

Group Policy: Payments and Benefits for Governing Body Members and Staff

Our Commitment

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

This policy 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.

Organisational Policy

Contents:

Section 1	Context
Section 2	Who the Policy applies to
Section 3	The Law and Good Practice
Section 4	Our Policy Objectives
Section 5	Implementing our Policy Objectives
Section 6	“Connected” Persons
Section 7	Declarations of Interests
Section 8	Managing Interests
Section 9	Payments and Benefits - Restrictions
Section 10	Permitted Payments and Benefits
Section 11	Recording Permitted Payments and Benefits
Section 12	Gifts and Hospitality – Restrictions
Section 13	Legacies
Section 14	Gifts and Hospitality – Thresholds and Registers
Section 15	Personal Arrangements
Section 16	Contractual Payments to Staff
Section 17	Register of Payments and Benefits
Section 18	Dealing with Complaints
Section 19	Breaches of this policy
Section 20	Review
Appendix A	Charity Law
Appendix B	Company Law
Appendix C	Connected Persons
Appendix D	Examples of Interest
Appendix E	Bribery Act 2010
Appendix F	Correspondence Format

Organisational Policy

Section 1 Context

- 1.1 This policy sets out how the Argyll Community Housing Association (ACHA) Group (see 1.4 below) deals with payments and benefits to governing body members and members of staff.
- 1.2 The policy is intended to ensure that no-one benefits, or could be seen to benefit, inappropriately from their involvement with the Group and that we can demonstrate that our conduct is transparent, honest and accountable.
- 1.3 This policy is also intended to ensure that people or bodies who are connected to the Group are not unfairly disadvantaged by their association with the Group.
- 1.4 The Group comprises:
 - 1.4.1 Argyll Community Housing Association Limited (ACHA) as the parent body; and
 - 1.4.2 Argyll Homes for All Limited (AHFA) as ACHA's subsidiary.

Section 2 Who the Policy applies to

- 2.1 This Policy must be complied with by all governing body members – that is, all elected, appointed and co-opted governing body members of the Group, who are:
 - 2.1.1 ACHA's Board of Management and Area Committees (who are charity trustees, because ACHA is a charity); and
 - 2.1.2 AHFA's Board of Directors (who are company directors).
- 2.2 This Policy must be complied with by all staff employed by the Group.
- 2.3 All governing body members and staff are individually responsible for ensuring that the terms of this policy are met. A breach of this policy will be regarded as a breach of the relevant Code of Conduct.

Section 3 The Law and Good Practice

- 3.1 The main legislation and regulatory guidance relating to this policy includes:
 - 3.1.1 **Bribery Act 2010;**

Hospitality is not prohibited by the Bribery Act, which is concerned with bribery. "Bribery" is defined as giving someone, or receiving, a financial or other advantage to encourage the recipient to perform their functions or activities improperly or to reward that person for having already done so.

However, governing body members and staff must be careful to avoid offering or accepting gifts or hospitality which might be perceived as a bribe. More information regarding the Bribery Act, and what is prohibited under it, is attached at Appendix E.

Organisational Policy

3.1.2 Charities and Trustee Investment (Scotland) Act 2005;

This 2005 Act places duties on charity trustees, which include the governing body members of ACHA, in regard to their conduct on behalf of ACHA, dealing with conflicts of interest, restrictions on remuneration (which includes payments and benefits in kind both to the trustees and to others connected with them) and so on. A summary of those duties, and restrictions, is set out in Appendix A.

3.1.3 The Companies Act 2006;

This 2006 Act places duties on company directors, which include the governing body members of AHFA, in regard to their conduct on behalf of AHFA, dealing with conflicts of interest and so on. A summary of those duties is set out in Appendix B.

3.1.4 The Regulatory Standards of Governance and Financial Management, published by the Scottish Housing Regulator (SHR) in 2019, set out the Regulator's requirements following the implementation of the legislative provisions of the Housing (Scotland) Act 2010:

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.

Standard 1.7 - 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 3.6 - The governing body ensures that employee salaries, benefits and pension offerings are at a level that is sufficient to ensure the appropriate quality of staff to run the organisation successfully, but which is affordable and not more than necessary for this purpose.

Standard 5.1 - We conduct our affairs with honesty and integrity and, through the actions of the governing body and staff, uphold the good reputation of our self and the sector.

Standard 5.4 - Governing body members and staff declare and manage openly and appropriately any conflict of interest and ensure they do not benefit improperly from their position.

Standard 5.5 - The governing body is responsible for the management, support, remuneration and appraisal of the senior officer and obtains independent, professional advice on matters where it would be inappropriate for the senior officer to provide advice.

Standard 5.7 - Severance payments are only made in accordance with a clear policy which is consistently applied and in accordance with contractual obligations. Such payments are monitored by the governing body to ensure the payment represents value for money. The RSL has considered alternatives to severance, including redeployment.

Organisational Policy

Standard 5.8 - Where a severance payment is accompanied by a settlement agreement we do not use this to limit public accountability or whistleblowing. We take professional legal advice before entering into a settlement agreement.

Section 4 Our Policy Objectives

- 4.1 Our policy explains what is permitted and what is not permitted and it describes the action(s) required by anyone who is affected by its terms.
- 4.2 We recognise that it is in our interest to have a rigorous policy to ensure that our good reputation is maintained and that the following principles, set out in the Guidance 'The 7 Principles of Public Life', (An overview of the principles, which are the basis of the ethical standards expected of public office holders) are adhered to and actively promoted by us:
 - 4.2.1 Selflessness
 - 4.2.2 Integrity
 - 4.2.3 Objectivity
 - 4.2.4 Accountability
 - 4.2.5 Openness
 - 4.2.6 Honesty
 - 4.2.7 Leadership
- 4.3 ACHA, as the Group parent, is responsible for setting and reviewing this Group policy on Payments and Benefits. This policy must be followed by every Group member.
- 4.4 This policy is an important part of our governance arrangements. Everyone affected by it has a personal responsibility to ensure that they are familiar with its terms and to take the appropriate action in the event that a payment or benefit is being considered.

Section 5 Implementing our Policy Objectives

- 5.1 Governing body members and staff should not normally receive any benefits from their involvement with us, beyond what is provided for in contracts of employment and / or expenses policies.
- 5.2 Apart from contractual payments to staff and payment of permitted expenses to staff and / or governing body members in accordance with our policies, all payments, gifts and benefits offered must be declared, whether accepted or declined, and recorded in our Payment and Benefits Register.
- 5.3 Therefore, the Group requires its governing body members and staff to:
 - 5.3.1 Declare any interests they may have that might give rise to a conflict of interest (see Section 7)
 - 5.3.2 Manage their interests appropriately (see Section 8)
 - 5.3.3 Identify where payments or benefits might arise and manage and record these appropriately (see Section 9, 10 and 11)

Organisational Policy

- 5.3.4 Record any offers (whether accepted or refused) of gifts and hospitality both received and given (see Section 12)
- 5.4 We recognise the importance of ensuring that we are seen to be acting, at all times in the interests of, and for the benefit of, our tenants and service users. From time to time, situations may arise which are not clear-cut. We will always adopt a cautious approach to any circumstances where there is the potential for an impression to be created that a conflict of interest (real or perceived) may compromise our reputation or our business effectiveness.
- 5.5 In these situations we will ensure that we can demonstrate transparency and accountability.
- 5.6 When considering payments and benefits governing body members, and staff, are required to be familiar with and honour the requirements of our Anti-Fraud, Corruption and Bribery policy also.

Section 6 “Connected” Persons

- 6.1 All governing body members and staff must be aware of any persons or bodies that are ‘Connected’ to them (which includes all corporate bodies and institutions).
- 6.2 For the purpose of this policy we deem the following to be ‘Connected’ to governing body members and staff:
- 6.2.1 **Family** = Spouses, civil partners, co-habitees, and
Children, parents, grandchildren, grandparents, siblings and any spouses of these relatives
- 6.2.2 **Institutions** = if controlled by, or conducted in accordance with the person’s wishes, (directly or through nominee(s)) by:
The staff member or governing body member or
A connected family member (above) or
A connected Corporate body or Partnership (below)
- 6.2.3 **Corporate bodies** = if substantial interest (more than one fifth of: the share capital; or the voting power at any general meeting) held by:
The staff member or governing body member or
A connected family member or Institution (above) or
A connected Partnership (below)
- 6.2.4 **Partnerships** = if one or more partner is:
The staff member or governing body member or

Organisational Policy

A connected family member (above)

- 6.3 This is based on the definition in the Charities and Trustee Investment (Scotland) Act 2005 of persons and bodies 'Connected' to charity trustees (a full copy of that definition is set out in Appendix C).
- 6.4 We will ensure that our policies and procedures enable us to identify 'Connected' persons by including a connected person declaration on relevant forms.

Section 7 Declarations of Interest

- 7.1 All governing body members are required to declare any personal interests they may have in any matter relevant to the activities of the Group. In this context, governing body members are required to consider all persons and bodies "connected" to them (see Section 6 above) and whether those connections might be perceived as creating a conflict of interest between the Group's interests and the individual interests of the governing body member or persons / bodies "connected" to them.
- 7.2 All staff members are also required to declare personal interests in the same way.
- 7.3 Declarations of interest will be completed by governing body members and staff when they first take up their post within the Group and will be kept up to date by them at all times. All declarations will be kept on the Register of Declarations of Interest.

Section 8 Managing Interests

- 8.1 The offer of a payment or benefit to a governing body member, staff member or person/body connected to them, is regarded as an interest that must be declared and considered against this policy prior to any decision being made or any payment or benefit granted.
- 8.2 Where a governing body member or staff member has a conflict of interest (whether directly or through a "connected" person or body) in respect of a matter relevant to the Group's activities, certain procedures must be followed:
- 8.2.1 The governing body member or staff member must acknowledge the interest and must not participate in any decision-making relevant to the conflicted matter in question.
- 8.2.2 Where appropriate, they must withdraw from any part of a meeting where the matter arises.
- 8.2.3 That acknowledgement, and the fact that they did not participate in decision making, should be documented for transparency.
- 8.2.4 Governing body members should, therefore, refer to the section in the *Group Governing Body Members Code of Conduct* relating to Declaring and Managing Personal Interests and staff should refer to the equivalent part of the *Staff Handbook* to ensure that all necessary action is taken.

Organisational Policy

- 8.3 Where a governing body member has a continuing personal interest which conflicts with the Group's interests, the Board may require them to resign.
- 8.4 The Group is conscious of the equality, management and fraud risks associated with the employment of connected persons, but, does not prohibit it as long as staff members have no line management responsibility for those they are connected too and the correct process for recruitment has been followed.
- 8.5 Where a staff member has a continuing personal interest which conflicts with the Group's interests, professional advice will be obtained.
- 8.6 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 individual tenancy is likely to be affected specifically by the matter being discussed.

Section 9 Payments and Benefits – Restrictions

- 9.1 Where ACHA, as a charity, proposes a payment or benefit for services provided to or on behalf of ACHA by:

9.1.1 One of ACHA's charity trustees (the ACHA Board and Area Associations); or

9.1.2 A person or body "connected" to one of ACHA's charity trustees;

Then that payment or benefit is called "remuneration" under the Charities and Trustee Investment (Scotland) Act 2005 – and is only permitted if the following five conditions are met:

1. A maximum amount of remuneration / benefit must be set in writing;
 2. The amount of remuneration / benefit must be reasonable;
 3. At any time less than half the trustees can receive remuneration / benefit – a matter of fact to be checked on each occasion;
 4. The remuneration / benefit should be in ACHA's best interest – this is for the ACHA Board, as trustees, to decide;
 5. Nothing in ACHA's constitution prohibits the remuneration / benefit being offered.
- 9.2 ACHA's governing body members are not remunerated for being charity trustees, but it is possible that one, or more, of them is connected to someone who receives remuneration from ACHA, for example they may be "connected" to a company that is paid for services by ACHA (see Section 6 re "connected").
- 9.3 In any decision about such situations where a governing body member has a conflict it is appropriate that:

Organisational Policy

- 9.3.1 The governing body member who has a connection declares their interest in the matter.
- 9.3.2 The connected governing body member does not take part in any decision made in regard to the person / body with which they are connected.
- 9.3.3 As part of the decision regarding the connected person / body, the governing body documents its consideration of the 5 conditions (see Appendix A).
- 9.3.4 Any decision clearly notes that the governing body approves remuneration / benefit only if they are satisfied that all 5 conditions are met.

Section 10 Permitted Payments and Benefits

10.1 Some payments and benefits are not for services rendered and can be permitted notwithstanding Section 9 above. For the avoidance of doubt, the following payments and benefits to a governing body member, staff member, HOME Argyll Applicant or any `Connected` person or body (refer to Section 6), **are permitted** but must be declared:

10.1.1 Payments:

- (1) Payment of statutory grants or allowances (for example, Right to Repair);
- (2) Payment of allowances to tenants or service users in connection with our policy (for example, re-decoration);
- (3) Payment of expenses to governing body members in accordance with our policy (for example, overnight allowances for conference attendance, reimbursement of out of pocket expenses for travel, subsistence etc);
- (4) Sale of all or part of our interest in a property through Right to Buy, LIFT (Low cost initiative for First Time buyers), Mortgage to Rent or equivalent to a `Connected Person`;

10.1.2 Benefits:

- (1) Granting a tenancy to a `Connected Person` in accordance with our allocations policy (provided that the connected governing body or staff member plays no part in the assessment or allocations process);
- (2) Carrying out repairs or improvements in accordance with our responsibilities as a landlord or factor, or as part of a planned improvement programme, to a property which is occupied by a governing body or staff member or `Connected Person` (provided they have received no undue priority);
- (3) Granting a contract of employment to a `Connected Person` who is a close family member of a current member of our staff (provided the existing staff member plays no part in the recruitment or selection processes and will not have any line management responsibility for the person recruited);

Organisational Policy

(4) Acceptance of hospitality or a small gift in line with Section 11 below.

10.2 The purchase or lease by the Association of any land, buildings, equipment from a Governing Body member, staff member or connected person shall be by exception only and subject to Board approval. Any purchase would only be at the District Valuer's valuation, or if that was impossible an independent valuation.

The exceptions will be as follows;

10.2.1 Where it is in the strategic business interests of the Association and to not affect the purchase would impede those interests;

10.2.2 A property that is in a housing action area or development area where the Association is carrying out comprehensive housing improvements;

10.3 We will be especially careful in sensitive situations such as:

10.3.1 Granting a contract of employment to a close family member of an employee;

10.3.2 Entering into a contractual agreement for the provision of goods or services with a connected company;

10.3.3 Agreeing the terms of a voluntary severance arrangement with an employee in compliance with legal advice and legislative requirement.

10.4 In these situations, or in any other situation where there is the potential for the perception to exist or be created that an inappropriate benefit or payment has been given or received, the following steps will be taken in advance:

10.4.1 Appropriate specialist advice will be obtained, if necessary, and reported to the relevant governing body;

10.4.2 In the case of financial transactions (for example a sale, purchase, lease, service provision, severance etc.) a written business case will be prepared that sets out the reasons why the transaction with the person or body connected to a governing body member or staff member represents the best option for us and the arrangements proposed for the management of the contractual process to avoid any perceived impropriety.

10.4.3 All decisions will be taken by the governing body and formally recorded in the minutes of the relevant meeting.

10.4.4 An entry will be made in the Payments and Benefits Register in accordance with the usual requirements but the entry will also record the additional scrutiny and authorisation measures that have been adopted.

Organisational Policy

Section 11 Recording Permitted Payments and Benefits

- 11.1 Any payment or benefit that is made in accordance with this policy must be declared and recorded in the Register of Payments and Benefits, apart from payment of out of pocket expenses made in accordance with our policies on expenses.
- 11.2 Entries in the Register of Payments and Benefits will include a description, details of the value and the identity of the `Connected Person`.
- 11.3 A benefit as described at section 10.1.2(1), granting of a tenancy, must be approved in accordance with our agreed allocations policy. Staff involved in assessing the application must have no connection to the applicant and the decision should be approved by the Director of Housing and Neighbourhood Services or Regional Manager and the file should be noted accordingly. The tenancy should be recorded in the Declaration of Interest Register as soon as the offer is made. The connection between the new tenant and the current member of staff should be recorded in each house file.
- 11.4 A benefit as described at section 10.1.2(3), granting a contract of employment to a person connected to a current staff member, must be as a result of an open recruitment process in which the current staff member has played no part. The current staff member must have no responsibility (even of a temporary or occasional nature) for the support or supervision of the post in question. The decision to appoint must be in accordance with our normal recruitment requirements and should be approved by The Director of HR and Corporate Services. The appointment should be recorded in the Declaration of Interest Register as soon as the offer is made. The connection between the new member of staff and the current member of staff should be recorded in each individual's file.
- 11.5 Where a benefit is offered but declined, this should also be recorded in the Register as described above, with reasons for refusal.

Section 12 Gifts and Hospitality – Restrictions

- 12.1 In this policy “gift” means any physical gift or present, ticket, voucher, token, donation or money offered or given gratuitously, including all Christmas and other seasonal gifts. “Hospitality” includes meals, coffee, invitations to events, tickets for events, accommodation and so on.
- 12.2 From time to time the Group may receive donated gifts as a goodwill gesture. These gifts may be accepted so as not to offend. Acceptance of these gifts must be registered and as a result will be accepted by the Group.
- 12.3 Staff members within their duties may require, on occasion, to attend corporate events. Events of a de-minimis value may be attended. Attendance must be registered and as a result will be accepted by the Group.
- 12.4 Governing body members and staff members may be offered gifts. These gifts can be accepted so as not to cause offence if they are of a de-minimis value and given in good will. The acceptance of any gifts must be registered.

Organisational Policy

- 12.5 Some examples of gifts and hospitality which would be acceptable are:
- 12.5.1 Lunch (example £15)
 - 12.5.2 Dinner (example £50)
 - 12.5.3 Box of chocolates (example £10)
 - 12.5.4 Diary (example £5)
 - 12.5.5 Flowers (example £40)
 - 12.5.6 Event hospitality (which is directly relevant to the delivery of our business objectives).
- 12.6 The Association may on occasion decide to make a retirement gift to Governing Body or staff members, normally for long service. The value of any such gift will not exceed £40.
- 12.7 It is acceptable for staff and governing body members to decide not to accept a gift or benefit even if it is de-minimis. Any offers should be registered.
- 12.8 The Group forbids any governing body member or staff member to solicit any gift or hospitality in the course of his/her work for or in connection with the Group, for example, seeking to use the Group connection to secure a product or tickets to an event at a significantly discounted price.
- 12.9 The Group forbids any governing body member or staff member from offering or receiving any gift or hospitality which is in breach of relevant law such as the Bribery Act or which is designed to improperly influence a decision maker.
- 12.10 The Group forbids any governing body member or staff member directly or indirectly from making an offer of, or making, a donation to any political, charitable or not for profit organisation in the course of his/her work for the Group as a way to obtain an advantage in a business transaction.
- 12.11 A common sense approach is required as to the assessment of the value of any gifts or hospitality, but in the event of any uncertainty, you should speak to the Chair, Corporate Services or Senior Officers.
- 12.12 Even if the gift or hospitality is small, if you are uncertain or uncomfortable about its intention, then you should speak to the Chair, Corporate Services or Senior Officers.
- 12.13 If the Group is in the process of tendering for work, care should be taken about any gifts or hospitality in relation to that business as they can be interpreted as an attempt to influence a decision maker. Concerns in this regard should be raised these with the Chair, Corporate Services or Senior Officers.
- 12.14 Special care should be taken over gifts and hospitality offered to any public or regulatory official.
- 12.15 Every governing body member and staff member has a responsibility to speak out if they suspect corruption or if they are aware of any gift or hospitality given or received which may be in breach of this policy. Any concern in respect of such a breach – whether by another governing body member, another staff member, a third party who represents us, one of our

Organisational Policy

suppliers or competitors, or anyone else – should be raised with the Chair, Corporate Services or Senior Officers, where appropriate, in line with the Group Whistleblowing Policy.

12.16 Examples of offers of gifts or hospitality which should not be accepted;

- 12.16.1 Offer of money;
- 12.16.2 Offer for free work being undertaken to your property;
- 12.16.3 Offer of a weekend away or other holiday;
- 12.16.4 Offer of bottle(s) of alcohol;
- 12.16.5 Offer of ticket(s) for non-work related events;

Section 13 Legacies

13.1 In exceptional circumstances a legacy may be offered by a deceased service user to a staff member. Legacies may only be accepted where the essential safeguards below are followed. The staff member must inform the Corporate Services department on receipt of formal notification to register the occurrence. The Group must be satisfied that the member of staff has reported the notification of a legacy and the following safeguards are fully met;

- 13.1.1 A professionally drawn Will is in existence and an extract of the relevant excerpt is obtained from the acting solicitor;
- 13.1.2 Whether our staff member had any involvement in the preparation of the Will, even if that involvement extended only to witnessing the document;
- 13.1.3 The date of first contact the solicitor had with our staff member in relation to this matter;
- 13.1.4 Whether any objection has been raised, either informally or formally, by a family member or otherwise, to the legacy being given to our staff member. Or whether the Will, on this ground, or any other been formally contested?
- 13.1.5 The length of time the service user was affiliated with the ACHA Group?
- 13.1.6 The length of the staff member's employment with the ACHA Group?

Section 14 Gifts and Hospitality – Thresholds and Register

- 14.1 It is appropriate that, from time to time and in accordance with agreed policy, we will offer hospitality and/or hold events or other activities to promote our aims and objectives and/or to demonstrate our appreciation of the commitment and support of our people.
- 14.2 Any such activities will reflect ACHA's role as a registered social landlord (and a Scottish Charity) and will be consistent with our agreed policy; we will not be unduly lavish or over-generous.

Organisational Policy

- 14.3 It is recognised that, occasionally, hospitality and/or small, often promotional / token gifts may be offered to staff and governing body members as a result of involvement with us. Whilst acceptance of such offers, in accordance with this policy, is permitted, it is essential that no one acts in a way that might reasonably be regarded as improper.
- 14.4 All gifts and / or hospitality offered or received by governing body members and staff must be recorded in the Payments and Benefits Register – whether or not they are accepted or declined. A paper on the Payments and Benefits Register entries will be reported to the Board on a yearly basis.
- 14.5 The Group forbids governing body member or staff member from offering to, or receiving from, any person or organisation (whether they have had or may have any influence over the Group’s business or not) a gift or hospitality reasonably thought to have an excessive value. However, the Group may exercise its discretion to permit gifts or hospitality which exceeds de-minimis limits. This discretion may only be exercised by the Groups Board of Management or AHFA’s Board of Directors.
- 14.6 Gifts and hospitality must be reported and recorded in the Payment and Benefit Register either in advance, or not later than ten working days following receipt. The entry should identify the donor and recipient and the value of the benefit.

Section 15 Personal Arrangements

- 15.1 A governing body member or staff member should only utilise the services of a “connected” business or any business with which we trade, for their own personal needs if the normal commercial rates are paid for this service and documentation obtained (quote etc). The use must also be registered. The Policy is not intended for bid, purchase of materials/goods, list prices or discounts available to the general public.
- 15.2 Examples of situations that might arise in this context include engaging the factoring service offered by ACHA or the repairs service offered by AHFA or buying goods or services from a connected business such as an architect or building contractor. If such a situation is unavoidable, we expect the governing body member or staff member to:
- 15.2.1 Report their proposed course of action to their departmental Director or the Chair, as appropriate, before entering into a formal agreement, and follow any advice offered. In emergency situations comply in retrospect.
 - 15.2.2 Make a written declaration that they have not received any advantage or preferential treatment (financial or otherwise) from the contractor or supplier arising out of their connection to the Group (this may be supported by providing quotations for the proposed work);
 - 15.2.3 Record the transaction or agreement in the Register of Payments and Benefits and keep the entry up to date;
 - 15.2.4 In the event of becoming involved in a dispute with the Group arising out of such a transaction or agreement, they must immediately notify the Chairperson and/or Chief Executive and withdraw from any discussions relating to the service involved;

Organisational Policy

15.2.5 In the case of governing body members: if the dispute cannot be resolved through the normal complaints procedure and they remain dissatisfied, they should resign from the governing body in order to pursue the complaint independently.

Section 16 Contractual Payments to Staff

- 16.1 The Group set the contractual remuneration for our staff with reference to the agreement reached through the relevant governing body and the Trade Unions.
- 16.2 Staff are not involved in determining or influencing their remuneration package and will withdraw from any part of a meeting of the relevant governing body at which such matters are under discussion. That should not preclude any members of staff making representation either through their Trade Union or as an individual to their employer as per their employment rights.
- 16.3 The Group will always observe the requirements of regulatory guidance in respect of the remuneration of our staff.

Section 17 Register of Payments and Benefits

- 17.1 All payments and benefits affected by this policy must be declared and recorded in the Register of Payments and Benefits.
- 17.2 All entries in the Register must be kept up to date and must be reviewed at least annually by the person responsible for the original entry.
- 17.3 An annual report will be made to the governing body of ACHA (as the Group parent) of the payments, benefits, gifts and hospitality that have been recorded in the Payment and Benefits Register and the Declaration of Interest Register.
- 17.4 The Register of Payments and Benefits and the Declaration of Interest Register will be available for inspection by members of the public.

Section 18 Dealing with Complaints

- 18.1 Complaints received in relation to this policy will be dealt with in line with our Complaint Handling Procedure or internal Grievance Procedure.

Section 19 Breaches of this policy

- 19.1 Breaches of this policy may result in investigation and possible disciplinary action.

Section 20 Review

- 20.1 This policy will be reviewed on a 3 year cycle.

Organisational Policy

Appendix A

Legislation: Duties of Governing Body Members

Charity Law – applies to ACHA governing body members

Charity Trustees' Duties

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”.

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.

Summary of General Duties: under Section 66 of the 2005 Act, a charity trustee must:

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. **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).
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.
4. **Ensure that ACHA complies with the law:** whether that is the provisions of the 2005 Act or other relevant legislation.

Summary of Specific Duties: additionally under the 2005 Act charity trustees' duties include:

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).
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. **Financial record keeping and reporting:** Section 44 of the 2005 Act states ACHA must:
 - keep proper accounting records

Organisational Policy

- 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.

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.
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".

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.
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 and Rule 19 of ACHA's Rules includes standard amendments to the SFHA Model Rules to provide specific powers in this regard.

Charity Trustee Remuneration and Benefits

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

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:

1. A maximum amount of any benefit must be set in writing.
2. The amount of the benefit must be reasonable.
3. At any time less than half the trustees can receive remuneration / benefit – a matter of

Organisational Policy

fact to be checked on each occasion.

4. The benefit should be ACHA's best interest – for the trustees to decide.
5. Nothing in ACHA's constitution prohibits the benefit being offered.

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.

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.

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 below must be considered:

- (1) The contract for services should clearly set out the maximum amount that will be paid for the services.
- (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.
- (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) The trustees must be satisfied that the terms of the contract for services are in ACHA's best interests.
- (5) As long as the other conditions are met, ACHA's constitution does not prohibit entering into this contract in these circumstances.

In any decision about such "connected" individuals or bodies it is appropriate that:

- The Board member who has a connection declares their interest in the matter.
- The connected Board member does not take part in any decision made in regard to the person / body with which they are connected.
- As part of the decision regarding the connected person / body, the Board documents its consideration of the 5 conditions.
- Any decision clearly notes that the Board approves remuneration / benefit only if they are satisfied that all 5 conditions are met.

Consequences of Breach of Trustees' Duties

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.

Organisational Policy

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.

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

Directors Duties under Companies Act 2006

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.

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

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.
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;

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.
3. 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.
4. To exercise reasonable care, skill and diligence (Section 174). An AHFA director owes a duty to exercise the same care, skill and diligence that would be exercised by a reasonably diligent person with regard to:

Organisational Policy

- 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).

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/she has a high level of skill and experience, he/she will be expected to perform to that standard.

Duties on Conflicts of Interest

5. To avoid conflicts of interest (Section 175). A director “*must avoid a situation in which he/she 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.

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 governing body members can give this authorisation.

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/she became aware at a time when he/she was a director.

6. 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. 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/she 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.

There is no need to declare an interest if:

- The director is unaware of the interest (but he/she will be treated as being aware of matters of which he/she ought reasonably to be aware);
- If the interest cannot reasonably be regarded as likely to give rise to a conflict of interest;
- If the other directors are already aware of it; or

Organisational Policy

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

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

Consequences of breach

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).

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:

- Damages or compensation where the company has suffered a loss;
- Restoration of company property;
- An account of profits made by the director(s); and
- Rescission of a contract where a director failed to disclose an interest.

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.

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.

Organisational Policy

Appendix C

Connected Persons

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

- (2) ... the following persons are “connected” with a charity trustee—
- (a) 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,
 - (b) any child, parent, grandchild, grandparent, brother or sister of the trustee (and any spouse of any such person),
 - (c) 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,
 - (d) 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
 - (e) 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.
- (3) For the purposes of subsection (2) a person who is—
- (a) another person’s stepchild, or

Organisational Policy

- (b) 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.

Organisational Policy

Appendix D

Examples of Interests

Examples of interests that governing body members may have but are subject to this policy (but are not confined to):

- 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;
- 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;
- Receipt of care or support services from the Group;
- 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;
- Membership of a community or other voluntary organisation that is active in the area(s) served by the Group;
- Voluntary work with another RSL or with an organisation that does or is likely to do business with the Group;
- 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;
- Membership of the governing body of another RSL;
- Purchase of goods or services from one of the Group's approved contractors;
- Significant shareholding in a company that we do business with;
- Membership of a political or campaigning body whose interests and/or activities may affect ours;
- 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;
- An unresolved dispute with the Group relating to the provision of services by the Group.

Organisational Policy

Appendix E

Bribery Act 2010: Summary

The Bribery Act 2010 codifies the law relating to bribery and corruption.

Corruption is the misuse of office or power for private gain. Bribery is a form of corruption and means:

- a) Giving or receiving money, gifts, meals, entertainment or anything else of value;
- b) As an inducement to a person to do something which is dishonest or illegal; and
- c) In the course of doing business.

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.

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.

Under the Bribery Act 2010 it is illegal to:

1. Offer, promise to give or to pay a bribe;
2. Request, agree to receive or accept a bribe;
3. Bribe a foreign public official;
4. Fail to have adequate procedures in place to prevent bribery.

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.

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).

Organisational Policy

Appendix F

ACHA • Putting Tenants First



Our Ref:

Your Ref:

If phoning or calling please ask for: Gayle Stead

E-mail: gayle.stead@acha.co.uk

50 Sinclair Street, Helensburgh, G84 8TQ
www.acha.co.uk

{address}

{date}

Dear Sir/Madam

Estate of the Late xxxxxxxxxxxxxxxxxxxxxxxxx

We understand that you act in the estate of the late xxxxxxxxxxxxxxxxxxxxxxxxx. We are a housing association and the deceased lived at xxxxxxxxxxxxxxxxxxxxx {customers address}, which is owned and managed by us. We understand that the deceased's Will made a gift to xxxxxxxxxxxxxxxxxxxxx, who is employed by us.

As a registered housing association we require to have a Payment and Benefit Policy and xxxxxxxxxxxxxxxx has informed us of the bequest made to him/her, which is classed as a gift under our policy. It would assist us in considering the effect of the Policy in this instance if you could kindly provide us with the following information;

1. Could you confirm that the deceased has a professionally drawn Will?
2. Would it be possible for a copy of the relevant excerpt to be provided to us?
3. Could you please confirm whether(our staff member) had any involvement in the preparation of the Will, even if that involvement extended only to witnessing the document?
4. The date on which you first had contact with(our staff member) in relation to this matter? And,

Organisational Policy

5. Whether you have received any objection, either informally or formally, from a family member or otherwise, to the legacy being given to our staff member or whether the Will, on this ground or any other has been contested?

We appreciate your assistance with regard to this matter.

Yours sincerely



Gayle Stead
Governance and Compliance Manager