



HOW IT MIGHT BE: COMPANIES WITHOUT NON-EXECUTIVE DIRECTORS – IMPORTANCE AND FUNCTIONAL DUTIES

Nosirov Kobiljon Shavkatovich

“International School of Finance Technology and Science”,
Lecturer of Corporate and Business Law,

Abstract

The strength of corporate governance often hinges on the presence of active and independent Non-Executive Directors (NEDs) who can challenge management decisions and provide objective oversight. This article looks into what happens when NEDs are missing, passive, or lack the authority to speak up—highlighting the serious risks companies face in their absence.

Drawing on major corporate failures like the 2018 collapse of Carillion, the Patisserie Valerie accounting scandal, and the Wirecard fraud, the article shows how weak board oversight can open the door to reckless leadership, financial misstatements, and breakdowns in accountability. These cases are not just isolated incidents—they reflect a wider issue: having NEDs in place isn't enough. If they lack real independence, authority, or access to clear information, their role as watchdogs becomes symbolic at best.

Using the UK Corporate Governance Code (2018) and OECD principles as reference points, the article explores how and why oversight fails. For example, Carillion's NEDs failed to respond to escalating financial risks, while Wirecard's supervisory board overlooked repeated red flags, including whistleblower reports. These examples show how passive boards can contribute directly to corporate disasters.

The analysis also digs into practical obstacles—like the danger of “groupthink,” lack of financial or industry knowledge, and limited support for NEDs to properly assess complex operations. It argues that while governance codes offer good frameworks, companies need to go beyond formal compliance. That means transparent appointment processes, proper training for NEDs, and a boardroom culture where asking tough questions is welcomed—not discouraged.

In the end, the article makes a clear case: empowering NEDs isn't just about ticking a regulatory box—it's a core part of building strong, ethical, and resilient businesses.

When NEDs are sidelined, companies risk becoming echo chambers for executive agendas, with devastating consequences for shareholders, employees, and public trust.





Keywords: Company, governance, corporate governance, directors, non-executive directors, shareholders, stakeholders.

Introduction

Companies' fate is subject to true governance by directors. "who is taking control, who are these people, to what extent they are trustworthy" can be reasonable question. However, it is always important to do double verification by objective observation. In Executive directors example, non executive directors are those, who holds position of monitoring the executives. In public companies, there is a widespread ownership where governance system need to be critically reviewed whether there is no misuse of power by those who are in charge. This is where Non-Executive Directors (NEDs) come in. They sit on boards not to manage daily operations, but to hold the executive team accountable, ensure transparency, and offer independent judgment on company matters.

The **UK Corporate Governance Code (2018)** highlights the need for board independence and oversight. It recommends that at least half the board (excluding the chair) of FTSE 350 companies should be made up of independent NEDs (FRC, 2018). Similarly, the **OECD Principles of Corporate Governance (2015)** stress the importance of independent board members in ensuring objectivity and in addressing conflicts of interest (OECD, 2015).

Without NEDs, the boardroom risks becoming an echo chamber, where executives face little challenge. This article explores what can go wrong when NEDs are absent or ineffective—and why their presence is a fundamental safeguard against governance failures.

Methods

This analysis takes a **qualitative approach**, built on a literature review of governance codes, corporate reports, and official investigations into corporate collapses. We analyze cases where the absence or weakness of NEDs led to agency problems, board dysfunction, and financial collapse.

In particular, this paper draws lessons from the **collapse of Carillion (UK, 2018)**, the **Patisserie Valerie accounting scandal (UK, 2019)**, and the **Wirecard fraud (Germany, 2020)**. These examples illustrate real-world consequences when boards either lack strong independent oversight or fail to empower NEDs meaningfully. Secondary data is complemented by analysis of governance best practices outlined in regulatory frameworks such as the UK Corporate Governance Code and OECD Principles.





Results

A company without effective NEDs can spiral into poor governance, primarily because of unchecked executive control. The case of **Carillion** is a textbook example. The construction giant collapsed in 2018 with over £7 billion in liabilities. The UK Parliament later concluded that Carillion's board had become "a useless watchdog," with NEDs failing to challenge aggressive accounting, rising debt, and unrealistic projections (House of Commons, 2018). Although the board technically included NEDs, their presence was symbolic—most failed to intervene or question the optimism of the executive team.

The **UK Corporate Governance Code (2018)** insists that NEDs must constructively challenge executive decisions and scrutinize performance. In Carillion's case, this principle was ignored in practice. The chair of the audit committee failed to act on red flags from internal audits. This shows that having NEDs on paper is not enough—they must be engaged, informed, and independent in spirit as well as title.

Similarly, the **Patisserie Valerie** scandal in 2019 exposed another weak spot in governance. The company collapsed after it was discovered that financial statements had been manipulated and £94 million in fictitious cash was recorded (BBC, 2019). Investigations revealed that the board had no functioning audit committee for much of the period leading up to the crisis (FRC, 2020). The absence of strong NED oversight directly enabled fraudulent behavior by executives and finance staff.

The **OECD** argues that boards should ensure the integrity of corporate reporting and monitor risk management systems (OECD, 2015). In both Carillion and Patisserie Valerie, these checks failed, largely due to passive or underinformed NEDs.

Outside the UK, **Wirecard**, a German fintech firm, collapsed in 2020 after it was found that €1.9 billion of supposed cash never existed. Independent board members were either ignored or not given enough information to challenge the executive narrative. German regulators and shareholders later criticized the supervisory board (the German equivalent of NEDs) for being too cozy with the CEO and failing to spot the fraud sooner (The Guardian, 2020).

These cases show that when NEDs are not properly empowered—or if boards lack true independence—executives can dominate decisions, distort financial reality, and sideline scrutiny. This leads to classic **agency problems**, where managers prioritize their interests over those of shareholders or the public.

Discussion

The absence or ineffectiveness of NEDs leads to serious consequences. The **agency theory**, widely discussed in corporate governance literature, suggests that conflicts





naturally arise when the interests of company executives (agents) differ from those of owners or shareholders (principals) (Jensen & Meckling, 1976). Without NEDs acting as intermediaries, executives can overpay themselves, manipulate performance metrics, or chase unsustainable growth strategies.

The UK Corporate Governance Code attempts to fix this by giving NEDs real roles: chairing audit, nomination, and remuneration committees; monitoring internal controls; and representing stakeholders beyond the management team. However, these duties must be performed actively. A NED who rarely questions or critiques is not truly independent.

NEDs also bring **diversity of perspective**. They come from different industries, professions, and backgrounds, which helps reduce "groupthink"—a phenomenon where executives reinforce each other's flawed decisions. For example, had Carillion's NEDs included more professionals with hands-on risk management experience, they might have questioned the board's repeated optimism about project profitability.

Another key role of NEDs is to **protect whistleblowers** and ensure that concerns raised internally reach the board. In several cases, including Wirecard, whistleblower alerts were ignored or buried, partly because the NEDs were too detached from internal communication channels (Financial Times, 2020).

Yet, challenges persist. Critics argue that NEDs often lack real insight into company operations, especially in complex or fast-moving industries. They may only meet a few times a year and rely heavily on board packs curated by executives—leading to information asymmetry. That said, well-trained and proactive NEDs can still ask the right questions and push for independent audits, even with limited interaction.

In UK public companies, appointing non-executive directors (NEDs) is guided by the UK Corporate Governance Code (UKCGC), which places strong emphasis on having independent voices on the board. According to the Code, at least half of the board members—excluding the chair—should be independent NEDs. This is to help ensure that decisions are balanced and not overly influenced by executive interests.

The process for appointing NEDs is expected to be clear and formal, typically handled by a nominations committee. This committee reviews potential candidates based on their skills, experience, and whether they're truly independent. Provision 17 of the UKCGC (2018) highlights that NEDs should not have recent ties to the company, such as former employment or significant financial links, as this could affect their objectivity (Financial Reporting Council, 2018).

There are also legal restrictions in place under the Companies Act 2006. For example, individuals with unspent criminal convictions, undischarged bankrupts, or those





previously removed from a directorship due to misconduct are not allowed to be appointed as NEDs (UK Legislation, 2006).

Additionally, the Code (Provision 18) points out that anyone who's been in a non-executive role for over nine years may not be viewed as independent anymore, which is why longer tenures are discouraged. To maintain transparency and accountability, the board is also expected to explain how it complies with these principles in the company's annual report.

To be effective, companies must invest in the **induction and ongoing development** of their NEDs. The UK Code recommends regular training and performance evaluations of the board, including its non-executive members (FRC, 2018). Transparency in the appointment process is also crucial to ensure independence and avoid placing allies of executives in “non-executive” seats.

Conclusion

Companies without effective Non-Executive Directors risk becoming echo chambers dominated by executive power, leading to weak oversight, misreporting, and, in extreme cases, collapse. The role of NEDs is not cosmetic—it is central to board accountability, risk oversight, and ethical governance.

As shown in cases like **Carillion**, **Patisserie Valerie**, and **Wirecard**, the absence or ineffectiveness of NEDs can result in serious financial and reputational damage. The **UK Corporate Governance Code (2018)** and **OECD principles** offer clear guidance on the role of NEDs, but it's up to companies to take them seriously—not just in policy, but in practice.

In today's business world, strong and empowered NEDs are not a luxury—they are a necessity.

References (Harvard Style)

1. BBC (2019) Patisserie Valerie: 'Black hole' in accounts widens to £94m. [online] Available at: <https://www.bbc.com/news/business-47682169> [Accessed 5 Apr. 2025].
2. Financial Reporting Council (FRC) (2018) The UK Corporate Governance Code. London: FRC. Available at: <https://www.frc.org.uk/directors/corporate-governance-and-stewardship/uk-corporate-governance-code> [Accessed 5 Apr. 2025].
3. Financial Reporting Council (FRC) (2020) Investigation into Patisserie Holdings plc. London: FRC. Available at: <https://www.frc.org.uk> [Accessed 5 Apr. 2025].





4. House of Commons (2018) Carillion: Second Joint report from the Business, Energy and Industrial Strategy and Work and Pensions Committees of Session 2017–19. London: UK Parliament. Available at: <https://publications.parliament.uk> [Accessed 5 Apr. 2025].
5. Jensen, M.C. and Meckling, W.H. (1976) 'Theory of the firm: Managerial behavior, agency costs and ownership structure', *Journal of Financial Economics*, 3(4), pp. 305–360.
6. OECD (2015) *G20/OECD Principles of Corporate Governance*. Paris: OECD Publishing. Available at: <https://www.oecd.org/daf/ca/Corporate-Governance-Principles-ENG.pdf> [Accessed 5 Apr. 2025].
7. The Guardian (2020) Wirecard collapse: How Germany's fintech star lost €1.9bn. [online] Available at: <https://www.theguardian.com/business/2020/jun/25/wirecard-collapse-germany-fintech-scandal> [Accessed 5 Apr. 2025].
8. Financial Reporting Council. (2018). *UK Corporate Governance Code*.
9. UK Legislation. (2006). *Companies Act 2006*.

