

# STAFF COMMISSION FOR EDUCATION AND LIBRARY BOARDS CODE OF PRACTICE FOR COMMISSION MEMBERS

1. This Code of Practice for Commission Members is based on HM Treasury guidelines issued in 1997. The material is arranged as follows:-

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## **Public service values**

2. Public bodies and their boards must at all times:-

- observe the highest standards of propriety involving **impartiality, integrity and objectivity** in relation to the stewardship of public funds and the management of the bodies concerned;
- maximise **value for money** through ensuring that services are delivered in the most economical, efficient and effective way, within available resources, and with independent validation of performance achieved wherever practicable;
- **be accountable** to Parliament, users of services, individual citizens and staff for the activities of the bodies concerned, their stewardship of public funds and the extent to which key performance targets and objectives have been met;
- in accordance with Government policy on **openness**, comply fully with the principles of the Citizen's Charter and the Code of Practice on Access to Government Information.

## **Relationship with DENI**

3. The Minister for Education is answerable to Parliament for the policies and performance of all public bodies sponsored by the department, including their use of resources and the policy framework within which they operate. The respective roles of DENI and the Staff Commission are set out in the Commission's Management Statement, supplemented by the Financial Memorandum specifying the terms on which the Commission receives and spends its funds.

## **The role of the chairman**

4. The chairman has particular responsibility for providing effective strategic leadership on matters such as:-
  - formulating the Commission's strategy for discharging its statutory duties;
  - encouraging high standards of propriety, and promoting the efficient and effective use of staff and other resources throughout the organisation;
  - ensuring that the Commission, in reaching decisions, takes proper account of guidance provided by the responsible Minister or sponsor department;
  - representing the views of the Commission to the general public; and
  - providing an assessment of performance of individual Commission members, on request, when they are being considered for re-appointment to the Commission or appointment to the board of some other public body.
5. The chairman should ensure that the Commission meets at regular intervals throughout the year and that the minutes of meetings accurately record the decisions taken and, where appropriate, the views of individual Commission members.
6. Communications between the Commission and the Minister for Education will normally be through the chairman except where the Commission has agreed that an individual member should act on its behalf. Nevertheless, an individual member has the right of access to Ministers on any matter which he or she believes raises important issues relating to his or her duties as a member of the Commission. In such cases, the agreement of the rest of the Commission should normally be sought. The main point of contact between the body and DENI on day-to-day matters will normally be the Secretary or another member of staff who is authorised to act on behalf of the body.
7. The chairman should ensure that all members of the Commission, when taking up office, are fully briefed on the terms of their appointment and on their duties, rights and responsibilities. The chairman and other members of the Commission should each have a copy of this Code of Practice; other relevant background material such as the Staff Commission's Management Statement and Financial Memorandum; its latest Corporate

Plan and Annual Reports and Accounts; the Treasury's memorandum: "The Responsibilities of a NDPB Accounting Officer"; the Treasury's handbook: "Regularity and Propriety"; notes describing the Staff Commission's organisational structure and statutory basis of operation; and the rules and procedures of the Commission. The chairman should encourage new Commission members to attend an induction course on the duties of members of public bodies or some other suitable form of induction programme.

### **Corporate responsibilities of Commission members**

8. Members of the Commission have corporate responsibility for ensuring that the Staff Commission complies with any statutory or administrative requirements for the use of public funds. Other important responsibilities of Commission members include:-

- ensuring that high standards of corporate governance are observed at all times;
- establishing the overall strategic direction of the organisation within the policy and resources framework agreed with the responsible Minister;
- overseeing the delivery of planned results by monitoring performance against agreed strategic objectives and targets;
- ensuring that the Commission operates within the limits of its statutory authority and any delegated authority agreed with its sponsor department, and in accordance with any other conditions relating to the use of public funds;
- ensuring that, in reaching decisions, the Commission has taken into account any guidance issued by the sponsor department;
- formulating a strategy for implementing the Code of Practice on Access to Government Information, including prompt response to public requests for information; and
- ensuring that the Commission operates sound environmental policies and practices in accordance with the approach set out in the 1990 White Paper "This Common Inheritance" (Cm 1200) and other relevant guidance.

### **Strategic planning and control**

9. One of the main tasks of the Commission is likely to be oversight of the production of a corporate plan. The process of preparing such a document provides an opportunity for agreeing, with the responsible Minister, or officials on his or her behalf, the policy and resources framework within which the body will discharge its duties, and for determining its key strategic objectives and targets. Such targets should normally cover areas such as the organisation's financial performance; the efficiency and effectiveness of its operations;

and the quality of the services it provides. Some public bodies cannot easily measure final outputs. Where this makes it difficult to set suitable performance targets, the Commission should aim to agree carefully formulated strategic objectives and milestones.

## **Delegation**

10. Commission members serve on a part-time basis. To the extent permitted by the Education and Libraries Orders, responsibility for day-to-day management matters should be delegated to staff so far as is practicable, within a clearly understood framework of strategic control. The Commission will want to consider internal guidance covering those matters delegated to staff and those reserved for decision by the Commission. The latter are likely to include issues of corporate strategy; key strategic objectives and targets; major decisions involving the use of financial and other resources; and personnel issues including key appointments and standards of conduct.
- It. The Commission may decide to delegate, where it has power to do so, responsibility for specified matters to individual members or committees of the Commission. Decisions taken by individual members or committees of the Commission under delegated powers should be recorded in written minutes available to the Commission as a whole.

## **Responsibilities of individual Commission members**

12. Individual Commission members should be aware of their wider responsibilities as members of the Commission. Like others who serve the public, they should follow the Seven Principles of Public Life set out by the Committee on Standards in Public Life (the Nolan Committee). The principles are printed at Appendix A. Commission members must:-
  - undertake on appointment to comply at all times with the Code of Practice that is adopted by the public body concerned and with rules relating to the use of public funds;
  - act in good faith and in the best interests of the public body;
  - not misuse information gained in the course of their public service for personal gain or for political purposes, nor seek to use the opportunity of public service to promote their private interests or those of connected persons, firms, businesses or other organisations; and
  - ensure that they comply with the Commission's rules on the acceptance of gifts and hospitality.
13. Commission members are expected not to occupy paid party political posts or hold particularly sensitive or high-profile unpaid roles in a political party. Subject to that, part-time members are free to engage in political activities, provided that they are conscious

of their general public responsibilities and exercise a proper discretion, particularly in regard to the work of the Commission of which they are members. On matters directly affecting that work, they should not make political speeches or engage in other political activities.

14. The restrictions in paragraph 13 do not apply to Commission members who are MPs (in those cases where MPs are eligible to be appointed), to local councillors or to Peers in relation to their conduct in the House of Lords. The position of Peers in this regard is covered by a statement reproduced as Annex D to "non-Departmental Public Bodies: A Guide for Departments".
15. The arrangements for appointing individual Commission members normally make it possible to remove them from office if they fail to perform the duties required of Commission members to the standards expected of persons who hold public office.

### **Handling conflicts of interests**

16. The chairman and other Commission members should declare any personal or business interests which may conflict with their responsibilities as Commission members. The Commission, in consultation with DENI, should draw up rules of conduct for Commission members which ensure that such conflicts are identified at an early stage and that appropriate action can be taken to resolve them.
17. The rules should include the keeping of a register of interests appropriate to the body's activities. The register should, as a minimum, list direct or indirect pecuniary interests which members of the public might reasonably think could influence judgement. The Commission should consider whether registers of interest should also include non-pecuniary interests of members which relate closely to the body's activities, and interests of close family members and persons living in the same household as the Commission member<sup>1</sup>.
18. Public bodies should make registers of interests open to the public. They should ensure that details of how access can be obtained are available widely and include such details in annual reports. It will often be appropriate to publish registers of interests annually. Commission members should, in any case, be required to update them as changes occur.
19. In the absence of specific statutory provisions, the common law requires:-
  - that members of public bodies should not participate in the discussion or determination of matters in which they have a direct pecuniary interest; and

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Indirect pecuniary interests arise from connections with bodies which have a direct pecuniary interest or from being a business partner of, or being employed by, a person with such an interest. Non-pecuniary interests include those arising from membership of clubs and other organisations. Close family members include personal partners, parents, children (adult and minor), brothers, sisters and the personal partners of any of these.

- that when an interest is not of a direct pecuniary kind, members should consider whether participation in the discussion or determination of a matter would suggest a real danger of bias. This should be interpreted in the sense that members might unfairly regard with favour, or disfavour, the case of a party to the matter under consideration. In considering whether a real danger of bias exists in relation to a particular decision, members should assess whether they, a close family member, a person living in the same household as the Commission member, or a firm, business or other organisation with which the Commission member is connected are likely to be affected more than the generality of those affected by the decision in question. This would cover, for example, a decision to invite tenders for a contract where a firm with which a member was connected was significantly better placed than others to win it.

For the avoidance of doubt, this paragraph does not preclude the Commission from deciding to issue an indemnity in the terms of paragraph 27 below.

20. Where, in accordance with the above, members do not participate in the discussion or determination of a matter, they should normally withdraw from the meeting, even if it is held in public. This is because the continued presence of someone who had declared an interest might be thought likely to influence the judgement of the other members present.
21. The Commission should obtain legal advice on the effect of any specific statutory provisions applying to them. In cases where members are authorised by law to represent a group likely to be affected by a body's decisions, the relevant statutory framework may permit members to be involved, notwithstanding any direct pecuniary interest that they may have in the decision. However, the Commission should not overlook the possibility that specific statutory provisions may impose restrictions that are stricter than those described in the paragraph 19 for interests that are not of a direct pecuniary kind.
22. Whether or not Commission members are able in the light of the considerations above to participate in the discussion or determination of a matter, they should declare as soon as practicable after a meeting begins if they have an interest, pecuniary or other, in a matter being considered. They should also disclose any interests in it of which they are aware on the part of close family members<sup>2</sup> and persons living the same household as the Commission member. In addition, Commission members should consider whether they need to disclose relevant interests of other persons or organisations which members of the public might reasonably think could influence the member's judgement.
23. Because executive NDPBs are required, other than exceptionally, to follow generally accepted accounting practice, Commission members must facilitate compliance with the need under Financial Reporting Standard 8 for material transactions with related parties to be disclosed in financial statements. "Related parties" in FRS 8 include close members

See footnote 1 above.

of the family of an individual, who are defined for the purposes of the standard as those family members, or members of the same household, who may be expected to influence, or be influenced by, that person in their dealings with the reporting entity.

24. The Commission should adopt safeguards to prevent conflicts of interests arising from the acceptance of outside appointments during or after tenure as a Commission member, taking account of guidance in chapter 10 of "non-Departmental Public Bodies: A Guide for Departments".

### **Personal liability of Commission members**

25. Although any legal proceedings initiated by a third party are likely to be brought against the Commission, in exceptional cases proceedings (civil, or, in certain cases, criminal) may be brought against the chairman or other individual Commission members. For example, a Commission member may be personally liable if he or she makes a fraudulent or negligent statement which results in loss to a third party. Commission members who misuse information gained by virtue of their position may be liable for breach of confidence under common law or may commit a criminal offence under insider dealing legislation.
26. In the case of a Commission which is incorporated under the Companies Act or the Companies (Northern Ireland) Order, an individual Commission member will be subject to the duties of directors under company law.
27. However, the Government has indicated that individual Commission members who have acted honestly, reasonably, in good faith and without negligence will not have to meet out of their own personal resources any personal civil liability which is incurred in execution or purported execution of their Commission functions. Subject to its own specific statutory powers, the Staff Commission should issue to Commission members suitable indemnities consistent with this paragraph.
28. Commission members who need further advice should consult the Commission's legal advisers.

### **Openness and responsiveness**

29. Commission members and their staff should conduct all their dealings with the public in an open and responsible way and ensure full compliance with the principles of the Citizen's Charter and the Code of Practice on Access to Government Information. They should take account as far as possible of the Standard of Best Practice for Openness in Executive NDPBs and NHS bodies in the First Report of the Committee on Standards in Public Life (Cm 2850-1). Wherever possible, the Commission should make provision for access to records of their decisions and should publicise the arrangements made.

30. The Commission should ensure they can demonstrate that they are using resources to good effect, with propriety, and without grounds for criticism that public funds are being used for private, partisan or party political purposes. They will need to act consistently with the nature of the body's business and the possible need for confidentiality on commercial or other grounds, always subject to the rights of Parliament and the Comptroller and Auditor General to obtain information. There should be internal procedures available to deal with complaints, including those on failure to provide information.

### **Accountability for public funds**

31. Commission members have a duty to ensure the safeguarding of public funds - which for this purpose should be taken to include all forms of receipts from fees, charges and other sources - and the proper custody of assets which have been publicly funded. They must take appropriate measures to ensure that the body at all times conducts its operations as economically, efficiently and effectively as possible, with full regard to the relevant statutory provisions and to relevant guidance in Government Accounting.
32. Members of the Commission are responsible for ensuring that the body does not exceed its powers or functions, whether defined in statute or otherwise, or through any limitations on its authority to incur expenditure. They are normally advised on these matters by the body's Chief Officer and its legal advisers.

### **Annual Report and Accounts**

33. As part of its responsibilities for the stewardship of public funds, the Commission of a public body must ensure that it includes a full statement of the use of such resources in its Annual Report and Accounts. Such accounts should be prepared in accordance with the Accounts Direction issued by the responsible Minister and such other guidance as may be issued from time to time, by DENI, DFP and the Treasury, including "Executive Non-Departmental Public Bodies: Annual Reports and Accounts Guidance".
34. Subject to any existing statutory requirements, the Staff Commission should aim to produce an Annual Report and Accounts as a single document and should give it appropriate publicity. If the Annual Report is published separately, it should normally contain at least a summary of the annual accounts and, in any case, give details of how to obtain the full accounts. A statement by the auditors should be included in the summary to confirm that it is consistent with the annual accounts. It should also state whether the report on the annual accounts was qualified and provide details if this was the case.
35. The Annual Report and Accounts should provide a full description of the Commission's activities; state the extent to which key strategic objectives and agreed financial and other performance targets have been met; list the names of the current members of the Commission and senior staff; and provide details of remuneration of Commission

members and senior staff in accordance with Treasury guidance. The Annual Report should contain information on access to registers of interests in accordance with paragraph 18 above.

### **The role of the Secretary/Chief Officer**

36. The Secretary has responsibility, under the Commission, for the overall organisation, management, and staffing of the Staff Commission and for its procedures in financial and other matters, including conduct and discipline. This involves the promotion by leadership and example of the values embodied in the Nolan Committee's Seven Principles of Public Life. Commission members should support the Secretary in undertaking this responsibility.
37. The Secretary is the accounting officer for the Staff Commission. She/he is responsible to Parliament and the accounting officer of DENI for the resources under his control. The essence of the role is a personal responsibility for the propriety and regularity of the public finances for which she/he is answerable; for the keeping of proper accounts; for prudent and economical administration; for the avoidance of waste and extravagance; and for the efficient and effective use of all the resources in her/his charge. The accounting officer has a responsibility to see that appropriate advice is tendered to the Commission on all these matters. Satisfactory performance of these responsibilities is fundamental to the role of the Secretary.
38. More detailed guidance on the role of an accounting officer is set out in "The Responsibilities of a NDPB Accounting Officer", which covers appearances before the Committee of Public Accounts of the House of Commons. All Commission members should ensure that they have a copy of this document. The contents of the memorandum apply to the senior full-time official of a NDPB in cases where there is no formally designated accounting officer. The Treasury's handbook, "Regularity and Propriety", describes what these concepts mean in a financial context. Although the handbook is intended primarily for accounting officers, Commission members should also familiarise themselves with it.

### **Audit committee**

39. Unless agreed otherwise with the sponsor department, all public bodies should establish an audit committee as a committee of the Commission. The committee should consist of non-executive Commission members and should be chaired by a non-executive Commission member, other than the chairman, who has experience of financial matters. The responsibilities of the audit committee will overlap with those of the accounting officer. It is envisaged that he or she will normally attend all meetings of the audit committee, unless, exceptionally, his or her own performance is being discussed.

## **The Commission as employer**

40. The Commission should ensure that:-

- it complies with all relevant legislation and that it employs suitably qualified staff who will discharge their responsibilities in accordance with the high standards expected of staff employed by such bodies. AH staff should be familiar with the body's main aims and objectives;
- the organisation adopts management practices which use resources in the most economical, efficient and effective manner;
- the body's rules for the recruitment and management of staff provide for appointment and advancement on merit on the basis of equal opportunity for all applicants and staff. In filling senior staff appointments, the Commission should satisfy itself that an adequate field of qualified candidates is considered, and should always consider the merits of full open competition. In recruiting external candidates, this should normally be used;
- its staff, and the Commission's own members, have appropriate access to expert advice and training opportunities in order to enable them to exercise their responsibilities effectively.

41. The Commission should adopt a code of conduct for its staff using the model issued for executive NDPBs by Cabinet Office (OPS) in August 1996, subject to any modifications that may be necessary - and that are agreed with the sponsor department - to take account of their own particular characteristics and circumstances. The model code covers arrangements enabling members of staff to raise concerns about propriety with a nominated official or Commission member of the NDPB in the first instance and subsequently, if necessary, with a nominated official in the sponsor department. There should be safeguards to prevent conflicts of interests when staff leave.

42. The Commission has a responsibility to monitor the performance of the Secretary and other senior staff. Where the terms and conditions of employment of the Secretary and other senior staff include an entitlement to be considered for performance-related pay, and where such payments are assessed by Commission members, the Commission should ensure that they have access to the information and advice required to make the necessary judgements.

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**The Seven Principles of Public Life**

**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 their 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

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The Government endorsed the Seven Principles of Public Life in "Spending Public Money: Governance and Audit Issues", Cm 3179, March 1996

Publications mentioned

**Committee on Standards in Public Life (the Nolan Committee), First Report**, Cm 2850-1, 1995, available from The Stationery Office, 0171-863 9090, price £11.80 (ISBN 0 10 128502 7).

**Executive Non-Departmental Public Bodies: Annual Reports and Accounts Guidance\***,

March 1996, available from Central Accountancy Team, HM Treasury, 0171-270 4502.

**Government Accounting\***, consolidated edition April 1995 and subsequent amendments, available from The Stationery Office, 01 71-863 9090, (ISBN 0 11 560063 9).

**Government Internal Audit Manual**, May 1996, available from The Stationery Office, 01 71-863 9090, price £29.95 (ISBN 01 1 702050 8).

**Model Code for Staff of Executive Non-Departmental Public Bodies**, August 1996, available from Machinery of Government and Standards Group, Cabinet Office (OPS), 0171-2700381.

**Non-Departmental Public Bodies: A Guide for Departments**, March 1992 and subsequent amendments, available from Machinery of Government and Standards Group, Cabinet Office (OPS), 0171-2700381.

**Regularity and Propriety: A Handbook\***, exposure draft November 1996, available from TOA Team, HM Treasury, 0171-270 5524.

**Spending Public Money: Governance and Audit Issues**, Cm 3179, March 1996, available from The Stationery Office, 0171-863 9090, price £8.65 (ISBN 0 10 1 31 792 1).

**The Government's Response to the First Report of the Committee on Standards in Public *ff.* Life**, Cm 2931, July 1995, available from The Stationery Office, 01 71-863 9090, price W £7.10 (ISBN 0 10 129312 7).

**The Responsibilities of a NDPB Accounting Officer\***, December 1994, available from TOA Team, HM Treasury, 0171-270 5524.

**The Common Inheritance, Britain's Environmental Strategy**, Cm 1200, September 1990, available from The Stationery Office, 0171-863 9090, price £30 (ISBN 0 10 112002 8).

Equivalent Northern Ireland guidance is available from Accountability and Accountancy Services Branch, Department of Finance and Personnel, 01232 526645