

Guidance Note: Fit and Proper Persons

Trustees and Managers)

1. Use of a declaration for fit and proper persons

A charity or CASC should give a declaration for fit and proper persons to each “manager” to sign before they are appointed. It should then keep the signed copy on file. It should not send it to HMRC. HMRC does not request it at any time as part of an enquiry into the tax status of the charity.

2. Meaning of “fit and proper person”

There is no definition in the Finance Act 2004. The Declaration is based on HMRC’s Model Declaration under the title “Declaration for Fit and Proper Persons (Trustees and Managers)” in our Trustees – Guidance Notes and Documents.

The Charity Commission may consider whether a person is a “fit and proper person” but that will not render HMRC’s definition of a “fit and proper person” is solely for HMRC’s regulator. However, HMRC does not ask charities or CASCs whether its “managers” are “fit and proper persons” or not. HMRC assumes that they are “fit and proper persons” unless the contrary.

HMRC will expect charity trustees to give proper consideration to the suitability of a person to act as a trustee of a charity, where they are able to do so. It is for the charity to decide how it does so. HMRC will not ask charities to give proper consideration to the suitability of “managers”, and that is not HMRC’s role.

Some charities or CASCs may have their own procedures for that purpose. Alternatively, a charity or CASC may ask each “manager” to read and sign the Declaration for Fit and Proper Persons (Trustees and Managers) before they are appointed. This is to enable it to inform HMRC, if asked, that they have given proper consideration to whether the person is a “fit and proper person”.

3. Recommendation to use the HMRC Model Declaration

Although the declaration as to whether a person is a “fit and proper person” needs to be in writing and signed, it is not legally required to be in any particular form. However, we strongly recommend that you use the HMRC Model Form (i.e. the Declaration for Fit and Proper Persons (Trustees and Managers) in this subfolder).

4. The serious consequences of not being a “fit and proper person”

If any of a charity’s or CASC’s “managers” are not “fit and proper persons”, it will no longer be entitled to charity tax reliefs and

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6. Who is “fit and proper”?

There is no definition in the Finance Act 2004. The Declaration is based on HMRC’s Model Declaration under the title “Declaration for Fit and Proper Persons (Trustees and Managers)” in our Trustees – Guidance Notes and Documents.

Whether they are a “fit and proper person” is solely for HMRC’s regulator. However, HMRC does not ask charities or CASCs whether its “managers” are “fit and proper persons” or not. HMRC assumes that they are “fit and proper persons” unless the contrary.

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8. Any other “manager” not being a “fit and proper person”

If any of a charity’s or CASC’s “managers” are not “fit and proper persons”, it will no longer be entitled to charity tax reliefs and

exemptions, and HMRC may ask for evidence that the tax reliefs would include Gift Aid.

5. HMRC Helpsheet

We have set out below the full text of the HMRC Fit and Proper Persons Helpsheet (referred to above). This is published by HMRC. We recommend that your charity manager to read to help the charity to appoint individuals who are “fit and proper” to manage the charity.

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Proper Persons Helpsheet (referred to above) and the Model Form of Declaration. We recommend that your charity manager to read to help the charity to appoint individuals who are “fit and proper” to manage the charity.

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Who is this helpsheet for?

This helpsheet and the model declaration are for charities, Community Amateur Sports Clubs (CASCs) and other organisations entitled to UK charity tax reliefs. The term 'managers' applies to the trustees of corporate charities, CASCs and other organisations having general control and management over the running of the charity.

In a typical small local charity a manager could include the Chairperson of the management committee who would have control over the running of the charity.

In a larger charity a manager could include all trustees or directors, or a proportion of employees who are able to determine the expenditure of the charity. For example, most large charities have a board of senior employees. In such a case, the board would be managers of the charity.

If you are a 'manager' of a charity, you should read the declaration based on the model declaration and copy the wording onto your own statement. The charity tax reliefs should keep a copy of the statement in case HM Revenue & Customs (HMRC) ask to see it. The signatory should see it.

Why is there a 'fit and proper persons' test?

The 'fit and proper persons' test is a requirement that individuals who are 'managers' of the charity should be fit and proper persons. Managers of such a body should be fit and proper persons. Organisations entitled to charity tax reliefs might misuse the tax reliefs if they are not fit and proper persons. It is known to exploit charity tax reliefs if they are not fit and proper persons.

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the Chairperson of the management committee and the rest of the management committee.

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as a charity trustee by a charity trustee or company director under the Disclosure of Tax Avoidance Act 2004 in respect of which a section 311 of Finance Act 2004, and the which used a charity, and their tax or partly remove the tax advantage payments have become final.

designing and/or promoting tax
which used a charity, and they are:

Under DOTAS, in respect of which a
 r section 311 of Finance Act 2004,
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Tax Avoidance Schemes guidance:
313987/Promoters of Tax Avoidance Scheme

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However, just because a person is one of the other points above a charity is not eligible for tax reliefs. When considering particular managers, HMRC will consider their position. For example any person who is spending charity funds, even if they are not the charity's eligibility to tax reliefs.

What do I need to do?

If you are confident you will do your duties only for charitable purposes and you have signed the declaration then you should sign the declaration.

If you are confident you will do your duties only for charitable purposes but you have not signed the declaration then you should sign the declaration out the relevant bullet point - the declaration to the charity. The charity will keep the declaration.

If neither of the above applies you should sign the declaration.

I've signed the declaration so what?

The charity will keep the declaration and HMRC have any concerns about the charity's eligibility to tax reliefs.

from acting as a charity trustee or manager. It follows that the charity will not be eligible for the fit and proper persons test to determine the likely impact on the charity's tax reliefs with HMRC and no control over the charity's proper person, is unlikely to affect the charity's eligibility to tax reliefs.

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If neither of the above applies you should sign the declaration.

If you are confident you will do your duties only for charitable purposes and you have signed the declaration then you should sign the declaration to the charity. If you are not confident you should sign the declaration to the charity to clarify the situation.