



Chartered
Governance
Institute
UK & Ireland



Code of Practice for board reviewers: Not-for-profit organisations

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Comments, questions and observations

If you have any feedback on the content of this guidance note, or additional questions that you'd like to discuss, please contact the Chartered Governance Institute UK & Ireland: 020 7580 4741| enquiries@cgi.org.uk

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Foreword

This Code of Practice (the Code) is for those providing external board performance reviews (also known as board evaluations and external reviews of governance) to not-for-profit bodies, including charitable, educational and sports organisations.

The Code aims to improve the market for external reviews, by encouraging greater transparency about how reviewers conduct reviews and their qualifications for doing so. Providers of reviews will follow a variety of different methods and practices, including through the use of technology and artificial intelligence. This guidance enables organisations to make a more informed decision as to which reviewers are best suited to their own particular need. It is not intended to prescribe or standardise the ways in which reviews are carried out. Rather, it supports reviewers in performing high quality work, and in developing productive client relationships.

The Code covers four key principles: competence and capacity; independence and integrity; client engagements; and client disclosure. Organisations and individuals choosing to apply the Code should report against it on an 'apply and explain' basis. The Code is not mandatory, but is intended to support reviewers and organisations in getting the most out of their board performance reviews.

This Code is inspired by CGIUKI's Code of Practice for board reviewers working with large listed companies. The Department for Business, Energy & Industrial Strategy (BEIS), as it then was, invited CGIUKI to identify ways to improve the quality and effectiveness of board performance reviews, including through the development of a Code of Practice. Whilst the corporate and not-for-profit sectors differ in their requirements and resources, CGIUKI identified a lack of guidance about board performance reviews for not-for-profits, and a need for more support in this area. This Code, having been developed with the input of several organisations both providing and procuring reviews in the not-for-profit space, is designed to address this need.

This Code is for those carrying out external board reviews. For those who are procuring, undertaking and reporting on (internal or external) board performance reviews within their own organisations, CGIUKI has produced 'Principles of Good Practice for not-for-profit organisations undergoing board performance reviews'.

CGIUKI offers a training service for those undertaking, or wishing to undertake board performance reviews, and training for those engaging reviewers or undertaking internal reviews. CGIUKI is the only chartered body to offer a formal accreditation process for those providing board performance reviews. Organisations which gain accreditation have undergone full scrutiny and are included on CGIUKI's list of accredited providers.

Eligibility

1. All providers of independent board performance reviews can choose to apply this Code, subject to them abiding by the commitments set out below.

Definition

2. For the purposes of this Code, an 'independent board performance review' is defined as one where the assessment and feedback on the board's performance has been provided by a third party independent of the organisation being reviewed.

Commitments

3. This Code operates on an 'apply and explain' basis. When using this Code of Practice, reviewers must commit that they will apply all four principles of this Code and are encouraged to describe on their website how they have done so. This statement should be reviewed at least annually and, if necessary, updated.
4. In addition, reviewers should commit to discussing this Code with clients before appointment to ensure that the terms on which they are hired are compatible with this Code.

Coverage

5. Reviewers should ensure that any engagements with larger not-for-profit organisations are conducted in accordance with this Code. This includes, for example, charities which meet the threshold for audited (rather than simply externally examined) accounts, multi-academy trusts with more than 10 academies, and sports bodies which are subject to Tier 3, and where applicable, some Tier 2 requirements under the Code for Sports Governance. This list is by no means exhaustive and reviewers are encouraged to follow the Code's principles for other engagements wherever possible.
6. Where reviewers are firms or partnerships, all individuals conducting or participating in reviews on their behalf should act in accordance with this Code. Reviewers should have adequate internal procedures to ensure reviews are conducted in accordance with this Code.

Principles

A Competence and capacity

- 7 Reviewers may come from a variety of backgrounds but should have - and be able to demonstrate to potential clients - the expertise, experience and capacity necessary for each engagement they undertake. They should only accept work that they have the necessary knowledge, skills and experience to perform and in which the client can be served effectively.
- 8 Reviewers should provide, for example on their website and in bids and tenders, sufficient information about their experience, expertise and resources. They should outline how they would typically undertake a board performance review and report their findings, to enable potential clients and their shareholders and other stakeholders to assess how well suited they are for a specific engagement.

B Independence and integrity

- 9 Reviewers should disclose, for example on their website and in bids and tenders, what other services they provide, if any, and their procedures for addressing potential or actual conflicts of interest that may arise in connection with the provision of other services to clients for whom they undertake board performance reviews.
- 10 Reviewers should disclose, for example on their website and in bids and tenders, their policies relating to the length of their relationship with a client, which should align with the guidance in this Code.

C Client engagements

- 11 Reviewers should ensure that the terms of engagement for each board performance review have been clearly and unequivocally agreed in writing with the organisation before the review commences.
- 12 Reviewers should commit to keeping all information received during the engagement confidential, with the exceptions of the discovery of unlawful practices, or where information is demanded by regulators or a court of law. There may also be rare instances where the reviewer believes it is appropriate themselves to raise concerns with a relevant authority and, in these circumstances, the reviewer should seek advice where possible, and may want to inform the client if appropriate to do so. The circumstances under which the reviewer may share information should be set out in the terms of engagement.
- 13 Where a reviewer is not able to agree with a potential client a scope for the review that they believe will provide a fair and balanced assessment of the board's performance, they should decline the appointment.

D Client disclosure

- 14 When a client discloses details of the process or outcomes of the board performance review either publicly or to a regulator, reviewers should ensure their engagement agreement gives them the opportunity to comment on any description of the process followed and the findings contained in the annual report or other disclosures, and agree any opinions attributed to the reviewer and any statement that purports to represent the reviewer's opinions before the statement is published.

Guidance

- 15 This guidance is provided to assist board reviewers to decide what actions they should take and what policies and procedures they should have in place in order to demonstrate how they apply the principles of the Code. The guidance is not mandatory and is not intended to be prescriptive.

Competence and capacity

- 16 While the range of topics and skills required will vary depending on the assignment, reviewers undertaking a full board performance review should have the ability to:
- assess the degree to which the board and its trustees or directors display rigorous thought processes leading to breadth, depth and independence of thinking, in addition to attributes such as skill, experience, knowledge, diversity and capability;
 - assess the culture and behavioural dynamics of the board and all of its members, as well as the board's preparedness for dealing with disagreements or conflicts which may arise;
 - conduct observations and reviews of the board's committees, where such committees exist and fall under the scope of the review;
 - assess succession planning, induction, and potential issues, both within the board and within the senior executive team, as appropriate;
 - analyse the effectiveness of the board's decision-making processes, for example by reviewing specific decisions which were critical to the fulfilment of the organisation's purpose or objectives;
 - assess the impact of governance, that is, the ongoing appropriateness of the strategy and policies set by the board;
 - review board and committee documentation, such as the list of matters reserved for the board, terms of reference for board committees, a sample of board and committee papers, and a sample of meeting minutes;
 - solicit and understand external stakeholder perspectives on the board's performance, as appropriate;
 - advise the board on how to address the issues identified by the review; and
 - provide and present a full report and recommended actions to the board.
- 17 An external review is typically undertaken every three or four years, as opposed to annual internal reviews. Governance Codes for the charity and education sectors tend to recommend that reviews are externally facilitated every three years, whilst for Tier 3 and some Tier 2 organisations in the sports sector, the Code for Sports Governance states they should occur at least every four years.
- 18 While there are no minimum qualifications for reviewers, they should display the required levels of competence to ensure their contributions are informed and constructive. Areas of capability might include, but are not limited to:

- direct experience or knowledge of board practice – perhaps derived from being a trustee, director, company secretary or other professional;
 - knowledge of, and expertise in, governance and behavioural issues;
 - sector-specific, management, business or financial experience;
 - communication and interpersonal skills including tact and discretion;
 - possession of relevant professional qualifications and up-to-date professional knowledge;
 - a track record of carrying out independent board performance reviews.
- 19 In addition to their qualifications and resources, reviewers should describe, for example on their website and in bids and tenders, the process or processes they would typically follow when carrying out a board performance review (while recognising that all individual reviews will be tailored to the needs of the client). This might include, for example:
- whether and how they make use of questionnaires;
 - the extent to which they have direct contact with board members individually and collectively (for example, one-to-one interviews or attending board and committee meetings);
 - whose views they seek on the board's performance, in addition to those of the board members;
 - whether they review board papers and other documentation, including on previous board performance reviews.

Independence and integrity

- 20 The value of an external board performance review to an organisation, its members and stakeholders is that it brings an independent perspective to the process. This value is undermined if the reviewer is perceived as being conflicted or too close to the client, or where the client is forcefully steering the direction of the review's outcome. A reviewer must have the ability to freely express the findings and outcome of the review.
- 21 The possibility for conflicts of interest can arise in all organisations. While conflicts cannot always be eliminated, they can be declared, managed and mitigated. The overriding objective is to ensure, as far as reasonably possible, that conduct is independent, fair, clear, not misleading and free from possible bias or undue influence. The perception that a review lacked independence can be reputationally damaging for both the client and the reviewer.
- 22 Reviewers should disclose on their website what other services they provide, if any. Where they provide other services, they should explain their policy on providing different services to the same client and describe their procedures for managing potential or actual conflicts of interest that may arise before, during or after any engagement.
- 23 Independence can be undermined if a reviewer becomes over-familiar with, or overly dependent on, a particular client. For that reason, it is usually considered good practice for a reviewer not to extend their relationship with any individual client

beyond eight years (a period which would typically include two consecutive full board performance reviews and associated follow-up work). There can be benefits to some familiarity with a particular organisation, in that it allows a reviewer to chart what progress has been made over time. There may also be rare instances where the supply of quality reviewers for a particular type of organisation is slim and so the relationship lasts longer. However, this comes with drawbacks, and a reviewer should not be discouraged from ending the client relationship after one review where they feel that that client would benefit from a fresh pair of eyes.

- 24 For the avoidance of doubt, ultimate responsibility for the management of any actual or potential conflict rests with the client. There may be instances where this requires the client to obtain assurances from the reviewer as to appropriate steps which have been taken to manage a potential conflict.

Client engagements

- 25 The terms of engagement will differ for each assignment, but should usually include:
- The identity of the lead contacts at the organisation and the reviewer, the identity of the board reviewer if different, and the process for consultation between them.
 - The identity of the contact at the organisation with whom the reviewer can discuss in confidence any concerns about how the review is being managed – this would normally be one of the board members, or under the Code for Sports Governance, the Chair.
 - Agreement on the process which will be followed to deliver the assignment – what will be in or out of scope and what access the reviewer will have to trustees or directors, staff and other parties, and to documentation. This should include the process by which the board will receive and consider the reviewer's report.
 - Agreement on deliverables, the timescale for completion and remuneration.
 - Arrangements, if appropriate, for any follow-up work to be undertaken by the reviewer. Where a full board performance review has been undertaken, it can be good practice for the reviewer to hold follow-up discussions with the organisation, ideally within twelve months, to review progress on the agreed outcomes.
 - Agreement on the arrangements for the reviewer to comment on disclosures by the organisation about the performance review, for example in its annual report.
 - A confidentiality agreement to cover all aspects of the engagement, including all interviews, for the period of and after the engagement.
 - How the insider status of the reviewer and the protection of legal privilege will be managed by the organisation and what obligations are placed on the service provider and/or its individual staff.
- 26 The agreement should also cover how the reviewer should treat particularly sensitive information or information about differences of view, attitude and approach that should be respected and not included in the main report, for example how any whistleblowing reported to the reviewer should be brought to the chair or board's attention in a way that ensures matters are aired without compromising the

information or individual(s) concerned.

- 27 Where the reviewer has a potentially conflicted business this should be specifically addressed in the terms of engagement.
- 28 For each engagement, reviewers should use their knowledge and experience to recommend a scope and methodology that they consider appropriate in the client's circumstances, guided by an objective view of the client's best interests and by relevant requirements from funders and regulators. They should explain clearly to the client what access they will require to individuals and resources, the topics they will cover and how they will report their findings, in order to help the client manage the process and reduce the risk of misunderstandings at any stage.
- 29 There may be instances where clients attempt to constrain the reviewer's ability to make a robust and independent assessment, either when agreeing the methodology to be followed or during the course of the review. Examples have included limiting the reviewer's access to individual board members or other parties during the review and asking the reviewer to alter their findings. If a reviewer is faced with such circumstances, they should give careful consideration to the risk to their own reputation of agreeing to the client's requests. In the first instance, they should raise their concerns with the appropriate contact at the organisation to see whether they can be resolved. Ultimately, a reviewer should be willing to withdraw from an engagement if they consider they are being asked to act in a way that is unethical or damaging to their own reputation.

Client disclosure

- 30 Whilst the intended audience of a review is ultimately the board itself, from time to time, some clients will choose or be required to disclose information about the conduct and outcome of the board performance review either publicly or to a funder or regulator. It is good practice for organisations to summarise the review in their annual report. While responsibility for these disclosures rests with the client, they are also important for the reviewer. Clients may ask the reviewer to draft a summary in the first instance, or may choose to do this themselves. If disclosures are found to be inaccurate or unbalanced, that can have an adverse impact on the reviewer's reputation.
- 31 It is recommended that reviewers ensure that disclosures describing the process by which the review was conducted and any statements that purport to represent the reviewer's opinions are agreed with them before they are made public. If this is not possible, they should at least ensure that they have the ability to comment on the factual accuracy of any such disclosures before they are finalised. This should be covered when agreeing the terms of engagement.
- 32 If, having commented on the relevant disclosures, a reviewer has concerns that the client still intends to make a statement that the reviewer considers to be misleading, they should raise their concerns with the appropriate contact in the first instance to see whether they can be resolved. If not, they should write to the client formally recording their concerns, and ultimately they may copy that letter to the appropriate regulator.

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