

# Charity trustees guide

This introductory guide:

- explains what a charity is
- outlines the duties and responsibilities of a charity trustee and the potential liabilities
- highlights the rewards of trusteeship
- looks at the structure of the board, and
- considers the induction and training of charity trustees.

The purpose of this guide is to provide people considering becoming a charity trustee with the information they will need to make an informed decision about the duties and responsibilities of trusteeship, whilst also revealing the significant rewards of trusteeship that are often overlooked.

## What is a charity?

In order to understand what charity trustees do, it is important to understand the sector in which they function. Charities are essentially organisations set up for the benefit of the communities they serve. High profile national charities such as the Salvation Army, YMCA, Barnardos, The Scout Association and Shelter are well known, but make up less than one per cent of registered charities. The majority of charities are based in local communities throughout the country, meeting local needs with limited resources. However, what they all have in common is the fact that they have 'charitable objects'.

Most charities, whether incorporated or unincorporated, have a governing document of some sort (for example a constitution, a trust deed, rules or articles of association). It is in this document that the charitable objects can be found. The governing document also deals with the way in which the charity is governed, how it functions and what the trustees can and cannot do.

A charity's objects (or its aims) provide its foundations - without wholly charitable objects an organisation could not achieve charitable status. The objects may be expressed in a multitude of ways, but will be focused in some way upon the 'charitable purposes' established by the Charities Act 2006 which are:

- 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.

Whatever charitable purpose an organisation is set up to meet, to obtain (and keep) charitable status it must also demonstrate that its 'purpose' is for the benefit of the public. The Charity Commission issued guidance in pursuit of its objective to promote awareness and understanding of public benefit. The two key principles of 'public benefit' identified by the Charity Commission were first that there must be an identifiable benefit or benefits and secondly that the benefit must be to the public or a section of the public. Find out more about the Charities Act and its implementation from the Office of the Third Sector on the Cabinet Office website.

Find out more about public benefit on the Charity Commission website. CIPD members can read our guide to public benefit.

## Regulation

The vast majority of charities depend upon money given to them by the public via fundraising activities, grant applications or gift aid. Consequently, in order to prevent fraud and thereby ensure that such money is spent on furthering organisations' charitable purposes charities are regulated by the Charity Commission.

The role of the Charity Commission is to ensure that charities operate for the public benefit independently of government or commercial interests. It does this by maintaining a public register of charities having an annual income exceeding £5,000 and by requiring charities with an annual gross income exceeding £25,000 to submit an annual return, annual report and accounts, which are then made publicly available. Charities with an annual gross income in excess of £10,000 must submit an annual return to the Charity Commission. These legal requirements can be found in the main sources of charity law, The Charities Act 1993 and the 2006 Act. Furthermore, charities must also comply with the Statement of Recommended Practice (SORP) which is also published by the Charity Commission. An explanation of the SORP requirements is available on the Charity Commission website.

Incorporated charities (companies limited by guarantee registered as charities) are also governed by the statutory provisions of the Companies Act 2006 and are subject to the regulatory requirements of Companies House.

Trustees of charitable trusts or unincorporated associations must also refer to the Trustee Act 2000 which sets out the duties of trusteeship in this context.

Information on charities, their regulation and operational guidance to assist trustees can be found on the websites of the Charity Commission and Companies House.

## What is a trustee?

Trustees must generally be over 18 years of age, although in the case of companies limited by guarantee the minimum age for trustees is 16 years. They must not have been convicted of a serious crime, must not have been declared bankrupt and must not have been disqualified as a company director. The Charity Commission keeps a record of all those barred from becoming trustees.

In the context of charity law, the role of a trustee is to serve on the governing body of the charity in order to control and be ultimately responsible for its management and administration.

In the case of incorporated charities, the directors are also the trustees and the terms are used interchangeably.

By definition, the most significant aspect of a trustee's role is the element of trust placed in them in all aspects of their role, from mapping out the strategic direction of the charity in accordance with the framework set out in its governing document to ensuring that they do not benefit financially from their position.

## What are the responsibilities and duties of a trustee?

The primary concern of good trustees is to ensure fulfilment of the duties and responsibilities of the role, the most significant of which are set out below.

### *Trustee as 'compliance officer'*

Trustees are legally responsible and in certain circumstances personally liable for ensuring compliance with relevant legislation (for example the Charities Acts 1993 and 2006 and the Companies Act 2006), as well as the requirements of regulatory bodies such as the Charity Commission. In order to do this, trustees should have an awareness of relevant legal principles established by the courts and keep up to date with legislative changes. Trustees of incorporated charities should note that the Companies Act 2006 has codified some of the duties of company directors from 1 October 2007. Further information on the changes to directors' duties is available

in our Board composition guide and CIPD Members can also read our guides to the Companies Act 2006.

Examples of the types of issues that can arise are when charities seek to raise funds either by carrying out trading activities or by selling property owned by the charity. Strict rules govern both these areas.

Keeping a rein on the charity's activities, ensuring that it does not stray from its charitable objects or the rest of its governing document and thus go beyond the parameters within which it is allowed to operate, also forms a major part of the compliance role.

#### *Trustee as 'administrator'*

Trustees are responsible for the administration of the charity. This means that they need to meet regularly, delegate tasks and formulate strategy and policies to take the charity forward towards achieving its charitable objects. They may decide to set up committees to undertake work on the trustees' behalf.

One of the most complex but most significant aspects of the role of administrator is ensuring that the distinction between governance and management is not blurred. Governance refers to the maintenance of the legal, regulatory and strategic parameters of the charity. The day-to-day management of the charity by the executive team should occur strictly within those parameters.

#### *Trustee as 'ultimate decision maker'*

Trustees should remember that whilst the governing document may give them the ability to delegate their powers, ultimate responsibility for the charity rests with them. This means that whilst they are able to delegate, they cannot 'pass the buck' for errors that delegates make. This is particularly important for larger charities, where trustees may have to delegate more owing to the sheer number of matters that require consideration. It is therefore crucial that trustees act with reasonable skill and care in all that they do, including delegation. They should never expose the charity to unreasonable or unacceptable risk.

#### *Trustee in a 'fiduciary capacity'*

Trusteeship is a fiduciary position. In other words, trustees must always put the best interests of the charity above all else, never allowing personal interests to conflict with those of the charity. For example, a trustee should not receive any payment for the work they do as a trustee and neither should they benefit from their position in any other way (although reimbursement of out of pocket expenses is permitted and payment for goods and services supplied by a trustee to a charity can be made if certain conditions are met).

*Trustee as 'financial controller'* Trustees must ensure that the charity is solvent at all times. They should protect the assets of the charity and ensure that such assets are only applied in furtherance of the charity's objects. Trustees must regularly review expenditure and keep accounts.

More information regarding trustee responsibilities can be found on the Charity Commission website.

#### *What liabilities are trustees likely to face?*

The potential liabilities facing charity trustees vary depending on the legal framework around which a charity is established. Fundamentally, however, trustees may be held personally liable for third party losses or losses arising from breach of trust or negligence.

In the case of third party losses, trustees of a charitable company should generally be protected because the third party can sue the charity itself as a separate legal entity, rather than individual trustees. However, trustees of a charitable trust or any other unincorporated body do not have the protection of limited liability and so face a greater risk of personal liability.

When a trustee breaches the trust placed in them it is irrelevant whether a charity is incorporated or not. If, for example, a trustee acts dishonestly, negligently or outside the powers granted to trustees in the governing document, that trustee will normally be personally liable for any loss that the charity incurs without limit. Company directors should bear in mind that there are legal

consequences for breaching the duties codified by the Companies Act 2006. CIPD members can find out more about this in our guide to directors' duties.

However, in the event of an inadvertent breach of trust which results in loss to the charity, trustees may obtain relief. Under the Charities Act 1993 (as amended) the Charity Commission is given the power to give trustees such relief for breach of trust or duty (previously only the courts had the power to do this) where trustees have acted honestly and reasonably and ought fairly to be excused.

Bear in mind that trustee indemnity insurance is available. A charity can take out (and pay for) an indemnity policy to cover its trustees, (subject to conditions set out in the Charities Act 1993 (as amended)). Potential trustees should find out whether the charity takes out trustee indemnity insurance and always check the governing document in this regard, since the power to obtain such insurance is not automatic. Operational guidance concerning trustee liability insurance has been issued by the Charity Commission.

Even if such insurance is in place, the policy will not cover willful acts of negligence or acts of bad faith. However, provided trustees act within the powers given to them and do not act dishonestly or negligently, personal liability should not be an issue.

### What about the rewarding aspects of trusteeship?

The role of a charity trustee may appear daunting, but it can also be tremendously satisfying and highly rewarding.

As a result of grappling with often demanding issues and circumstances, trustees can gain unique insights into their communities and consequently develop new skills. Trustee involvement in generating ideas and opportunities to advance the charity and raise funds to support it requires creative thinking and innovative problem-solving. Policy and decision making demands team work which aids the development of negotiation and communication skills. Add to this participation in the strategic planning and management of the charity and its staff and one can see the immense opportunities that exist for personal development.

Finally, from the perspective of personal satisfaction and civic pride, owing to their involvement in the local community, trustees can relish the thought that they are making a valuable contribution to society.

### How should a board of trustees be structured?

As the demands of charity governance are constantly changing, boards should reflect the diversity of the communities they serve. In the ideal world, trustees should be drawn from different age groups, races, genders and socio-economic groups, incorporating people with disabilities and with different backgrounds, qualifications and levels of professional experience. However, the reality is that many small charities struggle to attract trustees and therefore whilst variety is important in terms of considering the needs of all a charity's stakeholders, it is also important for boards to maintain a certain level of stability whilst striving to achieve balance and full representation.

The size of the board is also significant. If it's too big, board members are less likely to agree and form consensus; too small, and the board may be limited in terms of skill and experience and thus may not have the ability to discuss issues in the depth required. The Charity Commission recommends a minimum of three board trustees primarily to act as a safeguard and ensure no-one is acting in their own interests.

In terms of decision making the creation of sub-committees can facilitate a deeper level of consideration of a wider range of issues than might otherwise be possible at full board meetings. However, this can only occur if provision for the creation of such sub-committees is contained within a charity's governing document, and trustees should always insist upon putting oversight mechanisms, such as terms of reference, in place so that the overarching authority of the board is not undermined.

Best practice suggests a three-year cyclical structure for the appointment of trustees, with one third of the board appointed each year and each board member being appointed for a three year term. This way, at any point only one third of board members will have less than one year's experience, significantly bolstering the stability of the board and therefore the stability of the

charity. It is important to build in flexibility by appointing trustees for a set number of years, otherwise a charity can be stuck with trustees until they retire or die.

### What is the role of the chair of trustees?

The chair of trustees is responsible for running board meetings, determining the agenda and ensuring that meetings are productive by keeping debate (and individual trustees) in check. A good chair will allow all trustees the opportunity to participate fully in discussions and will deal with disputes amongst the trustees sensitively but authoritatively. An effective chair will not lose sight of the big picture. Guidance on how to run effective board meetings can be found on the Charity Commission website.

The chair will generally have the casting vote at meetings in the event of equality of votes. They will also summarise decisions and establish action points to be recorded in the minutes of meetings. The chair may also have the power to establish ground rules to control standards of board behaviour.

The role of the chair should not be underestimated in the context of relationships with the chief executive of the charity. They should guarantee that the chief executive and/or senior members of staff are not de facto in control, making decisions that trustees are simply rubber stamping.

### Induction and training of trustees

Induction and training are critical for the development of good trustees. Just because the role of trustee is entirely voluntary, this is no excuse for failing to ensure that high performance standards are maintained: a professional approach should be encouraged and expected at all times.

Trustees should receive an induction early on in their tenure, thus ensuring that they fully understand the organisation, its operations, its staff and its ethos and values. The induction process should also set out what is expected of trustees by the charity, the law and the Charity Commission.

Trustees should receive regular updates and briefings on these matters from the chief executive or external advisors such as solicitors, accountants, health and safety consultants, etc. Annual skills audits can be useful in identifying the strengths and weaknesses of a board and to enable ongoing training programmes to be tailored to the development needs of individual trustees.

Given the voluntary nature of trusteeship, scrutiny of this sort can raise hackles, so it can be helpful to introduce such audits as part of a change process, equipping trustees to deal with variances in funding or the appointment of a new chief executive. External facilitation can also prove effective, bearing in mind the potential advantages of using a trustee from another charity, not only in terms of the knowledge and independent perspective they will bring with them, but also the doors this might open through further collaboration.

There are different ways of auditing or appraising trustees' development needs. Questionnaires, group discussion, and/or individual interviews all yield benefits. Whatever method is adopted, at the end of the audit, a final conclusion should be prepared and presented to the whole board. An implementation and review plan should be put in place, so that all the proposals and recommendations in the audit report are actioned and not simply left to sit gathering dust on a shelf in the chief executive's office.

*Guidance, including a Trustee Recruitment Toolkit originally created by the Governance Hub, can be found on the website of the National Council for Voluntary Organisations (NCVO).*