

# FRC – New Guidance on AGM Best Practice

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The Financial Reporting Council (FRC), the body responsible for the UK Corporate Governance Code, has published guidance on best practice for holding AGMs, taking into account the impact of this year’s COVID-19 lock-down on the 2020 AGM season and providing its views on what did, and did not, work well. The FRC views that the lessons learned from lock-down should be a catalyst for long overdue change.

The guidance, available [here](#), sets out the FRC’s views on best practice for the 2021 AGM season, most of which is applicable, whether or not lock-down continues. In particular, the annex to the guidance is well worth reading by anyone who is starting to plan a 2021 annual general meeting or, indeed, any other shareholder meeting.

## **The future AGM – subject to law and tech**

In essence, the FRC advocates far greater use of electronic participation in AGMs in tandem with physical meetings – what is often described as the “hybrid” approach.

That said, the FRC does acknowledge that in order for this best practice to become a reality, both the law and technology need to catch up, meaning that certain of the FRC’s views may still be aspirational for all but a handful of large companies.

In particular, one of the common problems encountered during the 2020 AGM season was that although the technology may be available to hold meetings virtually, the providers are limited and accessing and utilising the technology in a failsafe way is not necessarily simple.

## **Our take on the key highlights**

Key takeaways from the guidance include:

- The FRC stresses the importance of the AGM as a means, especially for retail investors, to interact directly with the board of directors. This means that the FRC puts particular emphasis on the ability for questions to be put to the board in virtual meetings, especially in real time.
- The FRC states that the AGM “is not simply about voting” but that, effectively, is the legal purpose of an AGM. Given proxy voting is already commonplace, this did not create any practical problems during the 2020 AGM season but it is relevant to the FRC’s recommendations on greater engagement. But the guidance does not focus on a key issue that vexed many companies looking at virtual meetings and the fear of getting it legally

wrong – how to make sure the relevant technological platform is secure and that people attending, questioning and voting remotely are actually shareholders or are otherwise legally entitled to be present, speak and vote at the meeting. This presents a real opportunity for technology providers to consider and present robust solutions to this dilemma; hopefully increasing competition and lowering costs for companies in the long run.

- The FRC acknowledges that further legal clarity is needed to ensure that virtual or hybrid meetings are validly held and that many companies will need to change their articles (and have the cooperation of their shareholders do so – which as we have seen from this year’s AGM season – is not always forthcoming). But there is no guarantee that any changes to the law would be made in time for the 2021 AGM season and, in the case of many companies that would need to change their articles, the 2021 AGM is probably the earliest that a resolution could realistically be put to shareholders.
- The FRC appears to put its faith in the belief that the technology to participate in virtual meetings is readily available to all shareholders and that all shareholders are able to utilise electronic communications. This may (at least soon) be largely true, but it may not yet be the case for all retail investors, most of whom typically hold shares in nominee accounts which, historically, has led to their low AGM engagement. Virtual AGMs for these groups may create even more barriers, leading to the sort of disenfranchisement that the FRC is seeking to avoid.

### Shareholder engagement remains paramount

The FRC acknowledges that what is appropriate for individual companies will depend on their own circumstances and shareholder basis. Ultimately, when the legal and technological caveats to the guidance are taken into account, the key steps that companies will need to take in 2021 are to ensure that as much is done as possible to keep shareholders informed as to how the meeting will be conducted, how they can participate and, especially, how they can ask questions and how and when those questions are answered. In other words, holding a behind closed doors meeting that satisfies the bare legal requirements for a shareholder meeting will not, in the view of the guidance, be good enough. Nor will failing to allow, or respond to, shareholder questions.

The FRC acknowledges that the future of the AGM and its purpose deserves further consideration. And this is where things can perhaps be most usefully taken forward – whether the legal and technological challenges that have limited widespread change might be best addressed by more radical legal reform which allows for the questioning and challenge of management to be conducted separately from (and potentially in advance of), and on a more open basis than, the shareholder voting process. It is indeed no secret that greater engagement with one’s shareholders throughout the year, in whatever mode, is likely to lead to a more straightforward and uneventful AGM.

### Our views on the next AGM season

To hear more about our views on what to expect for AGMs in the 2021 season, lessons learned from this year and some practical tips on how to head off shareholder unrest at, or before, the meeting, do join us for our webinar **AGMs – a season of discontent** on Tuesday 24 November. To register your interest, please [click here](#).

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