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BUSINESS RESPONSIBILITIES

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BUSINESS RESPONSIBILITIES

Committee Responsibilities

Aims And Objectives, Governance

The management committee/board of directors is responsible for ensuring the organisation carries out its aims and remains within the powers given to it by the constitution. Committee members must understand both their powers, duties and responsibilities.

Accountability

The committee is responsible for ensuring the business is run properly, that it is acting according to the law or other regulations. The constitution or governing document sets out how the organisation should act and the committee should ensure that this is being followed and that it can be held accountable by ensuring its procedures are open and transparent.

Legal Responsibilities

Social enterprises have legal obligations to funders, some stakeholders, employees, customers and service-users. The committee has to ensure that it is obeying these legal obligations and responsibilities.

Financial Responsibilities

The committee must ensure the business has enough money to operate with, meet all its financial obligations and undertakings and that money received and spent is properly accounted for. In some cases it is also responsible for ensuring that money

is not misused or only used for purposes allowed under its rules. The committee should ensure that proper records are kept, it receives regular financial reports and that funders, members or stakeholders get at least annual financial reports for its general obligations to be met.

People Responsibilities

The board of directors of a social enterprise - like any organisation - are responsible ('have a duty of care') to employees, volunteers and people using their services or visiting their premises. It also has a legal responsibility for the actions of its employees or volunteers, whether overt acts or negligence.

Equal Opportunities

It must ensure it complies with acts about equal opportunities and discrimination.

Premises

The committee has responsibility for the state, use and security of its premises, particularly in relation to legal uses and health and safety. This includes ensuring there is proper insurance, it complies with fire and safety regulations, public health requirements and planning consents and regulations.

Insurance

There is both a legal and general requirement to maintain proper insurance cover. Compulsory insurance includes: a) Employers Liability Insurance; b) Public

Liability Insurance; c) Vehicle Insurance; d) Buildings Insurance; e) Contents Insurance. Some organisations may conclude that professional indemnity, fidelity, accident /medical or contingency (e.g. loss of trade) insurance is sensible for their business.

Legal Status

Whatever the legal status of the business, the committee must ensure it complies with the relevant laws and regulations: company, charity or society.

Committees And Contracts

Committees often shy away from knowing too much about contracts or service-level agreements, leaving them to staff to deal with. But they cannot escape both a general and legal responsibility for all contracts entered into by the organisation.

Authority

The committee should ensure that it has given permission for contracts or service level agreements to be entered into and that it is taking the decision about entering into any such contracts or agreements. It is the organisation that contracts, not staff, and ultimately it is the organisation that will be held accountable or liable, not staff.

Grants Or Other Financial Assistance

The committee is ultimately responsible for ensuring funding is used properly and can be held accountable if it is not. Such failure involves a 'breach of trust' and may fall under contract law as well and is therefore potentially very serious.

Contracts And Trading

The members of an incorporated body usually possess limited liability for loss or

debts and therefore are protected from a contract going wrong and remedy being sought so long as they were not party to the problem or negligent in not supervising the operation of the contract. If unincorporated, then the committee members can be individually or collectively liable for debt, loss or damages arising from a contract.

Charges

Some finance agreements (such as mortgages, loans, lease or hire purchase agreements) may include 'charges' over some asset of the organisation, a physical asset such as a building or (for instance) future income or cash. It is the responsibility of the committee to know about and understand the implications arising from such charges.

Agency

In some cases (VAT, National Insurance, Benefits and Tax), the organisation is acting as the agent of various government departments or agencies, collecting, distributing and transferring money on their behalf. The committee needs to ensure that this is being done properly and regularly. When businesses are struggling, one of the first 'savings' made is to fail to pass on Income Tax or National Insurance collected to the Inland Revenue; committees should be alert to this problem.

Reviewing And Monitoring

The committee should regularly review the terms and operation of any contract the organisation is party to. This ensures that the organisation is not generating potential legal problems for itself and offers the opportunity to consider how they are working and whether they should be re-negotiated.

BUSINESS RESPONSIBILITIES OF COMPANY DIRECTORS

UK Law

Companies are primarily governed by the Companies Act 1985 and the Companies Act 1989. The main stipulations regarding companies are as follows:

- Directors can be either individuals or corporate bodies (which means that charities or social enterprises can control other social enterprises registered as limited companies)
- At least two people are required to form a company
- There's no requirement to live or be in Britain or to be British to be a director
- The Company Secretary can be either an individual or a corporate body
- All companies must have a registered office in England or Wales
- It is your responsibility to check the name of your organisation is not already being used by some other company but Companies House will do a check when your formation papers are sent in
- Companies are no longer legally required to use a company seal on important documents

Duties And Responsibilities Of Directors

Directors

All directors should be over 18 and at least one director must be over 18. The directors are the decision-making body of the company and are liable in law for its actions. They have a duty of care to customers, service-users, employees and members even if it conflicts with their personal interest. The company is a separate legal entity from the directors, who are not liable for the company's actions so long as they have not acted in a negligent, fraudulent or reckless manner. So long as directors act in good faith they are protected by the law from the consequences, even if loss occurs.

The Secretary

The Company Secretary has the legal responsibility to maintain company records, file annual returns and carry out other activities which the rules of the company set out. As an officer of the company (even if not a director), they have the same duty of care as directors.

The Registered Office

This is where the company is officially located, where legal or official documents are sent; it's usually the office of the company's solicitor or accountant but can also be where you trade from. All documents from Inland Revenue, Customs & Excise and Companies House or relating to legal action go to the Registered Office so don't think it's a 'dead letter' address or something you need only when you first register the company. The company's official records must be kept at the Registered Office so they can be inspected by interested parties.

The Memorandum And Articles Of Association ('The Mem And Arts')

A company's rules consist of two documents, the Memorandum of Association and the Articles of Association. The Memorandum of a company sets out what the company may do and how it will attempt to achieve its aims and objectives. This is generally drawn fairly widely (to allow for flexibility) but many ethical businesses (including social enterprises) can be highly proscriptive. The Articles set out how the company will govern itself and therefore deals chiefly with membership, voting rights and how decisions get made and approved.

General Meetings

There is no requirement to hold a General Meeting of members except that once each year a company must hold an Annual General Meeting to report on the performance of the company, receive the annual accounts and make major decisions. Companies House requires an Annual Return (of who are the directors and other officers of the company) by a set date and

this is something you can only really fix at the AGM. Similarly they require the submission of accounts annually (although this can be delayed) and again, accounts can only usually be submitted after an AGM has approved. Its best, therefore, always to try to hold an AGM every twelve months.

Delegated Powers

The directors can delegate responsibility for some of its roles and responsibilities to ad hoc committees or working groups only if it has the power in its Articles of Association.

Ultra Vires

A good set of rules will cover most eventualities but it is important that the directors of a company understand what they are legally empowered to do and what they are not empowered to do ('ultra vires').