

## **Duties of Directors**

### **Purpose of report**

For decision.

### **Summary**

As an unincorporated Association, the LGA had a level of flexibility in how it managed its business.

As an unlimited company, we are now subject to the Companies Act 2006. Leadership Board is the Board of Directors, elected annually by the General Assembly. The Directors have specific duties and responsibilities under the Companies Act and must operate in accordance with the [Articles](#) of Association and [Governance](#) Framework of the LGA.

This report summarises those duties and responsibilities, which are also set out in the letter of appointment sent to directors immediately after General Assembly, and reflected in the role descriptions for the chairman, vice and deputy chairs of the LGA.

### **Recommendation**

That the directors of the Local Government Association **note** the report and **agree** to comply with the duties and responsibilities set out in the Companies Act 2006.

### **Action**

Any member requiring further information on the role should contact the Head of Corporate Services or the Corporate Legal Adviser.

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## **Duties of Directors**

### **Background**

1. On 1 April 2019, the assets, liabilities and operations of the LGA transferred to the new incorporated LGA. As an unlimited company, the LGA is now subject to the Companies Act 2006. The chairman, vice and deputy chairs, elected annually by the General Assembly, make up the Board of Directors. They have specific duties and responsibilities under the Companies Act and must operate in accordance with the LGA's Articles of Association and Governance Framework.

The UK Corporate Governance Code states that "All directors should receive induction on joining the board and should regularly update and refresh their skills and knowledge". This guidance will be reissued annually at the first Leadership Board meeting following the General Assembly. It is also summarised in the letter of appointment sent to directors, and reflected in the role descriptions for the LGA chairman, vice and deputy chairs.

### **Role of the Board**

2. The Companies Act 2006 sets out the role of the Board as a collective – in this case the LGA Leadership Board. The Leadership Board's role under the Act is to:
  - 2.1. Provide leadership and ensure the LGA company is properly managed;
  - 2.2. Ensure that the LGA discharges its objects, powers and functions, set out in the Articles;
  - 2.3. Set the overall strategic direction and ensure that this is consistent with Articles;
  - 2.4. Review performance and hold management to account;
  - 2.5. Operate within a framework of prudent and effective controls that ensure propriety, value for money and effective risk management;
  - 2.6. Operate within the limits of its authority and in accordance with any conditions on use of public funds.
3. The Leadership Board Terms of Reference, included as a separate item on the agenda, set out in more detail the specific responsibilities of the Leadership Board.

### **Duties of Directors**

4. The seven legal duties of directors are set out in sections 171 to 177 of the Companies Act 2006. Standing items 2 and 3 on Board agendas act as a reminder of those duties.

***Duty 1 - to act within their powers.***

*Directors are given certain powers to enable them to fulfil their roles as a Board. They must act within those powers, in accordance with the LGA's Articles of Association and Governance Framework, and use them only in the interests of the company.*

***Duty 2 - to promote the success of the company***

*Directors must act in a way which they consider in good faith will promote the success of the LGA for its members as a whole, having regard to:*

- *The likely long term consequences of any decision.*
- *The interests of the employees.*
- *The need to maintain good business relationships with suppliers, customers and others.*
- *The impact of operations on the community and the environment.*
- *The desirability of maintaining a reputation for high standards of business conduct.*
- *The need to act fairly between members.*

***Duty 3 - to exercise independent judgement***

*Each director must exercise independent judgement in their decision making, acting in the best interests of the company as a whole, rather than individual or sectional interests, irrespective of the circumstances in which they have been appointed.*

***Duty 4 - to exercise reasonable care, skill and diligence***

*This duty of directors to exercise reasonable care, skill and diligence is judged according to what may reasonably be expected of a person carrying out the role and to the general knowledge, skill and experience of the individual.*

***Duty 5 - to avoid conflicts of interest***

*Directors must avoid being involved in situations in which they could have a direct or indirect interest. This applies in particular to the exploitation of any property, information or commercial opportunity. There is no breach of duty if the potential interest is so indirect or remote that no reasonable person would see a problem, or if it has been authorised by the Board.*

***Duty 6 - not to accept benefits from third parties***

*Directors must not accept any benefit from a third party that is offered because of that director's position of anything they may or may not do. This is a matter of principle and there is no need to show that the company has suffered harm. The LGA's rules on hospitality set a de minimus level for gifts - directors should contact member services for further information and to record any gifts received.*

***Duty 7 - to declare interest in proposed transactions or arrangements with the company***

*Any director in any way directly or indirectly interested in a proposed transaction, arrangement or decision must declare the nature and extent of that interest. This should be both by completing the LGA's Register of Interests annually and updating it in the event of new circumstances, and by declaring the interest at the start of/during Board meetings*

### **Liabilities of Member councils and directors**

5. The liabilities of directors of unlimited companies are the same as for limited companies. They have same duties and the same potential protections under law. The LGA's Articles allow for its directors to be indemnified against certain liabilities and for the LGA to take out directors' insurance. These cover most liabilities which directors could face in the ordinary course of business, subject to limits imposed under the Companies Act 2006.
6. The Members of the company are our member councils. Members are not directly liable to the company's creditors but if the LGA is wound up and its assets are insufficient to cover its debts, the members will be liable to contribute to make up the shortfall.

### **In summary**

7. The role of the directors is to ensure that the LGA pursues its objects, powers and functions set out in the Articles of Association and complies with its Governance Framework, company law, other relevant legislation and the effective and efficient management of public money.
8. Directors must comply with the legal duties of a director set out in the Companies Act 2006. They should as far as practicably possible attend all Leadership Board meetings, declaring and withdrawing from discussions in the event of a conflict or potential conflict of interest.
9. Directors provide independent scrutiny of the activities of the company and contribute to the economic and effective operation of the LGA. They must ensure due consideration is given to the interests of all of its membership.
10. Finally, directors must adhere to the seven Principles of Public Life - selflessness, integrity, objectivity, accountability, openness, honesty and leadership - which are the basis of the ethical standards expected of all public office holders. They apply to anyone elected or appointed to public office and will already be familiar to the Board.

### **Next steps**

11. Any member requiring further information on the role should contact the Head of Corporate Services or the Corporate Legal Adviser, who will be pleased to help.