



Chartered
Governance
Institute
UK & Ireland



Code of Practice for board reviewers

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Code of Practice for board reviewers

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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Code of Practice for board reviewers

Foreword

When BEIS (as it then was) invited the Institute to identify further ways of improving the quality and effectiveness of board evaluations, it specifically requested that we include in this work “the development of a code of practice for external board evaluations”.

The intention is that such a code can play a useful role in improving the market for independent reviews, but that attempting to impose minimum standards may not be the most effective way of doing so.

The approach proposed in this Code of Practice is, instead, to encourage greater transparency about how individual external board reviewers conduct reviews and what their qualifications for doing so are, rather than to prescribe or standardise how reviews are expected to be carried out. This should mean that companies and their stakeholders are able to make a more informed assessment of which reviewers are best suited for their own particular needs.

Organisations applying the Code should report against it on an ‘apply and explain’ basis. This strikes the appropriate balance of introducing a degree of rigour into the way reviewers address the principles while retaining the necessary flexibility.

The principles and guidance cover four broad topics: competence and capacity; independence and integrity; client engagements; and client disclosure. The principles are designed to mirror the Institute’s Principles of Good Practice for listed companies, while the guidance draws on the FRC’s Guidance on Board Effectiveness. The Code of Practice also draws on earlier initiatives to establish good practice principles for the sector.

It should be emphasised that this Code is not mandatory. It is not intended to create barriers to entry to this market. However, these principles increase the transparency of board performance reviews across the market.

This second edition of the Code has been published following a review by an independent working group chaired by Dr Ian Peters MBE, Director of the Institute of Business Ethics.

This document should be read in conjunction with:

- Principles of Good Practice for listed companies using external board reviewers; and
- Reporting on board performance reviews: Guidance for listed companies

The Institute offers a training and accreditation service for those undertaking, or wishing to undertake board performance reviews, and training for those engaging reviewers or undertaking internal reviews.

Code of Practice for board reviewers

Eligibility

1. All providers of independent board performance reviews can 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 or facilitated by a third party independent of the company. The definition does not include a reviewer only providing proprietary material to companies undertaking their own evaluations.

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 on 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 FTSE 350 companies are conducted in accordance with this Code. They are encouraged also to follow this Code when carrying out engagements with other clients and should indicate on their website whether this is the case and, if not, give reasons for this decision.
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.

Code of Practice for board reviewers

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 skills and experience to perform and in which the client can be served effectively.
- 8 Reviewers should publish on their website 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 on their website 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 on their website 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 company 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, where information is demanded by regulators or a court of law, or where the reviewer believes it is appropriate themselves to raise concerns with a relevant authority.
- 13 Where a reviewer is not able to agree with a potential client a scope for the review that it believes will provide a fair and balanced assessment of the board's performance, it 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.

Code of Practice for board reviewers

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 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 behavioural dynamics of the board and its members;
 - conduct deep-dive observations and reviews across the board and its committees;
 - assess the contribution of the chair and of individual directors;
 - assess wider succession issues, such as that of the senior executive team, as well as the board itself;
 - analyse the effectiveness of the board's decision-making processes, for example by reviewing specific decisions which were critical to the success of the business;
 - review board and committee documentation, such as the list of matters reserved for the board, terms of reference for board committees, and a sample of board and committee papers;
 - 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 A 'full' review is one that looks comprehensively at all aspects of the board's performance and is typically undertaken every three years, as opposed to the interim reviews, sometimes focused on specific issues, that are frequently conducted during the intervening period. As the scope of such reviews will be determined in part by the needs of the client, it is not possible to provide a precise definition. Reviewers should take account of the guidance in this Code and the Financial Reporting Council's 'Guidance on Board Effectiveness' (2018) when determining whether an engagement constitutes a 'full' review.

Code of Practice for board reviewers

- 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 director, company secretary or other professional;
 - knowledge of, and expertise in, governance and behavioural issues;
 - management, commercial or financial experience;
 - communication, personal 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 on their website in broad terms 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.
- 20 When considering what information to provide on their website, reviewers may also find it helpful to look at the guidance for companies on externally facilitated board evaluations contained in the FRC Guidance.

Independence and integrity

- 21 The value to the company and to its investors of an externally facilitated board performance review 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.
- 22 The possibility for conflicts of interest can arise in all businesses. 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 business 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.

Code of Practice for board reviewers

- 23 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.
- 24 Independence can be undermined if a reviewer becomes over-familiar with, or overly dependent on, a particular client. For that reason, it is considered good practice for a reviewer not to extend their relationship with any individual client beyond six years (a period which would typically include two consecutive full board performance reviews and associated follow-up work).
- 25 For the avoidance of doubt, ultimate responsibility for the management of any actual or potential conflict rests with the client.

Client engagements

- 26 The terms of engagement will differ for each assignment, but should usually include:
- The identity of the lead contacts at the company 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 company with whom the reviewer can discuss in confidence any concerns about how the review is being managed – this would normally be one of the independent board members.
 - 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 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 company within twelve months to review progress on the agreed outcomes.
 - Agreement on the arrangements for the reviewer to comment on disclosures by the company 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 company and what obligations are placed on the service provider and/or its individual staff.

Code of Practice for board reviewers

- 27 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 whistle-blowers, and how this 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.
- 28 Where the reviewer has a potentially conflicted business this should be specifically addressed in the terms of engagement.
- 29 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. 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.
- 30 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 them 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 company 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

- 31 Some clients will be required to disclose information about the conduct and outcome of the board performance review either publicly (for example, listed companies that apply the UK Corporate Governance Code) or to a regulator. While responsibility for these disclosures rests with the client, they are also important for the reviewer. If disclosures are found to be inaccurate or unbalanced, that can have an adverse impact on the reviewer's reputation.
- 32 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.
- 33 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 at the company in the first instance to see whether they can be resolved. If not, they should write to the client formally recording their concerns, copying that letter to the appropriate regulator.

Code of Practice for board reviewers

The Chartered Governance Institute is the professional body for governance. We have members in all sectors and are required by our Royal Charter to lead 'effective governance and efficient administration of commerce, industry and public affairs'. With over 125 years' experience, we work with regulators and policy makers to champion high standards of governance and provide qualifications, training and guidance.

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