



HUST Nominated Director Policy

This policy is drafted in accordance with the existing rules of Hereford United Supporters Trust (HUST) and the requirements of the Articles of Association of Hereford Football Club (HFC). The purpose of the policy is to ensure that:

1. Candidates nominated by HUST to the club board possess the skills and experience required to operate effectively;
2. The interests of both HFC and HUST are adequately served by HUST's nominated club directors;
3. Provide clarity to the appointment process for HUST members, prospective candidates and HFC ensuring that HUST nominations to the club board are conducted in an open and transparent manner.

2. Eligibility

2.1 To be eligible for nomination for HUST Nominated Director (HND) the candidate must:

4. Be a current Member of HUST and have been a member of the Society for at least 1 (one) year
5. Agree to carry out the responsibilities and activities outlined in the HND Remit.
6. Supply a statement (of between 300 and 600 words) as to why they believe they should be a HND.
7. Abide by any rules for the conduct of elections made by the Board.
8. Meet the FA owners and directors test criteria.

2.2 No person can be a HUST Nominated Director:

1. who is removed from the HUST Board in accordance with the disciplinary process set out in the HUST Board Membership and Conduct Policy.
2. in relation to whom a registered medical practitioner who is treating them gives a written opinion to the Society stating that they have become physically or mentally incapable of acting as a HND and may remain so for more than three months.
3. in relation to whom by reason of their mental health, a court makes an order which wholly or partially prevents them from personally exercising any powers or rights which they would otherwise have.
4. who is subject to a bankruptcy order or have in place a composition with their creditors.
5. who is subject to a disqualification order made under the Company Directors Disqualification Act 1986.
6. who is the Chair of the HUST Board.

3. **Nomination**

- 3.1.** In order to be considered as a HND candidates must be nominated by two HUST Members and complete a nomination form and candidate statement. The nominations and documents should be provided to the HUST Secretary by the published deadline.
- 3.2.** Responsibility for selecting the HND rests with the Society Board who will discuss the nominations at a board meeting. A decision as to appointments will be made thereafter.

4. **Terms Of Office**

- 4.1.** From election, the HND will serve for a period of 3 years.

4.2. The maximum continuous period the HND can serve is 12 years.

5. Legal Duties and Obligations

5.1. The HNDs have the same legal responsibilities to the company (Hereford Football Club (HFC)) and its shareholders as all other HFC Directors. All Directors must act at all times in the best interest of the company (HFC) as a whole.

5.2. Further information on how the role of HND can operate can be found in the Supporters Direct document, 'Being a Director – What you Need to Know' attached at Appendix 1 to this document.

6. HND Obligations to Society Board

6.1. Acknowledging and fully accepting the legal duties and implications as above, the Society Board expects each HND to carry out the duties and responsibilities as laid out in the HND Remit.

6.2. Failure to do this will, in the first instance, be brought to the attention of the HND by the Chairman, Secretary and two other Society Board members. Ideally this group will work with the HND to improve the situation.

6.3. Ongoing failure to comply by the HND will lead to a vote of no confidence in the HND.

6.4. A vote of no confidence will be put to HUST members together with a report on the non compliance leading to the vote of no confidence.

6.5. The Society Board may, in the event of the HND being unable to continue in office, appoint a person, subject to the provisions contained with the HFC Articles of Association, to undertake the duties of HND, for a period, until a new appointment can be made. This period shall normally not extend beyond the next Annual General Meeting of the Trust Board.

7. HND Remit and Requirements

7.1. General requirements:

- Integrity and trustworthiness
- An ability to communicate effectively
- Diplomacy
- Confidentiality and discretion when dealing with commercially sensitive matters or issues of a confidential nature.

7.2. HFC requirements:

- Working with HFC to formulate its direction and strategy.
- Consistent attendance and participation at HFC Board meetings, AGM and EGMs.
- Attending HFC Fans' Forums and being available for questions.
- Being an Ambassador for the Club, hosting visiting officials, sponsors and others as required.

7.3. HUST requirements:

- An understanding of and commitment to the aims and ethos of the Society.
- Represent the Society Board's policies and positions on all matters relating to Hereford FC.
- Subject to issues of confidential nature report back fully to the Society Board on the business of HFC Board meetings and, in particular, ensure that the Society Board are made aware of any critical changes to strategy, policy, procedures or agreements by the HFC Board.
- Ensure that HUST members views are represented at HFC Board meetings and that HFC Board members give full weight to those views.

- Promoting best practice found in other clubs with supporter involvement at Board level.
- Consistent attendance and participation at Society Board meetings and general meetings in order to give reports and updates on HFC Board meetings and matters that require discussion and/or input from the Society.
- Pro-actively seeking the views and concerns of supporters both from and outside of the Society, communicating any significant issues raised to the relevant parts of the club and attempting to secure the best outcome for the supporters, bearing in mind the director's ultimate legal responsibilities.
- Being available for supporters to contact via various media (email, post etc) and providing a prompt acknowledgement and response to communications.
- Maintaining regular contact with all supporters' groups.

8. Appointment Process

8.1. Responsibility for the selection of HNDs lies with the Society Board;

8.2. The society board will review and discuss all eligible applications at a Board meeting and short list applicants for interview;

8.3. The Society Board will establish an Appointments Sub-Committee, of at least 3 (three) board members. The Sub-Committee will be delegated responsibility for the appointments process by the Board. The Sub-Committee will:

- Interview all short listed candidates to consider their suitability for the role.
- Have full responsibility to choose the successful candidates on behalf of the board.
- Oversee the Appointment Objection Process

- 8.4.** In the spirit of co-operation that exists between HUST and HFC, the Appointment Sub-Committee will invite HFC to nominate an individual to participate in interviews for HNDs. For the avoidance of doubt, the HFC nominated individual will be entitled to attend and participate in interviews but will not take part in the selection process as this role is undertaken by the Appointments Sub-Committee;
- 8.5.** The Society Board is committed to engaging its Members on all significant issues, including the appointment of HNDs. Once the Appointments Sub-Committee have selected the successful candidate(s) they will make the nomination known to the Secretary of the Society who will initiate the Appointment Objection Process with the Society Membership (as set out in this policy);
- 8.6.** Upon completion of the Appointments Objection Process applicants selected as HNDs by the Appointments Sub-Committee will be presented to the Society Board for formal ratification as nominated HNDs.
- 8.7.** Once HNDs are ratified, the Chair of HUST will inform the Chair and Secretary of HFC in writing of the HND nomination(s) and proposed terms of office.
- 8.8.** In accordance with part 3 of the HFC Articles of Association the HFC Board will consider the nominated HND appointment for approval.

9. Appointment Objection Process

- 9.1.** Following identification of successful applicants for HND positions by the Appointments Sub-Committee, the Sub-Committee will oversee the Appointment Objection Process.
- 9.2.** The Appointment Objection Process enables HUST Members to put forward any well founded objections to HND selections proposed by the Appointments Sub-Committee
- 9.3.** A well founded objection can be made by any HUST Member for a period of 7 calendar days after the announcement by the Society Board of HND selections;

- 9.4.** A well founded objection must be material to the role and supported with sufficient evidence as to why the selection is objected to;
- 9.5.** A well founded objection should be sent directly to the Chair of the Appointments Sub-Committee;
- 9.6.** Should any well founded objections be received, the Appointments Sub-Committee will liaise with the candidate(s) concerned and ask for a response to be provided. The Appointments Sub-Committee will prepare a document for presentation to the full Society Board on the matter.
- 9.7.** The Society Board will consider any well founded objections received, including the candidate's response at its next available board meeting. Board members will consider the range of evidence provided to them and decide whether or not to uphold the well founded objection.
- 9.8.** Should a well founded objection be upheld by the Society Board the person's proposed appointment as a HND will be withdrawn. If the objection is not upheld the appointment process will continue as if the objection had not been received.

10. Removal of a HND

- 10.1.** Once the appointment of a HND has been confirmed by the HFC Board they will be appointed for a period of up to three years. The term of office of a HND ceases at the earliest of:
- the day after the normal date of their retirement as a HND;
 - if s/he resigns from office;
 - the date the Society Board resolves that s/he be removed from office for not completing the role and requirements set out in this document. The reasons to be fully minuted by the Society Board;
 - the date Society Members pass a notice of no confidence in the HND concerned at a general meeting of the society;
 - if a majority of Ordinary and A Ordinary Shareholders at a HFC AGM/EGM reject the appointment remove the HND from office.

Appendix 1 - Being a Director - What you need to know

What does the law say about directors?

Whether you are a director of a supporter's trust or a football club and whether it is a limited company or an industrial and provident society, you have the same basic duties as a director. You owe the duties to the trust or the company because, so far as the law is concerned, it is a separate legal person. As a director, you are like a trustee or an agent who has responsibility for someone else's (the trust or company's) assets and you have to deal with the assets responsibly. In particular, you have "fiduciary" duties which are the duties of someone in a position of trust and a duty to act competently.

What are fiduciary duties?

Some of this is obvious. You cannot put your hand in the till or divert money or opportunities to yourself. The basic principle is that, because you are dealing with someone else's assets, you have to act in their interests rather than anyone else's (including, in particular your own). Everything you do must be directed towards enabling the trust or company to carry on doing what it is set up to do under its constitution.

Is there a difference here between trusts and football clubs?

Yes. A trust which has been set up using the Supporters Direct model is there to benefit the community. That means that, within limits, you can make decisions looking mainly at their impact on the community rather than on their financial impact. For example, if you were deciding between two contractors both of whom would do an equally good job, you could properly choose a local business with community roots rather than a cheaper multi-national. You could not push this to the point at which your decision put the trust in jeopardy but you do have freedom, and indeed a duty, to look at the interests of the community served by the football club.

On the other hand, in a football club with a standard limited company constitution, the key guiding principle will be financial. In the example where a

choice was being made between two contractors, the starting point would be to choose the cheaper contractor; a decision to choose the local contractor might be made but only if there was some potential financial benefit to the club, perhaps because support for a local business would be popular in the local community and might increase gate receipts. It follows that, in making decisions about the football club, extravagant crowd-pleasing signings or reductions in ticket prices are unlikely to be proper decisions.

What happens if I am a director of a football trust who is appointed by the trust to a board of a football club?

You have to remember that you have two separate roles. When you are acting as a director of the trust you have to act in the interests of the trust and when you are acting as a director of the football club you have to act in the interests of the club. Tricky questions are most likely to arise in your role as a director of the football club. The key point is that even though you have been appointed as a representative of the trust you still have an absolute duty to act in the interests of the football club. By way of example, if the trust decided that the club should reduce its ticket prices in order to increase community involvement you would be entitled to put that point of view forward at a board meeting of the football club and explain the reasons for it. When it came to a vote, however, you would not be entitled to vote to reduce the prices unless you thought that a price reduction would ultimately benefit the football club financially.

Does it make a difference if the trust has shares in the football club?

Not really. If the trust controlled 75% of the shares in the club, the votes could in theory be used to alter the constitution of the club to make it easier to take into account community interests but this is something of a legal minefield which would require specialist advice. If the trust controlled over 50% of the shares, the votes could be used to ratify controversial decisions of the football club board but this is a cumbersome procedure and there are limits to what can be ratified. The safe thing is to work on the basis that, as a director of a

football club, you always have to look to the interests of the club alone whatever shareholding the trust has.

What can I report to the trust about the affairs of the club?

If the trust owns shares in the club it is entitled to information as a shareholder, and if it has a controlling shareholding it can compel the club to provide broadly what it wants. This does not mean, though, that you can pass on everything you hear. Your duties as a director of the club are the same whatever shareholding the trust has and the information you get as a director about the affairs of the club belongs to the club; you would be in breach of your fiduciary duties if you passed it on to anyone outside the club. To complicate things further, there might be situations in which you knew things as a director of the club which you ought to disclose to the trust. In that situation you could be in breach of your duty to the club if you passed the information on and in breach of your duty to the trust if you didn't.

The answer to all this is that you should agree with the company and the trust what information will generally be passed on and how. You will need to deal on an individual basis with potentially sensitive issues; if you can't agree with the trust that you won't pass information on or with the club that you will, the best thing is to absent yourself from the discussion of the issue at the club board.

What about my duty to act competently?

The point at which the courts usually look at whether directors have acted properly is when a company or trust becomes insolvent. The Insolvency Act 1986 sets out the standard which is expected of directors in this context. They have to know or ascertain the things which would be known or ascertained by a reasonably diligent person and reach the conclusions or take the steps which would be reached or taken by a reasonably diligent person. In each case, the reasonably diligent person is taken to have both:

1.the general knowledge, skill and experience that may reasonably be expected of a person carrying out the same functions as are carried out by that director in relation to the company; and

2.the general knowledge, skill and experience that that director has.

The Courts have decided that this is the standard which applies to all company directors and it will follow that the same standard applies to directors of a trust. This means that there is a basic level of competence which is required of anyone who takes on the role of director of a company or a trust. It would not be a defence to a claim of incompetence to say “I am an idiot and have acted as a idiot”. The legal position is that if you are an idiot you should not take on the role of a director.

The standard also requires you to use the knowledge, skill and experience you actually have. That means that, if you are a person with significant financial experience or qualifications, you will be expected to exercise greater competence in dealing with figures than other people.

The standard does, however, allow for a distinction between executive and non-executive directors. Non-executive directors are not involved in the day-to-day running of the company or the trust between meetings and will only be expected to know what they are told as board members. Executive directors have responsibilities on a day-to-day basis and are expected to know what they need to know to carry out those responsibilities. There is also an expectation that they have the appropriate level of competence because they are being paid to do a job.

Does this mean that I should expect to be sued?

No. Although there are likely to be more serious responsibilities for you as a football club director than as a director of a trust, claims against directors are comparatively rare in any case.

Because the company or trust is a separate legal person, claims arising from what it does are claims against it and not against its directors. If there was to be a claim against a director, the company would have to bring the claim, which

means that the majority of the other directors would have to decide whether the claim was in the interests of the company. This in itself explains why claims against directors are rare.

The position of directors of a trust is always likely to be secure provided they are not guilty of fraud or dishonesty. From a practical point of view, most trusts do not engage in high value or risky transactions. From a legal point of view, directors of a trust are volunteers who are elected to represent supporters in a community benefit enterprise. The standard of competence which the courts would require of directors in that situation will not be high so the real test in any situation is likely to be whether the director has used his or her natural level of skill and care.

The position is different in a football club. With the proviso that non-executives only attend board meetings and only know what they are told, they will be expected to use a level of competence appropriate to a business having the kind of turnover which a football club has. Football clubs do enter into relatively high value and high risk transactions and, crucially, questions of insolvency can arise. None of this means that you should refuse to be a director of a football club; rather it means that you should take the role seriously and act prudently.

In general terms, people who act honestly are not held to account by the courts. This is so even if, with the benefit of hindsight, they did their best but got it wrong. People making commercial decisions are given a great deal of latitude and the courts do not substitute their judgement for the judgement of the directors. There is some guidance about insolvency later in this note but, as a general rule, you will have no problems as a director if you read carefully the papers which are sent to you, ask questions where the position is unclear and listen to specialist advice from inside the company or outside where the decision falls outside your own experience or knowledge. The types of cases where directors have been found liable are where they signed insurance forms which were untrue without bothering to read them or signed away assets of the company without even asking what documents they were signing.

Should I be worried about “shadow” directorship?

The Companies Act 1985 says that “director” includes any person occupying the position of director by whatever named called and goes on to define “shadow director” as a person in accordance with whose directions or instructions the directors of the Company are accustomed to act.

This means that if you attend company board meetings and act like a director, you will be treated as a director whether you are registered as a director or not. It also means that you will be treated as a director if you tell the directors what to do and they do as they are told, whether or not you attend board meetings.

The legislation is aimed in particular at people who want to run companies and evade their responsibilities as directors. It is unlikely to affect you as an individual in your relationship with a trust or a football club.

A separate question arises as to whether a trust which controls a football club could be said to be a shadow director of the club. If things work in the way they are meant to work and as they are described in this note, the question should not arise because the directors of the club will take decisions about the club in the interests of the club. The situation to be avoided is the situation in which decisions about the club are made at board meetings of the trust. In those circumstances, the trust might be held to be a shadow director. In practice, this would only be of practical significance if the club were to become insolvent. At this point a liquidator acting in the interests of the creditors would look at the conduct of the company’s affairs with a view to recovering as much money as possible. In the situation I have described, the assets of the trust might become available to creditors of the club. For the reasons given earlier in this note, the liability rests on the trust as a legal person rather than on the directors of the trust (although it might be argued in certain circumstances that the directors had acted in breach of duty or negligently by allowing the shadow directorship to arise).

The answer to all this is to ensure that the affairs of the trust and the club are conducted separately and that the directors of each understand their responsibilities.

How do I do a good job as a director?

The whole point about directors in a trust or a company is that they all bring different skills and experience to the table. There are, though, some basics to have in mind:

- Have in mind at all times what the trust or the company is trying to achieve.
- Make attending board meetings a priority.
- Read all Board papers carefully and seek clarification of anything you do not understand.
- Receive (and ask for it if you do not receive it) basic information about the company or trust's financial position at every meeting. In a trading company, you might expect a report on performance against budget, identifying and explaining any significant variances. Unless a cash flow forecast is prepared which shows a trading company operating within agreed limits, you should obtain confirmation that the company is operating within its banking covenants and expects to do so for the foreseeable future.
- Work with the rest of the board to achieve a strategic planning cycle so that you discuss what needs to be done, agree who will do what by when, review progress and success and begin the cycle again.
- Unless you have an executive role or take on a particular task, do not become involved in the day to day detail of running the trust or company. In the case of a football club, you will be paying executives to do things and they spend each working day in the business. You will not be as well placed as them to make detailed management decisions and they are unlikely to carry out effectively plans with which they do not agree.
- If there is a consistent failure to hit the targets the board has set in its strategic planning process, ask questions. Do this in a constructive way to see whether plans need to be changed because they are impractical. If you decide that there is a problem with day to day management (and

you should be slow to arrive at that conclusion), ask the executives who report to the board to deal with it. If the problems are with the executives who report to the board, have a discussion about it and deal with the issue. If there is an insurmountable problem with an individual, the individual must be replaced; do not fall into the trap of trying to do the person's job for them by making day to day decisions or overruling their decisions.

- If any question arises as to the solvency of a company or trust, seek independent advice. It is unlawful for a company to continue to trade, and incur liabilities, if it is unable to pay its debts as they fall due and directors who permit this situation to arise may become personally liable. It is legitimate for a company to trade through a period of difficulty if there is a reasonable prospect of restoring its fortune. If you find yourself in this situation, you must arrive at a clear understanding of what is proposed, how it will solve the problem and how the company's finances are to be managed in the interim. You should also identify critical features of the plan and agree what is to be done if any of these features comes into doubt.
- If you are not satisfied about the financial health of a trust or company or the steps being taken to put it right or if you feel that you are not being given the information you need to make proper decisions, resign.