

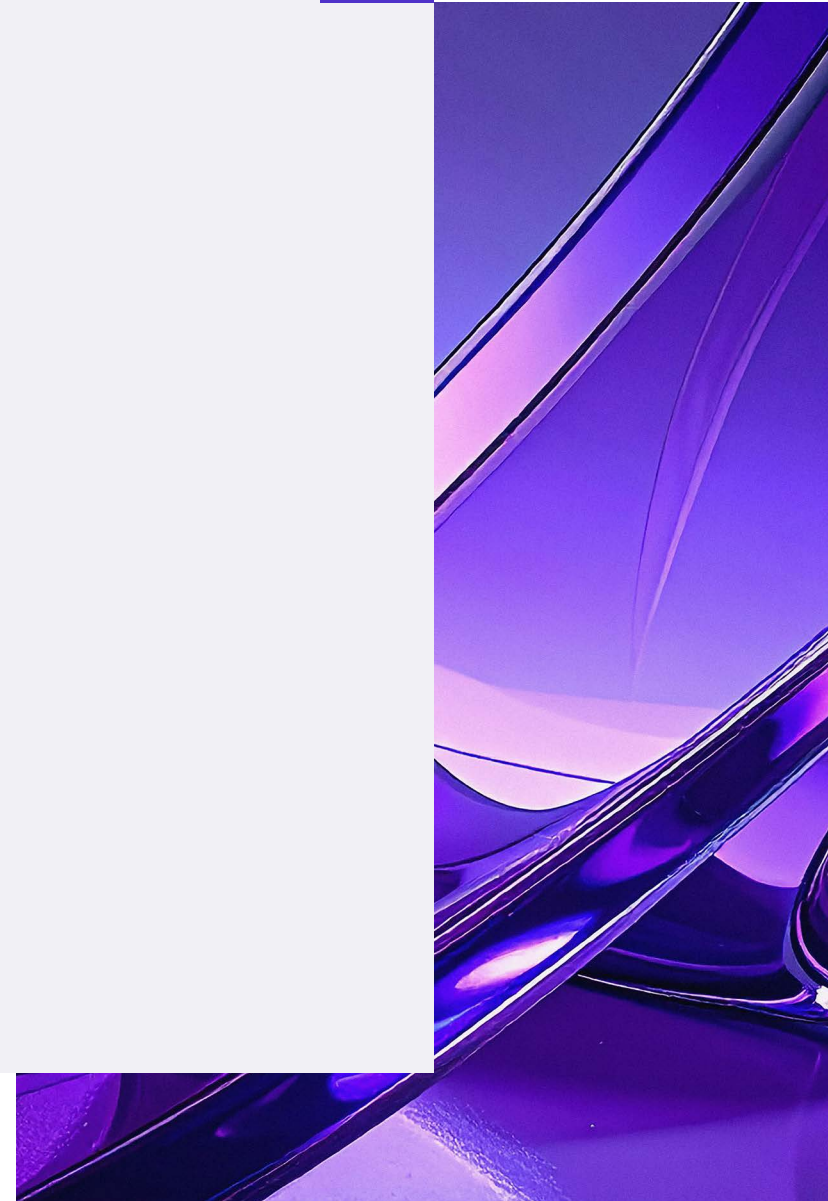
SLAUGHTER AND MAY



Boardroom Essential

Need to know for non-executive directors
and senior management

SEPTEMBER 2026



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Welcome to the Q3 issue of Boardroom Essential

Our quarterly publication for non-executive directors and senior management.

2026 has been a remarkable year for UK public M&A, with the value of firm offers in the first eight months already surpassing the whole of 2025 as international bidders are drawn to UK-listed targets by perceived undervaluation and favourable exchange rates.

At the same time, the regulatory and governance landscape continues to shift, with boards facing heightened expectations on internal controls, a changing tax framework, and the growing influence of AI across corporate operations and the threat environment.

In this edition, we examine the key takeover trends and what they mean for boards, before turning to the employment front, where the removal of the cap on unfair dismissal compensation from January 2027 changes the risk profile of senior executive exits — and we look at the steps remuneration committees should be taking now.

We then consider five AI issues boards should have on their radar this autumn, followed by a significant governance milestone — the first Provision 29 declarations on the effectiveness of material controls, which companies with calendar financial year-ends will need to make in early 2027.

We also look at HMRC's consultation on the taxation of distributions and capital repayments, which could reshape the way buybacks, demergers,

and returns of capital are structured, and round off with the new legislation enabling sponsoring companies to access surplus from ongoing defined benefit pension schemes.

As ever, our aim is to support your strategic decision making by bringing you insights from around the firm that help you continue to lead your businesses with confidence.

If you would like more information on any of the matters covered, please speak to your usual Slaughter and May contact. We hope you enjoy the issue.



Paul Dickson
Partner

Takeover trends in 2026



Key implications for boards

Boards are likely to see increased focus on:

- **Valuation and pricing:** bridging valuation gaps remains critical, with a wider range of pricing structures being used to progress transactions - requiring careful board consideration of risk, value and long-term outcomes.
- **Deal certainty and risk allocation:** deal certainty matters more than ever, sharpening the focus on risk allocation in the context of continuing regulatory scrutiny - an area where active board oversight is key.
- **Execution discipline:** successful dealmaking amid uncertainty continues to require resilience, creativity and discipline, underpinned by clear strategic rationale and robust governance.

UK public M&A has accelerated sharply in 2026. The value of firm offers made in the first eight months of 2026 has already outstripped total takeover value recorded in 2025, as UK public companies continue to prove attractive targets.

Activity remains selective, but momentum has strengthened despite geopolitical uncertainty.

Quest for scale

Scale is driving the market. Large-cap transactions have returned, with offers for FTSE 100 companies signalling renewed appetite for transformational combinations.

Tactics in focus

Hostile tactics have been prominent, with bidders increasingly appealing directly to target shareholders as differences in valuation expectations remain pervasive.

In turn, target boards and shareholders are leveraging pre-offer processes to improve terms and maximise value.

For boards, preparedness and early shareholder engagement are critical.

£65bn

aggregate value of UK takeovers in 2026 YTD

▲ 97% YoY

Strategic bidders and sponsors aim high

International bidders accounted for almost two thirds of firm offers, and 92% of deal value in the first eight months of the year. Persistent perceptions that UK equities are undervalued, combined with favourable exchange rates and international market volatility, continue to contribute to the appeal of UK targets

- Well-capitalised corporates are leading the majority of deals at the top-end of the market, including bids for **SEGRO, Schrodgers, Beazley, Rotork** and **Tate & Lyle**.
- Sponsors have been active across the value spectrum, but the return to scale is notable, with sponsors willing to pursue larger-cap, high-conviction public deals. **EQT's** offer for **Intertek** is set to become the UK's second largest sponsor-led take-private on record.

Boardroom takeaways

01

Scale is back: Scale has been the dominant theme of 2026, driven by a return of larger-cap transactions.

02

International bidders dominate: International interest in UK-listed targets has led activity, accounting for 92% of YTD deal value.

03

Early engagement is critical: Bidders are engaging target shareholders at an early stage in the process, with bear hug tactics back in focus.

04

Cash is king: Cash has become the predominant form of consideration, offering value certainty to shareholders.

05

Structured sale processes: Targets increasingly used sale processes and strategic reviews to respond to unsolicited interest and identify the best route to shareholder value.

1. Return of the bear hug



2026 has seen a return of more aggressive bidder tactics, with bear hugs – where a bidder publishes an indicative offer, typically including its terms, without the target board’s consent – an increasingly prominent feature.

Where private engagement on terms fails to secure a recommendation, a bear hug enables a bidder to test shareholder appetite broadly and publicly (which could not be achieved by wall-crossing a select few). The bidder’s aim is to encourage target shareholders to pressure the target board to engage, grant access to diligence, explore a transaction and, ultimately, recommend the proposal.

It can also be useful where the bidder has already been identified publicly, and the clock is ticking on its 28-day “put up or shut up” (PUSU) deadline to announce either a firm intention to make an offer or that it does not intend to make an offer.

A bear hug allows a bidder to frame its proposed premium, strategic rationale and the deliverability of the transaction, and can shift the burden of rebuttal onto the target. This can be particularly effective where the bear hug reveals the bidder for the first time, allowing the bidder to set the tone – at least initially – before the target has publicly established its own narrative. However, the strategy is not without downsides.

Are there downsides for bidders?

As an extension to the 28-day PUSU deadline is, in practice, only granted at the target board’s request, the bidder takes the risk as to whether the target board will be sufficiently persuaded within the PUSU period to recommend or extend the deadline. If not, it will be timed out and its only options are to walk away or make a hostile offer, which remains very rare in the UK (although this year, **Helios** has made one for **CAB Payments**, and **Harworth** received a hostile offer from

its major shareholder **Peel** without a prior bear hug approach).

Another potential downside is that subsequent engagement will play out in public and there will be scrutiny of the bidder and its proposal. This may well unsettle the target workforce or even draw in another bidder.

Targets can bite back

A successful outcome for a target is not necessarily the outright defeat of an approach, but may lie in an improvement of the terms such that the board can recommend the deal to shareholders.

Strategic moves – including dictating the timetable through a target’s control over PUSU extensions as well as the timing and extent of any information-sharing – are key tools in the target’s arsenal. Seeking a white knight to make a competing offer is less typical, but can be an effective strategy.

A critical element of a target’s defence is a compelling public narrative. Ultimately, effective preparation for an approach is key to a target’s ability to react to a bear hug quickly and effectively and to help control the story. In rare cases, a target may even consider voluntarily announcing an approach before the bidder does – putting itself in play but the bidder on the back foot and on the 28-day PUSU clock.

SEGRO

Prologis made its proposal to SEGRO shareholders early – just over a week after submitting a proposal to SEGRO’s board (although it had made a previous private approach in March 2024). Following a series of revised proposals, the SEGRO board announced it was minded to recommend Prologis’ best and final offer.

ip group

Railpen made a voluntary bear hug for IP Group in June 2026, having sought to privately explore a possible offer since late 2025, but has subsequently announced that it does not intend to make an offer.

easyJet

Castlelake made a bear hug for easyJet later in its PUSU period. Shortly before the PUSU deadline, the easyJet board gave Castlelake an extension before jointly announcing an agreement in principle. easyJet later recommended a competing offer from Apollo.

intertek

EQT adopted a bear hug approach by publishing its “final” proposal for Intertek two days before its PUSU deadline, following weeks of public speculation. Intertek announced that it was minded to recommend the final proposal.

beazley

Zurich chose to publicly announce its possible offer for Beazley, commencing its offer period, having made a number of private proposals to Beazley’s board since mid-2025. The two boards later announced an agreement in principle.

2. Cash tightens its grip



Cash has further strengthened its position as the predominant currency of UK takeovers in 2026, with listed equity featuring in fewer offers than in recent years.

- **Certainty:** A fixed cash price provides target shareholders with a settled amount to assess. In contrast, the value of listed share consideration is vulnerable to movements in the bidder's share price and, potentially, fluctuating exchange ratios up to completion. In the current period of macro volatility, this can make it challenging for the target board and shareholders to assess an offer's value. Share consideration also requires target shareholders to evaluate the equity story of the combined group.
- **Availability of financing:** The size of the cash offers announced in 2026 demonstrates that committed debt and equity financing remains available for high-quality assets – **Zurich's** \$5bn equity raising to partly finance its acquisition of **Beazley** and **Nuveen's** £3.1bn committed debt facility to acquire **Schroders** are good examples.
- **Dividend flexibility:** Several of the largest transactions announced in 2026 have included the ability for target shareholders to retain specified dividends without a corresponding reduction in the offer consideration. In some cases, this has extended beyond the next scheduled dividend to include future ordinary-course dividends arising during an extended transaction timetable (e.g. **Nuveen's** offer for **Schroders** and **Ingredion's** offer for **Tate & Lyle**).

Listed stock: a harder sell?

2026 has demonstrated some of the commercial and practical challenges of persuading target shareholders to accept listed stock:

- The Takeover Code imposes additional constraints on share bids – including in relation to profit forecasts – which add complexity and can put bidders off.
- Procedurally, applicable securities laws will impose obligations for share offers.
- In addition, investment mandates, index eligibility, custody arrangements, tax treatment and overseas securities law issues can make bidder equity unattractive or impracticable for some shareholders, or they may be restricted from receiving or retaining bidder shares where they are listed overseas.

The current level of interest by international strategics has brought this issue into focus.

Prologis' offer for **SEGRO** was initially proposed as a share offer and, alongside valuation, the attractiveness of an all-US paper offer was questioned in the market. A 25% cash "sweetener" was subsequently introduced as well as a commitment to establish a secondary listing of Prologis shares on the London Stock Exchange.

Stub equity can unlock deals

For sponsor-backed bids, unlisted or "stub" equity can allow shareholders to remain invested following the takeover, while lowering execution risk for bidders and potentially helping to bridge valuation gaps.

Stub equity can also help secure the support of a significant existing shareholder. For example, Apollo's recommended offer for easyJet includes an alternative under which eligible shareholders may elect to receive unlisted rollover shares in place of cash. The Haji-loannou family has undertaken to elect for the rollover in respect of approximately 15.3% of easyJet's existing share capital.

The investment proposition differs materially from listed equity: unlisted securities will typically have more limited liquidity and transferability, and different governance, information and exit rights. Structure, eligibility and terms therefore require careful consideration and this will often become a key upfront negotiation point on a stub equity deal (i.e. as between bidder and major shareholder).

69%

of firm offers were
cash-only in 2026 YTD
vs. 66% YoY

3. Structured sale processes



In 2026, targets (particularly smaller ones) have increasingly used sale processes and strategic reviews to respond to unsolicited interest, test public market valuations and identify the best route to shareholder value.

Formal sale process

An FSP allows a board to run a formal, public process. It can broaden the bidder universe and create competitive tension through a structured comparison of proposals. **Checkit** commenced an FSP after receiving six unsolicited expressions of interest from credible international parties.

The Panel will normally grant certain Takeover Code dispensations. Participating potential offerors may remain unnamed and outside the 28-day PUSU timetable while they remain in the process.

What are the trade offs?

- **Market perception of FSPs:** Announcing an FSP publicly signals that the company is available for sale and can be perceived as reflecting strategic or financial pressure, even where the process is launched proactively.
- **Management distraction:** Bidder engagement, management presentations and due diligence can place significant demands on management and the board.
- **Execution risk: An FSP** is often a prolonged public process without necessarily producing an acceptable proposal or firm offer.

Private sale process

A PSP allows a board to engage confidentially with a restricted group of potential offerors and test value and deliverability without immediately commencing an offer period. It can be particularly effective where credible bidders are identified. However, it is a more fragile process due to the need to maintain confidentiality.

Senior's PSP illustrates the potential benefit: following an unsolicited approach, the board initiated discussions with a limited number of third parties, creating competitive tension and securing a recommended offer.

What are the trade offs?

- **A narrower bidder universe:** Targeted outreach may not identify an unknown buyer willing to offer superior terms.
- **Fewer Code dispensations:** A PSP may allow participants to remain unnamed, but does not provide the full package of FSP dispensations, including blanket relief from the PUSU regime.
- **Public dynamics:** An announced PSP becomes a public search. Any potential offeror specifically identified ordinarily needs to be named and become subject to the PUSU deadline, although other participants may remain confidential.

Strategic reviews

A strategic review allows a board to assess a potential sale alongside other strategic alternatives and may ultimately lead to a Formal Sale Process (FSP) under the Takeover Code, a non-Code transaction or no transaction at all.

A board may also invite approaches publicly without commencing an FSP. Any potential offeror specifically identified will usually become subject to the 28-day PUSU timetable, increasing the pressure to decide quickly whether a firm offer is achievable.

What are the trade offs?

- **Flexibility:** A properly conducted review may support a transaction, an alternative strategic action or a decision to remain listed.
- **Risk if no route to value identified:** It can be resource-intensive and attracts shareholder scrutiny if it does not produce a transaction or identify a clear route to value.
- **Fewer dispensations:** The dispensations available on a FSP are not available.

Sources: S&P Capital IQ; Practical Law: What's Market. Data as of 31 August 2026 This material is for general information only and is not intended to provide legal advice.

Uncapped unfair dismissal: what boards need to know now



The Employment Rights Act 2025 will remove the compensation cap for unfair dismissal at the end of this year, so for dismissals on or after 1 January 2027 the potential exposure from a successful unfair dismissal claim becomes unlimited. The risk is particularly acute for senior executive dismissals, where the individual may be earning a seven-figure package (or more) and following a fair dismissal process is often problematic. Boards need to take action now to mitigate the risk of these uncapped claims.

Why this matters at board level

When a board decides to part company with a CEO or senior executive whose conduct or performance has fallen short, the usual approach is to seek a swift exit via a settlement agreement. This may include paying an amount representing the maximum amount of unfair dismissal compensation (currently set at the lower of twelve months' pay or a statutory cap of £123,543). Since this cap is usually far exceeded by the executive's annual remuneration package, there has to date been little incentive for executives to claim unfair dismissal. The existence of the cap has also made it relatively easy in most cases to reach a negotiated commercial settlement.

From January 2027, the financial risk profile of an executive dismissal will change fundamentally. A highly remunerated executive who brings a successful claim will be able to recover compensation reflecting their full loss of earnings, including not just base salary, but annual bonuses, long-term incentive plan awards, pension contributions, and other benefits. Losses can be claimed for whatever period a tribunal deems reasonable in order for the executive to find equivalent employment. For individuals at the top of the market, the sums involved can therefore be very large indeed.

Fair dismissal for executives?

One option for boards to consider is whether (and in what circumstances) it may be feasible to carry out a fair dismissal process for an executive. Performance management of very senior employees is rare and may be challenging, from a cultural and practical perspective. The employer (and to some extent the executive) would often prefer to act quickly, without disrupting the business and risking negative press coverage, shareholder concern or reputational damage.

Employers may be able to rely on "some other substantial reason" (SOSR), and this could allow for a simpler dismissal process. SOSR is one of the potentially fair reasons under the unfair dismissal legislation, alongside misconduct, lack of capability, redundancy or contravention of law. SOSR can be established where there has been a loss of confidence or breakdown in the relationship with the executive. But much will depend on the circumstances and the appetite within the organisation for taking this approach.

The settlement agreement lever

Settlement agreements are (and are likely to remain) the most effective tool for achieving a clean break in executive exits. In exchange for an agreed package, the departing individual waives their right to bring claims, including unfair dismissal. The challenge for boards is ensuring they retain sufficient leverage to secure that waiver, particularly where the individual knows that their potential claim is now uncapped. Valuation of losses from share and bonus awards may be complex, and lead to lengthy negotiations.

Tightening good leaver provisions

This is where remuneration committees should focus their attention. Many share plans and bonus schemes provide for "good leaver" treatment on termination, allowing leavers to retain the value of their awards. In many cases, good leaver status is either triggered by the particular circumstances

of departure (e.g. redundancy or retirement) or determined by the committee at their discretion.

In light of the new uncapped regime, good leaver provisions should be reviewed. In particular, the remuneration committee should have express discretion to grant good leaver treatment only where the departing individual enters into a settlement agreement (if requested by the company) that includes a waiver of employment claims.

This creates a straightforward commercial dynamic: if the executive signs the settlement agreement, they receive the benefit of good leaver treatment across their incentive arrangements. If they do not, the committee retains discretion to apply bad leaver treatment, typically resulting in forfeiture of unvested awards and loss of bonus entitlements. This will remove much of the value from an uncapped unfair dismissal claim.

Key implications for boards

Practical considerations

Remuneration committees should be reviewing existing plan rules and award documentation now to assess what amendments are needed. New awards should be structured with tightened good leaver provisions built in from the outset.

Boards should also consider whether budgets need to be reviewed to allow for greater provision for senior exits.

Finally, boards should assess whether there is any scope to expedite any anticipated senior executive exits so that they take effect before 1 January 2027, to avoid the new uncapped regime and minimise financial exposure.

AI on the board agenda: five issues for Autumn 2026



As AI opportunities continue to be identified and explored and enterprise adoption increases, there are new (or at least, amplified) risks for Boards to consider as we head into the end of 2026:

- 1. AI is tilting the cyber battlefield:** Against the backdrop of headlines warning of AI models initiating cyber hacks, continued attacks on UK AI infrastructure, and the Trump administration banning access to some frontier models on national security grounds, the UK's National Cyber Security Centre (**NCSC**) has been vocal about the ways in which AI is changing the cyber threat landscape. Its recent guidance on [managing the cyber risk of agentic AI](#) highlights the importance of carrying out threat modelling before deployment of agentic AI, controlling the agent's environment with a robust sandbox, setting the right level of oversight and maintaining the ability to 'pull the plug' in an emergency. Boards should consider whether existing cyber risk frameworks adequately reflect the reality that AI is reducing the cost and increasing the scale of cyber attacks, while equivalent gains in cyber defence remain harder to realise.
- 2. Corporate governance rules in play:** We continue to see increased focus, and investor scrutiny, on AI governance. The updated UK Corporate Governance Code also now requires boards to make an annual declaration on the effectiveness of their material internal controls (which may include technology issues like AI). For companies with calendar year-ends, the first declarations will be required in early 2027 – see our article on Provision 29 of the Code and the declaration of effectiveness in this edition for more information.
- 3. Increased AI reliance means increased operational resilience risk:** As organisations embed AI into core processes, both internal and customer facing, operational resilience increasingly depends on the availability, performance and integrity of those AI systems. This is particularly true where critical services depend on a small number of AI model and system providers, creating potential concentration risks. Boards need to satisfy themselves that AI dependencies have been mapped, stress-tested and factored into operational resilience planning. Cyber-style simulation exercises may also prove useful in rehearsing responses to AI-related disruption.
- 4. The EU AI Act is now generally applicable – and fines can follow:** The AI Act has been in force for some time but with staged implementation. Most of the Act now applies, including the enforcement and transparency provisions which have applied since 2 August 2026, although the EU's simplification programme for its digital and AI rules ([the AI omnibus – see blog](#)) has pushed back the timings for the Act's high-risk obligations. The Act has wide extra-territorial reach (catching users with EU operations, but also user organisations outside the EU whose AI output is used in the EU) and fines are significant (up to 7% of worldwide annual turnover). Despite the Act's wide reach and significant penalties, many organisations are still being asked to make judgment calls in areas where guidance is limited – for example, around how the extra-territoriality works in practice, and even what constitutes an in-scope AI system ([see our article for more information](#)). Enforcement expectations also remain largely untested.
- 5. UK Government changes – what does this mean for AI Regulation:** The arrival of a new prime minister has brought a reshuffling of AI policy priorities. The appointment of a new cabinet-level, dedicated Minister for AI and an AI Taskforce signal AI ambitions, while the dismantling of the Department of Science, Innovation and Technology (DSIT) has raised concerns about a lack of focus and loss of institutional expertise. No dedicated AI Bill has materialised, despite this being hinted at for a number of years, and a key question for the new administration will be how the UK wants to regulate AI risk – particularly given the fast paced evolution of the technology, and continued geopolitical pressures in this space. In the meantime, the UK's sector-specific approach continues, meaning organisations need to continue engaging with relevant regulators and monitoring developments in this space.

Anything to declare? Counting down to boards' first Provision 29 declarations



Background

Under Provision 29 of the UK Corporate Governance Code 2024, companies that choose to comply must include a board “declaration of effectiveness” of the company’s material controls. The requirement applies to financial years beginning on or after 1 January 2026, meaning that for calendar-year reporting companies, the first such declaration will speak as at 31 December 2026 and will appear in the annual report published in spring 2027.

The 2018 Code of course already requires boards to monitor and annually review financial, operational and compliance controls, and to confirm in the annual report that a review had been carried out. As well as adding reporting controls to that list, the 2024 Code critically adds a new requirement that the board must in the annual report:

- describe how it has monitored and reviewed the effectiveness of the framework of material controls;
- make a declaration of effectiveness of the material controls as at the balance sheet date;
- describe any material controls that were not operating effectively at that date, together with action taken or proposed to improve them; and
- report on action taken in respect of any previously reported issues.

Importantly the declaration speaks as at the balance sheet date and [the FRC has clarified in guidance](#) that it does not expect companies to report on a material control failure from across the course of the year if it has been rectified by the balance sheet date (unless it was a publicised issue, as shareholders and stakeholders would already be aware of the issue and expect to see reporting on it).

Preparing for the year-end.

Because the declaration speaks as at the balance sheet date, boards of calendar-year reporting companies have the remainder of 2026 to complete their testing of their material controls framework. Issues identified can be rectified before 31 December without triggering disclosure. Boards should also use this period to consider the draft disclosure language and what the board sign-off process will look like.

What should reporting under Provision 29 look like?

It is up to each board to decide upon its material controls; there is no set number, but the FRC has indicated that many companies have identified around 30-50. The annual report need not list those controls or describe the testing performed. Reporting should be proportionate and concise—normally no more than two pages—and avoid immaterial detail.

In terms of the declaration of effectiveness, there is no prescribed form of words. The board should give a clear, company-specific and reasonable conclusion, supported by a short account of its monitoring and review. A declaration may be qualified where a material control was ineffective. Any material weakness unresolved at the year end must be disclosed with a description of the actions taken or proposed to improve it but the FRC does not expect commercially sensitive or technical remediation detail that could harm the company’s interests to be disclosed. For illustrative purposes only, a ‘clean’ declaration might be along the following terms:

“The Board has reviewed the effectiveness of the Group’s risk management and internal control framework and, having regard to the recommendation of the [Board Audit and Risk Committee] and its work throughout the year, has concluded that, as at [31 December 2026], the Group’s material controls were operating effectively, providing reasonable assurance against financial, reporting and operational losses and of compliance with laws, rules and regulations”.

Overlap with Sarbanes-Oxley

Some companies will already report on internal controls under the Sarbanes-Oxley Act (“SOX”). While there is some overlap with Provision 29, there are also significant differences.

- **Scope:** SOX addresses internal control over financial reporting only. Provision 29 encompasses not only financial controls but also operational, reporting and compliance controls.
- **Nature:** SOX is prescriptive and rules-based. Provision 29 is principles-based; there is no mandated framework, no requirement to document every control or perform walk-throughs.
- **Certification:** SOX requires personal CEO/CFO certification and, for large companies, verification and attestation by an external auditor. Provision 29 is a collective board declaration and external audit assurance is optional (see below).

Companies that report under SOX may find it helpful to use their current approach and build on it to meet the requirements of Provision 29, or may prefer to keep the processes separate. A deficiency identified under SOX would generally be relevant for Provision 29 purposes (if continuing as at the balance sheet date), but due to the different scope, what is reported under Provision 29 will not always be relevant for SOX purposes.

Provision 29 and the role of the auditor

The FRC has recently published a [Provision 29 mythbuster](#) that clarifies the role of the auditor in relation to Provision 29. It is important to note that the Provision 29 statement is not covered by the audit opinion. In other words, auditors are not required to state that in their opinion the Provision 29 statement provides a “true and fair view” or to give any other form of comfort on the statement.

Similarly, auditors are not required to assess which controls are “material” nor are they required to test the design, implementation or operating effectiveness of the material controls. The auditor may, however, choose to test the operating effectiveness of certain controls as part of their response to assessed risks in the audit. This may include controls which are also material controls under Provision 29.

For audit purposes, the Provision 29 statement sits within what is known under the relevant accounting standard as ‘other information’, meaning that the auditor must read it and consider whether there is material inconsistency between the statement and (a) the financial statements or (b) the auditor’s knowledge obtained during the audit.

Broadly speaking, therefore, the auditor must consider whether it has any information that casts serious doubt on the accuracy of the declaration. If the auditor considers that there is a material inconsistency, it must evaluate whether this gives rise to a material misstatement of the “other information”. If an unresolved material inconsistency remains, the auditor may be required to report it as a material misstatement of the other information. Conversely, if the board discloses an ineffective material control relevant to the audit, the auditor considers whether it is new information, reassesses the risks of material misstatement where appropriate and decides whether further audit procedures are needed.

In practice, auditors are likely to have significant knowledge of the company’s financial controls, but less knowledge about operational, compliance and other controls. In the course of their work, auditors will generally share their views on the strength and weaknesses of the internal control systems they encounter in their audit work with the audit committee and the board. The board can take some comfort if the auditors do not find any weaknesses, but must be mindful that the scope of the auditors’ review is limited. By way of example, the auditors will not tend to comment on operational risks that are outside their area of expertise if these do not impact the financial statements.

Should boards seek external assurance?

External assurance on the control framework is optional and may cover the whole framework or only selected elements, with the decision revisited year by year. It is not, however, a substitute for the board’s own judgement. Boards should first map assurance from management, risk and compliance teams and internal audit, then consider whether to commission targeted independent work where evidence is weak or risk is high, or where it is considered important to benchmark the company’s internal controls testing against peers. Especially where the statutory auditor is engaged to give assurance, independence and scope constraints require care (for example, where the audit firm has already provided advice on designing a control that it is then asked to give assurance on, this could give rise to a conflict).

HMRC's consultation on distributions and capital repayments



On 23 June 2026, [HMRC published a consultation](#) on modernising the taxation of distributions and repayments of capital from companies. The proposals could fundamentally change how share buybacks, demergers and returns of capital are structured. The consultation ends on 14 September 2026.

The proposed changes are aimed at individual and trust shareholders and they will need to be taken into account by companies when structuring any transaction involving such shareholders.

HMRC say that they are seeking to address inconsistencies where substantively similar payments receive different tax treatment. In general, capital treatment is more favourable for individuals and trusts than income tax treatment because the rate of tax and the amount brought into charge are lower.

Three areas are of particular relevance to listed companies.

1. Capital returns following holding company reorganisations

HMRC want to close what they see as a loophole that allows the amount of “good tax capital” on shares to be increased which enables returns of value to be made in capital form, rather than as income.

A common technique has been to insert a new holding company above the group. This has the effect of increasing the amount of “good tax capital” to the market

value of the old parent company shares. HMRC now proposes to “freeze” the capital on shares in any new holding company at the amount originally subscribed for the underlying shares.

2. Demergers

Currently, the capital reduction route is often used by companies to carry out non-statutory demergers. The proposal to “freeze” the capital in shares (as mentioned above) will mean more demergers will be carried out through the statutory demerger route. HMRC is therefore proposing a number of broadly positive changes to the statutory demerger conditions to give more flexibility and provide simplification.

However, as a trade-off for these relaxations, HMRC proposes to remove the automatic right to appeal to the tax tribunal should a statutory demerger clearance be denied. Boards contemplating future separations will need to consider how the revised statutory conditions might apply.

3. Distributions from non-UK companies

Under current law, different rules apply depending on whether a distribution is made by a UK resident company or a non-UK resident company. In some cases distributions from non-UK resident companies are taxed as capital, whereas the same distribution from a UK resident company may be taxed, at least in part, as income.

HMRC proposes to align the two regimes by extending the full UK distribution rules to non-UK companies. Groups with offshore holding arrangements should consider whether this could affect returns to shareholders.

Key implications for boards

What should boards do for now?

The consultation is at an early stage and HMRC has emphasised that it will not proceed without fully understanding the commercial impact. Although no legislative timetable has been set, boards should be aware that the proposals may affect planned capital returns, demerger timetables, and the tax treatment of distributions within international group structures. The high-level nature of the consultation leaves many questions unanswered.

Refunding surplus from an ongoing defined benefit scheme



As at September 2025, more than 80% of defined benefit schemes were in surplus, with an estimated total surplus of over £170 billion. The Government clearly thinks that some of this could be used to stimulate economic growth with the result that new legislation is being introduced to facilitate the return of surplus to sponsors from ongoing schemes.

What is changing?

With effect from 6 April 2027, where scheme documentation does not allow an ongoing surplus to be refunded to sponsors, trustees will have the power to pass a resolution to permit it (subject to any conditions they determine). In addition, regulations will change the amount of surplus required before a refund can be made, potentially allowing release at lower funding levels.

Some practical considerations

Sponsors may want to start a conversation with trustees now about whether any surplus can be refunded to them and if so, on what terms. Any decision will need careful thought and to have regard to wide range of factors, including those set out below.

- **Scheme objectives:** The feasibility of release may depend on the scheme's long term objectives and how close it is to buying-out liabilities with an insurer and winding-up. Where buy-out is already in contemplation, trustees may be more reluctant to run-on the scheme to allow for surplus release.

- **Liabilities:** Surpluses can be ephemeral and illusory. Trustees will need to consider how certain they are that all liabilities have been properly identified and costed for as there is a long history of schemes being required to pay out more than originally intended.
- **Employer covenant:** Trustees will need to consider the covenant strength of the sponsor and whether it would be able to support the scheme in the future should the funding position deteriorate following any refund of surplus. They may require additional financial information from the sponsor. The sponsor may also need to consider whether it is willing to put in place contingent support such as guarantees to reassure the trustees.
- **Fiduciary duties:** Trustees have fiduciary duties and must think about whether release of surplus is appropriate from a fiduciary perspective. Whilst there is no requirement to share any surplus between sponsors and members, the members' interests are a factor trustees will need consider and in doing this, they should take into account issues such as the level of inflationary increases paid and whether benefits have previously been reduced. However, trustees should also consider the source of any surplus, which in many schemes is likely to be sponsor contributions.

What next?

We are awaiting final regulations and detailed guidance from the Pensions Regulator but in the meantime, sponsors might want to consider if their scheme has a surplus and if so whether to engage with the trustees about a possible release and the impact that this might have on their business and future planning.

Sponsors should also consider whether other options might achieve their aims better than surplus release. It might, for example, be possible to use surplus to meet DC contributions, either in the same scheme or as part of a transfer to another arrangement.



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