

Primer for Insurance Non- Executive Directors in the UK

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1. Introduction: 1 of 2

The UK's financial services regulators have considerable and increasing expectations of insurance and reinsurance Non-Executive Directors (iNEDs). An overview of the role and its potential problems has been lacking. The Worshipful Company of Insurers (WCI) first sought to fill this gap in 2014. This latest edition retains the same content as previous issues, but is now in power point format for greater ease of navigation and updating.

The abbreviation "iNED" is normally used to denote a non-executive who is independent, as opposed to one who represents, usually, a shareholder. Since the WCI's guidance focuses on non-executives in the insurance and reinsurance markets, iNED in the WCI's branding and usage refers to these sectors and not to independence. That said, the target audience for this Primer is independent non-executives, and readers should assume that this is the group referred to unless otherwise stated.

It has never been the Primer's role to provide a summary of the regulatory environment, but references are made to the material obligations with links given for further reading.

Electronic links to original source materials or to authoritative commentaries are inserted in the course of each section.

Information about the WCI's iNED Forum Programme, which considers specific topics relevant to iNEDs, can be found here:

<https://wci-ined-information-bank.co.uk/forums-and-workshops>

1. Introduction: 2 of 2

- Much has changed since the iNED Primer was first published. Two subjects have become mainstream concerns:
 - (a) diversity and inclusion, together with a focus on what is acceptable behaviour in the office; and
 - (b) sustainability and the impact of climate change.
- Social media have changed the dynamics of reputational risk and more explicit regulations have been introduced to provide a framework within which boards are expected to address these issues.
- In addition, the COVID-19 pandemic introduced new ways of working: from home; in hybrid arrangements; or from remote locations outside of traditional offices. It has also changed the importance of health and safety practices in the workplace. Boards have had to come to terms with new communications and procedures for conducting meetings. Working patterns are still in flux, and boards need to be vigilant in measuring the impact of changes on the efficiency of the business and the mental health of employees.

2. Understanding the role: 1 of 2

- The Institute of Directors (IoD) defines the independent non-executive director role as:
 - “to provide a creative contribution to the board by providing independent oversight and constructive challenge to the executive directors.”
- As members of a unitary and balanced board, iNEDs should help to develop and constructively challenge proposals on strategy. In particular, iNEDs bring independence and specialist knowledge. Those non-executive directors who represent specific stakeholders such as shareholders are not truly independent, but may provide insights and experience of value to the board.
- Typically, iNEDS should:
 - i) scrutinise the performance of management in meeting agreed goals and objectives, and monitor the reporting of performance;
 - ii) be satisfied with the integrity of financial information and ensure that financial controls and systems of risk management are robust and defensible; and
 - iii) focus on board matters and not cross the line into executive action.
- This last point can be difficult at times and may require skills that new iNEDs have to learn. Some patterns of behaviour may need modification.

IOD definition of NED

<https://www.iod.com/services/information-and-advice/resources-and-factsheets/details/What-is-the-role-of-the-NonExecutive-Director>

2. Understanding the role: 2 of 2

The IoD indicates that executive management should use their non-executives to provide general counsel and a different perspective on matters of concern. Executive management in insurance operations may also seek iNEDs' guidance on particular issues before they are raised at board meetings. Some of the main specialist roles of an iNED will be carried out in a committee of the board (see slides 28-30). The key roles are:

Strategic direction: as an “outsider”, the iNED may have a clearer, or wider, view of external factors affecting the business environment, able to act as a constructive critic in reviewing the objectives and plans devised by the CEO and his or her executive team.

Monitoring performance: iNEDs should take responsibility for monitoring the performance of executive management, especially with regard to the progress made towards achieving the agreed company strategy and objectives.

Risk and financial integrity: All iNEDs must satisfy themselves on the integrity of the financial information and ensure that financial controls and systems of risk management are robust and defensible, including those that extend to conduct, regulatory compliance and operational risks. It is the duty of the entire board to ensure that the company accounts properly to its shareholders, or capital providers, by presenting a true and fair view of its financial status and performance. As part of that process, the necessary internal controls must be in place and monitored regularly and rigorously.

Communication: A board's effectiveness, along with the enterprise itself, can benefit from outside contacts and opinions. According to the IoD, an important function for non-executives can be to help connect the business and board with outside networks of potentially useful people and organisations. In some cases, iNEDs may be called upon to represent the insurance organisation externally.

3. The Legal and Regulatory Background: 1 of 6 Sources of Regulation

Non-executive directors are subject to the same legal and regulatory regime as any director, including, in the UK:

- The Companies Act 2006, especially sections 170 to 177
- The Prudential Regulation Authority (PRA)
- The Financial Conduct Authority (FCA)
- The Corporation of Lloyd's in respect of the managing agents of syndicates trading at Lloyd's
- The Competition and Markets Authority
- The Information Commissioner's Office

Many industry bodies such as the Financial Reporting Council issue corporate governance codes addressing how the various legal and regulatory requirements might best be implemented. If business is conducted elsewhere than the UK, then local law and regulation will apply in addition.

PRA homepage:

<https://www.bankofengland.co.uk/prudential-regulation>

PRA's Approach to Insurance Supervision

<https://www.bankofengland.co.uk/-media/boe/files/prudential-regulation/approach/insurance-approach-2018.pdf>

FCA homepage:

<https://www.fca.org.uk>

ICO homepage:

<https://ico.org.uk>

CMA homepage:

<https://www.gov.uk/government/organisations/competition-and-markets-authority>

Lloyd's homepage:

<https://www.lloyds.com/>

Companies Act 2006:

<https://www.legislation.gov.uk/ukpga/2006/46/section/170>

FRC UK Corporate Governance Code:

<https://www.frc.org.uk/directors/corporate-governance-and-stewardship/uk-corporate-governance-code>

3. The Legal and Regulatory Background: 2 of 6

Directors' Duties

The Companies Act 2006 sections 171 to 177 set out the directors' duties as:

- to act in accordance with the company's constitution and only exercise powers for the purposes for which they are conferred;
- to act in the way he or she considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole, having regard to:
 - i) the likely long-term consequences;
 - ii) the interests of the employees;
 - iii) the need to foster the company's business relationships with suppliers, customers and others;
 - iv) the impact of the company's operations on the community and the environment;
 - v) the desirability of the company maintaining a reputation for high standards of business conduct;
 - vi) the need to act fairly as between members of the company.
- to exercise independent judgment;
- to exercise reasonable skill, care and diligence;
- to avoid direct or indirect interests which may conflict with the interests of the company;
- not to accept a benefit from a third party conferred by reason of being a director or doing or not doing anything as a director;
- to declare the nature and extent of any interest in a proposed transaction.

3. The Legal and Regulatory Background: 3 of 6

The regulators' objectives and expectations

- **The PRA's Statutory Objectives are:**
 - to promote the safety and soundness of the firms it regulates; and
 - to contribute to ensuring that policyholders are appropriately protected
- **The FCA's Statutory Objectives** fall into the following categories:
 - i) its strategic objective is to ensure that relevant financial markets function well;
 - ii) its operational objectives are:
 - iii) to protect consumers from bad conduct;
 - iv) to protect the integrity of the UK financial system; and
 - v) to promote effective competition in the interests of consumers.
- Since 2023 the PRA and FCA have a secondary object to facilitate the international competitiveness and growth of the UK economy in the medium to long term.
- The principal expectation of the regulators is that “A firm must deal with its regulators in an open and cooperative way, and must disclose to the regulator appropriately anything relating to the firm of which the regulator would reasonably expect notice.”
- Both regulators operate an approvals regime under which they vet the suitability of persons undertaking certain key roles within regulated businesses – see next slide.

3. The Legal and Regulatory Background: 4 of 6 Personal Approvals

PRA Senior Managers Regime – approvals

<https://www.bankofengland.co.uk/prudential-regulation/authorisations/senior-managers-regime-approvals>

FCA Senior Managers and Certification Regime:

<https://www.fca.org.uk/firms/senior-managers-certification-regime>

FCA The Senior Managers and Certification Regime Guide for Insurers:

<https://www.fca.org.uk/publication/policy/guide-for-insurers.pdf>

FCA Assessing fitness and propriety:

<https://www.handbook.fca.org.uk/handbook/FIT/1/3.html>

- An assessment of fitness and propriety is conducted with regard to:
 - i) honesty, integrity and reputation;
 - ii) competence and capability; and
 - iii) financial soundness (as an individual).
- Where the insurer is regulated by both the PRA and the FCA, then the former will take the lead.
- Appointments to the role of chair of the board or a committee will be those most relevant to iNEDs in this context. An appointment as a director with no approved role does not need regulatory approval. Approvals may take more than the basic three months envisaged by the regulations.

3. The Legal and Regulatory Background: 5 of 6

Sources of trouble

- As with insurance executive directors, iNEDs are liable to disqualification under the Company Directors Disqualification Act 1986. If an insurer's board is investigated for wrongdoing, such an investigation will include the actions or omissions of iNEDs. Personal fines may also be levied. Censures may be published. In extreme cases of malfeasance, a director may be prosecuted and jailed. Shareholder action may follow. Reputational damage will be inevitable.
- Typical circumstances in which directors may find themselves challenged by regulators include:
 - i) poor financial controls leading to the mis-statement of accounts or solvency issues;
 - ii) undisclosed relationships with colleagues;
 - iii) serious mis-selling of products;
 - iv) breach of sanctions regulations or cases of bribery; or
 - v) tolerance of poor corporate culture leading to harassment in the workplace.
- Within the board, iNEDs may be involved in the removal of any directors who are not performing satisfactorily.

3. The Legal and Regulatory Background: 6 of 6

Constantly Developing

The regulatory landscape is not static. Not only does the government periodically change the statutory objectives of the regulators, but the regulators themselves may introduce new themes or topics of focus, or may simply re-base the detail of the regulations. Recent examples include:

the introduction of a consumer duty to achieve good outcomes with respect to the products sold – this has included the requirement to appoint a Consumer Duty Champion, usually an independent non-executive director (<https://www.fca.org.uk/firms/consumer-duty-information-firms>);

a strong focus on operational resilience coupled with the need to identify and sustain important business functions (<https://www.fca.org.uk/publications/policy-statements/ps21-3-building-operational-resilience>); and

the switch at Lloyd's from a minimum standards regime to a principles based regime, which addresses and rates all aspects of a syndicate's functions and performance (Principles for doing business at Lloyd's: <https://www.lloyds.com/conducting-business/market-oversight/principles-for-doing-business-at-Lloyds>).

These topics may come with thematic reviews of the compliance of a number of market participants as well as requirements for boards to attest to aspects of the company's adherence to the standards. Attestations, incidentally, have no basis in the regulations, but have become a common method for all regulators to seek assurance from boards and thus drive accountability. Regulators' expectations of iNEDs are high and are becoming higher. Short of resource themselves, they sometimes look to iNEDs as their regulatory nominees, exercising a process of check and balance.

This section should have made clear that being in iNED is a professional commitment, not a retirement hobby. If, having read so far, your enthusiasm for taking up an iNED role is undimmed, please continue to the next section, which addresses what your motivation might be and what the practical requirements are.

4. Before becoming an iNED: 1 of 7

Motivation

- The most common reasons for seeking an iNED role are:
 - i) to remain active and in touch with the market and its participants;
 - ii) the opportunity to give something back to the market where a successful career may have been built;
 - iii) to seek intellectual and commercial challenge without the burden of full time executive employment;
 - iv) to contribute to commercial success;
 - v) to provide a bridge between full-time employment and full-time retirement; and
 - vi) to provide an income which will be less than as a full-time executive, but which may postpone or supplement a pension.
- This last point is one to watch. It is important to be able, in the extreme, to walk away from a non-executive appointment should there be a conflict on the board which cannot be resolved. Dependency on the fee is therefore to be avoided.
- Some would-be directors plan to construct a portfolio of non-executive appointments which, taken together, can amount to a full-time commitment. Before seeking out multiple appointments consider the following:
 - i) the first year of any appointment requires a lot of time and attention – best to spread out the starting dates;
 - ii) you may not like being an iNED, as a hands-off approach after an executive career is not everyone's cup of tea; and
 - iii) the clustering of activities and meetings around the regulatory deadlines will make for intense periods of activity which will distract from doing anything else, including going on holiday.
- Where you already have one appointment, the terms of your contract may require you to seek the permission of the current board before accepting an appointment to another.
- As in so many situations, taking it one step at a time is prudent. “Over-boarding” is to be avoided.

4. Before becoming an iNED: 2 of 7

What is expected

- Consider what it is you would be offering to a board. Companies look to balance the expertise which the iNEDs bring to the table. If the board has a total of four iNEDs, it is unhelpful if they are all either accountants or actuaries. Expertise in operations, IT and cyber security tend to be thinner on the ground than finance, actuarial and underwriting. In the vast majority of cases, iNEDs will be expected to demonstrate experience within the insurance market.
- Gender and ethnic diversity is also sought, although it can be hard to achieve and sustain.
- Boards will appoint iNEDs as chairs of the board and of the audit and risk committees, subject to regulatory approval. Some iNEDs will be “without portfolio”, although they will be board members and members of the committees. There may also be a remuneration committee requiring an independent chair, together with a whistleblowing champion and consumer duty champion. The audit committee chair will tend to be an accountant, but the risk committee chair may be from any number of disciplines given the relative immaturity of risk as a function and the breadth of the scrutiny required. Some companies will also appoint a Senior Independent Director or SID, in effect a deputy chair, although this tends to occur only in larger groups.
- It is often assumed that the work of an iNED is to read the papers prior to a board or committee meeting and then to attend the meeting to probe, challenge and support the executive in running the business. This is correct, but by no means the whole picture. Much of the work is behind the scenes, keeping in touch with the other iNEDs and with the principal executives and external firms appointed. For example, the chair of the Audit Committee is expected to maintain a dialogue between meetings with the Chief Financial Officer, the Head of Internal Audit, and the external auditors. The Risk Committee chair may wish to pay very detailed attention to the ORSA and Validation Report. This is time-consuming, even where a business is well-run. It is usual to involve the relative iNED in senior appointments e.g. the chair of the Risk Committee where a new Chief Risk Officer is sought. There should also be a training programme built into the annual cycle, sometimes in online modules. It is prudent to keep a personal training record to show that the iNED has kept up to date with market and regulatory developments as well as completing company-specific training. There is no prescribed minimum number of hours (unless set by the company or any professional body to which the iNED belongs), but 20-25 hours per annum would be a reasonable target.
- Should there be a non-routine issue affecting the business, such as a major revision to the risk management framework, a cyber attack, or a high-profile incident affecting the firm’s reputation, then iNED involvement can be significant in overseeing the executives’ response and keeping in touch with the regulator. Bear in mind that the iNED fee does not increase where additional oversight is required. A real emergency can be very time-consuming with no extra reward.

4. Before becoming an iNED: 3 of 7

Cost/Benefit/Commitment

- As the previous slide makes clear, the time commitment is very variable. This is true even for the core role of preparing for and attending quarterly meetings. Meeting packs can be substantial, with their size across the Board and its Committees being driven by the scale and complexity of the organisation as well as the quality of the writers of the papers. It is not unusual for the number of pages for Board and Committee meetings to exceed 1,000 in large and complex businesses. Committee and board meetings are typically spread across two days and may be timed to accommodate overseas members attending virtually. Search firms normally quote an annual commitment of at least 35 days in all but the most straightforward companies, to include membership of one or two Board committees. Chairing a Committee is likely to add 5 to 10 days to this.
- The meeting calendar is normally set at least a year in advance, which has the benefit that the iNED can plan his or her year. Whilst remote attendance is occasionally necessary or even planned for particular meetings, attendance in person is the norm. The meeting dates are often selected to sync with regulatory and financial reporting deadlines, so there is little flexibility. This is the main reason why having too many board appointments is just not manageable as the meetings tend to cluster.
- The fees paid are the only remuneration received. There is normally a basic non-executive fee supplemented by a top-up fee for membership of a committee and/or acting as chair of the board or of a committee. The amount varies according to the company, but, given the now onerous nature of the role, the basic fee will likely be not less than £50,000. A portfolio of two or three appointments will therefore yield an annual remuneration in six figures. Payment is made through the company's salary system with tax deducted at source. An indication of typical fee levels can be found on slide 25.
- Commitments are normally made for three years subject to a six month notice clause, renewable twice. The rule of thumb for publicly quoted companies is a maximum of 9 years, on the basis that independence and impartiality may be diluted after that period, and the board will need to be refreshed. This rule tends to be respected by insurers, even if not publicly owned, and the regulators will monitor whether the board is becoming stale. More about the typical contract is to be found on Slide 24. A list of typical objectives for an iNED is shown on the next slide.

4. Before becoming an iNED: 4 of 7 iNED objectives

- Contributing to leadership within a risk framework of prudent and effective controls
- Scrutinising performance and the achievement of goals
- Testing the integrity of financial information
- Monitoring the governance structure
- Contributing to an open and accountable culture
- Setting strategy and monitoring its execution
- Monitoring regulatory compliance and securing good outcomes for consumers where applicable
- Vetting the management information provided to the board and committees to ensure that it is apt and clearly presented
- Being vigilant that the business has the right resource to carry out its strategy in accordance with its risk appetite
- For chairs, ensure that the business of the board/committee is conducted within its terms of reference
- Ensure that reporting to stakeholders (employees, shareholders, regulators) is carried out in a timely, comprehensive and open manner
- At all times maintaining the highest standards of integrity and acting in the best interests of the company
- Consulting with other iNEDs on matters of concern to determine the best way forward

4. Before becoming an iNED: 5 of 7 iNED Behaviours

- Be a good listener
- Offer sound advice based on experience
- Be articulate and ready to defend your opinion
- Be receptive to alternative views
- Challenge ideas and colleagues
- Be prepared to speak up even if in a minority of one where you think a point needs to be made
- Avoid being antagonistic
- Manage conflict
- Support and encourage where you are in agreement
- Being outside the company's line management, an iNED is well-placed to act as a sounding board for many in senior management. The iNED can provide a safe space for approaches or concerns to be aired.
- There are specific areas where it makes sense for an iNED to be consulted ahead of the distribution of the papers e.g. the CFO may discuss with the chair of the Audit Committee the draft annual report and accounts to explain any changes or the way in which particular issues have been addressed with the external auditors.
- It is important not to stray over the line into an executive role, but informal guidance to individuals is an important aspect of the role. Regular meetings between the chair of the board and the CEO are a normal feature of governance.

4. Before becoming an iNED: 6 of 7

Being a chair

The chair of the board or a committee will normally attend to the following:

Embodying the culture fostered by the business

Being visible within the business

Fostering an open relationship with the company's shareholders, who may have a non-independent non-executive on the board

Setting the agenda for meetings

Balancing confidence with humility

Ensuring that accurate, concise, timely and clear management information is provided

Sponsoring open discussion, engagement, contribution and debate, ensuring that all relevant voices are heard

Mediating differences of opinion

Avoiding dominating the meeting

Meeting directors privately to discuss performance and effectiveness, and being open to approaches from them

Developing a good working relationship with the company secretary

Developing an open relationship with the senior executive most connected to the board or committee i.e. the CEO for the board, the CFO for the Audit Committee, and the CRO for the Risk Committee, and being able and willing to tackle issues which need to be addressed.

4. Before becoming an iNED: 7 of 7

Being a SID

- The appointment of a Senior Independent Director is required for public companies, but privately owned companies may also wish to appoint someone to this role.
- The SID provides a safety valve if the usual channels of communication are not functioning well, such as during periods of stress. In normal times the SID often acts as a sounding board for the chair and may perform the annual evaluation of the chair (see slide 33). A SID may be especially useful in managing and resolving conflicts between directors, especially if the Chair has become partisan.
- Other directors may also find the SID useful as an intermediary.
- Shareholders, where they believe that the Chair is not stepping up to address an issue, may also appeal to the SID.
- The SID would usually be involved in succession planning for the chair role in conjunction with the executive.

If you are now ready to look for a specific appointment, the next section considers the sources of appointments and the process adopted.

5. Accepting an appointment: 1 of 6

Initial enquiries

- Recruitment may take many forms: by advertisement (usually online), through head hunters (where there are horses for courses), or through professional or personal networks. Cronyism is to be avoided. The regulators will want to know that a formal process has been conducted. The company may have a Nominations Committee which will take the final decision. The process varies according to the firm, but multiple interviews with the other iNEDs and senior executives are common.
- The company and the candidate are likely to conduct due diligence on each other, garnering information from public sources and from sounding out contacts. Candidates can make it known that they are looking for appointments and may even target companies in which they are particularly interested. Those who are transitioning from a full time executive role may be permitted to begin this process early and to hold a non-conflicting role immediately prior to retirement.
- It is worth raising the question of fees early on. If the company has fallen below the market rate, then the candidate should raise the question before matters go far.
- For the candidate, the due diligence process will start online with the company's website followed by its report and accounts, Solvency and Financial Condition report (for companies not Lloyd's syndicates), social media accounts, and the Companies House pages which will provide the Articles of Association. On the basis of a non-disclosure agreement, the company may also provide private information such as: a governance map/organogram; group structure if part of a larger organisation; ORSA; and, for Lloyd's syndicates, the Syndicate Business Forecast. It is also worth probing the company's governance arrangements in some detail.
- Discussions with directors may include inquiries into: strategy and growth plans, culture, the retention of talent, succession plans and regulatory history, including complaints and any enforcement action. If the company is an intermediary, its client base, commission/fee profile, cash flow and client money situation might be raised.

5. Accepting an appointment: 2 of 6

Other considerations

- During this process of interaction the candidate must be sensitive to the culture which is being revealed. If available, the board minutes give a good indication of culture, and if not much can be derived from the minutes, then that also says something about the company. Questions about the style of leadership, the tone from the top, communications with employees, how ethical standards are fostered and failures addressed, relations with regulators, all will tell you much about the company's style and standards. The character of the CEO is an important facet of this enquiry, so take particular note of his or her responses, looking for openness and a frank acknowledgement of what needs improvement.
- Not all companies will wish to disclose sensitive matters at a preliminary stage, but other areas of enquiry could include: whether the regulators have demanded remediation in any part of the business; the volume of complaints; the risk management environment; or the availability of D&O insurance and/or indemnities in favour of directors.
- If the candidate wishes to take informal soundings within his or her network, then ideally the permission of the company should be sought and the soundings taken only in the strictest confidence. Given that companies themselves, or head hunters representing them, will be taking references about the candidate, they should not object to candidates in effect doing the same. As will have been evident from the Legal and Regulatory section of this document, becoming an iNED is a decision not to be taken lightly.
- Once a candidate and the company have an agreement in principle, the appointment process continues in earnest. The process comprises three main parts: the regulatory application forms; the contract for services with the company; and the induction process.

5. Accepting an appointment: 3 of 6

The regulatory application process – the forms

- The chair of the board, the senior independent director (SID), the chairs of the Risk, Audit, Nomination and Remuneration committees require prior approval from the regulators, which can at the time of writing take more than the minimum 90 days to be granted. Periods of 5 to 7 months are not unknown even where the candidate is known to the regulators from multiple prior appointments.
- Formal, documented handover procedures need to be followed for all prior-approved iNED roles under the PRA and FCA's Senior Managers and Certification Regime.
- Other iNEDs whose roles do not fall into these categories are what are termed “notifiable appointments” which can be made without prior approval.
- The forms are long and detailed. The firm's compliance department should be able to assist applicants to complete them, but they are not intrinsically difficult.

PRA Authorisations:

<https://www.bankofengland.co.uk/prudential-regulation/authorisations>

FCA Approved persons:

[https://www.fca.org.uk/firms/approved-persons#:~:text=An%20'approved%20person'%20is%20an,\)%20%2D%20for%20an%20authorised%20firm](https://www.fca.org.uk/firms/approved-persons#:~:text=An%20'approved%20person'%20is%20an,)%20%2D%20for%20an%20authorised%20firm)

5. Accepting an appointment: 4 of 6

The regulatory application process – the interviews

- Candidates should expect to be interviewed by both the PRA and the FCA or by them separately, depending on the type of authorised firm. The Corporation of Lloyd's may also attend such sessions when future directors of Lloyd's managing agencies are being interviewed.
- In the case of a new firm applying to be authorised by the PRA and/or the FCA, the entire board of directors can expect to be interviewed individually. The process for establishing a new firm is beyond the scope of this Primer.
- It is not possible to be prescriptive about the content of such interviews, but, collectively, directors should be well informed about strategy, compliance and risk management issues, systems sustainability and operational resilience, customer focus and corporate culture as well as to how, individually, they will be able to contribute to the success of the enterprise. Hypothetically, iNEDs may be asked questions about the following:

Business strategy
 Corporate governance
 Fitness and propriety
 Succession planning
 Balance and diversity of the board

Capital
 Stress testing
 The Risk Management Framework
 Reserving
 Emerging risks
 Conduct and the Consumer Duty

Remuneration
 Investment policy
 ESG policy
 Operational resilience
 Reinsurance purchase

5. Accepting an appointment: 5 of 6

The contract for services

Contracts for iNEDs are not contracts of employment, but contracts for services. There is commonality between the contents of the contracts, often between 10-15 pages in length, which will normally cover the following:

- Appointment to the board
- Requirement to serve on specified board committees
- Definition of iNED role: duties and responsibilities
- Term of the appointment, with start date and duration, usually three years
- Notice period
- Retirement and termination
- Requirement to perform satisfactorily
- Time commitment (often specified as a minimum number of days)
- Timing of meetings (e.g. quarterly) and dates for both the board and its committees
- Venue of meetings

- Alternative forms of meeting in accordance with the articles of association
- Accepting additional commitments
- Fees: amount and when paid
- Expense reimbursement
- Declared outside interests
- Conflicts of interest
- Confidential nature of the company's data
- Disclosure of price sensitive information
- Data protection and GDPR
- Induction arrangements
- Review process: board collectively and individual directors
- D&O liability insurance
- Independent professional advice
- Administrative support
- Board and board committee terms of reference
- Third party rights
- English law, or as appropriate
- Signatories and acceptance procedure.

5. Accepting an appointment: 6 of 6

Per Ardua Associates' 2024 indication of iNED remuneration

| FTSE 100: | Annual Fee |
|---------------------------------------|--|
| iNED: | £100,000 - £200,000 |
| iNED Committee / Chair: | £15,000 - £20,000 (Chair £20,000 - £25,000) |
| iNED Board Chair: | £400,000 - £650,000 |
| FTSE 250: | |
| iNED: | £60,000 - £150,000 |
| iNED Committee/Chair: | £10,000 - £15,000 (Chair: £15,000 - £20,000) |
| iNED Board Chair: | £150,000 - £350,000 |
| Subsidiary / Non FTSE Company: | |
| iNED: | £60,000 - £100,000 |
| iNED Committee/Chair: | £10,000 - £15,000 (Chair: £10,000 - £15,000) |
| iNED Board Chair: | £100,000 - £250,000 |

Committee participation might also be paid separately: £10,000 - £15,000.

Possibly increasing to £15,000 if chairing the committee.

Committee participation may be remunerated on an hourly rate basis.

Fees will always depend on expected days' involvement and this may differ considerably from board to board.

The iNED fees quoted are largely for London based companies. Fees may be different in other parts of the UK, although the responsibilities will be the same.

Subsidiary / Non FTSE company iNED fees will include London Market companies and Lloyd's managing agents (although the more complex Lloyd's businesses may command a higher fee).

6. The board in action: 1 of 13

Induction and the role of the board

- At the outset, the newly appointed iNED should be taken through an induction process, the object of which is to familiarise him or her with the personnel and with the principal documents which describe in detail the company's business and operations.
- When going through the induction process, it is a good idea to make a list of items on which more information is desired and/or where some change or improvement might be suggested.
- The board's focus is on financial soundness and commercial success whilst behaving responsibly towards its shareholders, customers, employees and regulators, fostering a culture which promotes ethical conduct and roots out any form of harassment or bullying.
- To achieve these objectives, iNEDs must be knowledgeable about the affairs of the company and, however good the induction process, it can take time to acquire the necessary information to be able to develop an objective strategic view, whilst being cognisant of markets, economic conditions and geopolitical developments.
- Beware in particular of what is called the "normalisation of deviance" i.e. where small breaches of regulation or good practice/behaviour have been tolerated, and the cumulative impact has changed the assessment of what is acceptable in a slow and stealthy manner.

6. The board in action: 2 of 13

What good corporate governance looks like

- The structure, rules, practices and procedures together with the behaviours and expectations of the directors all contribute to a framework within which the company fulfils its objectives.
- Stakeholders' interests must be balanced.
- Governance should be transparent, proportionate to the nature and scale of the business, and consistent; it should be supported by robust systems and controls with effective accountability.
- The way in which the board and its committees function requires close attention, focusing on the detail of the matters reserved to the board and on the committees' terms of reference to ensure that the right topics are discussed in the right place.
- There should be the right mix of executive and non-executive members with neither too many (the usual problem) nor too few directors. Independent non-executive directors are ideally expected to form a majority.
- The allocation of responsibilities of each governing body should be documented in terms of reference and in matters reserved to the board.
- The financial control and risk management framework must be fit for purpose, effective and effectively challenged, with high quality reporting to all stakeholders.
- Culture, ethics and values are vital in today's boardroom with an increased focus on office behaviour at all levels of seniority. There should be no tolerance of harassment, bullying, sexual misconduct, discrimination or unfair treatment of recognised minorities. The iNEDs should be vigilant to ensure that board and committee level behaviour match the rhetoric.
- Diversity and inclusion should be monitored through the gender pay gap, the distribution of roles within the hierarchy, and the turnover of staff.

PRA Corporate Governance: Board Responsibilities

<https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/supervisory-statement/2018/ss516update.pdf?la=en&hash>

Culture at Lloyd's:

<https://www.lloyds.com/about-lloyds/diversity-and-inclusion>

6. The board in action: 3 of 13

Board Committees: Audit

- The board will normally delegate to one or more committees the heavy lifting required in a number of areas. Each committee will have detailed terms of reference.
- Companies typically have an Audit Committee and a Risk Committee (now usually separated) with the latter committee often addressing capital and/or compliance as well as risk. The chair of each will require regulatory approval.
- Independent iNEDs should provide the chair and membership of the Audit Committee. Many others, such as shareholder non-executives, the CFO, head of internal audit and the external auditors, will attend. The UK Corporate Governance Code states that the chair of the board should not be an audit committee member, but in unquoted companies or subsidiaries, this restriction is not normally observed.
- The Audit Committee will focus on the effectiveness of financial controls and will scrutinise the financial results, including recommending to the board for approval the annual report and accounts and the solvency and financial condition report (if applicable). Careful reviews of these documents by the iNEDs are highly recommended.
- Claims and reserving may also be within the Audit Committee's remit, so that the Chief Actuary and any third party reserving consultants will report initially to the Audit Committee.
- Internal audit will provide reports on specified topics to the Audit Committee for review and to ensure that agreed management actions to remedy any weakness are fulfilled in the agreed time.
- The Audit Committee will approve the internal audit team's planned reports for each calendar year.
- The Audit Committee also appoints and approves the remuneration of the external auditors, although if the company is part of a larger group, this role is somewhat diluted.
- Where a significant project to improve financial controls is undertaken, the Audit Committee will normally be the forum to which the project managers will report until a business-as-usual status is achieved.
- It is usual for the Audit Committee members to have separate meetings with the head of internal audit and with the external auditors without management being present to provide an opportunity for any concerns to be raised.
- The Audit Committee is a mature function which links to the annual financial cycle and has well-established boundaries. The same cannot be said of risk (see next slide).

6. The board in action: 4 of 13

Board Committees: Risk

- The Risk Committee, whether or not it includes capital and/or compliance, is normally the most hard-working, given the range and scale of the matters under its auspices. This is why it has now mostly separated from the Audit Committee.
- Principal risks should include, but are not limited to, those which could result in events or circumstances which might threaten the company's business model, future performance, solvency or liquidity, and reputation.
- Risks are normally classified as: strategic; insurance (underwriting, claims and reserving); credit; market; liquidity; group (where applicable); and operational. Operational risk is the hardest to measure. Reputational risk is sometimes separated out, and sometimes regarded as a by-product of failures in other categories.
- The risk committee can have executive members, including the Chief Risk Officer, although iNEDs should be in a majority. The amount of cross sectoral information presented makes it a popular committee to attend.
- The risk function is responsible for the company's risk management framework (risk register, risk appetites, risk tolerances, exposure management and the related KPIs and KRIs). Risk appetites can be very difficult to articulate and often provoke significant discussion and revisions.
- The risk function is also responsible for putting together the ORSA and the Validation Report relating to the internal model (where applicable), which are recommended by the Risk Committee to the Board for approval. Risk incidents, emerging risks, solvency ratios and capital monitoring and management may be included. Risk mitigation projects may also come under the scrutiny of the Risk Committee. And all this is before compliance, including conduct risk and complaints monitoring.

6. The board in action:5 of 13

Other Board Committees

- Audit and Risk are the core committees, but most organisations have Nomination and Remuneration Committees to manage appointments, succession planning and compensation, including bonus allocation. They will normally comprise exclusively iNEDs, although they will take guidance from the senior executive team. This is particularly the case at the Remuneration Committee where iNEDs are unlikely to have the perspective on performance across the business which is necessary to be fair to all employees. They can, however, look for inconsistency.
- One of the roles of the Remuneration Committee is to ensure that the basis of remuneration, particularly the bonus structure, does not foster poor outcomes for consumers.
- Otherwise, there is a great variety in the way in which companies organise themselves and the other aspects of the business which are normally governed by committees are listed on slide 38. There is no one size fits all. Recognising the need to make a change if the current arrangements are not working well is important. Businesses are organic, and what worked well three or five years ago, may not now be optimal.

6. The board in action: 6 of 13

The Company Secretary and Minutes of Meetings

- The Company Secretary team is there to manage the meeting calendar, support the chair of the board or committee in the preparation of agendas, deliver the meeting packs (usually on a secure shared drive), and prepare the minutes of the meetings.
- Meeting calendars for the next following year should be produced well in advance, showing which body is responsible, date, time, venue, and main content. This last is not wholly predictable, but there are annual cycles e.g. for financial reporting or the ORSA.
- This very demanding role is difficult to do well and is absolutely vital to effective governance. If meetings are not thoughtfully planned, or if packs are late, poorly written, or badly assembled, the meeting will go badly. Decision-making will be of poor quality. If minutes are not produced promptly and are badly written, monitoring the business will be severely impaired.
- iNEDs would therefore be well advised to take particular notice of the CoSec team and to support them to ensure that they have the resource and authority to secure timely and good quality material from presenters. The chair takes the main responsibility for the agenda/pack/minutes, and should not hesitate to intervene where the CoSec team may be struggling to obtain a proper and timely response from contributing executives.
- The minutes of the meetings are normally first checked by the chair before being circulated to the other members. They can be very technical in content and can run to between 10 and 20 pages depending on the meeting. They repay close scrutiny to ensure that they are accurate and well-written with no obvious spelling or grammatical errors, which would give rise to the impression that little care has been taken over them. In particular any challenges raised by iNEDs should be recorded so that the regulators (who frequently ask for packs to be copied to them) can see that iNED scrutiny is functioning at the company. Where companies are subject to the Consumer Duty regime, for example, challenges to business plans to ensure that good outcomes have been taken into account should be made and recorded.
- CoSec is one of the many services where, if it is done well, no-one notices, and, if it is done badly, no-one can get anything done and it is a well of frustration, especially for the iNEDs.

6. The board in action: 7 of 13

Ongoing engagement with the regulators

- The PRA, FCA and Lloyd's all maintain regular supervisory contact with firms they regulate and with their directors. Frequency will depend on the nature and scale of the business and whether or not the business has done anything to draw attention to itself in a negative way by, for example, having a material spike in complaints or a series of IT outages.
- The regulatory reporting burden is significant with hundreds of forms being submitted each year. Lloyd's syndicates are monitored under the Lloyd's principles for business and are given ratings according to Lloyd's assessment. Companies are graded according to size. Generally, size matters in the regulatory world because of the capacity to create severe market disruption if something serious goes wrong.
- All the regulators will provide feedback from whatever encounter they have had with the business, together with a deadline for fulfilment of actions required. These actions have normally been discussed beforehand and shared with the board, so they should come as no surprise.
- The regulators may also request interviews with iNEDs from time to time, especially if there has been turnover on the board or some issue which has brought the business to their attention. Sometimes these interviews are thematic and are conducted to test how the market at large is dealing with something. It is a good idea to be well-prepared for these interviews. Sometimes the iNED is not accompanied by anyone else from the business, whilst two or three regulators may be present.
- The main thing is this: if there is an issue, then the regulators need to hear it first from the business itself, and the presentation of the problem needs to be accompanied by a timed plan which will address it. If the regulators believe that the company cannot address the problem themselves, or they know about it from another source, then they may invoke section 166 of the Financial Services and Markets Act 2000 and set up a skilled person review at the firm's expense. This is a costly and distracting exercise and one well worth avoiding if possible. It is often a precursor to enforcement action, the nature of which is beyond the scope of this Primer. Suffice it to say that the regulators have an array of enforcement options, including the withdrawal of regulatory permissions, the imposition of fines and the issue a public censure.

FSA Section 166

<https://www.fca.org.uk/about/supervision/skilled-person-reviews>

PRA Supervision

<http://www.bankofengland.co.uk/prudential-regulation/supervision>

6. The board in action: 8 of 13

Performance evaluation

- The board and its committees will perform a review of their effectiveness each year. This normally takes the form of an online questionnaire addressing various aspects of the functioning of the board or committee, such as the suitability of the terms of reference, the frequency and conduct of meetings, the role of the chair etc.
- The questionnaire will usually have a comments section for directors to comment freely in addition to giving a rating. Such comments are usually the most useful part of the process.
- The output is shared on an anonymous basis with other members, and usually forms the basis for a list of action points to be addressed during the following year.
- From time to time the company may seek assistance from external governance consultants to conduct the annual review. This has the benefit of bringing the process up to date, as well as importing a more objective approach.
- Personal evaluations are also usually conducted, with any SID involved in evaluating the chair. The chair of the board will discuss the performance of the CEO with him/her and will also discuss each iNED's contribution. Sometimes, the views of the iNEDs will be sought for the annual appraisal of the executive with whom they have most interaction e.g. the Audit Committee chair may comment on the Head of Internal Audit and the CFO.
- These are useful occasions to address learning and development needs for the board/committee as a whole as well as for individuals. Any iNED who has not completed a sufficient amount of CPD may also find themselves answerable on this occasion.
- As well as the performance of the body in question, this is a good moment to consider whether the mix of skills brought to the table by the incumbent iNEDs is optimal, especially if one of them is due in the next 12-18 months to leave the board as their term comes naturally to an end.

6. The board in action: 9 of 13

Powers, responsibilities and decisions

- The board oversees the business, culture and governance, delegating day to day functions, but reserves to itself a number of matters. Reserved matters will include overall strategy, material transactions, board appointments, business plans, external audit appointments, approval of the annual financial statements, capital adequacy and reserving, ORSA, validation report, and the major policies. Many of these reserved matters are prescribed by regulation.
- Reports will be made to the board by the major functions, either directly or via the Audit, Risk or other committees. The form of management information is very important to effective decision-making, and the chair of the board or committee has an important role in determining its shape and granularity. There is such a thing as too much information as well as too little. What is important is to equip the board with sufficient information for the board to perform effective oversight of the business.
- The chair is responsible for setting the board agenda. It is for the chair to ensure that board papers focus on the information needed to generate a valid decision. The temptation is to provide the same information which is in front of the executive team, but what is needed for the board is a selection of that information focusing on material trends and stripped of the day-to-day information which the executive team requires. This can be hard to achieve as there is a fear of leaving out something which might turn out to be important. There has therefore been a tendency for packs to balloon to the point where seeing the wood for the trees is a struggle, preventing the iNEDs from bringing effective oversight to the business. The remedy for this is squarely in the chair's remit.
- Decision-making is normally unanimous, and votes are rarely taken. Once the decision is taken, those iNEDs who may have had reservations about it, are expected to embrace the outcome and support the direction of travel.

6. The board in action: 10 of 13

Crossing the line and conflicts of interest

- All iNEDs were once executives. This habit can die hard. There are occasions during board or committee discussions where iNEDs stray into executive territory. Any director can challenge this, but it is for the chair to be vigilant and avoid the discussion getting bogged down in operational detail which it should be for the executive to sort out following the overall direction having been determined by the board.
- There may be exceptions to this rule. Sometimes a particular iNED may be asked to take responsibility for an aspect of the business, such as being appointed as the board Consumer Duty Champion. In this role, a more forensic interest in product design, the assessment of fair value, target markets, and exactly how vulnerable customers are dealt with come with the territory. Similarly, an iNED may be asked to assume more intrusive oversight of a significant project because of their background, but this would be a temporary arrangement until the project had been completed. Regulators may be involved in prompting such an appointment.
- Where the company is involved in a public takeover or is the subject of enforcement proceedings, regular and detailed engagement, which could be categorised as executive in character, cannot be avoided. The stakes are too high for the executive to be left to get on with it on a business as usual basis.
- Conflicts of interest also require close attention. Often the interest is known, such as the iNED's appointment to another board where the two companies have conflicting interests in the same subject matter. Personal interests, such as having a shareholding in a particular company, are less common, but can arise. Identifying the conflict is the first hurdle – sometimes not as easy as it might appear. Then the remedy must be minuted. The response is usually to deprive the conflicted director of data and any role in any decision. It is usual to ask iNEDs to complete an annual declaration of their other interests and those of their immediate family.
- If the conflicting position is unusual and difficult to analyse, the board and its directors have the option of taking independent legal or other advice to ensure that the course of action determined upon is adequate to address the problem.

6. The board in action: 11 of 13

The annual report and accounts and the SFCR

- One of the most important documents which comes, via the Audit Committee, to the Board is the annual report and accounts (ARA). Companies (but not Lloyd's syndicates) also have to complete a Solvency and Financial Condition Report (SFCR) which overlaps with the annual report and accounts.
- The ARA is the go-to document for anyone interested in buying shares in the company (if relevant), joining the board or staff, or otherwise doing business with the company. The accuracy and completeness of its audited financial information will depend on the efficacy of its financial controls, which it falls to the Audit Committee to foster.
- There has been a tendency for the ARA to contain more prose than numbers over the years, as companies are expected to describe overall strategy, ethics and culture, governance arrangements (including Committee structure and leadership), the internal control environment, the principal risks and associated risk management framework, ESG (environmental, social and governance) considerations, and any material contingent liabilities. Whilst complying with statutory audit requirements, many companies take the opportunity to showcase their ambitions and achievements, treating the ARA as a marketing document.
- All directors put their name to this document and should therefore pay close attention to its contents and the manner in which the different topics are handled. The executive directors and the external auditors should be questioned about the contents and probed as to what decisions have been made about presentation, in particular where material decisions may have been taken as to how a particular aspect has been presented.
- The SFCR is a Solvency II requirement in origin, which also repays close reading, bearing in mind that the directors are responsible for its contents, which are prescribed and audited. It is a public document.

6. The board in action: 12 of 13

More about meetings

- There are formal agendas for all board and committee meetings, determined by the chair. The heading will show the company's name, which body is meeting, and date and time of the meeting. There is no specified format, but meetings usually begin with apologies for absence, the declaration of any new interest which may amount to a conflict, and the review and approval of the minutes of the previous meeting followed by the actions points arising and their current status. After that, each company tends to have its own template. For a board this will include a CEO report, finance report, reports from the audit and risk committees, and any board level policies which are due for annual review. The business plan, actuarial function reports (underwriting and reinsurance), ORSA and Validation Report are annual events. Claims and reserving, compliance, conduct, and operations may be reported at each quarter. The agenda normally finishes by noting the date of the next meeting.
- Whilst meetings of the board and the Audit and Risk committees are usually scheduled quarterly to fit with regulatory deadlines, additional meetings, particularly of the committees, may be scheduled to address the big-ticket documents such as the ARA, the business plan, the ORSA and Validation Report.
- The Company Secretary team, together with the chair, will often try to ascribe timings to each agenda item to help keep the meeting on track. Each item to be presented will usually show the identity of the presenter and whether the paper is for noting or needs a decision. A one-page front sheet showing the principal points arising from the paper is normally now required.
- Supporting papers will be available on a shared drive, usually a week before the meeting. If inadequate time is provided for review, there is no prospect of a well-informed discussion or a good decision.
- There is some debate about whether longer papers or policies up for annual approval should be in the main pack or relegated to an appendix. If in an appendix, it should be clear that the papers are nevertheless part of the meeting material.
- As has previously been mentioned, the scale of the papers submitted for quarterly meetings can get out of control. This impedes good governance, and it is for the chair to get to grips with this. That said, if it is the season for approving statutory accounts, and more than one entity is under the management of the board, then large packs are hard to avoid. Otherwise, it should be approached from the point of view of: what does the board need to know?

6. The board in action: 13 of 13

Typical committees

- In addition to the committees already mentioned (i.e. Audit, Risk and Nominations/Remuneration), firms may form a number of purely executive committees to manage the business. Committees tend to be amoeba-like and to proliferate without control, impeding rather than fostering progress. Membership of committees also tends to grow, giving rise to problems in getting the members in the same room. The answer to this tendency is the periodic review and cull of both committees and membership.
- That said, an organogram of any insurance company is likely to show the following committees, which may all be purely executive, although practice varies in some cases such as underwriting and reserving:
 - Claims
 - Conduct/Compliance
 - Executive
 - Finance
 - Investment
 - Operations (cyber protection and data governance/quality may be split out)
 - Product Oversight
 - Reinsurance Placement and Security
 - Reserving
 - Underwriting (delegated underwriting may have its own sub-committee)
- Some of the larger firms are also forming ESG or Sustainability committees and well as Diversity and Inclusion committees.
- There is no right and wrong here: it is for each board to determine what best serves the business.

7. Problems and options for dealing with them

- Boards do not always run smoothly. Issues such as: “they are not listening to me (or even not asking me)”, “key decisions are being taken outside the board room”, “the chair is autocratic”, “the regulator is unhappy with us”, or “the other iNEDs are not speaking up” are not uncommon.
- How to deal with such matters will depend on how serious they are, so escalation should be graded. At the lowest end of the scale, the iNED might share concerns with other iNEDs and then raise the issue informally with the executive or with the chair. In a serious case, the iNED might invoke the right to independent legal advice which is contained in the letter of appointment. Such an approach may be governed by a written process. The ultimate action is akin to whistleblowing, namely going straight to the regulator. This would be justified only in very extreme circumstances such as fraud, and the basis for making the approach must be watertight.
- There are options in place in which concerns can be raised. For example, a SID, if there is one, can be appealed to. There should always be unfettered access to the chair. The chair should convene occasional private meetings of the iNEDs to discuss generally the state of governance. The chair should also have regular meetings with the CEO, when any concerns can be aired at an early stage. The annual evaluations mentioned on slide 33 are another option, although some matters cannot wait that long.
- The issue can be raised quietly to start with and be escalated if required. It is important to have evidence that the concern is concrete, not fanciful. So examples of the chair shutting off debate, or of the executives having failed to consult the board prior to a decision being taken, need to be amassed until the case is unanswerable.
- Resignation is always an option, and the company could give notice under the contract or simply not renew it. The regulators may enquire into the circumstances of the termination, especially since an iNED holding a senior management function will have to prepare handover material for the successor.
- Communication is vital, but if an iNED is not capable of raising a valid concern, then it is difficult to say why he or she is in a role where openness and challenge are key.

8. Conclusion

Whilst the Primer has focused on the responsibilities and risks in the role to ensure that aspirant iNEDs understand what they are letting themselves in for, it needs to be said that, if appointed to the right business with the right board, the role is enjoyable and rewarding, even as it offers challenges.

The role is a very necessary one in today's market and iNEDs can, without being complacent, consider that they are making a significant contribution to the health of the market and the establishment and maintenance of the highest ethical and professional standards. They may also protect staff and policyholders from ill-considered actions without impairing the business as a whole.

The role has developed at pace in the last two decades, mostly for the better as expectations have sharpened and standards improved. The Worshipful Company of Insurers is pleased to be part of the journey to a more professional and better informed iNED community, particularly by staging regular forums in which key aspects of the role are explored.

9. Acknowledgements and Disclaimer

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