

The National Library of Scotland (NLS)

RESPONSIBILITIES OF THE BOARD OF TRUSTEES

Introduction

1. Trustees of the National Library of Scotland (NLS) have responsibilities for the stewardship and governance of one of Scotland's great national resources for culture, education and knowledge. This document is intended to help identify these responsibilities clearly for Trustees. The responsibilities include legal obligations.
2. Being an effective Trustee of NLS however does not only involve meeting statutory obligations; it should also involve acting as a champion, supporter and 'critical friend' of the Library. This role may be demanding on occasion, but it should also be enjoyable and rewarding for Trustees who contribute to the future development of the Library.
3. In broad terms, the chief responsibilities of the Board as a whole are to:
 - Set the organisation's strategic direction within the context of the National performance Framework and the policies and priorities of Scottish Ministers;
 - Monitor, scrutinise, challenge and support the management in its running of the organisation;
 - Ensure the organisation meets its objectives.¹

Founding Legislation

4. The Board of Trustees of NLS was established by the National Library of Scotland Act 1925, as amended by the National Heritage (Scotland) Act 1985 and adjusted following the Scotland Act 1998. This legislation sets out the number of Trustees, the bodies which should appoint Trustees and the number of co-opted Trustees. The legislation sets out the powers and responsibilities in general, but not specific terms. New members of the Board are provided with relevant extracts from the legislation on appointment.

Charity Status

5. The National Library of Scotland is a charity (Scottish Charity number SC011086) registered with the Office of the Scottish Charity Regulator (OSCR). Scottish Ministers directed OSCR to recognise NLS as a charity in preparing the Charities and Trustee Investment (Scotland) Act 2005. Individual members of the Board, however appointed, are therefore Charity Trustees and have associated duties and responsibilities. In particular, the Board, and individual members of the Board, must at all times act independently in the interests of the charity (NLS) and meet such other requirements of charities that OSCR may decide.

¹ This clause is taken from 'The Role of Boards', Audit Scotland, September 2010 (paragraph 44)

Relationship with the Scottish Government

6. NLS is a Non Departmental Public Body (NDPB), largely funded by the Scottish Government and responsible to the Minister for Europe, External Affairs and Culture. Scottish Ministers generally expect to be able to direct NDPBs, and the Board of Trustees must take account of Government guidance in relation to the work of NLS, including that communicated, for example, through a 'Management Statement'. There is a potential tension between this power of ministerial direction and the requirement for Trustees to act independently referred to in paragraph 4 above, but this does not normally raise issues in practice.
7. The Minister for Europe, External Affairs and Culture is answerable to the Scottish Parliament for the policies and performance of all public bodies sponsored within her remit including their use of resources and the policy framework within which they operate. The Minister delegates day to day responsibility for liaison and decision-making with regard to NLS to civil servants in the sponsoring department - the Europe, External Affairs and Culture Directorate.
8. The Board also has accountability to the Scottish Parliament. The Annual Report and Accounts must be laid before the Parliament each year.

Corporate Responsibilities of Board Members

9. Members of the Board have corporate responsibility for ensuring that NLS complies with any statutory or administrative requirements for the use of public funds. Other important responsibilities of the Board include:
 - ensuring that high standards of corporate governance are practised at all times;
 - establishing the overall strategic direction of NLS within the policy and resources framework agreed with the sponsoring department;
 - ensuring that the Board operates within the limits of its statutory authority and any delegated authority agreed with the sponsoring department, and in accordance with any other conditions relating to the use of public funds;
 - ensuring that, in reaching decisions, the Board has taken into account any guidance issued by the sponsoring department;
 - ensuring that a code of conduct for Board members is in place and agreed with the sponsoring department.

Roles and responsibilities of Individual Board Members

10. Individual Board members should be aware of their wider responsibilities as members of the Board. 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 (Appendix 1). Board members must:
 - undertake on appointment to comply at all times with the Code of Practice that is adopted by NLS and with the rules relating to the use of public funds;

- act in good faith and in the best interests of NLS;
 - not misuse information gained in the course of public service for personal gain or for political purpose, nor seek to use the opportunity of public service to promote private interests or those of connected persons, firms, businesses or other organisations; and to declare publicly any private interests which may be perceived to conflict with public duties; and
 - ensure that they comply with the Board's code of conduct and rules on the acceptance of gifts and hospitality.
11. Board members are free to engage in political activities, provided that they are conscious of their general public responsibilities and exercise a proper discretion. However, on matters directly affecting the Board's work, they should not make political speeches or engage in other political activities.
12. Board members are strongly encouraged to attend Board meetings regularly, and to participate in other ways such as service on committees, assisting with the recruitment of senior staff or promoting the interests of the Library to relevant bodies and communities. Depending on the nature of their appointment, Board members who are unable to make such a commitment may be expected to relinquish their position as Trustee, so that they can be replaced by a Trustee who can contribute more actively to the Board. All Trustees, regardless of the nature of their appointment, are strongly encouraged to submit written comments on the business of any meeting that they are unable to attend.
13. Trustees are encouraged to develop and express an interest in particular professional fields or areas of activity relevant to the Library. They may contribute ideas to policy and practice in such areas in partnership with senior managers for example by participating in short-life working parties, projects or groups focussing on particular subjects or initiatives.
14. Should a Trustee have any concerns about the organisation between Board meetings, they should raise these informally in the first instance with the Chairman, or the Vice Chairman in the first instance as a 'providing assurance clause'.
15. Trustees must act at all times in the interests of NLS. This requirement applies equally to Trustees whether they are co-opted, appointed as individuals or are nominated by an external body (such as Universities Scotland, the Faculty of Advocates or CoSLA). Trustees are not appointed to represent the interests of nominating bodies.
16. Board members are encouraged to identify their own development/learning needs, and these will be considered at annual appraisal in the case of Crown-appointed Trustees. All Trustees are encouraged to attend an annual development/induction event.

The Role of the Chairman

17. The Chairman of the Board is appointed by the Crown.
18. The Chairman of the Board of Trustees of NLS has particular responsibility for providing effective strategic leadership on matters such as:

- formulating the Board'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 NLS;
 - ensuring that the Board, in reaching decisions, takes proper account of any guidance provided by the sponsoring departments;
 - representing the views of the Board to the general public; and
 - providing an assessment of the performance of individual Crown-appointed Board members and the chief executive, on an annual basis, and when they are being considered for appointment to some other public body.
19. The Chairman will ensure that the Board meets at regular intervals throughout the year and that minutes of meetings accurately record the decisions taken, and where appropriate, the views of individual Board members. The Chairman will listen to and respond appropriately to any concerns raised by Trustees at or outwith Board meetings.
20. Communications between the Board and Ministers will normally be through the Chairman except where the Board 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 Board. In such cases the agreement of the rest of the Board will normally be sought.
21. The main point of contact between the Board and the sponsoring department on day-to-day matters will normally be the Chief Executive or another member of staff who is authorised to act on behalf of NLS.
22. The Chairman will ensure that all members of the Board, when taking up office, are fully briefed on the terms of their appointment and on their duties, rights and responsibilities in accordance with such induction policy as may be agreed by the Board. The Chairman and other members of the Board should have a copy of the Code of Practice for NLS, including copies of NLS's Management Statement and Financial Memorandum; its latest corporate plan and annual reports and accounts; the 'Memorandum to Accountable Officers'; a copy (or digital link to) the 'On Board' publication for board members of NDPBs and notes describing NLS's organisational structure and statutory basis of operation;
23. The Chairman will encourage new Board members to attend an induction session on the duties of board members of public bodies or some other suitable form of induction programme.
24. The Chairman will maintain an overview of attendance of Trustees at Board meetings and of their participation in other activities to the benefit of NLS (see paragraph 12). If a Board member is not fulfilling his/her reasonably expected responsibilities in this respect, the Chairman will raise this matter with the Board member. If appropriate, the Chairman will suggest to an individual (in the case of a co-opted member or Crown appointee) or to a nominating body (in the case of a nominated member), that the Trustee may stand down from the Board and be replaced by a Trustee able to contribute more actively to the work of the Board.

Committees

25. The Board will establish committees as it sees appropriate, with a remit and membership agreed by the full Board. As a general rule, all Trustees will be expected to serve on at least one, but no more than two, committees. Committees may co-opt individuals who are not Trustees of NLS, where those individuals appear to the committee to have skills, experience or other qualities which would enhance the work of the committee, subject to agreement of the Board as a whole. The term of appointment for all committee members (Trustees or co-opted members) will be three years and may be renewed.
26. Like most public bodies, NLS will establish an Audit Committee as a committee of the Board. The responsibilities of the Audit Committee complement those of the chief executive, the formally-appointed Accountable Officer. It is envisaged that he/she will normally attend all meetings of the Audit Committee, unless, exceptionally, his or her own performance is being discussed. Guidance on the role of an Audit Committee is available through a link listed in Appendix 2. The Chairman will not be a member of the Audit Committee.

Register of Members' Interests

27. All Board members are required to record their interests in a Register of Interests and to ensure that this Register is kept up to date. This Register is updated annually even if the interests remain the same.
28. The Register must as a minimum list all direct or indirect pecuniary interests of Board members which members of the public might reasonably think could influence judgement; list non-pecuniary interests of Board members where these have a direct bearing on the business of NLS; and list interests of spouses and of children under the age of 18 and of persons living in the same household as the Board member. 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 or other organisations. Family members include personal partners, parents, children (adult and minor), brothers, sisters, and the personal partners of any of these. Board members who need further advice should consult the Board's legal advisers.
29. The Register of Board members' interests is required to be open for public inspection and is made available on the NLS website and details of how to access it are included in the Library's annual reports.

Handling of Conflicts of Interest

30. The Chairman and other Board members must declare any personal or business interests which may conflict with their responsibilities as Board members at the earliest available opportunity.
31. In Board meetings, Trustees must ensure that their interests are declared as soon as practicable after the beginning of a meeting and minuted as appropriate in Board resolutions. It is at the discretion of the Chairman whether the individual Board member should withdraw from the meeting during discussions of matters in which they have registered an interest. Where the interest is not of a direct pecuniary

kind, members should consider whether participation in the discussion or determination of a matter could suggest bias.

32. The Board must adopt safeguards to prevent conflicts of interests arising from the acceptance by a Trustee of outside appointments during or after tenure as a Board member, taking account of guidance from the Scottish Government.
33. Members of the Board must inform the Chairman and the Scottish Government, at the earliest available opportunity, of a decision to accept an appointment to any other NDPB board.

Personal Liability of Board Members

34. Although any legal proceedings initiated by a third party against the Library are likely to be in the name of the Board, in exceptional cases proceedings (civil, or in certain cases, criminal) may be brought against the Chairman or other individual Board members. For example, a Board member may be personally liable if he or she makes a fraudulent or negligent statement which results in loss to a third party. Board 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.
35. The Government, however has indicated that individual Board members who have acted honestly and in good faith 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 Board functions, save where the person has acted recklessly.

Remuneration

36. Board members are not paid or otherwise remunerated for their work as a Trustee of NLS. Trustees are entitled (and encouraged) to claim expenses incurred in connection with performing their duties on behalf of NLS.

Delegation

37. The Board will agree a scheme of delegation, to the chief executive or other staff, for day-to-day management of NLS, within a clearly understood and written framework of strategic control. Issues to be reserved for decision by the Board are likely to include issues of corporate strategy, key strategic objectives and targets (agreed with sponsoring departments as necessary) and major decisions involving the use of financial and other resources.
38. The Board may delegate to the Chairman, individual members or committees of the Board responsibility for such matters as the Board deem appropriate, for example in the form of working parties. Any decisions taken by individual members or committees of the Board under delegated powers will be recorded in written minutes available to the Board as a whole.

Strategic Planning and Control

39. One of the main tasks of the Board is oversight of the strategic aims of the organisation. The Board will approve corporate strategy and will maintain an

overview of its success in achieving the strategic objectives which are agreed. The Board will review information on the organisation's performance on a regular basis.

40. Each year, the Board will approve a corporate plan or similar document describing the key activities planned by NLS over the next year. This is the basis for agreeing with the responsible Minister, the policy and resources framework within which NLS will discharge its duties, and for determining its key strategic objectives, targets or outcomes, relating for example to financial performance, quality of services, and efficiency and effectiveness of operations.

Openness and Responsiveness

41. Board members must conduct all their dealings with the public in an open and responsible way. The Board is responsible for providing the Scottish Parliament (including its Committees) and the public with such information as may be requested concerning their policy decision and actions, including full compliance with the Freedom of Information (Scotland) Act 2002.
42. The Board will ensure that it can demonstrate that it is 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. The Board will need to act consistently with the nature of NLS business and the possible need for confidentiality on commercial or other grounds, always subject to the rights of Parliament and the Auditor General for Scotland.
43. The Board will ensure that there is a well-publicised and easy-to-use complaints procedure which covers both maladministration and failure to provide access to information.
44. Minutes of Board meetings are not published, but a summary of the business carried out at each Board meeting will be made available to the public by posting on the NLS website. The Board meetings themselves are not open to the public.

Annual Meeting

45. The Board will, in order to exercise the accountability described above, hold at least one public event each year. This will be advertised in advance and provide an opportunity for users of NLS, interested organisations, staff and the general public to ask the Board questions and to discuss the work of the Library.

Review of Board Performance

46. The Board may agree such mechanisms as they see fit for reviewing the performance of the Board on an annual or other regular basis. This may involve asking for external perspectives on the strengths and weaknesses of the Board and how it functions.

Communications

47. Board members are encouraged to develop an interest in and understanding of the work of NLS, and some structured opportunities to meet staff and to understand

their work will be provided, for example as part of the annual development/induction event.

48. Board members will need to exercise their judgement if staff raise sensitive issues with them; for example in connection with potential grievances, risks or 'whistle-blowing'. Trustees should normally seek guidance from the Chairman under these circumstances before taking any action, and ensure that they are acting in accordance with existing NLS policies for dealing with such matters.
49. Trustees are encouraged to develop contacts with the media where they further the Library's interests; however, Trustees should ensure that senior NLS marketing staff are aware of any media contacts and Trustees should follow any briefings prepared by them.

Accountability for Public Funds

50. The Board has a duty to ensure that public funds – including all forms of receipts from fees, charges and other sources – are properly safeguarded and that, at all times, NLS 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.
51. Members of the Board are responsible for ensuring that NLS does not exceed its powers or functions, including any limitations on its authority to incur expenditure. They are normally advised on these matters by the Chief Executive and the Library's legal advisers.

The Role of the Accountable Officer

52. The Chief Executive of NLS is designated as the Accountable Officer. NDPB Accountable Officers are responsible to Parliament and the Accountable Officer of the responsible Department for the resources under their control. The essence of the role is a personal responsibility for the propriety and regularity of the public finances for which they are 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 their charge. The Accountable Officer has a responsibility to see that appropriate advice is tendered to the Board on all these matters. Satisfactory performance of these responsibilities is fundamental to the role of the chief executive. Guidance on the role of an accountable officer is set out in the *Memorandum to Accountable Officers* and all Board members and the chief executive should have a copy of this document.

Annual Report and Accounts

53. As part of its responsibilities for the stewardship of public funds, the Board will ensure that a full statement of the use of such resources is included in NLS Annual Report and Accounts. Such accounts are prepared in accordance with the direction issued by the Accounts Commission and such other guidance that may be issued, from time to time, by the Scottish Government or Treasury. The Annual Accounts will be audited and, like the Annual Report, be made publicly available.

54. The Annual Report provides a full description of the Board's activities; states the extent to which key strategic objectives and agreed financial and other performance targets have been met; lists the names of the current Board members and senior staff, and provides details of any remuneration that Board members may receive. It should contain information on access to the register of interests, and 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, and state whether the report was qualified, with details if necessary.

The Board as Employer

55. The Board of Trustees is the formal employer of the Library's staff, who are not civil servants. Trustees must therefore take appropriate steps to ensure that, as a responsible employer, the Library complies with all the relevant employment legislation and that it employs suitably qualified staff who will discharge their responsibilities in accordance with the high standards expected of NLS. All staff should be familiar with the main aims and objectives of NLS.
56. The Board will ensure that arrangements for the recruitment, pay and management of all employees provide for appointment and advancement on merit on the basis of equal opportunity. It must ensure that the Staff Code of Conduct reflects public service values and that management practices use resources in the most economical and efficient manner.
57. The Board will ensure that its staff and the Board's own members have appropriate access to advice and training and development opportunities in order to enable them to exercise their responsibilities effectively.
58. The Board will, with the express agreement of the Scottish Government, appoint the chief executive and agree a process for monitoring his/her performance.
59. The Board shall, in appropriate circumstances and in accordance with the Library's employment policies, hear and determine appeals from staff arising from grievance and disciplinary proceedings. This is currently delegated to the Chairman.

The Role of the Chief Executive

The chief executive has responsibility, under the Board, for the overall organisation, management and staffing of NLS 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 'Seven Principles of Public Life'. Board members should support the chief executive in undertaking this responsibility.

Appendix 1

THE SEVEN PRINCIPLES OF PUBLIC LIFE ('the Nolan Principles')

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 organisation 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 interests.

Leadership

Holders of public office should promote and support these principles by leadership and example.

Committee on Standards in Public Life
<http://www.public-standards.gov.uk>

Appendix 2

REFERENCES

Audit Committees (principles, draft terms of reference, etc)

<http://www.scotland.gov.uk/Topics/Government/Finance/spfm/auditcommittees>

Memorandum to Accountable Officers

<http://www.scotland.gov.uk/Resource/Doc/1069/0012187.pdf>

Office of the Scottish Charity Regulator (OSCR)

<http://www.oscr.org.uk/>

'On Board' - a guide for Board members of Scottish NDPBs

<http://www.scotland.gov.uk/Publications/2006/07/11153800/0>

Scottish Government Management Statement

[to follow - currently under review]

Scottish Public Finance Manual

<http://www.scotland.gov.uk/Topics/Government/Finance/spfm/Intro>