



DUTIES OF CHARITY TRUSTEES

INTRODUCTION

Over 900,000 people serve as charity trustees in England and Wales. Charity trusteeship makes a vital contribution to society, and is immensely rewarding. However, it is important for charity trustees to know what the role involves. This helpsheet, written by ICAEW and specialist charity solicitors Bates Wells & Braithwaite, outlines the key duties of charity trustees.

This helpsheet is about the duties of trustees of charities registered and/or operating in England and Wales, regulated by the [Charity Commission](#). Scotland and Northern Ireland are separate jurisdictions with their own regulators: the [Office of the Scottish Charity Regulator \(OSCR\)](#) for charities in Scotland; and the [Charity Commission for Northern Ireland \(CCNI\)](#) for charities in Northern Ireland. However, the duties of trustees are broadly the same across all three jurisdictions.

The Charity Commission publication [CC3 The Essential Trustee: What you need to know](#) gives more detail on the points covered below, and is an invaluable source of reference. Bates Wells & Braithwaite also publishes a longer guide on the duties of charity trustees. We have included links to this and to a number of Charity Commission publications in the "additional resources and information" section at the end of this helpsheet.

WHAT IS A CHARITY TRUSTEE?

Charity trustees are the people who have the general control and management of a charity's administration: in short, they are ultimately responsible for the charity. They may also be known as the board, the management committee or the directors.

WHO CAN BECOME A CHARITY TRUSTEE?

Every charity has a "governing document" (often called the 'constitution') which sets out how it will be run, including how new trustees are to be appointed.

In theory, anyone can become a trustee, although the charity's constitution may impose some restrictions. Some people are legally disqualified from acting as a trustee, for example people who have been convicted of an offence involving dishonesty or deception.

It is good practice for new trustees to sign a declaration confirming that they are eligible to act.

WHAT ARE THE KEY DUTIES OF CHARITY TRUSTEES?

The overriding duty of all charity trustees is to advance the purposes of their charity. In doing so, they have several basic responsibilities.

- **Trustees are responsible for the proper administration of their charity**
Trustees must ensure that the charity's assets and resources are used only for the purposes of the charity and that the charity is run in accordance with its constitution, charity law and all other applicable laws and regulations.
- **Trustees must accept ultimate responsibility for everything the charity does**
The trustees are responsible for the vision, mission and management of the charity. While they may delegate in some circumstances, it is the trustees who are accountable if things go wrong.
- **Trustees have to act reasonably and prudently in all matters relating to their charity**
The law imposes a duty of care on the trustees of charities, which is sometimes expressed as a duty "to exercise such care and skill as is reasonable in the circumstances". The duty will be greater if a trustee has, or claims to have, any special knowledge or experience, or if their business or profession means that they can reasonably be expected to have special knowledge or experience. If trustees are not experts in certain matters, they will be expected to take appropriate advice.
- **Trustees must safeguard and protect the assets of the charity**
As well as obvious assets such as investments, cash and land, a charity's assets include its intellectual property, staff and reputation.
- **Trustees have a duty to act collectively**
Decisions and responsibilities are shared, so all trustees should take an active role. Trustees can act by majority decision, unless the constitution says otherwise. Some trustees, such as the chairman and the treasurer, will have particular roles, but all the trustees are collectively responsible for decisions made by the trustees.

- **Trustees must act in the best interests of their charity**
The interests of the charity are paramount. Trustees should not allow their personal interests or views to override this: they must exercise independent judgement.
- **Trustees must avoid any conflict between their personal interests and those of the charity**
The main implication of this is that the scope for trustees to benefit personally from their charity is very limited. Trustees must deal appropriately with any conflicts between their own personal interests and those of the charity. They must also be alert to possible conflicts between duties they may owe to other organisations and the duties they have to the charity.

WHAT ARE THE KEY THINGS TRUSTEES NEED TO KNOW ABOUT RUNNING A CHARITY?

Using resources for the purposes of the charity

The trustees must ensure that the charity's resources are used to further its charitable purposes – these are commonly known as the charity's "objects". The objects will be set out in the constitution and all trustees should be clear about what they are. If trustees use resources for purposes outside the objects, they can be made personally liable to reimburse the charity for the amount which has been wrongly spent.

Public benefit

All charities must have objects which are recognised by the law as being exclusively charitable, and which are for the public benefit. The Charity Commission guidance *Charities and Public Benefit* gives more detail about the so-called "public benefit requirement". Charity trustees are obliged to take note of this guidance when reviewing and planning the charity's activities and must state in their annual reports how their charity operates for the public benefit.

Safeguarding and protecting the charity's resources

Trustees must safeguard the charity's assets and ensure that the charity is and will remain solvent. Points to consider are:

Financial procedures

The Charity Commission publication *CC8 Internal Financial Controls for Charities* describes how trustees can design and implement financial procedures to meet their legal duties to safeguard the charity's assets and ensure the charity's continuing solvency. Further information on financial procedures, responsibilities and reporting is available on [ICAEW's website](#) and from the Charity Commission's compliance toolkit *Protecting charities from harm*, which contains a section on fraud and financial crime.

Investment

Trustees may invest the charity's funds if they have the necessary powers to do so. A good source of guidance is the Charity Commission publication *CC14 Charities and investment matters: a guide for trustees* which summarises legal and practical considerations for financial investments, programme-related investments and mixed motive investments. Additional information is also available on [ICAEW's website](#).

Charity land

Charities that own land are under an obligation to care for, maintain and insure it. Special rules apply to the sale, letting and mortgaging of land by charities. These rules are detailed and complex, so trustees should take professional advice from a person who is fully abreast of the rules. See also Charity Commission publications *CC28 Sales, leases, transfers or mortgages: what trustees need to know about disposing of charity land*, and *CC33 Acquiring Land*.

Employment

Charity trustees must manage their staff, and volunteers, properly. Charity trustees are responsible for ensuring that they fulfill their legal obligations as employers and have effective staff and volunteer management policies in place. You can find more information on this on [ICAEW's website](#).

Reputation

A charity must recognise that its name and reputation are very valuable. The trustees must avoid any activity which might damage the charity's reputation. They should consider legal protection of the charity's name and logo and any other intellectual property rights.

WHAT PARTICULAR LEGAL RULES SHOULD TRUSTEES BE AWARE OF?

We have explained how trustees must make sure that their charity is run in accordance with its constitution and with other laws and rules. Here are some areas which are of particular relevance to charities.

Fundraising

The rules about fundraising can be detailed and complex and trustees should have access to sufficient information and/or expertise to ensure that the rules are complied with. The Charity Commission publication *CC20 Charities and Fundraising*, is one source of information, and an overview of fundraising, including relevant regulations and laws, is available on [ICAEW's website](#).

Campaigning and political activity

Charities are allowed to campaign to further their purposes. There are few limits under charity law on campaigning activity that involves simple education, awareness raising, mobilising public support or influencing or changing attitudes. However, trustees should be careful that any political campaigning does not become the only way in which the charity fulfils its purposes. See Charity Commission publication *CC9 Speaking out: Guidance on Campaigning and Political Activity by Charities*.

Reporting and accounting

All charities, whether or not they are registered with the Charity Commission, must prepare annual accounts. They must make these accounts available to anyone on request, although they may charge to cover their costs of doing so eg, photocopying and postage.

Charities which are registered with the Charity Commission must file annual returns, trustees' reports and accounts once their income reaches a certain level. Charities with income above that level must also have their accounts independently scrutinised, either by an independent examiner or a registered auditor, depending on income levels and whether the charity is a company or not. The Charity Commission's guidance, *CC15b Charity Reporting and Accounting: the essentials*, sets out the requirements about sending information to the Charity Commission, including deadlines,

for the different sizes and types of charity. You can also get further information from [ICAEW's Advisory Services helpsheet](#) on charities – financial reporting and scrutiny.

Charity accounts must be prepared in accordance with *Accounting and Reporting by Charities: Statement of Recommended Practice* (Charities SORP 2005).

Accounting for separate funds

The accounts must differentiate the charity's reserves, depending on their source, between unrestricted income funds, restricted income funds and endowment funds. Appendix 3 to the Charities SORP 2005 explains the legal position for the various funds of a charity, with which the trustees must comply.

Other laws and regulations

Other laws that may affect charities include health and safety law, the rules on equality and discrimination, safeguarding children and vulnerable adults and company law. Some charities owe duties to other regulators, in addition to the Charity Commission, depending on their activities.

HOW DO THE TRUSTEES ADMINISTER THE CHARITY IN PRACTICE?

Meetings

Trustees need to meet often enough to ensure that they are carrying out their responsibilities properly. The constitution may contain details about how, and how often, trustees' meetings should be called and held and whether, for example, decisions can be made without the need for a meeting. You can find further guidance in the Charity Commission publication *CC48 Charities and Meetings*.

Delegation

The trustees may decide to delegate to others, although the extent to which they do so will depend on the nature and size of the charity. There are no restrictions on delegating the implementation of decisions, nor on seeking recommendations from others in areas where the trustees make the ultimate decisions. However, if the trustees want to delegate decision making, they must have power to do so. If trustees do delegate, they should set out the terms of the delegation in writing, perhaps in the minutes of a trustees' meeting, or in a policy document or job description. They should keep the delegation under regular review.

Policies

Policies in key areas help trustees to manage the charity and any delegation of responsibility. They should be followed by trustees and staff and reviewed regularly. Under the Charities SORP 2005, the charity must state its investment policy, grant-making policy and reserves policy in its annual report.

CAN TRUSTEES BE PAID?

Trustees should not be remunerated unless there is express legal authority for the payment. This might come from the constitution of the charity, express Charity Commission approval or a limited statutory power. However, trustees can recover certain reasonable expenses, such as the cost of travel to attend trustee meetings. Any remuneration paid to trustees must, with limited exceptions, be disclosed in

the financial statements of the charity, including the name of the trustee(s).

More information is contained in Charity Commission publications *CC11 Trustee Expenses and Payments* and *Reporting of Trustees' Expenses in Annual Accounts and Controls over Expenses*. If a charity has any doubts about payments to its trustees, it should take advice, as this is an area which the Charity Commission takes very seriously.

CONFLICTS OF INTEREST

Charity trustees must act in the best interests of the charity and not allow themselves to be swayed by any conflicting interests. Trustees should identify potential conflicts of interest and manage them appropriately. It is worth noting that charities will need to ensure they are aware of conflicts of interest and keep a register of related parties and of related party transactions to meet the Charities SORP 2005 reporting requirements.

CAN CHARITY TRUSTEES BE PERSONALLY LIABLE IF THINGS GO WRONG?

Trustees are often concerned about potential liabilities which charity trusteeship may involve. There are two types of potential liability.

- Liabilities to third parties that occur in the course of running a charity. The extent to which the trustees are personally liable in these circumstances will depend on the legal form of the charity.
- All charity trustees are, in principle, vulnerable to claims instigated by the Charity Commission or the Attorney General (or the other trustees) in the case of a breach of trust. These claims are not affected by the legal form of the charity.

Liability to third parties

Most charities have legal relationships, for instance, with suppliers, funders and staff. All legal relationships carry the risk of legal liability.

Charitable companies

If the charity is established as a company, it will have its own separate legal personality. This means that it can enter into legal relationships in its own name and if a third party brings a claim against the charity, it is the charity that is potentially liable. If the charity does not have sufficient funds to meet a claim, the claimant will generally lose out because the charitable company will be insolvent.

The trustees of the charity, as directors in the eyes of company law, will generally be protected from personal liability in these circumstances. There are, however, some situations where trustees of a charitable company may be personally liable, including liability for wrongful or fraudulent trading if the charity is insolvent.

Unincorporated charities

If the charity is constituted as a trust or an unincorporated association, it has no legal personality and all of the charity's legal relationships are, in fact, the relationships of the trustees. So, if a third party makes a claim against the charity on the basis of a legal relationship, the trustees will be named in the legal action. They can meet the claim with the charity's assets, including the proceeds of any relevant insurance

policy, but if the charity has insufficient funds to meet the claim, the trustees may well be personally responsible for the shortfall.

Trustees of charitable trusts and unincorporated associations are therefore more at risk of personal liability than trustees of charitable companies. For this reason, many unincorporated charities seek to become charitable companies as their activities and legal relationships expand.

Charitable incorporated organisations

The Charities Act 2006 introduced proposals for a new legal form, called the charitable incorporated organisation, which would operate a little like a charitable company by limiting the liability of the trustees in the case of claims from third parties. The legal framework for this new type of legal form has not yet been put in place but you can get further information from the Charity Commission website.

Liability as charity trustees

We have seen that certain duties are imposed on charity trustees. If a breach of duty (often called a breach of trust) results in a loss to the charity, the trustees are vulnerable to a claim to reimburse the charity for the loss caused. Such a claim will be instigated by the Charity Commission or the Attorney General or even by the other trustees.

Examples might include where the trustees allow funds to be spent for a purpose that is outside the charity's objects, or fail to ensure that charity property is insured. Liability along these lines is not affected by the legal form of the charity.

In practice, it is very rare indeed for charity trustees to be held personally liable for breach of trust when they have acted in good faith, unless they have acted in deliberate contravention of the rules, or have been grossly irresponsible. However, trustees need to be aware of the implications of acting imprudently or improperly.

The Charity Commission has far-reaching powers to supervise and intervene in charity activity. If trustees have been acting imprudently, but not fraudulently, it is much more likely that the Commission will seek to put the charity back on track than spend time pursuing the errant trustees personally. Where there has been fraudulent activity, however, the Commission will take steps to bring the wrongdoers to justice, in the interests of preserving the public integrity of charity.

Trustee indemnity insurance

Trustee indemnity insurance is an insurance policy that protects the trustees in the event of claims against them personally. Generally speaking, this type of insurance will cover breach of trust claims and wrongful trading. It often covers associated legal costs.

The personal liability of trustees of charitable trusts and unincorporated associations for debts to third parties will not be covered. The policy will almost certainly be restricted to cases where the trustees have acted in good faith.

ADDITIONAL RESOURCES AND INFORMATION

Charity Commission publications are available only by download from www.charity-commission.gov.uk.

The Charity Commission provides a range of guidance for charity trustees, including:

- *CC3 The Essential Trustee: What you need to know*
- *Charitable purposes and public benefit*
- *Compliance toolkit: Protecting charities from harm*
- *CC9 Speaking out: Guidance on Campaigning and Political Activity by Charities*
- *CC11 Trustee expenses and payments*
- *Reporting of trustees' expenses in annual accounts and controls over expenses*
- *CC14 Charities and Investment Matters: A guide for trustees*
- *CC15b Charity Reporting and Accounting: the essentials*
- *Accounting and Reporting by Charities: Statement of Recommended Practice (Charities SORP 2005, revised 2008)*
- *CC20 Charities and Fundraising*
- *CC48 Charities and Meetings*

Bates Wells & Braithwaite London LLP is one of the leading charity law specialists in England and Wales. Its resources for charities include:

- a free **pocket-sized guide** on the duties of charity trustees;
- a free **podcast** on the duties of charity trustees; and
- a governance training and development service for charity trustees, **OnBoard**.

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ICAEW'S ADVISORY HELPLINES AND SERVICES

For ethical or technical queries, please call ICAEW's advisory helpline on **+44 (0)1908 248 250**. This advice is free to all ICAEW members and is confidential. For further support, please read [ICAEW's advisory helplines and services helpsheets and FAQs](#).

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Laws and regulations referred to in this ICAEW helpsheet are stated as at September 2012.