



CHARITY COMMISSION
FOR ENGLAND AND WALES

GUIDANCE

Trustee expenses and payments (CC11)



MARCH 2012
New format February 2017

Contents

1. Key points about expenses and trustee payments	2
2. Introduction and meaning of terms	4
3. Payment of expenses to a trustee	7
4. Paying trustees for services	11
5. Paying for trusteeship	19
6. Employing a trustee or connected person	26
7. Compensating trustees for loss of earnings	31

1. Key points about expenses and trustee payments

This section summarises the main points for charity trustees to consider. They are based on a mixture of case law, charity law, and good practice, and are covered in more detail in the guidance.

- The concept of unpaid trusteeship has been one of the defining characteristics of the charitable sector, contributing greatly to public confidence in charities.
- The basic principle is that trustees must not put themselves in a position where their personal interests conflict with their duty to act in the interests of the charity unless authorised to do so.
- However, trustees are entitled to have their expenses met from the funds of the charity. Expenses can include a wide range of costs including, for example, travel and other costs of attending meetings, specific telephone and broadband charges, travelling on trustee business, and providing childcare or care of other dependants while attending to trustee business.
- Charities can pay some of their trustees for the supply of services. The power to do this, and the conditions attached to using it, were introduced by the Charities Act 2006 as a change to the Charities Act 1993 (now replaced by the Charities Act 2011). The power is summarised in this guidance. The power cannot be used if the governing document prohibits this type of payment.
- A charity trustee may only be paid for serving as a trustee where this is clearly in the interests of the charity and provides a significant and clear advantage over all other options. There is no general power in law for this type of payment - a charity would need a specific authority which may be found in its governing document, or be provided by the Charity Commission, or, more rarely, the courts.
- Where a charity proposes to employ a trustee in some other role, or where a charity wishes to compensate a trustee for loss of earnings to enable them to attend meetings during working hours, it must firstly ensure that it has the necessary authority. If it is not provided by the governing document, the charity will need to approach the commission or the courts.
- In any case where a charity wishes to make a payment, but has no clear power to do so, the trustee board must apply to the commission for authority before the payment is made.
- Properly assessing any potential risks and managing conflicts of interest are important factors when a charity is proposing to pay trustees. Trustee boards should be open and transparent about their decision to pay, and be prepared to justify it if publicly challenged. For all charities, disclosing such payments in the charity accounts in accordance with Charity SORP guidelines is not only a legal requirement for companies and larger charities but will help charities of all sizes dispel any perception that payments might have been made in secret.
- Charities should have clearly defined procedures for identifying and managing conflicts of interest. Ideally, these procedures should be set out in the charity's governing document.
- As good practice, a trustee board should regularly review the performance of each trustee (including the chair). This is particularly important where a trustee is receiving a payment from the charity.

- Ensuring that the opportunity to be a trustee is open to all is one of the keys to achieving strong, effective boards of trustees. Clear policies on payment of expenses can help with this. Other forms of payment, including compensating individuals for loss of earnings, can also be used as a tool to attract promising candidates who might otherwise be unable to afford to serve.
- if a trustee board is considering whether to make a payment to a trustee (as opposed to reimbursement of expenses) there are six key factors to consider:
 - who will receive the payment - will it be a trustee, or a person or business connected with a trustee?
 - what is the payment expected to cover?
 - is the payment clearly in the best interests of the charity?
 - is there a legal authority for it?
 - what conditions must be met if the payment is to be made?
 - how will any conflict of interest be managed?

The guidance on trustee expenses and payments applies equally to charity trustees and persons or businesses connected with them.

2. Introduction and meaning of terms

The concept of unpaid trusteeship has been one of the defining characteristics of the charitable sector, contributing greatly to public confidence in charities. This does not mean that a trustee can never receive any payment or benefit from his or her charity; there are sometimes good reasons why it can be in a charity's interests to make a payment to a trustee. Trustee boards need, though, to minimise the risks to their charity's reputation and operation. This guidance is designed to clarify the law and good practice where trustee boards propose to make payments to one or more of the trustees.

2.1 What this guidance covers

The guidance explains:

- what can be classed as legitimate trustee expenses; the commission emphasises that trustees should not be 'out-of-pocket' as a result of the work they carry out on behalf of their charity (section 3)
- how charities can use the statutory power to pay trustees for services (provided by the Charities Act 2011), and the conditions they must meet when doing so (section 5)
- the limited circumstances where payment may be made for serving as trustee, and the issues trustee boards need to address when considering these payments (section 5)
- when the commission's authority is needed if a trustee, former trustee, or person connected with a trustee, takes up paid employment with a charity. The commission also covers situations where an employee of a charity becomes a trustee, as well as where the spouse or partner of a trustee, or a person or business connected with a trustee is employed by a charity (section 6)
- when a trustee may be paid reasonable compensation for loss of earnings (section 7)

To support charity trustees' use of this guidance, the commission has included examples within the guidance. It has also included details of other relevant guidance, and contact details of organisations that can also provide useful advice affecting the issue of trustee payment.

2.2 What does the commission mean by 'expenses' and 'trustee payments'?

Expenses are normally refunds by the charity of costs a trustee has had to meet personally (or which have been met on his or her behalf) in order to carry out trustee duties. In some cases, these expenses may be paid in advance. A refund of properly incurred expenses is not a trustee payment, nor does it count as any kind of personal benefit.

Trustee payments are a financial or other measurable benefit paid to a trustee, or to a 'connected person' (see section 3), from a charity's funds in return for work the trustee has carried out for the charity. In most cases, this involves paying a trustee for services over and above normal trustee duties - for example, plumbing, painting the charity's premises, or legal or accountancy work. But it can also include payment for serving as trustee, and payment to a trustee as an employee of the charity in a separate role (for example a chief executive, head teacher, or religious leader who also sits on a charity's board).

Trustee payments might also be made 'in kind' - for example, free use of the charity's facilities or services for which users normally have to pay.

2.3 Meaning of other terms and expressions

The word 'must' is used where there is a specific legal or regulatory requirement that you must comply with. 'Should' is used for minimum good practice guidance you should follow unless there's a good reason not to.

Although the commission has tried to write this guidance in everyday language, there are a number of technical terms it needs to use in places. This list explains some of them:

- applicable SORP is the term used to describe the SORP to be used by the charity to prepare its accounts on an accruals basis which is in effect for the financial year for which the accounts are being prepared. For financial years beginning on or after 1 January 2015 the trustees have a choice of which SORP to apply. The choice is between SORP FRS 102 and SORP FRSE. For financial years beginning prior to 1 January 2015 only SORP 2005 applies. SORP 2005 does not apply for financial years beginning on or after 1 January 2015
- breach of trust: a breach of any duty imposed on a trustee; for charity trustees, these duties may be found in the provisions of a charity's governing document, laws and regulations, or orders of the court or the commission
- charitable company: a company formed and registered under the Companies Act 2006 for exclusively charitable purposes; this definition includes charitable companies registered under the Companies Act 1985, or which were in existence before that
- the Charities Act: the Charities Act 2011
- conditional power of payment: where use of a power to pay trustees can only be used with the commission's prior written approval
- conflict of interest: in this guidance, this term is used to mean any situation in which a trustee's personal financial interests may (or may appear to) influence or affect the decisions made by a trustee for their charity.
- connected person: in the context of trustee payment, this is defined by s.188 of the Charities Act and broadly means family, relatives or business partners of a trustee; it also covers businesses in which a trustee has an interest through ownership or influence - the term includes a trustee's spouse or unmarried or civil partner, children, siblings, grandchildren and grandparents, as well as businesses where a trustee or family member holds at least one-fifth of the shareholding or voting rights, if in doubt about whether a person or business is a connected person, refer to s.188, or seek advice from a solicitor or other person qualified to advise on the matter
- court: usually means the High Court, but can mean any other court in England and Wales with jurisdiction over charities
- governing document: a legal document setting out the charity's purposes and, usually, how it is to be administered; it may be a trust deed, constitution, memorandum and articles of association, will, conveyance, Royal Charter, scheme of the commission, or other formal document
- prohibition on payment: an express instruction against paying trustees. This would usually be couched in negative terms, for example: 'The trustees shall not pay...' or 'No trustee shall be paid...'. but a form of wording that says 'All trustees must act gratuitously' would also be a prohibition
- scheme: a legal document made by the commission or the court which either sets out all the rules for running a charity (and is therefore its governing document), or which amends the powers of a charity (thereby forming part of its governing document)
- the 2000 Act: the Trustee Act 2000

- trustee: a charity trustee; charity trustees are the people who are responsible for the general control and management of the administration of the charity. In the charity's governing document they may be collectively called trustees, the trustee board, managing trustees, committee members, governors or directors, or they may be referred to by some other title
- user trustee means any trustee who makes use, as a beneficiary of the charity, of the equipment, facilities, services or support that are provided as part of the charitable purposes of his or her charity

3. Payment of expenses to a trustee

This section explains the legal position with regard to trustee expenses. The law entitles charity trustees to claim legitimate expenses while engaged on trustee business. No separate authority is needed in the charity's governing document or from the commission.

3.1 What are trustee expenses?

The short answer

Expenses are refunds by a charity of legitimate payments which a trustee has had to meet personally in order to carry out his or her trustee duties. Expense claims should normally be supported by bills or receipts, except where it is impractical to expect this, for example, where very small amounts are claimed.

In more detail

Any reasonable costs that allow trustees to carry out their duties can be classed as legitimate expenses. So long as the charity only pays the trustee for the actual cost or expense, the payment is not taxable. The following are examples of expenses:

- the reasonable cost of travelling to and from trustee meetings, and on trustee business and events; this can include the cost of using public transport, taxi fares, and petrol allowances to the level permitted by HM Revenue & Customs (HMRC) before tax becomes payable
- reasonable refunds for the cost of meals taken while on charity business
- the reasonable cost of childcare, or care of other dependants (for example, an elderly parent) whilst attending trustee meetings
- the cost of postage and telephone calls on charity business
- the costs of a trustee's telephone rental and broadband subscription, so long as these are split to reflect the percentage of time relating to usage on behalf of the charity
- communication support: translating documents into Braille for a blind trustee, or into different languages; provision of alerting and listening devices, and other special aids for people with hearing impairment
- the costs of buying training materials and publications relevant to trusteeship
- providing special transport, equipment or facilities for a trustee with a disability
- cost of reasonable overnight accommodation and subsistence (including any essential care costs) while attending trustee meetings or other essential events such as voluntary sector conferences or specialist training courses

Payments which do not count as expenses

Sections 3.4 and 3.5 cover payments which are not expenses and which either cannot legitimately be made (3.4) or which can only be made if there is suitable authority (3.5).

It is also worth noting that reimbursement of trustees for purchases they have personally and properly made on behalf of the charity are not counted as expenses and are accounted for as part of the charity's general expenditure.

3.2 Do charities need an expenses policy?

The short answer

It is good practice for charities to have an expenses policy.

In more detail

Paying reasonable expenses is a good way of ensuring that the whole trustee board participates in running the charity and, more generally, of ensuring that being a trustee is open to all. For example, this might be particularly relevant when seeking to recruit younger trustees or to ensure that people on low incomes can participate. Unless by personal choice, no trustee should be 'out of pocket' as a result of carrying out their normal duties and responsibilities. Charities should have a written expenses policy, setting out what is recoverable as an expense and what is not, and they should ensure the policy is clearly understood by all the trustees. If trustee boards are in doubt about whether something qualifies as an expense, they should take advice. If the commission decides that an item is a trustee benefit rather than an expense, and there is no power in the governing document to make the payment, the commission may be able to approve it if it can be shown to be in the charity's interest to do so.

3.3 Can trustee expenses be paid in advance?

The short answer

Where they consider it useful, trustee boards can make arrangements for advance payment of reasonable out-of-pocket expenses.

In more detail

Repayment of expenses should be dealt with as quickly as possible and can be made in cash, particularly for smaller items. Advance payment can be particularly useful where the cost can be predicted, for example babysitting costs while attending a board meeting, a standing order for a broadband connection, or perhaps the cost of staying at a hotel when attending a conference. It will also be particularly helpful for trustees on low incomes or state benefits who simply cannot afford to wait for repayment.

If the actual cost of expenses exceeds the amount advanced, then adjustments can be made. But trustee boards must be clear that any pre-payment scheme they put in place has appropriate safeguards and does not constitute a private benefit. In particular, they should ensure that any sums not spent are returned to the charity.

Where payment exceeds actual cost: any payment kept by a trustee over and above the actual cost of the expenses will be an unauthorised private gain, and liable for repayment to the charity.

Entitlement to benefits: state benefit rules have clarified that entitlement to benefits will be unaffected by payment for expenses paid in the future. In case of any dispute, clear record keeping will enable a charity to show that such payments are a reimbursement, and not income for the trustee concerned.

3.4 What payments would not be legitimate trustee expenses?

The short answer

Expenses which are excessive, and/or which do not relate to legitimate trustee activities.

In more detail

The following are all examples of payments which are not legitimate trustee expenses or payments:

- payment of hotel accommodation or travel costs for spouses or partners who are not themselves travelling on charity business
- payment of private telephone bills for business unrelated to the charity
- payment of private medical insurance
- petrol mileage rates above the levels approved by HMRC for claimable expenses
- in the case of a trustee nominated by a local authority, expenses already allowed for under that authority's statutory or contractual arrangements

There are many other examples. Generally, charities should be wary of the risk of excessive or false trustee expense claims. Any misuse of charity assets for private benefit can damage public confidence in a charity, can affect the charity's ability to operate for the public benefit and is likely to amount to mismanagement or misconduct. The trustee may also be liable to repay the charity for any excessive or false trustee expense claims.

3.5 What legitimate payments not counted as expenses might need authority?

The short answer (legal requirement)

Some types of payment are often confused with expenses, when they are actually trustee benefits which HMRC will consider can be taxed as income. They can only properly be paid out of charity funds if there is suitable authority for doing so.

In more detail

The following are all examples of payments which are not expenses, and which the commission might need to authorise:

- compensation for loss of earnings whilst carrying out trustee business (see section 7)
- allowances: for example, a personal clothing allowance
- honoraria (small or token sums not intended to reflect the true value of the service provided - see section 5.8)
- payment for use of a trustee's property (or part of it) for storage and use of charity equipment

3.6 How should trustee expenses be accounted for?

The answer (legal requirement)

Charities that have to prepare accruals accounts must follow the applicable Statement of Recommended Practice (applicable SORP) which sets out accounting requirements for charities. In practice, this covers all company charities, as well as all other types of charity with gross yearly incomes of more than £250,000.

As part of the SORP requirements, charities must disclose as a note to their accounts:

- the total amount of trustee expenses
- the nature of the various expenses
- the number of trustees involved

For this purpose, expenses do not include purchases made on behalf of the charity for which a trustee has been reimbursed. If trustees have received no expenses, this should also be stated.

The commission recommends that all charities should follow this approach to accounting for expenses, even if they are not formally required to follow the SORP requirements.

4. Paying trustees for services

This section focuses on the power that allows charities to pay trustees for additional services they provide to their charity over and above normal trustee duties ('the statutory power'). This includes goods supplied in connection with the provision of services. Trustees must take this guidance into account before they enter into an agreement under this power.

Introduction

Trustees can be paid for providing services (and, in some cases, goods) to the charities for which they are trustees. The power to do this and the conditions which trustee boards must follow in deciding when payment is appropriate, are set out in the Charities Act. The power also applies to:

- payments for services and goods provided by 'connected persons' - broadly, family members or businesses connected with a trustee (see section 3.4)
- any trustees or nominees that may have been appointed simply to hold the title to a charity's property

The conditions that must be followed are outlined in section 4.3.

Situations not covered: charities cannot rely on the statutory power to pay their trustees where:

- the charity wishes to pay a trustee for serving as trustee (see section 5)
- the charity wishes to employ a trustee or a connected person under a contract of employment (see section 6)
- the charity's governing document has a strict prohibition against payment for services (see sections 4.2 and 4.10)
- the conditions for making the payment cannot be met (see section 4.3)

Terms used: for convenience, reference to services in the remainder of this guidance includes any goods provided to a charity, in connection with the provision of a specific service.

4.1 What services can a charity pay its trustees for?

The short answer

A charity can pay a trustee for the supply of any services over and above normal trustee duties. The decision to do this must be made by those trustees who will not benefit. They must decide that the service is required by the charity and agree it is in the charity's best interests to make the payment and must comply with certain other conditions (see section 5.3).

In more detail

Examples of services that may be provided by a trustee in return for payment under the power in the Charities Act include:

- the delivery of a lecture
- a piece of research work
- the use of a trustee's firm for a building job
- the occasional use of a trustee's premises or facilities
- entering into a maintenance contract with a trustee's firm

- providing curtains or decorating materials for hall premises
- providing timber for a building
- providing specialist services such as estate agents, land agents, management and design consultants, computer consultancy, builders, electricians, translators, and graphic designers

The power cannot be used to allow payment for auditing services as a trustee cannot legally act as an auditor for his or her charity.

4.2 What if a charity already has a power to pay its trustees for services?

The answer

The statutory power to pay for services is additional to any other form of authority to pay a trustee which exists in law or in a charity's governing document.

Where a power in a charity's governing document is:

- more restrictive than the statutory power, for example, if it only allows payment for professional services, the charity can use the statutory power, provided there is no prohibition against payment for other services in the charity's governing document
- less restrictive than the statutory power, the charity can rely on its own power

Conditional powers: many charities have a power to pay trustees which requires the commission's prior written consent before it can be used. This is known as a conditional power. The need for the commission's consent has now been removed where charities can meet the conditions of the statutory power, which are explained in section 4.3.

4.3 What conditions must be met before paying a trustee for services?

The answer (legal requirement)

There are a number of conditions, all of which must be met before payment can be made validly. The conditions are that:

- there is a written agreement between the charity and the trustee or connected person who is to be paid (see section 4.4)
- the agreement sets out the exact or maximum amount to be paid (see section 4.4)
- the trustee concerned may not take part in decisions made by the trustee board about the making of the agreement, or about the acceptability of the service provided (see sections 4.4 and 5.5)
- the payment is reasonable in relation to the service to be provided (see section 4.6)
- the trustees are satisfied that the payment is in the best interests of the charity (see section 4.7)
- the trustee board follows the 'duty of care' set out in the 2000 Act (see section 4.8)
- the total number of trustees who are either receiving payment or who are connected to someone receiving payment are in a minority (see section 4.9)
- there is no prohibition against payment of a trustee (see section 4.10)

It is also a condition that, before entering into this type of agreement, trustees must 'have regard to' the commission's guidance on the subject. The commission has used section 4 to provide this guidance and trustees must be able to show that:

- they are aware of this guidance
- in making a decision where the guidance is relevant, they have taken it into account
- if they have decided to depart from the guidance, they have a good reason for doing so

4.4 Can the written agreement to pay for a service simply be a record in the charity's minutes? If not, is there a standard format for the agreement?

The short answer (legal requirement)

No, recording the proposed arrangement in the charity's minutes will not be enough to meet the conditions for an agreement. There must be a separate written agreement which must cover certain issues, but there is no set format. This will depend on the nature of the service being provided, and the level of detail needed to cover it. Legal advice should be sought if an arrangement is likely to continue for some time, or if it is particularly complex.

In more detail

Content of the agreement: although there is no set format, there are certain elements the agreement must contain:

- an accurate description of the service to be provided
- the name of the trustee or connected person (including a business) who will receive the payment
- details of the amount, if a 'one-off' or fixed-term payment, or else the maximum amount for services to be provided over the duration of the agreement. Where the benefit is a 'payment in kind', details of the benefit and its approximate value must be given

As a matter of good practice, it should also contain the following statements to show that the trustee board has considered these factors and has therefore complied with its duties when reaching a decision (see sections 4.6 and 4.7):

- a statement that the trustee concerned (including one who is connected to a person providing a service) will withdraw from any discussion of the trustees which has any bearing on the terms of the agreement or the acceptability of the standard of service provided; this should not, however, prevent a trustee or connected person from providing information which the trustee board may need in order to reach a decision
- a statement that the trustee concerned will not vote on any of these matters, and must not be included when deciding whether a quorum exists at a meeting to discuss them
- Signing the agreement: the agreement must be signed by someone authorised by the trustees to do so. This could be one or more of the trustees who do not stand to benefit under the agreement, or someone who is not a trustee but who has a sound knowledge of the matter. The agreement should also be signed by the trustee or connected person who is to be paid.

Keeping a record of the agreement: as the agreement forms part of the charity's accounting records, it must be retained for at least 3 years in the case of a charitable company (6 years is recommended for best practice), and 6 years in the case of a non-company charity.

4.5 Why are there requirements for withdrawing from meetings and not voting, and should these be recorded in the agreement?

The short answer (legal requirement)

The requirements are designed to ensure that any trustee who stands to benefit cannot influence the trustees' decisions relating to that benefit. Including a statement in the agreement that these requirements apply is not required by law but can help demonstrate to those who fund or use the charity that proper steps are being taken to manage the conflict of interest.

In more detail

Requirement to manage conflict of interest: one of the conditions that must be met when using the power is that the trustee concerned must not take part in any discussion or vote on any decision of the trustee board in setting the terms and conditions of the payment, or any decision to allow or continue with the payment.

It will not be a breach of this requirement if, before its discussion, the trustee board simply asks the person concerned to provide any information necessary to help make a decision.

Breach of condition: if this condition is not met, the commission can require the repayment of all or part of any money received, including the monetary value of any 'payment in kind'. The commission can also require the charity to withhold further payment.

If the condition is breached, it will not affect the validity of the services provided.

Further advice: **Manage a conflict of interest in your charity** provides more detailed advice about managing conflicts of interest.

4.6 What constitutes a 'reasonable payment'?

The short answer

There are a number of factors to take into account, relating to affordability, price and quality. In terms of price and quality, trustee boards should normally test the market and use comparisons for similar work to ensure they are paying no more than the 'going rate'.

In more detail

Factors to consider: when considering whether a payment is reasonable, trustee boards should consider:

- whether the charity can afford the payment
- the value to the charity of the services provided by the trustee
- the quality of the service and the reliability of the supplier
- any costs previously paid by the charity in obtaining those services
- how much other organisations pay for similar services in similar circumstances
- the implications for the reputation of the charity with its donors, funders, members and supporters, and with the general public

Making comparisons: trustee boards should obtain quotations from other suppliers, unless the amounts involved are very small. Proper records should be kept of these, and of any other information used in making comparisons. Generally, the higher the costs, the more trustee boards need to be able to show they have properly tested the market and have obtained value for money. And where a charity has a policy on procurement and purchasing, trustees should ensure they comply with its terms when paying for services from a trustee.

Tendering may not be required: a full tendering exercise (ie obtaining bids from interested suppliers) will not always be economic or appropriate - for example, if the transaction is relatively small, and a good quality service can be provided quickly and at low cost. Trustee boards should ensure a proper record is kept of the basis for their decision, including why the level of payment is considered reasonable - preferably by reference to payments in similar situations.

4.7 How do trustees decide that this sort of payment is 'in the best interests of the charity'?

The short answer

Before making a decision, trustee boards must be satisfied that the arrangement is in the best interests of the charity. This means they should be satisfied that the service is required by the charity. They should also be able to show there is a clear advantage to the charity in using one of its trustees instead of someone else. In many cases, this will involve a simple financial advantage, but there can be other factors that might influence a decision to pay a trustee. These should be weighed against any likely disadvantages; for example, that the person would be barred from contributing to decisions about the scope of the service and its terms and conditions.

In more detail

Value for money: the service must be needed by the charity, and the trustee concerned must be sufficiently experienced and skilled or qualified to deliver it. There may be a cost advantage in using a trustee, but this does not always mean work should be done 'on the cheap'. Quality is important, and speed of delivery might also be a factor. Trustee boards must be satisfied that the charity will be receiving value for money, and that there will be no adverse affect on its reputation, or levels of support and funding. The board must ensure that the charity can afford the cost of the service, without any adverse impact on the charity's activities.

Knowledge of the charity: a particular knowledge of the charity and its working environment can sometimes be an advantage. A trustee board may decide that for less - or no more - than the market rate, it can use the skills of a trustee who knows the specific requirements of the charity, and is perfectly competent to do the work in question.

Purchase of goods: where goods are supplied by a trustee in connection with a service provided, again there must be a clear advantage. This will normally mean items being supplied at a favourable rate. Where quality is also a factor, there should still normally be a significant 'value for money' advantage to the charity.

When there is no advantage: where there is an unfavourable financial comparison with an outside supplier, and no weight of special expertise or knowledge that would tip the scales, the charity should use the supplier who is not a trustee. There would be no clear advantage in using the trustee, because of the need to manage the conflict of interest (see sections 4.4 and 4.5).

4.8 What is meant by the 'duty of care' and how does it influence the decision to pay trustees for the provision of a service?

The short answer (legal requirement)

The statutory power requires trustees who use the power to follow the duty of care set out in the 2000 Act. This means that the trustee board must act honestly and in good faith, and must exercise all reasonable care and skill in reaching their decision.

In more detail

Exercising all reasonable care and skill means allowing for:

- any special knowledge or experience a person has or says they have
- any special knowledge it is reasonable to expect from a business or professional person when acting in either capacity

The level of competence and proficiency required of a trustee will vary according to the level of expertise the person has.

In order to fulfil their duty of care when deciding to pay one of their trustees, the commission would expect trustee boards to:

- exercise the power responsibly in the best interests of the charity
- take professional or other appropriate advice when in doubt
- be clear that payment of a trustee can be justified
- ensure that conflicts of interest are properly and openly managed
- ensure that agreements are complied with and that any poor performance is identified and addressed
- retain the agreement as part of the charity's records as required by law
- disclose the payments in the charity's accounts

4.9 How many trustees can be paid at any one time for providing services?

The answer (legal requirement)

The statutory power can only be used if, at the time in question, the total number of trustees receiving payment from the charity's funds will be in a minority on the trustee board.

When assessing this, the trustee board needs to take into account the number of trustees who are receiving directly or indirectly (through a connected person) any trustee payment as defined in section 4.2. This means they need to include:

- any trustees connected to persons or businesses receiving payment
- any trustees who are receiving payment for serving as trustees
- trustees who are also paid employees of the charity
- trustees receiving any other form of trustee benefit

For the purpose of deciding if the meeting is quorate, those trustees who face a potential conflict of interest as a result of the issue being discussed should be excluded.

If there are only two trustees, the new power cannot be used, since paid trustees would not then be in a minority. If there is no other authority for the payment, either the commission's approval will be needed, or, if the governing document allows it, the trustees can appoint an additional unpaid trustee, which would then allow the new power to be used.

4.10 Can a charity pay one of its trustees for services even if its governing document prohibits this?

The short answer (legal requirement)

No. In these cases, payment can only be made after the prohibition has been removed by the commission or, in some cases, by the charity itself. The effect of removing the prohibition will be to enable a charity to use the statutory power to pay trustees for services: it would not allow any other form of trustee payment.

(See 4.2 for the position where there is a conditional power, rather than any outright prohibition.)

In more detail

When a charity can remove a prohibition: a charitable company may remove a prohibition on payment by amending its governing document without involving the commission so long as:

- there are enough members (who are not also trustees) to form a quorum to consider the alteration

Members who are also trustees should not vote on the resolution to remove the prohibition (but they can vote to adopt a power that goes no further than the statutory power, if there is no prohibition).

When the commission's consent to the removal of a prohibition is needed: an unincorporated charity cannot use the power of amendment set out in the Charities Act. An unincorporated charity will either need to:

- apply to the commission for a short scheme to remove the prohibition
- approach the commission for written consent if its governing document already contains a suitable power of amendment which can only be used with the commission's prior consent

Where a charitable company does not have any members, or enough members who are not trustees to form a quorum to consider an amendment to remove a prohibition, the commission's consent will be needed. In this case, the trustees will need to apply to the commission for an order.

When the commission is asked to provide consent or make a scheme or order in these cases, it will take into account any evidence about the reasons for including the prohibition and whether the change will be in the charity's interests.

4.11 Can the agreement to pay a trustee for a service be amended?

The short answer

Yes - by a majority decision of the trustees who do not stand to gain. It is also necessary in these cases either for the trustee being paid to agree the change or for the contract to provide for such a change.

In more detail

Any change to the terms and conditions of the agreement must be discussed and approved by a meeting of the trustee board in the absence of the trustee who is providing the service (or who is connected to someone doing so). The new terms must be in the best interests of the charity, and they must be agreed by a majority vote of the trustee board - again excluding the trustee concerned, who must not form part of the quorum for the purpose of the meeting. The trustee board's decision to vary the terms should be recorded in the minutes of the meeting at which that decision is taken. (As with the original agreement, the trustee concerned can be asked to provide information to the trustee board ahead of any discussion.)

An agreement can usually only be varied with the agreement of all the parties. If this is the case, an amended written agreement should be made.

4.12 Must these payments be mentioned in the charity's accounts?

The short answer (legal requirement)

Yes, in the case of accounts prepared on an accruals basis - in other words, charitable companies and those other types of charity with a gross yearly income of more than £250,000.

In more detail

Under the applicable SORP accounting framework, charities that prepare their accounts on an accruals basis must give details of payments and other benefits to charity trustees and connected persons - including family members and businesses. They are also required to say under what legal authority the payment is made, together with the reason for it.

Although there is strictly speaking no need for this in the case of charities that prepare accounts on a receipts and payments basis, the commission recommends, as best practice and to enhance transparency, that similar details are provided. This can help protect trustees from accusations that they are benefiting in some hidden way.

See **Charity reporting and accounting: the essentials (CC15b)**

4.13 What if a charity wants to pay for a service to be provided by a trustee or connected person, but cannot comply with all of the conditions of the statutory power?

The answer

If not all of the conditions set out in section 4.3 can be met, trustee boards are advised to contact the commission with the details before making any payment, to see if it can give its approval. The commission will not approve any proposal involving excessive costs, or which will result in an unacceptable personal benefit, or anything else clearly against the interests of the charity. But if a proposal is reasonable in terms of cost, conflicts of interest are managed and it represents a clear advantage to the charity, rather than to the individual concerned, the commission will usually authorise it. It will take into account the overall level of trustee payment, and any other relevant circumstances when assessing such cases including whether such a payment is expressly prohibited.

5. Paying for trusteeship

This section explains the limited circumstances in which trustee boards can pay a trustee for carrying out trustee duties.

5.1 What is the difference between paying a trustee for the provision of a service and paying for trusteeship?

The short answer

While there is a general power to pay a trustee for providing services, there is no such general power to pay a trustee for carrying out trustee duties. Charities cannot do this unless they have a suitable authority, either in the charity's governing document, or one provided by the commission or the court.

In more detail

Paying a trustee for the provision of a service usually involves a charity making a one-off or occasional payment to a trustee who is to provide it with a specific service that is quite separate from his or her normal trustee duties. Many charities already have a specific power to do this in their governing documents. If not, they can usually rely on the statutory power contained in the Charities Act, described in section 4 of this guidance.

In contrast, payment for trusteeship means that a trustee receives payment from a charity for carrying out his or her normal trustee duties. In some cases, payment will be made on a continuous basis whenever these duties are carried out; or it may take the form of a periodic or annual allowance; or it may be made on an occasional basis, intended to reflect only a certain aspect of the trustee role, or to enable a trustee to attend a specific meeting or event.

Crucially, there is no general power in charity law for trustee boards to make such payments, and normally they cannot do so unless their governing document specifically allows it, or unless they have authority from the commission or the court. (There are only very limited exceptions to this - occasionally where charities may be regulated primarily by legislation other than the Charities Acts.)

Without such authority, any such trustee payment is a breach of trust (see section 4.2) - even if the charity benefits from the transaction. As this might mean the trustee board or the individual trustee who has been paid being made liable to repay all or part of the payment, trustee boards without a suitable power should seek authority before any payment is made. Unauthorised payments may be evidence of misconduct or mismanagement.

5.2 Is paying for trusteeship contrary to the voluntary principle?

The short answer

Unpaid trusteeship has always been a distinctive feature of charitable activity, and greatly enhances public confidence and trust in charities. There is a general expectation that charity assets should be used directly for the purposes of the charity. As a consequence, any departure from this position is only likely to occur in exceptional circumstances and needs to be fully justified by trustee boards as being clearly in the interests of their charity.

In more detail

There are circumstances where payment may be justified (see section 5.3), but trustee boards need to be clear they can justify a decision to pay one or more of their trustees, and that they can also manage the risks involved in doing this. A major risk area will be the need to manage conflicts of interest. The more trustees who stand to benefit, the bigger the risk and potential disadvantage, particularly in terms of conflicts of interests.

Trustee boards should consider carefully whether there is likely to be any adverse effect on the reputation of the charity amongst its supporters and users - the charity might attract criticism if payment appeared to be excessive and widespread. An open and transparent approach to explaining the reasons for payment, and to accounting for them, will help reduce the level of risk.

Trustee payment must only be incidental to the purposes of a charity, and if a charity appears to be becoming a vehicle for trustee payment, the commission will use its powers to protect its assets. In an extreme case, charitable status could be placed in jeopardy.

5.3 When can paying for trusteeship be justified?

The short answer

When there is a clear and significant advantage to the charity that will outweigh any disadvantages.

In more detail

If the commission is asked to approve a payment, it will normally only do so where a charity's complexity of operation has led to an unusually high burden of trusteeship. This will usually involve a trustee exercising a higher degree of responsibility and supervision in a complex field of activity, perhaps because of the breadth and range of activities undertaken by the charity.

It is often argued that payment can overcome difficulty in recruiting new trustees. There are, however, many methods of recruitment, including targeted advertising and online publicity, use of specialist agencies and trustee brokerage services, and use of open selection processes. Before considering payment, the commission advises charities to review the effectiveness of their recruitment mechanisms; see the guidance **Finding new trustees (CC30)**.

In many cases, simply paying legitimate reasonable expenses may be all that is needed to reassure potential recruits that they won't be out of pocket by taking on trusteeship; generally, the commission recommends that all charities have a written expenses policy (see section 3).

But if trustee boards are convinced that only payment of a more direct benefit will enable them to obtain the skills, experience, and diversity they need for the charity, the commission will consider a reasoned case based on the factors set out in section 5.4. This includes payment where compensation for loss of earnings is a factor (see section 7).

Case study

A large grant-making charity applied for remuneration for future chairs and certain trustee posts on the basis of the high level of time and commitment involved. The charity felt that, without offering payment for the time commitment and for the responsibilities that come with oversight of a multi-million pound organisation, it could not attract the right calibre of candidate, and would be likely to attract only those who were retired or 'well-off'. It provided evidence that, even with a well targeted recruitment campaign, it was struggling to attract the right calibre of candidate.

The commission approved payment for chairs, but rejected an application for payment of five other trustee posts, for which the charity wished to attract experts in its field. There was little similarity in time commitment compared with the chair, and no evidence that these posts were difficult to recruit for; indeed, previous recruiting campaigns suggested the opposite was the case, as a number of well-qualified candidates had come forward.

There are many reasons for becoming a trustee - financial reward rarely ranks among them. Identification with a particular cause or purpose, a sense of serving the community, or the opportunity for personal development, can all attract people to trusteeship. Where this is the case, charities should find no difficulty filling trustee vacancies. Generally the commission advises that trustee boards look at a number of recruitment methods before they consider trustee payment as an option: the commission would need to see evidence that there is a lack of volunteers with the right skills.

It is likely that a charity will expect a trustee who is paid to have special knowledge and experience and that consequently the level of care and skill expected of that trustee will be higher than for someone who is not paid.

5.4 What factors should trustees cover when applying to the commission to approve a payment?

The short answer

The trustee board should show why the charity will not be as effective without payment. If it is proving difficult to recruit new trustees without payment, the board should normally provide evidence that it has made a serious attempt to recruit trustees on an unpaid basis. It is not in the interests of a charity to pay a trustee if it is easy to appoint one with the right skills and competence to act without payment.

In more detail

Main factors to consider: The trustee board needs to show:

- what steps have been taken to recruit trustees without payment - if none, then reasons should be given
- why it considers there are clear and significant advantages to the charity in paying a trustee rather than, for example, spreading duties among other trustees, or increasing the number of unpaid trustees (if the governing document allows it)
- whether the functions to be carried out are genuinely those of a trustee - as distinct from functions of an employee or a consultant; has the charity made the right balance between its executive and non-executive functions?
- that the payment can be shown to be reasonable and affordable, and will not affect the charity's ability to carry out its objects
- what risks they have identified and how they will manage them (see section 5.2)

- how the unpaid trustees will be able to review performance (including dealing with poor performance), judge value for money and, if necessary, bring the payments to an end
- how the conflicts of interest will be managed, so that the 'conflicted' trustee can still take an effective role in the governance of the charity

In cases where the commission is able to provide authority, it would normally expect to give this where the number of trustees benefiting is in a minority.

Applying for approval: all applications for authority to make payments to a charity's trustees should be made using the **trustee payments application form**. Using the form will ensure that the commission are given all the necessary information in one submission, avoiding the need for additional rounds of correspondence.

Making comparisons: to manage or help avoid conflicts of interest and to provide objective evidence, charities may find it useful to consider 'benchmarking' (testing what is the 'going rate' for a similar job in a broadly similar organisation), or using review mechanisms - such as payment committees or outside bodies - to review pay scales.

In some cases, the commission may include provisions for benchmarking or review in its payment authority.

Consultation: in some cases, particularly where larger charities wish to pay significant numbers of trustees (for example, payment of chairs and regional chairs, payment of whole boards), the trustee board may wish to consider whether it would help to consult with those with a significant interest in the charity or any of its stakeholders. 'Stakeholders' can include anyone with a direct interest in the charity's operation: funders, donors, users and beneficiaries, members, staff, volunteers, business/operating partners, and other relevant regulators or agencies.

Case study

A large educational trust running a group of schools had expanded considerably, and was looking to extend its operations still further into Academy schools. The trust was attempting to recruit a new chair with a commitment of around 60 days per year; it sought authority for reasonable payment in recognition of the increased time commitment and complexity the role of chair now demanded.

The commission was satisfied the trust had conducted an extensive advertising campaign, including use of a leading recruitment agency. The results showed considerable reluctance to undertake the commitment required on an unpaid basis. It agreed the proposed remuneration of the chair, subject to its further approval to any subsequent increases in the agreed rate of payment.

5.5 Can charities offer trustee benefits to help improve the diversity of their boards?

The short answer

It is more and more the case that charities wish to attract trustees from a wide variety of age ranges and social and economic backgrounds. In urging charities to seek greater diversity on their trustee boards, the commission recognises the advantages of recruiting and retaining trustees who have a particular knowledge of the communities and areas in which their charity operates. It supports the view that people should not be excluded from trusteeship because of their economic circumstances. Not every trustee will always be able to give their time freely, and the commission accepts that in some cases, particularly where loss of earnings will cause hardship, an element of financial compensation might be justified.

In more detail

A trustee board that reflects the composition and diversity of a changing society and of its beneficiaries is something all charities should strive to achieve. A diverse board is more likely to contain a broader range of skills, knowledge and experience than one which is more narrowly based. Effective recruitment and induction are key to this. Where charities need to draw on a wider trustee base, with new skills, ideas, and abilities to help them deliver better services to their communities, they may need to look at introducing new practices to encourage more diverse recruitment. These might include some of the factors mentioned in section 5.4, and also in the guidance **Finding new trustees (CC30)**.

But where it is clear that the potential loss of earnings are preventing promising candidates from applying, charities can consider whether some reasonable financial assistance will help with their recruitment. The commission does not suggest, though, that paying trustees should be seen as an automatic solution to widening the trustee base.

Expanding diversity: when preparing to recruit new trustees, a charity should, in general, seek to increase or at least maintain the diversity of its trustee board. On one level, this may involve enabling the users of the charity's services to be properly represented on its trustee board. Provision of special facilities or equipment may help with this (see the guidance **Users on Board: Beneficiaries who become trustees (CC24)**).

But in a much wider sense, having a more diverse board means taking positive steps to recruit trustees from parts of the community which may not traditionally have played a large role in charity governance: for example, young or unemployed people, people from ethnic minority communities, or people with disabilities. Some charities may have a specific need to recruit trustees who are on low incomes or from economically deprived areas. The commission believes it is important that people in this position should not be prevented from becoming charity trustees because of financial hardship.

Use of expenses: direct payment for being a trustee is not necessarily the best way to secure wider representation on the trustee board. Wherever possible, charities should ensure they can offer reasonable upfront expenses for the cost of transport, meals, childcare, and accommodation when on charity business. It is important that no-one fears they will be out of pocket by becoming a trustee. This is especially the case where young people, the elderly, and people on state benefits or low incomes are concerned; the commission recommends advance payment of expenses where cost is likely to be an obstacle to anyone carrying out trustee duties. See section 3 for further details on the use of a clear expenses policy.

Loss of earnings: in more problematic cases, it may be more than simply a question of being able to rely on expenses. Changing working patterns mean there is no standard working day for many people. This can mean some trustees are unable to attend meetings outside conventional working hours, and some may find it difficult to get paid time off work to attend meetings. Ideally, trustee meetings should be held at times that are most convenient to all, and at readily accessible venues; but the commission recognises this may not always be possible. In some instances, particularly where prospective trustees are self-employed or on low incomes, and are likely to lose out financially when acting on charity business, some level of financial compensation for loss of earnings may be a practical option to support their continued involvement. This issue is discussed in more detail in section 7.

Case study

A charity providing social care and support across a wide spectrum of social need, including disability, wished to appoint a disabled person who was in employment as a consultant to serve on its trustee board. The board felt it important to secure the services of the person concerned in order to give a wider perspective on its work. To avoid financial hardship as a result, the commission authorised reasonable payment to the new trustee as a direct replacement of loss of earnings while active on trustee business.

5.6 What if the person is receiving state benefits?

The short answer

Care should be taken where a trustee is receiving state benefits. The rules governing benefits and tax credits are complex, and charities will want to ensure that payment of a trustee does not result in a reduction in their entitlement to benefits.

In more detail

Any trustee who feels this might be a concern (either to them or to a member of their household) should obtain written advice from the relevant benefits office. Where it would help to clarify the position, the charity should be prepared, with the consent of the trustee, to contact the benefits adviser on the trustee's behalf.

Further details: **Volunteering while on benefits** (GOV.UK website)

5.7 What is the position of sole trustees?

The short answer (legal requirement)

Where a charity has a single or 'sole' trustee (which might be an individual, or a corporation such as a local authority, or a bank or insurance company), payment decisions cannot be taken without a conflict of interest. Realistically, there is little advantage to any charity in its sole trustee being paid to act as trustee. It will be significantly more difficult to make a case for payment, particularly where statutory funds might also be available to administer the charity.

In more detail

The commission will not normally authorise a proposed payment where a fee-charging company requests a provision that reflects its published commercial scales of payment, rather than a rate that reflects the value of work actually done for the charity. Where the commission are required to approve a payment provision, its authority will limit payment to a reasonable charge in relation to that work.

A sole trustee may not profit from any charges it makes to a charity. For example, if it costs a local authority £150 per hour to employ a solicitor, it can charge any trust it administers up to £150 per hour. It cannot charge £200 per hour, even if that is the rate a solicitor in private practice would charge the trust - unless the charity's governing document or the commission has authorised charging on this basis.

5.8 Is authority needed for small payments or gifts?

The short answer (legal requirement)

In the interests of proportionality and the best use of the commission's powers and resources, the commission does not usually require charities to seek its authority where the total value of all trustee payments (excluding expenses) is less than £1,000 in any financial year. The trustees still need to be satisfied that these payments are in the best interests of the charity. The commission would, however, expect trustees to apply for authority in cases where, for example, it is addressing issues of mismanagement with them.

In more detail

Are total trustee payments below £1000 per annum? Generally, the commission does not expect charities to seek any authority for a small trustee payment where the payment will still mean that total payments (excluding expenses) to all their trustees during the financial year will not exceed £1000. This includes where trustee boards wish to make a small one-off payment (often known as an honorarium) to a trustee, for which there is no strict legal entitlement and no agreed amount, but which represents a gesture of appreciation and goodwill for services rendered to the charity - perhaps for long service. Payments that would result in the charity exceeding the £1,000 threshold are treated the same as payments for being a trustee, and will need the commission's approval. The trustees still need to be satisfied that payments below the £1,000 threshold are in the best interests of the charity.

Gifts to retiring trustees: this approach includes gifts to trustees who are retiring or leaving to take up another post, usually involving token payments or small gifts. It is difficult to place hard and fast rules on what is an acceptable value of gift in these situations; it is for the trustee board to judge whether a person's length of service and quality of contribution to the charity should be acknowledged with a leaving gift directly out of charity funds, taking account of any possible effect on the charity's reputation.

Tax and benefits: a small one-off honorarium would not normally be classed as income by HM Revenue and Customs, and should not be taxable. But a large, regular or 'expected' honorarium can be classed as taxable earnings, and can also affect benefit claims. If such payments are not authorised by the charity's governing document, the trustee board must seek the commission's authority if the total trustee payments to all trustees will be more than £1,000 for that year.

Further information is available on HMRC website www.hmrc.gov.uk

6. Employing a trustee or connected person

This section explains when the commission's express authority is required where a trustee, former trustee, or connected person takes up paid employment with his or her charity. It also covers circumstances where an employee of a charity becomes a trustee, and the potential need for the commission's authority when the spouse or partner of a trustee, or any other connected person, is employed by the charity.

6.1 Can a trustee also take up a separate position as an employee?

The short answer

Charity trustees may become employees of their charities in a variety of circumstances. Charities need to be aware, though, that the employment may need to be approved by the commission.

In more detail

Sometimes a charity might need to employ someone for a particular job on a full or part-time basis, and the trustees may feel one of their number is ideally suited, through knowledge or motivation, to take on the job.

Need to justify decision: a trustee may be in a strong position to provide the necessary skills and experience, but because charities rely on the confidence of the public (donors and beneficiaries alike) and must comply with the law on trustee benefits it is essential they are open and transparent about the processes and decision-making which lead to the employment. Any decision to employ a trustee or former trustee must be completely justifiable, and must be made without favouritism or improper influence. This means a trustee or former trustee should not gain an 'inside track', or any unfair advantage because of their position, and potential conflicts of interest must be properly and openly managed. (See section 6.4; see also section 2 of this guidance, and **Manage a conflict of interest in your charity**.)

6.2 When must the commission's approval be obtained to the separate appointment of a trustee as an employee?

The short answer (legal requirement)

If decisions about the recruitment or appointment were made while the individual was (or continues to be) a trustee, the commission's approval to the employment must be obtained if there is no other express authority for it. Without an express authority, there may be a liability for the employee-trustee to repay earnings to the charity or for the trustees who authorised the appointment to reimburse the charity. This does not occur very often, but it can arise in the event of a legal challenge from a third party (either within or outside the charity), or as the result of a commission inquiry.

In more detail

No authority is needed if there is already a suitable express power. But otherwise, the commission's authority will be needed if:

- the person takes up the employment while still a trustee
- the job offer is made while the person is a trustee, even though he or she later resigns as a trustee

- the person resigned as a trustee before the formal job offer was made and took part in an open recruitment process, but played a major part in the trustees' decision to create or retain the post, or in devising the recruitment process

The last point covers any situation where a trustee or ex-trustee lobbied or canvassed for a post, or was involved in devising the job specification or any other major aspect of the recruitment process, including advertising. It also covers involvement in agreeing terms and conditions for the post.

6.3 How should trustee boards apply for approval?

The short answer

All applications for authority to make payments to a charity's trustees should be made using the online application form on GOV.UK. Trustee boards should note that the commission cannot authorise any payments retrospectively, but can only authorise new or continuing payments.

In more detail

When applying for authority, trustee boards need to show that the post is genuinely required for the effectiveness of the charity, and has not been created or tailored to meet the needs of the trustee or former trustee. The person appointed should not have gained any 'inside track' advantage in securing the post, and there should not have been any lobbying, undue influence, or collusion in relation to the appointment.

Main factors to consider in all cases: trustee boards need to satisfy to the commission that the post is genuinely required, and is not weighted towards the experience of a colleague or ex-colleague. When explaining why they consider the employment is in the charity's interests, the trustees need to show that:

- the charity has a need for the work to be carried out
- the person has the appropriate knowledge and skills for the job
- payment for the job is reasonable in relation to the work being carried out; how does it compare with payment for similar duties elsewhere? Is the charity obtaining value for money?
- the risks identified in section 5.2 have been considered and managed
- (usually) the job has been subject to an open and transparent selection process
- (where relevant to the charity) stakeholders have been consulted (see section 5.4)

If the person is to continue as a trustee, the commission needs to know why this is necessary, and what arrangements are in place for managing any conflict of interest. How will performance be assessed? Does the trustee board have independent and objective mechanisms for appraisal in place?

Recruitment process: the trustee board needs to ensure the selection criteria properly meet the needs of the charity, and that there is a good balance in the job specification between skills, experience, and qualifications. An open recruitment process will help to show that the post has not been created simply to benefit the trustee.

If the commission is asked to authorise an arrangement with no open recruitment process, and where there may be doubt about the suitability of a trustee or ex-trustee to do the job, or evidence of improper influence on the selection process, it may require a proper recruitment exercise to be conducted, and for the post to be openly and properly advertised.

6.4 Can an employee become a trustee?

(This section also applies where employees or paid directors of subsidiary trading companies owned by the charity are appointed to its trustee body.)

The short answer

If an employee becomes a trustee, their employment usually occurs before their trusteeship and so is not a benefit arising from the trusteeship. Accordingly, there is no liability to repay any earnings received before the start of the trusteeship. In view of the potential conflict of interest after the start of the trusteeship, however, it can be helpful to obtain authority to permit the trustee-employee to retain any increases in payments made after that date where these are not within an agreed employee pay structure - see section 6.6.

In more detail

Points to consider: whilst combining the role of trustee and employee can occasionally be advantageous for the charity, the benefits would need to clearly outweigh the difficulties that can come with this dual role. The trustee board should be particularly clear why it is not sufficient for the relevant employee simply to attend their meetings (in a non-voting capacity) in order to contribute to discussion. If this sort of arrangement is established, there will need to be clear procedures for managing the potential conflict of interest.

Declaring an interest: the person concerned may be said to have an economic interest in retaining the employed post, and with enhancing its terms and conditions. In order to properly manage this potential conflict of interest, the commission recommends the trustee board ensures the person concerned declares an interest, and that this is clearly recorded in the minutes and any register of interests the charity keeps.

Withdrawal from discussion: the trustee-employee should take no part in collective discussion or voting on the contractual terms and conditions of the employed post, or in any review of performance relating to it. This also includes any decision on whether it is in the charity's interests to continue with the post. For greater transparency, the commission recommends any withdrawals from relevant meetings by the trustee-employee are clearly minuted. For the most influential posts within a charity, however, this can be problematic as the following case study demonstrates.

Case study

The case of one charity highlighted what can sometimes be a difficulty with this type of arrangement, as the commission refused to renew a power of remuneration that would have allowed the chief executive officer to continue as a trustee. The person concerned was also the founder of the charity, and the commission's main concern was that the trustee board was not taking adequate steps to strengthen its governance, so it could take decisions independently of the CEO and review his performance.

A key aspect of this case study was the need for stronger governance arrangements so that decisions could be made in the interests of the charity by the whole trustee body, free from the influence of the paid chief executive. Where the governance arrangements are strong - for example, they include clear procedures for managing conflicts of interest in an open and transparent manner - concerns about conflict of interests and undue influence are greatly reduced.

For example, the governance model for many church charities allows or requires the priest, pastor or vicar to be a trustee because it can be important for those in such a pivotal role within these charities to be involved in their strategic oversight and leadership. So long as the potential conflicts of interest which they face are properly declared and managed, this type of arrangement can be beneficial to the charity.

6.5 Is the commission's approval required?

The answer

Without an express authority, the validity of the trustee-employee arrangement described in section 6.4 could be susceptible to a legal challenge - either by the commission, or by a third party. In practice, it may be very unlikely that an arrangement that is open, transparent, and clearly in the interests of the charity, would be challenged. But if trustee boards are in doubt about whether they have a suitable authority, they should contact the commission for approval in order to reduce the risk of a challenge which, even if unsuccessful, could cause financial and/or reputational damage.

Any authority the commission gives will be subject to its usual conditions designed to ensure the proper management of the conflict of interest, and that payment is reasonable in relation to the nature of the employment.

6.6 Is approval needed for future pay increases?

The answer

Where a trustee-employee is not being paid explicitly for being a trustee, negotiations in relation to pay and salaries should be completely outside the trusteeship role. The commission does not need to approve annual increases in salary or benefits for a trustee-employee which constitute a reasonable incremental progression within an established and transparent employee pay structure.

However, where salary increments, bonuses, or other tangible benefits are substantial, and not clearly justifiable by reference to any formal pay scale, the commission's authority would be required if trustee boards wished to avoid potential legal challenge.

Generally, trustee boards should be wary of agreeing to any payment or benefits which might be regarded as excessive in relation to the employment, and which might cause concerns about unacceptable levels of private benefit within their charity.

Applying for approval: if the trustees think that the commission's approval is required, they should apply using the online application form on GOV.UK.

6.7 What is the position where a trustee's spouse or partner or other 'connected persons' become paid employees of the charity?

The short answer (legal requirement)

The commission's approval must be obtained if there is financial interdependence between the parties and there is no other authority for the transaction.

In more detail

Contracted employment: if a trustee's spouse or partner becomes a paid employee on a full or part-time contract, then if they are financially interdependent, the trustee could profit from the employment. In law, this can be a trustee benefit, requiring express authority. This also applies to businesses owned by a trustee, or in which the trustee is a partner, a managing director, or has any financial interest. It can also apply to employment with a subsidiary owned by the charity.

Need for openness: trustee boards should be aware of the possible need for authority, and ensure no improper influence has been brought to bear in the charity's decision to employ a firm or individual. Any arrangement with a connected person should be open and transparent, so that it can be seen to be made in the charity's interests. The trustee board should ensure any potential conflict of interest is declared and recorded in its minutes, and that the trustee concerned does not take any part in the board's discussions and decisions concerning the terms and conditions of the connected person's employment.

Seeking the commission's approval: authority is only required where there is a potential financial dependency between a trustee and a connected person who is employed. If no such link exists, then no approval is needed - though any potential conflict of interest still needs to be managed. If trustee boards are in doubt about the need for authority, the commission recommends they take advice.

Where it is decided approval is needed, the trustees should apply using the online application form on GOV.UK.

7. Compensating trustees for loss of earnings

This section explains the commission's policy where a trustee board seeks to pay reasonable financial compensation to secure or retain the services of a trustee who might otherwise struggle to play a full trustee role.

7.1 When can payment be made to cover loss of earnings while on trustee business?

The short answer

As with other forms of trustee benefit, a charity can make these payments if there is suitable authority and if there is a clear and positive advantage to the charity in doing so.

In more detail

This type of payment is not a routine expense (see section 3) and must be treated as a trustee payment (see section 2.3). There must therefore be an express authority for it, either within the charity's governing document, or provided by the commission or the court. Some charities do have a suitable power to compensate for loss of earnings, but this is still relatively uncommon in governing documents. Where there is no suitable existing authority, the commission is prepared to provide one if the trustee board can show that payment is in the charity's interests.

Advantage to the charity: the circumstances in which a trustee board may wish to consider this type of payment are where a potential or existing trustee:

- brings particular skills or perspective which are valuable to the charity
- cannot afford to serve as a trustee because his or her employer does not pay for time spent on charity business during working hours
- is self-employed, and would lose out financially by carrying out trustee duties in normal business hours

The same considerations apply as for any payment of a trustee; when applying for authority using the online application form, the trustee board needs to show why it is clearly advantageous to the charity to pay for the services of the person concerned. This will depend on the abilities and experience the person concerned can bring to the trustee board. Details of any especially relevant skills, knowledge or expertise should be provided. In addition, the trustee board needs to consider whether the person could act as an unpaid adviser, or whether it would be possible to recruit a suitable replacement without the need for payment.

The trustee board also needs to show the basis on which the compensation is calculated, and explain why this is value for money.

Conditions of authority: if the arrangement is approved, the commission's authority will normally impose a condition that:

- reimbursement must be no more than:
 - the amount which could be regarded as reasonable payment for the work undertaken on behalf of the charity
 - the amount lost by the trustee

whichever is the lower

The trustee being compensated must not be a party to the application for authority. The person may have been required to provide factual information to the trustee boards, but it should be confirmed that he or she has not otherwise played a part in their decision to make the payment, or in setting the terms and conditions of the payment.

Case study

A leading disability charity wanted to ensure blind and visually impaired people are always able to have a voice on its trustee board. In this case, the charity wished to enable three trustees (including the chair) with valuable specialist skills to contribute regularly to the board, without any financial hardship to themselves as a result. One was self-employed, the other two had to forego fees from other work on a number of occasions when attending trustee meetings and acting on charity business.

The commission recognised the contribution made by these trustees, whose expertise ranged from IT support, disability employment services, Access to Work issues, and the needs of visually impaired people. The commission authorised payment by the charity to reflect their duties on the occasions when they would otherwise lose out. This was based on the charity's assessment of rates comparable to the chair and non-executive directors of NHS Trusts. As a result, the charity was able to retain the expertise of these 3 trustees, and further empower its users on the trustee board. The charity makes the point that it does not wish only to appoint trustees who can afford to be trustees.

7.2 Is there any set guideline for the level of loss of earnings to be compensated?

The short answer

There is no strict maximum or 'set' figure for compensation. Ultimately, it is for trustee boards to assess the level of payment in the light of the particular trustee's contribution to their charity, and whether the charity can readily afford the payment.

In more detail

Because there should be no question of a trustee profiting from trusteeship in these circumstances, the compensation payments should not necessarily be a full replacement of earnings, a highly paid trustee should not be reimbursed in full for lost salary. Rather, the payment should reflect the reasonable value of the work done on behalf of the charity or, if the loss to the trustee is less than that, the actual loss to the trustee. The payment should, in all cases, be the lower of these two figures. As with other trustee payments, the charity must ensure payment will not harm its ability to carry out its purposes in the interests of its beneficiaries. Charities with a limited income will need to be especially clear they can absorb the cost without any adverse effect on their activities. The commission would not normally expect a charity in financial difficulty to consider making compensation payments to its trustees.

7.3 Are there any risks in making payments for loss of earnings?

The answer

As well as the risks to be managed that are described in section 5.2 for paying a trustee, there are other potential disadvantages that charities might need to consider before making loss of earnings payments:

- only trustees who are employed or self-employed can benefit in this way; trustees who are unemployed, but still giving up their free time and energy for the charity, may view this as biased and unfair
- there may be problems where the trustee concerned believes the level of payment should reflect their actual loss of earnings, where the amount lost is more than the reasonable payment for the work carried out for the charity
- although payment may be effective on specific occasions, if it becomes a regular feature there it may remove the incentive to keep any loss of earnings to a minimum - eg by holding meetings outside of the trustees' usual working hours

7.4 Must there be a written agreement between the charity and the trustee concerned?

The short answer

Not in all cases, but there can be distinct advantages in having one.

In more detail

Where they are likely to be in operation on a regular basis, compensatory arrangements should be recorded in a written agreement, which should be kept as part of the charity's accounting records. This provides a mechanism for the trustee board to determine and monitor value for money, and otherwise protect the charity's interests. The commission does not expect a charity to meet exactly the same conditions for an agreement required when paying a trustee under the Charities Act power for the provision of goods or a service (see section 4). But generally, an effective agreement should address the amount and terms of payment, the level and type of task expected from the trustee, and also arrangements for performance review, assessment of continuing need, and the circumstances in which the arrangement will come to an end.