



Designated NEDs:
The journey from
scepticism to
meaningful insights

Insights on workforce engagement
from discussion roundtables



Building a better
working world

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Background

The 2018 UK Corporate Governance Code (the 2018 Code) introduced greater emphasis on how boards consider and engage with their workforce. This arose from several political and societal impetuses to empower employees, strengthen their voice in the boardroom and bring directors closer to the realities of those on the ground.

Under the 2018 Code boards have to adopt one or a combination of the following mechanisms to engage with the workforce, or to explain what alternative arrangements are in place:

- ▶ A director appointed from the workforce; or
- ▶ A formal workforce advisory panel; or
- ▶ A designated non-executive director (DNED).

The most commonly adopted approach has been to appoint a DNED¹, though it has often been implemented in combination with other approaches e.g., townhalls, newsletters, employee forums.

Context for our discussion roundtables

To what extent have the new mechanisms been successful in raising the employee voice in the boardroom? To find out, EY's Corporate Governance team organised discussion roundtables early in 2020, with a view to understanding what had been achieved in the first year of the implementation of the 2018 Code and to draw out practical tips to help boards and DNEDs improve future engagement.

Between organising the roundtables and holding them in May 2020, the world changed with the rapid onset and spread of COVID-19. We held our roundtables in May 2020, as planned, but virtually. They were attended by around 30 FTSE 350 DNEDs, company secretaries and HR directors. With widespread remote working, many companies having mothballed or temporarily closed operations and furloughed their employees, the importance of two-way dialogue with the workforce has been amplified. We therefore also used the opportunity to gain insight on how boards had adapted their engagement in these trying circumstances.

Some clear themes and common ideas emerged from our conversations. **We share these in this paper to provide boards, company secretaries and others involved in this space with practical thoughts on how to approach workforce engagement in the future. The insights within this paper should help DNEDs evolve and become more effective in their role.**

Key findings

1. Companies have made a good start with DNEDs enthusiastically taking up the mantle. While the first year has been a lot about taking stock and learning, DNEDs feel they have been able to have some impact and deliver.
2. Many companies already had many mechanisms in place to engage with their employees. DNEDs have supplemented these – the main change has been to ensure that workforce feedback gets appropriate attention at the board level.
3. Where there is a significant proportion of staff under varying working arrangements (e.g., contractors), DNEDs may need to evolve and expand their engagement to cover the wider workforce, not just employees.
4. Data ought to play a role in helping to target the focus of the DNED's activities.
5. Both the role and the mechanisms are still bedding in. It will likely take time to build trust from the initial scepticism and, alongside this, for the feedback to be of a calibre that will meaningfully influence board decision making.

These and other findings are detailed in the rest of this paper. Given the topic of discussion, we use informal terminology and colloquialisms to enable readers to easily relate to the messages.

¹ Financial Reporting Council (FRC) Annual Review of The UK Corporate Governance Code, January 2020, page 11.

1 Best person for the job



The starting point for many boards was deciding who is the right person to take on the role, aside from the practicalities of having the capacity to do so.

a. 'Cos you have the personality

A common discussion point that we had not quite anticipated was how important the individual's style and personality were. It is important for the workforce not to feel intimidated or hesitant to speak openly and honestly to a board member – something which sounds obvious but, in practice, is no mean feat. Therefore, the DNED needs to be good at building rapport and needs to have an open, natural approach to engaging people. Company secretaries also

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Our NED was a natural fit for the role. He has thrown himself into the role and we have had really positive feedback. Our workforce has welcomed the chance to have a dialogue with the board and have been surprised how open our NED has been.”

Company secretary, FTSE 250

reiterated that there is a skill required from the DNED in guiding discussions effectively in order to gain good board-level insights whilst maintaining a warm and friendly manner.

b. Volunteering, not being volunteered

Willingness to take on the role is key. Many DNEDs told us they had volunteered for the role. They felt it presented a good opportunity to make use of their experiences and to get greater visibility of the business. Many highlighted the significant time investment required to carry out the DNED role properly, suggesting it was equivalent to a committee chair. Despite the increased workload, there seemed to be a real desire to invest time to ensure their engagement was meaningful as it was recognised that this bore results in terms of more valuable feedback. Many companies had decided that they would rotate the DNED role, perhaps after a three-year term primarily to give other NEDs the opportunity to gain exposure both to the business and the workforce. Interestingly, some very large companies with global reach had appointed more than one DNED to 'divide and conquer' and reach more of the workforce. All agreed that, while they had a key role, the board retained overall responsibility to engage the workforce.

c. With my other hat on

A large proportion of the DNEDs were also the senior independent director (SID) or Remuneration Committee Chairs. There was consensus that these positions involve complementary responsibilities, already interacting with the workforce: the SID, alongside the Chair, is viewed as a representative of the board; the Remuneration Committee Chair often interacts closely with the workforce due to their responsibilities within the 2018 Code to consider wider employee pay policy and practices.

Top tips

- ▶ As well as assessing directors' individual skills and experiences to determine who is best suited to take on the DNED role, also consider their personal and social styles to enable them to be effective.
- ▶ Consider whether the DNED should be awarded additional fees (in a similar vein to a committee chair) given the significant time commitment of the role.
- ▶ Subject to overall commitments and availability, consider aligning the role to that of the SID or Remuneration Committee Chair.
- ▶ Consider whether rotating the role would be beneficial both from the board's and workforce's perspectives. If this is done, allow enough time for each DNED to learn the ropes and make an impact.

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The more you put in the more you get out. Though, you have to use time carefully — you can't boil the ocean in one meeting.”

DNED, FTSE 250

2 Don't reinvent the wheel



The board's responsibility to consider the interests of employees is not new. It is part of directors' s172 duties to promote the success of a company which has been in law for over a decade.

Irrespective of this legal duty, it makes good business sense for management and directors to understand the views of the workforce in order to guide and make better, and more effective, decisions.

a. If it ain't broke ...

It was therefore no surprise to hear most companies already had a variety of mechanisms to elicit the views of their employees. Sensibly, many of the DNEDs initially decided to take stock of these engagement methods, check for any gaps and

assess whether the information flows to the board needed to be improved. The conclusion in most cases was that the existing structures were working effectively and the DNED made only slight adjustments – for example, having the DNED attend already established employee forums.

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We had a lot of existing mechanisms to hear the voice of the employee. We have left these in place and looked to leverage these to a greater extent with our DNEDs.”

HR Director, FTSE 100

b. Beyond employees

The 2018 Code focuses on workforce engagement in contrast to employee engagement under company law. It doesn't define the term 'workforce', but the 2018 FRC Guidance on Board Effectiveness considers individuals engaged under contracts of service, agency workers, and remote workers, regardless of their geographical location, as part of the workforce. This is in recognition that traditional working arrangements have, in recent times, evolved beyond standard employment contracts. It is important the board considers the different interests and hears the views from each significant part of the workforce. It became evident from our discussions that not all companies – many of which actually had significant staff under varying working arrangements e.g., in the mining sector – had been able to fully think about this in the first year of applying the 2018 Code. In future years, such companies will have to evolve and expand their engagement to cover the wider workforce, not just employees.

c. Don't tread on the toes of management

A commonly recognised challenge was the need to set boundaries. There is a limit on how far the DNED can and should become involved in employee matters. The DNED is a board role and care is required to ensure that they don't veer into an executive or

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There is a danger the role can stray into executive responsibilities. I have to make a judgement call if I am the right person to address issues or if I decide to pass them on to the executives.”

DNED, FTSE 100

management function. Participants said DNEDs need to be very clear in establishing the purpose of their engagement with the workforce, explaining why they are there, how their role runs in parallel to executive engagement and setting out what they can and cannot do. Often DNEDs will need to delegate issues to HR directors or executive management and they need to be clear with the workforce on this. Some DNEDs noted the close support they had from the HR function and that this helped them tread this line carefully. The DNED however has an important accountability role i.e., to make sure that, even where delegated to executive management, the issues raised with them had been resolved or closed off appropriately.

Top tips

- ▶ Take stock of existing workforce engagement mechanisms and identify what the gaps are and how they can be addressed.
- ▶ Define 'workforce' in the context of your company and establish how your board is hearing views from all of its significant constituents.
- ▶ Set clear boundaries on the role of the DNED with the board, executives and workforce.
- ▶ Involve the HR function in supporting the DNED to operate effectively.

3 Getting people to talk and to listen

Some may feel less comfortable discussing issues in a group and a lot of effort will be required to get the conversation going. DNEDs pointed out that this is often exacerbated by cultural differences, something particularly complex in more global organisations. But differences in ages (or generations) and job types, or personalities, can also be a barrier. To get meaningful insights, it is important to make every effort to be inclusive.

a. But why are you really here, and do I trust you?

Many DNEDs were faced with initial scepticism and a sense of suspicion as to why a board member was there. Employees were hesitant to openly express views, especially if management was also present. Suggestions to tackle these obstacles included providing briefing materials in advance to explain why the DNED was there, having a private session without management present (for part of the session at least) and meeting the workforce in smaller groups. As is common in other situations, frequently engaging with the same sets of people, helped with openness and honesty.

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It took time to get people comfortable with the idea the board was coming to talk to them. The more times I met with people the more comfortable they felt, and trust was built.”

DNED, FTSE 250

b. Working the room

A popular idea discussed in all of our roundtables was to have a simple agenda to guide discussions, co-developed with the workforce. Often these would start with an item that everyone would be able to contribute to in order to get people talking. Another suggestion was to have standing items that enabled the DNED to update on actions taken as a result of prior engagement as well as to provide insight on a few strategic topics. This was seen as aiding the two-way feedback loop with the board.

Other ideas to get the conversation going included combining the meetings with other methods, especially to engage those less willing/able to speak up. For example, establishing an inbox to send questions and feedback in advance of a meeting with the DNED; having an external facilitator familiar with the local culture to help break the ice where DNEDs came from different backgrounds; or even having the

DNED meet employees informally at site canteens. Participants noted that the workforce was often more vocal if they were grouped with peers with similar backgrounds e.g., gender, diversity characteristics or occupational level.

c. Who to talk to, and about what?

We asked how DNEDs decided which locations to visit as part of their engagement programme. Surprisingly very few had made use of data or risk-based assessments to determine who and where they'd engage. In global organisations, DNED activities were often aligned with planned board site visits or other activities, for reasons of cost efficiency. As virtual engagement becomes more common and embedded (see COVID-19 section below), it is a good opportunity to target locations which may otherwise be lower down the priority list due to distance, scale or materiality but may nevertheless be important from an engagement perspective. With increased use and availability of culture and human capital metrics, DNEDs should be able to better target their engagement where it may be most needed. Equally, it should also enable them to visit locations with positive practices and then share learnings across the company.

An interesting debate ensued on the matter of executive remuneration. The 2018 Code introduced a requirement for remuneration committees to report what engagement with the workforce had taken place to explain how executive remuneration aligns with

wider company pay policy. Many of the DNEDs felt that it was their role to engage on this topic, but their experiences were extremely varied. In some cases, employees showed an avid interest for the policies and metrics being applied. For others, they had struggled to garner much interest at all. To deal with this dichotomy, and to improve wider understanding of the topic and other similarly complex topics, some DNEDs had instigated separate 'educational' podcasts or internal news bulletins.

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My role complements our internal work on improving culture. Following a cultural survey, my engagement is used to probe deeper into certain questions with the workforce — getting to understand what the issues are behind the survey data.”

DNED, mutual financial institution

Top tips

- ▶ Provide briefing materials to participants in advance to explain the purpose of the DNED's role.
- ▶ Meet with members of the workforce in smaller groups and include a private session with no or fewer members of management present to encourage open exchange.
- ▶ Establish an informal agenda which starts with a simple item that everyone can contribute to.
- ▶ Co-develop the agenda with the workforce.
- ▶ Consider the most appropriate combination of engagement mechanisms to ensure inclusivity.
- ▶ Use data and metrics to identify how to target a DNED's activities.

4 Making a difference

There was agreement that the 2018 Code requirement had elevated the employee agenda in the boardroom. While workforce engagement occurred previously, more often than not it didn't involve the board and/or its outcomes tended to be taken as read and not discussed at much length. Now, DNEDs have been more able to draw the workforce perspective into boardroom conversations as well as report back formally to the chair or relevant committees on their engagement.

However, there was also acknowledgement that the feedback DNEDs have gathered to date has had limited impact on strategic board decisions as it has, so far, often centred on more operational matters. In large part, this is because both the role and the mechanisms are new and still bedding in. It was agreed that, after the initial scepticism and "settling in" period, trust will build and the issues being raised are likely to provide more meaningful insights.

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We still need to raise the feedback to a level more supportive to the board decision making process.”

Deputy company secretary, FTSE 100

Top tips

- ▶ Elevate conversations with the workforce to strategic topics away from everyday issues – not only to get their input but also hear their concerns and feedback.
- ▶ Share workforce insights both through formal reporting and by embedding into boardroom conversations.
- ▶ Ensure that time is built in to allow board decision making to consider employee feedback.

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I regularly report back to our governance committee formally on my engagements. However, I find the most effective way to feedback workforce views in the boardroom has been if relevant topics come up in board conversations, I contribute what I have heard right then.”

DNED, mutual financial institution

5 The importance of engaging during the COVID-19 crisis



We held our discussions during the COVID-19 pandemic – an unprecedented crisis that has rapidly changed the way in which we all live and work. Everyone spoke about the disruption that has been felt in their businesses and the accelerated pace at which decisions have had to be made. At the same time, the crisis has brought organisations closer together, with a shared drive to overcome the challenges faced.

With extensive remote working, communication has never been more important. It is now more frequent, and it has changed from containing just factual updates to having a softer tone that recognises the challenges individuals face. DNEDs were keen to support their organisations, especially when difficult or sensitive messages had to be delivered.

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We have gone from trying to engage our workforce of 4,300 in just a few offices to 4,300 different offices!”

DNED, FTSE All Share

A real benefit was seen in virtual communications and engagement. Although it cannot completely replace physical communication and the subtleties that this brings, many DNEDs commented that, compared to the pre-conceived notions on online/virtual communications, they had been positively surprised. Virtual platforms had enabled them to speak to more people, more frequently and perhaps in locations they would not otherwise have reached quickly. It was previously common to convene a physical meeting/forum in the country of the DNED's residence, and conference call/dial in other locations. This had unconsciously given a stronger voice to those in the room. With everyone engaging virtually, the playing

field has been levelled, often leading to overall better participation. Many DNEDs hope to continue with some virtual engagement even when social distancing restrictions are lifted as they had been pleasantly surprised by the outcomes.

As the crisis continues to evolve, participants spoke of the need to regularly revisit engagement plans to assess if they are working. Organisations will have to adapt and learn as the situation changes.



Top tips

- ▶ Use shorter and more frequent communications.
- ▶ Be open to trialling virtual platforms as a method to engage the workforce.
- ▶ Regularly review the effectiveness of engagement methods and consider the need to revise these.

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Communicating virtually during the crisis has worked well and we plan to continue with this approach. Everyone is in the same position virtually, there is no superiority. It levels the conversation playing field.”

DNED, FTSE 100

6 Reporting implications

Provision 5 of the 2018 Code and the Companies (Miscellaneous Reporting) Regulations 2018 introduced additional reporting requirements around workforce and employee engagement respectively. We supplemented our findings from the roundtables with an analysis of employee engagement disclosures from across 100 annual report and accounts (ARA) of FTSE listed companies².

From this, we found that better reporters disclosed the topics of focus for the DNED, the specific feedback obtained from engagements as well as the impact this had on board decisions or management actions. This is in contrast with more boiler-plate, process-driven disclosures. From our discussions at our roundtables popular ideas included having a personal statement from the DNED and featuring a Q&A with the DNED on their experience during the year. This would provide more easily accessible and insightful information for readers.

Examples

- ▶ Elementis PLC, 2019 ARA, p63 – clearly sets out the established purpose and responsibilities of the role, the activities in the year and those planned for the following year.
- ▶ Legal & General Group PLC, 2019 ARA, p65 – evidences not only how the DNED engages the workforce but also the feedback received and what the board has done as a result of feedback.
- ▶ IHG PLC, 2019 ARA, p32-33 – disclosure explains how the DNED is supported in his role, his specific insights and learnings from engagements as well as actions being taken based on feedback.
- ▶ Reckitt Benckiser Group PLC, 2019 ARA, p101 – good explanation on why the DNED mechanism was chosen for workforce engagement whilst noting that the rest of the board is not absolved of its engagement responsibilities.

² EY's Corporate Governance team conducts an annual review of FTSE 350 reporting trends and provide insights on leading-practice disclosures. Our full report will be published in September 2020.

Top tips

- ▶ Clearly set out the chosen method of workforce engagement and an explanation of why this method has been chosen.
- ▶ Provide insight into the DNED's appointment process and the arrangements in place for the role e.g., tenure, support from HR or company secretary.
- ▶ Explain the types of engagement the DNED has carried out over the year.
- ▶ Describe the topics of feedback and how this has been taken forward or impacted board decisions.
- ▶ Consider including a Q&A with or personalised message from the DNED.

For further observations relating to ARA disclosures including s172(1) statements please visit [ey.com/corporategovernance](https://www.ey.com/corporategovernance)



7 Getting practical: A framework to help DNEDs operate effectively

Based on what we discussed and heard at our discussion roundtables with DNEDs, company secretaries and HR directors, we thought it would be useful to set out a framework to help DNEDs operate effectively. Companies can use this to benchmark their practices or as a starting point when drafting the terms of reference or statement of responsibilities of a DNED.

Appointment

- ▶ Appointments of the independent DNED should be made by the board (based on a recommendation from the nomination committee) and should consider the individual's skills, experience and availability as well as their personality and engagement style.
- ▶ The board should consider aligning the DNED's role to that of the SID or Remuneration Committee Chair, subject to the interest and availability of these individuals.
- ▶ Rotating the role should be considered and as part

of the succession planning, a reasonable transition or shadowing period should be built in.

- ▶ The board should consider appointing multiple DNEDs, particularly in instances where there are a large number of sites or geographies to cover.
- ▶ The board should appoint an HR function delegate to support the DNED.
- ▶ The expected time commitment of the role should be clearly defined and the board should consider whether the DNED will be commensurately remunerated.

Duties

- ▶ The board should ensure that the separation in roles and duties of the DNED versus executive management, HR and other roles such as a whistleblowers' champion (e.g., in regulated entities) is clearly agreed and understood by all involved, including the workforce.
- ▶ The DNED, with HR, should regularly review the number, methods and outcomes of workforce engagement to assess their effectiveness. As part of this, the DNED should consider whether they are engaging with all constituent parts of the workforce and not just employees.
- ▶ The DNED should consider insights from culture monitoring activities and other data sources in determining their target engagement activities and approach.

- ▶ Before each engagement with the workforce the DNED should ensure participants understand the purpose of the engagement and have an opportunity to contribute to discussion topics.
- ▶ Over time, the DNED should strive to steer engagement towards issues of strategic relevance.

Reporting responsibilities

- ▶ The DNED should report formally to the Board at least bi-annually on how they have discharged the matters within their duties and responsibilities.
- ▶ The DNED should escalate and notify the Board immediately of any matters which are deemed to be of material significance which cannot, in the opinion of the DNED, wait until the submission of a formal report.
- ▶ The DNED should contribute to boardroom discussions where workforce interests are impacted by board decisions. This contributes to the board's discharge of its duty under s172 and the 2018 Code.
- ▶ The DNED should feedback to the workforce on how their input has been considered, their concerns addressed or to explain any particular courses of action.

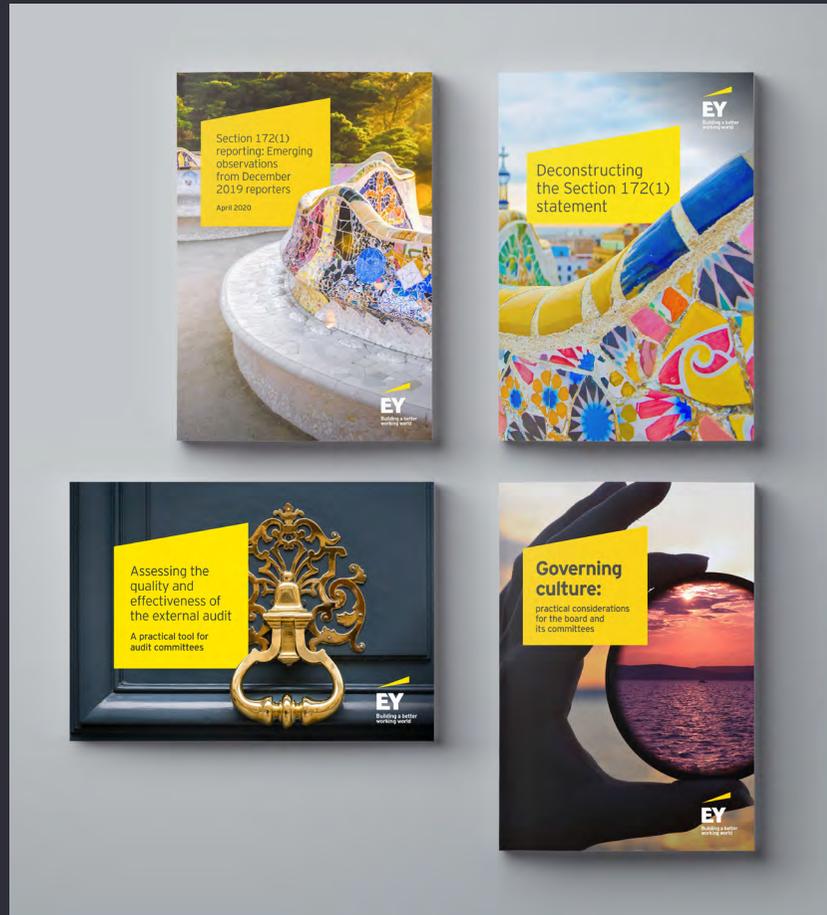
Other matters

- ▶ The chair should review the performance of the DNED annually and identify any developmental opportunities or changes to the DNED role to ensure the intent and spirit behind the role are being met.

Contacts and resources

EY UK's Corporate Governance team provides guidance and thought leadership on governance issues to help management and boards. The team also contributes to wider discussions on good governance, based on our research and engagement with investors, boards and regulators.

We can provide further insights, bespoke governance advice and annual report reviews. To find out more contact us at corporategovernance@uk.ey.com or visit our website ey.com/corporategovernance



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