On
board
A Guide for Board Members of Public Bodies in Scotland

SCOTTISH EXECUTIVE

Published by

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MINISTER FOR FINANCE AND PUBLIC SERVICE REFORM

Public bodies play a crucial and valued role in the provision of advice and the delivery of public services. Most aspects of our lives are affected in some way by the work carried out by them. They allow important government functions to be carried out without direct day-to-day control by Ministers and also allow the public sector to utilise knowledge, skills and expertise which may not otherwise be available. Scottish Ministers are very appreciative of your work and commitment as a non-executive Board member serving Scotland on the Board of one of our public bodies.
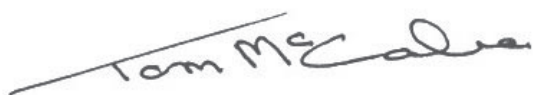
Your role and responsibilities are, however, more demanding than ever. No part of the public sector is immune from the reform agenda. The people of Scotland rightly expect us to organise the public sector so that:

- they know who does what – it is vital that there are clear lines of accountability and that public bodies are responsive to changing situations and demands;

- service provision is efficient – in an increasingly tight financial climate, internal efficiencies will need to fund expansions and improvements. All public bodies are expected to be Best Value organisations and to contribute to the Efficient Government agenda; and

- the governance of Scotland is simplified – we need to reduce unnecessary overlaps and to streamline bureaucracy across the public sector.

As a member of the Board of a Scottish public body, you have an important part to play in assisting Ministers and managers in your organisation to deliver against these priorities. Change is needed, and your support and your contribution to the leadership of it will be vital.

We want to provide Board members appointed to public bodies with the necessary information and training to ensure that you are able to carry out your duties to the highest standards. Precise training and information requirements will of course vary from Board to Board, depending on both the type of body and the nature of its functions. This revised edition of the 'On Board' Guide provides a comprehensive standard induction pack covering generic issues such as roles and responsibilities of public bodies, and accountability and governance arrangements to supplement the tailored induction and training you will receive.

I very much hope you will find the Guide of interest and value as a source of reference and advice and that it will help make your appointment effective, enjoyable and personally fulfilling. On behalf of the Scottish Executive, I would like to thank you for your time, commitment and effort in serving the people of Scotland.

Tom McCabe MSP
Minister for Finance and Public Service Reform

Acknowledgements

The Scottish Executive would like to thank all those organisations and individuals who assisted with the updating of this Guide.

The Scottish Executive is particularly grateful to David Nicholl, Head of the Chartered Institute of Public Finance and Accountancy (CIPFA) in Northern Ireland, for the invaluable advice, guidance and support provided during the preparation of this Guide.

The Scottish Executive recognises the encouragement and support provided by the Chief Executives' Forum in Northern Ireland whose earlier publication inspired this production. On Board: A Guide for Board Members of Public Bodies in Northern Ireland was first published in 1998 by the Chief Executives' Forum and CIPFA Northern Ireland.

Preface: What is a Public Body?

A public body is generally an organisation which receives at least 50 percent of its funding from central government. Within this framework, some public bodies operate to a greater or lesser extent at arm's length from Ministers and are **not** part of a Scottish Executive Department. These specific bodies are generally referred to as Non Departmental Public Bodies and are managed by a Board whose members are appointed by the Minister. There are five main categories of NDPB:

- Executive NDPBs – with executive, administrative, regulatory or commercial functions, employing their own staff and managing often considerable budgets. They have their own set of accounts. Examples include sportscotland and Scottish Enterprise.

- Advisory NDPBs – set up by Ministers to advise them and their Departments on particular matters. Advisory bodies generally have no staff of their own but are supported by staff from their sponsor Department. Their expenditure is usually no more than members' expenses. They do not have their own set of accounts. Examples include the Scottish Law Commission and the Historic Environment Advisory Council for Scotland.

- Tribunals – independent of the Scottish Executive, deciding the rights and obligations of private citizens towards each other or towards a Department or other public authority.   Tribunals are established, for example, to decide medical appeals and employment disputes. They do not employ staff and do not incur expenditure on their own account. Examples include the Rent Assessment Panel for Scotland and the Lands Tribunal.

- Public corporations and nationalised industries – industrial or commercial enterprises under direct Government control, with responsibility for employing their own staff and managing their own budget.

- National Health Service bodies – bodies which provide management, technical or advisory services within the NHS, and which normally have responsibility for employing their own staff and managing their own budget.

This guidance is specifically, but not solely, directed at Board members who have been appointed to an NDPB which falls into one of the above categories.

You can find a list of all current NDPBs at the Scottish Executive website at:

http://www.scotland.gov.uk/government/publicbodies

Welcome and Preface

Section **1**

Introduction

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SECTION 1   INTRODUCTION

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Section 1 Introduction

1.1 INTRODUCTION TO THE GUIDE

Welcome On Board - but what exactly is expected of you?

The main purpose of a Board of a Scottish public body, as defined in the Preface, is to provide effective leadership, direction, support and guidance to the organisation and to ensure that the policies and priorities of the Minister (and the Scottish Executive) are implemented. The Minister has appointed you as a Board member to make an effective contribution to the work of the Board and to ensure that it discharges its governance functions effectively on his/her behalf.

The Board, therefore, is the bridge between the Minister who approves the Corporate/Business Plans and key performance targets of the Body, and the Chief Executive and Senior Management Team who aim to ensure that the Plans are delivered and targets met through effective and properly controlled executive action.

All Board members of public bodies have a crucial role to play in ensuring that their organisation is run efficiently and effectively. You have been appointed as a Board member to bring your personal expertise and experience to the Boardroom and you are **personally** as well as **corporately accountable** for your actions and decisions as a Board member.

One of the key roles of every Board member is to carefully scrutinise plans and underlying assumptions before decisions are taken. In exercising this important role, you should be prepared to question the position adopted by the Chief Executive, other senior officers and, if necessary, other Board members with a view to clarifying issues and securing improvements.

What is the aim of this Guide?

This Guide has been produced to provide you with much of the basic information that you will need to understand your role as a member of the Board of a public body in Scotland and to help make your time with the Board fulfilling and effective. The Guide supplements the information contained in your Letter of Appointment that formally sets out your roles and responsibilities as a Board member. It does not, however, take precedence over existing legislation or the Management Statement and Financial Memorandum which your public body will have in place.

However, the Guide is merely the starting point of your induction into the body that you have just joined. In due course, you should expect to receive induction guidance and training from the organisation on a range of topics, including:

- the structure, governing legislation and work of your public body and links with the sponsor Department;

- the Code of Conduct for Board Members and the Ethical Standards Framework; and

- your corporate roles and responsibilities as a Board member.

Annex 1 provides a checklist of further induction guidance and training that **may** be available from your organisation. You should refer to this checklist when you are discussing your induction requirements with the Chief Executive and/or Chair of your organisation. Your annual appraisal with the Chair will also highlight areas where further training is required.

This Guide is produced in ring binder form to enable you to add material to it that you consider relevant and useful. The Guide will be updated as information changes.

Does this Guide cover your public body?

The Guide is designed to be relevant to Boards of all public bodies, as defined in the Preface, regardless of size or function. However, if you are a Board member of an advisory NDPB, a tribunal or an NHS body, some of the content of this Guide may not be directly relevant to you. Board members should seek clarification from the Chair or Chief Executive as to the extent to which separate arrangements apply in your organisation. Nevertheless, the Guide contains much generic information that is essential to enable you to discharge your responsibilities as a Board member of a public body of whatever kind.

1.2   STRUCTURE OF THE GUIDE

The Guide is organised into five main Sections, as follows:

Section 1   **The Introduction**
Sets the scene and provides some reference material.

Section 2   **Principles of Corporate Governance**
Explains the broad principles to be followed in the conduct and management of public business.

Section 3   **Roles, Responsibilities and Relationships**
Outlines the roles and responsibilities of the Board as a corporate body and individual Board members and the key internal and external relationships that must be managed properly for the Board to operate successfully.

Section 4   **Effective Financial Management**
Describes and explains the requirements arising from the Public Finance and Accountability (Scotland) Act 2000 and the Scottish Public Finance Manual including the need to account for the use of public money and the safe keeping of public assets.

Section 5   **Standards of Behaviour**
Outlines the requirements of the Ethical Standards Act and explores some of the practical issues for public bodies, Boards and Board members.

How can this Guide help you to discharge your responsibilities as a Board member?

You will notice that Good Practice Checklists have been included at the end of most of the Sections in this Guide. These checklists are intended to be an aide memoire for you as a Board member to be able to assure yourself that the relevant controls, policies etc. are in place in your organisation. However, please recognise that there may be good reasons why some of the controls, policies etc. are not in place in your public body. It might therefore be advisable to discuss any concerns that you have, in relation to your organisation's compliance with the checklists, with the Chair of your public body.

And what next?

1.3   FURTHER HELP AND GUIDANCE

There is a wealth of sources of further information and guidance and it would be impossible to give an exhaustive list. A list of further reading and useful contacts is provided at Annex 2.

The two main sources of information and guidance will be the body that you have just joined, particularly the Chair and Chief Executive, and the sponsor Department. Between them, they should be able to provide most of the advice and information that you are likely to need during your time as a member of the Board.

1.4 GLOSSARY OF TERMS

A glossary of terms used in this Guide, with which you may be unfamiliar, is attached at Annex 3.

Section **2**

Principles of Corporate Governance

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SECTION 2 PRINCIPLES OF CORPORATE GOVERNANCE

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Section 2   Principles of Corporate Governance

2.1   INTRODUCTION AND BACKGROUND TO CORPORATE GOVERNANCE

What is corporate governance?

Corporate governance was defined in the Cadbury Report as 'the system by which organisations are directed and controlled'.

Corporate governance is, therefore, concerned with the structures and processes for decision-making and accountability, controls and behaviour at the top of organisations. In the private sector, the focus is on the Board. In the public services, in the broadest sense, 'the Board' is sometimes difficult to identify and define but the decisions, actions and behaviour of top policy makers and managers in public bodies are equally, if not more, critical.

In whatever way 'the Board' is configured, constituted or described, all public bodies must have, at their head, a group which is responsible for:

- giving leadership and strategic direction;

- defining control mechanisms to safeguard public resources;

- supervising the overall management of the body's activities; and

- reporting on stewardship and performance.

It is to this 'Board' that the principles of corporate governance apply.

Why is corporate governance important?

Corporate governance has been a high profile topic in recent years principally because of public concern at a lack of control at the top of organisations. There is a perception that, in certain cases, senior managers appear to have been able to act without restraint and that inadequately designed systems have failed to prevent fraudulent, inefficient or inappropriate behaviour.

In the early 1990s, developments in corporate governance gained momentum partly as a result of scandals involving Directors or other senior staff in private sector organisations, for example, the Maxwell saga and the failure of BCCI.

In the public sector, a series of reports by the Committee of Public Accounts at Westminster in the 1990s highlighted serious failings in the area of corporate governance, for example the reports on the Welsh Development Agency and the Wessex and West Midlands Regional Health Authorities.

In Scotland, there have been a number of high profile reports and inquiries in recent years highlighting inadequacies in the governance of public bodies. In one report, a Parliamentary Committee concluded that the governance arrangements in an NDPB did not identify or prevent a crisis which it should have done. Although not the primary factor, the Committee believed that the Board failed sufficiently to challenge the Chief Executive over a significant operational development that ultimately failed.

In another report, the Scottish Parliament's Audit Committee concluded that, on the evidence received, 'members of the Board of a public body had acted with probity throughout a very difficult period but could not escape criticism for not being aware of problems of which they should have been aware.'

2.2   THE PRINCIPLES OF CORPORATE GOVERNANCE

Developments in the Private Sector

In the private sector, a number of financial reporting irregularities (Maxwell, Polly Peck etc.) led to the setting up of the 'Financial Aspects of Corporate Governance Committee' chaired by Sir Adrian Cadbury. The Cadbury Report, published in 1992, made a number of recommendations on the roles and responsibilities of the Chair and Chief Executive, transparency of financial reporting and the need for good internal controls.

In particular, the Cadbury Report identified the need for non-executive Directors to have a clearly defined role in determining how an organisation is directed and controlled. They should 'bring an independent judgement to bear on issues of strategy, performance, resources, including key appointments, and standards of conduct'. Non-executives are expected to act as a counterbalance to executive Directors and senior staff and to challenge them where necessary.

In 1995, following concerns about Directors' pay and share options, the Greenbury Report recommended that there should be extensive disclosure of remuneration in annual reports and that companies should establish a remuneration committee made up exclusively of non-executive Directors.

In 1996, the Hampel Committee was established to review the extent to which the recommendations of Cadbury and Greenbury had been

implemented and the resulting Hampel Report led to the pulling together of all the key recommendations from Cadbury, etc. into a Combined Code of Corporate Governance published in 1998.

Guidance on how to apply aspects of the Combined Code has since been included in a number of reports, including the Turnbull Committee Report (on systems of internal control). In January 2003, the Higgs Report was published and set out a number of key recommendations to enhance the role and effectiveness of non-executive Directors. These included:

Independence

Non-executive Directors must be "independent". Higgs set out strict tests of independence, particularly around the length of tenure of the role.

Performance Review

The performance of the Board and each individual Director should be formally assessed at least annually and the details of the assessment published.

Majority

At least half the members of the Board, excluding the Chair, should be non-executive Directors, who pass the test of independence.

Attendance

The Annual Report should state the number of times that the Board and its committees met. It should also set out the attendance record of each Director.

Multiple Directorships

Non-executives must be able to give fully the time that is required to each Board upon which they sit. Being on several Boards is therefore unlikely to be tenable. No-one should be the Chair of more than one company.

Director Development

Arrangements for the induction of new non-executive Directors, and the development of all non-executive Directors, should be substantially improved and accorded a high priority.

The Combined Code was updated in July 2003 to reflect the recommendations from the Higgs Report. Although there are elements of the Combined Code which are relevant to Board members of public bodies, the Code only applies to companies listed on the primary market of the London Stock Exchange.

While there are a number of similarities between the public and private sectors in terms of corporate governance principles, Board members should be aware that it may not always be possible to draw a direct parallel between the two. Being on the Board of a public body will call for a wider appreciation of how the principles of corporate governance are mediated by the codes of conduct that apply to those who serve in public life.

Developments in the Public Sector

Nolan Principles

In 1995, the Committee on Standards in Public Life (the Nolan Committee) identified seven principles of conduct underpinning public life "for the benefit of those who serve the public in any way" and recommended that public bodies should draw up Codes of Conduct incorporating these principles. The seven Nolan Principles are as follows:

Selflessness
Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or other friends.

Integrity
Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.

Objectivity
In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

Accountability
Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness
Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

Honesty   Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership   Holders of public office should promote and support these principles by leadership and example.

The Scottish Executive took the Nolan Committee recommendations one step further with the introduction of the Ethical Standards in Public Life etc. (Scotland) Act 2000 which brought in a statutory Code of Conduct for Board Members of Devolved Public Bodies and set up a Standards Commission for Scotland to oversee the ethical standards framework.

The Scottish Executive also identified nine key principles underpinning public life in Scotland, which incorporated the seven Nolan Principles and introduced two further principles.

Public Service   Holders of public office have a duty to act in the interests of the public body of which they are a Board member and to act in accordance with the core tasks of the body.

Respect   Holders of public office must respect fellow members of their public body and employees of the body and the role they play, treating them with courtesy at all times.

These nine principles and their practical implications for Boards and Board members are explored in Section 5.

Good Governance Standard for Public Services

In 2004, the Chartered Institute of Public Finance and Accountancy (CIPFA) and the Office for Public Management established an Independent Commission on Good Governance in Public Services under the Chairmanship of Sir Alan Langlands. The role of the Commission was to develop a common code and a common set of principles for good governance across the public services.

In January 2005, the Commission published its Good Governance Standard for Public Services which builds on the Nolan Principles by setting out six core principles of good governance for public bodies. These six core principles also have their own supporting principles as described overleaf.

**Figure 2.1   Good Governance Standard for Public
Services: Principles of Good Governance**
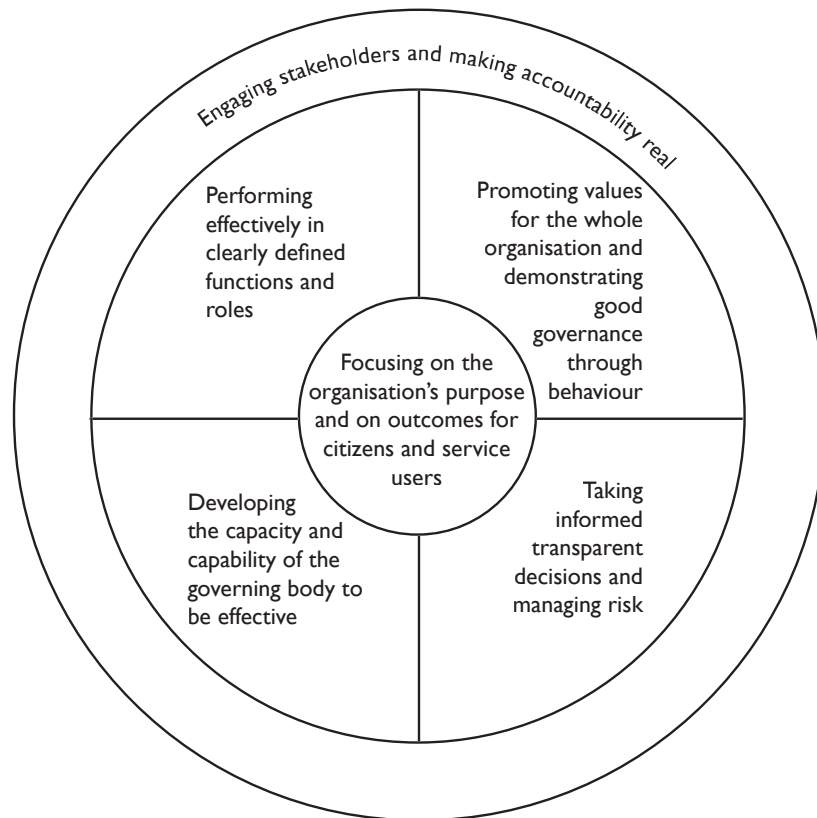
1.   Good governance means focusing on the organisation's purpose
and on outcomes for citizens and service users

    •   Being clear about the organisation's purpose and its
intended outcomes for citizens and service users;

    •   Making sure that users receive a high quality service; and

    •   Making sure that taxpayers receive value for money.

2.   Good governance means performing effectively in clearly
defined functions and roles

    •   Being clear about the functions of the governing body;

    •   Being clear about the responsibilities of non-executives and
the executive and making sure that those responsibilities
are carried out; and

    •   Being clear about relationships between Board members
and the public.

3. Good governance means promoting values for the whole organisation and demonstrating the values of good governance through behaviour

- Putting organisational values into practice; and

- Individual governors behaving in ways that uphold and exemplify effective governance.

4. Good governance means taking informed, transparent decisions and managing risk

- Being rigorous and transparent about how decisions are taken;

- Having and using good quality information, advice and support; and

- Making sure that an effective risk management system is in operation.

5. Good governance means developing the capacity and capability of the governing body to be effective

- Making sure that appointed and elected governors have the skills, knowledge and experience they need to perform well;

- Developing the capability of people with governance responsibilities and evaluating their performance, as individuals and as a group; and

- Striking a balance, in the membership of the governing body, between continuity and renewal.

6. Good governance means engaging stakeholders and making accountability real

- Understanding formal and informal accountability relationships;

- Taking an active and planned approach to dialogue with, and accountability, to the public;

- Taking an active and planned approach to responsibility to staff; and

- Engaging effectively with institutional stakeholders.

The Good Governance Standard also shows how these principles should be applied if organisations are to live up to the Standard and provides checklists for Board members (and the Board) and the public to challenge sub-standard performance of public bodies.

2.3   TRANSLATING THE PRINCIPLES INTO ACTION

The On Board Guide for Board Members of Public Bodies in Scotland provides the practical advice and guidance that is needed to enable public bodies and Board members to apply the principles of good corporate governance to their own organisations. The Guide pulls together good practice from the private and public sectors to provide guidance to Board members across the three main dimensions of corporate governance as set out below:

- Roles, Responsibilities and Relationships (Section 3 of this Guide)

    - setting out the roles and responsibilities of the Board, Board members, the Chair and the Chief Executive;

    - managing the key relationships between the Board and senior management and between the public body and the sponsor Department; and

    - conducting Board business efficiently and effectively.

- Effective Financial Management (Section 4 of this Guide)

    - how the Board and senior management demonstrates its financial accountability for the stewardship of public money and its performance in the use of resources.

- Standards of Behaviour (Section 5 of this Guide)

    - how the Board exercises leadership in determining the values and standards of the organisation, and ensuring compliance with the requirements of the Ethical Standards Act.

The Sections which follow take each of these three dimensions of corporate governance and explain their meaning more fully and, in particular, their relevance to you as a member of the Board of a public body in Scotland.

A Good Corporate Governance checklist is provided at Appendix 2.1. After you have settled in and familiarised yourself with your public body and its ways of working, you may wish to review the governance arrangements in place against the checklist to satisfy yourself that

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appropriate arrangements are in place to meet the needs of your public body.

In addition, you may wish to assess the extent to which your body is complying with the six core principles of Good Governance through completion of the self assessment checklist at Appendix A of the Good Governance Standard for Public Services.

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Appendix 2.1 Good Corporate Governance: A Checklist

ROLES, RESPONSIBILITIES AND RELATIONSHIPS	Yes	No

Statutory Accountability

1   Has the Board established effective arrangements to ensure compliance with all applicable statutes and regulations, and other relevant statements of best practice?

Accountability for Public Money

2   Has the Board established appropriate arrangements to ensure that public funds are:

- properly safeguarded?
- used economically, efficiently and effectively?
- used in accordance with the statutory or other authorities that govern their use?

Communication with Stakeholders

3   Has the Board established:

- clear channels of communication with the body's stakeholders?
- appropriate processes to ensure that such channels operate effectively in practice?

4   Has the Board made an explicit commitment to openness in all the activities of the body?

5   Does the Board make publicly available the names of all Board members, together with their relevant other interests?

Roles and Responsibilities

6   Is there a clearly defined division of responsibilities at senior management level?

7   Does the Board:

- meet regularly?

	Yes	**No**

- retain full and effective control over the body?
- monitor the executive management?

8.1 Has the Board established a framework of strategic control (or scheme of delegated or reserved powers)?

8.2 Does the framework of strategic control include a formal schedule of those matters specifically reserved for the collective decision of the Board?

8.3 Does the Board maintain an up-to-date framework of strategic control?

9.1 Has the Board established clearly documented and understood management processes for:

- policy development, implementation and review?
- decision-making, monitoring, control and reporting?

9.2 Has the Board established formal procedural and financial regulations to govern the conduct of its business?

10 Has the Board established appropriate arrangements to ensure that it has access to all such relevant information, advice and resources as is necessary to enable it to carry out its role effectively?

11 Is the role of the Chair formally defined in writing?

12.1 Are non-executive Board members:

- independent of management?
- free from any other relationships which may materially interfere with exercising an independent judgement on issues of strategy, performance, resources and standards of conduct?

12.2 Are the duties, terms of office, remuneration and its review, of non-executive Board members defined clearly?

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13.1 Does the Chief Executive have line responsibility for all aspects of executive management?

13.2 Is he or she accountable to the Board for the ultimate performance and implementation of the Board's policy?

14 Has the Board made a senior executive responsible for ensuring that appropriate advice is given to it on all financial matters?

15 Has the Board made a senior executive responsible for ensuring that Board procedures are followed and that all applicable statutes and regulations and other relevant statements of best practice are complied with?

16 Has the Board established a remuneration committee to make recommendations on the remuneration of top executives?

EFFECTIVE FINANCIAL MANAGEMENT

Annual Reporting

17 Does the Board publish on a timely basis an objective, balanced and understandable annual report?

18 Does the Board include in its annual report a statement confirming that it has complied with relevant standards or codes of corporate governance?

Internal Controls

19.1 Has the Board taken steps to ensure that systems of internal control:

- are established?
- continue to operate in practice?

19.2 Does the Board include in its annual report a statement on the effectiveness of the body's systems of internal control?

	Yes	No

20   Has the Board taken steps to ensure that effective systems of risk management are established as part of the systems of internal control?

21   Has the Board taken steps to ensure that an effective internal audit function is established as part of the systems of internal control?

Audit Committee

22   Has the Board established an audit committee with responsibility for the independent review of the systems of internal control and of the external audit process?

External Auditors

23   Has the Board taken steps to ensure that an objective and professional relationship is maintained with the external auditors?

STANDARDS OF BEHAVIOUR

Leadership

24   Has the Board taken steps to ensure that its members exercise leadership by conducting themselves in accordance with high standards of personal behaviour?

Code of Conduct

25   Has the Board developed a formal code of conduct defining the standards of personal behaviour, to which individual Board members and all employees of the body are required to subscribe?

26   Has the Board established appropriate mechanisms to ensure that members and employees of the body are not influenced by prejudice, bias or conflicts of interest?

Section 3

Roles and Responsibilities

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SECTION 3   ROLES, RESPONSIBILITIES AND RELATIONSHIPS

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Section 3   Roles, Responsibilities and Relationships

3.1   THE ROLE OF THE BOARD

What specifically is the role of the Board of a public body?

The main purpose of a Board of a Scottish public body is to provide effective leadership, direction, support and guidance to the organisation and to ensure that the policies and priorities of the Minister (and the Scottish Executive) are implemented.

The three main functions of a Board are:

- To represent the interests of the Minister. In the majority of cases, Boards of public bodies are appointed by Ministers in order to ensure the delivery of, or to advise upon, Ministerial policies.

  The representation of a body's views to Ministers by a Board is perfectly legitimate and acceptable, but such action should be viewed within this wider context. Crucially, Board members should be clear about Ministerial policies and expectations for their body. If they are in any doubt on this point at any time, they should seek clarification from the Chair.

- To provide active leadership of the public body by:

  - agreeing the organisation's strategy;

  - setting cost effective plans to implement the strategy;

  - establishing a performance management framework which enables under-performance to be addressed quickly;

  - establishing the values and standards of the organisation and ensuring that the organisation adopts and complies with Codes of Conduct for Staff and Board Members;

  - ensuring that the highest standards of governance are complied with, that the organisation complies with all Ministerial guidance, its Management Statement and Financial Memorandum and legislation, and that a framework of prudent and effective controls is in place to enable risks to be assessed and managed;

- focusing on the difference that the organisation is making in the outside world, i.e. effects on customers and citizens; and

- ensuring that the body is a Best Value organisation.

• To hold the Chief Executive (and senior staff) to account for the management of the organisation and the delivery of agreed plans on time and within budget.

In addition to any special responsibilities set by Ministers or set out in the statute that established the public body, the basic tasks of the Board are:

• To establish the corporate mission, aims and objectives of the body in line with Ministerial expectations. This should make explicitly clear:

- why your body exists?

- what it hopes to achieve?

- what are the values and beliefs that guide its work?

• to oversee the development (and review) of strategies, plans and policies of your public body;

• to ensure the operation and work of your public body is closely aligned with the work of other service delivery public bodies to ensure efficiency and effectiveness at the highest strategic level;

• to oversee the development (and review) of performance targets, including key financial targets;

• to provide continuity of direction and management by making appropriate arrangements for delegation; and

• to establish and promote the body's role in the community by:

- developing mechanisms for gathering and responding to the views of stakeholders, including customers;

- keeping people informed;

- representing the body within the community; and

- ensuring that the body operates in an open, accountable and responsive way.

The Effective Board ensures that:

- Alternative strategies for the organisation are developed

- The selected strategy is totally aligned to the organisation's purpose, consistent with Ministerial objectives and aspirations and is affordable

- Cost effective plans to implement the agreed strategies are developed, adopted and implemented

- It monitors organisational performance ensuring any underperformance is addressed swiftly

- The organisation complies with any Ministerial guidance or direction issued

- The organisation adopts and complies with its Code(s) of Conduct

- It maintains its focus on strategy, performance and behaviour and is not diverted by detail

3.2 THE ROLES AND RESPONSIBILITIES OF BOARD MEMBERS

What specifically is your role as a Board member?

The role of the Board member focuses on four key areas:

Strategy To contribute to strategic development and decision-making.

Performance To ensure that effective management arrangements and an effective team are in place at the top level of the organisation.

To help to clarify which decisions are reserved for the Board and then ensure that the rest are clearly delegated.

To hold management to account for its performance in meeting agreed goals and objectives through purposeful challenge and scrutiny; and to monitor the reporting of performance.

Risk   To ensure that financial information is accurate and that financial controls and systems of risk management are robust and defensible.

Behaviour   To live up to the highest ethical standards and comply fully with the Code of Conduct. Board members should also demonstrate through their behaviour that they are focusing on their responsibilities to the Minister, the organisation and its stakeholders.

When you join the Board, you should be provided with an appropriate programme of induction training. This should include guidance on what you have to do as a Board member and the standards that you must meet.

Your specific role may vary depending on the role of the Board to which you have been appointed and the capacity in which you have been appointed, but generally you will be expected to:

*   understand the environment in which your public body operates;

*   contribute to decision-making and share responsibility for the Board's decisions;

*   attend Board meetings on a regular basis and be well prepared by reading relevant papers in advance and, if necessary, seeking further information;

*   attend training events and keep up-to-date with subjects relevant to the body's work;

*   contribute to the work of any committees that have been established by the Board; and

*   represent the Board at meetings and events when required.

To what extent can you be held liable at law for your actions as a Board member?

Basically, if you, as an individual Board member, incur a civil liability in the course of carrying out your responsibilities for the Board, you will not have to pay anything out of your own pocket provided that you have acted honestly and in good faith.

However, it should be noted that this indemnity does not protect you if you act recklessly or in bad faith.

In many cases, your founding legislation or standing orders will set out the grounds on which you may be removed as a Board member. These may include bankruptcy, becoming incapable of performing your duties as a Board member or being convicted of an indictable offence.

The Ethical Standards in Public Life etc. (Scotland) Act 2000 formalised the use of Codes of Conduct for Board members. Ministers and the Parliament expect all Board members to adhere fully to the principles of public life set out in the Model Code of Conduct for Members of Public Bodies. Any breach of the principles or duties in that model code, or in any specifically approved Code for your public body, could result in sanction, suspension or dismissal. These principles and their implications for you as a Board member are discussed in greater depth in Section 5 of this Guide.

Nomination to the Board of another organisation

Some public bodies have the right to nominate one or more Board members to the Board of another organisation. If you are nominated to be a Board member on a body which is also a limited company, you will assume personal responsibilities as a **Company Director** under the Companies Acts. Any breach of your legal responsibilities as a Company Director could have serious consequences for you personally.

If you are in any doubt as to your position, you should take legal advice from the Board's legal advisers.

The Effective Non-Executive Board Member

- Upholds the highest ethical standards of integrity and probity (and complies with the public body's Code of Conduct for Board Members)

- Supports executives in their leadership of the business while monitoring performance

- Questions intelligently, debates constructively, challenges rigorously and debates dispassionately

- Listens sensitively to the views of others, inside and outside the Board

- Gains the trust and respect of other Board members

- Maintains a focus on strategy and performance and is not distracted by detail

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Re-appointment to the Board

You will have been appointed to the Board because your personal skills and knowledge match the criteria for the post and meet the needs of the public body. Prior to any decision being taken with regard to your re-appointment, the sponsor team along with the Chair will review the Board's balance of skills and knowledge and decide whether or not they are still appropriate. This will allow any gaps to be identified.

You may be re-appointed for a second term, in the same role without open competition, if you possess the skills and knowledge required on the Board at the time of re-appointment. However, you will only be considered for re-appointment if your performance has been assessed as satisfactory. Performance appraisals will be carried out regularly, throughout the term of your appointment, not just prior to a possible re-appointment. The Chair is most likely to conduct appraisals of Board members and senior officials in the sponsor Department will normally conduct Chair appraisals.

However, irrespective of the Chair's assessment of your performance, overall contribution and attendance during your time as a Board member, the final decision as to whether or not you are re-appointed to the Board ultimately rests with the Minister.

The terms and conditions of your appointment to the Board and the review procedure should be explained to you by the sponsor team upon appointment.

3.3 THE ROLES AND RESPONSIBILITIES OF THE CHAIR

What additional roles and responsibilities does the Chair have?

The Chair has some additional responsibilities over and above those of ordinary Board members, particularly in relation to strategic leadership and the conduct of Board business. These include:

- taking lead responsibility in representing the body in links with Ministers and the Scottish Parliament (other Board members may also be involved from time to time);

- advising the sponsor Department and Minister about Board appointments and the performance of individual members;

- taking the lead in building links, at Board level, with partner organisations and other stakeholders;

- ensuring that all Board members have a proper knowledge and understanding of their corporate roles and responsibilities;

- ensuring that the Board carries out its essential functions efficiently and effectively so that:

  - all planned business is dealt with, a conclusion is reached in respect of each item and each member of the Board understands the conclusion;

  - the Board takes proper account of Departmental guidance etc in reaching decisions;

  - all decisions by the Board are clearly and accurately minuted;

  - the Board delegates sufficient authority to its committees and to the Chief Executive;

  - all Board members are given the opportunity to express their views before any important decision is taken; and

  - the Board receives professional advice when needed.

- developing an effective working relationship with the Chief Executive:

  - overseeing the way the Chief Executive, together with the other senior managers, implements Board decisions;

  - agreeing the Chief Executive's annual performance targets and undertaking the assessment of his/her performance - possibly gaining Board (or Board Committee) approval for both the targets and the performance assessment.

The Effective Chair

- Develops and maintains a positive relationship with the Minister and the sponsor Department

- Ensures that the Board maintains a focus on strategy and performance and is not distracted by detail

- Sets the agenda, style and tone of the Board discussions to promote effective decision-making and constructive debate

- Promotes effective relationships and open communication, both inside and outside the Boardroom, between non-executive Board members and the Executive team

- Builds an effective and complementary Board, initiating change and planning succession in Board appointments, subject to Ministerial approval and OCPAS guidelines

- Promotes the highest standards of corporate governance and seeks compliance with the provisions of the Code of Conduct for Board Members, upholding the highest ethical standards of integrity and probity

- Ensures effective implementation of Board decisions

- Establishes a relationship of trust with the Chief Executive, providing support and advice while respecting Executive responsibility

- Develops and maintains positive relationships at Board level with stakeholders ensuring mutual understanding and co-operation

3.4 THE ROLE OF THE CHIEF EXECUTIVE

The Chief Executive has accountability to the Board for the overall organisation, management and staffing of the public body. He/she must devise and implement appropriate management structures and processes and must ensure the organisation has the necessary human capital for it to achieve its mission.

The key roles of the Chief Executive are:

Executive Management

- To assist the Board in developing the Strategy for the public body. This will involve devising alternative strategies by which the public body might achieve its purpose and assessing the strengths and weaknesses of each for the Board;

- To devise and recommend a corporate plan which will allow for the full implementation of the Board's adopted strategies within the resources available;

- To devise and implement management structures and processes which will allow the public body to implement agreed corporate plans;

- To ensure that the public body has managers and staff with the necessary skills, knowledge, qualifications and experience to be able to implement agreed corporate plans;

- To lead and inspire the organisation to fully implement agreed corporate plans on time and within budget to achieve agreed objectives;

- To monitor carefully the implementation of plans, adjusting them as needs be;

- To ensure that the Board is kept adequately informed so as to be able to discharge its duty to monitor performance;

- To develop and maintain positive relationships with officials of the sponsor Department to understand Ministerial aspirations and to ensure that the Department understands the challenges facing the public body; and

- To develop and maintain an effective relationship with the Chair and to ensure an effective link between senior managers and the non-executive Board members.

As Accountable Officer

Where a body manages its own budget, the Chief Executive will normally be designated as its Accountable Officer. The detailed responsibilities of the Accountable Officer for a public body are set out in a Memorandum from the Principal Accountable Officer (the Permanent Secretary to the Scottish Executive) issued to the Chief Executive at the time of formal designation (normally on appointment). These include:

- signing the accounts;

- ensuring that public funds are properly managed and safeguarded;

- ensuring that assets are properly controlled and safeguarded;

- ensuring that proper financial systems are in place and applied;

- ensuring that arrangements have been made to secure Best Value;

- representing the body before the Audit Committee of the Scottish Parliament; and

- alerting the Departmental Accountable Officer to circumstances where the Board is proposing to go against the Accountable Officer's advice on matters of financial propriety, regularity and/or value for money.

A full list of the specific responsibilities of your Accountable Officer is provided in the Memorandum to Accountable Officers of Other Public Bodies which is contained in the Scottish Public Finance Manual (see Annex 2: Further Reading).

What is the role of the Board in supporting the Accountable Officer?

The Board has an important role in assisting the Accountable Officer to discharge his/her responsibilities. Board members are collectively responsible for ensuring that the organisation adheres to strict standards of financial propriety, and complies with any financial requirements, in particular, those contained in the Management Statement and Financial Memorandum. The Board:

- considers and approves forward budget allocations and financial targets within key strategic and planning documents, such as Corporate and Operational/Business Plans;

- monitors the financial position against budget allocations and key financial targets and takes corrective action where required;

- approves high value, novel or contentious expenditure proposals, for submission to the Scottish Executive and Ministers for approval where appropriate;

- approves the annual accounts; and

- ensures that proper internal audit arrangements are established and maintained.

What can you do if you are concerned about the performance of your Accountable Officer?

In circumstances where there are serious concerns about the actions and performance of the body's Accountable Officer, the Board or the Departmental Accountable Officer can recommend to the Principal Accountable Officer that Accountable Officer status should be withdrawn or suspended. This would mean that the Chief Executive would be unable to fulfil their role and this would effectively terminate their position as Chief Executive.

The Effective Chief Executive

- Helps create the vision by providing technical support and advice

- Leads the development of alternative strategies for achieving the vision, ensuring creativity is allied to realism

- Leads the development of innovative plans to achieve the full implementation of agreed strategies

- Builds capable and inspiring teams and organises them into a fit-for-purpose organisation structure with management processes that provide for plan delivery

- Provides inspiring leadership to the public body to ensure the complete delivery of agreed plans on time and to budget

- Monitors organisational performance closely, keeping the Board appropriately informed

- Ensures operational/performance issues are quickly and effectively dealt with

- Delivers performance

- Maintains an ability to innovate and question the *status quo* even when he/she created it him/herself

- Fulfils all the responsibilities of being the public body's Accountable Officer

3.5   FUNDAMENTAL PRINCIPLES OF BOARD LIFE

There are a number of fundamental principles of Board life to which all Board members (including the Chair) must adhere:

Corporate Responsibility

While Board members must be capable of constructive challenge, they must also share corporate responsibility for decisions taken by the Board as a whole. If you fundamentally disagree with the decision taken by the Board, you have the option of recording your disagreement in the minutes. However, ultimately, you must either accept **and support** the collective decision of the Board – or resign. Board decisions should, however, always

comply with statute, Ministerial directions, Ministerial guidance and the objectives of the sponsor Department.

Confidentiality

It is essential that all Board members respect the confidentiality of sensitive information held by the body, within the parametres of the Freedom of Information (Scotland) Act 2002. This includes commercially sensitive information, personal information and information received in confidence by the organisation. It is also essential that debate **inside** the Boardroom is not reported **outside** it.

Conduct

You have a responsibility to set an example by demonstrating the highest standards of behaviour. You must comply with the letter and the spirit of the Members' Code of Conduct. You should never publicly criticise the organisation or fellow Board members. You must not attempt to undermine Board decisions or distance yourself from them outside of the Boardroom.

It is important that nothing you do or say, whether acting in your capacity as a Board member or in a business or private capacity, should in any way tarnish the reputation of your organisation or the Board.

If a Board member has specific concerns about the manner in which the public body is being run, these concerns should be raised with the Chair in the first instance. If you fail to achieve resolution to your concerns with the Chair, it is open to you to take them to the sponsor Department – but you should appreciate that this is a significant step. You are also able to take specific concerns to the Auditor General or, in the case of ethical standards, to the Standards Commission (see Section 5).

'Wearing your Board Member Hat'

You have to be aware that, when writing or speaking on any matter that is at all within the remit of the body, you might well be perceived as representing the Board even when you think you are writing or speaking as a private citizen, as an academic, or as a professional; indeed in any capacity. Any (mis)perception that you are speaking with your Board member 'hat' on, can lead to embarrassment and distress for both you and your organisation.

If your Board has adopted a particular position on any policy matter, it is for you to support that position. If your Board has not adopted a position on a particular policy issue, you may be able to promote your own personal views, but you have to remember that once your Board has adopted a particular position, you will have to promote that position.

In all probability, it would therefore be wise not to adopt too extreme a personal position.

Being a Board member does impose certain restrictions on what you can say and to whom. It is good practice - indeed it is almost essential - to clear articles or speeches on any subject matter which is at all relevant to the public body with the Chair or Chief Executive in advance. If you are approached by the media, it is good practice to leave such responses to the Chair or Chief Executive. If you are a Board member of an advisory body, you may wish to contact an official in the sponsor Department.

Operational Issues

It is essential that there is a clear understanding of the role of the officials and the role of non-executive Board members - there is often a fine line between the two. The Board's role is to oversee the development of strategies, plans and policies for the organisation and to monitor and review performance. It is the role of the officials to provide advice on and to implement those plans, strategies etc.

Board members should avoid interfering in the day-to-day running of the organisation. However, you should expect to be fully involved in the development and selection of long term goals and strategies for achieving them.

Exceptionally, Ministers can appoint the Chief Executive of some - but not all - public bodies to the Board. However, there is a strong presumption against this arrangement, primarily to ensure effective accountability, separation of function, objectivity and to avoid conflicts of interest in the decision-making process. Although Ministers appoint the Chief Executive and other Executives to the Board of most NHS bodies, there will never be a majority of Executive Directors. It is important that at full Board meetings and Committee meetings, the number of executives in attendance should be restricted to a minimum and under no circumstances should executives outnumber non-executives.

At least once a year, the Board should meet without the Chief Executive or any executives present. This gives the Board the freedom to challenge the actions and decisions of officials, without the potential for this challenge function to be undermined.

3.6   CORPORATE PLANNING AND STRATEGY

How does the Board manage the planning process?

One of the key tasks of the Board is to establish the mission, aims and objectives of the public body. This is usually done by developing

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a Corporate Strategy – a policy document setting out a vision for the organisation for the next five years or so. A Corporate Strategy can provide top-level information that feeds down into more detailed and shorter term planning documents such as the Corporate Plan. When appropriate, it must fit within, and take full account of, any strategic statements issued by the Scottish Executive.

The Corporate Plan is a key management tool for a public body as it turns long term strategies into planned action over a period of about three years and promotes continuous improvements in performance. The draft corporate plan should be submitted to the Scottish Executive in advance of the beginning of the first year to which the plan applies. The Corporate Plan should be reviewed, updated and published annually. Generally a corporate plan will include:

- the principal aims of the public body;

- an analysis of the environment in which it operates;

- the objectives, tasks and targets for the period of the plan;

- a description of the resources required to achieve the plan;

- indicators against which performance can be judged; and

- an efficiency plan describing how the body intends to achieve better value for money.

It must, in any event, meet any specific requirements as to content that may be set by the sponsor Department. It may be useful to meet with the Minister at the outset of the planning process in order to clarify priorities and objectives as the plan must self evidently be framed so as to deliver, or help deliver, Ministerial policy.

Ultimately, the Corporate Plan must be approved by the Scottish Ministers. As Ministers can only approve Corporate Plans for the Spending Review period, Board members should be aware that towards the end of the Spending Review period, the Corporate Plan can only be approved for the financial year immediately ahead. It is also worth remembering that, in addition to approving the Corporate Plan, the Scottish Ministers operate separate controls over the levels of funding in respect of your organisation.

The Board's role is to manage the planning process by providing the vision and to:

- ensure that effective long term and medium term planning takes place;

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- ensure the plans reflect the body's statutory duties and the policies and priorities of the Scottish Executive;

- consider, challenge and if necessary change the plans; and

- review the plans and performance against them on a regular basis.

On joining the organisation, you should have been provided with the current planning document. Have a look at the contents against the list provided above, although it is not intended either to be prescriptive or exhaustive. Find out how your organisation develops the plan, who is involved and the different stages in the planning process.

3.7 THE ROLE OF BOARD COMMITTEES

To function efficiently and effectively, a Board must put some thought into how business will be conducted. It must adopt processes for getting through business in a constructive way. Many Boards establish committees to deal with particular areas of interest outside main Board meetings, such as:

- Remuneration Committee;

- Audit Committee; and

- Area or Regional Boards.

Committees may also be set up to deal with specific aspects of the Board's role, the most common of which are:

- Staff Governance;

- Finance;

- Policy;

- Development; and

- Clinical Governance (in the NHS).

The advantage of a committee structure is that it allows for specialist areas to be debated in detail by members with the appropriate knowledge or skills. The key points can then be presented to the full Board for ratification, making more effective use of scarce time. It is very important, however, that it is not merely the minutes of Board Committees that are reported to the Board. The Board cannot be expected to understand the issues dealt with by the Board Committee from the minutes alone. The

Board has to have a substantive report from the Committee. That report will summarise not just the decisions but also the issues and the debate.

In some circumstances, the Board may invite individuals with specific skills and/or expertise to serve on Board Committees as co-opted members. However, co-opted members must never constitute a majority of the membership of any Board Committee.

3.8 THE ROLE OF THE MINISTER

Every public body sponsored by the Scottish Executive is expected to be aware of, and work within, a strategic and operational framework determined by the Executive. Every public body falls within the portfolio of a specific Scottish Minister who will set its overall policy aims, define expected outcomes arising from implementation of that policy, and will review its progress against these actions.

In some policy areas, more than one Minister is involved. While it is to be expected that the two (or more) Ministers will co-ordinate policy, the public body – led by the Chair – should ensure clarity of purpose and direction.

Public bodies are often described as operating at 'arm's length' from Ministers but this does not mean that they are beyond Ministerial control. The Minister will decide how much independence and flexibility the public body should have, depending on its size and the nature of the functions it carries out.

The founding legislation for most public bodies gives Ministers the power to issue a formal direction requiring it to take particular action. However, the use of these formal powers is extremely rare. The public body to which you have been appointed will, however, be covered by Ministers' relocation policy. This means that Ministers will expect you to consider and implement decisions on location as part of a wider strategic review which the body will be subject to from time-to-time.

The Minister is mainly responsible for:

- considering and approving the public body's strategic objectives and the policy and performance framework within which it operates;

- securing and approving the allocation of public funds for the body;

- the approval of key documents such as the Management Statement and Financial Memorandum and the Corporate Plan;

- making appointments to the Board;

- approving the terms, conditions and remuneration of the Chair and Board members, and in most cases the Chief Executive;

- fulfilling any responsibilities specified in the founding legislation, charter or articles of association; and

- issuing letters of strategic guidance.

Ministers may also seek to increase their understanding of the public body through formal meetings with the Chair and Board and other more informal events.

Ministers are responsible to the Scottish Parliament and may be asked at any time to attend Parliament or one of its Committees to answer questions from Members of the Scottish Parliament (MSPs).

3.9   THE ROLE OF THE SPONSOR DEPARTMENT

How does the Board interface with the sponsor Department and the Minister?

The day-to-day link between the body and the Minister is provided by the sponsor Department. Within the sponsor Department, a sponsor team should ensure that the body is adequately briefed about the Scottish Executive's policies and priorities. That team will monitor the body's activities on behalf of the Minister. However, civil servants from the sponsor Department will not normally attend Board meetings of the public body. On any occasion that they may do so, they should not be deemed to be party to decisions taken by the Board.

In particular, the sponsor team within the Scottish Executive prepares a formal document called the Management Statement and Financial Memorandum (MSFM) which sets out the relationship between the body and the Minister and officials. While MSFMs will vary according to the functions, powers and finances of the body, most include details of:

- the legislative basis under which the body was established and its statutory functions, duties and powers;

- aims and objectives, how these are to be delivered and the key targets to be achieved;

- the roles and responsibilities of Ministers, the sponsor Department, the Chair, Board members and the Chief Executive (and other senior officials) and, the body's accountability to Ministers and to the Scottish Parliament;

- arrangements for the planning, budgeting and control of the body's activities and expenditure, including funding, preparation of Corporate and Operational/Business Plans and setting of performance targets;

- arrangements for preparation and publication of the annual report and accounts and external audit procedures;

- responsibilities of the body for recruitment, pay, grading and other personnel matters;

- arrangements for conducting the Policy and Financial Management Review (PFMR), or alternative review processes; and

- financial authorities, controls and delegations.

The Board should be consulted when the Management Statement and Financial Memorandum is produced and whenever it is reviewed, which should happen regularly, and at least once every five years. The Board must ensure that arrangements are in place to monitor compliance with the requirements in the MSFM.

When joining the Board, you should have been provided with a copy of the MSFM. If not, you should ask to have sight of it and familiarise yourself with the contents.

It is important that a public body develops a productive working relationship with the sponsor team. It is best if there is good two-way flow of information, if issues on the horizon are shared before they become threatening, if risks and concerns are well understood and if there is honesty and openness.

Importantly, there should be NO SURPRISES – either way!

3.10 MANAGING RELATIONSHIPS – INTERNAL AND EXTERNAL

Key Internal Relationships

The Board/Board Members and the Chief Executive

Board members must guard against being seen as solely advocating or representing the interests of the public body. As outlined in Section 3.1, it is essential that Board members remember that they are appointed by the Minister and that they are there to represent the Minister's interests in order to ensure delivery of, or advise on, Ministerial policies.

It is essential that Board members and senior management in a public body work together as an effective team. This involves having clarity about roles and responsibilities and creating an atmosphere of mutual respect for each other's position. In particular, the working relationship between the Chair and Chief Executive is key to successful conduct of business.

There are two main dangers to achieving a healthy relationship between the Board and the Executive. The first danger is where the Board and/or Board members become involved in operational areas. It is important that the Board maintains a focus on strategy, performance and behaviour and is not diverted by detail which is the responsibility of the Chief Executive and staff. In cases where Boards become involved in operational issues, both good governance and good management are likely to suffer.

The Board as a body should also protect the Chief Executive and staff from the Board as individuals. Individual Board members have no authority to instruct the Chief Executive or any member of his/her staff.

The second danger is that the Chief Executive (and staff) start making Board-level decisions. This manifests itself in a number of ways:

- the Board rubber stamping strategy proposals or a draft Corporate Plan put forward by the Chief Executive;

- the Board being unable to take a decision without the Chief Executive's recommendation; and/or

- the Board allowing the Chief Executive to dictate the agenda for Board meetings.

A good Board/staff relationship recognises that the roles of the Board and executives are quite separate: Boards govern; executives manage.

The Chair and Board Members

In the Boardroom, it is expected that individual Board members should contribute fully to Board deliberations and exercise a healthy challenge function. This expectation extends to Executive Directors (where, as is the case in many NHS bodies, they are Board members). However, it is important that no individual Board member (or Chair) dominates the debates or has an excessive influence on Board decision-making. The Chair has an important role to play in ensuring that all Board members have an opportunity to contribute to Board discussions.

Outside the Boardroom, the Chair should be a useful source of advice and guidance for Board members (in particular, less experienced Board members) on any aspect of their role, responsibilities and general conduct.

As a Board member, you should support the Chair in his/her efforts to conduct Board business in an efficient and effective manner. However, you should not hesitate to challenge the Chair if you believe that a decision is wrong - even illegal - or is in contravention of the Management Statement and Financial Memorandum or formal instruction from Ministers, or has been taken without a full and proper debate.

Key External Relationships

Relationships with Stakeholders

It is useful for the Board to review from time-to-time who its key stakeholders are. The term stakeholder has a number of different meanings but, in this context, it includes anyone with an interest in the work of your organisation.

Stakeholders may be grouped into categories such as:

- providers of finance;

- users of services;

- partner organisations;

- suppliers of goods and services;

- regulators and inspectors;

- employees; and

- the wider community.

The Board needs to consider the concerns and needs of all stakeholders and actively manage its relationships with them. Stakeholders – and the general public – should have access to full and accurate information on the decision-making processes and activities of each public body and have the opportunity to influence its decisions and actions.

Scottish Ministers expect all public bodies to communicate clearly with their stakeholders in plain language, make information widely available and consult thoroughly and imaginatively. Where practicable and appropriate, a Board should:

- hold Annual Open Meetings;

- hold all Board meetings in public, unless there is a good reason not to;

- release summary reports and/or minutes of meetings;

- invite evidence from members of the public in relation to matters of public concern;

- consult stakeholders and users on a wide range of issues;

- make the Annual Report and Accounts widely available; and

- ensure, where relevant, that Board information is included as a class in the organisations publication scheme.

Only relevant statutory bodies have a statutory requirement to report annually to the Scottish Parliament.

3.11   EFFICIENT CONDUCT OF BOARD BUSINESS

How can the Board get through its business efficiently?

Board meetings should always have a manageable and prioritised agenda, an agreed duration and – perhaps – an estimated length of time for each agenda item.

It is important that the agenda is properly focused. It must reflect the Board's two fundamental purposes – the long term (mission, strategy and planning) and monitoring performance. There will be some issues reserved to the Board, such as major capital spend decisions, and these must be on the agenda. However, it is important that the agenda is not clogged up with detail, even if it is just items 'for noting'. It will be all too tempting to dwell on the easy unimportant things and not concentrate on the big issues.

The Chair should ensure that some action is agreed for every substantive item on the agenda and that the minutes clearly and accurately record decisions taken, responsibility for agreed action, and as appropriate, the views of individual Board members.

It is worth taking some time to find out how the Board you have just joined conducts its business and ask questions about the structures and processes that are in place. Questions from a new Board member can often be thought provoking and may stimulate new and more effective ways of working for the Board as a whole.

3.12 THE BOARD AS AN EMPLOYER

What responsibilities does the Board have in relation to employees?

The Board is the employer of the individuals who work for the public body. The Board needs to have assurance that the body is meeting its moral and legal obligations by:

- complying with employment law;

- avoiding discrimination of any kind against current or potential employees and ensuring equal opportunities;

- having in place agreed terms and conditions of employment and clear policies on human resource issues such as:

  - promotion;

  - discipline;

  - grievances; and

  - staff development.

- complying with all health and safety requirements.

The terms and conditions of employment should reflect the general standards set out in the Scottish Executive's Model Code for Staff of Public Bodies.

The Board is also usually responsible for the recruitment of the Chief Executive and, in some cases, other senior staff. If you take part in a recruitment exercise, you will need to be familiar with employment legislation and any Codes of Best Practice in relation to equal opportunities issues. You should receive training in recruitment and selection before serving in that capacity.

A checklist to see how your organisation measures up as a good employer is provided at Appendix 3.1.

Diversity

The Scottish Executive has a Diversity and Equality Strategy and the principles in it apply to all public bodies. The main aim is to remove the causes of discrimination and strengthen and build on what is positive and inclusive. There are three key objectives:

- making better policy and providing better services;

- promoting equal opportunities and tackling discrimination; and

- being a good employer.

The Scottish Executive expects all public bodies to mainstream equal opportunities in their work. This means that the Board should give specific consideration to the impact on equality of opportunity when developing policies and making decisions. The Board should also look at how information can be presented to different groups in formats that best suit their needs and find ways of consulting effectively with people with different needs.

As an employer, the Board should consider ways to attract new workers from a range of groups and perhaps set targets for increasing the number of applications from women, disabled people and people from minority ethnic groups.

Up-to-date information on current legislation relating to equal opportunities and best practice can be found on the following websites:

www.eoc.org.uk   Equal Opportunities Commission

www.cre.gov.uk   Commission for Racial Equality

www.drc-gb.org   Disability Rights Commission

www.caade.net   Campaign Against Age Discrimination in Employment.

Human Rights

Under the Human Rights Act 1998, it is unlawful for a public body to act in a way that is incompatible with a Convention right.

The Board should seek assurances from the Chief Executive and senior staff that the policies and procedures currently in place within your public body are compatible with the Convention rights. The 'human rights' dimension is one of the considerations that will have to be borne in mind by the Board when considering legislation, policies and procedures.

Your organisation should also be committed to protecting the privacy of individuals privacy in relation to how personal information is used as required by the Data Protection Act 1998 and equally to openness and transparency of decision-making in its handling of corporate information as required by the Freedom of Information (Scotland) Act 2002.

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Appendix 3.1   How does your organisation measure up as an employer?

Do you have the following ?	Yes	No	Needs more work
1. A clear understanding of the Board's role as employer			
2. A clear understanding between the Board and senior staff of each other's responsibilities			
3. Knowledge of current thinking on good employment practice			
4. An understanding of the organisation's management ethos			
5. A diagram showing the staffing structure of your organisation			
6. A recruitment and selection procedure			
7. Training on recruitment and selection for those involved in the selection process			
8. Signed contracts for all staff, including comprehensive terms and conditions			
9. A Code of Conduct for Staff			
10. Personnel specifications for all posts			
11. Job descriptions for all staff			
12. A pay policy and structure, and a system for annual pay reviews			
13. An induction system for all staff, Board members and volunteers			
14. A system for personnel records of all staff			
15. An equal opportunities policy			
16. A system of equal opportunities monitoring			
17. A training policy			
18. A system of monitoring and appraisal for all staff			
19. Disciplinary rules and procedures			
20. Grievance procedures			
21. A redundancy policy			

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Do you have the following ?

		Yes	No	Needs more work
22.	A health and safety policy			
23.	A policy and procedure for dealing with harassment			
24.	A whistleblowing policy			

Section **4**

Effective Financial Management

On board

SECTION 4   EFFECTIVE FINANCIAL MANAGEMENT

4

Section 4   Effective Financial Management

4.1   THE SCOTTISH PUBLIC FINANCE MANUAL

The primary document that governs all matters relating to public finance and reporting in Scottish public bodies is the Scottish Public Finance Manual (SPFM).

The SPFM provides guidance to your public body and its sponsor Department on the proper handling of public funds. It is mainly designed to ensure compliance with statutory and parliamentary requirements (in particular, the Public Finance and Accountability (Scotland) Act 2000), promote value for money and high standards of propriety, and secure effective accountability and good systems of internal control. It covers a wide range of areas such as:

- Accountability;

- Procurement;

- Risk management;

- Appraisal and evaluations of major investments; and

- Budget management and monitoring.

It is essential that the Board has processes and systems in place to ensure compliance with the SPFM. Board members should look to the staff of the public body for advice and assurance that the SPFM is being complied with but should be aware of the areas covered by the SPFM and have access to a copy for reference purposes.

4.2   BUDGETING IN A PUBLIC BODY

What is a budget?

A budget is concerned with two key elements - what is to be produced (outputs and their relationship to outcomes) and at what cost (inputs). It can be defined in different ways:

- a plan quantified in monetary terms, prepared and approved prior to a defined period of time, usually showing planned services to be delivered, income to be generated and/or expenditure to be

incurred during that period and the capital to be employed to attain a given objective.

- a management plan which shows the forecast resources required to achieve an agreed level of service activity.

How are budgets set?

The resources allocated to bodies by Scottish Ministers are determined as part of the Spending Review process. Spending reviews normally take place biennially with the last year of one Spending Review becoming the first year of the next. Thus Spending Review 2002 set plans for 2003-04, 2004-05 and 2005-06, while Spending Review 2004 revised plans for 2005-06 and set new plans for 2006-07 and 2007-08.

This process dovetails with the United Kingdom Spending Review which sets the overall Scottish budget for each Spending Review period. After deduction has been made for the costs of the Scotland Office plus the Scottish Parliamentary Corporate Body and Audit Scotland, the Executive has full discretion to decide how the Scottish budget should be divided between its various portfolios and programmes. Scottish Ministers' decisions on these allocations are underpinned by detailed material submitted by individual spending Ministers on the resources they consider necessary for the period under review and the outcomes that can be delivered. Adjustments to the budgets of bodies in the period between reviews may be considered by the Scottish Ministers on an ad-hoc basis. The grant-in-aid necessary to support the agreed budgets of bodies is authorised by the Scottish Parliament in the annual Budget Act.

Bodies will normally be expected to provide supporting material to the sponsor Department as part of the latter's contribution to both the Spending Review and the annual budgetary process. Wherever possible, this should be done as part of their own annual planning arrangements and they should therefore take all reasonable steps to harmonise the planning process with those of the Spending Review and annual budgetary process.

The starting point for the body's own budgeting process should be its Corporate Plan which sets out forward projections of resources required for each area of work. Setting a budget is not a one-off activity but part of an ongoing process of management, planning and control. A budget is normally drawn up for a 12-month period and represents the quantification of the first year in a public body's three year corporate plan.

While terminology and detailed approach may vary, the corporate planning process should be broadly as follows:

Figure 4.1 The Feedback Loop
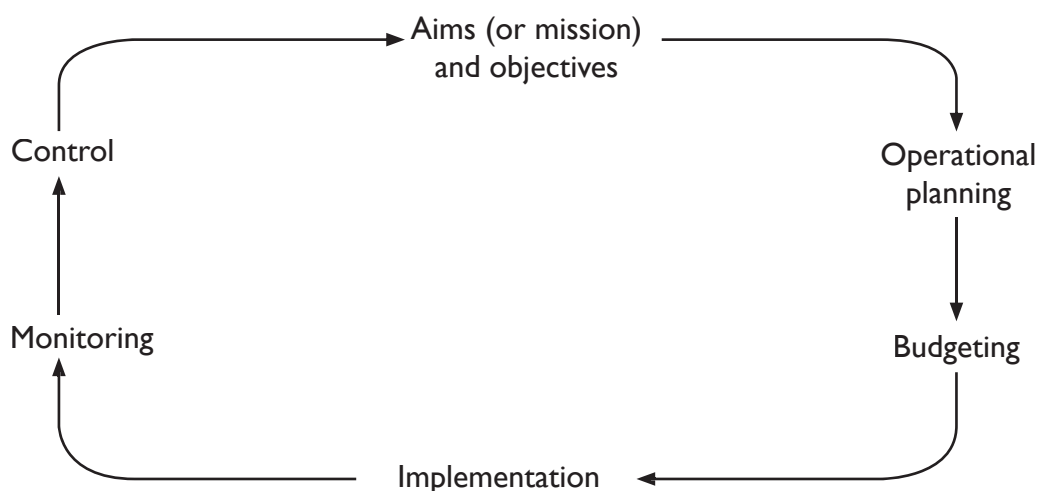
Aims and Objectives

The remit of a body is to achieve agreed objectives and to be formally held to account annually for performance and spending on behalf of the taxpayer. Aims and objectives are normally long run and stated in broad terms in a Corporate Plan.

Operational or Business Planning

The next planning level down involves devising plans or strategies to implement the aims and objectives at the operational level. This process should result in a defined set of activities, a set of realistic and measurable activity targets, outcomes and a statement of expected results.

Budgeting

Once decisions have been made about how the planned objectives are to be achieved, these can be expressed in financial terms. Planned expenditure/use of resources for the year is matched with expected income from grant-in-aid and other sources. Opportunities to make efficiency improvements that will release savings that can be re-invested back in to the delivery of services should be explored and built in to budgets.

Implementation

Ministers should write to public bodies at least annually setting out the policies and priorities which they wish them to pursue. Where a public body receives grant-in-aid, this is most commonly done through a grant-in-aid letter issued in advance of the financial year. The grant-in-aid letter confirms the resources that Ministers have allocated to the body and sets out the priority areas of work that Ministers wish the body to pursue.

Where a public body does not receive grant-in-aid, an equivalent letter should be received from the Minister covering the priority areas to be pursued. The letter should draw on material from the corporate plan and the Spending Review and any further instructions from Ministers.

Monitoring

Plans and budgets must be continuously monitored. Regular monitoring reports should be produced both for internal purposes and to meet the information needs of the Board and the sponsor Department.

Control

Any variations between actual spending/use of resources and performance, and planned spending/use of resources and performance must be investigated, and action taken to bring the plan and budget back under control or to change the planning assumptions, if appropriate.

The results of the planning, monitoring and control process for one year should inform the process for the following year.

What process is involved?

There are a number of key stages in any budget setting process. Typically these are:

- agreement of the budget period (i.e. the period of time for which the budget is to be prepared);

- agreement of the budget centres, the responsible managers and appropriate delegated authorities;

- arrangements for overseeing the preparation of the budget;

- publication and distribution of key budget policies and assumptions;

- preparation and distribution of guidelines for production of the budget;

- identification of key constraints;

- identification of potential efficiency savings;

- preparation of resource and capital budgets;

- presenting the budget to the appropriate channel for approval; and

- communicating the approved budgets to relevant managers/staff.

What is the role of the Board in the budget setting process?

Typically the Board of a public body will be responsible for the approval stages in the process, approving the Corporate Plan and possibly the Operational Plans as well, before submission to the sponsor Department. The Board should then receive regular financial reports (at least quarterly) showing expenditure/use of resources against planned budgets and progress towards financial targets including projected efficiency savings. Board members should provide the 'challenge function', carefully scrutinising plans and underlying assumptions.

4.3 BEST VALUE, EFFICIENT GOVERNMENT AND RELOCATION

The public sector reform agenda is based on the following key elements:

- user focus and personalisation;

- quality and innovation;

- efficiency;

- joining up; and

- strengthening accountability.

As a Board member, you should champion the public service reform agenda within your body by focusing on three key components of this agenda:

- Best Value;

- Efficient Government; and

- Relocation.

Best Value

As a Board member, you should always bear in mind the need for your public body to continually secure Best Value in the performance of its functions. In a tight financial climate, service improvements may need to be funded from internal efficiencies.

Figure 4.2 Best Value: A Common Framework for Continuous Improvement in Public Services in Scotland
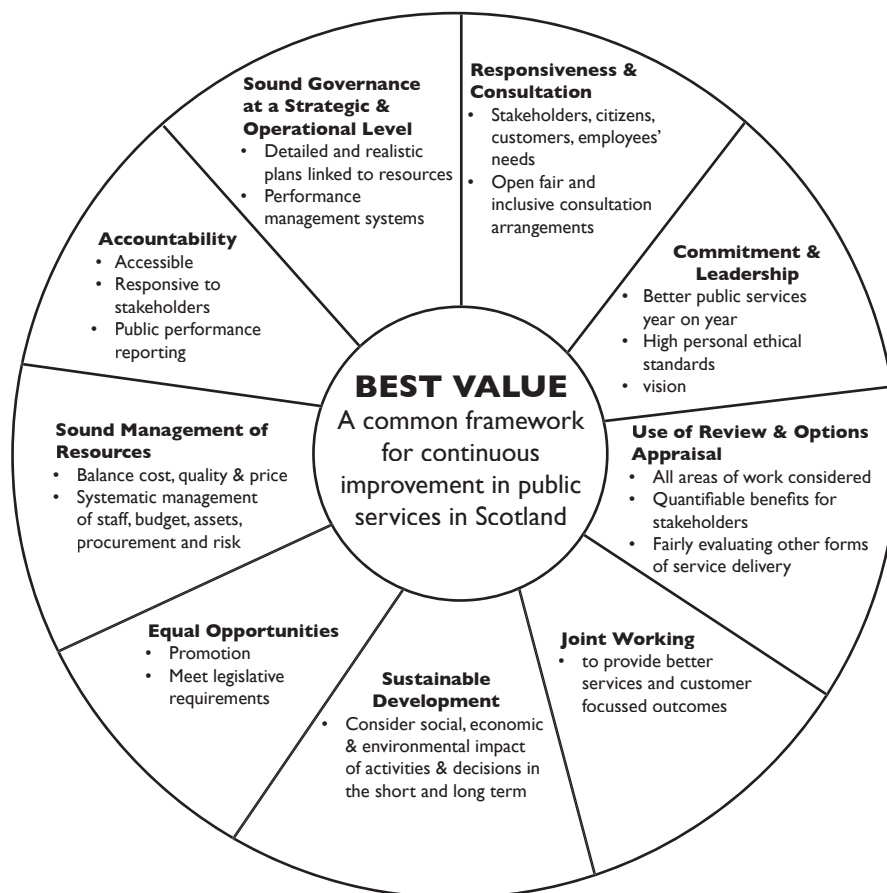
The Scottish Public Finance Manual requires all public bodies to promote the efficient and effective use of staff and other resources in accordance with the principles of Best Value. Furthermore, in those public bodies with Accountable Officers, these officers also have a duty to secure Best Value for their organisation and should put in place appropriate arrangements to do this (see Section 3.4 for further details of the role of Accountable Officers). As a non-executive Board member, you have a key role to play in ensuring that your body and its Accountable Officer complies with the Best Value framework outlined at Figure 4.2.

Best Value is about **continuous improvement** in the performance of the organisation's functions.

The Best Value principles complement good governance standards and offer a sound approach to running a public service organisation. A Best Value organisation should demonstrate that it has appropriate systems in place and that its operations deliver value for money. Best Value is part of Audit Scotland's annual audit of public service organisations and the Auditor General for Scotland will expect to see evidence that a Best Value approach is being taken and results obtained. Guidance on Best Value is available on the Scottish Executive website at www.scotland.gov.uk/Topics/Government/14838/12310

Efficient Government

The present Efficient Government Plan contains five workstreams where work is being taken forward right across the public sector in order to create a more efficient public sector. These are:

• procurement;

• asset management;

• shared support services;

• absence management; and

• streamlining bureaucracy.

Efficient Government is focused on the sound management of resources and ensuring that public bodies continually review their operations to identify opportunities for efficiency improvements. Efficiency improvements are about improving the ratio of resource inputs to outputs and can be made in any area, including the administration and delivery of services and in the procurement of goods and services. By making efficiency savings, more resources are available for re-investing in the delivery of services.

Opportunities for efficiency improvements within your body should be identified as part of the annual corporate and business planning processes and an Efficiency Plan should be drawn up for the body. As a Board member, you should ensure that such opportunities are being identified and that arrangements are in place for measuring, monitoring, and reporting the delivery of efficiency savings to the Board. The annual report should include a statement on how the organisation has performed in delivering their efficiency targets.

Public bodies should also have efficiency performance indicators (such as a range of input:output ratios) that will allow them to routinely monitor the efficiency of their operations.

Relocation

Relocation policy is another policy related to Best Value and Efficient Government. The Relocation Policy covers all sponsored public bodies and is a policy which Ministers will expect compliance on from Boards. The policy aims to disperse public sector jobs from Edinburgh in a cost-effective way that can bring the benefit of government-sponsored jobs to areas of particular social and economic need. Location reviews are triggered by the creation or reorganisation of bodies, as well as by property events (such as lease breaks). Reviews are led by the Relocation Support Team within the Executive, and Ministers will expect Board members to have regard to this policy in decisions they make on the most efficient and effective way of delivering services.

4.4   THE ANNUAL REPORT AND ACCOUNTS

The Board is responsible for approving the annual accounts and ensuring that the Minister is provided with the annual report and accounts to be laid before the Scottish Parliament. The accounting requirements for a public body will normally be set out in its founding legislation and/or its Management Statement and Financial Memorandum. On that basis, the Scottish Executive will issue an Accounts Direction, that will set out the form and content of the accounts.

Public bodies are required by the Scottish Executive to produce an annual report and, where they manage their own budget, accounts as the primary means of reporting on their activities to Ministers, the sponsor Department, the Scottish Parliament and the public.

Annual reports must contain certain key information, typically including:

- information about the body and its objectives;

- achievements and performance against key targets;

- contribution towards Efficient Government;

- performance against any Scottish Executive quality initiatives; and

- business prospects and corporate strategy.

The format of the Report is not fixed and the use of photographs and graphs as well as narrative is recommended. You should have been provided with a copy of the latest Annual Report and, where appropriate, Accounts as part of your induction pack. If not, you can easily obtain one from the public body concerned. The Accounts are subject to scrutiny by external audit. External audit arrangements are covered in Section 4.9.

4.5 PERFORMANCE MEASUREMENT AND REPORTING

Public bodies play an important role in the delivery of public services and with Executive Agencies are key components in the Scottish Executive's programme for modernising service delivery. It is imperative, therefore, that your organisation can show that its resources have been used effectively and efficiently in the delivery of high quality services. Efficiency indicators and performance measurement and business targets are an essential tool to help focus on what is required and review how resources have been managed and objectives met.

Key targets are agreed as part of the planning process with the sponsor Department and performance is reported against those targets. These should include targets for efficiency and effectiveness of operations and quality of service provided. Public bodies should contribute to the Scottish Executive's Efficient Government programme by identifying specific projects that will deliver efficiency improvements. Such improvements should be quantified and measured.

Your organisation should ensure that robust systems are in place to monitor performance against these targets. A report on the extent to which performance targets have been achieved should be incorporated into your organisation's Annual Report, where appropriate giving a summary of trends over a five-year period.

Policy and Financial Management Reviews

External Best Value Audits of individual bodies will provide Ministers with the assurance that each public body is considering accountability, governance, structure and funding arrangements on an ongoing basis.

In addition, all public bodies will be subject to a periodic review, currently known as a Policy and Financial Management Review (PFMR), which assesses public bodies in such a way as to satisfy Ministers that:

•   the functions of the body under review are still necessary;

•   the public body model is the best way of delivering those functions;

•   the work of the body contributes to both Departmental and Scottish Executive objectives; and

•   any opportunities for quality, efficiency and productivity improvements in the organisation and operations of the bodies covered by the review have been identified and considered, including a location review and an assessment of opportunities for joining up services.

The Minister will report the outcomes of this review to the Scottish Parliament. You should find out from your Chair when the last review was undertaken and obtain a copy of the Report. You may wish to check to see if the recommendations contained in the Report have been implemented, or form part of an action plan in the process of being implemented. Any changes to the current review process will be notified to all public bodies by the Scottish Executive.

4.6 RISK MANAGEMENT AND INTERNAL CONTROLS

What is risk?

Risk is the chance of things going wrong. As individuals, our experience of risk is an unavoidable fact of life and it does not matter how carefully we try and plan things and whatever precautions we take, the likelihood is that every now and again things will still go wrong. The situation is very similar for organisations, except the stakes are often higher and so the cost of things going wrong can often be far greater.

Public bodies are required to provide an Annual Statement of Assurance on Internal Controls in order to comply with best practice as recommended by the Turnbull Committee Report. As part of that process, Directors are required to review, at least annually, the effectiveness of all controls, including financial, operational and compliance controls. Organisations need to show that they have established and maintained effective and on-going procedures for identifying, evaluating and managing business risks.

What risks does your organisation face?

Every public body is responsible for identifying its own list of risks. The following list sets out (for illustrative purposes) a list of potential risks that may be faced by a public body:

- Poor strategic planning process with failure to determine and communicate an appropriate and focused strategy;

- Loss of Ministerial confidence;

- Change in Government funding policy results in a drop in real income;

- Unanticipated fluctuation in demand for services;

- Impact of new legislation resulting in the need to do new things, or do things in a different way (e.g. Working Time Directive);

- Failure to attract, develop and retain high quality staff;

- Failure to adhere to employment legislation and standards of good practice with resultant damage to reputation;

- Inability to expand and change to meet new challenges;

- Failure to exercise budgetary control;

- Failure to identify future liabilities and needs: for example, staff costs rising ahead of funding, a pensions deficit etc.;

- Failure to meet liabilities;

- Significant costs incurred not included in financial plans;

- Failure to comply with statutory requirements leading to prosecution - for example, the Data Protection Act and related legislation;

- Failure to actively manage positive and negative publicity and/or failure to maximise benefits from positive publicity;

- Failure to effectively manage health and safety, with consequent risk or damage to staff;

- Potential litigation, including possible punitive damages leading to damage to reputation and/or jeopardising future income;
- Press criticism arising from perceived corporate governance weakness or non-compliance;

- Loss of movable assets;

- Major IT disaster – loss of information or use of central hardware; and

- Failure to provide accurate and complete operational management information.

It is because of the regular experience of things going wrong that it is crucial to take steps to identify and manage risks, minimise the risk of adverse consequences and prepare contingency plans.

Why is risk assessment and risk management important to organisations?

Organisations have a set of aims and objectives and the responsibility for achieving these rests with management. Furthermore, the environment

within which organisations work is constantly changing and so these aims and objectives are constantly being refined and redefined; this only adds to the uncertainty and to the risk that organisations are already subjected to.

In order to achieve its objectives, senior management in the organisation must identify the risks associated with not achieving these objectives and establish risk ownership – i.e. allocate the assessment and management of risk to a specific manager. This manager then has the responsibility for matching controls to these risks in order to minimise or avoid these risks altogether. He/she is also charged with the responsibility of implementing these controls, and monitoring their effectiveness and continued relevance.

What is the role of the Board in risk management?

The Board should ensure that there is a system in place for continuous risk management in the public body which extends from the front line services through to the Board. This involves having a framework of prudent and effective controls in place to enable risks to be assessed and managed. The Board itself should regularly review key business risks affecting the organisation.

4.7   INTERNAL AUDIT

What is Internal Audit?

Internal Audit is a type of management control. It is an internal appraisal service, established by the management of an organisation, which reviews the internal control system. It should objectively examine, evaluate and report on the adequacy of internal control as a contribution to the proper, economic, efficient and effective use of resources. To achieve full effectiveness, the scope of the internal audit service should provide an unrestricted range of coverage of the organisation's operations. The internal auditors should have sufficient authority to allow them access to such assets, records and personnel as are necessary for the proper fulfilment of their responsibilities and report to the Board where they feel it is necessary.

4.8   AUDIT COMMITTEES

Where a Board is responsible for budget expenditure, best practice dictates that Audit Committees must be established to advise the Board on internal control (including corporate governance) and audit matters. An Audit Committee can:

- promote the understanding of audit's role and status within the organisation;

- enhance the independence and perceived value of internal audit;

- provide a forum for senior management to discuss internal control including issues raised by internal and external audits;

- assist the Head of Internal Audit in judging priorities; and

- aid the co-ordination of internal audit, external audit and any other consultancy and inspection reviews.

The Audit Committee should:

- be a formal sub-committee of the Board;

- have at least three non-executive members, under the chairmanship of a non-executive member who should be someone other than the Chair of the public body or of any other sub-Committee of the Board;

- have a clear programme of work and arrange its meetings to ensure effective delivery of that programme;

- ensure that the Accountable Officer, Head of Internal Audit, Director of Finance and External Audit (as necessary) attend meetings (though not as members of the Audit Committee); and

- have written terms of reference.

Items for discussion at committee meetings should include:

- the Head of Internal Audit's annual report to the Accountable Officer;

- the adequacy of governance and risk management arrangements;

- the audit needs assessment and the resource implications arising therefrom;

- findings from audit assignments;

- major policy issues and their implications for internal control;

- the plans and findings of external audit;

- corporate governance compliance;

- arrangements for securing Best Value, regularity and propriety; and

- arrangements for delivering efficiency savings.

An example of a checklist is attached at Appendix 4.1 and there is also extensive guidance on Audit Committees contained within the Scottish Public Finance Manual. This will help you evaluate the adequacy and effectiveness of your organisation's Audit Committee.

4.9   EXTERNAL AUDIT

Who are the external auditors of public bodies in Scotland?

The Auditor General for Scotland is the external auditor of a number of public bodies. The Auditor General may appoint himself, a member of the staff of Audit Scotland or an appropriately qualified professional firm as the auditor of your body.

Where a public body is incorporated under the Companies Acts, the auditor is appointed by the members of the company (i.e. the Board members).

What is a Financial Audit?

A financial audit undertaken by the Auditor General is conducted in accordance with the Public Finance and Accountability (Scotland) Act 2000 and the Code of Audit Practice issued by Audit Scotland on behalf of the Auditor General and the Accounts Commission. The appointed auditor will:

- issue an opinion as to whether the accounts give a true and fair view of the state of affairs of the public body at the year end and of its income and expenditure for the year and whether the accounts have been prepared in accordance with any applicable legislation and accounts direction;

- issue an opinion (known as the "regularity" opinion) as to whether the income and expenditure has been properly received or incurred in accordance with legislation, the Budget Act for the relevant year and any other guidance issued by the Scottish Ministers;

- review the Statement on Internal Control prepared by the body and report if it is not in accordance with the auditor's understanding of the body;

- consider the body's governance arrangements and arrangements for prevention and detection of fraud; and

- provide reports to the Board, Audit Committee and/or management on matters arising during the course of the audit.

On completion of the audit, the appointed auditor sends a copy of the accounts and the audit opinion to the Auditor General. The Auditor General may then add a report of his own (for example, on a qualification of the auditor's opinion or other matter drawn to his attention by the auditor) before sending the accounts and reports to the Scottish Ministers for laying before the Parliament.

What is Performance Audit?

Performance audit involves looking at the performance of an audited body and includes VFM audit which is an examination of the economy, efficiency and effectiveness with which a body has used its resources to carry out its functions.

The Auditor General has wide powers to conduct studies and these can include a study of one issue at a public body, a general study of the performance of a public body or a study looking at comparative performance across a group of public bodies. Studies may be conducted by central Audit Scotland staff, the appointed auditor, consultants or any combination thereof.

On completion of a study, the draft report will be discussed with the public body to ensure factual accuracy and, once finalised, the report will be laid before Parliament and published with an accompanying Press Release.

What access does the Auditor General have to information in your organisation?

For many executive NDPBs, the founding legislation provides that the Auditor General will appoint the auditor. In such circumstances, the Auditor General has a statutory right to carry out his VFM examination. Under Section 24 of the Public Finance and Accountability (Scotland) Act 2000, the Auditor General has a statutory right of access at all reasonable times to all the documents that he reasonably requires provided that the documents are in the custody or under the control of the organisation being examined. The Auditor General is also entitled to any assistance, information or explanation which he reasonably thinks necessary for the purposes of an audit or study.

Where the Auditor General is not the auditor of an executive NDPB nor appoints the auditor, he should have rights, either under statute or by agreement, to carry out an inspection of the NDPB's use of its resources. The expenses of most advisory and other non-executive NDPBs will be subject to audit by the Auditor General or auditors appointed by him as they are included in the accounts of their sponsor Department.

4.10 THE AUDIT COMMITTEE OF THE SCOTTISH PARLIAMENT

The Audit Committee of the Scottish Parliament is one of the committees established under the Standing Orders of the Parliament. The Audit Committee uses the reports of the Auditor General, which are laid before the Parliament, as the basis for conducting enquiries. It is chaired by a senior member of the Opposition and conducts its business on non-party political lines

How does the Audit Committee work?

The key stages in the process whereby the Auditor General's reports are considered by the Audit Committee are as follows:

- the Auditor General's report is discussed with the body concerned and the facts are agreed;

- the report is laid before Parliament and published together with a Press Release;

- if an enquiry is to be conducted by the Audit Committee, witnesses will be called to give evidence. The principal witnesses will usually be the Accountable Officer of the body and the Accountable Officer of the sponsor Department. However, it is possible that the Chair or indeed any Board member of a public body may be required to appear as a witness;

- the Audit Committee session takes place in the Scottish Parliament and will be in public;

- after the evidence session, the Committee drafts and approves a report which is published; and

- a formal response to the Committee's report is provided by the Scottish Executive (or by the body in consultation with the Executive) within two months of the Committee's report being published.

Appendix 4.1   Audit Committee Checklist

Composition, Establishment and Duties of Audit Committees

Ref.	Good Practice	Yes	No	N/A	Comments Action
1.1	Does the Audit Committee meet regularly, at least three times a year?				
1.2	Does at least one of the Audit Committee members have a financial background?				
1.3	Does the Audit Committee have written terms of reference?				
1.4	Are the terms of reference adopted by the full board and reviewed annually?				
1.5	Are the Audit Committee members independent of the management team?				
1.6	Are new Audit Committee members provided with some form of training?				
1.7	Does the Audit Committee's Terms of Reference include: reviewing internal control? reviewing Internal Audit? reviewing External Audit? reviewing the Standing Orders and Standing Financial Instructions?				

Ref.	Good Practice	Yes	No	N/A	Comments Action
	ensuring that the Audit Committee operates within any relevant guidance/circulars issued by the Scottish Executive?				
	reviewing schedules of losses and compensations?				
	reviewing annual accounts?				
1.8	Does the Audit Committee report regularly to the board?				

Compliance with the Law and Regulations

Ref.	Good Practice	Yes	No	N/A	Comments/Action
2.1	Does the Audit Committee have a mechanism to keep it aware of topical legal and regulatory issues?				

Internal Control

Ref.	Good Practice	Yes	No	N/A	Comments/Action
3.1	Does the Audit Committee monitor that risk is controlled and possible litigation avoided?				
3.2	Does the Audit Committee require an annual assurance report by the Chief Internal Auditor?				

Internal Audit

Ref.	Good Practice	Yes	No	N/A	Comments/Action
4.1	Does the Head of Internal Audit attend meetings of the Audit Committee.				
4.2	Does the Audit Committee review annually the Internal Audit strategic and annual plans?				
4.3	Does Internal Audit have a direct line of reporting to the Audit Committee?				
4.4	Has the Audit Committee considered the appropriate level of detail it wishes to receive from Internal Audit?				
4.5	Does the Audit Committee receive periodic reports from the Chief Internal Auditor?				
4.6	Are the follow up audits by Internal Audit monitored by the Audit Committee?				
4.7	Does the Audit Committee hold periodic private discussions with the Chief Internal Auditor?				
4.8	Does the Audit Committee review the adequacy of staffing and resources of Internal Audit?				

4

Ref.	Good Practice	Yes	No	N/A	Comments/Action
4.9	Has the Audit Committee evaluated whether the Internal Audit service complies with any mandatory audit standards?				
4.10	Are any Internal Audit performance measures monitored?				
4.11	Do formal terms of reference exist defining Internal Audit's objectives, responsibilities, authority and reporting lines?				
4.12	Is there appropriate co-operation between the Internal and External Auditors?				

External Audit

Ref.	Good Practice	Yes	No	N/A	Comments/Action
5.1	Does the External Auditor attend meetings of the Audit Committee?				
5.2	Does the External Auditor discuss his audit plan and strategy with the Audit Committee?				
5.3	Has the Audit Committee discussed the VFM programme with the External Auditor?				
5.4	Does the Audit Committee receive and monitor actions taken in respect of prior year VFM studies?				
5.5	Does the Audit Committee review the External Auditor's report?				
5.6	Does the Audit Committee hold periodic private discussions with the External Auditor?				
5.7	Does the Audit Committee assess the performance of External Audit?				

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Administrative Arrangements

Ref.	Good Practice	Yes	No	N/A	Comments/Action
6.1	Does the Audit Committee have a secretary who is a senior officer?				
6.2	Are Audit Committee papers distributed in sufficient time for members to give them due consideration?				
6.3	Are Audit Committee meetings scheduled prior to important decisions on specific matters (within the locus of the Audit Committee) being made?				
6.4	Is the timing of Audit Committee meetings discussed with all the parties involved?				
6.5	Is the Audit Committee role in the approval of the annual accounts clearly defined?				
6.6	Is an Audit Committee meeting scheduled to discuss proposed adjustments or issues arising from the audit?				
6.7	Does the Audit Committee annually review the accounting policies of the public body?				

Other Issues

Ref.	Good Practice	Yes	No	N/A	Comments/Action
7.1	Has the Audit Committee considered the costs of running the committee and are the costs appropriate to the perceived risks and the benefits?				
7.2	Does the Audit Committee assess its effectiveness periodically?				
7.3	Does the Annual Report and Accounts include a description of the Audits Committee's establishment and activities?				

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Section **5**

Standards of Behaviour

On
board

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Section 5   Standards of Behaviour

5.1   ETHICAL STANDARDS IN PUBLIC LIFE

The Scottish Ministers have high expectations of those who serve on the Boards of public bodies and the way in which they should conduct themselves in undertaking their duties. You must meet those expectations by ensuring that your conduct is above reproach.

The first report of the Committee on Standards in Public Life (the Nolan Committee) identified seven key principles of conduct which underpin public life and recommended that public bodies should draw up Codes of Conduct incorporating these principles. The Ethical Standards in Public Life etc. (Scotland) Act 2000 identified nine key principles which underpin public life in Scotland putting ethical standards and probity at the heart of decision-making in Scotland.

The ethical framework introduced by the Ethical Standards Act, sets out the standards of conduct required, ensures that there are clear and consistent procedures in place for dealing with any alleged misconduct and that such issues are dealt with fairly and objectively.

The key elements of the ethical framework include:

*   A Standards Commission for Scotland and a Chief Investigating Officer to oversee the ethical framework;

*   Codes of Conduct for Members of Devolved Public Bodies on a statutory basis for those bodies listed in Schedule 3 of the Act;

*   Other Codes for smaller bodies; and

*   Publicly available Registers of Members' Interests.

Through this ethical framework, the Scottish Ministers aim to ensure fairness, openness and, above all, confidence in Scottish public bodies and all who serve on them.

5.2   THE STANDARDS COMMISSION FOR SCOTLAND

The Standards Commission for Scotland ('the Commission') is central to the Ethical Standards Act. As an independent statutory body, the Commission has responsibility for various aspects of the ethical framework.   It is also responsible for providing advice and guidance to those covered by the framework. The Commission:

- adjudicates on cases of alleged contravention of the Codes of Conduct for Members of Devolved Public Bodies and Councillors brought forward by the Chief Investigating Officer;

- acts as guardian to the Codes of Conduct and Registers of Interests through the separate and independent investigatory functions of the Chief Investigating Officer;

- provides guidance to councils and public bodies on:

  - the promotion and observance of high standards of conduct by Councillors and Members of Devolved Public Bodies and assisting them in that task;

  - the Commission's relationship with local authorities and public bodies in carrying out its functions; and

  - the Registers of Interests for Councillors and Members of Devolved Public Bodies.

The investigatory functions of the Chief Investigating Officer are independent of the adjudicatory functions of the Commission.

On finding a contravention of a Code for bodies listed in Schedule 3, the Commission has the power to impose sanctions ranging from censure, or suspension from meetings of the public body for up to one year, to disqualification for up to five years. For details of the full range of sanctions available to the Commission, you should refer to Annex A of the Members' Model Code of Conduct or your public body's code of conduct. A copy of the Model Code can be found at http://www.scotland.gov.uk/library5/localgov/mcoc-00.asp

5.3 CODE OF CONDUCT FOR BOARD MEMBERS

Upon appointment to the Board, you should have been provided with a copy of your public body's Code of Conduct for Board Members (which will have been based on the Model Code of Conduct for Members of Devolved Public Bodies as approved by the Scottish Parliament).

It is your personal responsibility to make sure that your actions comply with the provisions of the Code of Conduct at all times as the Code contains the standards against which your conduct will be measured.

You should also review regularly, and at least annually, your personal circumstances with this in mind, particularly when your circumstances change. You must not at any time advocate or encourage any action contrary to the Code of Conduct.

No Code can provide for all circumstances and if you are uncertain about how any aspect of the Code applies, you should seek advice from the Standards Officer in your public body. You may also choose to consult your own legal advisers and, on detailed financial and commercial matters, seek advice from other relevant professionals. The Commission is also available for advice and guidance on any aspect of the Code.

Where a Board member has been accused of contravening the Code of Conduct, the matter will be referred to the Chief Investigating Officer of the Commission for consideration. He or she may then report to the Commission. It will be for the Commission to determine whether or not to proceed with the matter.

What if your Public Body is not covered by the Ethical Standards Act?

As an individual Board member, you are accountable to both Ministers and the public for your actions and decisions. It is important to emphasise that, irrespective of whether or not your public body is covered by the Ethical Standards Act, you are still required to adhere to the principles that underpin the ethical framework and have regard to provisions set out in the Model Code of Conduct in carrying out your public duties. It is your personal responsibility to ensure that your conduct is beyond reproach.

The Ethical Standards Act does make provision for Scottish Ministers to introduce a code or codes of conduct under the Public Authorities Regime for bodies not currently listed in Schedule 3 to the Act. However, while public bodies and their Board members will be expected to act in accordance with this code of conduct, they will not be subject to investigation by the Chief Investigating Officer or to sanctions by the Standards Commission.

5.4 KEY PRINCIPLES OF THE MEMBERS' CODE OF CONDUCT

In March 2002, the Scottish Parliament approved the Model Code of Conduct for Members of Devolved Public Bodies in Scotland which was the basis upon which public bodies have developed their own Code of Conduct for Board Members. The Model Code of Conduct is based on the nine key principles of public life approved by the Scottish Parliament augmenting the seven Nolan principles to reflect the nature of public service in Scotland.

Your organisation's Code of Conduct sets out the nine key principles that Board members are expected to uphold in carrying out their duties:

• Public Service;

- Leadership;

- Selflessness;

- Integrity;

- Objectivity;

- Honesty;

- Accountability and Stewardship;

- Respect; and

- Openness.

The rest of this Section examines these principles in greater depth, highlighting some of the practical issues and implications for you as a Board member of a Scottish public body.

5.5 PUBLIC SERVICE AND LEADERSHIP

Boards are responsible for determining the specific values and standards for their own organisation building on the core values and standards set out in the Code of Conduct. As an individual Board member, you are expected to show leadership by promoting these values and standards and by acting as a role model for others within the organisation in terms of standards of personal behaviour.

You have a duty to act in the interests of the public body of which you are a member and in accordance with the core tasks of that body. Board members should always act fairly, in good faith and objectively to meet the specified objectives of the body to which you have been appointed. You should ensure that nothing you do or say should ever weaken the public's faith in the integrity of public service and, in particular, your organisation and its Board members.

Board members should be aware that issues such as the receipt of gifts and hospitality, conflicts of interest and public accountability assume a much greater importance in public service than in the private sector. Likewise, Board members and senior executives are expected to be meticulous in complying with any rules of the public body in respect of remuneration, allowances and expenses. Minor breaches in any of these matters can attract significant criticism and adverse press coverage. This is largely due to the sensitivities arising from the fact that public service organisations are funded with taxpayers' money. Any such breaches may also be a breach of the Code of Conduct.

5.6 SELFLESSNESS, INTEGRITY, OBJECTIVITY AND HONESTY

Board members must be (and must be seen to be) completely selfless and objective as well as adhering to the highest standards of personal integrity. Specifically, Board members must:

• demonstrate **selflessness** by taking decisions solely in terms of the public interest. You must not act in order to gain financial or other material benefit for yourself, family or friends;

• demonstrate **integrity** by not placing yourself under any financial or other obligation to any individual or organisation that might reasonably be thought to influence you in the performance of your duties;

• be **objective -** decisions should be taken solely on merit when carrying out public business; and

• act with **honesty** at all times. You must declare any private interests relating to your public duties and take steps to resolve any conflicts arising in a way that protects the public interest.

Conflict of Interest

The key principles of the Model Code, especially those in relation to integrity, honesty and openness, are given further practical effect by the requirement for you to declare certain interests in the proceedings of your public body. Together with the rules on registration of interests, this ensures transparency of your interests which might influence, or be thought to influence, your actions. You should note that the appearance of a conflict of interest in terms of public perception can be every bit as damaging as an actual conflict - both should be avoided.

Registration of Interests

All devolved public bodies have a duty to set up, maintain and make available for public inspection a register of Board member interests. The Code is very specific about the interests that you, as a Board member, must register and these include:

• Remuneration from employment, self employment or directorships;

• Related undertakings;

• Contracts with the public body;

• Houses, land and buildings that you own or have an interest in which are of significance or relevance to, or bear upon the work and operation of, the public body;

- • Shares and securities – holdings in a company or organisation which are of significance or relevance to, or bear upon the work and operation of, the public body; and

- • Non-financial interests including membership or holding office in other public bodies, clubs, societies and organisations such as Trade Unions and voluntary organisations.

Your Code of Conduct will contain definitions of what is required under each of these categories and if you are in any doubt as to what you should or should not be registering, you should discuss this with the Standards Officer, the Chair and/or the Standards Commission.

The Register should also be available for inspection by the public (electronic and paper version). Public bodies should prepare a page for this purpose on their website and ensure that it is operational. The electronic version of the Register does not need to include any personal information that would compromise personal security although the full details **would** be made available for public inspection in hard copy.

Board members are required to keep their entries in the Register of Interests up-to-date and this involves notifying the Standards Officer of any new interest or change to an existing interest within one month of the change.

Handling Conflicts of Interest

Public confidence in your public body and its Board members depends on it being clearly understood that decisions are taken in the public interest and not for any other reason. In deciding whether to declare an interest, the key test is whether "a member of the public, acting reasonably, might think that a particular interest could influence you" (Section 5.3 of the Model Code of Conduct for Board Members).

Interests may be financial or non-financial and they may or may not be interests that are registerable under the Code. For example, the Code requires only that your personal interests should be registered but it would clearly be appropriate to declare any relevant financial or non-financial interests of your spouse, relatives or close friends.

If you have a financial interest, you must declare your interest at Board meetings and withdraw thereby avoiding any participation in either the discussion or the voting process. If you have a non-financial interest, you must consider whether the conflict is material in the context of the issue under consideration and also, in terms of public perception, whether "a member of the public, acting reasonably, would consider that you might be influenced by the interest in your role as a member of a public body and that it would therefore be wrong to take part in any discussion or decision-making".

If your non-financial interest would be deemed to be prejudicial under this test, you should declare your interest and leave until the discussion and voting in relation to that item are completed. If you believe that your presence would not fall foul of this objective test, then you should declare your interest and participate in the discussion and voting. In circumstances where you are unsure as to whether or not a prejudicial conflict of interest exists, you should discuss the matter with the Standards Officer and/or the Chair prior to the meeting. If still in doubt, you should err on the side of caution, declare the interest and leave the room during consideration of and voting on the relevant item.

Some examples of potentially prejudicial conflicts of interest are:

*   You are a director of a building supplies firm and the Board is entering into a procurement exercise for building materials;

*   The Board is meeting to discuss the possible closure of a facility where a member of your family is employed; and

*   You are a manager in a voluntary body that has submitted a grant application to the organisation and it is due to be considered by the Board.

The fundamental principle is that no-one should use, or give the appearance of using, their public position to further their private interests. This is an area of particular importance as it receives considerable media attention and even an innocent action can be misinterpreted.

A declaration of interest must be made as early as possible and certainly well before the particular item on the agenda is discussed. Ideally, the declaration should be made at the beginning of the meeting and provide enough information to allow those present to understand the nature of your interest. You do not need to provide a detailed description of the interest.

In the event of a particularly contentious or difficult matter, there may be a need to hold a pre-meeting to discuss how a particular conflict of interest should be handled. If an issue is identified at a sufficiently early stage, advice may be sought from the Commission.

Dispensations

The Commission does have the power to issue a dispensation (where it is deemed to be in the public interest to do so) to allow Board members to participate in a discussion and vote, despite the fact that they have financial or non-financial interests which would normally prevent them from participating in discussion and voting. The Standards Commission has issued two general dispensations for Board members in the following areas:

- Planning decisions in the Cairngorms National Park Area to address a conflict between the founding legislation of the Cairngorms National Park Authority and the effect of the Ethical Standards Act; and

- Membership of outside bodies to assist joined-up working.

In addition to these general dispensations, individual applications for dispensations in exceptional circumstances can be made to the Standards Commission and may be granted where it is in the public interest to do so. However, Board members must not take part in any discussion or vote on a matter (in which they are conflicted) unless and until they have actually received a dispensation.

Where a prejudicial conflict of interest exists and a Board member does not declare their interest and withdraw, the Chair should take appropriate action to ensure that the Board (and the Board member concerned) is not compromised. In the event that a Board member refuses to leave the room when asked by the Chair to do so, the Chair should suspend the meeting and reconvene without the Board member concerned being present. Board members should bear in mind that any such action on their part may lead to an investigation by the Standards Commission and imposition of sanction in the event that a breach of the Code of Conduct is proven to have taken place.

In certain situations, handling a conflict of interest properly may require much more than simply leaving the room while the matter is being discussed and voted upon. In particular, Board members who have a prejudicial interest in respect of a grant, licence or a planning application or a tender should not:

- get involved in the setting of criteria for the assessment of the grant, tender etc.;

- get involved in the actual preparation of the grant, tender, licence application (or subsequent presentations, interviews etc.) if at all possible;

- receive any relevant papers relating to their application in advance of the meeting;

- be present for the discussion or voting or receive any minutes relating to that part of the meeting;

- use their position as a Board member to try and improperly influence a decision by lobbying any other Board member(s) or by contacting another Board member to represent your interests at the meeting.

It is extremely important that there should be a level playing field with no advantage (real or perceived) given to Board members or to individuals or organisations with Board connections or representation.

Gifts, Hospitality and Entertainment

As a Board member, you should ensure that the reputation of your public body is not damaged through the receipt (or provision) of inappropriate levels of gifts and hospitality. The Code of Conduct sets out four key principles in relation to the acceptance of gifts or hospitality:

- You (or anyone in your organisation) should not canvass or actively seek gifts or hospitality;

- You must not accept any offer of a gift or hospitality from any individual or organisation that (1) stands to gain from a decision that your public body may be involved in determining or (2) is seeking to do business with your organisation:

  - It therefore follows that there is a different standard applicable when a gift is offered from a company or individual with which you do business and a similar gift from a community group or an individual who does not stand to gain or benefit from a decision that your public body may be involved in determining;

  - It is also specifically stated in the Code, that if you or your colleagues are making a visit to inspect equipment, vehicles, land etc., your public body should meet the costs of these visits and not be subsidised by someone with a vested interest.

- You must not accept repeated hospitality from the same source. For example, in the case of an annual invitation to a golf tournament, it may be appropriate to go once for networking purposes (assuming that the offer meets the previous criterion) but not on a regular basis;

- You should usually refuse offers of gifts and/or hospitality except in the following cases:

  - Lunch, or other reasonable hospitality, taken by Board members after, during, or as a result of a business related meeting

  - Acceptance of gifts of a trivial nature or inexpensive seasonal gifts such as diaries or calendars or simple items of office equipment

  - Gifts that are received on behalf of the public body and not an individual. However, it is important that these gifts should not

be excessive or give the impression of an inappropriately close relationship with a particular supplier.

There should be guidance available within your organisation in relation to the receipt of gifts and hospitality. This should provide you with information on, for example, the level of gifts and hospitality that are acceptable (eg a maximum threshold of £25 or similar amount), when approval is needed, registration requirements etc. As a Board member, you should ensure that there is practical up-to-date guidance in place in your organisation and you should familiarise yourself with the content of this guidance.

In circumstances where you are unsure whether or not to accept a gift or hospitality, even after consulting the organisation's guidelines, you should discuss the matter with the Standards Officer and/or Chair. It may also be useful to look at the organisation's Hospitality Register to get a feel for the types of gifts and hospitality that have been deemed acceptable in the past. But, ultimately, the best advice is - if in doubt, decline.

Where a gift or hospitality is accepted, and exceeds a specified minimum level, it should be recorded in the Hospitality Register.

In situations where public bodies are providing hospitality, it is important to remember that your organisation is spending public money. As the guardian of the public body's reputation, the Board should ensure that the organisation does not have (or appear to have) a cavalier attitude to the use of public money and, in particular, that lavish or excessive expenditure is avoided at all times.

Relationships with Suppliers

Board members have a duty to maintain the reputation of the organisation through fair, open and consistent dealing with suppliers. Anyone involved in the procurement process is expected to display high standards of competence and integrity.

Suppliers should be selected on the basis of quality, suitability and value for money. Board members and staff should take care to avoid becoming, or appearing to become, obliged to individual suppliers through the acceptance of hospitality, gifts, entertainment or sponsorship. When dealing with suppliers, it is essential to ensure that:

* all relevant legislation is complied with, e.g. public procurement legislation (UK and EU);

* the body's own internal rules and procedures are followed; and

* any agreed payment terms are met.

Boards should be aware that all public bodies are encouraged to use collaborative procurement where it is suitable to do so and to use e-Procurement Scotland (which exploits technology to the benefits of both buyers and suppliers) as the common platform for public sector procurement.

5.7 ACCOUNTABILITY AND STEWARDSHIP

Accountability is of key importance, not least because public bodies are funded by taxpayers' money. As a Board, and an individual Board member, you are accountable for your decisions and actions to the public. You have a duty to consider issues on their merits, taking account of the views of others and must ensure that the public body uses its resources prudently and in accordance with the law.

There are three key components to this duty of accountability and stewardship. The Board needs to ensure that:

•   the conduct of business is in accordance with the law and proper standards;

•   public funds are safeguarded and properly accounted for; and

•   resources are used economically, efficiently and effectively.

Public funds include, not only funds provided to the body by the Scottish Ministers, but also any other funds falling within the stewardship of the body, including gifts, bequests and donations.

In order for the Board to discharge these important responsibilities, it must ensure that the organisation has sound internal financial information systems in place including:

•   a management accounting system to monitor and control expenditure against budget;

•   a financial management information system to produce annual accounts; and

•   a performance management system to measure progress towards agreed financial targets.

Together these systems will help to ensure that your organisation is making best use of its resources in line with the Government's efficiency agenda. It will also demonstrate whether your body is achieving Best Value and complying with the terms of the Management Statement and Financial Memorandum.

5.8 RESPECT

As a Board member, you must respect your fellow Board members and employees of the body and the role they play, treating them with courtesy and respect at all times. Failure to do so may constitute an offence under the Code of Conduct and could therefore form the basis of a legitimate complaint to the Standards Commission and result in the imposition of a sanction in the event that the breach is proven.

As a Board member, you may also be called upon to represent the Board in dealing with the public and/or other external organisations. In these circumstances, it is your duty to maintain the reputation of the organisation by treating people in a helpful and courteous manner; on a timely, reliable and, where appropriate, confidential basis; and in an open and efficient way.

5.9 OPENNESS AND TRANSPARENCY

As a Board, you have a duty to be as open and transparent as possible about your decisions and actions, giving reasons for your decisions and restricting dissemination of information only when the wider public interest clearly demands.

The Freedom of Information (Scotland) Act 2002 places an obligation on all public bodies to provide access to information held by the organisation. If your public body is subject to the Act, you as a Board member should ensure that your organisation has Freedom of Information policies and procedures in place. You should make sure that it meets the specific requirements to:

- have in place a Publication Scheme approved by the Scottish Information Commissioner;

- respond to FOI requests in accordance with the timescales and other requirements of the Act; and

- advise and assist people who make requests for information.

The Environmental Information (Scotland) Regulations 2004 place similar responsibilities on organisations with regard to environmental information which they hold so you should make sure that, where appropriate, your organisation has in place policies and procedures to meet these responsibilities.

Public Bodies: Proposals for Change emphasised the importance of all public bodies communicating clearly with stakeholders in plain language, making information widely available and consulting thoroughly and imaginatively.

Where practicable and appropriate, the Board should:

- hold Annual Open Meetings;

- hold all Board meetings in public, unless there is a good reason not to;

- release summary reports and/or minutes of meetings;

- invite evidence from members of the public in relation to matters of public concern;

- consult stakeholders and users on a wide range of issues; and

- make the Annual Report widely available.

Confidentiality

On occasions, you will be required to treat discussions, documents or other information relating to the work of the body in a confidential manner. It is imperative that you respect this duty of confidentiality at all times.

In particular, you should never use information to which you have privileged access for personal or financial gain or in a way that brings the public body into disrepute.

Lobbying

In order for a public body to fulfil its commitment to being open and accessible, it needs to encourage participation by outside organisations and individuals in the decision-making process. However, openness and accessibility need to be balanced by transparency and probity in the way business is conducted within your organisation and, consequently, the Code of Conduct sets out some clear rules and guidance in respect of dealing with lobbyists and lobbying.

Two of the key principles are that:

- no person or organisation should gain better access to, or treatment by, you as a result of paying a company or individual to lobby on their behalf; and

- you must not accept paid work which would involve you lobbying your own public body or advising on how to influence the body and/or its members.

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Ultimately, if you have any concerns over the approach or methods used by anyone in their contacts with you, you should discuss the matter with the Standards Officer and/or the Chair.

5.10 WHISTLEBLOWING

Although not covered by the Ethical Standards Framework, Board members should have regard to issues relating to whistleblowing.

Board members have a responsibility to ensure that staff have confidence in the fairness and impartiality of procedures for registering and dealing with their concerns and interests. The Public Interest Disclosure Act 1998 gives legal protection to employees who may raise certain matters or concerns, known as 'qualifying disclosures', without fear of reprisal. It is designed to ensure that individuals who raise concerns at work, generally known as 'whistleblowers', are protected from adverse reaction from their employing organisation.

All public bodies should have a whistleblowing policy and procedure in place which will allow staff to raise concerns on a range of issues such as fraud, health and safety etc. without having to go through the normal management structure. The whistleblowing procedure should set out clearly who staff should approach with their concern(s) - normally a senior executive - and how it will be investigated. Unless an allegation is made which is malicious and/or without foundation, every effort should be made to ensure that the whistleblower remains anonymous.

As a Board member, you should ensure that your organisation has a whistleblowing policy and procedure in place.

Section 6

Annexes

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A Guide for Board Members of Public Bodies in Scotland

SECTION 6   ANNEXES

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Annex 1   What Next? Induction Guidance and Training for Board Members

The following list of induction guidance and training is not prescriptive but is designed to give you an idea of the type of support that may be provided by your public body. You may wish to refer to this checklist when you are discussing your induction requirements with the Chief Executive and/or Chair of your organisation.

Meetings

1. A one-to-one meeting with the Chair immediately following appointment to discuss in broad terms what is expected of a Board member in the first year and any individual role he or she is expected to play. (The Chair and Board member will subsequently meet on a regular basis as part of the appraisal process).

2. An induction session within one month of appointment to explain such things as:

   - organisational structure;

   - the collective role of the Board;

   - arrangements, formats etc. of Board meetings;

   - details of any subsidiary Boards and committees (e.g. Regional Boards, Audit Committee) and their responsibilities;

   - the long term strategy of the organisation;

   - the corporate planning system;

   - current priority areas of work;

   - budget and financial information, including the monitoring role of the Board;

   - the public body's policies on openness and access to information - where appropriate, including the role of Board members in promoting the public body to the public and in the media;

   - links between the public body/Board and the Scottish Executive and the Scottish Parliament. This should include details of where the sponsor Department fits within the

Scottish Executive structure, details of sponsor Minister(s) etc.;

- links to other key partner organisations;

- arrangements for Board members' remuneration and expenses;

- the organisation's Code of Conduct for Board Members; and

- where they exist, details of arrangements for monitoring and reporting on the performance of Board members.

Ideally, this session should be attended by all new Board members and by some existing Board members to allow the latter to pass on experience. Some other members of the senior management team may also attend, including the Board secretary.

3.   It may also be appropriate for a Board member to meet other key staff - for example, where they have been given a specific individual role for research issues, they may wish to meet research staff; where they are to sit on the Audit Committee, they may wish to meet audit and finance staff etc.

Publications

4.   The latest Annual Report and Accounts.

5.   The latest Corporate Plan and Operational/Business Plan.

6.   The Corporate Strategy or similar strategic document.

7.   Any significant recent policy or consultation documents which the public body has published.

8.   The latest in-house magazine or newsletter.

9.   The latest staff newsletter.

10. A list of relevant publications.

11. The organisation's Publication Scheme under Freedom of Information (Scotland) Act 2002 (if applicable).

Written Material

12. A guide to the legislation under which the public body was established.

13. A copy of the management letter/grant-in-aid letter from the sponsor Minister for the coming year.

14. A copy of the public body's current Management Statement and Financial Memorandum.

15. Standing Orders for the conduct of Board meetings.

16. Organisational structure, staff directory, office addresses etc.

17. Biographical and contact details of other Board members (and, where appropriate, those in subsidiary Boards and Committees).

18. Summary of key roles and responsibilities within the organisation - Board, subsidiary Boards and committees, Chief Executive/ Accountable Officer, management team, other senior staff.

19. Where a recent Policy and Financial Management Review (PFMR) or an alternative review process has been carried out, a copy of the report and action plan.

20. Forward programme of Board meeting dates and any other key events (press launches, conferences etc.).

21. The organisation's Code of Conduct for Board Members.

22. A copy of the organisation's Data Protection, Freedom of Information and other relevant policies and procedures relating to corporate governance and accountability.

    and if they exist:

23. A list of dos and don'ts for Board members in dealing with the media.

24. A list of key acronyms relating to the public body's area of work, partner organisations etc.

Terms and Conditions

25. Guidance on claiming travel and subsistence expenses.

26. Guidance on claiming other allowances where appropriate (e.g. child care).

27. Guidance on tax issues - e.g. for home to office travel.

28. Guidance on register of interests.

Training

29.   The public body should consider providing any further training deemed necessary to assist the Board, individually or collectively, to carry out its duties, for example, the one-day On Board training course that complements this Guide or training on financial management.

Annex 2   Further Reading and Useful Websites

Further Reading

Cadbury Report - Report of the Committee on the Financial Aspects of Corporate Governance (December 1992)
www.ecgi.org/codes/documents/cadbury.pdf

Rutteman Report - Internal Control and Financial Reporting: Guidance for Directors of Listed Companies Registered in the UK (1994)

The Proper Conduct of Public Business - The Committee of Public Accounts, Eighth Report 1993-94 (1994)

Nolan Committee - First Report of the Committee on Standards in Public Life (Cm 2850) HMSO (May 1995)
www.archive.official-documents.co.uk/document/parlment/nolan/nolan.htm

The Greenbury Report on Directors Remuneration (July 1995)
www.ecgi.org/codes/documents/greenbury.pdf

Hampel Report - The Report of the Committee on Corporate Governance (January 1998)
www.ecgi.org/codes/documents/hampel_index.htm

Public Interest Disclosure Act 1998
www.hmso.gov.uk/acts/acts1998/19980023.htm

Modernising Government White Paper (1999)
www.archive.official-documents.co.uk/document/cm43/4310/4310-00.htm

Turnbull Report - Internal Control - Guidance for Directors on the Combined Code (September 1999)
www.ecgi.org/codes/documents/turnbul.pdf

Enterprise and Lifelong Learning Committee 6th Report 2000: Report on the Inquiry into the Governance of the Scottish Qualifications Authority
www.scottish.parliament.uk/business/committees/historic/x-enterprise/reports-00/elr00-06-01.htm

Scottish Parliament's Audit Committee 4th Report 2001: Report on Governance and Financial Management at Moray College
www.scottish.parliament.uk/business/committees/historic/audit/reports-01/aur01-04-02.htm

Public Bodies: Proposals For Change published in June 2001
www.scotland.gov.uk/library3/government/pbreview.pdf

Members' Model Code of Conduct 2002
www.scotland.gov.uk/library5/localgov/mcoc-00.asp

Higgs Report - Review of the Role and Effectiveness of Non-executive Directors (January 2003)
www.ecgi.org/codes/documents/higgsreport.pdf

Smith Report - Audit Committees Combined Code Guidance (January 2003)
www.ecgi.org/codes/documents/ac_report.pdf

Building Effective Boards: Enhancing the Effectiveness of Independent Boards in Executive Non-Departmental Bodies (Lynton Barker, HM Treasury Public Services Productivity Panel, November 2004)
www.hm-treasury.gov.uk/media/FEA/5F/FEA5F162-BCDC-D4B3-1F9FC82F6F55E388.pdf

Regularity, Propriety and Value for Money (HM Treasury, November 2004)
www.hm-treasury.gov.uk/documents/public_spending_and_services/audit_and_accounting/pss_aud_regprop04.cfm

The Good Governance Standard for Public Services (OPM and CIPFA, January 2005)
www.cipfa.org.uk/pt/download/governance_standard.pdf

Scottish Public Finance Manual
www.scotland.gov.uk/library5/finance/spfm/spf-00.asp

Memorandum to Accountable Officers of Public Bodies
www.scotland.gov.uk/library5/finance/spfm/AOmemo_Annex2.pdf

Efficient Government Plan
www.scotland.gov.uk/library5/government/egrseep.pdf

Guidance on the Duty on Accountable Officers to ensure arrangements are in place to secure Best Value
www.scotland.gov.uk/consultations/finance/bestvalue.pdf

Useful Websites

Route Map: Your Guide to Complaining about Public Services in Scotland
www.scottishombudsman.org.uk/images/downloads/routemap.pdf

Equal Opportunities Commission
www.eoc.org.uk

Commission for Racial Equality
www.cre.gov.uk

Disability Rights Commission
www.drc-gb.org

Campaign Against Age Discrimination in Employment
www.caade.net

Public Bodies and Public Appointments
www.scotland.gov.uk/government/publicbodies

Scottish Executive
www.scotland.gov.uk

Scottish Parliament
 www.scottish.parliament.uk

Standards Commission
www.standardscommissionscotland.org.uk/

Scottish Information Commissioner
www.itspublicknowledge.info/

Scottish Public Services Ombudsman
www.scottishombudsman.org.uk/

Annex 3   Glossary of Terms

Audit Committee

A formal Board sub-committee which deals with issues raised by internal and external audits.

Benchmarking

A process whereby one organisation is able to compare its performance with that of another, or several others, to identify comparative measures of performance.

Best Value

Best Value involves making arrangements to secure continuous improvement in performance (while maintaining an appropriate balance between quality and cost); and in making those arrangements and securing that balance, to have regard to economy, efficiency, effectiveness, the equal opportunities requirements and to contribute to the achievement of sustainable development.

External Auditor

An auditor whose main function is to give an opinion on financial statements over a specified period. The Auditor General for Scotland is the external auditor for the Scottish Executive.

Grant

Payment made by Departments to outside bodies or individuals to fund expenditure on specific items or functions for specific purposes. Any unspent balance of the sums issued during the financial year will be liable for surrender to the Scottish Executive.

Grant-in-aid

Regular payments made by Departments to a public body where any unspent balance of the sums issued during the financial year will normally not be liable for surrender to the sponsor Department.

Internal Audit

An independent appraisal function within a department etc. which operates as a service to management by measuring and evaluating the effectiveness of the internal control system.

Market Testing

The process of testing the value for money of in-house services against tenders from outside firms.

NDPB

A Non-Departmental Public Body is a body which has a role in the processes of national government but is not a government department. It operates at arm's length from the Department. NDPBs fall into

five categories, namely, executive bodies, advisory bodies, tribunals, nationalised industries and public corporations and National Health Service bodies.

Performance Indicator	An indirect measure of the extent to which effectiveness, efficiency and economy, quality and service levels have been achieved in an activity or function. Normally used where direct measures are not available.
Performance Measure	A directly quantifiable means of assessing the extent to which effectiveness, efficiency and economy, quality and service levels have been achieved.
Policy and Financial Management Review	A Policy and Financial Management Review is a review, commissioned by the relevant sponsor Department, of the performance management, accountability and governance arrangements in a public body. All public bodies are required to undergo a PFMR at least every five years.
Propriety	Propriety is a further requirement that expenditure and receipts should be dealt with in accordance with the Scottish Parliament's intentions and the principles of parliamentary control. Propriety also includes the necessity for high standards of public conduct including fairness and integrity.
Regularity	Regularity is the requirement for all items of expenditure and receipts to be dealt with in accordance with the legislation authorising them, and any applicable delegated authority and the rules embodied in the Scottish Public Finance Manual.
Stakeholder	A stakeholder is a person (or organisation) who has an interest in the work of the organisation. Examples of stakeholders include providers of finance (e.g. sponsor Departments), users of services, employees and the wider community.
Statement of Internal Control	A Statement signed by the Accountable Officer and produced alongside the annual financial statements, providing assurances that the organisation has an effective system of internal control covering all of the main aspects of its work.
System	A series of related activities designed to operate together to achieve a planned objective.

Target   A quantified objective with a definite timescale.

Whistleblowing   The Public Interest Disclosure Act 1998 provides protection from dismissal, or other sanction for workers who make disclosures of information relating to malpractice by their employer or fellow workers.