
To
Scrutiny Co-ordination Committee

18th April, 2007

Subject
Role of Company/Charitable Trust Directors

1 Purpose of the Note

To provide information requested by the Committee relating to the role of Council-appointed Company/Charitable Trust Directors.

2 Recommendations

The Committee are requested to note this information and to decide if it wishes to consider this issue further.

3 Information/Background

- 3.1 On 14th February, 2007 (minute 193/06 refers), the Committee considered a report relating to the difficult financial position of the Coventry Sports Trust. The Committee were very concerned at this situation and wanted to try to prevent a similar occurrence in the future.

It therefore asked for the following information:-

- a) details of the role expected of Council-appointed directors of companies which are also charitable trusts
- b) details of any training provided for such directors
- c) how the trusts having grant aid agreements with the City Council might be more closely monitored

- 3.2 Information on each of these points is set out below.

Role of Council-appointed directors

When directors are appointed by the Council, they are provided with a document setting out what is expected of them in this role. A copy of this document is attached as the appendix to this briefing note. Appendix D of the document sets out the additional responsibilities for directors who are also charity trustees.

The overriding requirement of directors is that they must act in the best interests of the company and where they are also charity trustees, they must protect the trust's property and finances.

Training

Training is not provided for directors. It is more appropriate for the companies to which they are appointed to provide training, as it can then be tailored to the particular needs of that company.

The role of a Councillor or officer who has been appointed to be a Director of a charitable Trust or Company will depend upon the company's own Memorandum and Articles of Association. These documents are the company's Constitution and will set out the way in which the governance arrangements are to operate. It should be for the company/charitable trust to undertake a programme of induction for new Directors/Trustees, so that they are aware of the Company/Trust's own Constitution and how the Company/Trust operates. This is not a matter which the City Council should undertake.

Monitoring

Currently there is provision in the City Council's Constitution for a representative on an outside body to be asked questions at full Council. In addition, the Scrutiny Co-ordination Committee receives a brief annual report back on every body to which the Council appoints. The annual report gives the Committee the opportunity to decide whether or not to recommend that the Council makes future appointments and allows it to have, at least, an overview of what each organisation is doing.

There are limited opportunities for further monitoring. The Council-appointed directors/trustees could be asked to provide information, but would have to obtain the agreement of the company before disclosing any information beyond that which the company is required to disclose.

The major trusts having grant aid agreements with the City Council are now required to provide an annual report on their work. These reports have in the past been considered by the relevant Cabinet Member, but it is intended in future to involve the relevant Scrutiny Board in this process. It might be possible to require the Trusts to report more regularly.

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APPENDIX

DIRECTORS DUTIES AND REPOSIBILITIES

Set out below is a summary/checklist of duties/responsibilities of Directors. For more detailed advice, please refer to the attached appendices or contact the Company Secretary.

1. **Fiduciary Duties (Appendix A)** - Directors must act in the best interests of the Company. The duties are owed to the Company itself, not to its shareholders or members individually or to its creditors.
2. **Duty of Care and Skill (Appendix B)** - A Director should exercise reasonable care and skill in carrying out his duties.
3. **Duty to Employees** - Directors are required to have regard to the interests of the employees in general.
4. **Statutory Duties and Responsibilities (Appendix C)** - A number of statutory responsibilities are imposed on Directors:-
 - a) Maintenance of Proper Accounting Records
 - b) Preparation and filing of Annual Accounts
 - c) Maintenance of Statutory Registers, notifications to the Registrar of Companies, completion of Annual Returns
 - d) Responsibility for including the company name on company correspondence
 - e) Duties imposed by tax law
 - f) Personal liability for fraudulent or wrongful trading
 - g) Ensuring compliance with other legislation, where many statutes impose personal or criminal liability on Directors.
5. **Conflicts of Interest** - Directors must disclose their interest in matters being considered at a Board meeting.
6. **Restrictions on Transactions by Directors** - A wide range of restrictions are placed on Directors in relation to loans, contracts of service and substantial property transactions.
7. **Additional Responsibilities for Directors who are also Charity Trustees (Appendix D)** - Personal responsibility for the control and management of the charity and its assets.
8. **Additional Responsibilities for Directors who are also Elected Members or Officers of a Local Authority (Appendix E)** - imposed by legislation and National Code of Local Government Conduct
8. **Code of Best Practice (Appendix F)** - contained within the 1992 Cadbury Report principally aimed at Directors of companies listed on the Stock Exchange but other companies are encouraged to apply - guidance also given for Boards of Public Bodies
9. **Insider Dealing** - Only applies to companies listed on the Stock Exchange.

This is intended to be a general and hopefully easy to understand note for guidance and should not be relied on as comprehensive legal advice. Directors are encouraged to take further advice from the Company Secretary on any specific issues which arise.

APPENDIX A

FIDUCIARY DUTIES

A Director's duty is to act in the best interests of the Company, honestly and with good faith.

In particular a Director:

must never act without considering and protecting the best interests of the Company

must exercise his powers for the purposes for which they were conferred

should not generally give a commitment to a third party as to how he will vote

must not make any personal profits unless sanctioned by the Company.

APPENDIX B

DUTY OF CARE AND SKILL

A Director must exhibit the degree of skill and care which might reasonably be expected from a person with his knowledge and experience (more would be expected of an experienced businessman than someone with little experience).

A Director must be diligent and attentive to his duties, i.e. he must keep track of the affairs of the company sufficiently to ensure that any potential problems come to his attention.

A Director should keep himself informed of activities which have been delegated to others, for example accountants.

APPENDIX C

STATUTORY DUTIES AND RESPONSIBILITIES

The Companies Act makes directors responsible for the following, even though officers will be employed by the company to carry out the duties:-

- Maintenance of proper accounting records in accordance with the Companies Act 1985 and the Value Added Tax Act 1983, to be retained for six years
- Preparation of Annual Accounts, sending them to all members of the Company and sending them to the Registrar of Companies
- Submission of an Annual Return to the Registrar of Companies
- Maintenance of Statutory Registers available for public inspection
- Holding of an Annual General Meeting each year
- Ensuring that all taxes are paid

(2) Directors have personal liability for the debts of a company:-

- A director may be found guilty of fraudulent trading if he allowed the company to trade with intent to defraud creditors. A clear intent to defraud rather than recklessness or incompetence must be proved.
- An action for wrongful trading may be brought against a director by a liquidator if he can demonstrate that a director knew at some time before the winding up of a company that there was no reasonable prospect that the company would avoid going into liquidation.

(3) Other statutory duties are imposed, such as health and safety at work, consumer protection, environmental protection, etc.

APPENDIX D

ADDITIONAL RESPONSIBILITIES FOR DIRECTORS WHO ARE ALSO CHARITY TRUSTEES

The additional duties can be summarised as follows and further detailed guidance on Responsibilities of Charity Trustees is available from the Charity Commission:-

- Duty to acquaint himself with the terms of the Trust
- Duty to exercise powers in furtherance of the charitable objectives of the company
- Duty to protect Trust property - the property of the charity must be applied for purposes set out in the Trust document
- Duty to protect finances - the charity's money must be properly invested, control must be exercised over financial affairs and bank accounts must be controlled by at least two people
- Duty of loyalty to the beneficiaries - a trustee must not put himself in a position where his interest and duty conflict
- Duty to act without payment
- Duty not to profit from the Trust
- Duty to supply information to the Charity Commission, including submission of Annual Report

Duty to act reasonably and prudently in all matters relating to the Charity and always to bear in mind the interests of the Charity.

APPENDIX E

ADDITIONAL RESPONSIBILITIES FOR DIRECTORS WHO ARE ALSO ELECTED MEMBERS OR OFFICERS OF A LOCAL AUTHORITY

There are additional considerations which need to be borne in mind by local authority members or officers appointed as company directors by a local authority, particularly the requirements of the Local Government and Housing Act 1989, the Local Authorities (Companies) Order 1995 and the National Code of Local Government Conduct:-

- Even if nominated by a local authority, the director's primary duty in relation to company business is to the company
- Conflicts of interest relating to any transaction or arrangement between the local authority and the company must be declared at Board meetings
- Members should declare interests at Council or Committee meetings when company business is discussed
- Officers must give written notice to the local authority of pecuniary interests in contracts
- Members are required to offer information relating to the company to the local authority - they should bear in mind their fiduciary duty not to disclose confidential information - it is advisable for them to obtain the express sanction of the company before disclosing any information beyond that which the company is required to disclose
- Directors must notify the local authority of all fees and expenses received from the company
- Specific duties are imposed on directors of Local Authority Waste Disposal Companies on which separate advice should be sought.

APPENDIX F

CODE OF BEST PRACTICE

The Code of Best Practice recommended by the Cadbury Report is a collection of guidelines on good corporate government standards and a framework of best corporate management practice, summarised as follows:-

- The Board should meet regularly and exercise effective control over the company
- A clear division of responsibility on the Board should be adopted
- The Board should have a formal schedule of matters specifically reserved to it to ensure that control remains in its hands
- Independent legal and financial advice on performance of duties should be available to directors at the expense of the company
- Directors should have access to the services of the Company Secretary
- Executive directors' service contracts should not exceed three years
- Executive directors' pay should be reviewed by a remuneration committee
- Non-executive directors should be formally appointed
- An audit committee should be created to monitor financial reporting and controls.

Guidance on Codes of Practice, based on recommendations of the "Nolan Committee", has been issued for Board Members of Public Bodies with reference to:-

- Public service values
- Relationship with the sponsor department
- The role of the Chairman
- Corporate responsibilities of board members
- Strategic planning and control
- Delegation
- Responsibilities of individual board members
- Handling conflicts of interest
- Personal liability of board members
- Openness and responsiveness
- Accountability for public funds
- The role of the Chief Executive
- Audit committees
- The board as employer