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Charities: Trustees' Responsibilities

It is often considered an honour to act as a trustee for a charity and an opportunity to give something back to the community. However, becoming a trustee involves a certain commitment and level of responsibility which should not be underestimated.

Whether you are already a trustee for a charity, be it a local project or a household name, or are thinking of becoming involved, there are a number of responsibilities that being a trustee places upon you.

We outline the main responsibilities below, but please contact us for further clarification on any point.

Background

The charities sector is generally overseen by the Charity Commission. The Commission is a government body that requires the registration of most charities.

The Commission plays an important role in the charity sector and is in place to give the public confidence in the integrity of charities.

Since 1 April 2008, new charities have needed to demonstrate that their aims are for the public benefit, as part of their application process to the Charities Commission.

A key part of the Commission's work is to provide advice to trustees. This is primarily achieved through various Charity Commission publications (CCs) and operational guidance notes (OGs). These are available from either the Commission's website (www.charitycommission.gov.uk) or by telephone or written request.

Types of Charity

Charities can be created in a number of ways but are usually either:

- incorporated under the Companies Act 1985 (limited company charities) or
- created by a declaration of trust (unincorporated charities).

From 2009, when further provisions of the Charities Act 2006 are introduced, a third main option will be available. This will be called the Charitable Incorporated Organisation (CIO).

All charities are governed by the Charities Acts 1992, 1993 and 2006.

The type of the charity will determine the full extent of a trustee's responsibilities.

Who is a Trustee?

The Charities Act 1993 defines trustees as 'persons having the general control and management of the administration of a charity'. This definition would typically include:

- for unincorporated charities, members of the executive or management committee
- for limited company charities, the directors or members of the management committee.

Trustee Restrictions and Liabilities

In addition to the responsibilities of being a trustee, there are also a number of restrictions which may apply. These are aimed at preventing a conflict of interest arising between a trustee's personal interests and their duties as a trustee. These provide that generally:

- trustees cannot benefit personally from the charity, although reasonable out of pocket expenses may be reimbursed
- trustees cannot be employees of the charity.

There are limited exceptions to these principles. Where trustees do not act prudently, lawfully or in accordance with their governing document they may find themselves personally responsible for any loss they cause the charity.

Trustees' Responsibilities

Trustees have full responsibility for the charity and are:

- required to act prudently at all times in the best interests of the charity and its beneficiaries
- personally accountable for the proper management of the charity and its assets.

The Charity Commission publication CC3, 'The Essential Trustee - What you need to know' provides guidance for both new and existing trustees. The guidance sets out trustees' duties and responsibilities under five broad headings:

- responsibilities
- compliance
- duty of prudence
- duty of care
- when things go wrong.

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Accounting requirements

There are particular requirements for most charities to:

- keep full and accurate accounting records (and funds requirements are of particular importance here)
- prepare charity accounts and an annual report
- to ensure an audit or independent examination is carried out
- to submit an annual return, annual report and accounts to the Charity Commission (and, for limited company charities, to Companies House).

The extent to which these requirements have to be met generally depends upon the type of charity and how much income is generated.

Funds requirements

An important aspect of accounting for charities is the understanding of the different 'funds' that a charity can have. The effective management and control of fundraising is an important trustee responsibility.

Essentially funds represent the income of the charity and there may be restrictions on how certain types of funds raised can be used. For example, a donation may be received only on the understanding that it is to be used for a specified purpose.

It is then the trustees' responsibility to ensure that such 'restricted' funds are used only as intended.

The annual report

The annual report is often a fairly comprehensive document, as legislation sets out the minimum amount of information that has to be included. The report generally includes:

- a trustees' report (which can double as a directors' report for incorporated charities)
- a statement of financial activities for the year
- an income and expenditure account for the year (for some incorporated charities)
- a balance sheet
- a cashflow statement (for large charities only)
- notes to the accounts (including accounting policies).

Audit requirements

Whether or not a charity requires an audit will depend mainly upon how much income is received or generated. This limit has changed with the introduction of the Charities Act 2006; the relevant provision of which became effective early in 2007 and for most applies to February 2008 year ends onwards. The income limit varies according to the type of charity as follows:

- all charities where income exceeds £500,000 require an audit
- unincorporated charities where income is between £10,000 and £500,000 require an independent examination
- incorporated charities where income is between £90,000 and £500,000 require an audit exemption report.

The audit exemption report regime (for incorporated charities) will disappear for accounting periods starting on or after 1 April 2008. From that date, the limits and requirements will be the same as those for unincorporated charities. There are other criteria to consider and we would be pleased to discuss these (and earlier accounting periods if need be) in more detail with you.

Reporting requirements

There is a widespread framework in place that determines how a charity's accounts should be prepared.

Unincorporated charities with income below £100,000 may prepare receipts and payments accounts.

All other charities must prepare accounts that show a 'true and fair' view. To achieve this the accounts generally need to follow the requirements of the Charities Statement of Recommended Practice (SORP).

How we can help

A trustee's responsibilities are many and varied. If you would like to discuss these in more detail or would like help in maintaining your charity's records or preparing its annual report we are able to help.

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