

Swalcliffe Village Charity

Becoming a Trustee

Introduction

Trustees are the lifeblood of all charities. Without their enthusiastic, dedicated, and philanthropic contributions no charity whatever its size can exist. But there is more to being a trustee than occasionally turning up to trustee meetings and voting.

All trustees are equally responsible for the proper management of the charity in accordance with its charitable objects and charity law. Therefore, the majority decision of the trustees is legally binding on all trustees, even if they voted against the decision or were not present at the meeting at which the decision was taken. It is therefore most important that all trustees fully understand their role and responsibilities and take them seriously.

The purpose of this briefing is to help you with that. It is not a definitive statement of those roles and responsibilities, just a brief overview of the most important areas.

Who Are a Charity's Trustees?

The trustees of a charity, whatever its size, are the group of volunteers who have the ultimate responsibility for running and managing the charity for the public benefit in accordance with its governing document and in compliance with charity law.

What Are a Trustee's Responsibilities?

Trustees have collective responsibility and must accept, ultimate responsibility for directing the affairs of their charity, ensuring that it is solvent and well-run, and delivering the charitable outcomes for the benefit of the public for which it was set up.

Trustees must work together as a team and have collective responsibility for their charity." The current (revised in 2015) Charity Commission guidance documents on trusteeship can be found on the website: <https://www.gov.uk/government/publications/the-essential-trustee-what-you-need-to-know-cc3>

The guidance publication, "Being a Trustee", is 20 pages long. But it is a relatively easy read. The more detailed guidance publication, "The Essential Trustee: What you need to know, what you need to do" is 40 pages long and is more technical. It probably isn't essential for the trustees of a small charity like the proposed Swalcliffe Village Charity to be intimately familiar with every word from cover to cover. But having familiarity with its contents and guidance not a bad thing.

Understanding The Charity's Governing Document

What the charity's governing document is called depends on the legal status of the charity. On sound legal advice, the proposed Swalcliffe Village Charity would be established as a charitable incorporated organisation and would be governed by agreed Articles of Association and registered with the Charity Commission. Articles have largely been drafted based on the suggested Charity Commission template and standard (relent) charitable objects.

Charity law is quite specific – a charity can only do things which are (a) consistent with its objects; and (b) are for the public benefit. Trustees are responsible for ensuring that their charity adheres to that.

What is the Difference Between Trustees & Members?

The foundation model for charitable incorporated organisations (CIOs), which is being used as the template for the proposed Swalcliffe Village Charity mean that trustees are the only Members, and vice versa.

As not-for-profit organisations, charities do not have members/shareholders who would be entitled to a share of its profits, if it made any.

The members of a charity therefore:

- a) **Have limited liability** if the organisation winds up with debts - in the case of the proposed Swalcliffe Village Charity members have an obligation to a contribution up to £10.
- b) In recognition of their liability (albeit limited) the members of the organisation have certain powers to control the way in which the organisation is run, namely:
 - (i) they can make changes to the organisation's governing document.
 - (ii) they can appoint and remove trustees.

Public and Private Benefit

The concepts of Public Benefit and Private Benefit are quite subtle and can, at times, be rather difficult to understand and apply.

Public Benefit - It must be **beneficial**, and any detrimental side-effects must not nullify those benefits; It must be for the **public** - that is for the community as a whole not for specific or selected individuals.

Private Benefits – These are the benefits received by an individual. Private Benefits (also called “Personal Benefits) are most often financial (a payment for “services rendered”). But that isn't always the case – anything that is of benefit to an individual (e.g.: a free complementary health session; free transport or accommodation; giving that individual preferential treatment over others) is a “Private Benefit”, even if “no money changes hands”.

In order for a Private Benefit to be allowable under charity law it must be:

- i) **Necessary**: that is, the charity would not be able to provide its charitable services to the public without making that payment/benefit to the individual(s) concerned.
- ii) **Incidental**: that is, the payment/benefit must have arisen naturally and inevitably in the course of providing the Public Benefit – a charity must not take on a particular activity, even if of charitable benefit to others, in order to create the opportunity to provide private benefit to individuals.
- iii) **Reasonable**: the level of the payment/benefit must be commensurate with the “normal going rate” for the service provided by individual. So, for example, it would not be legal to pay a person a higher-than-normal salary for the work they do or allow them to upgrade to “First Class” travel.

Whenever the charity's funds are being spent it is the responsibility of the trustees to ensure that such expenditure meets the “necessary, Incidental and Reasonable” criteria.

Financial Responsibilities

A particularly important area of responsibility for trustees is the financial management of the charity. As with all other aspects of charity governance and management, all trustees share the responsibility for the financial management of the charity, even where they have appointed a treasurer to deal with the day-to-day finances.

Making Payments to Trustees

Under charity law, trustees should be volunteers and not be remunerated/paid for their services to the charity as a trustee. But charity law recognises that, just because they are volunteers, it is unreasonable to expect that trustees be out-of-pocket because of their contributions to the work of the charity. So, it is legitimate to reimburse trustees (and, indeed, any volunteer) at cost for any out-of-pocket expenses they incur whilst undertaking activities on behalf of the charity.

Conflicts of Interest

There is nothing immoral or illegal in conflicts of interest per se. On the contrary, they are normal and inevitable in individuals and groups who are enthusiastic, active, and dynamic in their interests – exactly the kind of people who make good charity trustees and volunteers. Impropriety and illegality only come in when what would otherwise be entirely legitimate conflicts of interest are not properly declared, acknowledged, and managed.

Why Conflicts of Interest Occur.

This can be due to deliberate exploitation of the situation by one party for their personal benefit. By *deliberate exploitation* is meant that the party concerned knows (or, at least, suspects) that what they are doing is wrong/immoral/illegal but carries on doing it anyway. Such deliberate exploitation is clearly totally unacceptable, is often illegal and must be stopped as soon as it is recognised, and the individual dealt with appropriately. Fortunately, this is relatively uncommon.

More commonly, it can be due to people being unaware of the legal environment in which they are operating and so act in an improper (perhaps even illegal) way under the misapprehension that they are doing the right thing in the best interests of the organisation. But ignorance of the law is no defence.

Trustees must take a very open approach to declaring any conflicts of interest that they think they might have. A well-maintained Register of Conflicts of Interest is the best defence against suspicions or accusations of impropriety against individual trustees.

What a Conflict of Interest is

The Charity Commission's guidance publication defines conflicts of interest as *'any situation in which a trustee's personal interests, or interests that they owe to another body, may (or may appear to) influence or affect the trustee's decision making'*.

Participation in Trustee Meeting

Trustees have an equal responsibility with all the other trustees for all the decisions properly taken at trustees meetings, whether or not they voted in favour of the decision, or even whether or not you were present at the meeting where the decision was taken.

It is therefore vital that they take seriously their commitment to attend all trustee meetings whenever possible prepare properly for the meeting by making sure that you have gone through all the papers and documents which are on the agenda.

Fit & Proper Person

It is a requirement of HM Revenue & Customs that all persons involved in the financial management of The Charity (which includes all trustees) are *'Fit and Proper'*.