

Annex B

Current Board Members' Code of Practice

5. Board Members' Code of Practice

5.1 Introduction

ARB has a responsibility to ensure the effective discharge of its duties.

Guidance on the role of ARB, the role of its members and good practice in undertaking this role can be found in three main sources: the Act; other legislation relevant to the Board; and in the publications of the Committee on Standards in Public Life and related organisations. This Code of Practice has been developed from the information contained in these documents, and is addressed to members of the Board. It is particularly important that members take care to understand and follow the spirit of the Code.

5.2 Corporate Responsibilities

The Board must ensure that high standards of corporate management and governance are maintained in the conduct of all its business. As a public corporation, ARB recognises that it must comply with all relevant legislation and good practice guidance, as well as the Framework Agreement between ARB and Communities and Local Government (CLG). The Board fully accepts and adopts the underlying principles set out below.

5.3 Individual Responsibilities

Members share in the corporate responsibility of ARB, and should therefore conduct themselves in a manner that supports its role. All members must follow the underlying principles set out below, and comply with the Code. In exercising the powers of the Board, members accept certain responsibilities and must recognise that the general principles of law and good practice applying to ARB will be directly relevant to their conduct as Board members. Board members share responsibility for the decisions of the Board or any Committee of the Board, and should cooperate in their implementation. Decisions should be allowed to operate, and if a member thinks that a policy or decision should later be reconsidered, they should seek to achieve this from within the Board. Any alleged breach of this Code by a member will be dealt with using the complaints procedure set out in **Appendix K**.

5.4 Principles Underlying the Code

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| Public service | Board members have a duty to act in the public interest in accordance with ARB's statutory responsibilities. |
| Selflessness | Board members have a duty to take decisions solely in terms of the public interest. They must not act in order to gain financial or other material benefits for themselves, their families or friends. |
| Integrity | Board members must not place themselves under any financial or other obligation to individuals or organisations that might reasonably be thought to influence them in the performance of their duties. |
| Objectivity | Board members must make decisions solely on merit when carrying out ARB's business. |
| Accountability & Stewardship | Board members are accountable for their decisions and actions to the public. They have a duty to consider issues on their merits, taking account of the views of others, and must ensure that ARB uses its resources prudently and in accordance with the law. |
| Honesty | Board members have a duty to act honestly. Members must declare any private interests relating to their public duties and take steps to resolve any conflicts arising, in a way that protects the public interest. |

Leadership	Board members have a duty to promote and support these principles by leadership and example, to maintain and strengthen the public's trust and confidence in the integrity of ARB and its members.
Respect	Board members must respect fellow members of the Board and ARB's employees and the role they play, treating them with courtesy at all times.

(Footnote: The Committee on Standards in Public Life set out principles for "the benefit of all who serve the public in any way" which were subsequently incorporated into guidance on codes of practice for Board members of public bodies in the White Paper "The Governance of Public Bodies: A Progress Report" (CM 3557), published in February 1997. The version above adopted by ARB is taken from the Scottish Model Code.)

5.5 Conduct of Board Members

5.5.1 General

This is a corporate board, and all members carry individual and corporate responsibility to the Board, regardless of whether appointed or elected to the Board. Members are elected or appointed to the Board to contribute their views on the questions the Board has to consider, to participate fully in its decision-making, and to ensure that it is well informed. A Board member has a duty to act in good faith and in the public interest.

5.5.2 Confidentiality

During the conduct of ARB's affairs, Board members might obtain privileged or confidential information relating to the Board, or to individuals, companies, universities etc. Board members are under an obligation to maintain confidentiality in relation to such information. Clearly, this obligation will not apply where the Act authorises or compels publication, as in the case of disciplinary matters. Even in relation to matters which are not confidential, members should proceed with caution, as prematurely revealing information to those outside the Board (for example by email circulation) may cause harm to others, or interfere with the prudent and efficient discharge of the Board's business.

It is particularly important that members should not use information gained in the course of their public service for personal gain or to advance the interests of any particular group or sector, nor seek to use the opportunity of public service to promote their private interests. (Selflessness principle - conflicts of interest are discussed further below). Members should also be aware of the Board's policy on matters to be discussed during the open and confidential sessions of Board meetings (see **Appendix L**).

5.5.3 Negligent Statements

Although any legal proceedings initiated by a third party are likely to be brought against the Board as a body, a Board member may be personally liable if they make a fraudulent or negligent statement which results in loss to a third party. A Board member who misuses information gained by virtue of their position may be liable for breach of confidence under the law applicable within the UK.

5.5.4 Dealing with the Press

Communications with the press will only be made through the Chair and Registrar, as agreed by the Board at its meeting on 21 May 2009. Board members should not provide information to the media, or do anything which could lead to the disclosure of anything said or discussed at any confidential session of the Board or any of its committees.

5.5.5 Dealing with the Wider Domain

Board members may also need to articulate developments within the Board on matters of general principle to other audiences and may also wish, on occasion, to take soundings from others on matters which are being or may be discussed. In conducting such discussions, Board members must ensure that matters relating to discussions held in the confidential session of the Board meeting or any of its committees are not disclosed.

5.5.6 Behaviour to other Board Members

Board members should treat each other with courtesy, and endeavour to work together in a cooperative and collaborative manner, in good faith and in a spirit of mutual trust and respect.

It is hoped that disputes will not arise, but if they do, the Board has a complaints process, a copy of which is at Appendix J.

5.5.7 Working with Staff

Board members are responsible for the staff that the Board engages, and should treat them with respect and courtesy. Not only is this an important requirement for any employer, it also helps to ensure that staff carry out their work smoothly and efficiently. Once the Board agrees that the staff should carry out a particular task, they should be entrusted to do so without interference.

5.6 Conflict of Interest

5.6.1 Public Duty and Private Interest

Board members must avoid being in a position where there is, or might reasonably be supposed to be, a conflict between their personal interests and their duty as a Board member. It is not possible to list comprehensively the situations that can arise, but where a member has a connection with an individual or organisation with whom the Board is dealing, or whose interests differ from those of the Board, then it should be declared and any potential conflict considered. Such connections may be direct, or they may be through a family member or business associate. They may also include connections with the Board itself (e.g. where there is a connection with a business supplying goods or services to the Board). As a general guide, if a member is in any doubt as to whether an interest should be declared, that in itself is an indication that it should.

Following the declaration of an interest, the Board or committee concerned must consider whether there is a potential conflict and ensure that the member does not take part in any discussion, decision or vote where the interest might be held to give rise to a conflict.

It is not enough to avoid actual impropriety. Board members must at all times avoid any occasion for suspicion and any appearance of improper conduct.

5.6.2 Disclosure of Pecuniary and Other Interests

A Board member may, on occasion, be at a meeting where a decision is to be taken on a matter where they have an interest, for example, a contract with a company where they are an officer or shareholder, or where they have a business, professional or personal relationship. Board members must disclose both direct and indirect pecuniary interests (including those of family members and business partners) which they may have in any matter coming before the Board or any of its committees.

Non-pecuniary interests are as important. Board members should not allow the impression to be created or exist that they are, or might be, using their position to promote a private or personal interest, rather than promoting the general public interest. Particular care must be taken with an interest arising from holding office with, or membership of, a society, or of a common interest group such as a professional body or trade association.

Board members will usually leave the meeting for agenda items where they have such an interest.

5.6.3 Gifts and Hospitality

Board members should not place themselves under any obligation to outside individuals or organisations that might influence them in the performance of their official duties or, just as importantly, that could give rise to a perception that they might be so influenced. Members should avoid accepting hospitality or gifts that might call into question their independence or impartiality.

Members should disclose for publication any gift, hospitality or benefit received either in their capacity as a Board member or connected with the performance of their duties. It is not necessary but it is good practice to record gifts with a value of less than £20, or hospitality such as a light lunch

as part of a working event, but a declaration should be made every time the benefit provided is significant and could therefore be perceived as having an actual or potential influence on members' conduct. Members should err on the side of declaration if they are unsure whether or not to disclose.

5.7 Register of Interests

Board members are obliged to provide details of any financial or professional interests that may be relevant to the work of ARB, by completing an annual Register of Interest form. A copy of this form, along with guidance on how to complete it, can be found at **Appendix M** to this Handbook. Not all interests listed in the Register may give rise to a conflict.

5.8 Insurance Declaration

Board members are obliged to complete an annual declaration as is required under the Board's insurance policy.

5.9 Acting Ultra Vires

It is a general principle of law that a body corporate can only act in accordance with the terms of its founding statute, charter or constitution. It follows from this that Board members can exercise powers only insofar as these are expressed or reasonably implied by the Act itself. If the Board acts outwith its powers, it is deemed to be ultra vires (literally, "beyond the power" of the Board).

5.10 Delegation

A duty imposed on the Board by the Act cannot lawfully be delegated. If the Board is considering delegating any of its functions, it should ensure that it has the power to do so by seeking legal advice on the question and giving that advice proper consideration.

5.11 General Legal Provisions

In addition to the *ultra vires* rule, there are a number of areas in which the Board's actions are affected by principles of law applicable to all bodies in the UK, whether or not created by statute.

5.12 Freedom of Information Act

The Freedom of Information Act 2000 gives a general right of access to all types of recorded information held by public authorities, sets out exemptions from that right, and places a number of obligations on those authorities. Subject to any exemptions, anyone who makes a request to a public authority for information must be informed whether the public authority holds that information. If it does, that information must be supplied, subject to certain conditions.

Every public body is required to adopt and maintain a publication scheme, setting out how it will publish the different classes of information it holds. ARB's publication scheme is posted on the website.

Board members creating documents or communicating by email or letter amongst themselves or with third parties on matters relating to Board business for which they have been given responsibility by the Board must ensure:

- (a) that the document or communication does not contain information which is not held on the Board's behalf; and
- (b) that it is marked as created on the Board's behalf; and
- (c) that a copy of that communication is lodged with the relevant staff member so that it can be produced, if necessary, in response to a FOI request.

Board members should be aware that any communications on board business that are copied to the office will be subject to disclosure under the Freedom of Information Act and the Data Protection Act.

5.13 Data Protection Act 1998

On 1 March 2000, the majority of the Data Protection Act came into effect. This Act was a revised form of the Data Protection Act from 1984. There are many parts and sections to this Act, but in its basic form it gives

guidelines to the use of information either on a computer system or manual records. It states that organisations that collect, store and use personal data must be forthcoming about the information. The Act can be summarised by eight principles.

Data must be:

* Fairly and lawfully processed * Processed for limited purposes * Adequate, relevant and not excessive * Accurate * Not kept for longer than is necessary * Processed in line with an individual's rights * Secure * Not transferred to countries without adequate protection.

As a public body, ARB is subject to the provisions of the Data Protection Act. Board members should be aware of the legislation and its eight principles whenever they are acting in their capacity as a Board member.

5.14 Human Rights

The Human Rights Act 1988 came into force in the UK on 2 October 2002. Under the Act, it is unlawful for any organisation to act in a way that is incompatible with a Convention right. The "human rights" issue, along with any requirements under the diversity legislation, will have to be borne in mind by the Board when considering legislation, policies and procedures.

Further guidance and information on the Human Rights Act can be obtained from the Human Rights Unit (www.dca.gov.uk/peoples-rights/human-rights/).

Note

The Board maintains a professional indemnity policy with a limit on the indemnity of £3,000,000 for any one claim. The policy covers the ARB and the Board against any "wrongful act" committed by the Board, any member of the Board, any employee or anyone else acting on the Board's behalf. "Wrongful act" means any actual or alleged negligent act, error or omission or unintentional breach of confidentiality arising from the professional activities of ARB. The policy also extends to include libel, slander and defamation.

In addition, the Board maintains a "Directors and Officers" policy with a limit of liability of £5,000,000 in all. The policy includes cover for any individual who is a director or officer of the Board. The policy provides protection against liabilities arising from, among other things, any actual alleged breach of duty, breach of trust, neglect, error, misstatement or other act leading to a claim against them in their legal capacity as 'Directors and Officers' of ARB. The policy also provides 'entity cover' for claims which may be made against the entity of ARB.

These policies have been maintained for a number of years and will continue to be maintained unless the Board otherwise directs.