COLONSAY COMMUNITY DEVELOPMENT COMPANY

CCDC Board Meeting
12 October 2023

Document Pack

Public

Please note that not all items on the agenda have supporting papers

Confidential items (e.g. relating to staffing) are not published in public

COLONSAY COMMUNITY DEVELOPMENT COMPANY

Board Meeting

Thursday 12 October 2023 – 19:00 – Colonsay Village Hall and by Zoom

Agenda

Public

1.	19:00	Attendance and apologies	
2.	19:02	Welcome of new board and co-opting directors	
3.	19:05	Minutes of last meeting and matters arising	
4.	19:07	Declarations of interest	
5.	19:08	Briefing Note	Dannie
6.	19:10	CCC meeting report	William
7.	19:12	Scalasaig report	Carrie
8.	19:25	Auditors, Accounts and Budgets	Callum
9.	19:30	ABC loan agreement	Callum
10.	19:35	AOCB	

DONM

Private

11.	19:40	Minutes of last meeting and matters arising	
12.	19:42	CR2B update	Linsay
13.	19:50	Port Mor update	Dannie
14.	20:55	AOCB	

COLONSAY COMMUNITY DEVELOPMENT COMPANY

Colonsay Community Development Company Board Meeting
Public Minutes
Thursday 21 September 2023

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1. Attendance and apologies

Present: Dannie Onn (DO), Callum Hay (CH), Andrew Abrahams (AA), William Joll (WJ), Darragh Keenaghan (DK), Lesley McInnes (LM)

Apologies: Helen Mann (HM), Linsay Chalmers (LC), Carrie Seymour (CS), Lizzie Keenaghan (LK)

2. Minutes of last meeting and matters arising

Minutes approved.

3. Declarations of interest

None.

4. Briefing Note

Circulated prior to the meeting. The DTAS visit is to take place 3-5 October. Training sessions are available but these are not to be taken up at this stage.

Lizzie's study tour report has been circulated to directors and will be made available on the website. It is not therefore included with the documents for this meeting.

There were no questions on the note.

5. Scalasaig report

CS report circulated prior to the meeting. Directors are aware that there are rumours circulating the island about contractors, money issues and a lack of drainage. The board noted that communication to the wider community needs to be improved. This will be looked at in October.

TSL contractors returning to site on 2 or 9 October. TSL have confirmed their intention to complete the contract. We await a revised programme, but hope for completion of the houses around March/April. Business units may be completed sooner.

DO to ask named tenants for the business units if they are OK having their names publicised. The board considered it to be too soon with lease arrangements still to be discussed. CH to remove names from the report before publication.

6. Old Manse report

LK report and draft development brief circulated prior to the meeting. An Expression of Interest for the Foundation Scotland grant (£50,000) going in tomorrow. The future uses of the house and site were discussed, but these will be explored with the consultants funded by the grant. Until confirmation of money, no agreement or decisions can be made.

Jamie Leppard has been asked to price for the driveway, and Chris Jewell for the bathroom. These are essential repair/ improvements which need to be carried out and paid for, irrespective of the grant fund.

7. Approval of 2022/23 Annual Accounts

CH report and draft accounts circulated prior to the meeting. Approval of the accounts has been delayed because of difficulties in getting an appointed auditor. Accounts will not be ready for approval until audited in the next 4-6 weeks' time. Draft accounts were summarised by CH, available for both CCDC and CTC, which will be taken forward to the AGM on Saturday, with an EGM having to follow to approve the accounts later in the year.

DO thanked CH for all his work and the work underway on budgeting.

8. Capacity Building Grants

DO explained that he joined a DTAS webinar on the community capacity grants. This explained the constrained funds available and the severely limited scope for making new awards. We may be ineligible in any event because our funding through HIE comes from the same SG funding pot. We have been discouraged from applying. DK suggested that they put an application in anyway. CH added that the information gathered for the application will be

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useful when looking for other funding. The board agreed that DO, CH and DK will make an application. The closing date is 29 September.

9. AGM arrangements

Saturday at 11am, here in the village hall. To engage the community more, it has been decided to present the information through a PowerPoint presentation. Two board members are due to stand down and these will be selected in accordance with our Memorandum and Articles of Association. All those present are happy to continue as board members. Co-opted members must stand down, but they may be co-opted again by the new board. Light refreshments to be made available in the hall on Saturday.

10.AOCB

- **Inverness advert for moorings**
  LK asks if board would approve or not £150 for advertising in an Inverness yachting publication. In principle there were no objections, but advertising generally needs to be discussed and this will be done over the closed season.
- **Footpath from Queens Bay**.
  Alex Howard is still saying 'no' to a license for a waymarked path. If he continues to say no, then an indicative route from the bay to the hotel may be made available on the website.

  DO to discuss further with AH.

- **Campsite Planning**
  There has been a positive response from the planning authority, although no permission as yet. It appears they are considering amendments to the road conditions which would minimise the work needed.
- **CCC**
  The board has agreed that concerns over the estate's new land management initiatives should be channelled through CCC. They have repeatedly invited Alex Howard to their meetings with no success as yet. It is thought the estate may be awaiting results on their grant application for funding to carry out a study.
- **Website**

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We have offered CCC the opportunity to publish their minutes through the CCDC website. There were no objections to the CCC using the CCDC site temporarily or permanently, with a contribution towards costs.

DONM Thursday 12th October 2023

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COLONSAY COMMUNITY DEVELOPMENT COMPANY

GENERAL BRIEFING NOTE September 2023

Visit by Laura Worku, our DTAS development officer

Laura visited CCDC last week. She met with CS and LK at the service point and discussed CCDC work as well as ways in which DTAS might support them. Laura then visited CCDC assets and projects with DO. She and DO ran through some of the issues and challenges for the company. DO reprised the board review meeting and discussed governor training resources with Laura. She has pointed us to a governor training pack and a board member induction toolkit. Copies are attached.

Other leads provided by Laura include the Green Shoots Fund, which may be appropriate for our audit costs and a community insights report, which may assist with our island profile work. In the future resources may be available to support a Community Action Plan and a Local Place Plan. The green shoots guidance is attached.

Also attached to this briefing is a copy of DTAS document offering practical help for community development trusts from professionals.

Old Baptist Manse

The Expression of Interest for early-stage project funding has been submitted to Foundation Scotland. This would pay for the necessary consultancy to define the project for capital funding applications.

Chris Jewell has visited to price for bathroom refit and floor repairs as necessary. His initial guide price is between £3,500 and £4,500. Discussion are underway with others for improvements to the access track. An application will be made to the Screwfix fund, which is for a maximum of £5,000.

Asset management transitional funding

The application for three-year funding has been made to DTAS. We have had our expectations 'managed' by DTAS, but nevertheless applied because there is still a small chance of funding; the application will highlight our ambitions to others, including HIE; and the information provided has also been useful for other applications and will continue to be

so. There will be a further opportunity to apply next year if the fund continues. If any directors would like to see our application, please contact Dannie or Callum

Dannie Onn

DEVELOPMENT TRUSTS ASSOCIATION SCOTLAND
the community-led regeneration network

DIRECTORS TRAINING PACK

Roles and Responsibilities of Company Directors in a Company Limited by Guarantee with Charitable Status.

Introduction

Those running a Company Limited by Guarantee with charitable status are both directors under the Companies Act and charity trustees under the Scottish charity legislation. This means that they are subject to both company law and charity law in addition to general law. Remember a duty is a legal obligation. Failure to carry out duties as a director can result in **fines and in some cases personal liability**. It is therefore essential that anyone considering becoming a director of a development trust is clear about their role and responsibilities. This document offers an overview of the main duties of a director/charity trustee.

Remember - the Articles of Association may impose additional obligations to those set out in this document.

Contents

Main Sections

1. Overview of Board Roles and Responsibilities
2. Main Duties of a Company Director
3. Main Duties of a Trustee of a Scottish Charity
4. Company Operational Responsibilities
5. Legal Obligations

Other Material

- Duties & Responsibilities of Charity Trustees (checklist from OSCR Guidance for Charity Trustees)
- Template Register of Directors' Interests
- Example Code of Conduct

Board Roles and Responsibilities

A Board should ensure that it has clarity on its own role and responsibilities as well as its officers, and maintains a strategic rather than reactive focus on the execution of its duties.

It is important that the Board:

- Ensures the organisation has a clear vision, mission, and strategic objectives.
- Understands its role, and working relationships are constructive and effective- avoiding any conflict or uncertainty within the Board or with senior managers
- Has a supervisory function and provides the necessary challenge and is able to hold key staff to account.
- Familiarises itself with and complies with statutory and compliance requirements.
- Challenges individual Board members when and where necessary.
- Promotes the organisation.
- Delegates decision-making authority formally whilst ensuring an appropriate quality and clarity of decision-making, management of risk and reporting mechanisms within the delegated authority.
- Complies with its constitution and works within the powers laid down.
- Ensures sound management of financial resources and manages and mitigates risk.
- Scrutinises the organisation's performance.

The Board must have a role in the appointment of new Board members and senior staff and, in doing so, must have assessed the needs of the organisation in terms of skills, diversity and experience that will enable it to fulfil its objectives.

The Board's role is to oversee the affairs of the organisation in its best interests, including the interests of the stakeholders and beneficiaries, for the long-term health and overall success of the organisation.

As well as appointing to the organisation and monitoring performance, the Board is responsible for establishing the structure, including paid staff and volunteers.

The Board should ensure provision is made for management and staff development for both paid staff and volunteers.

The Board sets the strategy for the organisation and advises and directs the senior staff who manage the day-to-day business and affairs.

Board must ensure that there is a balance between access to accurate and detailed information, without receiving too much information and becoming engaged in the operational and day-to-day management.

The Board must ensure that they understand and appreciate what is expected of them regarding compliance and the overall governance of the organisation. The Board should also evaluate its own performance to ensure it is fit for purpose and delivering effectively.

Responsibilities of Being a Board Member

Being a Board member is a voluntary role which carries legal responsibilities that are the same as those of a company director.

These include:

- Using the skills, experience and judgement to help make the business successful
- Following the company's rules and ensuring it meets its legal obligations
- Making decisions for the benefit of the company
- Declaring personal interests and conflicts of the Board members
- Ensuring that the company keeps accurate records
- Making sure the accounts present a 'true and fair view' of the company's finances
- Complying with the law (e.g. health and safety; employer responsibilities)
- These responsibilities are reflected in the role description and in the Code of Conduct that the Board must sign annually.

Board Members must:

- understand their role
- have the information to fulfil the role effectively
- have knowledge of the organisation's governing documents
- understand its structure, the roles and responsibilities and their own individual legal responsibilities

If the organisation is also a charity: this means that Board members are Charity Trustees with additional legal responsibilities which include:

- Acting in the charity's best interests at all times
- Ensuring that the charity's activities comply with its aims and objectives
- Acting with care and diligence
- Complying with all relevant legislation
- Ensuring that the charity fulfils its reporting obligations to the Office of the Scottish Charity Regulator (OSCR), including the submission of an annual return and accounts.

It is advisable that Directors sign up to a **Code of Conduct** which reflects these duties. Such a document should contain the following principles:

Selflessness:
The Board must act in the best interests of the organisation at all times and must take decisions that support and promote the strategic plan, aims and objectives. Members of the governing body should not promote the interests of a particular group or body of opinion to the exclusion of others.

Openness:
Board members must be transparent in all actions and they must declare and record all relevant personal and business interests and must be able to explain actions.

Honesty:
Board members must ensure that they always act in the best interests of the organisation and that all activities are transparent and accountable.

Objectivity:
Board members must consider all matters on their merits and base decisions on the information and advice available and reach their decision independently.

Integrity:
Board members must actively support and promote their values and must not be influenced by personal interests in exercising their roles and responsibilities.

Accountability:
Board members must take responsibility for and be able to explain their actions, and demonstrate that their contribution to governance is effective.

Leadership:
Board members must uphold the principles and commitment to delivering good outcomes for tenants and other service users and lead the organisation by example.

The main duties of a company director

The Companies Act 2006 sets out a statement of directors' duties; the nine key elements (focussing on companies limited by guarantee) are as follows.

Note: It is usually the case in development trusts that the majority of directors are also members of the company. The duties outlined below do not apply in your role as a member; for example, at a general meeting, directors (in their capacity as members) may vote as they wish.

It is also worth noting that company directors cannot delegate any of their duties or other responsibilities under Company Law to another person (for example staff or independent advisors). This does not mean they cannot delegate the functions of the company (i.e. work that the Board have agreed is required) but that responsibility for the overall management and smooth operation of the company remains with the directors. In practical terms, this means that directors must take care in ensuring any person they delegate work to has the appropriate skills, qualifications and experience to carry this out to an appropriate standard as the directors would ultimately be responsible for that decision if there was any liability arising from it. Directors of a limited company have statutory duties that they must adhere to, these are as follows:

1 Duty to act within powers

Directors have an obligation to act within their powers as set out in the governing document of the company, and to only exercise these powers for the furtherance of the company's purposes as set out in the articles of association.

2 Duty to promote the success of the company

Directors of a company with charitable status (or other public benefit objectives) must act in a way that they consider, in good faith, would most likely promote the success of the company in furthering its purposes.

"Success" will generally mean a long-term increase in value but fundamentally it is up to each director to decide, in good faith, whether it is appropriate for the company to take a particular course of action. When considering the charity law view, success will not necessarily be in monetary value but the ability to meet its purposes.

The directors must exercise this duty whilst having regard to the following list of factors (amongst others):

- The likely consequences of any decision in the long term (e.g. on the long-term value of the company or on it achieving its purpose in the long-term)
- The interests of the company's employees

- The need to foster the company's business relationships with suppliers, customers and others (e.g. other community organisations or partners)
- The impact of the company's operations on the community and environment
- The desirability of the company maintaining a reputation for high standards of business conduct
- The need to act fairly as between members of the company.

It should be noted that the list of factors to which the directors of the company must have regard in exercising this duty, is **non-exhaustive**; for example, when a company becomes (or is becoming) insolvent a director's first duty is to act in the best interests of the company's creditors (the persons to whom it owes money) and to minimise the potential loss to them.

This duty is to the company. This means that a director must not place the interests of any individual members, employees or beneficiaries above the interests of the company.

This duty can be of particular relevance in a situation where directors have "**divided loyalties**" due to their association with another organisation. Each director of a development trust must always ensure that when they are taking a decision in their capacity as a director of the development trust, they are voting in such a way as they consider, in good faith, is most likely to promote the achievement of the company's purposes (and not necessarily in the manner which best serves the interests of any other body with which they are connected).

In practice, one way of enabling directors to comply with this duty is to ensure they are presented with papers at board meetings that allow them to consider the above factors. For example, if a decision could have environmental consequences then papers setting out information relevant to this should be made available to the directors. Where a decision is made which involves the Board considering particular factors, or competing factors, the Board may want to record its consideration of those factors and the conclusions reached.

For development trusts, it is usually the case that the majority of directors are also members of the company. The duties outlined above do not apply in your role as a member; for example, at a general meeting, directors (in their capacity as members) may vote as they wish.

3 Duty to exercise independent judgement

The directors have a duty **not to act in accordance with the will of others**, whether that be through delegation or by simply acting in accordance with the wishes of others; rather they must exercise independent judgement on matters affecting the company.

This does not prevent directors from properly delegating matters to committees or appropriate individuals. Directors are also able to seek independent expert advice, provided that they still take their own independent decisions.

This duty does not prevent directors from relying on the judgement of others when considering matters which they do not have expertise in; in fact in certain circumstances it would be irresponsible (and a breach of directors' duties) for the directors to proceed without first obtaining external professional advice. It is important, however, that the directors should not blindly follow the advice of third parties; they should exercise their own independent judgement in deciding whether to follow the advice, which has been given, as responsibility for decisions ultimately rests with them. For example, if the Company encounters an employment law issue, it would be good practice for the directors to seek expert advice.

4 Duty to exercise reasonable care, skill and diligence

This duty is of particular relevance in relation to the directors' role in monitoring the activities of the company, and especially the company's financial position.

A director of a company must exercise the care, skill and diligence that would be exercised by a reasonably diligent person with both:

- the general knowledge, skill and experience that may be expected of a person in that role, and
- any general knowledge and skills that that director has.

This means directors must **act carefully and responsibly or they may be considered negligent.**

As a general guide, directors should:

- ensure that the company is run properly, responsibly and lawfully, complying with relevant legislation (e.g. that covering companies, health & safety, employment, equal opportunities, data protection);
- ensure the company is solvent when trading;
- ensure the Board is fit for purpose and working together for the benefit of the company as a whole;
- apply care, skill and diligence in matters relating to paid staff and volunteers;
- exercise good business sense, and consider taking appropriate professional advice as and when is necessary;
- attend as many board meetings as possible, to ensure that they are aware, at all times, how the company is performing

For example, the Board should, in terms of best practice:

- agree a scheme of financial delegation, set annual and project budgets, and monitor financial performance on a regular basis;
- agree and implement a programme of training for directors;
- agree and monitor a framework for managing and supporting paid staff and volunteers.

5 Duty to avoid conflicts of interest

A director of a company must avoid a situation in which they have, or can have, a direct or indirect interest that conflicts, or might conflict, with the interests of the

company. This applies in particular to the **exploitation of any property, information or opportunity** (regardless of whether the company could take advantage of that property, information or opportunity). This is slightly different from declaring interests (see below), although it is usually treated in a similar way.

Directors must not allow their personal interests or the interests of any other body to override the interest of the company (even where they were appointed as a Director on the basis that they had been nominated by that other body).

This duty could come into play where there are particular pieces of information available to the company (for example, information about a forthcoming development opportunity) that might be exploited by a director for personal financial gain or the benefit of any other organisation with which they are involved.

It also relates to a situation where a director is proposing to take on a directorship (or other similar role) with another organisation which might, for example, be competing with the company for grant funding.

It is possible that difficulties could arise where a director sits on the Board of more than one company and is therefore subject to a duty of confidentiality to two or more companies. Directors should be encouraged to seek independent legal advice if in any doubt as to whether a conflict of interest may exist.

A Director may be associated with another organisation and this may give rise to 'divided loyalties', but they may not stand to gain financially. If this is the case, the Director should declare it and ensure that it is minuted, and when taking the decision in their capacity as a Director must always vote in such a way as they feel will be **in the best interests of the company**, and not necessarily the other organisation on whose governing body they also sit.

Some companies' Articles of Association will state that, even where the issue is one of divided loyalties rather than conflict of interest in the narrower sense referred to above, the Director is still debarred from voting – and that would be considered best practice if full transparency in decision-making is being sought.

This duty does not apply to a conflict of interest arising in relation to a transaction or arrangement between the director and the company (that type of conflict is covered by other principles). Further, this duty is not infringed: -

(1) if the situation cannot reasonably be regarded as likely to give rise to a conflict of interest; or

(2) if the matter has been authorised by the directors. Board authorisation may be given only if:

- Nothing in the company's articles of association would invalidate board authorisation;
- Any quorum requirement is met without counting the interested director(s);

- Authorisation is given excluding any vote(s) cast by the interested director(s).

Please also refer to the guidance below on the duty to declare an interest in a proposed transaction or arrangement.

6 Duty not to accept benefits from third parties

A director must not accept any benefits from third parties that arise because of their office as a director, or equally through their doing, or not doing, anything in their capacity as a director. This does not apply to any transaction approved by the members of the company or one for which the company's governing document states that approval is not needed.

In this context, a "third party" means a person other than:

- the company;
- an associated corporate body, or;
- a person acting on behalf of the company or an associated corporate body.

This obligation continues beyond the point where a director ceases to hold office, and a person can be held liable as regards to things he did, or did not do, during their past office as a director.

There is no minimum threshold (in terms of financial value) above which directors must not accept a benefit from a third party, but the duty is not infringed if accepting the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest. It is worth considering whether it would be appropriate for the company to issue guidance to directors on what would be regarded as acceptable levels of benefits that may be received.

This duty is treated differently from the duty to avoid conflicts of interest in that a director obtaining a benefit from a third party can only be authorised by the members of the company rather than by their fellow directors.

7 Duty to declare interest in proposed transactions or arrangements

This duty relates to a situation where a director of a company **has a financial interest in or stands to gain (or lose) financially** from a contract, transaction or arrangement entered into by the company. Financial interest or gain can apply not only to money but also to anything with a monetary value (e.g. information). Examples could be where the company is looking to buy a service or goods from a Director or an organisation that a Director is involved with in any way (e.g. partner, Director, etc).

This duty is not infringed where:

(1) the director is not aware or ought reasonably to be aware of the interest or of the transaction or arrangement in question;
(2) the matter cannot reasonably be regarded as giving rise to a conflict of interest;

(3) the other directors are aware or ought reasonably to be aware of the interest;
(4) it concerns their service contract which has been considered at a board (or committee) meeting.

If a director of a company is in any way, directly or indirectly, interested in a proposed transaction or arrangement with the company, they must declare the nature and extent of that interest to the other directors at any time before the company enters into the transaction or arrangement. (However, directors do not have any duty to avoid such an interest, as they have in relation to transactions or arrangements with third parties).

Directors should also be aware of an additional obligation under section 182 of the Companies Act 2006 whereby directors must declare an interest in any existing transaction or arrangement with the company (whether legally binding or not). Failure to make such a declaration is a criminal offence.

This duty also applies where any person connected to the Director has a financial interest in or stands to gain (or lose) financially from a contract, transaction or arrangement entered into by the company (known as indirect interests). Under the Companies Act 2006, the people that a director is considered to be connected to includes their spouse, civil partner, parents, children or step-children of any age, a partner in an enduring family relationship and a partner's children or step-children (if under 18 years and living with the director).

All conflicts of interest must be declared at the earliest possible opportunity. They can be declared:
(a) at a full meeting of the Directors (not a sub-committee), or
(b) by way of a notice to the directors (either in relation to a specific matter or by way of a general notice)

Any declaration of interest under this duty must be made before the company enters into the transaction or arrangement. Further, if a declaration of interest in accordance with this duty proves to be, or becomes, inaccurate or incomplete, a further declaration must be made (but only if the company has not yet entered into

the transaction or arrangement at the time that the director becomes aware, or ought reasonably to have become aware, of the inaccuracy or incompleteness of the statement).

A director must not take part in any decision relating to an issue in which they have a conflict of interest, and does not count as part of the quorum at a Board meeting where such a decision is to be taken.

There are various special rules for substantial property and other transactions involving directors - legal advice should be sought in these circumstances.

8 Duties in insolvency

This is of particular importance! The duties of a director come into sharp focus - and have significant practical implications - when a company is, or is becoming, insolvent.

The main statutory provisions in this area (referred to as the "wrongful trading provisions") are fairly complicated, but the basic principle is that a director could be ordered to pay a contribution (out of their own funds) to help to satisfy the debts of the company if it had gone into liquidation but only if they allowed the company to increase the loss to creditors (normally by running up more debt) beyond the point where there was no longer a reasonable prospect of the company pulling through.

It is important to note that the obligation to take steps to minimise further loss to creditors is not something which arises only at the point when the company runs out of money. The directors' duty to take steps to address the situation (and normally that would involve closing down) is likely to have arisen much earlier, at the point when it became clear that there was no realistic hope of financial survival. If directors are becoming in any way concerned about the financial position of the company it is worth consulting a solicitor and/or accountant. There are, however, two tests that are useful (though not conclusive) in determining whether there is a significant issue of solvency:

- Cash Flow test: if the company cannot pay the money it owes when payment is due, or if this is likely to occur within the foreseeable future (generally the next 12 months).
- Balance Sheet test: if the value of its total assets is less than its total liabilities. This includes prospective liabilities.

If an organisation is able to pay its debts as they fall due but fails the balance sheet test it is said to be '**technically insolvent'**. Advice in this case should be sought – but as noted above, if there is ever a question mark over the ability of the company to avoid insolvent liquidation, it is important to

- carefully weigh up the positive and negative factors (including savings that you might make, as well as potential additional income).
- ensure that you have full and reliable financial information .
- decide on whether the prospect of pulling through is a reasonable prospect (not merely an outside chance).
- try to obtain firm written commitments from funders or others if there is a reliance on these.
- ensure that the discussions at board level are carefully minuted to show that the issues were recognised and that any decision to allow the company to continue its activities was made after due consideration by the board.

A Director is expected to act in these circumstances on the basis of:

- The general knowledge, skills and experience that might reasonably be expected of a person carrying out that particular Director's function.
- The general knowledge skills and experience that the Director actually possesses.

Ignorance is not a defence! At the very least this means that all Directors have a duty to ensure they receive proper financial information and have the skills to

identify problems that could lead to insolvency. If any Director feels they lack the appropriate skills the company should be asked to arrange training and/or seek advice from a solicitor and/or accountant.

9 Duty to attend meetings

The Articles of Association make reference to the number of missed meetings that could result in directors being asked to stand down from that role. Directors have a duty to attend whenever 'reasonably able to do so'. A director who does not attend over an extended period of time could be held in breach of their duty of care. If the company becomes insolvent, a director who has consistently failed to attend could be disqualified from becoming a company director of any other company for a period of years.

Liabilities

Directors are responsible for their own breaches and defaults. Directors can be relieved of the consequences of their liability if their company or the courts decide.

Companies are separate legal entities from its officers so a director would normally not be liable for a company 's debts. However, a director may be personally liable if they caused the breach by the company, e.g. by entering a contract outside of their powers.

If a director breaches their general duties they will normally be required to compensate the company for any loss it has suffered or to relinquish any gain they have as a result of their breach. Each duty imposed on a director carries its own punishment for breach. In most cases a director will be liable to a fine but in some cases they may also be imprisoned – although this is very rare. A director can also be disqualified from being a director for breaching company legislation.

When a company is in liquidation, an action can be raised against a director for their conduct before and during the liquidation. The most important examples are:

Misfeasance - misapplying, retaining or becoming otherwise accountable for any money or other property of the company or being accountable for breach of any fiduciary duty or other duty imposed by the company.

Fraudulent trading - knowingly carrying on business with the intention of defrauding creditors of the company or any other person or for any fraudulent purpose.

Wrongful trading – as shown above under note 8.

In all of the above cases the court can require the director to contribute to the company's assets. A director can also be disqualified if their conduct renders them unfit or if they appear to have been involved in or found guilty of fraudulent or wrongful trading.

The main duties of a Trustee of a Scottish Charity

The Scottish charities legislation (the Charities and Trustee Investment (Scotland) Act 2005) sets out certain specific duties, which apply to directors of companies which are recognised as Scottish charities (referred to in the legislation as "charity trustees").

The key points are as follows:

- charity trustees must act in the interests of the charity; and must in particular
    - seek in good faith to ensure that the charity exercises its functions in a manner which is consistent with its purposes·
    - act with the care and diligence that it is reasonable to expect of a person who is managing the affairs of another person
    - in circumstances where a conflict of interest may arise, put the interests of the charity first (or, where some other duty prevents that, disclose the conflict and take no part in the deliberations/decision)

- in addition, the charity trustees must ensure that the charity complies with any direction, requirement, notice or duty imposed upon it by virtue of the 2005 Act

- breach of trustees' duties specified above is to be treated as misconduct in the administration of the charity

- all charity trustees must take such steps as they reasonably can for the purposes of ensuring that any breach of the above duties by the trustee concerned is not repeated; and that any trustee who has been in serious or persistent breach of any of the above duties is removed as a trustee

In addition, the legislation includes provisions specifically addressing a situation where a charity trustee provides services to a charity. The main points are as follows:-

- Where a charity trustee provides services to a charity or might benefit from any remuneration paid to a connected party for such services, then (unless otherwise provided in any constitution which was in force prior to the 2005 Act)
    - the maximum amount of the remuneration must be specified in a written agreement and must be reasonable·
    - the charity trustees must be satisfied that it would be in the interests of the charity to enter into the arrangement (taking account of that maximum amount)
    - less than half of the charity trustees must be receiving remuneration or benefit from remuneration
    - the remuneration must not be expressly prohibited by the constitution

- Remuneration contrary to the above will be recoverable.

For further information please see extract from OSCR guidance on duties of a charity trustee on p 32.

Operational Responsibilities

Register of Members: The following details must be recorded:

- Full name and address of each member
- The date on which they became a member and the eventual date when they ceased to be a member
- If there are more than 50 members the register must record them in alphabetical order
- The register must be kept in a safe place where it cannot be amended without proper authority
- The register must be open for inspection by members free of charge.

Annual Returns and Annual Accounts: The Company must file an Annual Return at Companies House on the relevant form each year. Companies House will issue a pre-printed annual return in advance of the return date in each case – so all that is needed is to check that the details are correct and notify them of any discrepancies. There is a small filing fee for an annual return, payable to Companies House. Either a Director or the Company Secretary may sign the form. It is also possible to file annual returns electronically, and a reduced fee is payable if that facility is used.

Directors (and the Company Secretary) could be held personally liable for a fine if an annual return is late

Annual accounts have to be filed with Companies House, normally within nine months after the accounting reference date (financial year end) (though special rules apply in relation to the first accounts). This is taken very seriously by Companies House; a series of reminders are issued – but if accounts are late the company will automatically be liable for a civil penalty of £100 to £1000 depending on the length of delay – and Directors and the Company Secretary could also find themselves personally liable for fines.

In addition to the annual return to Companies House, a company which is recognised as a Scottish charity also requires to file an annual return with OSCR along with a copy of their accounts (which must comply with the relevant Charities Accounts Regulations). Both the Annual Return and Accounts must be signed by a charity trustee and dated at the meeting they were approved. Charities with an annual income of £25,000 or above will also have to complete a monitoring return.

Changing directors: You must notify Companies House within 14 days of any change of Directors (or a change in a Director's details) on the relevant form - form AP01for the appointment of a director, form TM01 for the resignation of a Director (or someone ceasing to be a Director for any other reason), and form CH01 for a change in a Director's details (eg change of home address). This must be signed by a new Director or new Company Secretary but does not need to be signed by a departing Director (or departing Company Secretary). It is also possible to file these forms electronically with Companies House. New directors can either be

co-opted by the board or elected at the AGM, in accordance with the procedures set out in the Articles.

Removing directors: The Articles set out certain circumstances in which a Director can be removed or will automatically cease to hold office. This may be, for example, because the Director has missed more than a specified number of board meetings. There is also a statutory right for members to remove a Director; a fairly convoluted procedure is involved, but ultimately the resolution will be passed if a majority of the votes cast at the EGM or AGM are in favour. Where the majority of the board are not in favour of removal, the members can still force the issue – since 10% of the membership can formally request the board to convene an EGM for this purpose – and the board is legally obliged to give effect to a requisition of that kind.

Keeping company records: in addition to the register of members you must keep a register of Directors showing:

- Full name
- Former names (not maiden)
- Date of birth
- Nationality
- Residential address
- Business occupation (if any)
- Particulars of Directorships (including a former Directorship – identified as such – if held within the preceding five years)
- The date on which each person became a director – and the date when they ceased to be a director

You must also keep a register of company secretaries (if you have a company secretary - see below), showing

- Full name
- Former names (not maiden)
- Residential address
- The date on which each person became secretary – and the date when they ceased to be secretary.

In each case, the register must be available for inspection by the membership.

Under the Charities and Trustee Investment (Scotland) Act 2005 charities have to keep accounting records for at least 6 years from the end of the financial year to which they relate.

Appointing a Company Secretary: It is no longer a statutory requirement for a company (other than a PLC) to have a Company Secretary; but almost all community development trusts do continue to have a Company Secretary - as it helps to ensure that important administrative requirements under the Companies Acts and the Articles are not overlooked, and generally contributes to good governance. The duties of a Company Secretary normally include:

- Being present at meetings.
- Taking minutes (unless you appoint a minute secretary).
- Issuing notices of meetings to directors and members.
- Maintaining the register of members, register of directors, register of secretaries, minute books and other company records.
- Making all necessary returns to Companies House, OSCR and HM Revenue & Customs.

The Company Secretary is not a voting position on the board unless the Company Secretary is also a Director. It is possible to appoint an employee or pay someone to carry out the role of the Company Secretary.
The Company Secretary can be changed by the directors whenever they wish. This is in contrast to the chair, vice chair (if any) and treasurer for whom there are normally special provisions for their appointment; occasionally, appointment is by way of election at the AGM but more commonly in a company context, it is for the board to elect their own office-bearers from their own number.

Appointing Auditors: Only certified or chartered accountants can be auditors. The first auditors are appointed by the directors and will normally continue in office from year to year unless steps are taken to change them. It should be noted that the requirement to re-appoint auditors at the Annual General Meeting no longer applies unless this is specifically required under the articles of association; the Companies Act 2006 provides that (in general terms - the detailed provisions are fairly complex) unless the directors appoint a different firm as auditors during the 28-day period that follows the filing of the annual accounts with Companies House, the existing auditors will be deemed to be re-appointed.

If you wish to change auditors, this is normally dealt with via the resignation of the existing auditors – with the board then filling the vacancy by appointing another firm as auditors. If auditors resign, they must make a written statement of any circumstances connected with their resignation that ought to be brought to the attention of the members or creditors. If the existing auditors refuse to resign, a more complicated procedure can be followed, involving removal at a General Meeting.

Role of an Auditor: Auditors have the right to free access to any documents, books or other records which they consider necessary to conduct the audit. They are entitled to proper explanations and information from the board to enable them to perform their duties; and to receive notices, as if they were members, of all General Meetings of the company. They can attend and be heard - but not vote - at General Meetings of the company on any business with which they are concerned.

The auditors will normally prepare a balance sheet and income and expenditure account. Once the audit process is completed, the accounts must be approved by the Directors, and the balance sheet signed and dated by a director; the auditors then sign their audit certificate on the accounts, and the report and accounts are then normally put before the AGM. A copy of the audited accounts is usually sent to all members along with the notice of each AGM (in terms of the statutory requirements, the accounts must be sent to the members on or before the last date on which it has to file accounts with Companies House or (if earlier) the date on which it actually files the accounts with Companies House).

Auditors have a duty to report to OSCR anything of material significance to OSCR carrying out its role as the charity regulator. They may report anything that may be of interest to OSCR.

Directors Annual Report: The directors must prepare a report each year that is attached to the Annual Accounts. This must:

- Give a fair review of the developments that have gone on in the company during the financial year
- Give the names of all the directors
- Set out details of all the activities of the company for the year
- Identify any significant change in the activities or in the fixed assets of the company

It must also give details of any important events that occurred after the financial year-end and any likely future developments. Finally it must set out the charitable contributions made by the company.

Place of Business: The name of the company must appear clearly outside the place of business.

Registered Office: The company must, at all times, have a registered office. This is an office where all formal communications and notices to the company will be addressed. This is why it must appear on all company stationery and there should be a notice outside your office saying that this is the registered office of the company. This does not prevent you from having another address (say that of the company secretary) where you want day-to-day correspondence to be sent.

You can change the registered office whenever you like by a decision of the directors but the necessary form (form AD01) must be lodged within 14 days with the Registrar of Companies. If you are operating from a different office you must have a notice of your registered office displayed outside your business address.

Company Stationery: As a charitable company all letterheads, invoices, orders and publications must contain:

- The company name.
- The place of registration (i.e. Scotland) and your company registration number (from your certificate of incorporation).

- The address of the registered office.
- The fact that you are a Scottish charity and your Scottish charity number.
- If the word "Limited" (or "Community Interest Company"/"CIC") does not appear in the company name, the fact that you are a company.

All chequebooks must state the full name of the company. If they do not, any person signing a cheque on the company's behalf may be found personally liable if the company does not pay.

As a charitable company all the above documents must state that the company is a charity

Types of Meetings: General Meetings are meetings of the membership of the company. Prior to the Companies Act 2006, any General Meeting that was not the Annual General Meeting (AGM) was referred to as an "Extraordinary General Meeting" (EGM) - although that terminology is not used in the Companies Act 2006. The rules in relation to calling of General Meetings are as follows:

- AGMs: The statutory requirement to hold an AGM was removed (other than for PLCs) by the Companies Act 2006, but for virtually all development trusts it is important that AGMs should continue to be held, in the interests of democratic accountability. Your Articles of Association will probably state that AGMs must be held - and if they do not, it would be as well to alter the Articles so that they do make that clear. The usual requirement under Articles of Association - following the position that applied prior to the Companies Act 2006 coming into force - is that AGMs should be held not more than 15 months apart, and with the first AGM being held not later than18 months after the company is incorporated.
- Other General Meetings: are either called by the directors at any time they feel one is required or, as set out earlier, they must be called at the request of 10% of the membership.

The membership, via a General Meeting, have the ultimate control of the company; some important decisions such as a change to your name, Articles of Association (also a winding-up resolution) can only be made at General Meetings (or through a written resolution signed by 75% or more of the total membership). However, the board has full power to make day-to-day decisions about the running of the company. They are, however, bound to follow a specific direction issued by the members at a General Meeting; that would normally, however, involve a special resolution, with due notice of the resolution being given, and in practice is extremely rare.

Notice of Meetings: The Articles of Association set out who should be notified of a General Meeting and how they should be notified. The minimum period of notice is 14 days - but it is important to note that many Articles of Association (reflecting the statutory requirements that applied before the Companies Act 2006 came into

force) state that 21 days notice is required for an AGM (or any other General Meeting at which a special resolution is to be passed) - and if that is what is stated in your Articles, you must give that longer period of notice.

Every notice of a General Meeting must give the following information:

- The place, time and date of the meeting
- The manner in which members can vote by proxy (even if your Articles do not allow for proxy voting, that is now overridden by the Companies Act 2006 ie all members have the right to vote by proxy even if the Articles say otherwise)
- If it is an AGM it must say so
- If it is proposed to move a special or extraordinary resolution the notice must state that, and set out the exact words of the resolution
- If it is a notice of an AGM, it is normal to send out the audited accounts and directors' report with the notice.

Conduct of General Meetings: The quorum specified in the Articles of Association must be present at all times. A chair must properly conduct the meeting and preserve order and may insist that a member leaves if they become disorderly or abusive.

The chair has no power to dissolve or adjourn meetings unless agreed by the majority of members present - except where they need to do so to preserve order.

It is the chair's duty to make sure that the meeting only discusses matters which fall within the scope of the notice convening the meeting. This need not prevent a free and general discussion after the completion of formal business - although that sort of discussion cannot involve the passing of formal resolutions.

A member may propose an amendment to a resolution without advance notice but only if it does not completely alter the original nature of the proposal. Special or Extraordinary resolutions must not, however, be amended – other than to correct a typographical error.

Types of Resolution: There are two different types of resolution that vary according to the size of majority required and the amount of notice to be given. They are:

- Ordinary resolution - which is passed by a simple majority
- Special resolution - which needs a three quarters majority ie three quarters of the votes actually cast must be in favour

Special resolutions are required, for example, to change the name, objects or Articles of Association of the company.

In calculating the three quarters majority only the votes cast for and against are counted and those who are absent (without having appointed a proxy to vote in their place), or abstain, are disregarded.

Within 15 days of a Special Resolution being passed, a typed copy of the resolution must be sent to the Registrar of Companies.

There are two kinds of resolution which require 'special notice' to be given. These are:

- A resolution to remove a director
- A resolution to remove an auditor

The member who is intending to propose the resolution must give 28 days' notice to the company of that intention. The company, having received the notice, then gives 14 days' notice of the resolution to the members (where possible, at the same time as it gives notice of the meeting).

Fines: To ensure that the various duties of a Company Secretary and directors are complied with, there are penalties in the form of fines. However, in practice, it is extremely rare for fines to be levied – other than in relation to annual returns and annual accounts. If the offences are really persistent and numerous the person may be disqualified from acting as a director – but again, that is very rare in practice.

Legal Obligations

Directors are responsible for ensuring that the company complies with its obligations relating to the health, safety and welfare at work of its workers, under health and safety legislation. Similarly, obligations arise under environmental legislation and anti-corruption legislation, employment law and Data Protection. Compliance with these ensures that the risk of personal liability is reduced further.

Health and Safety

Responsibility for health and safety matters is a responsibility of the company rather than of individual directors. However, where a 'body corporate' commits a health and safety offence with the consent or connivance of a director or the offence is attributable to neglect, then they are liable to be prosecuted. (In this context, consent means knowing of the circumstances and the risks, whilst connivance means knowing and not doing anything about the risks. Neglect means unreasonable breaching of a duty of care.)

Under the Health and Safety Executive ("HSE")'s enforcement policy statement, one of its purposes is to ensure directors are brought to account before the courts if they fail in their health and safety responsibilities. HSE Inspectors have been asked to consider in particular the management chain and role played by individuals in any health and safety breaches. Organisations and individuals found guilty of health and safety breaches will be named in the HSE's annual report each year.

The HSE and the Institute of Directors have published guidance as to the health and safety responsibilities of company directors, recommending that each board must:

- accept its collective role in providing health and safety leadership in their organisation;
- nominate a director to champion health and safety issues;
- ensure that each member accepts individual responsibility and makes sure that their actions and decisions at work reinforce the messages in the board's health and safety;
- make sure all decisions reflect the intentions in the organisation's health and safety policy;
- encourage workers at all levels to become actively involved in health and safety;
- keep up to date with relevant health and safety risk management issues and review its health and safety performance regularly, at least annually.

Employment laws

A company acts through two tiers of decision making – through the membership and the delegated authority given to the board of directors. The board of directors are in charge of the management of the company's business; they make the strategic and operational decisions of the company and are responsible for ensuring that the company meets its statutory obligations. Under the duty to promote the success of the company, the board must also protect the interests of the company's employees.

The limited company acts as the employer which brings responsibilities such as:

- Fair recruitment practices
- Written particulars of employment (usually in the form of a contract)
- Health and Safety
- Working Time Regulations and Annual Leave
- Minimum Wage
- Fair treatment which prevents claims of discrimination
- The duty to consider requests for flexible working
- The duty to grant maternity leave and pay/paternity leave and pay/parental leave and allow staff to return to the same job
- Abiding by express and implied contractual terms
- Informing and consulting when changes are made
- Auto-enrolment into a pension
- Terminating a contract fairly

Employers have a duty of care to their employees, which means that they should take all steps which are reasonably possible to ensure their health, safety and wellbeing.

Legally, employers must abide by relevant health & safety and employment law, as well as the common law duty of care. They also have a moral and ethical duty not to cause, or fail to prevent, physical or psychological injury, and must fulfil their responsibilities with regard to personal injury and negligence claims.

Requirements under an employer's duty of care are wide-ranging and may manifest themselves in many different ways, such as:

- Clearly defining jobs and undertaking risk assessments
- Ensuring a safe work environment
- Providing adequate training and feedback on performance
- Ensuring that staff do not work excessive hours
- Providing areas for rest and relaxation
- Protecting staff from bullying or harassment, either from colleagues or third parties
- Protecting staff from discrimination
- Providing communication channels for employees to raise concerns
- Consulting employees on issues which concern them.

General Data Protection Regulations

Compliance with the data protection regime requires the commitment of every function within an organisation. It has long been recognised that data protection breaches are most commonly caused by human error rather than external cyber-attacks.

The GDPR requires organisations to have both "appropriate technical and organisational measures in place." This requires implementation and maintenance of secure systems, training and robust policies on all aspects of data handling.

Further, the GDPR introduced a new principle of accountability which requires organisations to not only comply with the data protection principles but, at any time, to be able to demonstrate this. The role of directors will be to properly understand, prioritise and implement the changes needed to comply with data protection regime.

Once a data breach has been identified, the organisation may be required to notify both the Information Commissioner's Office (ICO) and the data subjects themselves within 72 hours of being made aware the incident. Upon learning of a breach of data protection legislation, the ICO has broad investigation powers including service of production orders and the exercise of search warrants.

Under the GDPR, there is a range of criminal offences relating to data protection including unlawfully obtaining, disclosing or selling data and various offences relating to the exercise of the ICO's statutory powers. There are also new offences under the Data Protection Bill including altering or destroying data with the intention of preventing disclosure of information to a data subject.

Directors may be liable for the criminal offences of the company where these were committed with their "consent, connivance or neglect." Whilst prosecutions of directors under the DPA were rare, directors should be conscious of the possible criminal offences which an organisation may commit and the possibility of the ICO prosecuting individuals.

At present, the company will be liable as an entity and there are no separate provisions making directors individually liable for non-criminal breaches of the legislation. However, directors should be mindful that this may change in future.

Bribery Act 2010

The Bribery Act 2010 extends the crime of bribery to cover all private sector transactions (previously, bribery offences were confined to transactions involving public officials and their agents).

The Act creates four separate offences:

- a general offence of offering, promising or giving a bribe;
- a general offence of requesting, agreeing to receive or accepting a bribe;

- a distinct offence of bribing a foreign public official to obtain or retain business;

- a strict liability offence for commercial organisations that fail to prevent bribery by those acting on their behalf, where the bribery was intended to obtain or retain a business advantage for the commercial organisation.

The Corporate Manslaughter and Corporate Homicide Act 2007

Companies and individuals (including the directors and managers of a company) are subject to the common law offence of manslaughter by gross negligence, which applies where:

- the defendant owed a duty of care to the deceased;

- there had been a breach of this duty of care;

- the breach was so grossly negligent that the defendant can be deemed to have had such disregard for the life of the deceased that the defendant's conduct should be seen as criminal and deserving of punishment.

A conviction of an individual for gross negligence manslaughter carries a maximum sentence of life imprisonment.

The Corporate Manslaughter and Corporate Homicide Act 2007 creates an offence of corporate manslaughter (known as corporate homicide in Scotland) in the UK, which replaces the common law offence of manslaughter by gross negligence for companies, partnerships, trade unions and other organisations. An organisation will be guilty of corporate manslaughter if:

- the way in which its activities are managed or organised causes a person's death;
- the death results from a gross breach of a duty of care owed by the organisation to that person;

- the senior management had organised or managed the organisation's activities in such a way to be a substantial element of the breach.

The Corporate Manslaughter and Corporate Homicide Act does not apply to individuals, but if found guilty an organisation will be subject to an unlimited fine.

Competition law

The Competition Act 1998 (CA98) imposes two key prohibitions on anti-competitive conduct.

- Agreements that may actually or potentially distort competition

- The abuse of a dominant market position

Competition law under applicable European and UK law (in common with comparable jurisdictions around the world), prohibits certain practises that will or may have the effect of reducing competition between competing undertakings.

Competition laws also include a prohibition on the state selectively granting advantages to companies ("state aid") and rules relating to government tender procedure. In Europe (and elsewhere), a breach of competition law can lead to severe fines, the nullity of any affected contract, and damages claims from affected third parties.

For companies (and charities) to be compliant with competition law, Boards need to be aware that:

- In any collaborative arrangements where you are engaging in economic activity: for example, agreeing speaking rates for senior representatives, or agreeing to boycott certain suppliers, would raise competition concerns.

- In applying for government and other tendered contracts. It is not permissible to "rig" the outcome of a tender process, by, for example, agreeing with a third party that they should not participate, so as to increase your chances of winning the tender. Further, in the EU, state aid rules may apply in relation to running social projects and providing public benefit services.

Example Code of Conduct

Name of Development Trust

Code of Conduct

Board of Directors

Two copies to be issued to new directors after the AGM or on their appointment to the Board: one of these signed copies to be returned to the company secretary.

1. Scope of Code of Conduct

This is the Code of Conduct for directors of the Trust. It has been approved by the board.

Candidates seeking election will be asked to confirm that they have read it, and if elected will sign a similar acknowledgement.

- A director must observe the code of conduct of the Board of Directors whenever he / she -
    - conducts the business of the organisation
    - conducts the business of the office to which he / she has been appointed, or
    - acts as a representative of the organisation.
- For the purposes of this code, “meeting” means any meeting of the Board of Directors, its committees and sub-committees.

Qualification for office

The constitution sets out the criteria by which an individual is eligible to be on the board. A board member shall notify the rest of the board immediately on becoming aware that they are or may no longer be eligible based on company and charity law.

Carrying out their responsibilities

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

- 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 board member who, without good reason accepted by the remaining directors, fails to attend more than 3 meetings (in accordance with the Constitution), will be in material breach of this Code and in this instance may be removed;
- Prepare properly for every meeting by reading in advance any documents sent out for the purpose of the meeting;
- 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.

4 Obligations of Director

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

The Board will observe the following general standard:

- treat fellow directors, staff and members of the organisation fairly with respect and courtesy at all times, and must not discriminate against any person;

- not disclose information given in confidence to the board unless required by law to do so.

- not prevent another person from gaining access to information to which that person is entitled by law.

- not conduct himself or herself in a manner which could reasonably be regarded as bringing their office, the board, or the organisation into disrepute.

- not use their position improperly to confer on, or secure for any person, an advantage or disadvantage

- ensure that the resources of the organisation are used prudently, in accordance with the law and, where appropriate, in compliance with the guidance of the charity regulator.

- ensure that the resources of the organisation are not used for the activities of a registered political party.

When reaching decisions, a director must -

- take decisions solely on merit

- take decisions in the best interests of the organisation and the wider community, and not act to gain advantage for themselves or organisations to which they belong.

- act honestly, and declare any private interests or potential conflicts of interest (see below).

- Directors must be as open as is possible and practical about decisions made by the board.

- A director must report any conduct by another board member which is believed to be a material breach of this code of conduct to the Chair. In the event that the report relates to the conduct of the Chair, such reports should be submitted to the Vice-Chair.

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

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

- 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 Trust, taking into account relevant factors and ignoring irrelevant factors;

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

- 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;

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

Personal Interests

- A director will notify the Company Secretary on their appointment as director of any personal interest which may give rise to potential or real conflicts of interest, or as they arise at any time in the future.

- The Company Secretary will hold a register of pecuniary and non-pecuniary interests, and this will be available for inspection by the board at any time, and by members on written application. The register will be reviewed and updated annuallyA director must declare any conflict of interest, whether previously notified or otherwise, at any meeting where it is likely to arise, and will accept the ruling of the Chair of meeting as to whether or not they should take further part in discussion or decision on that item. The declaration and actions taken must be recorded in the minute.

- Other directors are responsible for pointing out and ensuring that all conflicts of interest are raised and avoided.

The Board must disclose to the Board any material interest which they or their Spouse or partner holds in:

- Any business which competes with or carries on the same trade as the company;

- Any business which is providing goods or services to the company, or is being considered as a potential supplier of goods and services;

- Any public body or voluntary organisation with which the company has or is likely to have dealings.

“Material interest” for these purposes includes being an employee, holding any position of authority or responsibility, or owning any financial interest or voting rights. 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.

Subject to the constitution, no director may take part in any discussion on a matter in which they have a material interest, or take part in any decision, or vote on any resolution. This applies to meetings of the board and of any committee or sub-committee of the board.

Confidentiality

The Board will treat all information which they receive in their capacity as directors and trustees, and all discussion within the boardroom or within committees or sub-committees of the board, as confidential.

The Board will observe the following obligations of confidentiality:

- They will not disclose any information outside the boardroom unless it is already in the public domain, or they are specifically authorised to do so. This includes information

about Trust business, the deliberations of the board in reaching decisions, and the way individual directors voted on issues;

- They will not use any such information for personal advantage;
- They will not pass information to any representative of the media;
- They will not make unauthorised photocopies of any documents;
- They will take proper care of any documents they receive as directors, and store them securely.

Taking independent advice

Where employed staff are responsible for running the day-to-day business of the Trust, if one or more of the board have any questions about any aspect of the Trust affairs, they should be raised in the first place with staff, through the relevant line manager. Where staff are not in place, questions should be directed to the Chair.

If the board as a whole considers that it is in the best interests of the company to do so, they may resolve to take independent advice on any matter.

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

Training

All of the board shall take part in any training which 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

The board 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, except in the following circumstances:

- Working meals or refreshments;
- Inexpensive items (less than £25 in value) such as free calendars;
- Hospitality in the course of Trust business, which is disclosed to the Board and recorded in a register.

Breach of this Code

All board members 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 of the board alleges that another is in breach of this Code, the following provisions will apply:

If the allegation is made in the course of a meeting, the matter is to be referred to the chair, who may;

- Defer the matter to be considered by the board on a subsequent occasion;
- Adjourn the meeting;
- Request that the individual (s) alleged to be in breach temporarily leaves the meeting for the matter to be discussed by the remaining board present;
- Exclude the board member alleged to be in breach for the remainder of the meeting;

If the remaining board are to consider an allegation of breach of this Code at any time, the individual alleged to be in breach shall be given the opportunity to respond to the allegation;

If the remaining board considers that an individual board member has committed a breach of this Code,

- The breach shall be minuted by an individual board member nominated by the Board;
-
- The board may recommend that the individual in breach undergoes training;
-
- The board may resolve to report the matter to the members at the next members' meeting.

Subject to the constitution of the Trust, a board member in serious breach of this Code may be officially reprimanded by the remaining board, and, if they feel the breach is serious enough, may recommend to the membership that the board member is removed from office – using the appropriate company law provisions.

Before any such resolution can be considered, the individual alleged to be in serious breach shall be notified in writing of the alleged breach, and shall have an opportunity to answer the allegations made.

……..
……
Print Name Signature

…….
Date

Duties and Responsibilities of Charity Trustees

Office of the Scottish Charity Regulator

Further details on the duties and responsibilities of charity trustees can be found in this guidance published by OSCR. What follows is an extract.

https://www.oscr.org.uk/media/3621/v10_guidance-and-good-practice-for-charity-trustees.pdf

1. YOU MUST ACT IN THE INTERESTS OF THE CHARITY

- You must do what is best for the charity and its beneficiaries, not what is best for you, your friends or family or your business interests.
- You must put the needs of the charity before the needs of any other organisation that you are involved with, either in a personal or professional capacity.

Where you are faced with a decision where one option would be in your interest and the other in the interest of the charity you must choose the option that is in the charity's interest. To do this properly, you must declare what your interests are, know when it would be better that you did not take part in certain decisions and take appropriate action.

Good practice

- The charity has an up to date list (register of interests) detailing where charity trustees work and any other organisations they are involved with.
- The charity has a conflict of interest policy that says what charity trustees should do if there is a conflict of interest and what happens if a charity trustee does something wrong. See the conflict of interest section for more details.
- There is a policy that makes it clear when a charity trustee, their family or the organisation they work for can be paid, for services provided to the charity. See the remuneration (payment) section for more details.
- The charity has the power in its governing document to remove charity trustees if they are in serious or persistent breach of the charity trustee duties, or a breach of the requirements of that governing document. If you are at all unsure, you should declare a potential conflict and the other charity trustees can decide whether it poses a conflict.

1.1 You must seek in good faith to ensure the charity operates in a manner consistent with its purposes

Your charity's purposes are set out in your governing document (often called a constitution, trust deed or articles of association).

- A charity's purposes are what your charity has been set up to achieve and are the reason your charity exists.

- You must always act honestly and reasonably ("in good faith") when acting for the charity and make sure that the activities advance its charitable purposes.
- You must make sure that the charity's assets are used to advance its charitable purposes. This can be done directly by using an asset to undertake activities or indirectly by investing assets to generate funds for the charity.
- You should understand what the governing document says and means.
- You must make sure that the other charity trustees and people working at the charity follow the rules in the governing document.
- When the charity makes plans, the charity trustees must make sure that any decisions or actions fit with the purposes and powers set out in the governing document.

Good practice

- Every charity trustee has the most recent copy of the charity's governing document.
- Every charity trustee gets an induction into the charity and their role when they start.

1.2 You must act with care and diligence

The role of a charity trustee will vary from charity to charity. Some charities have staff who are responsible for daily operations, with the charity trustees providing strategic oversight and governance. Other charities are run solely by charity trustees on a voluntary basis. Whatever your charity trustee role involves – hands on or strategic oversight – the decisions you make about the charity should show that you are acting with care and diligence that is reasonable to expect of a person who is managing the affairs of another person.

When you are dealing with the charity's affairs, you should do so as carefully as you would if you were looking after someone else's affairs, for example a relative or a friend.

- As charity trustees, you must all work together to advance the charitable purposes, including making sure the charity is run properly, responsibly and lawfully.
- You have to protect your charity including its beneficiaries, assets and reputation. This means understanding and assessing potential risks to make sure decisions are as robust as possible.
- You should have a clear, up-to-date picture of how the charity is doing financially, and the charity should have procedures in place to reduce any risks. All the charity trustees should know what assets the charity has and understand any restrictions on how money can be spent. The charity must keep clear financial records and share them with all the charity trustees. See the charity finances section for more details.

- You can use the charity's money to get professional advice for the charity if needed.

As charity trustees:

- You must make sure that the charity has enough money to pay staff and other costs.
- You must make sure that any staff are treated properly and fairly.
- You must make sure that the charity's name and any logo are not used without the charity's permission.
- You are responsible for making sure your charity complies with any relevant laws. For example, health and safety, employment, data protection and equality laws.

Good practice

As charity trustees, you should:

- Review and update the charity's plans regularly.
- Agree financial budgets and monitor financial performance.
- Review the performance of the charity and, where necessary, agree steps to improve performance.
- Regularly compare what the charity proposes to do with the governing document to see if anything needs to be changed or updated. See our Making Changes to Your Charity guidance if the governing document needs to be amended.
- Make sure there are rules in place which set out what happens if the charity trustees cannot agree with each other. For example, set out in a code of conduct.
- Provide charity trustee induction packs and review the training needs of the charity trustees every year.
- Agree expectations of charity trustees' attendance at meetings and what to do if these are not met.
- Keep up to date with changes in the law that might affect your charity, and make changes when necessary.
- If your charity employs staff make sure there are rules in place to deal with any grievances raised by the charity's staff and/or volunteers. For example, an internal complaints procedure.
- Treat volunteers properly and fairly.
- Report any notifiable events to OSCR, and/or other relevant regulators.

You do not need to be a legal expert yourself but you should know the basics and the laws that apply to your charity's activities and where to get help if you need it.

1.3 You must manage any conflict of interest between the charity and any person or organisation who appoints trustees

As a charity trustee, you are required to act in the interests of the charity. A conflict of interest which arises between a charity trustee and a person or organisation that appointed them is called an 'appointment conflict'. Where such a conflict arises, the charity trustee must put the interests of the charity first. However, where another duty prevents the charity trustee from putting the interests of the charity first they must:

- Disclose the conflict to the charity and
- not participate in any discussion or decision on the matter.

Conflicts of interest can and do happen in all shapes and sizes of charity, so we have a separate section of the guidance for how to manage them.

2. YOU MUST COMPLY WITH THE 2005 ACT

- You must understand the legal requirements of being a charity.
- You must comply with the specific duties of the 2005 Act.

Specific duties for all charity trustees There are specific duties in the 2005 Act that all charity trustees must meet. You might delegate the practical details of these duties to your charity's staff, volunteers or professional advisers (if you have them), but you, as charity trustees, are responsible for making sure the specific duties are met.

2.1 Charity details on the Scottish Charity Register

Your charity must give us the information we need to keep the Scottish Charity Register accurate and up to date. This means making sure that we hold the latest information about your charity:

- The name of the charity.
- The principal office or the name and address of one of the charity trustees.
- The charity's purposes.

Your charity must tell us as soon as possible about any changes to the principal contact for the charity.

2.2 Reporting to OSCR: Making changes to your charity

If you want to make any changes to your charity, first check what the rules set out in your governing document say. If you do not follow these rules then any decisions you make could be invalid and we may refuse our consent to make the changes if it is required. Under the 2005 Act you must seek our consent before making any of the changes listed below. You need to ask for our consent at least 6 weeks (42 days) before you plan to make the proposed change.

- Changes that need our consent are:
- Changing the name of the charity.
- Winding up or dissolving the charity.

- Amending the objects and purposes of the charity. Amalgamating the charity with another body.
- Applying to the court to change purposes, amalgamate or wind-up. Changing your charity's legal form.

If we consent to the change you must notify us (tell us in writing) once you have made the change. Where a change to the governing document has been made you should send us the updated version. If you have the power to make other changes to your governing document (that do not need our consent) you must tell us what the changes are and send an updated version of your governing document within 3 months of the changes being made.

2.3 Financial records and reporting

- Every year, every charity must:
- Keep proper accounting records.
- Prepare a statement of account, including a report on its activities, at the end of each financial year.
- Have the statement of account independently examined or audited.
- Send a copy of the accounts, along with the annual return, to us, the Scottish Charity Regulator.

You must keep a copy of the accounting records for at least 6 years. Other laws or funding arrangements might require you to keep records for longer.

2.4 Fundraising

As charity trustees you are responsible for taking control of how your charity raises funds. You must make sure that anyone who professionally raises funds for the charity has an agreement that says how much they will get paid to do it.

2.5 Providing information to the public

There is information that you must to give to the public:

1. You must state your charity's name and Scottish charity number (SC0[zero]xxxxx) on your charity's website home page and all external documents, like letters, emails, adverts, posters, invoices and other publications. See the publicising that you are a charity section for more details.

2. You must give a copy of your governing document and/or the latest examined or audited accounts to anyone that asks for them.

The reason a person asks for a copy of these documents does not matter; provided it is a reasonable request, you must give them a copy. Good practice is to publish your governing document and accounts on the charity's website, if you have one.

What is an unreasonable request? What is reasonable or unreasonable will depend on the circumstances of each case. It is important to understand that it is the request that must be unreasonable not the reasons for the request or the identity of the requester.

The examples below are when a request might be unreasonable:

- A request for copies of accounts and/or governing document that are already publicly available, in which case you should tell the person where to get the information, for example on the charity's website.
- A request for documents that the person already has.
- A request for the documents within an unreasonable timescale, for example within 24 hours, or in an unreasonable format.

If you decide a request is unreasonable you should be able to justify your decision, bearing in mind that a concern could be raised with us about it. Where appropriate, you should work with the requester to fulfil their request.

Can you charge a fee for the request? Yes, you can, but only for any administrative costs in producing and sending a copy of the document, for example, the cost of photocopying and postage. You cannot charge for the costs associated with preparing the accounts or staff time taken to copy and post the documents.

Many charities publish their governing document and annual accounts on their own websites. You can put a link to your accounts on your entry in the Scottish Charity Register by emailing us the link and your charity's details.

What happens if you fail in your duties? If you fail to comply with these duties then this is misconduct and we do have powers to take action against charity trustees, where appropriate. Our response will be proportionate depending on the situation.

Information on Management of Conflict of Interests

Material interest is where the Board member or a direct family member [Under the Companies Act 2006, the people that a director is considered to be connected to includes their spouse, civil partner, parents, children or step-children of any age, a partner in an enduring family relationship and a partner's children or step-children (if under 18 years and living with the director)] of the Board member is the applicant or stands to benefit directly from the project (directly here means he or she will have immediate benefit from the project, such as wages, income or other material benefit; it does not mean that he or she will benefit from the project outputs, such as having access to improved services).

A Board member with a material interest should be asked to leave the room before discussion of the project starts.

Immaterial interest is where the Board member is associated with the applicant, such as being a member of the applicant group.

A Board member with immaterial interest may be asked to remain in the room during discussion in order to contribute to the discussion, but should be asked to leave the room before the decision is made.

If there is any doubt about a Board member's connection to an individual project it is always best to be cautious and for the Board member concerned to leave the room before discussion starts.

Declarations of interest and actions taken should always be noted in the publicised minutes.

(name of organisation) **Board of Directors**

Register of Interests

Name	Non-Pecuniary Interests (Directorship and involvement in Governance arrangements of other organisations)	Pecuniary interests (Employment related & other business interests)

EXAMPLE WORKING GROUP REMIT

PROPOSAL FOR DISCUSSION AT BOARD MEETING ON:

XXXXX Development Trust: Terms of Reference – Working Groups

Working groups will be established to help manage the Trust (e.g. funding working group) and develop projects/themes (e.g. renewables, paths etc) as decided by the Trust. The terms of reference for such sub groups will be as follow:

Membership: Working groups can include:

- Directors
- Members
- Local people
- Local organisations
- Partner agencies

An individual with a passion and particular interest in the subject should take the lead role in a working group (and co - ordinate activity). Each working group should have Director level involvement.

Responsibilities: The working groups will have the following responsibilities:

- Consider and develop projects or themes as agreed by the board of directors
- Explore the feasibility of projects
- Consult all stakeholders including the wider community
- Identify and prepare funding applications
- Identify and liaise with partners
- Co- ordinate their work with other working groups

Reporting procedures: all working group's will:

- Report directly to the full board of Directors
- Report to each monthly open meeting (written if not in person)

Powers: all working groups:

- Will seek board approval for any expenditure unless authorised by the Chair for urgent matters.
- Will bring any confidential matters to the attention of the board of Directors to be dealt with by the board.

- Funding applications must be reported to the full board of Directors before submission unless authorised by the Chair for urgent matters.

Persons with Significant Control (PSC) Register
– this does not constitute legal advice)

This new company legislation has been introduced to promote transparency regarding the ownership and control of companies. The requirements to keep a PSC register are set out in Part 21A of the Companies Act 2006 (the 'Act') - as inserted by the Small Business Enterprise and Employment Act 2015.

- **All development trusts that are companies, and their company subsidiaries, should** (since 06 April 2016) **maintain their own register of Persons with Significant Control** - or at the very least have a formal statement that they are in the process of establishing this. This new company legislation applies only to companies and not to SCIOs.

- **All companies must** (from 30 June 2016 on) **include information on "persons in significant control"/ "relevant legal entities" in their regular annual submission (formerly annual return) to Companies House**. June 30th was not a deadline for all to make a submission to Companies House.

- New companies must similarly include this information on their IN01 application to register a company.

For **development trusts that are companies limited by guarantee**, with many voting members:

1. there will be no person or relevant legal entity with significant (25% or more) control
2. a register of persons with significant control is still required, however, and cannot simply be blank, so it should simply state that the company is satisfied that there are no persons or legal entities with significant control.
3. Companies also have a legal obligation to establish any controlling stake they have in any other company (eg their wholly-owned subsidiaries), and confirm this controlling stake with that other entity.

Development trusts' subsidiary/ trading companies will have greater responsibilities under the PSC rules:

1. Wholly-owned subsidiaries clearly have a "relevant legal entity" (RLE) with significant control - in the development trust holding company itself.
2. they will have to write to the development trust and get it to confirm its position of control, the nature of this control and other details,
3. the subsidiary will then have to record this in its own PSC register
4. they will also have to include the PSC details in the annual submission to Companies House.

(But if the subsidiary company is owned by a SCIO development trust, then there will be no RLE to list in the subsidiary's PSC register)

Some useful website resources that summarise the PSC Register:

- http://www.informdirect.co.uk/company-records/psc-register-what-must-a-company-do/ - this also has free pro-forma letters at http://www.informdirect.co.uk/downloads/psc-resources/#noticetoacorporateentity
- http://www.farrer.co.uk/Global/Briefings/Charities%20and%20PSC%20registers.pdf - this guidance is specifically for charities
- http://www.burnesspaull.com/sites/default/files/client_guide_-_people_with_significant_control.pdf

DTAS Board Member Induction Toolkit

Introduction -

This pack has been prepared by DTA Scotland as a guide for development trusts to use for developing their own induction packs for new board members. It should be adapted to each organisation's particular context to ensure board members have all the information they need to feel confident in being able to fulfil their duties as a charity trustee / company director. A new trustee/director may be very familiar with the organisation they are becoming a board member for, they may have volunteered for a time with it or have a specific passion for one element or project within its activities. However, being on the board brings with it both legal and moral duties to understand the inner workings and operations of the organisation. Even board members who have a wealth of experience in other organisations have a duty to understand and build knowledge of the one they are now volunteering with.

We suggest that when new trustees/directors are brought in that they are given an induction pack and that this is worked through with a mentor. This may happen over a period of time or as suits the inductee without being overwhelmed. A period of three months should allow sufficient time. We have split this toolkit into sections and have also provided links to other training or resources. There is also an accompanying PowerPoint presentation for you to use if you are providing an initial training/induction meeting which can be found on the Members Area of the DTAS website.

In having this information any new board member should be:

- Clear about the organisation's purpose and what benefit it provides
- Clear about the financial status and operations of the organisation
- Clear about your role within the organisation
- Clear about your responsibilities through company and charitable law
- Prepared to start your new journey as a board member

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Governance

1. About your organisation

This should be a short summary of your organisation. It is likely to be something you use on funding applications, business plan, Companies House, OSCR overview or on publicity information. Who you are, what you do and where you do it.

2. Governing Document

This will be your Articles of Association if you are a Company Limited by Guarantee (CLG), Rules if you are a Community Benefit Society (CBS) and Constitution if you are a SCIO (Scottish Charitable Incorporated Organisation). This does not need to be in hard copy, it could be a link to your documents on your webpage or Companies House. Just be sure any link is to the most up to date version of these documents. This is also a good opportunity for existing board members to familiarise themselves with the organisation's governing document and review whether any updates are required.

3. Vision and Mission statement

You may or may not have a mission statement or vision but it can be a useful tool to ensure that there is clear a common understanding of what the development trust exists to achieve which is shared between the board, staff, volunteers and the wider community. A statement like this mitigates against communication issues or becoming task-led without clear strategic direction. More information on this can be found in our Cultivating Enterprise Toolkit Part 2 (you can access this by contacting your DTAS Development Officer).

For example, DTAS's vision statement is
"a successful development trust in every community"
our mission statement is
"to help local people achieve thriving and sustainable communities"

4. Annual report, AGM minutes and accounts

This may be a simple link to your website which has a section with these uploaded. If you do not regularly upload your AGM minutes and accounts to your website this may be something you want to consider to ensure that papers are available to be read by everyone. This is particularly important for trustees/directors who are appointed or co-opted through the year rather than at an AGM.

Understanding accounts is always difficult at first unless you already have working knowledge. Some development trusts may have a qualified accountant as a board member or employ a Finance Officer however every person on the board still has a legal duty to understand and monitor the financial position of

the organisation. Normal management accounts or a financial report should be produced for each board meeting.
Have a read of the DTAS Guide to Management Accounts on the Members Area of the website if you would like further information on understanding management accounts.

5. Meetings

This section should contain when and where meetings are held, in what format, and when information will be sent out beforehand. The push for online meetings has provided additional issues around confidentiality when using personal email addresses. Consider giving board members an email address with an organisation domain or even generic e.g. *treasureranytownDT@gmail.com*. This means that a password change is all that is needed when roles change and the trail of information is kept.
See our 'Good practice guide for virtual meetings' on the Members Area of the DTAS website and watch the *Chairing Effective Online Meetings* webinar which accompanies the notes.

6. Roles and responsibilities

There are specific responsibilities that board members must undertake within certain roles, this may be filing annual returns or it may be the lead on HR or fundraising. Use this section to set these out, including the roles and responsibilities which all board members have. It is also important to make sure that everyone on the board has a clear understanding of any working groups or sub committees and the delegation arrangements for these.
You can find more information about the Roles and Responsibilities of Company Directors in the DTAS Startup Toolkit Appendix 3 and the Roles and Responsibilities of Charity Trustees in the DTAS Startup Toolkit Appendix 4.

7. Conduct of board members

Having a code of conduct signed by new board members ensures that everyone is working to the same rules. A register of interests ensures that there is no conflict of interest in any decision making. Both of these documents are discussed within the DTAS Directors Training which is available through your Development Officer, and an example code of conduct can be found on the Members Area of the website. Make sure any new board members have understood and committed to the code of conduct and that you have an up-to-date register of interests.

If you are a charity then you must ensure that any prospective trustee is eligible and not disqualified. The criteria for this can be found here. If you are a company you also need to check that a prospective director is eligible. You can find out more about company director disqualification here. Companies House

also has a list of disqualified company directors. It is good practise to ask potential board members to sign a declaration of eligibility.

If you are an organisation that works with vulnerable people it may also be worth considering PVG Disclosure. This only applies directly to active engagement with beneficiaries and not just charitable objectives.

Operations

1. Who is who

This can be a simple organisational chart and contact details or may be a link to the About Us part of your web page. It is worth remembering that new board members may not be aware of all staff members or volunteers, particularly when there are many projects.

2. List of projects

This should be a brief summary of specific timelines as appropriate to the information in the above section on who is who regarding projects e.g. funding duration and end dates, perhaps where the money is from and whether it is self sustaining or not.

3. Day to day requirements

If relevant, this should encompass information such as

1. Office opening hours, keys, alarms etc.
2. Fire alarms and evacuation
3. Printing, postage, phones and email information
4. What expenses you may be eligible to claim and how to do this

4. Minutes of last three business meetings

While new board members should have access to all previous minutes this should provide enough information to follow recent discussion and decision making.

5. General policies and procedures

These should be in a specific paper or electronic folder normally in the office base of the trust, some organisations upload these to a closed section of their website. This is likely to include Health and Safety, Human Resources, GDPR etc.

Strategic overview

1. Community Action Plan, Business or Strategic Plan

Development Trusts are community owned and led and should manage the direction of their service or projects through plans. A Community Action Plan is usually generated through consultation within communities and outlines what the community wants and how this will be done.
A strategic or business plan will outline the strategic direction of your organisation and what actions are required in what priority to achieve them.

2. Duty to OSCR and / or Companies House

It is important that everyone on the board understands what the legal requirements are for reporting to the above bodies. If you do not comply you may be fined.
For more details on this the Companies House website has guidance on running a limited company, which includes information on reporting requirements. OSCR also has a webpage on annual monitoring requirements for charities. If you are on the board of a Community Benefit Society, there is information available here on the FCA's reporting requirements.

3. Formal Obligations

Many development trusts have property or assets which allow them to have an enterprising or regeneration activity within their community of benefit. Some of these activities may be funded through loan or service level agreements, it's important that everyone on the board understands these.

Appendix 1: What does it mean to be a development trust? What is DTAS?

A new board member may not know what a development trust is or what being a member of DTAS means. You may wish to include some information on this during the induction process so they know what support is available:

DTA Scotland is an independent, member-led organisation which aims to promote, support and represent development trusts in Scotland. Established in 2003, DTA Scotland now has over 300 development trust members – community-led organisations using a combination of enterprise and creativity to improve the quality of life for local people in urban, rural and island communities across Scotland.

Development trusts take a variety of legal forms (CLG, SCIO and CBS being the most common). What all development trusts have in common is that they are community-owned and led organisations, working to combine community-led action with an enterprising approach to address and tackle local needs and issues. The aim of a development trust is to create social, economic and environmental renewal in a defined geographical area, creating wealth within that area and keeping it there.

DTAS member benefits
Full information on what benefits are available to DTAS members can be found here. The DTAS team provides information, expert help and light touch support in areas such as governance, organisational development, financial planning and reporting, asset transfer and community ownership, staffing and community shares. To access this contact your DTAS Development Officer. In addition DTAS members can access a range of useful resources through the Members Area of the website.

Appendix 2: Frequently asked questions & further support

When is the best time to recruit new board members?

Normally new board members will be sought and voted in by membership at an AGM, however vacancies on the board can arise at any time. In this case your governing documents should tell you whether the new board member (appointed or co-opted) has voting rights or not. Appointed board members brought in during the business year should step down at the next AGM for election by the members.

Do board members need liability insurance?

DTAS recommends that development trusts take out trustee/director liability insurance (called Directors & Officers Liability Insurance in the commercial field). Board members are generally protected from financial liability for the organisation through the incorporated structure of the company/charity, however this doesn't offer protection if individual trustees or directors are accused of wrongdoing. So it is recommended that all companies/charities take out D&O insurance to cover the cost of compensation claims made against board members for alleged wrongful acts. *(Deliberate and/or reckless acts of wrongdoing would not be covered by this insurance, nor would failure to insure!)*. DTAS has a partnership with Keegan and Pennykid who will provide DTAS members with no-obligation advice on options for insurance cover and who have published a useful manual on insurance for charities. You can access the insurance advice service through your development officer. For more information on insurance for development trusts please see the 2018 webinar from Garry Dalton, Keegan and Pennykid, on the Members Area of the website.

Who should join a board?

The answer is practically everyone! The only criteria is that a person supports the organisation, wants it to succeed, and takes their role and responsibilities seriously. It's important to have a diverse range of people on a board - having a variety of ages, genders and backgrounds will ensure no group is excluded and will make the development trust seem more open to the community. It can be useful to have some specific skills on your board (perhaps someone with experience in accounting and/or with a law background), but equally people with less experience but who are keen to learn are incredibly valuable. This induction pack should make sure that even those without prior experience of being on a board can be effective board members. Having a professional background is great but often dedication, enthusiasm, energy and new ideas are just as important.
As mentioned above, in rare cases some people may be disqualified from being charity trustees or company directors so it is worth asking prospective board members to sign a declaration of eligibility.

Where can I find further information and support?

OSCR - www.oscr.org.uk/managing-a-charity/trustee-duties/good-governance/

Companies House website - https://www.gov.uk/government/organisations/companies-house

Association of Chairs - Information on managing difficult board dynamics, working as a team and one to one with Trustees (these are not free resources) https://www.associationofchairs.org.uk/working-with-trustees-one-to-one/

SCVO has a range of free resources- www.scvo.scot/support/running-your-organisation including a useful Good Governance Checkup and Guidance and Good Practise for Charity Trustees

Community Learning Exchange - Funding available to learn directly from other community organisations. DTAS can help you access this fund. https://scottishcommunityalliance.org.uk/our-programmes/community-learning-exchange/

DTA Scotland - DTAS have a wealth of information, resources and experience in governance and board training. Please make the most of it by looking at the resources on the members area of the website, asking your DO for Trustee/Director training and getting in touch when you have questions.

DTAS start up toolkit - www.dtascot.org.uk/resources/members-only-area
If you can't find your login details for the members area of the DTAS please contact Catherine McWilliam - catherine@dtascot.org.uk.
DTAS can offer bespoke Trustee/Director training to ensure your board understands it's roles and responsibilities. Please contact your Development Officer if you would like to access this.

Development Trusts Association Scotland
A Thriving Community-led Network

Practical Help for DTAS Members

As part of the full & provisional membership benefits package, DTA Scotland has arranged a variety of free or discounted arrangements from partner organisations. Please see below for further details.

Legal Advice from Burness Paull LLP

Full and provisional members of DTA Scotland are entitled to up to one hour of free legal advice (per enquiry) on various matters relevant to development trusts and their activities. This has kindly been made available by our partners Burness Paull LLP.

They can provide DTAS members with advice on the following areas:

- Constitutional issues, including memorandum and articles of association and IPS rules
- Company law
- Charity law and OSCR's policy/practice
- Law governing IPS structures and FSA's policy/ practice
- Contracts
- Funding/ finance arrangements
- Structures for new projects or social enterprises
- Community renewables
- Property law
- Employment law *
- Dispute resolution *

Any time associated with committing advice to writing would be chargeable by Burness Paull, but we expect that would only be necessary in some circumstances.
All enquiries must come through DTA Scotland in the first instance. Contact the DTAS office - info@dtascot.org.uk / 0131 220 2456 or your Development Officer.

* Employment law and dispute resolution advice is available via a telephone helpline service only. DTAS members will be able to receive a one-off advice session (lasting up to one hour) on any particular employment or dispute resolution matter – any further advice or work relating to the same or a similar matter will be chargeable.

Insurance - Keegan and Pennykid

Keegan & Pennykid are one of the leading insurance providers in the Third Sector. DTAS partners with Keegan & Pennykid, who will provide bespoke advice on the most appropriate insurance provision for your organisation at the various stages of its growth. DTAS has also agreed to a discounted rate for DTAS members on insurance services.

For further information on areas of cover or general insurance advice, don't hesitate to contact Garry Dalton on 0131 243 9674 or email gd@keegan-pennykid.com quoting your DTA Scotland membership number.

Accounts, VAT & Business Advice from Azets

Azets, previously known as Scott-Moncrieff, is a long-established and respected firm of chartered accountants offering specialist business advisory services. They are now working with DTA Scotland to offer a new member benefit of up to one hour of free advice on any topic below (you can access this help more than once).

They can advise development trusts on all aspects of their project from planning to completion, including specialist advice on:

- Business planning
- Access to funding
- Advice on governance
- Charity compliance
- Tax efficient structures
- Bookkeeping and management reporting
- Payroll
- VAT
- Systems and IT
- Cloud-based accounting solutions and packages

For more information or to access this support, don't hesitate to get in touch with DTA Scotland in the first instance. Contact the DTAS office - info@dtascot.org.uk / 0131 220 2456 or your Development Officer.

Free HR Advice

In partnership with STEP, it has agreed to provide up to 90 minutes of free HR advice by e-mail/phone for full and provisional members.

If further or ongoing advice is required over and above the 90 minutes of free advice, then charges would be agreed upon.

All enquiries must come through DTA Scotland in the first instance. Contact the DTAS office - info@dtascot.org.uk / 0131 220 2456 or your Development Officer.

If our Development Officers cannot answer your enquiry, it will be passed on to STEP, who will respond directly to you, usually within three working days.

DTAS Energy

DTA Scotland has been a partner in the Energy Action Group (EAG) since 2013 and is delighted to announce a renewed partnership with Touchstone Energy Services.

DTAS Energy offers businesses an independent and impartial brokering service to find the best energy deals and/or manage your energy consumption more effectively. Now includes Water Rates brokering services.

The benefits of DTAS Energy:

- Procuring gas and electricity on your behalf (but not without written consent!)
- No fee and no obligation service
- Contract Management
- Energy Management Reporting
- Supplier Dispute Resolution

If you are interested and would like to know more, please email info@dtascot.org.uk.

DTA Scotland Group Pension Scheme in partnership with Creative Auto Enrolment & Rowanbank Financial Services

DTA Scotland understands the challenges members face implementing a new Auto Enrolment Pension Legislation, so it is delighted to announce a new and innovative auto-enrolment pension solution, for our members, with partners Rowanbank Financial Services and Creative Auto Enrolment.

The DTAS Group Pensions provide a complete end-to-end solution that streamlines the scheme set-up and minimises the ongoing administration that will keep your organisation compliant with the new pension legislation at all times. Another exclusive benefit to the low-cost schemes is the free bespoke support from Rowanbank to your organisation about the scheme, the online set up and then to staff regarding their pension investment choices.

For more information, please get in touch with Ian Love at ian.love55@btinternet.com or 07511 543033.

Mediation Support

In partnership with Scottish Mediation, our mediation service can help nip any thorny issues in the bud. Do any of these sound familiar?

- Disagreements between board members
- Volunteers and employees not seeing eye to eye
- Personality clashes

Could this be your organisation? Don't let things get out of hand – seek help through mediation. An independent mediator can help people work out and express their issues and then explore options for moving forward.

In partnership with Scottish Mediation, DTAS runs a third-sector helpline which offers information, advice and access to a low-cost mediation service. Organisations with an annual income of under £50,000 may be eligible for mediation at no cost.

All enquiries must come through DTA Scotland in the first instance. Contact the DTAS office - info@dtascot.org.uk / 0131 220 2456 or your Development

Community Learning Exchange

scottish community alliance
local people leading

DTAS is a participating member network in the Scottish Community Alliance. Through DTAS membership development trusts are able to access the Community Learning Exchange (administered by the SCA).

The Community Learning Exchange is a fantastic opportunity for communities who are planning new ventures or thinking about future possibilities, to learn from the experience of other communities. Learning opportunities can be virtual or face to face. For physical learning visits, the Exchange will fund up to 100% of the costs of a visit by members of one community to another community project up to a limit of £750 to include travel, accommodation and subsistence.

If you would like to learn from another community organisation, DTAS so we can recommend a good match for your needs and advise on the application process.

Guidance is available here.
Useful tips on planning & making the most of a learning exchange:
https://ruralsehub.net/project/chapter-social-enterprise-learning-exchanges/

Group Stationery & Equipment Buying Scheme

Lyreco
You're our number One !

DTA Scotland has negotiated a group buying scheme allowing members to purchase all their office equipment at extremely competitive prices. Lyreco offers a Scotland-wide service with a simple ordering process and free next-day deliver to most customers.

To sign up to the DTAS scheme, please get in touch with Tanya Ziyenge on 07976 908784 or e-mail tanya.ziyenge@lyreco.com quoting your DTA Scotland membership number.

GREEN SHOOTS
SUPPORT FUNDING PROGRAMME

DTAS is working closely with Acorns to Trees to support our membership and we are pleased to relaunch 'The Green Shoots' support programme. This exciting programme has two strands of support which you can apply to and also includes the opportunity to benefit from a SORT-IT (Strategic Review) from DTAS.

This funding is available to full and provisional members of DTAS only.

Strand 1 – Critical Support and Expert Advice/Support (max value £10,000 per annum)

Aimed at supporting members that are facing unexpected costs that could potentially lead to considerable damage financially, reputationally or structurally.

Support will be time and cost limited as the intention is to provide the expertise/support to get through the situation and in a better position. Whilst there are no set criteria to the types of support the fund can offer, the range of expertise is likely to include but not limited to:

- unexpected legal fees
- consultancy support i.e. intensive leadership and governance
- expert and financial advice i.e. VAT advice above current DTAS member offer
- expert and intensive HR advice/support (above current DTAS offer)
- intensive advice on policies and procedures i.e. Hybrid/TOIL/Homeworking/Health & Safety
- peer mentoring/support within the membership

Above are only examples of what can be funded and each application will be assessed on the individual needs.

Strand 2 - Green Shoots organisational support (max value £10,000 per annum)

Time is often of the essence and delays can result in loss of funding, expired permissions or extra costs incurred. Green Shoots provides the opportunity for members to apply for a project that is being hindered due to the need for a small amount of funding. Green Shoots organizational support is focused on helping support a mix of 'shovel ready' projects, pilot projects and the testing of ideas.

For example:

- Costs to run a short pilot project
- Technical survey or land ownership survey
- Consultancy support
- Strategic plans
- Planning applications & Legal work
- VAT report
- Final piece of the puzzle match funding

Above are only examples of what can be funded and each application will be assessed on the individual needs.

Application Process

Complete the expression of interest form for Green Shoots and send to greenshoots@dtascot.org.uk

This will be reviewed by Development Officers for review and initial assessment, you will then be contacted and informed if not eligible, SORT-IT (Strategic review) arranged or asked for further information and issued an application to be completed.

Colonsay Community Council

Note to CCDC following the Council meeting held 26 September.

Principal matters discussed:

Repairs to the roads including the spur roads to Uragaig and the Strand were carried out in September and have been deemed an improvement.

Transport: David Hobhouse was unfortunately not present, but such news as there was had caused general disappointment. The Calmac winter timetable had finally been published and revealed severe lacunae in both Monday and Wednesday services while the Saturday service offered access to Kennacraig but not Oban. The Transport group has contacted Calmac execs but they simply indicated that that they had nothing better to offer. (since then, they have been asked if they will subsidise a Tuesday flight in lieu of the non-availability of the Monday boat for the next month and I understand that they may be prepared to pay for a RIB). This situation is currently hopeless, and at the moment of writing has been adversely affected by current weather conditions in Argyll.

In addition, the Air service is due to be changed in the spring of 2024 so that our link is to be transferred from Islay to Tiree, and this has effectively been done without consultation. There is to be a meeting covering both air and ferry travel shortly.: one of the aims is to transfer control of the Air service from A and B to transport for Scotland so that the 2 services may have some form of integration.

The CC is in touch with Colonsay Estate, Alex having returned, but no hard information has been received.

Community Fund: said to be working more smoothly. A substantial grant was awarded to the Music festival; details of all grants are apparently available on the website.

Administration: it was suggested that it might be possible for an individual to take the minutes for both the CCDC and the CCC and that the Community fund would bear the cost of this.

Finally, in AOCB, two members of the public , both second home owners , enquired as the likelihood of their Council Tax being doubled as from the next financial year and it seems that this likely to happen , according to initial messages from the Council but this will be confirmed before the next meeting which will be in late November .

WJ 9 October

COLONSAY COMMUNITY DEVELOPMENT COMPANY

PROJECT REPORT – Scalasaig Development

Project	Scalasaig Development			
Report Compiled by	Caroline Seymour			
Reporting Period	October 2023			
Project Status	Previous Status:		Current Status:	

1. SUMMARY OF ACTIVITY SINCE LAST REPORT

TSL Update

There has been no activity from TSL on either site since August. They were due back on 9th October to finish the internal works on the housing and business units and commence the access road and external drainage works. I have been in contact with our agents to get an update from TSL to understand why they have not yet returned.

ALLOCATIONS

Housing

Still awaiting an outcome to the NSSE and Rural Housing Burden questions. At the time of writing this report, CHT are due to update us following a meeting on 10th October.

CHT sent out an email to all rental applicants to check their current status and details as their position made have changed since they made their applications in July. They had one response which did lead to an amendment to the previous allocation scores. The rentals have been provisionally allocated by CHT based on our allocation policy. No notification will be sent to applicants until confirmation of the NSSE v Rural Housing Burden decision.

Business Units

The business units have been allocated, pending lease agreement and references. We are in the process of drawing up the lease agreements. Lizzie has secured £2500 from HIE towards our legal costs.

FINANCE

ABC Loan

ABC are still finalising the loan offer with their Council Legal Services. Douglas Whyte will be in touch week beginning 16th October with a further update.

COLONSAY COMMUNITY DEVELOPMENT COMPANY

PROJECT REPORT – Scalasaig Development

2. KEY ISSUES

TSL have not returned to site on the date we were expecting - we are trying to establish why not and what effect this will have on their programme.

3. FORMAL APPROVALS / DECISIONS REQUIRED

None required

4. NEXT REPORTING PERIOD ACTIVITIES

- Continue to work with CHT regarding RHB v NSSE
- Draw up business unit leases.
- Confirm rental allocations with CHT
- Confirm ABC loan terms
- Finalise Deed of Conditions and MOWI Heads of Terms
- Progress Standard Security with Scottish Government

5. APPENDICES

- None