

A. General

This guidance note provides general information on the legal duties, obligations, and responsibilities all charity trustees must be aware of. It does not contain detailed advice on specific matters that apply to them. It does not contain detailed advice if you require guidance on a specific situation or topic.

In this note:

“*charity*”

means an incorporated or unincorporated organisation (including a company or partnership) that is in law a charity.

For more information on “charity”, please see our Guidance Note on “[What is a charity in law](#)” in the [Charities] Subfolder

“*trustees*”

means those individuals who have the ultimate control and management of the charity, whether called “directors”, “managers”, “members” or any other name or description.

If the charity is a company, the trustees will be the directors of the company.

Trustees are responsible for the overall administration and management of the charity.

To be a trustee requires a commitment of time and effort. It is also a rewarding opportunity to serve the community and use your personal skills. It is estimated that there are well over 80,000 charities based in England & Wales. Some will be new to charity work and some will have limited knowledge of their legal responsibilities.

All trustees must comply with the law (including the Companies Act 2006 (and other relevant laws)). It is therefore very important that in the event of any changes to the law, they should familiarise themselves with the new provisions.

It is often assumed that, as a trustee is an honorary position (i.e. it is unpaid) and there is no financial benefit from it, someone taking on the role of a trustee has few or no legal duties, responsibilities, or potential liabilities. However, as will be explained in more detail in this note, that is not the case.

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tee is an honorary position (i.e. a trustee to receive any benefit from it, someone taking on the role of a trustee has few or no legal duties, responsibilities, or potential liabilities, or someone who is a company director. However, as will be explained in more detail in this note, that is not the case.

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se law, and they vary according
as follows: -

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Interests of the charity, exercise of decisions are unaffected by

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of interest. This applies not only to the charity and his/her own personal interests but also to the charity and any duties

st avoid being involved in any
here it is a substantial conflict,
potential benefit or other source

ch provide a specific procedure
cluding such a procedure in its

uments to include provisions to to have a written conflicts of and a standard agenda item at declare any actual or potential dance (May 2014) recommends guidance also emphasises the gains that potential conflicts may ue.

of information or anything else

Commission may a trustee resign

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direct benefit, advantage, or gain to the charity's constitution or by the charity's constitutions to include power to confer a benefit to a trustee in consideration of the trustee's loyalty in certain circumstances.

of training is allowed.

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Advice should be taken before a trustee (other than a trustee who is also a beneficiary).

any sort of payment or allows any expenses) or where a trustee is

(4) Administer the charity and the law

Particular follow the constitution

A trustee must ensure the charity acts in accordance with its constitution, charity law, and all other laws and regulations applicable to fundraising, campaigning, employment, equality and children and young adults.

acts in accordance with its constitution (if the charity is a company), and all other laws and regulations applicable to fundraising, campaigning, employment, equality and children and young adults.

A trustee must also ensure the charity complies with the requirements of the Charity Commission and any other relevant regulatory authority (for example, Ofsted in relation to education/schools, CQC in relation to health & safety, safeguarding of children and young adults, and the Information Commissioner in relation to data.)

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As to the duty to comply with the law:

Particular follow the constitution: -

Objects - The charity's resources must be used for the purposes specified in its objects. These are set out in the charity's constitution. Trustees must ensure that they know what the charity's objects are and that any activity would be for those objects. If some intended expenditure or activity would go beyond its objects, a charity may not expend its resources on it. On any occasion when considering how to use any resources, trustees should also consider whether there is a more effective way of furthering the charity's objects. A trustee may become personally liable if resources are applied outside its objects.

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Powers - A charity's constitution allows or what a statute authorises. A charity cannot take a lease of premises unless its constitution gives it power to do so, even if it is for the purposes of the charity's objects. Where a charity is subject to the Charity Commission's guidance on "public benefit", trustees should also consider the powers of the charity. Trustees should also consider the investment powers, but also the additional investment powers provided for in the constitution. Irrespective of any powers also included in the constitution.

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It is good practice to have policies and procedures to help manage the charity properly. These may include financial procedures, health & safety procedures, and policies on fundraising, employment, equality and children and young adults. We have included two forms of C&A. Some charities are required by law to have certain policies and procedures to help manage the charity properly. These may include financial procedures, health & safety procedures, and policies on fundraising, employment, equality and children and young adults. We have included two forms of C&A. Some charities are required by law to have certain policies and procedures to help manage the charity properly.

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
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that money is invested prudently, any or property donated to it, and unless either the charity is legally advance the charity's purposes. (ment cannot be made.).)

are protected, for example that its reputation, name, and staff are guarded; and that the charity is protected from staff.

solvent, that its assets and funds
any activities which could put its

...e and skill, and must use any
him/herself out as having. For
ular business or professional
re trustees to select appropriate

means that they must all take part. It does not usually mean that their powers are delegated to any trustee/s or the trustees, but no one or more (e.g. the trustees, etc) may make a decision on their own.

stitution (but not otherwise), all of
ees powers to make decisions.
needed to enable one or more
stees) to deal with emergency
ation should be by means of a

ies, responsibilities and liabilities

formal adoption of written terms of reference which sets out those terms in it.

There are some other powers of decision-making provided by law, but this is a complex area.

If something goes wrong for whatever the charity makes a decision or to implement it.

(9) Ensure restrictions

Where a charity receives funds for a specific purpose, a trustee must ensure that the funds are used for that purpose. Trustees cannot authorise any other use of the funds unless they have consent from the donor.

C. Liability

Where do a trustee's liabilities come from?

As mentioned at "B" above, a trustee's liabilities arise from both statute and case law. They can give rise to two types of liability:

(1) Governance Liabilities

Governance liabilities can arise automatically by the law of tort, by the position as a steward of the charity's assets, or by a failure by him/her to disclose information or "breach of trust". Liability is incurred by the charity and it suffers the consequences.

Such a liability can be enforced by the charity or by a court. This may be due to imprudent investment, or it may be due to dishonest misuse of funds.

The Charity Commission can enforce liability where a trustee has acted negligently.

In addition, the trustees can be personally liable for certain wrongs committed by them, for example, if they are found to be personally responsible for a wrongful or fraudulent transaction, or if they fail to file certain company or other documents, and for breaches of health & safety, environmental, discrimination, or data protection laws.

(2) Operational Liabilities

Operational liabilities arise from the way the charity does or from its constitution.

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What a charity does will might contract with a local authority for fees, or a charity might employ staff. In all those cases it is an employment contract, and the charity could be liable, for example, for failure to pay wages, or for failure to comply with other terms of the contract. Where it runs a fundraising campaign and causes injury or loss to a third party, the charity is liable.

Whether a trustee becomes personally liable depends on the legal form of the charity,

If it is incorporated, liability is limited to the charity (for example, to suppliers) and the charity has assets to meet the liability. Trustees are not personally liable for the liabilities of the charity.

If on the other hand it is unincorporated, the trustees (above) can create personal liability for the charity. All liabilities of the charity will not normally become the personal liability of the trustees required or meets its obligations. If the charity is not liable or does not have assets to meet the liability, the trustees are liable to the extent of the short

Establishing a charity can involve a potential exposure to personal liability for other financial liabilities. The charity can be incorporated vehicles for the purpose of liability by guarantee but charity legislation recent charity legislation has introduced the **company limited by guarantee**.

D. Insurance

Trustees might consider obtaining insurance for its trustees.

It is possible to obtain insurance to cover operational liabilities and it is essential to check what the insurance does not cover. We recommend that trustees should obtain "Indemnity Insurance", trustees should

Such insurance typically covers the trustees' need to fully understand

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charity, but, for example, a charity might provide services to service users in return for fees used by it, or it might employ staff. In all those cases it is a legal relationship (a services or employment contract) and it could become liable, for example, for failure to pay wages, or to dismiss an employee fairly, or for failure to comply with other terms of the contract. Another example might be where it runs a fundraising campaign and is negligent in some respect, that the charity is liable for his/her injury or loss.

Whether a trustee becomes personally liable depends on the legal form of the charity, incorporated form.

If it is incorporated, liability is limited to the charity (for example, to suppliers) and the charity has assets to meet the liability. Trustees are not personally liable for the liabilities incurred by the charity even if it has insufficient assets to meet the liability.

If on the other hand it is unincorporated, the trustees (above) can create personal liability for the charity. All liabilities of the charity will be theirs ultimately but they will be the charity itself does what is required or meets its obligations. If the charity is not pay a debt or some other obligation, the trustee could be personally liable to the extent of the short

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the range of cover available, and
 es little protection.

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se be reluctant to do so.

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in England & Wales. It is only a
that you seek further guidance
is note on which you decide that

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