

Trust Norfolk-SEN
The Role of a Trustee - Brief Guide
Approved and adopted by the board 17th March 2014

Trustee duties at a glance

This guide summarises the main duties and responsibilities of charity trustees. It is not a legal document, but sets out the legal principles in everyday language. The headings on this page are also used for sections of the more detailed guidance that can be found with the full Charity Commission Essential Trust document.

Trustees and their responsibilities

Charity trustees are the people who serve on the governing body of a charity. They may be known as trustees, directors, board members, governors or committee members. The principles and main duties are the same in all cases.

(1) Trustees have and must accept ultimate responsibility for directing the affairs of a charity, and ensuring that it is solvent, well-run, and delivering the charitable outcomes for the benefit of the public for which it has been set up.

Compliance - Trustees must:

(2) Ensure that the charity complies with charity law, and with the requirements of the Charity Commission as regulator; in particular ensure that the charity prepares reports on what it has achieved and Annual Returns and accounts as required by law.

(3) Ensure that the charity does not breach any of the requirements or rules set out in its governing document and that it remains true to the charitable purpose and objects set out there.

(4) Comply with the requirements of other legislation and other regulators (if any) which govern the activities of the charity.

(5) Act with integrity, and avoid any personal conflicts of interest or misuse of charity funds or assets.

Duty of prudence - Trustees must:

(6) Ensure that the charity is and will remain solvent.

(7) Use charitable funds and assets reasonably, and only in furtherance of the charity's objects.

(8) Avoid undertaking activities that might place the charity's endowment, funds, assets or reputation at undue risk.

(9) Take special care when investing the funds of the charity, or borrowing funds for the charity to use.

Duty of care - Trustees must:

(10) Use reasonable care and skill in their work as trustees, using their personal skills and experience as needed to ensure that the charity is well-run and efficient.

(11) Consider getting external professional advice on all matters where there may be material risk to the charity, or where the trustees may be in breach of their duties.

If things go wrong

The Charity Commission offers guidance to charities on both legal requirements and best practice to help them operate as effectively as possible and to prevent problems arising. In the few cases where serious problems have occurred we have wide powers to look into them and put things right. Trustees may also be personally liable for any debts or losses that the charity faces as a result. This will depend on the circumstances and the type of governing document for the charity. However, personal liability of this kind is rare, and trustees who have followed the requirements on this page will generally be protected.

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E1. What should I do before I become a trustee?

The short answer

You should take all reasonable steps to find out as much as you can about the charity, and about what will be expected of you as a trustee.

In more detail

Finding out more: Before you become a trustee, you should learn as much as you can about the charity, and what being a trustee will mean for you. For instance, for an existing larger charity, we advise you to read Annual Reports, important policies and the annual accounts; we also advise that you meet existing trustees, senior staff and perhaps some of the people who benefit from the charity's work. Some charities may also invite you to sit in on a trustee meeting as an observer before you formally join. You may wish to find out what training and support the charity offers its trustees.

The governing document: You should also get a copy of the charity's governing document, and read it. It will probably be a dry legal document, but it is the charity's main constitutional document, and governs key aspects of the charity's work. If it isn't clear what it means, then one of the existing trustees or the charity's Secretary should explain it to you.

E2. Trustees and directors - what's the difference?

The short answer

Although there are many names for trustees, their central responsibilities are the same in all cases. However, there are two main types of charity - unincorporated and incorporated. The exact legal position of trustees is slightly different in each.

In more detail

'Unincorporated charities': These may be 'trusts' or 'associations'. Their governing document will usually be a trust deed or a constitution or a Scheme of the Charity Commission. In an unincorporated charity, the property of the charity is usually held by the trustees or their nominees.

'Incorporated charities': Most of these are charitable companies registered with Companies House as well as the Charity Commission. Here, the company is a legal entity in its own right, and the trustees are the directors of the company. You can get more information about the role and responsibilities of company directors from Companies House. Contact details for Companies House are in [section J](#). There are also other types of special incorporated charities eg charities incorporated by Royal Charter or by statute. These are not regulated by Companies House. Trust Norfolk-SEN holds a Certificate of Incorporation Company No: 8754672. 30th Oct.13

Your position: Before you become a trustee, you should find out whether your charity is incorporated or not, as this will affect your legal position and responsibilities. In this guidance we have stated where differences occur, but have not described them in detail. You will find more in our other publications on particular subjects.

E3. Am I eligible to become a trustee?

The short answer

Most people over 18 years of age can become trustees, but a few are not eligible. People aged 16 and over can be trustees of a charitable company, but cannot be trustees of an unincorporated charity.

In more detail

Ineligible people: Those who have already been disqualified as company directors and those who have been convicted of an offence involving dishonesty or deception are some of the people who cannot usually become trustees. In some cases, people who receive benefits from the charity may also be ineligible.