



Charities: Trustees' Responsibilities

It is often considered an honour to act as a trustee for a charity and an opportunity to give something back to the community. However, becoming a trustee involves a certain commitment and level of responsibility which should not be underestimated.

Whether you are already a trustee for a charity, be it a local project or a household name, or are thinking of becoming involved, there are a number of responsibilities that being a trustee places upon you.

We outline the main responsibilities below, but please contact us for further clarification on any point.

Background

The charities sector is generally overseen by the Charity Commission. The Commission is a government department that requires the registration of most charities.

The Commission plays an important role in the charity sector and is in place to give the public confidence in the integrity of charities.

Since 1 April 2008, charities have needed to demonstrate that their aims are for the public benefit, as part of their application process to the Charities Commission.

A key part of the Commission's work is to provide advice to trustees. This is primarily achieved through various Charity Commission publications (CCs) and operational guidance notes (OGs). These are available from either the Commission's website (www.charitycommission.gov.uk) or by telephone or written request.

Types of Charity

Charities can be created in a number of ways but are usually either:

- incorporated under the Companies Act 2006 or earlier (limited company charities) or
- created by a declaration of trust (unincorporated charities).

From later in 2011 or 2012, when further provisions of the Charities Act 2006 are enacted, a third main option will be available. This will be called the Charitable Incorporated Organisation (CIO).

All charities are affected by the Charities Acts 1992, 1993 and 2006.

The type of the charity will determine the full extent of a trustee's responsibilities.

Who is a Trustee?

The Charities Act 1993 defines trustees as 'persons having the general control and management of the administration of a charity'. This definition would typically include:

- for unincorporated charities, members of the executive or management committee
- for limited company charities, the directors or members of the management committee.

Trustee Restrictions and Liabilities

In addition to the responsibilities of being a trustee, there are also a number of restrictions which may apply. These are aimed at preventing a conflict of interest arising between a trustee's personal interests and their duties as a trustee. These provide that generally:

- trustees cannot benefit personally from the charity, although reasonable out of pocket expenses may be reimbursed
- trustees cannot be employees of the charity.

There are limited exceptions to these principles. Where trustees do not act prudently, lawfully or in accordance with their governing document they may find themselves personally responsible for any loss they cause to the charity.

Trustees' Responsibilities

Trustees have full responsibility for the charity and are:

- required to act prudently at all times in the best interests of the charity and its beneficiaries
- personally accountable for the proper management of the charity and its assets.

The Charity Commission publication CC3, 'The Essential Trustee - What you need to know' provides guidance for both new and existing trustees. The guidance sets out trustees' duties and responsibilities under five broad headings:

- responsibilities
- compliance
- duty of prudence
- duty of care
- when things go wrong.

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In particular, trustees are under a legal duty to make sure that their charity's funds are only applied in the furtherance of its charitable objects. They need to be able to demonstrate that this is the case, so they should keep records which are capable of doing this.

Accounting requirements

There are particular requirements for most charities to:

- keep full and accurate accounting records (and funds requirements are of particular importance here)
- prepare charity accounts and an annual report
- to ensure an audit or independent examination is carried out
- to submit an annual return, annual report and accounts to the Charity Commission (and, for limited company charities, to Companies House).

The extent to which these requirements have to be met generally depends upon the type of charity and how much income is generated.

Funds requirements

An important aspect of accounting for charities is the understanding of the different 'funds' that a charity can have. The effective management and control of fundraising is an important trustee responsibility.

Essentially funds represent the income of the charity and there may be restrictions on how certain types of funds raised can be used. For example, a donation may be received only on the understanding that it is to be used for a specified purpose.

It is then the trustees' responsibility to ensure that such 'restricted' funds are used only as intended.

The annual report

The annual report is often a fairly comprehensive document, as legislation sets out the minimum amount of information that has to be included. The report generally includes:

- a trustees' report (which can double as a directors' report for incorporated charities)
- a statement of financial activities for the year
- an income and expenditure account for the year (for some incorporated charities)
- a balance sheet
- a cashflow statement (for large charities only)
- notes to the accounts (including accounting policies).

Audit requirements

Whether or not a charity requires an audit will depend mainly upon how much income is received or generated. The income limit varies according to the type of charity as follows:

- all charities where income exceeds £500,000 require an audit
- charities (both incorporated and unincorporated) require an independent examination where their income falls between £25,000 and £500,000
- where income is over £250,000 the independent examiner must be suitably qualified.

There are other criteria to consider, particularly regarding total assets, and we would be pleased to discuss these in more detail with you.

Reporting requirements

There is a comprehensive framework in place that determines how a charity's accounts should be prepared.

Unincorporated charities with income below £250,000 may prepare receipts and payments accounts.

All other charities must prepare accounts that show a 'true and fair' view. To achieve this the accounts generally need to follow the requirements of the Charities Statement of Recommended Practice (SORP).

How we can help

A trustee's responsibilities are many and varied. If you would like to discuss these in more detail or would like help in maintaining your charity's accounting records or preparing its annual report please contact us.

We are also able to advise on whether or not an audit or independent examination will be required and are able to carry this out.

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