
Duties and Code of Practice of Directors

The position of director of a Community Benefit Society carries many demanding and important duties that need to be recognised before appointment and throughout a director's period of office. Directors owe a duty to the society, not to individual members, any other organisation or employees.

Directors should adhere to the Charities Commission's 6 essential duties of a trustee:

1. ensure your charity is carrying out its purposes for the public benefit
2. comply with your charity's governing document and the law
3. act in your charity's best interests
4. manage your charity's resources responsibly
5. act with reasonable care and skill
6. ensure your charity is accountable

This Inspire – Culture, Learning and Libraries (Midlands) policy document is divided into two sections. Part one establishes the duties and responsibilities of the directors and part two confirms the code of practice for directors.

1. Duties and Responsibilities of Directors

This section sets out the legal duties and responsibilities of directors of Community Benefit Societies. It is only a summary, and if directors are in any doubt about their duties, or any aspect of performance of their duties, they should consult the Chief Executive.

1.1 Directors have important legal duties, and failure to carry out these duties can result in personal liability.

1.2 Broadly there are four categories of legal duty as follows, and a brief summary of these duties is set out below:

- 1.2.1 the duty to obey relevant laws and regulations;
- 1.2.2 the duty of good faith;
- 1.2.3 the duty to take care and
- 1.2.4 the duty to maintain the status of the organisation as a Community Benefit Society with exempt charitable status.

Obeying the law

1.3 Various Acts of Parliament and statutory provisions impose direct obligations upon directors and upon the society itself. These cover such areas as occupational health and safety, employee relations, equal opportunity for employees, competition, consumer protection, the environment and keeping proper accounting records.

1.4 Although directors do not carry executive responsibility for ensuring that statutory requirements are met, they are responsible as a board for ensuring that others take executive responsibility and discharge it. Where they fail to ensure this, directors can become subject to statutory penalties and personal liability.

1.5 Directors have a direct and personal responsibility for ensuring that the society does not continue to trade if it is insolvent. Again, failure to discharge this responsibility can result in personal liability.

Duty of good faith

1.6 A director is in a position like that of a trustee – namely being responsible for somebody else's (the society's) property. As a result the law imposes on directors a duty of good faith, which can broadly be summarised as follows:

1.6.1 truthfulness and honesty – This involves acting with complete truthfulness and honesty in any dealings with or on behalf of the society;

1.6.2 treating the society's affairs as confidential - Individual directors have no legal authority to disclose anything outside the boardroom except what is already in the public domain, or what they are expressly authorised by the board to disclose;

1.6.3 acting at all times in the best interests of the society – This means ensuring that the society's interests always come first, and that a director never uses their position to obtain a benefit or advantage for themselves, for other people or for other organisations;

1.6.4 avoiding conflicts of interest – A director should avoid putting himself or herself in a position where their duties and responsibilities as a director conflicts with other personal interests. Where a conflict arises, they must comply with the society's rules.

Duty to take care

1.7 In carrying out their responsibilities, directors must take proper care. They are expected to show: -

1.7.1 such skill and care in carrying out their responsibilities as a person having their background and experience would reasonably be expected to show (the subjective test), and 1.7.2 the levels of skill and care that a person carrying out that role would reasonably be expected to show (the objective test).

1.8 In other words, they are not expected to be experts, but they are expected to use such expertise as they have. Furthermore, directors must recognise that an objective standard is applied, which means that where they do not have the knowledge and expertise needed, they should either undergo training, or should bring additional skills onto the board, possibly through co-option.

1.9 The duty to take proper care includes the following:

1.9.1 reading board papers before meetings, and coming to meetings properly prepared;

1.9.2 asking questions if further explanation or information is needed, and challenging the executives when not satisfied with the answers given;

1.9.3 taking advice both from the executives and from independent advisors when that is needed for the best interests of the society;

1.9.4 doing their best – directors should aim for the highest standards they can achieve. It is not acceptable to leave things to other people, to fail to attend meetings, or to treat other matters as more important than those of the society. A director who does not give an appropriate level of commitment to the society's affairs is failing in their duty;

1.9.5 undergoing appropriate training and development. It is not sufficient to rely on current knowledge and experience. In order to keep pace with changing needs, and changing legal and financial obligations, directors need to ensure that they are properly equipped to carry out their responsibilities.

2. Code of Practice for Directors

This section of the policy sets out the standards of personal behaviour and conduct required of directors of the society.

Status of this Code of Conduct

2.1 This is the Code of Practice for directors referred to in the society's Rules.

2.2 Every director will sign an acknowledgement accepting their obligation to comply with this Code including its provisions covering confidentiality.

Candidates seeking election or appointment as director will be asked to confirm that they have read it, and if elected or appointed will sign an acknowledgement.

Qualification for office

2.3 The society's rules set out the criteria by which an individual is eligible to be a director. A director shall notify the secretary immediately on becoming aware that they are or may no longer be eligible to be a director. Under rule 95 section h the following prohibits a person from being a director by law –

- That person is prohibited from being a Director by law;
- That person is disqualified from acting as a trustee by virtue of sections 178 and 179 of the Charities Act 2011 (or any statutory re-enactment or modification of those provisions);
- A bankruptcy order is made against that person;
- A registered medical practitioner who is treating that person gives a written opinion to the Society stating that the person has become mentally incapable of acting as a Director and may remain so for more than three months;
- By reason of that person's mental health, a court makes an order which wholly or partly prevents that person from personally exercising any powers or rights which that person would otherwise have.

Carrying out their responsibilities

2.4 Being a director brings a commitment to carry out all necessary duties and responsibilities that must be performed by the board. Each director will do the following:

2.4.1 attend on time at every meeting of the board and of any committee or sub-committee of the board to which they are appointed. Any director who, without good reason accepted by the remaining directors, fails to attend more meetings than the board allows, will be in material breach of this Code;

2.4.2 prepare properly for every meeting by reading in advance any documents sent out for the purpose of the meeting;

2.4.3 accept decisions made by the board, even if they disagree with it and voted against it. This includes a commitment to support any decision of the board outside the boardroom.

Standards of behaviours

2.5 In addition to fulfilling their legal duties, directors are expected to show appropriate standards of behaviour in carrying out their responsibilities. This is necessary in order that the board can function properly as a board, that it can play its appropriate part in the society's overall governance, and that the society's good name and reputation in the community is maintained.

2.6 Directors will observe the following general standards:

2.6.1 in their dealings with each other, with the society's officers, and with its employees and members, treating people politely, fairly, and with respect;

2.6.2 on public occasions and on all society business, behaving in a way that is appropriate for a director of such an organisation. This includes not bringing the society into disrepute in any context.

2.7 Directors will treat meetings of the board or of any committee or sub-committee of the board as formal occasions, and will observe the following:

2.7.1 Accepting the authority of the chair of any meeting, expressing all questions and points of view through the chair;

2.7.2 Listening to the views of colleagues with an open mind, seeking advice or clarification where needed, expressing their own views, and coming to their own decision on individual matters in good faith in what they believe to be in the best interests of the society, taking into account relevant factors and ignoring irrelevant factors;

2.7.3 Not resorting to behaviour that could be considered to be aggressive or intimidating, e.g. swearing, name calling, shouting, finger pointing;

2.7.4 Keeping to the agenda, raising other issues under "any other business" according to agreed procedures, and not engaging in discussions during the meeting which are not relevant to the issues of the meeting;

2.7.5 Ensuring that they do not attend any meetings under the influence of alcohol, or illegal or recreational drugs.

Confidentiality

2.8 Directors will treat all information that they receive in their capacity as directors, and all discussion within the boardroom or within committees or sub-committees of the board, as confidential.

2.9 Directors will observe the following obligations of confidentiality:

2.9.1 They will not disclose information outside the boardroom unless it is already in the public domain, or they are specifically authorised to do so. This includes information about the society's business, the deliberations of the board in reaching decisions, and the way individual directors voted on issues;

2.9.2 They will not use any such information for personal advantage;

2.9.3 They will not pass information to any representative of the press or media, and will refer any press or media enquiries to the society's executives;

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- 2.9.4 They will not make unauthorised photocopies of any documents;
 - 2.9.5 They will take proper care of any documents they receive as directors, and store them securely.

2.10 Directors who are employees will take particular care not to disclose to their colleagues any confidential information that comes to them in their capacity as a director.

Conflicts of interest

2.11 Directors must disclose to the Chief Executive any material interest, which they or their spouse or partner holds in:

- 2.11.1 Any business which competes with or carries on the same trade as the society;
- 2.11.2 Any business which is providing goods or services to the society, or is being considered as a potential supplier of goods and services;
- 2.11.3 Any public body or voluntary organisation with which the society has or is likely to have dealings.
- 2.11.4 Council Directors will adhere to guidance on political campaigning

2.12 The Chief Executive will record any such interest in a register of directors' interests.

2.13 "Material interest" for these purposes includes being an employee, holding any position of authority or responsibility, or owning any financial interest. It does not include the holding of shares which amount to less than 2% of the entire issued share capital of any company whose shares are listed on a stock exchange.

2.14 Subject to the society's rules, no director may vote on a matter in which they have a material interest. This applies to meetings of the board and of any committee or sub-committee of the board.

Taking independent advice

2.15 The society's management executive are responsible for running the day-to-day business of the society. If one or more directors have any questions about any aspect of the society's affairs, they should be raised in the first place with the management executive, through the Chief Executive.

2.16 If the board as a whole considers that it is in the best interests of the society to do so, they may resolve to take independent advice on any matter, and shall do so through the Chief Executive.

2.17 If one or more directors are dissatisfied with advice given by the management executive or the society's external advisors, or they fail to obtain their requested advice, they should raise the matter with the Chief Executive. The Chief Executive may take further independent advice if they consider it to be in the best interests of the society to do so. The Chief Executive will take further independent advice if a minimum of three directors or one third of the directors (whichever is the greater) request it.

2.18 If the Chief Executive is involved in the matter in question and cannot be regarded as independent for the purposes of taking further advice, another member of the management executive shall act in place of the Chief Executive.

Training

2.19 All directors shall take part in any training that the board resolves that all directors should undertake. Failure to do so without good reason is a serious breach of this Code.

Hospitality and Gifts

2.20 Directors should not, in their capacity as director (or what might be perceived as their capacity as director), receive from any person or organisation any hospitality, gift or any other benefit which could be viewed by the public with suspicion and which could make the director concerned or the society vulnerable to criticism. Hospitality should only be accepted where it is on a scale appropriate to the circumstances, reasonably incidental to the occasion, and not extravagant.

Serving on the Board of any other body or organisation

2.21 Directors who serve on the board of any other body or organisation must treat their roles as director of the society and director of any such other body or organisation as separate.

2.22 This means that:

- 2.22.1 they must maintain confidentiality in relation to information they receive in one capacity, and not disclose any such information in the other capacity unless they are expressly authorised to do so;
- 2.22.2 when making decisions as a director of the society, they must make such decisions in what they consider to be the best interests of the society, and when making decisions as a director of the other body or organisation, make them in what they consider to be the best interest of the other body or organisation.

Breach of this Code

2.23 All directors accept that they must comply with this Code if the board is to be able to function properly and efficiently, and do its job. Where any director alleges that another director is in breach of this Code, the following provisions will apply:

- 2.23.1 if the allegation is made in the course of a meeting, the matter is to be referred to the chair, who may;
 - 2.23.1.1 instruct that the matter is dealt with in accordance with 2.23.3 below and/or;
 - 2.23.1.2 defer the matter to be considered by the board on a subsequent occasion and/or;
 - 2.23.1.3 adjourn the meeting and/or;
 - 2.23.1.4 request that the director alleged to be in breach temporarily leaves the meeting for the matter to be discussed by the remaining directors present and/or;
 - 2.23.1.5 exclude the director alleged to be in breach for the remainder of the meeting;
- 2.23.2 if the allegation is made outside of a meeting, the matter is to be referred to the chair or, if the allegation concerns the chair then to the Chief Executive and the provisions contained within 2.23.3 below shall apply.

2.23.3 If the Chair or Chief Executive believes the allegation is not trivial and requires further action then he/she will establish a group of three directors to form a committee to investigate the matter fully and to recommend the appropriate action to the Board

2.23.3.1 In serious cases then the Chair or Chief Executive shall have the authority to suspend the Director(s) in question until the matter is resolved.

2.23.3.2 If the committee requires the director(s) in question to attend a meeting to respond to the allegation then they shall arrange for a letter to be sent to the director(s) in question stating the allegations that have been made and allowing a minimum of 14 days so that the director(s) in question can prepare their case and any defence.

2.23.3.3 The committee may request statements from any other director or member of staff and/or request any other director or member of staff to attend a meeting in order to investigate the matter thoroughly.

2.23.3.4 The committee will report their findings and recommended actions to the Board. The director(s) who is/are the subject of the investigation will be excluded during the Board's deliberation. The committee, by a majority decision, can recommend the Board to;

- dismiss the allegation and reinstate the director(s)
- recommend that the director(s) in breach undergo training
- suspend the director(s) for a definitive period of time
- suspend the director(s) until the next General meeting and report the matter to the members for their decision. (note public and press will be excluded for this Agenda item at the General meeting)

2.23.3.5 The Board can choose to accept or decline the recommendations of the committee.

2.23.3.6 The decision of the Board will be communicated to the director(s) concerned within 5 working days.

2.23.3.7 The director(s) concerned shall have a right of appeal to have their case heard by the whole Board. Anyone wishing to exercise their right of appeal must write to the Chief Executive within 7 days of the deadline prescribed in 2.23.3.6 stating the reasons why they feel that the decision is unfair.

2.23.3.8 In the event of such an appeal being received then the appropriate meeting of the Board shall consider the matter further and;

2.23.3.8.1 The director(s) in question will receive not less than 7 days notification of the meeting in order to prepare their case and any defence

2.23.3.8.2 The Board may request statements from any other director or member of staff and/or request any other director or member of staff to attend the meeting.

2.23.3.8.3 After hearing the appeal the Board may, by a majority of not less than 75% of the remaining directors, decide to;

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- dismiss the allegation and reinstate the director(s)
 - instruct that the director(s) in breach undergo training
 - suspend the director(s) for a definitive period of time
 - suspend the director(s) until the next General meeting and report the matter to the members for their decision. (note public and press will be excluded for this Agenda item at the General meeting)

2.23.3.8.4 The decision of the Board following the appeal hearing is final and there are no other rights of appeal.

2.23.4 All decisions of the Board shall be minuted by the Chief Executive;

I confirm that I have read and understand the Inspire – **Culture, Learning and Libraries** (Midlands) policy regarding “Duties and Code of Conduct of Directors” and that I agree to be bound by this policy at all times whilst I am a Director of the Society.

Signed

Date

Print name