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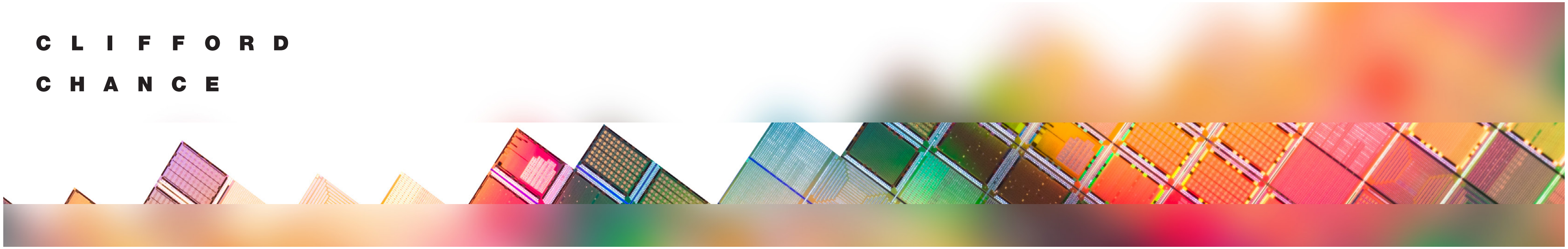

SHAREHOLDER ENGAGEMENT AGMS – WHAT ARE THE LATEST TRENDS?

The 2022 AGM season has seen a significant return to physical in-person AGMs, lower attendance figures, a rise in shareholder activism and innovative tactics used by protestors to seek to disrupt meetings. In this AGM review we explore the latest trends and set out some initial thoughts on what companies should be considering for next year.

At a glance

- **We saw a strong return to physical, in-person meetings.** Whilst some companies included webcasts for shareholders to view proceedings remotely, fully hybrid meetings are still seen as more complex and expensive than in-person meetings which make them unattractive for many companies.

- **Shareholder attendance (physical and hybrid, where available) has generally been lower than anticipated.** With the lifting of Covid-related restrictions on public meetings, companies prepared to welcome back shareholders in person, in many cases for the first time in two years. In person attendance was generally underwhelming with many retail shareholders not returning for the annual tea and biscuits. Online attendance was much lower than anticipated.

- **Activism is increasing.** We saw more shareholder requisitioned resolutions and shareholder agitation than in previous years. Activists are no longer focusing just on climate change, but on other social and workplace issues too.

- **Significant shareholder dissent.** There has been increased targeting of individual director reappointments, to show dissatisfaction both with the individual and with the wider board and its strategic direction. Remuneration issues have also once again been a focus for shareholder opposition.

- **There was large-scale disruption at the AGMs of a handful of large financial institutions and oil and gas companies.** As the AGM season progressed, activists became more innovative in their disruption tactics.

- **New FRC AGM Guidance published.** This encourages companies to disclose more openly how they have taken account of stakeholder issues and to engage with all types of shareholders, using technology where appropriate. The new guidance may ratchet up expectations for smaller listed companies.

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A return to in-person meetings

This year, following the removal by the Government of Covid-related restrictions on public meetings, we have seen the return of physical AGMs, often with little or no electronic participation. Most FTSE 350 companies held straightforward physical meetings, although some added a live webcast or dial-in facility (chart 1). FTSE 100 companies that held hybrid meetings during the pandemic typically continued to do so, but very few others stepped up to provide full hybrid facilities, despite many having recently amended their articles of association to expressly allow for them.

Only a handful of companies (three out of five being overseas companies (chart 1)) opted for virtual-only meetings, reflecting the uncertainty that exists over the validity of virtual-only meetings from a UK law perspective.

Contrary to what many expected, those listed companies which provided hybrid and webcast facilities reported low numbers using the electronic platform, suggesting that hybrid meetings may not be the most effective route to encouraging and increasing shareholder participation at AGMs. We are unlikely to see, at least in the short-term, significant numbers of companies – particularly smaller companies – adopting a fully hybrid approach as adding a fully hybrid platform significantly increases complexity and cost. However, for those larger companies that have provided hybrid facilities thus far, there is likely to be an expectation from investors that this will continue.

COVID safety – largely last year's problem

We saw a return to something more like pre-COVID normality in terms of arrangements and facilities at AGMs. As Government restrictions fell away, in-person shareholder attendance noticeably increased, COVID-related safety restrictions such as mask-wearing decreased, and there was a welcome return of tea and biscuits.

Most companies prudently highlighted in their AGM notice the potential need to change arrangements at short notice should the COVID situation change and, whilst we all hope that COVID is largely behind us, the need to plan for such precautionary measures is likely to continue into next year.

Shareholders add climate and social issues to the agenda

More shareholder-requisitioned resolutions have been threatened and filed this year compared with previous AGM seasons (chart 2). These resolutions were mostly centred on climate issues, but we are also starting to see this form of activism around social and workplace issues too, which is attracting media attention. Examples include the Living Wage resolution tabled at Sainsburys plc.

This broader ESG activism is also happening in other jurisdictions, including the US, where Amazon, for example, received a deluge of requisitioned resolutions on the treatment of workers, the use of non-disclosure agreements and a number of other issues which go beyond climate change.

The number of shareholder-led resolutions is perhaps lower than one might expect, given the media coverage of activist campaigns. In reality, a targeted Board frequently agrees next steps (updates to the company's ways of working and additional disclosures) with the particular interest group, so a threatened resolution does not always make it to a shareholder vote. In some cases, the shareholder proposal results in a director-proposed resolution being put forward at the AGM, with backing from the interest group. The "Say on Climate" campaign is driving this trend and so far this year we have seen 15 "Say on Climate" resolutions.

In the 2021 AGM season we saw climate change interest groups increasingly obtaining support from traditional institutional investors in the push for change at listed companies. Engine No. 1's successful campaign at Exxon in the US is perhaps the most striking example of this. This trend was also seen in the UK and is reflective of an increased focus on climate and other broader stakeholder issues amongst institutional investors and increased scrutiny of their stewardship responsibilities.

As this AGM season progressed, some other high profile issues such as the challenging economic environment, cost of living, energy security, the war in Ukraine and broader geopolitical relations have increasingly risen to the top of the Board agenda. In a number of instances, these issues are over-riding prescriptive climate change goals in the short-term both for companies and investors. Two of the largest asset managers, BlackRock and Vanguard, have announced that they are unlikely to support 'prescriptive or extreme' proposals which demand that Boards take, or refrain from taking, specific actions on the climate front. For example, to reduce carbon emissions by a specific amount, or to stop financing fossil fuels. However, BlackRock has stated that it may still support demands for greater disclosure in relation to a company's climate change strategy.

Significant shareholder dissent

Shareholders often show their disapproval by voting against AGM resolutions (chart 3). There is increased targeting of individual director reappointments, to show dissatisfaction with both the individual and the wider board and its strategic direction.

Sometimes, directors have received significant votes against their re-election as a result of 'overboarding' concerns, where they are perceived to be overcommitted. In other cases, shareholders target the chairs of the nomination and remuneration committees with significant votes against, in an effort to express dissatisfaction with certain policies and practices, in particular around board diversity and remuneration. This year we have seen a total of 62 significant votes against either the re-election of directors or remuneration issues, which is far higher than all of the other categories combined (chart 3).

Whilst the level and frequency of shareholder dissent in relation to director remuneration is not new, there has been a lot more variety in the reasons for the votes against. There are certainly themes in some cases, including perennial shareholder concerns, such as remuneration committee generosity towards exiting directors and changes to bonus and long-term incentive plans which are perceived to make payouts easier to achieve and bonuses being paid to directors of companies that took Government Covid support. There were, however, many more votes where there is no trend and the votes were linked to company-specific reasons.

Activists and disrupters

Climate protesters once again targeted a number of large financial institutions and oil & gas companies. The level of disruption at some of these companies' AGMs was significant, and activists have used more innovative tactics than many were expecting (see case studies).

For companies that are already targeted, and for those who see themselves as high risk, planning for next year has already begun and is not going to be easy.

Companies dealing with disrupted AGMs have taken a balanced and proportionate approach and have tried to ensure that the business of the meeting is dealt with whilst giving everyone an opportunity to be heard.

New provisions under the Police, Crime, Sentencing and Courts Act 2022, came into force in June, restricting protests in public areas and this might constrain future activity around AGM venues. However, once shareholders are inside the venue and the AGM has started, the conduct of the meeting will principally be governed by common law and the articles of association.

We have seen overseas companies in targeted industries use new (initially COVID-related) legislation to hold shareholder meetings on a virtual-only basis to avoid disruption to the ability to conduct the business of the meeting. In the US, oil giants, such as Exxon and Chevron, held virtual meetings this year and avoided this type of disruption. However, continuing uncertainty around the legality of virtual-only meetings here means this is not an option for affected UK listed companies.

It is crucial that companies work with their advisers and AGM venue to minimise possible disruption and have contingency plans in place.

DISRUPTED AGM CASE STUDIES

Singing from the rafters

HSBC's 2022 AGM was held at London's Queen Elizabeth Hall. Perhaps this concert venue inspired climate protesters to use song to protest against the Bank's financing of fossil fuels, through an adapted rendition of ABBA's 'Money, money, money'. As protests go it was short, with protesters ushered out after five to ten minutes, still singing.

Glued to their seats

Barclays' AGM was held for the first time in Manchester and its move to hold its AGM outside of London got off to a sticky start with climate activists disrupting the first 45 minutes of the meeting, setting off alarms and gluing themselves to the furniture and to each other to avoid being removed by security. The Chair, Nigel Higgins, was forced briefly to pause his opening speech as security dealt with the protesters after multiple interruptions. However, the meeting was able to continue and those joining the hybrid meeting online were largely oblivious to the disruption in the room.

On a lunch break

Shell was once again a target for climate activists at this year's London AGM. As the Chair, Sir Andrew Mackenzie, attempted to open the event, protesters chanted a doctored rendition of 'We will stop you' (to the tune of 'We will rock you'), before gluing themselves to chairs.

Following 40 minutes of disruption, Sir Andrew asked non-protesting shareholders to leave the main auditorium and retire to another room for lunch, which gave the police and security staff the opportunity to clear the meeting room of the activists. Three people were arrested outside the hall – two for attempted criminal damage and one for criminal damage.

Sexism over substance

At Aviva's AGM the problem was not climate protesters (insurance companies have not been targeted – yet). Instead, during the Q&A, some shareholders in the room aimed sexist comments at Amanda Blanc, Aviva's first female CEO, including that she was 'not the man for the job' and should be 'wearing trousers'.

The Chair, George Culmer, closed the Q&A saying: "*I'm not going to say thank you to everyone for your comments, because I think there were some comments in that session that were simply inappropriate and I do not expect and would not want to hear at any future AGM. I'm flabbergasted, to be honest.*"

There was an outcry following the sexist remarks with Ms Blanc receiving widespread messages of support and later posting on social media: "*In all honesty, after 30+ years in Financial Services I am pretty used to sexist and derogatory comments like those in the AGM yesterday.*" She also went on to say "*I would like to tell you that things have got better in recent years but it's fair to say that it has actually increased – the more senior the role I have taken, the more overt the unacceptable behaviour. The surprising thing is that this type of stuff used to be said in private, perhaps from the safety of four walls inside an office – the fact that people are now making these comments in a public AGM is a new development for me personally.*" She went on to note that this might prompt others to think about what they might do at their AGMs or when they encounter situations like this in the future.

Shareholder engagement – the bigger picture

Traditionally, the AGM was often the only way in which a company engaged with retail shareholders, but companies are beginning to recognise that the AGM is just one part of developing greater shareholder engagement.

Whilst hybrid meetings have not necessarily delivered in terms of increasing shareholder engagement (see above), there are other approaches – many of which were widely-used during the pandemic – which have continued to be used. These include more engagement with shareholders around the AGM including via a Q&A webcast ahead of the AGM or encouraging questions by email and publishing answers on the company website in advance of the meeting.

Perhaps the future lies beyond standard hybrid technology – Spain's Iberdrola provided its AGM's remote facility in the metaverse this year, allowing shareholders to participate in the meeting's proceedings as avatars for a fully immersive experience.

However, in the UK – even leaving aside the question as to whether UK companies can legally hold virtual-only meetings – a number of shareholder bodies are opposed to the idea of virtual attendance at meetings because they see this as allowing directors to avoid difficult shareholder questions being asked in a face-to-face meeting. An alternative view is that virtual meetings would be more accessible to all shareholders, allowing companies to reach a much broader geographical spread of shareholders and thereby enhance shareholder participation. On balance, it would be helpful if the Government was to legislate to remove the current uncertainty around the ability for UK companies to hold valid virtual-only meetings, so that companies could use the format most appropriate for their shareholders.

Whilst some companies have arranged shareholder engagement events away from the AGM, this very much remains the exception, at least as far as engagement with retail shareholders is concerned.

New Financial Reporting Council AGM Guidance

Published in July, the FRC's latest guidance highlights areas of potential best (or better) practice around AGMs and other shareholder meetings more generally and serves as timely encouragement for more disclosure around how companies have responded to stakeholder issues and for greater engagement with all types of shareholders, taking advantage of technology where appropriate. It covers key aspects such as board engagement with shareholders, communication of meeting arrangements, using proxies and voting processes. The guidance does however emphasise that there is no "one size fits all" approach and that companies should tailor their approach in light of their own circumstances and the composition of their shareholder base. For larger FTSE100 companies, there is unlikely be much to change as a result of this guidance, but for smaller companies it may ratchet up the expectation on how they should seek to engage with shareholders more broadly going forwards.

Looking ahead – things to consider

- Physical meetings are back, and listed companies should continue to plan on that basis. However, for companies that held hybrid meetings during the past few years, the expectation is likely to be that they should continue.
- Whether or not climate activists targeted a company's meeting this year, it is not safe to assume that it will not be targeted in the future. If you think you are at risk, you should start planning how to mitigate disruption now.
- Shareholder action groups are now focusing on social/ workplace issues as well as climate issues, and we expect more shareholder requisitioned resolutions to be proposed and filed next year. Companies should have a response ready and to be prepared to engage early with these groups, in order to try to find a mutually beneficial solution for all.
- Listed companies need to be thinking carefully about their climate and other sustainability activities, to ensure that where they are taking positive steps, they are disclosing them clearly and in accordance with the increasing volume of related disclosure requirements.
- In the US, we are starting to see 'conservative' groups waging war on so-called "woke capitalism" by challenging the value of corporate diversity and human capital policies, charitable giving and political spending. Whilst these proposals garnered less than 5% of shareholder support, the surrounding publicity is driving further activity. This 'woke backlash' is not something that we expect to see imminently in the UK, but it is something to be aware of.
- Take the time to review the new FRC guidance in relation to AGMs and consider how you measure up and whether there are any changes you might want to implement in your AGM plans for next year.

Return to Physical AGMs in 2022

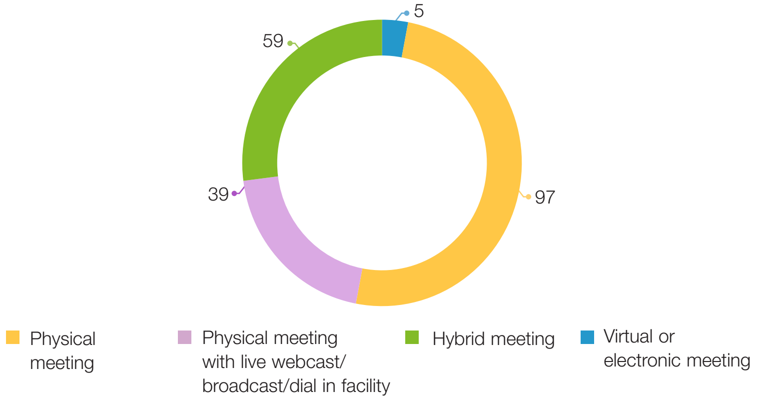

Chart 1

Requisitioned Resolutions in 2021 and 2022

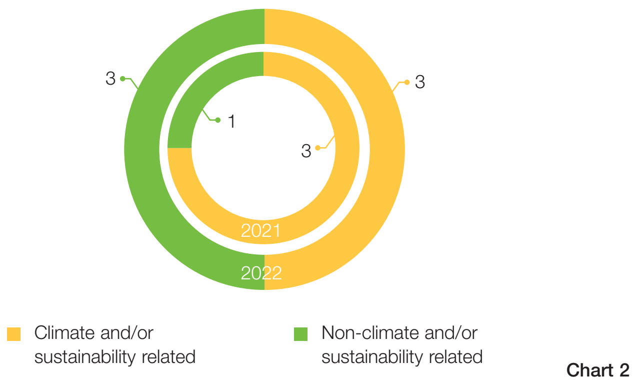

Chart 2

Resolutions Receiving a Significant Vote Against in 2022

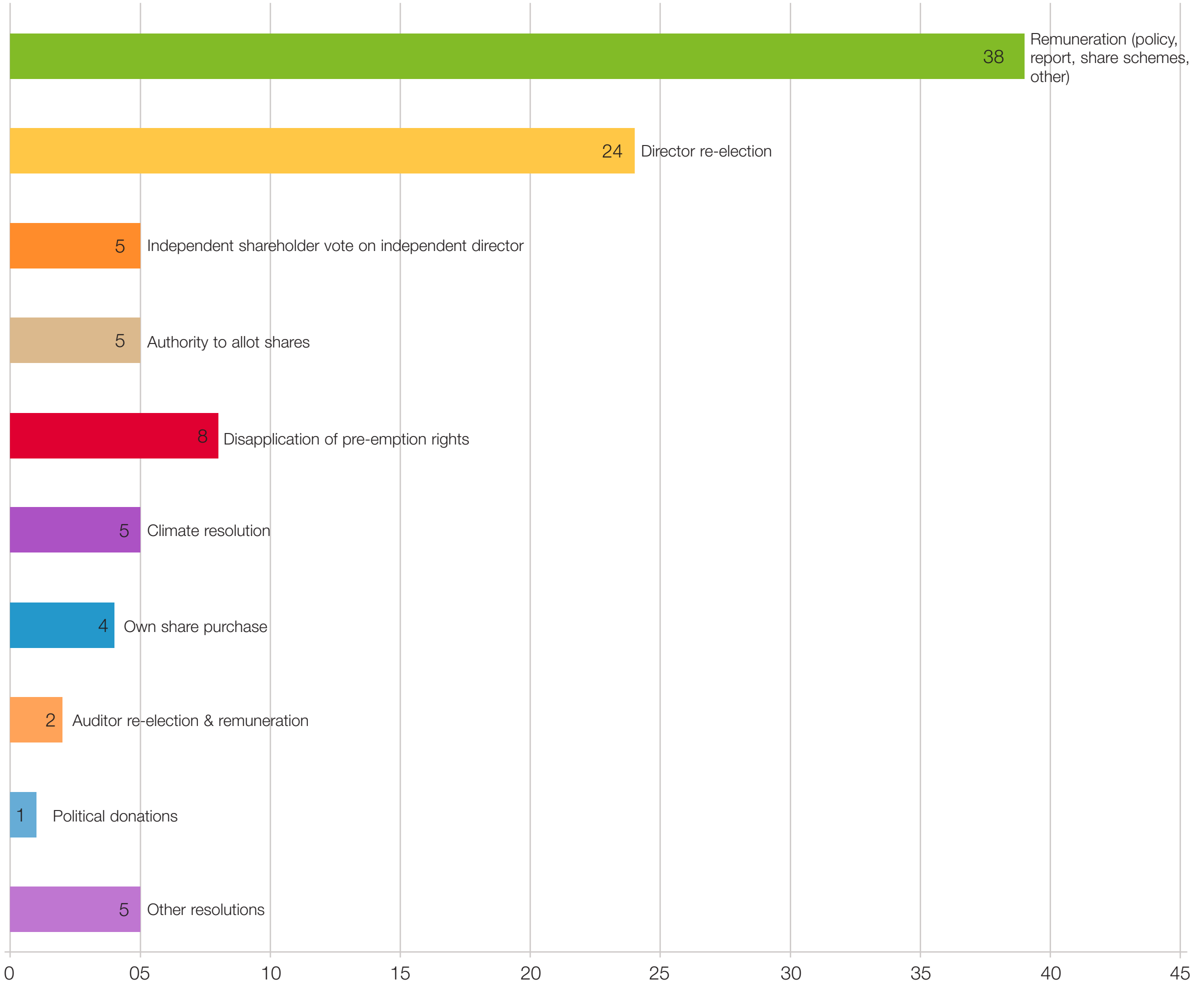

Chart 3

Note: This publication reviews FTSE 350 companies in respect of notices of AGM for 2022 with a cut-off date of 9 June 2022, unless stated otherwise.
Chart 1: Source - UK Practical Law, What's Market - accessed on 22 July 2022.
Chart 2: Source - UK Practical Law, What's Market - accessed on 17 June 2022. Figures for 2021 season review FTSE 350 companies in respect of notices of AGM with a cut-off date of 9 June 2021.
Chart 3: Source - The Investment Association - accessed on 20 June 2022 (data last updated 9 June 2022). Figures review FTSE All Share companies in respect of 97 resolutions.

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