely, RITGSTs) – see Chapter 4 and Appendix 7.2 for the specific wording of the RITGSTs - ensuring that the same issues were addressed by all the interviewees concerned. The rationale for covering these RITGST aspects was that it brought the subject matter for discussion right up to date (ie., the CGI) and was of key relevance to interviewees' then ongoing RemCo discussions. It also served to prompt interviewees to discuss broader contextual matters, such as how they saw the current UK 'executive pay scene' more generally.

The five RITGSTs were:

- RITGST1: Seeking interviewees' views on Labour's SVExecRemConsultants Proposals,
- RITGST2 – 4: Seeking views on Theresa May's proposed corporate governance reforms; namely, SABV, PRD and WOB, and
- RITGST5: DSOtherServicesFees - Seeking views on the comparative merits of the UK introducing regulations stipulating annual disclosure to shareholders of the fees charged by ExecRemConsultants not only (as now) in respect of advising the RemCo but also those charged by the appointed provider of RemCoAdvisory Services in the circumstances where that consulting firm also provides the client company concerned with 'Other Services' (whether pay-related or otherwise).

The objective in including RITGST5 was to find out from interviewees whether they considered the UK should follow the US model (where fees charged for such 'Other Services, and separately for CompCoAdvisory Services, are disclosable to shareholders, if in a particular fiscal year the former exceed USD120,000 in aggregate), and if this were to happen what the likely impact on UK ExecRemConsultancy services would be, given that in the US it was a major contributory factor in the ABC firms spinning-off key parts of their CompCoAdvisory Services into unconnected 'monoserviceline' Boutiques (where fee disclosure does not have to be made to shareholders). These now (together with pre-existing Boutiques) dominate the US market for such services.

Again, care was taken not to lead the interviewees in any particular direction – allowing ample opportunity for them, for example, to explain why in their view US corporate governance/company law had led to a particular approach/conclusion. The interviewer was also careful not to ‘nudge’ interviewees to any particular conclusions regarding why the UK had in recent years already come close on two occasions to proposing a very broadly analogous approach to the US (ie., at the draft stage of the 2013 Reforms<sup>382</sup> and in the ERWG Interim Report in 2016),<sup>383</sup> but had drawn back from taking the matter further.

The RIP2 also included the RICBQ. The latter’s purpose was to collect information from ExecRemConsultants (and ExecCompConsultants, in US) and their CoyExecRemSpecialist counterparts, on the level of academic attainment (eg., graduate or postgraduate), professional qualifications (eg., CA, Actuary, Lawyer, CTA, CPA or CIPD) and, adopting RCG’s approach in its December 2015 Review of Effectiveness of Code,<sup>384</sup> on the number of years of executive remuneration experience (split between, effectively, junior, mid-level and senior – the latter being ‘9 + Years’) for themselves, and also that of their ‘team’.

The objective with the RICBQ was to obtain a profile of interviewees and their respective teams’ details in this respect – with a view to informing discussion on professional and ethical standards/accreditation/LTP regime etc. It was most gratifying to see just how committed interviewees were, not only in completing, signing and returning IICFs, but also using their best endeavours to do the same with the RICBQ and, indeed, with the RICs.

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<sup>382</sup> Draft 2013 Reforms (n 103).

<sup>383</sup> ERWG Interim Report (n 104).

<sup>384</sup> RCG, ‘December 2015 Review of Effectiveness of Code’, Appendix B, Q1 (n 137) 17.

### **3.7. Research Interview Process (2): Scheduling and Conducting Interviews**

Throughout July and August 2016 a steady stream of completed RIP2 documentation was returned by prospective RIP interviewees. All replies were logged, and followed up with the few non-responders. The RIC process of actually agreeing/confirming interview dates/times/venues was extremely 'iterative', due to the interviewer having to resolve clashes between his diary and those of the various interviewees. The interviewer planned from the outset to schedule not more than one interview on any particular day, but eventually found that in a number of cases there was no choice but to schedule two interviews on certain days.

The plan was to complete the research interviews between late August and mid-December 2016. By conducting the interview programme within a four-month timeframe, it was felt that the 'time window' for interviewees' comments/views would be broadly contemporaneous. This was of particular relevance as many of the interviewees were already involved in the lead-up to the 2017 AGM Season (where the original 2014 'batch' of binding remuneration policy resolutions were due for their triennial review), plus the *Green Paper* and ongoing CGI.

Throughout the process of initially identifying prospective interviewees to be invited to participate (March and April 2016), through to sending out invitations (RIP1 and RIIP, late April and mid-June 2016), confirming acceptances and sending the RIP2 (July 2016), scheduling interviews (July to September 2016) and actually conducting the interviews (August to December 2016), various 'logs/schedules' were compiled (and updated regularly as details came in/were changed). These included:

- RIPMS – the Research Interview Programme Master Schedule containing each interviewee’s name, employing firm, business address, e-mail address and telephone number, together with the relevant ascribed confidential identification code number and the date documentation had been dispatched and received back, and
- RIPIRL – the RIP Interview Responses Log containing the respective name/status of IICF and RIP2 documentation – ie., whether completed and returned, together with interview date/time/venue preferences and status of these – ie., whether outstanding/agreed/changed.

It will be appreciated that updating/revising RIPMS and RIPIRL data was an ongoing process, keeping track of the RIC aspects and, indeed, assessing progress against the overall RIP. It was found that, even when an interview date/time/venue had been agreed and confirmed with interviewees, there were very frequent changes required to the schedule - mostly due to interviewees having short notice supervening work commitments.

Every attempt was made to meet interviewees’ requests – in some cases moving the relevant dates three or four times. This inevitably led to severe ‘diary compression’, which was solved in part by interviewees’ robust commitment to ensuring that they would deliver on their agreement to participate. Of the 56 initially confirmed acceptances, just three became ‘dropouts’. Two of these were due to confirmed interviewees leaving their employing organisation, whereas the other confirmed interviewee could not find a suitable diary date prior to the end of the interview programme.

Additionally, it proved impracticable to record every interview digitally – due, for example, to a meeting/interview room not always being available, or the relevant equipment not working satisfactorily (particularly during telephone interviews). The eventual ‘tally’ was that 47 of the 53 completed interviews were recorded and subsequently transcribed, and the balance were the subject of notes of interview (contemporaneous manuscript notes were compiled of all 53 interviews – save for one, where the interview was limited only to questions on RITG3:SQ1, and the contemporaneous manuscript note for that interview was compiled immediately after the interview concerned was completed). The digitally recorded interviews were uploaded in ‘batches’ of approximately ten and e-mailed to EQTSL for transcription. These were filed electronically and in hardcopy form.

### **3.8. Research Interview Process (3): Post-interview Actions**

During mid-December 2016 to mid-January 2017 the draft transcripts were reviewed, and also the typed notes of interview (particularly where digital recordings had not been made), in order to confirm that these were suitable for forwarding to interviewees in draft form – so that the interviewees could confirm that they were comfortable with the contents. Again, ‘progress logs’ were compiled of the process of reviewing draft transcripts/interview notes. In late January 2017 an e-mail/letter (RIP3 - see Appendix 8) was sent to interviewees accompanied by the respective draft transcript/interview note for interviewees’ review and agreement.

It was confirmed to RIP interviewees that absolute confidentiality in terms of interviewee names/employing firms would be maintained at all stages, and if they had in fact named individuals/companies in their interviews these would not be mentioned in this thesis. Interviewees were invited to amend/delete parts of their respective draft transcripts/notes of meeting, but made the point that overall it would be best if the interviewees trusted the interviewer’s

discretion, rather than making copious amendments or deletions/sending back 'tracked changes' versions. Interviewees were also advised that in due course they would be provided with the SRIF (see Appendix 2) or similar document, so that they could see - on a strictly 'no names' basis - the key comments/views of all the interviewees.

Two further 'logs' were also compiled, in order to track the post-interview process - namely:

- RPIML1 - Research Post-Interview Master Log 1: Containing respective interviewees' ascribed reference number, digital recording number, respective dates of interview and when the transcript had been reviewed – with similar details where typed notes of interview had been prepared – plus the date when these were dispatched to interviewees for their review, and
- RPIML2 - Research Post-Interview Master Log 2: Containing the respective dates when the compiled/extracted manuscript and views of the interviewees from the draft transcripts and notes of interview, together with the respective dates when the digital recording of these had been uploaded and e-mailed to EQTSL, plus when the latter had returned these for further review/amendment, in order for the SRIF to be compiled.

It will be appreciated that in the same way as updating/revising RIPMS and RIPIRL was an ongoing/'iterative' process, the same considerations applied to RPIML1 and RPIML2 – careful notes needed to be kept on the respective relevant stages particular interviewees had reached in the RIP, including any amendments they may have suggested pursuant to their review of draft interview transcripts.

The interviewees overwhelmingly complied with the six-week 'deadline' for responses on the draft transcripts/typed notes of interview. These, together with the proposed amendments/deletions, were logged for action in due course – to be incorporated into the transcripts of interview prepared by EQTSL and the draft typed notes of the interview (as applicable). Accordingly, by late March 2017 the final version of the interviewees' selected and extracted views/comments was available for incorporation, respectively, into the SRIF and Chapter 4 Findings.

For the purposes of this thesis (including SRIF), one of six 'job roles' was ascribed to each interviewee; namely, ExecRemConsultant, ExecCompConsultant, NED (ie., RemCoChair/Member), CoyExecRemSpecialist, City Lawyer or ROO. A particular interviewee though might have held more than one of these 'job roles' in the course of their long career. For example, an interviewee might have started as a CoyExecRemSpecialist and then become an ExecRemConsultant and subsequently a RemCoChair/Member.

More commonly, an interviewee may have spent the initial part of their career as an ExecRemConsultant and then become a CoyExecRemSpecialist. There was also a particular interviewee who was an ED, rather than CoyExecRemSpecialist – however, that particular individual had very considerable in-house executive remuneration experience. This interviewee was ascribed the 'job role' of 'CoyExecRemSpecialist', rather than creating an additional 'job role' category for that interviewee alone.

As regards ROOs, it was decided that the best way to protect interviewee anonymity would be to put the interviewees concerned into the broad 'job role' category of 'ROO' rather than creating 'sub-job roles' covering for example, 'Regulator', 'Institutional Shareholder Representative Body' or 'Proxy Advisory Organisation'.

Having said this, the 'job role' ascribed to particular interviewees in the overwhelming majority of cases actually refers to their current (or latest position). In summary, although any reader of this thesis can place absolute reliance on the 'job roles' ascribed to particular interviewees as being the most recent position actually held, it does not mean that the interviewee concerned has not at an earlier time filled one or even two other 'job roles' during the course of their career. The 53 interviewees can be split into the following 'job roles': ExecRemConsultants (19), ExecCompConsultants (4), NEDs (6), CoyExecRemSpecialists (12), City Lawyers (4) and ROOs (8).

Once much of this thesis had been written, and provisional conclusions formulated, a series of six 'Flying Test-Bed' meetings were conducted with selected RIP interviewees between April and July 2018. The objective was to seek their views on the provisional conclusions.

Notes were compiled during/immediately after each meeting, and certain consequential revisions were made to the provisional conclusions. The meetings were conducted on a one-to-one basis with, respectively, two ExecRemConsultants, two CoyExecRemSpecialists, a ROO and a RemCoMember.

## CHAPTER 4

### 4. FINDINGS

#### 4.1. Overview

Chapter 4 contains findings from two sources; namely, (1) the results from the completed RICBQ responses supplied by various RIP interviewees (ExecRemConsultants, CoyExecRemSpecialists and City Lawyers), and (2) the views expressed by the 53 RIP interviewees. The former is covered first in this Chapter 4, followed by the latter.

RICBQ focuses on the level of academic attainment (eg., bachelors, masters or doctorate – based on the Government’s ‘What Different Qualification Levels Mean: Compare Qualification Levels’),<sup>385</sup> professional qualifications (eg., CIPD, CFA, CA, CTA or Lawyer) and years of experience in executive remuneration, for each responder concerned and also for their ‘team’ (using the same ‘years of experience’ categories as RCG).<sup>386</sup> There were 31 completed RICBQ responses (12 ExecRemConsultants, three ExecCompConsultants, eight CoyExecRemSpecialists, two RemCoChairs/Members, three City Lawyers and three representatives of ROOs).

Regarding the views of RIP interviewees - although the key findings are contained in this Chapter 4, the SRIF (see Appendix 2) is a more comprehensive compilation of the interviewees’ remarks. It was anticipated that RIP interviewees (and readers of this thesis more generally) would

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<sup>385</sup> HM Government, ‘What Different Qualification Levels Mean: Compare Qualification Levels’ (*gov.uk*) <<https://www.gov.uk/what-different-qualification-levels-mean>> accessed 5 December 2018.

<sup>386</sup> RCG, ‘The Biennial Review of the Code of Conduct and the Annual Review of its Effectiveness and Implementation’ Appendix 1, 7. <[http://www.remunerationconsultantsgroup.com/assets/Docs/2017%20The%20Biennial%20Review%20of%20the%20Code%20of%20Conduct%20and%20the%20annual%20Review%20of%20its%20Effectiveness%20\(Final\).pdf](http://www.remunerationconsultantsgroup.com/assets/Docs/2017%20The%20Biennial%20Review%20of%20the%20Code%20of%20Conduct%20and%20the%20annual%20Review%20of%20its%20Effectiveness%20(Final).pdf)> accessed 5 December 2018.

appreciate having sight of the SRIF because, apart from obvious interest in what their fellow interviewees may have said, it covers the RITG/RITGST aspects in considerably more detail than this Chapter 4. For example, the SRIF includes interviewees' perspectives on the UK executive remuneration scene that are somewhat wider in scope than those covered by this thesis (which only addresses one of the BSI covered in the LLM dissertation).

The interviewees' key comments/remarks are addressed in respect of each of the five RITG aspects in turn (with the additional RITGST aspects referred to in Chapter 3, incorporated at relevant points). Interviewees' views were sought regarding a 'continuum' of reaction/strength of feeling on particular issues. For example, the interviewer explored interviewees' desire (or otherwise) for change regarding a particular practice and/or identifying whether interviewees considered that a specific behaviour or practice was 'more like' one named/labelled as one of these than another.

Accordingly, this Chapter 4 covers RICBQ responses, followed by interviewees' comments. Chapter 5 Discussion contains subsequent discussion of the results set out in this Chapter 4 Findings.

## **4.2. RICBQ Responses**

Although the RICBQ invited only ExecRemConsultant, ExecCompConsultant and CoyExecRemSpecialist interviewees to complete the various sections, two RemCoChairs/RemCoMembers, three City Lawyers and three ROOs submitted details. As regards the RemCoChairs/Members concerned, this is not altogether surprising in that some of the relevant individuals had been ExecRemConsultants at an earlier stage in their careers.

Thought was given to how best to present/use the completed RICBQs. For example, should the focus be simply on interviewees who were currently ExecRemConsultants or CoyExecRemSpecialists, respectively? Alternatively, should RemCoChairs/Members be included in the category of ExecRemConsultants for RICBQ analysis and discussion purposes, if their most recent post prior to becoming a RemCoChair/RemCoMember had been as an ExecRemConsultant? Another issue was how best to treat ExecCompConsultants.

The approach taken in this regard was to return to the purpose of designing and sending out the RICBQ to interviewees for completion. The objective was to capture the respective academic attainment levels, professional qualifications and years of relevant executive remuneration experience in respect of, first, ExecRemConsultants and, secondly, of CoyExecRemSpecialists. By doing this, information could be collated on what ExecRemConsultants and CoyExecRemSpecialists had in common in such respects, and also where they differed.

Given that, as mentioned previously, 'job roles' are fairly fungible (ie., ExecRemConsultants may become CoyExecRemSpecialists for a period of time, and vice versa) there were likely to be considerable similarities/aspects in common – so it would be the differences, if any, that might prove most interesting/valuable for research purposes.

Accordingly, it was decided that for the purpose of RICBQ analysis and discussion the two RemCoChairs/Members concerned would be included in the category of 'ExecRemConsultants' – both had enjoyed long careers as ExecRemConsultants before taking up their present roles. Also decided was that although due regard would be paid to RICBQ responses of ExecCompConsultants, this would only be on a 'compare and contrast' basis with their UK counterparts, rather than formally including their data within the

ExecRemConsultants' RICBQ responses. The same approach was taken with the respective RICBQ responses of the three City Lawyers and three ROOs.

An additional matter considered was whether to include in the ExecRemConsultant category for RICBQ analysis and discussion the CoyExecRemSpecialists whose most recent 'job role' prior to becoming a CoyExecRemSpecialist had been as an ExecRemConsultant. However, it was decided that it would not be appropriate to include the CoyExecRemSpecialists concerned in such manner because it would ignore the fact that such interviewees had chosen to be CoyExecRemSpecialists for their current job role - and so it would be useful to have them included in the CoyExecRemSpecialist category for comparison purposes.

For the sake of completeness, it is mentioned that none of the three City Lawyers concerned, nor three interviewees from ROOs, had been an ExecRemConsultant during their respective careers.

When considering the above-mentioned issues, it was realised that, in respect of the 22 other interviewees who had not completed RICBQ responses, the ExecRemConsultants (seven in number) and CoyExecRemSpecialists (three in number) concerned could easily be the subject of 'RICBQ response back-filling'. This was due to the interviewees concerned having provided relevant RICBQ details in their research interviews, such details already being known or these could be found out via their 'employer biographies' or a simple search of relevant databases. In this regard, such information was cross-checked from no fewer than two independent sources before being considered to be of 'usable quality'.

It was decided that, despite having the requisite degree of assurance regarding relevant 'RICBQ back-filled responses', it would not be appropriate simply to aggregate/'lump-in' the 'back-filled responses' with the actual RIBCBQ responses. Accordingly, the view was taken to provide details of the RIBCBQ responses separately – ie., the actual RIBCBQ responses without including the 'back-filled' ones and then, on a discrete basis, the 'back-filled' responses. Additionally, the data was shown on an 'aggregate basis' - so the relevant 'RICBQ data' would be shown on three bases.

Turning to the issue of 'professional qualifications', the RIBCBQ requested responders to specify any professional qualifications obtained – examples might be those awarded by various bodies - CA, Lawyer, CTA, CIPD or ICOSA (RICBQ Question 3). In respect of 'level of academic attainment', successful completion of, for example, the CIPD Advanced Diploma in Reward Management was categorised as a 'Level 7 Postgraduate Diploma' (RICBQ Question 2).

It was decided from the outset that adhering to Government's 'What Different Qualification Levels Mean: Compare Qualification Levels' taxonomy regarding 'level of academic attainment' would be appropriate because it acted as a 'levelling tool' regarding, for example, 'masters' and 'postgraduate certificate'/'postgraduate diploma'. RIP interviewees were asked simply to specify 'professional qualifications' on a 'broad church' basis, as this would facilitate such interviewees identifying/allocating their particular qualifications. Given that all interviewees who were 'CIPD qualified' entered this in the 'professional qualifications' category, and the same applied to 'CFA qualified', these were designated as 'professional qualifications' for the analysis and discussion of RIBCBQ responses.

Having said this, when seeking RIP interviewees' responses in respect of 'professional standards/qualifications', the interviewer mentioned the categorisation of three types of 'profession'; namely the 'liberal professions' of law (ie., solicitor or barrister), medicine and the clergy, the 'new professions' (eg., CA, CTA, CoySec or Actuary), and 'business advisors' such as management/strategy consultants (examples of strategy consultants are Bain and McKinsey), whether CMC certified or otherwise.

The purpose of this was to elicit from interviewees where they considered ExecRemConsultants lie on the continuum concerned, as opposed to asking, for example, where interviewees assessed particular qualifications (eg., CIPD or CFA) were positioned on the continuum. In other words, the focus was on interviewees' views on ExecRemConsultants' 'professional standards', as opposed simply to where a particular 'professional qualification' might lie on the continuum.

#### ***4.2.1. Background of Research Interviewee Population***

To provide context for the analysis and discussion of RICBQ responses (both actual and 'back-filled') of ExecRemConsultants and CoyExecRemSpecialists, set out below is relevant background information (ie., the three RICBQ aspects mentioned above) in respect of the whole population of 53 RIP interviewees. The purpose of this is to show the 'elite' nature of the interviewees concerned, and also to provide an appropriate context/perspective for readers of this thesis between the respective ExecRemConsultant and CoyExecRemSpecialist cohorts of interviewees and the overall population of RIP interviewees.

Analysis of the latter show that 50 of the 53 RIP interviewees held a bachelors degree or higher level of academic attainment (all three who did not, were ExecRemConsultants – one being CTA qualified and the other two being now

retired from long ExecRemConsultancy careers). Oxford/Cambridge University graduates ascribed Level 7 (ie., masters) to their 'Oxbridge MA'.

Thirty-five of the 53 RIP interviewees held a 'professional qualification' (defined for these purposes in line with the approach set out above) and of the balance of 18 interviewees, six held an MBA, Relevant masters or doctorate, and a further seven held a Non-Relevant masters or doctorate (for these purposes, 'Relevant' being simply defined as a STEM or financial subject, and 'Non-Relevant' as any other one). This left just five interviewees who held no professional qualification, nor at least a Relevant or Non-Relevant masters level of academic attainment, and of these five all but two held a bachelors degree or a professional qualification.

In terms of length of executive remuneration experience, just two of the 53 RIP interviewees had fewer than '9 + Years' of experience. Of the representatives of ROOs, two had '6 – 9 Years', one of the CoyExecRemSpecialists also had '6 – 9 Years' and one of the ExecRemConsultants had '0 – 3 Years'.

It will be seen therefore that the 53 RIP interviewees were overwhelmingly holders of at least a bachelors level of academic attainment with '9 + Years' of experience, and many also held a professional qualification.

#### ***4.2.2. Background of ExecRemConsultant and CoyExecRemSpecialist Research Interviewee Population***

Already described above is the approach adopted to ascribing particular RIP interviewees to specific 'job roles' solely for the purpose of RICBQ analysis and discussion. The ascribed category of CoyExecRemSpecialist included one RIP interviewee who was an ED but had considerable experience of managing executive remuneration issues in a corporate context (see Chapter

3 above for the reasoning in this regard), plus one other RIP interviewee who had at various times been an ExecRemConsultant or CoyExecRemSpecialist but had just recently become an ExecRemConsultant again after a considerable period spent as a CoyExecRemSpecialist.

This taxonomy resulted in 21 ExecRemConsultants and 12 CoyExecRemSpecialists being in the overall RIP population of 53 (four of whom were ExecCompConsultants, but not included as ExecRemConsultants nor CoyExecRemSpecialists for RICBQ analysis purposes). See Table 4.1 below for details.

**Table 4.1: ExecRemConsultant and CoyExecRemSpecialist: Interviewees' Background Details**

Respective Categories of Level of Academic Attainment / Professional Qualifications / Years of Experience	ExecRemConsultant (N=22)			CoyExecRemSpecialist (N=12)		
	RICBQ 'Actual' Responses	RICBQ 'Back-Filled' Responses	Aggregated Responses	RICBQ 'Actual' Responses	RICBQ 'Back-Filled' Responses	Aggregated Responses
<b>Research Interviewees' Highest Level of Academic Attainment</b>						
Below Level 6	2	1	3	0	0	0
Bachelors Degree (Level 6)	4	3	7	6	0	6
Non-Relevant Masters Degree or Doctorate (Levels 7 or 8, respectively)	1	0	1	2	0	2
Relevant Masters Degree or Doctorate (Levels 7 or 8, respectively)	7	4	11	1	3	4
<b>Professional Qualifications</b>						
None	6	4	10	4	1	5
Lawyer (Barrister or Solicitor)	3 <sup>1</sup>	0	3	1	1	2
Chartered Accountant or Chartered Tax Accountant	3 <sup>2</sup>	1	4	2	1	3
Actuary	0	3	3	0	1	1
CIPD	2	0	2	1	0	1
<b>Years' Experience</b>						
0-3 Years	1	0	1	0	0	0
3-6 Years	0	0	0	1	0	1
6-9 Years	0	0	0	0	0	0
9+ Years	13	8	21	7	4	11

**Notes:**

<sup>1</sup> One ExecRemConsultant who is a qualified Lawyer is also CTA qualified (recorded simply as Lawyer in Table 4.1).

<sup>2</sup> Two ExecRemConsultants who are CA and also CTA qualified (recorded once only in Table 4.1).

So far as ExecRemConsultants' 'background' is concerned, the key conclusions to be drawn from the data contained in Table 4.1 above are as follows:

- **Highest level of academic attainment.** Overwhelmingly, Level 6 or Relevant/Non-Relevant Level 7 or 8 (the three ExecRemConsultants who possessed below Level 6 as their highest attainment level were all very senior, having had over 25 years of experience in ExecRemConsultancy),
- **Professional qualification.** 10 of the 22 ExecRemConsultants did not possess a professional qualification, but seven of the former had Relevant/Non-Relevant Level 7 or 8 as their highest academic attainment level and the additional one had Level 6 - so only two ExecRemConsultants were neither professionally qualified nor below Level 6 – as their highest level of academic attainment (see Table 4.2 overleaf), and
- **Years of relevant executive remuneration experience.** 21 of the 22 ExecRemConsultants had '9 + Years' experience. Indeed, 18 out of 22 had in excess of 20 years of experience in ExecRemConsultancy.

The same analysis in respect of CoyExecRemSpecialists yielded the following:

- **Highest level of academic attainment.** Six of the 12 had Level 6 and the balance had Relevant/Non-Relevant Levels 7 or 8. None had below Level 6 (reflecting that they were overall a 'younger cohort' than the ExecRemConsultants),

- **Professional qualification.** Five of the 12 did not possess a professional qualification, but four of the former had Relevant/Non-Relevant Level 7 or Level 8 highest level of academic attainment, and
- **Years of relevant executive remuneration experience.** All but one of the CoyExecRemSpecialists had '9 + Years' of experience (indeed, nine had at least 15 years).

Turning next to Table 4.2, set out below:

**Table 4.2: ExecRemConsultant and CoyExecRemSpecialist: Interviewees' Further Background Details**

Respective Categories of Professional Qualifications / Highest Level of Academic Attainment	ExecRemConsultant (N=22)			CoyExecRemSpecialist (N=12)		
	RICBQ 'Actual' Responses	RICBQ 'Back-Filled' Responses	Aggregated Responses	RICBQ 'Actual' Responses	RICBQ 'Back-Filled' Responses	Aggregated Responses
Professionally qualified and with Relevant highest academic attainment of Masters Degree or Doctorate (Levels 7 or 8, respectively)	3	2	5	1	2	3
Professionally qualified and with Non-Relevant highest academic attainment of Masters Degree or Doctorate (Levels 7 or 8, respectively)	0	0	0	0	0	0
Professionally qualified and with Bachelors Degree as highest academic attainment (Level 6)	4	2	6	2	2	4
Professionally qualified and with below Level 6 as highest academic attainment	1	0	1	0	0	0
Not professionally qualified, but with Relevant highest academic attainment of Masters Degree or Doctorate (Levels 7 or 8, respectively)	4	2	6	0	1	1
Not professionally qualified, and with Non-Relevant highest academic attainment of Masters Degree or Doctorate (Levels 7 or 8, respectively)	1	0	1	2	0	2
Not professionally qualified, and with Bachelors Degree as highest academic attainment (Level 6)	0	1	1	2	0	2
Not professionally qualified and with below Level 7 as highest academic attainment	1	1	2	0	0	0

A similar but more 'granular' picture emerges from Table 4.2 above, with Table 4.3 overleaf setting out the summary position in respect of Tables 4.1 and 4.2 above.

**Table 4.3: ExecRemConsultant and CoyExecRemSpecialist: Interviewees' Background Details - Summary of Tables 4.1 and 4.2**

'Job Role'	Professional Qualification, plus Highest Level of Relevant Academic Attainment Level 7 or 8	Professional Qualification, but Highest Level of Relevant / Non-Relevant Academic Attainment below Level 7 or 8	No Professional Qualification but Highest Level of Relevant / Non-Relevant Academic Attainment Level 7 or 8	No Professional Qualification but Highest Level of Relevant / Non-Relevant Academic Attainment Below Level 7 or 8	9+ Years' Experience
ExecRemConsultant (N=22)	5 <sup>1</sup>	7	7	3 <sup>2</sup>	21
CoyExecRemSpecialist (N=12)	3	4	3	2 <sup>3</sup>	11

**Notes:**  
<sup>1</sup> No ExecRemConsultants in this category had professional qualifications, plus Non-Relevant level of academic attainment Levels 7 or 8.  
<sup>2</sup> One ExecRemConsultant in this category had an academic highest attainment of Level 6 and two were below Level 6.  
<sup>3</sup> Both CoyExecRemConsultants in this category had highest academic attainment of level Level 6.

It will be seen from Table 4.3 above that 12 of the 22 ExecRemConsultants had either a professional qualification plus Relevant academic attainment of Levels 7 or 8 (five ExecRemConsultants) or no professional qualification but a Relevant/Non-Relevant academic attainment of Level 7 or 8 (seven ExecRemConsultants). Six of the remainder had a professional qualification plus a highest level of Relevant/Non-Relevant academic attainment not below Level 6.

So far as CoyExecRemSpecialists are concerned, 10 of the 12 had either a professional qualification plus Relevant /Non-Relevant academic attainment of Level 7 or Level 8, or no professional qualification but had a Relevant/Non-Relevant academic attainment level of Level 7 or 8. The balance (two) had a highest Relevant/Non-Relevant academic attainment level of at least Level 6.

The respective 'backgrounds' of ExecRemConsultants and CoyExecRemSpecialists provide relevant context when reviewing the comments/remarks of the RIP interviewees. By way of further information in this regard, all the ExecRemConsultants (and the three RemCoChairs/RemCoMembers included as ExecRemConsultants for RICBQ analysis purposes) were currently (or were at some previous time) working in an RCG member firm. When the RIP was actually started, there were 12

RCG member firms (this subsequently became 11). It is interesting to see the number of RCG member firms shrinking with 'industry consolidation'.<sup>387</sup>

As mentioned already, the RIP process secured research interviews with ExecRemConsultants who worked/had worked for 10 of these 12 RCG member firms (of the remaining two firms, a representative of one was a 'confirmed RIP interviewee' but moved to another RCG member firm before the interview was actually conducted and the other did not respond to the interview invitation).

Accordingly, the RIP obtained excellent coverage of RCG member firms - with all five of the most significant, in terms of estimated annual fee income attributable to RemCoAdvisoryServices, being represented in the interviewee population (ie., Deloitte, PwC, WTW, AH and Mercer/Kepler). Indeed, in respect of two of these five RCG member firms not just the most senior/lead consultant(s) were interviewed but also at least one other consultant in the organisation concerned.

Additionally, there was a good spread of RCG member firms covered in the RIP with representation from Big Four, ABC and Boutique firms. Accordingly, the RIP may actually be the most comprehensive exercise yet carried out in terms of RCG member firm representation (with the possible exception of de Gannes's qualitative research exercise - her doctoral thesis, which did not major on the 'professional standards' of ExecRemConsultants/CoyExecRemSpecialists, was published in March 2018 – it comprised 44 ExecRemConsultant interviewees plus 18 others conducted over a 42-month period starting in early 2014). The RIP interviewees included almost all the current UK 'star' ExecRemConsultants, and indeed those of the 'previous generation'.

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<sup>387</sup> Examples are Mercer acquiring Kepler (2015) and FIT acquiring Strategic Remuneration Associates (2016).

To provide additional contextual material regarding the respective backgrounds of current ‘Executive Remuneration Practice Leaders’ in RCG member firms (as at 30 June 2017), set out in Table 4.4 below are the relevant details in respect of the 11 organisations concerned.

<b>Table 4.4: Remuneration Consultants Group: Member Firms</b>				
Number of Firm	Name of Member Firm	Big Four, ABC, or Boutique	UK Practice Leader Professionally Qualified	Professional Qualification
1	AON Hewitt NBSC	ABC	No	No, but previously at senior level in financial services HR/Reward (STEM MA)
2	Deloitte	Big Four	Yes	Actuary
3	EY	Big Four	No	No, but long-standing tax advisor (STEM Bachelors degree)
4	FIT <sup>1,2</sup>	Big Four	Yes	Lawyer plus CTA
5	Korn Ferry Hay	Boutique	No	No, but MBA and Relevant Doctorate
6	KPMG	Big Four	Yes	Chartered Accountant
7	MM&K	Big Four	Yes	Lawyer and Relevant Masters
8	Mercer <sup>3</sup>	ABC	No	No, but MBA
9	Pearl Meyer	Boutique	No	No, but MBA
10	PwC	Big Four	Yes	Actuary
11	Willis Towers Watson <sup>4</sup>	ABC	No	No, but Relevant Masters and Doctorate

**Notes:**  
1 FIT was started in 2010  
2 Strategic Remuneration (formerly a RCG member firm) merged with FIT in 2016 (the Practice Leader at Strategic Remuneration Associates was a CA and CTA)  
3 Kepler (formerly a RCG member firm) was acquired by Mercer in 2015  
4 The WTW Global Practice Leader of Executive Compensation, who is based in the UK, is an Actuary.

It is interesting to compare the ‘backgrounds’ of the ExecRemConsultants against that of the ExecCompConsultants (ie., their US counterparts). Not too much should be read into such a small sample of ExecCompConsultants but

Table 4.5 below summarises the US position (on the same basis as used for Table 4.3 above).

**Table 4.5: ExecCompConsultant: Interviewees' Background Details**

'Job Role'	Professional Qualification, plus Highest Level of Relevant Academic Attainment Level 7 or 8	Professional Qualification, but Highest Level of Relevant / Non-Relevant Academic Attainment below Level 7 or 8	No Professional Qualification but Highest Level of Relevant / Non-Relevant Academic Attainment Level 7 or 8	No Professional Qualification but Highest Level of Relevant / Non-Relevant Academic Attainment Below Level 7 or 8	9+ Years' Experience
ExecCompConsultant <sup>1</sup> (N=4)	1	1	2 <sup>2</sup>	0	4

**Notes:**

<sup>1</sup> Using same basis as for Table 4.3: ExecRemConsultants and CoyExecRemSpecialists.

<sup>2</sup> Both ExecCompConsultants in this category have highest level of Relevant academic attainment at Level 7 or 8 (as opposed to Non-Relevant).

Given the small sample size of ExecCompConsultants (all of whom had at least 25 years of relevant experience), for confidentiality reasons it is not possible to provide comprehensive information on their employing firms - save to state that two of the ExecCompConsultants concerned represent 'leading' Boutique firms and two a 'leading' ABC one (as mentioned already - although the Big Four in the US do not major on providing CompCoAdvisory Services, they are very active in advising company management on remuneration and other matters).

It will be seen that the ExecCompConsultants' background is similar to that of the ExecRemConsultants, with indeed none of the former falling into the category of having no professional qualification but highest level of Relevant/Non-Relevant academic attainment being below Level 7 or 8.

As an additional piece of contextual information, the respective backgrounds of the four City Lawyers (all of whom had at least 20 years of relevant experience) are set out in Table 4.6 overleaf (on the same basis as Table 4.3 above).

**Table 4.6: City Lawyer: Interviewees' Background Details**

'Job Role'	Professional Qualification, plus Highest Level of Relevant Academic Attainment Level 7 or 8	Professional Qualification, but Highest Level of Relevant / Non-Relevant Academic Attainment below Level 7 or 8	No Professional Qualification but Highest Level of Relevant / Non-Relevant Academic Attainment Level 7 or 8	No Professional Qualification but Highest Level of Relevant / Non-Relevant Academic Attainment Below Level 7 or 8	9+ Years' Experience
City Lawyer (N=4)	2	2 <sup>1</sup>	0	0	4

**Notes:**

<sup>1</sup> One of the City Lawyers is a qualified Lawyer and CTA qualified (recorded as single professional qualification only).

Again, one can see the similarity to the respective backgrounds of ExecRemConsultants (and, to a lesser extent, of CoyExecRemSpecialists).

Lastly, the respective backgrounds of the eight representatives of ROOs is shown in Table 4.7 below (again, on the same basis as Table 4.3 above):

**Table 4.7: Relevant Other Organisations: Interviewees' Background Details**

'Job Role'	Professional Qualification, plus Highest Level of Relevant Academic Attainment Level 7 or 8	Professional Qualification, but Highest Level of Relevant / Non-Relevant Academic Attainment below Level 7 or 8	No Professional Qualification but Highest Level of Relevant / Non-Relevant Academic Attainment Level 7 or 8	No Professional Qualification but Highest Level of Relevant / Non-Relevant Academic Attainment Below Level 7 or 8	9+ Years' Experience
Representative from Relevant Other Organisation (N=8)	2	1	2	3	8

Unsurprisingly, the representatives of ROOs had an even broader spread of backgrounds than the other RIP interviewees. The ROO interviewees came from a really heterogeneous variety of backgrounds, to work within regulators, shareholder representative bodies, proxy advisors etc. Having said this, none of the ROO interviewees fell below Level 6 as their highest level of academic attainment.

This completes the analysis of RICBQ responses. The next section of this Chapter 4 'Findings' contains the research interviewees' comments/remarks.

### 4.3. Research Interview Findings: Approach Adopted

To illustrate the chosen approach to analysing and coding the RIP interviewees' responses/comments, the RITG1 questions posed for interviewees were:

How do you consider the provision of UK RemCo advisory services is currently working (including in respect of the pay determination process and pay outcomes)? Do you feel that the advice provided by ExecRemConsultants to RemCos is genuinely independent and objective? What is your perspective on the working relationships between RemCos and their appointed ExecRemConsultants?

RITG1, together with RITG2, 3, 4, and 5, is split into sub-questions (SQs), which are 'sub-coded' for ease of reference. For example, the first sub-question in RITG1 - RITG1:SQ1 – 'How do you consider the provision of UK RemCo advisory services is currently working (including in respect of the pay determination process and pay outcomes)?' – is sub-coded as 'UKRemCoAdvisoryScene'. The sub-codes ascribed are carried forward in the SRIF collation of research interview comments/quotations (from which Chapter 4.3.1 'key comments/quotations' set out below were derived).

In respect of RITG1 and RITG2, each RIP interviewee was asked about one or more additional RITGST aspects of current relevance and interest. Regarding RITG1, the RITGST questions were SABV, PRD and WOB. There was a further RITGST question in respect of RITG1; namely, 'SExecRemConsultants' and there was one additional topic introduced in respect of workers; namely, 'DSOtherServicesFees'.

The response of RIP interviewees to the various RITG/RITGST aspects needs to be considered in the context of the 'job role' of the interviewee concerned, which is why the RIP included the 'job role' held by the interviewees whose comments/responses are set out in this thesis (so that readers can see where the particular maker of a comment/response 'is coming from').

Chapter 4.3 continues below with illustrative comments from interviewees, who were ascribed 'Positive', 'Mid-position' and 'Negative' positionings in terms of current or potential UK remuneration practice. A 'Positive' ascription means that the interviewee concerned's view is in favour of the relevant question posed, whereas a 'Negative' one denotes an unfavourable opinion and a 'Mid-position' stance entails a broadly neutral view on the posed question.

**4.3.1. RITG1:SQ1 – ‘How do you consider the provision of UK RemCo advisory services is currently working (including in respect of the pay determination process and pay outcomes) [Sub-coding: ‘UKRemCoAdvisoryScene’]?’**

- UKRemCoAdvisoryScene (Positive): ‘UK’s 2013 reforms were good - fundamentally a good system’ (ExecRemConsultant: 11)
- UKRemCoAdvisoryScene (Positive): ‘The situation was not particularly poor. There were actually relatively few issues prior to that point. But overall I would say that the provision of services is working well’ (ExecRemConsultant: 3)
- UKRemCoAdvisoryScene (Positive): ‘There are conflicts that arise, and conflicts can be very helpful in highlighting the issues that really need to be discussed. I’ve found that good ExecRemConsultants handle these things very professionally. It comes down to the procedural approach and rounding that is arguably very important’ (RemCoChair - NED: 2)

- USCompCoAdvisoryScene (Positive): 'I believe the relationship between the appointed ExecCompConsultants and the CompCo in the US is excellent. My firm, and as far as I can tell, my competitors, have a lot of independence and give very independent advice. I see the outcome of many of competitors' decisions in the proxies, and also I am occasionally at meetings with them, with the client, and occasionally I see their reports, and so I can see the nature of their advice and see the outcomes. The latter belong to the CompCo, but as a general matter, certainly in large companies, it appears to be highly independent and extremely useful' (ExecCompConsultant: 3)
- UKRemCoAdvisoryScene (Mid-position): 'What is the role of the ExecRemConsultant? This answers a lot of questions. The role is to provide independent advice to the RemCo? The role is to protect shareholder interest? Two fundamentally different things, and I think that we're getting rather mixed up. I think the answer is the former (ie., to provide independent advice to the RemCo). It's the Board's job to do the latter (ie., to protect the shareholder interest). From that, I think flows an awful lot. The ExecRemConsultant should be advising what the likely reaction of shareholders will be' (CoyExecRemSpecialist: 11)
- USCompCoAdvisoryScene (Mid-position): 'Executive pay still increases despite massive improvements in US corporate governance. This is not due to corporate governance – arguably, it's the labour market' (ExecCompConsultant: 3)
- UKRemCoAdvisoryScene (Negative): 'I think it's absolutely right that an ExecRemConsultant's position is worse than anyone else's? Not at all. The process is dysfunctional between RemCo being a proxy for the market and it's rather an ineffective proxy. Why would a CEO be allowed to set their own package? NEDs volunteer to decide pay (ie., RemCo) – therefore, they need expert advice. The analogy I would use is looking out of car windows to the side, to see what other cars are doing, calling it a benchmark, almost mathematical formula for higher than normal inflation in executive pay' (ExecRemConsultant: 15)

**4.3.2. RITG1:SQ1, RITGST1 – ‘What is your view on a shareholder vote being held on the appointment / retention of ExecRemConsultants [Sub-coding: ‘SVExecRemConsultants’]?’**

- SVExecRemConsultants (Negative): ‘At a purely theoretical level, I would be in favour of the appointment by shareholders, but I think the position of the ExecRemConsultant is quite different from that of an auditor. You’re a business advisor. It’s a matter of judgement on the spectrum of what is going to help the company and shareholders on the one hand, and what is going to screw it up on the other. By making the senior executives very rich, you may bust the company. It’s to do with what makes people tick, it’s to do with their motivation, all of these things come with it quite apart from the maths and the money’ (ExecRemConsultant: 6)
- SVExecRemConsultants (Negative): ‘From my perspective, it’s a bit of a misguided proposal in the first place. We have a very different role from that of auditor. The auditor has the final say on whether they agree with the accounts that are presented, and they write an opinion saying that they do agree the accounts are a true and fair reflection of the business, at the time they sign the accounts. There are many occasions when we give advice, and we recommend something that the RemCo decides to override, and for good commercial reasons, decide they want to do something we have not agreed with in the first place. So it is difficult for shareholders to have any of that insight, because they’re not in the meetings. From the perspective of them having the ability to vote every year on the individual advisors to the RemCo, it seems a little perverse that without any statutory authority for us to make our decisions, or views heard, how they would make that informed decision about what we were saying in a closed room. In the same way, you don’t vote on strategy consultants or PR consultants, or anyone else the Board appoints to advise them to do the job’ (ExecRemConsultant: 19)

#### **4.3.3. RITG1:SQ1, RITGST2 – ‘What is your view on a shareholder annual binding vote on remuneration [sub-coding: ‘SABV’]?’**

- USSABV (Mid-position): ‘UK three-year binding vote on policy, plus annual binding vote on implementation? Right now I don’t see an event in the United States that would force things to move in that direction. You need a crisis of some type. Crisis in confidence, social strategy, or political upheaval/seminal event to create change like that. Average Say-on-Pay vote in the States get 92% support. Investors are satisfied with the management of executive compensation of the companies they own. Whether or not the public are satisfied is an altogether different question, but investors who are the ones casting the Say-on-Pay votes, every indication would be they are reasonably happy with the way things are going’ (ExecCompConsultant: 4)
- SABV (Negative): ‘Nobody has been particularly clear about the problem we’re trying to solve. Do we believe corporate governance in the UK isn’t powerful enough and shareholders need more votes, then it will be better? What does better look like? The problem is that no one really wants to talk about it, but quantum is perceived to be the problem. By the politicians in particular. But they don’t want to actually address that head-on. My view is that giving shareholders more votes will not help. If they don’t like the NEDs making the decisions, they can vote them out, and they never do. There’s more than enough ways in which shareholders can express dissatisfaction with what’s going on in remuneration, and if they’re unhappy with it. 80% of companies get 90% support, and 90% of companies get 80% support. Companies will be less likely to vote against a binding vote because it has more impact. What do you do if you lose a binding vote? With advisory vote, companies the following year go up 15% points. The persistent offenders are two or three companies a year. And rather than create this entire industry that impacts every company that operates in the UK, we need to sort out just the two or three companies. Shareholders need to elect a new bunch of NEDs if they want’ (ExecRemConsultant: 19)

#### **4.3.4. RITG1:SQ1, RITGST3 – ‘What is your view on pay ratio disclosure**

**[Sub-coding: ‘PRD’]?’**

- PRD (Positive): ‘I’ve got every sympathy with people asking to produce multiple of pay or whatever, it’s a difficult thing to do’ (RemCoChair - NED: 4)
- PRD (Mid-position): ‘I think Theresa May is in a difficult place. The ExecRemConsultant role is to come up with ways off that particular windowsill. She’s out there with her kitten heels hanging over the ledge at the moment’ (RemCoChair - NED: 5)
- PRD (Negative): ‘I think there will become an industry to work out how to breach it. I think top executive pay is out of control. I think the ExecRemConsultants have a part to play in it because they do the benchmarking. Everyone wants to be above the median, and therefore the median is forever going up. It’s just a fact of life. It’s not to blame the ExecRemConsultants, but that is a consequence of having that going on. It’s absolutely unacceptable for anyone to be paid below the median. I’d love to think there’s an easy way to control top executive pay. I think it has contributed to a certain extent to the global political upheaval going on at the moment, this pay differential. Didn’t someone do some research to say once it gets above a certain level you can expect unrest?’ (CoyExecRemSpecialist: 5)

#### **4.3.5. RITG1:SQ1, RITGST4 – ‘What is your view of workers on the BOD**

**[Sub-coding: ‘WOB’]?’**

- WOB (Positive): ‘I’ve always had a negative view of it. But having seen it in action with pension schemes, I increasingly think it is a good idea. The right to have a balanced professional in there and having the debate is a good idea. It works with trustee boards; why can’t it work for RemCos?’ (CoyExecRemSpecialist: 4)
- WOB (Mid-position): ‘You can’t just stick somebody on the Board and hope for the best. You’ve got to give them support’ (ROO:2)

- WOB (Negative): 'I would say thumbs down to workers on the BOD. How can the RemCo operate effectively knowing they have someone in the room who is not independent?' (ExecRemConsultant: 7)
- WOB (Negative): 'I am not in favour of WOB. I have enough experience of works councils to know that once something is in the works council's knowledge, the whole company knows. And I don't think we've got the mindset amongst our workforce employee representatives to take a WOB member seriously' (CoyExecRemSpecialist: 5)

**4.3.6. RITG1:SQ2 – 'Do you feel that the advice provided by ExecRemConsultants appointed to advise RemCos is genuinely independent and objective [Sub-coding: 'GI&O']?'**

- GI&O (Positive): 'They try to be as independent and objective as they can. My experience of ExecRemConsultants as a group, and any individuals, is that they genuinely do try to be objective, to give facts and to give advice. I believe they are people of high integrity; both normally ethically and professionally' (CoyExecRemSpecialist: 4)
- GI&O (Positive): 'I think it is genuinely independent and objective. I've been fired from appointments because my advice has been genuinely independent and objective. I've resigned from some as well' (ExecRemConsultant: 5)
- GI&O (Mid-position): 'It's a tough ask of appointed ExecRemConsultants to be entirely objective in the advice they're giving, but having said that, it's absolutely achievable, because you can be objective in your advice without necessarily cutting across the interests of those you are advising' (CoyExecRemSpecialist: 11)

- GI&O (Mid-position): 'It's about independence of attitude, isn't it? You can have an independent frame of mind, and you can tell it as you see it is. I think the question is to what extent the buyers of the services of ExecRemConsultants want to hear what's being said to them' (ROO: 2)
- GI&O (Mid-position): 'I think it shows sometimes in that independence of the Big Four, that maybe it doesn't always come through in the ABCs. If there was more competition, I think there'd be an issue. I certainly have not heard from a RemCo that they're struggling to find independent people or the right ExecRemConsultant' (ROO: 6)
- GI&O (Mid-position): 'It's less a problem of bias. It's a problem of RemCos. The industry has got relatively little demand from RemCos for truly expert advice' (ExecRemConsultant: 16)
- GI&O (Negative): 'It is a brave, and perhaps very brave ExecRemConsultant who will really challenge a RemCo's decision-making processes. And I've seen that in action. And I've seen a few of these brave consultants in action as well, where they have fundamentally disagreed with the RemCo, and often followed that up, either by re-challenging the decision, or writing on behalf of their employer, the consulting firm they work for, I've seen that before. But it happens too rarely. I generally find the ExecRemConsultant will support RemCo's decision rather than be truly independent and truly challenge it. There's too much of a relationship of the income of the advisor, and the person paying the fees, all know each other' (CoyExecRemSpecialist: 4)
- GI&O (Negative): 'I think that there is an issue around independence. The relationship between ExecRemConsultants and their clients is further complicated by the fact that consulting firms are not paid by the shareholders, who are the ultimate masters in this process of remuneration governance, but by the companies themselves' (ExecRemConsultant: 15)

**4.3.7. RITG1:SQ3 – ‘What is your perspective on the working relationships between RemCos and their appointed ExecRemConsultancy [Sub-coding: ‘WorkingRelationshipsRemCo/ExecRemConsultants’]?’**

- WorkingRelationshipsComCo/ExecRemConsultants (Positive): ‘I think working relationships are very good. They are very constructive. Works well. RemCo, ExecRemConsultant and management all trust one another. In general there is a degree of trust in that triangular relationship. Where that is there, you tend to get better decisions made’ (ExecRemConsultant: 10)
- WorkingRelationshipsRemCo/ExecRemConsultants (Positive): ‘The appointed ExecRemConsultants I have chosen to work with have been extremely professional and helpful in terms of the experience and guidance they have given to me, or to the RemCos I have been involved with. I have in beauty parade situations met with other ExecRemConsultants who, frankly, I would never wish to use in that capacity. Inevitably, it comes down to the individual who you’re working with. Forget the fancy plaque that may be over the office door of that individual. I use individual ExecRemConsultants as they move from one firm to another. I value the advice of that individual’ (RemCoChair – NED: 2)
- WorkingRelationshipsRemCo/ExecRemConsultants (Positive): ‘The basic reason RemCos employ ExecRemConsultants is not that they particularly love them, but they like to have some input which they feel may be useful in their deliberations. That should be the honest reason for it, not because they want someone to tell them what to do. A sensible Board will always want to have some advice – reaching a conclusion which is based upon input which is expert. I feel there is no outsourcing of advice in the UK’ (RemCoChair - NED: 2)

- WorkingRelationshipsRemCo/ExecRemConsultants:  
(Mid-position): 'If you're doing your job as an ExecCompConsultant you become irreplaceable as an advisor. The whole purpose of being a consultant is to stay ahead of your client and to provide trusted advice for the Board. That's what a good consultant does. If you're doing your job properly, they will know and trust you as an individual, rather than as a company. They tend to focus on individuals, rather than companies' (ExecRemConsultant: 15)
- WorkingRelationshipsRemCo/ExecRemConsultants:  
(Mid-position): 'The working relationship between RemCos and ExecRemConsultants has changed because of the regulation and requirement to have your remuneration strategy agreed. The role of the ExecRemConsultant has become much more important in making sure that both strategy is in line with the current requirements of the institutional investor and then in having to make sure the RemCo lives by the strategy it has set' (RemCoChair - NED: 3)

**4.3.8. RITG2:SQ1 – 'What is your view on the provision of UK ExecRemConsultant advisory services via, respectively, Big Four, ABCs, and Boutiques [Sub-Coding: 'Big Four, ABCs and Boutiques']?'**

- Big Four, ABC and Boutiques (Positive): 'RemCo advisory work, it's the consultant that is appointed, and the firm is the secondary consideration. In some ways it does not matter if they're Big Four, ABC or Boutique. It's the skill, the fit, and capability of the ExecRemConsultant who is advising that is the important consideration. Secondly, does the consultant have the necessary support and capability behind him or her to provide the required advice? And then you make an assessment about the fit' (CoyExecRemSpecialist: 4)

- Big Four, ABC and Boutiques (Positive): ‘Big Four - they are all, they are very, very, bright professional people with a qualification. Yes, you don’t get a qualification lightly. They have got high professional standards and you’ve always got that kind of skill (I too am professionally qualified). So they get a harsh rap, sometimes’ (CoyExecRemSpecialist: 2)
- Big Four, ABC and Boutiques (Positive): ‘UK companies are much more international than US ones, and need big firms with international capabilities to support them. When RemCos make their appointments, they do take into account conflicts of interest’ (ExecRemConsultant: 17)
- Big Four, ABC and Boutiques (Mid-position): ‘Clients who are looking at reviewing their ExecRemConsultants will have to take into account who their auditors are and whether they’re coming up for a re-tendering process (where clients are using Big Four for audit and another Big Four firm as their appointed ExecRemConsultants)’ (City Lawyer: 1)
- Big Four, ABC and Boutiques (Mid-position): ‘Will the UK Big Four get out of remuneration consulting in ten years’ time? Perhaps discussions within the Big Four “Do we want to be in this business or not?” Anyway, say, a £30 million a year business, which is tiny for the firms concerned’ (RemCoChair - NED: 1)
- Big Four, ABC and Boutiques (Mid-position): ‘I think it would be possible to have independent firms in the UK, and for them to go on to the next generation if the market demanded it, but at the moment, it doesn’t’ (RemCoChair - NED: 1)
- Big Four, ABC and Boutiques (Negative): ‘There’s an inherent imbalance in the world of ExecRemConsultants where in the UK we have made it so easy for the large players to exploit this loophole, that inevitably you end up with a very small number of organisations doing all the work and the outcome of that is very dangerous. Most remuneration programmes are off the shelf/pret a porter designed because RemCoChairs are risk-averse for

very good reasons. They hire ExecRemConsultants who have a proven track record of having installed exactly the same windows in the houses' (ExecRemConsultant: 15)

**4.3.9. RITG2:SQ2 – ‘Do you consider that any potential conflicts of interest are currently satisfactorily addressed in the situation where a professional services firm (whether Big Four, ABC or Boutique) provides other advisory services to a client company as well as being appointed to advise the RemCo concerned [Sub-coding: ‘COI/ExecRemConsultants’]?’**

- COI/ExecRemConsultants (Positive): ‘Big Four/ABC: So there is a kind of Great Wall of China rather than Chinese Wall built inherently into the practices, because of the nature of the people themselves’ (CoyExecRemSpecialist: 4)
- COI/ExecRemConsultants (Mid-position): ‘I don’t personally see conflicts of interest. Audit fees are so much larger than anything for RemCo advice. More of an issue with Boutiques. It’s a much larger risk for a Boutique firm. The UK has more competition than the US, with Big Four and ABCs’ (CoyExecRemSpecialist:10)
- COI/ExecRemConsultants (Mid-position): ‘ExecRemConsultants have an important role to fulfil. Big Four firms, by their very nature, prefer not to have their head above the parapet’ (RemCoChair - NED: 5)
- COI/ExecRemConsultants (Mid-position): ‘Small Boutiques more likely to bend in the wind than the Big Four or ABC firms. My RemCo shared this view. More comfortable with Big Four or ABC. Overall, Big Four have an advantage over competitors. Believe the conflicts of interest are satisfactorily addressed by the Big Four: they would say if they thought something was wrong’ (CoyExecRemSpecialist: 12)

- COI/ExecRemConsultants (Mid-position): ‘I think the industry is in a worrying state. There has been a lot of consolidation and so the diversity or difference, I think has diminished (two of the Big Four [are leaders in ExecRemConsultancy advisory services], the other two have “dabbled”). Towers have merged, Aon Hewitt acquired NBSC. Mercer has recently acquired Kepler. So there’s much less diversity and it’s really happening over the last three or four years. And it’s hard to see now where the new start-ups are going to come from’ (RemCoChair - NED: 5)
- COI/ExecRemConsultants (Negative): ‘Too big to fail? You have got to have done something that’s going to imprison two-thirds of your partners before that’s going to happen. They should never have let PwC merge’ (RemCoChair - NED: 5)

**4.3.10. RITG2:SQ2, RITGST5 – ‘What is your view on disclosure to shareholders of ‘Other Services’ Fees [Sub-coding: ‘DSOtherServicesFees’]?’**

- DSOtherServicesFees (Positive): ‘I do think it’s a good idea. Do I think shareholders have a right to know first, how big my fee is for advising the RemCo; and second, whether I’m getting other work from that client. I absolutely do think they have a right to know that, because I think we live in a world of transparency and why wouldn’t you give it to them? I mean what is the problem of providing that information? I would put it in the accounts. Work is advising the RemCo on the executive director package. Most of the multi-line firms are actually reporting about a third of what their remuneration advisory fees actually are. I think if that was reported in the *Mail on Sunday*, I think Theresa May would go apoplectic, but I think quite rightly so. I think the fact that multi-line firms are not prepared to say sort of suggests that we’re embarrassed by that’ (ExecRemConsultant: 4)

- DSOtherServicesFees (Positive): ‘I think those figures, and a few lines of explanation, would be valuable. The US attitude to conflicts is far more stringent than the UK one. That’s not to say the UK attitude is lax, it’s just more pragmatic. In the US, accounting firms may have been persuaded it’s just not worth the trouble’ (City Lawyer: 4)
- DSOtherServicesFees (Mid-position): ‘I suspect that if that happened, if the disclosure came along, it wouldn’t be that they would leave, I think, the firm, because the private equity side or property side would not want to see those fees disclosed. I suspect what would happen is that the rest of the firm would say you’re no longer able to advise RemCos. I suspect the individuals currently in those businesses would not spin-off, they would be advising management (where there is less reputational risk)’ (RemCoChair - NED: 1)
- DSOtherServicesFees (Mid-position): ‘It’s entirely possible the UK will go the US way on the basis that if there is more disclosure and more scrutiny, then some of the big firms will say this is not worth the grief because all of the firms, the executive remuneration revenues are a very small part of the totality. They’re not central to the business model of any of them. I can see it happening that there is separation. I can also see something like the Australian model coming, and I think certainly the Australian model is being pushed to the Government when it comes to binding votes’ (RemCoChair - NED: 5)
- DSOtherServicesFees (Negative): ‘I personally think that we landed in the right place in the UK, where NEDs pay for the advice they are receiving. That’s a good thing because they can see whether they’re getting enough advice, or not enough advice, and make an informed decision on that basis. I think the wider disclosure of fees is not the right answer. That will force down more a Boutique model because why should any firm like the Big Four or ABC firms disclose their commercial arrangements with big clients for the entirety of the business relationship’ (ExecRemConsultant: 19)

**4.3.11. RITG3:SQ1 – ‘What is your perspective on the current UK approach of a VCC adhered to by members of the RCG [Sub-coding: ‘VCC’]?’**

- VCC (Positive): ‘I think that sort of professional approach (ie., voluntary self-regulation) is important, and so proper self-regulating practice and exposure to codes of practice is very relevant. It’s a helpful defence and it focuses the mind, on what should be done, if nothing else’ (RemCoChair - NED: 2)
- VCC (Mid-position): ‘The idea of a voluntary code of practice is, of course, a very British one. You don’t want to lay down rules. You want people to do the right thing. It’s probably in our culture, the best that you can get. In the fairly recent past it was considered not welcome, but acceptable, for the ExecRemConsultant to stand up and say things which the RemCo didn’t like. Is it like that still? I don’t know. I have my doubts’ (ExecRemConsultant: 13)
- VCC (Mid-position): ‘I think we have missed the elephant in the room. We have not stressed the fact that it is an unfair marketplace, which favours the larger players and actually there are real conflicts. I think the idea was: if you don’t set up the RCG then we’ll regulate your business. Self-regulate or be regulated. It’s rather a silly test and a carry-on that’s unhelpful’ (ExecRemConsultant: 15)
- VCC (Mid-position): ‘If I was self-regulating, which is what I believe for the ExecRemConsulting profession, I’d probably want some sort of accreditation. I think it would be good externally and good for the profession’ (CoyExecRemSpecialist: 8)
- VCC (Negative): ‘Self-regulating? Self-serving, I would say’ (ExecRemConsultant: 2)

#### **4.3.12. RITG3:SQ2 - 'How is it working in practice [Sub-coding: 'RCG']?'**

- RCG (Positive): 'Big Four and ABC firms can cope with more regulation, perhaps Boutiques will struggle. Be careful about asking the RCG to do more. It's not equipped to do more at the moment. Does quite a good job at getting feedback from the market' (ExecRemConsultant: 11)
- RCG (Positive): 'RCG is beneficial for firms. Protects everyone. Most people do not sign up for something without looking at it seriously. Improvements in standards largely driven by the market and the fact that RemCos have taken control. One will never know the counterfactual. Problem with formal regulation. We are a tiny profession. Many of the advisory firms are professionally regulated and also individual consultants too are actuaries, accountants, or lawyers, etcetera. Bringing in regulation would be to misunderstand the role of ExecRemConsultants. It would be hugely disproportionate. ExecRemConsultants do not make pay decisions' (ExecRemConsultant: 11)
- RCG (Positive): 'I think the RCG has evolved exactly how we thought it would. It has had very little impact, either on a firm's behaviour, or on the perception of consultants. The VCC provisions were adhered to and well-publicised before, and now they're kind of codified and externalised, but they haven't changed behaviour. At the margin, it might be a useful training tool' (ExecRemConsultant: 17)
- RCG (Positive): 'Leave the RCG alone' (CoyExecRemSpecialist:9)
- RCG (Positive): 'The RCG's VCC is actually more important than it appears. Firm's reputation is so important that you have nothing else to sell. What looks good like. What bad looks like' (RemCoChair - NED: 5)

- RCG (Mid-position): 'I would be reluctant to see the FCA or PRA or anyone else, come along and introduce a statutory form of regulation' (ExecRemConsultant: 12)
- RCG (Mid-position): 'The reason we have a VCC instead of a professional body is that we don't have a set of exams. It's still a very small profession. FTSE 100 ExecRemConsultants...you'll probably only find five or seven individual names repeat themselves over and over again. These six or seven employ the rest of the 200 in consultancies to get the work done' (ExecRemConsultant: 19)
- RCG (Mid-position): 'The RCG is a body there to promote and steward the VCC. It is not a training body nor industry body, and so it is not there to represent the broader interests of the industry' (ExecRemConsultant: 3)
- RCG (Mid-position): 'The RCG was in response to 2008 - some of the political and media pressure at the time. They have to be careful that they're not left behind again and get something worse. Steady state may not be good enough for the Government, media, for others, then they might force the RCG into something worse than actually if they were a bit more proactive and say: We're going to improve the VCC by making individuals sign up to it' (ROO: 6)
- RCG (Mid-position): 'Maybe one step the RCG should think about, whether adherence to the VCC would increase/improve if individuals signed up for it' (ROO: 6)
- RCG (Mid-position): 'RCG is not aimed at CoyExecRemSpecialists: How can a Head of Comp & Bens stand up to a CEO-type thing?' (ExecRemConsultant: 4)
- RCG (Mid-position): 'Need to become like a culture change programme. It is either going to be, we are going to take control and regulate ourselves, and prove that we are up to doing it, in a way that is controllable, fair and equitable. Or we're going to be regulated externally by other bodies' (CoyExecRemSpecialist: 4)

- RCG (Negative): ‘Shareholders need to call out if they think that some companies, or set of ExecRemConsultants, are detrimental. There are probably one or two advisors who perhaps are seen as not behaving brilliantly. They should call out a couple of these and tell NEDs: if you turn up with these advisors we assume you are up to something’ (ExecRemConsultant: 19)
- RCG (Negative): ‘It’s a complete waste of time. It was a defensive mechanism. Quick and dirty. Typical compromise document that says two times nothing. Does not require anything more than a certain sensible person would do’ (RemCoChair - NED: 1)
- RCG (Negative): ‘I think the RCG’s VCC is about as effective as hiding the Taj Mahal by sticking a bowler hat on its roof (in the daytime)’ (CoyExecRemSpecialist: 4)
- RCG (Negative): ‘Close down the RCG. I don’t think the existence of the VCC has made any difference to how I operate at any junction ever’ (ExecRemConsultant: 15)
- RCG (Negative): ‘The RCG is a cartel, obviously’ (ExecRemConsultant: 15)

**4.3.13. RITG4:SQ1 - ‘What is your assessment of the ethical and professional standards of ExecRemConsultants to RemCos in an individual consultant context, as well as that of the employing firm [Sub-coding: ‘E/PS’ – ie., ‘Ethical and Professional Standards’]?’**

- E/PS (Positive): ‘I’ve not perceived any issues. I think that a lot of the criticism that was levelled at the profession was not because consultants were behaving unethically or with low professional standards’ (City Lawyer: 3)
- E/PS (Positive): ‘The professional standards concerned haven’t been thrown into any doubt so far as I’m concerned. More about conflict issues’ (ROO: 8)

- E/PS (Positive): 'I've never had any cause to doubt either the ethical or professional standards of the individuals that I have worked with, and indeed of the firm's. Certainly on the professional side. It's a bit hard to judge on the ethical side, but again, I've never had any reason to bring this into question' (ROO:1)
- E/PS (Positive): 'I think they are between the 'new professions' and 'strategy consultants' on your continuum. I think perhaps they are closest to the 'business advisors'. I've never had to query the ethical or professional standards of ExecRemConsultants to RemCos. Nor have I felt there was a question mark over those. They've all struck me as people who are genuinely interested in what they do - not doing it just for the fee income' (City Lawyer: 4)
- E/PS (Positive): 'I suppose one of the benefits about ExecRemConsultants being Big Four firms or ABC consultancies is that by their very nature, they have a very strong professional standards culture because of their regulatory work. That is their bread and butter and that forms the basis of the standards which actually roll out across the rest of the firm into different practice areas' (CoyExecRemSpecialist: 2)
- E/PS (Mid-position): 'I think that we need to be careful not to over-regulate, over-complicate, and put the burden, responsibility on ExecRemConsultants. They're there to provide independent advice. We're getting to a rather sticky position. What would happen if a RemCo ignored the advice of ExecRemConsultants - as they do all the time at the moment?' (ROO: 6)
- E/PS (Mid-position): 'The market would fairly clearly identify anyone who is not competent to undertake their work and competent in technical skills and ethical standards, or in general behavioural skills' (RemCoChair - NED: 1)

- E/PS (Mid-position): 'I think your point about, they probably have other professional qualifications should instil proper modes of thinking and ethics' (City Lawyer: 4)
- E/PS (Mid-position): 'That somewhere between Bain and the new professions on your continuum. They're certainly not God. And most ExecRemConsultants have a professional qualification anyway' (CoyExecRemSpecialist: 5)
- E/PS (Mid-position): 'People who aren't conventionally part of a traditionally accepted profession are still judged on whether they behave ethically or not' (RemCoChair - NED: 6)
- E/PS (Mid-position): 'It strikes me that most ExecRemConsultants didn't go to university to be ExecRemConsultants, you know? Most of them are holding other professional qualifications. Professional behaviour, that's what I care about' (RemCoMember - NED: 6)
- E/PS (Mid-position): 'My guess is that people who have perhaps trained as accountants or lawyers, or whatever, who have felt that it is not quite meeting with they wanted in a career, and who were attracted by the idea of being a more complete consultant, in a narrow area, but you have to have an understanding, to make a success of it, of legal, tax, company law, commercial aspects of it. It means there is an element of self-selection' (ExecRemConsultant: 2)
- E/PS (Mid-position): 'ExecRemConsultants actually work with you to design something and then say it's okay. So, it's a slightly different relationship towards it' (CoyExecRemSpecialist: 8)
- E/PS (Mid-position): 'Targets that company needs to set and its balancing achievability and saleability to shareholders. That's not a professional question, that's a question of how well do I know the investment community. The type of advice we are giving is so far from professional advice, it's almost relationship advice' (ExecRemConsultant: 17)

- E/PS (Mid-position): ‘If you believe incentives change behaviour, you must be very careful with them. Think about how people work and behave rather than crunching numbers’ (RemCoChair - NED: 4)
- E/PS (Mid-position): ‘Well, it’s becoming a profession in its own right, isn’t it? There are people who have started, almost from university. If you look at the actuaries who are now in charge of compensation practices, the question is, are there successors to these actuaries? And I suspect you’ll find there are not’ (RemCoChair - NED: 4)
- E/PS (Mid-position): ‘ExecRemConsulting is essentially a selling profession. The problem is to have the vision that this is an important business, and I think no one has really cracked how to make an awful lot of money out of executive reward, because it is an unleveraged business’ (ExecRemConsultant: 16)
- E/PS (Negative): ‘So genuinely, I think advice has improved and the independence has improved since the financial crises and the instigation of the RCG’s VCC, but I think there’s still some bad practice and some wrong mindset in the industry’ (ROO: 6)
- E/PS (Negative): ‘And there are those who still have a mindset about how we can push it for management and get to the best outcome. It’s not a blanket quality of good advice at the moment’ (ROO: 6)

**4.3.14. RITG4:SQ2 - Do you consider that ExecRemConsultants have appropriate technical experience, operational processes and ethical training to support the provision of their advice to RemCos [Sub-coding ‘TE/E’ – ie., ‘Technical Expertise/Experience’]?’**

- TE/E (Positive): ‘The vast majority who do this are qualified as something else. So the good ones you would look at have done some decent professional qualifications beforehand, and have come to this afterwards. One of the advantages of a multi-disciplinary firm is that you can have this wide range of

qualifications (because we sponsor people through these) and then experiences (when they are qualified) and we can employ them and make sure we give this rounded and better service to clients' (ExecRemConsultant: 19)

- TE/E (Positive): 'Executive pay is an art rather than a science. Well, it's an art and a science. If you lose the art bit, then the science can give you the wrong answer from the start. Modelling can be done in good spirit or bad spirit. A lot of consultants who lead these businesses are very colourful people. They are not grey actuaries, they are the ones who went over the wall. They're the gorillas who got out of the compound. They are very, very clever people' (RemCoChair - NED: 4)
- TE/E (Positive): 'Do I consider ExecRemConsultants have appropriate technical experience? Well, again, in my experience, yes, very much so. Plus, the operational processes and the ethical training to support the professional advice and remuneration topics' (ROO: 1)
- TE/E (Mid-position): 'You need to be bright, you need to be commercial, you need to have experience in business. I think you actually need a few miles on the clock. But I think ultimately, you need to be prepared to give difficult advice. You need to have the gravitas, for want of a better word, to say to these people I've got something to say on this and you will listen' (ExecRemConsultant: 4)
- TE/E (Mid-position): 'None of the heads of the big practices at the moment are HR people. Executive remuneration is not a numbers game - you need numeracy, but pay is only part of the numbers game in the sense of ability to pay. You need to be able to answer some broader questions. Is this right for the organisation?' (RemCoChair - NED: 4)

- TE/E (Mid-position): 'One of the least appealing aspects of our role is that to some extent we have become political brokers, in a sense that shareholders are much more powerful these days and proxy agencies - and the design of pay for executive directors is to some extent a political exercise. Shareholders are paying for somebody who knows exactly the constituents of their shareholders, proxy agencies, and what they are likely to be able to sell to shareholders. We're simply a middleman advising them on what they consult' (ExecRemConsultant:17)
- TE/E (Mid-position): 'It takes five years at least before you are actually safe to be let out on your own [referring to ExecRemConsultants]. Remuneration does not exist in isolation. It supports, complements, supplements the way the organisation runs. You have to understand the places where things can go wrong' (RemCoChair - NED: 5)
- TE/E (Mid-position): 'You've got a graduate intake and you've got an actuarial intake. 30 years ago not many people made their careers in consulting. They moved across mid-career. If you set each of these people the same problem, would they come up with a similar answer in executive remuneration?' (RemCoChair - NED: 4)
- TE/E (Mid-position): 'The role we have is technical in nature...and then you give clients an opinion: "Here is the scenario you are presenting us with...we think it runs these risks...you make a commercial decision"' (ExecRemConsultant:19)
- TE/E (Mid-position): 'Larger numbers of people are coming into senior jobs in the ExecRemConsultancy profession through that direct entry route as a graduate or as a more general MBA. Is it right that you actually create a better core for them? We treated it as a craft skill, with ethics attached. If you had an apprenticeship sort of thing. Is the profession big enough to have an executive remuneration qualification of some sort? There is such a thing in the US, but the majority of senior practitioners don't have it' (RemCoChair - NED: 4)
- TE/E (Mid-position): 'Ethics are less a training issue, more of a cultural and awareness one' (CoyExecRemSpecialist: 11)

- TE/E (Negative): 'It used to be financially more attractive to be an ExecRemConsultant. When I look back, there were always lots of people to learn from' (ExecRemConsultant: 16)
- TE/E (Negative): 'In the last 10, 15 years, there's been a drain of senior expertise out of the UK consulting industry as large corporates recruit senior ExecRemConsultants into Heads of Comp & Bens roles. Most of them do not seem to come back, so there is less experience around for the younger talent to learn from whilst on the job. The work becomes more about compliance, so skills are disappearing out of the industry. I think we'll soon find companies start to use consultancies less often in the industry' (ExecRemConsultant: 16)
- TE/E (Negative): 'We're not really growing as a sector, and most senior people are not staying, and people retire relatively early. One problem is with demand. If corporates on the whole demand less from their ExecRemConsultants because they want more standardised stuff' (ExecRemConsultant: 16)

**4.3.15. RITG4:SQ3 - ‘Do you have a view on whether there might be a specialised RemCo advisory qualification/accreditation [Sub-coding: ‘SA/Q’ – ie., ‘Specialised Accreditation/Qualification’] given that the provision of such advice is not currently a licence to practise profession, with ongoing revalidation or CPD requirements and the availability of disciplinary sanctions [Sub-coding: ‘LTP’ – ie., ‘Licence to Practise’]?’**

SA/Q

- SA/Q (Positive): ‘Any professional qualification obtained by such ExecRemConsultant would’ve been obtained many years earlier by the consultant concerned. At a more junior level, a qualification in executive compensation would attract talent into the profession and be a hygiene factor. There is no training or qualification out there (except possibly in relation to share plans). Having a disciplinary body could be useful. Perhaps the RCG could get more involved? An accreditation could be useful at a junior level’ (CoyExecRemSpecialist: 10)
- SA/Q (Positive): ‘Accreditation: That is an idea perhaps worth exploring further. Certain institutional shareholders might be sympathetic with that kind of approach, including licence to practise – especially those who are most vocal about questioning the independence of advice given to companies’ (ROO: 8)
- SA/Q (Positive): ‘I think there’s a good case for accreditation, especially if Boutique firms are going to proliferate like they have in America, that there’s some kind of standard’ (CoyExecRemSpecialist: 5)
- SA/Q (Positive): ‘Accreditation? Yes, I’m sympathetic to it because as a means of helping the industry to engender within its young people coming through the important other aspects, skills required to do the job’ (ExecRemConsultant:1)

- SA/Q (Mid-position): ‘I think one of the problems has been that even up until now, it isn’t big enough to be a profession. Is it something that you would actually go and train for and say: “I want to be a remuneration consultant?”’ (ExecRemConsultant:9)
- SA/Q (Mid-position): ‘Most people already have some form of professional qualification and, I think, that’s kind of what makes ExecRemConsultancies work, is that mix, you haven’t pigeon-holed everyone into the same training’ (ExecRemConsultant: 7)
- SA/Q (Mid-position): ‘You have lawyers, CFA, ACA, and that blend is what works so well. If you did an accreditation, it would basically be a blend of all these things’ (ExecRemConsultant: 7)
- SA/Q (Mid-position): ‘I think it depends whether you are looking at the quality of service to the client or the career path for the individual, and there may be different answers to the two questions’ (ExecRemConsultant: 2)
- SA/Q (Negative): ‘I tend to think it is a more helpful way of allowing people to develop their careers than trying to funnel them down the direction of a very specialised qualification in their own area’ (CoyExecRemConsultant: 3)
- SA/Q (Negative): ‘Raw graduates: It may be easier, better, whatever, for such individuals to take another professional qualification whilst in consultancy, rather than creating a new one. Getting a grounding as a lawyer, accountant, or actuary - something that is appropriate to the skillset they’re looking for. I just don’t think that creating a professional accreditation process for the graduates who come straight from university to the process who otherwise don’t have a professional qualification would be helpful’ (RemCoChair - NED: 2)
- SA/Q (Negative): ‘Accreditation: Is it a big enough profession to warrant that? How would it be dealt with? Who would oversee it? Would you have an independent ombudsman so that clients could make complaints?’ (City Lawyer: 1)
- SA/Q (Negative): ‘I think RCG should look at the culture of ExecRemConsultants and how that works. Probably not big enough to be a standalone profession. Accreditation would not necessarily hit the button’ (ROO: 5)

## LTP

- LTP (Positive): 'Licence to practise: I think it's not such a bad idea. You should have a licence to operate, which is not something that requires an entry exam, but is something where, over time, you would be gently reviewed by your peers. What happens if you get a few rogue operators in this business? I don't know what, really' (ExecRemConsultant: 15)
- LTP (Positive): 'I think the accreditation thing as a voluntary thing in line with the CIPD. If you wanted to raise standards, then that helps achieve that. On the striking-off issue, this actually pulls me towards it being a licence to practise profession. Yes, I'm headed towards thinking about "rifles at dawn"' (CoyExecRemSpecialist: 7)
- LTP (Mid-position): 'Big Four firms have a sort of command structure or team structure which does actually have to check ExecRemConsultants' advice' (ExecRemConsultant: 9)
- LTP (Mid-position): 'Licence to practise? I think it could have a positive impact, yes. It is something that could help or even be desirable. It's very much a question for the industry rather than for a regulator' (ROO: 7)
- LTP (Negative): 'I have some sympathy for let's do nothing or let's perhaps talk about accreditation. Licensing would be a step too far (in terms of licence to practise) unless there is substantive evidence that either they're not impartial/they're not independent, and there is strong conflict of interest' (ROO: 8)
- LTP (Negative): 'Once you create a closed shop, you create barriers to entry' (City Lawyer: 2)
- USLTP (Negative): 'I do not believe in licensing nor other aspects, such as a licence to practise profession' (ExecCompConsultant: 3)
- LTP (Negative): 'Licence to practise would be a bridge too far, quite frankly. Adding enormously to the complexity and cost of the whole undertaking' (ExecRemConsultant: 13)

- LTP (Negative): ‘Accountant/actuary saying those numbers/reserves are right, within their materiality. ExecRemConsultants are giving professional advice on how to do things. I’m not in favour of licence to practice for ExecRemConsultants’ (CoyExecRemSpecialist: 8)
- LTP (Negative): ‘It just sounds an extreme measure. As an advisor, you want to be able to present all the options and to be able to advise on the pros and cons across the spectrum’ (ExecRemConsultant: 7)
- LTP (Negative): ‘How’re you going to draw the line between what you can do and what you can’t do without a licence? I’d rather see it as an accreditation – so it’s a kitemark or core standard’ (City Lawyer: 3)

**4.3.16. RITG5: SQ1 – ‘What is your perspective on CoyExecRemSpecialists working relationships/interactions with RemCo’s appointed ExecRemConsultant, and with the RemCo itself [Sub-coding: ‘WorkingRelationships-CoyExecRemSpecialists/ExecRemConsultants and Remco’]?’**

- WorkingRelationshipsCoyExecRemSpecialists/ExecRemConsultants and RemCo (Positive): ‘CoyExecRemSpecialists can act as a useful interaction between ExecRemConsultants and RemCo. I’m satisfied there is a role for them. They can add, both are useful, sort of sense check’ (ROO: 1)
- WorkingRelationshipsCoyExecRemSpecialists/ExecRemConsultants and RemCo (Positive): ‘The other main point of contact. I need their knowledge and experience to be able to apply advice to the company. And they always seem like they have a good relationship with the RemCo. I haven’t really seen them being a block to what happening or trying to influence decisions too much’ (ExecRemConsultant: 7)
- WorkingRelationshipsCoyExecRemSpecialists/ExecRemConsultants and RemCo (Positive): ‘This goes back to the triangular relationship between in-house and management: CoyExecRemSpecialist, ExecRemConsultant, and RemCo itself. I see these relationships working very well where there is that and I see that in the majority of cases. Where trust breaks down it can be very difficult for an organisation and for the Board to

reach good decisions that are in the interests of the broader organisation' (ExecRemConsultant: 10)

- WorkingRelationshipsCoyExecRemSpecialists/ExecRemConsultants and RemCo (Positive): 'CoyExecRemSpecialists are very important/useful/valuable to ExecRemConsultants providing staff data and numbers (and the in-house financial team providing company/specific accounting/financial information)' (CoyExecRemSpecialist: 10)
- WorkingRelationshipsCoyExecRemSpecialists/ExecRemConsultants and RemCo (Mid-position): A very good Reward Director will be able to give the rounded advice that an ExecRemConsultant can give, but frankly my view I've only ever come across a handful of those' (RemCoChair - NED: 1)
- WorkingRelationshipsCoyExecRemSpecialists/ExecRemConsultants and RemCo (Negative): 'Relationship between ExecRemConsultant and Director of Reward is the most difficult because the latter is internal. They view ExecRemConsultant as a threat. The Director of Reward has less budget/more cost-conscious. Ultimately, signs-off the bills and is perhaps looking to become a consultant in the future, or was a consultant in the past. Think they know the right answer/young/more easily in a position where they feel threatened by someone from outside' (ExecRemConsultant: 15)
- WorkingRelationshipsCoyExecRemSpecialists/ExecRemConsultants and RemCo (Negative): 'I can describe absolutely horrifying relationships with internal resources. As an example, an utterly dysfunctional CEO, who is greedy, and a Director of Reward who would do anything to keep the CEO from throwing toys out of the pram. I was caught in the middle and got fired. We've done the right thing and yet we have suffered a financial hit. It's very, very difficult' (ExecRemConsultant: 15)

**4.3.17. RITG5:SQ2 - ‘What is your assessment of any protocols adopted for initiating and managing the provision of RemCo advice (and review of successive drafts for advisory reports) [Sub-coding: ‘RemCoAdvisoryProtocols’]?’**

- USCompCoAdvisoryProtocols (Positive): ‘They are excellent. Their jobs overlap with ours. They work effectively with us ExecCompConsultants, to put together joint proposals. Material changes? Can see the value in letting the CompCoChair see these, but leaving it to him/whether to tell the CompCo’ (ExecCompConsultant: 3)
- RemCoAdvisoryProtocols (Mid-position): ‘The right process is for the ExecRemConsultant’s reports to go to RemCoChair, with copy to executive management. Both sides must be kept comfortable. ExecRemConsultants enjoy the intellectual challenge of their role and being able to say no’ (ExecRemConsultant: 14)
- RemCoAdvisoryProtocols (Mid-position): ‘I’ve always ensured that I have an unedited version of the ExecRemConsultant’s report before management can get their sticky paws on it and adjust. There’s probably a lot of discussions between internal and ExecRemConsultants. The latter must ensure that they have the right data, but it shouldn’t be an edited or highlighted process that they’re going through with the internal folk’ (RemCoChair – NED: 2)
- RemCoAdvisoryProtocols (Mid-position): ‘If there’s a material change from the draft, then the RemCoChair should see the different drafts. But if not, they should be told about the changes. If RemCoChair is doing his job properly, he should be on top of the personality of the EDs and the extent to which they are likely to try and influence the outcome’ (CoyExecRemSpecialist: 9)
- RemCoAdvisoryProtocols (Mid-position): ‘We’ve happily said to companies that if it’s worded like this, we don’t feel that there can be a joint report. If you accept our changes then it can be a joint report. If you don’t accept the changes, then we’d prefer it if it was your report, but we’ll write a comment paper’ (ExecRemConsultant: 5)

- RemCoAdvisoryProtocols (Mid-position): ‘There are dangers around successive drafts or reports and combining ExecRemConsultant and management input. That’s the area where conflicts have to be most clearly managed because it’s kind of insidious, step-by-step, can you change this? Each change in itself is fine, but then you end up saying something different’ (ExecRemConsultant: 17)

**4.3.18. RITG5:SQ3 — ‘Do you consider that any potential conflicts of interest inherent in CoyExecRemSpecialists being involved in top management remuneration are being satisfactorily addressed [Sub-coding: ‘COI/CoyExecRemSpecialists’]?’**

- COI/CoyExecRemSpecialists (Positive): ‘We have been presented with examples where poor practice and poor culture have been called out internally, as opposed to being called out through the use of ExecRemConsultants who may otherwise have been conflicted in some way’ (ROO: 5)
- COI/CoyExecRemSpecialists (Positive): ‘I would say that in the vast majority of cases the CoyExecRemSpecialist acts appropriately - whilst they might, as is understandable, put the management view. They will realise there is an appropriate boundary and ultimately the ExecRemConsultant needs to provide independent advice. If the ExecRemConsultant is a good advisor, and the vast majority are, they will take them at face value and ultimately give advice as they see it’ (ExecRemConsultant: 3)
- COI/CoyExecRemSpecialists (Mid-position): ‘It depends on whether one seeks to make out that CoyExecRemSpecialists really are independent. Almost by definition internal advisors are not independent. And a lot of their work entails independence not being important anyway, but obviously critical for quantum targets, and target-setting of incentives. It’s unusual to come across an HRD who is purely fighting for the CEO. CoyExecRemSpecialists have one reporting line to the CEO and the other to the RemCoChair’ (ExecRemConsultant: 14)

- COI/CoyExecRemSpecialists (Mid-position): 'Variable within companies and variable between companies. The Head of Reward is normally quite an independent thinker and well-aware of what shareholders want and is trying to make the right decision, so they tend to be trying to do the same sort of things that we are' (ExecRemConsultant: 17)
- COI/CoyExecRemSpecialists (Mid-position): 'The same issues of objectivity and independence of thinking, integrity, and competence are the same characteristics that mark out a great HRD or Head of Reward. US HRDs are more impressive than anywhere else, the UK is in the middle. Continental European HRDs can be absolute slaves to their CEOs' (ExecRemConsultant: 4)
- COI/CoyExecRemSpecialists (Negative): 'Being an independent CoyExecRemSpecialist in an organisation is very tough. It goes back to the US 1% rule – it gives the ExecCompConsultant leverage to walk away. One would need a kind of start-up exclusion zone in the UK for independent ExecRemConsultants. CoyExecRemSpecialists – it's more catastrophic if you're fired, than for the ExecRemConsultant. Most HRDs know nothing about Reward. They know which side their bread is buttered; where essentially their job is butler to the CEO' (RemCoChair - NED: 5)
- COI/CoyExecRemSpecialists (Negative): 'Are conflicts of interest satisfactorily addressed? No! I'm not convinced that conflicts are satisfactorily dealt with. It's a remarkably difficult thing to handle internally. A lot of the things they learn in HR are not necessarily ideal for securing objectivity, fairness, motivational in the face of executive influence. They are part of the business, so providing some sort of sanction is unfair and unreasonable' (RemCoChair - NED: 6)
- COI/CoyExecRemSpecialists (Negative): 'I don't believe internal people are very good at setting senior level compensation. There are too many conflicts of interest. So I think they're there to help people, not be part of the process. They work for RemCo Chair in helping him to do his job, rather than they're working for the CEO doing his job' (CoyExecRemSpecialist: 8)

#### **4.4. Synopsis of Research Interview Findings ('Synopsis')**

The purpose of the Synopsis is to collate the key Chapter 4 Findings on a factual basis (see Table 4.8 below for a summary in schematic format), in order to provide appropriate context for Chapter 5 Discussion – in which the UK Executive Remuneration Scene and Literature Review, Research Methods and Findings are discussed in detail.

There were in fact comparatively few RITG/RITGST aspects where RIP interviewees were really split into 'Positive' or 'Negative' positioning of their comments/views. Examples were RITG1:SQ1, RITG1:SQ2 and, to a lesser extent, RITG1:SQ3, plus RITG5: SQ1.

##### **4.4.1. RITG1 (and RITGST1-4) Aspects**

###### *UKRemCoAdvisoryScene*

The comments/ quotes selected for Chapter 4.3.1. to 4.3.18. above reflect the broad spectrum of views expressed by RIP interviewees, being more or less equally divided into 'Positive', 'Mid-position' and 'Negative' stances in respect of current UK practice. Some similar perspectives were provided in respect of the USCompCoAdvisoryScene. In relation to both UK and US, 'Negative' views majored on 'consultant independence' aspects and investor community restraints, whereas 'Positive' ones focused on the benefits arising from the 2013 Reforms, together with the perceived high quality of ExecRemConsultants' advice and their strong professional standards.

### *SVExecRemConsultants*

Labour's SVExecRemConsultants Proposals that the appointment and ongoing retention of RemCoAdvisors should be subject to shareholder approval, met with a unanimously 'Negative' response from RIP interviewees. The key reasons for interviewees opposing such proposed reforms is that they were viewed as in some way comparing the role of ExecRemConsultants advising RemCo with that of the appointed external auditor's statutory rights and duties.

### *SABV*

The August 2017 *Government Response* abandoned the Government's previous proposals regarding a SABV on Directors' remuneration. The views of the RIP interviewees in respect of the SABV proposals was overwhelmingly 'Negative'. In short, they could not see the need for such legislation - particularly since the introduction and ongoing operation of the 2013 Reforms. Indeed, there was a view that a SABV could lead to less satisfactory corporate governance outcomes than the arrangements in place post-2013 for an annual advisory vote on remuneration and triennial binding vote on remuneration policy.

### *PRD*

Government's August 2017 position of moving ahead with proposals (now enacted – applicable to accounting periods starting on or after 1 January 2019), for the disclosure of the ratio of CEO's remuneration to the pay of the workforce was not mirrored in the stance taken by the RIP interviewees. Although there was some sympathy with the concept of PRD, the RIP interviewees focused on the practical difficulties involved and doubted whether the introduction of PRD would be positive in corporate governance terms.

The UK took the opposite position to the EU in respect of PRD – once the latter dropped its PRD proposal. The US on the other hand put into effect for the 2018 Proxy Season its PRD reforms (using ‘median’ workforce pay figures, rather than ‘average’ ones) but only in respect, at this stage at least, of the largest publicly listed companies. The UK finally opted for the CEO ‘single total figure remuneration’ being compared against lower quartile, median and upper quartile median pay of the company’s UK workforce. The perceived merits of UK PRD were stressed by keen proponents, such as the *Financial Times* stating: ‘Britain can at least claim a step forward towards more effective governance’, and citing the HPC, PLSA and Government’s PRD proposals as being a ‘valuable and dynamic reference point’.<sup>388</sup>

It was Labour policy as well – see Umunna’s ‘massive pay ratios have turned into a surge of popular anger at the unfairness of our economic system’.<sup>389</sup> So there would appear to be clear water between the ‘Negative’ views expressed by the RIP interviewees and those of Conservative and Labour parties - and various UK corporate governance commentators.

## WOB

Government announced in August 2017 that it intended to press ahead with inviting FRC to consult on revisions to UKCGC to ‘strengthen the voice of employees at Board level’, based on BODs choosing between appointing employees to the BOD, having a NED with specific responsibility for ‘employee issues’ or introducing an employee advisory council. This was a ‘watered down’ version of Theresa May’s original proposals, as reflected in the November 2016 *Green Paper*. The new version of UKCGC was published in

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<sup>388</sup> Financial Times Leader Editorial, ‘Corporate governance reforms can be effective’ *Financial Times* (London, 29 August 2017) <<https://www.ft.com/content/d50a6ae8-8ca7-11e7-9084-d0c17942ba93>> accessed 21 January 2019.

<sup>389</sup> Chuka Umunna, ‘Giving Not Just Taking’ (Speech given at the Institute of Directors, 8 February 2018) <<http://highpaycentre.org/pubs>> accessed 25 January 2019. Also Umunna, ‘Labour Will Address Executive Pay and Rewards for Failure’ (Speech given at IPPR, 12 January 2012) <<http://www.labour.org.uk/labour-will-address-executive-pay-2012-01-12>> accessed 2 July 2014. Umunna resigned from the Labour Party in 2019.

July 2018 – applicable to accounting periods starting on or after 1 January 2019.<sup>390</sup>

The views of the RIP interviewees regarding WOB were generally ‘Negative’. Accordingly, their views on PRD and WOB were contrary to Government’s - but in line with the latter’s more recent views on SABV (and at one with the fact that this Government had never proposed the introduction of SVExecRemConsultant). Labour on the other hand remains in favour of a mandatory, ‘pure’ version of WOB.<sup>391</sup>

### *GI&O*

There was a broad spread of views from RIP interviewees regarding the ‘independence’ of ExecRemConsultants. These ranged from definitely ‘Negative’ through to very ‘Positive’. Several of the ExecRemConsultants interviewed stated that they had been sacked from particular advisory appointments after providing a specific piece of genuinely independent and objective advice to the RemCo concerned – indeed, because they had provided such advice.

The CoyExecRemSpecialists interviewed were split between those who maintained that it was possible for ExecRemConsultants to be independent, and that the latter genuinely tried to be objective, to a particular CoyExecRemSpecialist who was more critical in stating: ‘ExecRemConsultants generally support RemCo’s decision, rather than being truly independent and challenging it’.

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<sup>390</sup> UKCGC (July 2018), FRC Provision 5, 5 <<https://www.frc.org-uk/news/july-2018/a-uk-corporate-governance-code-that-is-fit-for-the-future>> accessed 5 December 2018. (FRC in February 2017 had announced plans for a comprehensive review of UKCGC) <<https://www.frc.org.uk/.../corporate-governance-and.../UK-corporate-governance-com>> accessed 21 January 2019).

<sup>391</sup> Ashley Cowburn, ‘Workers to make up one-third of company board members under Labour’ *The Independent* (London, 5 September 2018) <<https://www.google.com-uk/search?ei=08cHSPy6otk71FAPid21qA>> accessed 5 December 2018.

### *Working Relationships RemCo/ExecRemConsultants*

Although the general view of RIP interviewees was 'Positive' concerning the RemCo/ExecRemConsultant working relationship, one ROO referred to its perception of 'some sort of knowledge gap between the expertise which is held by ExecRemConsultants and the knowledge of some RemCos'. Strong emphasis was put on individual ExecRemConsultant expertise and professionalism, as opposed simply to the reputation of their employing firm. Another issue mentioned was that the working relationship had changed because of executive pay regulation and the 'requirement to have your remuneration strategy agreed'. This was perceived to have raised the importance of the ExecRemConsultant's role.

#### **4.4.2. RITG 2 (and RITGST5) Aspects**

##### *Big Four, ABCs and Boutiques*

The contrasting UK/US positions regarding advisory services provided to RemCos/CompCos – ie., the UK position where the market is dominated by the Big Four and ABC firms, and the US one where Boutiques predominate over the ABC firms and the Big Four do not major on advising CompCos – was considered by the RIP interviewees.

Some attributed the disappearance of larger UK Boutiques (ie., AH acquiring NBSC in 2008 and Kepler being acquired by Mercer in 2015), variously to the attractions of 'one-stop-shopping', lack of UK market demand for Boutique firms and the fact that UK companies tend to be more international than US ones (and so require international capabilities from their advisors).

The US position was attributed to a more legalistic (as opposed to ‘comply or explain’) approach generally to ‘COI/Independence’, the frequent combination of CoyChair and CEO roles, and the specific SEC 2009 regulations regarding the disclosure to shareholders of fees (for both CompCoAdvisory appointments and ‘Other Services’ – in the case where the latter exceed USD 120,000 in a particular fiscal year). Fee disclosure in particular was cited as the reason why to a greater or lesser extent US ABC firms spun-off much of their CompCoAdvisory Practices into Boutique firms (supplementing the likes of FC and PM, which were well-established Boutique firms already).

Although certain RIP interviewees specifically mentioned their view that Big Four ExecRemConsultants are ‘all very, very bright professional people with a qualification’, with ‘high professional standards’ (comments made by a CoyExecRemSpecialist), together with little concern expressed about ‘Big Four independence/COI’ (eg., a ROO interviewee in stating ‘I don’t get too worked up about this issue’), there was reference (by a City Lawyer) to companies needing to take into account the identity of their external auditor when reviewing their RemCoAdvisory appointment.

Lastly, one of the RemCoChair interviewees queried whether the Big Four would be in ExecRemConsultancy (particularly advising RemCos) 10 years hence – the fees generated being tiny compared against the overall income of Big Four firms and in light of the perceived reputational risks involved in providing RemCoAdvisory Services. However, as mentioned by a non-Big Four ExecRemConsultant interviewee, ExecRemConsultancy is attractive to the Big Four as a service line because ‘they go straight to the Boardroom’.

## *COI/ExecRemConsultants*

The comments from ExecRemConsultants in Boutique firms, not unsurprisingly, focused on the benefits as they see it, of their service offering being more 'partner-led' (as opposed to the Big Four/ABC firms), rather than simply majoring on the 'COI/independence angle' (although this was promoted in terms of 'this is the only service we provide, so we are not conflicted').

'Negative' comments regarding the Big Four (such as those expressed by a RemCoChair) were along the lines that these firms were now 'too big to fail', and 'they prefer not to have their head above the parapet', plus there is less diversity in the UK market than previously (with very few Boutiques) and the whole 'independence' issue being complicated by the fact that the provision of RemCoAdvisory Services 'is very particular to the individual ExecRemConsultant. It's not even the firm'.

More generally though, CoyExecRemSpecialists viewed Boutiques as being 'more likely to bend in the wind than their ABC/Big Four counterparts'. The stress from CoyExecRemSpecialists was on 'you really want to go where you are going to get the best advice; otherwise, what's the point of having it?' Additionally, the UK was seen as having more competition than the US – because in the UK the Big Four and ABC firms are very much in the market (in fact, they dominate it), as opposed to the Big Four being far less active regarding CompCoAdvisory appointments in the US.

There was frequent reference to the 'independence counter-argument' – ie., due to the fees charged by the Big Four and ABC firms for 'Other Services' (eg., external audit/actuarial) that they are less likely to put their entire business at risk by not being scrupulously independent/managing COI when providing RemCoAdvisory Services. The implication here being that Boutique

firms were too dependent upon just a few clients for a really significant proportion of their overall fee income.

### *DSOtherServicesFees*

There was definitely not a chorus of demand for the disclosure to shareholders of fees charged for 'Other Services'. Even amongst ROOs and RemCoMembers, such disclosure was not seen as being an issue that was high on their agenda.

There was some speculation though, from ExecRemConsultants and NEDs, about what might happen if such disclosure were to be introduced in the UK – in terms of 'there might be a few more Boutiques set up' - and that, with particular respect to the Big Four, the ExecRemConsultancy services would be limited to advising management rather than taking on RemCoAdvisory appointments 'because the private equity side or property side of the business would not want to see fees disclosed'.

It should be remembered too that ExecRemConsultancy firms advising CompCos/RemCos where there is already a secondary listing in another territory, already have full fee disclosure to contend with - but seem to manage it satisfactorily.

The overall conclusion from RIP interviewees was that introducing DSOtherServiceFees into the UK might lead to a move more towards the Boutique model 'because why should any firm like the Big Four or ABC firms disclose their commercial arrangements with big clients for the entirety of the business relationship?' They did not see strong business or corporate governance reasons for such disclosure being necessary or even desirable. The UK trend has in any event been moving away from the Boutique model – as client companies see benefits in a 'one-stop-shop' approach.

#### 4.4.3. RITG 3 Aspects

##### VCC

The comments of research interviewees on the UK's voluntary self-regulatory approach for ExecRemConsultants was broadly 'Positive' – ie., that self-regulation is appropriate in this context. One ROO interviewee commented:

I don't get the strong impression that people feel ExecRemConsultants are behaving in some sort of maverick, cavalier way. So, I think that some form of self-regulation is probably the right way to go for this sort of business activity.

Having said this, two ExecRemConsultant interviewees (one from an ABC firm and another from a Boutique one) were more critical of self-regulation. Whereas a particular interviewee saw 'self-regulation as being akin to self-serving', another stressed that 'the marketplace for ExecRemConsultancy advice provided to RemCos is unfair and favours the larger firms where there are real conflicts'. The latter also stressed the 'silly test' of 'if you don't set up RCG then we'll regulate your business'. In other words, the self-regulatory approach only came about due to the promotion in HC TC's *Ninth Report* and *Walker Review* of the concept of regulation for RemCoAdvisory Services.

##### RCG

Although the broad preponderance of interviewees was 'Mid-position' on how the UK self-regulatory position is working in practice (ie., the introduction and ongoing operation of RCG), there was considerable dispersion (both into 'Positive' and 'Negative' positioning). The 'Mid-position' responses, tended to focus on whether adherence to RCG's VCC would increase/improve if individuals (as opposed to ExecRemConsultancy firms) were RCG members –

ie., if individual ExecRemConsultants signed up to RCG and whether an RCG power to sanction individual ExecRemConsultants would be disproportionate.

The 'Positive' comments (ie., in favour of RCG as it currently stands) stressed that whereas Big Four/ABC firms might be able to cope with more regulation, Boutique ones 'will struggle'. There was also emphasis on 'be careful about asking RCG to do more. It's not equipped to do more at the moment' and that 'improvements in standards have been largely driven by the market and the fact that RemCos have taken control'.

It will be seen that the 'Mid-position and 'Positive' stances emphasise the perceived lack of need/demand for State-sponsored/statutory regulation (by, for example, interposing FCA or PRA), an appreciation of the inherent limitations of both the role of ExecRemConsultancy (ExecRemConsultants do not make pay decisions, they advise RemCos), the fact that ExecRemConsultancy is a 'tiny profession', together with ExecRemConsultancy firms (Big Four and ABC) being 'professionally regulated anyway, and also individual consultants too are, actuaries, accountants or lawyers'.

RCG was seen as being a creation of the particular circumstances in which it was devised and introduced in 2009/2010, for a limited purpose and with restricted objectives (broadly, the formulation of a VCC, plus the ongoing review of how that is working in practice and revising it). In short, RCG was perceived as being very different in concept from being the regulator of a LTP profession (such as, the Bar Council or GMC), with an independent disciplinary body (such as, BSB or SDT).

The 'Negative' comments majored on the perceived effectiveness (or otherwise) of RCG being 'about as effective as hiding the Taj Mahal by sticking a bowler hat on its roof (in the daytime)', and perceived complacency

‘if you’re complacent and not listening to the vast majority of people out there, who don’t live in this world, we’re all in trouble’ (both views of the same CoyExecRemSpecialist). A ROO interviewee stated that ‘there are probably one or two advisors who perhaps are seen as not behaving brilliantly (...) they [ie., shareholders] should call out a couple of these’.

Some ExecRemConsultant RIP interviewees were positively hostile to RCG, stating ‘the RCG is a cartel obviously’, and ‘close down the RCG. I don’t think the existence of RCG’s VCC has made any difference to how I operate at any junction ever’. A RemCoChair stating ‘it’s a complete waste of time (...) does not require anything more than a sensible person would do’.

The ExecRemConsultants from Big Four and ABC firms were on the whole keener on RCG than their Boutique counterparts, but this was not invariably the case. Indeed, some Boutique ExecRemConsultants were definitely supporters of RCG – particularly where earlier in their career they had worked in ABC firms.

The overall picture on RCG was pretty mixed – whereas some interviewees saw it as doing what had been expected of it from the outset (ie., a largely defensive measure with certain worthwhile aspects – such as, being a vehicle to capture market intelligence/feedback on how the ExecRemConsultancy industry was doing, and supplementing ExecRemConsultancy firms’ own terms of engagement/terms of business), others wanted RCG to ‘do more’ (including a ‘culture change’ role) and offering individual membership for ExecRemConsultants and, indeed, more broadly.

#### **4.4.4. RITG 4 Aspects**

*E/PS*

RIP interviewee comments/quotes on the ethical and professional standards of ExecRemConsultants were generally 'Positive' or 'Mid-position' in nature, as opposed to being 'Negative'. The consensus view being that although ExecRemConsultancy as a business may have issues (eg., in relation to COI), these were not primarily due to low ethical or professional standards. Professional and ethical standards were generally perceived as being at a high level, with the Big Four and ABC firms having a 'strong professional standards culture'.

The employing firm was seen as providing 'the environment for the consultant to give advice', but the position adopted 'really depended on the individual consultant'. ExecRemConsultants were seen as being 'business advisers' (ie., between the 'new profession' and the 'management strategy consultants') on the continuum. The diversity / multi-disciplinary nature of ExecRemConsultants and ExecRemConsultancy teams were seen as being positive factors, and that ExecRemConsultants have a 'fairly strong moral compass' and are 'comfortable working with conflicts'.

'Mid-position' comments focused on the balance between ExecRemConsultancy now becoming a profession in its own right (with 'direct entrants' from university) and the need for junior ExecRemConsultants to have sufficient senior colleagues to learn from and, indeed, the perceived necessity for ExecRemConsultants generally to have 'a hinterland of experience to form judgements' and that obvious successors might not come through in due course to take the place of Actuaries who currently tend to lead Big Four/ABC ExecRemConsultancy practices.

The self-selecting nature of ExecRemConsultants was referred to, and that 'the best guarantee of competence is competition by reputation'. The stress was on professional behaviour, as opposed to professional qualifications (and that an ExecRemConsultant might regard themselves as being a 'professional person' whether or not actually holding a professional qualification(s)). Also mentioned was the fact that ExecRemConsultancy is a 'tiny business' - it is not a profession but 'a specialised form of management consultancy rather than a fiduciary role'. ExecRemConsultancy was seen as being 'essentially a selling profession' and, interestingly, that 'no one has cracked how to make a lot of money out of it'. Where there was criticism of ExecRemConsultants it was along the lines of 'not lacking professionalism or competence but not being imaginative in terms of outcome'.

'Negative' comments came from ROO interviewees – 'still think there's some bad practice and some wrong mind-set in the industry' and 'to what use is that professional experience put? Sustainable results or short-term numbers game?' The criticism focused on the 'ethical dimension', rather than competence (indeed, one ROO interviewee accepted that ExecRemConsultants' advice and independence had improved but considered 'there may still be a lack of ethical dimension').

An issue referred to by ROO interviewees was the allegation that ExecRemConsultants may be sending unsolicited 'pay benchmarking' material (showing 'under payment') to senior management of companies whose RemCo they did not currently advise. This was also mentioned in ERWG Final Report, and RCG has since revised its VCC to stipulate that such behaviour by ExecRemConsultants is not acceptable.

Having said this, ERWG declined to provide RCG with specific information about the intelligence they said they had gathered in this regard, so RCG could only amend its VCC, as opposed to confronting particular member firms

with specific allegations. Now the VCC specifically prohibits such behaviour any breach that might occur in the future could presumably be grounds for the member firm concerned being expelled from RCG.

Criticism of ExecRemConsultants from ROOs focused on the view that despite improvements in recent years, there was still, in their view, a mindset amongst certain ExecRemConsultants that investor consultation is to be conducted with a view to 'seeing what one could get away with', rather than promoting genuinely constructive dialogue between RemCos and investors.

*TE/E*

The responses of research interviewees on technical expertise/experience rather mirrored those in respect of ethics/professional standards, in that comments were generally 'Positive' or 'Mid-position' rather than being 'Negative'. The 'Positive' comments focused on the fact that ExecRemConsultants are very usually qualified as an Actuary, CA, CTA, Lawyer or hold an MBA. In the words of one interviewee 'they have decent professional qualifications beforehand'. It was felt that not only do ExecRemConsultants have the appropriate level of technical expertise, but there are 'operational processes and ethical training to support the professional advice and remuneration topics'.

One ExecRemConsultant stressed that ExecRemConsultancy 'is a very good career. I've not hired anyone who has not stayed in the business or moved on well'. The stress was on 'executive pay being an art rather than a science' and that those in ExecRemConsultancy who were actuarially qualified 'are not grey actuaries. They're the gorillas who got out of the compound, very, very clever' (comment from a RemCoChair).

The really senior ExecRemConsultant interviewees reflected that when they entered the business it was far more common for mid-career or young entrants not to have professional qualifications (some had not been to university either); however, previous relevant work experience was generally seen as being a real asset. Although the numeracy aspect was stressed, it was felt that 'pay is only partly a numbers game', being empathetic and understanding the importance of 'people aspects' was crucial. ExecRemConsultancy was referred to as being a 'craft skill, with ethics attached' and that one needed to be 'bright, commercial and with a few miles on the clock'. It was seen as being important, not just to have innovative ideas, but also 'to be able to land stuff'.

It was mentioned that ExecRemConsultants now played a quasi-political role in investor consultations, which sometimes bordered onto 'relationship advice'. There was recognition that ExecRemConsultancy is a very niche, specialised career. But this was seen as being a positive aspect in that it enabled one to be 'more a consultant' than practising as a Lawyer, CA or Actuary. The multidisciplinary nature of the role was also stressed, with the opportunity to combine in a consulting team the respective inputs of various individuals from differing backgrounds.

The role was seen as being far broader than simply acquiring technical skills - RemCos expect their appointed ExecRemConsultants 'to have a hell of a lot of knowledge of pay', but 'the quality of advice is what people pay for. That's why they go to people who have established a reputation'.

Some ExecRemConsultant interviewees stressed that it would be better for 'direct entrants' to acquire professional qualifications (eg., Actuary, CTA, Lawyer or CA) before going into ExecRemConsultancy or, alternatively, gaining such qualifications while working as an ExecRemConsultant. There was stress on the 'business advice' dimension, rather than a vocational one.

'Negative' comments focused on interviewees saying that 'it used to be more financially attractive to be an ExecRemConsultant', and that 'in the past there were senior consultants more available to learn from'. The latter made it easier for young ExecRemConsultants to 'learn on the job'. The ExecRemConsultancy sector was seen as not growing in terms of the number of ExecRemConsultants, with RemCos perhaps demanding more compliance-type advice from their appointed RemCoAdvisors rather than asking for genuinely innovative ground-breaking ideas.

This may have led to ExecRemConsultants offering more risk-averse advice, to suit the greater risk concerns faced by RemCos. Whereas some ExecRemConsultant interviewees expressed views about 'skills disappearing from the industry' there did not seem to be more general concerns about this from other ExecRemConsultants interviewed. In fact, it was argued that less individualistic ExecRemConsultants better suited the consultancy times/environment in which ExecRemConsultants now work – expressed by one interviewee as 'more risk-averse consultancy advice for more risk averse times'.

## SA/Q

In respect of whether there should be a SA/Q for ExecRemConsultants, there was comparatively little enthusiasm expressed by RIP interviewees for moving away from the present situation - where although the vast majority of senior ExecRemConsultants possess a professional qualification(s) there is no ExecRemConsultancy SA/Q (save for limited accreditations). Accordingly, most interviewees fell into the 'Negative' camp, in that they could not see any value in the UK moving away from its present position (ie., supporting this thesis' hypothesis).

Dealing first with those who took a contrary view, RIP interviewees taking a 'Positive' stance (ie., in favour of SA/Q), considered that ExecRemConsultants might have obtained a professional qualification(s) many years ago and that a SA/Q in ExecRemConsultancy would 'attract talent and be a hygiene factor'. Accreditation was mentioned favourably as 'giving young people skills to do the job' – and that perhaps RCG could be involved in this. Others considered that if Boutiques were again to flourish in the UK then there would be a good case for accreditation.

A 'Mid-position' CoyExecRemSpecialist interviewee raised the issue 'I'm not sure I've met people who haven't a professional body who are ExecRemConsultants'. This echoes the comment from a ROO interviewee who stated 'I didn't know a Big Four firm would employ anyone who had just been through the consultant route and didn't have an actuarial or legal background'. One obviously needs to be careful here to distinguish between two separate issues; namely, the merits or otherwise of ExecRemConsultants having a professional qualification(s) of some type (eg., Actuary, CA, CTA or Lawyer) and whether ExecRemConsultants, irrespective of whether they already have such a qualification(s), should also possess a SA/Q in ExecRemConsultancy.

As regards the former, 'Mid-position' interviewees maintained that professional qualifications should be encouraged, rather than being made mandatory and that ExecRemConsultancy was 'not big enough to be a profession that one would train for'. Also, would SA/Q look like a 'blend of lawyer, accountant and CFA?' Others took the view that the Big Four instill the appropriate behaviours, particularly in relation to compliance aspects. Overall, research interviewees doubted the value of channelling 'direct entrants' down the direction of 'a very specific career' – which is presumably why the Big Four in particular offer such entrants a choice of Actuary and CA streams in which to qualify while working as an ExecRemConsultant.

RIP interviewees in the 'Negative' camp focused on SA/Q as being 'complete over-kill. Advice on what other people are doing and what options are available. You don't need people who are specifically qualified'. Also 'a lot of this base work is number crunching. I cannot see the benefit of a whole new profession with qualifications' (views of a CoyExecRemSpecialist). The answer to the 'training question' was seen as being in-house training and learning from more senior ExecRemConsultants (akin to 'apprenticeship'), rather than SA/Qs.

More than one interviewee stated that one needed to separate out what 'direct entrant' ExecRemConsultants might regard as being helpful in their training - SA/Q could fit this need – and what RemCos might actually regard as being useful for their appointed ExecRemConsultants when advising them.

If RemCoChairs/Members do not specifically voice the need for an ExecRemConsultant SA/Q then it is unlikely that ExecRemConsultants themselves will unilaterally promote one. At present RemCoChairs/Members, whilst they may express views that ExecRemConsultants should be professionally qualified and regulated, do not appear to be stating 'we want our appointed RemCoAdvisor to be a "Certified Executive Compensation Professional" or something similar'. There is also the potential issue raised by more than one interviewee that creating a mandatory SA/Q could create barriers to entry/a 'closed shop'.

It was hard to detect much enthusiasm from RIP interviewees (not just ExecRemConsultants) that a SA/Q would be a valuable innovation - although there was far more appreciation of the value of ExecRemConsultants being professionally qualified as, eg., Actuary, CA, Lawyer or hold an MBA. Some of this may be due to the perceived ethical and technical strengths of the 'new professions'. The 'vocational' aspects of legal qualifications seem less valued, but this is not surprising given the views of research interviewees that

ExecRemConsultancy lies between the 'new professions' and 'management / strategy consultants' on the continuum put to them by the interviewer.

### *LTP*

The views generally of RIP interviewees regarding the comparative merits/attractions of introducing a LTP regime for ExecRemConsultancy were in the 'Negative' camp (ie., again, supporting this thesis' hypothesis). This is hardly surprising in light of the limited appetite shown by interviewees for an ExecRemConsultant SA/Q. Given that a LTP involves both a SA/Q, plus a disciplinary sanctions regime, it seems only obvious that if SA/Q had few devotees then a LTP system/framework would find it even harder to garner support (particularly as a disciplinary sanction usually involves an independent assessment body - which would be extremely difficult to achieve in light of the very small number of ExecRemConsultancy practitioners).

'Negative' comments from RIP interviewees focused on whether a LTP regime is actually necessary, in light of most ExecRemConsultants in the UK being part of a highly regulated Big Four/ABC firm, together with the vast majority of ExecRemConsultants being professionally qualified anyway (so in principle are subject to individual regulation by the relevant professional body(ies), if they hold a practising certificate).

The UK situation typically involves a regulated firm with rigorous terms of business/codes of business conduct, plus firm membership of RCG, and then individual membership of professional bodies, on the part of ExecRemConsultants (eg., the CA bodies, Law Society, Bar Council, Institute of Actuaries or CIOT).

Accordingly, an ExecRemConsultant, holding a practising certificate from one of these bodies could in principle face individual disciplinary sanctions for

breach of the relevant code of conduct. The view expressed by one ROO could be regarded as fairly typical - 'licensing would be a step too far unless there is substantive evidence that either they're [ie., ExecRemConsultants] not impartial/ they're not independent'. Also the notion was raised that 'once you create a closed shop, you create barriers to entry'.

Research interviewees also found it difficult to conceive of a situation where an individual ExecRemConsultant would have their licence revoked. As one ExecCompConsultant put it 'so much of the advice is business judgement'. One ROO interviewee however, expressed the view that having a LTP 'could have a positive impact, but this was very much a matter for the industry rather than regulators'.

Interestingly, when the inception of RCG was in contemplation, FRC declined to extend its oversight/regulation beyond CAs and Actuaries. It was considered that the public interest lay in establishing a 'self-regulatory regime' for ExecRemConsultants – they were presumably seen as being closer to 'management/strategy consultants' (for whom a LTP regime is not applicable) than the 'new professions'.

In respect of the external auditor role for example, it is easy to see a public interest/harm argument in favour of both LTP and FRC regulation/oversight. Similar considerations obviously apply even more strongly for both Lawyers and medical practitioners - few would argue that a LTP regime is not necessary. Indeed, it is not difficult to formulate examples where individual practitioners should be barred from practising their profession - where harm to the public has resulted in loss of liberty/money for clients (in the case of Lawyers) or damage to health/even death for patients (in the case of medical practitioners). It is much harder to argue, in the view of the RIP interviewees, that similar considerations apply to ExecRemConsultants.

Although a RIP interviewee considered that a LTP is ‘not such a bad idea. What happens if you get a few wrong apples in this business?’, other interviewees would doubtless argue that such situations can be dealt with via the ‘raft of defences’ referred to above - with key issues being ‘will it make us better consultants? Would it restore public trust?’ These questions were raised by a US ExecCompConsultant, but are echoed by those of a UK RemCoMember - ‘I don't think disciplinary sanctions would have the bite to be effective’.

In essence, RemCos can easily dispense with the services of their appointed ExecRemConsultant if they are dissatisfied with them - and RemCos are far more likely to take this route where they perceive it as being necessary, as opposed to concerning themselves with LTP/disciplinary sanctions considerations. One RemCoMember also mentioned the fact that it is possible for a particular RemCo (in fact, the company concerned) to sue their appointed ExecRemConsultants in contract and/or tort if the advice provided has been negligent.

#### **4.4.5. RITG 5 Aspects**

##### *WorkingRelationshipsCoyExeRemSpecialists/ExecRemConsultants and RemCo*

The ‘Positive’ views of research interviewees regarding the working relationship between CoyExecRemSpecialists and, respectively, the appointed ExecRemConsultant and the RemCo concerned focused on how the in-house specialists ‘can act as a useful interaction between ExecRemConsultants and RemCo’ (ROO interviewee). ExecRemConsultants stated they needed ‘their [ie., CoyExecRemSpecialists]’ knowledge and experience to be able to advise’, together with recognition that other senior management ‘were an important part in the process’. The potential for conflict

was recognised, but one ExecRemConsultant interviewee stated 'nine times out of ten, a good ExecRemConsultant can avoid a stand-off [ie., with CoyExecRemSpecialists]'.

Having said this, certain ExecRemConsultant interviewees were far less sanguine about matters. 'Negative', comments included 'the relationship between ExecRemConsultant and Director of Reward is most difficult, as the latter is internal', and 'I can describe absolutely horrifying relationships within internal resources. Very, very difficult'. Another ExecRemConsultant was of the view that HRDs' involvement in the remuneration determination process 'stays in the pay package and bonus conversation [as opposed to strategic business matters]'. Yet another made the interesting observation that a Director once said to him 'a business with HR function is an unhappy business'. The ExecRemConsultant concerned added - 'I've a lot of sympathy with that'.

'Mid-position' comments of RIP interviewees majored on ExecRemConsultants stating how they appreciate the difficult role CoyExecRemSpecialists have to play, and not envying their position. There was clear acceptance that 'cutting out the internal guys is a mistake' and acceptance that it is better to face up to the inevitable conflicts arising than to seek imposing solutions/decisions on management without first obtaining their input/buy-in to the fullest extent possible. It was recognised that CoyExecRemSpecialists are 'experts in their company', so they have the knowledge and contribution to make on a far broader front than simply providing staff data.

Indeed, one ROO interviewee stated: 'CoyExecRemSpecialists may see themselves as knowledgeable as the ExecRemConsultants'. However, a RemCoMember interviewee stated 'CoyExecRemSpecialists welcome outside help on a white charger'. A possible reason for this is that

CoyExecRemSpecialists have the CEO as their ultimate 'boss' (albeit with a dotted line responsibility from CoyExecRemSpecialist to RemCoChair), so it is inevitably difficult for them to oppose a CEO directly - particularly as a CoyExecRemSpecialist 'may have to live there for the next twenty years'.

A CoyExecRemSpecialists interviewee stressed 'you have to be very patient to be an in-house person' and 'you care more about company performance than the ins - and - outs of technical stuff [ie., by comparison against ExecRemConsultants]'. The conclusion from the research interviewees would appear to be generally that ExecRemConsultants and CoyExecRemSpecialists appreciate and respect their differing but complementary roles. RemCoChairs/Members appear to value the contribution/input of CoyExecRemSpecialists. Having said this, it is apparent that certain ExecRemConsultants have not had an easy relationship with particular CoyExecRemSpecialists in particular circumstances.

### *RemCoAdvisoryProtocols*

The RIP interviewees recognised the importance of having appropriate protocols in place for when ExecRemConsultants circulate draft/final documentation containing their advice. Indeed, RCG's VCC now makes specific reference to ExecRemConsultants notifying the RemCoChair of material changes that have been made to draft reports during the course of preparation/before circulation of the final document. Having said this, particular RemCoChairs have their own specific way of handling the circulation of the ExecRemConsultant's documentation.

Whereas some stipulate that the ExecRemConsultant should send them the draft report 'before management can get its sticky paws on it', others prefer to see draft reports only once the ExecRemConsultants and management have conferred on any previous versions. Whichever approach is adopted,

RemCoChairs see liaison between ExecRemConsultants and management as being a process of ensuring staff data (and, indeed, company strategic business objectives and financial information) are correct, as opposed to 'editing' the draft report. One CoyExecRemSpecialist made the point - 'I've seen reports go straight to RemCo, which led to the ExecRemConsultant being sacked, because they gauge it wrongly'.

The 'Myners comments' referred to by ROO interviewees in particular are now somewhat historic (dating from the time of GFC). The view of ExecRemConsultants in particular, both UK and US, is that RemCoChairs should agree 'circulation protocols' at the 'on-boarding' stage when ExecRemConsultants are initially appointed.

RemCoChairs need to make it clear how they want documents to be circulated, together with procedures regarding drafts etc. This is reinforced by RCG's VCC protocols. Accordingly, it should be obvious to ExecRemConsultants that permitting management input that 'edits' draft reports (as opposed to amending factual errors on staff data/financial data) is not something that should be countenanced (and, indeed, management's request for such should result in ExecRemConsultant's notification to the RemCoChair). This is a different matter of course from soliciting/canvassing the views of management as part of the process of the ExecRemConsultant preparing an advisory report for RemCo's consideration and determination.

ExecRemConsultant interviewees made favourable reference to specific Australian regulatory provisions whereby there are really strict rules on 'paper management' and 'who can see what regarding draft circulation'. The ExecRemConsultants need to confirm that particular reports are their work and contain their views. As a result, it is common for ExecRemConsultants to write a separate 'comments paper'. More than one of the ExecRemConsultant interviewees stated that 'joint papers' (ie., management and the

ExecRemConsultants concerned) could be problematic, unless management accepts any changes put forward by the ExecRemConsultant. Where management refuse to accept the changes concerned, the ExecRemConsultant interviewee would write a 'comments paper'.

Accordingly, it could well be argued that a 'Myners situation', where successive drafts allegedly moved in management's favour, is now far less likely to arise. Having said this, there is no single 'correct approach'. A US ExecCompConsultant interviewee stated that 'joint reports' were a preferred route, and this usually worked well. In the UK context, the ExecRemConsultant interviewees seemed far more wary of 'joint reports' (but, like their US counterparts, were strongly supportive of liaison with management as part of the process of preparing advisory reports).

The standard UK approach now appears to be that the ExecRemConsultant sends the draft advisory report to the RemCoChair, who then authorises a copy to be sent to management. However, RemCoChairs are generally comfortable with the ExecRemConsultant consulting with management as the report is being prepared, to confirm business strategy/goals and staff data/financial details - but any suggestion of an 'editing process' entered into with management is not acceptable.

Such factors – eg., the 'circulation path'/limitations on the type of liaison with management - should be agreed with the RemCoChair at the outset of the ExecRemConsultant's appointment, together with the notification process for any material changes to draft reports.<sup>392</sup>

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<sup>392</sup> RCG (December 2016), 'The Board's Activities in 2016 and Review of Effectiveness of Code' 3  
<<http://www.remunerationconsultantsgroup.com/assets/Docs/2016%20Review%20of%20the%20Effectiveness%20of%20the%20Code.pdf>> accessed 5 December 2018.

## *COI/CoyExecRemSpecialists*

It is unsurprising that RIP interviewee comments regarding COI/CoyExecRemSpecialists tended to fall into the 'Mid-position' category (as opposed to 'Positive' or 'Negative'). This is because interviewees considered that although CoyExecRemSpecialists were inevitably conflicted - due to the fact they are part of the management of their employing companies or report to senior management - on the whole CoyExecRemSpecialists did their best to 'stand apart from management' and assist the RemCoChair/ExecRemConsultants to the best of their ability.

Research interviewees' comments regarding HRD 'independence' were generally less favourable than those regarding Head of Reward/Head of Compensation & Benefits. One CoyExecRemSpecialist stated 'US HRDs are the most impressive, UK in the middle and Continental European HRDs can be absolute slaves to their CEOs'. An ExecRemConsultant interviewee referred to some HRDs as being 'an internal Oliver, always asking for more'.

'Negative' research interviewee comments focused on the difficult role played by CoyExecRemSpecialists 'being an independent CoyExecRemSpecialist is really tough. It's more catastrophic if you are fired, than for an ExecRemConsultant'.

Another stated 'most HRDs know nothing about Reward but they know the way their bread is buttered'. An ExecRemConsultant interviewee referred to there being 'a big problem with bias. A CoyExecRemSpecialist wanting to work with their former colleagues'. Another referred to CoyExecRemSpecialists being 'cheerleaders for the CEO'.

In short, 'Negative' comments focused on COI not being satisfactorily addressed, whereas 'Positive' ones referred to CoyExecRemSpecialists as being an 'integral part of the whole process, and the management side respect the lines of reporting and responsibilities' (ExecCompConsultant). Interestingly, a ROO interviewee stated that CoyExecRemSpecialists had 'called out examples of poor behaviour/culture, where ExecRemConsultants had not actually done so'.

RIP interviewees observed that 'it comes down to the judgment of the person in the CoyExecRemSpecialist role' and 'you have to step outside it, and that's easier for some people than for others'. A 'triangular relationship' was described between RemCoChair, CoyExecRemSpecialist and ExecRemConsultant. When this worked well, it was a mutually supportive and satisfactory situation.

Table 4.8: Overall Summary of RIP Interviewees' Respective 'Positive', 'Mid-Position' and 'Negative' Stances on RITG and RITGST Aspects.

RITG/RITGST	Broad Summary of Research Interviewee Comments/Views in terms of Current or Potential UK Remuneration Practice Aspects		
	'Positive'	'Mid-position'	'Negative'
<b>RITG1 (+ 4 RITGSTs)</b>			
<b>UKRemCoAdvisoryScene (RITG1:SQ1)</b>	<b>Equally Split</b>	<b>Equally Split</b>	<b>Equally Split</b>
<b>SVExecRemConsultants (RITG1:RITGST1)</b>	→	→	<b>Unanimously 'Negative'</b>
<b>SABV (RITG1:RITGST2)</b>	→	→	<b>Overwhelmingly 'Negative'</b>
<b>PRD (RITG1:RITGST3)</b>	→	→	<b>Strongly 'Negative'</b>
<b>WOB (RITG1:RITGST4)</b>			<b>Generally 'Negative'</b>
<b>GI&amp;O (RITG1:SQ2)</b>	<b>Split Views</b>	<b>Split Views</b>	<b>Split Views</b>
<b>WorkingRelationshipsRemCo/ExecRemConsultants (RITG1:SQ3)</b>	<b>Generally 'Positive'</b>	→	<b>Some 'Negative'</b>
<b>RITG 2 (+1 RITGST)</b>			
<b>Big Four, ABCs and Boutiques (RITG2:SQ1)</b>	<b>Generally 'Positive'</b>	→	<b>Some 'Negative'</b>
<b>COI/ExecRemConsultants (RITG2:SQ2)</b>	<b>Generally 'Positive'</b>	→	<b>Some 'Negative'</b>
<b>DSOtherServicesFees (RITG2:RITGST5)</b>	<b>Some 'Positive'</b>	→	<b>Generally 'Negative'</b>
<b>RITG 3</b>			
<b>VCC (RITG3:SQ1)</b>	<b>Broadly 'Positive'</b>	→	<b>Some 'Negative'</b>
<b>RCG (RITG3:SQ2)</b>	<b>Some 'Positive'</b>	<b>Predominantly 'Mid-position'</b>	<b>Some 'Negative'</b>
<b>RITG 4</b>			
<b>E/PS (RITG4:SQ1)</b>	<b>Generally split between 'Positive' and 'Mid-position'</b>	<b>Generally split between 'Positive' and 'Mid-position'</b>	<b>Some 'Negative'</b>
<b>TE/E (RITG4:SQ2)</b>	<b>Generally split between 'Positive' and 'Mid-position'</b>	<b>Generally split between 'Positive' and 'Mid-position'</b>	<b>Some 'Negative'</b>
<b>SA/Q (RITG4:SQ3 (a))</b>	<b>Few 'Positive'</b>	<b>Some 'Mid-position'</b>	<b>Preponderantly 'Negative'</b>
<b>LTP (RITG4:SQ3 (b))</b>	<b>Few 'Positive'</b>	<b>Some 'Mid-position'</b>	<b>Preponderantly 'Negative'</b>
<b>RITG 5</b>			
<b>WorkingRelationshipsCoyExecRem-Specialists/ExecRemConsultants and RemCo (RITG5:SQ1)</b>	<b>Split Views</b>	<b>Split Views</b>	<b>Split Views</b>
<b>RemCoAdvisoryProtocols (RITG5:SQ2)</b>	←	<b>Overwhelmingly 'Mid-position'</b>	→
<b>COI/CoyExecRemSpecialists (RITG5:SQ3)</b>	<b>Some 'Positive'</b>	<b>Predominantly 'Mid-position'</b>	<b>Some 'Negative'</b>

## CHAPTER 5

### 5. DISCUSSION

#### 5.1. Introduction

This Chapter 5 Discussion brings together the respective matters covered in Chapters 2, 3 and 4 above, with a detailed examination of these. It represents the heart of this thesis - comprising material from which are formulated the academic and practice (ie., for UK RemCoAdvisory Services) conclusions regarding the research topic, which are set out in Chapter 6 Conclusions.

#### 5.2. Critical Analysis

##### 5.2.1. Overview

Commentators on the UK executive pay scene are split between those who argue (ie., proponents of the 'UK executive pay problem' stance) that UK pay structures are 'broken', and/or pay levels are 'out of control', and those (ie., those who maintain that 'UK executive pay is stabilising/reducing') who consider the 2013 Reforms<sup>393</sup> are actually working reasonably well but need further time to bed-down in practice - and that the problems regarding executive pay lie particularly in 'outlier'/highest-paying FTSE 100 companies.<sup>394</sup>

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<sup>393</sup> 2013 Reforms (n 78).

<sup>394</sup> Edmans (n 3); Gosling (n 4).

The 'UK executive pay problem' camp stresses what it sees as 'rising executive pay',<sup>395</sup> 'high ratio of CEO pay to average employee remuneration'<sup>396</sup> and 'growing income inequality',<sup>397</sup> whereas advocates of 'UK executive pay is stabilising/reducing'<sup>398</sup> point to the fact that even HPC accepts median CEO total pay remained static between 2010 and 2016 (2010: £3.4million; 2016: £3.45million - without significant 'spikes' in the interim years)<sup>399</sup> and that HPC in its 2017 joint report with CIPD notes FTSE 100 pay packages show 'a sharp reduction in the rising trend of remuneration' (in fact, the CIPD/HPC Survey finds 'FTSE 100 CEOs have seen an overall drop in pay packages especially at the top end', but states 'the gap between the highest paid executives in the workforce still remains').<sup>400</sup>

Additionally, the CIPD/HPC study states 'the more gradual reduction in median pay reflects the more dramatic drop in pay packages of CEOs at the top'.<sup>401</sup> The contributions of Gosling and Edmans, in Purposeful Company's Executive Remuneration Report,<sup>402</sup> have already been referred to in this thesis - together with the former arguing that CEO pay trends 'have reflected broader economic forces across a whole range of occupations'<sup>403</sup> and the latter that high pay ratios do not 'demotivate staff', that 'short-term investors improve labour productivity' (provided that they trade on long-term information) and that 'employee representation reduces firm values and productivity, growth, and job creation (whilst acknowledging that 'long-term value maximisation requires the consideration of all stakeholders')'.<sup>404</sup>

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<sup>395</sup> See Jenny Roper, 'The exec price tag: reforming executive pay' *HR Magazine* (19 February 2018)

<<https://www.HRMagazine.co.uk/article-details/the-exec-price-tag-reforming-executive-pay>> accessed 23 January 2019.

<sup>396</sup> See CIPD/HPC Joint Survey, 'Executive pay: review of FTSE 100 executive pay packages' (3 August 2017)

<[http://highpaycentre.org/files/7571\\_CEO\\_pay\\_in\\_the\\_FTSE100\\_report\\_%28FINAL%29.pdf](http://highpaycentre.org/files/7571_CEO_pay_in_the_FTSE100_report_%28FINAL%29.pdf)> accessed 23 January 2019.

<sup>397</sup> But note: Jonathan Cribb & Andrew Hood, 'The facts on income inequality in the UK may surprise you' (*Institute for Fiscal Studies*, 19 July 2017) <<https://www.ifs.org.uk/publications/9554>> accessed 23 January 2019.

<sup>398</sup> Edmans (n 3); Gosling (n 4); Purposeful Company Report (n 89).

<sup>399</sup> HPC figures referred to in the *Green Paper*, para 1.2 (n 71) 16.

<sup>400</sup> See (n 396) Interestingly, the 2018 CIPD/HPC Joint Survey 'Executive pay: review of FTSE 100 executive pay' (15 August 2018) shows a return to rising pay levels (median pay increased by 11%) 3 <<http://highpaycentre.org/pubs/cipd-high-pay-centre-survey-of-ftse100-ceo-pay-packages-2016>> accessed 23 January 2019. Fluctuations of this sort are somewhat inevitable due to variability in incentive plan payouts from year to year; for example, the subsequent CIPD/HPC Joint Survey (21 August 2019) shows a return to a reducing trend. See 'Executive pay in the FTSE 100. Is everyone getting a fair slice of the cake?' <[https://www.cipd.co.uk/Images/ftse-100-executive-pay-report-2019\\_tcm18-62886.pdf](https://www.cipd.co.uk/Images/ftse-100-executive-pay-report-2019_tcm18-62886.pdf)> accessed 10 September 2019.

<sup>401</sup> August 2017 CIPD/HPC Joint Survey (n 396) 3.

<sup>402</sup> Purposeful Company Report (n 89).

<sup>403</sup> Gosling (n 4).

<sup>404</sup> Edmans (n 3).

Gosling also argues that the academic evidence points more to CEO pay being well correlated with business/company performance (both in the US and UK) when adjustments are made for company size and also shareholdings from prior LTI awards.<sup>405</sup> Both Gosling and Edmans stress the importance of using large-scale datasets published in leading peer reviewed journals when formulating findings based on 'causation' rather than 'association'.<sup>406</sup>

One can discern a similar thread in the academic literature, and indeed on occasion in the media - for example, 'Michael52's' review comments<sup>407</sup> - published in relation to Pooler & Jenkins's *Financial Times* article 'Weir reignites pay debate with move to ditch controversial schemes'<sup>408</sup> (ie., LTIPs) - in which he (ie., 'Michael52') accuses the *Financial Times* of publishing 'fake news' and argues that, contrary to the tone/stance of the article, executive pay has not been rising since GFC, income equality has been falling over many years in the UK (ie., employee earnings gap inequality has been narrowing) and 'pay ratios' have actually been declining.

The 2018 findings of Deloitte<sup>409</sup> (echoed in a comparable PwC study)<sup>410</sup> regarding pay disclosures in respect of 2017 confirmed that FTSE 100 CEO median total pay had moved from stabilising/remaining static to outright decline, with the FTSE 100 CEO median figure of £4.3million in 2016 becoming £3.5million in 2017. Commentators may argue whether such stabilisation, and now actual decline, foreshadows/constitutes a long-term trend or, alternatively, is merely a 'GFC distortion' to the seemingly inexorable

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<sup>405</sup> Gosling (n 4).

<sup>406</sup> Edmans (n 3); Gosling (n 4); Purposeful Company Report (n 89).

<sup>407</sup> Michael52, Comment on Pooler & Jenkins's *Financial Times* article (See n 384) (*FT blog*, 19 March 2018) <<https://www.ft.com/>> accessed 24 January 2019.

<sup>408</sup> Michael Pooler & Patrick Jenkins, 'Weir reignites pay debate with move to ditch controversial schemes' *Financial Times* (London, 18 March 2018). Note too Clare Chapman, 'Reforming executive pay is harder than it should be' *Financial Times* (London, 27 April 2018).

<sup>409</sup> Deloitte Executive Compensation Report, 'Shareholder Alignment, Company Performance and Executive Pay' (Deloitte, June 2018) <<https://www2.deloitte.com/za/en/pages/human-capital/articles/executive-compensation-report.html>> accessed 24 January 2019. Also Deloitte Executive Compensation Report (Deloitte, October 2018)

<[https://www2.deloitte.com/content/dam/Deloitte/za/Documents/human-capital/za\\_executive\\_compensation\\_report\\_oct2018.pdf](https://www2.deloitte.com/content/dam/Deloitte/za/Documents/human-capital/za_executive_compensation_report_oct2018.pdf)> accessed 24 January 2019.

<sup>410</sup> PwC, 'Mid-season executive pay snapshot shows continued restraint' (PwC, 21 April 2017) <<https://www.pwc.co.uk/press-room/press-releases/Mid-season-executive-pay-snapshot-shows-continued-restraint.html>> accessed 24 January 2019.

upwards march of executive pay packages.<sup>411</sup> On balance, it would appear that the 'UK executive pay is stabilising/reducing' camp has relevant data in their favour. However, this does not mean for a moment that Edmans and Gosling, for example, take the view that current UK executive pay levels and structure are perfect.<sup>412</sup>

Accordingly, even those who are in the 'UK executive pay is stabilising/reducing' camp do not generally consider that the 2013 Reforms were the final word in the UK moving to a Panglossianly-perfect remuneration scene. There remain serious issues with the structure of both STIs and LTIs, in their view.<sup>413</sup> But they would doubtless point to the pay level stabilisation/reduction trend and maintain that the 2013 Reforms have been part of this (ie., it is not just 'GFC distortion').

Indeed in this regard they might well pray in aid Skovoroda et al's recent finding that 'in relation to performance conditions on LTIPs at least, regulation seems to have worked in shareholders' interests'.<sup>414</sup> This study compared 'pre and post the 2013 Reforms' the level of LTIP awards vested and share price performance 'to measure the alignment of executive rewards and shareholder interests'. They found a 'post 2012 step-change' in the 'vesting ratio' in a study of 140 UK publicly listed companies.<sup>415</sup>

There is also a nascent UK move from LTIPs to restricted shares (where share awards are contingent on remaining in service alone, rather than LTIPs requiring continued service plus the satisfaction of performance conditions -

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<sup>411</sup> The 2017 CIPD/HPC Joint Survey (n 396) shows a material reduction in remuneration, but its 2018 Joint Survey (n 400) shows a return to rising executive pay.

<sup>412</sup> Edmans (n 3); Gosling (n 4); Purposeful Company Report (n 89).

<sup>413</sup> *ibid.*

<sup>414</sup> Rodion Skovoroda, Alistair Bruce, Trevor Buck & Ian Gregory-Smith, "Say-on-Pay" Binding Votes and the Vesting Ratios of Performance Equity' (Royal Economic Society Annual Conference, University of Sussex, March 2018) <[https://editorialexpress.com/cgi-bin/conference/download.cgi?db\\_name=RESConf2018&paper\\_id=890](https://editorialexpress.com/cgi-bin/conference/download.cgi?db_name=RESConf2018&paper_id=890)> accessed 18 May 2019. See also Attracta Mooney, "Get rich quick" executive pay packages are under threat' *Financial Times* (London, 16 April 2018) referring to Skovoroda et al's study (and summarising in the form of the above quotation Skovoroda et al's findings).

<sup>415</sup> Skovoroda et al define VERA as 'the sensitivity of a vesting ratio of PSPs [ie., performance share plans/ LTIPs] to risk-adjusted shareholder returns' (n 414) 1.

such as, comparative TSR and/or absolute EPS targets).<sup>416</sup> Just at the time Skovoroda et al's research seems to be highlighting the attractions of LTIPs for shareholders, the UK seems to be at the early stages of potentially abandoning LTIPs in favour of restricted shares (albeit with the latter having one or more 'performance underpins' to be satisfied, rather than vesting being determined solely by effluxion of time/remaining in service).<sup>417</sup>

The tribulations faced by Weir in 2016 (where a move to a hybrid LTIP plus restricted share approach was voted down by shareholders)<sup>418</sup> to its 2018 success in abandoning LTIPs and introducing a restricted share plan instead (with lower annual award limits than for LTIPs) is indicative of an emerging UK trend - particularly as Weir's shareholder resolution in this regard was supported by Norges (the Norwegian Sovereign Wealth Fund) and was not subject to a 'vote against' recommendation from either ISS or Glass-Lewis (the two largest proxy advisory firms).<sup>419</sup>

Having said this, the recommendation of BEIS Select Committee's *Report on CGI* that no further LTIP awards should be made post-2017 is a long way from being generally adopted.<sup>420</sup> Government did not follow this recommendation as its corporate governance reforms moved forward. Additionally, institutional shareholders are still very split on the concept of moving from LTIPs to restricted shares.<sup>421</sup> This is hardly surprising in view of the fact that UK share incentives for publicly listed companies have been subject to performance conditions for the past 30 plus years.

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<sup>416</sup> Michael Pooler & Attracta Mooney, 'Investors back Weir executive bonus reforms' *Financial Times* (London, 27 April 2018); Matthew Vincent, 'Weir: a watershed on pay' *Financial Times* (London, 27 April 2018); Matthew Vincent, 'Weir investors in overwhelming vote for executive pay reform' *Financial Times* (London, 26 April 2018) <<https://www.ft.com/content/ffa3e6a6-4969-11e8-8aee9-465ddccq99b3>> accessed 24 January 2019.

<sup>417</sup> Pooler & Mooney (n 416).

<sup>418</sup> Graeme Wearden & Katie Allen, 'Executive pay: Shareholder revolts at Weir and Shire – as it happened' *Guardian Business Live Feed* (London, 28 April 2016) <<https://www.theguardian.com/business/live2016/apr/28/sajid-javid-mps-smes-crises-japan-markets-us-gdp-greece-live>> accessed 24 January 2019.

<sup>419</sup> Pooler & Mooney (n 416). Norges Bank, 'Support for Remuneration Policy at the Weir Group' (13 April 2018) <<https://www.nbim.no/en/the-fund/responsible-investment/our-voting-records/voting-intentions-published-ahead-of-general-meetings/support-for-remuneration-policy-at-the-weir-group/>> accessed 24 January 2019. Glass-Lewis's voting referred to in Vincent's article in *Financial Times* (London, 26 April 2018) (n 416).

<sup>420</sup> HC BEIS Select Committee, *Corporate Governance: House of Commons Third Report of Session 2016-17* (2016-17, HC 702) (n 71).

<sup>421</sup> For example, the 2018 IA Remuneration Guidelines Section C – Variable Remuneration 2 (ii) Particular Types of Scheme covers LTIPs, Matching Schemes, Option Schemes, Performance on Grant Schemes (a type of restricted share award) <<https://www.ivis.co.uk/media/13874/Principles-of-Remuneration-Nov-2018-FINAL.pdf>> accessed 24 January 2019.

Indeed, the UK used to look askance at the US practice of granting executive share options without performance conditions on exercisability, together with restricted shares (the US has subsequently moved to LTIPs being included in the share incentive 'mix'). The current UK zeitgeist though is in favour of simplification of remuneration packages, with less emphasis on the incentives component. The combination of this with the potential for lower quantum offered by the replacement of LTIPs by restricted shares (having long vesting/holding provisions) has keen advocates (particularly as restricted share awards with strong 'underpins' have much in common with LTIP design anyway ie., in some respects they are 'neo/crypto LTIPs').<sup>422</sup>

The irony of the UK starting to move to restricted shares has not escaped commentators though, in that at a time when institutional shareholder guidelines are now at least open to the possibility of restricted shares being introduced there is a danger of another wholesale 'package uniformity' lurch away from LTIPs towards restricted shares.<sup>423</sup> There seems to be incomplete appreciation that LTIPs may not be 'bad' per se - they may simply be poorly-designed in specific regards for individual companies in particular circumstances. In other words, the appropriate type/structure/design of LTIs for a specific company should reflect where that company is in its business lifecycle and, indeed, business strategy for the coming years.<sup>424</sup>

Another potential danger of using restricted shares is that unless the 'underpins' concerned are suitably strong (in other words, rather like a LTIPs performance conditions on vesting) there is greater risk of 'rewards for failure' than is generally the case with LTIPs. Accordingly, another 'UK executive pay scandal' may result.

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<sup>422</sup> ERWG Final Report (n 279) promotes a 'more flexible approach to LTI schemes', but 'expects that a number of companies will still find the LTIP model to be most suitable for them', whereas BEIS Select Committee's *Report* wanted LTIPs to be phased out completely (n 71).

<sup>423</sup> Gordon Clark, 'Mercer blanket ban on executive long-term incentives is ill-advised' (*Mercer*, 25 April 2017) <<https://www.uk.mercer.com/newsroom/response-to-beis-report-on-corporate-governance.html>> accessed 24 January 2019.

<sup>424</sup> *ibid.*

The above discussion indicates the complications/nuances of the UK executive remuneration scene. There is the ongoing 'UK executive pay problem'/'UK executive pay is stabilising/reducing' debate, together with very real differences concerning both STI and LTI arrangements - with commentators arguing that the former are designed to pay out at cap or close to on the attainment of comparatively low targets determined by RemCos signing-off on management proposals based around 'next year's budget' figures.<sup>425</sup>

There is a plethora of proposals for reform of UK executive pay regulation/practice, broadly in the spirit of the Chair of ERWG's remark 'the current approach to executive pay in the UK is not fit for purpose'.<sup>426</sup> In no particular order, there have been HPC's ongoing reports (such as, 'Are Remuneration Consultants Independent?')<sup>427</sup> and Philp's 'Restoring Responsible Ownership: Ending the Ownerless Corporation',<sup>428</sup> Umunna's February 2018 speech at IOD (building on his 2012 one) 'Giving Not Just Taking',<sup>429</sup> and CGI, together with the Government's *Green Paper*,<sup>430</sup> BEIS Select Committee's *Report*<sup>431</sup> and the *Government Response*<sup>432</sup> - which has led to considerably watered-down proposals having now been introduced.

The various proposals from the parties concerned are bewildering in their sheer variety. For example, Philp suggests a 'Shareholder Committee' (to replace the Nomination Committee) comprising the company concerned's top five shareholders, with the CoyChair and employee representative, respectively, attending meetings but not voting, with responsibility for considering and ratifying the pay policy and pay packages proposed by

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<sup>425</sup> Nick Goodway, 'Bonuses for FTSE 100 bosses bear no relation to performance' referring to PwC's 'Executive Pay: Review of the 2015 AGM Season' *The Independent* (London, 7 September 2015) <<https://www.independent.co.uk/news/business/news/bonuses-for-ftse100-bosses-bear-no-relation-to-performance-10489127.html>> accessed 24 January 2019.

<sup>426</sup> ERWG Interim Report, 'Introduction' (n 104) 3.

<sup>427</sup> HPC (n 48).

<sup>428</sup> Philp (n 96).

<sup>429</sup> Umunna's 2018 speech (n 389).

<sup>430</sup> *Green Paper* (n 71).

<sup>431</sup> HC BEIS Select Committee's *Report* (n 71).

<sup>432</sup> *Government Response* (n 70).

RemCo before these are put to shareholders.<sup>433</sup> Umunna, on the other hand, suggests that a Nomination Committee with enhanced powers should replace the RemCo and recommends that all remuneration proposals be put to shareholders for vote.<sup>434</sup>

Additionally, Umunna proposes (in line with IOD) that in the case where at least 30 percent of shareholders are opposed on a particular annual advisory vote, then the company concerned's remuneration policy should come back to shareholders for binding vote,<sup>435</sup> whereas Philp's take on the issue is simply to favour SABV.<sup>436</sup> The Purposeful Company's stance on the matter is that if under 75 percent of shareholders' annual advisory vote is in favour of the remuneration report for two successive years, then the company concerned's remuneration policy should revert to shareholders for binding vote.<sup>437</sup>

Where there is more general agreement though is that UK executive remuneration practice could be considerably improved. Dey referred to the then forthcoming 2018 AGM Season as 'over the next two weeks corporate Britain will have to defend its right to exist all over again'.<sup>438</sup> Interestingly, Dey makes the point that 'no amount of bashing executives for excessive pay levels will heal the wounds of society'.<sup>439</sup> He advocates a focus on the low paid, stating 'a few more pence on the national living wage could be a price worth paying if the alternative is a left-wing Labour Government'.<sup>440</sup>

Shah & Duke cite Persimmon (where an uncapped LTIP caused massive controversy), Unilever, Reckitt Benckiser and CRH as being potentially in line for shareholder wrath.<sup>441</sup> Johnson, in discussing Sir Martin Sorrell's departure from WPP, makes the point that the former CEO 'collected £200 million in the

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<sup>433</sup> Philp (n 96). See 19-23 for proposals in respect of Shareholder Committees.

<sup>434</sup> Umunna 2018 (n 389).

<sup>435</sup> *ibid.*

<sup>436</sup> Philp (n 96).

<sup>437</sup> Purposeful Company Report (n 89).

<sup>438</sup> Iain Dey, 'Closing the pay gap – from the bottom up' *The Sunday Times* (London, 22 April 2018)

<sup>439</sup> <https://www.TheTimes.co.uk/.../iain-dey-closing-the-pay-gap-from-the-bottom-up-v63jdfdmO> accessed 25 January 2019.

<sup>440</sup> *ibid.*

<sup>441</sup> *ibid.*

<sup>441</sup> Shah & Duke (n 84).

past five years alone' while it has taken since 1987 (ie., 31 years) for the shares to double from their previous high, and the CEO of Unilever, Paul Polman, whom Johnson states 'will exit soon', received a 39 percent pay rise in 2017 - 'taking only nine years to double Unilever's share price'.<sup>442</sup> Johnson's view is that it is depressing when such leaders are seen as symbolic of capitalism. He sees them as 'overpaid corporate types who do not reflect the good side of commerce' (in contradistinction to his opinion of Bill Gates, founder of Microsoft).<sup>443</sup>

Umunna refers to what can happen when the public/electorate perceives significant unfairness.<sup>444</sup> He refers to Orwell's 'tug from below' being evidenced in the 2016 Brexit referendum result and considers that 'crony capitalism'/'monopoly power' perceptions could lead to a similar 'tug from below' in respect of these in an executive pay context, and cites Adam Smith's view that commercial society is fundamentally predicated on 'sympathy and fellow feeling'.<sup>445</sup>

Two further considerations can be added. First, the UK is certainly not alone in having criticisms of poor corporate governance levied against it. Indeed, as the 'father' of the 'comply or explain' approach, which has ironically been exported to the EU generally but far less so to the USA, the UK has been at the forefront of corporate governance improvements since the time of *Cadbury*.

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<sup>442</sup> Luke Johnson: 'Sorrell & Co are poor adverts for captains of industry' *The Sunday Times* (London, 22 April 2018) <<https://www.thetimes.co.uk/article/luke-johnson-sorrell-co-are-poor-adverts-for-captains-of-industry-7w88hz8mz>> accessed 25 January 2019.

<sup>443</sup> Indeed, Johnson (n 442) was correct regarding Paul Polman's imminent departure from Unilever. However, the collapse of Patisserie Valerie Group into administration in January 2019, together with the lead-up profit warnings, share suspension, and emergency fundraising resulting from 'accounting irregularities' – under SFO investigation – has caused a considerable shadow to be cast over Johnson's business management skills generally/Executive Chairmanship of Patisserie Valerie. See the Financial Times Leader Editorial, 'Patisserie Valerie offers a bitter financial lesson' *Financial Times* (London, 24 January 2019). Also Leila Abboud, 'Patisserie Valerie chief was 'unaware of fraud'' *Financial Times* (London, 10 June 2019). Johnson is quoted as stating 'I know I was not dishonest', but Abboud states 'yet Mr Johnson was the company's executive chairman at the time so bore some responsibility for overseeing its management and performance'.

<sup>444</sup> Umunna 2018 (n 389).

<sup>445</sup> *ibid.*

Germany's two-tier board structure, for example, has been strongly criticised in relation to poor governance practices at Deutsche Bank and Volkswagen.<sup>446</sup> At the latter in particular, the combination of staff representatives holding half the Supervisory Board seats, together with three big investors (Qataris, Lower Saxony and the Porsche/Piech Family) holding most of the non-union seats, led to Jenkins asserting 'VW's 20-person Supervisory Board is distorted, so much so that it is a wonder the company can function at all'.<sup>447</sup> Jenkins also maintains that 15 years ago Deutsche Bank's Supervisory Board had 'zero financial expertise' (save the Chairman) and that although it is currently 'stacked (...) full of financiers' it is 'hardly a model line-up'.<sup>448</sup> Corporate governance has subsequently been referred to as VW's 'Achilles heel' – where the block shareholders and labour union representatives on the Supervisory Board allegedly 'lack the will to overcome lacklustre corporate governance'.<sup>449</sup>

Second, whatever legislative and/or soft law codes may be in place in a particular territory it is actual behaviour that is key. Ford refers to Martin Taylor's (ex-CEO of Barclays) observation in FRC's 2016 report on corporate culture 'what counts is the actual behaviour of an organisation and its top people. This is far more significant than 100 statements about a company's culture or its ethical policy'.<sup>450</sup>

Accordingly, executive pay regulation and soft law codes (such as, UKCGC) are important, as are individual company statements on culture/ethical policy, but in the final analysis it is actual behaviour that is most crucial. The general

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<sup>446</sup> Patrick Jenkins, 'Deutsche Bank and VW highlight perils of poor governance' *Financial Times* (London, 17 April 2018). Other articles critical of the German corporate governance model in general include (i) Financial Times Leader Editorial, 'Worker-directors are no governance panacea' *Financial Times* (London, 9 September 2016); (ii) Ursula Weidenfeldt, 'Beware of imitating the German model, Mrs May' *Financial Times* (London, 13 July 2016), and VW's in particular; (iii) Stephan Stern, 'VW has a myopic view of stakeholders' *Financial Times* (London, 1 October 2015); (iv) Chris Bryant and Richard Milne, 'Boardroom politics at heart of VW scandal' *Financial Times* (London, 5 October 2015); (v) John Plender, 'Poor governance of VW should've been a warning to investors' *Financial Times* (London, 30 September 2015); (vi) Richard Milne, 'Patience runs out with Volkswagen' *Financial Times* (London, 16 June 2016); (vii) Financial Times Leader Editorial, 'The next Volkswagen scandal can be avoided' *Financial Times* (London, 12 January 2017) and (viii) Robert Armstrong, 'The next Volkswagen scandal shows that corporate culture matters' *Financial Times* (London, 15/16 January 2017).

<sup>447</sup> *ibid.*

<sup>448</sup> *ibid.*

<sup>449</sup> Patrick Mcgee, 'Stadler's arrest puts focus on VW governance' *Financial Times* (London, 20 June 2018). He quotes Arndt Ellinghorst, an analyst at Evercore INI.

<sup>450</sup> Ford (n 12).

UK consensus, even among the proponents of 'UK executive pay is stabilising/reducing' (and obviously even more strongly by the 'UK executive pay problem' camp) is that the current situation is far from perfect.

Umunna notes in his 2018 speech that half of HPC's 2012 proposals for reform have now been enacted and exhorts the remainder to be implemented without delay.<sup>451</sup> One of these of particular relevance to ExecRemConsultants/RemCos is HPC's support for DSOtherServicesFees – interestingly, HPC specifically supported ERWG Interim Report's proposal in this regard<sup>452,453</sup> - but such proposal was absent when ERWG Final Report appeared. The same thing had happened in respect of the respective draft and final wording of the 2013 Reforms.<sup>454</sup>

Some of HPC's proposals are covered in Government's recent corporate governance reforms, including the revised UKCGC and legislative provisions applicable to publicly listed companies with a financial year that started on or after 1 January 2019 (eg., an etiolated version of WOB, but 'full-strength' PRD provisions – and no SABV).<sup>455</sup> Proponents of Taylor's view, and indeed Johnson's, would argue that what may well be more fundamentally significant is that headlines continue to appear regarding alleged examples of where high/excessive executive pay features in poor behaviour by leading business figures and/or incentive structures being defectively designed/operated (Persimmon and Carillion might well be cited as instances)<sup>456,457</sup> or companies 'suddenly failing' (again, Carillion could be used as an

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<sup>451</sup> Umunna's 2012 and 2018 speeches, respectively (n 389). Interestingly, in the latter Umunna did not repeat his 2012 comment that: '[P]art of the problem is that – in their advisory role to committees – the consultants owe their duty to the board and not to shareholders' (n 389 ; 2012 speech 6).

<sup>452</sup> HPC, 'Executive Remuneration Working Group High Pay Centre Response' (May 2016) <[http://highpaycentre.org/files/Executive\\_Remuneration\\_Working\\_Group\\_High\\_Pay\\_Centre\\_Response\\_Final\\_May\\_2016\\_%281%29.pdf](http://highpaycentre.org/files/Executive_Remuneration_Working_Group_High_Pay_Centre_Response_Final_May_2016_%281%29.pdf)> accessed 25 January 2019.

<sup>453</sup> ERWG Interim Report (n 104); ERWG Final Report (n 279).

<sup>454</sup> Draft 2013 Reforms legislation (n 103) and final legislation (n 78).

<sup>455</sup> UKCGC (n 18).

<sup>456</sup> Daniel Grote, 'Persimmon shareholders revolt over bosses' £75m bonus' *CityWire* (London, 25 April 2018). Persimmon's CEO, Jeff Fairburn, left Persimmon in November 2018, but the pay controversy continued subsequently. See Callum Keown, 'Persimmon boss could pocket £10m on top of £75m bonus after dismissal' *City A.M.* (London, 25 January 2019).

<sup>457</sup> Vincent (n 11).

exemplar).<sup>458</sup> These provide ammunition for commentators who argue that capitalism is failing, and that 'crony/monopoly capitalism' is prevalent rather than 'responsible capitalism'.

Without the employment and taxes generated by capitalism, it is hard to see how modern society can thrive (unless of course one adopts an entirely different political credo than capitalism). It really matters when potential detractors of capitalism are provided with the ammunition referred to above. Executive pay 'scandals' are a component of this - examples of poor behaviour have an impact that is far greater than the effect on individual BODs, or even particular companies, it affects the credibility of business as a whole as being a force for good in society.

Accordingly, 'high executive pay' has an importance that goes significantly beyond the mere figures involved. Edmans, Gosling, and others may advance cogent well-researched reasons why executive pay has increased so considerably in the period leading up to GFC, and also cast considerable doubt on some of the views expressed by the 'UK executive pay problem' proponents, but unless business provides attractive role models who show capitalism in a highly positive light (ie., as Johnson states 'achieving product and services innovations, the private sector has an impact on millions of people every day - it makes a positive difference')<sup>459</sup> commentators, and the public/electorate at large, will tend to focus on the situations where even capitalism's strongest supporters have to accept that serious problems have arisen.

As mentioned already, this thesis is not a treatise on 'responsible capitalism', nor does it purport to cover all of the BSI. However, the topic of this thesis obviously needs to be considered in the context of the other BSI and

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<sup>458</sup> Alia Shoaib, 'Carillion Inquiry, missed red flags, aggressive accounting and the pension deficit' *Accountancy Age* (London, 26 February 2018).

<sup>459</sup> Johnson (n 442).

'responsible capitalism' more broadly, which is why the matters above have been included.

### **5.2.2. Thesis Topic**

This thesis concerns the 'professional standards' of ExecRemConsultants and CoyExecRemSpecialists. The RITG/RITGST aspects all relate to this core issue, but recognise that the provision of RemCoAdvisory Services involves wider considerations than simply EP/S, TE/E, SA/Q and LTP – eg., such aspects reflect the context provided by the overall UK executive remuneration scene - particularly the fact that RemCoAdvisory Services are predominantly provided by the Big Four (more specifically, two of the Big Four firms really - Deloitte and PwC) and ABC firms (AH, Mercer and WTW), within a self-regulatory regime (ie., RCG - whose members are firms that provide RemCoAdvisory Services, as opposed to being individual ExecRemConsultants).

An observer comparing the UK and US scenes would presumably appreciate how the similarities and differences in the way RemCo/CompCoAdvisory Services are provided in the two territories are the result of the legal/regulatory regimes respectively applicable and the perceived level of risk particular types of professional services firms are willing to take on board when providing ExecComp/RemConsultancy advice.

In the US, due to regulatory and other limitations on particular service provision, the Big Four do not major on offering CompCoAdvisory Services. The ABC firms, while still being very active in the US advising management on ExecCompConsultancy issues, have become considerably less dominant regarding CompCoAdvisory appointments. Indeed, the ABC firms since 2010 have 'spun out' many of their most senior ExecCompConsultants into separately owned Boutiques (which have supplemented well established

Boutique firms already operating in the marketplace - such as, FC, and PM). This has led to the Boutique sector now rather dominating the provision of CompCoAdvisory Services in the US.<sup>460</sup>

The ABC firms' 'spin-out' initiative was the immediate response to the US version of DSOtherServicesFees coming into effect.<sup>461</sup> ABC firms effectively offered their clients the choice between staying with them (and making the strict fee disclosures entailed), moving to the newly established Boutique firm that probably had the individual ExecCompConsultant who was currently leading the CompCoAdvisory relationship transferring across to it<sup>462</sup> or, alternatively, establishing an advisory relationship with another ExecCompConsultancy firm (almost certainly a well-established or newly-founded Boutique).<sup>463</sup> The latter avenues saved companies from making disclosures not only of the fees charged for CompCoAdvisory Services, but also those in connection with Other Services.

Despite the nature of executive remuneration advice (including CompCo/RemCoAdvisory appointments) being very similar in the US and UK, there is now a marked difference in the types of firms supplying CompCo and RemCoAdvisory Services, respectively. In the UK, the larger Boutique firms (ie., NBSC and Kepler) have been acquired by ABC firms, plus Deloitte and PwC (in particular of the Big Four) are extremely strong in market share terms for RemCoAdvisory Services.<sup>464</sup>

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<sup>460</sup> Tran J, Wong S, & Goforth M, 'Compensation Consultant Market Share Rankings 2015' (*Equilar*, 13 January 2016) <<https://www.equilar.com/reports/30-2015-compensation-consultant-market-share-rankings.html>> accessed 25 January 2015. Equilar's Report shows, respectively, CompCo and executive management appointments – with the ABC firms moving to a far stronger position in respect of the latter, as opposed to the former (where Boutique firms predominate).

<sup>461</sup> SEC, 'Proxy Disclosure Enhancements' (2009 SEC Release No 33 – 9809) <<https://www.sec.gov/rules/final/2009/33-9089.pdf>> accessed 25 January 2019. See also Willis Towers Watson, 'SEC Adopts Changes to Proxy Disclosure Rules' (WTW, February 2010) <<https://www.willistowerswatson.com/>> accessed 25 January 2019.

<sup>462</sup> See WTW, 'Towers Watson Aligns Executive Compensation Consulting Strategy With Evolving Range of Client Needs' (WTW, 30 April 2010) <<https://www.towerswatson.com/en/press/2010/05/Towers-Watson-Aligns-Executive-Compensation-Consulting-Strategy-With-Evolving-Range-of-Client-Needs>> accessed 25 January 2019. Such press releases by ABC firms set the scene for senior ExecCompConsultants moving to newly-established Boutique firms – with existing CompCo clients having a range of choices whether to remain with the ABC firm concerned or to move to a new or longer-established Boutique firm.

<sup>463</sup> *ibid.*

<sup>464</sup> HPC (n 48) 214.

Explanatory factors in this are that the US takes a far more legalistic approach to issues such as COI, plus it is generally not attracted to 'comply or explain' principles and, of course, the 2009 SEC DSOtherServicesFees provisions provided an immediate impetus for ABC firms to take the 'spin-out' approach - thereby ensuring that Boutiques would dominate the US market for CompCoAdvisory appointments (FW and PM were already well-established and mature, and the post-2009 Boutiques helped to diminish the former strength of the ABC firms in this regard).

Additional contributory factors might well be that in the US it is still common for CoyChair and CEO roles to be combined (whereas in the UK this is definitely not the case for publicly listed companies, save in rare situations) and also that in the US executive management is frequently advised by one set of ExecCompConsultants and the CompCo appoints another ExecCompConsultancy firm specifically to provide CompCoAdvisory Services<sup>465</sup> (again, this situation is rare in the UK).<sup>466</sup>

It will be appreciated that in the latter situation US CompCos will be comfortable (particularly in light of the 2012 SEC 'independence' provisions) with the appointed ExecCompConsultants coming from Boutique firms. A CompCo's reasoning might be along the lines of - there is no CoyChair in place who is independent of management, plus such management is advised by its own ExecCompConsultants, and the DSOtherServicesFees implications are potentially more benign than would be the case if the CompCo's appointed ExecCompConsultancy firm provided Other Services as well to the company.<sup>467</sup> Last but not least the lead ExecCompConsultant appointed by the CompCo may well be the same one who had been providing CompCo (pre-2009) with satisfactory advisory services for some years previously.<sup>468</sup>

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<sup>465</sup> Equilar (n 460) shows the 'split' between CompCo and executive management remuneration advisors, respectively.

<sup>466</sup> See Main, 'What makes remuneration committees effective?' (WTW, 2011) for discussion of the comparative merits of UK companies having one firm of ExecRemConsultants advising RemCo and no ExecRemConsultancy firm explicitly advising executive management. Also see qualitative research conducted by WTW in 2012, in association with Main <<https://www.towerswatson.com/downloadMedia.aspx?media=%7BF050F55-601A>> accessed 25 January 2019.

<sup>467</sup> See (n 46).

<sup>468</sup> SEC (n 461); WTW (n 462).

Accordingly, it is not too surprising that although the technical nature of the services provided in the US and UK is almost identical, the two territories have ended up in a very different situation in terms of the type of advisory firms providing such services. They are all professional services firms, whether Big Four, ABCs or Boutiques, but the preponderance of advisory appointments made by CompCos/RemCos are held by Boutiques in the US and Big Four/ABC in the UK (and Continental Europe, for that matter).

So much for the differences between the two territories, what about the similarities? In terms of the education, work history, and professional qualifications there is much commonality between UK ExecRemConsultants and US ExecCompConsultants. The RIP included just four interviews with the latter, whereas there were 22 interviews with the former. Accordingly, in respect of the US ExecCompConsultants one needs to be particularly careful regarding their RICBQ responses. Having said this, the author has extensive personal experience of working with US ExecCompConsultants, both within his former employing firm(s) and also those from other ExecRemConsultancy organisations. He regards the RICBQ responses of the four ExecCompConsultants interviewed in his RIP as being reasonably typical of the current and recent past generation of really senior US ExecCompConsultants.

The educational/professional background of the RIP ExecCompConsultants is set out in Table 4.5 above. One can see a mixture of academic and professional backgrounds, and years of advisory experience that is broadly similar to the UK ExecRemConsultants participating in the RIP (see Tables 4.1, 4.2 and 4.3 above). This picture is reinforced by reference to Table 4.4 above in terms of the qualifications held by current UK ExecRemConsultancy Practice Leaders of RCG member firms.

Two further points can be added in this regard. The first is that it can be observed that really senior US practitioners tend to be more likely to hold MBA or other Relevant higher degree than their UK counterparts, but this is probably due simply to the fact that MBA study in the UK was, and still is currently, less common than in the US. Second, both in the US and UK the predominant route into ExecComp/RemConsultancy may be moving more to a 'direct entrant' basis following attainment of a bachelors degree.

This is something of a step-change from the recent past and does raise particular 'professional standards' issues, as the individuals concerned have neither relevant prior work experience nor a professional qualification before entering ExecComp/RemConsultancy.

This, aligned with the fact that in the UK context only half of the ExecRemConsultant cohort (according to RCG data, 48.9 percent)<sup>469</sup> has six or more years of relevant experience, means that the overall profile of UK ExecRemConsultants is younger, with less experience and less likely to be professionally qualified than previously. This does not matter so much when the individuals concerned are in the early stages of their ExecRemConsultancy careers (and may acquire professional qualifications 'on the job'). They will be assigned to data analysis and/or be under close supervision when working on advisory teams in a client-facing context, but in terms of subsequent career development, and coming through as the next generation of really senior ExecRemConsultants/Practice Leaders, these issues have important implications (particularly if, as mentioned by one RIP interviewee, there are fewer really senior ExecRemConsultants with the work experience/professional qualifications to guide them/be role models).

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<sup>469</sup> RCG (n 386).

Once ExecRemConsultants gain in experience it is less likely that they will suffer a form of 'imposter syndrome' because they do not have a professional qualification (whether a 'liberal' one - ie., Lawyer - or one of the 'new profession' variety - eg., CA, CTA or Actuary), nor indeed an ExecRemConsultancy SA/Q. It is interesting that RIP Big Four ExecRemConsultant interviewees stressed how 'direct entrant' ExecRemConsultants were required to train as CA or Actuary - because this was considered to be an excellent 'generalist financial training' for neophyte ExecRemConsultants.

RIP interviewees indicated that 'direct entrants' to ABC firms and Boutiques are less likely to be given this opportunity, which in such circumstances puts even greater emphasis on the need for comprehensive on-the-job training and monitoring by more experienced colleagues.

As far as CoyExecRemSpecialists are concerned, the RIP included 12 of these (as opposed to 22 ExecRemConsultants). The individuals concerned were generally '9 + Years' of experience in the role (or previous one(s)). Tables 4.1, 4.2 and 4.3 above set out their applicable background - ie., academic, professional and other key details. Although it is submitted that the cohort of RIP ExecRemConsultant interviewees was representative of really senior ExecRemConsultants (with 18 out of the population of 20 interviewees having in excess of 20 years of experience in ExecRemConsultancy), the cohort of RIP CoyExecRemConsultants, although being very experienced (with 10 out of 11 having experience of '9 + Years') by chance included some individuals who had previously been ExecRemConsultants and/or had practised as CAs or Lawyers.

This fact, plus the relatively small sample size, means that the background of these CoyExecRemSpecialists (and their interview comments/quotes) needs to be considered in light of this. Whereas it is submitted that the RIP

interviewees are the most senior/influential of the present and recent past generation of ExecRemConsultants, this is far less the case in respect of the cohort of CoyExecRemSpecialists (no disrespect intended to the CoyExecRemSpecialists concerned – see below). The UK obviously has working within it a far greater number of CoyExecRemSpecialists than ExecRemConsultants. Accordingly, the cohort of CoyExecRemSpecialist interviewees may well be less representative anyway than the ExecRemConsultant one.

Two points can be made though. The first is that RIP CoyExecRemSpecialist interviewees were a particularly well experienced and professionally qualified sample, many of whom could bring to bear the perspectives of having once been an ExecRemConsultant and now being a CoyExecRemSpecialist. Second it is considered that a further piece of research focusing on interviewing a larger, more representative sample of CoyExecRemSpecialists would be a valuable future research exercise.

### ***5.2.3. RITG1 (and RITGST 1-4) Aspects***

Each RITG and RITGST aspect is discussed in turn below, starting with RITG1 and its accompanying RITGSTs - with the objective of bringing together the relevant perspectives concerning the UK executive remuneration scene, academic literature review and the findings arising from the RIP. The goal being to formulate from this discussion particular conclusions in terms of complementing/adding to the academic literature and for UK RemCoAdvisory Services more generally.

The categorisation adopted for such discussion is to use the respective RITG/RITGST headings and in the same order. This should enable readers to follow the 'flow' of the discussion in this Chapter 5 and also to track the applicable evidence concerning, and rationale for, the conclusions set out in

Chapter 6 Conclusions. In any event, it is suggested that readers should review the summary of RIP interview 'positionings' set out in Table 4.8 above before reading the remainder of this Chapter 5 - in order to capture the overall picture before exploring points of detail.

### *UKRemCoAdvisoryScene (RITG1:SQ1)*

RITG1:SQ1 focuses directly on RemCoAdvisory Services aspects. The RIP interviews purposefully began with that topic being addressed by way of this question, and it being in such terms. Interviewees had the opportunity at the outset to give their particular overall views on how RemCoAdvisory Services were currently working.

It is only too apparent that whereas key protagonists/commentators on the UK executive pay scene, such as the Chair of ERWG,<sup>470</sup> IOD,<sup>471</sup> BEIS Select Committee on CGI<sup>472</sup> are highly critical (referring on occasion to the UK's situation being 'broken' or 'not fit for purpose') there is relatively little devoted to RemCoAdvisory Services - ie., ExecRemConsultants (and their in-house counterparts). Although HPC had directly queried the 'independence' of ExecRemConsultants,<sup>473</sup> the references to ExecRemConsultants in ERWG Final Report were largely tangential in nature - stating that RemCos should not rely uncritically on the advice of their appointed ExecRemConsultants<sup>474</sup> and that the appointment of the latter should regularly be put out to tender.<sup>475</sup>

Having said this, RIP interviewees were more or less evenly split between 'Positive', 'Mid-position', and 'Negative' stances, and that the views of the respective categories of interviewee (eg., ExecRemConsultants and

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<sup>470</sup> Read (n 274).

<sup>471</sup> IOD, 'IOD calls for tougher rules on executive pay in new governance code' (*IOD Press Release*, 27 February 2018) <<https://www.iod.com/news/good-governance-debate/article/iod-calls-for-tougher-rules-on-executive-pay>> accessed 25 January 2019. Plus, for IOD's criticism of Carillion's remuneration arrangements, see Simon Goodley, 'Carillion's "highly inappropriate" pay packets criticised' *The Guardian* (London, 15 January 2018) <<https://www.theguardian.com/.../15/Carillion-highly-inappropriate-pay-packets-criticised>> accessed 25 January 2019.

<sup>472</sup> BEIS Select Committee's *Report* (n 71).

<sup>473</sup> HPC (n 48).

<sup>474</sup> ERWG Final Report (n 285).

<sup>475</sup> *ibid.*

RemCoChairs/Members) were also mixed. 'Negative' comments focused on 'independence' concerns and 'Positive' ones on the beneficial impact of the 2013 Reforms and the sound quality of ExecRemConsultants' advice and their strong professional standards.

An example of 'Positive' is the comment of a RemCoChair:

There are conflicts that arise, and conflicts can be very helpful in highlighting the issues that really need to be discussed. I've found that good ExecRemConsultants handle these things very professionally. It comes down to the professional approach and rounding that is arguably very important.

A 'Negative' comment was provided by an ExecRemConsultant (not from a Boutique firm):

The provision of UK RemCo advisory services isn't working terribly well. For the simple reason that the consultants involved, working for the RemCo, are often not quite as independent in terms of their ability to give possibly unwelcome advice as they might be.

Overall though, even the 'Negative' views expressed by the interviewees were not as strongly critical as some of the UK protagonists/commentators referred to above. This may be due to the fact that whereas the latter's comments are generally in the overall context that in their view UK executive pay packages are a result of a 'broken' or 'not fit for purpose' system, the comments of the RIP interviewees were directed far more towards 'RemCoAdvisory Services'. Even the severest critics of the UK executive pay scene do not single out ExecRemConsultants as being the main cause of this, but rather as being part of a pay determination process that in their view is currently working poorly.

The RIP findings regarding the RemCoAdvisory scene complement those, for example, of Conyon,<sup>476</sup> Main,<sup>477</sup> Bender,<sup>478</sup> Adamson et al,<sup>479</sup> and Bender & Franco-Santos.<sup>480</sup> ExecRemConsultants are key players in RemCos' determination of executive pay packages (in terms of both structure and quantum), but their overall influence is variable and needs to be put in the context of other factors, such as executive pay regulation and soft law codes/institutional shareholder body guidelines. Bender & Franco-Santos's cautionary advice that RemCos should 'take the time to understand and appreciate the characteristics and preferences' of their appointed ExecRemConsultants (and the ExecRemConsultancy firm concerned) has already been noted.<sup>481</sup>

Certain RIP interviewees mentioned that despite commentators criticising UK executive remuneration package design for its extreme homogeneity (eg., the prevalence of similar LTIPs), there are very considerable differences in approach adopted by particular ExecRemConsultants and their employing firms.<sup>482</sup> This concurs with Bender & Franco-Santos's views in this regard - with the additional point too noted by a RIP ExecRemConsultant (again, not from a Boutique firm) referring to the current generation of ExecRemConsultants - 'the micro-environment is just so much more difficult than it used to be. More risk-averse group of people for more risk-averse times perhaps is the way I might describe it'.

The point being made by the interviewee concerned is that the reputational/brand damage that could be caused by poor 'professional standards' is such that the overall environment of market constraint/discipline

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<sup>476</sup> Conyon (n 108).

<sup>477</sup> Main et al (n 5).

<sup>478</sup> Bender (n 41) and (n 22).

<sup>479</sup> Adamson et al (n 42).

<sup>480</sup> Bender & Franco-Santos (n 43).

<sup>481</sup> *ibid* 19.

<sup>482</sup> See Omesh Kini & Ryan Williams, 'Do Compensation Consultants have Distinct Styles?' (*Harvard Law School Forum on Corporate Governance and Economics Legislation*, 15 May 2016) <http://corpgov.law.harvard.edu/2016/05/13/do-compensation-consultants/> accessed 24 March 2017. Overall conclusion is that 'it does not matter which compensation consultant is hired by client firms with strong governance mechanisms in place', but they did observe 'some style-like effects and some result in perverse outcomes'.

comes heavily into play. The interviewee considered 'the kind of median personality type of ExecRemConsultant may have evolved over time, changing the advice they may give.'

### *SVExecRemConsultants (RITG1:RITGST1)*

In the aftermath of GFC there were Labour's original SVExecRemConsultants Proposals.<sup>483</sup> The idea was again floated by Labour when the 2013 Reforms were at Committee stage, but defeated.<sup>484</sup> Although there remain some proponents of publicly listed companies seeking shareholder approval regarding ExecRemConsultants (and, indeed, some who argue that ExecRemConsultants should be appointed by shareholders and provide their advice to them),<sup>485</sup> the concept has rather disappeared in visibility since the 2013 Reforms were introduced (these included additional information on appointed ExecRemConsultants and disclosure to shareholders of fees charged for RemCoAdvisory Services - as opposed to disclosure as well of the fees charged for any Other Services provided).

RIP interviewees were unanimously 'Negative' regarding legislation stipulating a shareholder vote on the appointment/retention of ExecRemConsultants to RemCos of publicly listed companies. The sense from RIP interviewees was that 'things have moved on' since 2009 (and 2013). None of HPC, ERWG Final Report, Philp's 'Ownerless Corporation', Umunna's 2012 or 2018 speeches, nor the recent UK corporate governance changes, called for such involvement on the part of shareholders.

There appears to be a large measure of consensus that the respective roles of external auditor and appointed ExecRemConsultant can be distinguished. The latter's purpose is to advise the RemCo - and the RemCo can choose

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<sup>483</sup> Labour's SVExecRemConsultants Proposals (n 51).

<sup>484</sup> Enterprise and Regulatory Reform Bill Seventeenth Sitting (HC Deb 28 June 2012, cols 283-326). Proposed insertion of section 227A Companies Act 2006 'appointment of remuneration consultants of public company' <<https://publications.parliament.uk/pa/cm201213/cmpublic/enterprise/120628/pm/120628s01.htm>> accessed 25 January 2019.

<sup>485</sup> Peter Brown, 'Put an outsider or two on remuneration committees', Letter to Editor *Financial Times* (London, 29 April 2016).

simply to ignore such advice if it so wishes (if the ExecRemConsultant then decides to resign their appointment, there is no requirement, unlike with external auditors, to make public the reasons for resignation).<sup>486</sup>

### *SABV (RITG1:RITGST2)*

Since 2002, publicly listed companies have been required to have an annual shareholder advisory vote on Directors' remuneration paid.<sup>487</sup> This was supplemented in 2013 by a triennial binding vote on remuneration policy.<sup>488</sup> The *Government Response* to CGI was to abandon its proposals of the previous year regarding SABV on Directors' remuneration paid.<sup>489</sup> The view of the RIP interviewees was overwhelmingly 'Negative' to SABV.

One ExecRemConsultant considered that 'companies will be less likely to vote against a binding vote as opposed to the present advisory vote because it has more impact', whereas a RemCoMember stated 'I think so much of this stuff is about beware what you would wish for and be very clear about what you are trying to achieve'. As one of the RIP interviewees expressed it regarding the current annual advisory vote procedure '80 percent of companies get 90 percent support, and 90 percent of companies get 80 percent support'. Having said this it needs to be recognised that SABV as a concept has been supported by HPC,<sup>490</sup> Philp,<sup>491</sup> the BEIS Select Committee,<sup>492</sup> and the Government (until its August 2017 *Government Response* to the CGI).<sup>493</sup>

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<sup>486</sup> Russell (n 258) 'It is not uncommon for remuneration committees to ignore advice from their remuneration consultants' See (n 275) for mandatory notification by resigning external auditors: Companies Act 2006, s 519 (notification of resignation to company) and s 522 (notification to FRC). See FRC website <<https://www.frc.org.uk>> accessed 29 January 2019.

<sup>487</sup> The Directors' Remuneration Report Regulations, 2002 SI 2002/1986.

<sup>488</sup> 2013 Reforms (n 78).

<sup>489</sup> *Government Response* (n 70).

<sup>490</sup> HPC, 'The State of Pay: High Pay Centre Briefing on Executive Pay' (2015), in which HPC makes its case for SABV <[http://highpaycentre.org/files/The\\_State\\_of\\_Pay\\_2015.pdf](http://highpaycentre.org/files/The_State_of_Pay_2015.pdf)> accessed 25 January 2019.

<sup>491</sup> Philp (n 96).

<sup>492</sup> BEIS Select Committee's *Report* (n 71).

<sup>493</sup> *Government Response* (n 70).

The principle has a certain attractive simplicity, but it is actually a complicated concept in that a binding vote 'against' would have contractual and other implications - entitlement to remuneration reported for the financial year would need to be conditional upon shareholder approval of the DRR. According to Philp, only Switzerland, the Netherlands, and Denmark (with Italy having a binding vote regime for the compensation report regarding companies in the banking and insurance sector) have yet gone down this route.<sup>494</sup>

It needs to be remembered that currently in the UK shareholders have a binding vote on the introduction of LTIs, an annual advisory vote on Directors' remuneration paid, and a triennial binding vote on remuneration policy (which is brought forward in the case of an 'against' vote being carried in relation to the annual advisory vote on remuneration paid). As one ExecRemConsultant interviewee considered 'there's more than enough ways in which shareholders can express dissatisfaction with what's going on in remuneration, and if they're unhappy with it'. Additionally, as stipulated in the UKCGC since 2010, shareholders have an annual opportunity to vote against the re-appointment of Directors. Accordingly, if they are particularly unhappy, for example, with a RemCoChair or, indeed, CoyChair or CEO, they can vote against re-appointment.

### *PRD (RITG1:RITGST3)*

Some UK commentators saw Government proposals (now enacted for financial years that started on or after 1 January 2019) for disclosure of CEO and workers' pay (expressed as a ratio) as being part of an ongoing mission both to reduce CEO pay and to raise that of the workforce generally. Jenkins expresses this as 'failing to narrow the pay gap within companies will imperil capitalism'.<sup>495</sup> The US version of PRD has already been introduced and some

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<sup>494</sup> Philp (n 96) 18, 19. He makes the valid point that if SABV were to be introduced CA 2006, s 439(5) could be altered to make entitlement to remuneration contingent upon shareholders' approval of DRR.

<sup>495</sup> Patrick Jenkins, 'Bosses' pay disclosure fuel staff dissatisfaction' *Financial Times* (London, 26 March 2018).

startling ratios were disclosed in the 2018 round of proxy reports. The *Financial Times*'s Lex reports the apparent absurdity highlighted in the ratios disclosed by various FAANG companies where the way in which the pay figures are actually calculated shows up some astonishing differences between companies that are frankly counter-intuitive and, it could be argued, do not really move forward the 'high pay debate' in a helpful way.<sup>496</sup>

In any event, the US figures and the UK ones will be far from directly comparable. The US uses the Consistently Applied Compensation Measure for calculating 'total pay' and the median worker figure only is disclosed. In the UK, Government's original proposal was to use the average worker figure; however, what was actually enacted stipulates disclosure of the lower quartile, median and upper quartile figures, respectively, for 'UK workforce'. This, plus differing rules regarding the inclusion of overseas workers' pay, shows just how complicated the calculations/design considerations will be.<sup>497,498</sup>

Having said this, there was a strong impetus from Government,<sup>499</sup> HPC,<sup>500</sup> TUC,<sup>501</sup> Umunna,<sup>502</sup> Philp,<sup>503</sup> and BEIS Select Committee,<sup>504</sup> for PRD to be introduced in the UK. Others took the stance that if the introduction of PRD were to be unavoidable then such disclosure should at least be made more rational. For example, Mercer's view that CEO and employee pay should be compared separately to the National Living Wage (ie., not to one another).<sup>505</sup>

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<sup>496</sup> Financial Times Lex, 'Pay ratios: Faangs for the money' *Financial Times* (London, 29 May 2018).

<sup>497</sup> SEC, 'Commission Guidance on Pay Ratio Disclosure' (2017, Release No. 33-10415)

<<https://www.sec.gov/rules/interp/2017/33-10415.pdf>> accessed 28 January 2019.

<sup>498</sup> *Government Response* (n 70) (Government's PRD Proposals). The Companies (Miscellaneous Reporting) Regulations 2018.

<sup>499</sup> *Green Paper* (n 71).

<sup>500</sup> Paul Marsland (HPC), 'Pay Ratios: Just Do It' (2015) <[http://highpaycentre.org/files/Pay\\_Ratios\\_-\\_Just\\_Do\\_it.pdf](http://highpaycentre.org/files/Pay_Ratios_-_Just_Do_it.pdf)> accessed 28 January 2019.

<sup>501</sup> Minerva Analytics, 'UK corporate governance reforms: Pay ratio disclosure to be mandatory' (*Minerva Analytics*, 6 September 2017) - refers to TUC's Janet Williamson's comment that PRD 'would go a short way to improving transparency and could place some pressure on directors to consider whether soaring executive pay packages can really be justified' <<https://www.manifest.co.uk/uk-corporate-governance-reforms-pay-ratio-disclosure-mandatory/>> accessed 28 January 2019.

See also Stephan Stern (HPC), 'It seems like the right moment for more snapshots on top pay', Letter to Editor *Financial Times* (London, 13 November 2016). Interestingly, Brooke Masters, 'Santander's board shows its mettle over Orcel deal' *Financial Times* (London, 19/20 January 2019), refers to the new Spanish PRD legislation as being a contributory factor in Santander not proceeding with its proposed new CEO hiring (Andrea Orcel, formerly of UBS).

<sup>502</sup> Umunna (n 389).

<sup>503</sup> Philp (n 96).

<sup>504</sup> BEIS Select Committee's *Report* (n 71).

<sup>505</sup> Mercer, 'The Pay Ratio is Coming, Let's make it rational' <<https://www.uk.mercer.com/.../mercercuk-2017-executive-compensation-mercercuk-pay-ratio-mercercuk.pdf>> accessed 28 January 2019.

The original UK proposal to use 'average' employee pay would have been far simpler than the US 'median' approach (the UK version would simply have taken FTE headcount and 'total pay cost' at the operating subsidiaries,<sup>506</sup> rather than taking the annualised pay of every employee concerned). This would have been likely though to 'understate' the applicable ratio compared to using median figures. Average figures are invariably higher than median ones – therefore, the former would have led to a higher employee pay figure which would have led in turn to a lower ratio when compared against CEO pay than would otherwise have been the case using the median figure.

Turning to the views of RIP interviewees on PRD, even the few who were 'Positive' about the introduction of PRD appreciated the methodological challenges involved. For example, a RemCoMember stated: 'I've got every sympathy with people asking to produce a multiple of pay, it's a difficult thing to do'. The general views of interviewees though were strongly in the 'Negative' camp.

#### *WOB (RITG1:RITGST4)*

Whereas Government's 2017 views on PRD survived in substantially unchanged form, the same cannot be said in respect of its original proposals to introduce on a mandatory basis the appointment of a worker representative on the Board. These have morphed over time (partly due to the potential difficulties involved in appointing representatives with a particular interest onto a unitary Board - where NEDs have both business strategy and monitoring roles), via the revised UKCGC provisions applicable to financial years that started on or after 1 January 2019 - companies having a choice whether to appoint a WOB, allocate to an existing NED specific responsibility for 'employee issues', or to create an 'employee advisory council' to provide views to the BOD.<sup>507</sup>

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<sup>506</sup> *Green Paper* (n 71); *Government Response* (n 70).

<sup>507</sup> UKCGC (n 18).

An earlier variant was Philp's proposal that a Shareholder Committee (which would replace UK Nomination Committees) should comprise the top four or five shareholders in the company concerned (in terms of the size of their shareholding) and should also have the CoyChair and employee representative (not a trade union appointee) in attendance but not voting.<sup>508</sup>

Anyway, *Government Response* and subsequent clarification of the proposed provisions into the revised UKCGC were a pale shadow of the July 2016 original. Commentators should not have been too surprised - it was foreshadowed in the November 2016 *Green Paper*, where various routes short of mandatory WOB were floated.<sup>509</sup> Additionally, as shown in O'Grady & Bowman's article in August 2018 (just after *Government Response* was issued) there are very real arguments that can be advanced for and against the WOB principle.<sup>510</sup>

Government's adoption of a watered-down version of the WOB concept was no doubt influenced by general business hostility to the 'full-blown' version and perhaps the feeling that it needed to be seen to be doing something in this regard (it was after all abandoning SABV) - and it was not strictly essential to adhere to the original WOB proposals.

As has been discussed already, the RIP interviewees were firmly 'Negative' regarding SABV. The same applied to WOB. Accordingly, of Government's July 2016 corporate governance proposals (for SABV, WOB and PRD) only PRD - which was also viewed as strongly 'Negative' by RIP interviewees - has come to fruition in its original form.

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<sup>508</sup> Philp (n 96) 20.

<sup>509</sup> *Green Paper* (n 71).

<sup>510</sup> Frances O'Grady & Sam Bowman, 'Should companies be forced to put workers on boards?' *The Guardian* (London, 29 August 2017). See also Tim Shipman, 'Labour will put workers on boards' *The Sunday Times* (London, 23 September 2018).

Edmans is sceptical about the value of PRD - 'high pay ratios do not demotivate staff and reduce productivity'.<sup>511</sup> Presumably though, one might argue this both ways - if high pay ratios are not demotivating then publishing these of itself is not going to cause demotivation. Edmans also maintains, in a WOB context, that 'employee representation in governance reduces firm values and productivity, growth, and new job creation' but accepts that 'long-term value maximisation requires the consideration of all shareholders'.<sup>512</sup>

### *GI&O (RITG1:SQ2)*

The UK, unlike the US, does not have a statutory definition of 'independence' for ExecRemConsultants nor for NEDs/RemCoMembers. Regarding the latter, Hannigan raises 'whether RemCoMembers are sufficiently independent to be able to align remuneration with the long-term interests of shareholders'. She continues:

[N]on-executives will frequently hold or have held executive posts elsewhere, they may be part of the culture of high-pay with the result that they are unable to challenge generous executive remuneration.<sup>513</sup>

Another aspect discussed by Hannigan in relation to RemCoMembers is that they 'may have competence issues which require addressing'. She adds:

A lack of expertise may mean that remuneration committees are too dependent on remuneration consultants who in turn may have conflicting interests, as they often have close relations with company management.<sup>514</sup>

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<sup>511</sup> Edmans (n 3).

<sup>512</sup> *ibid.*

<sup>513</sup> Hannigan (n 275) 143-144.

<sup>514</sup> *ibid* 144.

The 2013 Regulations stipulate that RemCo must disclose confirmation that it is satisfied the advice it has received is 'objective and independent'.<sup>515</sup> This is obviously in the context of the advisor's [ie., the appointed ExecRemConsultant or other advisor(s)] advice being independent, as opposed to whether the RemCoMembers are themselves independent. The latter is addressed in the UKCGC's Provision 10, which sets out the circumstances that may be 'likely to impair' independence, such as having been in post for more than nine years since appointment.<sup>516</sup> However, Provision 10 applies on a 'comply or explain' basis.

Provision 35 stipulates that RemCo should exercise 'independent judgment' when 'assessing the advice of external third parties [eg., ExecRemConsultants] and when receiving views from executive directors and senior management'.<sup>517</sup> Additionally, the IA's Principles of Remuneration states that RemCoMembers should 'exercise independent judgment and discretion when authorising remuneration outcomes'.<sup>518</sup>

Boyle & Birds discuss Directors' statutory duties to exercise 'independent judgement' and 'reasonable care, skill and diligence'.<sup>519</sup> The former does not restrict a Director's ability to seek, or rely on, advice - as Hannigan points out, this is to the extent permissible under the duty of care and skill.<sup>520</sup> Hannigan also states 'nor does it require the Director himself to be independent'.<sup>521</sup>

As for the statutory standard of care, skill and diligence, the standard expected is that 'exercised by a reasonably diligent person' with the general knowledge, skill and experience reasonably expected of a Director in the role

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<sup>515</sup> 2013 Regulations, para 22 (i)(c)(iii).

<sup>516</sup> 'UKCGC 2018', Provision 10 (n 18) 6.

<sup>517</sup> 'UKCGC 2018', Provision 35 (n 18) 13.

<sup>518</sup> IA 'Principles of Remuneration 2018' (n 19) 4.

<sup>519</sup> Boyle and Birds (n 275) 610-615; 'independent judgment', Companies Act 2006 s 173; 'reasonable care, skill and diligence', Companies Act 2006 s 174.

<sup>520</sup> Hannigan (n 275) 264.

<sup>521</sup> *ibid.*

concerned [i.e., a RemCoMember, for present purposes] with the general knowledge, skill and experience such Director actually has.<sup>522</sup>

There is the example of Newcastle International Airport Limited v Eversheds LLP, where the RemCoChair's breaches of the duty of care (through consistently misreading or misunderstanding the contents of documents, disliking reading long documents and being inclined to make unjustified assumptions as to what these said) were found to be causative of the loss suffered by the company arising from the renegotiation of EDs' service contracts that were unduly favourable to the EDs concerned.<sup>523</sup> As Hannigan points out, the trial judge 'found there were comprehensive shortcomings in the performance of all members of the remuneration committee' (and, indeed, that of all of the company's NEDs).<sup>524</sup>

In relation to the 'independence' of advice given to RemCo by the appointed ExecRemConsultants, the UKCGC states that 'a consultant should be identified in the annual report alongside a statement about any other connections it has with the company'.<sup>525</sup> The latter is presumably aimed at the nature of any 'Other Services' provided. The IA's Principles of Remuneration does not mention ExecRemConsultants, save for the exhortation that RemCos 'should not be over-reliant on their remuneration consultants'.

The disclosure requirement in the 2013 Regulations' that RemCo must confirm the advice it has received is 'objective and independent',<sup>526</sup> necessarily entails RemCo itself being satisfied that the appointed ExecRemConsultants have provided 'independent advice'. This in turn leads to the issue of whether appointed ExecRemConsultants who provide 'Other Services' can in practice/particular circumstances be 'independent'. Hence the reason behind asking RIP interviewees about 'GI&O'.

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<sup>522</sup> Hannigan (n 275) 250; Companies Act 2006 s 174 (1) & (2).

<sup>523</sup> [2014] 2 All ER 728; Hannigan (n 275) 249, 256.

<sup>524</sup> Hannigan (n 275) 256.

<sup>525</sup> 'UKCGC 2018', Provision 35 (n 18) 13.

<sup>526</sup> IA 'Principles of Remuneration 2018' (n 19) 4.

RITG1:SQ2 attracted a broad spread of views from RIP interviewees. Indeed, there was a split response between 'Positive', 'Mid-position', and 'Negative' stances. So far as the ExecRemConsultant interviewees were concerned, there was - as might be expected - an overwhelmingly 'Positive' positioning. This no more than mirrors though the response reported by Bender & Franco-Santos when they asked broadly the same question of their cohort of ExecRemConsultants. All their ExecRemConsultant interviewees (indeed, their interviewee population was composed entirely of ExecRemConsultants) argued that there was no COI involved, stressing personal integrity and avoidance of reputational/brand damage as being paramount considerations in this regard. Having said this, Bender & Franco-Santos noted that several of their interviewees 'made slightly derogatory comments on the independence or services of some of their competitors'.<sup>527</sup>

One of Bender & Franco-Santos's interviewees considered 'people seem to be more worried about independence than they are about the quality of the advice'. Certain of the ExecRemConsultant RIP interviewees echoed Bender & Franco-Santos's interviewees in averring that they had turned down appointments/assignments where there was a potential COI and/or had actually been sacked from appointments/assignments where their strictly independent advice had met with disfavour.<sup>528</sup> Bender & Franco-Santos's interviewees stressed that a combination of their terms of business/code of conduct/RCG membership, together with the fact that the appointed individual ExecRemConsultant in the most senior position did not act as a client account manager (and was not financially rewarded for cross-selling) in respect of the company concerned, were all strong bulwarks.<sup>529</sup>

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<sup>527</sup> 2013 Regulations, para 22 (i)(c)(iii) (n 515).

<sup>528</sup> Bender & Franco-Santos (n 43) 15.

<sup>529</sup> *ibid* 6, 15.

The RIP interviewee population was broader than Bender & Franco-Santos's. The RIP CoyExecRemSpecialist cadre was split between those who maintained it was possible for ExecRemConsultants to be independent, and that they generally tried to be objective, and a particular CoyExecRemSpecialist who was more critical - stating 'the appointed ExecRemConsultants generally support RemCo's decision, rather than being truly independent and challenging it'. Another 'Negative' RIP stance was an ExecRemConsultant employed by a Boutique firm (already quoted in Chapter 4.3.5. above) who stated:

I think there is an issue around independence. The relationship between ExecRemConsultants and their clients is further complicated by the fact that consulting firms are not paid by the shareholders, who are the ultimate masters in this process of remuneration governance, but by the companies themselves.

In this context, the following 'Negative' position comment is relevant (from the critical CoyExecRemSpecialist quoted above) - 'there's too much relationship of the income of the advisor and the person paying the fees, all know each other'.

A far more 'Positive' positioning was adopted by one of the CoyExecRemSpecialist RIP interviewees:

It's a tough ask of appointed ExecRemConsultants to be entirely objective in the advice they're giving, but having said that, it's absolutely achievable, because you can be objective in your advice without necessarily cutting across the interests of those you are advising.

A ROO RIP interviewee stressed that independence of attitude is key 'you can have an independent frame of mind, and you can tell it as you see it is'. Interestingly though, the interviewee concerned questioned whether RemCos 'want to hear what's being said to them'. This rather circles back to an ExecRemConsultant interviewee in Bender & Franco-Santos's study who maintained that:

In the case where there is a strong independently - minded remuneration committee it doesn't matter where the advice is routed and how it works...not enough focus on the behaviour of the Board.<sup>530</sup>

Plender in 2007 referred to ExecRemConsultants as 'an unregulated and conflicted bunch'.<sup>531</sup> Now, in 2019, there is certainly more by way of executive pay regulation. The 2013 Reforms have shone a 'disclosure light' on the nature of the overall services provided by the ExecRemConsultancy firm concerned to a particular client company, together with the fees charged by the former in respect of its appointment as the RemCoAdvisor.<sup>532</sup>

HPC<sup>533</sup> and other commentators though would argue that DSOtherServicesFees is needed as a statutory requirement - along the lines of the draft 2013 Reforms and ERWG's Interim Report (see RITG2: RITGST5) and the introduction of RCG in 2009/2010 provided a measure of self-regulation for its member firms.

How have things moved on however, in respect of Plender's 'conflicted' assertion? His article focused more on US examples of 'excessive executive pay' (note that SEC's 2009 DSOtherServicesFees provisions and 2012's 'independence' ones are now part of the US executive compensation scene),

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<sup>530</sup> *ibid* 16.

<sup>531</sup> John Plender, 'It pays to simplify boardroom compensation' *Financial Times* (London, 4 January 2007) <<https://www.ft.com/content/465528a6-9c30-11db-9c9b-0000779e2340>> accessed 26 January 2019.

<sup>532</sup> 2013 Reforms legislation (n 78).

<sup>533</sup> HPC (n 48). Letter from HPC to Secretary of State for BIS, 'Flaw in the 2013 Remuneration Regulations' (2 July 2015) <<http://highpaycentre.org/blog/high-pay-centre-writes-to-sajid-javid-business-secretary-about-pay>> accessed 26 January 2019.

but in a UK context the combination of the introduction and ongoing operation of RCG, together with the 2013 Reforms, seems to have played a part in 'independence concerns' not being a paramount allegation/complaint from the perspective of the RIP ROOs (see RITG2: SQ2 and RITG2: RITGTST5).

This does not mean that HPC is comfortable with the present situation. It calls for DSOtherServicesFees - in the context of its findings that:

Five firms [Big Four and ABC ones] account for 85 percent of the fees paid by a sample of companies for remuneration services and the client companies concerned are employing the same firm to provide other, additional services.<sup>534</sup>

In the UK (and US), if an accountancy firm is a particular company's appointed external auditor it does not offer RemCoAdvisory Services to the company concerned. However, HPC notes the 'increasingly strong presence of the Big Four' in the UK ExecRemConsultancy/RemCoAdvisory market, maintaining that 'audit firms now increasingly dominate the market and have become subject to strict new rules on independence since the remuneration regulations were introduced'.<sup>535</sup> More than half its sample of companies 'use an audit firm to provide remuneration services', according to HPC, which in its view could lead to COI situations.<sup>536</sup>

There seems at first sight anyway to be a lack of clarity amongst UK publicly listed companies about what 'independence' actually means. For example, Informa PLC in its 2017 UKCGC disclosure states that:

Kepler the appointed RemCo advisors has no other connection with the company other than in the provision of advice on executive and employee remuneration, and is therefore considered independent.<sup>537</sup>

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<sup>534</sup> HPC (n 48) 14.

<sup>535</sup> HPC, Letter to Secretary of State for BIS (n 533).

<sup>536</sup> HPC (n 48) 5, 7, 12.

<sup>537</sup> Informa PLC's 2017 statement regarding ExecRemConsultants required by UKCGC's 2016, Provision D.2.1 para 3. It should be mentioned that para 2 states RCG's VCC 'was taken into account when selecting Kepler'. Both RCG membership and the

However, it is far more common practice for UK companies to refer to its appointed RemCoAdvisor's membership of RCG as constituting independence (albeit further bolstered by stating that the RemCo itself is satisfied in this regard). An example of this approach is set out in BP's 2017 report and accounts (interestingly, BP's previous RemCoAdvisor, Deloitte, stood down because that firm had been appointed BP's external auditor):

Following a competitive tender process, the Committee [i.e., RemCo] appointed PwC as its appointed advisor from September 2017. PwC is a member of the Remuneration Consultants Group and, as such, operates under the code of conduct in relation to executive remuneration consulting in the UK. The Committee is satisfied that the advice received is objective and independent.<sup>538</sup>

It is submitted that UK publicly listed companies tend to take the 'Informa line' only in the case where the RemCo concerned has made a reasoned decision to appoint an ExecRemConsultancy firm that provides no Other Services to the company concerned or, alternatively, it just so happens that this is the actual situation in a particular case. Otherwise, the 'BP line' is the one adopted.

Some commentators argue that COI (whether 'winning business' or 'repeat business') exists in all advisor/client relationships.<sup>539</sup> This may be so, but in a commercial environment companies and advisors have to decide whether in a particular situation the risks arising are so clear and potentially serious in nature that the business relationship concerned should not be entered into/or should be terminated, or if, on the other hand, the risk can be managed

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absence of provision of Other Services are reflected in the relevant wording of Informa's 2017 Annual Report & Accounts' DRR (referenced below). See also HPC (n 48). The author has experience of particular companies' DRRs referring to 'independence' comprising the absence of any other advisory services being provided by the ExecRemConsultancy firm appointed to advise RemCo, and of RemCoChairs insisting that the appointed RemCoAdvisor should have no other business connections with the company concerned. This is 'pristine independence'. See Informa's 2017 statement reference <<https://informa.com/>> accessed 25 January 2019.

<sup>538</sup> BP Annual Report & Accounts, DRR, 'Stewardship' 106 and 'Remuneration Committee Chair's Introduction' 86 <[https://www.bp.com/content/dam/bp-country/de\\_ch/PDF/bp-annual-report-and-form-20f-2017.pdf](https://www.bp.com/content/dam/bp-country/de_ch/PDF/bp-annual-report-and-form-20f-2017.pdf)> accessed 25 January 2019.

<sup>539</sup> For discussion of 'psychological bias', 'repeat business' and 'cross-selling of Other Services' potential COI for ExecRemConsultants, see Conyon, 'Compensation Consultants and Executive Pay' in H Kent Baker & Ronald Anderson (eds), *Corporate Governance: A Synthesis of Theory, Research and Practice* (Wiley & Sons Inc 2010) 59.

effectively. In the US, for example, Waxman was particularly concerned about the 'repeat business' aspects of ExecCompConsultancy firms advising CompCo and also providing Other Services to the company concerned.<sup>540</sup>

The 2009 SEC provisions on DSOtherServicesFees were brought in for shareholders to have disclosure of the fees charged for CompCoAdvisory Services and also in respect of Other Services (provided by the ExecCompConsultancy concerned to the client company).<sup>541</sup> One of the effects of this was the dramatic move towards further use of Boutique ExecRemConsultancy firms in the US - because where CompCo advice is the only service line of the company concerned, it cannot by definition be providing any Other Services to the client company and so no fee disclosure needs to be made.<sup>542</sup>

Additionally, the 2012 SEC 'independence' provisions do not stipulate that CompCoAdvisor must be 'independent' (according to the relevant definitions) but that CompCo must investigate the 'independence' of their appointed advisor and if such ExecCompConsultancy firm is not independent then CompCo can still appoint it (provided it manages any COI issues in a way that is appropriate/satisfactory).<sup>543</sup>

Post-GFC investigations showed how despite the averred protections of 'personal integrity' and 'risk of reputation/brand damage' these proved insufficiently effective in certain situations concerning external auditors, credit rating agencies, and research brokers.<sup>544</sup> In an

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<sup>540</sup> Waxman (n 109).

<sup>541</sup> SEC (n 461); WTW (n 462).

<sup>542</sup> Equilar (n 460); SEC (n 461); WTW (n 462).

<sup>543</sup> SEC, 'Final Rules: Listing Standards for Compensation Committees' (20 June 2012) <<https://www.sec.gov/rules/final/2012/33-9330.pdf>> accessed 28 January 2019.

<sup>544</sup> Frederico Mor, 'Company audits: problems and solutions' (HC Library Briefing Paper 8385, 10 January 2019); Tobias Johansson, 'Regulating Credit Rating Agencies: The Issue of Conflicts of Interest in the Rating of Structured Finance Products' (2010) 12(1) Journal of Banking Regulation 1-23 <[https://www.researchgate.net/publication/262964311\\_Regulating\\_Credit\\_Rating\\_Agencies\\_The\\_Issue\\_of\\_Conflicts\\_of\\_Interest\\_in\\_the\\_Rating\\_of\\_Structured\\_Finance\\_Products](https://www.researchgate.net/publication/262964311_Regulating_Credit_Rating_Agencies_The_Issue_of_Conflicts_of_Interest_in_the_Rating_of_Structured_Finance_Products)> accessed 28 January 2019. See also CFA Society United Kingdom, 'Conflicts of Interest' (April 2013) <<https://www.cfauk.org/-/media/files/pdf/pdf/5-professionalism/3-research-and-position->

ExecRemConsultant/RemCoAdvisory context, this underlines the importance of high 'professional standards'. ExecRemConsultants operate in an environment of inherent COI. Additionally, their role as RemCoAdvisors is all about resolving/ameliorating the agency conflict between management and shareholders.

Overlaid on this is the additional UK issue that RemCoAdvisory Services are overwhelmingly provided by Big Four and ABC firms (whereas in the US the former do not major on the business and the latter have 'spun out' many of their senior ExecRemConsultants into Boutiques), which provide Other Services to client companies. These Other Services generate fees that completely dwarf those charged for RemCo advice.<sup>545</sup>

While it can be argued that 'pure' Boutiques have their own 'independence challenges' (as a large part of their overall fee income may depend on a particular client), they are at least patently, transparently 'independent' from the standpoint that they provide no Other Services over and above RemCoAdvisory Services.<sup>546</sup>

It will be seen from the discussion regarding RITG2 below that the RIP interviewees were generally 'Positive' around the current UK mix of Big Four, ABC and Boutique firms and the attendant COI implications, but the UK dominance of non-Boutiques - and so the extensive provision of Other Services - makes it vital that high 'professional standards', plus sound terms of engagement/codes of business and RCG membership serve as effective bulwarks.

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[papers/conflicts-of-interest.pdf](#)> accessed 28 January 2019. Also Brooke Masters, 'Light-touch regime for rating agencies needs transparency' *Financial Times* (London, 3/4 June 2007) and Aleksandra Freat, 'Advisory firms under fire in battle for power in America's boardrooms' *The Times* (London, 24 May 2016).

<sup>545</sup> HPC (n 48) 7, 11; HPC (n 533).

<sup>546</sup> See FC's position in this regard <<http://www.fwcook.com/about-us/>> as well as FIT's <<http://www.fit-rem.com/>> both accessed 28 January 2019.

### *WorkingRelationshipsRemCo/ExecRemConsultants (RITG1:SQ3)*

RITG1:SQ3 attracted a generally 'Positive' response from RIP interviewees. However, one ROO interviewee referred in 'Negative' terms to the perception of 'some sort of knowledge gap between the expertise which is held by ExecRemConsultants and the knowledge of some RemCos' - implying over-reliance of the latter on the former.

Generally though, RIP interviewees put strong emphasis on individual ExecRemConsultant expertise and professionalism, as opposed simply to the reputation of their employing firm. Another issue was how the working relationship had changed due to executive pay regulation and the 'requirement to have your remuneration strategy agreed' (ie., the triennial binding vote on remuneration policy). This was perceived to have raised the importance of the ExecRemConsultants' role.

'Positive' positioning included:

- 'I think working relationships are good (...) RemCo, ExecRemConsultant and management all trust one another' (ExecRemConsultant), and
- 'A responsible Board will always want to have some advice - we each want a conclusion which is based on input which is expert. I feel there is no outsourcing of advice in the UK' (RemCoMember).

The ROO interviewee mentioned above continued in a 'Negative' vein:

The way in which those packages are put together and how you actually consider performance, both as an individual, and as a company in relation to its competitors, then you start to get into a very tricky area in which the Remuneration Consultants are experts, and perhaps some RemCo members are not so much

experts. I think the area of complexity is important because one of RemCo's responsibilities is to exercise judgement in terms of how they might override, can we put it, the detail of the package.

The flavour from ROO interviewees though is that institutional shareholder representative bodies in particular have been concerned in the past about ExecRemConsultants being not only present at meetings involving them and RemCoChairs, but also having taken on an advocate/leading role in explaining company business strategy and how, for example, a proposed new LTIP's performance conditions 'meshed' with this.

Having said this, certain ROO interviewees commented that in recent years RemCoChairs have played a much stronger role in such meetings. But suspicion/wariness remains; for example, ERWG's Final Report recommendation that RemCoChairs/Members should not over-rely on their appointed ExecRemConsultant and that the latter's appointment should be put out to tender on a regular basis.<sup>547</sup>

Additionally, an ExecRemConsultant interviewee mentioned that although the appointed ExecRemConsultant might be permitted by a particular institutional shareholder to attend a meeting between the RemCoChair and the shareholder concerned, the ExecRemConsultant was not allowed to speak at the meeting. The interviewee concerned was somewhat bemused by the fact that HRD of the client company was not only permitted to attend, but was also invited to speak. The ExecRemConsultant's view was that, without casting any aspersions, the HRD of the company was more likely to be conflicted/express a pro-management view than the appointed ExecRemConsultant.

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<sup>547</sup> ERWG Final Report (n 279).

With the exception of Bender & Franco-Santos's study, the academic literature is relatively light on the topic of RemCo's working relationship with ExecRemConsultants, whereas the literature is replete, for example, with quantitative studies on the relationship between ExecCompConsultants and CEO pay - see Conyon's summary of academic studies in this regard.<sup>548</sup>

Another much-investigated issue is whether ExecRemConsultants' multiple business relationships with a particular company and/or RemCoChairs/Members risk biasing their advice in favour of management - with higher pay levels being recommended or less stringent performance measures being used for incentive arrangements - see Bender's summary of academic studies.<sup>549</sup>

It is not altogether surprising though that the academic studies on executive remuneration do not predominantly focus on the working relationship between RemCos and ExecRemConsultants. Indeed, it rather follows from the fact that quantitative studies are so prevalent and that such exercises tend to investigate 'outputs' from, rather than 'inputs' into, the pay determination process. Bender cites books written by ExecRemConsultants for their particular insights on how the CompCo/ExecCompConsultant relationship works, in order to provide a non-quantitative perspective<sup>550</sup> Hodak is cited as suggesting that 'the retention of consultants depends on whether the plan they have devised has paid out, regardless of performance'<sup>551</sup> and Liberman's well-known recounting of a CEO's comment 'the basic goal of compensation consultants is to justify whatever it is the CEO wants to make'.<sup>552</sup>

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<sup>548</sup> Conyon (n 108).

<sup>549</sup> Bender (n 41).

<sup>550</sup> Bender (n 22) 362.

<sup>551</sup> *ibid* 371.

<sup>552</sup> *ibid*.

When one reviews Bender & Franco-Santos's qualitative study of ExecRemConsultants a rather more nuanced position emerges however, which is similar to the picture given by RIP interviewees.<sup>553</sup> Bender & Franco-Santos make the point that their interviewees (being employed by RCG member firms) see RCG's VCC as 'a useful framework for their client relationships', but that the relationship between ExecRemConsultants and RemCos can legitimately vary between 'inclusive' and 'transactional'.<sup>554</sup> In short, the nature of the relationship depends on particular RemCoChairs; whereas some seek advice frequently/in depth from their appointed ExecRemConsultants, others prefer to be far more 'hands off' and only seek such advice on an ad hoc/when they perceive it to be needed basis.

As Bender & Franco-Santos were told by their ExecRemConsultants interviewees, 'the nature of the committee-consultant relationship is not seen as a signifier of the quality of the remuneration committee'.<sup>555</sup> They also found that ExecRemConsultants had varying responses to the question 'What does good look like to an ExecRemConsultant regarding a RemCo appointment/ExecRemConsultancy assignment?' Some mentioned that 'keeping the appointment' rated as 'good', but others averred that 'getting fired was not indicative of doing a bad job'.<sup>556</sup> Agreement coalesced though around 'good' being a 'plan that was right for the company and its strategy, and one that satisfied all the parties'.<sup>557</sup> This was put succinctly as where 'the committee has taken management with them and not created angst from an external perspective'.<sup>558</sup>

The relationship is being assessed on the above basis by way of looking at the 'output', rather than whether the RemCoChair/Members 'got on well' with the ExecRemConsultants concerned. RIP interviewees on occasion referred

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<sup>553</sup> Bender & Franco-Santos (n 43).

<sup>554</sup> *ibid* 6, 10.

<sup>555</sup> *ibid* 10.

<sup>556</sup> *ibid* 14.

<sup>557</sup> *ibid*.

<sup>558</sup> *ibid*.

to RemCoChairs/Members wanting ExecRemConsultants to take on the specific task of 'diffusing'/'resolving' the situation where a CEO was at loggerheads with the RemCo over his/her pay package - and being grateful when the ExecRemConsultant has been successful in this regard. Generally though, pay issues are less personality-specific (ie., it is the pay package of EDs and/or Executive Committee as a whole that is causing difficulties).

In such circumstances, an ExecRemConsultant's willingness to challenge management proposals in appropriate circumstances is something RemCos appreciate. RCG's 2016 survey of ExecRemConsultants found that of those with '6 + Years' relevant experience, 53.8 percent were 'very comfortable in challenging the views of management' and 34.1 percent were 'comfortable' (other responses were: 6.6 percent 'not applicable', 5.5 percent 'it depends' and nil 'uncomfortable').<sup>559</sup> RCG's VCC (including its Good Practice Guidance) contains much information on how ExecRemConsultants should conduct their relationships with RemCo more generally; focusing on transparency, integrity, competence and due care, confidentiality and managing COI.<sup>560</sup>

#### **5.2.4. RITG2 (and RITGST5) Aspects**

RITG2 (and the accompanying RITGST5) is devoted to questions the RIP interviewees were asked about their views on the provision of RemCoAdvisory Services by the three types of professional services firms concerned (namely, Big Four, ABC and Boutiques). Also covered in the interviews were COI considerations in respect of firms that, as well as providing ExecRemConsultancy/RemCoAdvisory Services, also offer Other Services (such as, accountancy and tax services in respect of Big Four firms and

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<sup>559</sup> RCG, 'December 2016 Review of Effectiveness of Code', Appendix A, Q12, 14  
<<http://www.remunerationconsultantsgroup.com/?P=DOWNLOADS>> accessed 14 June 2019.

<sup>560</sup> RCG's VCC (December 2017), 'Fundamental Principles' 2  
<<http://www.remunerationconsultantsgroup.com/?P=DOWNLOADS>> accessed 28 January 2019.

pensions/actuarial/investment advice in relation to ABC ones). The applicable RITGST aspect was DSOtherServicesFees.

*Big Four, ABC and Boutiques (RITG2:SQ1)*

The interviewees' responses regarding RITG2:SQ1 were generally 'Positive', but with some 'Negative' ones. A particular CoyExecRemSpecialist was concerned about the Big Four offering 'multiple services across multiple disciplines with very, very little choice for the end user in some of those areas'. This CoyExecRemSpecialist's concerns were in a broader context than simply ExecRemConsultancy services. However, the interviewee added the opinion Big Four firms should not be in the ExecRemConsultancy business (even if not the appointed external auditor of the company concerned).

The prevailing response though of RIP interviewees was 'Positive' towards the Big Four offering RemCoAdvisory Services (obviously, in the context of the advisory firm not holding the external auditor appointment at the same time). Regarding 'Big Four Independence/COI', a ROO interviewee stated that 'I don't get too worked up about this issue' and a CoyExecRemSpecialist made a fairly typical comment regarding Big Four ExecRemConsultants on an individual basis 'all very, very bright professional people with a qualification (...) with high professional standards'. There was reference however, by more than one interviewee, to companies needing to take into account the identity of their external auditor when reviewing the ExecRemConsultancy appointment (in case either appointment might change in the foreseeable future).

The interviewer contrasted for RIP interviewees' consideration and comment the respective US and UK situations where the former territory has seen the growing dominance of Boutiques and the latter where Boutiques have played a diminishing role. It is worth noting though the growth of the Boutique FIT (which in 2016 acquired Strategic Remuneration Associates, another Boutique). However, FIT - although comparatively influential in the marketplace - is still small in terms of both the number of ExecRemConsultants and fee income generated compared to the Big Four and ABC firms. Another growing Boutique seems to be KFH – making recent hires of ExecRemConsultants from ABC firms in particular.

Looking back over the past decade, the US scene is characterised by the growth of Boutiques and the UK by the Big Four/ABC acquisition of several Boutiques. This has resulted in fewer Boutiques operating in the UK and the removal of several of those from RCG membership.

Just as important as the respective Big Four, ABC or Boutique nature of the UK consultancy firms concerned is the fact that the Big Four ones can offer partnership prospects to their ExecRemConsultants, whereas the ABC firms cannot do so (as they are all publicly listed organisations). It would be naive to think that this will not result in significant earnings differentials for the most senior ExecRemConsultants, with Big Four partnership earnings appreciably trumping ABC remuneration levels.

The previous generation of really senior ExecRemConsultants may have benefitted from significant 'earn-out'/'retention' opportunities when their employing firms were acquired by ABC ones (for example, NBSC were acquired by AH in 2008 and Kepler were acquired by Mercer in 2015). Now with NBSC and Kepler belonging to ABC firms, Hay having been acquired in 2015 by KF (a publicly listed company) and PM (a US Boutique) owning Patterson Associates within its UK operations, the 'remuneration and

career/client work opportunities' attraction factor enjoyed by UK Big Four ExecRemConsultancies in terms of hiring ExecRemConsultants must surely be very significant.

An ambitious, highly capable UK ExecRemConsultant seeking an employing firm with dominant market-branding for an extensive range of professional services, plus the ability to offer partnership earnings opportunities, and a large professionally qualified existing team of senior ExecRemConsultants to provide mentoring/learning opportunities, may well view a Big Four firm with a strong ExecRemConsultancy team as having an attractive position in the recruitment market. To these factors, one might well add that a Big Four firm will put 'direct entrants' through the CA or Actuary examinations.

It is suggested that this is the appropriate context/background against which RIP interviewees' comments should be set. A RemCoMember interviewee considered 'I think it would be possible to have independent firms in the UK (ie., Boutiques) and for them to go on to the next generation if the market demanded it, but at the moment, it doesn't'. Another RemCoMember interviewee stated that 'I've always worked with one of the Big Four or ABCs as opposed to Boutiques. I've not yet found a Boutique I wanted to engage as a consultant'.

These two comments imply that in principle at least UK Boutiques might have a future, over and above being a provider of RemCoAdvisory Services to those RemCos that place their highest priority on selecting RemCoAdvisors which have no other business relationship with the company concerned. The market seems instead though to have opted primarily for the perceived attractions of the 'one-stop-shop' offered by big professional services firms having truly international advisory capabilities (ie., Big Four and ABC firms) in preference to the more 'partner-led' (ie., really senior ExecRemConsultants), and arguably less conflicted 'monoserviceline' Boutiques.

It is interesting to note that FIT and MM&K (a modestly-sized UK Boutique that is a member of RCG) actively seek to address any concerns about lack of 'international advisory capability' by promoting their respective business tie-ups/collaboration with Boutiques in other territories (eg., FIT's working arrangement with FC - the largest US Boutique).<sup>561,562</sup>

FIT has shown since its creation in 2010 that it is possible for new Boutique ExecRemConsultancy/RemCoAdvisory firms to be established successfully in the UK, but, as pointed out by HPC, five firms (AH, Deloitte, Mercer, PwC and WTW) account for 85 percent of the fees paid by a sample of companies for remuneration services, with more than one-half of the sample using an 'audit firm' to provide these.<sup>563</sup> So the UK, as pointed out by Conyon and Bender appears to be in a 'competitive oligopoly' situation.<sup>564,565</sup>

This is not a source of particular concern though for the RIP interviewees (save for the CoyExecRemSpecialist mentioned above). One RemCo member interviewee stated 'RemCos in the UK have decided they want to have a broader range of services from one provider'. The same interviewee caveats matters though by stating:

Will the Big Four get out of remuneration consulting in ten years' time? Perhaps discussions within the Big Four: 'Do we want to be in this business or not?' Anyway, say, a £30 million a year business, which is tiny for the firms concerned.

For the moment at least though, Deloitte and PwC are very much in the UK ExecRemConsultancy business (although this position might change if DSOtherServicesFees were to be introduced in the UK - see below for

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<sup>561</sup> FIT has a formal affiliation with FC in the US (n 546).

<sup>562</sup> MM&K is a member of the Global Executive Compensation and Governance Network. GECGN operates a code of conduct for member firms <<https://mm-k.com>> accessed 17 January 2019.

<sup>563</sup> HPC (n 48) 14.

<sup>564</sup> Conyon (n 108).

<sup>565</sup> Bender (n 22).

discussion of DSOtherServicesFees). A further caveat is a point raised by an interviewee from a ROO 'if one of the ExecRemConsultancies ends up with two-thirds of the work, then the Government or whoever may start to intervene'. Additionally, the same interviewee queries whether ExecRemConsultancies 'actually are different in their approach and if not, then you have the danger of everyone thinking the same way'.

According to a City Lawyer RIP interviewee, the Big Four are very aware of their growing dominance in ExecRemConsultancy and are thinking more strategically than simply driving for market share of 'C-Suite advisory business'. The interviewee concerned stated:

The Big Four have been treading a little more cautiously and weighing up the pros and cons to them of providing advice in different respects, and what is the most valuable avenue for them with a particular company.

It seems likely that the present RCG membership (which contains Big Four, ABC and Boutique firms) suits the Big Four and ABC firms concerned, but it rather flatters the extent of choice realistically available in the marketplace. Although a CoyExecRemSpecialist interviewee stressed that for 'RemCo advisory work, it is the consultant that is appointed and the firm is the secondary consideration', the interviewee concerned did add that the preferred individual ExecRemConsultant 'must have the necessary support and capability behind him or her' to provide the required advice.

For the latter reason in particular, plus the fact that retaining the advisory services of a 'big name firm' is a 'safe choice', means that (with admittedly notable exceptions of major FTSE companies that have stayed with a really-valued individual ExecRemConsultant who has transferred employing firm) the five ExecRemConsultancy firms referred to earlier are in a particularly strong market position.

## *COI/ExecRemConsultants (RITG2:SQ2)*

The overall response of interviewees regarding COI/ExecRemConsultants was generally 'Positive', but with some 'Negative' stances. ExecRemConsultant interviewees in Boutique firms, not unsurprisingly, focused on the 'partner-led' approach mentioned previously rather than simply stressing the COI/independence angle (an example of the latter being 'this is the only service we provide, so we are not conflicted').

When it came to 'Negative' responses, the position is complicated by the fact that RemCo advice 'is very particular to the individual concerned. It's not even the firm'. Accordingly, it's not as straightforward as just comparing Big Four, ABCs and Boutiques as ExecRemConsultancy providers - the individual ExecRemConsultants play a really significant role as well.

One RemCoChair expressed the view that Big Four firms were now 'too big to fail' - and that 'the PwC merger should not have been permitted by the regulatory authorities'. Other RIP interviewees stated regarding the Big Four, that 'they prefer not to have their head above the parapet' and concerns were raised that there is less diversity in the UK market than previously (with very few Boutiques).

More generally though, one CoyExecRemSpecialist viewed Boutiques as: 'more likely to bend in the wind' than ABC/Big Four firms. The UK was seen as having more competitors in the RemCoAdvisory market (where the Big Four and ABC firms predominate) as opposed to the US - where Boutiques are the biggest players. A CoyExecRemSpecialist interviewee also stated 'you really want to go where you are going to get the best advice - otherwise, what's the point of having it?'

Bender & Franco-Santos's ExecRemConsultant interviewees mention the 'independence counter-argument' - ie., the Big Four/ABC firms are less likely to put their entire business at risk by not being scrupulously independent/managing COI - the implication here being that Boutiques may be over-reliant on the fee income generated by just a few clients (there is no equivalent in the UK anyway of the US general practice that no more than one percent of an advisory firm's overall fee income should come from any one client).<sup>566</sup>

An ExecRemConsultant interviewee made the point that if the UK were to promote more Boutique advisory activity in the future then any equivalent of the US provision introduced would need to be suspended in the early years. Otherwise, UK Boutique advisory provision would not have the best chance of growing because currently the level of such provision is so low.

Some CoyExecRemSpecialists RIP interviewees were unconcerned about COI for ExecRemConsultancy firms:

I don't personally see conflicts of interest. Audit fees are so much larger than anything for RemCo advice. More of an issue with Boutiques. It's a much larger risk for a Boutique firm. The UK has more competition than the US, with Big Four and ABCs.

One CoyExecRemSpecialist interviewee stated 'the Big Four have a Great Wall of China rather than Chinese Wall built inherently in their practices'. Another considered that their RemCo (ie., of that CoyExecRemSpecialist's employing company) was 'more comfortable with Big Four or ABC firms. Overall, Big Four have an advantage over competitors'.

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<sup>566</sup> One of the six factors the SEC stipulates CompCos should consider in evaluating ExecCompConsultant 'independence' is the fees paid to the ExecCompConsultant as a percentage of that ExecCompConsultancy firm's revenue. There is no 'bright-line' test, but a figure of 1% of the ExecCompConsultancy firm's total revenue is generally regarded as being the requisite figure.

To summarise, RIP interviewees (excluding responses from ExecRemConsultants, for the moment) were split in terms of whether there was sufficient competition in the UK RemCoAdvisory market, some felt there was, others thought differently, but the Big Four (and to some extent the ABC firms) were considered to be less likely to have COI issues than their Boutique counterparts. The latter may seem counterintuitive until one realises just how small the UK Boutique firms are in terms of fee income generated and number of ExecRemConsultants employed – whereas the US clearly has critical mass in this regard.

Commentary on the UK Big Four usually focuses on external auditor appointments, rather than RemCoAdvisory Services. This is hardly surprising in that despite, for example, Deloitte and PwC occupying such a pivotal position in UK RemCoAdvisory Services provision, the respective size of their RemCoAdvisory teams is frankly tiny compared to their Audit (and other advisory) Practices. Indeed, the RemCoAdvisory fee income, even if one includes all ExecRemConsultancy fees (ie., including any advice provided to management), is a mere 'rounding error' in the overall fee income of the UK Big Four Firms.

One City Lawyer RIP interviewee indeed queried why the Big Four would want to take on the potential COI/reputational/brand risk involved in offering RemCoAdvisory Services in return for such modest levels of fee income. He refers to the UK RemcoAdvisory market for the 'biggest companies' as generating £28million of consulting fees annually in its entirety.<sup>567</sup> Having said this, another interviewee (an ExecRemConsultant) mentioned 'I think there is a wish by these enormous auditing firms in particular to protect interests'. The point was made that RemCoAdvisory Services 'go straight to the Boardroom'.

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<sup>567</sup> Ho (n 101).

As regards 'audit concentration' in the UK advisory market, commentators vary between those who support the possible breakup of the Big Four to those who conclude that splitting-up the Big Four would, to adopt a medical analogy, be misdiagnosing the problem and then imposing an unhelpful cure. For example, Landell-Mills argues that hiving off Big Four consulting work would prevent COI,<sup>568</sup> but Peterson takes the stance that 'lopping-off advisory services would hurt performance'.<sup>569</sup> The latter view has support from Izza<sup>570</sup> and Bowens,<sup>571</sup> respectively, whereas Boyle<sup>572</sup> and Jubb,<sup>573</sup> would presumably be in the former camp.

FRC's 2018 support for CMA inquiry into competition in the publicly listed company external auditor market is ongoing (and contrasts rather dramatically with its 2012 support of the Big Four – the Lex column refers to FRC's former stance as 'selecting KPMG as its human shield').<sup>574</sup> Having said this, Ford argues that the FRC's 'idea does not go to the heart of the problem'. He sees the challenge as getting 'investors to demand higher standards, not only from the regulator but also from the auditors themselves'.<sup>575</sup> Jubb would doubtless agree with Ford in this respect - the former argues that 'it is time the "curse of Caparo" was broken' and suggests that the 'Carillion Joint Inquiry' should revisit the Caparo ruling that 'auditors do not owe a duty of care to any one shareholder but to the body of shareholders as a whole' (represented by the BOD).<sup>576</sup> Jubb avers that this 'immunises' auditors from the risk of being sued by investors for audit failure.<sup>577</sup>

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<sup>568</sup> Natasha Landell-Mills, & Jim Peterson, 'Should the Big Four accountancy firms be split up?' *Financial Times* (London, 22 March 2018). Also Natasha Landell-Mills, Martin White & Robert Talbut, 'Beware of quick fixes to the audit market', Letter to Editor *Financial Times* (London, 19 November 2018).

<sup>569</sup> *ibid.*

<sup>570</sup> Michael Izza, 'Solve three problems to fix audit concentration', Letter to Editor *Financial Times* (London, 20 March 2018).

<sup>571</sup> Jan Bouwens, 'Evidence does not support "conflict of interest" worries', Letter to Editor *Financial Times* (London, 20 March 2018).

<sup>572</sup> Paul Boyle, 'Restrictive ownership hobbles audit industry', Letter to Editor *Financial Times* (London, 19 March 2018).

<sup>573</sup> Guy Jubb, 'Auditor merry-go-round fails to shake-up cosy market' *Financial Times* (London, 29 May 2018).

<sup>574</sup> Financial Times Lex, 'KPMG: death wish' *Financial Times* (London, 21/22 July 2018).

<sup>575</sup> Jonathan Ford, 'Members of the auditing universe have enjoyed an easy life for too long' *Financial Times* (London, 21 May 2018). See Kevin Ellis's (Chair PwC UK) spirited counter-argument, 'An accountancy upheaval would endanger the quality of audits' *Financial Times* (London, 22 May 2018).

<sup>576</sup> Guy Jubb & Mark Solomon, 'It is time the "curse of Caparo" was broken', Letter to Editor *Financial Times* (London, 6 February 2018).

<sup>577</sup> *ibid.*

Geffen has an interesting angle on the WOB debate in that he argues stakeholder advisory panels (of a type that would represent the wider set of stakeholder interests, including executive pay matters) could appoint external auditors and that the latter would be accountable to such panels.<sup>578</sup> Geffen believes this would 'help create a more objective relationship between management and auditors'.<sup>579</sup>

The *Financial Times* argues that 'only radical reform will force the Big Four to improve audit quality', citing International Forum of Independent Audit Regulators' finding that four out of ten audits inspected in 2017 showed 'serious deficiencies' (and 41 percent of the problematic audits are 'infected' by COI and ethical problems).<sup>580</sup> The *Financial Times* tracks the post-Enron move in the US for three of the Big Four audit firms to split off their consultancy arms - but now 'they have rebuilt that part of their business'.<sup>581</sup>

The *Financial Times* appears in favour of the Big Four being broken up and states that 'public tolerance is dwindling' for the argument that if one of the Big Four is 'driven out of the business' the competition aspect will worsen.<sup>582</sup> The Big Four argue anyway that their present ability to cross-subsidise audit from non-audit activities makes them more stable.<sup>583</sup> BDO's Head of Audit suggests that the rule should be 'if you do the audit, you can only do the audit and audit-related work',<sup>584</sup> but no doubt the Big Four's response would be that if the market were demanding pure 'audit firms' then surely one would have emerged by now, plus there are already the EU rules in place (which came

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<sup>578</sup> Charlie Geffen, 'Auditors should answer to stakeholder panels', Letter to Editor *Financial Times* (London, 11 April 2018).

<sup>579</sup> *ibid.*

<sup>580</sup> Financial Times Leader Editorial, 'What the public should expect from auditors' *Financial Times* (London, 14 March 2018).

<sup>581</sup> *ibid.*

<sup>582</sup> *ibid.*

<sup>583</sup> *ibid.*

<sup>584</sup> Madison Marriage, 'BDO calls for extra curbs on non-audit work' *Financial Times* (London, 2 May 2018).

into force in the UK in 2016) restricting non-audit fees to 70 percent of the audit fees that have been billed over the previous three-year period.<sup>585</sup>

The general issue of Big Four COI has been discussed in some detail in this thesis because it puts into context the particular COI matters relating to the provision of RemCoAdvisory Services by Big Four and ABC firms (Boutiques providing such services usually have RemCoAdvisory Services as their only or key service line). Another factor is that although critics 'of independence' of ExecRemConsultancy services/ExecRemConsultants (such as, HPC) make reference to the prevalence of audit firms providing remuneration services (and argue for DSOtherServicesFees, for example) they do not generally call for the Big Four to be split up.

This is completely understandable because even if 'audit only' firms were to be created, it is likely that RemCoAdvisory Services would remain with the 'consultancy practices' (along with tax advisory).<sup>586</sup> However, it can obviously be argued that because RemCoAdvisory Services are supplied at BOD level, there is more likelihood that COI issues may become of greater existential significance and, indeed, could conceivably result in a situation that triggers the failure of a Big Four firm (or highly-damaging reputational/brand damage) - whereas a Boutique firm in such circumstances could not possibly be 'too big to fail'.

Accordingly, the Big Four and Boutique firms respectively are at opposite ends of the spectrum in this regard. ABC firms are of less systemic importance than the Big Four but like the Big Four, are arguably a 'competitive oligopoly' providing pensions and other advisory services.<sup>587</sup>

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<sup>585</sup> EU Audit Directive and Regulation Directive 2014/56/EU. Regulation 567/2014: regarding statutory audit of public-interest entities. Reform of EU Statutory Audit Market - Frequently Asked Questions (updated version) <<https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX:32014L0056>> accessed 28 January 2019. Also note the FRC's Ethical Standard (2016).

<sup>586</sup> Unless an 'audit only' firm declined to seek RemCoAdvisory appointments. So far as ExecRemConsultancy firms generally are concerned, were 'pristine independence' to be the overriding objective such firms would have to avoid undertaking any Other Services for the client company or, alternatively, be 'monoserviceline' Boutiques.

<sup>587</sup> Conyon (n 108); Bender (n 22).

An ExecRemConsultant RIP interviewee considered that the ABC firms are less vulnerable anyway to COI issues than their Big Four counterparts - on the basis that advice provided by ABC firms' respective Pensions Practices to pension scheme trustees was 'one step removed from company management' (however, Other Services advice provided by ABC firms to management entails similar issues to those faced by Big Four firms).

Returning to Plender's 2007 assertion that ExecRemConsultants are 'a conflicted bunch', this remains the case in principle. Having said this though, RCG's VCC refers in detail to how member firms should manage COI. Additionally, professional services firms now have COI provisions in their terms of engagement and codes of business conduct. Another bulwark is the fact that the vast majority of the current generation of really senior ExecRemConsultants are also professionally qualified (with attendant professional handbooks regulating in detail how to identify, avoid and/or manage COI).

It could be argued anyway that the very nature of an ExecRemConsultant's role when working in a RemCoAdvisory capacity is replete with conflicting demands and interests - so where the ExecRemConsultant's firm provides Other Services this is merely one more professional COI for that ExecRemConsultant to be transparent about to RemCo, management and shareholders.

The US has taken a particular approach to CompCoAdvisory Services, in that the Big Four do not major on providing such advice and the ABC firms have spun-off many of their more senior ExecRemConsultants into Boutiques - which now dominate the CompCoAdvisory market. The US, therefore, does not face the 'too big to fail' issue referred to above in respect of the UK Big Four's RemCoAdvisory Practices. US ABC firms have even less of a problem than the UK ABC ones have in this regard. But it was far easier for the US

following the 2009 SEC disclosure regulations to move to Boutiques being the dominant service providers. There was a strong tradition there already, with FC, PM and others, of Boutiques providing CompCoAdvisory Services, whereas in the UK the only Boutiques of significance now are FIT, KFH and PM – and these are all very small in the UK marketplace.

Accordingly, there would be real difficulties in the UK in maintaining a satisfactory level of RemCoAdvisory Services offering if, for example, the Big Four were denied the right to advise in this area/chose not to do so. This would apply even more strongly if the ABC firms were also to be put in a similar position. On the basis of HPC's figures, 85 percent of the fees charged to the companies in its sample were paid to just five firms of advisors (two Big Four and three ABC).

Effectively, for the UK to go down the US route the RemCoAdvisory business would need to go through a total 're-set and start again'. It could be argued first that the risks of a UK Big Four firm being brought down by a RemCoAdvisory issue are comparatively small (but the potential for suffering severe reputational/brand damage is considerably higher). Secondly, it might be maintained that if the UK moved to a DSOtherServicesFees regime this might limit market competition if Big Four firms in particular decided as a consequence to exit the RemCoAdvisory business (similar but less strong considerations apply to ABC firms).

#### *DSOtherServicesFees (RITG2:RITGST5)*

The objective regarding DSOtherServicesFees aspects was to seek interviewees' perspectives on the comparative merits of the UK introducing regulations stipulating annual disclosure to shareholders of the fees charged by ExecRemConsultancies not only (as now) in respect of advising RemCo but also those charged by the ExecRemConsultancy firm concerned where

that firm also provides the client company with Other Services (whether pay-related or otherwise – eg., accountancy, tax, or pensions advice).

The interviewer outlined to RIP interviewees the differences between the respective US and UK approaches to fee disclosure. Also mentioned was how the UK has twice come close to adopting a very broadly analogous approach to the US - ie., at the draft stage of the 2013 Reforms<sup>588</sup> and in the ERWG Interim Report in 2016.<sup>589</sup>

The response of RIP interviewees was generally to take a 'Negative' stance to the possibility of DSOtherServicesFees being introduced in the UK, although there were some 'Positive' comments. Even among ROOs interviewees and RemCoChairs/Members such disclosure was not an issue that was high on their agenda. There was some speculation about what might happen if such disclosure were to be introduced; for example, that 'there might be a few more Boutiques set up' and that, with respect to the Big Four, there would be a heightened focus on advising management rather than RemCos 'because the private equity side or property side of the business [ie., of a Big Four firm] would not want to see fees disclosed'.

An ExecRemConsultant commented though that ExecRemConsultancy firms (of all types) already seem to cope perfectly satisfactorily in the case where there is a full disclosure requirement due to the client company having a secondary listing in a particular territory. The overall flavour however, from RIP interviewees was that there were no really strong business or corporate governance reasons for such disclosure being necessary or even desirable. Some RIP interviewees made their views clear that the UK introduction of DSOtherServicesFees would favour the establishment of Boutiques; for example, 'why should any firm like the Big Four or ABC firms disclose their

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<sup>588</sup> Draft 2013 Reforms (n 103).

<sup>589</sup> ERWG Interim Report (n 104).

commercial arrangements with big clients for the entirety of the business relationship?'

This seems somewhat ironic as the UK Boutique sector is now much diminished (with the notable exception of FIT). The UK has moved - with Big Four and ABC dominance - to a more 'one-stop-shop' model, as opposed to the US Boutique-led one.

There are a number of issues that need to be unbundled in respect of DSOtherServicesFees. These include:

- Whether the present fee disclosure requirements and/or the fee figures currently actually disclosed correctly represent the full picture of fees charged for RemCoAdvisory Services,
- Consideration of the corporate governance effects (beneficial or otherwise) of DSOtherServicesFees being introduced, and
- Likely implications for ExecRemConsultancy firms if DSOtherServicesFees were to be introduced.

Interestingly, RCG documentation makes little reference to fee issues. Indeed, the December 2016 Review of Effectiveness of Code does not mention fees at all. However, the December 2015 VCC stipulates that as part of the 'on-boarding' process of the appointment by RemCo of ExecRemConsultancy advisors there should be disclosure to the RemCoChair of the scope and cost of work provided to the company concerned, in addition to that of the RemCoAdvisory Services.<sup>590</sup> Additionally, the Code of Practice states that the RemCoAdvisor should report to the RemCoChair 'on an annual basis the appropriate split with the value of the work done for RemCo and for executive management'.<sup>591</sup>

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<sup>590</sup> RCG's VCC, 'Good Practice Guideline 12' (n 560) 5.

<sup>591</sup> *ibid.*

The relevant legislation stipulates fee disclosure is applicable only to that referable to advice 'materially assisting the committee' (ie., for RemCo advice), as opposed to fees separately charged for Other Services.<sup>592</sup> As pointed out by HPC, the original draft legislation included disclosure to shareholders of not only RemCoAdvisory fees, but also for Other Services (ie., DSOtherServicesFees).<sup>593</sup>

HPC in July 2015 stressed in a letter to BIS that (a) : Almost all RCG member firms fell into both the 'RemCoAdvisory Services' and 'Other Services' categories ('the value of these other commercial relationships is clearly relevant to independence but is unknown to shareholders expected to vote on remuneration policy'), and (b) 'Audit firms now increasingly dominate the remuneration consultancy market and have become subject to strict new rules on independence (referred to above) since the remuneration regulations were introduced'.<sup>594</sup>

HPC's 'Are Remuneration Consultants Independent?' contains detail on aspects where it considers ExecRemConsultancies are not making accurate disclosure in relation to the relevant legislation as it currently stands.<sup>595</sup> In other words, even before consideration of the greater disclosures that would flow from new legislation restoring the DSOtherServicesFees provisions that were in the draft 2013 Reforms legislation.

Accordingly, HPC's approach has two strands. The first is the allegation that proper disclosure is not being made under the current legislation and the second is that disclosure of DSOtherServicesFees should be introduced.<sup>596</sup>

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<sup>592</sup> 2013 Reforms (n 78).

<sup>593</sup> HPC, Letter to Secretary of State for BIS (n 533).

<sup>594</sup> *ibid.*

<sup>595</sup> HPC (n 48).

<sup>596</sup> HPC (n 48); HPC (n 533).

What HPC does not mention in respect of the first of these is whether ExecRemConsultancies are actually allocating a fee figure for RemCoAdvisory Services that takes a narrow view of what should appropriately be designated as being for such services and that in respect of members of executive management generally who are not EDs. For example, the fees charged in respect of the design and introduction of a new LTIP need to be apportioned in some way to reflect participation in the LTIP by EDs, members of the Executive Committee generally, and other senior members of management (the fee disclosure figures concerned are not subject to audit).

When this issue was raised with RIP interviewees, the interviewer noted several of the ExecRemConsultants remarked that they themselves had occasionally been surprised by the 'lowness' of the disclosed fee figure in annual reports in the circumstances where competitor ExecRemConsultancies advised a particular RemCo. Additionally, a review by the author of the fee disclosures reported in HPC's publication, seemed to show that the 'overall value' of the RemCoAdvisory work looked on the low side (even after making due allowance for the corporate work 'split').<sup>597</sup>

In other words, if readers of the DRR consider that the full amount of fees charged by the appointed RemCoAdvisors is the figure disclosed in such annual reports, then they may be underestimating the fees actually charged by the RemCoAdvisors (the 'lower' figure may have been calculated/disclosed in a manner that legitimately takes advantage of the imprecision of the applicable legislation or, perhaps, has been 'finessed' somewhat by a narrowly-defined allocation basis for calculating fees charged for advising the EDs). In a 'steady state' year the discrepancy may be small, but in respect of a year, for example, where new LTI arrangements are introduced, then any discrepancy might be far larger.

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<sup>597</sup> HPC (n 48).

More broadly on fee disclosure, HPC points out that if there were to be a fee disclosure requirement for Other Services then in respect of the Big Four and ABC firms such disclosure would be likely to show fee levels for such 'other work' that completely dwarfs those charged for the strictly RemCoAdvisory role.<sup>598</sup> The question, of course, is whether in corporate governance terms the latter form of disclosure would be beneficial (and to whom). The RIP interviewees did not show much appetite for such disclosure - this included ROOs as well. One of the ROO interviewees stated that there was now far less demand for DSOtherServicesFees because the 2013 Reforms, together with the improvement in professional standards since RCG was formed, had 'lowered the temperature' somewhat.

It is hard to dismiss an intellectual argument that DSOtherServicesFees must in principle be in shareholders' interest - as it assists in their assessment of RemCos' ExecRemConsultant independence. It is also right perhaps to be sceptical about any Big Four/ABC arguments along the lines that preparing the necessary disclosure figures for DSOtherServicesFees would be particularly burdensome to client companies.

RCG stipulates that the RemCoChair should be provided annually with a 'raw split', so there is already a basis from which a more rigorous calculation could be produced.<sup>599</sup> Given that ERWG Interim Report in 2016 recommended DSOtherServicesFees, it seems that the concept has remained in 'mainstream thought' since being removed from the final version of the 2013 Reforms.

Having said this, it may be that a reason why DSOtherServicesFees has not yet been introduced in the UK is the one referred to earlier (ie., this could have a significant effect on whether Big Four firms in particular continue to pitch for RemCoAdvisory appointments, as opposed to advising senior executive management/EDs). Whereas in the US ABC firms spun-off many of their

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<sup>598</sup> HPC (n 48) 14; HPC (n 533).

<sup>599</sup> RCG (n 560) 5.

most senior ExecRemConsultants (mostly into newly-formed Boutiques, but some went to rival, existing Boutiques) the process was reasonably smooth (but not without major change for the ExecCompConsultants concerned), the UK RemCoAdvisory business in similar circumstances would likely suffer a major dislocation.

First, because of the dominance of Big Four and ABC firms in the UK marketplace (there is no UK equivalent of the large well-established Boutiques, such as FC and PM, in the US). Secondly, it could be argued that at least some of the current generation of senior UK ExecRemConsultants in the UK might prefer to stay with their existing Big Four/ABC firm and focus their advisory work on executive management/EDs instead (particularly in respect of financial services clients). If this proved to be the case then the US model of the latter role being carried out by a Big Four/ABC firm and CompCo being advised by a Boutique might start to become more prevalent in the UK. However, such route has not been popular with UK RemCos to date - it involves a 'doubling-up' of advisors.

Lastly, UK ExecRemConsultants may not be as entrepreneurial/ready for change as their US counterparts, so may not relish the prospect of building a Boutique business (the UK has after all seen the trend over the past 10-15 years of Boutique firms being acquired by ABC/Big Four firms).

For these reasons it may not be altogether surprising that although DSOtherServicesFees has twice been 'on the cards' in the UK, it is far from certain that it will be introduced in the foreseeable future - and if it is, it would be likely to result in a major dislocation to the provision of RemCoAdvisory Services, at least in the short to medium term.

### **5.2.5. RITG3 Aspects**

RITG3 concerns the UK's self-regulatory regime for ExecRemConsultancy/ExecRemConsultants. UK ExecRemConsultancies with at least one FTSE 350 RemCoAdvisory appointment have been eligible to join RCG (as member firms, rather than individual ExecRemConsultants) since its inception. All RCG member firms pay an annual subscription to defray RCG's running costs - such subscriptions are tiered in level depending on two ascribed sizes of ExecRemConsultancy.<sup>600</sup> This system results in the Big Four and ABC firms bearing the largest share of RCG's 'management time' and running expenses.

Interviewees' comments on the UK's self-regulatory regime ('VCC') were broadly 'Positive' (ie., that self-regulation is appropriate in this context), but with some 'Negative' stances; whereas comments on RCG were far more split/polarised, but preponderantly 'Mid-position' in nature.

#### **VCC**

A typical 'Positive' comment was that of a ROO:

I don't get the strong impression that people feel ExecRemConsultants are behaving in some sort of maverick, cavalier way. So I think that some form of self-regulation is probably the right way to go for this sort of business activity.

Interestingly though, when it came to 'Negative' comments the strongest were from ExecRemConsultant interviewees (specifically, ABC and Boutique ones) - they were critical of self-regulation as a concept, together with how/why RCG

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<sup>600</sup> RCG, Membership Application Form

<[www.remunerationconsultantsgroup.com/assets/Docs/membership%20Application%20Form.pdf](http://www.remunerationconsultantsgroup.com/assets/Docs/membership%20Application%20Form.pdf)> accessed 28 January 2019.

had come into being and its ongoing operation. Comments included:

- 'Self-regulation as being akin to "self-serving" ',
- 'Marketplace for ExecRemConsultancy advice provided to RemCos is unfair, and favours the larger firms where there are real conflicts', and
- 'Silly test (...) if you don't set up the RCG then we'll regulate your business'.

The latter comment is a reference to RCG's inception following promotion in HC TC's *Ninth Report* and *Walker Review* of the concept of self-regulation for RemCoAdvisory Services.<sup>601,602</sup> Even in 2011 though, FairPensions noted in its response to the *BIS Executive Remuneration Discussion Paper* that it had reservations that it put in 2009 to *Walker Review* on the proposed 'Remuneration Consultants' Code', arguing that the latter 'envisages an unacceptable degree of self-regulation' and that the Code should be overseen by FRC on the same footing as UKCGC (and now UKSC, as well).<sup>603</sup> FairPensions maintained that 'transparency over the use of ExecRemConsultants is a necessary but not sufficient condition to prevent conflicts of interest'.<sup>604</sup>

This needs to be seen in the context however, that FairPensions in 2011 was also calling for RemCoAdvisory Services to be provided only by firms that had no other business connections with the client company concerned. This clearly goes a step farther than DSOtherServicesFees, towards a position of 'pure/pristine independence'.<sup>605</sup> Also FairPensions argued that RemCo

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<sup>601</sup> Adamson et al (n 42).

<sup>602</sup> HC TC (n 254); *Walker Review Interim Report* (n 323); *Walker Review Final Recommendations* (n 324).

<sup>603</sup> Christine Berry, Executive Remuneration: Discussion Paper (Fair Pensions, 2011) <<https://shareaction.org/wp-content/uploads/2016/01/BISExecDiscuss.pdf>> accessed 29 January 2019. FairPensions' submission (September 2009) to *Walker Review* (comments on Walker Recommendation 39, 25) <<https://shareaction.org/wp-content/uploads-2016-01/DavidWalker.pdf>> accessed 29 January 2018.

<sup>604</sup> Berry (n 603) for her 2011 Response to Question 8, 6.

<sup>605</sup> *ibid.*

advisors should be appointed by shareholders (on the recommendation of RemCo) - ie., SVExecRemConsultants.<sup>606</sup>

Government's recent proposals to give FRC greater corporate governance responsibilities do not include it having regulatory responsibilities over ExecRemConsultancy<sup>607</sup> - so it would appear that FRC's appetite for, or being required to take on, such oversight is no greater now than it was in 2009. Accordingly, in the medium term at least it seems likely that a self-regulatory regime for RemCoAdvisory Services is going to continue.

A review of the relevant academic literature was conducted on the appropriateness of the self-regulatory regime for ExecRemConsultancy, to see whether views have changed in the period from 2009 to the present day. Bender in 2011 refers to ways in which ExecRemConsultants 'maintain their own legitimacy' (in the face of COI allegations). She notes that one way they do this is 'to foresee changes in the environment and adapt to these before they become serious'. The US spin-offs into Boutiques are an example of this, as is the inception and ongoing operation of the RCG in the UK. As Bender states:

[A]nd by 'professionalising', with the larger firms in the United Kingdom joining together to produce a Voluntary Code of Conduct, they are trying to take charge of the debate themselves, rather than have regulation imposed upon them.<sup>608</sup>

Bender notes - encouragingly for the ExecRemConsultancy business - 'as the pay landscape shifts, their [ie., ExecRemConsultants'] role will adapt, but will not disappear'.<sup>609</sup> She stresses though that independent input into RemCo

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<sup>606</sup> *ibid.*

<sup>607</sup> *Government Response* (August 2017) (n 70). See also BIS & FRC, *Proposals to Reform the Financial Reporting Council: A Joint Government & FRC Response* (March 2012) <[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/190187/12-700-proposals-reform-financial-reporting-council-response.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/190187/12-700-proposals-reform-financial-reporting-council-response.pdf)> accessed 29 January 2019.

<sup>608</sup> Bender (n 22) 394.

<sup>609</sup> *ibid.*

pay determination processes 'provides some legitimacy for the outcome', so it is crucial for the ExecRemConsultancy business that 'consultants need to address this in order to maintain and enhance their own legitimacy, and continue to be seen as a "best practice" solution'.<sup>610</sup>

Adamson et al state that while 'steps taken by the ERC seem to indicate a professionalization agenda similar to those of other new organizational occupations', an 'institutional work lens enables these developments to be seen in the context of the institution of executive pay-setting practices'.<sup>611</sup> Interestingly, Adamson et al contacted potential ExecRemConsultant interviewees via RCG itself.<sup>612</sup> For the RIP, senior ExecRemConsultants were approached directly. It is submitted that Adamson et al are broadly correct in assessing that the relevant UK population of senior ExecRemConsultants is 'around 50', but within that figure there are fewer than half that number seriously 'in the frame' for advising major FTSE companies.

Adamson et al's ExecRemConsultant interviewees seem comfortable with RCG's self-regulatory remit being limited to 'specifying the role and remit of Executive Remuneration Consulting and updating the Code'.<sup>613</sup> In other words, the current self-regulatory approach and limited scope was considered appropriate/satisfactory - and they did not see RCG as being 'regulatory in any other way' (ie., having a broader remit concerning the regulation of ExecRemConsultancy/ExecRemConsultants). Adamson et al consider:

The creation and maintenance of the RCG reaffirms the position of remuneration consultants in the broader landscape of executive pay practices by "pointing" the client companies to a pool of more "legitimate" consultants in the field.<sup>614</sup>

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<sup>610</sup> *ibid* 395.

<sup>611</sup> Adamson et al (n 42) 13.

<sup>612</sup> *ibid* 11.

<sup>613</sup> Adamson (n 20) 37 and RCG, 'Who We Are' and 'Our Responsibility' <[http://www.remunerationconsultantsgroup.com/?P=ABOUT\\_US](http://www.remunerationconsultantsgroup.com/?P=ABOUT_US)> accessed 14 June 2019.

<sup>614</sup> Adamson et al (n 42) 32.

Adamson et al note ExecRemConsultants' belief in the importance of 'market forces' as a quasi-regulatory influence.<sup>615</sup> At least one of the RIP ExecRemConsultant interviewees referred to their view that a particular ExecRemConsultant's reputation in the marketplace is what should largely determine whether their services are in demand - and that in a way this is the strongest/best form of 'regulation'. There were also elements in the ExecRemConsultant interviewee's comments supporting Adamson et al's finding that:

Individuals within the community of ERC professionals may intentionally and/or unintentionally, undermine the broader scene collective efforts aimed at the creation of the ERC professional project, for example by being reluctant to embrace the new identity or professional self-regulation.<sup>616</sup>

As Adamson et al express it, regarding McCann et al's study (of paramedics), 'professionals' behaviour at ground level contradicted professionalization efforts of the professional elite'. Although Adamson et al found evidence of this in their study, they suggest that rather than comparing 'new professional projects', such as ExecRemConsultancy, to that of 'traditional professions', 'the analysis of the relationships between the levels of institutional work may help better explain the development mechanisms and trajectories of such projects as ERC'.<sup>617</sup>

RIP findings support this. ExecRemConsultant RIP interviewees did not view RCG as part of an ongoing 'professionalisation project' to mirror 'traditional professions', it was simply seen as part of the way ExecRemConsultancies could best operate in an environment where COI concerns and other criticisms of ExecRemConsultants are part of the prevailing remuneration scene.

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<sup>615</sup> *ibid.*

<sup>616</sup> *ibid* 36.

<sup>617</sup> Adamson et al (n 42) 7, 24, 25. See McCann et al's study of paramedics (n 19) 37.

According to Adamson et al's findings, ExecRemConsultants at the senior level very frequently hold professional qualifications, and they are somewhat 'anchored' to these - as opposed to considering that ExecRemConsultancy is a 'new profession' in its own right.<sup>618,619</sup> Adamson et al state that 'consultants question the role of the Code and RCG as a genuine vehicle of self-regulation as well as doubting that professionalism was a suitable regulatory principle in this field'.<sup>620</sup>

In the context though of comments made by ExecRemConsultants in the RIP interviews that the market (via individual ExecRemConsultant reputation) plays a 'quasi-regulatory role', together with the fact that senior ExecRemConsultants are predominantly professionally qualified anyway, it is hardly surprising that ExecRemConsultants - although most supportive of RCG at the macro/collective level - are somewhat more questioning about the impact/value of RCG at an individual ExecRemConsultant level.

RCG could be viewed in certain respects as being even more of a type of 'starter' or 'trainer wheels' self-regulation of the sort introduced into financial services sector at the time of Big Bang. For example, SRO membership was at the firm level (although there was a disciplinary sanctions regime for employees of member firms, such as IMRO - whereas this does not exist in a RCG context). Accordingly, RIP interviewees were not only generally comfortable with self-regulation for ExecRemConsultancy and ExecRemConsultants (as opposed to formal State-sponsored regulation - such as happened in due course in the UK financial services sector), but they were content with RCG having a very limited form of self-regulatory remit.

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<sup>618</sup> Adamson et al (n 42).

<sup>619</sup> *ibid.*

<sup>620</sup> *ibid* 35.

There was certainly not a chorus of demand for self-regulation to be replaced by more formal regulation nor, indeed, for RCG's self-regulatory remit to be extended beyond its current confines (eg., to a disciplinary sanctions regime applicable to individual ExecRemConsultants).

Bender & Franco-Santos note that the Code (ie., RCG's VCC) is seen by RCG members as a “useful framework” for their client relationships’ but do not seem to have posed their 20 ExecRemConsultant interviewees specific questions concerning the UK's self-regulatory regime for ExecRemConsultancy/ExecRemConsultants. This is interesting in the context that the purpose of their study was to 'investigate the factors that influence the advice executive remuneration consultants provide to their clients'.<sup>621</sup>

It can also be seen in tandem with ExecRemConsultants not being a key focus of recent corporate governance initiatives - for example, ERWG, Purposeful Company's Report on Executive Remuneration, Philp's 'Ownerless Corporation', the 2016 *Green Paper*, BEIS Select Committee's *Report and Government Response* (of August 2017), together with subsequent soft law and legislative provisions. The structure of the UK regulatory regime for ExecRemConsultants in an RCG-context has also not featured.

In the absence of strong political or, indeed, shareholder representative body or proxy advisory firm pressure for a change in the present self-regulatory regime for ExecRemConsultancy, it appears that it will continue in its existing form. Even generally critical commentators, such as HPC, focus attention on 'high pay', WOB, SABV, and DSOtherServicesFees, as opposed to calling for 'professional standards' reforms for ExecRemConsultants (such as, SA/Q and/or LTP). Accordingly, the UK self-regulatory regime for

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<sup>621</sup> Bender & Franco-Santos (n 43) 4.

ExecRemConsultancy/ExecRemConsultants looks likely to continue for the foreseeable future.

This would not be surprising to a US ExecCompConsultant (assuming the RIP ExecCompConsultant interviewees were representative), because they could not see any likelihood of an RCG-type regime being introduced into the US - and saw the UK introduction of RCG as being due to post-GFC inquiries into the UK financial services industry, plus the applicable UK corporate governance regime more generally.

### *RCG*

As mentioned previously, the overall picture from the RIP interviewees was pretty mixed in relation to how the UK's self-regulatory regime - ie., the inception in 2009/2010 and ongoing operation of RCG – was working in practice. Although the broad preponderance of interviewees took a 'Mid-position' stance, there was considerable dispersion (ie., some 'Positive' and others 'Negative'). 'Mid-position' interviewees tended to focus on whether adherence to RCG's VCC would actually further improve if, say, individual ExecRemConsultants were to be admitted to RCG membership (as opposed to that of their employing firm alone). Additionally, if such individual membership were permitted/required, whether there should be a RCG (or independent disciplinary body) power to impose individual member sanctions for falling short of the stipulated standards.

The 'Mid-position' and 'Positive' (ie., in favour of leaving RCG as it currently stands in terms of scope and permitted membership) stances emphasised:

- The perceived lack of need/demand for statutory regulation (by, for example, interposing PRA or FCA),

- An appreciation of the inherent limitations of the role of ExecRemConsultants (RemCos make pay decisions, not ExecRemConsultants - whose advice to RemCo may not be followed if the RemCo so determines),
- ExecRemConsultancy is a 'tiny profession' - according to RCG there are around 250 ExecRemConsultants practising in RCG member firms, with many of these being relatively junior and/or devoting much of their time to advising senior management on remuneration issues,
- ExecRemConsultancy firms (Big Four and ABC) are professionally regulated by CA or Actuary bodies and FRC, plus also individual senior consultants in all ExecRemConsultancy firms (ie., whether Big Four, ABCs or Boutiques) are very likely to be professionally qualified and regulated (if they hold a practising certificate) as CA, CTA, Lawyer or Actuary,
- ExecRemConsultancy firms have their own terms of engagement/terms of business/codes of conduct, so RCG's VCC simply supplements these, and
- RCG was seen as being a creation of the particular circumstances in which it was devised and introduced - for a limited purpose and with restricted objectives (ie., the formulation of its VCC, plus the ongoing review of how the Code is working in practice and making necessary changes to it).

In essence, 'Positive' and 'Mid-position' interviewees saw RCG as being very different in concept from being the regulator of a LTP profession with individual membership (such as, Bar Council or GMC), with an independent disciplinary body (such as, BSB, SDT, or DDT). The view was expressed by an ExecRemConsultant that whereas Big Four and ABC firms might be able to cope with more regulation, Boutique ones 'will struggle'.

That particular ExecRemConsultant also added 'be careful about asking RCG to do more. It's not equipped to do more at the moment' and that 'improvements in standards have been largely driven by the market and the fact that RemCos have taken control'. The ExecRemConsultants from Big Four or ABC firms were on the whole keener on RCG than their Boutique counterparts, but this was not invariably the case. Indeed, some Boutique ExecRemConsultants were keen supporters of RCG. The interviewer noted that this was particularly the case where earlier in their career particular interviewees had worked in ABC firms.

RIP interviewees' 'Negative' comments majored on the perceived ineffectiveness/lack of relevance to day-to-day consulting activities over and above a particular ExecRemConsultancy firm's terms of engagement and an individual ExecRemConsultants' professional qualifications. 'Negative' stances included:

- On 'effectiveness': 'About as effective as hiding the Taj Mahal by sticking a bowler hat on its roof (in the daytime)' - a CoyExecRemSpecialist
- On 'complacency': 'If you're complacent and not listening to the vast majority of people out there, who don't live in this world, we're all in trouble' - the same CoyExecRemSpecialist
- On 'behaviour': 'There are probably one or two advisors who perhaps are seen as not behaving brilliantly (...) they [ie., shareholders] should call out a couple of those' - a ROO, and
- On 'competition': ExecRemConsultants' views - 'The RCG is a cartel obviously'; 'I don't think the existence of the RCG's VCC has made any difference to how I operate at any junction ever'; and a RemCoMember's view - 'It's a complete waste of time (...) does not require anything more than a sensible person would do'.

The dispersion of views ('Positive', 'Mid-position', and 'Negative') of RIP interviewees is interesting. For example, some interviewees were in favour of RCG being more involved in publicising ExecRemConsultancy and in the core training of ExecRemConsultants, whereas others were very much against this. There was no particular appetite expressed though for RCG to be subject to statutory regulation, so this was at least one area of general agreement.

There was also considerable consensus amongst RIP interviewees concerning (i) ExecRemConsultants at the senior level at least being professionally qualified or holding an MBA or other 'financial degree', and (ii) the small number of practising ExecRemConsultants militates against further regulatory requirements along the lines of individual membership of RCG and, indeed, becoming a LTP profession. There were differences in opinion however, on the role and scope of RCG's activities.

Some interviewees cautioned against any 'broadening-out/extension' of RCG's present operations (it is currently not a training nor trade body), whereas others were keener on RCG playing an objective/independent role in training ExecRemConsultants (and possibly RemCoChairs/Members and CoyExecRemSpecialists/RemCoMembers) and/or engaging in further publicising what ExecRemConsultants do and the inherent limitations in the part they play in the UK pay determination process. As mentioned already, on occasion the Chairman of RCG has written to the financial press to stress particular points of relevance regarding ExecRemConsultants' advisory services.<sup>622</sup>

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<sup>622</sup> Read (n 274).

The starting point when considering whether RCG 'should do more' is to bear in mind that its website states RCG's 'exclusive role is to periodically review the Code, not to comment on substantive developments in executive remuneration practices or arrangements at individual companies'. RCG sees its VCC as 'a basis for agreeing terms of reference, and members of RCG commit to discussing these issues with clients'.<sup>623</sup> In other words, the contractual relationship between client companies/RemCos and their appointed ExecRemConsultants sets out the terms of reference and responsibilities concerned.

RCG's present role is not to provide views on industry issues. After RCG was set up it committed in its Review of Code 2011 to carry out biennial Reviews.<sup>624</sup> These include canvassing the views of FTSE 350 RemCoChairs via an anonymous survey and holding consultation meetings with bodies equivalent to the ROOs in the RIP interviews.<sup>625,626</sup> Additionally, each year RCG conducts a Review of the Effectiveness of the Code - this includes an anonymous survey of ExecRemConsultants working for RCG member firms, plus a targeted survey for such senior ExecRemConsultants and focus groups of ExecRemConsultants from RCG member firms.<sup>627,628</sup>

Outcomes from these exercises include specific changes to the wording of RCG's VCC; for example, stipulating that member firms must not send unsolicited 'pay benchmarking' reports to senior management in companies where the member firm concerned does not advise the relevant RemCo (if the member firm were retained to advise the relevant RemCo it would not send

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<sup>623</sup> RCG, 'About Us', 'Our Responsibility' <[http://www.remunerationconsultantsgroup.com/?P=ABOUT\\_US](http://www.remunerationconsultantsgroup.com/?P=ABOUT_US)> accessed 19 January 2019.

<sup>624</sup> *ibid.*

<sup>625</sup> RCG, 'The Annual Review of the Effectiveness of Code' (December 2018) <<http://www.remunerationconsultantsgroup.com/assets/Docs/2018%20The%20Annual%20Review%20of%20the%20Effectiveness%20of%20the%20Code%20FINAL.pdf>> accessed 22 January 2019.

<sup>626</sup> *ibid.*

<sup>627</sup> *ibid.* Survey findings included: 95% responded that RCG's VCC does not need further improvement; 32% responded they had two formal training sessions per annum on the use of the VCC and 58% had one session (the comparable figures for informal training were that 29% had two sessions and 61% had one session); 60% responded the training received was 'very effective' and 36% 'quite effective but could be improved'; 51% responded that the VCC influences practices and behaviours in their firm 'significantly for the better' and 35% 'a little for the better'.

<sup>628</sup> *ibid.*

such reports anyway - at least not without seeking the RemCoChair's permission to do so).<sup>629</sup>

In its 2016 Effectiveness Review, RCG noted that it had promoted and raised awareness of RCG and the VCC, by contacting CIPD, ICSA, writing an article in the Manifest Survey, and preparing a RCG presentation for NED Academies.<sup>630</sup> RCG stated its plans for 2017 included exploring with members the feasibility of 'case studies' being developed for ExecRemConsultancy training purposes (these have now been introduced – see RCG's most recent Review of Effectiveness of Code, published in April 2018)<sup>631</sup> and developing VCC wording emphasising that RemCoAdvisory reports should convey the appointed ExecRemConsultant's views without additional verbal commentary being necessary, and making it clear which views were management's and which were those of the appointed ExecRemConsultant.<sup>632</sup>

This is directed towards similar objectives as the 2015 change in RCG's VCC wording providing for the ExecRemConsultants to make RemCos aware of material changes to the former's advisory proposals that result from management interaction.<sup>633</sup> One can see here RCG sticking firmly to its own terms of reference, but in doing so is making significant attempts to consult with member firms, RemCoChairs, and ROO-type bodies.

It needs to be remembered always that RCG itself is something of a 'broad church' of ExecRemConsultancy firms that vary dramatically in size. For example, the ExecRemConsultancies of the Big Four and ABC firms are

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<sup>629</sup> RCG's VCC, 'Good Practice Guideline 16' (n 560).

<sup>630</sup> RCG, '2016 Review of Effectiveness of Code' (December 2016)

<http://www.remunerationconsultantsgroup.com/assets/Docs/2016%20Review%20of%20the%20Effectiveness%20of%20the%20Code.pdf>> accessed 29 January 2019.

<sup>631</sup> RCG 'April 2018 Review of Effectiveness of the Code'.

[http://www.remunerationconsultantsgroup.com/assets/Docs/2017%20The%20Biennial%20Review%20of%20the%20Code%20of%20Conduct%20and%20the%20annual%20Review%20of%20its%20Effectiveness%20\(Final\).pdf](http://www.remunerationconsultantsgroup.com/assets/Docs/2017%20The%20Biennial%20Review%20of%20the%20Code%20of%20Conduct%20and%20the%20annual%20Review%20of%20its%20Effectiveness%20(Final).pdf)> accessed 14 June 2019.

<sup>632</sup> See (n 630).

<sup>633</sup> RCG, '2015 Review of Effectiveness of Code' (January 2016). Good Practice Recommendation 7, 26. See (n 630) for access details.

merely part of global professional services firms, whereas the Boutique firms are smaller ExecRemConsultancy businesses plus they are either 'monoserviceline' advisors (ie., ExecRemConsultancy/RemCoAdvisory alone) or part of broader professional services firms that are nowhere near as large as Big Four or ABC ones.

This is reflected in the 'two-tier' level of annual subscription fees paid by the RCG's member firms. RCG's annual subscription income is tiny (probably about £120,000 from all members combined - this does not include of course the voluntary time given/premises made available for RCG meetings, by RCG member firms). The level of subscription income is important because it is obviously of relevance when considering whether RCG 'might do more'. There are funding issues involved.

Interestingly, RCG is rather tangentially mentioned in the relevant academic literature. Bender & Franco-Santos for example, give some background on why RCG was set up.<sup>634</sup> Commentators after GFC accused ExecRemConsultants of being too close to management and having a lack of independence in their work, but otherwise do not refer to RCG's VCC save in the context of ExecRemConsultant interviewees stating how COI situations are addressed.<sup>635</sup>

Adamson et al also provide some background on why RCG was established; basically, the ExecRemConsultants' 'move to professionalization' was made in return for a softer stance on ExecRemConsultancy regulation than would otherwise have been the case.<sup>636</sup> Adamson et al mention that via the establishment of RCG 'the State aimed to improve the functioning of the larger institution ie., UK executive pay practices'.<sup>637</sup> Bender's 2011 study also covers the establishment of RCG – 'regulators [TC, actually] had been

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<sup>634</sup> Bender & Franco-Santos (n 43) 6.

<sup>635</sup> *ibid.*

<sup>636</sup> Adamson et al (n 42) 35.

<sup>637</sup> *ibid.* 29.

unconvinced by consultants' protestations of professional independence recommended that RCG be set up'.<sup>638</sup>

HPC sets out in detail its belief that the disclosure of ExecRemConsultancy fees is incomplete ('Hidden Links'), that DSOtherServicesFees should be implemented (it exhorts companies to do this on a voluntary basis, until such time as formal legislation is introduced) and that particularly in light of statements from the Auditing Practices Board, together with EU Audit Directive and Regulation Directive 2014, the Big Four face particular COI issues in relation to their professional services provided.<sup>639</sup>

Given HPC's stance on executive pay issues, none of this is surprising. Its references to RCG are made simply in the context of annual report disclosure that the appointed RemCoAdvisors are members of the RCG and that some companies (eg., Experian's 2014 disclosure - noted by HPC) assert that RCG membership of itself is sufficient for RemCo to be satisfied that the advice provided was independent and objective<sup>640</sup> (despite the fact that Other Services were provided), whereas other companies (eg., Glencore's 2014 disclosure) stress that the RemCo's appointed advisor provides no Other Services to the company.<sup>641</sup>

ERWG Final Report makes no mention of RCG save in relation to 'unsolicited benchmarking reports', and Philp's paper does not touch on RCG.<sup>642</sup> The same applies to BEIS Select Committee's *Report* and the *Government Response* (in fact, there is little reference to ExecRemConsultants in either of these documents).

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<sup>638</sup> Bender (n 22) 394.

<sup>639</sup> HPC (n 48) 11; HPC (n 533).

<sup>640</sup> HPC (n 48) 6.

<sup>641</sup> *ibid* 9, 10.

<sup>642</sup> ERWG Final Report (n 279); Philp (n 96).

Accordingly, in the same way that there is not a general UK clamour for DSOtherServicesFees, the same applies in respect of RCG's ongoing operations. There is some criticism, but compared, for example, to that on 'high executive pay', 'LTIPs' or 'rewards for failure', RCG is even less 'on the radar screen' than the activities of ExecRemConsultants more generally.

### *RCG and its VCC: Proposals for Change*

Having said this, it is submitted that RCG should give consideration to revising its VCC in certain respects, to promote better 'external optics' (thereby reducing the risk that there might be a future exogenous push/pressure to change RCG's self-regulatory framework and/or the voluntary status of the VCC), and also to improve further ExecRemConsultants' training on the use of the VCC currently provided by member firms. The latter aspect could include measures designed to enhance the considerable amount of member-firm provided training already supplied on 'induction' generally/ to 'direct entrants'.

It is not suggested that these proposals for change would alter RCG's fundamental tenets. RCG would, for example, continue on a member-firm basis, as opposed to including individual ExecRemConsultant membership. Individual membership would turn RCG into a very different type of body. The consensus view of RIP interviewees was that RCG should remain a self-regulatory, member-firm organisation. An ExecRemConsultant RIP interviewee stated: 'It [RCG] is not a training body, nor an industry body'.

It is submitted though that without compromising this RCG members could collaborate at RCG level on the introduction of a common syllabus for training ExecRemConsultants on the use of the VCC. Such syllabus could evidence the provision of a basic, commonly formulated and verifiable level of training which could of course be supplemented by any additional training that a

particular ExecRemConsultancy wished to offer for its own ExecRemConsultants.

It would be structured under the auspices of RCG, but actually taught by member firms for their own ExecRemConsultants. Accordingly, RCG would not be acting as a 'training body'. This would also not involve cutting across legitimate commercial rivalries. It could well be argued that such proposal would be for the benefit of all RCG member firms/ the reputation of RemCoAdvisory Services and the standing of ExecRemConsultants, as viewed from the perspective of external parties. Despite ExecRemConsultants' consensus view of satisfaction with RCG/its VCC (as shown in the RCG Survey ExecRemConsultant responses noted earlier in this Chapter 5.2.5. – for example, 95% responded that RCG's VCC does not need further improvement), there were certain 'Negative' views expressed by RIP interviewees (again referred to earlier in this Chapter 5.2.5.).

Such comments included a perceived lack of effectiveness, a certain complacency, poor behaviour and anti-competitiveness (the 'cartel' allegation). The cartel allegation could probably only be addressed by a change in RCG's membership eligibility requirements (by introducing individual membership and/or removing the current requirement that in order to join RCG a potential member firm must hold at least one FTSE 350 RemCoAdvisory appointment and/or permitting, for example, law firms/ individual Lawyers to join RCG), but there was certainly not a general demand for this from RIP interviewees. Accordingly, the changes proposed below are far more limited in nature – being an extension/enhancement of RCG's current primary role of monitoring and reviewing the effective operation of its VCC.

The proposed changes regarding RCG's VCC in respect of the training of ExecRemConsultants could include the introduction of a specific 'Ethics' module into such training syllabus. Although a CoyExecRemSpecialist RIP

interviewee referred to ethics as being 'less of a training issue, more of a culture and awareness one', it is submitted that ethical issues can be addressed in training sessions if these are covered in an appropriate business context using relevant, practical case studies.

This would involve the collaboration of ExecRemConsultants within RCG member firms on the development at RCG level of common training materials. These might follow the conceptual model of, respectively, a 'New Practitioners' Programme' (NPP) and an 'Established Practitioners' Programme' (EPP) – this example is taken from the relevant BSB provisions, for illustrative purposes. The NPP would need to be completed by ExecRemConsultants within, say, two years, of first becoming an ExecRemConsultant, and the EPP being of an updating/refresher/CPD nature applicable thereafter.

The NPP training on the use of the VCC could be very largely built on the type of training that RCG member firms already confirm annually to the Chairman of RCG is taking place. However, as mentioned already, member firms could be encouraged to personalise/supplement for their internal training sessions the 'RCG common framework for training on the use of the VCC' with any additional aspects they consider are particularly relevant to their own ExecRemConsultants.

It is anticipated that the initial reaction of RCG member firms to the proposed introduction of such new training requirements might be to assert that they already provide sufficient training, and so the proposed new amendments are simply otiose. The response to such reaction though is that not only would the 'external optics' be further improved by such changes but also 'direct entrant' ExecRemConsultants in particular might well find it attractive to have in place an enhanced level of objectively-set and verifiable career development training goals/milestones.

The reason for proposing separate categorisation of NPP and EPP is that the contents of the respective training programmes could be tailored to meet the needs of ExecRemConsultants at different level of seniority (in any event, participants in the NPP could contemporaneously join in with EPP training as well). The NPP would cover the basics/essentials of use of the VCC. The EPP would assume prior knowledge/completion of the NPP syllabus, and would complement this with updating/CPD-type aspects. The NPP would also contain a specific 'Ethics' component covering the typical COI involved in RemCoAdvisory Services and how to cope with/manage these (based on appropriate case studies).

The development and roll-out of a NPP and EPP would not be an onerous task for RCG member firms because it would build on the considerable training already provided by such firms, not just on the use of the VCC but also the 'business protocols'/'client agreements' currently operated. Completion of NPP and EPP training could be confirmed to the Chairman of RCG by individual member firms. This could be effected on the basis of each member firm keeping an individual register of their NPP/EPP participants (and if there were any 'absences from completion', to notify RCG in respect of particular cases where the position had been rectified in the following year). It is not anticipated that there would be any need to notify RCG of the names of particular ExecRemConsultants.

The benefits of such a training programme should be fourfold. Firstly, it would enhance the 'external optics' of the training of ExecRemConsultants, thereby positively enhancing the reputation/standing of RemCoAdvisory Services. This would provide further robustness/bulwark in terms of RemCoChair/Member, institutional shareholder, political and press perception. Second, 'direct entrant' ExecRemConsultants would have the career development/milestones benefit of completing the NPP – this could obviously be delivered within

‘induction training’, ‘terms of doing business’ and ‘operating codes’ of individual ExecRemConsultancy firms. Third, the EPP would be a considerably less ‘proceduralised’ version of the CPD requirements of LTP professions, which could also be incorporated into individual ExecRemConsultants’ ‘Performance Reviews’ and ‘Annual Development Plans’. Four, the introduction of such training requirements would demonstrate that RCG is continuing to embed its VCC into member firms’ activities. Lastly, it would of course be open to RCG member firms to invite client CoyExecRemSpecialists to participate in elements of such training.

The other change it is submitted that RCG should consider does not relate specifically to revising the VCC, but has a broader objective. RCG has always been a creature of the circumstances pertaining to its inception. Even recognising that it is not a trade body and does not provide industry-wide opinions/views, its current public profile is incredibly low. Some might argue that RCG sees no advantage in ‘putting its head above the parapet’ – due to the criticism RemCoAdvisory Services continues to attract from various quarters. However, the intervention of RCG’s Chairman in his 2016 letter to the Editor of the *Financial Times* (referred to in Chapter 2.6. above) seems to have been a timely and helpful contribution to the ongoing ‘ExecRemConsultants advise, RemCo decides’ debate.

Certain ExecRemConsultant RIP interviewees made the point that the diverse nature of RCG member firms (ie., Big Four, ABC and Boutiques) makes it difficult for a ‘RCG common view’ to be formulated, yet alone publicised. The force of such stance is arguably weakened though by the trend for UK Boutiques to be acquired by ABC firms. Assuming such consolidation continues (along perhaps with the future merger of some ABC firms), it is arguably more likely that the UK Big Four/ABC ‘competitive oligopoly’ will have broadly similar views on the UK remuneration scene. Surely RCG and its member firms appreciate that the key role played by ExecRemConsultants in

the pay determination process, and to a lesser extent in the 'high pay controversy/debate', means that RCG's current low profile could be viewed as something of an 'open goal' to those who might wish to criticise its activities/those of ExecRemConsultants in the future?

The issue of whether RCG 'should do more' is bound up with RITG4 - the 'professional standards' of ExecRemConsultants (E/PS and TE/E) and whether they should have a SA/Q and/or LTP regime. Such matters are addressed in Chapter 5.2.6. below.

### **5.2.6. RITG4 Aspects**

RITG4 is devoted, respectively, to ExecRemConsultants' ethical and professional standards ('E/PS' - RITG4:SQ1), their technical expertise and experience ('TE/E' - RITG4:SQ2), together with whether ExecRemConsultants should hold a SA/Q ('SA/Q' - RITG4:SQ3 (a)) and/or should be covered by a LTP regime ('LTP' - RITG4:SQ3 (b)). Readers will see that for analysis and discussion purposes RITG4:SQ3 has been split into parts (a) and (b). The reasoning for this is that RITG4:SQ3 effectively sought interviewees' comments on two issues which in fact warranted separation; namely, ExecRemConsultant SA/Q and possible LTP (with the availability of disciplinary sanctions).

#### *E/PS (RITG4:SQ1)*

The responses of RIP interviewees regarding E/PS was generally divided between 'Positive' and 'Mid-position', with some 'Negative' ones. The consensus view was that although ExecRemConsultancy as a business/industry may have issues (eg., in relation to COI), these were not primarily due to low ethical or professional standards of ExecRemConsultants.

Indeed, E/PS were generally seen as being of a high level - with Big Four/ABC firms being noted as having a 'strong professional standards culture'.

It was consistently mentioned by RIP interviewees that ExecRemConsultancy firms provide the 'environment for the consultant to give advice', but the position adopted on E/PS 'really depended on the individual consultant'. In terms of the interviewer's posed continuum ranging from 'liberal professions', through 'new professions' to 'management/strategy consultants', comments were usually to the effect of ExecRemConsultants being 'business advisors' (ie., falling within the latter category).

This seems rational in that Lawyers (a 'liberal profession') owe an overriding duty to the Court, and 'new professions' (eg., CA, Actuary, or CTA) are all LTP professions with individual membership and independent disciplinary bodies (for example, an appointed external auditor must be 'eligible' for appointment and hold an appropriate qualification). ExecRemConsultants however, do not require a SA/Q nor LTP, in order to offer RemCoAdvisory Services.

The duty of ExecRemConsultants is the same as that of other 'business advisors', such as management consultants/strategy consultants. Indeed, one RIP interviewee referred to ExecRemConsultancy as being 'a specialised form of management consultancy'. It was also generally seen by RIP interviewees that the diversity/multi-disciplinary nature of ExecRemConsultants, and ExecRemConsultancy teams working on particular client assignments/relationships, was a welcome feature. Additionally, ExecRemConsultants have a 'fairly strong moral compass' and are 'comfortable working with conflicts' (because, apart from any other considerations, the appointed ExecRemConsultants who are advising the RemCo concerned need to ensure that RemCo is made fully aware of institutional shareholder body/key shareholder stances on issues that may differ significantly from proposals RemCo may wish to adopt).

As one ExecRemConsultant interviewee stated - 'they [ie., ExecRemConsultants] realise which decisions are often contentious, in which there are competing views, and they are comfortable working in that space and those types of issues'.

'Positive' stances of RIP interviewees focused on matters including:

- 'I suppose one of the benefits about ExecRemConsultancies being Big Four/ABC firms is that by their very nature they have a very strong professional standards culture because of their regulatory work' (CoyExecRemSpecialist),
- 'The model of hiring other professionals mixed together works well. Ethical training that comes from being part of a broader team is very strong' (ExecRemConsultant), and
- 'They [ie., ExecRemConsultants] have to be able to demonstrate that they are clean and their people behave in an ethical fashion' (CoyExecRemSpecialist).

'Mid-position' stances were in the preponderance. These included:

- 'It's a craft that requires multiple professional skills' (ExecRemConsultant),
- 'It's not easy to test them [ie., ExecRemConsultants] because the business is 90 percent politics and 10 percent technical' (ExecRemConsultant),
- 'I would say it's a specialisation, rather than a profession' (CoyExecRemSpecialist),
- 'This [ie., ExecRemConsultancy] isn't a profession. I'm not sure that we as advisors in the remuneration space have actually earned the title of profession yet' (ExecRemConsultant),

- 'It's about emotional sensitivity and EQ rather than IQ as well' (ExecRemConsultant),
- 'Professional behaviour, that's what I care about' (RemCoMember),
- 'Type of advice we're giving is so far from professional advice, it's almost reputational advice' (ExecRemConsultant),
- 'No professional qualification that covers the whole gambit' (RemCoMember), and
- 'It's becoming a profession in its own right, isn't it?' (RemCoMember).

The overall flavour of 'Mid-position' RITG4:SQ1 stances is one of ExecRemConsultants requiring 'a hinterland' and 'a breadth of other experience'. Although with 'direct entrants' from university ExecRemConsultancy is starting to become a profession 'in its own right', the sheer breadth of ExecRemConsultancy advice, and the fact that it involves so much in the way of 'political'/'relationship' advisory skills, all lead to the view that the nature of RemCoAdvisory Services is far more that of 'business advice' as opposed to being a 'new profession' (yet alone a 'liberal' one).

Additionally, where 'Mid-position' interviewees (such as, RemCoMembers) had had an unsatisfactory experience with an ExecRemConsultant this was due to the latter being 'unimaginative in terms of outcome rather than being unprofessional' – 'he [ie., the ExecRemConsultant concerned] was not unprofessional as such' (a RemCoMember).

A RemCoChair made the point about 'professional behaviour' being what was really important - as with the previous comment, this touches on the way ExecRemConsultants go about their advisory role and the quality of the advice provided, rather than focusing on whether the appointed

ExecRemConsultancy's lead ExecRemConsultant providing the RemCo advice is professionally qualified.

The quality issue is of clear importance. A ROO interviewee stating that 'there is differing quality of ExecRemConsultants - and it surprised me, the differing level of quality'. The impression given by 'Mid-position' ROO interviewees though is that the issue of the quality of the advice/ethical stance of ExecRemConsultants 'is not one of the biggest issues in remuneration'. The ROO interviewee concerned stated 'I think there are some really big issues for firms and RemCos generally about addressing this sort of risk-reward debate and the ExecRemConsultants have a real role to play in that'.

The 'Negative' comments of RIP interviewees in respect of E/PS of ExecRemConsultants included:

- 'Still think there's some bad practice and some wrong mindset in the industry' (ROO),
- 'To what use is that professional experience put? Sustainable results or short-term numbers game? There is evidence that the latter has occurred too much' (ROO), and
- 'There are still those [ie., ExecRemConsultants] who still have the mindset about how we can push it for management and get to the best outcome. It's not a blanket quality of good advice at the moment' (ROO).

The theme was picked up from certain ROOs that despite improvements in recent years there remained, in their view, an attitude among certain ExecRemConsultants that investor consultation meetings should be conducted with a view to 'seeing what one could get away with', rather than promoting generally constructive dialogue between RemCos and investors. One ROO interviewee also referred to allegations that ExecRemConsultants

might be sending unsolicited 'pay benchmarking' materials to executive management of non-client companies (showing 'underpayment'). As mentioned already, such allegations were also contained in ERWG Final Report.<sup>643</sup> The RCG sought further details, but ERWG declined to provide these (so RCG specifically amended its VCC to prohibit such behaviour).<sup>644</sup>

Interestingly, when a particular ExecRemConsultant RIP interviewee was asked about any experience of 'unsolicited benchmarking', the interviewee concerned confirmed direct experience of being 'on the receiving end' of such a situation where executive management of a company (whose RemCo were advised by that ExecRemConsultant) had been sent 'unsolicited benchmarking'.

This ExecRemConsultant named the ExecRemConsultancy firm that had provided the 'unsolicited benchmarking' and stated that it had resulted in the incumbent RemCoAdvisory appointment being terminated (even though it was vouchsafed that the appointed ExecRemConsultancy firm had behaved impeccably at all times) - because the 'unsolicited benchmarking' had irreparably damaged the trust the executive management of the company concerned had in the appointed ExecRemConsultants. The existence of the practice of 'unsolicited benchmarking' is confirmed in RCG's Review of Effectiveness of Code published in April 2018 – 4.69 percent of the sample companies reported having received 'unsolicited benchmarking reports'.<sup>645</sup>

In Chapter 2 above there was comment regarding qualitative academic studies to the effect that there was something of a gap in respect of research into the 'professional standards' of ExecRemConsultants. Indeed, this is not just in the academic literature. For example, in ERWG Final Report, The

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<sup>643</sup> ERWG Final Report (n 279) 21.

<sup>644</sup> RCG, VCC 2017, Good Practice Guideline 16, 6 <<http://www.remunerationconsultantsgroup.com/?P=DOWNLOADS>> accessed 14 January 2009.

<sup>645</sup> RCG, '2017 Biennial Review of Code of Conduct and Annual Review of its Effectiveness', Appendix 1, Question 11, 13 <<http://www.remunerationconsultantsgroup.com/?P=DOWNLOADS>> accessed 14 January 2019.

Purposeful Company's Executive Remuneration Report, Philp's 'Restoring Responsible Ownership', Government's *Green Paper* and its August 2017 *Government Response*, plus Umunna's February 2018 speech at the IOD, there is very little mention of ExecRemConsultants in general, let alone their 'professional standards'.

The same applies in respect of Petrin's 2015 academic study of executive compensation in the UK.<sup>646</sup> There is mention in Ndzi's doctoral thesis of 'the consultant's effort to minimise possible outrage from the executive in respect of a pay benchmarking report containing "low data" could encourage them to provide advice to the RemCo that is subjective in nature'.<sup>647</sup> But to some extent this merely goes back to the fact that ExecRemConsultants advising RemCos work in a highly-conflicted environment (whether or not Other Services are provided by the ExecRemConsultancy firm concerned). There are the usual professional services provider conflicts (ie., wanting to win/retain appointments), plus agency ones (between the executive management and shareholders).

One counter to Ndzi's comment is that experienced ExecRemConsultants are only too aware that even apart from 'protective bulwarks' such as ethical considerations, professional qualifications, and ExecRemConsultancy firms' terms of business/engagement and RCG's VCC, a pay 'benchmarking' report should be transparent regarding the reasons for selecting a specific comparator group, the particular methodology used for choosing comparators and the specific companies selected (see RCG's VCC in this regard),<sup>648</sup> so that the resulting figures arise from a disclosed context. An experienced ExecRemConsultant knows only too well, in the case where an ongoing RemCoAdvisory appointment exists, that the 'pay benchmarking' process

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<sup>646</sup> Petrin (n 31).

<sup>647</sup> Ndzi (n 102) 130.

<sup>648</sup> RCG, 'Good Practice Guideline 6' (n 560 ) 18.

needs to be able to stand up to scrutiny on a multi-year basis - not just as a single year 'snapshot'.

Ultimately too, as was made clear by RIP ExecRemConsultant and ExecCompConsultant interviewees, there is an inevitability in all consulting careers that they are likely to have resigned, or have been sacked, from an advisory appointment because they felt it necessary to 'take a stand' on a particular issue or, alternatively, have been simply 'caught in the crossfire' between parties (such as, executive management and RemCo or between the latter and key shareholders).

In other words, although ExecRemConsultants obviously do not enjoy losing RemCoAdvisory appointments, they should be fully prepared to do so. Their long-term interests and those of their ExecRemConsultancy, should be more important than any single appointment (particularly where the ExecRemConsultancy concerned has the financial strength/broad client base to bear the loss of the client concerned).

The academic literature is replete with examples of ExecRemConsultants averring that COI for example, do not influence them to behave in a way that evidences poor professional standards.<sup>649</sup> Although as Bender & Franco-Santos mention, this does not prevent the same ExecRemConsultant interviewees accusing other ExecRemConsultants in rival firms from being so influenced.<sup>650</sup>

In the US, the ABC firms following Waxman and the SEC's respective 'fee disclosure' and subsequent 'independence' provisions have a far less market-dominant position regarding CompCoAdvisory appointments. Regarding the UK, the 2013 Reforms (where RemCoAdvisory fees are disclosed and more information - not fee disclosure - is provided regarding Other Services work),

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<sup>649</sup> For example, Bender (n 22), 388 et seq 'Conflicts of Interest and the Appointment of More Than One Consultant'.

<sup>650</sup> Bender & Franco-Santos (n 43) 16.

aligned with the fact that RemCoChairs would appear to have taken more control of the advisory relationship, would seem to have greatly reduced the pressure for change.

There remains of course the issue of DSOtherServicesFees raised by HPC<sup>651</sup> and, indeed, by Chu et al. The latter posed the question why fee disclosure to shareholders for Other Services is not made mandatory in the UK (as discussed earlier in this Chapter 5).<sup>652</sup> However, criticism of the ethics and 'professional standards' of ExecRemConsultants is largely limited to ERWG raising allegations of 'unsolicited benchmarking reports',<sup>653</sup> exhortation for RemCoAdvisory appointments to be regularly put out for tender, alleged 'over-reliance' of RemCos on their ExecRemConsultants (particularly in investor meetings)<sup>654</sup> and suggestions that RemCos and their appointed ExecRemConsultants 'chase the median' (and the impact of this on remuneration levels).<sup>655</sup>

It is submitted that this is a long way from, for example, Myners's 2008 reference to 'the invidious influence of benefit consultants'.<sup>656</sup> RCG's Chair has stated that some commentators view ExecRemConsultants as being 'the devil incarnate',<sup>657</sup> but a far more nuanced stance was taken by, for example, the RIP ROOs.

### *TE/E (RITG4:SQ2)*

The responses on TE/E from RIP interviewees was generally split between 'Positive' and 'Mid-position', but with some 'Negative' stances.

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<sup>651</sup> HPC (n 48, 11); HPC (n 533).

<sup>652</sup> Chu et al (n 119).

<sup>653</sup> ERWG Final Report (n 279) 21.

<sup>654</sup> *ibid* 17.

<sup>655</sup> Recommendation 10 (n 279) 21, 22

<sup>656</sup> Myners, 'The invidious influence of remuneration consultants' (n230), plus 'multiple drafts' of successive RemCoAdvisory reports 'moving in executive management's favour'. Russell referred to Myners's 'remuneration consultants represent a protection charter for weak and lazy boards' (n 258).

<sup>657</sup> Read (n 274).

The 'Positive' responses regarding TE/E included observations that ExecRemConsultants were usually professionally qualified in some capacity, so that their ethical training and ongoing processes were appropriate and that ExecRemConsultancy was a 'very interesting place to first start your career' (an ExecRemConsultant's comment) other comments included:

- 'They have very decent professional qualifications beforehand' (RemCoMember), and
- 'On the technical sense, I am very confident that the profession has the right people in it' (ExecRemConsultant).

'Mid-position' RIP interviewee comments included:

- 'This is one of the most niche careers in the country. It's an incredibly specialist profession' (ExecRemConsultant),
- 'Being able to deal with maths easily, while at the same time being a human being who can empathise and pick up the signals' (ExecRemConsultant),
- 'The reality is that you can't be an ExecRemConsultant without a hell of a lot of knowledge on pay' (RemCoChair),
- 'ExecRemConsultants are helping design a product regarding business strategy, not "true and fair" sign-off, little reliance placed on ExecRemConsultants by shareholders, unlike external auditors' (CoyExecRemSpecialist), and
- 'It's only by youngsters if you have come in at the entry level, but doing the sort of apprenticeship and going out with the more senior people that you realise the ethical components and some of the pressures that can be put on you' (ROO).

One picks up here the flavour that 'pay is only partly a numbers game', ExecRemConsultants need to be 'commercial, with a few miles on the clock', that the advice provided 'borders onto relationship advice' and that 'direct entrants' should be at least encouraged to do professional examinations. A RemCoChair commented: 'I agree that ExecRemConsultants are a mile away from an independent body. That's why the RCG wasn't taken there at all'.

There was strong consensus among the 'Mid-position interviewees that ExecRemConsultants provide business advice, which is multi-disciplinary in nature - requiring strong judgement, knowledge of pay, breadth of business experience and sound business focused advice. This results in being able to 'command the confidence of RemCo, to hold confidences and to give guidance, to become a trusted advisor' (ExecRemConsultant).

'Negative' comments from RIP interviewees focused on how they saw the ExecRemConsultancy business at the present juncture and what this might portend for its future:

- 'ExecRemConsultancy used to be more financially attractive in the past' (ExecRemConsultant),
- 'The sector is not growing in terms of numbers [ of ExecRemConsultants]' (ExecRemConsultant),
- 'Fewer senior ExecRemConsultants to learn from' (ExecRemConsultant), and
- 'Skills disappearing from the industry' (ExecRemConsultant).

There is important context though to such remarks in that the nature of the ExecRemConsultancy advice provided/required by RemCos of publicly listed companies to meet their risk concerns has changed somewhat from the 1990-2007 period (which ended with the onset of GFC), it was argued by one ExecRemConsultant interviewee that less individualistic ExecRemConsultants

are better suited to the consulting times/environment in which ExecRemConsultants now work - 'more risk averse consultancy advice for more risk averse times'.

Looking back over, say, the past 40 years, at the beginning of that period (say, 1978) ExecRemConsultancy in the UK was really in its infancy. There were broadly two 'types' of ExecRemConsultant; those who practised from firms such as Hay (now KFH) and TPF&C (one of the firms now within WTW) who tended to have an HR background, and those who joined NBSC (which was originally set up by Clifford Chance, solicitors), one of the Big Four or a number of Boutiques. The latter type were more likely to be Lawyers, CTAs, Actuaries or CAs who specialised in tax-effective remuneration (eg., Inland Revenue approved share schemes and/or registered profit-related pay schemes). RemCoAdvisory Services were characterised by little public disclosure of individual Directors' pay (this came with the *Greenbury Report* in 1995) and before the introduction of a shareholder annual advisory vote on the DRR (introduced in 2002).

RIP interviewees indicated that the senior ExecRemConsultants advising RemCos at that time were considerably more heterogeneous in work background (many were mid-career hires, as opposed to 'direct entrants' - with a few notable exceptions) and character/personality - with less focus than now on the compliance aspects of ExecRemConsultancy because there was far less executive pay regulation in force for publicly listed companies than is now the case.

There is a much stronger emphasis currently on ExecRemConsultants advising RemCos on proxy advisory firm, institutional shareholder representative body and key institutional shareholder voting policies. There had always been an element of this, for example, conformance with ABI Remuneration Guidelines, but there is now greater stress on

conformance/compliance. The latter existed even before 'comply or explain' was introduced by *Cadbury*, but has now become ever more important as 'voting opportunities' for shareholders have increased.

The Listing Rules have always provided for share plans involving new equity (and/or performance contingent vesting over more than a single accounting period) to require shareholder approval.<sup>658</sup> Then in 2002 the annual advisory vote on DRR was introduced,<sup>659</sup> being followed in 2010 by UKCGC exhorting (on a 'comply or explain' basis) an annual binding vote on the re-election of Directors of publicly listed companies.

The 2013 Reforms introduced a triennial vote on directors' remuneration policy, to supplement the annual advisory vote on Directors' remuneration paid (with the failure to carry the latter in a particular year triggering a new binding vote subsequently on remuneration policy).<sup>660</sup> The increased disclosure requirements ('single total figure remuneration') introduced in 2013, together with a far more interventionist position from ISS and Glass-Lewis (the two key proxy advisory firms) and, indeed, IA (successor to IMA, which itself succeeded ABI) has made the 'AGM Season' far more of an opportunity for shareholders to show their displeasure on business performance/Directors' pay issues.

Examples of the latter from 2018 were Deloitte's failure to be re-appointed as SIG's external auditor<sup>661</sup> and Robinson's CoyChair not being re-elected.<sup>662</sup> There are limits to this though in that even after the massive outcry regarding

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<sup>658</sup> See (n 27) <<https://www.handbook.FCA.org.uk/handbook/LR/9/4pdf>> accessed 14 January 2019.

<sup>659</sup> The Directors' Remuneration Report Regulations 2002, SI 2002/1986.

<sup>660</sup> Enterprise and Regulatory Reform Act 2013 and The Large and Medium Sized Companies and Group (Accounts and Reports) (Amendment) Regulations 2013, SI 2013/1981.

<sup>661</sup> Tabby Kinder, 'Deloitte is sacked after vote by SIG investors' *The Times* (London, 11 May 2019) <<https://www.thetimes.co.uk/article/deloitte-is-sacked-after-vote-by-sig-investors-m0fowfx3x>> accessed 29 January 2019. See also Attracta Mooney, Michael Pooler & Oliver Ralph, 'Businesses suffer series of revolts by shareholders' *Financial Times* (London, 11 May 2018), referring to SIG and Robinson votes. Plus Brooke Masters, 'Supine Shareholders need to stand up to directors' *Financial Times* (London, 16 May 2018).

<sup>662</sup> Morningstar, 'UPDATE: Robinson Drops Clothier As Chairman Following Annual Meeting' *Alliance News* (London, 10 May 2018) <[www.morningstar.co.uk/UK/news/ANI525968074199919000/update-robinson-drops-clothier-as-chairman-following-annual-meeting.ps.aspx](http://www.morningstar.co.uk/UK/news/ANI525968074199919000/update-robinson-drops-clothier-as-chairman-following-annual-meeting.ps.aspx)> accessed 29 January 2019.

the size of payments under Persimmon's LTIP, the annual advisory vote on Directors' remuneration was still carried (52 percent of shareholders voting, voted in favour) and the CEO was re-elected (with just 2 percent of voting shareholders, having voted against).<sup>663</sup>

This has created an environment since 2013 where RemCos rely more heavily on their appointed ExecRemConsultants in that there is a triennial binding vote on pay policy (which must be prescriptive enough to satisfy shareholders, yet sufficiently flexible to cope with 'new hires' and 'special situations'), with a greatly increased need for ExecRemConsultants to advise on likely voting decisions by proxy advisors and institutional shareholder representative bodies.

Several RIP interviewees referred to this new environment as increasing the role and importance of ExecRemConsultants, but this has not changed the consensus view of interviewees that ExecRemConsultants are 'simply advisors'. The RemCo makes pay determination decisions - and may or may not accept the advice of their appointed ExecRemConsultants.<sup>664</sup>

This is relevant to how ExecRemConsultancy and RemCoAdvisory Services provision has changed in terms of the Big Four, ABCs and Boutiques. The trend has been towards the Big Four (mainly PwC and Deloitte) gaining market share over the ABC firms and Boutiques.

This move towards Big Four 'dominance' has been a particular cause of concern for HPC - arguing that EU legislation and UK audit practice guidance makes it difficult for Big Four firms to avoid COI issues when they also provide remuneration advice (even though they will not at one and the same time hold

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<sup>663</sup> Rhiannon Curry, 'Persimmon shareholders narrowly pass pay packet vote as chairman offers apology' *The Daily Telegraph* (London, 25 April 2018) <<http://www.telegraph.co.uk/business/2018/04/25/Persimmon-reports-climbing-sales-ahead-potential-shareholder/>> accessed 29 January 2019.

<sup>664</sup> Read (n 274); Russell (n 258).

the external audit appointment and advise the RemCo concerned as appointed ExecRemConsultants).<sup>665</sup>

Bender refers to ExecRemConsultants as 'informed experts, providing survey data for peer companies, and advice on plan structuring (...) consultants do more than reflect the body of knowledge surrounding executive pay: they also helped to create it'. In her view, ExecRemConsultants not only need a level of expertise 'they must also *appear* to be experts'.<sup>666</sup>

This reflects both the technical expertise necessary to advise RemCos and also the 'impression management techniques' needed to secure appointments in the first place and then retain these. Conyon continues in a similar vein, 'the economic rationale for using executive compensation consultants is that they supply valuable data, information, and expertise to client firms'.

Interestingly, Bender & Franco-Santos quote one of their ExecRemConsultant interviewees as stating 'of course there is a technical competence issue which I'll take as a given'.<sup>667</sup> The consistent theme from RIP interviewees was that whatever criticisms they may have of ExecRemConsultancy and ExecRemConsultants, a lack of technical expertise is not one of these. Indeed, the only 'Negative' stances in this regard referred to the 'loss of skills from the profession' as the current ExecRemConsultancy businesses cease to grow in terms of really senior ExecRemConsultants (say, those with '9 + Years' of experience - RCG's most senior category in its taxonomy of 'length of service')<sup>668</sup> with fewer 'role models' for 'direct entrants' in particular to emulate.

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<sup>665</sup> HPC (n 48) and (n 533).

<sup>666</sup> Bender (n 22) 380.

<sup>667</sup> Bender & Franco-Santos (n 43) 4.

<sup>668</sup> RCG, '2018 The Annual Review of Effectiveness of the Code of Conduct', Appendix 1 Q2, 1 <<http://www.remunerationconsultantsgroup.com/assets/Docs/2018%20The%20annual%20Review%20of%20the%20Effectiveness%20of%20the%20Code%20FINAL.pdf>> accessed 14 January 2019.

Additionally, media articles containing criticism of ExecRemConsultants (for example, Russell and Bow)<sup>669,670</sup> focus more on perceived COI than issues such as technical expertise. For example, Russell's view of ExecRemConsultants - 'little accountability, less responsibility, and almost no transparency'.<sup>671</sup> Myners's 'remuneration consultants represent a protection charter for weak and lazy Boards'<sup>672</sup> and Parry's 'I'm not saying every consultant is a yes-man, but there is a perception they are less likely to challenge decisions'.<sup>673</sup> Indeed, the perceived COI is probably the most frequent criticism by far of ExecRemConsultants - despite Chu et al's nuanced conclusion that 'not all multi-service consultants are conflicted and not all specialist consultants are guardians of shareholder value'.<sup>674</sup>

Bender & Franco-Santos refer to an ExecRemConsultant interviewee who sees 'technical' more as an issue in terms of the appointed ExecRemConsultants 'helping RemCo understand technical points', as opposed to whether the ExecRemConsultant concerned has the required technical skills.<sup>675</sup>

In relation to technical competence, it is submitted that RemCoAdvisory work requires what one of Adamson et al's interviewees referred to as a 'broad understanding across the fields, you know, corporate finance, tax, strategy, actuarial and benefit issues in HR'.<sup>676</sup> Such skills are often not present in a single ExecRemConsultant, but within that ExecRemConsultant's broader practice at the ExecRemConsultancy firm concerned (and/or the ExecRemConsultant working in conjunction with the client company's retained solicitor or appointed external auditor). This is what Adamson et al refer to as

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<sup>669</sup> Russell (n 258).

<sup>670</sup> Bow (n 273).

<sup>671</sup> Russell (n 258).

<sup>672</sup> Myners (n 253) and (n 656).

<sup>673</sup> Oliver Parry, IOD Head of Corporate Governance, referred to by Bow (n 273).

<sup>674</sup> Chu et al (n 119).

<sup>675</sup> Bender & Franco-Santos (n 43) 14.

<sup>676</sup> Adamson et al (n 42).

'hybridisation of professional expertise'.<sup>677</sup> In any event, ExecRemConsultants typically also work with/seek sign-off from a client company's retained solicitor and appointed external auditor.

In terms of length of experience in the role, again RIP interviewees did not maintain that neophyte ExecRemConsultants were being thrust into RemCoAdvisory lead positions. Indeed, one RemCoChair made the point that if the junior ExecRemConsultants knew at the outset how long it would take 'before they are any good they would leave'. The process of getting the necessary 'miles on the clock' (as one ExecRemConsultant referred to this process) varies by individual ExecRemConsultant but, as pointed out by a RemCoChair interviewee, this can take at least five years.

ExecRemConsultants in the words of an ExecRemConsultant RIP interviewee 'need to know a lot about pay', and an apprenticeship model is generally used within ExecRemConsultancy to achieve this (working with senior colleagues is generally seen as the best way, complemented by specific in-house training, to impart the TE/E standards required).

This raises issues regarding recruitment of ExecRemConsultants whether 'direct entrant', post-professional qualification or mid-career. Whereas the Big Four would appear to put a strong emphasis on their 'direct entrants' taking CA or Actuary qualifications, this is far less common amongst the ABC firms. The latter tend to 'grow' their 'direct entrants', without placing such a strong emphasis on professional qualifications. They also recruit from the ranks of those who have recently attained such qualifications but wish to 'change over' to ExecRemConsultancy.

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<sup>677</sup> *ibid* 27.

One of the CoyExecRemSpecialist interviewees made the point that the Big Four were relatively reluctant to recruit in at partner level those who did not have professional qualifications but might have spent a number of years already in-house as CoyExecRemSpecialists, or with another ExecRemConsultancy firm. Another ExecRemConsultant interviewee contrasted the time when getting into ExecRemConsultancy had tended to be at the mid-career level - because strong emphasis was put on the value of their accumulated life/business experience - but considered that this was far less common practice now than in the past.

The differing recruitment models of ExecRemConsultancy firms is merely a reflection of the extreme heterogeneity of technical skills/working backgrounds required to build and operate a successful ExecRemConsultancy practice. But the point was made by the CoyExecRemSpecialist, ROO and RemCoChair/RemCoMember RIP interviewees that the Big Four (and to a slightly lesser extent the ABC firms) were highly familiar with compliance processes and that it was perceived that this had a beneficial effect on their ExecRemConsultancy businesses.

This was seen as a source of 'comfort' and a positive attraction to engaging the larger firms offering RemCoAdvisory Services. Given that the Boutique model in the UK is something of a marginal activity (no disrespect is intended in making this comment, it is simply a statement of fact) - in stark contrast to the US position - this is only a comparative advantage between ABC firms and Big Four ones, as all the ExecRemConsultancy providers are large entities.

It can be conjectured though that the present relatively modest advantage interviewees attribute to the Big Four in this regard will grow over time and perhaps the proportion of ExecRemConsultants working for Big Four firms will further increase compared to their ABC counterparts. The RIP interviewees

particularly valued the quality of ExecRemConsultants' advice, but they also seemed to be 'reassured' by professional qualifications as well.

*SA/Q and LTP (RITG4:SQ3 (a) and (b), respectively)*

This section of Chapter 5 Discussion covers first SA/Q, and then secondly, LTP.

*SA/Q (RITG4:SQ3 (a))*

The responses of RIP interviewees to the 'SA/Q issue' were preponderantly 'Negative' (ie., supporting the hypothesis of this thesis), with a few being 'Positive' and some others being 'Mid-position'. 'Positive' stances were embodied in a ROO's comment that certain institutional shareholders might be sympathetic to SA/Q and/or LTP, an ExecRemConsultant stating that a SA/Q might assist neophyte ExecRemConsultants, plus another ExecRemConsultant averring that a SA/Q could promote 'professional standards'.

Interviewees in the 'Positive' camp referred to the fact that a professional qualification may have been obtained many years previously by an ExecRemConsultant, and that an accreditation/qualification in ExecRemConsultancy would 'attract talent and be a hygiene factor'. One returns here to the distinction between what RemCoChairs/Members might require of their appointed ExecRemConsultant by way of a SA/Q in ExecRemConsultancy and what young/'direct entrant' ExecRemConsultants might find attractive/useful in terms of a SA/Q providing a formal career path into and through their early years in ExecRemConsultancy.

'Mid-position' RIP interviewees' comments included:

- 'I'm not sure I've met people who haven't a professional body who are ExecRemConsultants' (CoyExecRemSpecialist),
- 'I didn't know a Big Four would employ anyone who had just been through the consultant route and didn't have an actuarial or legal background' (ROO), and
- 'You have lawyers, CFA, CA, and that blend works so well. If you did have accreditation, it would basically be a blend of all these things' (ExecRemConsultant).

The flavour from 'Mid-position' interviewees recognised that ExecRemConsultants were generally professionally qualified (as Actuary, CA, CTA or Lawyer, for example), together with that it should be at least encouraged (or made mandatory) for such qualifications to be obtained by ExecRemConsultants; however, there was uncertainty about the need for a SA/Q and even what such an SA/Q might look like in practice. 'Agnostic' might be the word to describe the way 'Mid-position' interviewees regard SA/Q for ExecRemConsultancy.

Turning next to 'Negative' responses from RIP interviewees - these represent the preponderance of opinion - comments included:

- 'Raw graduates: it may be easier, better, whatever, for such individuals to take another professional qualification whilst in consultancy, rather than creating a new one' (RemCoMember),
- 'Accreditation: Is it a big enough profession to warrant that? How would it be dealt with? Who would oversee it? Would you have an independent ombudsman so that clients could make complaints?' (City Lawyer),

- 'I think RCG should look at the culture of ExecRemConsultants and how that works. Probably not big enough to be a standalone profession. Accreditation would not necessarily hit the button' (ROO), and
- 'There's only 200 people in the profession. The answer, I think, is largely in-house training. If there's a will to get people through, they'll get through' (ExecRemConsultant).

It will be seen that such 'Negative' comments go far beyond the 'agnostic' flavour of 'Mid-position' ones. There is a real sense of SA/Q for ExecRemConsultancy as being seen as unnecessary, impractical and potentially creating a 'closed shop', without benefitting RemCos. The only real attraction is seen as being that 'direct entrant' ExecRemConsultants might find it helpful to have a SA/Q as part of a more structured career path for themselves.

Canyon refers to ExecRemConsultants as 'one of the central actors in the executive pay-setting process',<sup>678</sup> and Bender too cites their 'important role in advising remuneration committees and the determination of executive compensation',<sup>679</sup> but neither discusses SA/Q issues despite both acknowledging the heterogeneity of ExecRemConsultants' work backgrounds and professional qualifications. Bender, when discussing ExecRemConsultants' respective roles as 'experts' and as 'intermediaries', does not include whether having a SA/Q would assist ExecRemConsultants when advising RemCos.

This illustrates really that SA/Q appears to be something of a non-issue at the present time (apparently, even more so in the US than the UK). Although TC's *Ninth Report* and the *Walker Review* rehearsed at length their respective

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<sup>678</sup> Canyon (n 108) 428.

<sup>679</sup> Bender (n 22).

perceived need for some form of regulation of UK ExecRemConsultancy services, SA/Q was not mentioned.

The same applies to more recent committees/reports on corporate governance, such as HPC, Government's CGI, ERWG, Philp and Umunna. Whereas there is some criticism of 'bad practices' these relate to ethics/behaviour issues - rather than these being specifically addressed via SA/Q. The consensus appears to be on RCG's VCC-type input into terms of engagement, delivery protocols (or further legislation on particular disclosure aspects, such as DSOtherServicesFees) rather than arguing that a SA/Q is needed.

This is not particularly surprising at the present time as the UK's current generation of really senior ExecRemConsultants is well qualified in both academic and professional qualification terms. The position may change though as the present generation of ExecRemConsultants retires (or moves into becoming CoyExecRemSpecialists or RemCoChairs/Members) and is replaced by a larger proportion of 'direct entrants' who have neither obtained professional qualifications at some stage in their career nor have directly-related prior work experience.

Although it could well be argued that RCG's VCC, plus ExecRemConsultancy firms' own terms of business/codes of conduct, are strong bulwarks in ensuring COI are managed appropriately and, indeed, ethical issues are satisfactorily addressed, it would probably take only one really serious incident involving a major FTSE company and its appointed ExecRemConsultant to trigger attention towards whether a SA/Q should be introduced.

In the same way as a UK example of the US 'Grasso affair' might stimulate COI allegations that could lead to DSOtherServicesFees (which in the US has resulted in Boutiques being the predominant providers of CompCoAdvisory

Services), a significant UK example of ExecRemConsultant 'bad behaviour' could promote inquiry into whether a SA/Q might have prevented this (particularly if the lead ExecRemConsultant concerned held no professional qualifications).

Having said this, it needs to be remembered that ExecRemConsultancy/RemCoAdvisory Services differs from the type of activity engaged in by, for example, the appointed external auditor. It is in essence business advice. The introduction of SA/Q would necessarily entail consideration of whether the provision of RemCoAdvisory Services should become a LTP profession (with an independent body to adjudicate upon and impose disciplinary sanctions on individual practitioners).

The issue of LTP is the subject of RITG4:SQ3 (b) below, but before leaving RITG4:SQ3 (a), it should be mentioned that generally there is by no means uniform acceptance in the UK generally that accreditation is a beneficial process. For example, Johnson refers disparagingly to UK proposals for practising estate agency to require a Government licence (although he accepts that such provisions exist in the US).<sup>680</sup> He mentions Shackleton (of Institute of Economic Affairs) whom he states 'comments astutely about the disadvantages of occupational licencing' - and that 'about one in five British workers now needs a licence from Government to practise their chosen profession - twice the proportion of 15 years ago'.<sup>681</sup> Johnson's view is that 'such rules entrench existing operators and exclude new entrants'.<sup>682</sup>

It is a question of degree when 'accreditation' becomes a full-blown LTP profession, but teachers and social workers are now firmly in the latter

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<sup>680</sup> Luke Johnson, 'Beware the estate agents calling for even more red tape' *The Sunday Times* (London, 6 May 2019).

<sup>681</sup> *ibid.*

<sup>682</sup> *ibid.*

camp.<sup>683,684</sup> The usual justification for formal LTP is the potential harm to the public that can be caused by inadequate standards/outright misbehaviour.<sup>685</sup>

Even the 'accreditation' end of the continuum, as opposed to the LTP part, requires a body to grant/remove such accreditation (with entry standards to be assessed). It is important to remember that there are perhaps 50 (and arguably fewer) really senior ExecRemConsultants practising in the UK - and it would appear the ExecRemConsultancy business as a whole has remained fairly static in terms of the number of employees in recent years. It is interesting to note though the 'uptick' in ExecRemConsultant numbers (from 236 to 265) set out in RCG's '2018 The Annual Review of Effectiveness of Code'. However, despite the percentage of ExecRemConsultants in '6-9 Years' category increasing from 10.59% to 12.45%, at the most senior '9 + Years' end of the scale there has been a fall-off from 39.98% to 33.21%.<sup>686</sup>

There would appear to be a three-way split between (1) 'Straight Accreditation' (eg., WorldatWork,<sup>687</sup> CIPD Advanced Awards and Diplomas,<sup>688</sup> and ICSA's Certificate in Employee Share Plans)<sup>689</sup> - where 'accreditation' is awarded in return for passing examinations/writing essays, but there is no LTP component - through to (2) 'Intermediate Position', for example CIPD membership/fellowship<sup>690</sup> or ChMC status for Managers<sup>691</sup> - where there are examinations and there is the power to expel members/fellows (or impose

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<sup>683</sup> Teachers (n 358) and (n 359).

<sup>684</sup> Hannah Cromarty, *Social Work Regulation (England)* (HC Library Briefing Paper CBP07802, 22 June 2018) <<https://researchbriefings.files.parliament.uk/documents/CBP-7802/CBP-7802.pdf>> accessed 30 July 2019.

<sup>685</sup> In relation to lawyers in USA, for example, see Benjamin Barton, 'Why Do We Regulate Lawyers?: An Economic Analysis of the Justifications for Entry and Conduct Regulation' (2001) 33 Arizona State Law Journal 429-485 <<https://web.leu.asu.edu/portals/34/barton.pdf>> accessed 30 January 2019. See also Noel Semple, Russell Pearce & Renee Newman Knake, 'Taxonomy of Lawyer Regulation: How Contrasting Theories of Regulation Explain the Development Regulatory Regimes in Australia, England, and Wales, and North America' (2013) 16(2) Legal Ethics 258-283. Contrast 'client protection for North America regulators is grounded in preservation of autonomy for legal services practitioners and the legal profession, often framed as 'professional independence'... (...) [b]y contrast, client protection for Australia and England and Wales is drawn from consumer protection principles' <<https://www.tandfalling.com/doi/pdf/10.5235/1460728x.16.2.258>> accessed 4 February 2019.

<sup>686</sup> RCG, '2018 The Annual Review of Effectiveness of Code of Conduct', Appendix 1, Q1 (n 592) 11 <<http://www.remunerationconsultantsgroup.com/?P=DOWNLOADS>> accessed 14 June 2019.

<sup>687</sup> WorldatWork (n 360).

<sup>688</sup> CIPD (n 361).

<sup>689</sup> ICSA (n 362).

<sup>690</sup> CIPD (n 361).

<sup>691</sup> Chartered Manager (n 363).

reprimands, fines, or suspension) but again not a LTP profession - then to (3) 'Full-blown LTP', 'new professions' and 'liberal professions'.

The above can be characterised as follows:

(1) 'Straight Accreditation': Individual attainment of stipulated level of academic/professional competence and experience; not LTP - ie., holding a LTP is not required in order to work in the business/sector/profession concerned (eg., WorldatWork and ICSA's Certificate in Employee Share Plans),

(2) 'Intermediate Position': Individual membership; attainment of stipulated level of academic/professional competence and experience; not LTP, but disciplinary body has power to impose warnings, suspension or expulsion (eg., CIPD and Chartered Manager), and

(3) 'Full-blown LTP Profession': Individual membership; attainment of stipulated level of academic/professional competence and experience; LTP needed in order to work in the profession concerned - disciplinary body has power to impose reprimands, suspension or expulsion (eg., 'new professions' and 'liberal professions').

RCG falls into none of these categories. Membership is open solely to firms that satisfy the stipulated entrance requirements and pay annual subscriptions.<sup>692</sup> RCG also states that it is not a trade body. In other words, its purpose is not primarily to represent the UK ExecRemConsultancy business – its role is expressed in far narrower terms (ie., to steward and to monitor RCG's VCC).<sup>693</sup>

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<sup>692</sup> RCG, Home Page, 'Members'. See (n 630) for access details.

<sup>693</sup> RCG, Home Page, 'Who We Are'. See (n 630) for access details.

Accordingly, individual ExecRemConsultant membership of RCG is not available (even if it were deemed appropriate). Although individual ExecRemConsultants can obtain elsewhere 'Straight Accreditation' or the 'Intermediate Position', this is not common practice by any means. Where individuals hold CIPD membership/fellowship, this is usually because at some previous point in their career they have been CoyExecRemSpecialists (or have filled some other HR-related role in-house).

Most senior ExecRemConsultants are in the 'Full-blown LTP Profession' category, either in one of the 'new professions' or as a Lawyer (a 'liberal profession'). Whereas it is perfectly reasonable to at least pose the question whether ExecRemConsultants in the 'Full-blown LTP Profession' camp should require a SA/Q, it is suggested it is more relevant to pose this in respect of ExecRemConsultants in the 'Intermediate Position' (ie., CIPD membership/fellowship) or 'Straight Accreditation' categories - and even more so in relation to 'direct entrant' ExecRemConsultants who may not fall within any of these categories. The latter may well be regarded as the 'orphans' in the SA/Q and LTP debate.

#### *LTP (RITG4:SQ3 (b))*

The responses of RIP interviewees to the question posed regarding LTP aspects were preponderantly 'Negative' (ie., supporting the hypothesis of this thesis), with some 'Mid-position' stances and a few 'Positive' ones. Given the limited appetite shown by interviewees in respect of SA/Q, it was hardly surprising that this was replicated in respect of LTP (particularly as the introduction of a LTP regime for ExecRemConsultants would be an even more substantial change than imposing a SA/Q one).

The consensus view of interviewees was to agree that the 'liberal professions' (eg., law and medicine) involve a risk of serious public harm (whether to liberty or health, respectively) and therefore merit LTP status, and in respect of 'new professions', such as CAs holding external auditor appointments, there was also a public interest/harm argument in favour of LTP. However, interviewees saw ExecRemConsultants as business advisors with accountability to RemCos, as opposed to shareholders more generally.

An external auditor has statutory rights and duties - because shareholders rely on the 'true and fair' opinion given in respect of company accounts. Formally too, an external auditor is re-appointed by shareholders on an ongoing basis - this does not apply to ExecRemConsultants. The latter's services can easily be dispensed with by RemCo, or the ExecRemConsultants can simply decide to resign a particular appointment.

In both cases, there is no need for reasons to be given to shareholders (nor the appointed external auditor's obligation to advise shareholders of the reason(s) or explanation for resigning). RIP interviewees considered that RemCos simply terminate ExecRemConsultant's appointment if they become unhappy for one reason or another with the service provided, rather than being concerned about complaining to RCG (to date, RCG has apparently never received a complaint)<sup>694</sup> or considering whether to complain to a particular ExecRemConsultant's LTP professional body. One RemCoChair interviewee mentioned the fact that in extreme situations it would be possible for an ExecRemConsultancy to be sued in contract and/or tort if the advice provided has been sufficiently harmful.

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<sup>694</sup> This is assumed to be the case because the RCG Home Page and accompanying documents available for downloading do not refer to any complaints having been made. The '2016 Review of the effectiveness of the Code' refers to: 'During the year no complaints have been raised with any of the Member firms or referred to the Chairman'. This is again mentioned in the April 2018 'Review of the Effectiveness of the Code', but not in the December 2018 one <<http://www.remunerationconsultantsgroup.com/?P=DOWNLOADS>> accessed 14 June 2019.

'Positive' stances taken to LTP focus on introducing a 'licence to operate' (but with no examinations), which is well short of a formal LTP, or, alternatively, introducing a full-throated LTP regime - with 'striking off' being mentioned (ie., losing the right to work in the business/sector/profession concerned).

The 'Mid-position' comments did not express outright 'hostility' to the LTP concept, but evidence scepticism about whether a LTP regime is appropriate for ExecRemConsultants:

- 'So much of the advice is business judgement advice. Guilty of malpractice?' (ExecCompConsultant), and
- 'If you are consulting around something that has huge public interest vested in it, it's probably not appropriate to be such a free agent as you would be if you were a McKinsey consultant, for example. But I don't think that it goes as far as being a doctor or lawyer' (City Lawyer).

The last-quoted RIP interviewee accepted the need for ExecRemConsultancies to have their own disciplinary procedures for their ExecRemConsultants 'having an internal disciplinary thing is quite sensible. You want people to adhere to certain standards', but foreshadowed in their 'kiss of death' comment the stance taken by interviewees in the 'Negative' camp.

These comments included:

- 'I have some sympathy for let's do nothing or let's perhaps talk about accreditation. Licensing [ie., meaning LTP] would be a step too far unless there is substantive evidence that either they're [ie., ExecRemConsultants] not impartial/they're not

independent, and there is a strong conflict of interest' (ROO), and

- 'Accountants/actuary saying these numbers/reserves are right within their materiality. ExecRemConsultants are giving professional advice on how to do things. I'm not in favour of a licence to practise for ExecRemConsultants' (CoyExecRemSpecialist)'.

The flavour from these 'Negative' stances was that the RIP interviewees concerned struggled to see how seriously poor advice/behaviour or 'malpractice' (to use a US term) would be determined in respect of ExecRemConsultants, and their view that it is difficult anyway to see where the boundaries would lie regarding LTP - covered advice.

Another factor that is common to both SA/Q and LTP considerations is that ExecRemConsultancy is such a small 'profession', which in turn entails issues as to how best to structure/fund an examination system and independent disciplinary body. BSB, for example, covers discipline for 16,000 barristers and SDT for 145,000 solicitors.

Also, of course, currently the vast majority of really senior ExecRemConsultants are professionally qualified in one of the 'new professions' or a 'liberal profession'. The RICBQ responses show that ExecRemConsultancy in the UK today is at the very least an 'all graduate profession'. 'Direct entrants' hold a bachelors degree (or higher). Whereas in the past (but perhaps not for the past 25 years or more) it was perfectly possible to become an ExecRemConsultant without holding a degree (or professional qualification, for that matter). This may still be feasible in principle, but is not the case in practice. Additionally, RCG consistently

stresses the need for member firms to ensure their ExecRemConsultants are fully aware of, and trained on, the RCG's VCC.<sup>695</sup>

At present, management or strategy consulting are not LTP professions (although it could be argued that the former, in the form of Chartered Manager status - with an independent disciplinary body - is on the 'professionalisation path' and is in the 'Intermediate Position'). If client companies are dissatisfied with such consultants they can presumably dispense with their services, in the same way as ExecRemConsultants who advise RemCos. A distinction might be made in that the latter are formally 'appointed', but management/strategy consultants are frequently appointed by the BOD to carry out particular pieces of work/assignments.

The view taken by de Gannes is that ExecRemConsultancy 'much like management consulting, "lacks the corpus of abstract knowledge" that differentiates and defines a profession'.<sup>696</sup> Indeed, de Gannes considers that ExecRemConsultants 'possess "weak knowledge" and thus continually face the need to negotiate with the client their status as "expert"'.<sup>697</sup> The point de Gannes is making can readily be appreciated – ie., that ExecRemConsultancy is not a 'new profession' in its own right – but it can be argued that the 'consultancy skills' required (ie., sound judgement and an empathetic mindset which can operate successfully in a highly-conflicted environment) need to be of a very high order for an ExecRemConsultant to advise a RemCo really effectively.

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<sup>695</sup> RCG, '2018 The Annual Review of Effectiveness of Code of Conduct', 'Introduction' 1 <<http://www.remunerationconsultantsgroup.com/?P=DOWNLOADS>> accessed 14 June 2019.

<sup>696</sup> de Gannes (n 44) 166.

<sup>697</sup> *ibid* 167.

The consensus view of RIP interviewees though accords with de Gannes's assertion that 'in place of disinterested expert driven by a "service ideal" remuneration consultants are shaped by a dominant market logic'. She states 'consultants have not sought the hallmark of professional status, rather consultants emulate the knowledge worker producing services within a managerial professional business'.<sup>698</sup>

Whereas the broad thrust of de Gannes's assertion that the path followed by ExecRemConsultants is 'the antithesis of the traditional professionalization story' is uncontroversial, it is submitted that she is being a bit hard on Adamson et al who position ExecRemConsultants' 'growing professionalisation' in the context not so much as establishing a professional identity but as part of operating within the broader UK executive pay determination process.<sup>699</sup> For example, Adamson et al explicitly note the fact that they do not put the professionalism path of ExecRemConsulting/ExecRemConsultants into the same category as paramedics.<sup>700</sup>

Adamson et al use the terms 'professional occupation' and 'professional service' to refer to 'new less-established knowledge-intensive occupations' that have developed within the Big Four and ABC firms in particular.<sup>701</sup> The RIP interviewees would agree that this description fits ExecRemConsultancy rather well, as there was no call for the equivalent of the Hippocratic Oath for ExecRemConsultants, nor the equivalent of Lawyers' Officer of the Court status. There was consensus that ExecRemConsultancy is not a candidate for becoming a 'liberal profession' (such as, medicine or law).

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<sup>698</sup> ibid 216.

<sup>699</sup> Adamson et al (n 42) 13.

<sup>700</sup> ibid 37, 38.

<sup>701</sup> ibid 41.

Additionally, although there was agreement that ExecRemConsultants should conduct themselves/provide advice in a 'professional manner' and, to coin Adamson et al's phrase, that ExecRemConsultancy is a new 'knowledge intensive occupation',<sup>702</sup> the view was that ExecRemConsultancy is far less a 'new profession' than a business advisory service that is closer in nature to that practised by management/strategy consultants. RIP interviewees considered that the obligations/responsibilities of the 'new professions' are considerably different from those applicable to ExecRemConsultants (and management/strategy consultants, for that matter).

In the RIP interviews there was mention of ExecRemConsultant 'misbehaviour'/'poor practice' in relation to 'unsolicited benchmarking'. Additionally, a ROO interviewee referred more broadly to 'some bad practices and poor mindset in the industry', but the consensus view of interviewees was that COI, for example, represented a bigger current issue than ExecRemConsultants' work practices/behaviour.

'Professional standards' can be viewed simply as the way a business service is actually provided (meaning in effect that the work is done in a way that exhibits competence, efficiency, confidentiality and value for money)<sup>703</sup> or, alternatively, in the sense that the service is rendered by those who have a 'professional background' (whether 'liberal' or 'new profession' in nature).

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<sup>702</sup> *ibid.*

<sup>703</sup> RGC, '2017 The Biennial Review of Code of Conduct and Annual Review of its Effectiveness', 'Background' 5 <<http://www.remunerationconsultantsgroup.com/?P=DOWNLOADS>> accessed 14 June 2019.

Much of the criticism of ExecRemConsultants that one sees from commentators stresses far more the alleged manner in which ExecRemConsultants handle COI/ethical challenges in consultancy work than the technical quality aspects of their advice.<sup>704,705,706,707,708,709</sup> The views of Buffet,<sup>710</sup> Munger<sup>711</sup> and Lawson<sup>712</sup> could be regarded as representing the high point in criticising ExecRemConsultants' behaviour.

Interestingly, when the introduction of RCG was in contemplation, FRC declined to extend its oversight/regulation beyond CA and Actuary practitioners, to ExecRemConsultants. It was considered that the public interest was better served by having a self-regulatory regime for the latter (as opposed to State-sponsored regulation). Whatever criticisms may be made by commentators/media of ExecRemConsultants' current activities, there certainly was no clamour from RIP interviewees for SA/Q or LTP for ExecRemConsultants. However, there was a thread of criticism regarding the RCG on the other hand (as mentioned already in this thesis).

Factors militating against SA/Q or LTP for ExecRemConsultants include:

- Most really senior ExecRemConsultants are already professionally qualified,
- ExecRemConsultancy is seen as a highly-specialised but technically-diverse business advisory service,
- ExecRemConsultancy in the UK is a tiny advisory sector, with perhaps 250 individual practitioners (fewer than 50 are really senior) – so who would administer an examination and CPD/'re-

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<sup>704</sup> Russell (n 258).

<sup>705</sup> Treanor (n 259).

<sup>706</sup> Wile (n 260).

<sup>707</sup> Goodley (n 261).

<sup>708</sup> Buttonwood (n 262).

<sup>709</sup> Bow (n 273).

<sup>710</sup> Oyedele (n 75).

<sup>711</sup> Munger (n 257).

<sup>712</sup> Lawson (n 74).

validation' process, let alone operate an independent disciplinary body for LTP purposes?

- RCG currently seems to have largely contained commentators' criticisms, with its self-regulatory member firm only format,
- The UK market for RemCoAdvisory Services being dominated by Big Four and ABC firms that are very familiar with compliance protocols, and have the size/mass needed to have effective terms of business/codes of conduct/client engagement documentation, plus ExecRemConsultant training, monitoring and peer review,
- RemCos, ROOs, and CoyExecRemSpecialists participating in the RIP interviews did not endorse the need for ExecRemConsultants to have SA/Q or LTP, and
- Recent corporate governance reports/papers/speeches (eg., the Government's CGI, the ERWG Report, Philp or Umunna) have not promoted SA/Q or LTP for ExecRemConsultants.

Given that the Big Four in particular channel their 'direct entrants' starting ExecRemConsultancy into completing CA or Actuary examinations, and that the ABC firms have a strong past record of hiring in ExecRemConsultants who are already professionally qualified (or transfer from being a practising Actuary), it would appear that the SA/Q and LTP issues are really most relevant to ExecRemConsultants who for one reason or another have come through as 'direct entrants' with a bachelors degree but no professional qualifications (and who do not hold an MBA or similar). If such individuals (who also by definition do not have relevant prior work experience) were to start predominating in ExecRemConsultancy then the case for SA/Q or LTP would, it is submitted, become considerably stronger - particularly if the current 'apprenticeship/craft skills with ethics' training approach for ExecRemConsultants were to be weakened by fewer senior mentors/trainers being available.

It is possible, of course, that 'direct entrant' ExecRemConsultants might start 'demanding' a SA/Q or LTP for their own career development purposes but, as noted by one RIP interviewee, ExecRemConsultants are largely self-selecting; they want to learn/solve problems and will 'find a way through' to success. Accordingly, SA/Q or LTP may not in fact be needed by such individuals.

### **5.2.7. RITG5 Aspects**

RITG5 is devoted to the three aspects discussed below.

*WorkingRelationshipsCoyExecRemSpecialists/ExecRemConsultants and RemCo (RITG5:SQ1)*

The responses of RIP interviewees on RITG5:SQ1 were a three-way split between 'Positive', 'Mid-position', and 'Negative' stances.

Taking the 'Positive' responses first:

- 'I need their knowledge and experience to be able to supply advice to the company. And they always seem to have a good relationship with RemCo. I haven't really seen them being a block to what's happening or trying to influence decisions too much' (ExecRemConsultant), and
- 'This goes back to the triangular relationship between in-house and management: CoyExecRemSpecialist, ExecRemConsultant and RemCo itself. I see these relationships working very well where there is that and I see it in the majority of cases' (ExecRemConsultant).

The flavour from the 'Positive' responses is that CoyExecRemSpecialists have an important role to play in providing the ExecRemConsultants with staff data/numbers, plus providing invaluable context on the company concerned's HR/Reward approach/culture. The potential for COI (because the CoyExecRemSpecialist's ultimate manager is the CEO) is recognised and managed by the three key parties: CoyExecRemSpecialist, ExecRemConsultant and RemCo.

The 'Mid-position' stances include:

- 'Have very considerable interaction with ExecRemConsultants, but have little impact on shaping their views. CoyExecRemSpecialists take the recommendations of ExecRemConsultants and make them a reality' (CoyExecRemSpecialist), and
- 'The HRD or Head of Reward role is critical at getting consensus, getting buy-in and explaining (...) I think it is still quite rare for the HR function to be able to have a really equal voice in terms of opinion and negotiation with the rest of the Executive Committee' (CoyExecRemSpecialist).

One can see from these comments the appreciation by ExecRemConsultants of the difficult role CoyExecRemSpecialists have to play - and not envying their position. ExecRemConsultants make it very clear that they need to work with CoyExecRemSpecialists (and other members of executive management), with one ExecCompConsultant stating that without being aware of relevant 'internal factors/culture' the advice to CompCo will not be useful ('you might as well bin it').

The view of ExecRemConsultants is that the knowledge and contribution CoyExecRemSpecialists have to make is on a far broader front than simply providing staff data. There is recognition that it may well be difficult for the CoyExecRemSpecialist to oppose their CEO directly - although the CoyExecRemSpecialist will have dotted line responsibility to RemCoChair, the CoyExecRemSpecialist will report to senior management (and ultimately the CEO).

A strongly 'Negative' stance from an ExecRemConsultant interviewee was:

Relationship between ExecRemConsultant and Director of Reward is the most difficult because the latter is internal. They view the ExecRemConsultant as a threat. The Director of Reward has less budget/more cost conscious. Ultimately, signs-off the bills and is perhaps looking to become a consultant in the future, or was a consultant in the past. Think they know the right answer/young/more easily in a position where they feel threatened by someone from outside.

Such a 'Negative' view brings into sharp relief the difficulties that can arise between CoyExecRemSpecialists and ExecRemConsultants in particular cases, but the overall picture from RIP interviewees in respect of working relationship aspects between CoyExecRemSpecialists, ExecRemConsultants and RemCo is that the inherent COI in CoyExecRemSpecialists' role is generally managed effectively - so that a productive and respectful working relationship exists. In essence, all parties need each other in order for RemCo's pay determination process to work well.

Already mentioned is the rather fungible situation where ExecRemConsultants spend part of their career as CoyExecRemSpecialists and vice versa. This may be why there is general recognition that the two roles are complementary in nature. Different skillsets are required though. One CoyExecRemSpecialist mentioned that the in-house role requires patience and the ability, for

example, to persuade Finance to give them the figures needed for incentive plan purposes. One of the ExecRemConsultant interviewees referred to the in-house role as being a 'less stressed environment' compared to that of ExecRemConsultancy, but another stated 'you'll hear I could go internal and I'll have a better work-life balance, but I would be bored stiff within a few years because it is so cyclical'.

On the whole though, there was recognition that the in-house role had its own COI and other challenges. One CoyExecRemSpecialist mentioned that in their view it would be an advantage when selecting an ExecRemConsultant to advise RemCo if the ExecRemConsultant concerned had actually been a CoyExecRemSpecialist earlier in their career.

It is interesting to see the similarity between a RemCoChair's view that CoyExecRemSpecialists see ExecRemConsultants as 'coming to their rescue on a white charger', and an ExecRemConsultant stating that CoyExecRemSpecialists appreciate ExecRemConsultants 'keeping them out of the muck and bullets' - but both interviewees understood the difficult role of CoyExecRemSpecialists and were positive about their contribution. This contrasts starkly against 'Negative' views from the above-mentioned ExecRemConsultant interviewee, who considered 'CoyExecRemSpecialists see ExecRemConsultants as a threat and have limited budgets anyway for advisory services'.

Bender & Franco-Santos refer to the ubiquity of RemCos having 'internal support from a Human Resources (HR) department or a dedicated Executive Compensation or Reward function'.<sup>713</sup> They view their research 'on the influence of internal HR advisors and the impact on the process of their

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<sup>713</sup> Bender & Franco-Santos (n 43) 10.

behaviour and the quality of their advice' as being 'not captured in any other academic work'.<sup>714</sup>

The interviews complement Bender & Franco-Santos's work in this regard. Indeed, whereas they conducted a series of interviews limited to ExecRemConsultants, the RIP covered a far broader population of interviewees (eg., including CoyExecRemSpecialists themselves, RemCoChairs and ROOs). In this sense, the RIP is more comprehensive than Bender & Franco-Santos's.

RIP interviewees' views would appear to concur with Bender & Franco-Santos's reference to: 'the quality of the internal HR advisors was influenced by characteristics of the person leading the HR department'.<sup>715</sup> It will be seen from RITG5:SQ3 ('COI/CoyExecRemSpecialists') that RIP interviewees generally saw the HRD as being more affected by COI than CoyExecRemSpecialists (whether Head of Reward, Head of Compensation & Benefits or an analogous role).

The HRD is seen as being far closer to the CEO than the CoyExecRemSpecialist - who has a dotted line responsibility to the RemCoChair. So HRD has influence, but ExecRemConsultant RIP interviewees generally considered CoyExecRemSpecialists also have a measure of independence from their HRD (and other members of senior management). Bender & Franco-Santos captured comments from ExecRemConsultants that were generally more negative towards their internal counterparts than those of RIP interviewees, but there were certainly traces of the same sort of unflattering views as were expressed by the 'Negative' stance RIP interviewees (eg., influence over which ExecRemConsultancy firms were

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<sup>714</sup> *ibid.*

<sup>715</sup> *ibid.*

invited to 'pitch' for RemCoAdvisory appointments and, indeed, the actual selection of the successful firm concerned).<sup>716</sup>

Having said this, Bender & Franco-Santos's ExecRemConsultant interviewees were certainly not wholly disparaging of their in-house counterparts - referring to the satisfaction ('whether or not fees are high') of working with 'sophisticated' CoyExecRemSpecialists who wished 'to explore several different alternatives and will appreciate the consultant's input'.<sup>717</sup>

Generally, though, the RIP interviewees were far more appreciative of CoyExecRemSpecialists' inherently difficult role COI-wise and their contribution. Part of the difference may be that the RIP interviews focused on gathering views on CoyExecRemSpecialists generally (ie., they may or may not have been in respect of HRDs) whereas Bender & Franco-Santos's interviewees appear to have concentrated more on HRD role.

Although Bender's earlier qualitative studies included interviews with HRDs (eg., her 2003 study)<sup>718</sup> the focus was on the 'strategic issues faced in setting the executive directors' remuneration' and the like, rather than the role played by HRDs and, indeed, CoyExecRemSpecialists. Her 2011 study of ExecRemConsultants does not cover CoyExecRemSpecialists,<sup>719</sup> nor does Adamson et al's,<sup>720</sup> Chu et al's,<sup>721</sup> nor Conyon's.<sup>722</sup> This is hardly surprising in that these studies all focused on ExecRemConsultants, rather than their in-house counterparts. Perhaps more surprising though is that the UK corporate governance scene, as embodied in the CGI and reform proposals, together with HPC, ERWG, Purposeful Company Report, Philp and Umunna pay scant attention to CoyExecRemSpecialists. Accordingly, it is submitted that Bender

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<sup>716</sup> *ibid.*

<sup>717</sup> *ibid* 11.

<sup>718</sup> Bender (n 169).

<sup>719</sup> Bender (n 22).

<sup>720</sup> Adamson et al (n 42).

<sup>721</sup> Chu et al (n 119).

<sup>722</sup> Conyon (n 108).

& Franco-Santos are correct in asserting that their recent study is the first to study 'in-house advisors'.<sup>723</sup>

It is interesting just how little attention HRD/CoyExecRemSpecialists have attracted in the UK remuneration scene. Bender and Franco-Santos note this, as does de Gannes – who considered that the ‘internal Reward Function is not sufficiently investigated’.<sup>724</sup> She added that research would provide ‘the opportunity to develop a comparative narrative between the internal HR function and the external consultant and to compare “HR’s professional project” against the development of ExecRemConsultancy’.<sup>725</sup> This can hardly be because CoyExecRemSpecialists’ role is not important, but it may be due to the fact that their inherent COI are fairly transparent - so their activities are not regarded as being particularly controversial in a RemCo pay determination process context.

Given CoyExecRemSpecialists’ close involvement with RemCos and ExecRemConsultants, it could well be considered that in the same way as RemCos and ExecRemConsultants have attracted interest from the Government/institutional shareholder and media commentators, the role of HRDs/CoyExecRemSpecialists warrants qualitative research on their part in the 'three-legged stool' of the RemCo pay determination process.

The RIP can be seen as being a stage in this process, but a significantly larger cohort of CoyExecRemSpecialists would need to be interviewed (and appropriate care taken to ensure that the interviewees were indeed representative of the broader population of UK CoyExecRemSpecialists). Additionally, it is suggested that such research should split HRDs and CoyExecRemSpecialists into two entirely discrete categories, and that the latter be limited strictly to a reasonably narrow definition of

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<sup>723</sup> Bender & Franco-Santos (n 43) 10.

<sup>724</sup> de Gannes (n 44) 214.

<sup>725</sup> *ibid* 219.

CoyExecRemSpecialists (ie., only Head of Executive Compensation, Head of Reward or Head of Compensation & Benefits) - as opposed to the RIP interviewees comprising some HRDs, CoySecs and GC.

*RemCoAdvisoryProtocols (RITG5:SQ2)*

Interviewees responses on RemCoAdvisory Protocol were generally 'Mid-position' in nature (with some 'Positive' ones) - these included:

- 'The right process is for the ExecRemConsultant's report to go to the RemCoChair with copy to executive management. Both sides must be kept comfortable. ExecRemConsultants enjoy the intellectual challenge of their role and being able to say "no" (ExecRemConsultant),
- 'If the first draft is going to them first [ie., CoyExecRemSpecialists] and they were editing it for material changes, I'd be worried. I just don't think that's the right way forward. If they step in the way of the process, somebody is going to hate them' (CoyExecRemSpecialist), and
- 'We need to ensure we've got absolute control over the client being completely unambiguous as to what our advice is. And anything that diminishes that is unacceptable. You should be prepared to articulate verbally and somewhere there should be a written record of your thoughts' (ExecRemConsultant).

These 'Mid-position' stances encapsulate the preponderance of thought of RIP interviewees. The reason such comments predominate is that the issues involved in 'draft/circulation protocols' are now front of mind when ExecRemConsultants take up a new appointment to advise a particular RemCo. Indeed, RCG's VCC makes specific reference to

ExecRemConsultants having terms of engagement with RemCo addressing matters such as:

- Circulation order/path of draft/final report,
- Notifying RemCoChair of material changes made to draft reports during the course of preparation/before circulation of the final document, and
- Ensuring ExecRemConsultants' reports can be read in a way that makes their meaning and/or recommendations clear even if the ExecRemConsultants are not present at the RemCo meeting during which these are considered.

The 'Myners comments' referred to by the ROO interviewees in particular<sup>726</sup> (plus see Russell's 2012 article)<sup>727</sup> are now somewhat historic (dating mainly from the time of GFC). The view of ExecRemConsultants, both in the UK and US, is that RemCoChairs should agree 'circulation protocols' at the 'on-boarding' stage when ExecRemConsultants are initially appointed. Additionally, ExecRemConsultants are well aware that permitting management input that 'edits' draft reports (as opposed to amending factual errors on staff/financial data) should not be countenanced.

Having said this, there is no simple 'correct approach' on circulation order or path of draft/final reports. It seems though that the standard UK approach is for the appointed ExecRemConsultant to send the draft report to the RemCoChair (having worked with management/CoyExecRemSpecialists to confirm business strategy, facts and draft data/financial details as the draft report is in the course of preparation), who then authorises a copy to be sent to executive management.

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<sup>726</sup> Myners (n 253) and (n 656); Russell (n 258).

<sup>727</sup> Russell (n 258).

An ExecCompConsultant RIP interviewee stated that joint reports (with management/CoyExecRemSpecialist) were the preferred approach, and that this usually worked well. In the UK context, ExecRemConsultant interviewees seemed far less attracted to joint reports (but, like their US counterparts, were strongly supportive of liaison with management as part of the process of preparing advisory reports).

It seems that if UK ExecRemConsultants can agree a joint report they might do so, but if not they prepare a separate 'comments' paper - and the latter is done very routinely - whereas in the US it would appear that joint reports are much more common - with a separate 'comments' paper being perfectly possible, but less usual.

The Australian position in this regard is interesting, whereby there are really strict rules on, for example:

- 'Paper management' (including indication of precisely what has been written by the ExecRemConsultants),
- 'Who can see what first'/draft circulation (with NEDs controlling the process),
- 'ExecRemConsultants and BOD making respective declarations that the "remuneration recommendations" are free from undue influence', and
- DSOtherServicesFees.<sup>728</sup>

Although PwC's commentary on the Australian provisions states simply that 'remuneration advice is clearly defined' (ie., 'remuneration recommendations'), excluding many categories in advance (such as, legal, tax, actuarial and 'all-

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<sup>728</sup> Australian provisions: Corporations Amendment (Improving Accountability on Director and Executive Remuneration) Act 2011. For example, paper management/document circulation (section 206h), freedom from undue influence (section 206m) and DSOtherServicesFees (section 300A(i)(b)(5)) <<https://www.legislation.gov.au/Details/c2011A00042>> accessed 30 January 2019.

employee' advice),<sup>729</sup> Guerdon's commentary (Guerdon is an Australian Boutique firm) is critical of Australia's decision to opt for a US-style black-letter law approach to the issues involved, rather than a UK type principles-based one.<sup>730</sup>

In any event, the Australian requirement for the ExecRemConsultant to write to RemCo explaining its involvement in each paper<sup>731</sup> (and preparing a separate 'comments' paper)<sup>732</sup> was mentioned with approbation by an ExecRemConsultant RIP interviewee. This is backed by a RemCoChair RIP interviewee's comment that a requirement to notify the extent to which reports are being modified, and confirmation that a report is the ExecRemConsultant's work and their views, was 'not a bad thing'.

It may well be though that the essence of Guerdon's criticism is that Lawyers, CAs, and Actuaries, for example, may have professional/actual COI but their advice is excluded from being covered by the relevant legislation (there are also no DSOtherServicesFees requirements applicable to them, but these are applicable to ExecRemConsultants providing 'remuneration recommendations').<sup>733</sup>

From a UK perspective, the RemCoAdvisory protocols contained in RCG's VCC are seen as being generally uncontentious and sufficiently flexible to meet the particular relationship/working arrangements RemCos have with their appointed ExecRemConsultants.<sup>734</sup>

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<sup>729</sup> PwC, '10 Minutes on Executive Remuneration Corporations Law Amendments' (February 2011) <<https://www.pwc.com.au/consulting/assets/publications/ten-minutes-feb11.pdf>> accessed 30 July 2018. For respective definitions of 'remuneration consultant' and 'remuneration recommendation' see section 9 (A) and (B) of Corporations Amendment (Improving Accountability of Director and Executive Remuneration) Act 2011. See (n 728).

<sup>730</sup> Guerdon Associates, 'Australia Treasury Receives Submissions on Executive Pay "Remuneration Recommendation" Regulation' (Guerdon Associates, 1 August 2011) <<http://www.guerdonassociates.com/articles/australian-treasury-receives-submissions-on-executive-pay-remuneration-recommendation-regulations/?print=pdf>> accessed 30 July 2018.

<sup>731</sup> Australian legislation (n 728) and (n 729).

<sup>732</sup> *ibid.*

<sup>733</sup> Guerdon (n 730).

<sup>734</sup> RCG's VCC (December 2017). For example, 'Good Practice Guideline 12', 'Transparency' regarding potential COI and working relationship between RemCoChair and ExecRemConsultants. See (n 644) for access details.

RCG's VCC provisions/practice guidelines cover:

- Sources of information used by ExecRemConsultants (ie., from management or other consulting firms' proprietary data),
- Where 'joint reports' are prepared, what is management's and ExecRemConsultant's opinion, respectively,
- Where there has been significant management input into a report, then 'flagging' this to RemCoChair,
- Written advice should be capable of being read by RemCo where the ExecRemConsultant is not present, and
- Agreement on the flow of papers (including whether sent to management first 'to check facts and understanding of context' before sending to RemCo).<sup>735</sup>

With regard to the latter comment, this merely restates the way Deloitte described the role of ExecRemConsultants when giving evidence to HC TC after the GFC:

I think remuneration consultants need to be very clear about who they work for, and certainly in my role I work for the company. The company is the remuneration committee, it is not the self-interest of management, and I might work with management to get the facts, but I do not work for the management, and it is a very important distinction.<sup>736</sup>

RCG's VCC sees such 'supporting protocols' in the context of 'safeguarding objectivity' (ie., managing COI).<sup>737</sup> This approach appears very practical and, allied to RIP interviewee comments that 'RemCoChairs have taken control' of the ExecRemConsultant/RemCo relationship, it seems that

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<sup>735</sup> RCG's VCC (December 2017), 'Good Practice Guidelines 6 & 7', 'Transparency' (sources of information for pay benchmarking); 8 (joint reports/significant management input) & 9 (where ExecRemConsultant not present) and 17 'objectivity' ('flow' of papers). See (n 644)

<sup>736</sup> Carol Arrowsmith (then of Deloitte), giving oral evidence to HC TC on 19 November 2008. See HC Treasury Committee, *Banking Crisis* (HC 2007-08, 144-I) 79, Q578, Ev73 <<https://publications.parliament.uk/pa/cm200809/cmselect/cmtreasy/144/144i.pdf>> accessed 18 May 2019.

<sup>737</sup> RCG's VCC (December 2017), 'Good Practice Guideline 17', 'Objectivity' 6. See (n 644) for details.

RemCoAdvisoryProtocols are no longer a 'hot issue' in the UK remuneration scene.

### *COI/CoyExecRemSpecialist (RITG5:SQ3)*

Interviewees' responses regarding COI/CoyExecRemSpecialist were preponderantly 'Mid-position', but with some 'Positive' and 'Negative' stances. At first sight this appears to mirror the overall stance of interviewees in respect of RITG5:SQ2 (ie., 'RemCoAdvisoryProtocols'), but actually the 'COI/CoyExecRemSpecialists' positioning was rather more dispersed in nature than in relation to RemCoAdvisoryProtocols. Nonetheless, for the former there was more in the way of both 'Positive' and 'Negative' stances. The fact that the COI/CoyExecRemSpecialist question attracted a preponderance of 'Mid-position' responses is hardly surprising.

Interviewees considered that although CoyExecRemSpecialists were inevitably subject to COI - due to their being part of senior executive management team (or they reported to such management) of their employing companies (and, at the more senior level, being part of management's STI and LTI arrangements), they did their best to 'stand apart from management' and to assist the RemCoChair/ExecRemConsultant in a professional manner.

'Positive' RIP comments focused on the view that while CoyExecRemSpecialists understandably 'put the management's view', they will 'realise there is an appropriate boundary and accept that the ExecRemConsultants needs to provide independent advice'. Typical 'Mid-position' comments included:

- 'In the vast majority of cases the potential conflict doesn't become an actual conflict because of the way those individuals

conduct themselves, but, in the minority of cases, it can become a significant issue' (ExecRemConsultant),

- 'CoyExecRemSpecialists can go one way and offend the CEO, or you can go the other way and offend the RemCo, and trying to find that balance is incredibly difficult. Whereas being an ExecRemConsultant is easier because our job is not necessarily to make everyone happy' (ExecRemConsultant),
- 'HRD typically not involved in the process because of conflicts' (ExecRemConsultant), and
- 'They're really conflicted. But they will know far better than any ExecRemConsultant what impact any changes can have on the workforce in total. There are safeguards, and the RemCo is not being advised solely by these folks' (ExecRemConsultant).

Grouping together this exposition of 'Mid-position' and 'Positive' responses gives a picture of ExecRemConsultants/ExecCompConsultants appreciating the COI inherent in the CoyExecRemSpecialist role, and anticipating that 'RemCos have enough nous to see whether the in-house pay specialist is doing nothing more than a ratcheting job in an attempt to increase pay'. It was also mentioned by the last-quoted ExecRemConsultant that 'now we have the binding policy vote, I see a lot less of this and the conflict is disappearing'.

There is also focus from ExecRemConsultant interviewees on the 'triangular relationship' (ie., RemCo, CoyExecRemSpecialists and ExecRemConsultants) in that a CoyExecRemSpecialist COI problem only arises where there is the 'failure of at least one, if not both, of the other two sides in the triangle for that view to prevail'.

Generally, one needs to be careful in respect of COI comments from RIP interviewees to distinguish between those directed solely at HRDs, CoyExecRemSpecialists or, alternatively, both (also one needs to bear in

mind that CoyExecRemSpecialists themselves comprise a broad church of individuals ranging from HR specialists, through Compensation & Benefits Directors, Head of Executive Compensation/Reward, GC or CoySec). The presumption appears to be that HRDs are potentially more likely to be 'purely fighting for the CEO' than CoyExecRemSpecialists.

In other words, despite CoyExecRemSpecialists having a reporting line to HRD (and ultimately CEO) they find it easier than HRDs to 'distance themselves' from management views where appropriate to do so. There is mention too of the dual reporting line of the CoyExecRemSpecialist (ie., both to HRD and RemCoChair).

There were some strongly 'Negative' stances taken by RIP interviewees, including:

- 'Most HRDs know nothing about Reward. They know which side their bread is buttered; where essentially their job is to butler the CEO' (RemCoChair),
- 'I don't really come across CoyExecRemSpecialists that have the depth of expertise as ExecRemConsultants. They are still very dependent on ExecRemConsultants. My experience is that people in these roles feel deeply conflicted and find it extremely hard' (City Lawyer), and
- 'Some CoyExecRemSpecialists are fantastic, and try to give a balanced argument to a RemCo, plus their boss, the CEO or HRD. Some of those don't last too long because you have got a megalomaniac CEO. They don't particularly want a balanced approach from the people who are on their team' (ExecRemConsultant).

The latter ExecRemConsultant concludes that CoyExecRemSpecialists are 'often not trusted by RemCo (...) and ultimately end up falling foul of the RemCo (...) and they too end up trying to find a new job'. This harks back to the inherent COI in the CoyExecRemConsultants' role. As the same ExecRemConsultant concludes - 'being a CoyExecRemSpecialist is a hiding to nothing. It's a really difficult job'.

Accordingly, even ExecRemConsultants who expressed 'Negative' views appreciated the difficulties faced by CoyExecRemSpecialists in practice. However, despite making proper allowance for this, some ExecRemConsultant interviewees clearly consider that particular CoyExecRemSpecialists favour previous ExecRemConsultant colleagues for RemCoAdvisory appointments (or perhaps particular CoyExecRemSpecialists have an eye to a future ExecRemConsultant role). There is also the comment from a ROO averring that CoyExecRemSpecialists working for the larger publicly listed companies may be putting pressure on appointed ExecRemConsultants so the latter 'find it difficult to defend their position'.

This concludes Chapter 5 Discussion. Chapter 6 Conclusions follows - drawing together the points emerging from Chapter 5 Discussion and previous Chapters in this thesis.

## CHAPTER 6

### 6. CONCLUSIONS

#### 6.1. Overview

Chapter 6 is devoted to conclusions regarding the respective academic and UK practice contributions in respect of the RIP topics covered by the RITG/RITGST. It also contains proposals for further research, together with 'Final Conclusions' on the RIP and the RITG/RITGST aspects overall.

#### 6.2. Conclusions Regarding RITG/RITGST Aspects

This section of Chapter 6 addresses in turn the various RITG/RITGST aspects (18 in total) and sets out the conclusions that can be drawn from these in respect of the thesis topic.

##### 6.2.1. Overview of Conclusions

The 2014 LLM dissertation made reference to the 'professional standards' of ExecRemConsultants. The specific context was whether a professional qualification (on a LTP basis) for ExecRemConsultants would promote higher professional standards.<sup>738</sup> The dissertation's conclusions on this though, and those regarding potential ancillary regulatory changes in respect of ExecRemConsultancy and ExecRemConsultants, was that 'the burden of proving any necessity for additional regulatory controls on remuneration consultants should be on those who make them'.<sup>739</sup>

The hypothesis of this thesis was formulated on such basis. It is submitted that - subject to the author's proposal already discussed in this thesis that

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<sup>738</sup> Jackson (n 1).

<sup>739</sup> *ibid* 52.

RCG should consider making certain changes to the ambit of its activities/VCC - the resulting consensus view from RIP interviewees, together with the analysis and discussion in this thesis, provide very significant support for such hypothesis; namely, that the current hard and soft law regulation/guidelines/codes applicable to ExecRemConsultants are broadly appropriate (and that, in particular, any move to SA/Q and to LTP – with disciplinary sanctions being available against individual consultants - is not warranted).

This was in light of RCG (and its VCC), ExecRemConsultancies' client engagement protocols/terms of business and that senior ExecRemConsultants may well be subject to the conduct rules and disciplinary sanctions stipulated by the LTP qualifications they hold (eg., CA, CTA, Actuary or Lawyer).

The overall view of RIP interviewees - although being somewhat split on certain RITG/RITGST aspects (such as, E/PS and TE/E) - was that there was generally little appetite for regulation concerning SA/Q or LTP. This obviously does not of itself mean that no change should be contemplated. It needs to be remembered, for example, that the consultation process for the 2013 Reforms elicited a chorus of unfavourable comments from those in RemCoChair/Member, ExecRemConsultant and, indeed, ROO, 'job roles' (using the RIP categorisation of these),<sup>740</sup> but now the triennial binding vote on remuneration policy and 'single total figure' disclosure of Directors'

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<sup>740</sup> For example, NAPF and Quoted Companies Alliance, respectively, did not support a binding shareholder vote on remuneration. See 'Executive Remuneration Discussion Paper: A response by National Association of Pension Funds' (NAPF, November 2011) <[https://www.plsa.co.uk/portals/0/Documents/0199\\_Executive\\_Remuneration\\_An\\_NAPF\\_response\\_to\\_a\\_BIS\\_consultation.pdf](https://www.plsa.co.uk/portals/0/Documents/0199_Executive_Remuneration_An_NAPF_response_to_a_BIS_consultation.pdf)> accessed 30 January 2019. Also 'QCA response to BIS Executive Remuneration: Discussion Paper' (QCA, 29 November 2011) <<https://www.theqca.com/news/responses/50177/qca-response-to-bis-executive-remuneration-discussion-paper.shtml>> accessed 30 January 2019.

remuneration are generally regarded as having been a considerable step forward.<sup>741</sup>

At the time of the consultation concerned however, there was strong feeling in the Coalition Government, and amongst 'pay commentators' in the press and media, that the proposed 2013 Reforms were both proportionate and necessary. There is not currently a similar demand for change in respect of the 'professional standards' of ExecRemConsultants (nor CoyExecRemSpecialists, for that matter) that warrants SA/Q and/or LTP regulation. This did not exist in 2012/2013 either - regarding SA/Q and/or LTP - and the mood in this respect has, if anything, become quieter since.

A ROO interviewee referred to 'the spotlight having moved away' from ExecRemConsultants since the immediate post-GFC period - with RCG having been established, RemCoChairs 'taking charge' and, perhaps, ExecRemConsultants knowing that their voluntary self-regulatory regime could be changed for a State-sponsored one if poor behaviour/practices were to become apparent. This, coupled with the beneficial impact of the 2013 Reforms, seems to have contributed to a relatively benign current climate for ExecRemConsultants.

What might change this? The answer to this question lies as much in the hands of ExecRemConsultancy firms, and individual ExecRemConsultants, as exogenous factors - such as, an incoming Government of a particular political persuasion that might put ExecRemConsultants firmly into the camp of being part of the 'executive pay problem'. Such Government though would probably be more inclined to introduce SABV, or possibly SVEExecRemConsultants, than to introduce formal regulation in respect of SA/Q and/or LTP.

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<sup>741</sup> For example, Philip Bartlett, Ian Frasier & Charles Mayo (Simmons & Simmons LLP), 'Shareholder votes on executive remuneration: shareholder spring 2.0?' (*Practical Law*, 30 June 2016) <<https://uk.practicallaw.thomsonreuters.com/3-630-1986?transitionType=Default&ContextData=SC.Default&firstpage=true&comp=%pluk>> accessed 30 January 2019.

If there were to be the UK equivalent of the US 'Grasso Affair'<sup>742</sup> (ie., where the sort of criticism levelled at ExecRemConsultants by the HC TC's *Ninth Report* in 2009<sup>743</sup> - on 'consultant COI/independence' - were to be elevated to the level of the Waxman Committee's criticisms of US ExecCompConsultants) this would be far more likely to lead to demands for DSOtherServicesFees or, indeed, limitations on Big Four/ABC firms' range of professional services provided, than in respect of SA/Q and/or LTP. Another consideration is that current controversy around the Big Four's COI, 'external audit quality' and 'too big to fail' arguments appear to be far more in the public eye than the 'professional standards' of ExecRemConsultants.<sup>744,745,746</sup>

Assuming no exogenous 'push' of the sort mentioned above, ExecRemConsultancies/ExecRemConsultants would currently appear to be in a strong position to influence/direct the agenda in respect of UK ExecRemConsultancy/RemCoAdvisory Services - via RCG, in-house technical and ethical training and ensuring junior ExecRemConsultants are appropriately monitored/supervised on matters such as seeking external professional advice/sign-off (from the client company concerned's appointed external auditor or retained solicitor) in appropriate circumstances.

RIP interviewees were generally 'Positive' or 'Mid-position' regarding RCG. There appears to be far less unhappiness in respect of RCG's activities than was already manifest in respect of the financial services sector's SROs after the effluxion of a similar amount of time following the latter's introduction. Having said this, it would be somewhat surprising if RCG were to continue for

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<sup>742</sup> Peter Elkind, 'The Fall of the House of Grasso' *Fortune Magazine* (New York, 18 October 2004) <[http://archive.fortune.com/magazines/fortune/fortune\\_archive/2004/10/18/8188087/index.htm](http://archive.fortune.com/magazines/fortune/fortune_archive/2004/10/18/8188087/index.htm)> accessed 21 May 2019.

<sup>743</sup> HC TC (n 254) 33.

<sup>744</sup> Ian Gow & Stuart Kells, 'Big Four, big changes and big question marks' *The Times* (London, 28 May 2018), plus John Plender, 'The Big Four face dismembering of accountancy's cosy club' *Financial Times* (London, 19/20 May 2018).

<sup>745</sup> Gill Plimmer, 'MPs want Big Four accountancies referred for break-up over Carillion' *Financial Times* (London, 16 May 2018). Also Gill Plimmer, 'Carillion board and auditors savaged in scathing report' *Financial Times* (London, 16 May 2018).

<sup>746</sup> Madison Marriage, 'Watchdog criticises KPMG for 'deterioration' in audits' *Financial Times* (London, 23 June 2018). Also Steven Harris, 'Watchdogs need to remind auditors of their proper role' *Financial Times* (London, 4 July 2018), plus Patrick Hosking, 'One disaster can shrink Big Four to three' *The Times* (London, 9 July 2018). Additionally, Times Leader Editorial 'Hold to Account' *The Times* (London, 4 July 2018) and Ben Lurance, 'Crunch time for the Big Four' *The Sunday Times* (London, 19 August 2018).

a further, say, 10-year period without exhortations 'to do more' than exemplified by its 2017 introduction of 'case studies' for ExecRemConsultants.<sup>747</sup> RCG can be seen as having been rather successful to date on its own terms, but the risk is that if a UK ExecRemConsultancy 'scandal' were to occur RCG, as currently constituted, financed and with such a limited remit, could well be vulnerable to well-founded criticism. In a UK regulatory architecture context, RCG is currently in a somewhat privileged position (self-regulating, firm membership - rather than individual - and the most serious 'disciplinary sanction' available being expulsion of a member firm from voluntary membership).

All this is readily understandable in the context of RCG's inception and its ongoing operation since then, but it should be remembered that the UK scene is replete with examples of self-regulation being found inadequate when challenged by previously unforeseen events (eg., pensions mis-selling and Maxwell scandals).

RCG's supporters would argue that it is a 'creation of its particular defining circumstances' and that it serves beneficially to focus the minds of RemCos and their appointed ExecRemConsultants on the terms of, and how best to conduct, their working relationship. RCG also needs to be seen in the light of the small number of practising ExecRemConsultants and the fact that the really senior practitioners are currently almost invariably professionally qualified in a 'new profession' (or hold an MBA or PhD) or as Lawyers - and/or have prior work experience that is directly relevant to the ExecRemConsultancy advice they provide.

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<sup>747</sup> RCG, '2017 The Biennial Review of Code of Conduct and Annual Review of its Effectiveness', 'Background' 5 <[http://www.remunerationconsultantsgroup.com/assets/Docs/2017%20The%20biennial%20Review%20of%20the%20Code%20of%20Conduct%20and%20the%20annual%20Review%20of%20its%20Effectiveness%20\(Final\).pdf](http://www.remunerationconsultantsgroup.com/assets/Docs/2017%20The%20biennial%20Review%20of%20the%20Code%20of%20Conduct%20and%20the%20annual%20Review%20of%20its%20Effectiveness%20(Final).pdf)> accessed 14 June 2019.

RCG's detractors on the other hand might argue that in regulatory terms it is something of a 'Potemkin Village' - ie., it has an attractive facade but not much of substance behind it. However, if the RIP interviewees are representative then such detractors actually tend to be ExecRemConsultants who are split three ways between those who consider RCG is a 'cartel', that it does not actually influence their advisory work or that RCG 'should do more'. There is some press criticism of RCG, as noted in Chapters 2 and 5 above (but the CGI, HPC and ERWG Final Report, for example, make only limited reference to RCG's activities).

It is not altogether surprising there is relatively modest appetite for change expressed by RIP interviewees, and UK commentators generally, in respect of significant revisions to RCG (and its VCC) and also regarding the possible introduction of a SA/Q and/or LTP for ExecRemConsultants (yet alone CoyExecRemSpecialists). RCG is mentioned to a minor extent in the 2014 LLM dissertation, but does not feature as one of the BSI recommendations. Although ExecRemConsultants' (and CoyExecRemSpecialists') 'professional standards' are both discussed in such dissertation and, indeed, comprise one of the BSI, the thrust of the latter is that 'short-termism', LTI design, 'rewards for failure' and corporate ethics/behaviour are far more pressing concerns than the activities of ExecRemConsultants/CoyExecRemSpecialists.

Although ExecRemConsultants/CoyExecRemSpecialists are clearly important to the RemCo pay determination process, which in turn is a key component of what commentators refer to as the 'UK executive pay problem' - and has implications for 'responsible capitalism' - few would claim that the activities of ExecRemConsultants (yet alone CoyExecRemSpecialists) are the 'predominant problem'. Having said this, high 'professional standards' in RemCoAdvisory Services is undoubtedly a valuable component in the RemCo pay determination process - and RemCo decisions that in turn contribute to 'responsible capitalism'.

### **6.2.2. Conclusions: RITG1 (and RITGST1-4) Aspect**

Set out below are comments on the three relevant RITG1 aspects together with the four attendant RITGSTs.

#### *UKRemCoAdvisoryScene*

The views of the respective categories of interviewee (ie., 'job roles') were mixed; therefore, there was no 'common line' taken by ExecRemConsultants or RemCoChairs/Members, for example. Having said this, 'Negative' comments focused on 'independence' concerns regarding ExecRemConsultants and 'Positive' ones on the beneficial impact of the 2013 Reforms, plus the sound quality/strong 'professional standards' of ExecRemConsultants.

The RIP findings complement the views of Bender,<sup>748</sup> Main,<sup>749</sup> Bender,<sup>750</sup> Adamson et al,<sup>751</sup> Bender & Franco-Santos<sup>752</sup> and de Gannes.<sup>753</sup> ExecRemConsultants are key players in RemCos' determination of executive pay packages. However, ExecRemConsultants' overall influence is variable and needs to be put in the context of other factors, such as RemCo processes and decision-making, executive pay regulation and soft law codes/institutional shareholder body guidelines.

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<sup>748</sup> Bender (n 22).

<sup>749</sup> Main et al (n 4).

<sup>750</sup> Bender (n 41).

<sup>751</sup> Adamson et al (n 42).

<sup>752</sup> Bender & Franco-Santos (n 43).

<sup>753</sup> de Gannes (n 44).

Main's argument, that there is an 'unsocialised view' of executive pay practices,<sup>754</sup> is mentioned with approval by de Gannes. She refers to 'bringing the "social" in'.<sup>755</sup> Adamson et al<sup>756</sup> consider that the 'professionalisation' of ExecRemConsultants can best be understood in the overall context of the UK RemCo remuneration determination process. This includes what de Gannes calls 'the dynamic processes' of pay design and governance.<sup>757</sup> She considers this is based on 'the social interactions amongst key actors involved in these processes'.<sup>758</sup>

What might happen if the present generation of professionally qualified (eg., CA, CTA, Actuary or Lawyer) ExecRemConsultants is largely succeeded by 'direct entrant' ones who have neither professional qualifications nor (arguably just as, or even more, important) the directly related previous work experience of the current really senior ExecRemConsultants? It could be argued that provided such 'direct entrants' undergo appropriate training (along 'apprenticeship' lines, with senior mentors/supervision) this should prove satisfactory. It may indeed be possible to provide such training, and to instil appropriate ethics within 'direct entrants', for 'risk averse/compliance'-type RemCoAdvisory Services.

However, future Practice Leader/'star' ExecRemConsultants who are required by RemCos to provide genuinely innovative, highly business/people - focused executive remuneration advice will probably continue to feature strongly those ExecRemConsultants who are professionally qualified (including MBAs for this purpose) and/or have directly related work experience.

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<sup>754</sup> Main et al (n 5).

<sup>755</sup> de Gannes (n 44) 11.

<sup>756</sup> Adamson et al (n 42) 13, 21.

<sup>757</sup> de Gannes (n 44) 201.

<sup>758</sup> *ibid* 11.

The Big Four appear to be anticipating this already in their policy of channelling their 'direct entrants' into qualifying as CA or Actuary (as part of their career development as ExecRemConsultants), and the ABC firms in their present hiring practice of recruiting ExecRemConsultants with professional qualifications and/or previous directly-related work experience for their 'non-direct entrant' positions (whereas 'direct entrants' into ABC firms tend not to take professional examinations once in post).

### *GI&O*

There were split views from RIP interviewees in respect of ExecRemConsultant 'independence'/COI. Not surprisingly though, the view from ExecRemConsultants was overwhelmingly 'Positive'. However, Bender & Franco-Santos had noted that certain of their ExecRemConsultant interviewees, despite claiming their complete 'independence', accused other firms' ExecRemConsultants of being less so.<sup>759</sup> There are echoes here of the 'unsolicited benchmarking' allegations that surfaced in ERWG Final Report,<sup>760</sup> in that whereas ExecRemConsultancy firms/ExecRemConsultants do not admit in the latest RCG survey to providing 'unsolicited benchmarking' reports, 4.69 percent of that survey's 'RemCo Sample' respond they have in fact received such advice.<sup>761</sup>

Another spin on the 'independence' argument is that RIP interviewees stressed 'independence' is not simply an issue of whether ExecRemConsultants manage COI effectively. The particular lead ExecRemConsultant's objectivity/independence of mind is just as important. The COI challenges would not disappear even if all UK RemCoAdvisory Services were provided by Boutiques. Indeed, RIP interviewees generally

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<sup>759</sup> Bender & Franco-Santos (n 43) 16.

<sup>760</sup> ERWG Final Report (n 279).

<sup>761</sup> RCG, '2017 The Biennial Review of Code of Conduct and Annual Review of its Effectiveness' (n 645) 13.

argued that Boutiques have just as serious, but somewhat different, COI challenges as Big Four and ABC firms.

The RIP interviewees were generally 'Positive' about the current mix of Big Four, ABC and Boutiques, and with the current COI situation - but the dominance in the UK of firms other than Boutiques (compared to the US) makes it all the more vital that high 'professional standards', plus robust terms of engagement/codes of business and RCG, serve as effective bulwarks.

The UK arguably has a 'competitive oligopoly'<sup>762</sup> situation in that there are far fewer Boutiques than in the US - although many would argue that this is balanced to some extent by the UK having two of the Big Four in the top three UK RemCoAdvisory providers, whereas in the US the Big Four do not major on offering CompCoAdvisory Services and many of the ExecCompConsultants formerly working in ABC firms now reside in Boutiques. Again, as mentioned earlier, the UK situation appears to be working reasonably well - but, as with RCG, there is the danger that exogenous events could cause more serious problems than might otherwise be the case.

### *WorkingRelationshipsRemCo/ExecRemConsultants*

There was a generally 'Positive' response from RIP interviewees in respect of RemCo/ExecRemConsultant working relationships, but there were also views in a more 'Negative' vein. For example, ERWG Final Report exhorts RemCos not to be 'over-reliant' on their ExecRemConsultants<sup>763</sup> and suggests that their appointment should be 'regularly put out to tender'.<sup>764</sup> The flavour from his ROO interviewees was that they remain wary of ExecRemConsultants acting as 'advocates' in shareholder consultation meetings on new incentive scheme

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<sup>762</sup> Conyon (n 108); Bender (n 22); HPC n 48) and (n 533).

<sup>763</sup> ERWG Final Report (n 279) 21, 22.

<sup>764</sup> *ibid* 18

proposals - to the point in some cases where ExecRemConsultants were permitted to attend such meetings only if they did not participate in the discussions.

It has been noted already that, with the exception of papers such as Bender & Franco-Santos's study,<sup>765</sup> the academic literature obviously covers but does not really focus on RemCos' working relationship with ExecRemConsultants. Although Bender<sup>766</sup> cites books written by ExecCompConsultants (eg., Hodak and Liberman)<sup>767,768</sup> these contain views based on personal experience (and major on 'Negative' aspects) rather than qualitative research. Bender & Franco-Santos's qualitative study sets out a rather more nuanced position, which is similar to the picture painted by his RIP interviewees (although Bender & Franco-Santos finish on the note of caution already mentioned).<sup>769,770</sup>

Not all ExecRemConsultancy firms and individual ExecRemConsultants are the same by any means - in exactly the same way as RemCos differ. As Bender & Franco-Santos state:

Corporate governance is more about board culture and attitudes than it is about the structures of independence that are the focus of many commentators and regulators.<sup>771</sup>

It obviously helps to have a framework/structure for RemCo/ExecRemConsultants' working relationships/interaction. This is provided by UKCGC and various other soft law guidance, together with RCG's VCC. Qualitative research is also useful in exploring the 'inputs' into the

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<sup>765</sup> Bender & Franco-Santos (n 43).

<sup>766</sup> Bender (n 22); Bender (n 41); Bender

<sup>767</sup> Bender (n 22) 395.

<sup>768</sup> Liberman (n 185).

<sup>769</sup> Bender & Franco-Santos (n 43).

<sup>770</sup> *ibid* 19.

<sup>771</sup> *ibid*.

RemCo pay determination process. The working relationship between RemCos and their appointed ExecRemConsultants has changed significantly since the 2013 Reforms were enacted - the stakes are now higher for all parties in that the level of transparency and accountability has increased (and institutional shareholders appear more willing on occasion to exercise their voting powers).

These reforms, together with UKCGC provisions regarding annual re-election of Directors (introduced in 2010),<sup>772</sup> have meant that shareholders have multiple opportunities to express their views on pay issues (even without a SABV). This has made the role of the appointed ExecRemConsultant even more important to RemCos - to the point where one of the RIP interviewees considered that the advice provided is 'almost relationship advice'. Another ExecRemConsultant interviewee took the view that his RemCoAdvisory work was 'almost 10 percent technical and 90 percent political', whereas a RemCoChair interviewee acknowledged the impact of the 2013 Reforms in two ways. Firstly, the binding vote on remuneration policy had implications on the importance to the RemCo of the ExecRemConsultants advice in this regard and, second, that the level of professional fees charged had risen considerably - to reflect the ExecRemConsultant's work and responsibility.

### *SVExecRemConsultants*

Labour's SVExecRemConsultants Proposals surfaced unsuccessfully in 2008/2009 (in connection with 'Big Banks'),<sup>773</sup> and again in 2013 (for UK publicly listed companies more generally).<sup>774</sup> The RIP interviewees were unanimously 'Negative' on the issue. It could be that rather like 'independence' concerns, SVExecRemConsultants was a concept whose genesis lay in the post-GFC febrile atmosphere - which has improved

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<sup>772</sup> *Walker Review Final Recommendations* recommended that Bank CoyChairs should stand for re-election each year. Such re-election was introduced on a 'comply or explain' basis in UKCGC 2010, 'Preface', 8 <<https://www.frc.org.uk>> accessed 31 January 2019.

<sup>773</sup> Labour's SVExecRemConsultants Proposals (n 51).

<sup>774</sup> *ibid.*

significantly since, probably due to the introduction and ongoing operation of RCG (and its VCC), the enactment of the 2013 Reforms and RemCoChairs 'taking control' of the pay determination process/shareholder consultation meetings. Anyway, even HPC and Umunna do not currently include SVExecRemConsultants as being amongst their respective key issues - and the concept did not attract any 'mainstream support' in CGI submissions and findings.

It may be the case that the most likely way SVExecRemConsultants would become a live issue again is if some type of Shareholder Committee (see Philp and Umunna above) were to be set up with review (or stronger) powers over Directors' remuneration. But if this happened the SVExecRemConsultants issue would probably be subsumed into giving the Shareholder Committee overall responsibility for Directors' remuneration. This would entail a fundamental change though - because the appointed ExecRemConsultant's duty would not lie (as now) with advising the RemCo but would instead be to a Shareholder Committee (with key shareholder membership - and, depending on whether Philp's,<sup>775</sup> or Umunna's,<sup>776</sup> proposals were adopted, to WOB being formally part of the Shareholder Committee or in attendance).

### *SABV*

Again, RIP interviewees were overwhelmingly 'Negative' on SABV. The broad thrust of interviewees' comments was that shareholders' current voting opportunities were sufficient; ie., annual binding vote on re-election of Directors, binding vote on the introduction of LTIs (involving newly-issued shares, or existing shares where the performance measurement period exceeds a single financial year), annual advisory vote on Directors' remuneration paid and a triennial binding vote on Directors' remuneration

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<sup>775</sup> Philp (n 96).

<sup>776</sup> Umunna 2018 (n 389).

policy. Indeed, if within such stipulated three-year period an annual advisory vote on Directors' remuneration is not carried, then a new remuneration policy binding vote is triggered in the subsequent financial year. Accordingly, it can be argued that the issue is now really more to do with how such voting powers are actually used in practice.

The concept of SABV sounds so straightforward it is not surprising that HPC, Philp, Umunna and others are devotees. Although the interaction between service contract terms and a subsequent SABV can in principle be addressed satisfactorily (see Philp's proposals in this regard),<sup>777</sup> the Conservative Government eventually decided to remove SABV from its original *Green Paper* 'menu choice' of potential corporate governance reforms.<sup>778</sup>

Such decision met with some criticism but is understandable - not just on a *priori* grounds (for example, if EDs believe they may not receive particular payments in due course there is likely to be pressure for the overall package to be larger - to reflect the risk concerned), but also in the circumstances of Government's lack of an overall majority and other pressures (such as, 'Brexit').

## *PRD*

The RIP interviewees were strongly 'Negative' on PRD. This was not surprising, as the interviewees comprised a 'broad church' of 'job roles' representing protagonists actually involved in the UK executive remuneration scene. They were/are on the 'front line' of executive remuneration determination and governance, whereas the proponents of PRD tend to be politicians (such as, Government and the BEIS Select Committee on CGI), pressure groups/think tanks (eg., HPC) and the media.

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<sup>777</sup> Philp (n 96).

<sup>778</sup> *Government Response* (n 70).

Such politicians/commentators saw Government's proposals for disclosure of CEO and workers' pay (expressed as a ratio) as being part of an ongoing mission both to reduce/stabilise CEO pay and to raise that of the lower paid members of the workforce. Seen from such perspective (which is echoed, regarding the former, in the US context) it is easier to understand the perceived logic of the now enacted PRD - it focuses on injecting publicity/transparency/'shaming' into the 'public debate' in the hope that this will modify management's expectations/demands and RemCo decisions in this regard. In effect, it is a variant of the 'outrage constraint'.

In the US, where the most recent Proxy Season has been the first in which PRD has been in force, the result in the eyes of many commentators has been to demonstrate the limitations/rather absurd results arising from the methodology for calculating the ratio and the wildly differing figures from various business sectors - it has had limited effect in public perception terms.<sup>779,780,781</sup> The risk from a UK perspective is that the public 'outrage' caused by the publication of PRD figures will merely heighten calls for further regulation of executive pay (rather than actually ameliorating 'outlier' amounts paid), which could have unwelcome side effects.

It is understandable why Government should arguably wish to play the 'populist card' with PRD but, as mentioned already, executive pay levels (save for some admittedly egregious 'outliers', particularly in the higher reaches of the FTSE 100 and exceptional cases, such as Persimmon) have actually stabilised/been reducing in recent years.

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<sup>779</sup> Deb Lifshey (PM), 'The CEO Pay Ratio: Data and Perspectives from the 2018 Proxy Season' (*Harvard Law School Forum on Corporate Governance and Financial Regulation*, 14 October 2018) <<https://corpgov.law.harvard.edu/2018/10/14/the-ceo-pay-ratio-data-and-perspectives-from-the-2018-proxy-season/>> accessed 30 January 2019.

<sup>780</sup> Financial Times Lex (n 496). For a UK perspective on PRD, see Sarah Gordon, 'New rules set to end secrecy of executive pay ratios' *Financial Times* (London, 23 April 2018).

<sup>781</sup> Lex had indicated three weeks previously that in relation to Twitter the ratio investors in US 'Tech Groups' should be really concerned about is the 'alarming amount of stock that has been distributed to other employees [ie., excluding founder/CEO Jack Dorsey] diluting external shareholders'. Financial Times Lex Column, 'Tech pay: getting shirty' *Financial Times* (London, 8 May 2018). For an academic article critical of US PRD, see Steven Bank and George Georgiev, 'Securities Disclosure as Soundbite: The Case of CEO Pay Ratios' (2019) 60 *Boston College Law Review* <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3324882](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3324882)> accessed 5 March 2019.

The views of Vincent<sup>782</sup> and Hosking<sup>783</sup> (in commenting on the recent FRC revisions to UKCGC) have considerable relevance. These include improvements; such as, five-year periods from LTI award date to disposal of shares and ensuring RemCos have discretion to reduce incentive plan payouts to override formulaic calculations.<sup>784</sup> The latter applies to RemCo decision-making, and can be contrasted against concepts such as PRD, which may actually be counterproductive.

It is interesting that the original UK proposal to use 'average' workers' pay in the PRD calculation (rather than the 'median' figure used in the US), would have resulted in considerably lower ratios. Anyway, the UK legislation was enacted on the basis of comparing the CEO 'single total figure of remuneration' against, respectively, the lower quartile, median, and upper quartile of the company's UK worker population. Average figures would have been easier to calculate. Indeed, they already exist in the 'Gender Pay Disclosures'. It is easy though to have some sympathy with Mercer's view that if PRD had to be introduced it would have been more useful to structure the comparison on the basis of not having a ratio that directly compares CEO against that of the workforce.<sup>785</sup>

## WOB

The comments of RIP interviewees were generally 'Negative' regarding WOB. Whereas Government's PRD proposals were enacted in broadly unchanged form, its WOB ones morphed over time into a pale shadow of the original proposal to make it mandatory for companies to appoint a worker onto the

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<sup>782</sup> Matthew Vincent, 'Carillion shows why it pays to make executives wait for their bonus' *Financial Times* (London, 17 July 2018). See also Caroline Binham & Madison Marriage, 'FRC aims to make bosses retain shares' *Financial Times* (London, 16 July 2018).

<sup>783</sup> Patrick Hosking, 'Rocketing pay and scandals persist despite regulators' best intentions' *The Times* (London, 17 July 2018).

<sup>784</sup> UKCGC (2018) (n 18). See Charlotte Fleck, 'The new code enhances the use of discretion on pay', ICSA (28 August 2018) <<https://www.icsa.org.uk/knowledge/governance-and-compliance/features/new-code-enhances-discretion-on-pay>> accessed 30 January 2019.

<sup>785</sup> Mercer (n 505).

BOD.<sup>786</sup> The latter contained shades of the Bullock Report forty years on.<sup>787</sup> Such etiolated outcome is not surprising because the unitary BOD structure, where NEDs have both business strategy and monitoring roles, and NEDs representing 'special interests' (such as, a key shareholder) are rare, does not lend itself naturally to the WOB concept.

FRC's revised UKCGC requires firms (for financial years starting on or after 1 January 2019) to formalise 'employee engagement' in one of three ways - an 'employee director' (ie., actually appointed to BOD), establishing a workforce advisory panel or having an NED who has designated responsibility for employee engagement.<sup>788</sup>

One can surmise that Government saw the WOB concept in similar terms as PRD. It was a way to promote a broader insight into RemCo decision-making. The latter two employee engagement routes set out above are unlikely to cause concern to UK publicly listed companies and may actually be useful contributions to overall governance, but formal WOB status (ie., BOD appointment) would be far more controversial. Its supporters argue that the workforce, as key stakeholders in their employing company, should participate in BOD decision-making, whereas opponents point to Germany's WOB on the Supervisory Board and how this may not work well in practice. (eg., at VW).<sup>789</sup>

To be fair though one needs to examine whether particular 'block shareholdings' in combination with WOB in a Supervisory Board context are the issue or if the latter is a problem even without the former. Edmans argues however that 'employee representation in firm governance reduces firm values

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<sup>786</sup> Comparing *Green Paper* (n 71) through *Government Response* (n 70) to provisions in UKCGC 2018 (n 18).

<sup>787</sup> HMSO, *Report of Committee of Inquiry on Industrial Democracy* (Cmnd 6706, 1977). See Carr's criticisms of the Bullock proposals on WOB, HL Deb 23 February 1977, vol 380, cols 179-355 <<https://api.parliament.uk/historic-hansard/lords/1977/feb/23/industrial-democracy-bullock-report>> accessed 31 January 2019.

<sup>788</sup> UKCGC (2018) (n 18).

<sup>789</sup> For VW-specific articles, see (n 446-449). Also see Financial Times Leader Editorial *Financial Times* (London, 9 September 2016) (n 446).

and productivity, growth and new job creation', but accepts that 'long-term value maximisation requires the involvement of all stakeholders'.<sup>790</sup>

### **6.2.3. Conclusions: RITG2 (and RITGST5) Aspects**

Set out below are comments two RITG2 aspects; together with its attendant RITGST5.

#### *Big Four, ABCs and Boutiques*

RIP interviewees were generally 'Positive' on this aspect, but there were some 'Negative' comments - with the latter focusing on whether the Big Four should actually be in the ExecRemConsultancy business (even if not the appointed external auditor of the company concerned) due to the likelihood of COI arising. Generally though, interviewees' comments regarding the Big Four's involvement in ExecRemConsultancy were complimentary (regarding both high 'professional standards' and the quality of the ExecRemConsultants concerned). This is hardly surprising in light of HPC's finding that the Big Four (ie., Deloitte and PwC) comprise two of the top three UK ExecRemConsultancy providers (by fees charged – based on HPC's sample companies).<sup>791</sup>

There is the contrasting US:UK position - where Boutiques dominate the former (with some ABC firms now devoting much of their efforts to advising executive management, rather than CompCo, and the Big Four not majoring on the CompCoAdvisory business), whereas the Big Four and ABC firms are dominant in the UK.

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<sup>790</sup> Edmans (n 3) and in Purposeful Company Report (n 89).

<sup>791</sup> HPC (n 48).

The RIP interviewees seemed content with the fact that UK Boutiques had been acquired by Big Four/ABC firms, particularly where the original brand name/ExecRemConsultants had simply continued both for marketing and advisory service delivery purposes (as opposed to being totally subsumed within the acquiring entity). It was hard to detect an appetite/demand for more/bigger UK Boutiques.

One ExecRemConsultant interviewee considered that Big Four/ABC firms were best placed to advise complex, global companies with their broader service offerings than Boutiques ('one-stop-shop' considerations). More than one interviewee though posed the question whether the Big Four would remain in the RemCoAdvisory business if DSOtherServicesFees were to be introduced in the UK. The rationale being that fees charged in respect of RemCoAdvisory Services are tiny in terms of Big Four overall fee income levels and much larger, key parts of Big Four's operations might well balk at the requirement to disclose their fee income levels.

Despite HPC's concerns over Big Four/ABC firms' COI and the absence of DSOtherServicesFees, it would appear unlikely, from the comments of RIP interviewees, that the UK will turn away from the dominance of the Big Four/ABC firms in the provision of RemCoAdvisory Services unless one or both of two things happen. The first is if the UK were to follow US practice in relation to the Big Four not being major players in the CompCoAdvisory business and the second - also in line with the US - is if DSOtherServicesFees were to be introduced.

The potential effect of the latter in particular probably weighed upon the minds of the relevant parties; namely, Government - in respect of the 'last minute' removal of DSOtherServicesFees contained in the draft 2013 Reforms<sup>792</sup> - and the institutional shareholders - in the case of the DSOtherServicesFees

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<sup>792</sup> BIS Consultation (n 103).

proposals no longer being included when ERWG Interim Report became its Final Report.<sup>793</sup> The discontinuance of the Big Four and/or ABC firms from the UK RemCoAdvisory marketplace would be far more disruptive than what occurred in the US when the ABC firms spun-out major parts of their CompCoAdvisory Practices.

The UK would need, in effect, to build a new RemCoAdvisory capability without having the US advantages of well-established Boutiques to which newly established ones could simply be added into the marketplace. It is possible as well that, particularly in respect of financial services advice, the most senior ExecRemConsultants already working in UK Big Four firms might prefer to continue providing advice to executive management from within those firms rather than establishing new Boutiques.

### *COI/ExecRemConsultants*

RIP interviewees were generally 'Positive' in relation to potential/actual COI, but there were some 'Negative' stances. Boutique firms, not unsurprisingly, focused on their 'partner-led' approach rather than simply stressing the COI/'independence' angle - reflecting that not only do Boutiques have their own 'independence' challenges but also that whether one is talking about Big Four, ABCs or Boutiques the individual ExecRemConsultants play a really significant role as well.

Bender & Franco-Santos mention the 'independence counter-argument' - that Big Four/ABC firms may be less likely to put their entire business at risk.<sup>794</sup> Some CoyExecRemSpecialist RIP interviewees were unconcerned about COI for Big Four firms 'it's so much larger than anything for RemCo advice' - and, in fact, perceiving more risk regarding a Boutique firm. Others reflected were of the opinion was that ExecRemConsultants were so different in personality

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<sup>793</sup> ERWG Final Report (n 279).

<sup>794</sup> Bender & Franco-Santos (n 43).

from other staff in Big Four/ABC firms that, in the words of a CoyExecRemSpecialist interviewee 'there is a kind of Great Wall of China rather than a Chinese Wall built inherently in the practices'.

It was discussed earlier in this thesis the ongoing UK debate about whether the Big Four might be split-up, far more in an audit connection than an ExecRemConsultancy one. If there were to be such a 'split' then it seems likely ExecRemConsultancy would remain in the Consultancy part of the business.<sup>795</sup> In principle therefore, a 'split' would not of itself mean that the Big Four would no longer be in the ExecRemConsultancy business. This would happen though, irrespective of a 'split', if the Big Four were to be prohibited from, or simply decided to exit, RemCoAdvisory work.

Given RCG's VCC contains protocols for managing COI, plus ExecRemConsultancy firms having terms of engagement in place with client companies (which include how best to manage actual/potential COI) and that individual ExecRemConsultants at the most senior level currently tend to have professional qualifications anyway (ie., they are subject to the rules of their respective professional bodies), the RIP interviewees appeared generally comfortable from a COI perspective with the present UK position.

This could of course change if there were to be a COI-related 'scandal' and/or one of the situations mentioned above came to pass, but for the moment even HPC focuses on DSOtherServicesFees / greater transparency / adherence to EU Directives on the proportion of non-audit work Big Four firms can undertake compared to that of their Audit Practices,<sup>796</sup> rather than simply pushing for Big Four/ABC firms to exit the RemCoAdvisory business.

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<sup>795</sup> See references to CMA, Kingman and Brydon proposals in Matthew Vincent, 'Big Four accountants aim to become a cartel of the unconflicted' *Financial Times* (London, 31 January 2019). This includes CMA's proposed legal separation of CA's audit and non-audit services. Auditors' continuing 'auditing problems' remain strongly in the headlines; for example; Madison Marriage, 'Auditors do not look for fraud, says Grant Thornton' *Financial Times* (London, 31 January 2019), where a rival auditor [ie., to Grant Thornton] is quoted as referring to the Grant Thornton CEO's appearance before the BEIS Select Committee as being a 'car crash'.

<sup>796</sup> HPC (n 48) 11; HPC (n 533).

## *DSOtherServicesFees*

The views of RIP interviewees in relation to the possible introduction of DSOtherServicesFees were generally 'Negative', but with some 'Positive' stances. Even among ROO interviewees and RemCoChairs/RemCoMembers the issue was not high on their agenda - although there was some speculation about what might happen if DSOtherServicesFees were to be introduced in the UK, with the Big Four perhaps moving to advising executive management rather than RemCos 'because the private equity side or property side of the business [ie., of Big Four firms] would not want to see fees disclosed'.

There was acceptance that DSOtherServicesFees would have significant implications for Big Four/ABC firms - despite the fact that such firms manage to cope perfectly satisfactorily already where there is a full disclosure requirement for the client company having a secondary listing in a particular territory.

Discussion of DSOtherServicesFees needs to be considered in light of the 'unbundling' earlier in this thesis of the issues regarding these. Part of the debate should be whether proper disclosure is currently being made under the present regulations. HPC considers it is not<sup>797</sup> - and it can be questioned whether the ascribed fee figures for RemCoAdvisory Services disclosed in DRRs take too narrow a view of what is appropriately designated as being RemCo advice and that in respect of members of executive management who are not on BOD.

It is hard to dismiss in principle the argument that DSOtherServicesFees is in shareholders' interest - as it would assist shareholders' assessment of the 'independence' of the ExecRemConsultants advising RemCo. Given that RemCos, under the relevant RCG VCC provisions, already know the

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<sup>797</sup> HPC (n 48) 7.

approximate annual 'split' between RemCoAdvisory fees and DSOtherServicesFees,<sup>798</sup> it is perhaps right to be sceptical about arguments along the lines that preparing the necessary figures for DSOtherServicesFees would be particularly burdensome for client companies.

Having said this, RIP interviewees did not place a high value on the potential benefits of DSOtherServicesFees being introduced. Additionally, although DSOtherServicesFees has twice previously been on the 'radar screen' it seems unlikely it will be introduced in the UK - at least in the short to medium term (despite pressure from HPC and others). If DSOtherServicesFees were to be introduced this would be likely to have a significant effect on the RemCoAdvisory business.

#### **6.2.4. Conclusions: RITG3 Aspects**

Set out below are comments on the two RITG3 aspects.

##### VCC

RIP interviewees were more generally split between 'Positive' and 'Mid-position' about the UK's self-regulatory regime for RemCoAdvisory Services, and there were significant 'Negative' stances as well. Interestingly, the strongest of the latter were from those ExecRemConsultants who were critical of self-regulation as a concept, together with how/why RCG had come into being and its ongoing operation.

Although FairPensions had argued both in 2009<sup>799</sup> and 2011<sup>800</sup> for the 'Consultants Code' to be overseen by FRC (on the same footing as now for UKCGC and UKSC), this needs to be considered in the context of

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<sup>798</sup> RCG's VCC, 'Transparency', Good Practice Guideline 12 (n 560).

<sup>799</sup> *Executive Remuneration Discussion Paper*, Berry/FairPensions (n 603).

<sup>800</sup> *ibid.*

FairPensions also advocating that RemCoAdvisory Services should be provided by firms that have no other business connections with the client company concerned (and FairPensions also being in favour of SVExecRemConsultants).<sup>801</sup> It would however appear that FRC's appetite for supervising RemCoAdvisory Services/ExecRemConsultants is currently no greater now than previously (and the matter was not even mentioned in the FRC's recent review of UKCGC).

In light of it seeming likely that the present UK self-regulatory regime for RemCoAdvisory Services is going to continue unchanged - at least for the foreseeable future - discussion/findings in the relevant academic literature and other sources were explored to assess whether views have changed significantly since 2009. The aim was to see if, in respect of ExecRemConsultancy/ExecRemConsultants, there was at least a nascent trend away from self-regulation to the more formal State-sponsored variety.

In short, it was not possible to find evidence supporting such a trend. This is not surprising - considering the comments of RIP interviewees, together with Bender's view that ExecRemConsultants, in the face of COI allegations, take steps 'to maintain their own legitimacy'.<sup>802</sup> Bender maintains that ExecRemConsultants aim to 'foresee changes in the environment and adapt to these before they become serious'.<sup>803</sup>

This appears only logical. As indicated by Bender & Franco-Santos,<sup>804</sup> the inception and ongoing operation of RCG shows ExecRemConsultancies/ExecRemConsultants adapting to the post-GFC's more risk-averse and transparent environment, particularly since the enactment of the 2013 Reforms. Another example given by Bender is the US spin-offs into Boutiques - following the introduction of the SEC provisions on

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<sup>801</sup> *ibid* 6.

<sup>802</sup> Bender (n 22) 394.

<sup>803</sup> *ibid*.

<sup>804</sup> Bender & Franco-Santos (n 43) 16, 15.

fee disclosure/DSOtherServicesFees.<sup>805</sup> Indeed, Bender points out how crucial it is for ExecRemConsultants to address 'independence' issues.<sup>806</sup> The reason for RemCoAdvisory Services being provided is to ensure independent (and expert) input into RemCo pay determination process.

It is 'independence' which, in Bender's view, 'provides some legitimacy for the outcome'.<sup>807</sup> In essence, what Bender is emphasising is that ExecRemConsultancy/ExecRemConsultants need to be constantly on the alert for issues that might challenge the self-regulatory regime - assuming for the moment that the RIP interviewees' overall support for the self-regulatory regime is echoed more broadly, the RIP interviewees were certainly not supportive of the present regime being replaced by a State-sponsored one (eg., for CA, CTA, Actuary or Lawyer).

This is particularly the case because the UK's self-regulatory regime (in the form of RCG and its VCC) is even more a type of 'starter' or 'trainer wheels' self-regulation than the sort introduced into financial services at the time of Big Bang (ie., the SROs). In a sense, what accompanies the arguably privileged self-regulatory status of ExecRemConsultancy/ExecRemConsultants as it currently exists is the awareness/willingness on the part of ExecRemConsultants to ensure that successful bulwarks are operated against any challenges howsoever arising.

Perhaps those in the 'Negative' camp (who consider, for example, that 'self-regulation is akin to self-serving') should bear in mind that if the voluntary self-regulatory regime were to be removed it would be far more likely to be replaced by State-sponsored regulation, as opposed to returning to the pre-2009/2010 position of there being no regulatory regime.

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<sup>805</sup> Bender, (n 22) 372, 394.

<sup>806</sup> *ibid* 370, 394.

<sup>807</sup> *ibid* 395.

The consensus view of RIP interviewees was broadly that the UK's self-regulatory regime, despite being something of a 'forced sale' on ExecRemConsultancies/ExecRemConsultants, has been reasonably successful to date in this regard. The challenge is that the self-regulatory regime needs to be considered in conjunction with the respective COI challenges of an arguably 'competitive oligopoly' of Big Four/ABC firms dominating the marketplace for publicly listed company RemCoAdvisory Services and the broader picture of perceived 'high pay/rewards for failure' being potential threats to social cohesion. In other words, the self-regulatory regime could be swept away even though it may up to that point have been working reasonably well on its own terms.

### *RCG*

RIP interviewee comments on RCG were preponderantly 'Mid-position', but some 'Positive' and 'Negative' ones were expressed as well. Whereas interviewees' views on the self-regulatory regime tended to be rather more 'Positive' overall, the ones on RCG featured more dispersion (in both 'Positive' and 'Negative' directions). Accordingly, stronger views were expressed at both ends of the spectrum.

Mid-position' and 'Positive' stances (ie., those in favour of leaving RCG as it currently stands in terms of scope and permitted membership) emphasised:

- The perceived lack of need/demand for State-sponsored regulation (by, for example, interposing the PRA or FCA),
- The 'tiny profession' nature of ExecRemConsultants advising RemCo - both in respect of the small number of senior ExecRemConsultants and the overall level of fees generated,

- That the combination of RCG's VCC, terms of engagement with clients, regulation of ExecRemConsultancy firms and, indeed, of individual senior ExecRemConsultants who were professionally qualified (as CA, CTA, Actuary or Lawyer) meant that effective defences were in place regarding COI, ethics and technical compliance/training, and
- Whether RCG in its current form/funding could actually cope with 'doing more'.

The 'Negative' comments majored on the perceived ineffectiveness/lack of relevance of RCG and its VCC to their day-to-day consulting activities. 'Negative' comments however, were split between those expressing outright hostility to RCG ('the RCG is a cartel obviously') and those who viewed RCG as complacent ('not listening to the vast majority of people out there') or ineffective ('about as effective as hiding the Taj Mahal by sticking a bowler hat on its roof (during the daytime)').

It was noted that whereas the 'outright hostility' comments implied that RCG should not exist at all, the 'complacent'/'ineffective' comments quoted came from a CoyExecRemSpecialist who wanted RCG 'to do more' (specifically in effecting culture change in certain ExecRemConsultants' behaviour).

References to RCG in the academic literature (such as, Bender,<sup>808</sup> Adamson et al<sup>809</sup> and Bender & Franco-Santos<sup>810</sup>) are informative on RCG's inception and ongoing operation, but are somewhat tangential to other issues that are explored / discussed. Much the same can be maintained in respect of HPC - it refers to RCG in the context of annual report disclosure that the appointed advisors to RemCo are members of RCG.<sup>811</sup> The same applies even more

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<sup>808</sup> Bender (n 22).

<sup>809</sup> Adamson et al (n 42).

<sup>810</sup> Bender & Franco-Santos (n 43).

<sup>811</sup> HPC (n 48) 6.

strongly to the ERWG Final Report (the reference is only to 'unsolicited benchmarking reports')<sup>812</sup> and Philp (who does not mention RCG at all).<sup>813</sup>

It will be recalled that in Chapter 5.2.5. above, it is proposed that RCG should consider making certain changes in respect of the ambit of its activities/VCC. Although there is currently no general clamour of discontent regarding RCG's ongoing operations/activities, it is submitted that RCG/ExecRemConsultancies/ExecRemConsultants should guard against being open to any potential accusations of being 'careless with self-regulation'.

#### **6.2.5. Conclusions: RITG4 Aspects**

Set out below are comments on the four RITG4 aspects.

*E/PS*

The RIP interviewees were generally split between 'Positive' and 'Mid-position' comments, but with some 'Negative' ones. The consensus view though was that even though ExecRemConsultancy as a business/industry may have issues (eg., in relation to COI) these were not primarily due to low ethical/'professional standards' of ExecRemConsultants. Indeed, E/PS were generally seen as being of a high level - with Big Four/ABC firms being noted as having a 'strong professional standards culture'.

RIP Interviewees put ExecRemConsultants closer to the 'management/strategy consultants' than the 'new professions', on the 'professions continuum'. They referred to ExecRemConsultants having duties to RemCo (ie., similar to management/strategy consultants' duties/obligations

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<sup>812</sup> ERWG Final Report (n 279).

<sup>813</sup> Philp (n 96).

to the BOD). There was also reference to ExecRemConsultants working in multi-disciplinary teams and having 'a fairly strong moral compass' plus being 'comfortable working within conflicts'.

A CoyExecRemSpecialist RIP interviewee noted that there are two types of ExecRemConsultant - those who 'were there for the intellectual challenge' and 'another group (...) because they are on a power trip'. Other comments were - 'you need a hinterland of experience' and 'it's about emotional sensitivity and EQ rather than IQ as well'.

The consensus view was that ExecRemConsultancy involves considerable 'political'/'relationship' advisory skills. This all leads to the view that ExecRemConsultancy is far more 'business advice' (an interviewee called it 'a specialised form of management consultancy') as opposed to being a 'new profession' (yet alone a 'liberal' one). A RemCoChair interviewee made the point that what is really important is 'professional behaviour' rather than focusing on professional qualifications.

'Negative' comments of RIP interviewees majored on allegations of 'bad practice and some wrong mindset in the industry' and the use to which professional experience is put (ie., 'sustainable results or a short-term numbers game?'), together with a mind-set of 'how can we push it for management to get to the best outcome?'

It was noted both from a particular ExecRemConsultant RIP interviewee, and the RCG's April 2018 Review of Effectiveness of Code,<sup>814</sup> that the ERWG Final Report's allegations of 'unsolicited benchmarking reports' do appear to have substance.<sup>815</sup> Additionally, to paraphrase Bender & Franco-Santos,

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<sup>814</sup> RCG (n 631).

<sup>815</sup> ERWG Final Report (n 279). See responses to RCG questionnaire Q26. No ExecRemConsultants reported sending out unsolicited pay benchmarking reports in past 12 months ('Review of Effectiveness of Code', December 2018 (n 292)), whereas in Q11 (for RemCoChairs/Members) 4.69% of responders stated that they had received such a report ('Review of Effectiveness of Code', April 2018 (n 631)). Part of the apparent disparity may be due to the timing difference between the two Reviews – RCG had changed its VCC in 2017 explicitly to prohibit the sending of unsolicited benchmarking reports.

there seems to be a view among some ExecRemConsultants that although they personally manage COI effectively certain rival ExecRemConsultancies/ExecRemConsultants do not.<sup>816</sup>

Having said this, it was also noted that there was something of a gap in the academic literature's qualitative studies on the 'professional standards' of ExecRemConsultants. This applies more broadly too. For example, ERWG Final Report, Philp, Government's/BEIS' CGI and Umunna's February 2018 IOD speech.

The message from the ExecRemConsultant RIP interviewees was that they are fully prepared to lose RemCoAdvisory appointments if it was necessary to 'take a stand' - maintaining that their long-term interests, and those of their ExecRemConsultancy, are more important than any single RemCoAdvisory appointment. It needs to be recognised though that differing ExecRemConsultants may have considerably varying places at which they would 'draw the line' in this regard.

The UK criticism of the ethics/'professional standards' of ExecRemConsultants is largely limited to ERWG raising allegations of 'unsolicited benchmarking reports', 'over-reliance' of RemCos on their appointed ExecRemConsultants (particularly in investor consultation meetings), exhortation for RemCoAdvisory appointments to be 'regularly put out to tender',<sup>817</sup> and suggestions that RemCos and their appointed ExecRemConsultants 'chase the median' (and the impact of this on remuneration levels).<sup>818</sup>

There are of course criticisms of ExecRemConsultants contained in the media and other commentators - such as, Buttonwood in *The Economist*,<sup>819</sup>

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<sup>816</sup> Bender & Franco-Santos (n 43).

<sup>817</sup> ERWG Final Report (n 279).

<sup>818</sup> *ibid.*

<sup>819</sup> Buttonwood (n 262).

Plender<sup>820</sup> and Bow<sup>821</sup> - but looking at the consensus view of the RIP interviewees things appear to have moved on somewhat from Myners's 2008 reference to the 'insidious influence of benefit consultants'<sup>822</sup> and the RCG Chairman's opinion that some commentators view ExecRemConsultants as being 'the devil incarnate'.<sup>823</sup>

## *TE/E*

The responses received from RIP interviewees in relation to TE/E were generally split between 'Positive' and 'Mid-position', but with some 'Negative' stances. The 'Positive' ones majored on observations that senior ExecRemConsultants were usually professionally qualified in some capacity and/or had relevant prior work experience, together with in-house ethical and technical training and ongoing processes - eg., supervision and mentoring.

The 'Mid-position' comments tended to refer to ExecRemConsultancy being a 'niche' or 'narrow' career (eg., 'it's an incredibly specialised profession'), plus 'numeracy skills' being important plus 'political'/'emotional intelligence'/'relationship' ones. In short, that ExecRemConsultants provide 'business advice' which is a 'niche career' that is multidisciplinary in nature - requiring technical and 'political' skills The flavour being that 'pay is only partly a numbers game', that ExecRemConsultants need to be 'commercial, with a few miles on the clock' and to have 'a hell of a lot of knowledge about pay', with 'direct entrants' at least encouraged to take professional examinations. A RemCoChair interviewee commented: 'I agree that ExecRemConsultants are a mile away from an independent body. That's why RCG was not taken there at all'.

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<sup>820</sup> Plender (n 531).

<sup>821</sup> Bow (n 273).

<sup>822</sup> Myners (n 253) & (n 656).

<sup>823</sup> Read (n 274).

All the above contains elements of ExecRemConsultants being required to give 'business-focused advice' and, in the words of an ExecRemConsultant interviewee, 'to command the confidence of RemCo, to hold confidences and to give guidance, to become a trusted advisor'.

'Negative' comments on the other hand were directed more towards certain ExecRemConsultant interviewees' views on the future of ExecRemConsultancy/ExecRemConsultants – with reference to ExecRemConsultancy being less financially attractive than in the past, the slow growth of practitioner numbers, fewer really senior ExecRemConsultants for their junior colleagues to learn from/emulate/be mentors, and that 'skills were disappearing from the industry' (the latter being a reference to RemCos wanting only 'compliance consulting/advice' and that ExecRemConsultants were being lured away to CoyExecRemSpecialist posts which provided better remuneration packages and 'a more balanced lifestyle').

Shareholders, as mentioned earlier, have considerably more powers (if they choose to use them). This has led to a more risk-averse stance on the part of RemCos and their appointed RemCoAdvisors, with the Big Four (Deloitte and PwC, really) growing into market dominance (on HPC's figures)<sup>824</sup> being two of the big three providers of RemCoAdvisory Services, and an ABC organisation (ie., WTW) comprising the other one of the big three (with the ABC firms AH and Mercer also being in strong market share positions). Boutiques have been reduced to marginal activity in the UK, in market share terms (FIT and possibly KFH appear to be the only UK Boutiques that are expanding in terms of FTSE 350 RemCoAdvisory appointments).

Overall, the consistent theme from RIP interviewees is that whatever criticisms there may be of ExecRemConsultancy/ExecRemConsultants, a lack of technical expertise is not one of these. The same applies to media articles

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<sup>824</sup> HPC (n 48) 15; HPC (n 533).

criticising ExecRemConsultants (eg., Russell and Bow) - COI being of far more concern.

Interestingly, one of Bender & Franco-Santos's ExecRemConsultant interviewees stated 'of course there is the technical competence issue which I'll take as a given'.<sup>825</sup> Whereas not all really senior ExecRemConsultants have the same level of technical expertise, even ones who would assess their 'institutional shareholder intermediary' skills above their 'technical' ones (and were hired by RemCos for their strength in the former category) still required a solid level of technical knowledge/experience.

Some RemCos, as hinted already, express the paramount need for 'institutional shareholder intermediary' skills and experience, whereas others require highly technical share valuation methodologies for example. It is hard to escape the conclusion though that the majority of RemCos want a blend of skills/experience in their lead ExecRemConsultant (who can call on deep technical expertise, such as share valuation or executive pensions structuring, that lies within the overall 'consulting team' of the ExecRemConsultancy concerned).

Regarding 'experience', RCG's latest Review of Effectiveness of Code shows that the percentage of really senior ExecRemConsultants (using RCG's '9 + Years' of experience categorisation)<sup>826</sup> has reduced, although the ExecRemConsultancy business as a whole is growing in terms of numbers of ExecRemConsultants. Such increase is at the intermediate level (ie., '3-6 Years') - now 24.15%, formerly 17.8%. This may be a reflection of ExecRemConsultancies needing more in the way of analyst/compliance and intermediate level resource and/or capitalising on the 'leverage value' of having a 'broad-bottomed' ExecRemConsultancy staffing 'pyramid' (the opposite really of the Boutique 'partner-led consulting' model).

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<sup>825</sup> Bender & Franco-Santos (n 43) 4.

<sup>826</sup> RCG, '2018 The Annual Review of Effectiveness of Code' (n 695) 11.

It does have relevance however to the 'direct entrant'/professional qualification issues to which reference has already been made. RIP RemChairs/Members and CoyExecRemSpecialists as a whole particularly valued the quality of ExecRemConsultants' advice, but they also seemed to be 'reassured ' by professional qualifications as well.

The Big Four seem to stipulate that 'direct entrants' should obtain CA or Actuary qualifications while in post as junior ExecRemConsultants and the ABC firms used at least to have a hiring practice of mid-career joiners being professionally qualified (with an MBA ranking as professionally qualified, for such purposes).

Accordingly, any legislation on DSOtherServicesFees, taken together with the small scale of the UK's Boutique provision, and the 'Negative' comments referred to above, could cumulatively result in a major dislocation in the way ExecRemConsultancy/RemCoAdvisory Services are provided in the UK. The UK RemCoAdvisory market has changed considerably in recent years towards growing dominance by two of the Big Four (Deloitte and PwC), so if a major shift/break were to occur in the 'Other Services'/RemCoAdvisory Services business model (which would affect ABC firms as well) then this would have a magnifying effect.

## SA/Q

The responses of RIP interviewees to the SA/Q aspect were preponderantly 'Negative', with a few being 'Positive' and some others 'Mid-position'. Dealing first with the 'Positive' comments (ie., in favour of introducing SA/Q), these ranged from a ROO interviewee's 'that is an idea perhaps worth exploring further. Certain institutional shareholders might be sympathetic to that approach, including a licence to practise', to a more 'full-throated' support for SA/Q from a CoyExecRemSpecialist: 'I think there is a good case for

accreditation, particularly if Boutique firms are going to proliferate like they have in America'.

There was reference to the fact that any professional qualification (eg., CA, CTA, Actuary or Lawyer) may have been obtained by an ExecRemConsultant many years earlier and that SA/Q would 'attract talent and be a hygiene factor'. The latter comment harks back to the point made earlier that one needs to distinguish between what RemCoChairs/Members might require of their appointed ExecRemConsultant and what young, 'direct entrant' ExecRemConsultants might find attractive in terms of a SA/Q providing a career development path into and through their early years in ExecRemConsultancy.

'Mid-position' RIP interviewees tended to raise similar points as the 'Positive' ones, but in 'weakened'/'agnostic' form, whereas 'Negative' comments (which were the predominant SA/Q view) focused on a SA/Q being unnecessary and/or hard to pin down in terms of the broad spectrum of expertise required, together with the overall small number of ExecRemConsultant practitioners and the lack of financial and staff resources to devise a syllabus, examinations and examiners for such a SA/Q.

Some interviewees were trenchant in their criticism of the SA/Q concept, such as a CoyExecRemSpecialist's 'I think its complete overkill. Advice on what other people are doing and what options are available. You don't need people who are specially qualified'. Others had concerns about creating a 'closed shop'.

It was observed that SA/Q (and LTP, for that matter) appeared to be something of a non-issue for academic researchers - eg., Conyon and Bender.<sup>827,828</sup> The same considerations applied to *Walker Review*,<sup>829</sup> *Green Paper/BEIS Select Committee's Report/Government Response*<sup>830</sup>, ERWG Final Report,<sup>831</sup> Philp,<sup>832</sup> HPC<sup>833</sup> and Umunna.<sup>834</sup> Where there are allegations of ExecRemConsultancy/ExecRemConsultant 'bad practices' these relate to ethics/behaviour aspects - rather than these being addressed specifically via SA/Q. This is not particularly surprising in view of the 'bulwarks' currently in place in the UK. For example, RCG's VCC, terms of engagement with clients, regulation of ExecRemConsultancy firms - usually by CA or Actuary bodies, with FRC oversight - and the present generation of really senior ExecRemConsultants possessing qualifications (with LTP/disciplinary regimes).

This may change over time though (particularly with 'direct entrants' growing through the ranks), hence the formulation in this thesis of the categorisation of 'Straight Accreditation', 'Intermediate Position', and 'Full-blown LTP New Professions' (including for latter purposes 'liberal professions', such as Lawyers). It will be seen that there is a continuum ranging from the current limited accreditations available for ExecRemConsultants (and, indeed, their CoyExecRemSpecialist counterparts) through to full-blown LTP status.

As mentioned previously, RCG is a 'membership firm' organisation rather than having individual ExecRemConsultant members/offering accreditation status. Although CIPD is in the 'Intermediate Position', in that membership is

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<sup>827</sup> Conyon (n 108).

<sup>828</sup> Bender & Franco-Santos (n 43).

<sup>829</sup> *Walker Review Final Recommendations* (n 324).

<sup>830</sup> *Green Paper* (n 71); BEIS Select Committee's *Report* (n 48); *Government Response* (n 71).

<sup>831</sup> ERWG Final Report (n 279).

<sup>832</sup> Philp (n 96).

<sup>833</sup> HPC (n 48).

<sup>834</sup> Umunna 2018 (n 389).

individual, there are examination and experience requirements, plus disciplinary arrangements.

The category 'Intermediate Position', aptly describes the CIPD arrangements - these do not constitute a LTP. Accordingly, even if a CIPD member is expelled he/she can still work in HR roles, and the Chair of a CIPD Disciplinary Panel is now a CIPD member (Disciplinary Panel members may or may not hold CIPD membership).

The current absence of a SA/Q for ExecRemConsultants could change, as mentioned already, if there were to be a significant scandal involving an ExecRemConsultant providing RemCoAdvisory Services or, alternatively, if 'direct entrant' ExecRemConsultants were to feel that it is an essential part of their career development (the same applies, even more strongly, to LTP).

### *LTP*

Given the limited appetite shown by RIP interviewees for SA/Q, it is hardly surprising that their stance on LTP was preponderantly 'Negative' (with some 'Mid-position' and a few 'Positive' ones). Accordingly, support was provided for the hypothesis of this thesis in respect of both SA/Q and LTP aspects. Any move towards RemCoAdvisory Services (or even ExecRemConsultancy, more broadly) becoming a LTP profession would be a major change - far more so than the introduction of SA/Q. Though RIP interviewees appreciated the need for 'liberal professions' (eg., medicine and law) being LTP in nature, and could see why 'new professions', such as the appointed external auditor, involved a public interest/public harm argument in favour of LTP, ExecRemConsultants were viewed as 'business advisors' with accountability to RemCos (as opposed to shareholders generally).

Only one of the RIP interviewees, a CoyExecRemSpecialist, supported a full-throated LTP regime for ExecRemConsultants advising RemCos - with 'striking off' being mentioned - whereas an ExecRemConsultant interviewee suggested a 'licence to operate' (with no examinations) - which is well short of formal LTP. 'Mid-position' comments did not express outright 'hostility' to the LTP concept, but were sceptical about whether a LTP regime would be appropriate for ExecRemConsultants.

'Negative' stances on the other hand ranged from the perceived dangers of creating a 'closed shop', to asking simply whether a LTP regime 'would make us better consultants? Will it restore trust in what we do?' Similar arguments were advanced as with SA/Q, in terms of the small number of ExecRemConsultants, the onerous task of syllabus setting and an examination framework - but such points were raised to a higher level of concern in that a LTP regime entails an independent disciplinary body to hear and determine allegations of code of conduct/handbook breaches.

RIP interviewees' limited appetite for LTP, is not gainsaid by Government's/BEIS Select Committee's CGI and commentators on the UK executive remuneration scene. As stressed by RIP interviewees, and de Gannes,<sup>835</sup> ExecRemConsulting is analogous to management/strategy consulting - with de Gannes stating that ExecRemConsulting:

[L]acks the corpus of abstract knowledge that differentiates and defines a profession (...) consultants have not sought the hallmark of professional status, rather consultants emulate the knowledge worker producing services within a managerial professional business.<sup>836</sup>

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<sup>835</sup> de Gannes (n 44).

<sup>836</sup> *ibid* 166.

Given that so many of the present generation of really senior ExecRemConsultants are in fact already professionally qualified, it is not surprising that the respective findings from Adamson et al,<sup>837</sup> Bender & Franco-Santos,<sup>838</sup> de Gannes,<sup>839</sup> and the RIP ExecRemConsultant interviewees, was that ExecRemConsultants see themselves first as CA, CTA, Actuary or Lawyer (depending on a particular interviewee's original qualification/background) and only then as an ExecRemConsultant with a professional image/way of working - supported via RCG.

As de Gannes maintains, it is ExecRemConsultants' original professional qualification that gives them a 'first order professional claim'.<sup>840</sup> She also notes that given the choice 'direct entrant' ExecRemConsultants are more likely to want to read for an MBA than a professional qualification, such as CA or Actuary.<sup>841</sup>

Another point is that made by a RIP CoyExecRemSpecialist interviewee who considered that ExecRemConsultants are largely self-selecting, they want to learn/solve problems and will find a way through to success - so a SA/Q or LTP may not be needed by such individuals (however, they are likely to benefit enormously from senior ExecRemConsultant supervision and mentoring, plus structured in-house technical and ethical training programmes).

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<sup>837</sup> Adamson et al (n 42).

<sup>838</sup> Bender & Franco-Santos (n 43) 14.

<sup>839</sup> de Gannes (n 44).

<sup>840</sup> *ibid* 100.

<sup>841</sup> *ibid*.

### **6.2.6. Conclusions: RITG5 Aspects**

Set out below are comments on the three RITG5 aspects.

#### *WorkingRelationshipsCoyExecRemSpecialists/ExecRemConsultants and RemCo*

The responses of RIP interviewees in respect of RITG5:SQ1 were a three-way split between 'Positive', 'Mid-position' and 'Negative' stances. The flavour from the 'Positive' comments is that CoyExecRemSpecialists have an important role to play in providing ExecRemConsultants with staff data/numbers, plus supplying invaluable context and views on the company concerned's HR/Reward approach and culture. The potential for COI was recognised by RIP interviewees filling all 'job roles'. 'Mid-position' stances majored on CoyExecRemSpecialists' rather invidious position in being part of company management yet needing to stand aside from this to work constructively/'independently' with RemCoChair and appointed ExecRemConsultants.

The 'Negative' comments from RIP interviewees included instances cited by ExecRemConsultants of 'absolutely horrifying relationships with internal resources', 'seeing consultants as a threat', and 'causing problems signing-off bills'. These 'Negative' comments bring into sharp relief the difficulties that can arise between CoyExecRemSpecialists and ExecRemConsultants in particular cases, but the overall picture from RIP interviewees was that the inherent COI in CoyExecRemSpecialists' role is generally managed effectively, so that a productive and respectful working relationship exists.

In essence, all parties need each other in order for the RemCo's pay determination processes to work well - with general recognition that the ExecRemConsultant and CoyExecRemSpecialist roles are complementary in nature.

Bender & Franco-Santos refer to the ubiquity of RemCo's having 'central support from a Human Resources (HR) department of a dedicated Executive Compensation or Reward function'.<sup>842</sup> They see their research into CoyExecRemSpecialists as being 'not captured in any other academic work'.<sup>843</sup> The results of the RIP complement Bender & Franco-Santos's work in this regard - indeed, the RIP interviewees held a far broader range of 'job roles' than Bender & Franco-Santos's cohort (which was drawn from ExecRemConsultants alone).<sup>844</sup>

It was maintained that a particular HRD's personal characteristics influence 'the quality of the internal HR advisors'. RIP interviewees saw HRDs as being more affected by COI than CoyExecRemSpecialists more generally. An HRD is recognised as being closer to the CEO than a CoyExecRemSpecialist, who has a dotted reporting line to the RemCoChair.

Having said this, Bender & Franco-Santos captured comments from ExecRemConsultants that were generally more negative towards in-house counterparts than those of the RIP interviewees (picking up the same uncomplimentary views as were expressed by the 'Negative' stance RIP interviewees). Some of this may be due though to Bender & Franco-Santos's interviewees focusing more on HRD roles, whereas the RIP interviewees majored on CoyExecRemSpecialists more generally.

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<sup>842</sup> Bender & Franco-Santos (n 43).

<sup>843</sup> *ibid* 10.

<sup>844</sup> *ibid*.

It was observed that the commentators/participants in the UK corporate governance scene (eg., HPC,<sup>845</sup> ERWG Final Report,<sup>846</sup> Purposeful Company,<sup>847</sup> Philp<sup>848</sup> and Umunna<sup>849</sup>) pay relatively scant attention to CoyExecRemSpecialists. Interestingly, de Gannes considers 'the internal Reward function is not sufficiently investigated'.<sup>850</sup> It is hard to argue with this. HRDs/CoyExecRemSpecialists generally appreciate the inherent COI involved in their respective roles. Most frequently, HRDs manage these COI, despite the fact that they might thereby incur the displeasure of their CEO. This applies even more strongly to CoyExecRemSpecialists who might fall foul of both CEO and HRD (depending on their actual 'job role' in the organisation).

The flavour was that ExecRemConsultants generally have experienced situations similar to those described in the 'Negative' camp, but that thankfully this is not a particularly common occurrence. Overall, CoyExecRemSpecialists generally go to all practicable lengths to manage COI effectively, but in the final analysis RemCoChairs can be wary of, and lack trust in, the advice provided by CoyExecRemSpecialists - simply due to such inherent COI. Given that the COI are fairly transparent (they are 'baked-into' the role really), it may be that the activities of CoyExecRemSpecialists are not seen currently as being particularly controversial in nature in a RemCo pay determination context.

The role of CoyExecRemSpecialists warrants further research - using a significantly larger cohort of CoyExecRemSpecialist interviewees (to ensure that a fully representative sample is compiled). Additionally, such research should differentiate clearly between HRDs and CoyExecRemSpecialists more

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<sup>845</sup> HPC (n 48) & (n 294).

<sup>846</sup> ERWG Final Report (n 279).

<sup>847</sup> Purposeful Company Report (n 89).

<sup>848</sup> Philp (n 96).

<sup>849</sup> Umunna 2018 (n 389).

<sup>850</sup> de Gannes (n 44).

broadly - the two categories have significant differences as well as similarities. This aspect is returned to in Chapter 6.3 below.

### *RemCoAdvisoryProtocols*

The views of RIP interviewees in respect of RITG5:SQ2 were generally 'Mid-position' in nature. In other words, RemCoAdvisoryProtocols was not generally seen as a topic that elicited strong views either way. The RIP interviewees appeared content that suitable protocols (in particular, RCG's VCC)<sup>851</sup> existed both in respect of RemCo's appointed ExecRemConsultant's 'on-boarding protocols' and subsequent advisory document 'circulation path'. They considered the most common route for the latter was usually for a first draft to be sent to the RemCoChair - followed by circulation to executive management, but with the appointed ExecRemConsultant liaising with/gathering views from such management (particularly the CoyExecRemSpecialist) while an advisory report is in the course of preparation.

The 'Myners allegation', that successive draft advisory reports featured amendments in executive management's favour, appears to be less common than it may have been in the past.<sup>852</sup> This could be due in part to there now being an explicit RCG VCC provision that the RemCoChair should be notified by the ExecRemConsultant if material changes are made to draft reports,<sup>853</sup> plus that RemCoChairs do seem to be more alive to the issue.

Certain RIP interviewees mentioned with approval the Australian provisions on 'paper management', where the RemCo very much controls the advisory document circulation proposals and there is DSOtherServicesFees,<sup>854</sup> plus the

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<sup>851</sup> RCG (n 560).

<sup>852</sup> Myners (n 253) & (n 656).

<sup>853</sup> RCG, '2016 Review of Effectiveness of Code' – 'consultants should make remuneration committee aware of any material changes to proposals as a result of interactions with management'. See (n 630).

<sup>854</sup> Australian legislation and practice (n 728), (n 729) & (n 730).

appointed ExecRemConsultants explain their specific involvement in RemCoAdvisory reports (also a separate 'comments paper' is usually written, rather than 'joint reports').

On UK practice, an ExecRemConsultant interviewee noted that - in the case of the preparation of a separate 'comments paper' - 'we provide useful feedback beforehand [ie., to executive management] so we don't embarrass anybody'. RemCoChairs are well aware anyway that during the course of the preparation of ExecRemConsultants' advisory reports for RemCo 'there's probably a lot of discussions between internal and ExecRemConsultants'.

In terms of 'Positive' stances, a RIP ExecCompConsultant mentioned that it was common (and, indeed, the preferred approach) for 'joint proposals' (ie., executive management and ExecCompConsultants) to be prepared. The interviewee gave the impression that this is a common US approach, whereas the ExecRemConsultant interviewees seemed far more wary in a UK context of 'joint reports' than were their counterparts in the US.

An ExecRemConsultant interviewee mentioned the need to be 'on your toes here' regarding successive changes made to 'joint papers' - adding 'there are dangers around successive drafts of reports and combining ExecRemConsultant and management inputs'.

In any event, the consensus view of RIP interviewees was that RemCoAdvisoryProtocols were no longer a 'hot issue' on the UK remuneration scene - particularly since RCG's VCC 'supporting protocols' were introduced and, as noted by an ExecRemConsultant interviewee: 'RemCoChairs have taken control'.

## *COI/CoyExecRemSpecialists*

Although the responses of RIP interviewees to RITG5:SQ3 appear to mirror the consensus stance of interviewees in respect of RITG5:SQ2 (ie., overwhelmingly 'Mid-position'), the positioning in respect of SQ3 was rather more dispersed.

The combined RIP interviewees' 'Positive' and 'Mid-position' views though regarding COI/CoyExecRemSpecialists were that despite the role concerned being part of the senior management team (or they reported to such management) of their employing companies (and, at the more senior level, being part of such management's STI and LTI arrangements), they did their best to 'stand apart from management' and to assist both RemCoChair and the appointed ExecRemConsultants in a professional, objective manner. HRDs though - as mentioned already - were seen as being particularly subject to COI compared to their CoyExecRemSpecialist colleagues/subordinates.

CoyExecRemSpecialists were seen as a valuable 'cultural interpreter', with much reliance on the integrity of individuals and working protocols. An ExecRemConsultant interviewee noted that since the introduction of the triennial binding policy vote as part of the 2013 Reforms there were fewer instances seen of CoyExecRemSpecialists being involved in a 'ratcheting job in an attempt to increase pay' - with the comment made: 'I see a lot less of this and the conflict is disappearing'.

Having said this, there were some strongly 'Negative' stances from RIP interviewees regarding RITG5:SQ3, the most trenchant of which came from ExecRemConsultants. One RemCoChair considered that COI were not satisfactorily addressed - and made the comment 'a lot of the things they learn in HR are not necessarily ideal for securing objectivity, fairness, motivational in face of executive influence'. The supplemental point was made though that

'they are part of this business, so providing some sort of sanction is unfair and unreasonable'.

This encapsulates the CoyExecRemSpecialist's COI dilemma. HRDs in particular may be somewhat beholden to the CEO. This is unsurprising in that disagreeing with, or not supporting, the CEO can be career limiting. RemCoChairs understand this and bear it in mind. An ExecRemConsultant interviewee put this as CoyExecRemSpecialists being 'often not trusted by the RemCo (...) they too end up trying to find another job'. The ExecRemConsultant concerned stated this in a supportive vein, adding 'it's a really difficult job'.

Accordingly, even in situations where ExecRemConsultant interviewees may consider that CoyExecRemSpecialists favour the latter's previous ExecRemConsultant colleagues (or perhaps a CoyExecRemSpecialist has an eye on a future ExecRemConsultant role) there is an appreciation of the limitations and challenges of the CoyExecRemSpecialist role. Interestingly, a CoyExecRemSpecialist (who also had experience as an ExecRemConsultant) expressed the view that it was far more common for ExecRemConsultants to be unsuccessful in a subsequent CoyExecRemSpecialist role than where CoyExecRemSpecialists had become ExecRemConsultants.

This may be a reason why CoyExecRemSpecialist positions in FTSE 100 companies can actually carry more lucrative remuneration packages than those available in ABC and Boutique ExecRemConsultancy firms.

### **6.3. Research Objectives and Principal Findings**

Chapter 6.3. covers the following:

- Research Objectives: Academic Contribution (6.3.1.),

- Research Objectives: UK Practice Contribution (6.3.2.),
- Principal Research Findings: Academic Contribution (6.3.3.), and
- Principal Research Findings: UK Practice Contribution (6.3.4.).

### **6.3.1. Research Objectives: Academic Contribution**

Whereas quantitative research studies on ExecRemConsultants are reasonably numerous, qualitative ones are fewer in number. Regarding the UK, Bender,<sup>855</sup> Conyon,<sup>856</sup> Adamson et al,<sup>857,858</sup> and de Gannes<sup>859</sup> (there are other academic studies, but those cited above are arguably the key exemplars) have undertaken interviews of ExecRemConsultants, and Bender & Franco-Santos additionally included CoyExecRemSpecialists. However, the RIP was an opportunity to carry out academic research that complemented these other studies and would also potentially 'fill in some gaps' in the existing academic literature.

The RIP comprised interviews with a full range of 'job roles' for key protagonists on the UK scene, whereas, for example, Adamson et al and Bender & Franco-Santos limited their interviewees to ExecRemConsultants.<sup>860,861</sup> On the other hand, de Gannes's interviewees comprised almost as full a range as the RIP.<sup>862</sup> However, this thesis focuses on the 'professional standards' of ExecRemConsultants and CoyExecRemSpecialists - the academic literature has generally contained only tangential references to, and discussion of, such aspects.

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<sup>855</sup> Bender (n 22).

<sup>856</sup> Conyon (n 108), based on the Conyon, Peck & Sadler study (n 107).

<sup>857</sup> Adamson et al (n 42).

<sup>858</sup> Bender & Franco-Santos (n 43).

<sup>859</sup> de Gannes (n 44).

<sup>860</sup> Adamson et al (n 42).

<sup>861</sup> Bender & Franco-Santos (n 43).

<sup>862</sup> de Gannes (n 44).

In essence, the author considered that in light of his particular career background he had a somewhat unique opportunity to contribute to the existing academic literature in covering an under-researched area. In relation to CoyExecRemSpecialists in particular, both Bender & Franco-Santos and de Gannes point out just how little research had been carried out previously (and the need for further future research).

### **6.3.2. Research Objectives: UK Practice Contribution**

It was also considered that the RIP would be an opportunity to examine the 'professional standards' of ExecRemConsultants/CoyExecRemSpecialists with a view to formulating conclusions that as well as making an academic contribution would also be valuable in a UK practice context. Indeed, the potential benefits of a combined academic/practice approach can be viewed as being of key importance.

This echoed the view of Edmans<sup>863</sup> and Gosling<sup>864</sup> - that such a combination can be powerful for the provision of 'best practice' RemCoAdvisory Services. The author, together with two ExecRemConsultant colleagues, had collaborated with Main in 2006-2007 on a qualitative semi-structured interview programme involving RemCoChairs/Members.<sup>865</sup> Accordingly, he considered the RIP would stand a good chance of securing the participation of key UK protagonists, plus he anticipated that a wealth of data/views could potentially emerge from such interviews (which would provide useful insights into how RemCo pay advisory processes could be structured to best effect).

It was hoped that the RIP could be a potentially valuable source of information/guidance to key protagonists on the UK pay scene, when considering the 'professional standards' of ExecRemConsultants and

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<sup>863</sup> Edmans (n 3) and in Purposeful Company Report (n 89).

<sup>864</sup> Gosling (n 4) and in Purposeful Company Report (n 89).

<sup>865</sup> Main et al (n 5).

CoyExecRemSpecialists. This is particularly the case against the backdrop of the UK's alleged 'competitive oligopoly' in the provision of RemCoAdvisory Services - and that the present generation of really senior ExecRemConsultants holding professional qualifications will in due course retire and be replaced by ExecRemConsultants who may have been 'direct entrants' (and who may not have subsequently obtained professional qualifications).

The present rather limited accreditations available to ExecRemConsultants and CoyExecRemSpecialists, can hardly be compared in depth and, frankly, status, to the 'new profession' qualifications of CA, CTA or Actuary, nor the 'liberal profession' of Lawyer.

It was also germane to explore whether in fact this was considered important from the perspective of RIP interviewees (particularly ROOs, RemCoChairs/RemCoMembers, plus ExecRemConsultants and CoyExecRemSpecialists themselves). If ExecRemConsultancy 'in-house' technical and ethical training (rather than SA/Q and/or LTP) were seen to be the key determinants of ExecRemConsultant career development, this might have implications for the current role of RCG - where the latter's present sole function concerns its VCC (and maintaining VCC's effectiveness via regular reviews and updating).<sup>866</sup>

Interestingly, RCG has recently been instrumental in the development and circulation of 'case studies' for its member firms to use in an in-house training context.<sup>867</sup> The RIP could examine the various merits (or otherwise) of RCG moving beyond its present highly limited role.

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<sup>866</sup> RCG, Home Page, 'About Us', 'Our Responsibility' (n 623).

<sup>867</sup> *ibid.*

### **6.3.3. Principal Research Findings: Academic Contribution**

As mentioned already, the RIP was seen as having the potential to complement other qualitative studies on ExecRemConsultants and CoyExecRemSpecialists – particularly because these did not really explore their respective 'professional standards' in any particular detail. The findings and conclusions arising from the RIP, and this thesis more generally, reinforce the view that such 'professional standards' comprise an under-researched area.

In focusing on 'professional standards' therefore, this thesis has not only complemented previous academic studies but can also lay claim to having addressed 'gaps' in the academic literature. In particular, the RIP covered not just the 'usual topics' of COI/RCG/RemCoAdvisory working relationships/protocols, but also obtained really detailed views on E/PS, TE/E, SA/Q and LTP for ExecRemConsultants (and to some extent CoyExecRemSpecialists as well). Accordingly, a contribution has been made to the existing general academic literature on ExecRemConsultants and CoyExecRemSpecialists - and has as well made a specific contribution in respect of 'professional standards'.

Adamson et al and de Gannes make particular mention of their respective findings that ExecRemConsultants, whilst generally appreciating the macro-level importance of RCG's existence, remain somewhat 'anchored' to their original professional qualifications/status.<sup>868,869</sup> ExecRemConsultants were not convinced that ExecRemConsultancy is akin to the 'new professions' – putting it closer on the relevant continuum to management/strategy consulting, as business advice provided to RemCos. The RIP findings confirmed this, and also addressed in detail how ExecRemConsultants view (and are viewed by ROOs and RemCoChairs/RemCoMembers) in relation to E/PS, TE/E,

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<sup>868</sup> Adamson (n 19).

<sup>869</sup> de Gannes (n 44).

SA/Q and LTP aspects. Overall – subject to the proposal in this thesis that RCG should consider making certain changes in respect of the ambit of its activities/VCC – it is submitted that such RIP findings and the analysis/discussion in this thesis provide very significant support for its hypothesis that further regulatory changes in respect of the ‘professional standards’ of ExecRemConsultants and CoyExecRemConsultants are currently unwarranted (see Chapter 6.3.4. below for UK practice contribution).

The activities of RCG were also covered in the RIP, not just in relation to these aspects but more broadly - together with the implications for ExecRemConsultancy that might arise from the alleged 'competitive oligopoly' position, DSOtherServicesFees and similar considerations.

The picture that emerged was that the UK RemCoAdvisory business currently looks reasonably stable. The alleged 'competitive oligopoly' is unlikely to change too much because the larger Boutiques have already been acquired. There does not appear to be a groundswell of demand for the self-regulatory regime to be replaced by a State-sponsored one.

ExecRemConsultancy is not an obvious candidate, to put it mildly, for the sort of CMA investigation of Big Four/ABC investment consultants,<sup>870</sup> nor the type of current debate concerning whether Big Four external audit services should undergo 'Big Four and More' (ie., in effect opening up FTSE 350 external auditor appointments to, say, the next five largest CA firms) or be 'split off'.<sup>871,872,873,874,875</sup>

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<sup>870</sup> Attracta Mooney & Caroline Binham, 'Stricter rules loom for investment consultants' *Financial Times* (London, 29 June 2017), plus Attracta Mooney, 'Investment advisors avoid break-up' *Financial Times* (London, 19 July 2018) and John Authers, 'Consultants' claims and the evasion of responsibility' *Financial Times* (London, 21/22 July 2018).

<sup>871</sup> Oliver Shah 'The music's over for accounting giants' *The Sunday Times* (London, 26 August 2018). See also Oliver Shah, 'Beancounters need to look below the icing' *The Sunday Times* (London, 14 October 2018).

<sup>872</sup> Madison Marriage & Jonathan Ford, 'Structural flaws of Big Four love-in with clients' *Financial Times* (London, 29 August 2018). See also Matthew Vincent, 'Audit fines show self-interest is bigger than a Big Four problem' *Financial Times* (London, 30 August 2018). Additionally, Michael Izza, 'Audit must claim its Victorian roots to win back public trust' *City A.M.* London, 15 January 2018).

<sup>873</sup> Financial Times Leader Editorial, 'What the public should expect from auditors' *Financial Times* (London, 14 March 2018) and Madison Marriage, 'Watchdog urges inquiry into break-up of Big Four accountants over audit role' *Financial Times* (London, 16 March 2018).

The same applies to E/PS, TE/E, SA/Q and LTP – particularly in light of the current generation of really senior ExecRemConsultants being almost invariably professionally qualified. Having said this, the position may in fact be more fragile than initially appears. One only has to look at how the US ExecCompConsultancy/CompCoAdvisory market was affected by the DSOtherServicesFees provisions enacted in 2009, to appreciate how quickly things can change. Additionally, whereas there would currently seem to be little appetite in the UK for SA/Q and/or LTP this might alter as the new generation of 'direct entrants' take over from the professionally qualified present generation of really senior ExecRemConsultants.

Also, there may be a COI or other 'scandal' that affects ExecRemConsultants directly or tangentially. Alternatively, the Big Four/ABC firms, for one reason or another, may wish, or effectively be obliged, to no longer offer RemCoAdvisory Services.

#### **6.3.4. Principal Research Findings: UK Practice Contribution**

Many of the considerations referred to in Chapter 6.3.3. above also apply in respect of this thesis' principal research findings concerning UK practice contribution. This includes in particular the practice implications of the very significant support found for this thesis' hypothesis (subject to the proposal in this thesis that RCG should consider making certain changes in respect of the ambit of its activities/VCC) that the current hard and soft law regulation/guidelines/codes applicable to ExecRemConsultants are broadly appropriate (especially the finding that any move to SA/Q and/or LTP, with disciplinary sanctions being available against individual ExecRemConsultants,

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<sup>874</sup> Brooke Masters, 'A clubby oligopoly that is overdue for reform' *Financial Times* (London, 20/21 August 2016). See also Financial Times Leader Editorial, 'Accountancy's Big Four need more competition' *Financial Times* (London, 25 August 2016).

<sup>875</sup> Financial Times Leader Editorial, 'Auditors have a duty to follow the scent of fraud' *Financial Times* (London, 4 February 2019). Note PwC and EY formally adopting KPMG's chosen route of not offering consultancy services when appointed external auditor. The article states Deloitte is likely to follow in due course. Given that CAs in UK already do not offer RemCoAdvisory Services where they are the appointed external auditor, this may not appear particularly relevant to this thesis. However, it shows that the Big Four may change their current practices if they consider for commercial or other reasons this is appropriate. It may be the case that at a future date, the Big Four will decide not to offer RemCoAdvisory Services (even when not the appointed external auditor).

would be unwarranted). This reinforces the argument that academic and practice approaches have particular power when combined – the RIP findings/conclusions are relevant in both academic and UK practice contexts.

It is proposed in due course to offer sessions to RIP interviewees, taking them through the research and explaining the findings/conclusions. The aim is to embed these into UK practice, as a future reference point on 'professional standards'. Accordingly, for example, it is anticipated that sessions will be offered to ExecRemConsultancies (that were 'represented' by particular RIP interviewees) in which issues such as E/PS, TE/E, SA/Q and LTP will be discussed. The same applies regarding other RIP interviewees, especially the ROOs and RemCoChairs/Members. It is hoped that this will contribute to shaping the relevant UK debate and practice over the coming period.

As mentioned already, RIP interviewees as a whole did not consider that ExecRemConsultants and CoyExecRemSpecialists are a major cause of the 'UK executive pay problem'. The existence of RCG, plus RemCoChairs 'taking control', have contributed to a relatively benign current environment for ExecRemConsultancy. This may well be linked, of course, to the consensus view of RIP interviewees being that ExecRemConsultants have high 'professional standards'. This position could change however, for any one of the reasons mentioned above. Accordingly, there should not be reliance on the present situation remaining stable.

An example is what might have happened if the Government/media had taken the view, in respect of recent FTSE 350 RemCo 'headlines'/ 'debacles', that the ExecRemConsultants, who happened to advise the relevant RemCos at the time, could be accused of having given 'inappropriate'/'poor advice' (even though the ExecRemConsultants concerned may actually have advised the exact opposite course of action to the one a particular RemCo decided to take).

In such circumstances the ExecRemConsultancy/ExecRemConsultant concerned might well suffer considerable reputational damage - but could not 'go public' on the issue (whether a particular RemCo had taken their advice or otherwise). The ExecRemConsultancy could, of course, resign its appointment - but that would not address the specific allegations. This can be contrasted against the position applicable to an appointed external auditor, which has the obligation to state publicly the reason(s) for its resignation.<sup>876</sup>

The current situation is demanding on ExecRemConsultants in respect of, for example, uncertainty over institutional shareholders' views on LTIPs/restricted shares. Their role in advising FTSE 350 RemCos has become a difficult mix of really detailed regulatory compliance (eg., on remuneration disclosure) and sophisticated 'relationship skills' being required to navigate an appropriate path between the differing views of particular institutional shareholders (eg., on LTIs). The situation could become immensely more challenging still if one or more of the 'change events' referred to above were to come to pass. If this happens - perhaps accompanied by criticisms of ExecRemConsultancy and ExecRemConsultants that may include: 'Why do they not have a SA/Q and/or LTP?'/ 'Why does SVExecRemConsultants not exist?'/ 'Why does RCG have such a limited role?'/ 'Why is DSOtherServicesFees not in place?' – the hope is that the relevant protagonists on the UK executive remuneration scene may find the contents of this thesis of assistance.

Additionally, as discussed in Chapter 6.4. below, it is anticipated that this thesis will be a component part of further research into the BSI proposed to be undertaken in the future.

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<sup>876</sup> External auditor (n 275).

#### **6.4. Further Research Proposals**

Two issues have already been mentioned as meriting further research. The first is in relation to CoyExecRemConsultants - and proposals in this regard have been discussed. It is considered that semi-structured interviews of a more fully representative sample of CoyExecRemSpecialists could yield potentially valuable results. This would complement the limited academic research that has previously been carried out in respect of this 'job role'. The 'three-legged stool' concept (ie., RemCoChair, ExecRemConsultant and CoyExecRemSpecialist) that was mentioned by more than one RIP interviewee is very apt. CoyExecRemSpecialists represent an important, yet currently under-researched, leg of such stool.

The second aspect of potential further research arises in light of the fact that this thesis does not cover in any detail the highly specific remuneration regulation applicable particularly to banks and insurance companies. Certain of these provisions, such as malus and clawback for incentive arrangements, have found their way into general publicly listed company practice, whereas others are specifically confined to financial services (eg., EU bonus cap). Valuable results could be obtained from research into emerging practices in financial services sector RemCo pay determination processes - covering on a comparative basis, say, US, EU, UK (particularly in view of proposed Brexit), France, Germany, Switzerland and Japan. This would be an opportunity to examine such practices, together with ExecRemConsultant and CoyExecRemSpecialist involvement particularly in the 'input' component of these in the world's key territories for financial services.

ExecRemConsultants/ CoyExecRemSpecialists comprise just one of the BSI identified in the LLM dissertation. Accordingly, this thesis can be viewed as being in fact the beginning of further work proposed to be undertaken on certain other BSI aspects. The UK's 'high executive pay' controversy is far

broader than simply ExecRemConsultants/CoyExecRemSpecialists - involving as it does, for example, issues of 'short-termism', 'rewards for failure', LTI structure and design, plus corporate ethics and behaviour.

The overarching concept is that of 'responsible capitalism'. Each time there are newspaper headlines around corporate governance/'pay failures' (recent examples could include Persimmon,<sup>877,878,879</sup> Carillion,<sup>880</sup> WPP<sup>881</sup> and even Royal Mail)<sup>882</sup> it strikes a blow against the electorate's support of 'responsible capitalism' as being the best way to provide the meaningful employment and well remunerated jobs that generate the taxes needed to pay for good public services.

## 6.5. Final Conclusions

The activities of ExecRemConsultants are currently in a relatively benign position compared, for example, to the post-GFC period – based on the consensus view of RIP interviewees, plus the analysis/discussion in this thesis. This provides very significant support for the adopted hypothesis (subject to the proposal in this thesis that RCG should consider making certain changes in respect of the ambit of its activities/VCC). Currently, there is no general clamour for radical change. Such situation though could well alter at a future date. This might particularly be the case if an incoming Government were to be elected with a mandate for making further significant reforms to

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<sup>877</sup> Financial Times Lex Editorial 'Persimmon/UK Exec Pay: Help to Buy' *Financial Times* (London, 8 November 2018).

<sup>878</sup> Attracta Mooney, 'The £75m question: who will yell "stop" on pay?' *Financial Times* (London, 7 May 2018); Merison (n 82).

<sup>879</sup> Alistair Osborne, 'Builder's leadership has gone to ruin' *The Times* (London, 8 November 2018). See also Jim Armitage, 'Fairburn's vast pay was a case of bricks and falter' *Evening Standard* (London, 7 November 2018) and Luke Hildyard, 'Governance system needs fixing in big business', Letter to Editor *Financial Times* (London, 30 April 2018).

<sup>880</sup> Carillion's collapse captured headlines in mid-May 2018. See Gill Plimmer, 'Carillion board and auditors savaged in scathing report' *Financial Times* (London, 16 May 2018); Matthew Vincent, 'Carillion's conflicted auditors require some less conflicted numbers' *Financial Times* (London, 17 May 2018) and Financial Times Leader Editorial, 'Unravelling a web of failure at UK outsourcer Carillion' *Financial Times* (London, 16 May 2018).and Plender See also (n 11) for further articles.

<sup>881</sup> The Times Leader Editorial, 'Pay Back excessive executive pay is damaging the reputation of free markets' *The Times* (London, 4 January 2018) and Alex Brummer, 'Greed that shames Britain' *Daily Mail* (London, 6 January 2018). Note also Johnson's comments (n 442) and (n 443).

<sup>882</sup> Mines (n 13). See also Pooler & Mooney's and Vincent's articles (n 13).

executive pay regulation. Accordingly, there exists the real possibility of future change.

The conclusion to be drawn from this is that the key protagonists on the UK executive remuneration scene should take all steps to avoid being remotely complacent about the present position regarding ExecRemConsultants (and, to some extent, CoyExecRemSpecialists). In fact, it should be assumed that change will come - and possibly from a currently unexpected direction.

Although there was a consensus view from RIP interviewees that the 'professional standards' of ExecRemConsultants are currently high, and that the voluntary self-regulatory regime is working satisfactorily, this may not protect RemCos, ExecRemConsultants and CoyExecRemSpecialists (plus, indeed, senior executive management more generally) from the effects of an electorate who may be enraged by perceived instances of 'fat cattery'/'rewards for failure'.

Everyone involved in the UK RemCo pay determination process/corporate governance scene needs to be ever alert to the significant damage that can arise to the concept of 'responsible capitalism' when it is perceived that such events have occurred. The 'high executive pay controversy' generates more than media headlines - it could be a key factor in the electorate turning away from the longstanding consensus that capitalism warrants its support.