

What to Expect of the NED Role



In consultation with the NED Community
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 **NEDonBoard**
The Professional Organisation for Non-Executive Directors

PREFACE

In consultation with the non-executive director community, this document has been created by NEDonBoard for the information of non-executive directors (NEDs) and organisations considering appointing NEDs. It aims to identify common features of the role of the NED across different sectors and types of organisation in the UK.

This document is freely available to members. It is not tied to, or influenced by, the agenda of any outside organisation. Further reference material is provided in the Appendix.

Important disclaimer

Whilst the core principles for director's duties under the UK legal and regulatory framework have been used as the basis of this document, it should not be relied upon as an exhaustive guide to a NED's legal responsibilities. It is the responsibility of every NED to understand and abide by the regulatory and legal requirements of their role.

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INTRODUCTION

There is growing awareness of the NED role and a growing number of organisations are appointing NEDs of various types, often titled as 'trustees' or 'governors' as much as 'non-executive directors'. For many organisations, large and small, appointing NEDs has now become standard practice. It is no longer limited to very large organisations and there is increasing focus on the professionalism and training of NEDs.



NEDs should make a substantive and measurable contribution to the effectiveness of the board they belong to. A NED is not a consultant or special advisor, but should, within the remit of the role, play a full and active part in helping an organisation to succeed. Irrespective of the skills, experience and contacts that NEDs will bring, they must, above all, provide appropriate independent and constructive challenge.

For appointments to work effectively, both the organisations and the NEDs themselves must understand the purpose of being a NED, within the specific organisation concerned, and what value the NED is expected to bring. This goes beyond statutory requirements. Organisations should not appoint a NED as an alternative to acquiring a contractor, consultant, interim or permanent staff.

The effectiveness of NED appointments, and how these are achieved, will vary considerably between different organisations, depending on their size, sector, business maturity and the nature of the challenges which they face. For example, many smaller organisations are now appointing NEDs to bring in wider experience, in response to complexity of the business and organisational challenges they face.

The role of the NED is also diversifying. With the pressure on organisations to compete globally, deal with digital transformation and respond to rapidly changing market conditions, new skills are needed at board level. This implies a need to refresh the NED pool, bringing in new external experience and challenge when the organisation needs it, and adjusting as circumstances change.

Much existing guidance on the role of a NED is considered from the viewpoint of larger organisations with an established tradition of appointing NEDs. We want this guide to be helpful not only to experienced NEDs in large organisations but also the many new NEDs in small organisations, some of whom may not even consider themselves to be NEDs – for example, a trustee to a charity, a long-term advisor to a small business or a college governor.

The internet abounds with information for NEDs in every sector on legal and procedural matters. We have therefore focused less on statutory obligations, and more on the broad mix of behaviours, skills and experience required of an effective NED. This guide is also truly independent, with no allegiance to any specific sector or business sponsor.

Above all, we want to encourage more people to become NEDs and more organisations to appoint them. We see this as mutually beneficial to private businesses, the public sector and to charities and academia. We hope this will support career development of professionals in every sector who could benefit from the valuable experience of taking on a NED role.

Jean-Philippe Perraud, Head of Board Connection, NEDonBoard

THE SELECTION OF NEDS - DRIVERS FOR CHANGE AND THE MOTIVATIONS OF THOSE CONCERNED

Why Should You Consider Becoming a NED?

Typically, a NED will offer broad experience in fields relevant to the activities of the organisation to which they are appointed. For many NEDs, this is an opportunity to apply their existing experience in a wider context. But it often calls for the development of new skills, as well as using existing skills in new ways.

This brings the satisfaction of operating on a broader level, and, when done alongside an executive career, NED roles can provide balance to more operational responsibilities in executive roles.

But being a NED is not an easy option. It carries onerous legal responsibilities and may require the NED to think about, discuss and make decisions on a wide range of issues, possibly across a number of different disciplines. It also requires flexibility and sufficient available time to carry out the role – and any remuneration is expected to cover all the responsibilities of the job. Remuneration is not determined by the hours worked as in a contractor activity.

A NED must be able to remain independent, recognising that it is the role of the executives to run the enterprise. For some people embarking on a NED career, it can be frustrating to have to operate by means of challenge, advice and influence rather than instructing and leading a team as an executive. The role of a NED typically requires experience of senior leadership, diplomacy, patience and self-motivation, along with coaching and influencing skills.

Therefore, being a NED is not the right choice for everyone. In particular, it may not suit those with a strong urge to manage a business in a hands-on way. So, before taking a NED role, it is best to consider whether you will feel comfortable with this situation. Some people feel that if they carry responsibility for the actions of the organisation as a director, they want a closer involvement than is normally possible as a non-executive.

However, if you can manage the transition effectively, there are many advantages to becoming a NED. It attracts status, it broadens your network and gives varied and new experiences. It can also strengthen a CV, leading to other appointments and career opportunities. It may well introduce you to new sectors and new ways of working, creating more diversity in your working life. It may be possible to build up a portfolio of roles, which can complement each other if they are in similar fields or require similar skills, although a portfolio of very varied roles can also be useful, giving the NED a broad perspective. To some, NED roles are a welcome change from having to focus on the operational aspects of an executive job. But it would be a mistake to assume a NED does not have to master complex and detailed material, often in lengthy board papers that need to be read in a short time.

NED positions may give you more independence, variety, flexibility and work/life balance. Commercial NED roles are normally paid. Whilst the income is likely to be less than for an equivalent level executive, there are other compensating factors.

Importantly, it should be possible for aspiring NEDs to select roles which provide the satisfaction of 'giving back' to society generally or to sectors which they have benefitted from, or where they have a personal interest. An old saying is that there are three phases of life: "we learn, earn, and then return". For many, being an NED falls into the latter category. This is not to say you won't still learn a lot from doing the role.

The Company's Perspective: Why Appoint a NED?

The main reasons for appointing a NED are to bring independent perspective and objectivity to the board. The legal responsibilities of all directors are the same (discussed further in the section 'The Basic Principles NEDs Should Apply') and for unquoted or non-regulated businesses there are often no requirements to have NEDs on the board. However, they are often considered valuable because they bring perspective and experience from outside the business. They may also contribute a longer term perspective to the board discussions, and provide additional focus on ethical leadership.

External experience in the sector, or with customers or regulators, is particularly valuable as it should improve the understanding and management of the risks in the sector and help support business growth. NEDs can also bring diversity of skills and interests to the board whereas the experience of the executives may be homogeneous. This is particularly true in large organisations with an executive team grown from within or recruited from similar organisations. NEDs bring new styles of working, diversity and – for a young executive team – maturity. Conversely, many organisations are seeking younger NEDs who may bring in additional experience e.g. in the digital field.

In providing balance to the executives and an independent perspective, NEDs will be expected to provide challenge to executives on the board, keeping the interests of shareholders and other stakeholders particularly in mind. The independent perspective which the NED will bring is one of the principal reasons why NEDs are likely to chair (and comprise the membership of) the risk, audit and remuneration committees of the board, as these committees have specific roles in holding executive management to account. The involvement of strong NEDs is an important reassurance to regulators and investors, and may well encourage shareholders or bondholders to increase their investment. In start-ups, the NEDs will often bring an investment stake and introduce others.

Another advantage of having NEDs is their availability to sponsor projects. While a NED should not become a consultant, they may nevertheless be able to provide a similar service, at least at the start of a project, and the company then has the benefit of a trusted resource with an open-ended commitment to the company and normally no extra cost. This is often particularly relevant to start-up businesses, but also applies in larger organisations.

NED ROLES - A MORE DETAILED REVIEW

The Commonalities and the Differences

NED roles vary greatly, due to factors such as:

- **The sector** – There are many different sectors - not just the public and private sectors, and different business sectors, but also charities, academic institutions and professional bodies, all of which have different cultures, regulations and functions.
- **The type of business** – A family-run business or a partnership, compared with a large corporate for example, will probably require a very different style of NED.
- **Other factors** – Such as the balance of the number of NEDs and executives on the board. Some boards have a NED majority; some may have just one NED brought in for a specific role.

There are a variety of secondary characteristics which also impact on NED roles, such as:

- **The nature of business challenge** – An organisation may be going through a merger or acquisition, or may be operating in difficult times, perhaps with strong competition, market change and pressure from shareholders or financial backers.
- **The scale of the business** – A small business or 'start-up' will need a different skill set, which may be more intense or specific than is expected of a NED in a large and well-established, mature organisation.
- **The balance between UK based and international activities** can make a difference as well, especially in organisations seeking a NED who understands the changes in international relationships post Brexit.

In addition, all organisations differ in the processes, style, culture, and behaviours of the leadership team, irrespective of the sector. A NED will need to be aware of this and adapt their personal style accordingly.

In other words, a NED does not just bring business skills and experience; their inter-personal and 'soft' skills matter too. Some environments require consummate political sensitivity, some an open, fast-moving, 'no holds barred' and 'pull no punches' approach.

Also, some NED roles are paid and some are pro bono. This should not make a difference as to how they carry out their duties, but a volunteer role may be perceived differently in practice.

Some NED roles are not necessarily even regarded as such – e.g. trustees and college governors are sometimes seen as different from NEDs, although in law they may be essentially the same.

Understanding these differences can help a NED to perform well - to challenge constructively, to understand the demarcation of roles of executives and NEDs, and to avoid some of the cultural, business and legal pitfalls which present themselves.

Types of Organisation

Companies are all required to have directors, and mutual bodies normally do so also. Other types of entity do not have directors but may have leaders who operate in a similar capacity, including some partnerships.

Many charities are set up as companies, normally as companies limited by guarantee rather than by shares. (Companies limited by guarantee do not have shareholders as such, although in law they have “members” - the term used for shareholders.) Trustees of charities which are constituted as companies limited by guarantee or as charitable incorporated organisations will also be directors of their organisation, even if they are normally referred to as charity trustees. There are specific requirements for charity trustees which don't apply to directors of companies which are not charities, so trustees of corporate charities will need to be familiar with both sets of rules.

Community Interest Companies, organisations set up under special rules to carry out a social purpose, but not strictly charities, are also normally companies limited by guarantee. There are various types of mutual bodies whose constitutions may be similar to companies, but with some different features.

Professional organisations and increasingly firms in the financial sector are often constituted as limited liability partnerships, which share many of the features of a limited company with boards on which NEDs may participate.

Entities can also exist with less formal status, such as unincorporated associations – many local sports clubs and community organisations might have this form of legal personality, for example. People taking leadership roles in these types of organisations need to consider what legal liabilities they might assume, as they may differ from those of directors of limited companies.

Sectors

The Private Sector

Many people looking for a NED role will think first of the private sector, because that is a world with which many in this position feel some familiarity and also because NED roles in the private sector are more likely to be remunerated (or perhaps better remunerated) than elsewhere. The qualities and benefits which NEDs are recognised as adding in private sector roles, including individual skills and experience, contacts and profile, are now sought after in other sectors as well.

The particular requirements for a NED in any company will of course vary, depending in part on the scale and nature of the company's operations. Small and medium sized enterprises (SMEs) and start-ups often appoint NEDs to bring in specialist skills and to overcome specific challenges, as well as contributing by bringing contacts and influence. Sometimes, an organisation, such as an SME, may be too small or too immature to employ full time executive directors with the complete set of skills required, or they may be simply changing too fast, such as a start-up business. As in other sectors, a NED can widen and complement the board's effectiveness, reducing pressure on executives to know and do everything.

The Public Sector

The public sector is very varied, with NED roles found today in every area – councils, government departments, non-departmental public bodies (NDPBs), schools, colleges, universities, police and fire services.

Health organisations, local authorities and many NDPBs appoint NEDs, some extensively. In

some cases, public service organisations are already working with a private sector partner, such as an advisory or consultancy business which provides NED-type input.

Many local authorities, government departments and NDPBs are setting up trading bodies, often to draw in new income as public sector budgets and grants are cut. They are using this mechanism to sell new services, increase revenue generation and collection, and to underpin integrated shared service arrangements. They are looking to NEDs to provide commercial and business practice experience, but with an understanding of public service ethos and regulation. This is more than just trading, and skills sought can span mergers, acquisitions, sales of businesses, structuring of complex contracts and setting up public and private partnerships.

Academic Sector

Universities, colleges, schools of all types (public, private and state sectors) and associated research bodies, often appoint NEDs. Sometimes they are called governors, sometimes trustees, but they are all in effect NEDs.

There is extensive guidance on the internet for state sector college and school governors, and NEDs in this sector are advised to be clear on the specific role they are taking on, in addition to reading the general guidance. This is because whilst the guidance is good, the nature of roles varies, and organisations are at different levels of understanding as to what they should expect from their NEDs. This will affect the NEDs' risks, responsibilities and liabilities.

Third Sector

The Charity or "Third sector" is diverse and complex. According to Charity Commission data, there are 167,109 (as at December 2016) registered charities in the UK. Some are linked together, sharing trustees. Many are small, not-for-profit community organisations, and some are businesses with charitable aspects, that nonetheless operate as companies with sales, marketing, product development and customer services.

Where charities operate commercial (trading) functions – for example running charity shops or selling services – it is usually good practice to carry on these activities through a subsidiary company which is not itself a charity, which will have its own board. This may comprise trustees of the main board as well as independent directors. NEDs need to understand the makeup, governance, structure and contractual responsibilities that they are taking on in such situations.

There are some excellent guidance notes for aspiring NEDs in the charity sector published by the Charity Commission (see Appendix).

Special Roles a NED Might Hold

Chair/Chairman

The Chair leads the board and is responsible for it working effectively. He/she sets the agendas and ensures that the agenda is covered in the meetings, and that there is a constructive, harmonious and collegiate relationship between board members. The Chair should ensure that all have the opportunity to participate, and that a good dialogue takes place between NEDs and executive directors. He/she should ensure that healthy debate and constructive challenge take place, without becoming divisive.

The Chair is also responsible for communications with shareholders and for the relationship with other stakeholders.

The role of Chair is distinct from the role of the Chief Executive Officer (CEO), who runs the business. The Financial Reporting Council's (FRC) UK Corporate Governance Code requires the roles to be held by different people and discourages transition from CEO to Board Chair.

In other countries, notably the US, the roles of CEO and Chair are often combined, and there are also instances of this in the UK, particularly in smaller companies not seeking to apply the UK Corporate Governance Code.

Typically, the Chair will be experienced in leading a mixed team of senior professionals, carrying status and gravitas, with political skills and sound understanding of corporate governance.

Senior Independent Director

In 2003, the Higgs Report recommended that one director should be designated as the Senior Independent Director (SID), and this role is now formally designated in the UK Corporate Governance Code. The SID is effectively a champion for the NEDs and a channel for communications with shareholders, independently from the Chair, where required. The SID may also on occasion act as an alternate to the Chair.

The SID will also organise the appraisal of the Chair's performance, whereas appraisal of other directors (as required under the UK Corporate Governance Code) is carried out by the Chair.

The role of SID is becoming more widely adopted particularly in listed and regulated companies, banks and public sector bodies.

UK Government Corporate Governance Proposals

The UK Government's November 2016 Green Paper on corporate governance proposes that particular NEDs should be appointed to represent the interests of other stakeholder groups, such as employees and customers, meeting with formal representatives of these stakeholders and bringing their views to the board.

Advisory Councils

It can be useful, as a way of preparing for NED roles, to act as an observer on a board or join an advisory council. This provides practical experience of how boards function. It can help people decide if they would enjoy board responsibility, and facilitate their transition from executive to non-executive roles, without them needing to accept formal appointment and responsibility for the board's decisions. A number of boards, particularly in the charity sector, offer such volunteering opportunities. In some cases, young companies may value an advisory council as a way of mentoring the board.

However, care should be taken, particularly by members of advisory boards (and by consultants at board level) that they do not become so extensively and intimately involved that they make

themselves accountable in the same way as formally appointed directors by becoming “shadow” or “de facto” directors. A shadow director is defined in the Companies Act as someone in accordance with whose directions or instructions the company’s directors are accustomed to act. This is however a complex legal area and would not, for example, include someone acting in the capacity of a professional adviser.

THE NED JOURNEY - FROM APPOINTMENT TO SUCCESS IN THE ROLE

Factors You Should Consider Before Accepting a Role

Applying for a NED role, being asked to attend a NED interview, or indeed being offered a position, is exciting and flattering – there is often stiff competition and you will be selected because of your reputation or experience. But you should be careful before accepting a position and consider the following points in particular:

- **Your level of interest and commitment to the organisation and to the role** - Most appointments require review and re-election after three years but there may be an expectation that the NED will complete at least two three-year terms, or even three. While it's possible to step down earlier, this might damage your future prospects generally, and will limit the value you contribute, compared with completing a normal term of office.
- **Personal risk** - It's important to assess the risks and whether you have the requisite sector and governance skills to shoulder responsibility for them. Ask if the business will provide training, and consider whether the experience of the other NEDs will complement any limitations in your own experience. Many not-for-profit enterprises such as schools and hospital trusts say that sector experience is not necessary for their non-executive roles, but you may still be criticised by the public or regulatory bodies if they regard you as unsuitable for the role.
- **What resources does the organisation offer?** - Do they offer formal induction and training both before starting, and ongoing? Can they support you with appropriate professional advice, including legal advice if there are legal or regulatory challenges? While a major PLC will take this for granted, it may be more difficult for a start-up to resource this.
- **Time commitment, travelling requirement, fees, and expenses all need to be fully understood** - It's a good idea to ask existing NEDs about the time commitment if you can, as well as asking the company themselves.
- **Contract for services** - There are sample NED letters of appointment online, or you may prefer to take your own legal advice. Bodies such as the Institute of Directors (IoD) and ICSA also have pro-formas. However, there may be little room for negotiation as the organisation is unlikely to want different contracts for different NEDs.
- **The implications of the legal and regulatory status of the organisation** - For example, directors of banks and insurance companies have additional responsibilities to the regulators, and some potentially onerous personal liabilities under the Senior Managers Regime. Partnerships are subject to particular legal considerations.

In order to assess the liabilities you are taking on, it is important to understand thoroughly the insurance cover that the organisation provides to NEDs and to executives ("Directors and Officers cover" – D&O), as you may need to fall back on that. It's advisable to find some benchmarks to compare with, and consider if it is sufficiently comprehensive.

You should also ask if D&O claims have been made in recent years, and how much of the overall liability cover is still available. Bear in mind that the D&O cover cannot cover all liabilities, and it may be advisable to take out additional insurance. Various contracts are available and are increasingly being used by regulated businesses to protect both their executives and NEDs.

In summary, carry out your own personal due diligence about the role, especially in the following areas:

- **Business & sector** – Strategic future, competitors, regulation, profitability
- **The Chair and other NEDs** – Their integrity, resilience, openness, likeability
- **The executive directors** – Integrity, understanding of the business, future commitment
- **Legal and regulatory status**
- **Terms and conditions and protection available to you** - Including D&O cover

The Basic Principles NEDs Should Apply

There are various key governance principles that all directors must be aware of:

The Principles of the Companies Act Sections 170 to 181

These sections, which form part of a wider set of rules governing directors in Part 10, Chapter 2 of the Companies Act, cover executives and NEDs on an equal basis. There are seven principles set out in the Act, and directors should be familiar with these.

The most important principle is “to act in the way [the director] considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole, and in doing so have regard (amongst other matters) to -

- (a) the likely consequences of any decision in the long term,
- (b) the interests of the company's employees,
- (c) the need to foster the company's business relationships with suppliers, customers and others,
- (d) the impact of the company's operations on the community and the environment,
- (e) the desirability of the company maintaining a reputation for high standards of business conduct, and
- (f) the need to act fairly as between members of the company....”

The general duties owed by a director of a company to the company – Companies Act, 2006

- 171) Duty to act within powers
- 172) Duty to promote the success of the company (with subsection (1) stated in main text above)
- 173) Duty to exercise independent judgment
- 174) Duty to exercise reasonable care, skill and diligence
- 175) Duty to avoid conflicts of interest
- 176) Duty not to accept benefits from third parties
- 177) Duty to declare interest in proposed transaction or arrangement

For full statement of duties, please refer to the Companies Act.

The Companies Act also requires directors to obtain shareholder approval for some dealings with the company, including entry into a service contract, some property transactions, and loans. They are also responsible for meeting a range of reporting obligations.

NEDs need to bear in mind that directors can be held personally liable for breach of their duties in a range of situations; these include acting beyond their powers, failure to use sufficient skill and care, ignoring conflicts of interest, trading when the business is or is likely to become insolvent, fraudulent activities and serious health and safety shortcomings. The potential penalties can include criminal sanctions or disqualification of directors in some circumstances.

All directors may also incur personal liability outside the Companies Act, for example, for breaches of environmental, health and safety, and competition law, depending to some extent on the nature of their company's business.

Other Codes and Guidance

In addition to the Companies Act, there are specific codes and sources of guidance for certain types of company:

- The Financial Reporting Council (FRC) publishes the UK Corporate Governance Code which applies to listed companies and which sets out principles that many non-listed companies aim to follow where appropriate.
- The Charity Commission has published extensive material for trustees of charities.
- The Education Funding Agency (EFA) provides guidance for governors of schools which are maintained within the state education system.
- NHS Improvement is responsible for overseeing NHS trusts and foundation trusts; their website provides an array of relevant guidance.
- Guidance specific to smaller listed companies is available through the Quoted Companies Alliance (QCA).

Many other types of organisation will have specific guidance and the NEDs should ensure they are familiar with this guidance.

Directors of London Stock Exchange listed companies will need to be aware of the rules and regulations set out in the FCA Handbook, and directors of AIM companies need to be aware of the AIM Rules for Companies. Directors of both listed and AIM companies will also need to be aware of the EU Market Abuse Regulation, particularly in connection with rules relating to the release of information into the market and dealings in their companies' shares.

General Guidance for NEDs

The following final sections are intended to help a NED to make best use of their individual strengths and competencies as well as their personal style in exercising the role:

- Take a strategic view - This is important for all directors, but many executive directors will also have a focus on their specific areas of executive responsibility, whereas a NED should take a broad view on all subjects; they should not confine themselves to areas of personal expertise;
- NEDs should use their wide external experience for the benefit of the organisation;
- NEDs should bring an objective perspective to the governance of the organisation - This involves remaining independent from (but supportive of) the executive management of the company, and having the courage to stand up to them when necessary;
- The NEDs' independence is particularly important in exercising their Companies Act responsibilities towards external stakeholders – shareholders, employees, customers and the environment;
- They should respect the distinction between the governance responsibilities of a director and the executives' responsibilities to run the business, while appreciating this is not clearly defined and requires the exercise of discretion, according to circumstances, as indicated in the Walker Report.

"In broad terms, the role of the NED, under the leadership of the chairman, is: to ensure that there is an effective executive team in place; to participate actively in the decision-taking process of the board; and to exercise appropriate oversight over execution of the agreed strategy by the executive team."

Walker Report, 2009

"An over emphasis upon monitoring and control risks non-executive directors seeing themselves, and being seen as, an alien policing influence detached from the rest of the board. An over emphasis on strategy risks non-executive directors becoming too close to executive management, undermining shareholder confidence in the effectiveness of board governance."

Higgs Review, 2003

"NEDs and the boards of which they are members need to find the right point on the spectrum which ranges from relatively unquestioning support of the executive at one end to persistent and ultimately unconstructive challenge at the other. The importance of challenge will be greater the greater the entrenchment of the chief executive, especially if he or she is believed to face or tolerate little challenge from within the executive team and unreceptive or inaccessible to critical input from any other source. In an ideal situation, appropriate balance should be neither unduly acquiescent nor unduly intrusive. But the balance actually struck before the recent crisis phase was much too close to the acquiescent or supportive end of the spectrum in several important cases."

Walker Report, 2009

NEDs should also:

- Apply intellectual curiosity, such as reading around the subjects relevant to the activities of the board, meeting a range of people both within the organisation, and external stakeholders;
- Be sufficiently determined and conscientious to ensure they are receiving a full and honest report on the business of the company and that questions are being properly answered;
- Be constructive in the way they challenge – clear, positive, and bringing new ideas;
- Be aware of the right time to step aside – either at the end of an agreed term, or before that if there are issues of principle the NED cannot support.

The next section provides guidance on how these responsibilities might be carried out.

How to Conduct Yourself as a NED

Once the appointment has been made, you are likely to find that you need to adjust in various ways, particularly if you are making a transition from executive life.

Most NED candidate specifications will insist that the candidate should have utmost integrity and probity, but this does not necessarily preclude people from companies that suffered public criticism, from getting NED roles elsewhere. NEDs will need to be ready to respond to any questions regarding their past career and how it relates to their NED role.

Remember also that if you are a NED in a major charity or public company, your comments and views, however light-hearted or well-intentioned, may be reported on social media or quoted privately to your or the company's disadvantage. So take care! Demonstrate integrity in both your corporate decision making and general way of life. This is not a good time to get involved in an undignified Twitter spat or even an emotional row with the neighbours, as that could be used against you and the organisations you work with.

Utmost confidentiality about the enterprise's internal discussions is essential at all times. Any dialogue with the outside world about the company and its business, needs discretion and care.

Loyalty and responsibility to the business comes first, and conflicts of interest, real or perceived, must be avoided, or disclosed so that you can legitimately abstain from board discussions on that topic.

Even if a NED is appointed by a particular shareholder or by a stakeholder group (and in some countries, this may include trade unions) his or her responsibility, in the UK at least, is to all the stakeholders. This means the NED should find time to make contact with, and listen to the views of, shareholders, customers, employees, sponsors, partners, local community, the environment, regulators and creditors.

A NED should also take advice where it is needed, and should not rely solely on his or her own judgement. It is not sufficient to rely on opinions from the golf club or social media. Whilst broad personal experience is part of the benefit of appointing a NED, it should not lead to blinkered subjectivity, personal crusades or a narrowing of perspective. Normally professional advice would be taken by the business itself, not the NED, but a NED shouldn't hesitate to request it where appropriate.

Although the business may provide ongoing training, a NED should take personal ownership

for their professional development. You need to be fully aware of your statutory obligations, and the skills required to fulfil the role you have taken on, since if things do go wrong, ignorance is not an acceptable defence.

And there are many ways to keep up-to-date. NEDonBoard provides connection, knowledge and leadership to the NED community. Specific industry organisations and bodies also address NED related topics. There is also ample material online: both the standing material on NEDs' responsibilities in general, and free publications and webinars on current topics, such as Government budgetary announcements, constitutional developments including Brexit, and targeted industry matters.

Allow sufficient time to prepare for and to follow-up from meetings, and also to keep abreast of the business itself and the sector. The role requires more than attending the formal meetings, and a greater engagement will make constructive challenge more effective as well as the role more fulfilling. Often the NEDs themselves will meet separately from the rest of board, to assess the effectiveness of the board and reflect on the executives' performance and succession plans.

The NED's role is to challenge, but always to do so constructively. This means coming up with ways to solve problems, not just to expose them. This may require meetings with executives outside the main board, so you can understand their perspective on a particular topic and build personal relationships (without of course, compromising objectivity).

Your behaviour on the board must remain objective but decisive, applying honest and independent judgment. Do not just follow the lead of the executives or other NEDs even if they are more experienced or longer-serving than you. CEOs by their nature tend to be strong personalities, and NEDs need to be able to stand up to them. But equally, the board is not the place for rows of a personal nature or intransigent behaviour – it is hard enough for a CEO to run a business without dealing with a maverick group of NEDs.

A NED also has a role, informal if not stated, to mentor and inspire management, and to give them encouragement and support. It is important to remember this when management below board level make presentations to the board, which may have involved a great deal of preparation, and for the NEDs to show them courtesy and interest.

It's also normally inadvisable for a NED to form particular alliances within the executive since this can be misunderstood, especially if there are issues of remuneration involved; a NED must be, and be seen to be, at all times, totally transparent and objective. Therefore, for example, social events to which some NEDs are invited and others not, are likely to cause bad feeling and are best avoided.

A board has collective responsibility for its decisions. If after constructive debate and a genuine attempt by all sides to understand each other's points of view, it is impossible to reach consensus, then a board member (including a NED) may well feel it is important for the minutes to record that they do not support a decision. If the issue is sufficiently critical to the running of the business, for example, where there is continuous disagreement on strategy or policy, then the board member may feel the need to resign.

It is rarely professionally appropriate to share this discussion and disagreements publicly, however strongly felt. However, where the departure involves potential breaches of ethics or law, it may be appropriate to inform appropriate regulators, and in extreme circumstances it may be advisable for the NED to take advice on their own personal position. In a regulated business, the regulators will expect a frank explanation from any director who leaves the board unexpectedly. Major investors will also normally seek a confidential discussion with directors in such circumstances.

Above all, NEDs should try to avoid encroaching on the executives' role, and give them space to do their job, even though occasional deep dives are valuable to improve a NED's understanding, and there will be occasions where a NED has to become more closely involved in order to fulfil their responsibilities. It's normally helpful to frame input as questions or suggestions, as opposed to instructions, although you need to ensure your points are heard and acted upon. A difficult balancing act - but also an interesting challenge!

Follow these hints and your reputation, contribution and views will be accurately conveyed around the organisation, and not seen to be biased towards a specific agenda, team or personal interest. As you would in executive roles, be discreet, and treat other directors on an equal basis. But above all be yourself, and enjoy the role!

For further information, supplementary NEDonBoard documents will be duly available, addressing more specific topics of the NED role and sectors. A short appendix of further reading is also provided below.

For more information about NEDonBoard, please visit our website at www.nedonboard.com

If you have an questions related to this document, our contact details at NEDonBoard are team@nedonboard.com



 **NEDonBoard**
The Professional Organisation for Non-Executive Directors

APPENDIX

Non-executives are responsible for familiarising themselves with the regulatory and legal responsibilities of their role and sector.

The below list is not exhaustive however, it highlights some useful reference points.

- **Companies Act, 2006**
<http://www.legislation.gov.uk/ukpga/2006/46/contents>
- Financial Reporting Council, **The UK Corporate Governance Code**
<https://www.frc.org.uk/directors/corporate-governance-and-stewardship/uk-corporate-governance-code>
- The Charity Commission, **The Essential Trustee: What you Need to Know, What you Need to Do**
<https://www.gov.uk/government/publications/the-essential-trustee-what-you-need-to-know-cc3>

Useful Further Reading

- ACCA, **A Guide to Directors' Responsibilities Under the Companies Act 2006**
<http://www.accaglobal.com/content/dam/acca/global/PDF-technical/business-law/tech-tp-cdd.pdf>
- City Values Forum and Tomorrow's Company, **Governing Culture: Risk and Opportunity**, September 2016
<http://tomorrowscompany.com/wp-content/uploads/2016/09/Tomorrows-Company-Governing-Culture-vfl-1.pdf>
- Chartered Institute of Internal Auditors has produced a series of short briefings for boards, and in particular audit committee members, to inform them about key governance, risk and other issues.
<https://www.iaa.org.uk/resources/corporate-governance/>
- For details relating to the certification of senior managers in the financial sector regulated by the Bank of England Prudential Regulation Authority, see
<http://www.bankofengland.co.uk/pr/Pages/supervision/strengtheningacc/default.aspx>
Corresponding rules for the part of the financial sector regulated by the Financial Conduct Authority are set out at
<https://www.fca.org.uk/publication/corporate/applying-smr-to-fca.pdf>
- Financial Reporting Council, **The UK Stewardship Code**, 2012
[https://www.frc.org.uk/getattachment/d67933f9-ca38-4233-b603-3d24b2f62c5f/UK-Stewardship-Code-\(September-2012\).pdf](https://www.frc.org.uk/getattachment/d67933f9-ca38-4233-b603-3d24b2f62c5f/UK-Stewardship-Code-(September-2012).pdf)
- Financial Reporting Council, **Guidance on The Strategic Report**, 2014
<https://frc.org.uk/Our-Work/Publications/Accounting-and-Reporting-Policy/Guidance-on-the-Strategic-Report.pdf>
(This is one of a number of formal Guidance notes published by the FRC: others include Guidance on the Audit Committee, Risk Management and Reporting and Board Effectiveness, and you can find all of them on the FRC website.)
- House of Commons **Business, Energy and Industrial Strategy Committee, Corporate Governance Report**, pp.27-29
<https://www.publications.parliament.uk/pa/cm201617/cmselect/cmbeis/702/702.pdf>
- Institute of Chartered Secretaries and Administrators, **Liability of Non-Executive Directors: Care, Skill and Diligence**
<https://www.icsa.org.uk/knowledge/resources/liability-of-non-executive-directors>

- Institute of Chartered Secretaries and Administrators is a useful reference point for a broad variety of board-related guidance
<https://www.icsa.org.uk/knowledge/resources>
- **Practical Guide to Corporate Governance**, 2014, Mark Cardale
- Quoted Companies Alliance, guidance specific to smaller listed companies
<http://www.theqca.com/shop/guides/>
- **The Director' Handbook: Your Duties Responsibilities and Liabilities**, 2010 Institute of Directors
- **The Good Governance Code**, a code for the voluntary and community sector
<http://www.governancecode.org/>
- **The Independent Director, The Non-Executive Director's Guide to Effective Board Presence**, 2015, Gerry Brown
- The Institute of Directors (IOD) provides a wide range of director guidance
<http://www.iod.com/Home/Business-Information-and-Advice/Being-a-Director/>
- **UK Government's Corporate Governance Reform – Green Paper**, November 2016
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/573438/beis-16-56-corporate-governance-reform-green-paper-final.pdf

Reviews and Reports

- **The Cadbury Report**, The Financial Aspects of Corporate Governance, 1992
<http://www.ecgi.org/codes/documents/cadbury.pdf>
- **The Higgs Review**, Review of the Role and Effectiveness of Non-Executive Directors, January 2003, Derek Higgs
<http://webarchive.nationalarchives.gov.uk/20121212135622/http://www.bis.gov.uk/files/file23012.pdf>
- **The Walker Report**, an independent review of corporate governance in the UK banking industry, November 2009, Sir David Walker
http://webarchive.nationalarchives.gov.uk/+http://www.hm-treasury.gov.uk/d/walker_review_261109.pdf

For some of the latest thinking around diversity issues at board level, see:

- **The Hampton-Alexander Review on FTSE Women Leaders**, November 2016
<http://www.ubm.com/sites/default/files/Hampton-Alexander-2016.pdf>
- **The Parker Report into the Ethnic Diversity of UK Boards**, November 2016
http://www.ey.com/Publication/vwLUAssets/A_Report_into_the_Ethnic_Diversity_of_UK_Boards/%24FILE/Beyond%20One%20by%2021%20PDF%20Report.pdf
- Note also the section on Board Diversity (pp.50-55) in the House of Commons **BEIS Committee, Corporate Governance Report** referred to above.

About NEDonBoard:

NEDonBoard is the professional body for non-executive directors in the UK. We serve non-executive directors by promoting the highest standards of professional excellence, ethics and professional education for board members. We provide a professional network for NEDs, jobs board, news, dedicated courses for individuals and companies, events and insights to enhance and accelerate our members' non-executive director life. Our mission is not only to serve non-execs, but ultimately to improve how businesses and organisations operate in the UK. We believe every board member is an agent of progress and each organisation should find its own ways.

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