

A TRUSTEE'S ROLE AND RESPONSIBILITIES

PART TWO TRANSCRIPT

Trustee role and legal duties

Welcome to part two of this course on trustee role and responsibilities. In part one we looked at an introduction to the voluntary sector, its breath, how it's funded and how it's regulated as well as challenges facing the sector.

In this section we will look at the role of trustees, explore how boards should operate and outline key legal responsibilities of trustees.

The role of trustees is defined within the Charities Act as 'the persons having the general control and management of the administration of a charity.'

This is important because it means that trustees hold ultimate responsibility for everything the organisation does. Regardless of the organisation's size and scale. From a small community group right through to a household name charity – the board of trustees is responsible for the management and administration of the organisation.

If we unpack what this responsibility means a little more then we can say that trustees have ultimate responsibility for that charity. They are voting members of the governing body, who are elected or appointed in accordance with the charity's governing document. The governing document provides the formal set for board and organisation, setting out the purpose and powers of the organisation and defining how the board should operate. Governing documents are sometimes call constitutions, or memorandums and articles of association.

Where a charity is also an incorporated company, then trustees are also company directors – we explore what this means in the next section.

Trustees in the sector are almost always unpaid, giving their time as volunteers.

Trusteeship is all about working together. Boards should be made up of people with the skills, experience and knowledge to lead the organisation as a collective group. Trustees are jointly responsible and so should make decisions together as a group. Boards should operate at a high level and try to maintain a strategic focus so far as is possible, this often means delegating tasks to sub committees and individuals within the organisation. Although the board can delegate authority and tasks, it always remains responsible.

In order to ensure the best decisions are made in the interests of the charity – trustees are expected to challenge constructively and hold each other to high standards.

The Charity Commission's guidance, *The Essential Trustee*, is the core guidance for all trustees – it spells out everything trustees need to know and everything they are expected to do. The guidance identifies six key legal duties for trustees, which I am going to walk you through.

Purpose

First, charitable status exists in the public confidence that charities will use their resources (in particular their money) to advance the purpose set out in their governing document and no other purpose. As such, ensuring that the organisation is carrying out its purpose is a central legal responsibility for trustees. Trustees should therefore:

- understand the charity's purposes set out in its governing document
- plan what is needed to deliver the purposes – this normally takes the form of a strategic plan
- explain, at least annually in your trustee's report, how all of the charity's activities further or support its purposes.

Spending charity funds on the wrong purposes is a very serious matter; in some cases trustees may have to reimburse the charity personally.

Governing document

Complying with the governing document is the second key legal responsibility. Trustees should pay particular attention to the:

- purpose
- powers – which set out what decisions the organisation and the board can make
- processes – which outline appointments, meetings and decision making mechanisms.

Trustees must also make sure that the charity complies with charity law requirements and other laws that apply to the charity. Trustees are not expected to know every law inside out, but should take reasonable steps to find out about requirements by reading guidance or taking appropriate advice when needed.

Interests

Trustees need to act in the best interest of their charity. This involves making collective, balanced and adequately informed decisions, thinking about the long term as well as the short term implications. It also means trustees have a duty to avoid conflicts of personal interest or loyalty. Where conflicts arise, or where there is a perception of conflict, trustees should declare these. The overriding principle here is that trustees should not receive any personal benefit from the charity.

Accountability

Trustees must ensure the accountability of their organisation both internally and externally.

Externally this involves formal accountability to the Charity Commission and other regulators through annual accounting and reporting requirements, as well as in their communications with the public, stakeholders and members.

Internally it's about ensuring accountability where authority is delegated for particular tasks or decisions to staff or volunteers. This involves management but also making sure that the board has the information it needs to maintain control and monitor progress against the objectives it sets.

Trustees are also accountable to each other, and a trustee board should act collectively in its decision making. Trusteeship is about making joint decisions, it's about listening to all opinions and perspectives before making the most informed decision possible as a group.

Manage resources

There is also an expectation that trustees will manage the resources responsibly. This obviously involves acting responsibly, reasonably and honestly, but it's also about exercising sound judgement on how the charity's resources are best used to advance the purpose.

Trustees need to consider the risks associated with taking particular decisions and avoid exposing the charity's assets, beneficiaries or reputation to undue risk. This duty is all about putting in place the appropriate procedures and safeguards to make sure the organisation's resources are used wisely to advance the cause. Though trustees should remember it's also important to take some measured risk. Being overly risk-averse is after all, a risk itself!

Reasonable care

Finally, trustees are expected to act with reasonable care and skill when making decisions. Trustees should make use of their skills and experience but also be honest about the limits of their experience and take advice from staff or other experts when necessary.

Trustees are also expected to give enough time, thought and energy to their role, preparing properly for meetings, understanding and staying informed on the business of the organisation.

In this section we have looked at who trustees are, how they operate and their key legal duties. If you are a trustee it's always worth reflecting on how your board meets its legal duties – and particularly in relation to the six key areas we have described, how your board could improve the way in which it complies.

Some key questions for trustees to ask would be:

- What can we do to ensure we meet our legal duties?
- Could the safeguards and systems at my organisation be improved to help the board fulfil its legal duties?

That's it for part two. Join me for part three, where we'll look at the various legal forms which charities can take and what this means for trustees, and explore areas where trustees are exposed to liability and how this can be limited.