

Questions for sports bodies

A Code for Sports Governance – Tier 3

Principle 1 – Structure

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 1 – Structure

Organisations shall have a clear and appropriate governance structure, led by a Board which is collectively responsible for the long-term success of the organisation and exclusively vested with the power to lead it. The Board shall be properly constituted, and shall operate effectively.

A Code for Sports Governance, Principle 1

A sound structural framework lays the foundation for sustainable governance. Responsibility for decision making and strategic planning are key duties of the board, and the governance architecture of the organisation should be clearly established, identifying where authority and competence reside and setting terms of reference and channels of accountability for delegated matters. Appropriate structures will vary in detail between organisations, but many of the core practice recommendations will apply across a range of bodies.

Regardless of the structure adopted, the authority – and legal responsibility – for leading the organisation lies with the board. It is the board which directs the organisation and which determines what authority it delegates and to whom, based on the provisions set out in the governing document and applicable legislation.

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Boards

Code Requirements 1.1–1.2

Members of the board – be they termed directors, trustees or members of the management committee – are collectively responsible for the long-term success of the organisation.

Under company and charity law, board members are accountable for the performance of the organisation and are collectively responsible for decisions made and actions taken. Together they can be jointly and severally liable, depending on the exact legal structure of the organisation. Companies with limited liability offer some protection to the board, but legal duties must be adhered to.

In 1992, the Cadbury Committee stated that the board of directors is responsible for the governance of an organisation and outlined its key functions as including: setting the aims of the entity; providing the leadership to put them into effect; supervising the management of the organisation; and reporting to stakeholders on their stewardship.

As such, the board must be the ultimate decision-making body within an organisation and must be responsible for setting the strategic direction and for the oversight of its implementation.

The King IV report, published in 2016, charges board members with additional responsibilities, recommending that they ‘act ethically beyond mere compliance’ and ‘should set the tone for an ethical organisational culture’. The board should ensure that the organisation ‘is and is seen to be a responsible corporate citizen’.

Questions to ask

General

- Is the board the ultimate decision-making body of the organisation?
- Are all members of the board familiar with the legal form which the organisation takes?
- In what ways does the organisation ensure that board members are fully conversant with their legal and regulatory obligations as directors or trustees?
- Is the legal duty to act in the best interests of the organisation made clear to and adhered to by all board members?

Role of the board

- Do board members have a clear understanding of the role of the board?
- Is there a clear distinction between the board’s role and that of the council, if one is in place?

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- Does the governing document clearly set out the structure, powers and decision-making processes of the board? Does it clearly establish procedures for the appointment and removal of board members?
- Are the roles and responsibilities of board members clearly defined and communicated in role descriptions for all positions?

Delegation and matters reserved for the board

- Is a clear division established and maintained between the board's strategic and oversight role and the executive's operational role?
 - Is this agreed and explicitly set out in the governing document, or other document?
 - Where board members also carry out operational duties, do they remain aware of the duality of their roles and, when acting as board members, ensure that their governance responsibilities take precedence over their management duties? How is this monitored and managed?
- Has the board identified documents and matters which are required to be executed by it and which cannot therefore be delegated (matters reserved for the board)? Are these set out formally in a document?
- Matters reserved for the board will include (these are examples only):
 - approval of strategic aims and objectives
 - approval of annual operating and capital expenditure budgets
 - approval of the annual report and accounts and half-yearly or interim reports/statements
 - agreeing the stakeholder engagement strategy
 - changes to management and control structures
 - major capital projects or extension of activities into new business or geographic areas
 - changes to the structure, size and composition of the board
- Has the board established a formal, written scheme of delegation outlining the authorities and responsibilities of the management team, committees of the board or individual persons, as appropriate?
- Has the board agreed thresholds – financial, strategic or otherwise – above which decisions or authorisations must be referred to the board?
- How frequently are matters reserved and schemes of delegation reviewed and amended?
- Are board members aware that they collectively retain responsibility for delegated matters? How is this awareness ensured?

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Strategy and oversight

- In fulfilling its strategic and oversight responsibilities, does the board, in liaison with management, draw up and agree a long-term (3–5 year) strategy for the organisation from which is extracted an annual operational plan detailing how policies are implemented in order to achieve strategic goals?
- How are key performance indicators (KPIs) agreed and monitored?
- What is the board’s response to those KPIs that aren’t being met or which have produced unintended consequences?
- What contact do board members have with members of the executive outside of formal channels? In what ways is such contact monitored by the chair in accordance with the organisation’s code of conduct and conflicts of interest policies?

Councils

Code Requirements 1.3–1.7

Councils can perform important democratic and consultative functions, representing the interests and views of an organisation’s membership, where applicable.

A council is defined in the Code as:

a body forming part of the constitutional or organisational structure of a sport’s national governing body, representing some or all of its stakeholders in some capacity, and having powers or rights with respect to its governance, but which is not the board of the NGB (or a committee of the board) or the shareholders in general meeting.

Any body which performs this function, regardless of the name used, will be treated as a council under the Code. Not all NGBs or other organisation will operate with a council. However, where one does form part of the organisational structure, the board should consider the following.

Questions to ask

Role and functions

- What is the role and what are the responsibilities of the council? Are its functions and powers detailed in the governing document or other documents?
- The Code lists several possible functions a council might serve as part of its democratic and deliberative roles. Does the council:
 - Act as an ambassador to disseminate the organisation’s strategic vision, helping to ensure that all stakeholders understand and support a shared vision for the development of the sport and of their respective organisation?

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- Have a right to an audience with the chair of the board?
 - Have a right to an audience with the board as a whole?
 - Have the power to call meetings of the members?
 - Have the power to put resolutions at a members' meeting?
 - Have the right to be consulted on the development of the organisation's strategy and any major strategic decisions which affect the sport?
 - Have the power of veto on decisions taken?
 - Provide a forum for debate among stakeholders?
 - Act as a sounding board for the board and provide advisory opinions as and when appropriate?
 - Provide a pool of candidates to fill certain positions?
- Are there written role descriptions for council members alongside codes of conduct or other documents covering conduct, probity and confidentiality? How are council members appointed and removed? Is there a right of appeal?
 - While not able to override the board in decision making, does the council act as a conduit for its constituencies, performing a consultative role and offering constructive challenge to the board?
 - In what ways has the council challenged the board in its decisions and actions?
 - What were the key themes of that challenge and what has the board done as a result?
 - What is the board's agreed approach to dealing with and communicating with the council and other stakeholders?
 - Is that strategy reviewed and revised regularly?
 - In what way does the board demonstrate that it has taken into account the feedback of all stakeholders, including the council?
 - Note that the board must retain ultimate control over decisions made.
 - Does the council undergo regular evaluation in order to assess, amongst other things, its role, effectiveness and representation of the wider stakeholder landscape?
 - How frequently is a review undertaken?
 - Who performs this review?
 - Are the results of the review or actions arising from the findings published? Would this improve accountability?
 - Is a code of conduct in place for council members?
 - What is the organisation's policy for raising and proactively managing conflicts of interest of council members, including potential and perceived conflicts?

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Composition

- If the council appoints directors to the board:
 - How many are appointed in this way?
 - Do these constitute not more than one-third of the total?
- When considering the composition of the board, are nominated directors deemed not to be independent? Do they hold non-executive positions only?
- How does the council balance the need for corporate memory and fresh thinking and experiences?
- Are council members subject to maximum term limits? Recommended tenures are two terms of four years or three terms of three years, but shorter terms may be adopted to reflect the needs and circumstances of the organisation (to a maximum of eight or nine years).
- What actions have been taken to ensure that the council membership reflects the diversity, in all its forms, of the stakeholders it represents and the wider community?
- What effect have these actions had?

Communication

- Which of the following are made available and how?
 - Agenda and minutes of council meetings
 - Council members' code of conduct
 - Conflicts of interest for council members
 - Outcome of evaluations of the council and steps taken in response
- Are there further steps which could be taken to improve the transparency and accountability of council business?

Board size and composition

Code Requirements 1.8–1.12

A board whose members are able to make a positive contribution is a key element of effective governance.

Strong decision making and opportunities for long-term success can be maximised by ensuring that the appropriate range and balance of skills, experience, knowledge and independence are present in the boardroom. Diversity in the widest sense creates a breadth of perspective on the board and facilitates challenge and fresh thinking. A board needs to strike the right balance between making all these attributes available and ensuring that it remains manageable and flexible as a discussion and decision-making body.

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Questions to ask

Size

- What are the minimum and maximum number of board members permitted in the governing document?
- Does the size of the board fall within the maximum of 12 specified in the Code?

Skills, performance and representation

- Does the size and composition of the board meet the organisation's needs by providing a breadth of skills, knowledge, experience, independence and diversity?
- Is board composition and performance monitored to ensure that it remains appropriate to the circumstances of the organisation?
- Have there been difficulties performing the duties owed to the organisation as a result of the size or composition of the board (including disruption caused by changes to board membership)?
 - What were these difficulties?
 - What steps have been taken to avoid them in future?
- Has the organisation had difficulty recruiting people from specific groups?
 - What are the reasons for this and what measures have been taken to remedy the situation?
- How frequently does the organisation review its processes for board member recruitment?
- How recently was an evaluation of the board undertaken?
 - What were the findings and what actions were taken to address them?
 - Were those findings and actions communicated to stakeholders?
 - When will the next evaluation take place?
- When did the organisation last commission an externally-conducted evaluation of the board?
- Is an up-to-date skills matrix maintained with which to inform board recruitment, training and development? Is this assessed annually?
- Are appointments to the board based primarily on skills considerations, aligning board member capabilities with the strategic plan?
- Is there a clear, transparent, evidence-based approach to recruitment that details person specification and other criteria?
- Are existing board members provided with the opportunity to refresh and develop their knowledge and skills?
- In line with the recommendation of the UK Corporate Governance Code, does the board ensure that 'directors, especially non-executive directors, have access to independent

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- professional advice at the company's expense where they judge it necessary to discharge their responsibilities as directors'?
- Where management personnel are appointed to the board, are these in an ex officio capacity only?
- Is the use of ex officio positions regularly reviewed (against the skills and knowledge required by the board)?
- How is the wider stakeholder landscape incorporated into considerations concerning the composition of the board?

Term limits

Code Requirements 1.13–1.15

Setting term limits for board members can help to prevent stagnation and power concentrations in the leadership.

Periodic injection of new personalities, experience and skills can bring fresh thinking, new perspectives and problem solving to an organisation. Used in conjunction with board evaluations and skills matrices, term limits can assist a board in matching an appropriate mix of attributes to the organisation's needs and strategic development.

Questions to ask

- Is the governing document clear as to tenure, resignation and removal processes for board members?
- Are board members subject to term limits as specified in the Code?
- If a board member is seeking a longer term on the board, is this:
 - Subject to a clear rationale and under exceptional circumstances such as those referred to in the Code (to become chair, upon taking up a senior post in an international federation, to aid succession planning, etc.)?
 - Sought in consultation with UK Sport or Sport England, as appropriate?
- Are board members' terms staggered to allow continuity alongside changes in board composition?
- Some organisations rotate resignations to ensure a third are up for re-appointment each year. Has such an approach been adopted to ensure manageable renewal of board membership?
- Once the maximum term has been reached, is a minimum of four years enforced before the board member may sit on the board of the organisation again?
- What plans are in place to ensure there is a ready supply of talent willing to apply for board positions?

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The Chair

Code Requirements 1.16–1.18

The role of the chair in overseeing an effective board cannot be overstated. The chair creates the conditions for the overall board and the individual effectiveness of its members. The chair will set the style and tone of board meetings and ensure that they run efficiently and effectively. He or she will also set clear expectations concerning the organisation's culture, values and behaviour and will lead by example through their own conduct, integrity and probity.

Questions to ask

Role of the chair

- Are the roles of chair and CEO performed by different individuals and is this division established in writing and agreed by the board?
- Is the division monitored and reviewed regularly?
- Is there an agreed written document about leadership of the organisation and leadership of the board?
- Is there clarity of understanding about the roles of the chair, the rest of the board and senior managers?
- Does the board and management know who is responsible for what in times of crisis or media attention?
- How is the chair appointed?
- How well does the chair:
 - Demonstrate ethical leadership and uphold the values of the organisation, ensuring the promotion of equality and diversity for all its stakeholders?
 - Provide clarity of vision to the board in achieving its stated goals?
 - Set a board agenda which is focused on fulfilling sporting objectives, strategic planning, performance management and accountability?
 - Ensure the timely flow of high quality, relevant and accurate information?
 - Handle the proceedings of board meetings so that adequate time is allocated to the discussion of issues – particularly important or strategic issues?
 - Manage conflicts of interest in line with the stated policy?
 - Ensure that board decisions are implemented and that the executive and senior leadership or management teams are held to account?
 - Ensure that the board has effective decision-making processes in place and provides sufficient and robust scrutiny of proposals?
 - Foster a board culture so that all board members contribute to debate and constructively challenge prevailing thinking and accepted positions?
 - Regularly consider succession planning and the composition of the board, taking into account and acting upon evaluations of the board and of individual board members?

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- Build and maintain close relations and effective communications between the organisation’s various constituencies and stakeholders?
- Represent the organisation at functions, meetings and in the wider media, in line with the agreed strategy?

Evaluation

- Is the performance of the chair evaluated at least every three years in a process led by the senior independent director (SID)?
- What were the outcomes of previous evaluations?
- What has changed as a result?

Key relationships

- What is the relationship between the chair and chief executive?
- Is it professional and respectful yet constructively challenging, or is the relationship too cosy or unproductive?
- What is the power balance between the chair/chief executive and the rest of the board?

Independent non-executive directors

Code Requirements 1.19–1.20

Having independent directors on the board brings invaluable objectivity to discussion and decision making. The Code offers a definition of ‘independent’ in its Appendix:

a person is independent if they are free from any close connection to the organisation and if, from the perspective of an objective outsider, they would be viewed as independent.

A person may still be deemed to be ‘independent’ even if they are a member of the organisation and/or play the sport.

In addition, the UK Corporate Governance Code provides further examples of circumstances which might be deemed to impinge on independence and requires the board to state in its annual report which non-executive directors it considers to be independent.

Questions to ask

- What proportion of the board is comprised of independent NEDs?
- Does this meet the Code minimum requirement of 25%?
- Has consideration been given to raising this number further?

Independence

- Has the independence of the organisation’s NEDs been assessed against the criteria set out in the UK Corporate Governance Code? Relevant considerations include:

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- Has the board member been an employee of the organisation within the last five years?
 - Does the board member have – or have they had in the last three years – a material business relationship with the organisation? This encompasses direct relationships and as partner, shareholder, director or senior employee of a body that has such a relationship with the organisation.
 - Does the board member receive – or have they received – additional remuneration from the organisation apart from a director’s fee? This includes share options, performance-related fees or being part of the pension scheme.
 - Does the board member have close family ties with any of the organisation’s advisers, directors or senior employees?
 - Does the board member hold cross-directorships or have significant links with other directors through involvement in other organisations?
 - Is the board member a significant shareholder?
 - Has the board member served on the board for more than nine years since the date of their first election?
- Does the governing document specify a required number of independent NEDs to be included within a quorum for decision making?

Senior independent directors

- Has an independent NED been appointed by the board as the SID?
- Does the SID:
 - Provide support for, and act as a sounding board for, the chair?
 - Act as an effective and trusted intermediary for other NEDs?
 - Where relevant, act as a conduit for stakeholders where other established channels have not led to successful outcomes or where such channels would not be appropriate?
 - Lead the evaluation of the chair’s performance?

Board conduct

Code Requirement 1.21

A successful board is not necessarily a comfortable place. Challenge as well as teamwork is essential and should be welcomed and encouraged by board members and senior management.

The chair will play a crucial role in the handling of meetings. However, individual board members have a responsibility both to contribute fully to discussions and, by their conduct, to ensure that their colleagues participate and that meetings proceed efficiently and

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effectively. Agreeing a meeting protocol may be one way of establishing the culture and mutual respect required to achieve successful meetings and ongoing board dynamics.

Questions to ask

- Do board members have a clear understanding of the board's role and what is expected of them at each meeting?
- Do board members effectively deploy their knowledge, skills and experience in order to further discussion and arrive at well-reasoned decisions?
- Do board discussions take place in an environment where challenge and debate is welcomed and encouraged?
- Is this challenge offered in a constructive and well-intentioned manner, designed to question assumptions and established orthodoxy?
- Does the organisation provide board members with an expectation of conduct in the board room? This may be in the form of a written code of conduct, meeting etiquette policy or be part of an induction process.
- What is the nature of the relationships in the governance structure between:
 - The chair and the chief executive?
 - The chair, chief executive and the governance professional?
 - The chief executive and the board as a whole?
 - Individual board members?
 - Board members and senior managers?

Board meetings

Code Requirement 1.22

Board meetings are the central mechanism by which proposals are discussed and decisions made.

As such, it is crucial that they are effective and timely in order to ensure that the organisation is governed in a manner which inspires confidence and provides assurance to staff, members, athletes, volunteers, supporters and other stakeholders. The chair, along with the board members, governance professional and chief executive, will determine how often the board meets and the agenda for meetings. Both of these factors will be in part determined by the business to be conducted and key dates within the corporate calendar, such as the submission of formal reporting documents and other legal and regulatory requirements.

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Questions to ask

Meeting cycle

- Does the board meet with sufficient regularity to enable it to conduct the business of the organisation in a timely and effective manner?
- What determines the board meeting calendar:
 - Ensuring that important business is transacted in line with legal and regulatory reporting and other obligations?
 - The cycle of business or events in the sporting calendar?
 - Times and places that offer the maximum number of members to attend and contribute?
 - In what ways could the productiveness and effectiveness of board meetings be improved?
- What are the organisation's rules around board quorum, delegated functions, and 'chair's actions'? How are these monitored to ensure decisions are made legally?

Agendas and conduct of business

- Do board agendas have an appropriate mix of forward looking and historical items?
- What is the ratio of strategic/operational/compliance items? In what ways could this be improved?
- Does the board achieve closure on individual items of board business?
- Are some items re-opened regularly? If so, what are the areas that generate this repeated attention?
- How could this be resolved?
- Where urgent matters require the attention of board members between scheduled meetings, is a procedure in place that enables them to give consideration to such business? This may include telephone or video conferencing and the transmission of relevant information.
- Does the governing document permit board meetings to take place and decisions to be made in this format? If so, how are they monitored and ratified?
- With regard to decisions or actions taken between meetings, are these made an agenda item at following meetings in order to keep board members fully informed?

Recording proceedings

- Are the minutes taken brief and authoritative, containing sufficient information to allow someone who was not in attendance at the meeting to ascertain what decisions were taken and why?
- Are minutes circulated promptly to allow board members to verify their accuracy and to ensure that actions are implemented?

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- Are minutes accompanied by an action list to enable those with actions to complete before the next meeting to be reminded of that fact?
- Does the organisation satisfy the legal requirements on the production and retention of minutes?
 - How are minutes stored and for how long are they retained?
 - Is there a document retention policy? How often is it reviewed and amended?
- The board should ask itself similar questions of the reporting of committee proceedings, plus:
- Does the organisation have a disclosure policy for minutes and other documents that considers the need for confidentiality, the handling of commercially sensitive information and the requirements of the Freedom of Information Act?

Governance support

- Does the organisation have access to a governance professional who facilitates the effective functioning of the board and provides impartial, independent advice on issues of process, law and governance standards? This can be on a voluntary, paid or shared basis.

Board committees

Code Requirements 1.23–1.26

Committees constitute an important aid to decision making and should be given appropriate resources to conduct their business and sufficient time to report to the board on their meetings. Whilst a board may delegate powers to a committee, it retains responsibility for the work undertaken and for the recommendations of the committee.

As such, it is important that it formally clarifies the remit of its committees, reviewing this regularly, along with the processes of interaction and reporting, and the nature and content of discussions and follow-through.

Questions to ask

- What standing committees does the organisation have?
- Are powers delegated to the committees specified in a resolution within the governing document or within the committee's terms of reference and approved by the board?
- Do the terms of reference include:
 - The purpose of the committee?
 - Committee membership?
 - Frequency of meeting?

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- How decisions are recorded and reported, including the framework for reporting committee activity to the board?
- Provisions as regards attaining quorum?
- How are committee meetings planned and scheduled?
- Do their timings support the work of the board, feeding information to it for due consideration in a timely manner?
- Are committees regularly reviewed as part of any board evaluation or governance review?
- What were the findings of previous evaluations and what changes have been made as a result?

Audit committee

- Does the organisation maintain an audit committee to scrutinise financial reporting and internal controls?
- What have been the principal themes of its work in the last 12 to 18 months?
- Does the audit committee comprise two or three independent NEDs with at least one member of the committee having recent and relevant financial experience?
- Does the audit committee meet with external and internal auditors at least annually, without management present, in order to discuss matters within its remit?
- Is the chair of the board excluded from serving as a member of the audit committee?

Nominations committee

- Does the organisation maintain a nominations committee? This may be on a permanent or ad hoc basis.
- Are the majority of members of the nominations committee independent NEDs?
- Is the nominations committee chaired by the chair of the board (except where dealing with the chair's successor, when it should be chaired by an independent NED)?

Reporting

- Are minutes of committee meetings (or a written summary of them) circulated to the board prior to its next meeting?
- Does the board receive a verbal report from the committee chair in addition to written minutes? Is an opportunity given to board members at that meeting to ask questions about the committee's work?
- Has consideration been given to the terms of reference and reports of committees being made available, for example on the website?
- Are records kept and made publicly available for attendance at board and committee meetings of all relevant members?

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Composition

- When filling positions on committees, are appointments made on a skills basis and is consideration given to:
 - All board members, as far as is possible, being involved in committees (but not on every committee?)
 - Bringing in expertise from outside the board?
 - Publicly advertising positions in order to attract suitable candidates from the widest backgrounds possible?
 - If external appointments are made, that relevant codes of conduct or expected behaviours are transmitted to position-holders?
 - How a balance of board members on committees is ensured without unduly placing too much responsibility on a minority of board members?

