



## **AN ANALYSIS OF DIRECTORS' REMUNERATION DISCLOSURE REGIME IN THE UNITED KINGDOM: LESSONS FOR NIGERIA**

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### **Abstract**

*This paper subjects to analysis directors' remuneration disclosure regime in the United Kingdom and draws lessons for Nigeria to promote transparency and accountability in relation to directors' remuneration. To achieve its objective, this paper critically examines the legal framework for disclosure of directors' remuneration in the United Kingdom. The Companies Act 2006 (CA 2006) provides the framework for disclosure of directors' remuneration in the United Kingdom. The Enterprise and Regulatory Reform Act 2013 (ERRA 2013), and the Companies (Directors' Remuneration Policy and Directors' Remuneration Report) Regulations 2019 (CDRPDRR Regulations 2019) respectively made amendments into the CA 2006. The first part of this paper presents an introduction, while the second part presents a brief history on disclosure of directors' remuneration in the United Kingdom. The third part highlights the importance of disclosure of directors' remuneration, while the fourth part examines the legal framework for disclosure of directors' remuneration. The fifth part concludes the paper, while the last part draws lessons for Nigeria. It was found that the legal framework for disclosure of directors' remuneration in the United Kingdom adequately guarantees transparency. One lesson drawn for Nigeria is that directors of quoted and traded companies are required to prepare directors' remuneration report.*

**Keywords:** Directors' Remuneration, Directors' Remuneration Report, Disclosure, Transparency, Accountability.

### **A. Introduction**

The CA 2006 requires every private company to have at least one director, while a public company must have at least two directors.<sup>1</sup> This strongly suggests that a company certainly needs human hands as directors to direct its business and affairs. Remunerating directors is a way of incentivising them for better performance. Under common law, just as trustees, directors of companies were expected to freely offer their services and so it was deemed that they were not to be compensated unless they have been specifically employed for services.<sup>2</sup> Therefore, the court in *Re George Newman and Co*<sup>3</sup>, held that directors were not entitled to be remunerated and cannot pay themselves or each other or make presents to themselves out of the company's assets, unless it was sanctioned by the company's constitution or by the shareholders. Paying directors for their services is also a way of giving them a stake in the company as they would work hard to ensure that value is created, thereby aligning their interests with shareholders' interests.

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<sup>1</sup> CA 2006, s 154 (1) and (2).

<sup>2</sup> Z Adenwa, 'Directors' Generous Remuneration: To be Paid or not to be Paid?' (1991) (3) *Bond Law Review*; 31.

<sup>3</sup> (1895) 1 Ch 674.



Remuneration is broken down into two main categories namely, directors' remuneration and employees' remuneration. Directors' remuneration is divided into non-executive directors' remuneration and executive directors' remuneration. The words 'remuneration' and 'compensation' mean same thing and are used interchangeably.<sup>4</sup> Remuneration has been defined as the benefit earned by executives and chief executive officers from companies that contracted them for service.<sup>5</sup> Directors' remuneration has been defined as the payment made to members of the board of directors of a company for their services.<sup>6</sup> It is also defined to mean the complete package of compensation received by directors from a company.<sup>7</sup> Remuneration is viewed beyond salary paid to directors and as such includes bonuses, stocks, options to buy stocks and other benefits.<sup>8</sup> Further, remuneration is referred to mean the income received by directors for their activities on the board.<sup>9</sup> Salary, long-term incentive, short-term bonus, and ownership income have been identified as the sources of directors' remuneration.<sup>10</sup>

Incontestable is the fact that directors enormously influence a company's performance.<sup>11</sup> Directors' remuneration strongly impacts on the financial performance of a company and has been regarded as an important factor for a company's economic growth.<sup>12</sup> Therefore, it is important that directors are compensated for their efforts. It is equally important that the remuneration process is transparent. Transparency and disclosure are terms used interchangeably.<sup>13</sup> Disclosure in connection with directors' remuneration ensures that a company's directors are accountable to the shareholders. Again, disclosure will enable shareholders and other investors to determine if directors' pay reflects the company's performance as well as the performance of individual directors. The central objective of corporate disclosure is to relate a company's performance and governance to shareholders and other investors.<sup>14</sup> Without disclosure by way of directors' remuneration report, it may be difficult for shareholders to discover when directors pay excessive remuneration to themselves.

A refusal or failure to disclose directors' remuneration may be seen as an unfairly prejudicial conduct. In *Re Sam Weller and Sons Ltd*<sup>15</sup>, a director refused to disclose his remuneration. On this and some

<sup>4</sup> D Ewers, 'Director Remuneration and Performance: A Study of Top UK Companies 1996-1998 (DPhil Thesis, Henley Business School, University of Reading, 2002) 14.

<sup>5</sup> I F Antwi and Others, 'Corporate Governance and Firm Performance in the Emerging Market: A Review of the Empirical Literature' (2021) (10) (1) *Journal of Governance and Regulation*; 105.

<sup>6</sup> N H Ab Razak, 'Director Remuneration, Corporate Governance and Performance: A Comparison Between Government Linked Companies vs Non-Government Linked Companies' (2014) (10) (2) *Corporate Board: Role, Duties and Composition*; 46.

<sup>7</sup> E T Esenohor and Others, 'The Impact of Directors' Remuneration on Financial Performance of Quoted Selected Firms in Nigeria' (2023) (10) (6) *International Journal of Research*; 379.

<sup>8</sup> *Ibid.*

<sup>9</sup> Ewers (n4), 14.

<sup>10</sup> *Ibid.* 1.

<sup>11</sup> R Melville and A Merendino, 'The Board of Directors and Firm Performance: Empirical Evidence from Listed Companies' (2019) (19) (3) *Corporate Governance*; 2.

<sup>12</sup> T Jahan, 'Directors' Remuneration and Corporate Governance within the UK' (2017) (7) (3) *International Journal of Learning and Development*; 13.

<sup>13</sup> F Janning and Others, 'Transparency is (Full) Disclosure in Corporate Governance' in F Janning and Others (eds), *The Illusion of Transparency in Corporate Governance: Does Transparency Help or Hinder True Ethical Conduct* (Palgrave Macmillan, 2020) 60.

<sup>14</sup> Antwi and Others (n5), 105-106.

<sup>15</sup> (1990) Ch 682.



other grounds, the petitioners sought an order mandating the director to buy their shares. The director argued that the alleged conduct could not amount to unfair prejudice as it affected all members of the company. The court held that the fact that the conduct complained of also affected the interests of those responsible for it is immaterial and that in this case the conduct was capable of resulting to unfair prejudice. In *Re Ravenhart Service (Holdings) Ltd*<sup>16</sup>, contrary to what was agreed that all directors are to be remunerated only by way of dividends, the first respondent without the sanction of the board of directors of the company or of the relevant subsidiaries procured payment of consultancy fees to himself from the company's subsidiaries, and also emoluments to another director of the company. Therefore, the petitioner sought an order directing one or more of the directors to buy his shares on the ground that the affairs of the company have been conducted in an unfairly prejudicial manner. The court held that the petition is not bound to fail.

As fiduciaries, directors must act in shareholders' best interests by not paying themselves excessive remuneration amounting to diversion of shareholders' wealth. In *Irvine v Irvine*<sup>17</sup>, a sole director of a company awarded excessive remuneration to himself without consulting the company's shareholders. The minority shareholders brought a petition for relief on the ground that the company's affairs have been conducted in a manner unfairly prejudicial to shareholders' interests. The court held that the awarding of excessive remuneration by the director is a conduct unfairly prejudicing the interests of the company's shareholders and ordered the director to buy the petitioners' shares. Again, in *Maidment v Attwood*<sup>18</sup>, the Court of Appeal held that the payment of excessive remuneration to a director amounted to unfair prejudice in terms of *section 994* of the CA 2006. By virtue of *section 6 (1) (a) and (b)* of the Company Directors Disqualification Act 1986 (CDDA 1986) of the United Kingdom, the fact that a director received excessive remuneration may be relied upon as a proof of unfitness in a disqualification proceeding. In view of *section 212 (1) (c) and (3)* of the Insolvency Act 1986 (IA 1986) of the United Kingdom, the court may, on the application of the official receiver or the liquidator, or of any creditor or contributory, investigate the conduct of a director accused of receiving excessive remuneration and order him or her to repay or account for the excess remuneration.

## **B. Brief History on Disclosure of Directors' Remuneration in the United Kingdom**

In the United Kingdom, legal obligation to disclose directors' remuneration was first introduced by the Directors' Remuneration Report Regulations 2002 (DRR Regulations 2002).<sup>19</sup> But the DRR Regulations 2002 failed to require shareholders' approval of directors' remuneration report. The DRR Regulations 2002 amended the Companies Act 1985 (CA 1985) of the United Kingdom by introducing *section 243B* into it. By virtue of *section 243B* of the CA 1985, directors of quoted companies were required to prepare a remuneration report for each financial year of the company. The remuneration report was to contain information specified in the new schedule 7A to the CA 1985. In 2017, the European Council adopted a Directive known as 'Revised Shareholder Rights Directive'.<sup>20</sup> Before the

<sup>16</sup> (2004) EWHC 76.

<sup>17</sup> (2006) EWHC 1875.

<sup>18</sup> (2013) BCC 98.

<sup>19</sup> L Roach, 'The Directors' Remuneration Report Regulations 2002 and the Disclosure of Executive Remuneration' <<http://ssrn.com/abstract=1754677>> accessed 31 October 2024.

<sup>20</sup> Department for Business, Energy and Industrial Strategy, 'The Companies (Directors' Remuneration Policy and



adoption of the Revised Shareholder Rights Directive, the European Council had previously adopted 'Shareholder Rights Directive 2007/36/EC'. The Shareholder Rights Directive 2007/36/EC was transposed in the United Kingdom through the Companies (Shareholders' Rights) Regulations 2009, which provides, among other matters, for certain shareholder rights in connection with voting and receipt of company information.

The Revised Shareholder Rights Directive complements the original Shareholder Rights Directive by introducing fresh provisions aimed at further strengthening shareholder rights, including reporting of directors' remuneration of traded companies. In an effort to implement articles 9a and 9b of the Revised Shareholder Rights Directive, the UK issued the CDRPDRR Regulations 2019. The CDRPDRR Regulations 2019 amended the CA 2006 by extending the obligation to prepare directors' remuneration report to traded companies.

### **C. Importance of Disclosure of Directors' Remuneration**

In essence, disclosure of directors' remuneration means that the amount of the remuneration, composition of the remuneration, and the remuneration policy adopted or approved for the company are disclosed.<sup>21</sup> By virtue of *section 420* of the CA 2006 (as amended by Regulation 11 of the CDRPDRR Regulations 2019), directors of a quoted company and traded company are required to prepare directors' remuneration report for each financial year of the company. The following are discussed as importance of disclosure of directors' remuneration.

1. Disclosure of directors' remuneration will aid shareholders to form an opinion as to whether directors are paid excessive remuneration. To do this, shareholders would have to review the company's performance by relying on the business review contained in the directors' report. By virtue of *section 415 (1)* of the CA 2006, a duty is imposed on a company's directors to prepare a directors' report for each financial year of the company. The directors' report (which is different from directors' remuneration report) as required under *section 415* of the CA 2006 must contain a business review providing for a balanced and comprehensive analysis of the development and performance of the company's business during the financial year, and the position of the company's business at the end of that financial year.<sup>22</sup>
2. Disclosure of directors' remuneration will help in the recovering of unmerited rewards given to executive directors. Executive directors' remuneration is usually linked to a company's performance and so includes share options or other performance related components. Therefore, executive directors' remuneration should reflect a company's financial performance. It is crucial that executive directors are not only assessed on the basis of a company's performance but also on their individual performance so as to implement a claw-back of unmerited rewards given to them.

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Directors' Remuneration Report) Regulations 2019: Frequently Asked Questions' <[www.gov.uk/beis](http://www.gov.uk/beis)> accessed 3 November 2024.

<sup>21</sup> J Lee, 'Regulatory Regimes and Norms for Directors' Remuneration: EU, UK and Belgian Law Compared' (2012) (13) *European Business Organisation Law Review*; 601.

<sup>22</sup> CA 2006, s 417 (4) (a) and (b).

3. Disclosure of directors' remuneration provides information relating to the allocation of a company's wealth. Directors' remuneration report will enable shareholders to understand how a company's wealth is allocated among those who direct its business and affairs. It will also help them realise if the company's wealth is diverted to directors through payment of excessive remuneration. Excessive remuneration is adjudged to signify inadequate transparency.<sup>23</sup> The need for a transparent remuneration system arises from the fact that there is separation between ownership and actual control.<sup>24</sup>
4. Disclosure of directors' remuneration will help shareholders to determine if there is implementation of fair remuneration practices within the company.
5. Disclosure of directors' remuneration will afford shareholders access to information relating to the policy adopted by a company to incentivise its executive directors. Access to information of such nature is considered to be crucial as it aids in the understanding of the link between directors' remuneration, corporate goals, and performances.<sup>25</sup>
6. Disclosure of directors' remuneration promotes transparency and so would help in safeguarding market confidence.
7. Disclosure of directors' remuneration is a way of regulating directors' remuneration to help prevent corporate failures arising from excessive remuneration. When companies fail, shareholders and other investors lose their savings; ordinary workers lose their jobs; and taxpayers money are utilised by government to resuscitate failing companies. For these reasons, disclosure of directors' remuneration is important.<sup>26</sup>
8. Transparency and disclosure are regarded as crucial elements of an improved corporate governance framework providing the base for informed decision-making by shareholders and potential investors in connection with allocation of capital, and financial performance monitoring.<sup>27</sup> Therefore, disclosure of directors' remuneration will help shareholders to monitor the company's financial performance as well as executive directors' performance.
9. Disclosure of directors' remuneration, just as other effective corporate governance practices, would help in lowering agency conflicts between shareholders and directors.
10. Disclosure is a way of effectuating mutual exchange of information between directors and shareholders. This will help lower information asymmetry, thereby solving agency problems arising from the separation between ownership and actual control.<sup>28</sup>
11. Disclosure will enable shareholders to exercise ownership rights on an informed basis.

<sup>23</sup> T Jahan, 'Directors' Remuneration and Corporate Governance within the UK' (2017) (7) (3) *International Journal of Learning and Development*; 13.

<sup>24</sup> F Simona, 'International Comparison of the Remuneration System Disclosure' (2010) (25) (2) *Euro Economics*; 35.

<sup>25</sup> *Ibid*, 43.

<sup>26</sup> Lee (n21), 604.

<sup>27</sup> B Fung, 'The Demand and Need for Transparency and Disclosure in Corporate Governance' (2014) (2) (2) *Universal Journal of Management*; 72.

<sup>28</sup> A Melis and Others, 'Directors' Remuneration: A Comparison of Italian and UK Non Financial Listed Firms' Disclosure' (2015) (47) (1) *The British Accounting Review*; 2.



12. In the absence of disclosure, it will be difficult for shareholders to discover a breach of directors' fiduciary duty, particularly, as regards fixing of directors' remuneration.<sup>29</sup>
13. It will help limit diversion of corporate funds for personal benefits by directors. In the absence of disclosure as a good corporate governance practice, shareholders stand the chance of losing their wealth to directors.<sup>30</sup>
14. Disclosure of directors' remuneration could compel a company's board of directors to effectively monitor executive directors.<sup>31</sup>
15. Directors' remuneration report may help check certain types of unsuitable remuneration practices such as underpaying directors from a particular race or country.
16. Disclosure will enable market participants to evaluate a company's quality of remuneration practices and the quality of the support for its strategy and risk-taking attitude.<sup>32</sup>
17. Directors' remuneration policy as a measure of disclosure is helpful as recourse to it in budget preparation process will afford a company's board an opportunity to reject excessive remuneration for executive directors. Therefore, it is advised that the board should be fully involved in the budget preparation process if it must seize the opportunity to reject excessive remuneration for executive directors as shareholders are the first to suffer the consequences of excessive executive remuneration.<sup>33</sup>
18. A directors' remuneration report will enable tax authorities to appropriately determine personal income tax to be paid by corporate directors.

#### **D. Analysis of Disclosure of Directors' Remuneration in the United Kingdom**

The CA 2006 is the main legal framework supporting disclosure of directors' remuneration in the United Kingdom. However, it is pertinent to state that the EERA 2013 and the CDRPDRR Regulations 2019 respectively made amendments into CA 2006 in connection with disclosure of directors' remuneration. Originally, the CA 2006 only required directors of a quoted company to prepare a directors' remuneration report for each financial year of the company.<sup>34</sup> Failure to prepare a directors' remuneration report is an offence. Accordingly, every person who was a director of the company immediately before the end of the period for filing of accounts and reports for the financial year in question, and failed to take reasonable steps to ensure compliance commits an offence.<sup>35</sup> The directors' remuneration report shall be approved by the board and signed on its behalf by a director or the company's secretary.<sup>36</sup> It is important that the directors' remuneration report complies with the

<sup>29</sup> M B Fox, 'Required Disclosure in Corporate Governance' (1999) (3) *Law and Contemporary Problems*; 118.

<sup>30</sup> H Doucouliagos and Others, 'Pay for Performance and Corporate Governance Reforms' (2010) Deakin University Economic Series School Working Paper No. 04/2010, 5. <<https://ssrn.com/abstract=1635045>> accessed 25 November 2024.

<sup>31</sup> Y Yan, 'Determinants and Consequences of Executive Compensation: Empirical Evidence from Chinese Listed Companies' (DPhil Thesis, University of Bath 2015) 25-26.

<sup>32</sup> A A Almhmooud, 'The Laws and Regulations Related to Remuneration Practices : A Comparative and Analytical Investigation into Legal Aspects' (DPhil Thesis, University of Liverpool 2015) 41.

<sup>33</sup> I Walker, 'Who Bears the Cost of Excessive Executive Compensation (and Other Corporate Agency Costs)?' (2012) (57) (3) *Villanova Law Review*; 662.

<sup>34</sup> CA 2006, s 420 (1).

<sup>35</sup> *Ibid*, s 420 (2).

<sup>36</sup> *Ibid*, s 422 (1).



requirements of the CA 2006. Where a directors' remuneration report approved by the board fails to comply with the requirements of the CA 2006, every director of the company who was aware that it did not comply, or was careless as to whether it complied, and failed to take reasonable steps to ensure it complied, or failed to preclude it from being approved by the board commits an offence.<sup>37</sup>

By virtue of *section 422A* of the CA 2006 as inserted by *section 79* of the EERA 2013, the directors' remuneration policy is to be contained in the directors' remuneration report and may be revised. In the event that a directors' remuneration policy approved by the board is revised, it must be further approved by the board.<sup>38</sup> The directors' remuneration policy as so revised must be set out in a document signed on the board's behalf by a director or the company's secretary.<sup>39</sup> Before 2013, the CA 2006 only required a quoted company's directors' remuneration report to be approved by the members of the company. However, *section 79 (4)* of the EERA 2013 inserted *section 439A* into the CA 2006 to also require a quoted company's directors' remuneration policy to be approved by the members of the company. The CA 2006, as amended by the EERA 2013, requires a quoted company to give notice of the intention to move, at an accounts meeting, a resolution sanctioning the relevant directors' remuneration policy.<sup>40</sup> The EERA 2013 added *section 226B* to the CA 2006, which itself has been amended by regulation 7 of the CDRPDRR Regulations 2019 to the effect that a quoted company or unquoted traded company is empowered to refuse to make a remuneration payment to a director if the payment is inconsistent with the approved directors' remuneration policy, or the payment is not approved by a resolution of the company's members.

The approved directors' remuneration policy to be relied upon in making a remuneration payment is the most recent remuneration policy approved by a resolution of the members passed at a general meeting. A quoted company is to ensure that its annual accounts and reports are made available on a website maintained by it or on its behalf. The annual accounts and reports made available on the website shall remain there until the annual accounts and reports for the company's next financial year are made available.<sup>41</sup> It is relevant to add that *section 81* of the EERA 2013 amended the CA 2006 by adding *subsection (2A)* to *section 430* of the CA 2006 to require a quoted company to ensure that its revised directors' remuneration policy is made available on the website on which its annual accounts and reports are posted. It is of great importance to state that the CDRPDRR Regulations 2019 amended part 15 of the CA 2006 to extend its application, relating to annual accounts and reports, to traded companies. Particularly, regulation 12 of the CDRPDRR Regulations 2019 amended *section 420 (1)* of the CA 2006 to require directors of traded companies to also prepare a directors' remuneration report.

By virtue of *section 430 (2C)* of the CA 2006 as inserted by the CDRPDRR Regulations 2019, after a directors' remuneration policy has been approved by members of a quoted company or unquoted traded company, it must be ensured that the approved remuneration policy is made available on the company's website. Further, information relating to the date the resolution was passed, the number of valid votes

<sup>37</sup> CA 2006, s 422 (2).

<sup>38</sup> *Ibid*, s 422A (2).

<sup>39</sup> *Ibid*, s 422A (3).

<sup>40</sup> *Ibid*, s 439A (1).

<sup>41</sup> *Ibid*, s 430 (1) and (2).



cast, the proportion of the company's issued share capital represented by those votes, the number of votes cast in the resolution's favour, the number of votes cast against the resolution, and the number of abstentions must also be made available on the website where the relevant approved directors' remuneration policy is made available. The CDRPDRR Regulations 2019 added *subsection (4ZA)* to *section 430* of the CA 2006 to require a quoted company and traded company to ensure that its directors' remuneration report is kept for a period of ten years starting with the date it is first made available and may be kept for a longer period if it does not contain personal data. In view of the CA 2006 (as amended by the CDRPDRR Regulations 2019), an unquoted traded company means traded company that is not a quoted company.<sup>42</sup> Striking is that a member or debenture holder of an unquoted company is entitled to be given, on demand and without charge, a copy of the last directors' remuneration report,<sup>43</sup> and the auditor's report on the directors' remuneration report.<sup>44</sup>

In the case of a quoted company, a member or debenture holder is entitled to be given, on demand and without charge, a copy of the last directors' remuneration report,<sup>45</sup> and the auditor's report on the directors' remuneration report.<sup>46</sup> Interesting is that where a member or a debenture has made a demand on an unquoted company or on a quoted company and a copy of the last directors' remuneration report as well as a copy of the auditor's report on the directors' remuneration report is not provided the member or debenture holder within seven days of the making of the demand, the company and every of its officer who is in default are guilty of an offence.<sup>47</sup> The CA 2006 requires that the name of signatory to accounts and directors' remuneration report be stated in publicised copies of annual accounts and directors' remuneration report.<sup>48</sup> The application of chapter 9 of the CA 2006 has been extended to traded companies.<sup>49</sup> As a result, *section 439 (1)* of the CA 2006 now requires a quoted company and traded company to notify its members entitled to receive notice of the accounts meeting of the intention to move at the meeting a resolution approving the directors' remuneration report for the financial year. The CDRPDRR Regulations 2019 added *subsection (1A)* to *section 439* of the CA 2006 to further confirm that the application of *section 439 (1)* of the CA 2006 has been extended to traded companies.

Again, regulation 20 of the CDRPDRR Regulations 2019 amended *section 439A* of the CA 2006 to extend its application to a traded company. This means the directors' remuneration policy of a traded company must also be approved by the company's members. It is relevant to draw attention to the fact that *section 446 (1)* of the CA 2006 is amended by regulation 22 of the CDRPDRR Regulations 2019 to require a quoted company and traded company to file with the registrar of companies a copy of the directors' remuneration report for each financial year. Worthy of mention is that a directors' remuneration report is regarded as one of the annual reports of a quoted company.<sup>50</sup> In the case of an unquoted company, *section 471 (2)* of the CA 2006 has been amended by regulation 23 of the

<sup>42</sup> CA 2006, s 430 (8).

<sup>43</sup> *Ibid*, s 431 (1) (ba).

<sup>44</sup> *Ibid*, s 431 (1) (c).

<sup>45</sup> *Ibid*, s 432 (1) (b).

<sup>46</sup> *Ibid*, s 432 (1) (d).

<sup>47</sup> CA 2006, ss 431 (3) and 432 (3).

<sup>48</sup> *Ibid*, s 433.

<sup>49</sup> CDRPDRR Regulations 2019, regulation 18.

<sup>50</sup> CA 2006, s 471 (3).



CDRPDRR Regulations 2019 to the effect that a directors' remuneration report is now regarded as an annual report of an unquoted company. By reason of regulation 25 of the CDRPDRR Regulations 2019, *section 497* of the CA 2006 applies to quoted companies and unquoted traded companies.

An auditor of a quoted company or unquoted traded company is required to, in his or her report on the company's annual accounts for the financial year, report to the company's members on the auditable part of the directors' remuneration report, and specify whether in his or her opinion the auditable part of the directors' remuneration report has been properly prepared in accordance with the CA 2006. The auditable part of a directors' remuneration report is stated to be the part identified as such by regulations under *section 421* of the CA 2006. The Secretary of State for Business, Energy and Industrial Strategy is empowered to make regulations relating to information that must be contained in the directors' remuneration report.<sup>51</sup> Before concluding, it is pertinent to draw attention to the fact that directors are to recompense the company for any loss suffered by it on account of any false or misleading statement in the directors' report, directors' remuneration report, and the summary financial statement derived from either the directors' report or directors' remuneration report.<sup>52</sup> This is consistent with the rule developed by the House of Lords in *Hedley Byrne and Co Ltd v Heller and Partners Ltd*.<sup>53</sup>

Further, if the company suffered loss as a result of omission of any information required to be included in the directors' remuneration report, the directors are liable to recompense the company.<sup>54</sup> A director is so liable to recompense the company only if he is aware that the statement is false or misleading or was careless as to whether it was false or misleading, or the director knew the omission to be dishonest obfuscation of a significant fact.<sup>55</sup> Other than the company, the directors shall not be liable to any person for any liability arising from reliance on information provided in the directors' report or the directors' remuneration report.<sup>56</sup>

## **E Conclusion**

The directors' remuneration disclosure regime in the United Kingdom is well developed and adequately guarantees transparency as the CA 2006 requires a quoted company and traded company to prepare a directors' remuneration report for each financial year of the company. A directors' remuneration report must first be approved by the board of directors and is to be further approved by a company's members. The legal framework requires that a remuneration policy must be designed for directors. The relevant directors' remuneration policy approved by the board of directors is to be further approved by the members of the company at an annual accounts meeting. Undoubtedly, giving a company's members a right to exercise a vote on directors' remuneration policy as well as a directors' remuneration report will enhance directors' accountability to the members of the company.

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<sup>51</sup> CA 2006, s 421 (1) (a).

<sup>52</sup> *Ibid*, s 463 (2) (a).

<sup>53</sup> (1963) 2 ALL ER 576 HL.

<sup>54</sup> CA 2006, s 463 (2) (b).

<sup>55</sup> *Ibid*, s 463 (3) (a) and (b).

<sup>56</sup> *Ibid*, s 463 (4).



Worthy of commendation is that where a company suffered loss by reason of false or misleading statement in the directors' remuneration report or by reason of omission of anything required to be included in the directors' remuneration report, the directors are liable to recompense the company. Again, requiring a company's auditor to report on the auditable part of a directors' remuneration report and also express his or her view as to whether the auditable part of the directors' remuneration report was properly prepared will ensure that directors are meticulous and honest in providing information that may be required by a regulation under *section 421* of the CA 2006.

#### **F. Lessons for Nigeria**

The following lessons are drawn from the United Kingdom as proposals for a reform to promote adequate disclosure in relation to company directors' remuneration in Nigeria.

1. The CA 2006 requires a quoted company and traded company to prepare a directors' remuneration report. This will ensure transparency and accountability and protect investors' confidence.
2. The legal framework in the United Kingdom requires that a remuneration policy be developed for directors, which is to be approved by the board of directors and further approved by the members of the company at an annual accounts meeting.
3. The directors' remuneration report must be approved by the board of directors and further approved by the members of the company at an annual accounts meeting.
4. A company's auditor must report on the auditable part of a directors' remuneration report and express his or her view as to whether the auditable part of the directors' remuneration report was properly prepared.
5. A quoted company or unquoted traded company is empowered to refuse to make remuneration payment to a director if the payment is inconsistent with the approved directors' remuneration policy, or the payment is not approved by a resolution of the company's members.
6. The CA 2006 provides that where a company suffered loss by reason of false or misleading statement contained in the directors' remuneration report or by reason of omission of anything required to be included in the directors' remuneration report, the directors are liable to recompense the company.
7. A member or debenture holder of a quoted company or traded company is to be provided, on demand and without charge, a copy of the last directors' remuneration report and the auditor's report on the auditable part of the directors' remuneration report.