



Conduct Guidance for Historic England Commissioners

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1. Introduction and the Principles of Public Life

- 1.1 As a board member of a public body, Commissioners are obliged to observe various government requirements and standards in their role. The key documents are:
 - a) The National Heritage Act 1983;
 - b) *Managing Public Money*, chapter 3 on the role of the Accounting Officer (Historic England's Chief Executive);
 - c) Cabinet Office *Code of Conduct for Board Members of Public Bodies*; and
 - d) Government's *Corporate Governance in Central Government Departments: Code of Good Practice 2011*.
- 1.2 Links to the latest versions of these documents are available on the Commissioners' extranet site under 'Constitution' (for the National Heritage Act) and 'Guidance'.
- 1.3 These requirements are then reiterated in the Management Agreement between DCMS and Historic England, which sets out the government's priorities and governance expectations.
- 1.4 To help Commissioners get to grips with all this, this document brings together the key requirements into one place and puts them in the context of Historic England's business and governance arrangements.
- 1.5 This guidance and all the various central government codes are based on the Seven Principles of Public Life which come from the Nolan Report 1995¹. Those are:
 - a) **Selflessness** - Holders of public office should act solely in terms of the public interest.
 - b) **Integrity** - Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.
 - c) **Objectivity** - Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.
 - d) **Accountability** - Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.
 - e) **Openness** - Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.
 - f) **Honesty** - Holders of public office should be truthful.

¹ See 'Guidance' section of the Commissioners' extranet.

- g) **Leadership** - Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

2. The Role of Commission

- 2.1 Commission should ensure that effective arrangements are in place to provide assurance on risk management, governance and internal control. Commission is expected to assure itself of the effectiveness of the internal control and risk management systems.
- 2.2 Commission must maintain the Audit and Risk Assurance Committee. The Audit and Risk Assurance Committee should support Commission and the Accounting Officer by providing advice and assurance on risk management, governance and internal control.
- 2.3 Commission must either consider issues relating to staff remuneration itself or maintain the Remuneration and Appointments Committee for that purpose.
- 2.4 Commission is specifically responsible for:
- a) ensuring that Historic England fulfils the aims and objectives set out in its founding legislation and within the policy and resources framework determined by the Secretary of State (the Management Agreement);
 - b) determining the steps necessary to deal with any developments which are likely to affect Historic England's ability to fulfil its aims and objectives and keeping the responsible DCMS Minister informed if any such developments arise;
 - c) ensuring that any statutory or administrative requirements for the use of public funds are complied with; that Commission operates within the limits of its statutory authority, within the resources framework determined by the Secretary of State and any delegated authority agreed with the sponsor department, and in accordance with any other conditions relating to the use of public funds; and that, in reaching decisions, Commission takes into account guidance issued by the sponsor department;
 - d) ensuring that Commission receives and reviews regular financial information concerning the management of Historic England; is informed in a timely manner about any concerns about the activities of Historic England; and provides positive assurance to the Department that appropriate action has been taken on such concerns;
 - e) demonstrating high standards of corporate governance at all times, including using its Audit and Risk Assurance Committee to help Commission to address key financial and other risks;
 - f) appointing a chief executive and, in consultation with the Department, setting remuneration terms linked to performance against objectives for the chief executive; and,
 - g) ensuring that any public functions of Historic England are carried out in compliance with statutory duties.

3. The Chair's Particular Responsibilities

3.1 The Chair is responsible to the Secretary of State for ensuring that Historic England fulfils its statutory purpose as set out in its founding legislation, that where appropriate Historic England's policies are consistent with those of the Secretary of State, and that Historic England's affairs are conducted with probity. The Chair is also responsible for good governance and for ensuring that the principles set out in the DCMS *Guidance on Board Appraisal Processes for Arm's Length Bodies*² are followed.

3.2 In addition, the Chair has the following leadership responsibilities:

- a) formulating Commission's strategy for discharging its statutory duties;
- b) ensuring that Commission, in reaching decisions, takes proper account of guidance provided by the responsible Minister or the Department;
- c) ensuring that Commission, in reaching decisions, takes proper account of the requirements of charity law in so far as they are applicable to Historic England's activities;
- d) supporting the Accounting Officer in promoting the efficient and effective use of staff and other resources;
- e) supporting the Accounting Officer in delivering high standards of regularity and propriety; and
- f) representing the views of Commission to the general public.

3.3 The Chair also has an obligation to ensure that:

- a) the performance of Commission and its individual members are reviewed annually and operate effectively and to instigate remedial action should this not be the case;
- b) Commission has a balance of skills appropriate to directing Historic England's business;
- c) Commissioners are fully briefed and understand their terms of appointment, duties, rights and responsibilities;
- d) when required, he or she, together with the other Commissioners, receives appropriate training on financial management and reporting requirements and on any differences that may exist between private and public sector practice;
- e) the responsible Minister is advised of Historic England's needs when Commission vacancies arise;
- f) he or she assesses the performance of individual Commissioners when being considered for re-appointment;
- g) there is a code of practice for Commissioners in place consistent with the Cabinet Office *Code of Conduct for Board Members of Public Bodies* (which is this document).

² See Guidance section of the Commissioners' extranet site.

4. Individual Commissioners' Responsibilities

4.1 Individual Commissioners should:

- a) comply at all times with the Code of Practice³ and with the rules relating to the use of public funds and to conflicts of interest summarised below;
- b) not misuse information gained in the course of their public service for personal gain or for political profit, nor seek to use the opportunity of public service to promote their private interests or those of connected persons or organisations;
- c) comply with Commission's rules on conflicts of interest and the acceptance of gifts and hospitality; and
- d) act in good faith and in the best interests of Historic England.

5. Personal Liability of Commissioners

- 5.1 In terms of the legal nature of the role, Commission is much like a company and Commissioners are much like directors of a company. Commission was established under Statute, and has corporate responsibility for all actions taken by Commissioners, including any wrongful ones. This means that, if judgment is made against Commission, any financial settlement would be met out of Historic England's funds rather than from the personal assets of individual Commissioners.
- 5.2 Although any legal proceedings initiated by a third party are likely to be brought against Commission, in exceptional cases proceedings (civil or, in certain cases, criminal) may be brought against the Chair or other individual Commissioners. For example, a Commissioner may be personally liable if he or she makes a fraudulent or negligent statement which results in loss to a third party. Similarly, a Commissioner who misuses information gained by virtue of his or her position may be personally liable for breach of confidence under common law or may commit a criminal offence under insider dealing legislation.
- 5.3 Commission has subsidiary companies⁴. Any Commissioner who is a director of any of those companies will have the same potential personal legal liability as any director of a private company.
- 5.4 Government has indicated that individual Commissioners who have acted honestly and in good faith will not have to meet out of their own personal resources any personal civil liability that is incurred in execution or purported execution of their Commission functions so long as they have not acted recklessly.
- 5.5 Should the need arise, Commission, or in appropriate circumstances individual Commissioners who need further advice, should consult Historic England's legal department.

³ The Cabinet Office's Code of Conduct for Board Members of Public Bodies – See 'Guidance' section of the Commissioners' extranet site.

⁴ See structure charts on the extranet.

6. Relationship with Government Departments

- 6.1 The Secretary of State for Culture, Media and Sport is answerable to Parliament for the policies and performance of the public bodies it sponsors. The respective roles of the Department for Culture, Media and Sport and Historic England are set out in statute, supplemented by the Management Agreement, which also specifies the terms on which funds provided by the Secretary of State are received and may be spent. The respective roles of other government departments and Historic England in relation to statutory controls and the planning system are also defined by statute, supplemented by guidance.
- 6.2 Communications between Commission and the Secretary of State for Culture, Media and Sport will normally be through the Chair, except where Commissioners have agreed that another member of Commission should act on their 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 Commissioner. In such circumstances, the individual member should inform the other Commissioners of their intention.
- 6.3 The main point of contact between Historic England and the Department for Culture, Media and Sport and other government departments on day-to-day matters will normally be the Chief Executive or another member of staff who is authorised to act on his or her behalf.

7. Handling Conflicts of Interests

- 7.1 Chair and other Commissioners should declare any personal or business interests which may conflict with their responsibilities as Commissioners. Commissioners will declare any of the following direct or indirect pecuniary interests⁵ which may conflict with their responsibilities as Commissioners for inclusion in the Register of Commissioners' Interests:
- a) remunerated directorships or partnerships;
 - b) remunerated employment, office, profession or consultancy; and
 - c) shareholdings in any company where the interest held is 3% or more of the nominal value of the issued share capital of the company.
- 7.2 Non-pecuniary interests and interests of close family members will be declared as they arise and will also be included in the Register of Commissioners' Interests⁶. The Register is on the extranet. Accompanying it is more detailed guidance on what should be recorded.
- 7.3 The Register of Interests will be open to public inspection and its availability will be publicised in the Annual Report and Accounts.
- 7.4 A Commissioner who is in any way directly or indirectly interested in a contract made or proposed to be made by Commission, or in any other matter which falls

⁵ Indirect pecuniary interests arise from connections with bodies which have a direct pecuniary interest or from being a business partner of, or being employed by, a person with such an interest.

⁶ Non-pecuniary interests include those arising from membership of clubs and other organisations. Close family members include personal partners, parents, children (adult and minor), brothers, sisters and the personal partners of these.

to be considered by Commission, shall disclose the nature of his interest at a meeting of Commission. The disclosure shall be recorded in the minutes of the meeting.

- 7.5 Under the National Heritage Act 1983 a Commissioner shall not:
- a) where a contract in which the Commissioner is interested is under consideration, take part in the deliberations on or decision about the contract; and
 - b) where any other matter in which the Commissioner is interested is under consideration, take part in the deliberations on or decision about the matter if the Commission decide that the Commissioner's interest might prejudicially affect his or her consideration of the matter.
- 7.6 When an interest is not of a direct pecuniary kind, Commissioners should consider whether participation in the discussion or determination of a matter would suggest a real danger of bias. This should be interpreted in the sense that Commissioners might unfairly regard with favour, or disfavour, the case of a party to the matter under consideration. In considering whether a real danger of bias exists in relation to a particular decision, Commissioners should assess whether they, a close family member, a person living in the same household, or a firm, business or other organisation with which the Commissioner is connected are likely to be affected more than the generality of those affected by the decision in question. This would cover, for example, a decision to invite tenders for a contract where a firm with which a Commissioner was connected was significantly better placed than others to win it.
- 7.7 Where, in accordance with the above, Commissioners do not participate in the discussion or determination of a matter, they should normally withdraw from the meeting, even if it is held in public. This is because the continued presence of someone who had declared an interest might be thought likely to influence the judgement of the other members present.
- 7.8 Commissioners will consult the Chair before accepting any outside appointment during their tenure as a Commissioner or within one year after ceasing to be a Commissioner where such an appointment may give rise to a conflict of interest and in order that such conflicts are identified at an early stage and that appropriate action can be taken to resolve them.
- 7.9 Commissioners, in working in a personal capacity with developers, local authorities, or with consultants they appoint, should clearly state this is the case and that they are not working in any way in their roles as Commissioners of Historic England. Commissioners, when contacting members of staff, should explain at the outset the capacity in which they are acting.
- 7.10 Non-Commissioner members of the advisory committees and panels will also abide by the guidance set out this section.

8. Delegation

- 8.1 Responsibility for day-to-day management is delegated to staff under a Scheme of Delegations⁷: Commission should keep the Scheme under review.
- 8.2 Commission has no power to delegate responsibility for decisions to individual Commissioners subject to the Chair's approval procedure set out in the Scheme of Delegations. Commission may delegate responsibility for advice and oversight to committees of Commission. All committee meetings shall be minuted and those minutes available to all Commissioners.
- 8.3 Commissioners have no executive or managerial responsibility so it is not appropriate for them to instruct staff directly. Any requests should be channelled through members of the Executive Team

9. Business Planning

- 9.1 To operate its business effectively, Historic England should produce management planning and information documents covering at least three financial years ahead. These may take the form of strategic or corporate plans (for three years ahead), and should include a business plan (one year ahead).
- 9.2 DCMS should be sent copies of each of the completed planning documents. These plans should be made available to the public via the internet.

10. Openness and Freedom of Information

- 10.1 Commissioners 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. Commissioners should give reasons for decisions and restrict information only when the wider public interest clearly demands. Commissioners should ensure that internal procedures to deal with complaints, including those on failure to provide information, are maintained.
- 10.2 Commissioners and Historic England staff should conduct all their dealings with the public in an open and responsible way. Commission minutes are published online as soon as they are approved.
- 10.3 All the information and records that staff and Commissioners generate in the course of Historic England business, by whatever means (including mobile devices), are subject to freedom of information legislation. The Freedom of Information Act, the Data Protection Act and the Environmental Information Regulations entitle third parties to access all of our information, subject to certain exemptions.
- 10.4 The exemptions allow for the safeguarding of information that should rightly not enter the public domain for the time being, for example, commercially sensitive information or information which is intended for publication. None of the

⁷ See Commissioners' extranet for the current version.

exemptions last indefinitely. Commissioners should therefore be aware that all information generated or handled in their capacity as a Commissioner – whether emails, text messages or posts on social media - may at some point come into the public domain.

11. Use of Public Funds

- 11.1 Commissioners have a duty to ensure the safeguarding of public funds (which includes earned income) and the proper custody of assets which have been publicly funded. They must take appropriate measures to ensure that the body at all times conducts its operations as economically, efficiently and effectively as possible, with full regard to the guidance in *Managing Public Money*⁸. Commission must not employ consultants to lobby Parliament, Government or political parties.

12. Annual Report and Accounts

- 12.1 As part of its responsibilities for the stewardship of public funds, Commission must ensure that a full statement of the use of resources is included in its Annual Report and Accounts. Such accounts should be prepared in accordance with the Accounts Direction issued by the Secretary of State, and such other guidance as may be issued, from time to time, by the Department for Culture, Media and Sport and HM Treasury, including the *Financial Reporting Manual*⁹.

13. The Role of the Chief Executive

- 13.1 The Chief Executive has a responsibility to Commission for the overall organisation, management and staffing of Historic England and for its procedures in financial and other matters, including conduct and discipline. This involves the promotion by leadership and example of the *Seven Principles of Public Life* (see 1.5 above).
- 13.2 The Departmental Accounting Officer (the Permanent Secretary of DCMS) will normally appoint the Chief Executive to be the Accounting Officer for the body. The duties of Historic England's Accounting Officer are set out in full in the Permanent Secretary's appointment letter to them. The Accounting Officer is responsible for accounting to Parliament, DCMS, Commission and other stakeholders.
- 13.3 The Historic England Accounting Officer is personally responsible for safeguarding the public funds for which he or she has charge; for ensuring propriety and regularity in the handling of those public funds; and, reporting to Commission for the day-to-day operations and management of Historic England and the achievement of its strategic aims. In addition, he or she should ensure that Historic England as a whole is run on the basis of the standards, in terms of governance, decision-making and financial management that are set out in *Managing Public Money*.

⁸ See 'Guidance' section of the Commissioners' extranet.

⁹ See 'Guidance' section of the Commissioners' extranet.

13.4 The key accountabilities are:

- a) signing the accounts and ensuring that proper records are kept relating to the accounts and that the accounts are properly prepared and presented in accordance with Treasury guidance and with any directions issued by the Secretary of State;
- b) signing a Statement of Accounting Officer's responsibilities, for inclusion in the Annual Report and Accounts;
- c) signing a Governance Statement concerning the organisation's management and control of resources during the year and setting out how risk has been managed, for inclusion in the Annual Report and Accounts;
- d) ensuring that effective procedures for handling complaints about Historic England are established and made widely known within the body;
- e) acting in accordance with the terms of the Management Agreement, *Managing Public Money* and other instructions and guidance issued from time to time by DCMS, HM Treasury and the Cabinet Office; and,
- f) giving evidence, normally with the Accounting Officer of the sponsor Department, when summoned before the Public Accounts Committee on Historic England's stewardship of public funds.

13.5 The Accounting Officer's particular responsibilities to DCMS are:

- a) informing the Department of progress in helping to achieve DCMS's policy objectives as defined in the Single Departmental Plan and in demonstrating how resources are being used to achieve those objectives;
- b) ensuring that timely forecasts and monitoring information on performance and finance are provided to the Department; that the Department is notified promptly if over or under spends are likely and that corrective action is taken; and that any significant problems whether financial or otherwise, and whether detected by internal audit or by other means, are notified to the Department in a timely fashion; and,
- c) to work collectively with the Department and other members of the DCMS 'family' of Arm's Length Bodies in support of each other and the group as a whole.

13.6 The duties of the Accounting Officer with respect to Commission are:

- a) advising Commission on the discharge of its responsibilities as set out under the founding legislation, in this document, and in any other relevant instructions and guidance that may be issued from time to time;
- b) advising Commission on Historic England's performance compared with its aims and objectives;
- c) ensuring that financial considerations are taken fully into account by Commission at all stages in reaching and executing its decisions, and that financial appraisal techniques are followed;
- d) taking action as set out in paragraphs 3.8.5 and 3.8.6 of *Managing Public Money* if Commission, or its Chair, is contemplating a course of action

involving a transaction which the Chief Executive considers would infringe the requirements of propriety or regularity or does not represent prudent or economical administration, efficiency or effectiveness, questionable feasibility, or is unethical.

- 13.7 More detailed guidance on the role of an Accounting Officer, including appearances before the Public Accounts Committee, is set out in Chapter 3 of *Managing Public Money*.

14. Commission as Employer

14.1 Commission, working through the Chief Executive, should ensure that:

- a) it complies with all relevant 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; and,
- b) that Historic England'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.

14.2 Commission has a responsibility to monitor the performance of the Chief Executive and other senior staff. Where the terms and conditions of employment of the Chief Executive and other senior staff include an entitlement to be considered for Performance Related Pay, and where such payments are assessed by Commissioners, Commission should ensure that they have access to the information and advice required to make the necessary judgements.

15. Handling Approaches from the Press

15.1 Approaches from the press should always be referred to the media team (020 7973 3416) where a press officer is on call at all times. If it is not urgent you can email communications@historicengland.org.uk. Commissioners, committee and panel members are welcome to call the team for advice at any time.

16. Approaches from the public or lobbying

16.1 Commissioners and Committee or Panel members may receive approaches from members of the public, professionals or interested parties regarding our role in strategic matters or particular casework. In general, Commissioners are encouraged to urge applicants to work with Historic England's staff teams. Where the approach constitutes an attempt to influence our decision on a specific case, it is important to bear in mind that we must demonstrate complete impartiality and integrity. This would be compromised by any perception that an informal approach to a Commissioner or other person associated with Historic England can influence a final decision.

16.2 We recommend that if a Commissioner, committee or panel member is approached on a particular case they do not express an opinion. This would be reasonable on the grounds that they are unlikely to have sufficient information to

consider the full picture. If the case is subsequently considered at a meeting a member will be expected to declare if they have previously expressed an opinion on the matter. The Chair or Chief Executive will then use their discretion to ask the member to withdraw if, in their view, the nature of the contact or the comments given are likely to draw into question the impartiality of Historic England's decision-making process.

16.3 Should an approach be received, it is recommended that the person or group be directed to an appropriate member of the Executive Team.

16.4 Where the approach constitutes a complaint over our handling of a planning case, it should be referred to the appropriate Planning Director for the area in the first instance. If the person is not satisfied with their response, they will be referred to the Director of Planning or other appropriate Executive Team member.

17. Expenses

17.1 Commissioners must follow Historic England's expenses policy¹⁰. Commissioners are responsible for compliance with all relevant HMRC requirements concerning payments.

18. Gifts and Hospitality

18.1 The Chair and Commissioners must not accept any gifts or hospitality which might, or might reasonably appear to, compromise their personal judgement or integrity or place them under an improper obligation. Commissioners must never canvass or seek gifts or hospitality.

18.2 Commissioners should record any gifts or hospitality accepted.

19. Use of Historic England Resources and Information

19.1 Commissioners must not misuse Historic England resources or information for personal gain or for political purposes. Commissioners must not disclose any information which is confidential in nature or which is provided in confidence without authority. This duty continues to apply after Commissioners have left.

20. Political Activity

20.1 In their Historic England role, Commissioners should be, and be seen to be, politically impartial. They should not occupy a paid party political post or hold a particularly sensitive or high-profile role in a political party. They should abstain from all controversial political activity and comply with Cabinet Office rules on attendance at Party Conferences.

¹⁰ See the 'Expenses' section of the Commissioners' extranet.

- 20.2 On matters directly related to the work of Historic England, Commissioners should not make political statements or engage in any other political activity. In their official capacity, they should be even-handed in all dealings with political parties.
- 20.3 Subject to the above, Commissioners may engage in political activity but should, at all times, remain conscious of their responsibilities as a Commissioner and exercise proper discretion. They should inform the Chair before undertaking any significant political activity. The Chair may choose to inform DCMS.
- 20.4 The Chair and any deputy chair are barred from service as Members of Parliament under the House of Commons Disqualification Act 1975.