



### **Trustee Attributes, Roles and Responsibilities: Selecting and Recruiting the Right Trustee**

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#### **Introduction**

A charity is a body or trust which has charitable purposes to provide benefit to the public. Charities must meet stringent conditions regarding their overall objectives. These are formalised in a charity's governing document, which is the legal record or set of rules, that specifically sets out the objectives, how these will be carried out and how the charity will be administered. Administrative provisions such as managing finances and how the trustees will run the charity are also outlined in the document. It may also set out the maximum number of trustees that the charity may have, groups that should be represented, how they may be recruited and their length of service.

This article discusses the role of the trustee, their legal duties and liabilities, general and specific skills and attributes to consider, and the recruitment of trustees. Whilst this article is primarily aimed at charities, as it discusses the legalities attached to being a trustee, it may also be useful for voluntary and community organisations and groups to provide an overview of trustee requirements in terms of knowledge, skills and experience and trustee recruitment and selection.

#### **What is a Charity Trustee?**

Trustees are individuals that have the general control and management of a charity's administration. They serve on the governing body and may be referred to as trustees, managing trustees, directors, board members, committee members or governors. Their work is carried out on a voluntary basis and they must ensure that the governing document is adhered to. Trustees must therefore be clear of each of a charity's purposes, how the charity will achieve these and ultimately, the benefit these will provide to the public.

#### **Legislation Affecting Charities**

What is deemed as a charitable purpose differs within England and Wales, Scotland and Northern Ireland, and all are based on different legislation. While this article aims to be applicable across England, Scotland, Wales and Northern Ireland in providing a general guide, readers are advised to refer to the separate Acts for the UK countries.

The Charities Act (2006)<sup>(1)</sup> is applicable for charities within England and Wales. The Charity Commission is the independent regulator and registrar. Details may be found at: <http://www.cabinetoffice.gov.uk>

The Charities and Trustee Investment (Scotland) Act (2005)<sup>(2)</sup> applies to charities in Scotland and is overseen by the Office of the Scottish Charity Regulator. Details may be found at: <http://www.opsi.gov.uk>

The Charities Act (Northern Ireland) (2008)<sup>(3)</sup> received Royal Assent in September 2008. This Act establishes a Charity Commission and Charity Tribunal for Northern Ireland. Until the establishment of a Charity Commission, the Department for Social Development (DSD) is the main charity authority, with responsibility for policy and the majority of legislation (Charities Act Northern Ireland 1964) that relates to charities. At present there is no register for charities in Northern Ireland such as those for England, Wales and Scotland. The Act will be implemented in stages and it is believed that it will take two years for all provisions to be brought in. Details may be found at: <http://www.dsdni.gov.uk/>

While the Charities and Trustee Investment (Scotland) Act (2005) covers trustee powers there are separate Acts for trustees within England and Wales and Northern Ireland which are discussed later in this article.

### **Role of the Trustee**

The main responsibility of the trustees is to ensure that the charity complies with the relevant charitable law; if this is not the case the trustee may be personally liable. In general, trustees must protect the ethos and purpose of the charity through consistency in carrying out its activities and adhering to the rules stated in the charity's governing document.

Examples of trustee activities are as follows:

- \* Managing and controlling the charity's budgets, income and expenditure.
- \* Monitoring financial performance.
- \* Managing, maintaining and preparing annual accounts, returns, audits and reports (as applicable).
- \* Ensuring that all the charity's activities are carried out in line with the governing document and within the provisions determined by each country's Act.
- \* Investing money.
- \* Acquiring, developing and maintaining property.
- \* Assessing and monitoring the effectiveness of the charity's programme and services.
- \* Ensuring all documentation is up-to-date in line with current legislations, regulations and charity law.
- \* Risk assessment and management.
- \* Developing policies.
- \* Determining the procedures for recruitment, appraisal and remuneration of staff.
- \* Fundraising.
- \* Attending board meetings.

### **Who Cannot be a Trustee**

Generally the governing document should outline who is not eligible to become a trustee. Certain individuals are disqualified from acting as charity trustees (although this differs slightly depending on an individual country's Act) including the following:

- \* Anyone with a conviction for an offence involving dishonesty or deception (for Scotland this is classed as an unspent conviction).
- \* Anyone that has an undischarged bankruptcy.
- \* Anyone that has been previously removed from being a trustee.
- \* Anyone convicted of an offence under the Charities and Trustee Investment (Scotland) Act (2005).
- \* Anyone disqualified from being a company director.

Trustees must be aged 18 and over for England, Wales and Northern Ireland and generally 16 and over for Scotland. It may also be important to check if the potential trustee may have a personal vested interest in the charity, to safeguard that they will act purely in the charity's interests, therefore avoiding circumstances in which a conflict of interest may arise. An example of this may be a potential trustee that has a connection to an organisation with an involvement in the charity, such as renting premises from it.

### **Legal Duties of the Trustee and Liabilities**

Trustees have specific legal responsibilities which they must fulfil in relation to the Act relevant for their country. As breaches of an Act may result in personal liability, it is essential that these responsibilities are set out within the role description. Trustees must also be competent to comply with other legal requirements and legislations which govern the activities of a charity. Examples of this include:

- company law for charities that are also companies;
- employment law and health and safety legislation which applies to charities employing staff or volunteers;
- data protection law; and
- legislation protecting charities working with children or vulnerable people.

Most importantly, trustees must ensure that everything stated in the governing document is followed to the letter. In general, trustees must ensure that the charity's property is only used for its intended purpose, verify that the charity's income is used solely for its charitable objectives, surplus money is invested and that the charity remains solvent. In particular, trustees must never place the charity at risk in any way or be in a position where a personal interest conflicts with their duties as a trustee.

Under the Trustee Act for Northern Ireland (2001)<sup>(4)</sup> and the Trustee Act (2000)<sup>(5)</sup> for England and Wales, the specific responsibilities are outlined:

- \* Duty of Care - to exercise such care and skill as is reasonable in the circumstances.
- \* Investment – general powers of investment.
- \* Acquisition of Land – power to acquire land.
- \* Agents, Nominees and Custodians – the trustees may authorise any person to exercise any or all of their delegable functions as their agent.
- \* Remuneration – A trustee's entitlement to payment under trust instrument.

For Northern Ireland, the Appointment and Retirement of Trustees is also covered by the Act which details the procedure for the appointment or retirement of a trustee and the appointment of a substitute for an incapable trustee.

The general duties of a charity trustee are outlined in Section 66 of the Charities and Trustee Investment (Scotland) Act (2005) which outlines the following:

1. A charity trustee must, in exercising functions in that capacity, act in the interests of the charity and must, in particular:
  - seek, in good faith, to ensure that the charity acts in a manner which is consistent with its purposes,
  - act with the care and diligence that it is reasonable to expect of a person who is managing the affairs of another person, and
  - in circumstances capable of giving rise to a conflict of interest between the charity and any person responsible for the appointment of the charity trustee —
  - put the interests of the charity before those of the other person, or

- where any other duty prevents the charity trustee from doing so, disclose the conflicting interest to the charity and refrain from participating in any deliberation or decision of the other charity trustees with respect to the matter in question.
2. The trustees of a charity must ensure that the charity complies with any direction, requirement, notice or duty imposed on it by virtue of this Act.
  3. Subsections (1) and (2) are without prejudice to any other duty imposed by enactment or otherwise on a charity trustee in relation to the exercise of functions in that capacity.
  4. Any breach of the duty under subsection (1) or (2) is to be treated as being misconduct in the administration of the charity.
  5. All charity trustees must take such steps as are reasonably practicable for the purposes of ensuring:
    - that any breach of a duty under subsection (1) or (2) is corrected by the trustee concerned and not repeated, and
    - that any trustee who has been in serious or persistent breach of either or both of those duties is removed as a trustee.

Trustees must not receive payment for carrying out trustee duties and responsibilities. In some instances, trustees may be paid for providing goods or services, the conditions of which are outlined in the relevant Acts. Under Section 36 of the Charities Act (2006) for England and Wales, for example, trustees may be paid for providing goods or services, providing the following conditions are met:

- \* The amount or maximum amount of the remuneration is set out in a written agreement between the charity or its charity trustees and the relevant person.
- \* The trustees are satisfied that the arrangement is in the best interests of the charity, in terms of saving the charity money or providing a better quality service.
- \* If more than one trustee will benefit, these should be a minority of the overall number of trustees.
- \* The governing document does not contain anything to prohibit the relevant person from receiving pay.
- \* Trustees who stand to benefit, take no part in any decision about the agreement.

When charities experience problems, trustees may be personally liable for any resulting debts or losses. Trustee indemnity insurance may be purchased, although this varies for the different legislations, but generally this is dependent on:

- that it is in the charity's best interests to buy the insurance with the charity's money; and
- the charity's governing document does not prohibit the purchase of indemnity insurance.

### **General Skills of a Trustee**

Ultimately, trustees must be selected on the basis of what they will be able to contribute to the charity. The general skills that are required include:

#### Business and managerial skills

These should include the ability to manage staff, property and the charity's finances. Trustees will need the business acumen to ensure the legal requirements of providing detailed accounting records are upheld. Trustees should therefore possess the ability to interpret financial reports and accounts and monitor and manage income, budgets and cash flow (See GRANTfinder's March 2008 Special Feature - Beat the Budget Blues: How to Write a Winning Financial Plan). The trustee will also need the professionalism to uphold relationships with other charities and groups and to represent the

charity in the public realm and with its stakeholders and funders. Other relevant business skills may also include fundraising, marketing and campaigning abilities.

### Governance role

Trustees must ensure that there are adequate systems and procedures in place for monitoring the charity's activities, performance and effectiveness. This should include the ability to set the direction of the charity in relation to all its operations. Trustees must have the ability to assess current working practices and strategies for improvements to ensure the continued success of the charity. This can include producing development plans and assessing the way the charity conducts itself and with regard to the property it maintains and its income and expenditure. Governance roles also include reviewing and authorising plans and commitments and ensuring compliance with legal and contract requirements.

### Strategic role

Trustees must also be able to write, maintain, develop and monitor the charity's fundraising strategies. Fundraising strategies are essential for outlining how funds will be raised for each element of a given project, the level of staff involvement, providing timescales for stages of progress and resources that will be implemented to enable the charity to reach its intended outcomes (See GRANTfinder's May 2008 Special Feature – Writing A Fundraising Strategy). It is essential that trustees possess the skills to think strategically, from several points of focus and over the short-, medium- and long-term.

### **Specific Skills to Meet Your Charity's Needs**

The board should decide what new attributes and knowledge are needed on the trustee board by assessing the current skills mix and experience. A new trustee may help to fulfil these unmet needs and the board should draw up essential and preferred skills, knowledge and experience, agreeing which will be favoured. Trustees may also be selected for the knowledge they possess in the area of the charity, for example a health charity recruiting an individual with a qualification or experience of the health setting. This would ensure that the trustee is knowledgeable of the charity's operating environment. This person may also network with other charities and groups providing similar or related services, which would be an advantage to prevent duplication of services and may also provide opportunities for collaboration with other sectors, such as local authorities and statutory bodies.

Overall, trustees should be selected on the basis of what they can bring to the charity as opposed to any status they may have in the community. It is also extremely important that diversity and equality are at the core of any charity and therefore this should ultimately be reflected in its board of trustees. To ensure that the board represents the community it should be diverse in reflecting and encompassing characteristics such as gender, age, ethnicity, race, religion, marital status, sexual orientation, economic and social background, and educational achievement.

### **Attributes to Look for in a Trustee**

There are a number of attributes that all good trustees share:

- \* **Does the individual have enough time to devote to the charity?** Trustees will need to play an active role in running the charity and should meet regularly. The amount of time necessary is largely dependent on the nature and size of your charity. Charities should weigh up the time commitment needed and the individual's employment and other responsibilities and be willing to change meeting times etc to accommodate the right applicant.
- \* **Can the individual demonstrate a record of responsibility?** Trustees are entrusted with a high level of responsibility, not just for the administration of the charity but in protecting its property. Individuals should therefore have a track record of managing equivalent responsibility and above all they should be aware of the legal responsibilities of being a trustee.

- \* **Does the individual have the unique skills that are lacking from the board?** Skills such as fundraising and marketing are always valued aspects an individual may bring to the board and no matter how many trustees a charity has that possess these skills, a fresh focus and new ideas will guarantee a reward. Other skills which may be lacking from the existing team of trustees should be considered, such as individuals with links in the community or with service users.
- \* **Is the individual honest and reasonable?** It is imperative that trustees are trustworthy and act with selflessness, integrity and objectivity as failure to act reasonably and in an honest manner will result in liability.
- \* **Is the individual a team player?** Trustees must act as a group and make decisions together therefore it is crucial that the individual possesses strong communication skills with an ability to work well with others.
- \* **Is the individual a forward and strategic thinker?** The potential trustee will contribute to managing the charity's affairs and should therefore be capable of taking a long-term and short-term view, important in developing strategic plans and fundraising strategies, for example.
- \* **Is the individual clear of any weaknesses?** Whilst trustees can bring their own unique skills and experience to a charity, it is vital that they recognise when to seek professional help on matters which exceed their competence.

### **Recruitment of a Trustee**

It is important you refer to your governing document to follow your charity's procedure for recruiting and selecting a trustee. There are various ways a trustee may be recruited and the more varied methods used will ensure a wide range of applicants and ultimately ensure a diverse board of trustees. Advertising campaigns can be particularly effective at reaching out to specific target groups and can include placing advertisements in local community centres, libraries, local publications and community newsletters. There are also brokerage services which match potential trustees and vacancies on the boards of voluntary organisations and further details may be found at:

#### **National Association for Voluntary and Community Action**

<http://www.nacvs.org.uk>

NAVCA is the national voice of local voluntary and community sector infrastructure in England.

#### **Scottish Council for Voluntary Organisations**

<http://www.scvo.org.uk>

The Scottish Council for Voluntary Organisations is the national body representing the voluntary sector. SCVO seeks to advance the values and shared interests of the voluntary sector.

#### **Northern Ireland Council for Voluntary Action**

<http://www.nicva.org>

NICVA is the Northern Ireland Council for Voluntary Action, the umbrella body for voluntary and community organisations in Northern Ireland.

#### **Wales Council for Voluntary Action**

<http://www.wcva.org.uk>

WCVA is the voice of the voluntary sector in Wales, representing and campaigning for voluntary organisations, volunteers and communities.

Specialist websites are also available which allow charities to post details of their trustee vacancies, such as:

<http://www.do-it.org.uk>

<http://trusteenet.or.uk>

<http://www.getonboard.org.uk>

Any assessment you conducted to identify the gap in skills and experience of your board of trustees should be used to create a job description for the new trustee. It is essential that the particular skills and experience being sought are stated clearly so that you know exactly who you are looking for, get applications from eligible applicants and avoid wasting time. You should provide the potential trustee with specific guidance to allow them to make an informed decision as to whether they are not only suitable and have the ability, but to ensure they are clear of what is expected of them.

A trustee can only be effective if he/she has a firm understanding of the charity and its aims and governing procedures as this will ensure that the trustees' actions are honourable. You should provide potential trustees with your governing document and the level of commitment and time they would need to set aside. The legal requirements must also be included in the role description and you could also provide the following information:

- \* Accounts and financial documents.
- \* Annual reports.
- \* Minutes of trustee meetings.
- \* Fundraising strategy.
- \* Details of property or land owned by the organisation.

Whilst you should provide relevant documentation, be careful not to scare off potential trustees by overstating the legalities of the position. You should also try to emphasise the positives of being a trustee in relation to the experience and valuable skills they will gain. A survey conducted by the Charity Trustee Networks<sup>(6)</sup> may help emphasise this as over 50% of respondents agreed that since becoming a trustee they had definitely acquired new skills; developed existing skills; and enjoyed the experience (these figures were less than 5% for respondents answering negatively). Respondents also thought that their skills and experience were of definite value to the charity (67.8%) and they had definitely met people from different backgrounds that they would otherwise not have met (54.7%).

Another good practice exercise is to allow potential trustees to meet with existing trustees so they can experience a first-hand account of the positives of being a trustee and how the charity is run. Potential trustees could also attend a trustee meeting so that they are aware of the types of decisions they would need to make.

### **Viewpoints From the Third Sector**

During the course of completing this article, various contacts within the third sector were consulted on their opinions of what they look for in a trustee. Three examples of which are provided below:

Trudi Beswick, Chief Executive, Caudwell Children

"Caudwell Children takes the role of our trustees very seriously and we endeavour to have members on the board who share our passion and determination to help sick and disabled children around the UK. Our board comprises of professionals from different industries, bringing with them different expertise and their own ideas and contacts. Board meetings not only review policy and operations but also provide a platform for new ideas and inspiration that we can then pass down to the rest of the Charity team. We are fortunate to have a number of trustees who have been involved with the Charity since its inception, so they have become integral to its running and a vital part of its future."

Christine Massey, Trustee, Midland Association for Amputees and Friends (MAAF)

“Within MAAF and other organisations I am involved with, we/I look at what the potential trustee can bring to the organisation. If the person is to be a trustee with MAAF they do not necessarily have to be an amputee, but preferably they do need to have some background/knowledge, this could be through family, friends, work, volunteering etc. With regard to specialities, look to see if they have a specific knowledge that you are looking for, ie; knowledge of Health and Safety or accounts. Integrity plays a very large part in a person becoming a trustee, through all the responsibility that a trustee takes on board – long gone are the days when a trustee could turn up for a cup of tea, a chat and then go home. Many trustees are part of other organisations, this offers an opportunity to get to know what they are about, and if suitable get them on board”.

Elsbeth Cox, Assistant Company Secretary, MacMillan Cancer Support

“It is difficult to be specific about what we would look for when appointing a trustee, as it might vary in each case depending on, for example, whether they were replacing a trustee with expertise in a particular area. But we would always look for people with a commitment to the ethos, values and objectives of Macmillan Cancer Support, and the stature and attributes to make a strong overall contribution to the work of the Board and the time and energy to do so”.

## **Conclusion**

Finding and recruiting the right trustees to complete your board is integral to the success of any charity. While the role of the trustee is wide-ranging and requires general business and managerial skills, trustees may also be chosen to complement other shortfalls within the board.

Through assessing the skills gaps within your board you can identify what you need the trustee to bring to your charity, targeting the recruitment drive accordingly. It is also important to bear in mind that your board reflects the community or individuals it serves in terms of ethnicity, sexual orientation, disability and age, for example.

It is essential that you ensure potential trustees have a clear understanding of how the charity operates, what their responsibilities are and what is expected of them. Whilst a trustee is bound by the legalities of the role and the governing document, the flair, drive and creativity of a new trustee may transform and invigorate a board and ultimately enhance your charity.

## **References**

- (1) Charities Act (2006)
- (2) Charities and Trustee Investment (Scotland) Act (2005)
- (3) Charities Act (Northern Ireland) (2008)
- (4) Trustee Act for Northern Ireland (2001)
- (5) Trustee Act (2000) for England and Wales
- (6) Charities Trustees Network Survey