

Charity Governance: an overview

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Charities and Companies

- Charity or company? You can be both.
- Charitable objects + income over £5k pa? You must register as a charity.
- Want to limit the individual liability of trustees? You may wish to incorporate.
- Not yet a registered charity? Take the decision on incorporation first.

Incorporation

Incorporation of a charity entails:

- Creating a company (a new legal entity)
- Re-registering this company as a charity (with a new identity and charity number)
- Transferring undertakings from the old charity to the new one
- Winding up the old charity

Names and Definitions

- All members of the governing body (the Board or Management Committee) are automatically:
- Trustees under charity law; and
- Directors under company law (if your organisation is incorporated).

Accountability

- Under both charity and company law, all Board members of an organisation are individually accountable to that organisation (and its members) and have to act solely in its best interests.
- They are not accountable to any body that may have nominated them.

Charity Trustee Responsibilities

Under charity law, **Trustees must ensure** that the charity is:

- solvent
- well-run
- delivering the public benefit for which it has been set up.

(Charity Commission leaflet CC3)

Duty of Compliance

Trustees must comply with:

- their own governing document;
- the requirements of key regulators (Charity Commission, Companies House, Information Commissioner, HMRC etc);
- other aspects of the law.

Duty of Prudence

Trustees must:

- Ensure that the charity remains solvent.
- Use charitable funds and assets reasonably, and only in furtherance of the objects.
- Avoid activities that might place the charity's funds, assets or reputation at undue risk.
- Take special care when investing or borrowing funds for the charity's use.

Duty of Care

Trustees must:

- Use reasonable care and skill in their work.
- Consider getting external **professional advice** where the charity may be at risk, or where trustees may be in breach of their duties.

Duties of Company Directors

Every **director** has a personal responsibility to ensure that required information is delivered to Companies House, e.g.:

- accounts and annual returns;
- any changes in directors' details.
(Companies House leaflets GP2, GP3.)

Incorporation and Risk

- Some legal liabilities fall on the organisation rather than individual trustees, but only if it is incorporated.
- If the organisation is not incorporated, all risks fall on individual trustees.
- Significant risks arise from: employing staff; leasing premises or equipment.

Risk Type 1: Breach of Contract

- E.g. failure to pay bills, carry out repairs.
- General liability: the company.
- Trustee personal liability: contracts outside charitable objects and powers; acts beyond personal authority; operating when insolvent.
- Risk management: governing document; financial procedures; financial monitoring.

Risk Type 2: Statutory breaches

- E.g. food hygiene, unfair dismissal.
- General liability: the company.
- Trustee personal liability: PAYE; health & safety; Companies House or Charity Commission rules; operating insolvent.
- Risk management: clear procedures, monitoring & review; effective Company Secretary, Treasurer roles.

Risk Type 3: Breach of Trust

- Example: personal benefit to a trustee.
- Trustees personally liable.
- Risk management: honest and reasonable decision-making; follow the governing document; take legal or financial advice.

Risk Type 4: Criminal offences

- Example: drugs on the premises, money laundering, terrorism, child abuse.
- Liability: Either the company or individual Trustees could be prosecuted.
- Risk management: Well-informed trustees, staff, advisors; monitoring of staff, money, safeguarding; regular financial reports.

Risk Type 5: Civil wrongs (tort)

- Examples: negligence, nuisance, defamation.
- Liability: either the company or individual Board members could be sued.
- Risk management: HR procedures (training, supervision, delegation); speak "on behalf of the organisation"; keep timely records of incidents; effective complaints procedure.

Risk & Insurance

Insurance essential for:

1. employer's liability (if staffed; display certificate);
 2. public liability (for premises or public activities);
 3. professional indemnity (for advice work);
 4. staff car insurance to include company business.
- Either 1 or 2 should cover volunteers.

Insurance optional for: employer's legal costs; buildings (may be a lease requirement); contents; loss of key worker or data.

Trustees as Employers

The Board needs to:

- Develop, maintain and follow a full range of personnel policies (either develop and maintain a high level of in-house expertise or subscribe to an HR support service);
- Ensure staff receive effective support and line-management.

Managing Volunteers

Much of HR policy (health and safety, conduct etc) will also apply to **volunteers**, but a clear distinction between staff and volunteers is vital.

Staff need employment contracts.

Volunteers need non-contractual agreements. They should only be reimbursed for actual expenses, supported by receipts.

A Volunteering Policy would be useful.

Health and Safety

- Trustees are responsible for all staff and volunteers.
- Funders may have specific requirements.
- Policy should cover training, risk assessment, monitoring.
- Risk assessment should cover: hazard identification; potential risks (how? how serious? who is at risk?); preventative measures; emergency procedures.

Trustees & Finance 1: Planning

Trustees must ensure that there is:

- an Income & Expenditure budget;
 - a Cash-flow budget (if income is uneven or deferred, or if solvency is uncertain);
 - regular monitoring and review;
 - assessment of any VAT liability.
- Plans should be risk-assessed.

Trustees & Finance 2: Records

Trustees must ensure that:

- clear financial records are kept, e.g. cash book, bank statements, petty cash, bank reconciliations, assets, PAYE payments, bills;
- records are retained for 6 years.

Trustees & Finance 3: Procedures

- Trustees must ensure formal written **financial procedures** to produce a clear “audit trail” and safeguard the charity from misappropriation or loss: delegation of financial authority, cheque signing, record keeping, petty cash, PAYE, secure storage, personal safety

Trustees & Finance 4: Reporting

Trustees must ensure requirements met (these vary with annual income):

- production of annual report;
- independent examination / audit;
- submission to Companies House & Charity Commission.

Charity Commission leaflets CC15b, CC31

Project grants & contracts 1

Trustees need to know and understand:

- What are we expected or required to deliver?
- Specific requirements: quality marks, insurance, referral sources, monitoring, reporting?
- Duration? Renewable? Requirements for renewal?

Project grants & contracts 2

Grant or contract? If in doubt, write to the funder stating your assumption.

If a contract:

- it could push you over the VAT threshold (£70k pa trading income);
- you could be liable for more than repayment in the event of failure.

Direct Fund-raising

Trustees should know legal rules on e.g.

- public collections;
- gaming (e.g. raffles, lotteries);
- event fundraising;
- house-to-house collections;
- using paid fundraisers;
- deals with commercial sponsors.

Trustees & Premises

Trustees need to understand the legalities:

- Powers in the governing document?
- Lease or licence?
- Duration? Break clause?
- Cost? Rent reviews (how often)?
- Repairs (structural/decorative), insurance?
- Power to sub-let?

Take **legal advice** before signing a lease.

Trustees & Data Protection

Data Protection Act 1998: Personal information to be:

1. Fairly and lawfully processed (i.e. with explicit or implied consent and in order to provide a service to the *data subject*);
2. Processed for limited purposes;
3. Adequate, relevant and not excessive;
4. Accurate and up to date;
5. Not kept for longer than is necessary;
6. Processed in line with subject's rights (i.e. access);
7. Secure (e.g. internet security, locked cabinets);
8. Not sent abroad without adequate protection.

Safeguarding & Disclosure

Trustees have to balance:

- a duty of confidentiality to service users (Data Protection);
- a possible duty to disclose to safeguard those at risk (Children, Vulnerable Adults).

A Confidentiality Policy is needed.

Public Events

- Indoors: Premises licensed for our purpose?
“Public entertainment licence” needed?
- Outdoors: Need to notify police or Council?
- Serving food: Do we meet Food Hygiene regulations? Who is trained in this area?
- Playing music and charging for admission:
Need for music licences (PRS and PPL)?

<http://www.tameside.gov.uk/events/organisevent.pdf>

Trustees & Equality

Human rights and anti-discrimination laws cover:

- employment, membership, service delivery;
- disability, race, gender, belief, sexual orientation.

- Take “reasonable steps” to ensure disabled access.
- Single-sex services allowed for reasons of privacy and decency, or to avoid ‘serious embarrassment’.

Advice: Equality and Human Rights Commission.