

KEEPING IT LEGAL - BOARD RESPONSIBILITIES AND RISKS

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About

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Key Interests:

- (i) What is legally / procedurally correct & commercially prudent?
- (ii) Minimising risk and containing liability / Mitigating Risk
- (iii) What happens when things go wrong...horribly wrong?

Cautions apply to:

- ❖ CEOs / CFOs / COOs
- ❖ Executive Management
- ❖ Trustees / Officers / Board Members

Trustee/Board Member - Criteria

- ⦿ must be over 18 years of age
- ⦿ must not have been convicted of a serious crime
- ⦿ must not have been declared bankrupt
- ⦿ must not have been disqualified as a company director.

General Principles - Role of Board Members

- ⦿ There is an element of trust placed in trustees in all aspects of their role
- ⦿ to serve on the governing body of the charity in order to **control** and be **ultimately responsible** for its **management and administration**.
- ⦿ In the case of Incorporated Societies, the directors are similar to trustees - same legal responsibilities apply
- ⦿ mapping out the **strategic direction** of the charity

Fundamental Duties

Compliance Leader

- Trustees are **legally responsible** and in certain circumstances **personally liable** for compliance with legislation

PLUS - requirements of regulatory bodies such as the Charities Service and Registrar of Incorporated Societies

Fundamental Duties

Compliance Leader

- keeping a rein on organization's activities
- ensure organization does not stray from its charitable objects or its governing document
- NO ultra vires acts

Fundamental Duties

Administration Oversight

- need to meet regularly
- delegate tasks
- formulate strategy and policies.
- maintain distinction between governance and management is not blurred.

Fundamental Duties

Ultimate Decision-Maker

- ultimate responsibility for the organisation rests with Board Members
- Members must act with care and diligence at all times

Fundamental Duties

Fiduciary Capacity

- trusteeship is a fiduciary position
- Board members must always put the best interests of the charity above all else
- never allow personal interests to conflict with those of the organisation
- Conflicts of Interest

Liabilities

- potential liabilities depends on the legal framework of the organization
- Board Members may be held personally liable
- any Member acting dishonestly, negligently or ultra vires likely to be personally liable for any loss that the charity incurs

CEO & Executive

- operate at all times within the constitution and regulations of organisation
- not cause or allow any practice, activity, or decision that is unethical, unlawful or imprudent, or which violates any board policy or expressed Board values
- uphold Board policy and values

CEO & Executive

- not conduct any business activity which is clearly outside organisation's competency areas (i.e. social housing)
- keep Board informed of the true & accurate position of outcomes of programmes & services, financial position, significant management issues and all matters having real or potential legal/organisational risk considerations for the organisation

Committees

- (i) Audit and Risk Committee
- (ii) Finance and Resources Committee
- (iii) CEO Review Committee
- (iv) Board Succession Committee

The function of committees is to solve problems for and/or make recommendations to the management team

Scenario 1

- ❖ What would you do in light of your imminent formal appointment?
- ❖ When would you sign the Deed of Appointment?
 - ❖ What actions can you take when appointed?
- ❖ Is the Board approaching a crisis?