

This is one of a series of factsheets produced by Community Action Norfolk for voluntary and community groups. If you would like some more support or to receive some of our other factsheets please contact the Development Team on 01362 698216.

Document: The Role and Responsibilities of Trustees Factsheet

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The purpose of this factsheet is to provide information about what Trustees do, their legal duties and how to recruit them.

What is a Charity Trustee?

The Charity Commission defines charity Trustees as the people who serve on the governing body of a charity. They may be known as Trustees, Directors, Board Members, Governors or Committee Members. Charity Trustees are responsible for the general control and management of the administration of a charity.

Who can be a Trustee?

Most people over the age of 18 can be Trustees and people from the age of 16 can be Trustees of a charitable incorporated organisation (CIO). They must also be fit and able to carry out their duties but this does not mean it is impossible to have Trustees who may have disadvantages such as a learning difficulty or English not being their preferred language, whose own experience could be very beneficial to the group. In these cases, it is important to consider how meetings and communications can be inclusive.

Recruiting Trustees

The governing document of the group will give the process for recruiting people onto the committee. It will also explain when, if at all, they have to stand down and how they are elected or re-elected. See our 'Recruiting Volunteers' factsheet for some suggestions on recruiting Trustees. Try to be as inclusive and diverse as possible and consider the balance of skills and knowledge you need on the Trustee Board. It is important that new Trustees are aware of their responsibilities and are given a proper induction. If your group's beneficiaries are children or vulnerable adults you need to make sure Trustees have not been disqualified from working with them.

It is good practice to obtain a declaration from new Trustees confirming they are eligible to act as Trustee.

We can provide Trustee Training for your organisation and help you to carry out a Trustee Skills Audit if needed.

Who is not allowed to be a Trustee?

The following people may not be allowed to be a Trustee:

- People who have been disqualified as company directors. You can search for this on the Companies House Website.
- Anyone convicted of an offence involving dishonesty or deception which is unspent.
- Undischarged bankrupts or those with Individual Voluntary Arrangement(s) to repay debts. To find this out, you can use the Individual Insolvency Register.
- Anyone who has previously been removed from Trusteeship of a charity by the court or the Charity Commission. You can search for this on the Charity Commission website.
- Those who have unspent offences under the counter-terrorism legislation.
- People with unspent offences under the Bribery Act 2010, and certain money laundering offences.
- People with unspent offences of misconduct in public office, perjury or perverting the court of justice.
- Those with unspent “attempting, aiding or abetting” offences relating to; contempt of court, being designated under terrorist asset freezing legislation, and, being on the sex offenders register.

How long does the appointment of a Trustee last?

This depends on what the governing document says. It is best practice to have a set term. If their term of office expires they can be reappointed unless the governing document says otherwise. If it does not specify, the appointment continues until the Trustee dies, resigns or is removed from office. In an unincorporated charity Trustee resignation must be handled as set out in the governing document. In an incorporated charity, it is straightforward for a Trustee to resign, unless the number of Trustees would drop below the minimum stated in the governing document, in which case a new Trustee must be appointed first.

Main Responsibilities

Trustees are ultimately responsible for their charity and ensuring it is well-run, financially solvent and delivering the charitable outcomes it is set up to do. They lead the charity. Their overriding duty is to advance the purposes of their charity.

We have taken all reasonable steps to make sure that this information is current and accurate. We cannot, however, guarantee its accuracy or completeness and therefore cannot accept liability for your acting, or failing to act, on the information given.

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Compliance

Trustees must:

- Ensure the charity complies with Charity Law and with the requirements of the Charity Commission and produce reports, annual returns and accounts as required by law.
- If registered with other registrars (e.g. Companies House) ensure you comply with the requirements of that regulator and any relevant laws.
- Ensure the charity follows the rules set out in its governing document and remains true to the charitable purpose and objects.
- Comply with any other legislation and regulations for example employment law, equal opportunities and discrimination, data protection, health and safety
- Act with integrity and in the best interest of beneficiaries

Prudence

Trustees must:

- Ensure the charity is and will remain financially solvent
- Use charitable funds and assets reasonably and only in relation to the charity's objects
- Avoid undertaking activities that might place the charity's endowment, funds, assets or reputation at undue risk
- Take special care when investing or borrowing funds

Safeguarding Resources

This includes:

- Ensuring proper procedures are in place to guard against fraud and dishonesty
- Insurance of buildings and valuable assets
- Protection of the charity's reputation
- Legal protection of the charity's name and logo
- Good employment practice
- On-going risk assessment

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Duty of Care

Trustees must:

- Use reasonable care and skill in their work as Trustees
- 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
- Work together as a team – act collectively
- Act with integrity.
- Act honestly, carefully, reasonably in person, in the best interests of the charity
- Remain independent
- Avoid conflicts of interests in relation to themselves and persons connected with them
- Declare and manage conflicts of interest, real or perceived

Director's Duties

In a CIO or a Company Ltd by guarantee the following list of duties from The Companies Act 2006 are in addition to Trustee duties:

- Duty to act within the company's constitution and powers
- Duty to promote the success of the company
- Duty to exercise independent judgement
- Duty to exercise reasonable care skill and diligence
- Duty to avoid conflicts of interest
- Duty not to accept benefits from third parties
- Duty to declare an interest in proposed transaction or arrangement

Trustee Personal Liability

Trustees can be personally liable for debts, losses or legal action but this is rare. Trustees can also be held personally liable if they undertake any activities outside the governing document, for a breach of duty under charity law, for failing to comply with relevant statutory requirements and for operational liabilities. The best protection against this is good governance – a system in place ensuring the direction, effectiveness, supervision and accountability of the organisation. If Trustees act in line with their responsibilities and have good policies and practices in place there should not be a problem. Trustee Indemnity Insurance can be purchased. Directors of incorporated charities are less exposed than Trustees of unincorporated charities but can still find themselves exposed to personal liabilities arising from breach of trust or duty, personal guarantees or wrongful or fraudulent trading or are proven to be criminal or negligent.

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Meetings

The constitution may include how often Trustee meetings should be held but otherwise there is no legal requirement, some may meet weekly, but more common is monthly or quarterly depending upon the needs of the project and the size of the group. Where the Trustees are also the people directly running and managing the project they will meet more frequently than where the trustees delegate (e.g. employ a manager or have volunteers who run the group).

Delegation

The Trustees have ultimate responsibility for running their charity but they generally have the power to delegate certain powers subject to their governing document and legislation. Delegated authority must be monitored and reviewed. Many smaller groups have no staff and work at all levels so the work is also done by the Trustees. In other larger organisations Trustees may only make the ultimate decisions and agree strategy, they may also have a sub-committee structure. Where decision making is delegated it must be allowed within the constitution and this should be checked if you are not sure. The terms of delegation should be set out in writing, perhaps noted in the minutes and should include:

- What powers are being delegated?
- Who is the power or task being delegated to?
- Details about timing and reporting back
- Specifics about financial issues.

Decision Making

All decisions concerning the organisation are taken by all the Trustees acting collectively and as a team. However, the decisions do not need to be unanimous – a majority decision is sufficient unless the governing document states otherwise. A Trustee who does not attend a meeting will still be bound by the decisions made at that meeting.

Payments

In general Trustees are unpaid and must not benefit in any way from their connection with the charity. There are limited exceptions to this rule. They can receive reasonable out of pocket expenses. They must not benefit by borrowing money from the charity, making contracts to do business with the charity or take a lease of the charity's property.

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Employment

Trustees cannot generally be employed by the charity as they must not gain from their position. Again, there are limited exceptions to this. There are times when a Trustee can be paid for their professional expertise but this should be checked with the Charity Commission to be sure it is allowable.

Conflicts of Interest

Trustees cannot generally receive any benefit from their charity. The Trustees must act in the best interest of the organisation so they need to be aware of where they may have other interests, e.g. they may be trustees of more than one organisation. It is best practice to have a register where any potential conflicts of interest can be recorded. If there is one the Trustee would not be entitled to vote on the issue and may need to leave meetings when it is discussed.

Why become a Trustee?

- It is immensely rewarding
- To support a project close to your heart
- To use the skills you have (you may not be exercising these in your paid job or in other aspects of your life).
- A chance to learn, gain new experience and take part in training and meeting other people
- The opportunity to mould a project that makes a difference to lives and your community.
- It makes a real difference to society!

Other sources of information are:

- The Charity Good Governance Code <https://www.charitygovernancecode.org/en>
- Charity Commission www.charity-commission.gov.uk
- Companies House www.companieshouse.gov.uk
- Trustees and Management Committee National Occupational Standards <http://www.skills-thirdsector.org.uk/>

For resources, ideas and useful information please contact Community Action Norfolk on 01362 698216 or email office@communityactionnorfolk.org.uk

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