



Council Member Handbook

January 2021

Note:

The intention is that the Handbook be in everyday language. There is repetition to allow chapters to be read on their own.

Cross references to clauses in the Articles of Association (A) and to the Trust Rules (R) and other documents are included and where practical hyperlinked to the relevant document. A balance of these has been sought as too many would make the Handbook difficult to read especially in the opening chapters. For the avoidance of doubt, the Articles and Trust Rules take precedence over anything in this Handbook.

The Handbook will be updated periodically as required.

This Version is dated January 2021

1 INTRODUCTION

This handbook is intended to be a practical guide for Council Members. Council Members are advised to also read the Trust's Governance Handbook which contains information about other governance structures, such as the Board, its Committees and the Executive team.

The more technical aspects of this Handbook are based on the Articles and the Trust Rules. If ever there is a discrepancy between this Handbook and the Articles/Rules, then the Articles and Rules take precedence.

2 SUMMARY

The Trustees are company directors under company law and are responsible for everything the Trust does. So, it is the Trustees and not the Council, that are responsible and accountable for the way in which the Trust is run.

The Council's responsibilities are important but limited. Council Members are members of the company under company law. The Council provides vital checks and balances to ensure good governance and, in a small number of circumstances, to limit the powers of the Trustees. For example, Trustees cannot appoint each other, nor can they change the Articles or Trust Rules without Council consent.

Individual Council Members discharge their responsibilities by:

- Attending and contributing to Council meetings
- Voting on certain decisions recommended to them by the Trustees and/or the Appointments Committee, taking into account the supporting material provided to them to support those decisions, and asking questions if they need more information
- Understanding the sources of assurance available to them about how the Trust is run, especially receiving the Trustees' Annual Report and Accounts
- Asking for support and information if ever they have any concerns

3 WHAT IS COUNCIL FOR?

The role of Council is defined in the Articles. Paragraph 29.4 of the Articles says:

Although the Council shall not determine policy or strategy, nor may it fetter the discretion of the Trustees to exercise their powers as set out in Article 7, the Council shall assist the Trustees in the formulation of policy and strategy by:

- debating important points of principle to provide guidance and perspective from different beneficiary and stakeholder groups to the Trustees
- suggesting issues of concern for the Trustees to pursue, and
- acting as a sounding board for the Trustees in relation to the development of proposals and policies

Council Members normally fulfil the requirements of Article 29.4 at Council meetings and there is more about this in Section 5.

The Council also has specific tasks allocated to it in company law. The Scheme of Delegation sets out the tasks for Council as per the box below. Decisions “reserved” for Council can only be undertaken by Council and cannot be delegated to anyone else.

Decisions Reserved to the Council
<p>The Council may advise the Board. Matters reserved to the Council are:</p> <ol style="list-style-type: none">a. Appoint the Boardb. Make a recommendation to a General Meeting to remove a Trusteec. Make amendments to the Articles by special resolution requiring a 75% majority (subject to entrenchment provisions in the Articles)d. Make, repeal or amend Rules as to the governance of the Trust but only on the recommendation of the Trusteese. Require the Trustees to call a General Meetingf. Appoint the Trust’s external auditorsg. To receive and consider the Trustees’ Annual Report and Accounts together with the Auditor’s Reporth. Any other matter specifically requiring members’ approval under the Companies Act 2006.

Section 6 gives you more information about each of these decisions.

4 WHO ARE THE MEMBERS OF COUNCIL?

The Articles state that the Council should provide “a fair reflection of the diversity of the beneficiaries of the Trust and other stakeholder bodies or electorates interested in the Trust’s affairs”. The Articles also set the framework for the composition of Council:

- There can be no more than 50 Members
- The Chairs of the Regional Advisory Boards have an automatic place on Council
- The Appointments Committee can co-opt up to 10% of Council Members
- All other Council Members are either:
 - directly elected to Council; or
 - directly nominated by an organisation

The constituencies for the Members who are either directly elected or directly nominated are set down in the Trust Rules – and as only Council can change the Trust Rules (and/or Articles), then effectively you have the ultimate say about who sits on Council.

However, it is not your formal role to identify the best composition overall for Council, nor is it your role to identify and nominate constituencies for elected/nominated members. That is the role of the Appointments Committee who will ultimately make recommendations to Council asking you to approve what they believe is a balanced composition for Council.

Your job is to receive and read the Appointments Committee report and its recommendations, to make sure you understand what is being proposed and why, and then to vote accordingly, either in person or by proxy.

We would not expect to change the composition of Council significantly on a regular basis. However, we would expect to carry out a periodic review of Council to ensure that its composition and the way it operates remains relevant and up-to-date.

Following recommendations in a review carried out in 2018, we amended the composition of Council.

5 COUNCIL MEETINGS

Council meetings are usually held twice a year, in March and September. The September meeting is the Annual General Meeting (AGM). Meetings typically start mid-morning and last until around 4.30pm. The September meeting is normally in Birmingham. The March meeting will normally be at a different location each year, and again the location is sent to you well in advance.

Council meetings are usually chaired by the Chair of the Board of Trustees (who is not entitled to vote). Agendas for Council meetings include:

- A report from the Appointments Committee (if required)
- Any formal decisions required to be made by Council (see section 6)
- An update on the Trust's performance, usually presented by the Chief Executive
- Presentations/discussions on current issues, and/or on issues previously requested by Council Members

The draft agenda is agreed by the Board of Trustees. When putting the agenda together, Trustees and management always aim for a mix of "tell" and "interactive" sessions. Some "tell" sessions are unavoidable, given that one of the main functions of the meetings are to tell you how the Trust is doing. But the agenda is planned, and the meeting chaired so as to encourage debate, questions and interactions throughout.

The meeting pack is distributed two weeks before the meeting. Whilst we do not expect Council Members to share the agenda or papers with anyone else, they are not confidential and after the meeting they are normally published on the website.

At the meetings, Trustees or management may share more detailed information with you as part of the presentations or ensuing discussions. The content of these discussions should be kept confidential, as should information about the way in which the meeting was conducted. This is because we want to create an open environment where Members and other attendees feel able to ask questions or to share opinions.

Votes, where required, are usually taken by a show of hands – a quorum for the meeting is one-third of all Council Members entitled to vote. Voting by proxy is encouraged if for any reason you cannot attend, and the agenda contains information about how to vote by proxy.

Trustees are entitled to attend and speak at Council meetings, but they are not entitled to vote.

Typically, the Council meeting is preceded by a "site visit", which is a visit to a nearby waterway or a relevant site, building or attraction. This not only lets Council Members see the

work of the Trust at first hand, but also gives you an opportunity to meet – and to build personal and trusting relationships with – each other, the Trustees, the Chief Executive and the management team.

After a Council meeting the reports, presentations, and the minutes are posted on the Trust's website.

6 COUNCIL DECISIONS

Section 3 listed the decisions which are reserved for Council. This section gives you more information about each one.

6.1 Appointing the Board

Council appoints the Board, but it is not Council's role to identify potential candidates – that is the role of the Appointments Committee.

The Appointments Committee is a joint Committee of the Council and of the Board. Three Trustees and 3 Council Members sit on this Committee. It has a specific task to oversee the recruitment of potential candidates and to propose them for appointment as new Trustees at a Council meeting:

- First, the Board identifies any skills or attributes required - examples in the past have been the need to recruit individuals with the right experience to chair the Investment Committee, or the Audit & Risk Committee
- With the support of the Trust's HR team, the Appointments Committee engages recruitment consultants to help find suitable candidates
- The Appointments Committee draws up a shortlist of candidates and organises a series of interviews, including with the Chair of the Board of Trustees
- At the Council meeting, the Chair of the Appointments Committee presents a report telling you what skills and attributes they were looking for in the new Trustees, what the Committee has done to find the best candidates, and why they are proposing them to Council for appointment
- The Trust's Articles require 20% of all Trustees to rotate off the Board each year. Trustees can serve three terms - so the Appointments Committee may also propose the reappointment of one or more Trustees for a second and third term. The Articles say that there is no need to advertise such vacancies – it is sufficient just to propose these Trustees for a further term
- The Appointments Committee will recommend for appointment by Council the exact number of candidates as there are vacancies.

Your role as a Council member is to satisfy yourself that the Appointments Committee has followed a robust and transparent recruitment process for new Trustees, and to make sure you understand why you are being asked to appoint the proposed candidates. If the Appointments Committee report does not give you enough detail, or you do not understand it, then you should ask. It is always helpful if you can ask any questions before the Council meeting as that gives Trust management and the Appointments Committee the opportunity to prepare an appropriate answer. And remember that there are three fellow Council

Members on the Appointments Committee and they will be happy to give you more information if you need it.

6.2 Removing Trustees

Removing a Trustee would be a very serious event for the Trust – no Trustee has ever been removed in this way, and we hope no Trustee will ever be removed in this way.

Only a very significant failing on the part of a Trustee would be expected to trigger this action by Council. As noted above, you do not have a specific role in monitoring the performance of the Trust – that task falls to the Board of Trustees – but you clearly need to be able to satisfy yourself that the Trust is being well-managed, and that you would be able to spot when something significant is going wrong. There is information on how to do this in section 7.

6.3 Amending the Articles

The Articles of Association is the principal governing document of the Trust. They set out the constitution of the Trust, including a lot about how it must be run. The Articles also contain the charitable objects of the organisation, and the powers that the charity may use in pursuit of those objects.

The Board may, from time to time, recommend changes to the Articles for Council to approve. This requires a special resolution of Council through a 75% majority vote at a general meeting.

If the Trustees do ask Council to change the Articles, the Chief Executive or Chair of the Board of Trustees will send you a report 2 weeks before the Council meeting setting out the reasons why they are recommending the amendment. Your role is to read that report, make sure you understand it, ask questions if you need more information and then to vote as you think fit, either in person or by proxy.

It's worth noting that some clauses in the Articles cannot be changed by Council – instead they can only be changed with the agreement of the Secretary of State. In the main, the provisions in the Articles that cannot be changed by Council relate to the powers of the Secretary of State.

6.4 Amending the Trust Rules

The Trust Rules are the second-tier constitutional document which supplements the Articles. They are made under powers contained in the Articles and are intended for provisions that may require updating on a more frequent basis than the Articles.

The Trust Rules have been changed a few times since the Trust began in 2012, mostly relating to the membership constituencies and nominating bodies.

The process for changing the Trust Rules is similar to that for changing the Articles, but they can be changed by only a simple majority vote of Council, and on the recommendation from the Board of Trustees. A report will be sent to you 2 weeks before the Council Meeting containing clear recommendations about proposed changes to the Rules, together with the reasons why they are making those recommendations. Your role is to read that report, make

sure you understand it, ask questions if you need more information and then to vote as you think fit, either in person or by proxy.

6.5 Requiring the Trustees to call a General Meeting

The Trustees can call a General Meeting at any time – and they must do so, if required by the Members, under the Companies Act – in practice this means that at least 5% of Council Members must ask the Trustees to call a general meeting.

The Trust's Council has never asked the Trustees to call a General Meeting – we would only expect this to happen if there was something seriously wrong at the Trust. In section 7 we have described how Council Members can satisfy themselves about how well the Trust is governed.

6.6 Appointing the external auditor

Paragraph 6.7 explains how important it is that you receive the Trustees' Annual Report & Accounts, and that the Report has been subject to independent external audit.

Because the independent auditor report on the Trustees' Annual Report & Accounts is addressed to you as Council Members, it is only right that it is you who makes the final decision about who should act as the external auditors. In fact, it is a Companies Act requirement that company members appoint the auditor.

At the Annual General Meeting the Chair will normally recommend that you appoint a particular firm as the external auditors. This is how this process works:

- When the auditors complete their audit work in early summer, the Finance Director reflects on how well or otherwise the audit has gone. He/she reports his/her views on the quality of the external auditors to the Board's Audit & Risk Committee (ARC), with the external auditor in attendance. The Finance Director makes a recommendation about whether those external auditors should be reappointed. If the ARC agrees, they in turn make this recommendation to the Board, and then the Board will bring that recommendation to Council
- Normally we would not expect to change audit firms frequently because it is helpful for the auditors to get to know their client, and for the Finance team to get to know the auditors. The audit profession has rules to preserve the independence of auditors, including the periodic rotation of senior audit staff
- However, every so often it is good practice to retender for external audit services – this makes sure that the Trust is getting the best possible service at the best possible price. When this happens the Chair of the ARC is responsible for identifying the best firm to appoint and will then make that recommendation to Council, again via the Board of Trustees.

We last appointed new external auditors for the 2018/19 financial year, which was duly approved by Council in September 2018.

6.7 Receiving the Trustees' Annual Report & Accounts together with the Auditor's Report

Company Law requires members of the company – you – to receive the Annual Report & Accounts, which of course contains amongst other things the audited financial statements.

The Trust must follow the standard accounting and other rules when producing the Annual Report & Accounts, and the Trust's external auditors must check that we have done so. The external audit opinion is addressed to you and is called the "Independent auditor's report to the members of Canal & River Trust".

Never underestimate how important it is that you receive the Trustee's Annual Report & Accounts and that the external audit opinion is addressed to you. This is the main way in which you can gain independent assurance that the Trust is being well run, and that it is financially solvent.

There are sections in the Annual Report & Accounts about the Trust's performance, governance and risk management as well as the financial statements.

We send all Council Members a hard copy of the Annual Report & Accounts. The Trust also publishes the Annual Report & Accounts on the Trust's website.

7 KEEPING A FINGER ON THE PULSE

Council Members sometimes worry that they may not notice if something is significantly wrong at the Trust until it is too late. Here are the main ways in which Council Members can "keep a finger on the pulse" and reassure themselves that the Trust is being properly run:

- By receiving the Trustees' Annual Report & Accounts. It is no accident that company law requires company members to "receive" the Annual report – this is intended to be one of your main sources of assurance that the Trust is well-governed and financially sound. There is more information about this in paragraph 6.7
- By attending Council Meetings: the Chief Executive and the Chair of the Board of Trustees provide an update of how the Trust is doing at each Council meeting, and this will always include a summary of the Trust's financial and non-financial performance against targets. The update will not only tell you how the Trust has done in the past, but will always tell you about future key events, strategies and initiatives. That is why we really appreciate you attending Council meetings and participating in those meetings by asking questions and suggesting topics for future meetings
- By attending, when you can, the site visits that precede the Council meetings: this enables you to see the work of the Trust at first hand, and to build relationships between other Council Members, Trustees and Executive Directors
- If there are any other significant events at the Trust, the Chief Executive will send you a short email to tell you about it.

The following pieces of information may also provide reassurance that the Trust is well-managed. Whilst you are not involved with any of the activities listed below, you should be aware of these important checks and balances that are embedded in the Trust's governance arrangements:

- Because DEFRA gives the Trust some £50m of public funds each year via the DEFRA

grant, it monitors the Trust's performance and holds quarterly monitoring meetings with the Chief Executive and the Finance Director – and the Chair attends periodically. The minutes from these meetings are published on the Canal & River Trust website

- Under the terms of the Agreement with DEFRA, a Protector has been jointly appointed to oversee how the Trust uses the commercial property portfolio to ensure it is for the purposes for which it is intended, which are to provide income for the waterways and to provide a reserve for dealing with emergencies. The Protector provides an annual report on investment activity to the Secretary of State and the Trust publishes this on its website
- The Trust has an externally-provided internal audit service, currently Grant Thornton LLP. The Institute of Internal Auditors defines internal audit as “an independent, objective assurance and consulting activity designed to add value and improve an organisation's operations. It helps an organisation accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management and governance processes”. The Head of Internal Audit, a partner from Grant Thornton, reports to the Board's Audit & Risk Committee
- The Trust has whistle-blowing arrangements which allow employees, volunteers and contractors a safe route to speak up if they see any wrong-doing
- The Trust applies Governance Codes and reports on that compliance annually to the Audit & Risk Committee and refers to this in the Annual Report & Accounts.

If ever you feel you have genuine cause for concern, then you should contact the Chief Executive privately for an informal discussion. The Head of Legal & Governance Services also has specific responsibilities as the Trust's Company Secretary and is always willing to offer you advice and is a good starting point for any discussion.

8 COUNCIL MEMBER CODE OF CONDUCT

This is included within Appendix 1.

9 GOVERNANCE STRUCTURES



10 FAQs

10.1 Being a Council member

Is there any difference between those Council Members that were nominated, elected or co-opted? And what about Regional Advisory Board Chairs?

There is no difference in status or voting rights between any of these different types of Council Members. The Trust Rules do specify some differences in how these Members may be replaced once they are appointed (eg, an organisation that has elected a Council Member that leaves Council can simply nominate a different person for the remainder of the term of that Member, whereas for a nominated Member, it is the Appointments Committee that appoints a replacement, after consultation with the nominating body). Regional Advisory Board Chairs are *ex officio* (ie, they remain as Council Members as long as they are in their position as Chair).

I am an elected Council member. What is my on-going responsibility to my electorate? Am I responsible for keeping them informed about Council decisions? Do I consult with them before voting, or do I vote with my own conscience?

Council Members are elected in their own right, rather than as delegates of their nominating organisations. Whilst we do encourage elected Members to keep their organisations informed on Council decisions (and the work of the Trust more generally) there is no duty on elected Members to consult or vote in accordance with the wishes of their organisation.

I am a nominated Council member. What is my on-going responsibility to the organisation which nominated me? Am I responsible for keeping it informed about Council decisions? Do I consult with it before voting, or do I vote with my own conscience?

Council Members are nominated in their own right, rather than as delegates of their nominating organisations. Whilst we do encourage nominated Members to keep their organisations informed on Council decisions (and the work of the Trust more generally) there is no duty on nominated Members to consult or vote in accordance with the wishes of their organisation.

Who else is on Council other than me?

There is a full list of Council Members on the Trust [website](#).

What should I do between Council meetings?

Other than receive the Annual Report & Accounts, there is no need for you to take any particular action between meetings.

From time-to-time the Trust may send you further information about the Trust or may ask you for comments about a particular topic.

How do Council Members influence what topics are discussed at Council meetings?

There is a slot on each Council agenda where the Chair asks Council Members what they would like to hear about or discuss at future meetings. Please come prepared with your suggestions.

When planning the agenda, the Head of Legal & Governance Services and the Chief Executive review the list of requests made both at meetings and subsequently, with the Board of Trustees, work out how to respond.

The Chair of the Board of Trustees, who also chairs Council, has the final say in the construction of the agenda for a Council Meeting. In so doing the Chair seeks to create engaging meetings which will best enable Council members to discharge their responsibilities.

What happens if I can't attend a Council meeting?

Attending Council Meetings is one of the main ways to discharge your responsibilities as a Council Member. Section 5 of this Handbook describes why your attendance is so important. The Trust Rules state that the Board of Trustees may request the Appointments Committee

to terminate a Council member who misses 3 consecutive meetings.

So, you should try to attend every Council meeting because they are so crucial in enabling you to carry out your role. But sometimes other commitments must take priority. If you can't attend a meeting, please let us know as soon as you can.

If you miss 2 consecutive meetings the Head of Legal & Governance Services will write to you to remind you of the Trust Rules – and if you miss 3 consecutive meetings, the Head of Legal & Governance Services will report this to the Board of Trustees so that they can decide whether they wish to request the Appointments Committee to terminate your membership. Termination is not automatic. The Head of Legal & Governance Services will ask if you wish to make representations to the Board, and the Trustees and Appointments Committee would always take any extenuating circumstances into account.

The Board and the Appointments Committee has removed a Council Member in the past and would do so again if required, because without attending the meetings it is very difficult for a Council Member to discharge their responsibilities.

What is the relationship between the Council and the Trust's Advisory Groups. Can I be a member of both?

The role of Council is set out in the Trust's Articles and Rules and is a key element of the way in which the Trust is governed.

The Trust also has several [Advisory Groups](#). They have no role in the Governance of the Trust – their task is to advise management on specialist topics. Each Advisory Group is led by an independent chair and a member of Trust management, and each advisory group is quite different from the next.

It is up to the independent chair and the member of Trust management to advertise for or invite people to sit on the Advisory Groups and in doing so, they consider the balance of skills and experiences required and the Group's programme of work.

It is possible for a Council member to also sit on an Advisory Group, but there is no right for a Council member to do so, as there is no connection between the two roles, and the methods of recruitment are completely different.

10.2 Who is on the Appointments Committee and how were they selected?

The Appointments Committee is a joint Committee of both the Council and the Board of Trustees. There are 3 Trustees and 3 Council members on the Committee. The following Trustees are on the Appointments Committee and were appointed by the Board of Trustees:

- Dame Jenny Abramsky (Chair)
- Janet Hogben
- Allan Leighton

The following Council members serve on the Appointments Committee:

- Ian McCarthy
- Andrew Phasey
- Phil Prettyman

If a vacancy for a Council member arises, the Head of Legal & Governance Services will ask Council members for volunteers to fill that vacancy. If the number of Council members wishing to serve on the Committee exceeds the number of vacancies, there is a 'first past the post' ballot with all Council members being eligible to vote.

The Appointments Committee selects its own chair.

10.3 Taking decisions

How many Council Members need to vote before a motion is carried?

Most decisions, including decisions to amend the Trust rules, requires a simple majority of Council members eligible to vote. The Articles can only be amended if 75% of Council members eligible to vote agree.

How do I vote by proxy?

If you are asked to take any formal decisions at Council, the instructions about how to vote by proxy and a voting form are attached to each Council meeting agenda.

Any member of the Trust (a 'Council member') is entitled to appoint another person as his or her proxy to exercise all or any of his or her rights to attend and speak and vote at a meeting of the Trust. A proxy must vote in accordance with any instructions given by the Council member by whom the proxy is appointed.

The proxy may be the Chair of the meeting or any other person the Council member wishes to appoint and need not be a Council member. A proxy notice must be given in writing and must contain all the information in the form of the notice attached. It should be sent by post or electronically as directed in the form to arrive no less than 48 hours (excluding Saturdays, Sundays and public holidays) before the meeting.

Why can Council only vote as a block for Trustees?

Paragraph 22.2 of the Articles state that the list of candidates proposed for appointment as Trustees by the Appointments Committee "will contain as many proposed Trustees as there are vacancies on the Board of Trustees". And in the next paragraph, the Articles state that "the Council may appoint the candidates proposed by the Appointments Committee as a block by ordinary resolution at the Annual General Meeting".

What this means in practice is that the Appointments Committee only proposes the exact number of candidates as there are vacancies and you are permitted to vote for (or against) this proposal in a single vote. You do not get to choose from a short list.

The reasoning behind this is that it is the Appointments Committee's role (and not Council's) to carry out a robust and transparent recruitment and selection process, balancing the

required skills and experience of the new Trustees. The Appointments Committee report presented to Council should be designed to explain that process to you. It is your job to read the Appointments Committee report, to make sure you understand what the process has been and what is being recommended, and to vote accordingly, either in person or by proxy.

APPENDIX 1 – COUNCIL MEMBER HANDBOOK

COUNCIL MEMBER CODE OF CONDUCT

Members of the Canal & River Trust will comply with the Trust's governance arrangements as encapsulated in the Trust's Articles, Trust Rules and other governance documents and the law.

Members will act in a manner consistent with their legal duties, acting always in the Trust's best interests, with integrity and in a responsible, reasonable and honest manner.

Members commit to understanding the overall governance arrangements of the Trust, the division of responsibilities between the Council, the Board of Trustees and the Appointments Committee, and to seek further information if unsure.

Members will give enough time, thought and energy to their role, for example, by preparing fully for and attending Council meetings. Members should seek leave of absence from Council meetings only when prevented from attending by compelling personal or professional reasons which should be relayed to the Chair in advance, via the Governance Administrator.

Members will make balanced and adequately informed decisions about the Trust. When making decisions, Members will read supporting reports carefully, and listen attentively to subsequent advice from and discussion with Trustees, the Appointments Committee and Trust management. Members will ask for additional information and advice when required, ideally in advance to enable Trust management to prepare appropriately detailed responses.

Members will assist in the formulation of Council meeting agendas by suggesting topics for consideration at those meetings.

Members will treat each other, and other Trust people, with respect and courtesy. Members will recognise that Council and the wider Trust may decide with which they disagree. Members accept and do not seek to frustrate the implementation of decisions which are properly reached.

Members should take appropriate steps to safeguard the confidentiality of any information given to them in confidence. Whilst reports sent in advance of Council meetings will ultimately be published, it is not the Council members' job to share these with others. Members should keep confidential any further information given verbally at Council meetings and should not disclose to others anything about the conduct of the meeting. This is to ensure that the meetings can be conducted in such a way as to promote open and honest debate.

Members should not represent themselves as speaking officially for the Trust to the media or to any other organisation, and they should avoid as far as possible being placed in a position where they might be misrepresented as speaking on behalf of the Trust.