

CHARITY TRUSTEES YOUR DUTIES AND RESPONSIBILITIES

The trustees of a charity are those individuals responsible for controlling the management and administration of the charity. They may not be called trustees, but could be referred to for example as directors, officers, management committee or governors. In some instances they may not have any title and may not have been formally appointed, but if they undertake the duties and responsibilities of a charity trustee they can be held liable in the same manner as formally appointed trustees.

Trustees Responsibilities

Trustees are responsible for actively managing the affairs of the charity and ensuring that it is carrying out the charitable activities that it was established to perform.

A trustee is considered to be responsible for all the actions taken, or not taken, by the charity. A trustee cannot disclaim responsibility for certain actions on the grounds that 'I did not know'. It is part of the trustees responsibilities to ensure that they are aware of, and actively manage, every aspect of the charity's activities.

This does not mean that trustees must physically carry out, or directly supervise, every action taken by the charity. Trustees may delegate the implementation of their decisions but they cannot delegate the decision making process.

Legal and Regulatory Compliance

- **Legal**

The trustees have a duty to ensure that the charity complies with all the legal and regulatory requirements including Charity law, Company law (if an incorporated charity) and any other legislation relevant to the charity. These regulations range from the trustees ensuring, for example, that annual accounts are produced and that the Annual Return is filed on time through to ensuring that food hygiene regulations are being complied with and, where appropriate, the carrying out of **Criminal Record Bureau (CRB)** checks. CRB checks are required on individuals (paid staff and volunteers) working with children or

vulnerable adults on behalf of the charity. Some charity trustees are also included in the CRB requirements.

The Charity Commission are currently reviewing the performance of CRB checks by charities.

Further guidance on when CRB checks are required is given in Charity Commission publication CC30 – Finding New Trustees (Section G)

- **Governing document**

Over a long period of time the activities of a charity may gradually change. The trustees should ensure that the charity's activities remain within the objects of its governing document.

Normal operating practices also change over time. The trustees should regularly review the governing document to ensure that its current operating practices are permitted by the governing document.

Avoidance of Conflict of Interest

The trustees should always act in the best interests of the charity. A trustee should not benefit financially by acting as a charity trustee. Receiving payment for acting as a trustee is therefore prohibited. At present it is also prohibited for a trustee to undertake any form of paid work for the charity, for example, as a decorator or an electrician.

The Charities Act 2006 (the Act) permits payment for other work provided it is in the best interests of the charity and only a minimal number of trustees are paid in this manner. This part of the Act is not expected to come into force until early 2008. Receiving payment for acting as a trustee continues to be prohibited.

Fundraising

Whenever fundraising is undertaken by or on behalf of the charity, the trustees should ensure that the reputation of the charity is not damaged by either misleading literature or unethical collection methods.

Procedures should be in place to ensure the accurate recording of the funds raised and the safe custody of those assets/funds. Appropriate procedures should be established to ensure that funds are only used for the purposes for which the donor gave them.

Trustees Duties

• Prudence

The trustees should avoid taking undue risks when managing the assets or operations of the charity.

Assets should be protected. For example property should be insured and surplus cash should be invested to earn an income for the charity.

Investments should be based on informed decisions, safeguarding the capital whilst earning a suitable level of return. Where appropriate, professional advice should be obtained.

Decisions regarding the operations and administration of the charity should aim to mitigate the risks to which the charity is exposed. Activities should not be undertaken that could result in the reputation of the charity being damaged.

• Care and skill

Reasonable care and skill should be applied when acting as trustee for a charity. This requires each trustee to devote sufficient time to the affairs of the charity to be able to make informed decisions. Regular trustee meetings should be held to facilitate the effective management of the charity.

The level of skill expected from each trustee is dependent upon the background of that trustee and the nature of the matter under consideration. A trustee who is a solicitor will be expected to demonstrate greater skill regarding legal matters than a trustee who is a plumber by trade.

A carefully selected and well balanced board of trustees should ensure that a range of skills are available.

Where the trustees themselves do not have the appropriate skills or knowledge they

should consider whether it is appropriate to employ the services of a specialist.

Trustees Personal Liability

Provided that the trustees have taken all reasonable steps in actively managing the charity it is unlikely that they will be personally liable for any charity debts.

The exception to this arises when the liabilities of the charity exceed the assets of the charity. In this situation the trustees may be personally liable for any liabilities that the charity is unable to discharge. It is therefore very important for trustees to be certain that the charity will be able to meet its obligations under mortgages or similar borrowings before any such agreement is undertaken.

If any of the trustees have acted illegally or irresponsibly then all of the trustees may be personally liable for the liabilities of the charity or for compensating the charity for any loss suffered regardless of whether the charity is still solvent. Even if only one trustee acted irresponsibly, all the trustees may be liable as they are deemed to govern as a body not as individuals. Regular trustee meetings are therefore essential to ensure the effective management and control of the charity's activities.

Further information on the duties and responsibilities of trustees can be found in Charity Commission publication CC3 – The Essential Trustee: What you Need to Know.

Charity Commission publications can be downloaded free of charge from their website www.charity-commission.gov.uk. A printed copy can be requested by telephone on 0845 300 0218.

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