

The voice of the Voluntary Arts

Charity Trustees – what do they do?

PART I

An overview

Trusteeship is a valuable and interesting opportunity for individuals to contribute to a civil and democratic society. However, the task is not an easy one. Changes in legal, funding and social structures has meant that charities and trustees have had to take on an even greater share of responsibilities and sometimes liabilities.

Additionally, contracting, service-level agreements and an increasing amount of money managed by voluntary organisations has amplified the need for effectiveness and accountability. This briefing (Part I of two briefings) will take a broad look at the central role trustees play in determining this effectiveness and accountability.

NB. Scotland and Ireland: please note that whilst the general responsibilities and roles that trustees play in organisations will remain the same, there are differences in implementation and charity law in Ireland and Scotland. In Scotland, particularly, charity law has recently been through a review process and it is expected that some progress towards implementing change will be made early in the next term of the new Scottish Parliament (mid 2003). ([] signifies differences or may not apply in Scotland/Ireland)*

Any charitable voluntary organisation (England, Wales, Scotland, Ireland) would do well to examine its own structures and practice against the English Charity Commission's "Hallmarks of a well-run charity" (cc60) <http://www.charity-commission.gov.uk/publications/pdfs/cc60text.pdf> and to get advice when uncertain on any issues.

So, what is a Trustee?

Charity trustees are the people responsible under the charity's constitution for controlling the administration and management of the charity. Sometimes trustees are known by other terms – 'members of the committee (or board)', 'management committee members', 'council members', 'executive committee members', or something similar as defined in the constitution. However, no matter what the title, if you are a member of the committee/board, are entitled to take part in the decision making process and vote at meetings then you are a 'charity trustee'.

Some charities have representative trustees appointed by another organisation. Representative trustees still personally carry the responsibilities and liabilities of being a trustee and have to act in the best interests of the charity – not those of the nominating organisation. Often national organisations have 'branches' with local committees. If the branch is constitutionally part of the national organisation (i.e. it does not have its own registered charity number) then the members of the local committee are not trustees. The trustees are the members of the national governing body with overall responsibility including the work of the local branches. However, some members of local committees may also be trustees of the national charity. If a local branch is independent with its own governing document and is affiliated to a national organisation, then the members of the local committees will be trustees of that local branch.



Who can become a trustee?

The job of a trustee should not be taken lightly.

Potential trustees should only take on the role if they:

- are prepared to give the necessary time and effort to the charity (find out what is expected of you);
- can help the charity achieve its aims through your expertise or commitment (be certain why you are there);
- understand that trusteeship carries legal duties and responsibilities (take time to learn these);
- are absolutely trustworthy and act with selflessness, integrity, objectivity, accountability, openness, honesty and leadership (who can vouch for you?);
- members of a charity's staff cannot become trustees except in specific circumstances (check with the Charity Commission)[*];
 - a) it may be advisable to draw up a code of conduct for your organisation's trustees based on these principles;
 - b) it may also be advisable to have someone in your organisation who is responsible for checking that trustees are not disqualified under the terms of the Charities Act 1993 and the Company Directors Disqualification Act 1986 (more information from the Charity Commission)[*];
 - c) you might want new trustees to sign a declaration both to this effect, and of commitment to your charity.
 - d) if your organisation works with children/young people you may want to add a declaration that they have not committed a criminal offence which would make them unsuitable, and check them with the Criminal Records Bureau.

Who cannot be a charity trustee?

- People under 18 years of age (unless the charity is a registered company); or who have been disqualified under section 72 of the Charities Act 1993 [*], e.g. because they have an undischarged bankrupt or have an unspent conviction for an offence of dishonesty or deception; or (in the case of charity trusteeship of a children's

charity) they have been banned from being a trustee under the Criminal Justice and Court Services Act 2000 [*].

- People excluded by restrictions stated within the charity's governing document e.g. requiring trustees to live in a certain area or be of a particular religious denomination.

So – you pass!

But what do you know about the charity?

Do you understand its legal status? Before you leap into being a charity trustee you should:

- study the charity's governing document to learn about its purposes and administrative procedures; (a trust will have a declaration of trust or trust deed; an association will have a constitution; a charitable company will have a memorandum and articles of association, and its letterhead will, by law, indicate that it is a charity and a limited company);
- ask the other trustees to give you full details of the charity's property, investments and income;
- study recent accounts and minutes of meetings to learn about the charity's finances, policies and work.

The job itself – your role as a trustee

The role of trustees is to 'receive assets from donors, safeguard them and apply them for a charitable purpose according to the wishes of the donor'. They must make sure the organisation is well managed (NOT to manage it themselves). Thus the board of trustees has full responsibility for everything the charity does and must:

- act together as a group and in person and not delegate control of the charity to others (you may be able to delegate areas of work, but these must still remain under the trustees' control);
- act strictly in accordance with the charity's governing document;
- act in the charity's interests only, individuals setting aside their personal interests;
- manage the charity's affairs prudently and take a long-term (developing a strategic plan) as well as a short-term view;
- not (without explicit authority and in exceptional



circumstances) derive any personal or financial benefit or gain from the charity;

- take proper professional advice on matters on which you are not competent;
- determine the charity's mission and purpose;
- guard the charity's ethos and purpose, and ensure that all the charity's activities come within this purpose;
- develop and agree the charity's policies;
- ensure that all the charity's activities are within the law;
- ensure accountability as required by law and to others such as donors, beneficiaries, staff, volunteers and the general public;
- ensure the charity has adequate resources, and that property, assets and other resources are protected and managed effectively;
- agree the budget and monitor financial performance;
- monitor the charity's programme and services;
- review annually the performance of the board of trustees;
- establish procedures for recruitment, support, appraisal and remuneration of staff, and for dealing with disciplinary matters.

Trustees must meet as often as necessary to carry out this role and show commitment by taking time to read board papers, attend board meetings, keep informed about the charity's activities, and up to date with regulations, charity law, and where appropriate, company law and best practice recommendations. (e.g. SORP for Accounting by Charities)[*]

But that sounds scary!

Yes, it does! But you and your fellow trustees will only put yourselves at risk of personal liability if you:

- cause loss to the charity by acting unlawfully, imprudently or outside the terms of the charity's governing document; or
- commit the charity to debts which amount to more than its assets.

Governance vs. management

It is important that trustees understand that their role is to focus on 'governing' the charity i.e. providing leadership and overall direction, setting policy,

monitoring and evaluating progress and establishing and upholding responsibilities and values, rather than on managing the organisation. With this in mind it is helpful from the outset to distinguish between the governance matters that trustees must deal with, and the day-to-day operational matters that should be delegated to staff. Making this distinction, even in small organisations with few or no staff and where trustees agendas tend towards operational issues, helps trustees focus on safeguarding the long term future of the organisation as well as deal with short-term issues. Governance means to:

- define, and keep, a clear, shared vision of purpose i.e. what the charity is aiming to achieve;
- decide how best to achieve this i.e. set clear aims and objectives, establish priorities;
- safeguard the assets (incl. human resources).

In all but the smallest of charities day to day management and operations should be delegated to staff/volunteers. What is delegated will depend on the organisations size and should be set down in writing. Decisions made by staff must be reported to the board of trustees. The board however is responsible for supervising the head of staff, ensuring s/he is managing the organisation well and is operating within agreed policies, the law and the budget. They must do this strictly within the powers defined within the governing document and any decisions must be made by the board as a group.

If your governing document allows you can delegate a particular aspect of your charity's work to a sub-committee or task group of the board. However, any decisions made by such groups still remain the responsibility of the whole board. Terms of reference and reporting back procedures for these groups must be laid down in writing and agreed by the board.

Trustees can play several roles in the charity e.g. be a member of the board but also run a conference or fundraising event. Note that the roles differ in responsibility. Trustees in other volunteer roles must be prepared to take direction from the member of staff with responsibility for that area of work.



Management issues

The success of the charity depends to large extent on the way trustees give over, and then oversee, the organisations managerial responsibilities.

These include:

- strategic planning;
- accountability to funders and stakeholders;
- staff management;
- monitoring and evaluating the work of the charity;
- relations with local groups and branches of national charities;
- managing the charity's property and land;
- managing the charity's public relations and representing the views of the charity;
- contracting.

Legal and financial responsibilities

Charity trustees are also responsible for the legal administration of the charity. You must ensure that the charity complies with the requirements of the Charities Acts 1992 and 1993, and for charitable companies, Companies Acts 1985 and 1989[*].

The financial responsibilities of a trustee are wide ranging and include ensuring detailed accounting

records by following legal disclosure, reporting and accounting requirements. Failure to do this is a criminal offence. Trustees should have or need to develop basic skills in financial management, in particular how to:

- read budgets and accounts;
- interpret financial reports;
- assist and monitor fundraising activities;
- guide professional advisers entrusted with property and financial reserves.

In conclusion

As you will now be aware, being a trustee is not a simple job! It is a challenge that requires honesty, reliability and commitment, as well as a range of skills. If you are considering taking on the role think carefully about what you can offer and whether you are suitable or you might find yourself stressed and over worked, and at very worst in legal difficulty. But don't let this put you off! Enthusiastic trustees on well run committees can gain considerable satisfaction from the experience. It presents an opportunity to learn new skills, to have your opinions really count, to see things being achieved and to make a valuable contribution to society.

Further Information

Most of the information above has come from the following very useful resources:

Responsibilities of Charity Trustees (CC3) (Charity Commission) – a comprehensive outline of roles and responsibilities. At www.charity-commission.gov.uk or **T: 0870 333 0123**. (there is both a summary and a comprehensive version).

The Good Trustee guide (NCVO Publications, 1999) – an excellent, easy to read resource for voluntary organisations. (£20) **T: 0800 2 798 798**.

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

Faith and Hope don't run charities – trustees do (WCVA, 1999) – also an excellent, easy to read, practical guide. **T: 029 2043 1719**.

The above books deal with English charity law in the main. There are books available on charity law specific to Scotland and Ireland but bear in mind that there may be changes in the pipeline.

Care, Diligence and Skill (Scottish Arts Council, 2002) – a useful handbook on governance for arts organisations. (£5) **T: 0131 226 6051**.

Advice on legal issues and charity procedures

Part II of this Briefing gives a list of useful organisations.

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.



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