

The voice of the Voluntary Arts

Charity Trustees – what do they do?

PART II

Managerial, legal and financial roles and responsibilities

Part I of this briefing looked at who the trustees of voluntary organisations are and what responsibilities and roles they take on in general. This briefing looks in more detail at the managerial, financial and legal aspects of the role.

NB. This briefing is based on legislation for England and Wales. Whilst the general responsibilities and roles that trustees play in organisations will be similar, there may be differences in implementation and in charity law in Ireland and Scotland. In Scotland charity law has recently been through an extensive review process. Changes are expected to be implemented from early on in the next term of the new Scottish Parliament (mid 2003). ([] signifies differences or may not apply in Scotland/Ireland)*

Management

The success of a charity depends to a large extent on the way trustees give over, and then oversee, the organisation's managerial responsibilities. These include:

- **strategic planning** i.e. the long term view, usually three to five years. A strategic plan should contain: overall aims, specific objectives, key strategies, financial implications and risk areas. Simply put: defining the charity's mission statement (See VAN Briefing 60), deciding what the organisation needs to achieve and by when, how it will do this, and an annual review.
- **accountability to funders and stakeholders.** Trustees are morally and legally accountable for the way they exercise the power they have to supervise the running of the charity. Voluntary organisations are accountable to a wide range of stakeholders e.g. funders, local authorities, the

government, the Charity Commission, the Registrar of Companies, Scottish Executive, Inland Revenue, members, volunteers, staff and even the public [*]. As a trustee you need to be clear who these may be for your organisation. You will need to ensure too that:

- a) the charity is open to complaints and criticism and that there are complaints procedures;
- b) an annual return (report *and* accounts if relevant) is submitted to the appropriate body each year;
- c) charitable companies are *also* subject to company law and must submit an annual trustees report to the registrar of companies and the charity commission; [*]
- d) this information is usefully used to show other stakeholders the charity's work;
- e) you are aware of any specific reporting required by certain funders. Check.

- **staff management.** Trustees are the employers of staff in a charity. Employment issues, together with contracts, is the area most likely to give rise to a situation in which trustees find themselves personally liable. Trustees must abide by current employment legislation and see that mechanisms for adequate support and supervision are in place for ALL staff. The charity must have employment policies in place e.g. recruitment, appraisal remuneration, health and safety, equal opportunities. Additionally, trustees of small charities may be involved in appointing and appraising staff (larger organisations may appoint senior staff to do this.) All boards have responsibility for appraising the CEO. Staff also have statutory rights – trustees must understand these.



- **monitoring and evaluating the work of the charity.** It is the responsibility of the trustees to ensure that the charity is meeting its aims and objectives, the needs of beneficiaries, providing a good quality service and using resources efficiently. Systems of measuring this need to be in place. Funders may require regular monitoring reports.

Trustees should evaluate i) the Board itself ii) the CEO iii) the organisation and its activities. In order to evaluate you first need to monitor and collect the necessary data. Trustees must decide what information they require for monitoring rather than relying on staff to put forward information they think trustees need to have. A list of 'indicators' in each of the important areas of the charity's work should be drawn up. It may be helpful to compare your charity's performance with a similar, and effective, organisation to get an idea as to your progress.

- **relations with local groups and branches of national charities.** Many charities have local groups or branches e.g. doing fundraising, engaged in development work in a region, providing specific services, membership self-help groups, or advice and information centres. Trustees need to be clear about the relationship between the charity and any related groups. Local groups can be a part of the national charity; others may be separate and autonomous with their own trustees (who will have the same responsibilities and liabilities as all trustees). In this case the trustees of the national group will not be responsible for the work of the local groups. If the group is part of the national charity trustees need to create a system for overseeing the work of local groups without being seen to be 'interfering'. Local groups too need systems that make them accountable to the national charity e.g. accounting returns, appropriate PR work. To be certain about these issues check the governing document and seek advice from the Charity Commission. [*]
- **managing the charity's property and land.** If your charity owns land, or wants to buy property, check out the legal requirements and that you are following the correct procedures.
- **managing the charity's public relations and representing the views of the charity.** Raising the profile of the charity and creating a positive public image is a prerequisite for raising funds and developing and growing. Trustees must ensure that

the charity develops an effective public relations strategy. This includes having a clear message and public image (logo, house style, presentation). The strategy should contain procedures to limit damage should the charity come under public criticism.

- **contracting.** Local authorities and other agencies used to give grants to voluntary organisations to undertake many of their activities. Voluntary organisations are now invited to tender for contracts to provide services formally provided by the statutory sector [*]. A contract is a legally enforceable agreement between two or more parties. For a contract to exist the parties have to: offer and accept something unconditionally, exchange something of material value, and have the intention of creating a legally binding relationship.

In order to enter into a contract the charity's governing document needs to give the power to do what is necessary to carry out the work. Trustees need to consider several issues:

- how the proposed work fits in with the charity's legal objects and its mission;
- the impact of providing this service on the rest of the charity's work;
- that the charity has the skills and resources;
- the legal liabilities.

Trustees need to consider all the terms and conditions and proceed only if the charity can fulfil them. Note-with unincorporated charities (trusts and associations) the contract will be a legal agreement between the trustees and the contracting party i.e. the trustees can be personally liable if the terms are not complied with. With charitable companies it is the company which is party to the contract, not the trustees. [*]

Financial responsibilities

Monitoring the accounts of voluntary organisations can be a daunting task. Trustees will need to understand:

- accounting rules and regulations;
- approving and monitoring budgets;
- exercising control over income and expenditure and managing reserves;
- fundraising policy and activities;
- charity law and trading activities;
- the tax affairs of the charity;
- managing investments;
- insurance;
- preventing and detecting fraud and other irregularities.



Help – I don't know everything!

If you do not have the know how admit it rather than find yourself in a mess later. It is the board's responsibility (and yours if you become a trustee) to make sure that there are trustees who do know the ropes and to help new trustees learn the basics of understanding the organisations accounts. The treasurer, CEO or finance officer can help as could internal and external training sessions. Financial information should be presented in a form which is easily understood with written explanations.

Some detailed financial work can be delegated to the treasurer or a finance committee but this does not remove trustees overall responsibility for ensuring that the financial affairs are managed properly.

At the very least trustees should know how to:

- a) read budgets and accounts;
- b) recognise whether the annual accounts properly summarise the organisations activities and state of affairs;
- c) interpret financial reports;
- d) give direction to professional advisers who are entrusted with property and financial reserves;
- e) assist and monitor fundraising activities.

But don't panic! Two sets of criteria are used to judge the performance of trustees of registered charities in meeting financial responsibilities:

- 1) "proper care and diligence" – a trustee will not be held liable for wrongdoing by any member of staff or professional advisor if the board has given proper attention to the appointment, duties and supervision of that employee or advisor; [*]
- 2) the "prudence of ordinary men and women of business in the management of their own affairs" – this requires trustees to satisfy themselves that the financial affairs of the organisation are being properly handled in the same way as they would manage their own finances; ignorance of what is happening or the absence of dishonesty on the part of the trustee is not accepted as prudent behaviour, and it is your responsibility as a trustee to stay informed. [*]

In summary:

in managing the charity's finances you must:

- make sure that bank accounts are operated by more than one person;
- make sure that all the charity's property is under the control of the trustees;

- make sure that funds held for different purposes are kept in separate bank accounts, or the charity's accounting records show clearly at all times the amount of funds held for each purpose;
- keep full and accurate accounting records
 - i) **unincorporated charities:** the 1993 Charities Act has made trustees responsible for ensuring detailed accounting records are kept; [*]
 - ii) **charitable companies:** subject to company law. Trustees must ensure that the accounting procedures set out in the Companies Act 1985 are followed; [*]
 - iii) **all charities:** make sure you understand and follow the SORP (Statement of Recommended Practice) on Accounting by Charities. [*]
- collect in full all money owed or due to the charity, including tax and rating reliefs.

In applying the charity's income you must:

- spend it solely for the purposes set out in the charity's governing document;
- spend it with absolute fairness between persons qualified to benefit from the charity; and
- spend it for the purposes of the charity unless you have some specific future use for it in mind, or unless you have explicit authority to accumulate it.

If your charity has land or buildings you must:

- either occupy and use it for the charity's purposes or let it for the maximum possible return;
- make sure it is maintained in good condition;
- consider insurance;
- regularly consider whether you are using it to the best advantage of the charity; and
- make sure that the charity property is vested in the trustees or in the name of a nominee where there is proper authority to do so.

If your charity has funds to invest you must:

- invest only within the limits of the powers granted by the charity's governing document or the Trustee Act 2000; [*]
- constantly monitor the performance of the investments;
- avoid speculation and invest prudently to achieve both income and capital growth; and
- seek professional advice about what investments are most suitable for your charity.



If you raise funds by appealing to the public you should:

- make sure that your appeal properly describes what the public's donations will be used for;
- be open and honest if asked about the costs of the appeal;
- not use fund-raising methods which exert undue pressure on people to give;
- approve in advance any fund-raising or advertising campaign carried out on your charity's behalf; and
- require fund-raisers to hand over money raised or collected by them before deducting their fees or expenses.

Legal responsibilities

Charity trustees are ultimately responsible for everything the charity does and how it does it. Many of the legal responsibilities of trustees have been mentioned in the preceding sections. Though you could be held personally liable very few trustees who have behaved honestly have suffered financial loss as a result of their trusteeship. Specific areas trustees need to pay heed to are:

- **Charity legislation** – The main legislation covering the activities of charities are the Charities Acts 1992 and 1993 [*], the 1985 and 1989 Companies Acts and the De-regulation and Contracting Out Act 1994 [*], as well as legislation to do with employment law. Trustees do not need to be experts on the relevant legislation but they do need to be aware of it and to make sure that effective compliance systems are in place. Some charities also have written rules for internal procedural matters such as the composition of the board and other committees and the election/ appointment of new trustees which you will have to comply with.
- **The governing document** – This sets out the charities 'objects' i.e. the underlying purpose of the organisation. Trustees must act within the objects of the charity or they could be held liable to repay the charity any monies spent on activities outside the objects.
- **What type of organisation** – Charitable status and structures. All registered charities have a 'governing instrument' or set of rules under which they have to operate. They will also have a legal structure each with its own type of constitution e.g. a trust, an unincorporated association, a company limited by guarantee or an industrial or provident society. (Briefings 22, 23 and 56 give more information on structures and becoming a charity.)
- **Conflict of Interest** – The interests of trustees may on occasion conflict with those of the charity. Trustees have a general responsibility to avoid such conflicts, especially if these involve financial transactions. Trustees are jointly and severally responsible for the activities of the charity and must act together. However, board decisions do not have to be unanimous – the majority bind the minority. If a trustee disagrees make sure this is recorded in the minutes. If the conflict is serious the trustee might consider resignation. Make sure there is a conflict of interest policy.
- **Payments to trustees** – Trustees should not derive any personal benefit from their work as trustees. However, they can claim reasonable out-of-pocket expenses to cover travel, accommodation, telephone or postal costs and enabling costs for disabled trustees and carers. Trustees are also prohibited from receiving any special benefits from the charity such as services, access to equipment, leasing charity property at less than the market rent, loans or receiving an honorarium in return for voluntary work. Only in exceptional circumstances can a charity pay a trustee.
- **Insolvency and wrongful or fraudulent trading** – This takes place when a company continues to operate when the directors (trustees in a charity) knew, or ought to have known, that there was no way the company could avoid going bankrupt. One defence trustees have in this situation is to be able to claim that they took every reasonable step to minimise potential losses to the charity's creditors. If the charity gets into financial difficulties trustees must avoid the temptation to continue the activities in the hope that things will get better. They must put the needs of the charity's creditors first and take steps to minimise the potential loss. If the charitable company does become insolvent you could be disqualified from being a trustee and you and your fellow trustees could be held personally liable to repay the money to the creditors.
- **Political activities** – As a charity trustee you must ensure that your charity complies with the law relating to political activities by charities. An organisation set up to achieve a political purpose cannot be a registered charity but an organisation set up for a charitable purpose may engage in activities which may secure changes in law or



public policy on issues relevant to its work. After all, charities are there to further the well-being of society. However, they cannot engage in party political activities or try to change laws or policy not directly related to their work. [*]

- **Trustees annual report** – charities have to produce an annual report consisting of a narrative report, setting out what the charity is trying to achieve and how it is going about it, and a financial review, showing the charity's financial position and transactions. Home Office Regulations and the Statement of Recommended Practice (SORP) on Accounting by charities lays out what must be contained in the annual report. [*]

And as if that isn't enough!

This isn't all there is to your responsibilities as a trustee. You, as a member of the group, are also responsible for making sure that the Board of Trustees works efficiently. Issues to consider here are:

- effective board and committee structures;
- recruiting trustees; trustee job descriptions; introducing, inducting, training, supporting – and keeping – them;
- diversity, disability and equal opportunities;
- holding meetings that work;
- effective decision making;
- committee/staff relationships;
- assessing the Board.

A note of caution: Briefing I and II give a very quick overview of the roles and responsibilities of charity trustees. They do not cover all the issues in detail, and there are some issues that they do not cover at all. It is your responsibility as a trustee, or potential trustee, to undergo further research to cover these topics as fully as possible.

Further Information

Publications

Much of the information above comes from:

Responsibilities of Charity Trustees (CC3) (Charity Commission) – a comprehensive outline of roles and responsibilities.

The Good Trustee guide (NCVO Publications, 1999) – an excellent, easy to read resource (£20).

Faith and Hope don't run charities – trustees do (WCVA, 1999) – also an excellent practical guide.

Running a Charity by Francesca Quint (Jordans, 1994).

See also:

Just about managing – Sandy Adirondack (LVSC, 1998) (ask for the latest edition)

Voluntary but not Amateur – Forbes, Duncan, Hayes Ruth and Reason, Jacki (LVSC, 1998).

Charity Law in Scotland – ISBN: 0414011414 (£35.00). This book provides legal guidelines for Scotland's charity administrators. (bear in mind its publication date however: 1996).

VAN Briefings:

Bf 57 – Effective Management Committees

Bf 55 – Constitutions Clarified

Bf 23 – Incorporation

Bf 22 – Getting Charitable Status

Bf 21 – Making committees work for you

For more information on legal issues, charity procedures and useful (often free) publications contact:

SCOTLAND

SCVO – T: 0131 556 3882 www.scvo.org.uk/ umbrella body for voluntary organisations in Scotland. To source all the major steps in Charity Law Reform in Scotland visit: www.scvo.org.uk/policy/law/charity_law/index.htm which has links to the Scottish Executive response to the McFadden Report, the report itself and other policy papers in the archive.

www.scotland.gov.uk/justice/charitylaw/ Scottish Charity Law Review Commission – an independent commission to review and reform charity law in Scotland. The commission called for a new stricter definition of what it means to be a charity; regulation and support from government; a new body to oversee Scotland's charities. The report acknowledges that the supervision and regulation of charities in Scotland is devolved to the Scottish Executive. The position of heritage and arts charities is clearly supported by the proposed new definition. The remit of the Charity Commission extends only to England and Wales: the report proposes a new structure for the Charity Commission and a lighter system of regulation for smaller charities. These recommendations will affect the way in which the McFadden recommendations for CharityScotland are taken forward.

IR Charities (Scotland) – charitable status enquiries
T: 0131 7774133



www.strategy-unit.gov.uk the Strategy Unit Report.

www.govanlc.com/charitylaw charity law and practical legal issues for voluntary organisations.

www.scottishlaw.org.uk/lawscotland/charity.html .

www.dundee.ac.uk/law/clru/intro.htm charity law research unit.

www.dundee.ac.uk/law/clru/publish.htm Scottish charity law publications (note the date of publication).

WALES

WCVA www.wcva.org.uk T: 029 2043 1719
umbrella body for voluntary organisations in Wales.

ENGLAND

The Charity Commission
www.charity-commission.gov.uk T: 0870 3330123

NCVO www.ncvo-vol.org.uk T: 020 7713 6161
umbrella body for voluntary organisations in England.

IRELAND

NICVA www.nicva.org T: 028 9087 7777 umbrella body for voluntary organisations in Northern Ireland.

www.acca.co.uk/ go to: publications – inpractice ireland – issue 24 – reforming charity law. Offers an analysis of a 284 page report *Charity Law: The Case for Reform by the Law Society’s Law Reform Committee*.

www.icnl.org/journal/vol4iss23/ohalloran3.htm
In 1998 the Centre for Voluntary Action Studies undertook a charity law research project spurred by an awareness that the legal framework for charitable activity in Northern Ireland was quite different from any comparable framework elsewhere in the United Kingdom.

www.homeandaway.com/Nireland_law.htm
law resources for Ireland and Republic of Ireland.

REPUBLIC OF IRELAND

Creative Activity For Everyone. 004414736600.
cafe@connect.ie

The Wheel www.wheel.ie T: 353 1 4548 727
The Wheel is perhaps most similar to NICVA in so far as it is independent from government.

Combat Poverty Agency www.cpa.ie (website down at time of writing)

Area Development Management (ADM)
www.adm.ie T: 353 1 2400 700

Other Useful contacts

The following organisations will also be able to offer useful information. Note that this list is not exhaustive.

Community Foundation
www.communityfoundation.org.uk/ T: 020 7713 9326.

Community Matters
www.communitymatters.org.uk/ T: 020 7837 7887.

Companies House
www.companies-house.co.uk T: 029 2038 0801.

CVS or RCC Local organisations should first approach their nearest council for voluntary services (CVS) or rural community council (RCC). The following two organisations can provide contact details).

National Councils for Voluntary Service
www.nacvs.org.uk/ T: 0114 278 6636.

ACRE Action with Communities in Rural England (ACRE) www.acre.org.uk/ T: 01285 653477.

Directory of Social Change
www.dsc.org.uk T: 0207 209 4949.

Volresource www.volresource.org.uk voluntary and community sector information for the UK.

Disclaimer: We have taken reasonable precautions to ensure that the information contained in this document is accurate, but the document is not intended to be legally comprehensive. We recommend you take legal advice before taking action on any of the matters covered in this Briefing.



Do you need this publication in a larger or alternative format?
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