



# CHARITY COMMISSION FOR ENGLAND AND WALES

Pun Samaaj UK (Reg Charity No: 1160842)

## Trustee Board Members' Duties and Responsibility in England and Wales

Date: 11 March 2015



### **The Trustee need to know and what to do are as follows:**

#### **1. About this guidance**

- 1.1 This guidance explains the key duties and responsibilities of all trustees of charities in England and Wales, and what trustees need to do to carry out these duties competently.
- 1.2 Trustees have independent control over, and legal responsibility for, a charity's management and administration. They play a very important role, almost always unpaid, in a sector that contributes significantly to the character and wellbeing of the country.
- 1.3 Being aware of the duties and responsibilities covered in this guidance will help you carry out your role in a way that not only serves your charity well but also gives you confidence that you will be complying with key requirements of the law.
- 1.4 You should also read this guidance if you are thinking about setting up a charity or becoming a trustee in England or Wales.
- 1.5 All appointed members of the body are charity trustees by law, you are automatically a charity trustee. You share, with all members of the body, equal responsibility for the charity. The body has ultimate authority and responsibility for directing and governing the charity.
- 1.6 You should read this as a minimum, and ensure you fully understand your responsibilities by referring to the rest of the guidance as necessary.
- 1.7 Trustees who act in breach of their legal duties can be held responsible for consequences that flow from such a breach and for any loss the charity incurs as a result. When the Commission looks into cases of potential breach of trust or duty or other misconduct or mismanagement, it may take account of evidence that trustees have exposed the charity, its assets or its beneficiaries to harm or undue risk by not following good practice.

## **2. Trustees' duties at a glance**

### **2.1 Before you start - make sure you are eligible to be a charity trustee:**

- a. You must be at least 16 years old to be a trustee of a charity that is a company or a charitable incorporated organisation (CIO), or at least 18 to be a trustee of any other charity.
- b. You must be properly appointed following the procedures and any restrictions in the charity's governing document.
- c. You must not act as a trustee if you are disqualified, unless authorised to do so by a waiver from the Commission. The reasons for disqualification are shown in the disqualifying reasons table and include:
  - i. being bankrupt (undischarged) or having an individual voluntary arrangement (IVA)
  - ii. having an unspent conviction for certain offences (including any that involve dishonesty or deception).
  - iii. being on the sex offenders' register.
- d. Ensure your charity is carrying out its purposes for the public benefit.
  - i. You and your co-trustees must make sure that the charity is carrying out the purposes for which it is set up, and no other purpose. This means you should:
    - a. ensure you understand the charity's purposes as set out in its governing document.
    - b. plan what your charity will do, and what you want it to achieve.
    - c. be able to explain how all of the charity's activities are intended to further or support its purposes.
    - d. understand how the charity benefits the public by carrying out its purposes.
- e. Spending charity funds on the wrong purposes is a very serious matter; in some cases trustees may have to reimburse the charity personally.

### **2.2 Comply with your charity's governing document and the law**

- a. You and your co-trustees must:
  - i. make sure that the charity complies with its governing document
  - ii. comply with charity law requirements and other laws that apply to your charity

- b. You should take reasonable steps to find out about legal requirements, for example by reading relevant guidance or taking appropriate advice when you need to.

### **2.3 Act in your charity's best interests**

- a. You must:
  - i. do what you and your co-trustees (and no one else) decide will best enable the charity to carry out its purposes
  - ii. with your co-trustees, make balanced and adequately informed decisions, thinking about the long term as well as the short term
  - iii. avoid putting yourself in a position where your duty to your charity conflicts with your personal interests or loyalty to any other person or body
  - iv. not receive any benefit from the charity unless it is properly authorised and is clearly in the charity's interests; this also includes anyone who is financially connected to you, such as a partner, dependent child or business partner

### **2.4 Manage your charity's resources responsibly**

- a. You must act responsibly, reasonably and honestly. This is sometimes called the duty of prudence. Prudence is about exercising sound judgement. You and your co-trustees must:
  - i. make sure the charity's assets are only used to support or carry out its purposes
  - ii. avoid exposing the charity's assets, beneficiaries or reputation to undue risk
  - iii. not over-commit the charity
  - iv. take special care when investing or borrowing
  - v. comply with any restrictions on spending funds or selling land
- b. You and your co-trustees should put appropriate procedures and safeguards in place and take reasonable steps to ensure that these are followed. Otherwise you risk making the charity vulnerable to fraud or theft, or other kinds of abuse, and being in breach of your duty.

### **2.5 Act with reasonable care and skill**

- a. As someone responsible for governing a charity, you:
  - i. must use reasonable care and skill, making use of your skills and experience and taking appropriate advice when necessary

- ii. should give enough time, thought and energy to your role, for example by preparing for, attending and actively participating in all trustees' meetings

## 2.6 Ensure your charity is accountable

- a. You and your co-trustees must comply with statutory accounting and reporting requirements. You should also:
  - i. be able to demonstrate that your charity is complying with the law, well run and effective
  - ii. ensure appropriate accountability to members, if your charity has a membership separate from the trustees
  - iii. ensure accountability within the charity, particularly where you delegate responsibility for particular tasks or decisions to staff or volunteers

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

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

- a. there are some restrictions on who can be a trustee – there are minimum age limits and some factors that automatically disqualify people from being trustees
- b. you must be properly appointed, and should know how long your appointment lasts
- c. if you are not properly appointed, the trustees' decisions or actions may be invalid, potentially creating disputes or putting charity assets at risk
- d. if you are a trustee of a charity that provides 'regulated activities' for children or adults, be prepared for your charity to request a DBS check on you

### 3.2 How trustee appointments begin and end

- a. You must follow any rules in your governing document about:
  - i. who appoints new trustees (chair and team).
  - ii. when, and how, new trustees are appointed
  - iii. who can be a trustee - the governing document may impose conditions
  - iv. how long appointments last and whether a trustee can be re-appointed
  - v. how trustees can resign or be removed

- b. If your governing document has no specific provisions for these things, your charity must comply with the relevant legal provisions:
- c. CIOs must include provisions in their constitutions for appointment and removal of trustees.
- d. The Commission can use its powers to appoint or remove trustees if the charity's trustees (or members, if applicable) are unable to do so.

#### **4. Ensure your charity is carrying out its purposes for the public benefit**

- 4.1 You and your co-trustees must make sure that everything your charity does helps (or is intended to help) to achieve the purposes for which it is set up, and no other purpose. This means you should:
  - a. ensure you understand the charity's purposes as set out in its governing document
  - b. plan what your charity will do, and what you want it to achieve
  - c. be able to explain how all of the charity's activities are intended to further or support its purposes
  - d. understand how the charity benefits the public by carrying out its purposes
- 4.2 Spending charity funds on the wrong purposes is a very serious matter; in some cases trustees may have to reimburse the charity personally.

#### **5. Comply with your charity's governing document and the law**

- 5.1 You and your co-trustees must:
  - a. make sure that the charity complies with its governing document
  - b. comply with charity law requirements and other laws that apply to your charity
- 5.2 You should take reasonable steps to find out about legal requirements, for example by reading relevant guidance or taking appropriate advice when you need to.

#### **6. Act in your charity's best interests**

- 6.1 You must:
  - a. do what you and your co-trustees (and no one else) decide will best enable the charity to carry out its purposes
  - b. with your co-trustees, make balanced and adequately informed decisions, thinking about the long term as well as the short term
  - c. avoid putting yourself in a position where your duty to your charity conflicts with your personal interests or loyalty to any other person or body

- d. not receive any benefit from the charity unless it is properly authorised and is clearly in the charity's interests; this also includes anyone who is financially connected to you, such as a partner, dependent child or business partner

## **7. Manage your charity's resources responsibly**

- 7.1 You must act responsibly, reasonably and honestly. This is sometimes called the duty of prudence. Prudence is about exercising sound judgement. You and your co-trustees must:
  - a. make sure the charity's assets are only used to support or carry out its purposes
  - b. avoid exposing the charity's assets, beneficiaries or reputation to undue risk
  - c. not over-commit the charity
  - d. take special care when investing or borrowing
  - e. comply with any restrictions on spending funds or selling land
- 7.2 You and your co-trustees should put appropriate procedures and safeguards in place and take reasonable steps to ensure that these are followed. Otherwise you risk making the charity vulnerable to fraud or theft, or other kinds of abuse, and being in breach of your duty.

## **8. Act with reasonable care and skill**

- 8.1 As someone responsible for governing a charity, you:
  - a. must use reasonable care and skill, making use of your skills and experience and taking advice when necessary
  - b. should give enough time, thought and energy to your role, for example by preparing for, attending and actively participating in all trustees' meetings  
This is sometimes called the duty of care.

## **9. Ensure your charity is accountable**

- 9.1 You and your co-trustees must comply with statutory accounting and reporting requirements. You should also:
  - a. be able to demonstrate that your charity is complying with the law, well run and effective
  - b. ensure appropriate accountability to members, if your charity has a membership separate from the trustees
  - c. ensure accountability within the charity, particularly where you delegate responsibility for particular tasks or decisions to staff or volunteers

## **10. Reduce the risk of liability**

- 10.1 It's extremely rare, but not impossible, for charity trustees to be held personally liable:
- a. to their charity, for a financial loss caused by them acting improperly
  - b. to a third party that has a legal claim against the charity that the charity can't meet
- 10.2 Understanding potential liabilities will help you to protect yourself and your charity by taking action to reduce the risk. This includes complying with duties covered in this guidance. It also includes deciding whether your charity should become incorporated.

## **11. Your charity's legal structure and what it means**

- 11.1 It's important to know your charity's legal structure (eg trust, association, CIO, company) because it affects whether:
- a. the charity itself can enter into contracts or employ staff, or the trustees must do these things personally
  - b. land is held by the charity itself or by the trustees (or someone the trustees appoint for that purpose)
  - c. trustees' liability is limited
  - d. trustees have specific legal duties that go with that legal structure

## **12. Charity officers - the chair and treasurer**

- 12.1 Some trustees have special roles, such as the chair and the treasurer. They are known as officers. You must comply with any specific provisions for officers in your governing document. Trustees can also nominate a trustee to take the lead on a particular matter.
- 12.2 Charity officers do not automatically have any extra powers or legal duties than their co-trustees, but may carry out specific roles or have specific responsibilities delegated to them. However, all trustees remain jointly responsible for the charity. For example, all trustees share responsibility for finances (not just the treasurer).
- 12.3 A chair can only make decisions in accordance with any provision in the governing document or delegated authority agreed by the trustees, and should notify the other trustees of any decisions made.

## 13. Technical terms used in this guidance

This section explains some legal and technical terms used in this guidance.

- 13.1 **'Beneficiary' or 'beneficiaries'** means a person or group of people eligible to benefit from a charity. A charity's beneficiary group is usually defined in its governing document. Some charities call their beneficiaries clients or service users.
- 13.2 **The 'Charities Act'** is the Charities Act 2011. This guidance occasionally refers to specific powers under this Act.
- 13.3 **A 'charitable incorporated organisation', or 'CIO'**, is an incorporated legal form designed specifically for charities.
- 13.4 **A 'charity'** is any organisation set up under the law of England and Wales for solely charitable purposes.
- 13.5 **The 'Commission'** means the Charity Commission, the regulator for charities in England and Wales.
- 13.6 **A 'community benefit society'** is an incorporated legal form in which charities can be set up. It is similar to a limited company. Community benefit societies are registered by the Financial Conduct Authority. Charitable community benefit societies are currently exempt charities.
- 13.7 **'Excepted charities'** do not have to register with the Commission or submit annual returns. Apart from that, the Commission regulates them and can use any of its powers if it needs to. This only applies to specified churches, Scout and Guide groups and armed forces charities whose income is below £100,000.
- 13.8 **An 'exempt charity'** is exempt from registration and direct regulation by the Commission. Most exempt charities have a different charity regulator (or 'principal regulator'). Trustees of exempt charities have the same basic duties as other charity trustees.
- 13.9 **The 'governing document'** is the legal document that sets out the rules that govern a charity. These include the charity's objects and, usually, how it must be administered. It's usually a trust deed, constitution, CIO constitution or articles of association. Pun Samaaj UK adopted the written documents on 06 March 2015.
- 13.10 **'Have regard to'** does not have a strict legal definition, but generally means 'take into account' or 'consider', rather than 'comply with'.
- 13.11 **'In the charity's best interests'** means what the trustees believe will best enable the charity to carry out its purposes for the public benefit.



- 13.11 **An ‘incorporated charity’** means a charity formed as a company, CIO, royal charter body, community benefit society or a corporation created by Act of Parliament. Being incorporated means the charity itself is a legal body. It can own property or enter into contracts in its own name. Incorporation gives trustees more protection from personal liability.
- 13.12 **“Misconduct”** includes any act (or failure to act) that the person committing it knew (or ought to have known) was criminal, unlawful or improper.
- 13.13 **“Mismanagement”** includes any act (or failure to act) that may cause charitable resources to be misused or the people who benefit from the charity to be put at risk.
- 13.14 **A charity’s ‘purpose’** is what it is set up to achieve (for example, relieving poverty or promoting health). A charitable purpose is one that:
- a. falls within one or more of 13 ‘descriptions of purposes’ listed in the Charities Act
  - b. is for the public benefit (the ‘public benefit requirement’)
- 13.15 **A charity’s ‘objects’** are a written statement of its purposes - they must be exclusively charitable.
- 13.16 **A ‘registered charity’** is a charity registered with the Commission.
- 13.17 **A ‘suitably qualified person or adviser’** is someone who the trustees could reasonably expect to be competent to advise them about a particular matter. This includes professional advisers (such as solicitors, accountants and surveyors). It could also include (for example) a member of the charity’s staff, a suitably qualified trustee or an adviser from another organisation.
- 17.18 **‘Trustee’** means a charity trustee. Charity trustees are the people responsible for governing a charity and directing how it is managed and run. The charity’s governing document may call them trustees, the board, the management committee, governors, directors, or something else. The Charities Act defines the people who have ultimate control of a charity as the charity trustees, whatever they are called in the charity’s governing document:
- a. a **‘custodian trustee’** is a corporation appointed to hold property for a charity; it isn’t a charity trustee and must act on the lawful instructions of the charity trustees
  - b. **‘holding trustees’** are individuals appointed to hold property for a charity; they aren’t charity trustees, they must act on the lawful instructions of the charity trustees and in accordance with any provisions in the governing document
- 17.19 **An ‘unincorporated charity’** is a charity set up as a trust or association. Being unincorporated means the charity isn’t a legal body (so it can’t hold property or enter into contracts) in its own right. Trustees’ personal liability isn’t limited.