



# **QAA Code of Good Practice in Governance**

**Approved by the QAA Board**

**15 March 2023**

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## Foreword by the Chair of the Board

In 1999, the Board of QAA adopted a *Code of best practice for members of the Board*, which since then has served as a guidance and reference point on governance matters for Trustees, Committee members, staff and the interested public, and as reflection of the value QAA places on good governance.

For over 25 years, QAA has worked as the UK’s independent quality body. Just as the Agency has evolved over the years, so has the Code. I am pleased to introduce the Code's latest edition, the *QAA Code of Good Practice in Governance*.

Taking QAA's Articles of Association as its starting point, the Code gives practical guidance to Board members and staff, signposts legislation and regulation relevant to the governance of QAA as a charitable company, and provides links to supporting policies.

UK higher education has a reputation for continuous enhancement of quality and rigorous assurance of academic standards. QAA's purpose – to ensure that students and learners experience the highest possible quality of education – supports this richly-deserved reputation.

The scale, diversity and delivery of tertiary education continues to evolve, both in the UK and globally. So too does the policy and regulatory environment, to which QAA continues to respond, often applying its expertise in innovative ways – and its work is rightly underpinned by its own robust governance arrangements.



Simon Gaskell  
Chair of the QAA Board  
March 2023

## About QAA

### Who we are

The Quality Assurance Agency for Higher Education (QAA) is the independent body entrusted with monitoring and advising on standards and quality in UK tertiary education. Specifically, QAA exists for:

- the promotion and maintenance of quality and standards in tertiary education in the UK and elsewhere;
- the enhancement of teaching and learning, and the identification and promotion of innovation and good practice in teaching and learning;
- the provision of information and the publication of reports on quality and standards in tertiary education in the UK and elsewhere; and
- the provision of advice to governments, as requested, on access course recognition and in relation to all or any of the above objects.

QAA is a world-leading quality agency with unmatched experience providing impartial regulatory and collaborative quality assurance and enhancement.

We work towards a greater public understanding, domestically and internationally, of how excellent quality is demonstrated in UK higher education, and how autonomous providers both assure its delivery and address weaknesses.

Our work safeguards the value of qualifications for students and learners, and protects and promotes the reputation of higher education.

Our work is underpinned by the belief that a high-quality academic experience for learners is a good in itself, furthers human understanding and knowledge, and supports economic and broader societal progress.

### Our corporate status

QAA was incorporated as a company limited by guarantee on 27 March 1997 and registered as a charity in England and Wales on 9 June 1997; since 6 February 2007, QAA has also been registered as a charity in Scotland. The provisions of the *Companies Act 2006* and of the *Charities Act 2006* and *2011*, therefore apply to QAA, as do the regulations of the Charity Commission and the Office of the Scottish Charity Regulator (OSCR).

QAA's company members and legal owners are the representative bodies of UK higher education providers: Universities UK (UUK), GuildHE, Universities Wales (UWales) and Universities Scotland (UScotland).

# The Board

## Role

The Board's role is to govern QAA in line with the organisation's purpose, aims and values, and to ensure that it achieves its charitable objects. Trustees are responsible for the organisation's compliance with legal and regulatory requirements and provisions as applicable to a UK charity. In order to discharge this responsibility, the Board:

- provides leadership and direction for QAA within a framework of prudent and effective controls, accountabilities and risk management
- sets QAA's strategic aims
- ensures that the resources are in place for QAA to deliver its objects and to achieve its aims
- reviews management performance
- sets QAA's values
- determines QAA's risk appetite and tolerance thresholds.

## Responsibilities and tasks

In fulfilling its role, the Board will:

- 1 Provide strategic direction by:
  - setting QAA's strategy and objectives, and key policies
  - approving QAA's strategic plans, annual plans and budgets
  - safeguarding the good name and values of QAA
  - maintaining high standards of corporate governance.
- 2 Enable leadership by:
  - appointing the Chief Executive, and putting in place suitable arrangements for monitoring the post holder's performance
  - appointing the Company Secretary
  - agreeing a scheme of delegation.
- 3 Monitor performance by:
  - ensuring processes are in place to monitor and evaluate the performance and effectiveness of QAA against strategic and annual plans and approved key performance indicators
  - establishing processes to monitor and evaluate the performance and effectiveness of the Board itself.
- 4 Ensure accountability by:
  - receiving and approving the annual accounts
  - ensuring, and monitoring, the existence and integrity of systems of control and accountability, including financial and operational controls and risk management
  - safeguarding public funds and ensuring that at all times QAA conducts its operations economically, efficiently and effectively.

## Matters reserved to the Board

Annex A provides further detail of the legal framework underpinning Trustees' work.

## Delegation of authorities by the Board

### Committees

#### [QAA Articles of Association:](#)

73 The Board of Directors may delegate any of their powers to a committee(s) of directors and such other person(s) as they think fit, and any committee so formed shall, in exercise of the powers so delegated, conform to all regulations imposed upon it by the Board of Directors.

The Board can establish and dissolve committees as the need arises. It is at present supported in its work by seven committees and the Honorary Treasurer. Governance committees include the Audit and Risk Committee (ARC) and the Nomination and Remuneration Committee (NRC). Committees with a specific remit for safeguarding academic standards and quality include the Advisory Committee for Degree Awarding Powers (ACDAP) and the Access Recognition and Licensing Committee (ARLC). The Scotland Strategic Advisory Committee, Wales Strategic Advisory Committee and Student Strategic Advisory Committee inform the Board's strategy development by giving expert advice on higher education matters in the devolved nations, and by providing students' perspectives on QAA's work. The Committees are made up of Members of the Board and other external expert members.

### The Executive

#### [QAA Articles of Association:](#)

76 The Board of Directors may entrust to and confer upon the Chief Executive for the time being such of the executive powers exercisable under these Articles by the Board of Directors as they may think fit, and may confer those powers for such time, and to be exercised for such object and purposes, and upon such terms and conditions, and with such restrictions, as they may consider expedient, and may revoke, withdraw, alter or vary all or any of those powers PROVIDED THAT all acts of such Chief Executive shall be reported in due course to the Board of Directors.

The Board has delegated responsibility for the day-to-day management of QAA's activities and functions to the Chief Executive. At each meeting of the Board, the Chief Executive reports (in writing) about key developments in and achievements by QAA, often set in the context of developments or changes in the legislative, regulatory or policy environment of QAA operations, nationally and internationally.

## Membership of the Board

QAA's Articles of Association stipulate the composition of the Board, specify membership criteria, and set out nomination rights. These provisions enable the QAA Board to be an effective governing body for the charity, while representing the diversity of providers of UK higher education.

QAA Articles of Association:

50 Unless otherwise determined by a general meeting, membership of the Board of Directors shall be constituted as follows:

- (i) 4 persons to be nominated by UScotland, UUK, UWales and GuildHE jointly, and subject to the approval of the Board of Directors, to be appointed by the Board of Directors;
- (ii) 3 persons to be nominated by DfE (NI), HEFCW and SFC jointly, and subject to the approval of the Board of Directors, to be appointed by the Board of Directors;
- (iii) 6 independent directors to be appointed by the Board of Directors in accordance with Article 51 of these Articles;
- (iv) 1 independent director appointed by the Board of Directors and who at the time of their initial appointment is: (a) either a registered undergraduate or postgraduate student for a course leading to an award of a higher education institution, (b) an elected student officer of a student union (a student union being for the purpose of this Article a student union within the meaning of part II of the Education Act 1994 and any other establishment which the Board of Directors deems is a student union) or (c) an elected student officer of a student representative organisation;
- (v) 1 person to be nominated by the National Union of Students and subject to the approval of the Board of Directors, to be appointed by the Board of Directors;
- (vi) 1 person to be nominated by the representative body for Colleges in the UK and subject to the approval of the Board of Directors, to be appointed by the Board of Directors; and
- (vii) 1 person appointed by the Board of Directors who is engaged wholly or mainly in the governance or management of an Alternative Provider or Alternative Providers and who will (in the opinion of the Board of Directors) have a comprehensive knowledge and understanding of, and will represent the views and interests of such providers.
- (viii) The Board may co-opt up to 3 further members who can provide a knowledge and understanding of other such areas as the Board may consider desirable;

## **Selection and induction**

Members of the Board are recruited and selected in accordance with good practice and QAA policies to safeguard transparency, fairness and thoroughness of process, to ensure equality and diversity. Where external bodies nominate Members to the Board, QAA, on behalf of the Nomination and Remuneration Committee (NRC) and the Board, engages in dialogue with nominators. For independent Members of the Board, the NRC oversees a process of public recruitment that is in line with good practice and QAA's policies.

New Board Members participate in a structured induction programme to familiarise them with their role and duties as Trustees, the contexts and framework within which QAA operates, and with the organisation and its activities. Trustees are supported in their role by the Company Secretary, who provides advice and guidance as requested. Board Members have access to a secure online Members' area (SharePoint) where information and guidance pertaining to their role as Trustees is easily accessible.

## Meetings

The Board meets four times during QAA's business year, which runs from 1 August to 31 July. Meetings usually take place in person, with a video conference facility available for remote attendance if necessary.

Board and committee members are expected to demonstrate their commitment to the organisation by unbroken attendance at the Board or committee on which they sit, except when prevented by unforeseeable events. Attendance at meetings is reported in QAA's Annual Report and reviewed regularly by our Nomination and Remuneration Committee. If members total attendance (at Board and Committee meetings) falls **below** 75% in a calendar year, the NRC will be notified and will evaluate Board participation in order to maintain continuity and cohesion in the governance of QAA. It is likely that this will prompt a conversation between the member and relevant Chair to, in the first instance ensure ongoing availability and commitment to the committee. The NRC will consider each case individually.

Annex B - Transaction of business outside of meetings - provides guidance for the Board on conducting urgent business outside the usual meeting cycle.

## Code of Conduct

QAA has developed a Trustee Code of Conduct, which also applies to members of QAA Board committees.

Annex C - Code of Conduct for Members of the QAA Board and QAA Board committees.

In addition to this Code, Members of the Board are required to adhere to the following QAA policies (please note that these are internal links; however, the policies are available upon request).

- [Equality and Diversity](#) (internal link)
- [Ethical Conduct and Anti-bribery](#) (internal link)
- [Whistle Blowing](#) (internal link)
- [Conflicts of Interest](#) (internal link)
- [Data Protection Policy](#) (internal link)



## **Board and Executive**

### **The role of the Chair**

The Chair of the QAA Board is one of the independent Trustees. The Chair's responsibilities relate primarily to managing the Board and ensuring its effectiveness. The Chair's responsibilities include:

- ensuring that the Board meets at regular intervals throughout the year
- setting the Board agenda, with a focus on strategy, performance monitoring, controls and accountability
- ensuring that the Board is enabled to, and does, make clear decisions, and monitoring the implementation of the Board's decisions
- promoting QAA's values, high standards of propriety, and efficient and effective use of staff and other resources throughout the organisation
- ensuring the Board has the requisite skills and expertise, and that new Board members are properly inducted and supported
- monitoring the performance of the Board and its Members
- appraising, on behalf of the Board, the Chief Executive.

### **The role of the Honorary Treasurer**

The Honorary Treasurer role was introduced to the Board in June 2017. The primary role of the Honorary Treasurer is to provide assurance to the Board on:

- the financial health of the Agency (and its subsidiaries)
- the soundness of the information on which they base their financial decision-making
- the soundness of financial management and planning, including that key financial risks are being appropriately managed.

The Honorary Treasurer will provide assurance to the Board that the financial functions of the Agency are carried out with due diligence and, in conjunction with the Director of Resources, will provide regular reports to the Board on the Agency's financial health.

### **The role of the Chief Executive**

The Chief Executive, appointed by the Board but not a Board member or Trustee, leads the Executive Team and is responsible for the executive management and day-to-day direction of QAA and its programmes of work.

The Chief Executive is accountable to the Board for the propriety and regularity of the finances for which QAA is answerable, for keeping proper accounts, for prudent and economical administration, for avoiding waste and extravagance, and for the efficient and effective use of all the resources in QAA's charge. The Chief Executive proposes the organisational strategy to the Board, and implements the strategy as decided by the Board.

## QAA Committees

QAA's Trustee Code of Conduct also applies to Members of QAA Board committees.

Annex C - Code of Conduct for Members of the QAA Board and QAA Board committees.

In addition to this Code, Members of QAA committees are required to adhere to the following QAA policies (please note that these are internal links; however, the policies are available upon request).

- [Equality and Diversity](#) (internal link)
- [Ethical Conduct and Anti-bribery](#) (internal link)
- [Whistle Blowing](#) (internal link)
- [Conflicts of Interest](#) (internal link)
- [Data Protection Policy](#) (internal link)

New Committee Members are expected to familiarise themselves with this good practice guide and with their role and duties in respect of the committee, the contexts and framework within which QAA operates, and with the organisation and the committee's activities. They are supported in this by the committee Chair and Secretary. Attendance of committee members will be reported by committee secretaries to the Board.

Meetings will take place by videoconference. Proceedings from committee meetings will be reported to the next Board meeting following the Committee.

## Annex A - The legal framework underpinning Trustees' work

QAA Board Members are both the company's directors and the charity's Trustees. As such, the following Acts govern their roles and responsibilities:

- *Companies Act 2006*
- *Charities and Trustee Investment (Scotland) Act 2005*
- *Charities Act 2011.*

### Trustees' and company directors' duties

Based on statutory and case law, the Charity Commission's guidance, [The essential trustee: what you need to know, what you need to do \(PDF 1.06MB\)](#) summarises Trustees' duties as follows.

Trustees, both individually as Board Members and collectively as the Board as a whole:

- must ensure the charity is carrying out its purposes for the public benefit, and in doing so should
  - understand the charity's purposes as set out in the governing document
  - plan what the charity will do, and what it will achieve
  - be able to explain how all the charity's activities are intended to further or support its purposes
  - understand how the charity benefits the public by carrying out its purposes.
- must comply with the charity's governing document and the law
- must act in the charity's best interests, which means that Trustees should
  - do what the Trustees decide will best enable the charity to carry out its purposes
  - make balanced and adequately informed decisions, thinking about the long term as well as the short term
  - avoid conflicts of duty to the charity with personal interests or loyalty to any other person or body
  - not receive any benefit from the charity unless it is properly authorised and is clearly in the charity's interests
- manage the charity's resources responsibly, and in so doing
  - make sure the charity's assets are only used to support or carry out its purposes
  - avoid exposing the charity's assets, beneficiaries or reputation to undue risk
  - do not overcommit the charity
  - take special care when investing or borrowing
  - comply with any restrictions on spending funds or selling land
- act with reasonable care and skill by
  - making use of personal skills and experience and taking advice where necessary
  - giving enough time, thought and energy to the role of Trustee
- ensure the charity is accountable, and in so doing
  - must be able to demonstrate that the charity is complying with the law, well run and effective

- should ensure appropriate accountability to Members
- should ensure accountability within the charity, particularly where responsibility for particular tasks or decisions is delegated.

The *Companies Act 2006* sets out company directors' duties as follows:

- to act within their powers
- to promote the success of the company for Members' benefit
- to exercise independent judgement
- to exercise reasonable care, skill and diligence
- to avoid conflicts of interest
- not to accept benefits from third parties
- to declare interests in proposed transactions or arrangements with the company.

Additional guidance for charity trustees is available as follows:

- [Charity Governance Code](#)
- [Charity Commission, \*The essential trustee: what you need to know, what you need to do\* \(PDF 1.06MB\)](#)
- [Office of the Scottish Charity Regulator, \*Guidance and Good Practice for Charity Trustees\*](#)

## **Public benefit (charities) and members benefit (companies)**

Members of the QAA Board need to be mindful of their twin obligations as charity trustees and company directors with regard to the beneficiaries of QAA and its work.

### **Charities and public benefit**

The *Charities Act 2011* defines a charity as 'an institution which is established for charitable purposes only, and falls to be subject to the control of the High Court in the exercise of its jurisdiction with respect to charities'. In order to qualify as a charitable purpose, the institution's activity must fall within one of the categories stipulated by the Act, and also be for the public benefit.

While there is no presumption of public benefit in any case, the 'advancement of education' is now one of a new list of 12 recognised charitable purposes satisfying the requirements of charities' legislation.

Charity trustees such as QAA's Board Members are required to have regard to the [Charity Commission's guidance on public benefit](#) when exercising any of their powers or duties.

'Having regard' to the commission's public benefit guidance means being able to show that Trustees are aware of the guidance, have taken it into account when making a decision to which the guidance is relevant, and in the event that Trustees decide to depart from the guidance, that it is possible to demonstrate a good reason for doing so.

From January 2008, all charities have to show, and be able to report on, how they meet the public benefit requirement.

The Charity Commission's guidance sets out two key principles of public benefit:

- the 'benefit aspect'
  - a purpose must be beneficial in a way that is identifiable and capable of being proved by evidence where necessary, and not based on personal views
  - any detriment or harm that results from the purpose (to people, property or the environment) must not outweigh the benefit - this is also based on evidence and not on personal views
- the 'public aspect'
  - the purpose must benefit the public in general, or a sufficient section of the public
  - the purpose must not give rise to more than incidental personal benefit (incidental benefit being a necessary result or by-product of carrying out the purpose).

QAA's annual report must explain how the Agency has carried out its purpose for the public benefit, and must also state whether the trustees had due regard to the Commission's public benefit guidance when exercising powers or duties to which the guidance is relevant. The Commission checks a random sample of annual reports for the quality of reporting about public benefit, and would consider persistent non-reporting a potential regulatory issue.

The *Charities and Trustee Investment (Scotland) Act 2005* provides that a body meets the charity test if its purposes consist only of one or more of the charitable purposes (of which the advancement of education is one) and it provides public benefit in Scotland or elsewhere. The Office of the Scottish Charity Regulator (OSCR) confirmed in February 2007 that QAA met the requirements of the charity test.

Charity Commission [guidance](#) includes:

- Public benefit: the public benefit requirement
- Public benefit: running a charity
- Public benefit: reporting.

## Annex B - Transaction of business outside of meetings

There may be occasions when the Board needs to transact business outside the usual meeting cycle. The following procedures should be followed in order to ensure that decisions are made under due process, are sound, and validly transacted.

### Chair's action

If, in order to ensure the smooth running of processes which are the responsibility of the Board, it is necessary for a decision to be made between Board meetings, the Board authorises the Chair to take such action as he or she considers necessary to achieve it. Where practicable the Chair will discuss the matter with the Chief Executive before taking any such action.

The Chair will exercise this power with care, will promptly notify all Members of the Board, and will explain why the action was taken and was considered appropriate. The Chair will also formally report such action to the next meeting of the Board, where a formal minute of the matter will be taken and the decision will be ratified by the Board.

### Board decisions

In accordance with QAA's Articles of Association, the Board has three options to make decisions between meetings:

**Call a special meeting.** The Chair or any three Members can call a meeting, or instruct the Company Secretary to do so. The Company Secretary will give notice to all Board Members, including notification of the means of convening the meeting (face-to-face, by teleconference or video conference). The meeting must be quorate regardless of the medium through which it takes place. Formal minutes must be made. Any business transacted at such special meeting constitutes a formal and binding decision of the Board.

**Written resolution.** Where it is not practical or possible to call a meeting, a decision may be proposed in writing, by the circulation of a written resolution, and where applicable, accompanying note. A written resolution must be circulated to all Members eligible to vote on the matter that is the subject of the resolution, and must be signed and returned by a simple majority (or in the case of a special resolution, by a majority of not less than 75 per cent) of the Members who would have been entitled to vote, within the specified timeframe. Decisions made by written resolution are formal and binding decisions of the Board.

**Committee.** The Board can delegate any of its powers to a committee made up from its Members for the purpose of considering an urgent matter outside the normal meeting cycle.

The acts, decisions and proceedings of such committees shall be reported fully to the Board in writing no later than the next scheduled Board meeting, and, where necessary, will be ratified by the Board.

### Transaction of Committee business outside meetings

Committees will normally conduct business within their meetings only, but where it is necessary to conduct business outside meetings, similar principles should be applied. Any decision made by circulation should be recorded in the minutes of the next meeting of the Committee.

## Annex C - Code of Conduct for Members of the QAA Board and QAA Board committees

Members of the QAA Board ('Trustees') and of the QAA Board's committees ('Members') will at all times:

- act in good faith
- act in the best interest of QAA
- act in accordance with QAA's Articles of Association, both as individuals and collectively
- act in accordance with the seven principles of public life.

### Seven principles of public life

The [seven principles of public life](#) are:

Selflessness:	Holders of public office should act solely in terms of the public interest.
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.
Objectivity:	Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.
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.
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.
Honesty:	Holders of public office should be truthful.
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.

## **QAA's best interest**

Some Trustees and Members are nominated to their positions by external organisations, including QAA's company members. However, a Trustee must act solely in the interests of the charity and not of their nominating body. A Trustee is not a delegate of the body that appoints him or her. It is not part of a Trustee's function to represent or promote the interests of a third party, whether that third party is the body that nominated him or her, a funding body, or a body of which the Trustee is a member or employee, or in which he or she has some other interest. The promotion of QAA's best interests and continuing need for independence must at all times guide Trustees and Members in their decision-making.

## **Gifts and hospitality**

Trustees and Members will not accept gifts, hospitality or other benefits which are offered in relation to QAA business or Trustees' and Members' positions on QAA's Board or QAA Board committees, and which could be seen as intended to influence Trustees' and Members' judgement. The Company Secretary will advise in case of uncertainty; any gifts or hospitality received must be declared to the Company Secretary within 14 days.

## **Confidentiality**

Trustees and Members will receive confidential information and/or be party to confidential discussions in the course of their duties. They must not divulge or communicate confidential information - including discussions, opinions, information or intelligence heard in meetings - by any means, use confidential information for their own purposes, or cause any unauthorised disclosure of any confidential information. Only when a person authorised to do so has given consent, may confidential information be disclosed.

Trustees and Members must hold confidential information securely and dispose of it securely. Any loss or accidental disclosure, as well as the circumstances leading to it, must be notified to the Chair of the Board or Committee and to the Company Secretary/Chief Executive.

Board and committee Members are required to sign the *Terms of use for access to QAA systems*, which also cover access to confidential information through QAA's electronic systems.

## **Media, public speaking engagements, communications with external organisations, public representation of QAA**

From time to time, Trustees and Members may be approached by the media, events organisers or other organisations with requests for writing or speaking in their capacity as a QAA Board or committee Member. Any such requests should be discussed with the Chair of the Board or Committee and the Chief Executive or Director of Corporate Affairs before agreeing to the engagement.

When speaking or writing about QAA and QAA's work, Trustees and Members should ensure they comply with this Code's provisions regarding confidential information, reflect current QAA policy, and make accurate, well-informed and well-considered statements that do not adversely affect QAA's reputation and the public's and stakeholders' confidence in the organisation.



## Meetings and decision-making

Trustees and Members are expected to make every effort to attend Board and committee meetings and to commit to the time necessary to prepare for meetings and to discharge their duties. Trustees and Members undertake to be available and to prepare for urgent business transactions outside the normal meeting cycle if the need arises.

At meetings, Trustees and Members will conduct business collegiately, openly, objectively, and be respectful of others' views and opinions.

When a quorum is present, the Board and committees make decisions by majority. Trustees and Members are expected to respect and accept such decisions, and while they may make it known to the Board or committee why they do not agree with a decision, they must not hinder the implementation of decisions.

## QAA staff

Trustees and Members understand and respect the difference in roles and separation of responsibilities between the Board or committees, the Chief Executive, and the Executive Team. Trustees and Members recognise that staff are responsible to their line managers and the Chief Executive, not to Trustees or Members.

Trustees will have a clear understanding of the authorities delegated by the Board to the Chief Executive, and will be careful not to undermine this delegation by word or action.

## Sanctions

All Trustees and Members are expected to work in the spirit of this Code. If the Chair of the Board or of a committee considers that a Trustee or Member fails to do so, they will first discuss the matter with the individual concerned with a view to resolving any concerns, before asking the Board or committee to consider the need for, and nature of intervention.

## Liability and insurance

QAA has corporate responsibility for actions taken by Board Members. This means that, if judgement were made against the Board, any financial settlement would normally be met from QAA funds rather than from the personal assets of individual Board Members. Individual Board Members who act honestly, reasonably, in good faith and without negligence in the best interests of the organisation should not normally incur any liability in an individual capacity, provided they are acting in furtherance of their duties. As Trustees, QAA Board Members are, upon appointment, covered under QAA's trustee indemnity insurance, which covers both actions of the Board as a whole and, subject to the exclusions below, personal liability.

QAA trustee indemnity cover does not apply if Board Members, as company directors, act wrongfully, for example, make a fraudulent or negligent statement or decision which results in loss to a third party. Board Members who misuse information gained by virtue of their position may also be liable for breach of confidence under common law or may commit a criminal offence under insider dealing legislation. Section 232 *Companies Act 2006* provides that: 'Any provision that purports to exempt a director of a company (to any extent) from any liability that would otherwise attach to him in connection with any negligence, default, breach of duty or breach of trust in relation to the company is void.' Therefore, if a director acts 'wrongfully', he or she will be personally liable for the consequences. Clause 95 of QAA's *Articles of Association* reflects this, and also makes Board Members personally liable in

respect of costs of any unsuccessful defence to the criminal prosecution of an individual in the capacity of company director. Failure to act in order to prevent a breach of duty or of trust by another or others may also lead to the non-acting 'sleeping Trustee' being held personally liable, even after they have retired from the Board.

Where Board Members, in their capacity as QAA's Trustees, fail to comply with their duty to report serious incidents to the charity regulator, the legal, regulatory or reputational consequences arising from this failure constitute liabilities which would not be covered if Board Members neglected their duty of care or acted negligently.

Although any legal proceedings initiated by a third party are likely to be brought against QAA corporately and not against Board Members individually, in exceptional cases proceedings (civil or criminal) may be brought against the Chair or other individual Board Members. Such proceedings might arise in relation to an act or omission which the Member in question knew to be a breach of trust or a breach of duty, or which was committed in reckless disregard to whether it was a breach of trust or a breach of duty. For example, Board Members may be personally liable if they make a fraudulent or negligent statement which results in loss to a third party.

Failure to act in order to prevent a breach of duty or of trust by another or others may also lead to the non-acting 'sleeping Trustee' being held liable.

This document is available in both English and Welsh

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