Consultation

The essential trustee: what you need to know, what you need to do

Contents

1. About this guidance

Charities fulfil a vital role in society. If you are a charity trustee you are responsible for people, money and other charity assets. Good intentions alone aren't enough to fulfil your responsibilities. This guide explains the rules that all trustees of charities in England and Wales need to know, understand and follow.

You should read this guide if you are:

- a trustee of a registered charity
- a trustee of a charity that is not required to register
- thinking about setting up a charity or becoming a trustee

If you help to run a charity but don't know if you are a trustee, check the definition in section 1.1.

When something goes wrong in a charity, it's often because the trustees haven't understood or followed their basic legal duties or the charity's rules. This can have serious consequences for the charity and the trustees personally. By using this guidance you can avoid some of the common mistakes that get charities and their trustees into difficulty.

The Charity Commission has written this guide to help you to:

- understand your responsibilities, and what you need to do to fulfil them
- find out why your charity exists, and what it's allowed to do
- be aware of when you need more help or information, and how to find it

The commission expects trustees to take their responsibilities seriously and use the information in this guide.

Part 2 is a brief summary of all the main points in this guide. These are explained in the rest of the guide. You will find links to more detailed guidance if you need it.

Must and should - what they mean

In this guidance:

- 'must' means something is a specific legal or regulatory requirement that you must comply with
- 'should' means something is a minimum good practice requirement which may, if not complied with, constitute a breach of duty. In consequence, the commission expects you to follow these unless you have a good reason not to

If you don't follow the specified good practice:

- the commission may ask you to explain and justify your decision
- you may struggle to comply with your legal responsibilities
- if something goes wrong as a result, you may be in breach of your legal duties and held responsible for any loss the charity incurs
- the commission may treat this as evidence of misconduct or mismanagement

1.1 Definitions of technical terms used in this guidance

This section explains some legal and technical terms used in this guidance. You can look at it now or come back to it if you read a term you don't understand.

'Beneficiary' or 'beneficiaries' means a person or group of people eligible to benefit from a charity. A charity's beneficiary group is usually defined in its governing document. Some charities call their beneficiaries clients or service users.

The 'Charities Act' is the Charities Act 2011. This guide occasionally refers to specific powers under this Act.

A 'charitable incorporated organisation', or 'CIO', is an incorporated legal form designed specifically for charities. See part 12 of this guide for more detail.

The 'commission' means the Charity Commission, the regulator for charities in England and Wales.

An 'exempt charity' is exempt from registration and direct regulation by the commission. Most exempt charities have a different charity regulator (or 'principal regulator'). Read more about exempt charities.

The 'governing document' is the legal document that sets out the rules that govern a charity. These include the charity's objects and, usually, how it must be administered. It's usually a trust deed, constitution, CIO constitution or articles of association. Some charities have a different type of document such as a conveyance, will, Royal Charter or Charity Commission scheme. Find out more about governing documents.

'In the charity's best interests' means what will best enable the charity to carry out its purposes for the public benefit. See part 6 of this guide for more detail.

An 'incorporated charity' means a charitable company, CIO, royal charter body or a corporation created by Act of Parliament. Being incorporated means the charity itself is a legal body. It can own property or enter into contracts in its own name. Incorporation gives trustees more protection from personal liability. See part 12 of this guide for more detail.

A charity's 'objects' or 'purposes' are what it exists to achieve (for example, relieving poverty in a particular place). The Charities Act refers to 'purposes'; many charities' governing documents use the term 'objects'.

A 'suitably qualified person or adviser' is someone who the trustees could reasonably expect to be competent to advise them about a particular matter. This includes professional advisers (such as solicitors, accountants and surveyors). It could also include a member of the charity's staff, a professional trustee or an adviser from another organisation.

'Trustee' means a charity trustee. Charity trustees are the people responsible for governing a charity and directing how it is managed and run. They may be called trustees, the board, the management committee, governors, directors, or something else. The Charities Act defines the people who have ultimate control of a charity as the charity trustees, whatever they are called in the charity's governing document.

A 'custodian trustee' is a corporation appointed to hold property for a charity. It isn't a charity trustee and must act on the lawful instructions of the charity trustees.

'Holding trustees' are individuals appointed to hold property for a charity. They aren't charity trustees. They must act on the lawful instructions of the charity trustees and in accordance with any provisions in the governing document.

'Professional trustee' means someone (such as a solicitor or accountant) who is a trustee as part of their business or profession. It would also include a trustee who has (or claims to have) specialist knowledge or experience of something.

An 'unincorporated charity' is a charity set up as a trust or association. Being unincorporated means the charity isn't a legal body (so it can't hold property or enter into contracts) in its own right. Trustees' personal liability isn't limited. See part 12 of this guide for more detail.

2. At-a-glance summary

This is a summary of the main points in The essential trustee. This summary won't tell you everything you need to know; look at the rest of the guide to find out more. This guide explains:

- who can be a trustee
- your legal duties and responsibilities as a trustee and what they mean in practice
- other things you should do or think about as a trustee
- where to find out more about good practice that will support your charity's effectiveness
- how to avoid common mistakes - learning from the commission's regulatory work
- information for trustees of particular types of charity or in particular roles

2.1 Who can be a trustee?

You must be at least 16 years old to be a trustee of a charity that is a company or a CIO, or at least 18 to be a trustee of any other sort of charity.

You must not act as a trustee if you have been convicted of an offence involving dishonesty or deception, are bankrupt or have entered into a formal arrangement with a creditor, or have been removed as a company director or charity trustee because of wrongdoing. There are further restrictions for charities that help children or vulnerable people. A charity's governing documents may also set conditions for who may be a trustee.

See part 3 for more information.

2.2 Your legal responsibilities as a trustee

You must:

- carry out your charity's purposes for the public benefit (see part 4)
- comply with your charity's governing document and the law (see part 5)
- act only in the charity's best interests (see part 6)
- manage the charity's resources responsibly (see part 7)
- act with reasonable care and skill (see part 8)

2.3 Other things you should do

You should also:

- ensure your charity is accountable; this includes:
  - making meaningful information about the charity readily available
  - open and honest two-way communication with beneficiaries, supporters and regulators
  - demonstrating that the charity is effective and legally compliant (see part 9)
- plan for the future (as well as the present) (see part 10)

2.4 How to avoid common mistakes - learning from the commission's regulatory work

There are some common mistakes that trustees make, which are often at the heart of when things go seriously wrong. These can result in harm to the charity or its beneficiaries. Trustees may face personal consequences. You can avoid these mistakes by:

- understanding your responsibilities
- knowing your governing document
- making decisions properly
- dealing with conflicts of interest
- being prepared to challenge assumptions
- not being too trusting
- asking questions (even 'awkward' or 'stupid' ones)
- ensuring that the information you must send the commission (accounts, annual returns, trustee details) is up to date

The information on the commission's website will help you. If you give the commission your email address you can receive Charity Commission News four times a year, with updates and useful information.

2.5 Information for trustees of particular types of charity or in particular roles

There are some other things you need to be aware of if you are a trustee:

- of an unincorporated charity
- and director of a charitable company
- of a Charitable Incorporated Organisation (CIO)
- in a specialist trustee role, such as the chair or the treasurer

Read more in part 12 of this guidance.

3. Who can be a trustee and how trustees are appointed

You must make sure you are allowed to be a trustee:

- you must be properly appointed to be a trustee, and should know when your appointment ends
- if you're not properly appointed, the trustees' decisions or actions may be invalid potentially creating disputes or putting charity assets at risk
- acting whilst disqualified is a criminal offence

3.1 Who can be a trustee

You must be at least 16 years old to be a trustee of a charity that is a company or a CIO. You must be at least 18 to be a trustee of any other sort of charity. You must not act as a trustee (you are legally disqualified) if you:

- are disqualified as a company director
- have an unspent conviction for an offence involving dishonesty or deception
- are bankrupt (or subject to sequestration in Scotland), or have a current composition or arrangement (including an individual voluntary arrangement (IVA)) with your creditors
- have been removed as a trustee by the commission or the court because of misconduct or mismanagement

If your charity wants to appoint someone who is disqualified as a trustee, you can apply to the commission for a waiver. The commission will only grant a waiver when it's clearly in the charity's interests and there's no risk to charity assets.

Read more about trustee disqualification.

If you have been barred by the Disclosure and Barring Service (DBS) from working with children or vulnerable adults, you must not take on a role that would give you access to those people. You may be prevented from being a trustee of some charities working with these groups.

Trustees must manage risks to their charity's reputation as well as the people it helps. If your charity works with vulnerable groups including children, even if it's permissible to have a trustee who is barred by the DBS, you should seriously consider whether it's appropriate.

3.2 How trustee appointments begin and end

You must follow any rules in your governing document about:

- who appoints new trustees
- when, and how, new trustees are appointed
- who can be a trustee - the governing document may impose conditions
- how long appointments last
- how trustees can resign or be removed

If your governing document doesn't have specific provisions for these things, you must comply with the relevant legal provisions:

- companies must comply with company law provisions for appointing and removing directors
- unincorporated charities must comply with Trustee Act 1925 provisions
- CIOs must include provisions in their constitutions for appointment of trustees

If the trustees can't remove or appoint trustees, the commission can use its powers.

Read more about legal powers to remove and appoint trustees

When you appoint new trustees you should think about:

- the skills and experience the current trustees have, and what you would like to add
- how the board reflects the experiences and diversity of your beneficiaries
- ensuring new trustees are eligible to act
- ensuring new trustees don't have serious conflicts of interest
- how you will help new trustees to understand their responsibilities and how the charity works

Find out more:

Trustee board: people and skills - how to get the right people with the right skills on your charity's board

Finding new trustees: what charities need to know

3.3 Avoid mistakes - make sure trustee appointments are valid

Be careful to follow the rules in your charity's governing document and the law when appointing trustees. If trustee appointments breach these rules they are not valid. But a trustee who isn't properly appointed can still be held liable for their actions and decisions. The validity of actions and decisions they were involved in could, however, be called into question. In charities with a membership this often leads to disputes. In the worst cases it can harm the charity's reputation, alienate supporters, put charity assets at risk and ultimately leave the charity unable to function.

4. Carry out your charity's purposes

You must make sure that the charity does what it has been set up to do. This means you should:

- be able to explain how all of the charity's activities further or support its purposes
- understand how the charity's purposes and activities benefit the public

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

4.1 Understanding the charity's objects and powers

The charity's governing document should clearly explain its objects - these set out:

- who the charity is there to benefit
- how they will benefit (what the charity will do for them)
- any order of priority to the services and benefits the charity provides
- any restrictions on what the charity can do or who it can help (geographical or other boundaries; or specific qualifications that beneficiaries must meet)

You should ensure that you understand the objects, what they mean in practice, and what powers the charity has to carry them out.

The objects might be quite broad and general, or they might specify services or activities that the charity will provide.

You can find out more about governing documents in part 5 of this guidance.

Everything the charity does must contribute to achieving its purposes. You should regularly consider how effective the charity's activities are, whether there might be better ways of carrying out the charity's purposes, and any consequences of changing what the charity does.

4.2 Public benefit

All charities must be for the public benefit. You must have regard to the commission's public benefit guides PB1, PB2 and PB3 when making decisions they are relevant to. This would include reviewing the charity's activities or considering new ones.

Public benefit is part of what it means:

- to be a charity - having only charitable purposes for the public benefit
- to operate as a charity - carrying out the charity's purposes for the public benefit
- to report on a charity's work - explaining how the trustees have carried out the charity's purposes for the public benefit

You should understand, and be able to explain:

- what the charity is set up to achieve - its 'purpose'
- how the charity's purpose is beneficial - this is the 'benefit aspect' of public benefit
- how the charity's purpose benefits the public or a sufficient section of the public - this is the 'public aspect' of public benefit
- how the trustees will carry out (or 'further') the charity's purpose for the public benefit

5. Comply with your governing document and the law

You must:

- make sure that the charity complies with its governing document
- comply with charity law requirements and other laws that apply to your charity

You don't have to be a legal expert, but you should take reasonable steps to find out about legal requirements.

5.1 Your charity's governing document

Every charity should have a governing document which clearly sets out:

- what the charity exists to do (its objects)
- what powers it has to further its objects
- who the trustees are, what the minimum and maximum numbers are and how they are appointed
- if the charity has members, who can be a member
- rules about trustees' (and members') meetings; how they are arranged and conducted; how decisions can be made, and so on
- how to change the governing document or close the charity down

You must make sure that the charity (and the trustees) complies with the governing document. There may be rules limiting how powers can be used, who can vote at meetings, or which rules can be changed. So every trustee should have a copy of their governing document and read it. If you don't have a copy, or don't know what it is, ask your fellow trustees. If they don't have a copy, the commission can usually provide one (if your charity is a registered charity).

Your governing document is essential to your charity. You may need to review it from time to time to ensure that it continues to meet the charity's needs. You can find out more about this in part 10 of this guidance.

Read more about governing documents.

5.2 Charity law - registration, accounting and reporting requirements

Charities set up in England and Wales must register with the commission unless they are:

- exempt charities
- excepted from registering, or
- very small (below the annual income threshold for compulsory registration, currently £5,000) and not a CIO

Find out whether your charity needs to register

All charities must keep proper financial records and prepare annual accounts.

All registered charities must:

- inform the commission of any changes to the information on the register, including trustee details and changes to the governing document
- send an annual return (or annual update) and other information to the commission

The additional accounting and reporting requirements (eg whether annual accounts and reports have to be filed) vary depending on the size of the charity.

Exempt charities may have to send accounting information to their principal regulator.

Read more about accounting and reporting requirements for charities.

A registered charity with an income over £10,000 in its last financial year must state that it's a registered charity on any appeal documents and on many of its financial documents, including cheques, invoices and receipts. You don't have to state the charity's registration number, but it's good practice to do so.

5.3 Other laws and regulations

Charities and their trustees must comply with a range of other laws and regulations depending on what the charity does, where it works and how it's set up. There are some laws that all charities must comply with, such as equality law. You should find out which laws apply to your charity, for example if it:

- is a company, CIO or community benefit society
- employs staff
- owns buildings or vehicles
- provides:
  - legal, financial or other professional advice
  - housing or accommodation
  - medical or care services
- works in Scotland, Northern Ireland or overseas in different legal and regulatory systems
- works with children or vulnerable adults
- undertakes activities that are subject to regulations, such as fundraising, or keeping personal data on members or supporters

The commission doesn't expect you to be a legal expert, but you should take reasonable steps to find out about legal requirements. This could include taking independent advice from a suitably qualified person. You should also have systems and procedures to ensure that the charity complies with legal requirements.

Find a solicitor - Law Society

Legal advice for small charities - LawWorks

5.4 Avoid mistakes - know your governing document

If you don't follow the governing document, the charity might undertake activities outside its objects. It might fail to follow procedures, or take actions it has no power to take. Actions and decisions could be invalid and have to be reversed as a result. Charity assets could be lost, and the trustees would be responsible.

If you don't follow rules about who can be a member or a trustee, or how to arrange and run meetings, it often leads to disputes, which can prevent the charity from operating effectively.

6. Act in your charity's best interests

You must:

- do what will best enable the charity to carry out its purposes, both now and in the future
- make balanced and adequately informed decisions, thinking about the long term as well as the short term
- avoid putting yourself in a position where your duty to your charity conflicts with your personal interests
- not receive any benefit from the charity unless it's properly authorised and is clearly in the charity's interests

6.1 Understanding the charity's interests

Acting in the charity's best interests means always doing what the trustees decide will most effectively fulfil the charity's purposes. It's not about:

- acting for the benefit of the charity as an organisation
- the interests of trustees or staff
- the personal interests of individual beneficiaries

You should consider future as well as present needs, including for how long your charity should continue. The most effective way of fulfilling a charity's aims may involve merging with another charity or spending all of its resources and closing.

6.2 Making decisions

Making decisions is one of the most important parts of the trustee role. Some decisions are simple and straightforward; others can be complex or far reaching in their consequences. You and your co-trustees are responsible for deciding what activities the charity will undertake, what funds and resources it will need, how it will obtain them and how it will use them.

When you make decisions about your charity, you must:

- act within your powers
- act in good faith, and only in the interests of your charity
- make sure you are sufficiently informed, taking any advice you need
- take account of all relevant factors
- ignore any irrelevant factors
- deal with conflicts of interest
- make decisions that are within the range of decisions that a reasonable trustee body could make in the circumstances

Following these principles will help you to make sure you're acting within your powers (the things your governing document allows you to do) and your charity's objects. It's also important to record how you made more significant decisions in case you need to review or explain them in the future.

Read more about decision making.

6.3 Conflicts of interest

A conflict of interest is any situation where your personal interests or loyalties could, or could appear to, prevent you from making a decision only in the charity's best interests. For example, if you (or your spouse or child):

- receive payment from the charity for goods or services, or as an employee
- make a loan to the charity
- own a business that enters into a contract with the charity
- use the charity's services
- enter into some other financial transaction with the charity

Even when you receive no financial benefit, you could have a conflict of loyalty. For example if your charity has business dealings with your employer, a friend, or another charity that you are a trustee of.

This means you:

1. should identify, and must declare conflicts of interest
2. must prevent the conflict of interest from affecting the decision
3. should record the conflict of interest and how it was dealt with

How you prevent the conflict of interest from affecting the decision will depend on the circumstances and the seriousness of the conflict of interest. For the most serious conflicts of interest it may mean deciding not to go ahead with a proposal or even resigning as a trustee. More usually it will mean the conflicted trustee(s) not taking part in the discussion or decision making process.

Read more about conflicts of interest.

6.4 Payments and other benefits to trustees

When you become a trustee, you usually volunteer your services and receive no payment for your work. This is called the voluntary principle. Charities can't usually pay their trustees. You can claim reasonable expenses such as travel and childcare - being a trustee shouldn't mean being out of pocket.

In some circumstances, trustees do receive payments or other benefits from their charity. This is only permitted if:

- the benefit is specifically authorised by the Charities Act (or other relevant legislation), the governing document, the commission or the courts
- even if the benefit is authorised, allowing it is clearly in the charity's best interests
- the conflict of interests is managed; so in most cases the conflicted trustee can't be involved in the decision and only a minority of trustees can benefit

These restrictions apply to trustees (or a trustee's spouse or child) benefiting by:

- doing one-off work for the charity eg building work or specialist services, because the trustee offers better value than other suppliers
- being employed by the charity (or by a trading subsidiary owned by the charity)
- being paid to act as a trustee; this is very unusual and only permitted in exceptional circumstances
- entering into a property transaction (or any other financial transaction) with the charity - this is called self-dealing

Read more about payment of trustees

Find out whether you need permission, and how to apply

6.5 Avoid mistakes - deal with conflicts of interest

Problems in charities are often caused by poorly managed conflicts of interest. Conflicts of interest (and conflicts of loyalty) are quite common in charities. If one of your fellow trustees appears to have a conflict of interest you should say so; you are not calling their integrity into question by doing so.

If you fail to identify and deal with conflicts of interest:

- the trustees' decision may be invalid, and could be open to challenge
- trustees might have to refund any payment they received from the charity, even if the charity also benefited from the arrangement
- trustees might have to make good any loss the charity suffers
- the commission will take regulatory action where it's necessary to protect the charity from further harm or to deal with any misconduct or mismanagement by the trustees

6.6 Avoid mistakes - be prepared to challenge assumptions

Trustees must make decisions solely in the charity's interests. They shouldn't allow themselves to be swayed by personal prejudices or dominant personalities.

It's good practice to recruit trustees for the skills, experience and background they bring to the charity. In some cases they are appointed by members, beneficiaries or other groups with an interest in the charity. Trustees appointed in this way must act solely in the interests of the charity; it's not their role to represent or lobby on behalf of the group or body that appointed them.

Trustees must act collectively (jointly). Part of their role is to critically and objectively review proposals and challenge assumptions in making decisions. No one should be able to direct the trustees or drive decisions through without sufficient discussion. Trustees who simply defer to the opinions and decisions of others aren't fulfilling their duties. They can be held liable for a breach of duty that occurs as a result of their inaction.

If you strongly disagree with a decision that your fellow trustees have made, you should ask for your disagreement to be recorded in the minutes of the meeting. If you think that your fellow trustees are acting improperly, you should contact the commission.

7. Manage your charity's resources responsibly

You must act responsibly, reasonably and honestly. You must:

- make sure the charity's assets are only used to support or carry out its purposes
- not take inappropriate risks with the charity's assets or reputation
- not over-commit the charity; you should not allow it to become insolvent
- take special care when investing or borrowing

You should put appropriate procedures and safeguards in place, take reasonable steps to ensure that these are followed and not put too much reliance or trust in individuals. Otherwise you risk making the charity vulnerable to fraud or theft, or other kinds of abuse.

7.1 Managing risks

Risks are any potential events that could prevent your charity achieving its purposes or carrying out its strategies. Most (if not all) charities face some risks. The risks your charity might face will depend on its size, funding and activities, among other factors. Managing property, employing staff, using volunteers, or implementing change all involve elements of risk.

Trustees must act responsibly, but this doesn't mean never taking risks. Risk management is the process of identifying and assessing risks, and deciding how to deal with them. It may involve an element of responsible risk taking, and is central to how trustees make decisions.

The commission's guidance on risk management sets out the basics of dealing with risks and includes a risk management model, made up of the following steps:

1. establish a risk policy
2. identify risks (what could go wrong)
3. assess risks (how likely is it, and how bad would it be)
4. evaluate what action to take (eg avoid it, transfer it, insure it, accept it)
5. review, monitor and assess periodically

Read more about managing risks and protecting charities from harm.

7.2 Getting the funds your charity needs (income generation)

Most charities get their funds through one or more of the following methods:

- fundraising (asking for donations or grants)
- trading (selling goods or services)
- investment
- leasing or letting land or buildings

You need to decide how your charity will raise funds. You should think about:

- how much money you need to raise
- the costs, benefits and risks of different methods of generating income
- any legal requirements that the charity must comply with
- any potential reputational issues
- whether you need to take advice

If your charity is already bringing in funds, you should make sure that its income generation is working properly, complies with the law and is not exposing the charity to undue risk.

(1) Fundraising (asking for donations or grants)

This covers a range of activities including:

- street and house-to-house collections and collecting boxes
- fundraising events (including fetes and raffles)
- legacy fundraising
- applying for grants
- using professional fundraisers

You must comply with the rules and regulations that apply to some methods of fundraising (such as obtaining licences for public collections). You should also follow good practice, otherwise the charity's reputation can be harmed and potential donors can be put off.

Find out more about fundraising

Your charity might also be able to attract funding from charities, organisations or individuals that want to invest for charitable or philanthropic reasons. This is commonly called 'social investment'. You should consider appropriate advice before undertaking this kind of activity. Find out more.

(2) Trading (selling goods or services)

A charity can carry out trading that is directly linked to its purposes. This is called 'primary purpose trading', and includes:

- selling goods made by beneficiaries
- charging fees for the charity's activities or services
- delivering public services that support your charity's purposes, under funding agreements with public bodies

All charities may do this. There is no limit on the amount of primary purpose trading that a charity may do. It's exempt from income and corporation tax.

Any trading not linked to the charity's purposes is 'non-primary purpose trading'. There are strict limits on non-primary purpose trading, to maintain charitable status and tax exemption. You may need to set up a subsidiary trading company to carry out substantial or permanent non-primary purpose trading.

Find out more about trading

(3) Investment

You can invest your charity's money, either to provide income to spend on its purposes or as a way to further them directly. Some ways of investing will do both.

When you invest your charity's funds, by law you must:

- follow any restrictions on investments in your governing document
- make sure you know what you're doing when making investment decisions - take advice from a suitably qualified person where necessary
- manage risk to your charity's funds; consider whether you should have a mix of investments rather than relying on a single large investment

You should have an investment policy for the charity that covers:

- the scope of the charity's investment powers
- investment objectives
- investment risk
- particular types of investment, such as ethical investment or social investment
- who can take decisions - trustees, employees, investment managers
- benchmarks, targets and reporting requirements

Use your policy to inform your fund managers and people who are interested in the charity. If your charity is registered and its accounts must be audited, you must report on your investment policy in your trustees' annual report.

Find out more about charities and investment matters.

7.3 Managing funds and keeping them safe

You and your fellow trustees are responsible for your charity's money. Your charity should have effective processes for handling money, to help avoid bad decisions and accidental errors, as well as deliberate theft and fraud:

- set a budget and keep track of it
- put in place clear policies and procedures to deal with money coming in and out
- keep accurate records of income and expenditure
- have robust and effective financial controls in place
- protect the charity from financial crime such as theft or fraud
- put appropriate safeguards in place for money, assets and staff if the charity operates outside of the UK
- have an appropriate reserves policy

If something does go wrong, you should inform the commission and (if appropriate) the police. See the section on what to do if something goes wrong in part 8 of this guidance.

Find out more about managing funds and keeping them safe.

7.4 Managing property (land and buildings)

If the charity owns or rents land or buildings, you should make sure it's held in the charity's name. You should know what condition it's in, whether it's being properly used, and whether you have adequate insurance.

All property needs to be properly maintained. Property that you use for the purposes of the charity needs to be appropriate and fit for purpose. If you lease any property to generate income, you should regularly review whether it's still a good investment for the charity, and whether the terms of the lease are in the charity's interests.

Decisions about property are important, so think about the advice and information you may need.

Most charities can buy, sell or lease land when they need to, but a charity's governing document may specify that land or buildings must be used for a particular purpose. This is called designated land (or 'specie land'). Special conditions apply to leasing or selling designated land.

Land belonging to a charity might be permanent endowment. This puts restrictions on using the proceeds of sale.

You must get permission for any sale or lease to or from a trustee or someone closely connected to a trustee.

Find out more about buying, selling or leasing charity property, including designated land and permanent endowment.

7.5 Managing staff and volunteers

Virtually all charities rely on volunteers or staff to get their work done.

As part of your overall responsibility for the charity, you have responsibilities towards any volunteers or staff. You should ensure that:

- people are clear about what they are supposed to do
- people work safely
- the charity complies with the law (eg relevant employment law and health and safety law provisions)
- people know what to do if there's a problem

You should make sure that the charity has appropriate procedures and policies in place, staff and volunteers get any training they need, and people know they must comply with policies and procedures.

Read more about managing volunteers

Read more about managing employees

7.6 Avoid mistakes - Don't be too trusting

Things can go wrong when trustees place too much trust in individuals, and don't implement sufficient safeguards to ensure accountability. This can result in the charity falling victim to fraud or theft, or beneficiaries suffering abuse. These kinds of occurrences could cause the charity serious reputational damage.

All charities should have appropriate financial controls which ensure that more than one person is involved in receiving income and authorising expenditure. These should cover all payment methods that the charity uses - cheque, cash, credit card, charge card, debit card, prepaid card or other electronic means. Handling cash brings increased risk, so try to avoid cash payments wherever possible.

When other people raise funds on behalf of the charity, whether they are volunteers or paid professionals, you should ensure there are proper controls over the funds raised. This is to make sure that the charity receives the full amount due to it.

Read more about financial controls

Charities that have direct contact with children or vulnerable adults must have appropriate safeguarding policies and procedures in place, including complying with DBS requirements.

Read more about protecting vulnerable groups

If something does go seriously wrong, you should take prompt action to deal with it and report it to the commission. Find out more in section 8.3 of this guide.

8. Act with reasonable care and skill

As someone responsible for governing a charity, you:

- must use reasonable care and skill, making use of your own skills and experience, or taking advice when necessary
- need to give enough time, thought and energy to your role, for example by attending trustees' meetings

8.1 Using your own skills and experience

Trustees should be appointed for the skills, experience and commitment they bring to the charity. You should use your skills and experience to inform decision making and benefit the work of your charity. At the same time you might learn new skills, so it can also be a way of developing your own skills and experience.

Trustees have a duty of care. The Trustee Act 2000 says that trustees must "exercise such care and skill as is reasonable in the circumstances". What is reasonable in the circumstances will depend on any special knowledge or experience that the trustee has or claims to have. It also depends on whether someone is acting as a professional trustee, and what it would be reasonable to expect such a person to know.

Even though the Trustee Act 2000 only applies to trustees of unincorporated charities, the law imposes similar duties on directors of charitable companies and trustees of CIOs (see part 12 of this guidance). All trustees should apply the duty of care to all aspects of their work in making decisions about their charity.

8.2 Taking advice when you need to

Trustees should recognise and acknowledge when they need expertise or experience that they don't have. This is particularly important if the charity (or its property) may be at risk, or if you could be in breach of your duties. For example:

- buying or selling land (most charities must take advice from a surveyor or other qualified person when selling charity land)
- making significant or complicated investments
- entering into contracts
- considering legal action

Larger charities may employ their own professional advisers; most charities can only obtain advice externally.

Read more on making sure you are sufficiently informed

Other sources of help and advice

8.3 What to do if something does go wrong

If something does go wrong, you should take prompt and appropriate action to deal with it:

- report it to the appropriate authorities (including the police)
- prevent or minimise any further loss or damage

- try to prevent it from happening again - review controls and procedures
- think about and plan what you might need to say to your staff, members, the public or the media

You should report serious incidents to the commission as soon as you suspect them. Serious incidents include:

- fraud, theft or the charity losing a significant amount of money another way
- a large donation from an unknown source
- links with terrorism
- the charity having no policy to safeguard its vulnerable beneficiaries
- suspicions, allegations and incidents of abuse or mistreatment of vulnerable beneficiaries

When you report a serious incident, you should provide details of:

- what has happened
- the nature of the risk
- the steps you have taken to deal with the incident

This will help the commission to decide what action, if any, is appropriate. If you provide this information when you first report the incident, it is less likely that the commission will need to ask you further questions.

When the commission becomes aware of a concern it will consider the seriousness and extent of the risk involved and how the trustees are dealing with it. If the trustees report the incident, this will indicate that they are acting responsibly. In most cases, problems in charities can be resolved by the trustees themselves, sometimes with some advice. However, in the most serious cases the commission may need to formally investigate matters by opening a statutory inquiry.

The commission carries out inquiries to identify and investigate concerns about the most serious cases of non-compliance and abuse in charities. This is likely to be where the issue itself is serious and where there is evidence or serious suspicion of misconduct or mismanagement. The commission might also open an inquiry where there is a high risk to the charity or to public confidence in charity more widely. This will include where charity assets, services or beneficiaries are at significant risk of abuse or harm.

If trustees fail to report a serious incident, the commission may consider this to be mismanagement and take regulatory action.

Read more about reporting serious incidents:

Read more about how the commission deals with abuse and mismanagement in charities

9. Ensure your charity is accountable

You must comply with statutory accounting and reporting requirements. You should also:

- be open about how your charity operates and spends its money
- be willing to respond openly and honestly to concerns, criticisms or complaints about your charity
- be able to demonstrate that your charity is legally compliant, well run and effective
- ensure accountability within the charity, particularly where you delegate responsibility for particular tasks or decisions to staff or volunteers

9.1 Complying with accounting requirements

All charities must produce accounts and provide a copy to anyone who asks. (You can charge to cover your costs.) The commission will take regulatory action against charities that persistently fail to provide copies of accounts when asked by members of the public or a regulator. Exactly what accounts your charity must produce depends on whether the charity is a company and how much income it receives. Different rules apply to exempt charities. One or all of the trustees must approve and sign the trustees' annual report and accounts so the trustees need to know what is required.

All registered charities must also provide information annually to the commission. The rules vary according to your charity's size and structure:

- registered charities with an income above £25,000 and all CIOs must file copies of their trustees' annual report, accounts and external scrutiny report
- registered charities with an income above £10,000 and all CIOs must prepare and file an Annual Return form
- all other registered charities should complete and file an update form

The commission updates your charity's register entry with the information provided.

Failure to submit accounts and accompanying documents to the commission is a criminal offence. The commission also regards it as mismanagement and misconduct in the administration of the charity.

Read more about accounts

Read more about annual returns

Your charity may also have to report to other regulators, for example, if its activities include providing social housing or social care. Companies must submit their accounts to Companies House annually.

9.2 Being accountable to people with an interest in the charity

You should be prepared to provide information about your charity. Make copies of the charity's governing document, accounts and other important information available on your charity's website.

You should also listen and respond to what your beneficiaries, supporters and funders say. Use this information to improve the charity's services. You should have procedures for dealing with complaints. Make sure these are easy to find and clearly explain how to make a complaint, the process for handling complaints and likely timescales.

Find out more - see a complaints management checklist: annex A of Cause for Complaint?

You should be able to demonstrate that your charity complies with the law, is well run and is effective in carrying out its purposes. If you can't demonstrate these things, you should be able to explain what steps you are taking steps to address any difficulties.

To review how your charity is doing, you could use:

- a governance code, such as Good Governance: a code for the voluntary and community sector
- a quality standard, such as PQASSO, or another standard endorsed by the commission
- benchmarking (comparing and learning) with another organisation
- an independent review by a suitably qualified advisor

Read about public trust and confidence in charities

9.3 Trustees and delegation

Trustees often delegate day to day activities to volunteers or employees. Many charities also have power to delegate decision making to sub-committees or senior employees. This can help trustees to govern more effectively, but they cannot delegate their overall responsibility. Trustees always remain responsible for all decisions that are made and actions that are taken with their authority.

You should clearly set out in writing the limits of any delegated authority. You should also put clear reporting procedures in place, so you can ensure the delegated authority is exercised properly. High risk and novel decisions should not be delegated. You should agree appropriate guidelines to help assess what is likely to be high risk or novel.

You might be told that trustees should not interfere in day to day operations. But trustees must be able to ensure that the delegated authority is being properly exercised, through appropriate reporting procedures and independent checking.

9.4 Avoid mistakes - Ask questions (even 'awkward' or 'stupid' ones)

Part of your role is to hold people (including staff, volunteers and fellow trustees) to account for how they carry out their role or use the charity's resources. This can mean asking probing or challenging questions about information at trustee meetings, or being prepared to say 'I don't understand what this means'. You should receive information in a format that you can understand and use. All trustees, not just the treasurer, should be able to consider and comment on financial information.

Trustees should exercise independent judgement, constructively question and challenge proposals. No one should be able to direct the trustees or drive decisions through without proper discussion. Trustees who simply defer to the opinions and decisions of others are not fulfilling their duties.

10. Plan for the future

You should take account of both present and future need for the work of your charity. You should:

- plan what your charity will do
- budget for the resources your charity will need to carry out its plans
- review what your charity does and make sure it is still relevant

10.1 Planning ahead

You and your co-trustees are responsible for deciding what the charity will do, both short term and long term, to achieve what it was set up to do. This means you are responsible for setting the charity's strategic aims, objectives and direction.

Planning is closely linked to making decisions and managing risks. Find out more.

10.2 Budgeting

At the same time as you think about what the charity will do during the next planning period, you need to work out what funds and other resources it will need and where the charity will get these from. A charity can only succeed in meeting its aims if it manages its money properly. This means you have to plan and monitor its income and outgoings so that it can meet its short, medium and long term goals.

Read more:

Managing resources

Financial difficulties in charities

10.3 Make sure your charity's objects and governing document are up to date

Part of the trustees' role is to review the work of the charity and ensure that it is still effective. From time to time this will involve looking at the charity's objects and making sure that they are still appropriate, relevant and up to date.

Circumstances change over time and this could affect whether:

- the beneficiary group that the charity was set up for still exists
- the need that the charity was set up to meet still exists
- there may be better ways of meeting the need for which the charity was set up
- any restrictions on who may benefit are still appropriate

In the past many charities helped people by providing goods including food, clothing or fuel. Many charities have decided that they can meet current needs more effectively with cash payments or vouchers, and have updated their objects. Of course, some charities still work effectively by providing goods (such as food or medical equipment).

Charities are often set up for a particular locality. Changes over time may mean that there are no longer enough people who need the charity's services in that place. In these circumstances, charities can expand their area of benefit to include neighbouring areas.

Two charities providing similar (or complementary) services in the same area may decide to collaborate or merge for greater efficiency.

A charity supporting homeless young people decided that it could be more effective by supporting and educating young people at risk, to help prevent them becoming homeless in the first place. It made a clear case that its objects needed to be updated, and the commission agreed.

Charities don't usually change their objects completely; the governing document and charity law wouldn't usually allow it. They can modify or add to their objects if necessary, using powers in the governing document, company law or the Charities Act. If you are thinking about updating your objects you should consider what the charity was originally set up to do, and how circumstances have changed.

You should also think about other provisions in your charity's governing document and whether they still meet the charity's needs.

Governing documents are legal documents. You should consider taking appropriate advice about any changes. Use an approved governing document or one of the commission's model governing documents, to ensure that your governing document has all the provisions and powers you need, and that they are appropriately worded,

Read more about reviewing and updating your governing document

Read more about how to write charitable purposes

11. Understand and prevent personal liability

The law generally protects trustees who have acted honestly and reasonably. However:

- trustees of unincorporated charities may need to take additional steps to manage risks
- the commission expects trustees to understand and fulfil their responsibilities
- there is no protection from liability for negligence, recklessness or deliberate wrongdoing

11.1 Why trustees can become personally liable

It's extremely rare for trustees who act honestly and reasonably to be held personally liable. There is a risk that you could become personally liable:

- to the charity itself, if you cause it to lose money through negligence or deliberate wrongdoing, or receive an unauthorised benefit
- to someone who has a claim against the charity (including because of actions or omissions of staff or volunteers) if the charity can't satisfy the claim; this is a risk for unincorporated charities

If you act honestly and reasonably, complying with the law and your governing document, then the law protects you. Even if volunteer trustees make an honest mistake, the law usually protects them. The commission and the courts do expect higher standards from professional or paid trustees. The charity can normally meet any liabilities that you incur as a trustee. But if you incur liabilities that exceed the value of the charity's assets, you could be liable for any amount that the charity can't cover. The commission can relieve trustees from personal liability to the charity if they have acted honestly and reasonably. The commission can't relieve contractual liabilities.

If you act negligently, recklessly or in deliberate breach of the law or your duties, the position is different. You may be held personally responsible to make good any loss to the charity. You and your co-trustees will usually be collectively responsible to meet any such liability. The commission can take proceedings in court to recover funds a charity has lost because of a breach of trust by the trustees.

11.2 Reduce the risk of personal liability

To reduce the risk of becoming personally liable, you should:

- make sure the charity can meet its financial obligations, particularly before agreeing to any contract or substantial borrowing
- make sure trustees understand their responsibilities
- hold regular trustee meetings and keep proper records of decisions made
- make sure you prevent conflicts of interest from affecting decisions
- make sure any transactions with and benefits to trustees or connected persons are properly authorised
- take appropriate advice from a suitably qualified person when you need to
- if you delegate any powers, give clear written instructions and make sure the instructions are being followed

- make sure the charity has effective management and financial controls including
  - keep receipts and records of income and expenditure
  - receive regular financial reports
  - file accounts on time
- make sure the charity is complying with other laws that apply to it
- consider whether the charity needs additional insurance or needs to become incorporated

Read more about:

- risk management
- insurance for charities
- changing your charity into a company or CIO

11.3 Avoid mistakes - understand your responsibilities

Many problems arise because trustees don't understand their role or responsibilities. If you or your fellow trustees don't understand that you are trustees and responsible, you might allow someone else to take control, or you might fail to hold people to account for their actions. If you don't understand that you must act in the interests of the charity, you might allow conflicts of interest or personal prejudices to affect your decisions.

Some charities have complex structures with different bodies or committees having different roles. The role and responsibilities of each body should be explained in the governing document or the charity's policies. Make sure it is clear who the charity trustees are.

Help new trustees to understand their responsibilities, how the charity works and who does what. Provide them with suitable induction and training, including copies of the governing document, the charity's latest accounts, and this guidance.

Trustees appointed by other groups or organisations need to understand that their duty is to the charity, not to the body that appointed them.

12. Information for trustees of particular types of charities or in particular roles

Charities have different legal structures (eg trust, association, CIO, company). The legal structure your charity has will affect whether:

- the charity itself can enter into contracts or employ staff, or the trustees must do these things personally
- land is held by the charity itself or by the trustees (or someone the trustees appoint for that purpose)
- trustees' liability can be limited
- trustees have specific legal duties that go with that legal structure

Read more about choosing a charity structure

All trustees have the same legal responsibilities, but some have special roles or duties such as the Chair and Treasurer.

12.1 Charitable incorporated organisations (CIOs)

The CIO is a new legal form for charities. CIOs are legal bodies in their own right:

- the charity must register with the commission and only comes into existence at that point
- the charity can hold property or enter into contracts in its own name
- the liability of trustees is limited (unless they breach their legal duties as trustees)
- trustees need to be aware of the rules for CIOs

Trustees of CIOs also have specific duties under the Charities Act:

- to act in such a way that they decide, in good faith, will be most likely to further the purposes of the CIO
- a duty of care similar to the duty in the Trustee Act 2000 (explained in part 8 of this guidance)

Find out more about what CIOs must do

12.2 Charitable companies

Charitable companies are legal bodies in their own right:

- the charity must also register with and submit returns to Companies House
- the charity must prepare a directors' report and accounts under company law; these must also comply with charity law requirements
- the charity can hold property or enter into contracts in its own name

- the trustees are also company directors and have duties under company law
- the liability of trustees is limited (unless they breach their legal duties as trustees or company directors)

Find out more about company directors' duties

12.3 Other forms of incorporated charity

A few charities are incorporated by Royal Charter or Act of Parliament. These charities are legal bodies in their own right:

- The charity can hold property or enter into contracts in its own name
- The incorporated status gives the trustees some protection from personal liability
- Royal Charters and Acts of Parliament can be difficult to amend or update

Read more about Royal Charter charities

12.4 Unincorporated charities (trusts and unincorporated associations)

Charities set up by a trust deed, constitution or similar governing document are unincorporated. This means these charities are not legal bodies in their own right and:

- the trustees have to enter into contracts or agreements in their own names on the charity's behalf
- the charity can't hold property in its own name; any land or other property must be held on its behalf by trustees
- the liability of trustees is unlimited

If the trustees don't want to hold legal title for any land or other property themselves, they may appoint a nominee, holding trustees (other individuals) or a custodian trustee (a company or other corporate body that has power to hold property for the charity). The governing document may explain how to do this.

Holding and custodian trustees aren't charity trustees; they can't make decisions about the management of the charity or its property, and must follow the lawful directions of the charity trustees.

You may find it simplest to vest the land in the Official Custodian for Charities. Read about The Official Custodian for Charities' land holding service

Apply to transfer land or property to the Official Custodian

12.5 Chair and treasurer trustee roles

Some trustees have special roles, such as the chair and the treasurer. They are known as officers. Charity officers don't usually have any extra powers or responsibilities than the other trustees. For example, all trustees share responsibility for finances (not just the treasurer). A chair can't make decisions except in accordance with any delegated authority agreed by the trustees, and should notify the other trustees of any decisions made.

The treasurer usually takes the lead on:

- making sure the charity keeps proper accounts
- reviewing the charity's financial performance
- drawing up policies for finance and investment
- ensuring that the charity has robust and effective financial controls in place

Role description for a charity treasurer - Governance Pages

The chair:

- helps plan and run trustee meetings
- might have a second or casting vote if a vote on a trustees' decision is tied, but only if this is specified in the charity's governing document
- may represent the charity at events
- might also work as a link between trustees and staff

Role description for chair of trustees - Governance Pages

A Chair's Compass - A guide for Chairs of charities and Non-profit Organisations