

**CODE OF BEST PRACTICE
FOR TRUSTEES
OF
THE ROYAL BOTANIC GARDENS, KEW
(THE BOARD)**

FEBRUARY 2005

[Conflicts of Interest Section Updated June 2013]

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1. This document sets out the Code of Best Practice for Board members of RBG Kew and became effective on 1 April 1998. It will be issued to each new Board member as and when they take up appointment. For the purposes of this document the references to public funds includes all income (whether grant or otherwise) received by RBG Kew.

Public service values

2. The Board as a whole, and individual Board members will at all times:
 - observe the highest standards of propriety involving impartiality, integrity and objectivity in relation to stewardship of public funds and management of the bodies concerned;
 - maximise value for money through ensuring that the mission and statutory obligations are achieved in the most effective, efficient and economical way, within available resources, and with independent validation of performance achieved wherever practicable;
 - be accountable to Parliament, users of services, individual citizens and staff for the activities of RBG Kew, their stewardship of public funds and the extent to which key performance targets and objectives have been met;
 - in accordance with Government policy on openness, comply with the Principles of the Citizen's Charter and Code of Practice on Access to Government Information.

Relationship with the sponsor department

3. RBG Kew's sponsor department is the Department for Environment, Food and Rural Affairs (Defra). The Defra Minister is answerable to Parliament for the policies and performance of all public bodies sponsored by the department, including their use of resources and the policy framework within which they operate. The respective roles of the sponsor department and RBG Kew will be set out in a Management Statement (to be put in place during 1998). In the case of RBG Kew, as a grant-aided body, this information is also supplemented by the Financial Memorandum specifying the terms on which RBG Kew receives and spends funds provided by the Minister.

Role of the Chairman

4. The Chairman has particular responsibility for providing effective strategic leadership on matters such as:
 - the Board's formulation of strategy for discharging its statutory duties;
 - encouraging high standards of propriety, and promoting efficient and effective use of staff and other resources throughout the organisation;
 - ensuring that the Board, in reaching decisions, takes proper account of guidance provided by Defra to the Chairman;
 - representing the work of RBG Kew to the general public; and
 - providing an assessment of performance of individual Board members, on request, when they are being considered for reappointment to the Board or appointment to the Board of some other public body.
5. The Chairman should ensure that the Board meets at regular intervals throughout the year; and that minutes of meetings accurately record decisions taken and, where appropriate, the views of individual Board members.

6. Communications between the Board and the Defra Minister will normally be through the Chairman except where the Board has agreed that an individual member should act on its behalf. Nevertheless, an individual member has the right of access to Ministers on any other matter which he or she believes raises important issues relating to his or her duties as a member of the Board. In such cases the agreement of the rest of the Board would normally be sought, except in situations where the member believes there are issues of Board propriety where it would not be appropriate to seek Board agreement.

The main points of contact between RBG Kew and Defra on day-to-day matters are the Director and the Director of Operations.

7. The Chairman will ensure through procedures agreed with the Secretary to the Board that all members of the Board,, when taking up office, are fully briefed on the terms of their appointment, and on their duties, rights and responsibilities. They will be given a copy of this Code of Practice; the Management Statement (when ready) and Financial Memorandum; the current Corporate Plan and Annual Reports and Accounts; the constitutional framework as set out in the National Heritage Act and any other relevant background material including details of the Civil Service College familiarisation course for new NDPB Board members. In addition the Chairman will ensure that the Director arranges an early briefing session with new Trustees to bring them up to speed on principal issues.

Corporate Responsibilities of Board Members

8. Members of the Board have corporate responsibility for ensuring that RBG Kew puts or has in place the practices, procedures and policies to meet its statutory or administrative requirements for the use of public funds. Other important responsibilities of Board members include:
 - ensuring that high standards of corporate governance are observed at all times;
 - establishing the overall strategic direction of the organisation within the policy and resources framework agreed with the Defra Minister;
 - overseeing the delivery of planned results by monitoring

performance against agreed strategic objectives and targets and by ensuring corrective action is taken when necessary;

- ensuring that the Board operates within the limits of its statutory authority; within the limits of the Board's delegated authority agreed with its sponsor department; and in accordance with any other conditions relating to the use of public funds;
- ensuring that, in reaching decisions, the Board has taken into account any guidance issued to the Board by the sponsor department;
- formulating appropriate strategies for implementing any Codes of Practice required by Government (eg Access to Government Information);
- ensuring that the Board operates sound environmental policies and *practices in accordance with the approach set out in the 1990 White Paper "This Common Inheritance"* (Cm 1200) and other relevant guidance.

Strategic planning and control

9. One of the main responsibilities of the Board is the oversight of the production of a corporate plan within the timetable agreed with Defra as part of the planning cycle. The process of preparing such a document provides an opportunity for agreeing, with the responsible Minister, or officials on his or her behalf, the policy and resources framework within which RBG Kew will discharge its duties; and for determining its key strategic objectives and targets. These targets are being continually refined and cover areas such as the organisation's financial performance; the efficiency and effectiveness of its operations; and the quality of the services it provides. Some final outputs cannot easily be measured and this makes it difficult to set suitable performance targets. In such cases the aim is to agree carefully formulated strategic objectives and milestones.

Delegation

10. Board members serve on a part-time basis. Responsibility for day-to-

day management matters is delegated to the Director as Accounting Officer within a clearly understood framework of strategic control linked to the planning process involving annual approval by the Board of Trustees of the Corporate Plan and budgets.

11. Where the Board decide to delegate (where it has power to do so) responsibility for specified matters to individual members or committees of the Board that delegation will be clearly specified as appropriate. Decisions taken by individual members or committees of the Board under delegated powers should be recorded in written minutes available to the Board as a whole. The Board will regularly review and continue to develop internal guidance covering those matters delegated to staff and those reserved for decision by the Board. The latter primarily include issues of corporate strategy; key strategic objectives and targets; major decisions involving the use of financial and other resources; and personnel issues including key appointments and standards of conduct.

Responsibilities of individual Board members

12. Individual Board members should be aware of their wider responsibilities as members of the Board. 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 Nolan Committee). The principles are included at the end of this Code. Individual Board members must:
 - undertake on appointment to comply at all times with the Code of Practice that is adopted by RBG Kew and with rules relating to the use of public funds;
 - act in good faith and in the best interests of RBG Kew;
 - not misuse information gained in the course of the public service for personal gain or for political purposes, nor seek to use the opportunity of public service to promote their private interests or those of connected persons, firms, businesses or other organisations; and
 - ensure that they comply with the Board's rules on the acceptance of gifts and hospitality.

13. Board members, whether full or part-time, are expected not to occupy paid party political posts or hold particularly sensitive or high-profile unpaid roles in a political party. Subject to that, part-time members are free to engage in political activities, provided that they are conscious of their general public responsibilities and exercise a proper discretion, particularly in regard to the work of the Board of Trustees of RBG Kew. On matters directly affecting that work, they should not make political speeches or engage in other political activities.
14. The restrictions in paragraph 13 do not apply to Board members who are MPs to local councilors or to Peers in relation to their conduct in the House of Lords.
15. The powers of the Defra Minister and procedures for appointing individual Board members are embodied in the National Heritage Act 1983. If appropriate the Minister is able to remove Trustees from office if they fail to perform the duties required of Board members to the standards expected of persons who hold public office.

What is a conflict of interest?

16. A conflict of interest is any situation in which a Board member's personal interests, or interests that they owe to another body, may (or may appear to) influence or affect that Board member's decision making.
17. RBG Kew is an exempt charity and a non-departmental public body. As such Board members have responsibilities both as charity trustees and as members of the Board of a public body.
18. As charity trustees, Board members cannot receive any material benefit from RBG Kew in return for any service they provide to RBG Kew unless they have express legal authority to receive such a benefit. "Benefit" includes any property, goods or services which have a monetary value, as well as money. Where there is the potential for a Board member to receive a personal benefit as a result of his or her membership, this creates a conflict of interest.
19. As charity trustees, Board members must act in the best interests of RBG Kew and must exercise independent judgment in their decision-making. A conflict of interest may affect a Board member's ability to exercise independent judgment. Accordingly, Board members must

ensure that no conflict arises, or could reasonably be perceived to arise, between their public duties and their private interests – financial or otherwise.

20. The rule that a trustee cannot receive any benefit from his or her charity without explicit authority is based on the principle that trustees should not be in a position where their personal interests and their duty to the charity conflict. Any conflict of interest giving rise to a benefit must be properly and openly managed and may require explicit authorisation from the Charity Commission (detailed further below).
21. Conflicts of interest can take various forms:
 - direct financial gain, pecuniary interest or benefit to the Board member, such as:
 - payment to a Board member for services provided to the charity;
 - the award of a contract to another organisation in which a Board member has an interest and from which a Board member will receive a financial benefit; or
 - the employment of a Board member in a separate post within RBG Kew, even when the Board member has resigned in order to take up the employment;
 - indirect financial gain or pecuniary interest, such as employment by RBG Kew of a spouse or partner of a Board member, where their finances are interdependent; and
 - conflict of loyalties, such as where a Board member is a director or trustee of another body which is the subject of discussions of the Board. For example, a conflict of loyalty may arise where a Board member is also a trustee of The Foundation and Friends of the Royal Botanic Gardens, Kew.
22. If a Board member is set to receive a material benefit as a result of a conflict of interest, the benefit must be authorised according to charity law. Only the Charity Commission is able to authorise the receipt of a

material benefit by a Board member, meaning that the Board must make a request to the Charity Commission to authorise such a benefit before a Board member is allowed to receive it.

23. If there is no material benefit to a Board member, no authority will be required, but if the Board member or a connected person is set to receive a payment (even if not material), or if there is a conflict of loyalty, the Board must ensure the conflict is properly managed in accordance with charity law and with the Code of Conduct for Board Members of Public Bodies. The process for managing conflicts of interest, set out below at 15, ensures compliance with these two sets of requirements.

Connected persons

24. If a “connected person” to a Board member has a conflict of interest with RBG Kew, this creates an indirect conflict of interest which must be addressed by the Board. A “connected person” is a person who is:

- a family member;
- part of the same household; or
- a business associate;

who could, or could be perceived to

- have influence over the Board member in their dealings with RBG Kew; or
- benefit (directly or indirectly) from any benefit the Board member receives.

Board members who are also directors of any subsidiary of RBG Kew

25. RBG Kew has a wholly-owned trading subsidiary known as RBG Kew Enterprises Limited (“Enterprises”). RBG Kew and Enterprises are distinct entities. Any Board member who is also a company director of Enterprises has two distinct sets of responsibilities, which can create the potential for a conflict of interest.

26. The Board should ensure that there is:

- at least one person who is a Board member of RBG Kew, but not a director or employee of Enterprises; and
 - at least one person who is a director of Enterprises, but not a Board member or employee of RBG Kew.
27. Such people are described as 'unconflicted' as they have no conflict of interest in their roles as regards RBG Kew and Enterprises. These unconflicted Board members and directors should advise their colleagues as to the proper course of action where the duties of those with dual responsibilities are in conflict and they should have due regard to the principles and processes set out below regarding conflicts of loyalty. This reduces the risk of any transaction between RBG Kew and Enterprises being challenged or being called into question and, should such a challenge be made, provides a robust and transparent basis for defence.
28. Board members cannot be paid for their services as a director or employee of Enterprises unless authority from the Charity Commission has been obtained in advance.
29. These provisions apply to any other subsidiary of RBG Kew which may be incorporated in the future.

Process for managing conflicts of interest

30. This section describes what steps must be taken once a conflict of interest has been identified.

(a) Direct pecuniary interests

Where a potential conflict of interest involves a direct pecuniary interest (for example a payment being made to a Board member):

- the conflicted Board member must:
 - declare the nature and extent of his or her interest before discussion begins on the matter;
 - withdraw from the meeting for that item after providing any information requested by the Board to support its consideration of the potential conflict;

- not be counted in the quorum for that part of the meeting; and
- be absent during any discussion on the matter and during the vote, and have no vote on the matter; and
- the Board must assess whether the direct pecuniary interest is material, and if so seek Charity Commission authorisation.

(b) Indirect pecuniary interests or conflicts of loyalty

i. Where a potential conflict of interest involves an indirect pecuniary interest or a conflict of loyalty, the conflicted Board member must:

- declare the nature and extent of his or her interest before discussion begins on the matter; and
- withdraw from the meeting after providing any information requested by the Board.

The Board then must assess, in the absence of the conflicted Board member, whether the indirect pecuniary interest or conflict of loyalty;

- is material, and in the case of a material indirect pecuniary interest seek Charity Commission authorisation; and
- might pose a danger of bias or perceived bias on the part of the conflicted Board member.

ii. If either Charity Commission authorisation is required or the Board concludes there is a danger of bias, the Board member should

- not be counted in the quorum for that part of the meeting;
- be absent during any discussion on the matter and during the vote; and
- have no vote on the matter.

iii. If Charity Commission authorisation is not required and the Board decides there is no danger of bias, then the Board may if

- it is quorate, without counting the conflicted Board member; and
- it is satisfied that it is in the best interests of RBG Kew to do so;

pass a resolution in the absence of the conflicted Board member, authorising that member to:

- continue to participate in discussions leading to the making of a decision and/or to vote;
- (for conflicts of loyalty) disclose to a third party information confidential to RBG Kew; and/or
- refrain from taking any step required to remove the conflict.

(c) Minutes

The Board must ensure that the minutes of Board meetings include records of the discussions and decisions made regarding an identified conflict.

Register of interests

31. The Board must keep a register of interests of Board members. The register must contain, for each Board member and any connected person, details of any direct or indirect pecuniary interests (including any material transaction with RBG Kew), and details of any directorships and/or trusteeships of other bodies. Board members should take particular care to ensure the interests of any connected person are noted in the register.
32. Board members should declare any new interests, material transactions or appointments (in relation to themselves or any connected person) as soon as they arise.
33. It is important that the register is kept up-to-date, in particular so RBG Kew is able to comply with Financial Reporting Standard 8 in the

preparation of its annual accounts. FRS 8 requires RBG Kew to include in its accounts any transactions Board members or their connected person have entered into with RBG Kew.

34. The Secretary to the Board shall be responsible for the register of interests and annually shall make a formal request to each Board member to consider their entry and confirm whether any changes are required.
35. Following the receipt of responses to the request to update the register, the Secretary and the Chairman of the Board shall review those responses and assess whether any newly declared interest brings any Board member into a position of conflict. The Secretary shall notify all Board members of each others' interests and such interests shall be noted at the next meeting of the Board. [A list of Board members' interests shall also be published on RBG Kew's public website.]

Personal Liability of Board members

25. Although any legal proceedings initiated by a third party are likely to be brought against the Board, in exceptional cases proceedings (civil or, in certain cases, criminal) may be brought against the Chairman or other individual Board members. For example, a Board member may be personally liable if he or she makes a fraudulent or negligent statement which results in loss to a third party. A Board member who misuses information gained by virtue of his or her position may be liable for breach of confidence under common law or under insider dealing legislation.
26. The Government has indicated that an individual Board member who has acted honestly and in good faith will not have to meet out of his personal resources any personal civil liability which is incurred in the execution or purported execution of his Board function, save where the person has acted recklessly.
27. Board members who want further advice should consult the Board's legal advisers through the Director of Operations.

Openness and responsiveness

28. Board members and their staff should conduct all their dealings with

the public in an open and responsible way, and ensure full compliance with the principles of the Citizen's Charter and the Code of Practice on Access to Government Information. Wherever possible, consistent with the nature of RBG Kew's business and the need for confidentiality on commercial or other grounds the Board should make records of major decisions publicly available.

29. The Board should ensure they can demonstrate that they are 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. The Board will need to act consistently with the nature of RBG Kew's business and the possible need for confidentiality on commercial or other grounds, always subject to the rights of Parliament and the Comptroller and Auditor General to obtain information. There will be internal procedures available to deal with complaints, including those on failure to provide information.

Accountability for public funds

30. Members of the Board have a duty to ensure that public funds - which for this purpose should be taken to include all forms of receipts from fees, charges and other sources - are properly safeguarded; and that, at all times, RBG Kew conducts its operations as economically, efficiently and effectively as possible, with full regard to the relevant statutory provisions and to relevant guidance in 'Government Accounting.
31. Members of the Board are responsible for ensuring that RBG Kew does not exceed its powers or functions, whether defined in statute or otherwise, or through any limitations on its authority to incur expenditure. They will be advised on these matters by the Director and if appropriate its legal advisers.
32. As part of its responsibilities for the stewardship of public funds, the Board of RBG Kew must ensure that it includes a full statement of the use of such resources in its Annual Report and Accounts. Such accounts should be prepared in accordance with the Accounts Direction issued by the responsible Minister and such other guidance as may be issued, from time to time, by Defra and the Treasury, including 'Executive NonDepartmental Public Bodies: Annual Reports and Accounts Guidance'. From 1996/97 RBG Kew will produce an Annual Report & Accounts as a single document.

33. Subject to any current statutory requirements, RBG Kew will aim to produce an Annual Report and Accounts as a single document and will give it appropriate publicity. If the Annual Report is published separately, it will contain at least a summary of the annual accounts and in any case give details of how to obtain the full accounts. A statement by the auditors will be included in the summary to confirm that it is consistent with the annual accounts. It will also state whether the report on the annual accounts was qualified and provide details if this was the case.
34. The Annual Report and Accounts will provide a full description of the Board's activities; state the extent to which key strategic objectives and agreed financial and other performance targets have been met; list the names of the current members of the Board and senior staff; and provide details of remuneration of Board members and senior staff within the range of prescribed salary bands. The Annual Report will refer to the existence of the register of interests in accordance with paragraph 18 above.

The role of the Director

35. The Director has responsibility, under the Board, for the overall organisation, management, and staffing of RBG Kew and for its procedures in financial and other matters, including conduct and discipline. This involves the promotion by leadership and example of the values embodied in the Nolan Committee's Seven Principles of Public Life. Board members should support the Director in undertaking this responsibility.
36. The Director is also designated as the Accounting Officer for RBG Kew and is responsible to Parliament and the Accounting Officer of Defra for the resources under his or her control. The essence of the role is a personal responsibility for the propriety and regularity of the public finances for which they are answerable; for the keeping of proper accounts; for prudent and economical administration; for the avoidance of waste and extravagance; and for the efficient and effective use of all the resources in his or her charge. The Director as Accounting Officer has a responsibility to see that appropriate advice is tendered to the Board on all these matters. Satisfactory performance of these responsibilities is fundamental to the role of the Director.

37. More detailed guidance on the role of an Accounting Officer is set out in “The Responsibilities of a NDPB Accounting Officer”, at Appendix A which covers appearances before the Committee of Public Accounts of the House of Commons.

Audit

38. As required in all public bodies, RBG Kew established an Audit Committee in 1995 as a committee of the Board. The Committee consists of Board members with senior management attending and is chaired by a member of the Board, other than the Chairman, who has experience of financial matters.

The Board as employer

39. The Board should ensure
- that it complies with all relevant employment legislation and that it employs suitably qualified staff who will discharge their responsibilities in accordance with the high standards expected of staff employed by such bodies. All staff should be familiar with RBG Kew’s main aims and objectives;
 - that the organisation adopts management practices which use resources in the most economical, efficient and effective manner;
 - that RBG Kew’s rules for the recruitment and management of staff provide for appointment and advancement on merit on the basis of equal opportunity for all applicants and staff. In filling senior staff appointments, the Board should satisfy itself that an adequate field of qualified candidates is considered, and should always consider the merits of full open competition. In recruiting external candidates, this should normally be used;
 - that its staff, and the Board’s own members, have appropriate access to expert advice and training opportunities in order to enable them to exercise their responsibilities effectively.
40. The Board is adopting during 1998 a code of conduct for its staff using the model provided by Cabinet Office (OPS), and as agreed with Defra.

41. The Board has a responsibility to directly monitor and assess the performance of the Director and fix the level of remuneration based on performance and to maintain an overview of the performance of other senior staff.

The Government endorses the Seven Principles of Public Life set out by the Nolan Committee for the benefit of all who serve the public in any way.

The principles are set out below.

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.

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These principles apply to all aspects of public life. The Committee has set them out here for the benefit of all who serve the public in any way.