

# **The role and duties of charity trustees (England & Wales)**

Guidance note

# The role and duties of charity trustees (England & Wales)

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# The role and duties of charity trustees (England & Wales)

## Introduction

This guidance note is aimed at sports bodies in England and Wales which are established as charities or for the trustees of a charitable entity set up by the parent organisation.<sup>1</sup> The content can be adapted for any size of charity to reflect good practice for each organisation's needs. It is intended to help those organisations provide their trustees with an understanding of their legal duties as trustees. Where the organisation is also incorporated as a company, such as a charitable company limited by guarantee, the trustees will also have duties as directors under company law. These are covered in a separate document.

As with any organisation, it is good practice for each charity to undertake a periodic review of their governance arrangements as the charity evolves, and where appropriate, amend policies, procedures, and the governing document<sup>2</sup> to ensure that they remain fit for purpose and are structured in the most effective way to meet the charity's objects and the environment in which it operates.

The information in this document consolidates and expands upon, the practice recommended in both the Code for Sports Governance and the Charity Governance Code.<sup>3</sup> Though the Charity Governance Code is the principal code for the charity sector, it acknowledges (p. 3) that organisations in sectors such as sport have codes which may take precedence over it. For funded sports bodies the primary document is the Code for Sports Governance. Where appropriate, reference to good practice contained in both is made.

For the purpose of this guidance note, it is assumed that the charity employs staff including a charity secretary, governance professional or governance lead who is not the chief executive officer.<sup>4</sup>

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- 1 Whilst principles of good governance transcend national borders, it is important to bear in mind the specific differences in charity legislation for those charities operating in Scotland, Northern Ireland, and elsewhere.
  - 2 There are specific actions that must be taken in order to change a charity's governing document depending on the corporate structure of the organisation. In all cases changes to the charity objects will require approval from the Charity Commission. See The Chartered Governance Institute guidance note Amending charity governing documents (England & Wales) for further information.
  - 3 These can be downloaded from <https://www.sportengland.org/campaigns-and-our-work/code-sports-governance> and [www.charitygovernancecode.org](http://www.charitygovernancecode.org) respectively.
  - 4 Further details on the role of the charity secretary can be found in The Chartered Governance Institute guidance note Specimen role description for the charity secretary of the board of trustees.

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## Overall purpose

The following document has been developed in response to the ongoing need to clearly articulate the role and duties of trustees of charitable organisations in England and Wales. It is hoped that this guidance note will provide useful information on the various responsibilities and functions which trustees carry out and the attributes which will help them to make a positive contribution to their charity. The information it provides on the basic principles of trusteeship will be of benefit to both experienced and inexperienced trustees.<sup>5</sup>

The Charity Governance Code recommends that a charity sets out role descriptions defining responsibilities for all trustees that clearly differentiate those of the chair and other officer positions, and how these roles relate to staff.<sup>6</sup>

The Code for Sports Governance (Principle 4) explicitly links high standards of integrity and the embedding of the right values in the culture of an organisation with enhancing that organisation's reputation and stakeholder trust. Similarly, Principle 3 of the Charity Governance Code stresses the importance of charities taking seriously their responsibility for building public trust and confidence in their work. Trustees can facilitate this through accountability and effective communication, ensuring that the charity's performance and interaction with stakeholders are guided by the values and culture established by the board.

## Benefits of being a trustee

Whilst the role of trustee is a serious duty, there are various positive aspects to the role that can help an individual on a personal and professional basis including:

- the knowledge that you are contributing to a worthwhile cause through the impact that sport and physical activity provide, or through the activities of charitable body;
- building self-confidence;
- gaining experience of committee work;
- acquiring new skills – personal and professional – through training and information and sharing; and
- the enjoyment to be had from working with a group of individuals from different backgrounds who share a similar passion for a particular cause and its impact on society.

The role of charity trustee is one that can offer considerable satisfaction, challenges and experiences, but it should not be forgotten that the position can be quite onerous and require a significant time commitment.

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<sup>5</sup> Detailed guidance can be found in the Charity Commission's publication CC3 The Essential Trustee: what you need to know, what you need to do, July 2015.

<sup>6</sup> Charity Governance Code Recommended Practice 2.4.4

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Careful consideration as to whether you can meet that commitment should be given before taking up a position.

## **Terminology**

There are many different terms in use that refer to those individuals and groups responsible for the ultimate management and strategic direction of a charity. Such terms could include: ‘management committee member’, ‘director’, ‘governor’, or ‘trustee’.

Whatever the term used within an organisation, that individual (along with a number of others in the same position) is responsible for the overall control and strategic direction of the charity, within the legal framework, and that person is a trustee. Depending on the structure of the organisation, an individual may be a trustee and a director of a company.

The Charities Act 2011 defines trustees as ‘the persons having the general control and management of the administration of a charity’ (s177). When applying the Code for Sports Governance to a charity, they would be defined as the members of the board, which has ‘overall and executive responsibility for governing the organisation, overseeing and controlling its management’.

## **Trustee or chief executive?**

Depending upon the size of the charity, trustees may or may not have a hand in the everyday management of operating the charity – for example, opening mail, responding to correspondence, setting up and locking up facilities. As a charity grows, it is likely that the trustees will employ staff to be responsible for the daily operations of the charity, under clear guidelines and parameters as to what and how decisions can be made without referral to the trustee board.<sup>7</sup>

If trustees are to avoid delegating responsibilities when they have no legal right to do so, it is imperative that all trustees and the chief executive have a clear understanding of their respective roles in relation to the day-to-day administration of the charity. It is recommended that those matters which are delegated are set out formally in a written document.

The trustee board will be responsible for recruiting and appointing the chief executive officer, along with appraising and monitoring their work. The chief executive officer is answerable to the trustee board and should not undertake activities and duties outside of the parameters that the board establish. The overall responsibility and liability for the actions of those managing the charity lies with the trustees. It is therefore essential that trustees give clear guidance and establish thorough reporting systems to ensure that they are the ones making the appropriate decisions about the overall direction of the charity. It is

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<sup>7</sup> See Section 1 of the knowledge base on the SGA website.

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then up to the chief executive officer to implement the decisions of the trustees and report back to the board.

## **Trustee qualities**

The trustee board should have a range of skills and experience available to help the charity develop and grow, and overcome any difficult situations. Some boards include users of the services the charity provides, professionals, and those with an interest in that particular cause.<sup>8</sup>

As with any organisation, it is not necessarily advantageous to have set criteria for board composition. A skills audit, however, could highlight the strengths and weaknesses of the board as a whole, and provide guidance when recruiting a new trustee as to the most desirable experiences and knowledge required. Undertaking such an audit periodically, preferably not less than once a year, will enable the charity to gain a clear picture of the skills possessed by the board and identify sources of knowledge and experience available and/or missing at a specific point in time.<sup>9</sup> This will help to align recruitment with the agreed strategic plan, ensuring the requisite skills are present on the board to effectively implement that strategy or to help the charity address emerging challenges.

To help recruit suitable individuals with the skills mix required by the charity it would be beneficial to develop general role descriptions for trustees, and more specific ones for the honorary positions of chair, secretary and treasurer where appropriate. Honorary positions are generally unpaid and should not be confused with the duties performed by paid staff.

Increasingly, the charity sector has come to realise that it is important for the board of trustees to reflect the wider environment in which the charity operates and, to this end, actively target those communities that traditionally have not played a large role in charity boards, such as minority and ethnic groups, young people, minority religions, disability groups, and women. This provides a diverse group of individuals to promote the charity, enhances its cultural development and provides a broader range of experiences and perspectives in board discussions. It can also lend the charity legitimacy among the communities it seeks to serve. Principle 6 of the Charity Governance Code recognises this and recommends that boards look beyond the nine protected characteristics of the Equality Act 2010 and look to recruit people who think in different ways and those from different backgrounds. Ultimately, however, trustees should have the requisite skills, knowledge, time and empathy the charity needs at that point in its development.

8 Further information can be found in the Charity Commission's CC30 Finding new trustees: what charities need to know. The Code for Sports Governance recommends that organisations undertake an evaluation of their board and individual trustees on an annual basis, with an external review conducted every four years, where appropriate. Such a review would typically consider the skills, knowledge and experience available on the board, its diversity and the effectiveness of its workings (Requirements 4.1 and 4.2).

9 Further information on skills audits can be found in Sections 4 and 5 of the SGA knowledge base. A sample skills matrix is included in the tools for Section 4.

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## Key roles and responsibilities

Along with abiding by and complying with charity law, company law (where applicable) and other relevant regulation and legislation, trustees must exercise their powers in strict accordance with the charity's governing document.<sup>10</sup>

The following lists cover many of the responsibilities that fall to trustees as they fulfil their legal duties and carry out their role in accordance with good practice.

## Strategy

One of the key tasks of trustees is to facilitate the development of a strategy for their charity. These can be summarised as:

- develop and agree the strategy – with input from staff, who will implement it – by which the charity aims to promote its interests or fulfil its purpose
- establish clear objectives to deliver the agreed plans and strategy in accordance with short, medium and long-term plans and regularly review performance against those objectives
- contribute to constructive debate regarding the charity's strategic development and any other material and significant issues facing it
- hold to account the chief executive (where one is in place) and the management team for the effective delivery of the charity's strategic aims and objectives
- promote and develop the charity in order for it to grow and maintain its public benefit, recognising the situation when it may be more appropriate to wind the charity up where there is no longer a need for it to provide the services it does or because the charitable objects are no longer relevant to contemporary social situations
- safeguard the charity's property and resources, including its good name and reputation – by ensuring high standards of conduct, rather than by putting reputation ahead of other considerations
- build and maintain close relations between the charity's various constituencies and stakeholder groups to promote the effective operation of its activities
- agree an effective communication strategy that includes the needs of all relevant stakeholders
- agree the charity's values and ensure that they are reflected in the conduct and activities of the organisation and those who work in and for it
- set the tone for the charity through leadership, behaviour and performance

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<sup>10</sup> This may be known as the constitution, memorandum and articles of association, or trust deed. For more information see the ICSA guidance note Amending charity governing documents, and CC36 Changing your charity's governing document on the Charity Commission website.

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- when investing money, ensure that this is done so in the most suitable manner, in line with the charity's statement of investment principles, investment policy and reserves policy, outlining any ethical reasons for the form of that portfolio. This portfolio should be reviewed regularly with a view to choosing the most appropriate format for the charity, and professional advice should be sought when necessary.

## Compliance

Aside from strategy, trustees have some more immediate responsibilities around compliance, including:

- ensure that the charity complies with its governing document, all applicable legislation and regulations including, where applicable:
  - charity and, where appropriate, company law
  - health and safety
  - employment law
  - money laundering and the proceeds of crime
  - data protection
  - safeguarding
  - whistleblowing
- act in the best interests of the charity at all times, and to the benefit of present and future beneficiaries, in accordance with the governing document
- ensure that the charity is registered with the Charity Commission, Companies House if it is a charitable company, and other regulators as appropriate and comply with any continuing obligations
- ensure the solvency and effective and efficient administration of the charity and its resources, striving for good practice in governance in order to optimise impact and delivery of its objects and strategy
- seek guidance from the Charity Commission when a charity is no longer able to carry out its objects in line with the governing document, with the view to resolving the situation
- periodically review the charity's purposes and ensure they remain valid and relevant, taking into consideration any developments in the external environment
- maintain the fiduciary duty invested in the position, undertaking duties in a way that adds to public confidence and trust in the charity
- ensure that robust financial and other administrative controls are in place, are regularly reviewed, and that the board is kept fully informed through timely and relevant information
- identify and assess risks and opportunities, determining which are appropriate or desirable, and establish effective risk management mechanisms in order to monitor and mitigate these

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- preserve any permanently endowed funds or property (it may be possible to apply to the Charity Commission in certain circumstances to change the use of an endowment)
- ensure that those working on behalf of the charity, including, staff, volunteers, contractors, suppliers, fundraisers, etc. abide by the standards which the organisation sets and also by the relevant requirements of legislation
- ensure that there is a transparent, well-publicised and effective mechanism for making and handling complaints
- with the assistance of the governance lead, promote the highest standards of corporate governance in compliance with the Code for Sports Governance and other regulatory requirements and good practice, where appropriate
- ensure that proper minutes are kept, recording the deliberations and decisions of the board and any committees
- maintain appropriate records relating to accounts and financial matters and ensure that they are audited/independently examined. This may include accounts being filed with the Charity Commission and at Companies House, where appropriate. Presentation of accounts should be in line with the Statement of Recommended Practice (SORP), and the Charity Commission's guidance Prepare a charity trustees' annual report
- report serious incidents to the Charity Commission
- take appropriate professional advice in all matters where there may be a material risk to the charity, or where the trustees may be in breach of their duties
- uphold the values of the charity by example, and ensure that it promotes equality and diversity for all its stakeholders.
- ensure that trustees do not personally profit from their position (reimbursement of out-of-pocket expenses is a reasonable entitlement) unless relevant permission has been gained from the Charity Commission or the governing document gives express permission.

## **Performance monitoring**

Trustees have a responsibility to:

- ensure the effective implementation of board decisions by the chief executive and the senior management team, where appropriate
- ensure a fully effective and appropriate system for the recruitment, appointment and monitoring of the work and activities of the chief executive officer and, where applicable, other members of the senior management team
- ensure that any duties delegated to an executive officer do not impinge on those of the board
- set challenging objectives for improving performance and monitoring performance against those targets

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- pay due regard to ensure that any key performance indicators (for performance, finance, commercial activity, etc.) are in alignment with the ethos of the organisation and culture it promotes.

## **Board activities**

- uphold the highest standards of integrity and probity, adhering to the Nolan Principles and observing the recommended practice of Principle 4 of the Code for Sports Governance, relating to Standards and Conduct
- participate fully in the work of the board, ensuring the collective responsibility of the trustees
- attend and possibly chair, committees and ad hoc meetings of the main board where appropriate
- represent the charity at functions, meetings and in the wider media, in line with the agreed media strategy
- participate in a board induction, any training and other evaluation identified as an individual and as part of the board or committee
- maintain the board's commitment to board diversity, renewal and succession management in line with the governing document, the Code for Sports Governance and/or current good practice
- facilitate an individual and board performance appraisal, and attending any additional training highlighted as a result of the evaluation process
- maintain absolute confidentiality about all aspects of the trustees' business, bearing in mind the overriding legal obligations placed upon them.

## **Directors' duties**

Under Part 10 of the Companies Act 2006, there are specific legal duties placed upon company directors. For trustees and directors of charitable companies, therefore, there are additional duties to fulfil including:

- duty to act within powers;
- duty to promote the success of the company;
- duty to exercise independent judgement;
- duty to exercise reasonable care, skill and diligence;
- duty to avoid conflicts of interest;
- duty not to accept benefits from third parties; and
- duty to declare interest in a proposed transaction or agreement.

These are discussed further in the separate document, 'Directors' general duties', in the tools section of the SGA knowledge base.

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## **Trustee liability**

Trustees are individually and jointly liable for any consequences arising out of a breach of trust. Trustees must make decisions collectively, but are both jointly and severally liable. It is therefore important that trustees primarily act in line with their governing document, the legal and regulatory framework, and seek professional guidance on those situations that are beyond the reasonable knowledge and competence of the board.

Generally, as long as trustees have acted with an appropriate degree of prudence, intelligence and due diligence and not acted dishonestly or fraudulently, and accessed all reasonable means of support and guidance, the Charity Commission and the Courts are likely to exonerate trustees from any personal liability resulting from their actions or inactions.

