

Questions for sports bodies

A Code for Sports Governance – Tier 3

Principle 4 – Standards and conduct

Questions for Sports Bodies: A Code for Sports Governance – Tier 3

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If you have any feedback on the content of these resources, or additional questions that you'd like to discuss, please contact the SGA: **020 7612 7029** | info@sportsgovernanceacademy.org.uk

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Questions for Sports Bodies: A Code for Sports Governance – Tier 3

Introduction

These series of questions are designed to help organisations implement the Tier 3 requirements of the Code for Sports Governance (the Code) and to prompt an assessment of governance arrangements more generally within individual sports bodies.

Each set focuses on one of the five principles around which the Code is built: Structure, People, Communication, Standards and Conduct, and Policies and Processes. They present a number of questions which sports bodies should ask themselves in order to begin an examination and appraisal of their governance structures and practices.

Publicly funded national governing bodies (NGBs) will need to comply with the individual funding agreements put in place with UK Sport and/or Sport England and these should take precedence. However, in answering honestly the questions suggested here, organisations can reflect on how they are run and identify areas for improvement.

Tier 3 represents the most stringent application of mandatory governance requirements in the Code. It encompasses those organisations in which significant investment of public money is being made. An investment will generally be categorised as Tier 3 if:

- the funding is intended to be granted over a period of years;
- the funding is granted for a continuing activity rather than a one-off project; and
- the total amount of funding is greater than £1million.

The Code advises that ‘organisations receiving funding for significant, medium to long term activity should generally expect to be in Tier 3’. However, sports bodies need not be in receipt of public funding at this level in order to consider implementing those elements of good governance practice which are proportionate to their circumstances. The Code is aspirational and organisations should not be afraid to seek to put in place improved governance arrangements where it is appropriate to do so.

The requirements of Tier 3 of the Code will represent a step up for some organisations and may involve a more thorough consideration of governance than has been undertaken previously. Asking these questions – and seeking the answers to them – will help those with governance responsibilities to determine their place on the path to improved governance. This should also initiate a more detailed examination of practices and processes and of the culture and behaviour they underpin.

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The questions suggested invite a combination of open and closed responses, but even those with ‘yes/no’ answers should invite a more critical assessment of the circumstances which have prompted the given response. Further questions relevant to the areas covered here can also be found in separate sections on each of the five principles set out in the Code.

These tools can be used alongside other material in the SGA knowledge base covering specific areas of governance. They should, of course, be read in conjunction with the Code document itself which sets out in detail the principles and outcomes which organisations may aim for in pursuit of improved governance arrangements.

In addition to the requirements of the Code, organisations also have legal obligations under company, employment and/or charity law as well as safeguarding legislation. Board members must ensure that these are satisfied, as are the requirements of respective regulators.

Principle 4 – Standards and conduct

Organisations shall uphold high standards of integrity, and engage in regular and effective evaluation to drive continuous improvement.

A Code for Sports Governance, Principle 4

The Code for Sports Governance is an aspirational document. Though compliance with the agreements put in place with UK Sport or Sport England will be a requirement for funded bodies, the Code is also intended to drive up standards of governance in the sector more generally. This may be achieved by organisations seeking to exceed minimum expectations, or by the proportionate adoption of good governance practices regardless of receipt of public money. In either case, the objective is a constant improvement in the way in which organisations are run.

Such improvement can be made to the governance framework which an organisation has in place. It can also be made in the ways in which those with oversight responsibilities work to achieve the strategic objectives. Ensuring that the sport’s leadership possess the necessary skills and experience and work together constructively and effectively will maximise the opportunities to reach the organisation’s potential and to place it on a strong, sustainable footing.

Recent high profile stories in sectors across the economy (and sport has been in no way immune) have highlighted the damage which can be done, both to victims of poor choices, actions or behaviour, and to the reputation of the organisation concerned. Such conduct also represents a risk to public investment (where relevant), to the trust

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of stakeholders more widely and to the sport's legitimacy. Seeking to embed a positive, healthy organisational culture where values are clearly stated and lived can help to protect against adverse conduct, both by individuals and by the collective. It should be seen as an essential component of the governance framework.

Development of the Board

Code Requirements 4.1–4.2

Regular and timely evaluation of performance is critical to the optimal running of an organisation. Just as most employees will undergo an annual performance appraisal, so too should boards regularly review their effectiveness and the skills and experience on which they can draw. A board evaluation assesses a board's capacity to provide good governance with a view to delivering the long-term objectives of the organisation. It is one way to provide a snapshot of the board members' individual and collective strengths, highlight areas of weakness, assess how the board functions as a unit, and identify methods for future development. Board evaluation can provide valuable feedback on performance and can help to avoid or resolve common problems such as board members who are contributing insufficiently; a lack of independence and/or diversity; multiple directorships or trusteeships; or a tendency to group think.

The Code for Sports Governance requires that an internally-facilitated board evaluation take place annually, but the exact timing will be for individual organisations to decide. Some may prefer to undertake the exercise towards the end of the financial year in order to include the results in the annual report and other documents aimed at stakeholders. Other boards may wish to use a quieter time during which they feel more able to be reflective or forward-thinking. This is a conversation which the chair, chief executive and governance professional should have as part of planning the exercise.

An internally-led board evaluation may provide benefit by being undertaken by those with a better understanding of the organisation and the way it operates, greater familiarity with the personalities on the board, and perhaps a clearer insight into the challenges facing each particular sport and the wider sector. On the other hand, an external review offers an independent and objective perspective, experience of similar exercises in organisations of comparable size or complexity, as well as providing an opportunity for board members to be more open and honest. It can be particularly useful when addressing a known problem which requires tactful, impartial handling. In performing annual internal evaluations and those undertaken externally every three or four years, organisations can feel more confident that the advantages of each are brought to bear.

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Questions to ask

General questions about the board evaluation process

- Is there agreement among the board on the usefulness of an evaluation exercise?
- How enthusiastic are board members about the process?
- Who is leading the calls for an evaluation – the chair, another board member, the council, an external body (such as a funding organisation)?
- In what ways has the chair (or senior independent director, if heading the process) demonstrated leadership in proposing the evaluation? Have they effectively communicated to the board and to the organisation more widely the benefits anticipated?
- Can board members describe why the board is being evaluated? What are the reasons behind the evaluation?
- What is hoped will be achieved in the process? Potential objectives might include:
 - a routine health check of the board’s effectiveness and the organisation’s overall governance arrangements;
 - to achieve a radical overhaul of the board’s composition;
 - to address a specific problem; and
 - to guard against complacency or inertia in the boardroom.

Internal board evaluation

- How frequently is a skills audit undertaken in order to ascertain the skills and experience at the board’s disposal?
- What does the strategic plan tell the board about the skills and experience needed for its implementation?
- Does the skills matrix indicate whether the board possesses these, and what can be done to address any gaps?
- In evaluating the board and wider governance arrangements, what use will be made of different techniques? These might include:
 - desktop research of the current governance systems and their effectiveness;
 - questionnaires – comprising both open and closed questions;
 - interviews;
 - 360° reviews; and
 - comparison against peer practices.
- In what ways is the evaluation process designed to assess:
 - overall organisational performance?
 - the governing document and how it enables the board to provide effective leadership?
 - the leadership of the board and of the organisation, including the board’s role in setting and testing strategy?

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- the mix of skills, knowledge and experience on the board and how this relates to the organisation's strategic plan and the sporting and business challenges it faces?
- diversity on the board – in the widest sense of the word, including background, perspectives, differing approaches to problem solving, etc. as well as the protected characteristics of the Equality Act 2010?
- the ways in which the board works as a unit, and the tone set by the chair and the chief executive?
- the quality of key relationships, such as:
 - chair/chief executive;
 - chair/senior independent director, where one is in place;
 - chair/company secretary;
 - between individual board members;
 - between board members and senior managers; and
 - between executive and non-executive directors?
- the effectiveness of individual directors?
- board time and agenda management?
- the quality of discussion around agenda items and of the decision-making process?
- the dynamics and personal interactions between board members?
- the support given to the board, including the quality of the governance support from the governance professional/secretariat?
- succession planning?
- the board's engagement with and responsiveness to stakeholders?

[Note: these considerations may also be applicable to externally-facilitated evaluations, depending on the agreed focus]

- How will the evaluation take into account the views of the senior leadership team, senior managers, middle management and key stakeholders?
- Is the evaluation intended to provide a picture of the board at the present time, or to provide a baseline against which future evaluations can be measured? This may determine what questions are asked and in what format.
- What is the process in place for appraising the performance of the chair?
- Do the senior independent director and the non-executive directors lead the assessment, taking into account the input of other directors?

Committees

- How recently was the committee structure last reviewed?
- With what frequency are committees evaluated? If not done so already, could this be undertaken annually?
- How do committees interact with the main board? What is the quality of this interaction?

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- Are committee meetings arranged in such a way that full papers can go to the board in a timely manner?
- Does the composition of committees enable them to effectively carry out their function and provide quality support to the board?
- How might the quality of governance and administrative support provided to committees be described?

External review

- With what frequency is an externally-facilitated evaluation undertaken?
 - Is this at least every four years?
- What issues were identified in the last evaluation?
 - What steps were taken to address these?
 - What impact did those changes have on the success of the organisation in achieving its aims?
- Have the chair, chief executive and governance professional discussed what it is hoped will be achieved in the external evaluation?
- In what ways has the chair ensured ‘buy-in’ from the board and assuaged any concerns about external assessment, demonstrating the positive advantages of the process?
- Have the skills and experience of the external evaluator(s) been assessed to determine their suitability against requirements decided by the board?
- Has the internal lead on the evaluation process agreed with the external evaluator the scope of the assessment, what it is hoped will be achieved and parameters of time and cost?
- What steps have been taken to ensure any conflicts of interest are avoided and that the evaluation is independent and objective?
- In addition to disclosing any potential conflicts to UK Sport/Sport England, where else are these communicated?
- What thought has been given to incorporating the following into the process:
 - Views from members, management staff who interact with the board, auditors and other advisors, staff, athletes and other stakeholders?
 - Examples of good practice in comparable organisations?
 - Benchmarking exercises?
- Have previous external reviews provided value for money? If not, what was felt to be lacking and what would provide better value and impact in future?

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Implementing recommendations – internal and external evaluations

- What is the process and timescale for sharing the results of the evaluation with the whole board?
- Has the process yielded a clear set of recommendations and actions?
 - Can an agreed timeframe for their implementation be designed?
- Who will take responsibility for implementing the action plan?
- How will findings be fed into board inductions, training and individual development activities?
- What is the process for drawing up and implementing such development plans?
- In what ways is the implementation monitored and assessed?
- What positive actions have been taken in response to the most recent evaluation?
 - What was their impact?
- What has the exercise revealed about the composition of the board? What can be changed to address these points?
- What mechanisms are in place to allow those who participated in the evaluation to provide feedback on the process?
- In what ways does the organisation assess the value of the evaluation process, including how recommendations were implemented and their impact?
- What information about the process and outcomes of board evaluations is shared with stakeholders?

Integrity

Code Requirements 4.4–4.5

While steps to improve governance processes are to be welcomed, there is a growing recognition that rules-based compliance cannot, on its own, deliver healthy behaviour within organisations. The efficacy of rules, procedures and processes depends in large part on the integrity of those subject to them. The actions of those within an organisation – and of the organisation itself – are determined to a significant degree by the culture of the entity, on the dynamics, attitudes and behaviour which are interwoven with the more mechanical aspects of governance.

Culture can be defined as the agreed set of customs and norms which inform and are evident in the behaviour of those who work in or belong to an organisation. It can be seen as the interaction of the organisation's overall purpose, the activities it engages in, the reasons why it undertakes those activities and the way it goes about them.

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Questions to ask

- Has the board agreed a defined set of values which underpin all that the organisation does?
- How are these shared within and outside the organisation?
- Do discussions around the organisation's culture form a regular agenda item at board meetings?
 - When was the last discussion held?
 - Can board members articulate the themes of that conversation?
- Does the organisation report specifically on cultural and ethical issues? Where can this be found?
- In what ways has the positive impact which an appropriate culture can deliver been evidenced?
- Can board members describe the organisation's overall approach to embedding and protecting the agreed culture?
 - What is it?
- Can the board and management team describe what to look for as indicators of the prevalent culture in the organisation?
- Do the board and management work in unison to ensure a coherent culture runs throughout?
 - Are each aware of their responsibilities in this regard?
- What thought has been given to whether a single culture is in place?
 - Is this appropriate to the various activities of the body?
 - Have subcultures been identified within the organisation that were not planned or intended or are not desirable?
- How frequently and in what ways do board members experience the workings and activities of the organisation at all levels?
 - In what ways could this exposure be increased?
- How would board members, senior management and employees describe the organisation – open, meritocratic, hierarchical, siloed?
- Is the organisation people-focused?
- What steps has the organisation taken to mitigate power imbalances, or the accretion of influence to an individual or group of individuals, both in sporting/coaching activities and the business environment?
- Would the current culture survive the departure or arrival of certain individuals?

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- If not, what might this say about the extent to which the purported culture is embedded?
- What might the turnover, both of staff and members of the board, indicate about the organisation as a place to work?
- What is the nature of the approaches taken to financial discipline and to risk?
 - Do these safeguard the long-term viability of the organisation?
- Is a code of conduct in place and communicated to all who work in the organisation, including staff, athletes and volunteers?
 - Is it clearly linked to the agreed ethics statement?
- Does the code of conduct cover:
 - anti-doping?
 - competition manipulation?
 - gambling?
 - other relevant threats to sporting integrity?
 - discrimination in all its forms?
- What induction, education and training programmes are in place for athletes/ participants, coaches, staff and volunteers to address these areas?
 - Are they effective in making everyone aware of the expectations of them?
- Does the organisation work closely with regulatory bodies, governing bodies/federations, law enforcement and other relevant agencies to adopt a robust approach to integrity issues?
- When behaviour runs counter to the stated culture and/or the code of conduct, what has the organisation's response been?
- Do sanctions for transgressions address issues sufficiently robustly?
- What changes have been implemented in response to breaches?
- What lessons have been learned recently which might improve behaviour and the organisational response in future?
- Does the organisation have a separate code of conduct for directors?
- Do board members behave in accordance with the agreed values of the organisation?
- Does the organisation adopt a 'speak-up' procedure in which users can have confidence?
- What issues have been revealed through this process in the past 3 years?
 - What was the organisation's response and what has changed as a result?
- How frequently are reviews undertaken of policies of the board and of committees and appropriate terms of reference?

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- What changes were made the last time a review was undertaken?
- What is the process whereby new legislation and regulation is monitored and incorporated into current policies?
- Has the board discussed what they are and are not prepared to engage in commercially, ensured that this is aligned with the stated ethical position and agreed any non-negotiables?
 - Has this been clearly communicated to stakeholders?
- What role do key performance indicators play in incentivising positive behaviour and an appropriate culture?
- In what ways are remuneration packages – particularly any performance-related pay schemes – designed to facilitate the desired culture?
- Where KPIs or remuneration packages are deemed to have played a role in producing unwanted or unintended consequences, what has been the organisation’s response?
- What support does the organisation offer for its participants and staff? This might cover:
 - positive mental health;
 - support for those affected by safeguarding issues;
 - preparation for a second career for athletes and post-career transition;
 - financial well-being; and
 - other pastoral care.

Conflicts of interest

Code Requirement 4.6

A key duty of directors is to make decisions in the best interests of the organisation. A critical part of this is to avoid situations where their direct or indirect interests conflict, potentially conflict or offer the appearance of conflicting with the interests of the organisation. Conflicts of interests and loyalty, however, are natural and to some extent may be unavoidable, particularly where board members are recruited for their experience and skills, where the organisation enters into complex commercial agreements or, for example, hosts large scale events. With that in mind, it is essential that directors are able to identify conflicts – both real and perceived – and that the organisation has in place procedures for managing them.

A conflict of interest can be defined as:

...any situation in which a trustee’s [or director’s] personal interests or responsibilities they owe to another body may, or may appear to influence the trustee’s [or director’s] decision making.

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Directors should be aware that conflicts of interest can arise not only through themselves personally, but also through persons or institutions connected to them. ‘Connected persons’ are defined in company and charity law.

Questions to ask

Conflicts of interest

- Can directors, members of the leadership team and the governance professional describe the policy for handling conflicts of interest? This might include:
 - how conflicts are identified;
 - the maintenance of a register of interests – including a record of gifts and hospitality offered, accepted and refused;
 - declaring interests relating to agenda items at the start of the board meeting and again at the appropriate time in the discussion;
 - members’ recusal from discussion and voting on proposals on which they are conflicted (or a provision to allow them to remain if their input is necessary);
 - repercussions of recusal for purposes of attaining a quorum;
 - how the management of conflicts of interest in board meetings is recorded; and
 - how (or whether) minutes, board papers and other materials relevant to proposals, appropriately redacted as necessary, are distributed to conflicted members.
- When was the conflicts of interest policy last reviewed?
- When considering a potential conflict of interest, have those concerned considered the ‘tabloid test’ – i.e. ‘how could this situation be made to look in the media?’
- Are board members required to complete a declaration of interests upon taking up a position on the board?
 - How frequently is this updated?
- What training and advice is provided to board members on the issue of conflicts of interest?
- Are the conflicts of interest policy and the directors’ code of conduct complementary?
 - Do they support the organisation’s governing document?
- Does the organisation’s whistleblowing policy allow for undeclared conflicts of interest to be raised by other members of staff or volunteers?
- On how many occasions has the governance professional or another board member raised a conflict because a conflicted individual has failed to do so?
 - What steps could be taken to ensure that such a step would in future be unnecessary?

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- Has the organisation also developed complementary policies which cover expenses, and the giving and receiving of corporate hospitality, including a register of gifts offered, received and refused and a limit to the value of gifts received?
- What monitoring processes are in place following a decision to demonstrate the absence of impropriety? These might include:
 - review and scrutiny of performance – particularly where a potential conflict was highlighted; and
 - termination of a relationship if the organisation is dissatisfied with the service.
- What is the process when the organisation is procuring goods and services?
- Are large contracts subject to a tendering process?

Conflicts of loyalty

Situations where directors have a financial or business interest may be more easily identifiable than where a conflict arises from competing loyalties. These can stem from a variety of causes, such as: family and friends; employers; favouritism; other organisations which the board member represents; professional or political organisations; or from moral or religious values.

- Are board members alert to non-pecuniary motivations which may exert pressure in relation to certain proposals?
- Are these considered alongside actual/potential financial or business conflicts?
- What is the process for handling such conflicts of loyalty?
 - Is the process as robust as that covering conflicts of interest?

Nominated directors

Some sports bodies may have board members who are nominated or elected by a particular group, for example: the professional game; county associations; the athlete body; and so on. These can be advantageous in terms of bringing particular perspectives to board discussions and can play a role in the democratic life of an organisation.

However, all directors need to be aware of their duty to promote the interests of the organisation as a whole; they are not, and should not consider themselves to be, representatives of a particular 'constituency'. There can be a temptation to promote these interests in board discussions or the nominated director may feel pressured to advance a particular point of view which may be prevalent among the group which returned him/her. This should be avoided.

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- Are all board members made aware of their statutory duties when they join the board?
- In what ways are groups who elect or nominate directors made aware of directors' legal duties in order to manage expectations with regard to the role and function of nominated directors?

Disclosure

- Are directors, members of the leadership team and the governance professional able to articulate the policy on disclosure of interests?
- Does the organisation's disclosure policy set out what information will be made available to stakeholders in terms of the interests of board members and senior staff?
- In what ways could transparency be improved while protecting the privacy of directors?
- Have different levels of disclosure been considered? For example:
 - making sections of the register of interests publicly available, but maintaining the confidentiality of other sections;
 - making sections of the register accessible to the membership, but maintaining the confidentiality of other sections; and
 - making the complete register only available to members of the board.
- Where else do board members disclose any significant commitments that might impede their ability to participate in discussions or make decisions without bias or the perception of bias?
 - This might include the annual report and the directors' biography pages on the website. Is this an ongoing process?

