Charity law duties and responsibilities

The UK’s legislative framework for preventing, protecting and pursuing terrorists and those who support terrorist organisations is complex. Terrorist activity is a crime and charities need to be aware that concerns about terrorist abuse and activity are considered in the UK in that context. Some terrorist-related activities are dealt with under existing criminal legislation, for example, fraud, theft, public order, drugs, forgery and counterfeiting laws.

These laws impact upon charities and their trustees as they do upon all other organisations and individuals in the UK.

As a trustee, you must ensure that you and your charity comply with UK counter-terrorism legislation and that you discharge your trustee charity law legal duties. This means you must not promote or support activity that promotes terrorism or terrorist ideology through your charity’s work.

You must also ensure that you fulfil any obligations under UK or international law regarding the reporting of suspicions of terrorist or criminal activity. You must report suspicions or beliefs regarding terrorist financing offences as soon as is possible to the police so as to comply with legal obligations under s.19 of Terrorism Act 2000. You should also report such matters simultaneously to the Commission. Module 9 - Reporting Requirements - provides more detailed information.

The police and law enforcement agencies assess allegations of criminality within a charity. The Commission’s role is to ensure that trustees comply with their legal duties and responsibilities and to ensure that charities are protected.

Under charity law you have 6 main duties. These are explained in ‘The essential trustee: what you need to know, what you need to do’ (CC3) and are summarised below.

- Ensure your charity is carrying out its purposes for the public benefit
- Comply with your charity’s governing document and the law
- Act in your charity’s best interests
- Manage your charity’s resources responsibly
- Act with reasonable care and skill
- Ensure your charity is accountable
These trustee duties apply in a number of ways:

As a trustee, you must manage your charity’s resources responsibly. This means that you should:

- exercise overall control over your charity’s financial affairs
- ensure that its systems of control and monitoring are appropriate and effective, properly implemented and regularly reviewed
- ensure that proper financial records are kept and that the charity is transparent and accountable

These steps will reduce the risk of your charity being open to abuse by unscrupulous associates, employees or partners. When choosing partners or other delivery agents, you should conduct proper due diligence checks to ensure that they are appropriate for your charity to work with and capable of carrying out the intended activities or services. You should take reasonable steps to ensure the charity’s funds will be properly used and monitor and verify this. If you’re considering funding non-charitable bodies, you must ensure that funds are used only for charitable activities which further the purposes of your charity and that don’t expose it to undue reputational or other risks

Deciding to carry out, or knowingly supporting any activities that would be criminal, illegal, or otherwise improper for a charity would amount to misconduct on the part of the trustees. So if you allowed a breach of counter-terrorism laws to occur during the course of carrying out your role, then aside from any possible criminal investigation, this is likely to amount to misconduct in the administration of the charity. The Commission would have concerns about whether you had properly discharged your charity law duties and responsibilities and might need to take protective action to ensure that the charity is properly safeguarded

Charities must not carry out activities that are criminal - this includes any offences under counter-terrorism legislation - or that are in the sphere of criminality at risk of prosecution. Neither must charities be used as a platform to promote inappropriate radical or extremist views. Such a use of charity money or property is in breach of charity law. We provide further information in ‘Protecting charities from abuse for extremist purposes’.

Where a trustee is convicted for terrorist offences, their link to the charity means this is corrosive to public trust and confidence both in their charity and charity generally. This is irrespective of whether the conviction is connected to their role in the charity or whether the events directly involved it.

You must make sure your charity’s assets are used only to support or carry out its purposes. You must avoid exposing its funds, assets, beneficiaries, staff or reputation to undue risk. You should therefore implement realistic and reasonable risk management strategies which identify and mitigate such risks. These should be relevant and proportionate to the charity’s activities and the nature of its operations. Risks may take a number of forms, including operational, financial, reputational and external.
Any exploitation of a charity by terrorists and criminals is serious, whether this concerns the abuse of assets, such as its funds, or premises, or the misuse and exploitation of its name, including its on-line and social media presence. If you know this is happening, (or ought to have done had you been vigilant), but don’t take any action, you would fail in your duties as a trustee.

A charity must not provide funding or support to a partner organisation that exposes beneficiaries to activities which directly, or indirectly, promote terrorism. This is so, even if the charity’s funding or support were used for legitimate humanitarian aid or other charitable activities. Aside from the risks of committing criminal offences under UK legislation, this is also likely to amount to misconduct on the part of the trustees in managing and administering the work of the charity.

As a trustee, you must act with reasonable care and skill. This applies to both your own conduct and how you deal with concerns. Expressing strongly controversial or partisan views on a particular issue may compromise the charity’s integrity, purposes or activities. As such, it may be unsuitable for you to act as a trustee of that charity. This is regardless of whether you hold or express those views in a personal capacity. Such views may conflict with your ability to exercise your objective judgement in the interests of the charity and so may interfere with your ability to properly manage the potential harm to public trust and confidence in the charity. This may also create risks to the charity’s operations and in particular, may undermine its ability to deliver services to its beneficiaries.

You should not engage in conduct or activities that would lead a reasonable member of the public to conclude that the charity or its trustees were associated with a proscribed organisation or terrorism in general.

When dealing with concerns that are raised, the greater the risks, the more important it is that you and your co-trustees can show you’ve discharged your duty of care. The greater the risks and impact, the higher the duty of care is likely to be.

The risks will vary depending on what activities the charity carries out. For example, there have been incidents where terrorism-related training has occurred within the UK, sometimes using the facilities of otherwise legitimate organisations providing outdoor training activities. If a charity hires out these kinds of outdoor facilities, its trustees must be aware of the need to carefully scrutinise their customer and beneficiary base and report any suspicions they have.

You should consider getting external professional advice on matters where there may be material risk to the charity, or where you or your co-trustees may be in breach of your duties. In higher risk situations, you will be unable to comply with your legal duties if you don’t do so.
Summary

- you must comply with the law, including counter-terrorism legislation
- as a trustee you must act in your charity’s best interests, avoid exposing it to undue risk and make sure that its assets are used only to support its charitable purposes; you should:
  - take reasonable steps to ensure that your charity’s premises, assets, staff, volunteers or other resources cannot be used for activities that may, or appear to, support or condone terrorism or terrorist activities
  - ensure that effective procedures are put in place and properly implemented to prevent terrorist organisations taking advantage of your charity’s status, reputation, facilities or assets
  - take immediate steps to dissociate the charity from any activity that may give, or appear to give, support to terrorism or terrorist activity
  - take all reasonable steps to ensure the charity’s activities are open and transparent so that these cannot be misinterpreted
  - exercise proper control over your charity’s financial affairs and safeguard its assets
- any person connected with a charity, whether a trustee, employee, volunteer, or beneficiary, should deal with the concerns of a charity’s possible links with terrorism responsibly; these must be reported immediately to the police and should also be reported simultaneously to the Commission, more information on reporting requirements is in module 9

Further information on trustees’ duties can be found in The essential trustee: what you need to know (CC3), the Trustee Act 2000 and the Charities Act 2011 and Reporting serious incidents guidance.