Duties and Responsibilities of Directors

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# Summary

The position of director in Market Cross UK Limited (hereafter known as Market Cross or the co-operative) carries many demanding and important duties that need to be recognised before appointment and throughout a director’s period of office. Directors owe a primary duty to the co-operative, rather than to individual members or employees. These can be divided into statutory duties, fiduciary duties and duties of care.

This document sets out the legal duties and responsibilities of the directors of Market Cross. It is only a summary. Directors should ensure they remain up-to-date with the law as it affects them and the co-operative and if they are in any doubt about their duties, or any aspect of performance of their duties, they should consult the secretary for clarification and guidance.

Directors have important legal duties, and failure to carry out these duties can result in personal liability. Broadly there are four categories of legal duty as follows:

1. The duty to obey relevant laws and regulations;
2. The duty of good faith;
3. The duty to take care;
4. The duty to maintain and uphold the co-operative status of Market Cross.

At the present time, while certain management executive positions remain unfilled, directors assume the responsibility of all related management executive positions. For example, the Finance Director assumes the role of Finance Manager, the Health and Safety Director assumes the role of Health and Safety Manger, etc.

# Duty to obey the law

Market Cross is registered under the Co-operative and Community Benefit Societies Act 2014. This Act does not codify directors’ duties since these are codified by the Companies Act 2006 (CA2006). As a matter of good governance practice, directors of Market Cross should follow the codified Companies Act duties. The directors’ duties set out in CA2006 are:

* The duty to act within the powers i.e. for our society this means within the rules [CA2006 section 171];
* The duty to promote the success of the company i.e. the director should act and make decisions in a way he or she thinks will best promote the success of the society [CA2006 section 172];
* The duty to exercise independent judgment [CA2006section 173];
* The duty to exercise reasonable care, skill and diligence [CA2006 section

174];

* The duty to avoid conflicts of interest [CA2006 section 175];
* The duty not to accept benefits from third parties [CA2006 section 176]; and
* The duty to declare an interest in a proposed transaction or arrangement

[CA2006 section 177].

Various Acts of Parliament and statutory provisions impose direct obligations upon directors and upon the co-operative itself. These cover such areas as occupational health and safety, employment matters, equality, data protection, competition, consumer protection, the environment, and keeping proper accounting records.

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

Directors have a direct and personal responsibility for ensuring that the co-operative does not continue to trade if it is insolvent. Failure to discharge this responsibility can result in personal liability.

# Duty of good faith

A director is in a position similar to that of a trustee – namely being responsible for somebody else’s (the co-operative’s and the members’) property. As a result the law imposes a duty of good faith on directors, which can broadly be summarised as follows:

* Truthfulness and honesty – acting with complete integrity in any dealings with or on behalf of the co-operative;
* Treating the co-operative’s affairs as confidential - individual directors have no legal authority to disclose anything outside of board meetings except what is already in the public domain, or what they are expressly authorised by the board to disclose;
* Acting at all times in the best interests of the co-operative – this means ensuring that the interests of Market Cross always come first, and that a director never uses their position to obtain a benefit or advantage for themselves, for other people or other organisations;
* Respecting the collective decision making process – directors should accept decisions made by the board in accordance with the law and the co-operative’s rules, even if he or she disagrees with it, and voted against it if a vote was taken. This includes a commitment to support any decision of the board outside of board meetings;
* Avoiding conflicts of interest – directors should avoid putting themselves in a position where their duties and responsibilities as a director conflicts with other personal interests. Where a conflict arises, they must comply with the co-operative’s rules. See also CA2006 duties 175-177 under ‘Obeying the law’.

# Duty to take care

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

* Such skill and care in carrying out their responsibilities as a person having their background and experience would reasonably be expected to show (the subjective test);
* The levels of skill and care that a person carrying out that role would reasonably be expected to show (the objective test).

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

The duty to take proper care includes the following:

* Reading board papers before meetings, and coming to meetings properly prepared;
* Asking questions, requesting clarification if further information or explanation is needed, and challenging the members of the management executive when not satisfied with the answers given;
* Taking advice both from the management executive and from independent advisors, when appropriate, in the best interests of the co-operative;
* Disclosing any material interest[[1]](#footnote-1) to the board as provided for in the rules of the co-operative. Directors should also do this in conjunction with any Conflict of Interest Policy that the co-operative may adopt and the Code of Conduct for Directors as approved by the board.

Directors should aim to carry out their role to the highest possible standards. It is not acceptable to leave things to other people, to fail to attend meetings without an unavoidable reason for doing so, or to treat other matters as more important than those of the co-operative. A director who does not give an appropriate level of commitment to the co-operative’s affairs is failing in his or her duty.

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

# Duty to maintain and uphold the co-operative status of Market Cross

Directors should discharge their legal duties and responsibilities in a way which seeks to ensure that Market Cross remains committed to operating as a successful co-operative business. This is in accordance with the values and principles that are set out in the International Co-operative Alliance Statement of Co-operative Identity and is the basis of all co-operative enterprises.

Directors must also serve the interests and protect the assets of the co-operative’s members by exercising independent and objective judgement.

1. For these purposes “Material interest” includes being an employee, holding any position of authority or responsibility, or owning any financial interest. It does not include the holding of shares which amount to less than 2% of the entire issued share capital of any company whose shares are listed on a stock exchange. [↑](#footnote-ref-1)