

A voluntary code of conduct for directors

A proposal for the UK government



Key points

- 1 In the wake of the recent corporate scandals at Carillion, P&O Ferries, BHS and other significant enterprises, there is an understandable demand for business to be held more accountable to wider society.
- 2 There is a risk that each new corporate scandal or collapse will renew pressure on government to impose prescriptive regulatory obligations relating to directorship.
- 3 However, a heavily regulated regime for directors runs the risk of inducing a counterproductive focus on compliance which detracts from the capacity of boards to be strategic and innovative.
- 4 This paper proposes an alternative, more flexible approach which emphasises individual responsibility and the importance of a business-led solution.
- 5 We call on the UK Government to commission a high-level working group which would draft a voluntary code of conduct for directors. All UK directors would be encouraged to become signatories to the Code, and voluntarily commit themselves to its principles.
- 6 The code and its accountability mechanisms would be operated by the business community rather than by Government or a regulatory body.
- 7 As the UK's leading professional organisation for directors, the IoD would be willing to coordinate this process whilst also drawing on the input and involvement of a wide range of stakeholders.

The case for a voluntary code of conduct for directors

Directorship is one of the most important leadership roles in society. Organisations in the private, public and not-for-profit sectors rely on directors and their equivalents to make crucial decisions in respect of their welfare and prosperity. Directors have ultimate legal responsibility for corporate entities, and play a crucial role in shaping organisational behaviour and culture.

Despite their extensive responsibilities, it is perhaps surprising that directors do not have a formal code of conduct that guides their behaviour as a professional group. Such a conduct framework is common in other professions, e.g. accountancy, medicine, and the Law. However, UK directors' behaviour is primarily governed through the general legal duties defined in the Companies Act 2006 and various other regulatory requirements.

Recent corporate scandals and collapses – including those at Carillion, BHS, Patisserie Valerie and P&O Ferries – suggest that business conduct does not always fulfil the expectations of wider society. However, many in the business community doubt that the solution is an ever-increasing burden of regulatory liability placed on directors and the business entities that they serve.

Although proportionate and well-designed regulation is a necessary component of a properly functioning business system, it can easily become a drag on growth and competitiveness. The experience of directors in the UK, the United States and elsewhere suggests that a heavily regulated regime can induce board members to focus on legal compliance as an end in itself. Such a regime may also trigger a reluctance amongst many talented directors to serve on boards in the first place – or to move to jurisdictions where the regulatory burden is lighter.

A wide range of professional groupings and organisations view a code of conduct as an essential means by which to promote positive behavioural outcomes. A code of conduct (or code of practice or code of ethics, terms which are often used interchangeably) is a key statement aimed at shaping high standards of behaviour. It is normally structured as a series of principles which practitioners agree to commit themselves to. Practitioners also agree to accept explicit accountability procedures relating to the achievement or otherwise of the defined standards of conduct.

One of the consequences of the Sarbanes-Oxley Act 2002 was to require many US corporations to adopt and disclose a code of business conduct and ethics for directors, officers and employees. Each reporting company may determine the content of its own code. However, certain topics must be addressed, including policies relating to conflicts of interest, corporate opportunities, confidentiality, fair dealing, protection and proper use of company assets, compliance with laws, rules and regulations, and encouraging the reporting of any illegal or unethical behaviour.

In the UK, codes for accountants, governance professionals, and HR professionals have been produced by a chartered professional membership body, whereas the code for solicitors is applied by a regulatory body. For accountants and solicitors, adherence to the relevant code of conduct or ethics is an obligatory feature of their professional life. A potential sanction is the removal of the legal right to practice in the associated profession. For governance professionals and HR professionals, non-adherence can lead to the revocation of membership of a particular professional association – although this does not necessarily imply that an individual is legally prohibited from working as a governance or HR professional.

Table 1: Principles highlighted in codes of professional conduct

	ICAEW ¹	SRA ²	CGIUKI ³	CIPD ⁴
Integrity	✓	✓	✓	✓
Objectivity/independence	✓	✓		
Professional competence	✓	✓	✓	✓
Confidentiality	✓	✓		
Professional behaviour	✓	✓	✓	✓
Uphold the rule of Law		✓		
Act in client's interests		✓		
Maintain trust in the profession		✓		✓
Encourage equality of opportunity & diversity		✓		
Protect client money and assets		✓		
Transparency				
Stewardship				✓

1 Institute of Chartered Accountants in England and Wales (ICAEW)

2 Solicitors Regulation Authority (SRA)

3 Chartered Governance Institute UK & Ireland (CGIUKI)

4 Chartered Institute of Personnel and Development (CIPD)



Board members serve as role models in their respective organisations and beyond. The behaviour of directors is just as important for society as the behaviour of doctors, lawyers, accountants and other professionals. Hence, we believe that an important missing element in our business framework is a code of conduct for directors, which could play a significant role in building trust and respect in the UK business community. The idea of a code of conduct for the director community is strongly supported by the IoD's members. In a members' survey conducted in May 2022, 78% of respondents agreed that directors should be subject to a code of conduct - either on a mandatory or voluntary basis¹.

Codes of conduct for directors already exist in certain jurisdictions, e.g. Hong Kong, Singapore and South Africa, where they have been published by national directors' associations. In the UK, the IoD pioneered the first Code of Professional Conduct for Directors in 1998². For a number of years, it was applicable to IoD members as a condition of membership. According to the preamble to the edition of the Code published in 2003, "this Code has been written in order to help directors simultaneously meet high standards of professionalism and ethics". However, during the 2000s, the IoD's Code of Professional Conduct for directors was absorbed into the Chartered Director framework, and currently only applies to holders of the Chartered Director Qualification – the IoD's 'gold standard' professional qualification for directors.

¹ Policy Voice survey, 13-27 May 2022.

² The following article reporting this development was reported in The Independent, 14 June 1998.

<https://www.independent.co.uk/news/bosses-must-sign-tough-ethics-code-to-become-iod-members-1164824.html>

The IoD believes that now is the time to re-fashion a 21st century code of conduct for directors, which applies to all UK directors. Such a code will incorporate modern thinking relating to issues such as climate change, diversity and business purpose as well as more traditional expectations around competence, lawfulness, independence and confidentiality.

It is important to note that a code of conduct for directors is something distinct from a corporate governance code (such as the UK Corporate Governance Code) or the general legal duties of directors under the Companies Act 2006. A governance code describes best practices relating to the structure, composition, activities and functioning of the board of directors as a whole. In addition, governance codes typically only apply to large, listed companies, and are not primarily focused on articulating high-level principles of individual conduct and behaviour which individual directors should embody in their conduct as business leaders. Directors' general legal duties under the Companies Act are baseline fiduciary responsibilities that directors owe to their respective organisations, and do not speak to the specifics of director behaviour. A code of conduct would, therefore, be complementary to the existing governance code framework and directors' fiduciary requirements.



Code of conduct for directors

Next steps

The IoD's vision is for board members from all UK entities to sign-up to a code of conduct on a voluntary basis. By committing themselves to the code, directors would signal their willingness to apply high ethical and behavioural standards in their governance and leadership activities. They would also agree to submit themselves to any accountability processes associated with the code. The code itself would be owned by the business community. However, the Government, regulators, institutional investors and other key stakeholders would be encouraged to endorse the code, and advocate (but not oblige) the participation of UK directors.

Our initial thinking is that all signatories to the code could appear on a publicly viewable register. In addition, signatories could be encouraged to disclose their commitment to the code in the annual report of their entities (e.g. through an appropriate kitemark). A whistleblowing process could be established to allow the reporting of poor conduct. An appropriate investigations and sanctions process would also need to be defined.

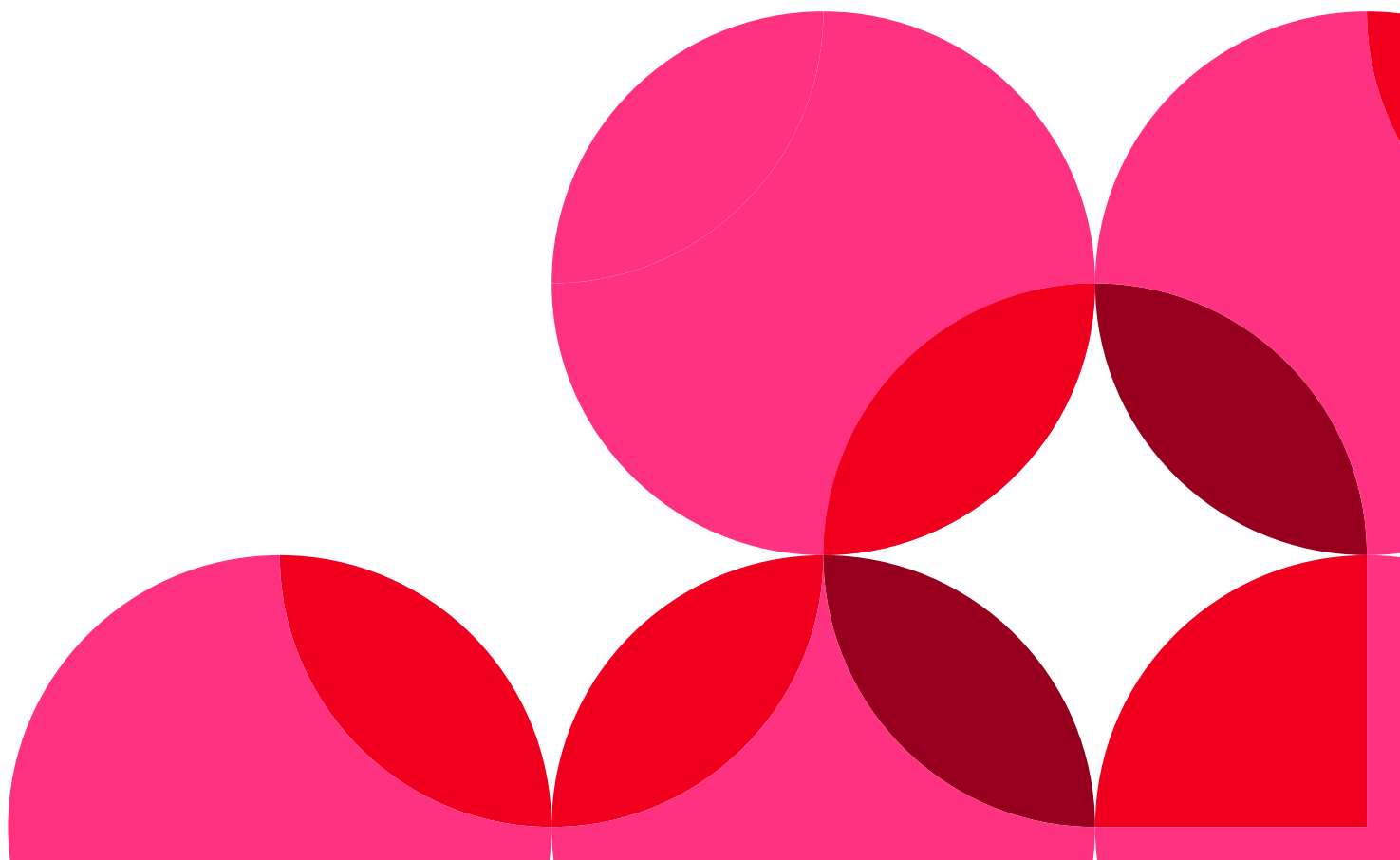


The IoD believes that the next step is for the UK Government to commission a high-level working group consisting of leading directors, governance experts and representatives from relevant stakeholder groups, such as institutional investors, regulators and academics. The task of this group would be to draft a code of conduct for directors and define any associated accountability mechanisms.

As the UK's leading professional organisation for directors, the IoD would be willing to coordinate this process whilst also drawing on the input and involvement of a wide range of interested parties. The initial draft could be further scrutinised and enhanced through a public consultation before being endorsed by the Government. The Government would then encourage directors across the UK economy to voluntarily submit themselves to the code, and become signatories.

Such an initiative would enable the Government to demonstrate its commitment to meaningful governance reform. At the same time, it would encourage business itself to take the lead in addressing societal concerns relating to business leadership and accountability. Overall, it would demonstrate that the UK is continuing to lead the world in the development of responsible business leadership – which represents a key source of competitive advantage for the UK economy.

A starting point for what might be included in a code of conduct for directors is included in the appendix, below. The text has been adapted from the existing Chartered Director Code of Professional Conduct and the codes of various international directors' associations. However, it must be stressed that this is only intended to provide a flavour of how the code might be formulated. Obtaining input from a wide range of stakeholders will be essential for the code's legitimacy.



Appendix: A draft code of conduct for directors

Article 1: Directorship

As a director, I agree to:

Understand my legal duties as a director.

Assume individual and collective responsibility for my organisation.

Apply commercial judgement in my organisation's interest.

Ensure that my organisation complies with the law.

Maintain the financial viability of my organisation and, if that is no longer possible, take appropriate action to protect the interests of creditors.

Devote sufficient time and attention to my role.

Acquire first-hand knowledge of my organisation, its operations and its key people.

Attend as many board meetings as possible and participate fully in deliberations.

Avoid over-extending myself by accepting too many directorships or other business obligations.

Article 2: Integrity

As a director, I agree to:

Act honestly, in good faith and in the best interest of my organisation.

Place the interests of the organisation above my personal interests.

Be open and transparent to the rest of the board in respect of my personal interests and activities.

Exercise independent judgment.

Take reasonable steps to be satisfied as to the soundness of all board decisions.

Avoid conflicts of interest wherever possible and, if this is not possible, make full and prior disclosure of any conflict, or potential conflict, to the rest of the board.

Express disagreement on matters of concern with other board members, including the chair, chief executive or managing director.

Recognise that resignation or dismissal from the board may sometimes be the ultimate consequence of sustained disagreement on a matter of conscience or judgement.

Adhere to collective responsibility for agreed board decisions as a loyal member of the board.

Article 3: Responsible Business

As a director, I agree to:

Ensure that my organisation behaves in a socially responsible manner.

Evaluate board decisions in a broad social context and be conscious of the impact on society and the environment.

Encourage the board to define a business purpose which articulates why my organisation exists and the problems it is seeking to solve.

Gain a clear understanding of my organisation's approach to climate change and environmental impact.

Insist that my organisation reduces its carbon footprint over a reasonable timeframe.

Ensure that suppliers are paid in a timely manner, particularly SMEs, and advocate becoming a signatory to the Prompt Payment Code.

Exercise due diligence over working conditions in my organisation's supply chain, and strive to eliminate labour exploitation or modern slavery practices.

Insist on a zero-tolerance approach to bribery in my organisation and in its business partners and intermediaries.

Article 4: Inclusion and diversity

As a director, I agree to:

Promote an inclusive approach to board composition and business practice.

Advocate the benefits of inclusion and diversity in enhancing decision making, attracting talented employees and building societal trust.

Avoid serving on boards that do not value an inclusive business approach.

Article 5: Shareholders

As a director, I agree to:

Understand the expectations of shareholders and endeavour to take account of them when making decisions.

Engage with shareholders on the general strategies being adopted for my organisation and on other matters of importance.

Ensure that all shareholders or classes of shareholders are treated fairly.

Avoid prioritising the short-term financial interests of shareholders over the interests of other stakeholders.

Article 6: Stakeholders

As a director, I agree to:

Pay regard to the interests of all stakeholders with a legitimate interest in the success of the organisation.

Build the goodwill and commitment of stakeholders towards my organisation.

Help develop strong lines of communication and mutual understanding with relevant stakeholders.

Article 7: Confidentiality

As a director, I agree to:

Not disclose confidential information received in my role as a director, unless that disclosure has been authorised by the board or is required by law.

Not make improper use of information acquired by virtue of my role as a director.

Article 8: Continuing Professional Development

As a director, I agree to:

Strive to improve my competence as a director.

Build my knowledge and skills as a director through continuing professional education.

Consider qualifying as a Chartered Director or undergoing an appropriate certification programme in company direction.

Article 9: Personal Conduct

As a director, I agree to:

Exhibit high standards of personal conduct, both inside and outside of the boardroom.

Take into account the impact of my behaviour on employees and other stakeholders.

Avoid behaviour which might affect the reputation of my organisation, or which contradicts its values.

Treat others with respect, dignity and consideration, including colleagues, employees and other stakeholders.

The Institute of Directors is a non-party political organisation, founded in 1903, with approximately 20,000 members. Membership includes directors from right across the business spectrum – from media to manufacturing, professional services to the public and voluntary sectors. Members include CEOs of large corporations as well as entrepreneurial directors of start-up companies.

The IoD was granted a Royal Charter in 1906, instructing it to “represent the interests of members and of the business community to government and in the public arena, and to encourage and foster a climate favourable to entrepreneurial activity and wealth creation.”

The Charter also tasks the Institute with promoting “for the public benefit high levels of skill, knowledge, professional competence and integrity on the part of directors”, which the IoD seeks to achieve through its training courses and publications on corporate governance.

iod.com



About the author

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Dr. Roger Barker is Director of Policy and Corporate Governance at the Institute of Directors (since September 2020) and a member of the IoD Management Team. He is also Honorary Associate at the Centre for Ethics and Law at University College London, and a regular speaker on corporate governance issues at a variety of leading universities and business schools.

Dr. Barker is the author of numerous books and articles on corporate governance and board effectiveness, including a new co-edited volume: ‘The Law and Governance of Decentralised Business Models: Between Hierarchies and Markets’ (Routledge, 2020). Previous books include: ‘Corporate Governance and Investment Management: The Promises and Limitations of the New Financial Economy’ (Edward Elgar, 2017), ‘The Effective Board: Building Individual and Board Success’ (Kogan Page, 2010), and ‘Corporate Governance, Competition, and Political Parties: Explaining Corporate Governance Change in Europe’ (Oxford University Press, 2010).

A former investment banker, Dr. Barker spent almost 15 years in a variety of equity research and senior management roles at UBS and Bank Vontobel, both in the UK and Switzerland. He has a doctorate from Oxford University and taught Politics at Merton College, Oxford (2005-2008). Until January 2020, he served as a UK Member of the European Economic and Social Committee in Brussels.

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