



enabling people with disabilities

**CODE OF CONDUCT  
FOR  
TRUSTEES (DIRECTORS)**

**2022/2023**

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## SECTION 1 OVERVIEW



Ability West’s work is underpinned by eight *Core Values*

- Independence
- Partnership
- Openness
- Integrity
- Accountability and Transparency
- Participation in Community Life
- Person Centredness
- Rights Based Approach

## Company Information

- Company Limited by Guarantee (CLG) and Registered in Ireland, No. 41317
- Registered Charity, No. 20011161
- Certified by the Revenue Commissioners as a Charity, No. CHY 6306
- Registered Office: Blackrock House, Salthill, Galway H91 R254
- Éirim An Iarthair is a Registered Business Name of Ability West

## Constitution

The Memorandum & Articles of Association, originally adopted in 1973, were updated and approved at an Extraordinary General Meeting in 2010 having been approved by the Revenue Commissioners. Following the enactment of the Companies Act 2014, Ability West was required to convert its governing documents to a Constitution. This conversion was completed and approved at an Extraordinary General Meeting in 2017 having been approved by the Revenue Commissioners. The Constitution was accepted by both the Companies Registration Office and the Charities Regulatory Authority.

Further work was undertaken in 2019 to review the branch and regional structure due to the decline in branch and regional membership. Biannual Family Fora were set up in 2017 with a view to increasing engagement from families. It is through this forum that the Board of Directors will seek nominations (2) from families of service users. A revised draft Constitution was submitted in January 2020 to the Charities Regulator, and this was processed by the Charities Regulator in March 2020. An AGM was held in July 2020 with two special resolutions to be considered and ratified, i.e. That the current Constitution be updated and replaced by the enclosed updated Constitution, and That the register of members will be updated to reflect the membership of the company in accordance with the enclosed updated Constitution. Both resolutions were ratified at the AGM and the revised Constitution was filed with the Companies Registration Office.

The main Object for which the Company is established is:

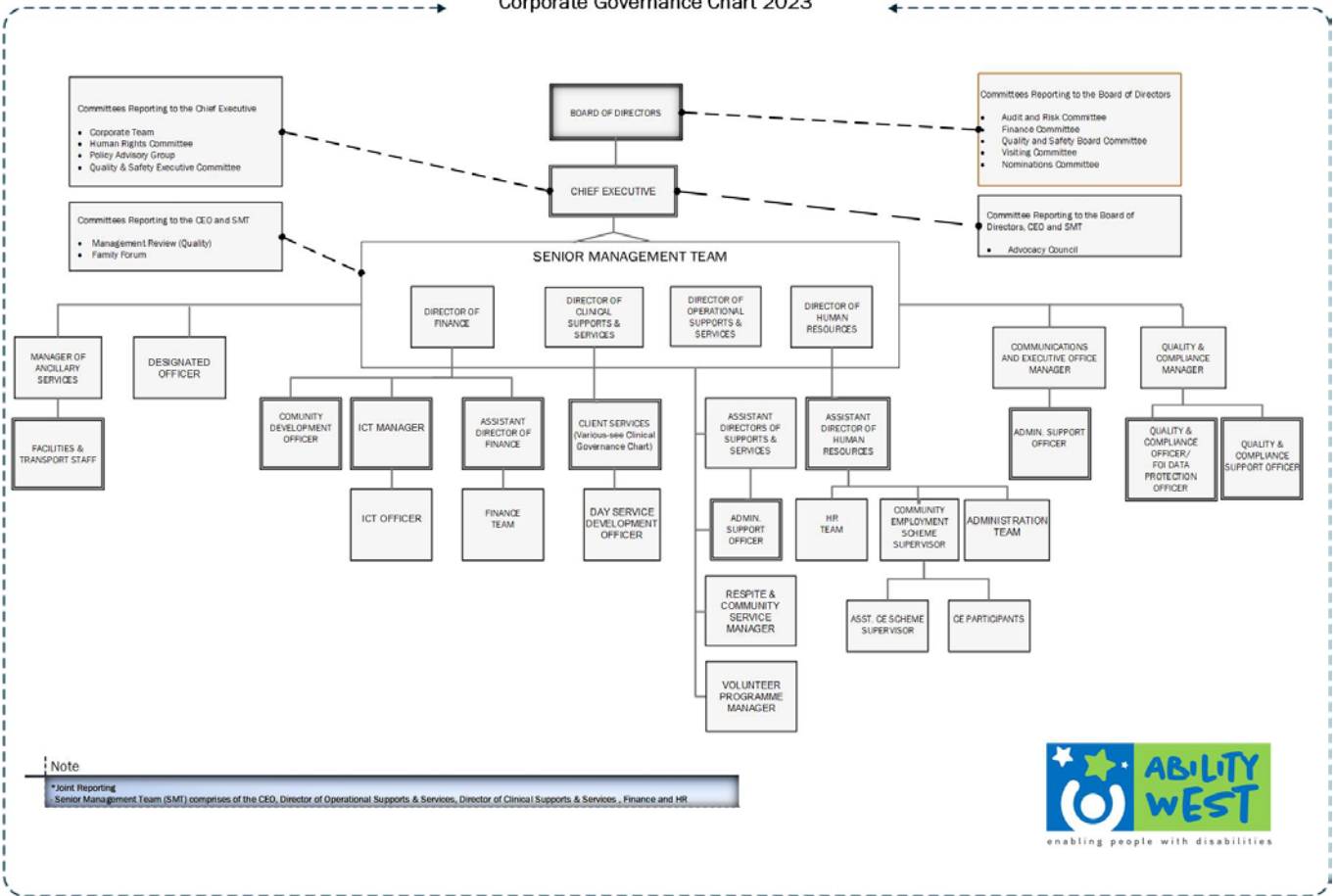
*To benefit the community through the promotion and/or provision of the highest possible standard of service, support, treatment, training, education, general welfare of persons with disability in their own communities and the giving of advice, guidance and support to parents/guardians and family members of persons with disability.*

The Articles of Association lay down the details of membership, meetings and how the Board of Directors operates.

## Services

In accordance with the Constitution Ability West provides services and supports to children and adults with disability. Admission to service is based on an individual having a primary diagnosis of an intellectual disability.

Corporate Governance Chart 2023



**Note**  
 \*Joint Reporting  
 Senior Management Team (SMT) comprises of the CEO, Director of Operational Supports & Services, Director of Clinical Supports & Services, Finance and HR



## Principal External Advisors

Bankers	Bank of Ireland, 22 Mainguard Street, Galway, H91 TX21
Auditors	FCC Chartered Accountants & Registered Auditors, Lismoyle House, Merchants Road, Galway, H91 FX4T
Insurance Brokers	O’Leary Insurance Group, Liosbán Industrial Estate, Tuam Road, Galway, H91 DW01
Solicitors	Kieran Murphy & Co., 9 The Crescent, Galway, H91 W6T7 Jacob & Twomey, Merrythought House, Templeshannon, Enniscorthy, Co. Wexford, Y21 E0F3 Ronan Daly Jermyn, Aengus House, The Docks, Galway H91 Y2AE

## Principal External Relationships and Funding

### Health Service Executive

The principal external group that Ability West is linked with is the Health Service Executive (HSE), being the principal funder of the company contributing circa 98% of the total operating costs. The relationship is defined under the terms of an annual Service Arrangement (SA) which is a two document contract;

- *Part 1* which is signed every three years by the HSE and Ability West, consists of 37 standard clauses which form the main body of the SA, and sets out the legal framework under which both parties agree to work;
- Part 2 is completed annually and signed by the HSE and Ability West. This consists of a set of 10 Schedules which specify detailed information on services delivered by Ability West. This includes information on: Quality and Safety, Service Delivery Specification, Performance Monitoring, Information Requirements, Funding, Insurance, Complaints and Staffing.

Ability West is a Section 39 Organisation under the 2004 Health Act.

### *Annual Compliance Statement*

As part of the consideration of ongoing funding for Ability West, we are required to submit an Annual Compliance Statement as an additional requirement to the Service Arrangement process. The Compliance Statement must be completed by the Board of Directors having reviewed the compliance of the organisation over the course of the previous year. This statement is approved at a Board meeting and must be signed by the Chairperson and another Director.

### *Annual Financial Monitoring Return*

This return forms part of the financial and corporate governance required by DPER Circular 13/2014 which must be submitted annually to the HSE. This form is signed by the Chief Executive and Director of Finance.

## Other Funders

Funding is received from the Department of Education and Skills to support the provision of training delivered by St. Joseph's Training Services.

Funding is also received from the Department of Social Protection to support the operation of a Community Employment Scheme and also under the Employment Support Scheme.

## Health Information & Equality Authority (HIQA)

Ability West's residential and residential respite services are operated in compliance with the *National Standards for Residential Services for Children and Adults with Disabilities*, along with application legislation, i.e. Statutory Instruments S.I.365, 366 and 367. Ability West complies with HIQA standards and its requirements.

## Charities Regulator

Ability West has registered with the Charities Regulator and is listed on the register of charities. The Ability West reports annually on compliance with the code. The Board of Directors has also signed up to the Guidelines for Charitable Organisations on Fundraising from the Public (Charities Regulator, 2017).

## Pensions

All permanent staff in the organisation join the National Federation of Voluntary Bodies Defined Contributions Pension Scheme. The Trustees of the pension scheme are drawn from member organisations of the Federation.

A Defined Benefit Pension Scheme exists but this scheme was closed to staff in 1994. There are three Trustees of this scheme, comprising of two individuals representing Ability West (the employer) and one individual representing the Members.

## Staff Salaries

Staff Salaries are in compliance with the Consolidated Pay Scales Department of Health.

## Insurance

Ability West carries a comprehensive suite of Insurance cover which includes Directors and Officers Liability Cover.

## SECTION 2 BOARD OF DIRECTORS

### Composition of Board

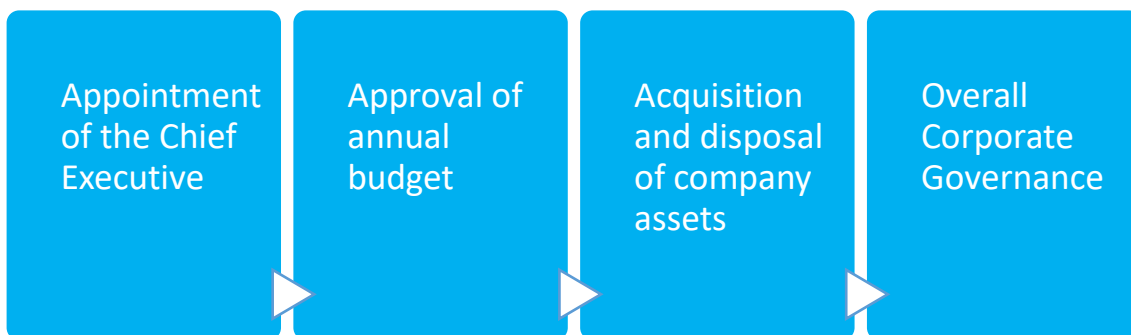
The Board of Directors comprises elected and co-opted Board Members. The number of Directors shall be no fewer than four and no more than fourteen. Board Members are recruited for their skills, expertise and experience. Two Board Members, who must be family members\* are nominated through the Family Forum (there are two fora annually with the nominations being put forward at the first forum of the year, and in advance of the AGM).

*A family member\* means the parent, grandparent, legal guardian, sibling, spouse of a sibling, child of a sibling, aunt, uncle, spouse of an aunt or uncle or child of an aunt or uncle of a service user.*

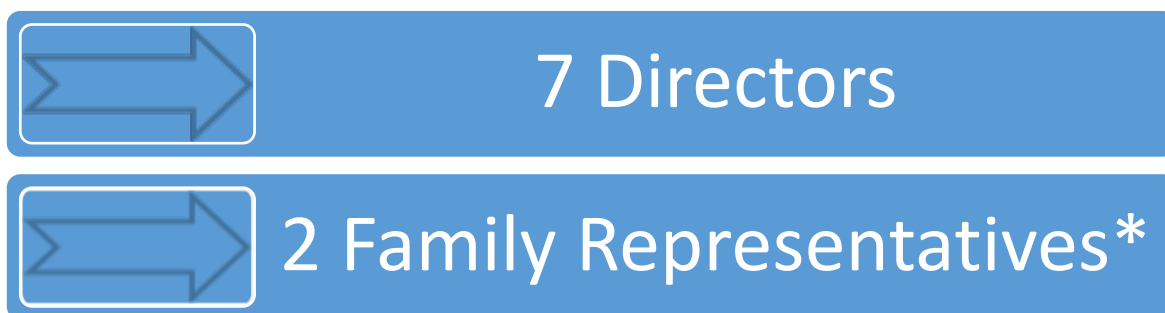
The Directors are non-executive and offer their services on a voluntary basis.

Within the Board’s broad governance role are a number of specific roles that are exercised, including: approval of the Strategic Plan and reporting to Members at the Annual General Meeting.

The Board has a number of reserved functions:



The current composition of the Board (April 2023) is as follows:



The Chief Executive *attends* the Board of Director meetings and is not a member of the Board of Directors.

\*Family representatives are elected at the first family of the year and co-opted at the next AGM.



## Appointment of Officers

The Chairperson, Vice-Chairperson, Company Secretary and Honorary Treasurer are elected annually at the AGM.

## Roles and Responsibilities of the Board of Directors

1. The Directors control and direct the company in the interests of its members. They have particular responsibilities under the law and the Company's Constitution.
2. The Directors are Trustees or minders of the Company's Assets.
3. They govern or take overall responsibility for directing the affairs and policies of the organisation.
4. They keep an eye on the "big picture"/Strategic Plan and are not drawn into the level of detail that is associated with the management or operations of the organisation.
5. The Common Law Duties of a Director, i.e., those created by court require:
  - a. A Director to act in good faith and in the Company's interest. Not to use their power for personal gain or for the benefit of others at the Company's expense.
  - b. Directors must not profit from being a Director and must not accept gifts or hospitality that might reasonably be thought to influence them in carrying out their role as a Director.
  - c. Directors must act with due care, skill and diligence.
6. Statutory Duties of Directors – i.e., those created by legislation.
  - a. The Directors must give the company their name, address, date of birth, nationality and occupation.
  - b. They must also give details of any Shares or Debts in the Company.
  - c. They must give details of any other Companies of which they are a Director.
  - d. They should keep the Company up to date of any changes to this information.
  - e. They should also inform the Company if they have any interest in a Company contract or proposed contract.
  - f. They must comply with the organisation's Constitution.
  - g. Directors must ensure that the Company keeps the proper book of accounts.
  - h. They must prepare annual Financial Statements that give a true and fair view of the Company affairs.
  - i. These Financial Statements must be audited.
  - j. The Directors have the power to appoint or re-appoint the Companies Auditors.

*Through the Company Secretary, they must:*

- k.** Write an Annual Report.
- l.** Call an AGM or an EGM if necessary.
- m.** Organise Board and Board Committee meetings and keep relevant minutes.
- n.** Keep a Register of Members, Directors and Secretaries and Register of Interests of Directors and Secretaries.
- o.** Return documents and information to the Companies Registration Office.
- p.** Return documents and information to the Charities Regulatory Authority.

### **Induction of Trustees (Board Members)**

New Trustees receive induction which includes:

- (a) An overview of the organisation, its services locations and management structures.
- (b) Details of the current Strategic Plan of the organisation.
- (c) An overview of their Role and Responsibilities.
- (d) Information on confidentiality and conflict of interest/loyalty.
- (e) Specific other training as required.
- (f) All members receive a pack containing all of the above information.

### **Reserved Powers**

The Board reserves to itself certain powers:

- (a) The recruitment and employment of the Chief Executive.
- (b) The annual appraisal of the Chief Executive through the Chairperson.
- (c) Review of the Board, this is completed at the end of each meeting and is an agenda item.
- (d) The approval of annual audited accounts and their recommendation to the Members of the Company.
- (e) The approval of the Strategic Plan and associated budget which shall be prepared and presented to the Board by the Chief Executive and Director of Finance.
- (f) The approval of borrowing or pledging arrangements proposed to be entered into with financial institutions.
- (g) The setting and approval of bank mandates.

- (h) The agreement of contractual relationships with third party organisations or groups.
- (i) Corporate Risk Register including risks associated with Health and Safety and Complaints/Allegations.
- (j) Service Arrangement with the HSE.
- (k) The approval of all of the organisation's Policies.

### Delegated Powers – Role of the Chief Executive

The Board have chosen to delegate to the Chief Executive certain powers consistent with the day-to-day management of the company.

Delegated Powers are:

- (a) The recruitment, dismissal and matters of staff management.
- (b) The procurement, maintenance and disposal of fixed and moveable assets within the framework of the operational plan.
- (c) Presentation of the Strategic Plan for the approval of the Board.
- (d) Presentation of the annual budget for approval of the Board.
- (e) Presentation of the risks of the organisation and management plan to the Board for approval.
- (f) Presentation of all new policies and amendment to policies to the Board for ratification.
- (g) Report on the day to day management of the company at each meeting.
- (h) Approve fundraising in the name of the company.
- (i) Registered Provider Representative (HIQA).
- (j) Signing the Service Arrangement with the HSE on the Board's behalf.

### Role of Chairperson

The Chairperson is appointed by the Board and the duties include:

- Leading the board
- Ensuring smooth running of board meetings
- Promoting good governance among fellow charity trustees
- Providing supervision and support to the Chief Executive
- Acting as a figurehead or spokesperson where required

*Refer to: The role of the Chairperson of a charity [Charities Regulator]*

## Role of Secretary

The Company Secretary is appointed by the Board and is responsible, together with all the Trustees, for the efficient administration of the company, particularly with regard to ensuring compliance with statutory and regulatory requirements. The role of secretary inter alia includes:

- (a) Maintaining the register of members, the register of trustees/directors and secretaries, the register of trustees' and secretary's interests.
- (b) Helping to ensure that charity trustees file all relevant statutory returns and information with the Charities Regulator and the Companies Registration Office.
- (c) It is the duty of each trustee and the Company Secretary to ensure that the Company complies with the requirements of the Companies and Charities Acts and with the charity's internal governance rules.
- (d) The role also includes issuing notices of meetings of the Board and members meetings, the keeping of minutes, and the maintenance of statutory books.

*Refer to: The role of the Secretary of a charity [Charities Regulator]*

## Disqualification of Directors

### RESIGNATION, CESSATION AND EXPULSION OF MEMBERSHIP

*(In line with the Constitution – Articles of Association, Articles 30 and 36)*

- (a) A member may by notice in writing to the Secretary of the Company resign his membership of the Company.
- (b) Membership of the Company shall automatically cease on any member's death.
- (c) If any member shall refuse or wilfully neglect to comply with any of these Articles of Association or shall have been guilty of such conduct as in the opinion of the Board shall have rendered him unfit to remain a member of the Company or shall be injurious to the Company or if the Board shall for any other good reason require that a member shall be expelled such member may by a Resolution of the Board be expelled from membership provided that he shall have been given notice of the intended resolution for his expulsion and shall have been afforded an opportunity of giving orally or in writing to the Board any explanation or defence as he may think fit.

## SECTION 3 – BOARD PROCEDURES

### Board Meetings

Trustees should:

- Aim to attend all meetings, contribute appropriately and effectively, and avoid dominating the contributions of others
- Always respect the authority of the Chairperson of the Board, and the Chairperson of any meeting
- Bring a fair and open-minded view to all discussions of the Board, maintain a respectful balance between speaking and listening, treating different views with respect, and ensuring that all decisions are made in the best interest of the organisation
- Bring a genuinely independent perspective to enhance decision-making, given that the charity Trustees share responsibility for Board decisions
- Ensure contributions are informed and impartial when presenting views on topics in meetings while listening to and respecting the input and experience of other Trustees

### Frequency of meetings

- (a) The Board will hold ten (10) formal meetings annually.
- (b) The schedule of meetings for the upcoming year is approved by the Board at the end of each calendar year.
- (c) The quorum for a meeting is half plus one of the Directors (Article 47)
- (d) All members have equal voting rights with the Chairperson having a second or casting vote.

### Board Sub Committees



### Finance Committee

The Finance Committee monitors the financial affairs of the organisation on behalf of the Board of Directors. The committee consists of Board Members, one of whom is the Honorary Treasurer and two members of the Senior Management team, i.e. the Chief Executive and Director of Finance. The Finance Committee meets regularly during the course of the year.

## **Audit and Risk Committee**

The Audit and Risk Committee's main functions are to review the effectiveness of the company's system of internal control and any proposed amendments; to monitor the performance and quality of the external auditor's work and the auditor's independence from the company; to advise the Board on the appointment of the external auditor, the audit fee, and issues relating to the resignation or dismissal of the auditor or on any matters arising of concern to the auditor.

## **Quality & Safety Board Committee**

This committee assures the Board of Directors that there are appropriate and effective systems in place that cover all aspects of clinical, quality and safety. Meetings are held biannually and involve all Board Members, the Chief Executive, Directors of Finance, Human Resources and Client Services, and the Quality & Compliance Manager.

## **Nominations Committee**

This committee is tasked with the core responsibilities of managing the appointment process for new Directors and succession planning for the Board. The membership of the Board of Directors should reflect diversity in terms of gender, skills and areas of competency. The size of the Board of Directors should be large enough to take account of the full range of members' duties and responsibilities but small enough to enable the Board of Directors to perform effectively.

## **Visiting Committee**

This committee comprises of all Board Members. Visits to Residential and Respite Services are undertaken annually by Board Members and visits to Day Services are undertaken every two years. A written report is provided to the Chief Executive's office after each visit and the Chief Executive will provide feedback, as required, at the following Board meeting.

## **Relationships with the Board and Management**

The conduit for relationships between the Board members and the organisation and staff of the Company is via the Chief Executive.

Board members can expect free and reasonable access to the Chief Executive and are free to raise any matters of concern or information with him/her.

It is good practice for members to consult with the Chief Executive before seeking special advice or information from the Company's advisors or elsewhere.

The Board of Directors' meetings with the Chief Executive and Senior Management Team are held twice yearly and also twice yearly in relation to Quality and Safety.

## **External Relationships**

From time to time, Board members may be invited to represent the parents' desire or need to the Company. Clearly, members would wish to respond speedily to enquiries and requests for information.

Such enquiries should be dealt with sensitively, and referred immediately to the Chief Executive for an adequate reply to be given on behalf of the organisation.

## Conflict of Interest/Conflict of Loyalty

Directors have a legal responsibility to take decisions solely in terms of the interest of the Company.

**Conflict of Interest:** A conflict of interest arises when a Trustee's private interest(s) compete with their professional duties. A conflict of interest may arise, for example, if a Trustee influences the awarding of a contract to a company owned by a family member. It is legal to award a contract to the best qualified company, even if that company is owned by a relative, but that Trustee could not be part of the decision-making process. This would be a conflict of interest because their own family would benefit financially from this position. A conflict of interest can also happen in relation to connections the Trustee might have that are unrelated to family connections, but to do with others with whom he/she may have a business connection.

**Conflict of Loyalty:** A conflict of loyalty is where a Trustee may be involved in Board decisions and may be (or perceived to be) potentially influenced by considerations other than the best interests of the organisation. This might happen when the Trustee has joined the Board as a nominee of a particular group e.g. members in a particular region, a funding body or beneficiaries. This situation may possibly cause the Trustee to think that they should act in the interests of the grouping that nominated them. However, in all cases, regardless of how they joined the Board of Directors, all Trustees should act in the interests solely of Ability West rather than acting in the interests of the grouping that nominated them. Conflicts of loyalty may be sufficiently serious to amount to conflicts of interest.

## Fundraising

All funds donated or raised in aid of Ability West, unless otherwise specified by the donor, is used towards our capital programme. This programme includes new builds, extensions and refurbishments of existing buildings, the purchase of specialised equipment and buses/minibuses. Fundraised monies are vital so that we can continue to provide high quality services and supports to children and adults with an intellectual disability and comorbidity. No funds raised are utilised for salary purposes.

Ability West is fully committed to adhering to the Guidelines for Charitable Organisations Fundraising from the Public (*Charities Regulator, September 2017*).

Ability West also complies with the Charities Institutes Ireland Triple Lock Standards, ensuring transparent reporting, good fundraising and governance.

Financial accountability goes to the heart of transparency. Ability West must produce an Annual Report and a statement of Annual Accounts, this will be made public each year. This Annual Report and Statement of Annual Accounts provides a summary overview and information about the previous year in relation to income and expenditure items.

## Statement of Principal Fiduciary Duties of a Director

The principal fiduciary responsibilities of a director are set out in Part 5 of the Companies Act 2014.

There is a requirement on a director to act in good faith, to act honestly and responsibly and to act according to the company's constitution. There is a requirement for the directors to have regard to the interests of the company's employees as well as to the interest of the members. Under section 231 of the Act, there is a duty on directors to disclose any interest they have in contracts made by the company. The duties set out in the Act are not exhaustive and will still require directors to consider obtaining legal advice concerning compliance with their duties.

Section 228 states:

- 1) A director of a company shall -
  - (a) act in good faith in what the director considers to be the interests of the company;
  - (b) act honestly and responsibly in relation to the conduct of the affairs of the company;
  - (c) act in accordance with the company's constitution and exercise his or her powers only for the purposes allowed by law;
  - (d) not use the company's property, information or opportunities for his or her own or anyone else's benefit unless—
    - (i) this is expressly permitted by the company's constitution; or
    - (ii) the use has been approved by a resolution of the company in general meeting;
  - (e) not agree to restrict the director's power to exercise an independent judgment unless—
    - (i) this is expressly permitted by the company's constitution; or
    - (ii) the case concerned falls within subsection (2);
  - (f) avoid any conflict between the director's duties to the company and the director's other (including personal) interests unless the director is released from his or her duty to the company in relation to the matter concerned, whether in accordance with provisions of the company's constitution in that behalf or by a resolution of it in general meeting;
  - (g) exercise the care, skill and diligence which would be exercised in the same circumstances by a reasonable person having both—
    - (i) the knowledge and experience that may reasonably be expected of a person in the same position as the director; and
    - (ii) the knowledge and experience which the director has; and
  - (h) in addition to the general duty under section 224 (duty to have regard to the interests of its employees in general), have regard to the interests of its members.
- (2) If a director of a company considers in good faith that it is in the interests of the company for a transaction or engagement to be entered into and carried into effect, a director may restrict the director's power to exercise an independent judgment in the future by agreeing to act in a particular way to achieve this.



- (3) Without prejudice to the director's duty under subsection (1)(a) to act in good faith in what the director considers to be the interests of the company, a director of a company may have regard to the interests of a particular member of the company in the following circumstances.
- (4) Those circumstances are where the director has been appointed or nominated for appointment by that member, being a member who has an entitlement to so appoint or nominate under the company's constitution or a shareholders' agreement.

*Ref. Companies Act 2014*

## SIGN OFF BY TRUSTEES

I confirm that I have read and agree to abide by Ability West Code of Conduct for Trustees, including the Statement of Principle Fiduciary Duties as a Director, as set out in the Companies Act 2014

Signature of Trustee

Date

Redmond Kelly  
Parvii Lawless

24/04/2023  
24-04-2023

Servat O'Neill

24/04/2023

J. K.

24/04/2023

Breda Dole

24/4/2023

[Signature]

24/04/2023

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