

The Role and Selection of Non-Executive Directors on boards of companies wholly owned by Oxford City Council

Introduction

Oxford City Council in responding to the challenges of major reductions in central government funding has explored a number of means of replacing revenue due to cuts in grants. The Council has also been keen to explore how different business models would enable it to deliver key strategic aims.

Subsequently the Council has formed a number of companies that are wholly owned by the Council.

This paper sets out the Council's view on the need to engage Non Executive Directors in the governance of these companies and the framework for their recruitment and selection.

Summary

The Council supports the view of the 1992 Cadbury Report (<http://www.ecgi.org/codes/documents/cadbury.pdf>) that good governance of companies is supported by the engagement of non-executive directors who “bring an **independent judgement** to bear on issues of strategy, performance and resources including key appointments and standards of conduct”.

The Memorandum and Articles and Shareholder Agreements for wholly owned companies of the Council will include the possibility of Non-Executive Directors and retain the appointment of directors as matters for the Shareholder.

The relevant Shareholder Committee will consider the composition of boards on a case by case.

Where it is agreed that there should be Non-Executive Directors on a board, recruitment and selection will be carried out by subcommittee of the shareholder group to include representatives of the shareholder supported by a Council nominee director to the company and a senior executive of the company who will act in an advisory capacity to the Shareholder's representatives..

This subcommittee will have delegated to it the authority to appoint the Non-Executive Director.

The Council's preference is that Non-Executive Directors will be recruited without remuneration. However, it is recognised that in some cases to recruit the desired experience and specialist knowledge there may have to be remuneration for NEDs. The question of remuneration will be decided by the Shareholder Group, (may be delegated to the Subcommittee) taking into account a report from the board of the relevant company.

The process for recruitment and selection is summarised below:-

- Board of company considers the need for NEDs, including the skills and experience required, the availability of such skills and the remuneration question.
- Board makes recommendation to the Shareholder Group
- Shareholder Group considers the Board's report and if it agrees, forms and delegates appointment to Subcommittee
- In all cases, there will be a public advertisement at least at a local level. In some cases this may be augmented by Executive Search either by the company or by engaging Executive Search specialists
- The appointments process will be designed to optimise the formation of diverse boards that represent the character of the city of Oxford
- The subcommittee will determine the selection process that, as a minimum, will include an interview.
- The Subcommittee will form a view on appointment. Where there is agreement they will implement any delegation to appoint. If there is not agreement, the matter will be referred to the Shareholder Group.

Non-Executive Directors will be appointed by Letter of Appointment from the Chair of the Board of the company. The initial appointment will be for three years. There will be an annual appraisal of performance of the NEDs by the Chair of the company. NEDs may be invited to apply for re-appointment once. (ie Total appointment shall not exceed 6 years). Re-appointment will be considered at the AGM of the Shareholder and will be at the discretion of the Shareholder

A NED cannot be appointed if they are (and must stand down if they become):

- ◇ bankrupt; or
- ◇ convicted of an offence of dishonesty; or
- ◇ convicted of another offence (which, in the Shareholder's opinion, makes them unsuitable to hold office); or
- ◇ disqualified from acting as a director (under the Company Directors Disqualification Act 1986); or
- ◇ unable to conduct regulated activities on behalf of another organisation because the Financial Services Authority (FSA) withdraws their approval (under the Financial Services and Markets Act 2000 FSMA)); or
- ◇ unable to conduct regulated activities because the FSA makes a prohibition order against them (under FSMA); or
- ◇ (in the Shareholder's opinion) physically or mentally unable to carry out their duties properly.

These matters must be tested during the selection process.

Non Executive Directors will stand down if:

- ◇ without good reason and without the board's permission they fail to attend three board meetings in a row;
- ◇ the Shareholder resolves that they should be removed.

Directors will be expected to comply with the requirements of the Council's Code of Conduct for Non Executive Directors which will be based on the Cabinet Office's Code of Conduct.

OXFORD CITY COUNCIL

**CODE OF CONDUCT FOR NON EXECUTIVE MEMBERS
OF BOARDS OF COMPANIES OWNED BY OXFORD CITY COUNCIL**

OCTOBER 2018

FOREWORD

The Council expects all holders of public office to work to the highest personal and professional standards. In support of this, all non-executive board members must abide by the principles set out in this Code of Conduct. The Code sets out, clearly and openly, the standards expected from those who serve on the boards of council owned companies and will form part of individual members' terms and conditions of appointment. Any breach of the Code will be viewed as a breach of those terms and conditions of appointment.

Any questions on the Code should be directed to:

Monitoring Officer
Oxford City Council
St Aldate's Chambers
St Aldate's
Oxford OX1 1DS

Tel: 01865 249811

The code is based on the Cabinet Office Code of Conduct for board members of public bodies.

**CODE OF CONDUCT FOR NON EXECUTIVE MEMBERS
OF BOARDS OF COMPANIES OWNED BY OXFORD CITY COUNCIL**

CONTENTS

1.	Introduction	4
2.	Key Principles of Public Life	4
3.	General Conduct	5
	Use of Public funds	5
	Allowances	5
	Gifts and Hospitality	6
	Use of Official Resources	6
	Use of Official Information	6
	Political Activity	6
	Employment and Appointments	7
4.	Members' Interests	7
5.	Responsibilities as a Board Member	8
6.	Responsibilities towards Employees	8

**CODE OF CONDUCT FOR NON EXECUTIVE MEMBERS
OF BOARDS OF COMPANIES OWNED BY OXFORD CITY COUNCIL**

1. INTRODUCTION

- 1.1 As a non-executive director of a publicly owned company, your behaviour and actions must be governed by the principles set out in this Code of Conduct. It is your responsibility to ensure that you are familiar with, and comply with, all the relevant provisions of the Code.

2. KEY PRINCIPLES OF PUBLIC LIFE

- 2.1 The key principals upon which this Code of Conduct is based are the Seven Principles of public Life. These are:

Selflessness

You should decisions solely in terms of the public interest. You should not do so in order to gain financial or other material benefits for yourself, your family or your friends.

Integrity

You should not place yourself under any financial or other obligation to outside individuals or organisations that might, or might be perceived to, influence you in the performance of your official duties.

Objectivity

In carrying out public business, including awarding contracts and recommending individuals for rewards and benefits, you should make choices on merit.

Accountability

You are accountable for your decisions and actions to the public and must submit yourself to whatever scrutiny is appropriate for your office.

Openness

You should be as open as possible about the decisions and actions that you take. You should give reasons for your decisions and restrict information only when the wider public interest clearly demands.

Honesty

You have a duty to declare any private interests relating to your public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership

You should promote and support these principles by leadership and example.

- 2.2 These principles should inform your actions and decisions as a board member.

3. GENERAL CONDUCT

Use of Public Funds

- 3.1 You have a duty to ensure the safeguarding of public funds¹ and the proper custody of assets which have been publicly funded.
- 3.2 You must carry out your fiduciary obligations responsibly – that is, take appropriate measures to ensure that the body uses resources efficiently, economically and effectively, avoiding waste and extravagance.

Allowances

- 3.3 You must comply with the rules set by the board regarding remuneration, allowances and expenses. It is your responsibility to ensure compliance with all relevant HM Revenue and Customs' requirements concerning payments, including expenses.

¹ This should be taken to include all forms of receipts from fees, charges and other sources.

Gifts and Hospitality

- 3.4 You must not accept any gifts or hospitality which might, or might reasonably appear to, compromise your personal judgement or integrity or place you under an improper obligation.
- 3.5 You must never canvass or seek gifts or hospitality.
- 3.6 You must comply with the rules set by the body on the acceptance of gifts and hospitality. You should inform the Managing Director (or equivalent) of any offer or gifts or hospitality and ensure that, where a gift or hospitality is accepted, this is recorded in a public register in line with the rules set by the body.
- 3.7 You are responsible for your decisions on the acceptance of gifts or hospitality and for ensuring that any gifts or hospitality accepted can stand up to public scrutiny and do not bring the public body into disrepute.

Use of Official Resources

- 3.8 You must not misuse official resources² for personal gain or for political purposes. Use of such resources must in line with the body's rules on their usage.

Use of Official Information

- 3.9 You must not misuse information gained in the course of your service for personal gain or for political purpose³.
- 3.10 You must not disclose any information which is confidential in nature or which is provided in confidence without authority. This duty continues to apply after you have left the board.

Political Activity

- 3.11 In your role, you should be, and be seen to be, politically impartial. You should not occupy a paid party political post or hold a particularly sensitive or high-profile role in a political party. You should abstain from all controversial political activity.
- 3.12 On matters directly related to the work of the company, you should not make political statements or engage in any other political activity.

² This includes facilities, equipment, stationery, telephony and other services.

³ Board members who misuse information gained by virtue of their position may be liable for breach of confidence under common law or may commit a criminal offence under insider dealing legislation.

- 3.13 In your official capacity, you should be even-handed in all dealings with political parties.
- 3.14 Subject to the above, you may engage in political activity but should, at all times, remain conscious of your responsibilities as a board member and exercise proper discretion. You should inform the Chair before undertaking any significant political activity.

Employment and Appointments

- 3.15 If you wish to take up new employment or appointments during your term of office, you must inform the Chair.

4. MEMBERS' INTERESTS

- 4.1 You must ensure that no conflict arises, or could reasonably be perceived to arise, between your duties and your private interests – financial or otherwise.
- 4.2 You must comply with the rules of the Company on handling conflicts of interests. As a minimum, these will require you to declare publicly any private interest which may, or may be perceived to, conflict with your public duties⁴. The rules will also require you to remove yourself from the discussion or determination of matters in which you have a financial interest. In matters in which you have a non-financial interest, you should not participate in the discussion or determination of a matter where the interest might suggest a danger of bias⁵.
- 4.3 It is your responsibility to ensure that you are familiar with the Company's rules on handling conflicts of interests, that you comply with these rules and that our entry in the body's register of interests is accurate and up-to-date.

⁴ In general, all financial interests should be declared. When considering what non-financial interests should be declared, you should ask yourself whether a member of the public, acting reasonably, would consider that the interest in question might influence your words, actions or decision.

⁵ These are common law provisions.

5. RESPONSIBILITIES AS A BOARD MEMBER

- 5.1 You should play a full and active role in the work of the Company. You should fulfil your duties and responsibilities responsibly and, at all times, act in good faith and in the best interests of the company.
- 5.2 You should deal with the public and their affairs fairly, efficiently, promptly, effectively and sensitively, to the best of your ability. You must not act in a way that unjustifiably favours or discriminates against particular individuals or interests.
- 5.3 You must comply with any statutory or administrative requirements relating to your post, relevant company law and duties of directors.
- 5.4 You should respect the principle of collective decision-making and corporate responsibility. This means that, once the board has made a decision, you should support that decision.
- 5.5 You must not use, or attempt to use, the opportunity of service to promote your personal interests or those of any connected person, firm, business or other organisation.

6. RESPONSIBILITIES TOWARDS EMPLOYEES

- 6.1 You will treat any staff employed by the Company with courtesy and respect. It is expected that employees will show you the same consideration in return.
- 6.2 You will not ask or encourage employees to act in any way which would conflict with their own Code of Conduct.

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