

Group Governing Body Members Code of Conduct

Our Commitment

The Argyll Community Housing Association Group is committed to providing equal opportunities across all services and to avoid discrimination. This document is intended to assist the Group in putting this commitment into practice. Compliance with this policy should also ensure that governing body members do not commit unlawful acts of discrimination.

This document can be made available in other formats, for example in large print, audio-format or Braille: the document may also be available in other languages, in full or summary form, as appropriate.

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Section 1 - Context

- 1.1 The purpose of this Code of Conduct is to ensure that the governing body members of the Argyll Community Housing Association (ACHA) Group conduct themselves, and Group business, to the highest standards of propriety, governance and ethical behaviour while ensuring the effective operation of the Group. It is a condition of membership of a governing body within the Group (see 2.1 below) that all governing body members agree to adhere to this Code of Conduct.
- 1.2 This Code of Conduct sets out the requirements and expectations which are attached to the role of governing body member. All governing body members have a personal responsibility to uphold the requirements of this Code.
- 1.3 No individual will be able to be a governing body member if they do not adopt and agree to abide by this Code of Conduct.
- 1.4 Governing body members will be required to review and sign this code annually.

Section 2 - Who the Code applies to

- 2.1 The Group comprises:
 - 2.1.1 Argyll Community Housing Association Limited (ACHA) as the parent body; and
 - 2.1.2 Argyll Homes for All Limited (AHFA) as ACHA's subsidiary.
- 2.2 This Code of Conduct applies to all elected, appointed and co-opted governing body members of the Group, that is:
 - 2.2.1 ACHA's Board of Management and its Committees; and
 - 2.2.2 AHFA's Board of Directors.

Section 3 The Law and Good Practice

- 3.1 ACHA is a registered social landlord (RSL) registered with the Scottish Housing Regulator (SHR) and an industrial and provident society registered with the Financial Conduct Authority (FCA) and a charity registered with the Office of the Scottish Charity Regulator (OSCR). ACHA's Constitution is its Rules.
- 3.2 AHFA is a company registered with the Companies Registrar and its Constitution is its Articles of Association.
- 3.3 Therefore, legislation relevant to this policy includes:
 - 3.3.1 Housing (Scotland) Act 2010;
 - 3.3.2 Bribery Act 2010;
 - 3.3.3 Charities and Trustee Investment (Scotland) Act 2005;
 - 3.3.4 Industrial and Provident Societies Act 1965;
 - 3.3.5 Co-operative and Community Benefit Societies Act 2014
 - 3.3.6 Companies Act 2006.
 - 3.3.7 The Health and Safety at Work Act 1974

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- 3.4 Appendix A provides a summary of key duties of governing body members, as set out in legislation, both for ACHA as a charity, where Board members are charity trustees, and for AHFA as a company. While AHFA is not a charity, its Board of Directors will be held to the same general standards as ACHA's Board of Management, but will not have to demonstrate compliance with the charity law rules regarding remuneration (see section 12.2).
- 3.5 The SHR's `Standards of Governance and Financial Management` sets out the standards and elements of required compliance in relation to expected conduct:
- Standard 1.2** - *The RSL's governance policies and arrangements set out the respective roles, responsibilities and accountabilities of governing body members and senior officers, and the governing body exercises overall responsibility and control of the strategic leadership of the RSL.*
- Standard 1.6** - *Each governing body member always acts in the best interests of the RSL and its tenants and service users, and does not place any personal or other interest ahead of their primary duty to the RSL. The RSL maintains its independence by conducting its affairs without control, undue reference to or influence by any other body (unless it is constituted as the subsidiary of another body).*
- Standard 4.1** - *The governing body ensures it receives good quality information and advice from staff and, where necessary, expert independent advisers that is timely and appropriate to its strategic role and decisions. The governing body is able to evidence any of its decisions.*
- Standard 4.3** - *The governing body identifies risks that might prevent it from achieving the RSL's purpose and has effective strategies and systems for risk management and mitigation, internal control and audit.*
- Standard 5.1** - *The RSL conducts its affairs with honesty and integrity and, through the actions of the governing body and staff, upholds the good reputation of the RSL and the sector.*
- Standard 5.2** - *The RSL upholds and promotes the standards of behaviour and conduct it expects of governing body members and staff through an appropriate code of conduct. It manages governing body members' performance, ensures compliance and has a robust system to deal with any breach of the code.*
- Standard 5.4** - *Governing body members and staff declare and manage openly and appropriately any conflicts of interest and ensure they do not benefit improperly from their position.*
- 3.6 OSCR's "Guidance for Charity Trustees" sets out good practice for all governing body members of a charity. This is relevant for all governing body members of ACHA, who will be provided with a copy of that guidance as part of their training.

Section 4 Policy Objectives

- 4.1 This Code of Conduct is an important part of our governance framework. The governing body members of ACHA, because it is the parent body within the Group, are responsible for establishing and monitoring the overall strategic direction of the Group.
- ALL governing body members are responsible for:
- 4.1.1 Ensuring compliance with all relevant statutory or regulatory requirements;
 - 4.1.2 Ensuring high standards of corporate governance;
 - 4.1.3 Overseeing the delivery of planned results by monitoring performance against agreed strategic objectives and targets;
 - 4.1.4 Ensuring that the body they sit on operates within the limits of its authority as stated in its Constitution and Standing Orders;
 - 4.1.5 Ensuring that, in reaching decisions, the governing body have taken into account guidance issued by the Scottish Housing Regulator, Office of the Scottish Charity Regulator, the Care Inspectorate and other relevant regulatory bodies.
- 4.2 Governing body members have corporate responsibility for all actions taken by members of the body to which they belong, including any wrongful ones. This means that, if judgement is made against the Group, any financial settlement would normally be met out of Group funds rather than from the personal assets of individuals.

Section 5 - Individual Responsibilities of Governing Body Members

ALL governing body members must:

- 5.1 Uphold and promote our aims, objectives and values.
- 5.2 Demonstrate honesty, integrity and probity.
- 5.3 Exhibit selflessness, openness, objectivity, accountability and leadership.
- 5.4 Accept responsibility for all decisions reached by the governing body or sub-committee, and support them at all times, even if you did not agree with the decision when it was made.
- 5.5 Always consider the views of others and be tolerant of differences.
- 5.6 Comply at all times with this Code of Conduct (or any agreed modification of it) and with rules relating to the use of public funds; and to act in good faith and in the best interests of the Group.
- 5.7 Participate in and contribute to an annual review of the contribution made individually to governance.
- 5.8 Not use information gained in the course of their service to promote their private interests.

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- 5.9 Recognise that as individuals, they have no powers to act on behalf of, or represent the Group, other than when they have been specifically delegated to do this.
- 5.10 Not act in an individual way which could bring the Group into disrepute.
- 5.11 Report any concerns or suspicions about possible fraud, corruption or other wrongdoing.
- 5.12 Not misuse, or contribute to or condone the misuse of resources and must comply with policies and procedures regarding the use of funds and resources.
- 5.13 Prepare effectively for meetings and ensure you have access to all necessary information to enable you to make well-informed decisions.
- 5.14 Monitor performance carefully to ensure the organisations purpose and objectives are achieved
- 5.15 Uphold adopted policies.
- 5.16 Not speak or comment in public on the Group`s behalf without specific authority to do so.

Section 6 - Declaring and Managing Personal Interests

- 6.1 Being a member of our Governing Body is only one part of life. Other aspects of life such as family, friends and neighbours, voluntary work, causes you support, possible business or financial interests, housing arrangements etc. may have the potential to cross into your role as a Governing Body Member.
- 6.2 As we are an organisation that works for the community (and uses public funds), it is essential that there is no conflict (or reasonable perception of conflict) between your duties as a Governing Body Member and your personal (or personal business or financial) interests.
- 6.3 Any potential conflict between your position as a member of the Governing Body and your other interests must be openly declared and effectively managed so as to protect the good reputation of the Argyll Community Housing Association Group and the social housing sector.
- 6.4 Where you have a personal business or financial interest in any matter that is relevant to our activities or is being considered, or is likely to be considered) or you know that someone to whom you are closely connected has such an interest, you must declare it promptly. Declarations will be recorded in a Register of Interests, by the Corporate Services department, which will be available for public inspection.
- 6.5 Each governing body member, when they take office, must complete a form for the Register of Interests declaring their interests. Governing body members must keep their entry in the Register of Interests up to date. Any new interests must be added as soon as they arise and any existing entries amended if any changes take effect.

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- 6.6 When identifying and declaring interests governing body members should consider connections (whether business or personal) in which they have an interest. Appendix B sets out the definition of persons or bodies “connected” to charity trustees, for use by all governing body members when considering their personal interests. Personal interests will include, but are not restricted to, the granting of a tenancy or any other benefits from the Group such as offers of employment or contracts. Appendix C sets out some further examples. Where a payment or benefit is being considered for a person or body that is connected to one of ACHA’s charity trustees see paragraph 13.2 below regarding remuneration also.
- 6.7 If you become aware of any action or involvement relating to any person with whom you have a connection (refer to Appendix B) you should declare and manage this as soon as possible.
- 6.8 However, we recognise that you will not always be closely acquainted with or in regular contact with all of the people listed in Appendix B and we will not expect you to go to unreasonable lengths to identify actions or involvement that are covered in this policy.
- 6.9 Please note we do expect you to be familiar with the actions of members of your household and of any other people listed in Appendix B (from the point of view of a reasonable and objective observer) with whom you are closely associated and/or in regular contact.
- 6.10 The declaration of an interest *is not* a breach of this Code, but failure to disclose an interest is a breach of this Code.
- 6.11 Governing body members will not use their position to unduly influence their Board or Committee in order to benefit any individual or business. This will not preclude governing body members representing the interests of their community or tenants in the deliberations of their Board or Committee.
- 6.12 Governing body members who do have a continuing personal interest which conflicts with the activities of the Group may require to resign their position.
- 6.13 To manage identified conflicts of interest: at any meeting where a governing body member has an interest, they must indicate their interest and withdraw from the part of the meeting where the discussion will take place. If a governing body member inadvertently remains in the meeting they should not participate in or seek to influence the discussion or contribute to the decision.
- 6.14 For the avoidance of doubt, tenant members of ACHA’s governing body are not normally expected to declare their tenancy interest at the start of a meeting or withdraw from discussion at a meeting unless their own tenancy is likely to be discussed.
- 6.15 Our policy on Payments and Benefits makes additional provision for the Group in respect of the management of personal interests.
- 6.16 You should note that in some circumstances, declaration of an interest may not be sufficient, and that it may be necessary for the organisation to take additional measures to

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deal satisfactorily with the situation so as to protect the probity and reputation of both yourself and the organisation. That is, we have policy on Payment and Benefit to ensure, for example: that you have no involvement in future decision making related to your disclosed interests; that any use of the Group's contractors is appropriate; in extreme cases a governing body member may step down if their disclosed interest creates an on-going conflict of interest.

6.17 Any failure to make a complete, accurate and prompt declaration, whether deliberately or through taking insufficient care, will be regarded as a breach of this Code.

Section 7 - Confidentiality

7.1 While the Group aims to conduct its business openly and with transparency, governing body members will maintain the confidentiality of Group business. The Group has an Openness and Confidentiality Policy to which all governing body members will adhere.

7.2 While not comprehensive, governing body members must be particularly aware of the importance of maintaining confidentiality in relation to:

- Any matter pertaining to an individual tenant or an identifiable group of tenants;
- Any matter pertaining to an individual member of staff or an identifiable group of employees;
- Any commercially sensitive information e.g. tenders.

7.3 All reasonable steps must be taken by governing body members to preserve the confidentiality and security of information acquired through governing body membership.

Section 8 - Representation / Public Statements

8.1 Governing body members will not represent the views of the Group or make any public statements to any other organisation or party, including the media, unless expressly authorised to do this directly by the ACHA Board (the parent Board) or by the Group Chief Executive.

Section 9 - Training

9.1 Governing body members are required to attend relevant training sessions and events. The housing and business environment is constantly evolving with new legislation, regulation and initiatives. Governing body members should keep abreast of these developments.

9.2 All new governing body members will be offered an Induction at the commencement of their post.

9.3 A training record is retained recording all training undertaken by governing body members.

Section 10 - Equality

10.1 In line with the Group Equal Opportunity Policy, governing body members will not unfairly discriminate against any individual or organisation.

- 10.2 Governing body members will be expected to actively promote the Group Equal Opportunities Policy and end unlawful discrimination.

Section 11 - Behaviour

- 11.1 Governing body members, when representing the Group, whether at internal or external events or otherwise will conduct themselves in an appropriate manner being courteous, professional and respectful to others at all times.
- 11.2 For example, when governing body members are representing the Group as delegates at an external event they will:
- 11.2.1 Refrain from offensive or discriminatory behaviour/language at all times;
 - 11.2.2 Refrain from aggressive or threatening behaviour /language at all times;
 - 11.2.3 Support and assist other delegates in obtaining the best out of the event;
 - 11.2.4 Follow the format of events and attend all workshops /break-out sessions as required. At workshops /break-out sessions, delegates will:
 - Allow others the opportunity to comment and contribute to the discussion
 - Not be disruptive
 - Follow the guidance of the facilitator
 - 11.2.5 Report in writing on the event and any workshop / break out session for the benefit of other governing body members.
 - 11.2.6 Treat any information they receive concerning the personal circumstances of any person in confidence.
- 11.3 While representing the Group, please remember that governing body members are Group ambassadors, and should represent the Group with dignity.
- 11.4 Governing body members who breach this Code of Conduct while attending external events may be suspended from attending future events on behalf of the Group for up to two years. Reconsideration for future events may be subject to conditions.
- 11.5 Governing body members must not use social media to criticise or make inappropriate comments about organisations, its actions or any member of the Governing body, staff or other partners.

Section 12 - Remuneration

- 12.1 Governing body members will not claim nor receive, nor expect any remuneration for their work with the Group, save that properly incurred expenses and allowances may be paid in line with the Group Policy on Members Expenses.
- 12.2 Additionally, ACHA governing body members who are charity trustees must comply with conditions set out in the Charities and Trustee Investment (Scotland) Act 2005, which

restrict remuneration (whether payments or benefits in kind) received not only by them but also by persons or bodies connected to them. There is further detail on these restrictions in Appendix A and in the Group's Payments and Benefits Policy.

Section 13 - Gifts and Hospitality

- 13.1 The ability to provide corporate hospitality remains permitted under the Bribery Act and "reasonable and proportionate hospitality" expenditure is not prohibited.
- 13.2 Governing body members must only accept or offer gifts or hospitality in accordance with the Payment and Benefit Policy. A Register of Payments and Benefits will be maintained by the Group to record gifts and hospitality given and / or received by both governing body members and staff.

Section 14 - Bribery Act 2010

- 14.1 The Bribery Act 2010 forbids all forms of bribery and a summary of key parts of the Bribery Act is at Appendix D. The Group policy on Anti-Fraud, Corruption and Bribery provides further guidance to governing body members and staff. Important points for governing body members are also noted here.
- 14.2 Bribery is a specific form of corruption which includes offering a financial or other advantage intended to persuade someone to perform improperly a function or activity.
- 14.3 Governing body members are not allowed to accept bribes from – or give bribes to – anyone with whom the Group does business.
- 14.4 All governing body members have a duty to immediately report any act of attempted, suspected or detected fraud, theft, bribery and corruption within either *the Group* or any of our business partners. This can be done in a confidential manner to an appropriate person, for example:
- a senior officer of ACHA or AHFA
 - the Chair of the Board of Management (ACHA)
 - the Chair of the Board of Directors (AHFA)
 - a governing body member
- 14.5 If governing body members are not sure whether or not any activity they propose to undertake may constitute "bribery" they should always seek advice within the Group before undertaking such activity. This can be done in a confidential manner to an appropriate person, for example:
- a senior officer of ACHA or AHFA
 - the Chair of the Board of Management (ACHA)
 - the Chair of the Board of Directors (AHFA)
 - a governing body member
- 14.6 Accepting or giving bribes will result in disciplinary action under Section 16 of this Code, which could result in dismissal /removal from the Board or Committee and can also result in

criminal prosecution and imprisonment of up to 10 years for individuals found guilty of such acts.

14.7 Please refer to the Group Whistleblowing Policy for further advice.

Section 15 - Breach of this Code of Conduct and Complaints

- 15.1 Each governing body member has a personal and individual responsibility to promote and uphold the requirements of this Code. If any governing body member believes that they may have breached the Code or has witnessed or has become aware of a potential breach by another governing body member, they should immediately bring the matter to the attention of the Chair. If their concern relates to the Chair, then they should raise the matter instead with the Vice-Chair.
- 15.2 Alleged breaches of the Code of Conduct, or any complaints made relating to a governing body member, will be investigated by the Chair, with the support of the Chief Executive where appropriate. Where the allegation of a breach is against the Chair, the Vice-Chair will be responsible for leading the investigation again with the support of the Chief Executive where appropriate. Please refer to the Group Complaint Handling Procedure.
- 15.3 As part of any investigation, the governing body member alleged to have breached the Code, or in relation to a complaint, will be able to make their case. They may be accompanied and supported by a friend or other adviser.
- 15.4 A sub-committee will hear from the investigator and the relevant governing body member and will decide on the alleged breach and a proposed course of action. In the event that the sub-committee agree that the Code of Conduct has been breached, the governing body member may appeal to the whole Board or Committee whose decision will be final. The proposed course of action will consider the following:
- 15.4.1 In the event of minor breaches, the governing body member may be admonished by the Board or Committee.
 - 15.4.2 Repeated or more serious breaches of the Code may result in the governing body member's expulsion from the Board or Committee.
 - 15.4.3 The procedure commented on here, and any decision, does not take precedence over any rights the governing body member has, as set out in the relevant Constitution and Standing Orders.
- 15.5 Any governing body member who comes into dispute with the Group may be required to stand down from the Board or Committee during the dispute.
- 15.6 A breach of the Code is a Notifiable event. The Chair will be responsible for ensuring that the necessary notifications are made as soon as any breach comes to light, and that the requirements in terms of reporting the outcome of the investigation are met.

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- 15.7 Alleged breaches that occur during the course of a meeting will normally be dealt with by the Chair of the meeting, either during the meeting either during the meeting and/or as soon as is practically possible taking into consideration the circumstances. In these circumstances, the chair may ask the member to leave the meeting or a vote may be taken to exclude the member from the rest of the meeting.
- 15.8 After the meeting, the Chair will discuss such behaviour with the member and may require the member to apologise or take such other action as may be appropriate. Where the Chair regards such behaviour as being very serious, it may also be investigated subsequently in accordance with this policy, as will repeated incidents of a similar nature.

Section 16 - Document Review

- 16.1 The Register of Interests will be presented on an annual basis to the Group Board of Management for information and awareness.
- 16.2 Each governing body member will be asked to review and sign this Code of Conduct – see below – when taking office and on an annual basis thereafter to re-confirm their commitment and compliance.

Section 17 - Acceptance

I _____ have read and understood the terms of this Code of Conduct and I agree to uphold its requirement in all my activities as a member of our Governing Body. I am aware that I must declare and manage any personal interests. I agree to ensure that my details within the Registers are accurate and up to date. I understand that, if I am found to have breached this Code of Conduct, action will be taken by the Governing Body which could result in my removal.

Sign.....

Print Name.....

Date.....

Legislation: Duties of Governing Body Members**Charity Law – applies to ACHA governing body members****Section 1 - Charity Trustees' Duties**

- 1.1 Section 106 of the Charities and Trustee Investment (Scotland) Act 2005 (**the 2005 Act**) defines charity trustees as “the persons having the general control and management of the administration of the charity”.
- 1.2 The members of ACHA’s Board and its Area Associations, including co-optees, are charity trustees and therefore carry the duties, responsibilities and liabilities of charity trustees. The 2005 Act sets out both general and specific charity trustees’ duties.

Section 2 - Summary of General Duties:

- 2.1 Under Section 66 of the 2005 Act, a charity trustee must:
- 2.1.1 Act in the interests of ACHA:** trustees should put the interests of ACHA before their own interests or those of any other person or organisation (and, specifically, before any parent organisation that may have appointed the trustees).
 - 2.1.2 Operate in a manner consistent with ACHA’s purposes:** trustees should carry out their duties in accordance with ACHA’s governing document (that is, the Rules).
 - 2.1.3 Act with due care and diligence:** trustees should take such care of ACHA’s affairs as is reasonable to expect of someone who is managing the affairs of another person.
 - 2.1.4 Ensure that ACHA complies with the law:** whether that is the provisions of the 2005 Act or other relevant legislation.

Section 3 - Summary of Specific Duties:

- 3.1 Additionally, under the 2005 Act charity trustees’ duties include:
- 3.1.1 Updating ACHA’s details:** trustees must make sure that OSCR holds the latest information about ACHA on the Scottish Charity Register (under Section 17(1) (b) of the 2005 Act).
 - 3.1.2 Reporting to OSCR:** trustees must ensure ACHA complies with the statutory duty to supply information to OSCR:
 - Annual monitoring returns
 - Accounts in the proper form
 - If making changes to the charity, seek OSCR consent under Section 16 of the 2005 Act where appropriate, and otherwise notify OSCR under Section 17 of the 2005 Act when changes have been made.

3.1.3 Financial record keeping and reporting: Section 44 of the 2005 Act states ACHA must:

- keep proper accounting records
- prepare a statement of account, including a report on the charity's 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 OSCR.

Accounting records should be kept by the charity for a minimum of 6 years from the end of the financial year in which they were made.

3.1.4 Providing information to the public: trustees must ensure that ACHA provides a copy of its Rules and / or its latest accounts to anyone who requests the same (under Section 23 of the 2005 Act). They must also make sure that ACHA refers to its charitable status in all documents, including advertisements and websites not just more formal documentation.

3.1.5 Ensuring the charity refers to its charitable status: The following information must be stated on documents issued or signed on ACHA's behalf:

- ACHA's name, as entered in the charity register
- Any other name by which ACHA is commonly known
- ACHA's charity registration number (SC042713).
- The fact that ACHA is a charity

ACHA is established under Scots law and managed wholly from Scotland so can describe itself as a "Scottish charity" or "registered Scottish charity".

3.1.6 Fundraising: trustees are responsible for controlling how ACHA fundraises. The 2005 Act places restrictions and regulations on how certain fundraising activities can be carried out.

3.1.7 Investments: Charity trustees have the power to invest ACHA's assets in whatever way they wish, including shares and land, provided they make a comprehensive assessment of the appropriateness of the investment.

The 2005 Act stipulates a number of conditions and duties to be followed by trustees in exercising their investment powers. The power can be exercised by a nominee, appointed in accordance with duty of care placed on trustees regarding such appointments in the 2005 Act, for example an Investment Manager. It remains possible for ACHA, as a charity, to invest in derivatives as per Rule 19 of ACHA's Rules.

Section 4 - Charity Trustee Remuneration and Benefits

4.1 Charity trustees (ACHA's Board and Area Association members) can receive payment for out-of-pocket expenses.

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- 4.2 Otherwise, charity trustees cannot receive any remuneration, whether direct or indirect, whether payment or benefit in kind, and whether received by a charity trustee or a person connected to a charity trustee, unless the following 5 conditions are met:
- 4.2.1 A maximum amount of any benefit must be set in writing
 - 4.2.2 The amount of the benefit must be reasonable
 - 4.2.3 At any time less than half the trustees can receive remuneration / benefit – a matter of fact to be checked on each occasion
 - 4.2.4 The benefit should be in ACHA's best interest – for the trustees to decide
 - 4.2.5 Nothing in ACHA's constitution prohibits the benefit being offered
- 4.3 Only if the above conditions are met, can a trustee be remunerated for:
- Services provided by the trustee to or on behalf of ACHA; or
 - Such services provided by persons "connected" to the trustee.
- 4.4 ACHA's Board and Area Association members are not remunerated for being charity trustees, but it is possible that one, or more, trustee is connected to someone who receives remuneration (payment or benefit in kind) from ACHA, e.g. a trustee may be connected to a company that is paid for services to ACHA.
- The definition of "connected" is set out in Appendix B.
- 4.5 Example: a trustee is connected to a company (either directly or through a family member) that is proposed to be paid for services provided to ACHA – each of the 5 conditions above must be considered:
- 4.5.1 The contract for services should clearly set out the maximum amount that will be paid for the services.
 - 4.5.2 To evidence that the amount paid is reasonable, it should be comparable to (or better than) the amount that would be paid to any other company offering these services, or similar services, who is not connected to a trustee.
 - 4.5.3 At all times, ACHA must ensure that it has fewer than 50% of its trustees with connections to benefiting parties (whether contracting companies or others) – a matter of fact to be checked before contracting.
 - 4.5.4 The trustees must be satisfied that the terms of the contract for services are in ACHA's best interests. As long as the other conditions are met, ACHA's constitution does not prohibit entering into this contract in these circumstances.
- 4.6 In any decision about such "connected" individuals or bodies it is appropriate that:
- 4.6.1 The Board member who has a connection declares their interest in the matter.
 - 4.6.2 The connected Board member does not to take part in any decision made in regard to the person / body with which they are connected.

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- 4.6.3 As part of the decision regarding the connected person / body, the Board documents its consideration of the 5 conditions.
- 4.6.4 Any decision clearly notes that the Board approves remuneration / benefit only if they are satisfied that all 5 conditions are met.

Section 5 - Consequences of Breach of Trustees' Duties

- 5.1 OSCR has a duty to act where there is evidence that charity trustees are behaving improperly. The seriousness of the circumstances will alter OSCR's response, which should be proportionate to the breach. A breach of the trustees' duties may be considered by OSCR to evidence misconduct or mismanagement of a charity.
- 5.2 OSCR has considerable powers of investigation and inquiry into charities at any time and not only when allegations of misconduct arise. In cases of misconduct or mismanagement, or a failure by a charity to continue to meet the "charity test" by having charitable purposes and providing benefit to the public, OSCR has powers to suspend trustees, issue directions to a charity (either to do something or refrain from doing something) and otherwise intervene.
- 5.3 Good practice and appropriate policies can assist ACHA to avoid any breach of trustees' duties. For example, misconduct is much less likely to occur if ACHA's trustees:
- Understand their duties;
 - Put ACHA's interests first and act reasonably;
 - Operate within ACHA's Rules;
 - Comply with the law and any guidance from regulators;
 - Seek advice as and when necessary to inform decisions;
 - Ensure ACHA has resources to meet its liabilities, whether through contracts or otherwise.

Company law – applies to AHFA governing body members

Section 6 - Directors Duties under Companies Act 2006

6.1 The Companies Act 2006 (**the Act**) sets out director's duties in a statutory code. This, broadly, brings in to statute the common law as it stood before the Act but it also introduces, amongst others, a new duty to promote the success of the company.

6.2 Summary of General Duties: there are seven general duties, as follows:

6.2.1 To act within the directors' powers (Section 171). A director must act in accordance with AHFA's Articles and any resolutions and agreements. AHFA, through its Articles, may go further than the statutory duties and may place more requirements on its directors.

6.2.2 To promote the success of AHFA and to act in good faith (Section 172). A director must act in a way he / she considers, in good faith, would be most likely to promote the success of AHFA for the benefit of its shareholders – that is, ACHA. To do this the directors must consider the following factors:

- The likely consequence of any decision long term
- The interest of AHFA's employees
- The need to foster AHFA's business relationship with suppliers, customers and others
- The impact of AHFA's operations on the community and environment
- The desirability of AHFA maintaining a reputation of high standards of business conduct

6.2.3 The above list is not exhaustive but, rather, identifies those matters that, at the least, directors are expected to take into account. The more significant a decision, the more important it will be to ensure that there is a paper trail showing that the directors actively considered how a particular decision was arrived at and how it will affect AHFA's employees, customers, suppliers, the environment and its commercial reputation and any other relevant factors.

6.2.4 To exercise independent judgement (Section 173). Directors should not, in exercising their duties, be influenced by others. Also, they should not fetter their discretion. However, these duties should not prevent directors from:

- Acting in accordance with AHFA's constitution
- Relying upon advice in areas where this is required (provided that they exercise their own judgement in deciding whether to follow such advice)
- Delegating to appropriate individuals or committees where permitted, or
- Complying with contracts by which AHFA is bound.

6.2.5 To exercise reasonable care, skill and diligence (Section 174). An AHFA director owes a duty to exercise the same care, skill and diligence that that would be exercised by a reasonably diligent person with regard to:

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- The general knowledge, skill and experience that may reasonably be expected of a person carrying out the same functions as the director in relation to AHFA (an objective test); and
- The general knowledge, skill and experience that the individual director actually has (a subjective test).

6.2.6 It will not be open to a director to claim that his/her lack of skill and experience prevents him/her from performing to at least the standards expected of a reasonably diligent person. If, on the other hand, he has a high level of skill and experience, he will be expected to perform to that standard.

Section 7 - Duties on Conflicts of Interest

- 7.1 To avoid conflicts of interest (Section 175). A director “*must avoid a situation in which he has, or can have, a direct or indirect interest that conflicts, or possibly may conflict with the interests of the company*”. This applies in particular to the exploitation of any property, information or opportunity, and it is immaterial whether the company can take advantage of the property, information or opportunity.
- 7.2 The duty is not infringed if the situation cannot be reasonably regarded as likely to give rise to a conflict of interest or the matter giving rise to the conflict has been authorised by the directors (in accordance with the procedure set out in Section 175). The directors are entitled to authorise such conflicts unless the company’s constitution prevents this. Currently, only members can give this authorisation.
- 7.3 It should be noted that this duty continues to apply to a person ceasing to be a director as regards to the exploitation of any property, information or opportunity of which he became aware at a time when he was a director.
- 7.4 Not to accept benefits from third parties (Section 176). This section codifies the rule which prohibits directors from exploiting their position for personal benefit. There is no “de minimis” threshold or minimum monetary value placed on such a personal benefit, and indeed the benefit need not be financial. For example, accepting appointment to an honorary position could be a benefit.
- 7.5 To declare interest in proposed transactions or arrangements (Section 177). If a director is in any way, directly or indirectly, interested in a proposed transaction or arrangement with the company he must declare the nature and extent of the interest to the other directors at a meeting of the directors. The declaration must be updated if it proves to be inaccurate or incomplete.
- 7.6 There is no need to declare an interest if:
- 7.6.1 The director is unaware of the interest (but he will be treated as being aware of matters of which he ought reasonably to be aware);
 - 7.6.2 If the interest cannot reasonably be regarded as likely to give rise to a conflict of interest;

7.6.3 If the other directors are already aware of it; or

7.6.4 If the interest concerns the terms of a service contract that have been or will be considered by a board or committee meeting.

7.7 There are many additional specific duties of directors spread throughout the Companies Act 2006, for example, the duty to deliver accounts under Section 441.

Section 8 - Consequences of breach

- 8.1 The consequences for a director who breaches any of the above duties can be very serious. The Companies Act 2006 provides that if a breach occurs the consequences are “the same as would apply if the corresponding common law or equitable principle applied” (Section 178).
- 8.2 Duties 1, 2, 3, 5, 6 and 7 above are fiduciary duties and the common law consequences of a breach of a fiduciary duty include:
- 8.2.1 Damages or compensation where the company has suffered a loss
 - 8.2.2 Restoration of company property
 - 8.2.3 An account of profits made by the director(s), and
 - 8.2.4 Rescission of a contract where a director failed to disclose an interest
- 8.3 It should be noted that a breach of duty 4 (to exercise reasonable care, skill and diligence) is not a fiduciary duty and in that case the remedy is that of damages only.
- 8.4 The Companies Act 2006 also introduces a statutory procedure allowing members (in this case, ACHA) to sue directors on behalf of the company for breach of duty or trust, negligence or default. Such claims are known as derivative actions.

Section 7 - Connected Persons

7.1 Section 68 of the Charities and Trustee Investment (Scotland) Act 2005 defines individuals who are `connected` to a charity trustee as follows:

7.2 The following persons are “connected” with a charity trustee—

7.2.1 any person—

- (i) to whom the trustee is married,
- (ii) who is the civil partner of the trustee, or
- (iii) with whom the trustee is living as husband and wife or, where the trustee and the other person are of the same sex, in an equivalent relationship,

7.2.2 any child, parent, grandchild, grandparent, brother or sister of the trustee (and any spouse of any such person),

7.2.3 any institution which is controlled (whether directly or through one or more nominees) by—

- (i) the charity trustee,
- (ii) any person with whom the charity trustee is connected by virtue of paragraph (a), (b), (d) or (e), or
- (iii) two or more persons falling within sub-paragraph (i) or (ii), when taken together,

7.2.4 a body corporate in which—

- (i) the charity trustee has a substantial interest,
- (ii) any person with whom the charity trustee is connected by virtue of paragraph (a), (b), (c) or (e) has a substantial interest, or
- (iii) two or more persons falling within sub-paragraph (i) or (ii), when taken together, have a substantial interest

7.2.5 a Scottish partnership in which one or more of the partners is—

- (i) the charity trustee, or
- (ii) a person with whom the charity trustee is, by virtue of paragraph (a) or (b), connected.

7.3 For the purposes of subsection (2) a person who is—

7.3.1 another person’s stepchild, or

7.3.2 brought up or treated by another person as if the person were a child of the other person, is to be treated as that other person’s child.

7.4 In summary, a charity trustee is **connected with**:

7.4.1 Family = Spouses, civil partners, co-habitees

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Children, parents, grandchildren, grandparents, siblings and any spouses of these relatives

7.4.2 Institutions = if controlled by, or conducted in accordance with the person's wishes, (directly or through nominee(s)) by:

- The trustee or
- A connected family member (above) or
- A connected Corporate body or Partnership (below)

7.4.3 Corporate bodies = if substantial interest (more than one fifth of: the share capital; or the voting power at any general meeting) held by:

- The trustee or
- A connected family member or Institution (above) or
- A connected Partnership (below)

7.4.4 Partnerships = if one or more partner is:

- The trustee or
- A connected family member (above)

Section 1 - Examples of Interests

- 1.1 Examples of personal interests that governing body members may have to include (but are not confined to):
- 1.1 Tenancy of a property (by the governing body member or someone to whom they are connected) of which ACHA or Argyll Homes for All Limited is the landlord;
 - 1.2 Occupancy or ownership of a property (by the governing body member or someone to whom they are connected) which is factored or receives property related services from the Group;
 - 1.3 Receipt of care or support services from the Group;
 - 1.4 Ownership or part ownership of a business by the governing body member or someone to whom they are connected that the Group does business with – or may reasonably consider doing business with;
 - 1.5 Membership of a community or other voluntary organisation that is active in the area(s) served by the Group;
 - 1.6 Voluntary work with another RSL or with an organisation that does or is likely to do business with the Group;
 - 1.7 Current or recent (within the last 12 months) employment by another RSL or a business, organisation or body whose activities/interests are relevant to the Group's activities;
 - 1.8 Membership of the governing body of another RSL;
 - 1.9 Being an elected member of any local authority where we are active;
 - 1.10 Purchase of goods or services from one of the Group's approved contractors;
 - 1.11 Significant shareholding in a company that we do business with;
 - 1.12 Membership of a political or campaigning body whose interests and/or activities may affect ours;
 - 1.13 An application for a tenancy or occupancy of a property owned, leased or managed by the Group by the governing body member or someone to whom they are connected;

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- 1.14 Ownership of land or property in our areas of operation excluding for the purpose of your own residential use (for example, there is no requirement for you to declare any house in which you currently live);
- 1.15 An unresolved dispute with the Group relating to the provision of services by the Group.

Section 1 - Bribery Act 2010: Summary

- 1.1 The Bribery Act 2010 codifies the law relating to bribery and corruption.
- 1.2 Corruption is the misuse of office or power for private gain. Bribery is a form of corruption and means:
 - 1.2.1 Giving or receiving money, gifts, meals, entertainment or anything else of value;
 - 1.2.2 As an inducement to a person to do something which is dishonest or illegal; and
 - 1.2.3 In the course of doing business.
- 1.3 In other words, a bribe is where a financial or other advantage is made where it is the intention to induce the improper performance of a business activity and bribery is designed to make a person act wrongly to secure an advantage for the donor.
- 1.4 The ability to provide corporate hospitality remains permitted under the Bribery Act and it is not the intention of the Bribery Act to outlaw “reasonable and proportionate hospitality” expenditure.
- 1.5 Under the Bribery Act 2010 it is illegal to:
 - 1.5.1 Offer, promise to give or to pay a bribe;
 - 1.5.2 Request, agree to receive or accept a bribe;
 - 1.5.3 Bribe a foreign public official;
 - 1.5.4 Fail to have adequate procedures in place to prevent bribery.
- 1.6 The Bribery Act is one of the widest-ranging pieces of legislation in the field. It covers: bribery which occurs in the UK or abroad; any corrupt act by a UK business (or by a foreign company carrying on any part of its business here) wherever it occurs. A corrupt act committed abroad may well result in a prosecution in the UK. Nor does it matter whether the act is done directly or indirectly.
- 1.7 If ACHA or AFHA or anybody on the Group’s behalf is found guilty of bribery – or even of failing to have adequate procedures in place to prevent bribery – they will be subject to large fines. Any person guilty of bribery will be subject to fines and /or imprisonment (up to 10 years).