



# Summary

# Introduction

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This booklet contains excerpts from The Good Trustee Guide published by NCVO in April 2015, sponsored by Cazenove Charities. The Guide provides comprehensive information about a trustee's role, and guidance on developing an effective trustee board.

The updated edition covers current legal and regulatory frameworks, and includes an extensive range of best practice guidance from voluntary sector support agencies and regulators.

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# What is a charity?

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The modern concept of charity has evolved from an Elizabethan statute of 1601, which defined 'charitable' as 'the relief of aged, impotent and poor people, the maintenance of schools of learning, the repair of bridges, churches and highways, and the relief or redemption of prisoners or captives', among other things. This definition was developed over the years by the courts. In 2006, a new Charities Act restated the charitable purposes and set out a separate public benefit requirement and a range of other changes.

## **Charities have exclusively charitable purposes**

Today, charities are organisations that are set up with purposes that are exclusively charitable. Charitable purposes are set out in the Charities Act 2011 (an Act that consolidated the 2006 Act with earlier charity legislation). The purposes of a charity will be set out in the 'objects' clause in its governing document and must fall under one or more of the following:

- the prevention or relief of poverty
- the advancement of education
- the advancement of religion
- the advancement of health or the saving of lives
- the advancement of citizenship or community development
- the advancement of the arts, culture, heritage or science
- the advancement of amateur sport
- the advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity
- the advancement of environmental protection or improvement
- the relief of those in need, by reason of youth, age, ill health, disability, financial hardship or other disadvantage
- the advancement of animal welfare
- the promotion of the efficiency of the armed forces of the Crown, or of the efficiency of the police, fire and rescue services or ambulance services
- other purposes currently recognised as charitable and any new charitable purposes which are similar to another charitable purpose.

# What is a charity?

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## Charities must benefit the public

All charities must be able to demonstrate how their purposes benefit the public. For a charity to benefit the public it must be able to demonstrate that:

- it provides an identifiable benefit, the benefit being balanced against any detriment or harm, and
- the benefits are to the public, or a section of the public
- any private benefit must be incidental to a charity's work. This includes the restrictions over how far trustees can benefit personally from a charity and the benefits to members in a membership charity.

## Political activity and campaigning

Under English law, charities *cannot have political purposes*. This means they cannot seek to change a law or government policy either in the UK or abroad as their main purpose, but they *can carry out political activity* (seek to change a law or policy both in the UK and abroad) that supports the delivery of its charitable purposes. Charities can never engage in party political activities

(i.e. trying to persuade members of the public to vote for or against a candidate or political party).

## Structure

Broadly speaking, there are four main common forms of legal structure for charities, each with its own type of governing document:

- Trust
- Unincorporated association
- Company limited by guarantee
- Charitable incorporated organisation (CIO).

# What is trusteeship?

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Charity trustees are people who are entrusted to look after money (or other resources such as land or property) given to a charity by a person or group of people. As a charity trustee, you must ensure that these resources are used effectively to achieve the particular purpose for which they were given.

## The 12 essential board responsibilities

### 1 Set and maintain vision, mission and values

The trustee board is responsible for establishing the essential purpose of the charity as set out in the objects of its governing document. The board is also responsible for guarding the ethos and values of the charity.

### 2 Develop strategy

Together, the trustees (and chief executive where employed) should develop a long-term strategy. Meeting agendas need to reflect the key points of the strategy in order to keep the organisation on track.

### 3 Establish and monitor policies

The trustee board creates a wide range of policies to govern organisational activity. These may include human resources, financial controls, safeguarding, risk management, volunteer management and selection of beneficiaries.

### 4 Ensure compliance with the governing document

The governing document is the rulebook for the charity, and the trustees must ensure it is followed. In particular, the charity's activities must comply with the charitable objects in the governing document.

### 5 Ensure accountability

The trustees should ensure that the charity fulfils its legal requirements to be accountable. This will include publishing annual reports and accounts. The charity should also be accountable to other groups that are sometimes known as stakeholders: donors, beneficiaries, staff, volunteers and the general public.

# What is trusteeship?

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## 6 **Ensure compliance with the law**

Trustees are responsible for checking that all the charity's activities are legal.

## 7 **Maintain proper fiscal oversight**

Trustees are responsible for effectively managing the charity's resources and funding so it can meet its charitable objects. The trustee board secures sufficient resources to fulfil the mission; monitors spending in the best interests of the charity; approves the annual financial statement and budget; protects the charity against liability by providing insurance; seeks to manage risk for the charity; ensures compliance with the law.

## 8 **Respect the role of staff/volunteers**

The trustee board recognises and respects the domain of staff and/or volunteer responsibility. It also creates policy to guide staff and/or volunteer activities and safeguard the interests of the charity.

## 9 **Maintain effective board performance**

The board keeps its own house in order. It engages in productive meetings, effective committees with adequate resources, development activities and regular reviews of its role. The board is also responsible for overseeing trustee board recruitment.

## 10 **Promote the organisation**

Through their own behaviour, their governance oversight and their activities on behalf of the charity, trustees enhance and protect the reputation of their charity. They are good ambassadors for the charity.

Where staff are employed:

## 11 **Set up employment procedures**

The trustee board creates comprehensive, fair and legal personnel policies. These protect the charity and those who work for it. They cover recruitment, support, appraisal, remuneration and discipline.

## 12 **Select and support the chief executive**

If necessary, the trustee board creates policy covering the employment of a chief executive. It also selects and supports the chief executive and reviews their performance.

# Duty of trustees

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As a trustee, you must make sure that your organisation:

- pursues its objects or purposes, as set out in its governing document
- uses its assets exclusively to pursue those aims
- acts in the interests of its beneficiaries.

You should also:

- take an active part in the charity
- avoid conflict with your personal interests
- not profit from your role unless it has been authorised.

## Duty of care

The Charity Commission states that trustees must: ‘use reasonable care and skill in their work as trustees, using their personal skills and experience as needed to ensure that the charity is well-run and efficient; and consider getting external professional advice on all matters where there may be material risk to the charity, or where the trustees may be in breach of their duties’<sup>1</sup>.

To ‘use reasonable care and skill’ means allowing for:

- any special knowledge or experience a person has or says they have; and
- any special knowledge it is reasonable to expect from a business or professional person.

## Duty to comply with the law

Trustees must ensure the organisation complies with laws that may be relevant to its work.

## Duty to protect the charity’s property

Trustees have a duty to protect all the assets belonging to the charity, for example by ensuring that there are adequate financial controls and that any land or buildings the charity owns are well maintained and insured.

<sup>1</sup> Charity Commission publication The Essential Trustee: What you need to know (CC3). Crown Copyright.



### **Duty to act in the interests of beneficiaries and avoid conflicts of interest**

The law is quite clear – your first duty as a trustee is to the charity’s beneficiaries, which means you must act in the interests of the charity as a whole. You must remain independent and not come under the influence of another organisation. Anything that might conflict – or be perceived to conflict – with your duty as a trustee should be managed using a conflicts of interest policy.

### **Duty to act collectively**

Trustees are jointly and severally responsible for the activities of the charity and must act together. No trustee acting alone can bind his or her fellow trustees, unless specifically authorised to do so. Trustee boards operate collectively, and decisions are taken together. The board’s decisions do not have to be unanimous. Therefore the majority bind the minority, and you are bound by the decisions of your fellow trustees even if you were absent from a meeting. If you vote against a decision, make sure your vote is recorded in the

minutes and if the matter is serious, for example if you think the charity is going to spend resources on something outside its objects (which would be a breach of trust), you should consider resignation.

### **Duty not to financially benefit unless authorised**

The voluntary principle – that trustees serve primarily to benefit others, rather than for personal gain – is one of the defining principles that distinguish charities from other types of organisation.

# What is governance?

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Trustees take overall responsibility for everything the charity does and they act collectively to govern the organisation. The term often used to describe this role is 'governance'.

## **The six principles of good governance**

The 12 essential responsibilities of trustees are underpinned by six principles of good governance, as set out in the sector governance code.

See [www.governancecode.org](http://www.governancecode.org).

## 1

### **Understanding their role**

Members of the board will understand their role and responsibilities collectively and individually in relation to:

- their legal duties
- their stewardship of assets
- the provisions of the governing document
- the external environment
- the total structure of the organisation and in terms of:
  - setting and safeguarding the vision, values and reputation of the organisation
  - overseeing the work of the organisation
  - managing and supporting staff and volunteers, where applicable.

## **2 Ensuring delivery of organisational purpose**

The board will ensure that the organisation delivers its stated purposes or aims by:

- ensuring organisational purposes remain relevant and valid
- developing and agreeing a long-term strategy
- agreeing operational plans and budgets
- monitoring progress and spending against plan and budget
- evaluating results and assessing outcomes and impact
- reviewing and/or amending the plan and budget as appropriate.

## **3 Working effectively both as individuals and a team**

The board will have a range of appropriate policies and procedures, knowledge, attitudes and behaviours to enable both individuals and the board to work effectively. These will include:

- finding and recruiting new board members to meet the organisation's changing needs in relation to skills, experience and diversity
- providing suitable induction for new board members
- providing all board members with opportunities for training and development according to their needs
- periodically reviewing their performance both as individuals and as a team.

# What is governance?

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## 4 Exercising effective control

As the accountable body, the board will ensure that:

- the organisation understands and complies with all legal and regulatory requirements that apply to it
- the organisation continues to have good internal financial and management controls
- it regularly identifies and reviews the major risks to which the organisation is exposed and has systems to manage those risks
- delegation to committees, staff and volunteers (as applicable) works effectively and the use of delegated authority is properly supervised.

## 5 Behaving with integrity

The board will:

- safeguard and promote the organisation's reputation
- act according to high ethical standards
- identify, understand and manage conflicts of interest and loyalty

- maintain independence of decision making
- deliver impact that best meets the needs of beneficiaries.

## 6 Being open and accountable

The board will lead the organisation in being open and accountable, both internally and externally.

This will include:

- open communication that informs people about the organisation and its work
- appropriate consultation on significant changes to the organisation's services or policies
- listening and responding to the views of supporters, funders, beneficiaries, service users and others with an interest in the organisation's work
- handling complaints constructively, impartially and effectively
- considering the organisation's responsibilities to the wider community, for example its environmental impact.

# Financial responsibilities

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Trustees are legally responsible for the financial resources entrusted to the charity.

## **Key financial responsibilities of trustees**

- ensuring that the charity's assets and income are used exclusively to pursue its objects
- safeguarding the charity's assets, funds and resources and making sure they are correctly applied
- ensuring proper accounting records are kept and policies adopted
- ensuring annual reports and accounts are produced, and where appropriate independently examined or audited, in a form that satisfies the requirements of regulators and the charity's governing document, and are filed with regulators as required
- making decisions on financial policy (for example, in relation to investments and reserves)
- ensuring that proper control is exercised over both income and expenditure, in particular monitoring continued solvency
- monitoring fundraising policy and activities
- overseeing any trading activities and ensuring that the tax affairs of the charity are managed effectively
- ensuring that, where a charity has financial assets to invest, it:
  - does so in accordance with the charity's powers of investment as set out in its governing document
  - adopts an appropriate investment policy including the aims and objectives, the risks and any ethical or responsible investment criteria
  - takes advice where necessary
  - earns the best possible financial return for the level of risk that you consider acceptable.

You have two principal duties when fulfilling your financial responsibilities.

### **'Proper care and diligence'**

A trustee will not, for example, be held personally liable for wrongdoing by any financial agents if the board of trustees has given proper attention to the appointment, duties and supervision of the agents.

# Financial responsibilities

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## **'Prudence of ordinary men and women of business in the management of their own affairs'**

This requires trustees to satisfy themselves that the financial affairs of the charity are being properly handled in the same way that they would manage their own finances or those of someone else for whom they were morally responsible. Ignorance of what is happening, or the absence of dishonesty on the part of a trustee, is not accepted as prudent behaviour. As a trustee, it is your responsibility to find out all relevant information.

## **Investments**

The Charity Commission guidance highlights the legal obligations with regards to investments, summarising that trustees should:

- know, and act within, their charity's powers to invest (legal requirement)
- exercise care and skill when making investment decisions (legal requirement)
- select investments that are right for their charity. This means taking account of:
  - how suitable any investment is for the charity
  - the need to diversify investments (legal requirement)
- take advice from someone experienced in investment matters unless they have good reason for not doing so (legal requirement)
- follow certain legal requirements if they are going to use someone to manage investments on their behalf
- review investments from time to time (legal requirement)
- explain their investment policy (if they have one) in the trustees' annual report (legal requirement).

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