

MANUAL:	Governance
POLICY AREA:	General Governance & Board Policies
POLICY NAME:	Trustee Code of Conduct
AUDIENCE:	Board
EFFECTIVE DATE:	June 2020
REVIEW PERIOD:	Three yearly
NEXT REVIEW DATE:	2022



TRUSTEE CODE OF CONDUCT

PURPOSE

To set the framework within which the Trustees conduct themselves when governing the affairs of the Trust.

DEFINITIONS

- (a) **Act** means Trusts Act 2019.
- (b) **Trust Deed** means the Otago Community Trust Deed of Trust dated 28 August 2000 as varied by Deeds of Variation of Trust Deed dated 10 August 2008, 31 July 2015 and July 2020.

POLICY

1. Principals of Good Conduct

a. To be Familiar with the Principal Legislation, the Trust Deed & Trust Policies

The standards of conduct recognise that the trustees have duties and responsibilities under legislation and the Trust Deed. The Trustees have a responsibility principally to the beneficiaries of the Trust which is (more or less) the community of Otago.

The Trusts Act 1956 has been replaced by the Trusts 2019 Act, which sets out the Trustees' responsibilities to the beneficiaries and in relation to the investment of the Trust Fund.

The Trusts Act 2019 will come into effect on 30 January 2021. Much of the Act updates or restates law that exists already, either in statute or in case law. There are, however, a number of changes about which trustees and settlors should be aware.

The Act contains 'mandatory' and 'default' duties for trustees.

b. Mandatory Duties

Mandatory duties are obligations imposed on trustees that cannot be modified or excluded by the settlor in the Trust Deed.

In summary, these duties are:

- Know the terms of the trust;
- Act in accordance with the terms of the trust;
- Act honestly and in good faith;
- Act for the benefit of beneficiaries; and
- Exercise power for proper purpose.

c. Default Duties

Default duties are obligations that are imposed on trustees unless modified or excluded by the settlor in the Trust Deed.

The default duties that apply to the Trust are:

- General duty of care;
- Invest prudently;
- Not exercise power for own benefit;
- Consider exercise of power;
- Not to bind or commit trustees to future exercise of discretion;
- Declare and manage conflict of interest;
- Impartiality; and
- Acting unanimously.

Please note that the default duties not to profit from the Trust and to act for no reward have been modified by clause 24 of the Trust Deed.

d. Trust Documentation

Trustees will also have new duties relating to trust documentation. This should bring a new level of rigour to trust record-keeping, which can sometimes be lacking.

Each trustee will be obliged to keep copies of the trust deed and any variations. They will have to either keep their own copies of 'core trust documents' (which are defined in the Act) or to ensure at least one of the other trustees holds all of the core trust documents and will make them available on request. If a trustee is not confident in their fellow trustees' ability with paperwork, they will need to keep these documents personally.

e. Beneficiary Access to Basic Trust Information

The Act also creates a presumption that 'basic trust information' must be made available to beneficiaries. That includes information that a person is a beneficiary of the Trust, the name and contact details of the trustees, details of trustee changes as they occur and the beneficiary's right to request further trust information.

There is also a presumption that if a beneficiary requests further trust information, including a copy of the trust deed, the trustee must provide that information within a reasonable period of time. The trustee may ask the beneficiary to pay the reasonable costs of providing that information.

Trustees do have the ability to decide that either, or both presumptions, do not apply. A list of factors is set out in the legislation and the trustees must consider these factors when deciding whether these apply in the circumstances.

Those factors include, among other things:

- The nature and interests of the beneficiary (including whether the beneficiary is likely to receive trust property in the future);
- The nature and interests of other beneficiaries;
- The intentions of the settlor when the trust was established;

- The age and circumstances of the beneficiary in question and the other beneficiaries of the trust;
- The effect of giving the beneficiary the information;
- The nature and context of any request for further information; and
- Any other factor a trustee reasonably considers is relevant. Trustees will have to carefully consider any decision not to disclose information.

The Community Trusts Act 1999 and the Trust Deed directs the Trustees, mostly in very general terms, in relation to the Trust's operating activities.

In keeping with developing best practice, there are also voluntary standards of governance which the Trustees develop from time to time for purposes of best practice.

The Trust Deed and subsequent variations are available to the public on the Trust's website.

f. To Serve the Public Interest

The Trustees have a duty to serve the overall interests of the community which are the residents of the area as specified in the Trust Deed and not just that the part of the area where the Trustee resides. Collectively, the Trustees are responsible to the community and while the Trust decisions are not made in public, the process of decision making should be managed in a way that would maintain public confidence were it subject to public scrutiny.

g. To Act Honestly and with Integrity

The Trustees should act honestly and openly, with integrity and in good faith. They should avoid placing themselves in situations where these ideals might be questioned.

h. To Use Personal Judgement

The Trustees may have regard to the views of others but should reach conclusions in matters before them independently, based upon their own judgement.

i. To be Diligent and Objective

The Trustees should make decisions feeling properly informed and without bias after thorough consideration of the merits of the situation or proposal.

j. To Disclose all Conflicts of Interest

The Trustees must disclose to the Board any actual, potential or perceived conflicts of interest which may exist or might reasonably be thought to exist between the interests of the Trust and the interests of the Trustee and persons associated with the Trustee. All such declared Conflicts of Interest are to be managed in terms of the Board's conflicts of interest policy.

k. To be Committed

Trustees are expected to attend the Trust meetings punctually and devote sufficient time to preparing for those meetings so as to be informed and able to contribute to decision making. Trustees attending conferences and workshops on behalf of the Trust should take a full and active part in proceedings and provide feedback to the Board on the outcomes. It is expected that Trustees are available on most occasions to attend the regional visits. The Trustees are also encouraged to be available from time to time to represent the Trust at community events and activities. The Trustees should respond positively to requests from the public for assistance or guidance in relation to the Trust's activities and if unsure on any matter encourage them to communicate with the Trust's staff.

l. To Understand the Difference Between Governance & Management

The Trustees should understand and respect the distinction between the respective roles and responsibilities of the Board and the management

m. To Respect Confidentiality and Privacy

The Trustees must not use or disclose confidential information for any other purpose than the purpose for which the information was provided to Trustees. Confidential information includes all information other than that approved for wider circulation and the personal views expressed around the Board table. Trustees must ensure that all information (electronic or hard copy) in their possession or control is kept safe and accessed, used, stored or disposed of appropriately. Trustees will always observe an individual's right to privacy when dealing with personal information.

n. To Show Collective Responsibility

Once Board decisions are reached, the Trustees are expected to abide by the principle of collective board responsibility and accountability. When speaking externally, the Trustees should reflect and support the implementation of the agreed position of the Board, notwithstanding that their personal views may differ.

o. To Observe Financial Probity

Trustees must claim only for fair and legitimate expenses in relation to costs incurred on Trust business.

Trustees should not solicit, demand, or request any gift, reward or benefit by virtue of their position. The Chairperson and/or Chief Executive should be notified if any gifts accepted by a Trustee in his or her capacity as a Trustee exceed \$150 in value. Any such disclosures shall be reported by the Chief Executive at the subsequent Board meeting.

2. Relationships

a. Fellow Trustees

In order to preserve Board effectiveness, the Trustees should show respect towards their fellow Trustees by acting professionally, positively and constructively. The views of

fellow Trustees should be encouraged and understood. The Trustees should show respect to the Chairperson and adhere to meeting procedures.

b. Staff

The Trustees should act in accordance with the Trust's responsibility to be a good employer. All employees should be treated with courtesy and respect. The Trustees should recognise the authority of the Chief Executive, on behalf of the Trust, to deal with employment matters.

c. Applicants

The Trustees should refrain from raising expectations prior to board decisions on applications.

d. The Public

The Trustees are expected to abide by the principles of collective responsibility when engaging in communications with members of the public.

The Trustees are expected to be available from time to time to represent the Trust at community events or functions to which the Trust has been invited.

The Trustees should respond to enquiries for information or guidance positively and impartially. The staff have knowledge of grants and investment policies and practice, detailed enquiries should be directed to them.

e. The Media

All relations with the media must be dealt with in terms of the media policy. Media relations are handled by the Chairperson or the Chief Executive.

3. Breaches of the Code of Conduct

If a Trustee considers that the conduct of another Trustee is in breach of this Code he/she should raise it with the Chairperson or the Deputy Chairperson. If appropriate the matter should be raised with the Trustee concerned by the Chairperson or Deputy Chairperson.

In the event the issue persists, it should be raised for discussion at a meeting of the Board with adequate notice being provided to the trustee affected. The affected Trustee should have the opportunity to respond after which following the departure of the affected Trustee, the Board shall determine the matter.

Outcomes of this process might include:

- Cessation of the matter causing concern;
- A facilitated resolution;
- Retraction;
- Censure; or
- Such other actions as the Trustees are able to lawfully undertake.

RELATED DOCUMENTS

- Trust Deed
- Trusts Act 2019
- Community Trusts Act 1999
- Trustee Conflict of Interest policy