

## THE MIDCOUNTIES CO-OPERATIVE LIMITED

### GUIDING PRINCIPLES FOR THE BOARD OF DIRECTORS OF

The following principles were adopted by the Board of The Midcounties Co-operative Limited by resolutions dated 3 October and 28 November 2005 (minutes 05/282 and 05/334). They were updated by resolution dated 1 October 2007 (minute 07/148). They help guide the Board in its decision making and provide the framework and expectations for the way directors interact with one another and with others with whom it has business.

On 1 October 2007, the Board also agreed that Appendix 9 of Co-operativesUK Code of Best Practice should be appended to these Guiding Principles, to confirm the expectation that directors should observe the principles and standards set out in this appendix.

As directors on the Board, we will:

1. Remember that our first responsibility is to represent the members who own and control the Society and that the Society is a co-operative, subscribing to co-operative values and principles which underpin all that we do.
2. Work together as a team, consistently presenting a unified front with respect to Board decisions.
3. Be thoroughly professional in all that we do.
4. Participate actively in the work, continuous performance development and building business awareness of the Board.
5. Give equal standing to all members, respect their views and opinions and protect their right to express them.
6. Be willing to give and accept constructive criticism.
7. Not seek to dominate Board discussions, pursue personal agendas or behave, verbally or non-verbally, in a way that is aggressive, offensive or abusive.
8. When appropriate, constructively challenge one another or others with whom we work as a Board.
9. In relation to decisions that we take, satisfy ourselves of the adequacy of the information before us particularly in relation to our responsibilities for risk assessment and due diligence.
10. Foster a positive relationship between the Board and the management of the Society.

11. Contribute to building a positive perception of the Board among the Society's membership and all staff.
  12. Support all efforts to increase and engage the Society's membership and ensure that an active dialogue is maintained with members to enable them to participate in a meaningful way in decision taking on important matters which affect their Society.
  13. Promote the co-operative advantage and, particularly, the Society in the wider community.
  14. Treat all information which we receive as directors of the Society and all discussion within the boardroom in the utmost confidence, and not disclose such information or use it to our own advantage.
  15. Recognise that we may from time to time have conflicts of interest with the Society and where this is the case report these to the Secretary with immediate effect.
  16. Recognise that being a director carries legal duties and responsibilities and undertake to exercise these to the best of our abilities.
  17. Seek to update our knowledge and skills to allow us to direct the affairs of the Society to best effect.
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## Appendix 9

### THE DUTIES OF DIRECTORS AND DIRECTORS' CODE OF CONDUCT

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The position of director of a co-operative society carries many demanding and important duties that need to be recognised before appointment and throughout a director's period of office. Directors owe a duty to the society, not to individual members or employees. Directors are bound by legal duties, and failure to carry out those duties can result in personal liability. These can be divided into statutory duties, fiduciary duties and duties of care. This appendix is divided into two sections. Part one sets out the duties and responsibilities of the directors of co-operative societies and the part two is an outline code of conduct for directors.

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#### 1. Duties and Responsibilities of Directors

This part sets out the legal duties and responsibilities of directors of co-operative societies. It is only a summary, and if directors are in any doubt about their duties, or any aspect of performance of their duties, they should consult the secretary.

- 1.1 Directors have important legal duties, and failure to carry out these duties can result in personal liability.
- 1.2 Broadly there are four categories of legal duty as follows, and a brief summary of these duties is set out below:
  - 1.2.1 the duty to obey relevant laws and regulations;
  - 1.2.2 the duty of good faith;
  - 1.2.3 the duty to take care and
  - 1.2.4 the duty to maintain the co-operative status of the organisation.

#### Obeying the law

- 1.3 Various Acts of Parliament and statutory provisions impose direct obligations upon directors and upon the society itself. These cover such areas as occupational health and safety, employee relations, equal opportunity for employees, competition, consumer protection, the environment, and keeping proper accounting records.
- 1.4 Although directors do not carry executive responsibility for ensuring that statutory requirements are met, they are responsible as a board for ensuring that others take executive responsibility and discharge it. Where they fail to ensure this, directors can become subject to statutory penalties and personal liability.
- 1.5 Directors have a direct and personal responsibility for ensuring that the society does not continue to trade if it is insolvent. Again, failure to discharge this responsibility can result in personal liability.

## Duty of good faith

- 1.6 A director is in a position like that of a trustee – namely being responsible for somebody else's (the society's) property. As a result the law imposes on directors a duty of good faith, which can broadly be summarised as follows:
- 1.6.1 truthfulness and honesty – this involves acting with complete truthfulness and honesty in any dealings with or on behalf of the society;
  - 1.6.2 treating the society's affairs as confidential. Individual directors have no legal authority to disclose anything outside the boardroom except what is already in the public domain, or what they are expressly authorised by the board to disclose;
  - 1.6.3 acting at all times in the best interests of the society – this means ensuring that the society's interests always come first, and that a director never uses their position to obtain a benefit or advantage for themselves, for other people or other organisations;
  - 1.6.4 avoiding conflicts of interest – a director should avoid putting themselves in a position where their duties and responsibilities as a director conflicts with other personal interests. Where a conflict arises, they must comply with the society's rules.<sup>16</sup>

## Duty to take care

- 1.7 In carrying out their responsibilities, directors must take proper care. They are expected to show
- 1.7.1 such skill and care in carrying out their responsibilities as a person having their background and experience would reasonably be expected to show (the subjective test), and
  - 1.7.2 the levels of skill and care that a person carrying out that role would reasonably be expected to show (the objective test).
- 1.8 In other words, they are not expected to be experts, but they are expected to use such expertise as they have. Furthermore, directors must recognise that an objective standard is applied, which means that where they do not have the knowledge and expertise needed, they should either undergo training, or should bring additional skills onto the board, possibly through co-option.
- 1.9 The duty to take proper care includes the following:
- 1.9.1 reading board papers before meetings, and coming to meetings properly prepared;
  - 1.9.2 asking questions if further explanation or information is needed, and challenging the executives when not satisfied with the answers given;
  - 1.9.3 taking advice both from the executives and from independent advisors when that is needed for the best interests of the society;

<sup>16</sup> The rules should provide that directors disclose any material interest to the board. If the rules do not provide this, the law is that directors must disclose any material interests to the members.

- 1.9.4 doing their best – directors should aim for the highest standards they can achieve. It is not acceptable to leave things to other people, to fail to attend meetings, or to treat other matters as more important than those of the society. A director who does not give an appropriate level of commitment to the society's affairs is failing in their duty;
- 1.9.5 undergoing appropriate training and development. It is not sufficient to rely on current knowledge and experience. In order to keep pace with changing needs, and changing legal and financial obligations, directors need to ensure that they are properly equipped to carry out their responsibilities.

## 2. Code of Conduct for Directors

This part sets out the standards of personal behaviour and conduct required of directors of co-operative societies. A society's rules should require its board of directors to adopt a code of conduct, and to enforce compliance with it. This code may be adopted for these purposes, and it may be adapted to suit local needs and circumstances.

### Status of this Code of Conduct

- 2.1 This is the Code of Conduct for directors referred to in the society's rules. It has been approved by the board of directors.
- 2.2 Every director will sign an acknowledgement accepting their obligation to comply with this Code including its provisions covering confidentiality. Candidates seeking election as director will be asked to confirm that they have read it, and if elected will sign a similar acknowledgement.

### Qualification for office

- 2.3 The society's rules set out the criteria by which an individual is eligible to be a director. A director shall notify the secretary immediately on becoming aware that they are or may no longer be eligible to be a director.

### Commitment to Co-operative Principles

- 2.4 The society is established to provide goods and services to its members as a co-operative.
- 2.5 Each of the directors will discharge their responsibilities in a way which seeks to ensure that the society remains committed to following Co-operative Values and Principles.

### Carrying out their responsibilities

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

- 2.6.1 attend on time at every meeting of the board and of any committee or sub-committee of the board to which they are appointed. Any director who, without good reason accepted by the remaining directors, fails to attend more meetings than the board allows<sup>17</sup>, will be in material breach of this Code;
- 2.6.2 prepare properly for every meeting by reading in advance any documents sent out for the purpose of the meeting;
- 2.6.3 accept decisions made by the board, even if they disagree with it and voted against it. This includes a commitment to support any decision of the board outside the boardroom.

#### Standards of behaviours

- 2.7 In addition to fulfilling their legal duties, directors are expected to show appropriate standards of behaviour in carrying out their responsibilities. This is necessary in order that the board can function properly as a board, that it can play its appropriate part in the society's overall governance, and that the society's good name and reputation in the community is maintained.
- 2.8 Directors will observe the following general standards:
  - 2.8.1 in their dealings with each other, with the society's officers, and with its employees and members, treating people politely, fairly, and with respect;
  - 2.8.2 on public occasions and on all society business, behaving in a way which is appropriate for a director of such an organisation. This includes not bringing the society into disrepute in any context.
- 2.9 Directors will treat meetings of the board or of any committee or sub-committee of the board as formal occasions, and will observe the following:
  - 2.9.1 accepting the authority of the chair of any meeting, expressing all questions and points of view through the chair;
  - 2.9.2 listening to the views of colleagues with an open mind, seeking advice or clarification where needed, expressing their own views, and coming to their own decision on individual matters in good faith in what they believe to be in the best interests of the society, taking into account relevant factors and ignoring irrelevant factors;
  - 2.9.3 not resorting to behaviour that could be considered to be aggressive or intimidating, e.g. swearing, name calling, shouting, finger pointing;
  - 2.9.4 keeping to the agenda, raising other issues under "any other business" according to agreed procedures, and not engaging in discussions during the meeting which are not relevant to the issues of the meeting;
  - 2.9.5 ensuring that they do not attend any meetings under the influence of alcohol, or illegal or recreational drugs.

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<sup>17</sup> The board should include in this code or in a separate resolution of the board the minimum number of attendances required each year, or the maximum number of consecutive absences, or absences per year which are permitted.

### Confidentiality

- 2.10 Directors will treat all information which they receive in their capacity as directors, and all discussion within the boardroom or within committees or sub-committees of the board, as confidential.
- 2.11 Directors will observe the following obligations of confidentiality:
- 2.11.1 they will not disclose any information outside the boardroom unless it is already in the public domain, or they are specifically authorised to do so. This includes information about the society's business, the deliberations of the board in reaching decisions, and the way individual directors voted on issues;
  - 2.11.2 they will not use any such information for personal advantage;
  - 2.11.3 they will not pass information to any representative of the press or media, and will refer any press or media enquiries to the society's executives;
  - 2.11.4 they will not make unauthorised photocopies of any documents;
  - 2.11.5 they will take proper care of any documents they receive as directors, and store them securely.
- 2.12 Directors who are employees will take particular care not to disclose to their colleagues any confidential information which comes to them in their capacity as a director.

### Conflicts of interest

- 2.13 Directors must disclose to the secretary any material interest which they or their spouse or partner holds in:
- 2.13.1 any business which competes with or carries on the same trade as the society;
  - 2.13.2 any business which is providing goods or services to the society, or is being considered as a potential supplier of goods and services;
  - 2.13.3 any public body or voluntary organisation with which the society has or is likely to have dealings.
- 2.14 The Secretary will record any such interest in a register of directors' interests.
- 2.15 "Material interest" for these purposes includes being an employee, holding any position of authority or responsibility, or owning any financial interest. It does not include the holding of shares which amount to less than 2% of the entire issued share capital of any company whose shares are listed on a stock exchange.
- 2.16 Subject to their society's rules, no director may take part in any discussion on a matter in which they have a material interest, or take part in any decision, or vote on any resolution. This applies to meetings of the board and of any committee or sub-committee of the board.

### Taking independent advice

- 2.17 The society's management executive are responsible for running the day-to-day business of the society. If one or more directors have any questions about any aspect of the society's affairs, they should be raised in the first place with the management executive, through the secretary.
- 2.18 If the board as a whole considers that it is in the best interests of the society to do so, they may resolve to take independent advice on any matter, and shall do so through the secretary.
- 2.19 If one or more directors are dissatisfied with advice given by the management executive or the society's external advisors, or they fail to obtain their requested advice, they should raise the matter with the secretary. The secretary may take further independent advice if they consider it to be in the best interests of the society to do so. The secretary will take further independent advice if a minimum of three directors or one third of the directors (whichever is the greater) request it.
- 2.20 If the secretary is involved in the matter in question and cannot be regarded as independent for the purposes of taking further advice, another member of the management executive shall act in place of the secretary. If neither the secretary nor any member of the management executive can be regarded as independent for the purposes of the matter, it shall be referred to the Chief Executive of Co-operatives<sup>UK</sup>.

### Training

- 2.21 All directors shall take part in any training which the board resolves that all directors should undertake. Failure to do so without good reason is a serious breach of this Code.

### Hospitality and Gifts

- 2.22 Directors should not, in their capacity as director (or what might be perceived as their capacity as director), receive from any person or organisation any hospitality, gift or any other benefit, except in the following circumstances:
- 2.22.1 working meals or refreshments;
  - 2.22.2 inexpensive items (less than £10 in value) such as free calendars;
  - 2.22.3 hospitality in the course of the society's business, which is disclosed to the secretary and recorded in a register.

### Serving on the Board of a Federal Body

- 2.23 Directors who serve on the board of any federal body such as Co-operatives<sup>UK</sup>, or the Co-operative Group (CWS) Limited must treat their roles as director of their society and director of any such federal body as separate.
- 2.24 This means that:
- 2.24.1 they must maintain confidentiality in relation to information they receive in one capacity, and not disclose any such information in the other capacity unless they are expressly authorised to do so;

2.24.2 when making decisions as a director of the society, they must make such decisions in what they consider to be the best interests of the society, and when making decisions as a director of the federal body, make them in what they consider to be the best interest of the federal body.

**Breach of this Code**

2.25 All directors accept that they must comply with this Code if the board is to be able to function properly and efficiently, and do its job. Where any director alleges that another director is in breach of this Code, the following provisions will apply:

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

- 2.25.1.1 defer the matter to be considered by the board on a subsequent occasion;
- 2.25.1.2 adjourn the meeting;
- 2.25.1.3 request that the director alleged to be in breach temporarily leaves the meeting for the matter to be discussed by the remaining directors present;
- 2.25.1.4 exclude the director alleged to be in breach for the remainder of the meeting;

2.25.2 if the remaining directors are to consider an allegation of breach of this Code at any time, the director alleged to be in breach shall be given the opportunity to respond to the allegation;

2.25.3 if the remaining Directors consider that a director has committed a breach of this Code,

- 2.25.3.1 the breach shall be minuted by the secretary;
- 2.25.3.2 the board may recommend that the director in breach undergoes training;
- 2.25.3.3 the board may resolve to report the matter to the members at the next members meeting.

2.25.4 subject to the rules of the society, a director in serious breach of this Code may be removed from office by a resolution approved by not less than three-quarters of the remaining directors, providing that the remaining directors also consider that it is not in the best interests of the society for that individual to continue as a director. Before any such resolution can be considered, the director alleged to be in serious breach shall be notified in writing of the alleged breach, and shall have an opportunity to answer the allegations made.

This Code of Conduct has been approved by the board of

Date: