

# Kent Good Governance Charity Forum

6 November 2019

# The Management of Conflicts of Interest for Trustees

**Alyson Howard FCCA DChA CF**  
**Partner Education and Not for Profit**

6 November 2019



# Agenda – Trustees Week

- The Management of Conflicts of Interest for Trustees  
Alyson Howard - MHA MacIntyre Hudson
- Trustee Recruitment and Retention  
Christopher Eriksson-Lee and Antonio Fletcher -  
Brachers
- The Role of the Trustee in Financial Governance  
Neil Poynton - CAF Bank
- Q & A



# What is conflict

- The Charity commission defines it as being when trustees' personal interests or loyalties might, or might be seen to, prevent the trustees from acting in the best interests of the charity
- So not just the facts of the situation but its appearance (the good old Daily Mail test)
- Trustees have a legal duty to act in the charity's best interest
- Trustees need to understand and manage potential conflicts
- We are going to look at
  - Conflicts with a connected organisation
  - Conflicts between the board and the executive team
  - Conflicts between planning for the future and looking after beneficiaries now



# Conflict with your trading subsidiary/other connected organisation

Legatum Institute Foundation – charity part funded by Legatum Group with remit to advance education in national and international political and social and economic policy

- **Reason for case**

- Complaints about Brexit bias
- Concern that charity was operating outside its objects –research report issued by Special Trade Commission (working group of the charity), which was subject to considerable peer review

- **Issues found**

- The trustees were aware of the need to remain neutral and balanced in its research work
- But they crossed the line with their Brexit research paper as it did not posit alternate outcomes
- Report should have opened with statement that there were other points of view

- **Resolution & lessons learnt**

- Charities must remain independent of party politics, but charity was found to be separate from STC
- Charity had to remove report from their web site
- Trustees should manage the risk when commissioning research reports in sensitive and highly political areas
- Trustees must manage connected relationships carefully and separately



# Managing conflict with connected organisations

- Be careful if politics is involved at all!
- Any charity closely connected to a non charity needs to be careful. There must be appropriate separation.
- They must pay their way.
- There should be leases of formal agreement for property space, and other shared resources
- Think about payroll, VAT and cross charges.(Paymaster or Joint contracts of employment) .
- Ideally completely separate governance.
- Costs should not outweigh the benefits.
- If there is a loan between the charity and sub it must be at a commercial rate.
- Trading is often about risk, the subsidiary ring fences that risk.
- But that doesn't mean open ended losses are ok.
  - Result must be closely scrutinised
- And beware of transacting with businesses owned or controlled by trustees

# Executive freedom and board oversight



- Day to day running is delegated by the board to the executive team
- That requires the board to be satisfied that there is a strong system of control which is designed to minimise fraud
- Controls should not just be checked at year end by the auditors.
- What about an internal audit function?
- Where things go wrong there is often a dominating personality, someone who can bully and intimidate to get their own way.
- Watch for dominating Chairs or CEOs. Board decisions should take all views into account
- Don't let the CEO take board minutes, there needs to be an independent clerk or secretary. And minutes must be checked and signed off at subsequent meetings.
- Part of each board meeting without paid staff for separate confidential recording.
- Mutual respect between all, but board must challenge executive team

# Conflict between now and the future



- If you have a service that is making a loss, should you cut it? Not necessarily
- Passion is a big part of most charities, the board the management team and the beneficiaries.
- Public contracts are often delivered at a loss because the LA/trust won't permit a commercial rate.
  - If you are content to allow this how are you funding the gap. You cannot just run down reserves?
  - Tougher negotiating, and threatening to walk away?
- Conflict is good when decisions are not made in isolation but as part of the wider offering.



# Key Principles for charity trustees

## Trustees must:

- Act within their powers
- Act in good faith and only in the interests of the charity
- Make sure they are sufficiently informed
- Take account of all relevant factors
- Ignore any irrelevant factors
- Manage conflicts of interest
- Make decisions that are within the range of decisions that a reasonable trustee body could make



# Q & A



**Thank you for listening**

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# Charity Governance

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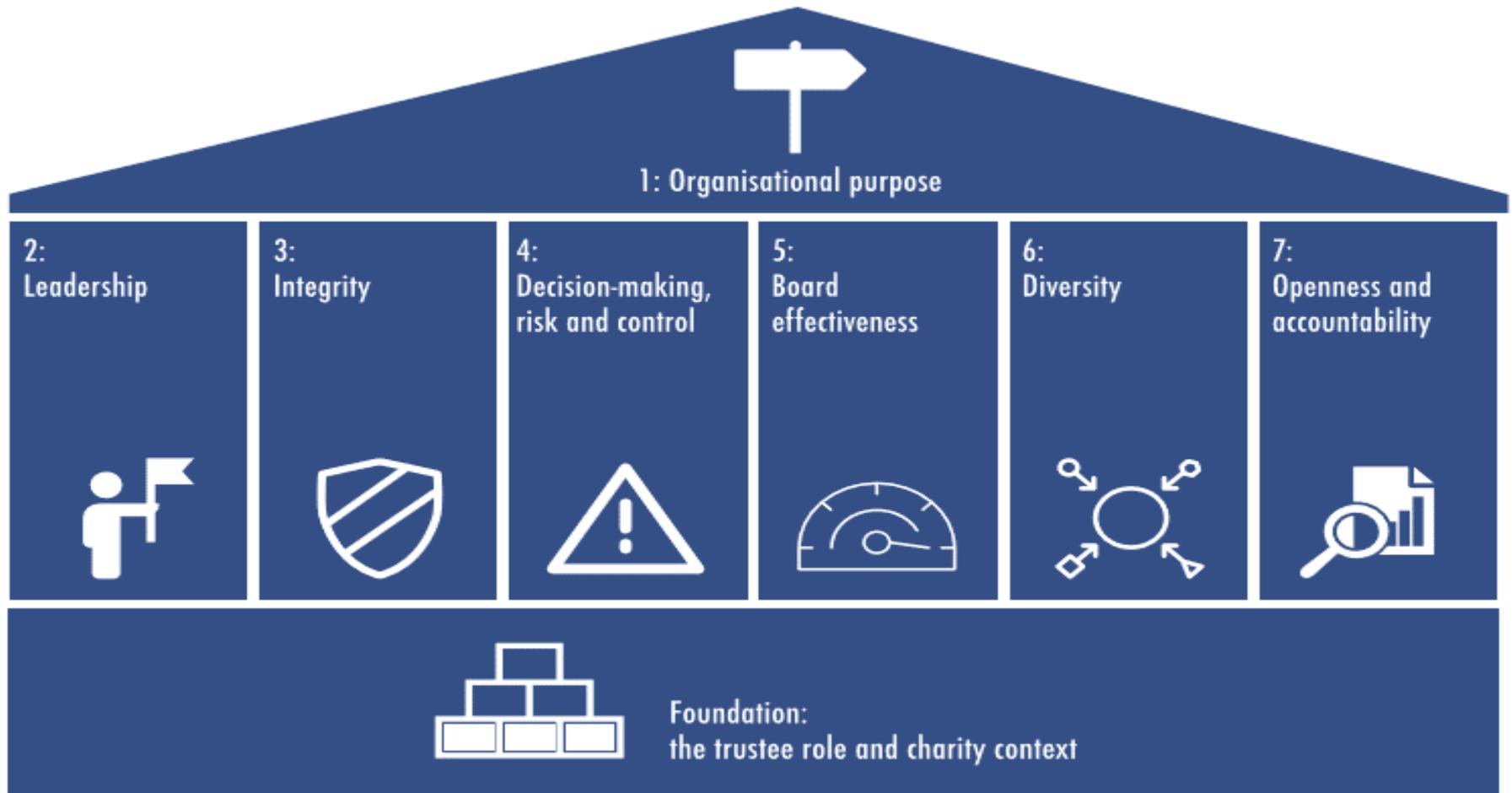


## Overview

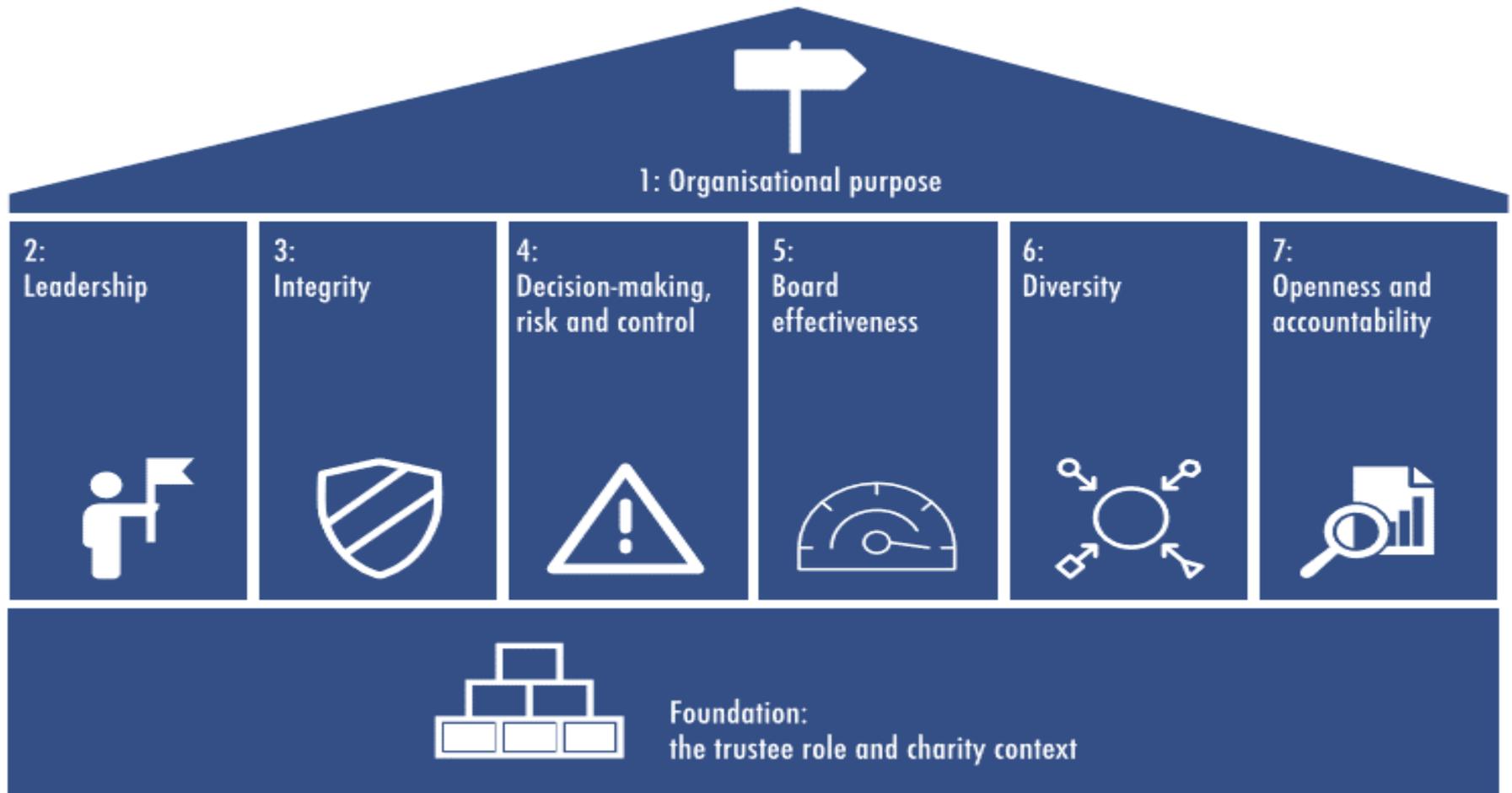
- 01 Charity Governance Code
- 02 Who can act as a trustee? Remuneration and disqualification
- 03 Diversity in leadership and board positions
- 04 Recruitment and retention of trustees

# Charity Governance Code

**Brachers**  
With you all the way



# Charity Governance Code



# Who can act as a trustee? (Disqualification)

Capacity	Age restrictions	Disqualification	Other
<ul style="list-style-type: none"><li>• Must have capacity to manage their own affairs</li></ul>	<ul style="list-style-type: none"><li>• No upper age limit</li><li>• Charitable trusts: minimum age 18</li><li>• Charitable companies: minimum age 16</li></ul>	<p>Must not:</p> <ul style="list-style-type: none"><li>• Be disqualified as a company director</li><li>• Have unspent conviction for a dishonest offence</li><li>• Be undischarged bankrupt</li><li>• Have been removed as trustee of a charity previously</li><li>• Be on sex offenders' register</li></ul>	<ul style="list-style-type: none"><li>• Charity governing document can impose other restrictions such as certain religious denomination</li><li>• Charities involving safeguarding may require DBS check</li></ul>

## Remuneration

- Charities can not pay their trustees
- Trustees are volunteering their services
- You can pay reasonable expenses
- Trustees (or someone with a financial connection to them) can not benefit from the charity, such as:
  - Being employed by the charity;
  - Receiving material benefits as beneficiary of the charity;
  - Being paid to act as trustee;
  - Entering into property transactions with the charity; and
  - Entering into financial transactions with the charity.

## Diversity in leadership and board positions

- Diversity supports effective leadership, board effectiveness and decision making
- Diversity in a broad sense:
  - Nine protected characteristics
  - Diversity of thought
  - Representation
- Diversity in a narrower sense:
  - Career paths
  - Life experiences
  - Knowledge and professional skills
- A charity is dependent on its trustees, an effective board means a thriving and successful charity

# Recruitment

Think about diversity when recruiting trustees.

## **Recommended practice**

- Monitoring and reporting on diversity to identify gaps and imbalance
- Removing obstacles to diversity:
  - paying reasonable expenses
  - time, location, frequency of meetings
  - varied communication formats
- Setting diversity objectives
- Diversity present in trustee appointment panels

Think how to incentivise and attract the correct candidate.

## **Tips**

- Promote the role outside the boundaries of the charity's network
- Consider what the candidate wants from the role and how your charity can offer it:
  - candidates often want to 'give something back'
  - gain skills for professional development; or
  - are committed to the charity's cause

## Retention

Keeping the board feeling fulfilled is important in order to retain trustees

### **Recommended practice**

- Provide a solid induction
- Provide training and reflection
- Understanding the board's responsibilities
- Asking for feedback on how meetings can be made more accessible
- Ask for feedback on creating environment all trustees can be heard and participate in
- Give opportunities to build relationships and form ideas to develop the charity

## Thank you

**Antonio Fletcher and Christopher Eriksson-Lee**

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# THE IMPORTANCE OF REMAINING SECURE

Neil Poynton – 6 November 2019

[www.mca.mt/multitype/caf/bank](https://www.mca.mt/multitype/caf/bank)

**CAF**  
Bank

# AGENDA

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Some disturbing facts and areas commonly targeted

A case study

The dos and don'ts (what the charity did and didn't do)

How banks look to help (and can be misunderstood)

Learnings

Where to go for help



# SOME DISTURBING HEADLINES

**“Fraud against charities has increased by £400m over the past 12 months and is now worth about £2.3bn, the latest estimates show.”**

*Source: Third Sector, 13th November 2017*

**“ ... there were 4.7m fraud and cybercrime incidents in the year ending September 2017. For charities it is now a question of when, not if, they are targeted”**

*Tackling Charity Fraud, Prevention is Better than Cure,  
Charity Commission*



# COMMON AREAS OF FRAUD



A CASE STUDY

**Payments totalling £250,000 made**

**Time lapse before reconciliation**

**Assumed Bank error/mistake**

[www.mtafinancialreg.co.uk](https://www.mtafinancialreg.co.uk)

**CAF**  
Bank

# HOW TO GET IT RIGHT

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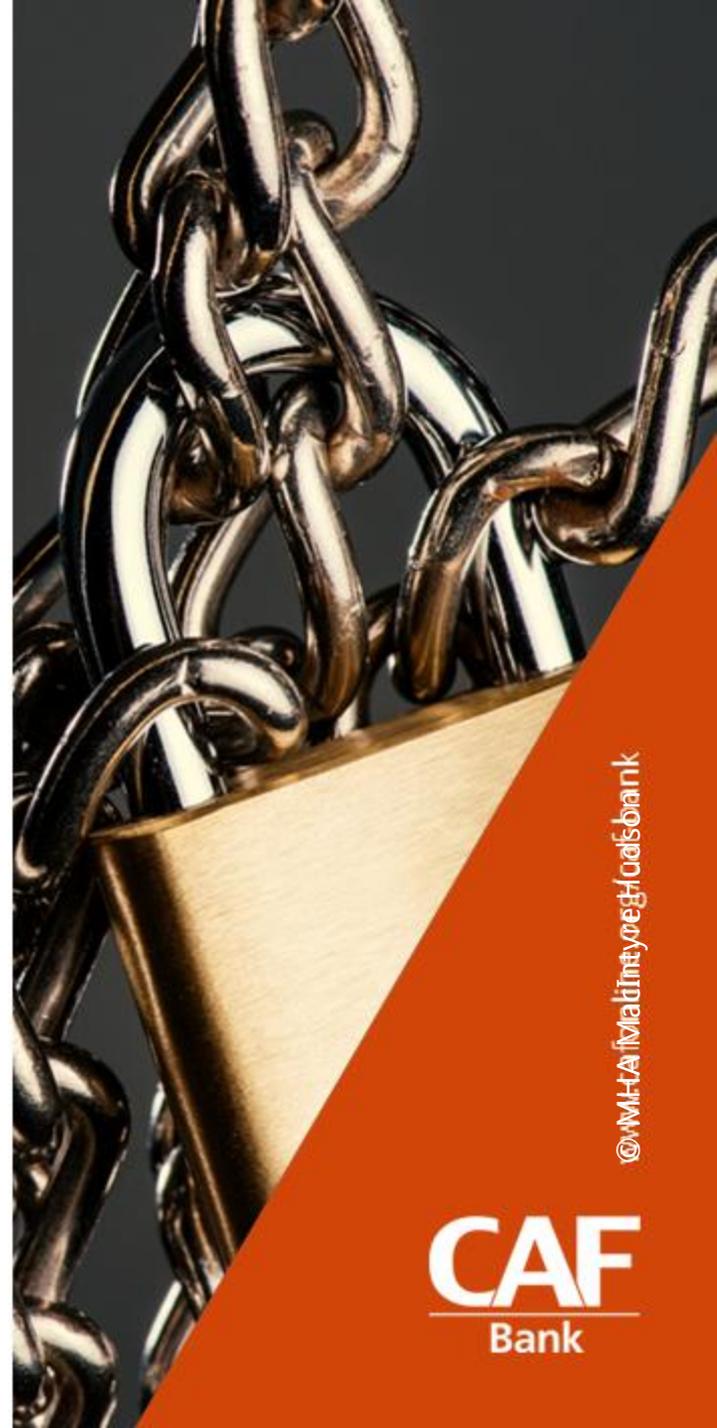
Develop strong anti-fraud strategy and policy



Provide training and build organisational culture 'to do the right thing'



Review and strengthen security, continually



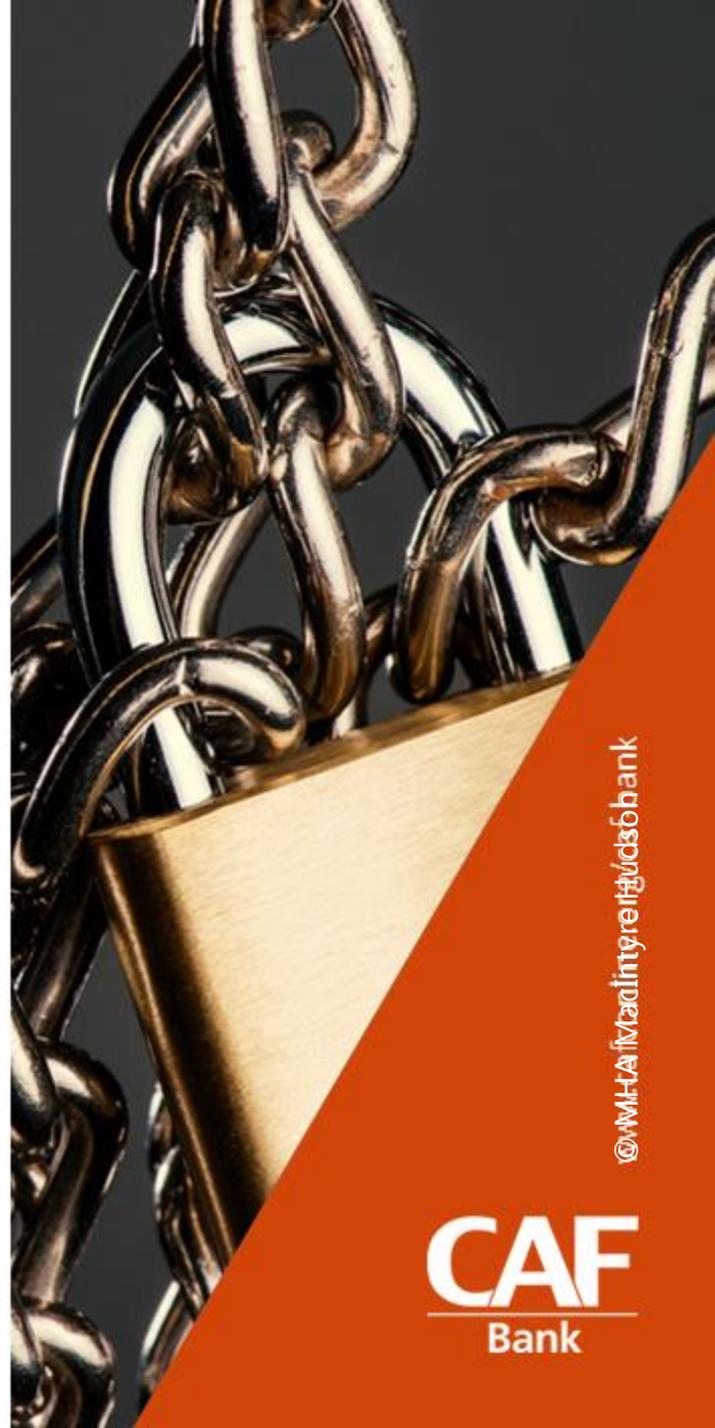
# HOW BANKS, LIKE CAF BANK, ARE LOOKING TO HELP

[www.mtcafinancialtyregh/casbank](https://www.mtcafinancialtyregh/casbank)



# BANKING FRAUD CHECKLIST

- ✓ Never share security or login details with anyone. Your bank will never ask for your PIN number or full password.
- ✓ Use strong passwords or pass phrases that are difficult to guess.
- ✓ Never comply with requests to provide confidential, financial or payment information, without verifying the source of the request.
- ✓ Legitimise payment requests from senior managers and suppliers.
- ✓ Reconcile transactions with monthly bank statements to check for any discrepancies.
- ✓ Don't be pressured.
- ✓ When hanging up the phone after receiving a suspicious call, use a different phone when making another call to ensure you have a clear line.
- ✓ Never click on links or open attachments in unexpected or suspicious-looking emails, especially from an unknown source.
- ✓ Encourage a security aware culture.







**THANK YOU — STAY SECURE**

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