

Terms of Reference for the Board of The Care Trust

1. Role of the Board of Directors

The Board is the governing body of The Care Trust (“TCT” or “the Company”) and is therefore ultimately responsible for what happens within it. The governance role incorporates a set of core duties:

- Ensuring that TCT is successfully managed and achieves its objectives
- Ensuring that TCT is compliant with the principles of good governance
- Safeguarding and promoting the **values and principles** of TCT
- Ensuring that TCT has **clear direction**, plans, structure and resources for its present and future work and that its **assets** are fully protected
- Ensuring that TCT has policies and procedures in place to operate in a **legal, responsible and accountable manner**
- Seeking to have and maintain **good relationships** with staff
- Establishing and maintaining **links with key stakeholders** and associated companies and
- The Board must **work as a team** at all times, where each Member understands their own particular role and responsibilities.

2. Collective Responsibility

The Board only has authority when it acts as a whole. For decisions to be binding, proper quorate meetings must be held. All Members are legally liable in equal proportions for any legal or financial repercussions from decisions. (See also section below on the powers of Company Directors). Members of the Board may delegate some responsibilities to management or staff, but they remain responsible for ensuring that duties are fulfilled.

Whilst all Members of the Board share in the governance responsibilities outlined above, a number of Board Members will have their own specific responsibilities. Details on the individual roles and responsibilities of the Chairperson and of the Company Secretary are included below.

3. Role of individual Board Members

It is vital that all appointees to the Board are aware of their individual responsibilities to The Care Trust. The core remit for individual Directors is to act in the best interest of The Care Trust and in particular:

- know and understand the duties and activities required to fulfil the role of Director, including the underpinning legal obligations
- actively contribute to the work of the Board by preparing for, and participating fully in meetings, events and reviews
- provide support and help and seek to have positive and respectful communication and coordination with other Directors and with staff and
- act with integrity, avoid conflicts of interest and/or loyalty and be worthy of the trust invested in the role by ensuring that all decisions are made solely in the interests of TCT.

4. Sub-Committees

TCT has (to date) established three Sub-Committees to take on specific responsibilities: the Audit Committee, the Remuneration Committee and the Governance Committee. All Committees have separate Terms of Reference, which are approved by the Board. Terms of Reference cover Membership, purpose, limits of decision-making and spending as well as method of reporting to the Board as a whole. The Sub-Committees, their purpose and efficacy, are reviewed periodically. The minutes of all Sub-Committee meetings should be circulated to the Board.

5. Powers and legal duties of the Board of Directors

The Board of TCT is responsible for the governance of the Company. As part of its governance role, Board Members have to ensure that all legal requirements are met. This section outlines the key legal responsibilities held by Board Members.

5.1 Company Law

The duties of Directors arise primarily from two sources: statute (i.e. Acts of the Oireachtas and other legislation) and common law (developed through precedent in the courts).

As a Member of the Board, a Director stands in a special relationship to the Company. This special position is a 'fiduciary position' and the Director is a 'fiduciary'. A fiduciary is required to act in a manner which is legally becoming of their office and which places the Company's interests ahead of their own.

5.2 Common law duties

Directors' common law duties can be summarised into three principles:

- 1) **Directors must exercise their powers in good faith and in the interests of the company as a whole.** Personal interests, the views of a certain section of staff or any outside interests, should be put aside
- 2) **Directors are not allowed to make an undisclosed profit from their position as Directors** and must account for any profit which they secretly derive from their position as Director and
- 3) **Directors are obliged to carry out their functions with due care, skill and diligence.**

A Director is, in general, justified in delegating duties to other officials of the Company (e.g. to management) where such duties may properly be left to such officials, having regard to the Articles of Association of the Company and the nature of its business. Where a Director abuses their powers, any action taken is invalid but may be subsequently ratified by a general meeting of the Board of the Company.

5.3 Statutory duties

Directors' statutory duties arise from the Companies Acts 1963 - 2013 and related legislation e.g. EU Regulations. This section gives a guide to the principal duties imposed by statute; it is not exhaustive.

Duty as a Company Officer

A Director is under a duty to comply with the obligations under the Companies Acts and to ensure that the requirements of the Acts are complied with by the Company.

Duty to maintain Proper Books of Account

The Care Trust is required to maintain proper books of account.¹ The Directors of the Company are required to ensure that TCT is in compliance with this requirement. The Care Trust must keep books of account for at least six years.

Duty to Prepare Annual Accounts

The Annual Accounts of TCT are prepared from the information contained in the Company's books of account and other relevant information. The Accounts are required to give 'a true and fair view' of TCT's affairs. It is required to annex a Directors' Report to the Annual Accounts and the Accounts must be laid before the Company's AGM and signed by a minimum of two Directors, on behalf of the Board.

Duty to have an Annual Audit Performed

Having prepared the financial statements, the Directors are generally obliged by law to have the financial statements audited at least once a year.²

Duty to Maintain Certain Registers

Every company has a legal obligation to maintain certain Registers and other documents.³ TCT Directors are responsible for ensuring that these records are maintained, updated as appropriate and made available to the appropriate parties.

¹ Section 202 of the Companies Act, 1990, as amended.

² Certain companies can be exempted from the requirement to have an annual audit provided that they comply with certain conditions. The criteria that must be satisfied are set out in the ODCE Information Book 1 – Companies (section 2.10.3). The criteria and procedures for audit exemption are set out in Part III of the Companies (Amendment) (No. 2) Act, 1999, as amended.

³ Information required to be included in these Registers is set out in detail in section 2.10.4 of ODCE Information Book 1 – Companies.

Duty to file certain documents with the Registrar of Companies

Company Directors are legally obliged to ensure that certain documents are filed with the Registrar of Companies. Some are required to be filed by every company (e.g. the Annual Return) while others are only required in certain circumstances.

Duty of Disclosure

Directors are required to disclose certain information including the following:

- certain personal information in the Register of Directors' Interests – where a Conflict of Interest may arise⁴
- Directors' service contracts with TCT must be made available for inspection by any Member of TCT;⁵ and
- where a Director has an interest in a contract/transaction with TCT, they are required to declare the nature of that interest at a meeting of the Directors.⁶

Duty to convene general meetings

Company law provides for two types of meeting of a company, namely an Annual General Meeting and an Extraordinary General Meeting. General meetings of the company are meetings of the Members and the Directors at which certain company business is conducted. In general, every company is required to hold an Annual General Meeting (AGM) annually.⁷ At least 21 days notice in writing must be given of an AGM (28 days if resolution proposed to remove a Director or Auditor).

Duties regarding transactions between the Directors and the Company

Directors have certain responsibilities and obligations where they enter into transactions with the company of which they are a Director.

⁴ Section 195 Companies Act, 1963.

⁵ Section 50 Companies Act, 1990.

⁶ Section 194 Companies Act, 1963, as amended.

⁷ Section 131 Companies Act, 1963, as amended.

Duties of Directors of Insolvent Companies or Companies in Liquidation

Directors have a number of duties and responsibilities where the company of which they are a Director is insolvent i.e. unable to pay its debts as they fall due, or in liquidation (i.e. in the process of being legally dissolved).

The Powers of Company Directors in Law

The Directors act on behalf of The Care Trust and only have the power to do what TCT itself is legally entitled to do. The powers that Directors have are conferred upon them by TCT, usually via the Company's Articles of Association.

6. Meetings: Frequency and attendance

A Director, while not bound to give continuous attention to the affairs of the company, should attend meetings in circumstances where he or she is reasonably able to do so. Board meetings will normally be held at least five times a year in Dublin, although additional meetings may be arranged from time to time as required for the business of the Company. Directors are expected to attend each Board meeting held, subject to receiving reasonable notice.

7. Board materials and information

Directors will receive any materials or other information required to give proper consideration to any matter due to be discussed at a Board meeting sufficiently far in advance of the meeting to enable thorough review. As well as the time required to participate in Board meetings, Directors are required to prepare fully for meetings and reviews and to commit time to attend to the other duties of a Director.

8. Minutes

Normally, Directors' powers are conferred collectively. These powers are formally exercised by a resolution at a Board meeting, usually decided by a majority of votes. The Care Trust is obliged to keep minutes of such meetings.⁸

⁸ Section 145 Companies Act, 1963.

9. Board evaluation

The Board of Directors is required to undertake an evaluation of its own performance and that of each individual Director on an annual basis. The Board will also review its composition and the appointment of the Chairperson.