

Responsibilities of Charity Trustees

What is a charity trustee?

Charity trustees are the people who serve on the governing body of a charity. They may be known as trustees, directors, board members, governors or committee members. They are responsible for the stewardship of the charity's assets and resources and for controlling the management and administration of the charity. Trustees, by definition, are members of key management.

What is the overriding responsibility of a trustee?

Trustees have ultimate responsibility for directing the affairs of the charity and ensuring that it is solvent with a thought through reserves policy which is properly monitored, that it is well run, and delivering the charitable outcomes for which it has been set up.

Compliance with the regulatory landscape – what does this mean?

Whilst trustees are not expected to have a detailed understanding of all the laws and regulations that may affect their charity, they are expected to know sufficient to ask relevant questions of those who can carry out research or who should know – including employees of the charity, advisers and professionals. There are three key areas of law for trustees to consider:

1. The charity's governing document eg its trust deed, constitution or Articles of Association. This is a key document which should be read by all trustees. It sets out what the charity was set up to do, the specific powers of the trustees, the way in which trustees are appointed and their length of office, how meetings should be conducted and what happens should the charity ever be wound up.
2. Charity law – the Charities Act 2011 sets out the legal requirements for the administration of charities including the need to keep proper accounting records, prepare annual accounts and have them audited, the need to complete an annual trustees' report, the need to submit these documents to the Charity Commission with ten months of the charity's financial year end and the need to complete an annual return. It also covers other areas such as fundraising provisions, the rules governing the disposal of charity property or the securing of loans against charity property.
3. Like all organisations charities have to comply with a raft of other laws and regulations such as:
 - Employment law – if they have employees
 - Health and Safety laws and regulations – in respect to employees and members of the public
 - Tax laws covering VAT and payroll taxes for example
 - Pensions legislation
 - Property laws eg planning requirements,
 - Safeguarding regulations for vulnerable adults and children
 - Data protection including GDPR

In addition they must comply with the requirements of other regulators such as the Care Quality Commission (CQC) and Ofsted

How do trustees ensure they only act in the best interests of their charity?

- By making decisions with full understanding of the facts and accepting collective responsibility for such decisions.
- By doing those things that will enable the charity to carry out its purposes or objects as set out in its governing document and by balancing the needs of beneficiaries both now and in the future
- By making balanced and adequately informed decisions, balancing short and long term objectives
- Acting with integrity and avoiding personal conflicts of interest or misuse of the charity's funds or assets. This will include the need to declare any potential conflicts to fellow trustees and formulating a conflicts of interest policy. By not receiving any benefit from the charity unless properly authorised and in the charity's best interests, i.e. not being paid for being a trustee.
- Through active discussion regarding policies and procedures and by engaging in key issues such as safeguarding.

The duty of prudence – what does this involve?

There are three key principles to this:

1. Ensuring that income & property are applied for purposes set out in the governing document ie the charity's objects
2. Acting reasonably & prudently in all matters – safeguarding the charity's reputation and not over committing the charity
3. Thinking about and documenting risk management – identifying what could go wrong, looking at the controls in place to mitigate the risks and ensuring those controls are operating.

It involves safeguarding the charity's assets including:

- Ensuring the charity's buildings and properties are insured for the correct value, that they are well maintained and that there is a planned maintenance programme.
- Ensuring the charity's investments are managed by professional managers and that they are managed in accordance with a policy agreed by the trustees. The policy should take in to account the trustees' appetite for risk, the income and capital growth requirements and any ethical constraints. The trustees should meet with the investment managers, possibly twice per annum, to monitor the performance of the investments and the managers.
- Ensuring that staff are aware of their responsibilities, authority limits and that processes are in place in respect to reviewing their performance etc.

The duty of care

Trustees have an obligation to always apply reasonable skill and care to their work, bringing forth the experience and expertise they have accumulated over their lifetimes and careers.

Any trustee that has a professional or specialist qualification needs to be aware that it is reasonable for their fellow trustees to place an added duty of care when discussing issues where that knowledge is relevant. For example, any trustee with legal training would be held to have a higher duty of care when discussing matters relating to the charity's legal issues than a trustee without specialist legal knowledge.

The trustees should at least annually consider the key overriding risks faced by their charity, identifying the impact of such risks and the mitigating factors. The internal controls in place to

mitigate risk should be assessed to determine whether they are adequate and, if not, allocate responsibility for improving and/or implementing new controls.

The trustees will always owe a duty of care to the beneficiaries of the charity and this will involve the consideration of safeguarding procedures, ensuring processes are in place to enable whistle-blowing and putting in place a complaints policy.

The trustees would be expected to acknowledge that at times it may be necessary to seek professional or external advice in order to protect the charity.

Procedures should be implemented to ensure that, when required, a Serious Incident Report is submitted to the Charity Commission.

Can things go wrong?

As in any organisation, decisions can be made which prove to be wrong or not necessarily the best ones with hindsight. In such cases, provided the trustees have acted within the law and have not behaved in a negligent or reckless manner, any loss suffered by the charity will normally be made good out of the charity's own resources. Only on occasions where such resources are not sufficient or where the trustees have acted in a negligent or reckless manner may the trustees be held personally liable in some situations.

The risks of things going wrong can be reduced by:

- Understanding your responsibilities
- Knowing your governing document
- Sound induction procedures
- Dealing with conflicts of interest and maintaining a register of interests
- Making decisions properly
- Being prepared to challenge assumptions
- Asking questions
- Not being too trusting
- Regular meetings
- Taking advice when needed
- Effective management and financial controls
- Knowing the laws and regulations that affect the charity
- Ensuring the charity has the resources needed to meet contractual obligations
- Taking minutes
- Retaining key documents – minutes, insurance policies and signed accounts