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## **CCAB ETHICAL DILEMMAS CASE STUDIES FOR PROFESSIONAL ACCOUNTANTS WORKING AS NON-EXECUTIVE DIRECTORS**

**SEPTEMBER 2009**

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# CCAB Ethical Dilemmas Case Studies for Professional Accountants Working as Non-executive Directors

## *Introduction*

The following case studies were developed by the UK and Ireland's Consultative Committee of Accountancy Bodies (CCAB). They illustrate how the ethical codes of the CCAB bodies can be applied by professional accountants working as non-executive directors. These scenarios are not intended to cover every possible circumstance, but instead to outline key principles and processes that could be considered when attempting to identify, assess and resolve ethical problems in line with the ethical codes. These case studies were published in September 2009. The CCAB welcomes comments on these cases. Please email [admin@ccab.org.uk](mailto:admin@ccab.org.uk)

## *The role of the non-executive director*

All members (and registered students) of CCAB bodies have a responsibility to behave professionally and ethically at all times. It is important, when working within an organisation, that you consider how your behaviour will help to promote an ethical culture within it. As a professional accountant and a non-executive director, you will have a particularly important role to play in creating and maintaining an ethical culture. You may be approached by employees wishing to report unethical behaviour and, as a senior figure within the organisation, you will have an impact on its ethical tone. When acting as a non-executive director in a voluntary capacity, for example for a small charity or school, your responsibility to behave professionally and demonstrate strong ethics is in no way lessened by the fact that the position is unpaid.

Non-executive directors have a broad role that goes beyond operational matters. They contribute to the development of a clear mission and strategy for the company and to helping to ensure that the strategic objectives are fulfilled. Non-executive directors are encouraged to demonstrate their objectivity and, where appropriate, to challenge decisions of the executive directors. The duties of non-executive directors cannot be easily reconciled. On the one hand, they are expected to work closely with the executive directors as part of a team; on the other hand, they are expected to monitor the executive directors' behaviour and to challenge their decisions.

It is important to consider the wider requirements of your role as a non-executive director, whether in the public, private or charity sector, and to ensure that you comply with all relevant governance standards and regulations. The role of the non-executive director is coming under increasing scrutiny in the corporate sector. With this growing focus can come a greater risk of personal liability should things go wrong.

## *Resolving ethical dilemmas*

These case studies are compatible with the ethical codes of the CCAB member bodies, which are derived from the Code of Ethics for Professional Accountants issued by the International Federation of Accountants (IFAC).

The case studies illustrate the application of the "conceptual framework" approach to resolving ethical dilemmas. This approach focuses on safeguarding the fundamental principles of:

- integrity,

- objectivity,
- professional competence and due care,
- confidentiality, and
- professional behaviour.

In order to do so, it is important to be alert to situations that may threaten these fundamental principles. Identified threats need to be evaluated and managed, to ensure that they are either eliminated or reduced to an acceptable level. Threats may arise as a result of any of the following:

- self-interest: the threat that a financial or other interest will inappropriately influence your judgement or behaviour
- self-review: the threat that you will not properly evaluate the results of a previous judgement made or service performed by you (or someone else within the organisation) when forming a judgement as part of providing a current service
- advocacy: the threat that you will promote a position (usually your employer's) to the point that your objectivity is compromised
- familiarity: the threat that, due to a long or close relationship with someone, you will be too sympathetic to that person's interests, or too accepting of their work
- intimidation: the threat that you will be deterred from acting objectively because of actual or perceived pressures, including attempts to exercise undue influence over you.

When resolving an ethical conflict, consider carefully whether other parties could or should be involved in discussions and, if appropriate, how the board should be approached. A board may be approached via the secretary or the chairman. Disclosure to the board will often be necessary, and the dynamics of the board should be taken into consideration as you formulate your response to the dilemma. As a non-executive director, you may also be expected to spend less time discharging your duties than you feel is actually required. This may give rise to a risk that any potential ethical issues that arise will not be adequately considered.

If you are facing, or think you might be facing, an ethical dilemma, you may wish to seek advice from your professional body or obtain independent legal advice. Consider whether your actions in response to the situation and the advice obtained are sufficiently well documented, either by way of board minutes or your own records. In many situations, the perception of a reasonable and informed third party will be relevant to the resolution of the dilemma, and you might be required to evidence the steps you took to resolve the issue.

These case studies do not form part of the CCAB bodies' ethical codes. You may find it useful to refer to the advisory services and websites of the individual CCAB bodies for further information. The IFAC website may also be of use.

<i>Case Study 1</i>	<i>To be or not to be a non-executive director</i>
<i>Outline of the case</i>	
<p>You are a professionally qualified accountant, recently retired from your position as the financial director of Company A, which is a listed company. Company A operates in the heavy engineering industry and you worked there for over 12 years. Prior to this, you had spent 10 years as an audit partner in a large accountancy firm.</p> <p>You receive a phone call from a head-hunter with an executive recruitment agency, acting on behalf of a company’s nominations committee. After the usual small talk, he cuts to the chase:</p> <p>“You have been recommended to me as a suitable candidate for a very prominent non-executive role that is available at the moment. The company, Company B, is a listed company, seeking a non-executive director who will also serve as the chair of the company’s audit committee.” He adds that Company B is a well-known financial services company.</p> <p>You are not struggling financially. You have a reasonable pension, but the extra cash from this role would come in handy. Additionally, you are finding it difficult to fully unwind after years spent working to tight deadlines and coping with difficult challenges on a daily basis. Therefore, you find this potential opportunity very attractive.</p> <p>You advise the head-hunter that you will think about his proposal and get back to him as to whether you wish to be considered for the role. You hang up and then consider the matter in greater detail. Your first instinct was to say to him, whilst he was on the phone, that you wished to be considered for the position. However, due to your prudent nature, you decided that it would be wise to give yourself some time to reflect fully on the issues before making a decision.</p> <p>You are keen to be put forward for this role, but you have a nagging doubt at the back of your mind: you have no work experience in the financial services sector. Twelve months ago your doubts may not have been so acute, but recent well-publicised events have certainly raised your awareness of the complexities of the transactions which many financial services companies undertake. You are caught between two stools: on one hand, there is little doubt that your business acumen will be of benefit to Company B; on the other hand, you feel that your lack of expertise in this sector will leave you struggling to contribute constructively at times.</p>	
<i>Key fundamental principles</i>	
<p><b>Integrity:</b> You should safeguard your integrity by only allowing your name to be put forward for positions where you believe that you have (or can readily attain) the technical skill set required, or where you can serve effectively as a lay member of the board, and the board is balanced by the presence of other technical experts.</p> <p><b>Objectivity:</b> The ability to make an informed, unbiased decision must be preserved. The potential financial rewards are obviously a threat to your objectivity, but ultimately you should not let these cloud your judgement in considering the interests of shareholders and other stakeholders.</p>	

**Professional competence and due care:** Can you quickly acquire adequate knowledge of the commercial, strategic, technical and regulatory requirements of the proposed role?

### ***Considerations***

#### *Identify relevant facts:*

Consider the technical and regulatory requirements which impact on Company B's business and the legal responsibilities of a non-executive director. You have to be satisfied that you can acquaint yourself with these requirements quickly. Find out whether Company B provides a comprehensive induction programme for its new non-executive directors, as this might help to alleviate your concerns. It would be helpful to find out whether a more detailed specification is available for the role.

#### *Identify affected parties:*

Key affected parties are you, the head-hunter, the nominations committee, other directors of Company B, and the shareholders of Company B.

#### *Who should be involved in the resolution:*

You should involve the head-hunter in the resolution process, as he may have access to much of the information you require. The nominations committee may also be involved through their contact with him.

If you do decide to be put forward for the role, then you should be open and transparent in your discussions with Company B. The nominations committee may, in fact, be looking for someone who is unfamiliar with the financial services industry, or who has the specific qualities that you possess, in order to bring a fresh perspective to the workings of the company's board and audit committee.

### ***Possible course of action***

Ultimately, you have to exercise professional judgement in this matter. If you do not feel comfortable being put forward for the role, then you should inform the head-hunter accordingly. You may, of course, decide to be put forward for the role, but if your concerns are not adequately addressed, and if you are offered the role, you should decline the appointment at that stage. You should also consider contacting your professional body for advice.

You need to establish what Company B is looking for. Try to obtain a detailed specification of the role and the skill set of the person that the company requires. Ask the head-hunter why, in his opinion, you were "recommended" to him as a suitable candidate. You need to ensure that you are aware of the responsibilities associated with a non-executive director's role. You should also undertake your own due diligence on Company B and on your prospective fellow directors. Do you believe that, even if you have, or can acquire, the necessary skill set, this is a company on whose board you would want to serve? Do you believe that the board would then have the correct composition and balance?

<i>Case Study 2</i>	<i>Formal governance procedures not being followed</i>
<b>Outline of the case</b>	
<p>You are a non-executive director of a public sector body, and a member of the organisation’s finance committee.</p> <p>The committee is currently discussing the tender process for the procurement of substantial capital improvements to the staff catering facility. The director of finance has suggested that the normal tender route be waived in this instance and the project awarded on a single tender basis. This is because the organisation has recently tendered for the construction of a new boiler facility on the organisation’s main site. As the catering facility is in close proximity to this existing capital project, the finance committee has agreed that there are practical benefits in awarding the work to the same contractor, who has a good history of completing capital projects for the organisation.</p> <p>If the tender process is waived, it will mean that the improvements to the catering facility can be commenced as soon as the boiler project ends. It is likely this could result in cost savings to the catering project, because the contractor’s equipment will not have to be removed and the required workers can remain on site. The director of finance has also suggested that it is possible to benchmark costs to ensure that the agreed contract price is in line with current market prices. Initial discussions have already taken place with the contractor, who has explained that substantial cost savings would be achieved if this project was awarded to them straight after the boiler project. They have also provisionally agreed to undertake the works.</p> <p>There are existing standing orders and standing financial instructions which require a formal tender process to be fulfilled for projects of this size. You are concerned that the organisation is openly ignoring the governance arrangements that are in place without providing a robust basis for doing so, and you believe that the director of finance should not recommend these proposals to the advisory board.</p>	
<b>Key fundamental principles</b>	
<p><b>Integrity:</b> Whatever action you decide to take, are you able to demonstrate that you are being fair and honest towards all parties concerned?</p> <p><b>Objectivity:</b> Can you demonstrate objectivity in your actions? Does the potential breach of the organisation’s governance documents require you to refer the matter to a higher level? You should not allow your objectivity to be threatened by close relationships with other members of the finance committee. Neither should you allow yourself to feel intimidated by advisory board members or other interested parties.</p> <p><b>Professional competence and due care:</b> This is a sensitive matter so it is important that any action you take is careful and considered. Do you have the knowledge and experience to decide on a course of action, or do you need to take advice?</p> <p><b>Professional behaviour:</b> You should endeavour to ensure that the organisation acts in accordance with relevant regulations, and that you act in compliance with your obligations and responsibilities as a non-executive director.</p>	

## ***Considerations***

### ***Identify relevant facts:***

Is there an established procedure for overriding the tender process? As a non-executive director, you are required to hold a governance role which involves taking an overview of the operation of the organisation. In this instance, you have been made aware of the issues and need to determine the appropriate action to take.

### ***Identify affected parties:***

The affected parties are you, the other members of the finance committee and the other advisory board members who have specific responsibility for the governance arrangements, including the CEO and the director of finance. You should also consider the contractor, who may or may not have been promised the work without following the tender process, and other parties who might not be given the opportunity to tender.

### ***Who should be involved in the resolution:***

You should ensure that both the finance committee and the advisory board are involved in the decision. The internal auditor may also need to be made aware.

## ***Possible course of action***

As a non-executive director, it is your responsibility to raise your concerns at the committee meeting so that the other members are fully aware of your views on this matter. If the committee does not consider your view, you should ensure that, when the matter is referred to the advisory board for decision, you make your advisory board colleagues aware of your concerns. This may include highlighting the failure to comply with the organisation's governance arrangements and the potential risks faced by the organisation if it pursues this proposed course of action.

However, before voicing your concerns, you should exercise due care in obtaining sufficient information to be able to meet your responsibilities as a non-executive director. You should establish, by making enquiries, whether any procedures exist for situations where it is proposed to waive the formal tender process.

At all times, you should remember your obligations and responsibilities as a non-executive director. You are required to act in the best interests of stakeholders. This often demands the exercise of professional judgement. Whilst you need to safeguard the principle of objectivity, you should also be aware that insisting on following established internal procedures may sometimes impede the operations of the organisation.

If, having gathered the necessary information, you have determined it necessary to disclose your concerns to the finance committee and then the advisory board, and if you believe that the advisory board will not give due consideration to your concerns, you could raise them with the internal auditor.

You should consider taking legal advice. In addition, as a non-executive director who is also a professional accountant, you could discuss the dilemma with your own professional body. You should document any discussions you have and the bases for the decisions you make.

<i>Case Study 3</i>	<i>Confidentiality and conflict of interest in non-executive roles</i>
<b>Outline of the case</b>	
<p>You are a non-executive director of two unrelated companies, Company A and Company B. Company A has recently bought a business that has an operation that competes with Company B, so that both companies are now bidding for the same contracts.</p> <p>You are now likely to find out information about Company A that could be useful to your role in Company B and vice versa.</p>	
<b>Key fundamental principles</b>	
<p><b>Integrity:</b> Are you able to act fairly and honestly? Is a breach of trust likely to arise or be perceived by a reasonable and informed third party?</p> <p><b>Objectivity:</b> Will the potential conflict of interest compromise your professional or business judgement in respect of either or both companies? How do you discharge your duties to both companies?</p> <p><b>Confidentiality:</b> Can you maintain the requirement to respect confidentiality? You should not use information gained as a result of your relationship with one company to the advantage of the other.</p>	
<b>Considerations</b>	
<p><i>Identify relevant facts:</i></p> <p>You should gather information in respect of each company’s policies, procedures and guidelines (including any code of conduct it has), any legal requirements to avoid conflicts of interest, and your professional body’s own code of ethics.</p> <p>You should also ascertain to what extent Company A and Company B will now compete. Will this occur regularly or only for occasional contracts? Will the boards be involved in discussions relating to this? You need to manage the perception of your involvement with both companies, as well as any actual conflict you might anticipate.</p> <p><i>Identify affected parties:</i></p> <p>The key affected parties are you and the boards of Company A and Company B. Other possible affected parties are stakeholders in the companies, such as investors and creditors.</p> <p><i>Who should be involved in the resolution:</i></p> <p>Consider not just whom you should involve, but also why and when. Board dynamics vary and there will be different ways to ensure that you and the chairman of each of the boards (and then the boards themselves) engage effectively. Other external and internal parties may also be relevant, as the appearance of ethical behaviour is important as well as the reality.</p>	

### ***Possible course of action***

It is important to be transparent, and to ensure that the boards are in an informed position to make decisions on the matter. The first step in resolving a potential conflict situation is likely to be disclosure to the parties involved, as soon as a threat to one or more of the fundamental principles is identified. It may be advisable to discuss the matter with the company secretaries to determine how it should be raised with the chairmen and then the boards. One of the boards, or indeed both, may feel that it would be in everyone's best interests for you to step down from one of the companies. Alternatively, both boards may be happy that the situation can be managed, in which case procedures should be put in place that are capable of identifying and assessing threats as they arise, and applying appropriate safeguards.

You are entitled to use experience gained in other roles, but not to use confidential information for your own benefit or that of another party. A key threat is that you could be put in a position where you can influence a decision on a matter in one company through your knowledge of relevant information gained in the other. If you use that information, you will breach the fundamental principle of confidentiality; if you do not use it, you may be refraining from influencing a decision that you know to be wrong. Can you realistically maintain objectivity?

Having established to what extent Company A and Company B will compete, an appropriate safeguard to apply might be to exclude yourself from involvement in decision-making at Company A and Company B on matters where a conflict of interest exists or is likely to arise.

You should protect your professional reputation, and insist that the resolution of this ethical dilemma, and the basis for it, be minuted by both boards.

You should consider a final appraisal of the situation:

- Is the resolution of the dilemma acceptable from a professional and personal point of view?
- Would a reasonable and informed third party reach the same conclusion?
- Is the proposed solution workable?
- Could the situation compromise your professional or personal reputation?

You might wish to review these questions with your professional body.

<b>Case Study 4</b>	<b><i>Non-executive director being used as a sounding board by an employee</i></b>
<b><i>Outline of the case</i></b>	
<p>You are a non-executive director of a manufacturing company. The company’s success and reputation rely on one core product. In order to manufacture the product, it needs to source two main components, X and Y. Component X may be purchased from either of two suppliers, A Limited or B Limited. The board has agreed a strategy that both suppliers will be used, thereby enabling the purchasing department to exercise bargaining power over its suppliers.</p> <p>On the days that you attend monthly board meetings, you take lunch in the staff restaurant. One day you find yourself in conversation with the purchasing manager, who is unfamiliar with the concept of a non-executive director. As you explain your role, the purchasing manager takes the opportunity to seek your opinion on a matter that has been causing her some concern.</p> <p>She is responsible for placing orders for stock, and orders of component X are usually placed on a weekly basis. Prices are obtained from A Limited and B Limited on a regular basis, and confirmed prior to each order being placed. However, in recent months the purchasing director has been taking a more active role in the ordering process. He has been directing the manager to place almost every order with B Limited, although the manager believes that a better price could often have been obtained from A Limited. The director has told the manager that he has been building an effective relationship with the sales director of B Limited, which will lead to a reduction in prices in the long term. This has involved regular business lunches and an invitation for the purchasing director and his family to spend a weekend on the sales director’s private yacht.</p> <p>The purchasing manager expresses her opinion to you that the purchasing director is accepting bribes, as well as ignoring the company’s agreed purchasing strategy, which aims to limit the risk associated with exposure to just one supplier. You are asked for your views on the situation, as the purchasing manager is delighted to have this opportunity to “run the issue past you, informally and off the record”.</p> <p>What advice should you give to the purchasing manager, and what action should you take in your role as a non-executive director?</p>	
<b><i>Key fundamental principles</i></b>	
<p><b>Integrity:</b> Are you able to be straightforward and honest with the purchasing manager and the board whilst, at the same time, safeguarding the other fundamental ethical principles and ensuring good governance?</p> <p><b>Objectivity:</b> Are you able to retain your independence from the executive board members and, at the same time, resist the influence of any potentially unfounded assumptions made by the purchasing manager?</p> <p><b>Professional competence and due care:</b> You should exercise diligence, and gather all the relevant facts before reaching any conclusions. Are you sure of your responsibilities in this situation? To whom do you owe a duty? Should you seek advice concerning your legal</p>	

obligations?

**Confidentiality:** Can you discuss the information you have acquired from this informal conversation at the next board meeting without breaching the trust of the purchasing manager? Is there anyone else whom you may consult or whom you should inform?

**Professional behaviour:** Are you able to comply with established internal procedures, and are there whistleblowing or employee code of conduct procedures with which you should encourage the manager to comply?

### *Considerations*

#### *Identify relevant facts:*

In this case, your responsibilities concern the actions of a director and a manager, the possible undermining of company strategy, and a serious ethical breach.

You have been made aware that the company's purchasing strategy may be being breached, and that an employee believes that a director is accepting bribes. You should decide what information and advice you give to the purchasing manager, and what information you provide to the board (or others). You have the right to make enquiries within the company as necessary.

#### *Identify affected parties:*

Key affected parties are you, the purchasing manager and the purchasing director. Other affected parties are the shareholders, other members of the board and, possibly, the officers of A Limited and B Limited.

#### *Who should be involved in the resolution:*

You may seek independent legal advice, or consult with the company's ethics committee if one exists. You might wish to discuss the situation with the board. The initial approach could be to the company secretary, although in a matter as potentially serious as this the CEO or the chairman might be more appropriate (having regard to the dynamics of the board). Having pursued these routes, it might be appropriate and necessary to discuss the matter with the internal audit function or the chairman of the audit committee.

### *Possible course of action*

You should explain to the purchasing manager that you have a responsibility towards the shareholders of the company, and that you recognise that she has concerns. The allegation of bribery is a serious one, and so her concerns will need to be investigated. You should advise the manager to obtain details of any established internal procedures (which might include her whistleblowing responsibilities), as well as external organisations that will look after her interests.

You might initially request permission from the manager to discuss the situation with the internal team responsible for investigating wrongdoing. This may be an internal audit or risk management team. If permission is granted, you should ensure that you have all available and relevant information before bringing the matter to the board's attention (thereby exercising professional competence and due care). Your initial approach to the board might be via the

company secretary. However, you should consider bringing the matter directly to the chairman of the board or audit committee, as the issue is potentially one of fraud, and there may be a risk of alerting and tipping off the purchasing director if the situation is discussed openly with the board.

If permission to discuss the matter with anyone else is withheld by the manager, you should nevertheless adhere to your professional obligation to discharge your duties as a non-executive director. If there is an audit committee, it may be possible for you to bring an anonymised version of the matter to its attention (via the committee chairman); or you might be able to discuss the situation with the internal or external auditors. At any stage, you might wish to seek your own independent legal advice, or consult with your professional body. You should document the discussions you have, the actions you take, and the bases for any decisions made.

<i>Case Study 5</i>	<i>Pressure on a non-executive director to make a decision without adequate information</i>
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**Outline of the case**

You are a non-executive director of a medium-sized company. The company’s financial director (who is also the company secretary) is advocating that the company make an acquisition and has implied that, if the company does not act quickly, the opportunity will disappear. The CEO has also said that she wants to move quickly. However, you are not convinced that the figures presented to you indicate that the acquisition is currently the right thing to do, and you think it warrants further discussion.

One year ago, shortly after you had joined the board, a similar decision was made which, to you, seemed unusual given the company’s trading position at that time. However, none of the other board members (who had been on the board for several years) challenged the CEO.

You have tried to contact, through the company, an independent specialist to get an expert, impartial view on the acquisition. However, the CEO seems to be discouraging you from proceeding with this.

You are considering whether you should raise your concerns with other board members or simply allow the company to go ahead with what could be a profitable acquisition. Should you insist on waiting for the impartial professional advice at the risk of the company missing the opportunity of the acquisition?

**Key fundamental principles**

**Objectivity:** Is your objectivity compromised by the pressure from the CEO and the financial director to push through the decision, or by the close working relationships you may have with other members of the board or management?

**Professional competence and due care:** Is it appropriate to seek expert advice or are you, in fact, attempting to make your concerns more palatable by asking someone else, namely the expert, to express them? Is there sufficient time for you and the independent expert to consider the situation fully?

**Confidentiality:** In seeking expert advice, can you ensure you maintain confidentiality over commercially sensitive information?

**Professional behaviour:** If the acquisition goes ahead and there is subsequently a high-profile failure of the company, would you be able to defend your actions as being appropriate? Would people be able to see, and comment favourably on, the part played by the non-executive directors in making the decision to acquire? Professional behaviour also means complying with relevant laws and regulations. Have any applicable company law provisions been considered?

**Considerations**

*Identify relevant facts:*

The dilemma you face involves weighing up the risks faced by the company against the

opportunities and the potential benefits that might accrue. You should establish whether it is, in fact, necessary to make the acquisition as urgently as the financial director claims. You should also assess whether the numbers that have been presented to you can be objectively verified and any assumptions tested.

Determine whether the company has an acquisition policy which includes a due diligence process. Consider also whether company law confers upon you personally any legal accountability for the decision, as a professional accountant and non-executive director. You should also take into account your responsibility to apply your professional judgement.

*Identify affected parties:*

Key affected parties are you, the financial director, the CEO, other board members and the company, as well as the other company being considered for acquisition. Other stakeholders in the businesses, such as investors, shareholders, customers and suppliers, will also be affected.

*Who should be involved in the resolution:*

You should discuss your concerns with the chairman. Are there other board members (executive or non-executive) that you could approach? Consider not just whom you should involve, but also why and when. It is possible that an independent expert adviser will also be involved in the resolution.

***Possible course of action***

Depending on your relationships with the CEO, the financial director and other board members, it may be difficult for you alone to stand up to management on this issue. There could be a potential familiarity or intimidation threat to your objectivity.

If the CEO is a dominant character, it is possible that she will exert undue pressure on you to allow the decision to go through without further discussion. A threat to your objectivity might also exist if there is a risk that you will lose your position (and the associated income) by standing up to the CEO.

As a professional accountant, you need to ensure that the company is taking steps to manage risk effectively, and that any established process for managing risk is followed. You should therefore make appropriate enquiries to ensure that you have all the information you require to be able to make a professional judgement on the company's actions. If the company has an acquisition policy and established procedures, you can bring these to the attention of the board to support your position.

You may need access to independent expert advice. However, you also need to balance this with not being obstructive. While there is clearly a potential business benefit in making a decision quickly, there is also a potential risk to the business in doing so. Unless you fully understand the consequences for all stakeholders, you will not be able to fully understand the potential risk.

It is important to be in a position to challenge management constructively. Ensure concerns are recorded in board minutes and if you resign, provide a written statement to the chairman. It is also advisable to document any decisions you make outside of board meetings.

If the CEO is domineering or aggressive, or if the other non-executive directors are passive and accepting, then part of the long-term solution could be to try to build a stronger board or to improve the board's processes or terms of reference.

Seek allies on the board. Those other non-executive directors who are usually accepting of the CEO's decisions may also have misgivings. They may speak up if you do. You should speak to the chairman about this.

The processes that the board has in place will change as the company grows, as will the composition of the board. But there are certain basic steps that can be taken to help to resolve this situation:

- Seek further information and opinion on how necessary it really is to make a decision quickly (without breaching confidentiality).
- Consider whether sufficient due diligence has been carried out and whether there has been adequate debate about the outcome of the process, such as identification of the risks and the potential rewards.
- Consider seeking your own legal advice or contacting your professional body for guidance. In some jurisdictions, directors' duties are codified in law. This needs to be taken into account when deciding upon a course of action.
- If you are still concerned, after having sought expert advice and considered the situation, voice your concerns to the board and ensure these are minuted. Document the thought processes that led you to your decision, being mindful of the need not to breach confidentiality.

If you have very serious misgivings which you feel the board or management are not responding to appropriately, you may consider resigning. This is a last resort, but if you do resign, you should ensure the chairman knows of your reasons.

<i>Case Study 6</i>	<i>Withholding information from the non-executive directors</i>
<b>Outline of the case</b>	
<p>You are a non-executive director of a large retail company. The board of directors meets on a monthly basis to discuss quarterly forecasts and other issues.</p> <p>It is the responsibility of the group finance director to distribute financial and other appropriate information at least one week prior to the date of each meeting. The CEO must sign off on the information pack, which is then sent to each member of the board.</p> <p>For each of the past three meetings, you have received the information the day before the meeting. You discuss this issue with the group finance director, who tells you that the pack has always been ready for sending on time, but the CEO has delayed signing off. You believe that this does not provide you with sufficient time to review the information and make a significant contribution at the meeting. You further believe that you are being given less and less information, and that the limited information available is often difficult to understand and appraise.</p> <p>Previously, the pack included information on sales segments as well as on extended credit terms for favoured customers. Despite repeated requests from you over recent months, such information has not been included. You are becoming increasingly concerned about the quality and completeness of the information provided, and you are of the opinion that the non-executive directors are becoming less effective at the monthly board meetings as a result.</p> <p>The majority of executive directors are closely involved with all the key reports contained within the pack. You believe that, because they are already familiar with the information, they are less affected (and consequently less concerned) by both the delay in receiving the pack and the limited information contained within it.</p> <p>The company has a policy on performance bonuses. The CEO is expected to be awarded a significant bonus, should the company continue to achieve increasing profitability. The CEO has a very strong personality and is seen to influence the majority of the key decisions made by the company. Most members of staff, including the executive and non-executive directors, feel intimidated by him.</p>	
<b>Key fundamental principles</b>	
<p><b>Integrity:</b> This situation might have an impact on your integrity if the matter is not dealt with. The integrity of the CEO may be at issue, or alternatively there might be valid reasons why he has failed to sign off in good time. Nevertheless, a perceived lack of integrity may be created together with reputational damage to the CEO, you and the board.</p> <p><b>Objectivity:</b> Many of the executive and non-executive directors are intimidated by the CEO. This intimidation is a threat to their – and your – objectivity, and if you stand up to the CEO, you may find yourself in a minority. Nevertheless, you need to safeguard the principle of objectivity and ensure that the non-executive directors play an effective role.</p> <p><b>Professional competence and due care:</b> You require timely, relevant information in order to act competently as a non-executive director, and to continue to act without it would indicate a lack of due care on your part. It is your responsibility to ensure you receive the information you need to carry out your duties effectively. In the meantime, you should make</p>	

the other board members aware of the limitations imposed on you by the lack of information.

**Professional behaviour:** How should you proceed so that you do not bring discredit on yourself? How will you manage relationships with the executive directors and other non-executive directors? You should ensure you are aware of the company's policies and procedures, and be clear about your responsibilities.

### *Considerations*

#### *Identify relevant facts:*

Consider the business's policies, procedures, guidelines and code of conduct, and how these relate to the provision of the information pack to the board prior to each meeting. Is the expectation that the pack will be signed off and distributed at least one week in advance of each board meeting the result of a company policy, or is this simply a trend that has developed through habit?

Is it necessary for the CEO to sign off on the pack, or can this be done by someone else? Can you determine the reasons for the reduction in the amount of information provided and the repeated delays in signing off, and have any reasons been disclosed to members of the board?

#### *Identify affected parties:*

Key affected parties are you, the board (and in particular the non-executive directors), the group finance director and the CEO. Ultimately, the shareholders and other stakeholders might also be affected and, possibly, the favoured customers who receive extended credit terms (which, if not regularly reviewed, may have consequences for the ability of those customers to repay).

#### *Who should be involved in the resolution:*

You should discuss the issues with the other non-executive directors. Consider whether the chairman of the board might be able to provide reasons for the lateness and deficiency of the information. Given the intimidating nature of the CEO, do you deem it appropriate to approach the CEO and discuss your concerns directly? Consider whether the company secretary is an appropriate person with whom to discuss the issue. He or she might be able to provide information regarding the company's policies and procedures. Another possible option would be to discuss the matter with the internal audit team (having regard to appropriate confidentiality measures).

### *Possible course of action*

You should consult the company's policies and procedures to ascertain the board meeting process. Confirm when the information pack should be delivered to members of the board, and if this is not formally established, consider how the timing of its delivery could be incorporated into the procedures. Establish whether there is a policy on the quantity and quality of the information to be provided. It may be the case that an undefined term is applied to the information that should be made available, such as "sufficient" or "adequate". If so, you should establish whether there is a procedure to be followed if a member of the board believes that "insufficient" or "inadequate" information is being made available.

Depending on your relationship with other members of the board, it might be appropriate to discuss your concerns with them and, in particular, with the other non-executive directors. Establish if any of them have similar concerns. Inform them that you believe that the lack of information is impeding your effectiveness as a non-executive director (and that non-disclosure of certain key information may contribute to inadequate corporate governance). You should refrain from suggesting that the CEO is responsible for this, as it may be the case that the information is being withheld inadvertently, rather than deliberately, or for a valid reason. If others share your opinion on this issue, it may be appropriate to approach the CEO as a group in order to mitigate any potential intimidation. Alternatively, the company secretary or the chairman of the board may be able to introduce the matter for formal discussion at a future meeting.

Should the CEO prove inaccessible, you may want to consider obtaining professional support and guidance from your professional body or seeking independent legal advice. If you decide to discuss the situation with anyone else, you should remember to safeguard the confidentiality of commercially sensitive information. Given the nature of the information involved, you should consider carefully with whom you discuss the matter, and the need to keep the facts general rather than providing specific detail.

In the absence of a solution emerging from the above approaches (and if you still feel that you are not receiving adequate and timely information), you have the option of resigning as a non-executive director. However, you should ask yourself whether it would be better for all the stakeholders involved for you to remain as a non-executive director and attempt to resolve the issue over time. Alternatively, it may be preferable to resign from the board, inform the chairman of your reasons, and consider making public your misgivings concerning the way the company is run. You should have regard for the legal and ethical means by which this should be done, bearing in mind the confidentiality of commercially sensitive information, and obligations for professional behaviour.

You should weigh up the risks associated with each option. Your personal reputation may be damaged, should you remain on the board. However, your resignation might have an adverse effect on the company's reputation, which may cause disproportionate damage to the company. Despite this risk, you may consider it to be the only way of improving the quality of governance of the company and protecting your own integrity.

During the resolution process, it is important to document the substance of the discussions held, who was involved, and what decisions were made and why. Where appropriate, the discussions should be documented within board minutes or other minutes (preferably with the company secretary present). In any event, a personal account of events should be maintained.