

CODE OF BEST PRACTICE FOR LAW COMMISSIONERS

The Law Commission is an advisory non-departmental public body. It is independent of the Ministry of Justice and was established under the Law Commissions Act 1965. This code draws on the Treasury model 'Code of Best Practice for Board Members of Public Bodies'. It takes particular account of the recommendations in the First Report of the Committee on Standards in Public Life.

Public service values

1. The Law Commissioners are expected at all times:

to observe the highest standards of impartiality, integrity and objectivity in relation to the work of the Commission;

to be answerable to the Secretary of State for Justice and Lord Chancellor, and indirectly to Parliament, those bodies with an interest in its work, individual citizens and staff for the activities of the Commission, the proper use of public funds and the achievement of objectives.

Relationship with the Ministry of Justice

2. The Secretary of State is answerable to Parliament for the performance of all public bodies (of which the Law Commission is one) sponsored by his department, including their use of resources and the framework within which they operate.

The role of the Chairman and other Commissioners

3. Responsibilities of the Chairman include:
 - * taking the lead in formulating the Commission's strategy for discharging its statutory duties;
 - * leadership of the team of Commissioners;
 - * overseeing the delivery of planned results by receiving regular reports on progress from Commissioners;
 - * representing the views of the Commission to those outside, including the general public, and promoting the role and work of the Commission;
 - * the main channel for communications between the Commission and the Secretary of State;
 - * special responsibility for oversight of the Commission's consolidation and statute law revision work.

Responsibilities of the Chairman and other Commissioners include:

- * ensuring that the Commission operates within the limits of its statutory authority;
- * assisting in establishing the overall strategic direction of the organisation;
- * liaison with the Chief Executive (who is the budget holder) in his responsibilities for the Commission's overall organisation, management, staffing, allocation of resources and financial matters;
- * liaison with the senior lawyer (who has management responsibility) in his or her team;
- * ensuring that the Commission observes high standards of governance at all times;

- * complying with the Freedom of Information Act, including prompt response to public requests for information.
4. Normally, communications between the Commission and the Secretary of State will be through the Chairman except where the Commission has agreed that an individual Commissioner or the Chief Executive should act on its behalf. Nevertheless, an individual Commissioner has the right of access to the Secretary of State on any matter, which he or she believes raises important issues relating to his or her duties as a member of the Commission. In such cases the agreement of the rest of the Commission should normally be sought. The main point of contact between the Commission and the Ministry of Justice on day-to-day matters will normally be the Chief Executive or another member of staff who is authorised to act on behalf of the Commission.
 5. The Chairman and Chief Executive will ensure that all other Commissioners, when taking up office, are fully briefed on their duties and responsibilities. The Chairman and other Commissioners will each have a copy of this Code of Best Practice and other relevant background material such as the Commission's latest Programme of Law Reform and Annual Reports.

Strategic planning and control

6. One of the tasks of the Commissioners is oversight of the production of the equivalent of strategic plans, i.e. the Commission's Programmes. The process of preparing such a document provides an opportunity for determining the Commission's key strategic objectives. The Programmes are approved by the Secretary of State and laid before Parliament.

Delegation

7. The Commission may decide to delegate responsibility for specified matters to individual Commissioners or groups of Commissioners. Decisions taken by individual Commissioners or groups of Commissioners under delegated powers should be recorded in written minutes available to the Commission as a whole.

Responsibilities of individual Commissioners

8. Individual Commissioners should be aware of their wider responsibilities as members of the Commission. 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. The Principles are printed at **appendix 1**.

In addition, Commissioners must:

- * undertake on appointment to comply at all times with this Code of Best Practice;
 - * act in good faith and in the best interests of the Commission;
 - * not misuse information gained in the course of their appointment to the Commission for personal gain or for political purposes, nor seek to use the opportunity of the appointment to promote their private interests (see **appendix 2**); and
 - * ensure that they comply with the rules on the acceptance of gifts and hospitality (see **appendix 2**).
9. Commissioners should abstain from all controversial political activities. Commissioners should not occupy paid party political posts or hold particularly sensitive or high-profile unpaid roles in a political party.

Handling conflicts of interests

10. The Chairman and other Commissioners should declare any personal or business interests which may conflict with their responsibilities as Commissioners as they arise. Rules of conduct are drawn up and maintained to ensure that such conflicts are identified at an early stage and that appropriate action can be taken to resolve them. The current rules are at **appendix 2**.
11. The rules of conduct include the keeping of a register of interests appropriate to the Commission's activities. The register will list direct or indirect pecuniary interests which members of the public might reasonably think could influence them in the performance of their official duties. The register of interests may include also non-pecuniary interests of Commissioners which relate closely to the Commission's activities.
12. The register of interests will be made open to the public. Details of how access can be obtained are to be made available widely and will be included in the Commission's annual reports. Commissioners in any case will be required to update the register as changes occur.

Openness and responsiveness

13. Generally, it is the Commission's policy to be as open as possible with those who have a legitimate interest in the operation of the Commission and the Commissioners' role.
14. Commissioners will need to act consistently with the nature of the Commission's business. With the Chief Executive, they should ensure that the Commission 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. Subject to the possible need for confidentiality, Commissioners and the Commission's staff should conduct all their dealings with the public in an open and responsible way and ensure compliance with the principles of the Code of Practice on Access to Government Information and the Freedom of Information Act 2000.
15. Agenda and minutes of the Law Commission may be marked with a protective marking, such as "Restricted", and treated as such until and/or unless the Chief Executive directs otherwise. Other information will be released/published as detailed in the Law Commission's Publication Scheme and/or as determined by the Chief Executive. All minutes/notes of meetings, discussion papers etc., will remain confidential, until after the publication of the final report. This will allow uninhibited and candid discussion (e.g. about the formulation of policy) while projects are 'live'.

Evidence to Select Committees

16. Commissioners may on occasion be invited to give evidence to Select Committees. Departmental Select Committees have an important role in examining the expenditure, administration and policies of NDPBs. Guidance is at **appendix 3**.

Accountability

17. Commissioners are responsible for ensuring that the Commission does not exceed its powers or functions, whether defined in statute or otherwise, and must accept any limitations on the authority given to the Chief Executive to incur expenditure. Advice on these matters is provided by the Chief Executive
18. The Chief Executive has a duty to ensure the safeguarding of public funds and the proper custody of assets which have been publicly funded. The Chief Executive

should ensure that the Commission at all times conducts its operations as economically, efficiently and effectively as possible, with full regard to the relevant statutory provisions.

The role of the Chief Executive of the Commission

19. The Chief Executive has responsibility for the overall organisation, management, staffing and allocation of resources of the Commission and for the Commission's procedures in financial and other matters, including conduct and discipline of the Commission's staff. He or she is responsible for promoting the efficient and effective use of staff and other resources throughout the organisation. The Chief Executive is expected to consult Commissioners when appropriate in fulfilling these responsibilities. Commissioners are expected to support the Chief Executive in undertaking them.
20. The Chief Executive is designated by the Ministry of Justice as the budget holder for the Commission. He or she is responsible to the accounting officer of the Ministry of Justice for the resources under his or her control.
21. The Chief Executive should ensure that the Commission has timely and regular meetings throughout the year and that the minutes of meetings accurately record the decisions taken and, where appropriate, the views of individual Commissioners.

Employees

22. The Civil Service code of conduct for its staff covers arrangements enabling members of staff to raise concerns about propriety with a nominated official in the first instance and subsequently, if necessary, with a nominated official in the sponsor department (the Ministry of Justice).

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Relevant Publications

Committee on Standards in Public Life (the Nolan Committee), First Report, Cm 2850-1, 1995, available from The Stationery Office, (ISBN 0 10 128502 7)

Non-Departmental Public Bodies: A Guide for Departments, March 1992 and subsequent amendments, available from Machinery of Government and Standards Group, Cabinet Office (OPS).

The Government's Response to the First Report of the Committee on Standards in Public Life, Cm 2931, July 1995, available from The Stationery Office, (ISBN 0 10 129312 7).

"Spending Public Money: Governance and Audit Issues" Cm 3179, March 1996.

The Seven Principles of Public Life

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 organisations 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 interest.

Leadership

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

The Government endorsed the Seven Principles of Public Life in "Spending Public Money: Governance and Audit Issues ", Cm 3179, March 1996.

**RULES OF CONDUCT FOR LAW COMMISSIONERS
CONFLICTS OF INTERESTS
REGISTER OF INTERESTS**

General Principles

1. Commissioners are expected to avoid taking part in activities which might cause a conflict with their membership of the Commission. The general principle to be applied is that Commissioners must not make use of their appointment to the Commission to further their private interests, or receive gifts, hospitality or benefits of any kind from a third party which might be seen to compromise their personal judgement or integrity.
2. It is possible for a conflict of interest to arise for any Commissioner. Should such a conflict arise, the Commissioners would need to take appropriate action at an early stage to ensure that the integrity of the Commission is maintained.
3. Each Commissioner has a personal duty to ensure that his or her actions uphold the highest standards and should immediately raise any concerns of conflict either at, or preferably before, a meeting. The facts raised will be recorded in the minutes. It may mean that a Commissioner with a conflict of interest will need to withdraw from the discussion on the particular issue concerned. Interests disclosed at meetings in relation to the matters being discussed include other interests besides pecuniary interests. They also include the interests of immediate family members and persons living in the same household. The Commissioners will want to minimise the instances of conflicts arising, or appearing to arise, between Commissioners' private interests and their public duties. If instances of conflict arise, the Commissioners will ensure that the conflicting interest neither has, nor appears to have, any influence upon their decision making.

Political Activities

4. Any Commissioner who is doubtful about the propriety of any political activity, should seek guidance in the first instance from the Chief Executive.

Declaring Financial or Other Interests

5. All Commissioners are required to declare details of those financial or other interests, where those private interests relate to their duties as Law Commissioners. The register will list direct or indirect pecuniary interests which members of the public might reasonably think could influence them in the performance of their official duties. The details of financial interests will be updated each year and kept by the Chief Executive in a Register of Interests. Commissioners in any case will be required to update the register as changes occur. The categories of those financial interests to be declared include:
 - Remunerated office or profession;
 - Directorships (whether remunerated directly or indirectly).
 - Shareholdings and other financial interests should be declared if the value of the Commissioner's interest is likely to be affected by the work of the Commission or if the fact of the interest is likely to give rise to

the perception of a conflict of interests. As well as financial interests, non-pecuniary interests should be recorded in the Register where they relate closely to the Commission's activities. Some interests may become relevant only unexpectedly and, although they should be declared if relevant business arises, may be omitted from the Register.

Rules on acceptance of gifts and/or hospitality

6. Commissioners should not accept any gift/hospitality or services from anyone which would, or might appear to, place him/her under an obligation. Offers of gifts/hospitality or services, save those which are excepted such as conventional hospitality, isolated gifts of a trivial character or inexpensive seasonal gifts, such as calendars, should be reported to the Deputy Chief Executive and recorded in a hospitality register maintained by the Deputy Chief Executive. The Register will be open for public inspection upon request.

Application of Rules of Conduct

7. Any Commissioner who is doubtful about the application of these rules should seek guidance from the Chief Executive.

Revision of Rules of Conduct

8. The Chief Executive, in consultation with the Commissioners and the Ministry of Justice, shall consider whether any amendment is required to the terms of these Rules on an annual basis.

EVIDENCE TO SELECT COMMITTEES

1. Departmental Select Committees have an important role in examining the expenditure, administration and policies of NDPBs. The Government fully supports this role. Lords Committees and other Committees may also seek evidence from NDPBs from time to time.
2. Commissioners may, on occasion, be invited to give evidence to Select Committees. When they do so, they should be as helpful as possible in providing accurate, truthful and full information refusing to provide information only when disclosure would not be in the public interest. This should be decided in accordance with the relevant statutes and the Government's Code of Practice on Access to Government Information (which will be superseded by Freedom of Information legislation from January 2005). Commissioners should bear in mind in this context the need to respect legitimate confidences.
3. Before giving evidence, Commissioners may find it helpful to see *Departmental Evidence and Response to Select Committees* (also known as the *Osmotherly Rules*). This gives general advice on dealing with Select Committees including their powers to summon witnesses and papers and responses to Select Committee reports. Copies are available from the Propriety and Ethics team in the Cabinet Office on 020-7276- 2474 or it can be accessed at [www.cabinetoffice.gov.uk/propriety and ethics/civil service/select committees.aspx](http://www.cabinetoffice.gov.uk/propriety_and_ethics/civil_service/select_committees.aspx).
4. Similarly, the Chief Executive of an NDPB may be called, as an Accounting Officer, to give evidence to the Public Accounts Committee (PAC). Guidance on giving evidence to the PAC is set out in the *Accounting Officer Memorandum* which can be obtained from the Treasury Officer of Accounts.
5. Commissioners wishing to give evidence should, as a matter of courtesy, advise the Chairman, Chief Executive, other Commissioners and the sponsoring department (Ministry of Justice) of their intention. They should discuss with them the handling of any oral or written evidence they want to submit and whether they expect to be giving evidence on behalf of the NDPB or in a personal capacity. The Select Committee should be advised of the status of the witness.
6. Subject only to a Committee's power to decide to require the attendance of a witness, the decision on whether to give evidence is solely for the individual concerned. There must be no pressure placed on individuals to deter them, or action taken against them as a consequence of giving evidence to a Select Committee. Any such actions might be regarded as a contempt of the House, with potentially serious consequences for those involved.