



This Guidance Note is for the information of UKGI staff. It is not to be circulated outside of UKGI.

Guidance Note 13

The Role of the UKGI NED

November 2021

This Guidance Note is intended as a guide to **the role of the UKGI NED**. For UKGI's portfolio of Assets, having a UKGI employee on the Asset Board is a core part of our shareholder model.

Further reading is in the links below and in particular in the UKGI *Portfolio Operating Principles* (POPs) where it is discussed under [Principle F](#). **Please get in touch with Adam Moore, Helen Lambert or Tim Martin if you have any questions or relevant material to add to this guidance note.**

Becoming a UKGI NED

UKGI NEDs are typically Directors or Executive Directors. UKGI NEDs should, as with all Board members, possess the skills, background and expertise relevant to the requirements and operations of the Asset and UKGI endeavours to ensure appointments are appropriate across its portfolio. Typically, the UKGI NED will also lead the UKGI shareholder team for the Asset. However, in limited circumstances UKGI also performs NED-only roles. Currently, we have only one such role - for Network Rail.

The principle of there being a UKGI NED on the Board of an Asset should be set out in the Framework Document for the Asset and shareholder teams should ensure that they include *specific language agreed with UKGI Legal*. Where appointments to the Asset Board are Ministerial appointments, such as may be set out in legislation, UKGI should request Ministerial permission for the appointment. Upon appointment, the UKGI NED should be issued with an appointment letter from the Asset in the same manner as the Asset's other NEDs. This appointment letter should be based on the Asset's standard form, *with the addition of certain bespoke information sharing and conflicts provisions, drafted by UKGI Legal*. Further information and guidance regarding these procedural matters can be found below and in the POPs under [Activity 39](#).

The role of the UKGI NED

Unless stated otherwise in constitutional documentation, the duties of the UKGI NED on an Asset's Board must be the same as those of all the other Directors, including any other Directors appointed by Ministers. These include a duty to act in a way they consider, in good faith, most likely to promote the success of the Asset for the benefit of its shareholders. These responsibilities have different parameters to those of UKGI performing the shareholder role and the UKGI NED should therefore be conscious that they will need to wear two 'hats' (as described in more detail below). The personal responsibilities of Directors of companies incorporated under the Companies Act 2006 (or predecessor legislation) are set out in section [171 to 177](#) of the Companies Act 2006¹. The responsibilities of the Board cannot be delegated and include (but are not restricted to) the following:

- Duty to promote the success of the company
- Duty to exercise reasonable care, skill and diligence
- Duty to exercise independent judgment
- Duty to act within powers

¹ UKGI acknowledges that some of its Assets are not constituted as "companies" and are therefore not legally subject to the Companies Act 2006. Nevertheless, in terms of a Director's responsibilities, UKGI applies the principles of the Companies Act as far as possible, as these substantially act to codify the fiduciary and common law duties applicable to all Directors (including those of non-Companies Act entities).

- Duty to avoid conflicts of interest
- Duty to declare interests in proposed transactions
- Duty to declare interests in existing transactions
- Duty not to accept benefits from third parties.

How the role of the UKGI NED differs from other NEDs

The role of the UKGI Shareholder NED is to:

- fulfil the relevant statutory and/or fiduciary duties of a Director under the Companies Act, acting in a way which is most likely to promote the success of the Asset for the benefit of its shareholder whilst having appropriate regard to other stakeholder interests;
- contribute to the overall strength of the Board by bringing appropriate skills and expertise;
- contribute expertise in best practice corporate and government governance;
- by virtue of their unique position, facilitate the relationship and understanding between the Department and the Asset, including:
 - conveying the context of the Department's objectives and perspective (established through regular meetings with Departmental officials and, when appropriate, Ministers to discuss Asset developments and relevant Departmental / Ministerial interests) to the Board to aid its decision-making;
 - whilst fulfilling their duties of confidentiality as a member of the Board, providing a direct line of sight to the Department on developments at the Asset and the quality of the Board and management in the performance of their functions; and
 - supporting wider relevant government stakeholder relationships.

The wording in this section (How the role of the UKGI NED differs from other NEDs) can be used for outward facing communications, with Departments and Assets.

UKGI NEDs and Shareholder Teams

From the UKGI NEDs' perspective they will seek support in carrying out their responsibilities from their shareholder teams and UKGI encourages this insofar as UKGI team members can provide expertise and insight. However, the UKGI NED's responsibilities as a Director cannot be borne by anybody other than the UKGI NED.

The UKGI NED role is also an important lever in helping UKGI deliver its shareholder role as a whole. The UKGI NED often also serves as head of the shareholder team, and in this role leads UKGI's execution of shareholder activities, including overseeing performance of the Asset through regular shareholder meetings, as well as often representing UKGI in any recruitment process to the Asset Board where UKGI has a role. The Department, especially senior Departmental officials, will regard the UKGI NED as both a point of contact, day-to-day, with the Asset's Board and a facilitator of information flow in both directions, as well as an important evaluator of the performance of the Asset's Board and management. The UKGI NED should make sure that the Department receives regular and timely performance information regarding the Asset, in a UKGI shareholder capacity, and should also provide a qualitative and candid assessment of Board and Executive performance, morale, and relationship with Government as necessary. In order to do so, it is imperative that the UKGI NED maintains an effective relationship with the Board and senior management of the company (in particular its Chair), the relevant senior officials within the Department, and other stakeholder groups.

UKGI NEDs hold their posts as ex officio members of UKGI. Therefore, it is usual practice for the UKGI NED to cease their directorship at the Asset if they leave UKGI (permanently or for any extended

period). The UKGI NED should also not be additionally remunerated for their NED role in addition to their UKGI salary.

Often, Assets provide their Directors with directors and officers insurance and / or indemnification as protection in respect of personal liability. All UKGI NEDs should also receive indemnities from the relevant Department but note that we understand that in future these may have to be approved by HMT as they are unlimited and thus could exceed £10million. *UKGI Legal can provide further advice and the form of indemnity appropriate for the relevant Asset / Department.*

Potential problem areas for the UKGI NED

We recognise that the functional relationship of the Shareholder NED will differ from independent NEDs as set out above and there may be circumstances, albeit relatively rare, where there might be an actual rather than perceived conflict between the position of the UKGI NED as the shareholder representative and the interests of the company.

It is usually possible to find a solution to reconcile the conflict of interest, following a consultation at a high level within the Department, UKGI, and importantly with in- house legal advisers – not least because there are well established procedures set out in the Companies Acts for dealing with possible conflicts for ex officio Directors. In certain circumstances it might be necessary for the UKGI NED to recuse themselves from certain Board decisions where there is an actual conflict. However, if this becomes necessary outside of extraordinary, irregular circumstances, it may be necessary to reconsider the relationship between the Department and Asset, and the appropriateness of the role of the UKGI NED as shareholder representative. *Further guidance dealing with these situations may be found in UKGI Legal's document on Assets with a Public Purpose.*

Why a policy director should not be a NED

UKGI is often asked why a policy director from a sponsor Department should not be a NED either instead of, or in addition to, the UKGI NED. UKGI does not believe a policy director from the Department should act as a NED on an Asset Board because:

- Actual or perceived conflicts may be created, if an individual who makes policy decisions in relation to the Asset also sits on the board of that Asset
- Lines of accountability can be confused, which in turn:
 - detracts from the effectiveness and empowerment of the Board, and ultimately undermines the purpose of the Asset in operating at arm's length to government; and
 - compromises the separation between the policy and shareholder functions, which UKGI best practice indicates promotes effective oversight and good governance.

The NED-only role

As noted above UKGI can have a shareholder role which is limited to that of a NED only. UKGI does not perform the typical shareholder activities for such Assets, but rather acts as an interlocutor between HMG and the Asset. With the UKGI role being established within an individual, rather than a shareholder team, the NED-only role is concerned more with relationship handling between key individuals, officials and Asset personnel, than performing shareholder activities. It is important to note, however, that as with all UKGI NED roles, insofar as the Board is concerned, the duties of the UKGI NED must be the same as those of all other Directors.

Though no two NED-only roles are the same, the typical responsibilities of a UKGI NED on these Assets include:

- Regularly meeting with Departmental officials (expected to include the relevant Asset shareholder team, and Policy and Client teams where applicable), and Departmental Ministers

when appropriate, to discuss relevant Departmental/Ministerial interests so that the NED will have an up to date understanding of these

- Participating in other discussions with Departmental officials as required on matters of interest relating to the Asset
- Providing insights into the views of the Department with respect to the Asset at the relevant board meetings to the extent required to aid the Asset's decision making; and
 - Where appropriate, helping to resolve any issues as "honest broker" between the relevant Departmental team and the Asset.