



# Health and Social Care Act 2012

## 2012 CHAPTER 7

### PART 4

#### NHS FOUNDATION TRUSTS & NHS TRUSTS

##### *Governance and management*

#### 152 Directors

(1) After paragraph 18 of Schedule 7 to the National Health Service Act 2006 insert—

“18A The general duty of the board of directors, and of each director individually, is to act with a view to promoting the success of the corporation so as to maximise the benefits for the members of the corporation as a whole and for the public.”

(2) After paragraph 18A of that Schedule insert—

“18B (1) The duties that a director of a public benefit corporation has by virtue of being a director include in particular—

- (a) a duty to avoid a situation in which the director has (or can have) a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the corporation;
- (b) a duty not to accept a benefit from a third party by reason of being a director or doing (or not doing) anything in that capacity.

(2) The duty referred to in sub-paragraph (1)(a) is not infringed if—

- (a) the situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or
- (b) the matter has been authorised in accordance with the constitution.

(3) The duty referred to in sub-paragraph (1)(b) is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.

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*Status: This is the original version (as it was originally enacted).*

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- (4) In sub-paragraph (1)(b), “third party” means a person other than—
- (a) the corporation, or
  - (b) a person acting on its behalf.”

- (3) After paragraph 18B of that Schedule insert—

“18C (1) If a director of a public benefit corporation has in any way a direct or indirect interest in a proposed transaction or arrangement with the corporation, the director must declare the nature and extent of that interest to the other directors.

(2) If a declaration under this paragraph proves to be, or becomes, inaccurate or incomplete, a further declaration must be made.

(3) Any declaration required by this paragraph must be made before the corporation enters into the transaction or arrangement.

(4) This paragraph does not require a declaration of an interest of which the director is not aware or where the director is not aware of the transaction or arrangement in question.

(5) A director need not declare an interest—

- (a) if it cannot reasonably be regarded as likely to give rise to a conflict of interest;
- (b) if, or to the extent that, the directors are already aware of it;
- (c) if, or to the extent that, it concerns terms of the director’s appointment that have been or are to be considered—
  - (i) by a meeting of the board of directors, or
  - (ii) by a committee of the directors appointed for the purpose under the constitution.”

- (4) After paragraph 18C of that Schedule insert—

“18D (1) Before holding a meeting, the board of directors must send a copy of the agenda of the meeting to the council of governors.

(2) As soon as practicable after holding a meeting, the board of directors must send a copy of the minutes of the meeting to the council of governors.”

- (5) After paragraph 18D of that Schedule insert—

“18E (1) The constitution must provide for meetings of the board of directors to be open to members of the public.

(2) But the constitution may provide for members of the public to be excluded from a meeting for special reasons.”