

FACTSHEET – LEGAL RESPONSIBILITIES FOR DIRECTORS OF COMMUNITY INTEREST COMPANIES (CICS)

1. Context

Community Interest Companies (CICs), although they have their own regulator (CIC Regulator), are in all other respects companies governed by the Companies Acts. The Board of Directors is the company's highest authority. However, the company directors do not have 'unlimited power'. Their legal duties and the limits of their powers are set out in the:

- Companies Act 2006
- company's governing document or constitution ('Articles of Association')

Directors' decision-making is subject to the law (e.g. employment, discrimination, safeguarding, data protection, health and safety, money laundering, immigration, taxation).

2. Legal Duty 1: Observe the Constitution

The first legal duty of directors under the Companies Act is to "act in accordance with the company's constitution, and only exercise powers for the purposes for which they are conferred" (CA 171).

The constitution may take the old form (content separated into Memorandum and Articles of Association) or the new form (content solely in the Articles, with the Memorandum just for the original signatories).

3. The Articles

The Articles will cover:

- the **asset lock** (equivalent to a dissolution clause in a charity), setting out the permissible use of any residual assets if company closes down and naming the potential beneficiary organisation.
 - *Naming the beneficiary organisation is legally optional, but to avoid having issues with potential funding bodies we strongly recommend you include it when registering as a CIC*
- (optionally) the company's **legal purpose** (the 'objects'), which will be specific to each company
 - *Again – although optional we strongly recommend including in your Articles to avoid issues with potential funding bodies*
- the **powers**, which are generic and mostly standard practice (employ staff, rent premises etc.)
- the rules (if any) on **public and private benefit**
- **limited liability**, which limits members' legal liability for any commercial debts (usually £1 or £10 per member), assuming the company is limited by guarantee
- **Directors' powers**, responsibilities and decision-making, including quorum, rules on conflicts of interest, appointment and retirement



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- the **Membership** rules (if any)
- the **General Meeting** rules, covering notice, resolutions, quorum, voting (note Companies Act requires provision for proxy voting)
- powers or policy (tailored) on **directors' indemnity** cover
- some standard clauses covering communication, keeping of accounts and serving notice

4. Duty 2: Acting in good faith

The second legal duty of directors under the Companies Act (CA 172) is to act “in good faith” ... “to promote the success of the company for the benefit of its members as a whole”. When taking decisions, directors should consider:

- a) the likely consequences of any decision in the long term
- b) the interests of the company's employees
- c) the need to foster the company's business relationships with suppliers, customers and others
- d) the impact of the company's operations on the community and the environment
- e) the desirability of the company maintaining a reputation for high standards of business conduct, and
- f) the need to act fairly between members of the company

5. Duty 3: Independent judgement

The third legal duty of directors under the Companies Act (CA 173) is “to exercise independent judgment”.

6. Duty 4: Care, skill and diligence

The fourth legal duty of directors under the Companies Act (CA 174) is to “exercise reasonable care, skill and diligence.” This means the care, skill and diligence that would be exercised by a reasonably diligent person with:

- a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the functions carried out by the director in relation to the company, and
- b) the general knowledge, skill and experience that the director has

7. Duties 5-7: Conflicts of interest and personal benefit

The fifth legal duty of directors under the Companies Act (CA 175) is to “avoid conflicts of interest” or “conflicts of duty”, whether actual or potential. “This applies in particular to the exploitation of any property, information or opportunity.”

The other directors (acting without the conflicted director) may authorise the conflict, provided “nothing in the company's constitution invalidates such authorisation”. If there is a public benefit clause, it could invalidate any such authorisation.

The sixth legal duty of directors under the Companies Act (CA 176) is not to accept any benefit from a third party arising from either (a) being a director, or (b) doing or not doing anything as a director, unless this cannot reasonably be regarded as likely to give rise to a conflict of interest or duty.



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The seventh legal duty of directors under the Companies Act (CA 177) is to declare to the other directors the nature and extent of any interest, direct or indirect, in any proposed transaction or arrangement with the company.

If you will have four or fewer directors when you set up, you will need to detail any Persons of Significant Control. This applies whether you are setting up a CIC limited by shares or guarantee. Anyone with more than 25% control in a company is defined as a Person with Significant Control (PSC).

8. Evidencing compliance

Keep accurate Board minutes, complete with any briefing documents considered as part of the decision-making. Retain them for at least 10 years (legal minimum).

9. Company administration duties

The main duties, for which all directors hold a legal responsibility, are:

- to submit annual accounts within 9 months of year-end (for the company by 31 December each year)
- to submit a confirmation statement (formerly annual return) on time (for the company by 20 June each year)
- to notify all changes of directors' details within 14 days
- to notify any changes to the governing document within 15 days

For full filing requirement details see the [Companies House website](#).

10. Legal risk type 1: Breach of contract

E.g. failure to pay bills, carry out repairs.

General liability: the company.

Director personal liability:

- contracts outside objects and powers
- acts beyond personal authority
- operating when insolvent

Risk management:

- governing document
- financial procedures
- financial monitoring

11. Legal risk type 2: Statutory breach

E.g. food hygiene, unfair dismissal.

General liability: the company.

Director personal liability:

- PAYE
- health and safety
- breach of Companies House rules
- operating when insolvent

Risk management:

- clear procedures, monitoring and review
- effective Company Secretary, Treasurer roles



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12. Legal risk type 3: Criminal offences

Example: drugs on the premises, money laundering, terrorism, child abuse.

Liability: Either the company or individual Directors could be prosecuted.

Risk management:

- well-informed Directors, staff, advisors
- monitoring of staff, money, safeguarding
- regular financial reports

13. Legal risk type 4: Civil wrongs ('Tort')

Examples: negligence, nuisance, defamation.

Liability: either the company or individual Directors could be sued.

Risk management:

- HR procedures (training, supervision, delegation)
- speak "on behalf of the organisation"
- keep timely records of incidents
- effective complaints procedure

14. Risk and insurance

Insurance is essential for:

- Employer's Liability (if staffed ensure you display certificate)
- Public Liability (for premises or public activities)
- Professional Indemnity (for advice work)

If you have volunteers, ensure these are covered in the above.

Check that staff car insurance covers company business.

Buildings cover may be a lease requirement.

15. Directors as employers

The Board has two key roles. It needs to:

- develop, maintain and follow a full range of personnel policies (either develop and maintain a high level of in-house expertise or subscribe to an HR support service)
- ensure staff members receive effective support and line-management

16. Managing volunteers

Much of HR policy (health and safety, conduct etc.) will also apply to volunteers, but a clear distinction between staff and volunteers is important.

Staff need employment contracts and volunteers need non-contractual agreements. They should only be reimbursed for actual expenses, supported by receipts.

A Volunteering Policy is advised.

[See our Involving Volunteers Toolkit for more guidance and resources](#)



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17. Health and safety

Directors are responsible for all staff and volunteers.
Funders may have specific requirements.
Policy should cover training, risk assessment, monitoring.

Risk assessment should cover:

- hazard identification
- potential risks (how? how serious? who is at risk?)
- preventative measures
- emergency procedures

18. Financial planning

Directors must ensure that there is:

- an Income and Expenditure budget
- a Cash-flow budget (if income is uneven or deferred, or if solvency is uncertain)
- regular monitoring and review
- assessment of any VAT liability

Plans should be risk-assessed.

19. Financial records

Directors must ensure that:

- clear financial records are kept, e.g. cash book, bank statements, petty cash, bank reconciliations, assets, PAYE payments, bills
- records are retained for six years

20. Financial procedures

Directors must ensure formal written financial procedures to produce a clear “audit trail” and safeguard the company from misappropriation or loss:

- delegation of financial authority (authorisations, cheque and card use)
- record keeping
- petty cash
- PAYE
- secure storage
- personal safety

21. Financial reporting

Directors must ensure key requirements are met:

- production of annual accounts
- submission to Companies House

For a small company (under £10m turnover, under 50 staff), a formal audit is not required. However, annual independent examination is required and is likely to be specified under the company articles. Funders may also have specific requirements.



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22. Project grants and contracts

Directors need to know and understand:

- What are we expected or required to deliver?
- Specific requirements: quality marks, insurance, referral sources, monitoring, reporting?
- Duration? Renewable? Requirements for renewal?

Grant or contract? If a contract, you could be liable for more than repayment in the event of failure.

Does the income count towards the VAT threshold (annual income of £90,000 2024)?

23. Directors and premises

Directors need to understand the legalities:

- Powers in the governing document?
- Lease or licence?
- Duration? Break clause?
- Cost? Rent reviews (how often)?
- Repairs (structural/decorative), insurance?
- Power to sub-let?

Take legal advice before signing a lease.

24. Directors and data protection

[See our Data Protection Toolkit for small organisations](#)

25. Safeguarding and disclosure

Directors have to balance:

- a duty of confidentiality to service users (Data Protection)
- a possible duty to disclose to safeguard those at risk (Children, Vulnerable Adults)

A Safeguarding Policy is needed. For support developing your policies please contact Bury VCFA.

For support developing your community interest company, please contact fundinganddevelopment@buryvcfa.org.uk



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