



Green Street Green Association

Trustee Guidance Pack

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CHARITY COMMISSION
FOR ENGLAND AND WALES

GUIDANCE

The essential trustee: what you need to know, what you need to do



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1. About this guidance

This guidance explains the key duties of all trustees of charities in England and Wales, and what trustees need to do to carry out these duties competently.

Trustees have independent control over, and legal responsibility for, a charity's management and administration. They play a very important role, almost always unpaid, in a sector that contributes significantly to the character and wellbeing of the country.

Trusteeship can be rewarding for many reasons - from a sense of making a difference to the charitable cause, to new experiences and relationships. It's also likely to be demanding of your time, skills, knowledge and abilities. Being aware of the duties and responsibilities covered in this guidance will help you carry out your role in a way that not only serves your charity well but also gives you confidence that you will be complying with key requirements of the law.

You should read this guidance if you are a trustee of any charity based in England or Wales, including:

- a registered charity
- a charity that is not required by law to register
- a charity that is required to register, but has not yet done so

You should also read this guidance if you are thinking about setting up a charity or becoming a trustee in England or Wales.

The charity regulators in **Scotland** and **Northern Ireland** have their own guidance for trustees.

If you are involved in running a charity but don't know whether you are a trustee, check the charity's governing document. (This is the document that sets out the charity's rules; it may be a constitution, trust deed, articles of association or similar document.) It will tell you which body has ultimate authority and responsibility for directing and governing the charity. All properly appointed members of that body are charity trustees in law, whatever they are called (trustees, directors, committee members, governors or something else).

If you are a member of that body, you are automatically a charity trustee. You share, with all members of that body, equal responsibility for the charity.

The Charity Commission expects trustees to take their responsibilities seriously. Using this guidance and ensuring you give sufficient time and attention to your charity's business will help. The Commission recognises that most trustees are volunteers who sometimes make honest mistakes. Trustees are not expected to be perfect - they are expected to do their best to comply with their duties. Charity law generally protects trustees who have acted honestly and reasonably.

1.1 Must and should - what they mean

In this guidance:

- 'must' means something is a legal or regulatory requirement or duty that trustees must comply with
- 'should' means something is good practice that the Commission expects trustees to follow and apply to their charity

Following the good practice specified in this guidance will help you to run your charity effectively, avoid difficulties and comply with your legal duties. Charities vary in terms of their size and activities. Consider and decide how best to apply this good practice to your charity's circumstances. The Commission expects you to be able to explain and justify your approach, particularly if you decide not to follow good practice in this guidance.

In some cases you will be unable to comply with your legal duties if you don't follow the good practice. For example:

Your legal duty	It's vital that you
Act in your charity's best interests	Deal with conflicts of interest
Manage your charity's resources responsibly	Implement appropriate financial controls Manage risks
Act with reasonable care and skill	Take appropriate advice when you need to, for example when buying or selling land, or investing (in some cases this is a legal requirement)

Trustees who act in breach of their legal duties can be held responsible for consequences that flow from such a breach and for any loss the charity incurs as a result. When the Commission looks into cases of potential breach of trust or duty or other misconduct or mismanagement, it may take account of evidence that trustees have exposed the charity, its assets or its beneficiaries to harm or undue risk by not following good practice.

1.2 How to use this guidance

You may want to read all of this guidance to get a better understanding of trustees' duties overall, or you may want to find out more about a specific topic. As a minimum the Commission recommends that you read the summary of trustees' duties in section 2:

- section 2 of this guidance gives a summary of trustees' duties
- section 3 explains whether you can legally be a trustee
- sections 4 to 9 explain the 6 key duties of trustees in more detail
- section 10 explains when trustees can be liable and how to reduce the risk
- sections 11 and 12 provide more detail about charity structures, and the roles of charity officers
- section 13 contains definitions of technical terms used in this guidance

2. Trustees' duties at a glance

This is a summary of trustees' main legal responsibilities, which are explained in detail in the rest of this guidance. You should read this section as a minimum, and ensure you fully understand your responsibilities by referring to the rest of the guidance as necessary.

Before you start - make sure you are eligible to be a charity trustee

You must be at least 16 years old to be a trustee of a charity that is a company or a charitable incorporated organisation (CIO), or at least 18 to be a trustee of any other charity.

You must be properly appointed following the procedures and any restrictions in the charity's governing document.

You must not act as a trustee if you are disqualified, unless authorised to do so by a waiver from the Commission. Until 31 July 2018, the reasons for disqualification include:

- having an unspent conviction for an offence involving dishonesty or deception (such as fraud)
- being bankrupt, or entering into a formal arrangement (eg an individual voluntary arrangement) with a creditor
- removal as a company director or charity trustee because of wrongdoing

New reasons for disqualification will be added on 1 August 2018: our **guidance** explains the changes in more detail.

There are further restrictions for charities that work with children or adults at risk.

See section 3 for more information.

Ensure your charity is carrying out its purposes for the public benefit

You and your co-trustees must make sure that the charity is carrying out the purposes for which it is set up, and no other purpose. This means you should:

- ensure you understand the charity's purposes as set out in its governing document
- plan what your charity will do, and what you want it to achieve
- be able to explain how all of the charity's activities are intended to further or support its purposes
- understand how the charity benefits the public by carrying out its purposes

Spending charity funds on the wrong purposes is a very serious matter; in some cases trustees may have to reimburse the charity personally.

See section 4 for more information.

Comply with your charity's governing document and the law

You and your co-trustees must:

- make sure that the charity complies with its governing document
- comply with charity law requirements and other laws that apply to your charity

You should take reasonable steps to find out about legal requirements, for example by reading relevant guidance or taking appropriate advice when you need to.

See section 5 for more information.

Act in your charity's best interests

You must:

- do what you and your co-trustees (and no one else) decide will best enable the charity to carry out its purposes
- with your co-trustees, make balanced and adequately informed decisions, thinking about the long term as well as the short term
- avoid putting yourself in a position where your duty to your charity conflicts with your personal interests or loyalty to any other person or body
- not receive any benefit from the charity unless it is properly authorised and is clearly in the charity's interests; this also includes anyone who is financially connected to you, such as a partner, dependent child or business partner

See section 6 for more information.

Manage your charity's resources responsibly

You must act responsibly, reasonably and honestly. This is sometimes called the duty of prudence. Prudence is about exercising sound judgement. You and your co-trustees must:

- make sure the charity's assets are only used to support or carry out its purposes
- avoid exposing the charity's assets, beneficiaries or reputation to undue risk
- not over-commit the charity
- take special care when investing or borrowing
- comply with any restrictions on spending funds or selling land

You and your co-trustees should put appropriate procedures and safeguards in place and take reasonable steps to ensure that these are followed. Otherwise you risk making the charity vulnerable to fraud or theft, or other kinds of abuse, and being in breach of your duty.

See section 7 for more information.

Act with reasonable care and skill

As someone responsible for governing a charity, you:

- must use reasonable care and skill, making use of your skills and experience and taking appropriate advice when necessary
- should give enough time, thought and energy to your role, for example by preparing for, attending and actively participating in all trustees' meetings

See section 8 for more information.

Ensure your charity is accountable

You and your co-trustees must comply with statutory accounting and reporting requirements. You should also:

- be able to demonstrate that your charity is complying with the law, well run and effective
- ensure appropriate accountability to members, if your charity has a membership separate from the trustees
- ensure accountability within the charity, particularly where you delegate responsibility for particular tasks or decisions to staff or volunteers

See section 9 for more information.

3. Who can be a trustee and how trustees are appointed

You must make sure you are allowed to be a trustee:

- there are some restrictions on who can be a trustee – there are minimum age limits and some factors that automatically disqualify people from being trustees
- you must be properly appointed, and should know how long your appointment lasts
- if you are not properly appointed, the trustees' decisions or actions may be invalid, potentially creating disputes or putting charity assets at risk
- if you are a trustee of a charity that provides 'regulated activities' for children or adults, be prepared for your charity to request a DBS check on you

3.1 Who can be a trustee

3.1.1 Minimum age

You must be at least 16 years old to be a trustee of a charitable company or a charitable incorporated organisation (CIO), unless the charity's governing document says you must be older. You must be at least 18 to be a trustee of any other type of charity.

3.1.2 Disqualification

You must not act as a trustee if you are disqualified under the Charities Act, unless your disqualification has been waived by the Commission. Reasons for disqualification include if you:

- are disqualified as a company director
- have an unspent conviction for an offence involving dishonesty or deception (such as fraud)
- are an undischarged bankrupt (or subject to sequestration in Scotland), or have a current composition or arrangement including an individual voluntary arrangement (IVA) with your creditors
- have been removed as a trustee of any charity by the Commission (or the court) because of misconduct or mismanagement

From 1 August 2018, new disqualification reasons will be added: these will include being on the sex offenders' register, unspent convictions for a wider range of offences including bribery and money laundering, or disobeying a direction of the Commission. The **guidance** explains the changes in more detail.

If any of the current or new disqualification reasons apply to you, you may be able to get your disqualification lifted (or 'waived') by the Commission. The Commission will carefully consider whether granting a waiver is appropriate, although there are some situations where it has no power to grant a waiver – for example, where a trustee is disqualified as a company director.

Read more about **trustee disqualification**.

3.1.3 Fit and proper persons

Charities that want to claim UK tax reliefs and exemptions (eg Gift Aid) must meet the management condition in the Finance Act 2010. This requires all of the charity's managers (including trustees) to be 'fit and proper persons'.

Find out more - see the **HM Revenue and Customs guidance**.

3.1.4 Disclosure and Barring Service (DBS) checks

There are legal restrictions under safeguarding legislation on who can be involved in working with children

and adults at risk. In addition, the DBS undertakes criminal records checks of individuals, which charities can use to ensure that they are eligible and suitable for the trustee role. The type of check that can be made depends on the nature of the charity's activities and the role that the trustee plays. For example, if you are a trustee of a charity that provides 'regulated activity' for children or adults, you should expect your charity to request an enhanced DBS check on you: where it is satisfied that the role is eligible, this will include a check against the relevant barred list.

Find out more about **safeguarding and DBS checks**.

3.2 How trustee appointments begin and end

You must follow any rules in your governing document about:

- who appoints new trustees
- when, and how, new trustees are appointed
- who can be a trustee - the governing document may impose conditions
- how long appointments last and whether a trustee can be re-appointed
- how trustees can **resign or be removed**

If your governing document has no specific provisions for these things, your charity must comply with the relevant legal provisions:

- companies must comply with company law provisions for appointing and removing directors
- unincorporated charities must comply with Trustee Act 1925 provisions

CIOs must include provisions in their constitutions for appointment and removal of trustees.

The Commission can use its powers to appoint or remove trustees if the charity's trustees (or members, if applicable) are unable to do so.

Read more about **legal powers to remove and appoint trustees**.

3.3 What to consider when recruiting trustees

When charities recruit new trustees, they should think about:

- the skills and experience the current trustees have, and whether there are any gaps
- ensuring new trustees are eligible to act
- ensuring new trustees don't have **serious conflicts of interest**, or getting Commission consent and putting procedures in place to manage the conflicts
- how to help new trustees to understand their responsibilities and the charity's work

It's also important for trustees to be interested in the charity's work and be willing to give their time to help run it.

Members or beneficiaries on your board

Many charities' governing documents allow or require:

- some or all of the trustees to be elected by the members (this is usual practice for charities with voting members other than the trustees)
- the trustee body to include beneficiaries
- other groups or organisations, such as local authorities, to appoint trustees

It's important to listen to the views and perspectives of members, beneficiaries and other bodies with an interest in your charity. Having people as trustees is one way of obtaining these views. But all trustees, regardless of how they are appointed, must act solely in the interests of the charity; it's not their role to act on behalf of any particular group. They must also manage conflicts of interest, including conflicts of loyalty to their appointing body.

Find out more:

Trustee board: people and skills - how to appoint the right people with the right skills

Finding new trustees: what charities need to know

Charity trustee: declaration of eligibility and responsibility

Avoid mistakes - make sure trustee appointments are valid

Be careful to follow the rules in your charity's governing document and the law when appointing trustees. If trustee appointments breach these rules they are not valid. The validity of actions and decisions they were involved in could be called into question. But even if a trustee isn't validly appointed, they can still be held liable for their actions and decisions.

Improper trustee appointments can often lead to disputes. In the worst cases this can harm the charity's reputation, alienate supporters, put charity assets at risk (including by loss of funding) or ultimately leave the charity unable to function.

4. Ensure your charity is carrying out its purposes for the public benefit

You and your co-trustees must make sure that everything your charity does helps (or is intended to help) to achieve the purposes for which it is set up, and no other purpose. This means you should:

- ensure you understand the charity's purposes as set out in its governing document
- plan what your charity will do, and what you want it to achieve
- be able to explain how all of the charity's activities are intended to further or support its purposes
- understand how the charity benefits the public by carrying out its purposes

Spending charity funds on the wrong purposes is a very serious matter; in some cases trustees may have to reimburse the charity personally.

4.1 Understanding the charity's objects and powers

You should read the objects clause in your charity's governing document and ensure you understand:

- what the charity is set up to achieve (its purposes)
- who the charity is there to benefit (its beneficiaries)
- how they will benefit (what the charity will do for or with them)
- any order of priority to the services and benefits the charity provides
- any restrictions on what the charity can do or who it can help (geographical or other boundaries; or specific criteria that beneficiaries must meet)

The objects might be quite broad and general, or they might be quite narrow, specifying what services or activities the charity can provide in order to achieve its purposes.

You can find out more about governing documents in section 5 of this guidance.

The charity may have specific powers in its governing document. Charities also have powers from the Charities Act and other laws. You must only use these powers in ways that further your charity's purposes.

Find out more about **charitable purposes**.

Some charities produce 'mission statements' or other summaries of their aims and activities. When checking the scope of your charity's objects or powers, be careful not to rely on such statements instead of the charitable purposes set out in the governing document, as the wording may be less precise. If you need to check whether your charity can lawfully undertake a particular activity, you should check against the objects clause rather than any other statement of the charity's mission or aims. Otherwise you could end up carrying out activities in breach of the charity's governing document.

4.2 Public benefit

All charities must be for the public benefit. Trustees must have regard to the Commission's **public benefit guidance PB1, PB2 and PB3** when making decisions they are relevant to. This would include reviewing the charity's activities or considering new ones.

Public benefit is essential to:

- charitable status - to be a charity an organisation must have only charitable purposes for the public benefit
- a charity's operation - its activities must all be focussed on carrying out the charity's purposes for the public benefit
- a charity's accountability - trustees must be able to explain how their charity's activities are or have been for the public benefit

This means that you should understand, and be able to explain:

- what the charity is set up to achieve - its purpose
- why the charity's purpose is beneficial - this is the 'benefit aspect' of public benefit
- how the charity's purpose benefits the public or a sufficient section of the public - this is the 'public aspect' of public benefit
- how the charity will carry out (or 'further') its purpose for the public benefit

4.3 Planning and reviewing your charity's work

You and your co-trustees are responsible for deciding and planning how your charity will carry out its purposes.

All charity trustees should, therefore, decide together what activities the charity will undertake, and think about the resources it will need. Trustees of larger charities should take responsibility for setting the charity's strategic aims and direction, and agreeing appropriate future plans.

Involving the charity's staff, volunteers and others with an interest in the charity in the planning process can be helpful.

As part of your planning process, you should work out what funds and other resources the charity will need and where it will get them. See section 7 of this guidance for more detail.

You and your co-trustees should periodically review what the charity is achieving, and how effective the charity's activities are. Thinking about the difference your charity makes may help you to explain more clearly how it benefits the public. It may also help you to decide whether it could be more effective in carrying out its purpose by changing what it does.

Find out more:

Inspiring Impact

Charity governance, finance and resilience: 15 questions you should ask

You and your co-trustees should also review the charity's objects from time to time and make sure that they are still appropriate, relevant and up to date. Circumstances change over time and this could affect whether:

- the charity's beneficiary group still exists, and is still a **'sufficient section'** of the public
- the geographical 'area of benefit' in which the charity can operate is still relevant
- the need that the charity was set up to meet still exists, and meeting it is still for the public benefit
- there may be better ways of meeting the need for which the charity was set up

If your charity's objects are no longer effective, you must consider how these could be changed or take other action to enable the charity's resources to be applied for its purposes.

In the past many charities helped people by providing goods including food, clothing or fuel. Many charities have decided that they can meet current needs more effectively with cash payments or vouchers, and have updated their objects. Some charities still work effectively by providing goods (such as food or medical equipment).

Charities are often set up for a particular locality. Changes over time may mean that there are no longer enough people who need the charity's services in that place. In these circumstances, charities can expand their area of benefit to include neighbouring areas.

Two charities providing similar (or complementary) services in the same area may decide to collaborate or merge for greater efficiency.

4.4 Updating your charity's objects

Charities can modify or add to their objects if necessary, using powers in the governing document, company law or the Charities Act. They can't usually change their objects completely; the governing document and charity law do not usually allow it. If your charity is planning to update its objects, you and your co-trustees should consider what the charity was originally set up to do, and how circumstances have changed. Most charities must obtain permission from the Commission before changing their objects.

You should also review the other provisions in your charity's governing document and update them if they no longer meet the charity's needs - see section 5 of this guidance.

Governing documents are legal documents. You must follow the correct procedures to amend them, and it's important to word any changes correctly. You should consider taking appropriate advice about any changes. Use one of the **Commission's model governing documents** or an **approved governing document**, to ensure that your governing document has all the provisions and powers you need.

Find out more:

How to make changes to your charity's governing document

How to write charitable purposes

5. Comply with your charity's governing document and the law

You and your co-trustees must:

- make sure that the charity complies with its governing document
- comply with charity law requirements and other laws that apply to your charity

You should take reasonable steps to find out about legal requirements, for example by reading relevant guidance or taking appropriate advice when you need to.

5.1 Your charity's governing document

You and your co-trustees must make sure that the charity complies with the governing document, which usually contains key information about:

- what the charity exists to do (its purposes, as explained in its objects clause)
- what powers it has to further its objects
- who the trustees are, how many trustees there should be and how they are appointed and removed
- whether the charity has members and, if so, who can be a member
- rules about trustees' (and members') meetings; how they are arranged and conducted; how decisions must be made and recorded, and so on
- how to change the governing document
- how to close the charity down

There may also be rules limiting how powers can be used, who can vote at meetings, or which rules can be changed.

Every trustee should have an up to date copy of their charity's governing document and regularly refer to it. If you don't have a copy, or don't know what it is, ask your fellow trustees. If they don't have a copy, the Commission can usually provide one (if your charity is a registered charity).

The governing document is essential to your charity. You and your co-trustees may need to review it from time to time to ensure that it continues to meet the charity's needs. Governing documents are legal documents. You must follow the correct procedures to amend them, and it's important to word any changes correctly. You should consider taking appropriate advice about any changes. Use one of the **Commission's model governing documents** or an **approved governing document**, to ensure that your governing document has all the provisions and powers you need.

Read more about **governing documents**.

5.2 Charity law - registration, accounting, reporting and other requirements

Charities set up in England or Wales must register with the Commission unless they are:

- exempt charities
- excepted from registering
- very small (below the annual income threshold for compulsory registration, currently £5,000) and not a CIO (all CIOs must register)

Find out **whether your charity needs to register or is exempt or excepted**.

Charities that operate in Scotland or Northern Ireland may also have to register there.

All charities must keep proper financial records and prepare annual accounts. Trustees must arrange for accounting books and records (including cash books, invoices and receipts) to be kept for a specified period.

Read more: **Retention of Accounting Records**.

All registered charities:

- must inform the Commission of any changes to the information on the register of charities, including trustee details and changes to the governing document
- must send an annual return (or annual update) and other information to the Commission
- must comply with any additional accounting and reporting requirements such as filing annual accounts and reports with the Commission, depending on the size of the charity
- should report to the Commission any serious incident in their charity, as soon as possible after it occurs (see section 8.3 for more details)

Exempt charities may have to send accounting information to their principal regulator.

Find out more about **accounting and reporting requirements for charities**.

Charities whose income is over £250,000, and all charitable companies, must prepare their accounts and trustees' annual report in accordance with the Statement of Recommended Practice - Accounting and Reporting by Charities (Charities SORP).

Find out more about the **Charities SORP**.

A registered charity with an income over £10,000 in its last financial year must state that it's a registered charity on any fundraising documents and on many of its financial documents, including cheques, invoices and receipts. This includes electronic documents such as emails and websites. You don't have to state the charity's registration number, but it's good practice to do so.

5.3 Other laws and regulations

Charities and their trustees may be subject to a range of other laws and regulations depending on what the charity does, where it works and how it is set up. Some laws apply to all charities, such as equality, data protection and copyright law. It is important to be aware of the laws that apply to your charity, for example if it:

- is a company, CIO or community benefit society
- employs staff
- owns or rents premises
- operates vehicles
- provides:
 - legal, financial or other regulated advice
 - housing or accommodation
 - medical or care services
 - works with children or adults at risk
- undertakes activities that are subject to regulations, such as fundraising
- wants to benefit from Gift Aid or other tax reliefs
- works in Scotland, Northern Ireland or outside the UK

The Commission doesn't expect every trustee to be a legal expert. You and your co-trustees should take reasonable steps to find out about legal and regulatory requirements and keep up to date, for example by getting mailings from the Commission and other sources, reading relevant guidance and attending appropriate training. The charity should also have systems and procedures to ensure that it complies with legal requirements.

Where there is concern about a specific issue, the trustees may wish to consider taking independent advice from a suitably qualified person.

Find a solicitor - Law Society

Legal advice for small charities - LawWorks

Avoid mistakes - know your governing document

If the trustees don't comply with the governing document, the charity might undertake activities outside its objects. It might fail to follow the correct procedures, or take actions it has no power to take. Actions and decisions could be invalid and have to be reversed as a result.

If you don't follow rules about who can be a member or a trustee, or how to arrange and run meetings, it often leads to disputes, which can prevent the charity from operating effectively.

6. Act in your charity's best interests

You must:

- do what you and your co-trustees (and no one else) decide will best enable the charity to carry out its purposes
- with your co-trustees, make balanced and adequately informed decisions, thinking about the long term as well as the short term
- avoid putting yourself in a position where your duty to your charity conflicts with your personal interests or loyalty to any other person or body
- not receive any benefit from the charity unless it is properly authorised and is clearly in the charity's interests; this also includes anyone who is financially connected to you, such as a partner, dependent child or business partner

6.1 Understanding the charity's interests

Acting in the charity's best interests means always doing what the trustees decide will best enable the charity to carry out its purposes, both now and for the future. It's not about serving:

- the interests of trustees or staff
- the personal interests of members or beneficiaries
- the personal interests of supporters, funders or donors
- the charity as an institution in itself, or preserving it for its own sake

Sometimes trustees need to consider **collaborating or merging with another charity**, or even spending all of the charity's resources and **bringing it to a close**.

6.2 Making decisions

You and your co-trustees are ultimately responsible for deciding what activities the charity will undertake, what resources it will need, how it will obtain and use them. Collective decision making is one of the most important parts of the trustee role. Some decisions are simple and straightforward; others can be complex or far reaching in their consequences. When you and your co-trustees make decisions about your charity, you must:

- act within your powers
- act in good faith, and only in the interests of your charity
- make sure you are sufficiently informed, taking any advice you need
- take account of all relevant factors you are aware of
- ignore any irrelevant factors
- deal with conflicts of interest and loyalty
- make decisions that are within the range of decisions that a reasonable trustee body could make in the circumstances

You should record how you made more significant decisions in case you need to review or explain them in the future.

Read more about **decision making**.

Avoid mistakes - be prepared to challenge assumptions

Trustees must make decisions solely in the charity's interests, so they shouldn't allow their judgement to be swayed by personal prejudices or dominant personalities.

Trustees must act collectively (jointly). Part of their role is to critically and objectively review proposals and challenge assumptions in making decisions. No one should be able to direct the trustees or drive decisions through without sufficient consideration. Trustees who simply defer to the opinions and decisions of others aren't fulfilling their duties.

Decisions don't usually have to be unanimous (depending on your governing document), but once the trustees have made a decision, they must all comply with it, including any who disagree. If you strongly disagree with your fellow trustees' decision, you can ask for your disagreement to be recorded in the minutes of the meeting. If you think that your fellow trustees are acting in breach of their duty, you should discuss the matter with the chair or your fellow trustees. If you are still concerned, contact the Commission. Ultimately, you may feel that you have to resign in order to distance yourself from the decision.

The Commission can only advise or intervene in relation to trustees' legal duties; it can't arbitrate in disputes between trustees.

6.3 Dealing with conflicts of interest and conflicts of loyalty

You can only comply with your duty to act in the charity's best interests if you prevent your personal interests from conflicting (or appearing to conflict) with the best interests of the charity. This means recognising and dealing with conflicts of interest.

A conflict of interest is any situation where your personal interests could, or could appear to, prevent you from making a decision only in the charity's best interests. For example, if you (or a person connected to you, such as a close relative, business partner or company):

- receive payment from the charity for goods or services, or as an employee
- make a loan to or receive a loan from the charity
- own a business that enters into a contract with the charity
- use the charity's services
- enter into some other financial transaction with the charity

Even when you receive no financial benefit, you could have a conflict of loyalty. For example if your charity has business dealings with your employer, a friend, family member, or another body (such as a local authority or charity, or a charity's trading subsidiary) that you serve on.

This means you and your co-trustees:

- should identify, and must declare conflicts of interest (or loyalty)
- must prevent the conflict of interest (or loyalty) from affecting the decision
- should record the conflict of interest (or loyalty) and how it was dealt with

How you prevent a conflict of interest from affecting a decision will depend on the circumstances and the seriousness of the conflict of interest. You must follow any specific conflict of interest provisions in your governing document. If a trustee (or a person connected to a trustee) stands to benefit directly or indirectly, the conflicted trustee(s) should withdraw from the discussion and decision making process. If the non-conflicted trustees can demonstrate that a conflict of loyalty involves no material benefit and poses a low risk to decision making in the best interests of the charity, they may permit the affected trustee to participate. Directors of charitable companies must have specific authority in the company's articles to do this. For the most serious conflicts of interest it may mean obtaining permission from the Commission, deciding not to proceed with a proposal or even resigning as a trustee.

Avoid mistakes - deal with conflicts of interest

Conflicts of interest (and conflicts of loyalty) are more common than people often think. If one of your fellow trustees appears to have a conflict of interest you should say so; you are not calling their integrity into question by doing so.

In deciding how to deal with a conflict of interest, trustees should be mindful of what feels right, and also how others might view the trustees' actions.

Where conflicts of interest have not been identified or properly dealt with, it can have negative impacts on both the charity and individual trustees including financial cost and reputational damage. Because the trustees have acted in breach of their duty, decisions may be called into question or legally challenged. The Commission may have to take regulatory action to protect the charity from further harm or to deal with any misconduct or mismanagement by the trustees.

Read more about **conflicts of interest**.

6.4 Payments and other benefits to trustees

Charities can't usually pay their trustees. When you become a trustee, you usually volunteer your services and receive no payment for your work. This is called the voluntary principle. You can, however, reclaim reasonable expenses that you incur such as travel and childcare - being a trustee shouldn't mean being out of pocket.

These restrictions apply to trustees (or someone with a financial connection to a trustee, such as their partner, dependent children or a business partner) benefiting by:

- supplying goods or services to the charity eg building work or specialist services, even if the trustee offers better value or expertise than other suppliers
- being employed by the charity or by a trading subsidiary owned by the charity
- receiving material benefits as a beneficiary of the charity
- being paid to act as a trustee; this is very unusual and only permitted in exceptional circumstances
- entering into a property transaction (or any other financial transaction such as a loan) with the charity - this is called self-dealing

In some circumstances, one or more trustees (or persons with a financial connection to a trustee) do receive payments or other benefits from their charity. This is only permitted if:

- the benefit is specifically authorised by the governing document, the Charities Act (or other relevant legislation), the Commission or the courts; any specified procedures must be strictly followed
- even if the benefit is authorised, the non-conflicted trustees are satisfied that allowing it is in the charity's best interests
- the conflict of interest is managed; so in most cases the conflicted trustee(s) can't be involved in the decision and only a minority of trustees can benefit

Read more about **payment of trustees**.

Find out whether you need permission, and how to apply.

7. Manage your charity's resources responsibly

You must act responsibly, reasonably and honestly. This is sometimes called the duty of prudence. Prudence is about exercising sound judgement. You and your co-trustees must:

- make sure the charity's assets are only used to support or carry out its purposes
- avoid exposing the charity's assets, beneficiaries or reputation to undue risk
- not over-commit the charity
- take special care when investing or borrowing
- comply with any restrictions on spending funds or selling land

You and your co-trustees should put appropriate procedures and safeguards in place and take reasonable steps to ensure that these are followed. Otherwise you risk making the charity vulnerable to fraud or theft, or other kinds of abuse, and being in breach of your duty.

7.1 Managing risks

A risk is anything that could, if it happened, affect your charity achieving its purposes or carrying out its plans. All charities face some risks. The risks your charity might face will depend on factors such as its size, funding and activities. For example, managing property, employing staff, using volunteers, using IT, working with children or people at risk, or implementing change all involve elements of risk.

You and your co-trustees should manage risk responsibly. You have a duty to avoid exposing your charity to undue risk. This doesn't mean being risk averse. Risk management is the process of identifying and assessing risks, and deciding how to deal with them. It may involve an element of responsible risk taking, and is central to how trustees make decisions.

The Commission's guidance on risk management sets out the basics of dealing with risks and includes a risk management model, made up of the following steps:

1. Establish a risk policy.
2. Identify risks (what could go wrong).
3. Assess risks (how likely is it, and how serious would it be).
4. Evaluate what action to take (eg avoid it, transfer it, insure against it, accept it).
5. Review, monitor and assess periodically.

Find out more:

How to manage risks in your charity

Institute of Risk Management guide for charities

Charities: how to protect vulnerable groups including children

Some charities work in areas or undertake activities that involve greater exposure to risks such as fraud, financial crime, extremism or terrorism. Charities should assess their exposure to these risks and take proportionate action. If your charity needs to address these risks, you may find the Commission's toolkit on **protecting charities from harm** helpful. Chapter 2 of the toolkit includes a practical guide to due diligence, based on 3 principles:

- know your donor (for example, if your charity receives large donations, particularly anonymous or cash donations or with conditions attached)
- know your partner (if your charity relies on partners or intermediaries to carry out any of its work)
- know your beneficiaries (for example if your charity makes grants of cash or other financial support directly to individuals)

Charities must also assess and manage safeguarding risks. For example, they must ensure that their beneficiaries or others who come into contact with their charity do not, as a result, come to harm. For example, many charities come into contact with or provide activities for those who may be experiencing, or at risk of, abuse or neglect. This includes:

- children and young people under 18 years of age
- adults (aged 18 and over) at risk

Even where work with children or adults at risk does not form part of the core business of the charity, trustees must be alert to their responsibilities to protect from risk of harm those with whom the charity comes into contact.

Read more about **protecting vulnerable groups**.

These principles will help you and your co-trustees to carry out their legal duties and manage the risks to the charity's beneficiaries, assets and services.

7.2 Budgeting

You and your co-trustees need to work out what funds and other resources your charity will need and where the charity will get these from. A charity can only succeed in meeting its aims if it manages its money and other resources properly. You will need to plan and monitor its income and outgoings so that it can meet its short, medium and long term goals.

Find out more:

Managing charity assets and resources

Charity governance, finance and resilience: 15 questions you should ask

Financial difficulties in charities

7.3 Getting the funds your charity needs (income generation)

Most charities get their funds through one or more of the following methods:

- fundraising (asking for donations, legacies or grants)
- trading (selling goods or services)
- investment
- leasing or letting land or buildings

In practice, it's best to avoid relying on a single source of income. You and your co-trustees are responsible

for deciding how your charity will obtain funds. You should think about:

- how much money the charity needs
- the costs, benefits and risks of different methods of generating income
- any legal requirements that the charity must comply with, including fundraising regulations, and restrictions on commercial trading
- any potential reputational issues
- whether you need advice

If your charity is already bringing in funds, you and your co-trustees should ensure that its income generation is on target, complies with the law and is not exposing the charity to undue risk.

Find out more:

Fundraising legally and responsibly

Institute of Fundraising code of fundraising practice and good practice guides

Charity trading: selling goods and services

How to invest charity money

Charities and their trading subsidiaries

Charities need to use a trading subsidiary if they carry out commercial (non-charitable) trading which exceeds the threshold for paying income or corporation tax, or involves significant risk.

A trading subsidiary is a separate company controlled by the charity. The charity can raise money from trade without exposing its assets to risk or being liable for income or corporation tax.

There are, however, risks which trustees need to be aware of and manage:

- the charity exists for charitable purposes, but the trading subsidiary exists to generate income; their aims and interests are different; you need to distinguish between them
 - if the trading subsidiary starts to fail, the charity must not bail it out; this would be putting the charity's funds at risk
 - charity trustees who are also directors of the subsidiary have a conflict of interest
 - if a charity trustee is also a director of the trading subsidiary, the restrictions on payments and benefits to trustees also apply to any payments or benefits as a director
-

7.4 Managing funds and keeping them safe

You and your co-trustees are responsible for your charity's money. Your charity should have effective processes for handling money, to help avoid poor decisions and accidental errors, as well as theft and fraud. Failure to do so is likely to result in a breach of your duty. You should:

- set a budget and keep track of it
- put in place clear policies and procedures to deal with income and expenditure
- ensure the charity keeps accurate records of income and expenditure
- have robust and effective **financial controls** in place

- protect the charity from **financial crime such as theft or fraud**
- put appropriate safeguards in place for money, assets and staff if **the charity operates outside of the UK**
- have an appropriate **reserves policy**
- ensure the charity receives **tax reliefs** to which it is entitled

If something does go wrong, you should inform the Commission and (if appropriate) the police. See the section on what to do if something goes wrong in section 8 of this guidance.

Find out more:

Charity money: how to keep it safe

Charities: due diligence checks and monitoring end use of funds

7.5 Managing property (land and buildings)

If the charity owns or rents land or buildings, you and your co-trustees should:

- make sure the property is recorded as belonging to the charity - see section 11 of this guidance
- know on what terms it's held
- ensure it's properly maintained and being correctly used
- make sure the charity has sufficient insurance

You should regularly review whether the property is suitable for the charity's purposes, and whether any property the charity lets to generate income is still a good investment.

Decisions about property are important, so think about the advice and information you may need in order to make decisions in the charity's interests.

Most charities can buy, sell or lease land when they need to. When selling or leasing land, trustees must try to get the best deal for the charity (unless they are making the disposal to further the charity's purposes). So all charities should, and registered charities must:

- obtain written advice, including a valuation, from a qualified surveyor before agreeing a sale or granting a lease for more than 7 years
- advertise the sale or lease, unless the surveyor advises otherwise

Otherwise, you are likely to need permission from the Commission for the sale or lease.

A charity's governing document may specify that land or buildings must be used for a particular purpose. This is called designated land (or 'specie land'). Special conditions apply to leasing or selling designated land.

Land belonging to a charity (particularly designated land) might be permanent endowment. This restricts how you can use the proceeds of sale.

You must get permission from the Commission to sell or lease property to or from a trustee, someone closely connected to a trustee, or an employee of the charity.

Before taking out a mortgage or loan secured against your charity's land you must get written financial advice and ensure that:

- the loan is needed and used for an activity that fits with your charity's purposes
- the terms of the loan are reasonable
- the charity will be able to repay the loan

Otherwise you will need permission from the Commission to proceed.

Find out more about **buying, selling, leasing or mortgaging charity property**, including designated land and **permanent endowment**.

7.6 Staff and volunteers

As part of your overall responsibility for the charity, you and your co-trustees have responsibilities towards any volunteers or staff.

You must ensure that:

- the charity complies with relevant law including employment, pension, equality and health and safety law
- volunteers are clearly distinct from employees in terms of responsibilities and rights; for example by not requiring volunteers to work set hours, nor paying them more than expenses they actually incur

You should ensure that:

- people are clear about what they are supposed to do, through appropriate job descriptions for staff or role descriptions for volunteers
- people are aware of the rules and boundaries within which they must work, for example, when representing or speaking on behalf of the charity
- people work safely
- people know what to do if there's a problem
- people know what they need to report and who they report to
- senior managers will not be disqualified when new rules take effect on 1 August 2018

You and your co-trustees should ensure that the charity has appropriate procedures and policies in place, staff and volunteers get appropriate training, and people know they must comply with policies and procedures. You also have an important role in promoting effective working relationships between trustees, senior staff (if any), staff and volunteers.

If your charity has senior managers – typically carrying out chief executive or finance director roles – you and your co-trustees should ensure that you have procedures in place to check if they will be disqualified by **new rules that take effect on 1 August 2018**.

Find out more:

How to manage your charity's volunteers

Charity staff: how to employ paid workers

Pension rules for charities

Pensions (Charity Finance Group guidance)

Avoid mistakes - don't rely too much on individuals

Things can go wrong when trustees place too much reliance on individuals, and don't implement sufficient safeguards to ensure accountability. This can result in the charity falling victim to fraud or theft, or beneficiaries suffering abuse. These kinds of occurrences could cause the charity serious reputational and other damage.

All charities should have appropriate financial controls which ensure that more than one person is involved in receiving income and authorising expenditure. These should cover all payment methods that the charity uses - cheque, cash, credit card, charge card, debit card, prepaid card, telephone or internet banking or other electronic means. Handling cash brings increased risk, so try to avoid cash payments wherever possible.

When other people raise funds on behalf of the charity, whether they are volunteers or paid professionals, you should ensure there are proper controls over the funds raised. This is to make sure that the charity receives the full amount due to it.

Read more about **financial controls**.

If something does go seriously wrong, you should take prompt action to deal with it and report it to the Commission. Find out more in section 8.3 of this guidance.

8. Act with reasonable care and skill

As someone responsible for governing a charity, you:

- must use reasonable care and skill, making use of your skills and experience and taking advice when necessary
- should give enough time, thought and energy to your role, for example by preparing for, attending and actively participating in all trustees' meetings

This is sometimes called the duty of care.

8.1 Using your skills and experience

As a trustee, you must use your skills and experience to inform decision making and benefit your charity. For example, the Trustee Act 2000 says that trustees must “exercise such care and skill as is reasonable in the circumstances”. What is reasonable in the circumstances will depend on any special knowledge or experience that the trustee has or claims to have. It also depends on whether a trustee is acting in a professional or paid capacity, and what it would be reasonable to expect such a person to know.

The Trustee Act 2000 applies to trustees of unincorporated charities. Company law and the Charities Act impose similar duties on directors of charitable companies and trustees of CIOs (see section 11 of this guidance). In addition, all trustees have a general duty of care which they must apply to all aspects of their role.

8.2 Taking advice when you need to

Trustees should recognise and acknowledge when they need advice. This is particularly important if the charity (or its property) may be at risk, or if they could act in breach of their duties, for example, when:

- buying or selling land (most charities must take advice from a surveyor or other qualified person when selling charity land)
- investing charity funds
- entering into novel, long-term, complex or high-value contracts
- considering legal action

Some larger charities employ their own professional advisers; most charities are more likely to obtain advice externally.

Find out more:

It's your decision: charity trustees and decision making

How to invest charity money

Other sources of help and advice

8.3 What to do if something does go wrong

Most problems in charities can be resolved by the trustees themselves, sometimes with some advice. However, in serious cases the Commission may need to advise the trustees or take action to protect the charity.

If something does go wrong, you should take prompt and appropriate action to:

- prevent or minimise any further loss or damage
- if appropriate, report it to the Commission, the police if a crime has been committed, and any other regulators that the charity is accountable to
- plan what you will say to your staff, volunteers, members, the public or the media
- take reasonable steps to prevent it from happening again - review controls and procedures, take appropriate advice

The Commission requires charities to report serious incidents. A serious incident is an adverse event, whether actual or alleged, which results in or risks significant:

- loss of your charity's money or assets
- damage to your charity's property
- harm to your charity's work, beneficiaries or reputation

The most common type of incidents are frauds, thefts, significant financial losses, criminal breaches, terrorism or extremism allegations, and safeguarding issues.

If a serious incident takes place, you need to report what happened and explain how you are dealing with it, even if you have reported it to the police, donors or another regulator.

The Commission can then decide what action, if any, is appropriate. Trustees must avoid exposing their charity to undue risk and should take reasonable steps to assess and manage risks to its activities, beneficiaries, property and reputation. Reporting serious incidents to the Commission demonstrates that you have identified a risk to the charity and that its trustees are taking appropriate action to deal with it. It also means the Commission can respond positively to any enquiries from the public or media.

If trustees fail to report a serious incident that subsequently comes to light, the Commission may consider this to be mismanagement and take regulatory action, particularly if further abuse or damage has arisen following the initial incident.

Find out more:

How to report a serious incident in your charity

8.4 When the Commission would become involved

The Commission will get involved if it is concerned that trustees are not fulfilling their duties towards their charity, either because they don't understand them or are unwilling or unable to fulfil them.

In some cases, the Commission may decide that it's sufficient to advise the trustees about their duties. In more serious cases, when charities' assets, reputation, services or beneficiaries have been harmed or are at significant risk, the Commission may open a statutory inquiry, which will allow it to:

- obtain and assess evidence
- use enforcement powers to protect the charity's assets or secure their proper application

Opening an inquiry does not always mean the Commission suspects wrongdoing. The Commission's aim in such cases is to stop abuse or damage and put charities back on a proper footing for the future.

Read about the Commission's work to prevent, detect and tackle abuse and mismanagement in charities and promote charity law: **Tackling abuse and mismanagement in charities**.

9. Ensure your charity is accountable

You and your co-trustees must comply with statutory accounting and reporting requirements. You should also:

- be able to demonstrate that your charity is complying with the law, well run and effective
- ensure appropriate accountability to members, if your charity has a membership separate from the trustees
- ensure accountability within the charity, particularly where you delegate responsibility for particular tasks or decisions to staff or volunteers

9.1 Complying with accounting requirements

All charities must produce accounts and provide a copy of the most recent to anyone who asks. (You can charge to cover your costs.) The Commission will take regulatory action against charities that persistently fail to provide copies of accounts when asked by members of the public or a regulator.

Exactly what accounts your charity must produce depends on whether the charity is a company and how much income it receives. Different rules apply to exempt charities. Find out more about **accounting and reporting requirements for charities**.

Charities whose income is over £250,000, and all charitable companies, must prepare their accounts and trustees' annual report in accordance with the Statement of Recommended Practice - Accounting and Reporting by Charities (Charities SORP).

Find out more about the **Charities SORP**.

All registered charities must also provide information annually to the Commission. The rules vary according to your charity's size and structure. Registered charities with:

- income up to £10,000 should complete the relevant sections of the annual return, which include updates to trustees
- income above £10,000, and all CIOs, must prepare and file an annual return form
- income above £25,000, and all CIOs, must also file copies of their trustees' annual report, accounts and external scrutiny report (audit or independent examiners' report)

Failure to submit accounts and accompanying documents to the Commission is a criminal offence. The Commission also regards it as mismanagement or misconduct in the administration of the charity. Providing timely, accurate and informative financial information that will help funders, donors, beneficiaries and others to understand your charity and its work will encourage trust and confidence in it.

Remember, those trustees who sign the trustees' annual report and accounts are signing on behalf of the whole trustee body so all of the trustees are responsible for the accounts.

Find out more about **annual returns**.

Your charity may also have to report to other regulators, for example, if its activities include providing social housing, education or social care. Companies must also submit accounts and annual returns to Companies House annually.

9.2 Being accountable to people with an interest in the charity

It's important to take account of what your members, beneficiaries, supporters and funders say. Use this information to inform decisions and improve the charity's services. If your charity has a wider voting membership in addition to the trustees, your governing document may contain specific provisions about when to involve members in decisions, for example through general meetings.

Charities should consider the benefits of having appropriate **procedures for dealing with complaints**, and ensuring they are easy to find and easy to follow.

You and your co-trustees must ensure that your charity complies with the law, and should be able to demonstrate that it is legally compliant, well run and effective in carrying out its purposes. If you can't demonstrate these things, you should be able to explain what steps you are taking to address any difficulties.

You may find it helpful to review your charity's compliance and good practice using:

- a governance code, such as **Good Governance: a Code for the Voluntary and Community Sector**
- a quality standard, such as **PQASSO**, or another standard that is suitable for your charity
- benchmarking (comparing and learning) with another organisation
- an independent review by a suitably qualified adviser

Read about **public trust and confidence in charities**.

9.3 Trustees and delegation

Trustees often delegate day to day activities to particular trustees (such as the chair), volunteers or staff. Many charities also have power to delegate decision making to sub-committees or senior staff. Delegation can help trustees to govern more effectively, but they cannot delegate their overall responsibility. Trustees always remain collectively responsible for all decisions that are made and actions that are taken with their authority.

You and your co-trustees should set out in writing the limits of any delegated authority. You should also put clear reporting procedures in place, so you can ensure the delegated authority is exercised properly. This could include staff job descriptions, volunteers' role descriptions and committees' terms of reference. A periodic review of any delegated authorities can help to ensure that those authorities are properly managed.

The trustees should consider and decide what decisions they will not delegate. High risk and unusual decisions should not be delegated. You should agree appropriate guidelines to help assess what is likely to be high risk or unusual. Staff, particularly senior staff, can have an important role in informing trustee decision making by providing information and advice.

Trustees might be told that they should not interfere in day to day operations. You should allow staff and volunteers to carry out any functions that have been delegated to them. But you and your co-trustees must be able to ensure that delegated authority is being properly exercised, through appropriate monitoring and reporting procedures (and, where appropriate and possible, independent checking).

It's important to have clear and appropriate channels of communication between staff and trustees and ensure these are followed.

Avoid mistakes - ask questions (even ones that seem 'awkward' or 'stupid')

Part of your role is to hold people (including staff, volunteers and fellow trustees) to account for how they carry out their role or use the charity's resources. This can mean asking probing or challenging questions about information at trustee meetings, or being prepared to say 'I don't understand what this means'. You should receive timely information in a format that you can understand and use, and if necessary ask for explanations, training or a different presentation. For example, all trustees, not just the treasurer, are responsible for the charity's finances and should be able to understand, consider and comment on financial information.

10. Reduce the risk of liability

It's extremely rare, but not impossible, for charity trustees to be held personally liable:

- to their charity, for a financial loss caused by them acting improperly
- to a third party that has a legal claim against the charity that the charity can't meet

Understanding potential liabilities will help you to protect yourself and your charity by taking action to reduce the risk. This includes complying with duties covered in this guidance. It also includes deciding whether your charity should become incorporated.

10.1 Personal liability to the charity

Trustees can be held liable to their charity for any financial loss they cause or help to cause. This applies to any type of charity whatever its legal form.

The law generally protects trustees who have acted honestly and reasonably from personal liability to their charity. The Commission and the courts:

- can relieve trustees from liability if they have acted honestly and reasonably and have not benefited from their actions
- rarely enforce liability on an unpaid trustee who has made an honest mistake
- expect higher standards from trustees who act in a professional capacity or are paid for being trustees

Trustees who receive an unauthorised payment or benefit from their charity have a duty to account for (ie repay) it. The Commission can't relieve trustees from this duty.

There is no legal protection for trustees who have acted dishonestly, negligently or recklessly. However, there may be financial protection for those trustees who have made an honest mistake and can rely on the indemnity provisions in the charity's governing document, insurance cover or relief from the Commission or the court.

Find out more:

Charity Commission policy on restitution and the recovery of charitable funds misappropriated or lost to charity in breach of trust

10.2 Liability to third parties

Charities or their trustees can become liable to a third party who has a claim against the charity such as:

- breaches of an employee's terms, conditions or rights
- failing to pay for goods or services, or to fulfil the terms of a contract
- a member of the public being injured on the charity's premises
- liability to any staff pension scheme

If the charity is incorporated, the charity itself will be liable for the claim. Some types of incorporated body (companies, CIOs and Community Benefit Societies) can specifically limit the liability of their trustees and members.

If the charity is unincorporated, the trustees have to sign contracts and other agreements personally, and will have to meet any claim. The charity can normally meet any liabilities that you incur as a trustee provided you have acted honestly and reasonably. (Some charities also have power to indemnify trustees against liability arising from an honest mistake.) But if you incur liabilities that exceed the value of the charity's assets, you could be liable for any amount that the charity can't cover.

Find out more about your charity's legal structure – see section 11 of this guidance.

Find out more:

Vicarious liability of a charity or its trustees

10.3 Criminal liability

In some cases, the charity or its trustees can become liable for offences committed by the charity's staff (for example, under the Bribery Act or corporate manslaughter law).

Find out more about the **Bribery Act** (Transparency International guidance).

10.4 Reduce the risk of personal liability

To reduce the risk of becoming personally liable, you should:

- ensure trustees understand their responsibilities
- ensure the charity can meet its financial obligations, particularly before agreeing to any contract or substantial borrowing
- ensure the charity can meet any obligations to staff pension schemes
- hold regular trustee meetings and keep proper records of decisions made and the reasons for those decisions
- ensure you prevent conflicts of interest from affecting decisions
- ensure any transactions with and benefits to trustees or connected persons are properly authorised
- take appropriate advice from a suitably qualified person when you need to
- if you delegate any powers, give clear written instructions and make sure the instructions are being followed
- ensure the charity has effective management and financial controls including:
 - keep receipts and records of income and expenditure
 - receive regular financial reports
 - file accounts on time
- ensure the charity is complying with other laws that apply to it
- consider whether the charity needs additional insurance or needs to become incorporated

If your charity is unincorporated and employs staff or enters into other contracts, the trustees should seriously consider changing the charity into an incorporated form. You may need to take professional advice about this, particularly in relation to any pension liabilities which could be triggered by incorporation.

Read more about:

How to manage risks in your charity

Charities and insurance

Changing your charity into a company or CIO

Pension rules for charities

Pensions (Charity Finance Group guidance)

11. Your charity's legal structure and what it means

It's important to know your charity's legal structure (eg trust, association, CIO, company) because it affects whether:

- the charity itself can enter into contracts or employ staff, or the trustees must do these things personally
- land is held by the charity itself or by the trustees (or someone the trustees appoint for that purpose)
- trustees' liability is limited
- trustees have specific legal duties that go with that legal structure

11.1 Different legal structures for charities

An 'incorporated charity' is one that's set up in a legal form which makes the charity itself a legal entity. This is called 'legal personality', and means the charity can own property or enter into contracts in its own name. Incorporation gives trustees more protection from personal liability. Some incorporated forms can limit trustees' liability to third parties. The law places duties on board members to prevent the abuse of limited liability.

An 'unincorporated charity' doesn't have legal personality, so can't hold property or enter into contracts in its own name. Trustees' personal liability is unlimited.

This table summarises the characteristics of different legal forms and what they mean for trustees.

Legal form or structure	Incorporated (legal personality)	Title to land held by	Contracts/ employment in the name of	Liability to third parties limited	Additional duties on trustees
Trust	No	Trustees for the charity	Trustees personally (for the charity)	No	No
Association	No	Trustees for the charity	Trustees personally (for the charity)	No	No
Company	Yes	The charity	The charity	Yes	Company law
Charitable Incorporated Organisation (CIO)	Yes	The charity	The charity	Yes	Charities Act and CIO regulations
Corporation created by Act of Parliament	Yes	The charity	The charity	Yes unless excluded by the Act	No
Royal charter body	Yes	The charity	The charity	Incorporation gives some protection	No
Community Benefit Society	Yes	The charity	The charity	Yes	Co-operative and Community Benefit Societies Act

Find out more:

Charity types: how to choose a structure

Running a limited company: Directors' responsibilities

Royal Charter charities

11.2 Unincorporated charities (trusts and unincorporated associations) - holding land

Charities set up by a trust deed, constitution or similar governing document are unincorporated. This means they are not legal bodies in their own right and can't hold property in their own name; it must be held for the charity by trustees.

If the charity trustees don't want to hold legal title for any land or other property themselves, they can appoint a nominee, holding trustees (other individuals) or a custodian trustee (a company or other corporate body that has power to hold property for the charity). The governing document may explain how to do this.

Holding and custodian trustees aren't charity trustees; they can't make decisions about the management of the charity or its property, and must follow the lawful directions of the charity trustees.

You may find it simplest to vest the land in the Official Custodian for Charities. Read about **The Official Custodian for Charities' land holding service**.

Apply to transfer land or property to the Official Custodian.

12. Charity officers - the chair and treasurer

Some trustees have special roles, such as the chair and the treasurer. They are known as officers. You must comply with any specific provisions for officers in your governing document. Trustees can also nominate a trustee to take the lead on a particular matter.

Charity officers don't automatically have any extra powers or legal duties than their co-trustees, but may carry out specific roles or have specific responsibilities delegated to them. However, all trustees remain jointly responsible for the charity. For example, all trustees share responsibility for finances (not just the treasurer). A chair can only make decisions in accordance with any provision in the governing document or delegated authority agreed by the trustees, and should notify the other trustees of any decisions made.

12.1 The treasurer

The treasurer usually takes the lead at board level on:

- making sure the charity keeps proper accounts
- reviewing the charity's financial performance
- drawing up or reviewing policies for finance and investment
- ensuring that the charity has robust and effective financial controls in place
- liaising with finance staff and with the charity's independent examiner or auditor
- reporting on financial matters to the members, in a membership charity

In larger charities the treasurer may share these responsibilities with a finance committee, and staff may carry out day to day finance functions.

Find out more:

The Honorary Treasurer's Forum

12.2 The chair

The role of the chair may vary depending on the charity's circumstances. The chair usually:

- helps plan and run trustee meetings (and in a membership charity, members' meetings)
- takes the lead on ensuring that meetings are properly run and recorded
- takes the lead on ensuring that trustees comply with their duties and the charity is well governed
- might have a second or casting vote if a vote on a trustees' decision is tied, but only if this is specified in the charity's governing document
- may act as a spokesperson for the charity
- acts as a link between trustees and staff
- line manages the chief executive on behalf of the trustees

A Chair's Compass - A guide for chairs of charities and non-profit organisations.

13. Technical terms used in this guidance

This section explains some legal and technical terms used in this guidance.

‘Beneficiary’ or ‘beneficiaries’ means a person or group of people eligible to benefit from a charity. A charity’s beneficiary group is usually defined in its governing document. Some charities call their beneficiaries clients or service users.

The ‘Charities Act’ is the Charities Act 2011. This guidance occasionally refers to specific powers under this Act.

A ‘charitable incorporated organisation’, or ‘CIO’, is an incorporated legal form designed specifically for charities. See section 11 of this guidance for more detail.

A ‘charity’ is any organisation set up under the law of England and Wales for solely charitable purposes.

The ‘Commission’ means the Charity Commission, the regulator for charities in England and Wales.

A ‘community benefit society’ is an incorporated legal form in which charities can be set up. It is similar to a limited company. Community benefit societies are registered by the Financial Conduct Authority. Charitable community benefit societies are currently exempt charities.

‘Excepted charities’ don’t have to register with the Commission or submit annual returns. Apart from that, the Commission regulates them and can use any of its powers if it needs to. This only applies to specified churches, Scout and Guide groups and armed forces charities whose income is below £100,000. Read more about **excepted charities**.

An ‘exempt charity’ is exempt from registration and direct regulation by the Commission. Most exempt charities have a different charity regulator (or ‘principal regulator’). Trustees of exempt charities have the same basic duties as other charity trustees. Read more about **exempt charities**.

The ‘governing document’ is the legal document that sets out the rules that govern a charity. These include the charity’s objects and, usually, how it must be administered. It’s usually a trust deed, constitution, CIO constitution or articles of association. Some charities have a different type of document such as a conveyance, will, royal charter or Commission scheme. **Find out more about governing documents**.

‘Have regard to’ does not have a strict legal definition, but generally means ‘take into account’ or ‘consider’, rather than ‘comply with’.

‘In the charity’s best interests’ means what the trustees believe will best enable the charity to carry out its purposes for the public benefit. See section 6 of this guidance for more detail.

An ‘incorporated charity’ means a charity formed as a company, CIO, royal charter body, community benefit society or a corporation created by Act of Parliament. Being incorporated means the charity itself is a legal body. It can own property or enter into contracts in its own name. Incorporation gives trustees more protection from personal liability. See section 11 of this guidance for more detail.

Misconduct includes any act (or failure to act) that the person committing it knew (or ought to have known) was criminal, unlawful or improper.

Mismanagement includes any act (or failure to act) that may cause charitable resources to be misused or the people who benefit from the charity to be put at risk.

A charity's 'purpose' is what it is set up to achieve (for example, relieving poverty or promoting health).

A charitable purpose is one that:

- falls within one or more of 13 'descriptions of purposes' listed in the Charities Act
- is for the public benefit (the 'public benefit requirement')

A charity's 'objects' are a written statement of its purposes - they must be exclusively charitable.

A 'registered charity' is a charity registered with the Commission.

A 'suitably qualified person or adviser' is someone who the trustees could reasonably expect to be competent to advise them about a particular matter. This includes professional advisers (such as solicitors, accountants and surveyors). It could also include (for example) a member of the charity's staff, a suitably qualified trustee or an adviser from another organisation.

'Trustee' means a charity trustee. Charity trustees are the people responsible for governing a charity and directing how it is managed and run. The charity's governing document may call them trustees, the board, the management committee, governors, directors, or something else. The Charities Act defines the people who have ultimate control of a charity as the charity trustees, whatever they are called in the charity's governing document:

- a 'custodian trustee' is a corporation appointed to hold property for a charity; it isn't a charity trustee and must act on the lawful instructions of the charity trustees
- 'holding trustees' are individuals appointed to hold property for a charity; they aren't charity trustees, they must act on the lawful instructions of the charity trustees and in accordance with any provisions in the governing document

An 'unincorporated charity' is a charity set up as a trust or association. Being unincorporated means the charity isn't a legal body (so it can't hold property or enter into contracts) in its own right. Trustees' personal liability isn't limited. See section 11 of this guidance for more detail.

Charity Commission Guidance for Trustees

Public benefit: rules for charities

Charity trustees must 'have regard' to the Charity Commission's public benefit guidance when carrying out activities to which it's relevant.

About public benefit

- In England and Wales, public benefit is part of what it means:
- to be a charity - your charity must have only charitable purposes which must be for the public benefit ('the public benefit requirement')
- to operate as a charity - as a charity trustee, when running your charity you must carry out your charity's purposes for the public benefit
- to report on a charity's work - as a charity trustee, you must report each year on how you have carried out your charity's purposes for the public benefit and confirm that, in doing so, you have had regard to the Charity Commission's public benefit guidance where relevant

All charity trustees have a duty to 'have regard' to the commission's public benefit guidance when exercising any powers or duties to which the guidance is relevant.

As a charity trustee, 'having regard' to the commission's public benefit guidance means being able to show that:

- you are aware of the guidance
- you have taken it into account when making a decision to which the guidance is relevant
- if you have decided to depart from the guidance, you have a good reason for doing so

The public benefit requirement

Your charity's 'purpose' is what it is set up to achieve. For an organisation to be a charity, each of its purposes must be for the public benefit. The Charities Act 2011 calls this the 'public benefit requirement'.

The public benefit requirement has two aspects:

The 'benefit aspect'

To satisfy this aspect:

- a purpose must be beneficial - this must be in a way that is identifiable and capable of being proved by evidence where necessary and which is not based on personal views
- any detriment or harm that results from the purpose (to people, property or the environment) must not outweigh the benefit - this is also based on evidence and not on personal views

The 'public aspect'

To satisfy this aspect the purpose must:

- benefit the public in general, or a sufficient section of the public - what is a 'sufficient section of the public' varies from purpose to purpose
- not give rise to more than incidental personal benefit - personal benefit is 'incidental' where (having regard both to its nature and to its amount) it is a necessary result or by-product of carrying out the purpose

In general, for a purpose to be a charitable purpose it must satisfy both the benefit and the public aspects. However, charities for the relief (and in some cases the prevention) of poverty need only satisfy the benefit aspect.

Your organisation cannot be a charity if it has some purposes that are charitable and some that are not. For more information, read [Public benefit: the public benefit requirement](#).

Carry out purposes for the public benefit

As a charity trustee, it's your responsibility to run your charity in a way that carries out its purposes for the public benefit. This means:

Make decisions to ensure your charity's purpose provides benefit

This means understanding how the purpose is beneficial and carrying it out so as to benefit the public in that way.

Make decisions to manage risks of detriment or harm to your charity's beneficiaries or to the public in general that might result from carrying out the purpose

This means identifying risks of harm, minimising the risks and making sure that any harm that might arise is a minor consequence of carrying out the purpose.

Make decisions about who benefits in ways that are consistent with the purpose

This means knowing who can potentially benefit from the purpose and giving proper consideration to the full range of ways in which you could carry out your charity's purpose. You may choose to focus on certain beneficiaries. You can do this provided that you have proper reasons for doing so and you make your decisions in accordance with the framework for trustee decision making.

Other factors that can also affect who can benefit from your charity's purpose include membership provisions, physical access to facilities provided by the charity (such as opening hours) and charging for a charity's services.

Where your charity's charges are more than the poor can afford, you must run it in a way that makes more than minimal provision for the poor to benefit.

Make decisions to make sure any personal benefits are no more than incidental

This means making sure that any personal benefits people receive (having regard both to its nature and to its amount) are no more than a necessary result or by-product of carrying out the purpose.

You must make decisions that are within the range of decisions that trustees could properly make in those particular circumstances. Provided that you do that, then you will have made a 'right' decision. It is not for the courts or the commission to tell trustees which decision to make if there is a range of decisions open to them.

This means that, as a charity trustee, you generally have a choice about how to carry out your charity's purposes, provided that you exercise your discretion in a way which:

- is in accordance with your charity's purpose (so not operating outside of that purpose)
- is for the public benefit
- has regard to the commission's public benefit guidance where relevant
- is in accordance with the general framework or [trustee decision making](#)

The commission would expect you and the other trustees to address and resolve a situation in which your charity's purposes were not being carried out for the public benefit. For more information, read the commission's guide: [Public benefit: running a charity](#).

Report on public benefit

If your charity is registered, your trustees' annual report must explain how you have carried out its purpose for the public benefit. A detailed report is only required if your charity's gross income exceeds £500,000; otherwise a brief summary is all that's needed.

You must also state whether you and the other trustees had due regard to the commission's public benefit guidance when exercising any powers or duties to which the guidance is relevant.

If you send the commission your charity's trustees' annual report, it will be displayed on [the public register of charities](#). The commission provides [examples of good public benefit reporting](#) but it does not endorse individual reports.

The commission checks a random sample of trustees' annual reports for the quality of reporting, including about public benefit, and would consider persistent non-reporting of public benefit a potential regulatory issue.

However, reporting on public benefit should not just be seen as a legal requirement that trustees must meet and that the commission regulates. Done well, it can help you stay focused on what your charity is there to achieve. It can also help you demonstrate the value and impact of your charity's work to its supporters, beneficiaries, grant makers and funding bodies.

For more information, read the commission's guide: [Public benefit: reporting](#).

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The Charity Commission

Applies to:

England and Wales



Guidance

Charity governance, finance and resilience: 15 questions trustees should ask

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Key messages

In '**The essential trustee: what you need to know, what you need to do (CC3)**' the Charity Commission sets out the 6 key duties for charity trustees and what these cover - they are all relevant but 3 are particularly so when using this checklist:

- act in the interests of their charity and its beneficiaries
- protect and safeguard the assets of their charity
- act with reasonable care and skill

To deliver against these duties, charity trustees need to be able to identify the critical issues - the charity's purposes and plans, its solvency, its resilience and quality of governance - and to be able to review these at regular intervals. The Commission has designed these 15 questions to help charity trustees carry out such a review and decide what they need to focus on.

The Commission has also included links to guidance that can help trustees access further information on a particular issue.

Of course, what will apply will depend on the size, type and activities of the charity.

Strategy: a plan of action designed to achieve a long-term overall aim

1. What effect is the current economic climate having on our charity and its activities?

For example:

- are we focusing on the right activities, or are we doing things that are over and above our core charitable aims? if we are, should we stop doing those things?
- will our funding support our strategic plans? if we are relying on a single source of income (such as grant funding or investment income), should we look at other sources of funding?
- how do we think the political, economic, social and technological environment in which we work is going to change and is this reflected in our strategic planning?
- does this environment present us with any immediate challenges or opportunities? for example:
 - recruiting volunteers including those with different skills
 - collaborating with others to provide skills, accommodation, equipment or increased buying power
 - re-negotiating contracts
 - bidding for public service delivery contracts
 - taking advantage of on-line services - for example banking
- are there particular risks we should consider? for example:
 - increased (or reduced) demand for services, or changes in the type of services needed
 - reduced income from investments and savings
 - funding uncertainty
- should we think about whether we want to, or are able to, continue operating? could closing the charity and passing its resources to a similar charity be a better use of scarce funding and resources?

Find out more:

Managing a charity's finances: planning, managing difficulties and insolvency (CC12)

Managing charity assets and resources: an overview for trustees (CC25)

Making the most of our finances

2. Are we financially strong enough to continue to provide services for our beneficiaries?

For example:

- do we have up to date information about our charity's finances, cash flow and debts/obligations? the financial information provided at each trustee meeting should typically include:
 - the latest management accounts
 - a comparison of budget to actual figures
 - an explanation for variances between forecasts and what actually happened
 - details of cash flow and closing bank balances
- do we have access to the right type of financial/professional advice?
- based on the information we have, can we:
 - tell what might happen to our future income?
 - protect (or increase) our current income?
 - continue our programme of activities for the foreseeable future?
 - make our money go further, for example by identifying costs we can cut?
 - fulfil our contractual obligations?
 - meet our financial commitments as they fall due?
 - tell if the charity is facing potential insolvency?
- are we clear about what core activities we want to sustain under any circumstances?
- are we clear about the charity's financial prospects for the longer term?
- are we confident that we will be able to identify and address potential insolvency in good time?
- have we planned for an orderly wind up of the charity's affairs if the charity is no longer viable?

Find out more:

Managing a charity's finances: planning, managing difficulties and insolvency (CC12)

3. Do we know what impact the social and/or economic climate is having on our donors and support for our charity?

For example:

- how secure is our existing funding, for example contracts from other bodies for service delivery, statutory funding or grants from other bodies, for the foreseeable future?
- is it possible to diversify or broaden our sources of income? for example, there are new opportunities for funding such as organisations, charities and investors that can provide loans and other support to charities as a social investment
- do we need to rethink our fundraising strategy - is it in line with current guidance and good practice?
- have we considered other factors that might influence our supporters? reputational issues and any of a charity's policies can affect the support of its donors, for example the way the charity invests its money or the way it fundraises

Find out more:

Charity fundraising: a guide to trustee duties (CC20)

Charities and investment matters: a guide for trustees (CC14)

Charities and public service delivery: an introduction (CC37)

4. What is our policy on reserves?

For example:

- do we have a clear, published reserves policy that meets the needs of our charity?
- what will the consequences be for our charity's beneficiaries (in particular vulnerable beneficiaries) if the charity has no financial reserves to enable it to continue in the event of loss of regular income?
- does our policy:
 - fully justify and clearly explain keeping or not keeping reserves?
 - identify and plan for the maintenance of essential services for beneficiaries?
 - reflect the risks of an unplanned closure, our spending commitments and our potential liabilities and financial forecasts?
 - help to address the risks of unplanned closure on our beneficiaries, staff and volunteers?
- do we know what the level of our reserves is now? we need to know what assets are freely available to spend and not already set aside or designated for particular purposes
- have we considered:
 - new priorities and needs (for example an increased demand for our services or a change in our activities) which have arisen because of changes in our financial and social environment?
 - the level of reserves needed to meet new priorities and needs, a longer term strategy to replenish reserves, or spending them in their entirety?
 - using reserves to restructure our work?

Find out more:

Charities reserves: building resilience (CC19)

Charity reserves and defined benefit pension schemes

Charity reporting and accounting: the essentials (CC15b)

5. Are we satisfied with our banking arrangements and our current and future investment policy?

For example:

- how often do we review our banking arrangements?
- does our bank offer the range of services that we need? for example:
 - online banking with suitable security measures
 - the access to cash on deposit that we need
 - a loan facility
- have we considered the costs and benefits of our current and deposit accounts to ensure competitive interest rates?
- are our deposits protected by the Financial Services Compensation Scheme?
- have we looked at the services offered by other banks with a view to switching our provider?
- have we recently reviewed our investment policy to ensure that it reflects and can meet our current and future needs?
- have we arranged for regular investment policy reviews - sudden changes in the economic climate might mean they should take place more regularly?
- have we reviewed the diversity, suitability and risks associated with our spread of investments?
- have we thought about whether an ethical investment policy would be right for our charity?
- could social investment be an effective way to meet our aims?

Find out more:

Charities and investment matters: a guide for trustees (CC14)

Banking for charities - Charity Finance Group

6. Have we reviewed our contractual commitments?

For example:

- do we know exactly what our contractual commitments are - they might include office leases, rental agreements, equipment hire?
- could we collaborate with other organisations to save costs on essential support or back office expenses?
- do we understand the obligations of any existing or new contracts - there might insurance requirements or penalty clauses for non delivery?
- are these obligations manageable for our charity now and for the remainder of the contract?
- how do we terminate our contracts if necessary?
- should we review any contracts we have with fundraisers for value for money and reputational risks?
- if we cannot meet the terms of a contract, are we aware of the financial and reputational risks we could face?

Find out more:

Charities and risk management (CC26)

Managing a charity's finances: planning, managing difficulties and insolvency (CC12)

7. Have we reviewed any contracts to deliver public services?

For example:

- do we understand all the obligations imposed on us by our existing contracts?
- are these obligations manageable in light of the charity's current and probable future situation?
- can we terminate any contracts we are party to if necessary?
- if we cannot meet the terms of a contract are we aware of the financial penalties and reputational risks we could face?
- have we planned for what happens when the contract ends?
- are we fully aware of the risks and obligations attached to taking on new public service delivery contracts?
- have we explored the different ways in which we can achieve our charity's aims as an alternative to entering into a new contract?

Find out more:

Charities and public service delivery: an introduction (CC37)

8. If we have a pension scheme, have we reviewed it recently?

For example:

- do we know the risks and liabilities attached to our charity's pension scheme?
- what plans do we have to manage those risks and liabilities?
- do we make it clear in our financial reporting what our pension liabilities are and what we are doing to manage any risk to our charity?
- do we need to take specialist advice?

Find out more:

Charity reserves and defined benefit pension schemes

9. How can we make best use of any permanent endowment investments we hold?

For example:

- do we know whether any of our funds are permanent endowment and can only be invested to produce income for our charity or used as specified by the donor?
- do we think that the interests of our charity and its beneficiaries would be better served by making use of the greater flexibility to spend permanent endowment offered by the Charities Act?
- can we take advantage of the power to use a total return approach to investment (this is usually only appropriate for larger permanently endowed charities)?

Find out more:

Permanent endowment: rules for charities

Total return investment for permanently endowed charities

Governance

10. Are we an effective trustee body?

For example:

- do we understand:
 - the charity's aims as set out in its governing document?
 - what our charity will do, and what we want it to achieve?
 - that all of the charity's activities are intended to further or support its purposes?
 - how the charity benefits the public by carrying out its purposes?
- have we read 'The essential trustee (CC3)'?
- have we recently reviewed our performance as a trustee body?

- are we using our time together as a board efficiently and effectively? do we read the accounts, reports and other background material before the meeting?
- have we recently reviewed the skills, knowledge and experience we have as a trustee body? have our needs changed?
- are we aware of the importance of effective communication and negotiation with those with an interest in our charity - these could be donors, supporters, beneficiaries, staff and volunteers?
- do we have sufficient oversight and knowledge of the activities of external people and organisations acting on our behalf?
- do we have access to the guidance we need to ensure that our decisions are made in the best interests of our charity and its beneficiaries?
- do we know what, if any, conflicts of interests might affect our decision making?
- do we need to monitor the charity's affairs more closely, for example by meeting more frequently?
- do we feel able to take difficult or unpopular decisions if needed, for example about:
 - ending or changing some activities?
 - changing staffing levels?
 - changing staff benefits?
 - merging with another charity?
 - winding up the charity?

Find out more:

The essential trustee: what you need to know, what you need to do (CC3)

11. Do we have adequate safeguards in place to prevent fraud?

For example:

- do we have proper financial controls and procedures in place to prevent fraud?
- do they need reviewing and updating, to take account of any increased risk of fraud as a result of changes in the economic and technological environment the charity operates in? an example might be the greater risk of computer fraud
- are there controls and procedures in place to reduce the risk of misuse of personal data?

Find out more:

Charity money: how to keep it safe

Protecting charities from harm: compliance toolkit

Charity fraud: a guide for the trustees and managers of charities

Making best use of resources

12. Are we making the best use of the financial benefits we have as a charity?

For example:

- do we understand how to make the most of Gift Aid?
- are we making the most of our potential tax relief as a charity?
- are we aware of any financial help available for charities from other bodies - they may be governmental, other organisations or charities? if yes, have we considered whether it is appropriate for our charity, and whether to apply for it?
- do we know where to go for information on how to take advantage of the growing interest in social investment into charities?
- have we considered whether any trading activities should be hived off to a subsidiary trading company in order to avoid tax liabilities?

Find out more:

Claiming Gift Aid as a charity or CASC

Trustees trading and tax: how charities may lawfully trade (CC35)

Charity trading: selling goods and services

13. Are we making the best use of our staff and volunteers?

For example:

- are we aware of our obligations as employers and do we know where to go for further information?
- do we have a safeguarding policy that clearly lets trustees, staff, volunteers and beneficiaries know what their roles, rights and responsibilities are?
- do our staff have the right mix of skills and experience that our charity needs to be effective?
- could we introduce more flexible patterns of working in order to focus our resources where most needed?
- do we still need the same type and number of staff? are there better opportunities to recruit in a competitive job market?
- are we making the best use of any interest in volunteering for charities?
- are we proactive in attracting potential volunteers and have we reviewed the way we support and use them?

Find out more:

Advisory, Conciliation and Arbitration Service (ACAS)

Workforce - NCVO

14. Have we considered collaborating with other charities?

For example:

- are there any of our activities that could be more effective by working with others, such as sharing equipment, sharing staff, running joint training sessions, purchasing or sharing back office services?
- do we know how to identify other charities with similar purposes operating in our area that we could contact to discuss possible collaboration or joint working?
- should we consider the possibility of a formal merger with another charity or charities in the interests of our beneficiaries? this will be important if your charity wishes to wind up or is facing financial difficulties

Find out more:

Search the charity register

Collaborative working and mergers: an introduction (CC34)

15. Are we making the best use we can of our property?

For example:

- have we recently reviewed how we use any assets, such as buildings or equipment we own or rent? could we use them differently, share them with others, re-negotiate terms or sell them?
- have we reviewed the costs and benefits of the way we hold property? for example, should we buy, rent or lease?
- have we reviewed any insurance policies we hold - can we get a better deal?
- what will any change in use of our property mean in terms of insurance?

Find out more:

Charity land and property

Charities and insurance (CC49)



CHARITY COMMISSION
FOR ENGLAND AND WALES

COMPLIANCE TOOLKIT: PROTECTING CHARITIES FROM HARM

Chapter 4: Holding, moving and receiving funds safely in the UK and internationally - summary



All charities need money or financial assistance of some kind to carry out their work. They may receive money from donors and sponsors, from fundraising activities, from membership subscriptions or from charging for their charitable services. They spend money in a variety of ways, for example on running the organisation, on charitable projects to help beneficiaries and by giving grants to other charities and organisations. Charities which work internationally often move money across international borders and spend it in other countries, encountering different financial systems and needing to use different currencies.

Most countries in the world have formal banking systems in place. Using such systems is a prudent and responsible way to ensure that charity funds are safeguarded, and that there are appropriate audit trails of the sort which trustees must keep for the receipt and use of money. This chapter explains the need for charities to have and use bank accounts; what trustees' duties are when using the banking system; and the particular issues which arise in connection with exchanging sterling for other currencies.

However, charities may need to use and work in cash to some degree, some charities more than others. Charities may need to use alternative financial systems to hold or move the charity's money, or when spending it in furtherance of the charity's purposes, although these are more inherently risky than using formal banking systems. These include Money Service Businesses, agents using alternative remittance systems, Payment Services, cash couriers, or even other charities and NGOs. This guidance provides advice to trustees about what things they need to consider if they have to use these alternative methods, and considers the various ways in which funds can be transferred in circumstances where the use of banking facilities may not be possible.

We also give advice on risk management factors trustees need to consider when these methods are used and guidance on the sort of financial controls which may be appropriate.

We provide a number of practical Tools that trustees can use to help manage the risks and protect their charity's funds from harm.

What are trustees' legal duties and responsibilities?

Whatever the charity's activities, all charity trustees are under legal duties to safeguard the charity's money and assets and to act prudently. Trustees also have a duty to avoid undertaking activities that may place their funds, assets or reputation at undue risk.

This means that when receiving, holding and moving funds, trustees need to ensure they take proper care to ensure the charity's money is held safely, not placed at undue risk and reaches the intended destination for the purposes intended.

As part of their duty of care, trustees must also ensure that they use reasonable care and skill when making decisions about financial procedures including movement and use of money. The greater the risks, the more important it is that trustees can show that they have discharged their duty of care.

Ensuring strong financial management procedures and proper internal controls, and applying a common sense approach, will help trustees meet their duties. They also need to promote the transparency and accountability of their charity, particularly as regards its finances, which is so important for public trust and confidence in charities.

What is the purpose of this chapter?

The purpose of the chapter is to remind charity trustees of their legal duties and responsibilities in respect of holding, moving and receiving funds safely, including when moving those funds internationally, and to help them with practical advice and guidance to ensure they properly discharge those duties.

Who should read this guidance?

This chapter is primarily intended for trustees and other relevant people in their charity. Trustees' duties apply when the charity receives, holds, moves or uses money. For some charities there may be a limited number of these transactions, for others there may be tens of thousands. We hope this guidance, particularly the Tools, will be of use to smaller and medium sized charities and also to those charities which may need to use methods other than the formal banking system, because of the nature of their activities, the communities they serve or the location of their operations.

The guidance may also be useful to a charity's professional or other advisers who provide advice on what measures and controls a charity needs to have in place. A charity's partners, intermediaries and providers of financial services may find it helpful to know what the trustees' responsibilities are under charity law, so they understand what a charity may be asking of them and any requirements they have.

What does the guidance contain?

1. Using the banking system

Charity trustees have a legal duty to protect their charity's funds and ensure that they are used for the charity's proper purposes. Good financial stewardship, including having appropriate banking arrangements, is a vital element of good governance. It is difficult to see, where regulated banking services are available, how trustees could show they discharged this duty if they did not use them in order to ensure the charity's funds were secure.

In order to operate effectively and transparently when delivering aid or undertaking charitable work, every charity must have access to formal banking facilities.

When they use banking systems they should choose only those organisations which are legally entitled to operate and offer such services. In the UK those organisations have to be 'authorised' and are usually authorised and regulated by the Financial Services Authority.

The Commission would have serious concerns if a charity were not able to operate because of a lack of banking services. If these services are declined or withdrawn from a charity, harm could result to the effective delivery of its charitable work and its ability to operate transparently. It could also have an adverse impact on public trust and confidence in that charity and on charity generally. It may also have a wider impact upon the community that the charity works with or represents.

2. Operating bank accounts

Having a bank account is an integral and indispensable element of a prudent and responsible financial management system.

It is for the charity to decide which bank or other financial organisation it chooses to hold its account with. However, trustees should, in acting in the best interests of the charity, ensure that the banking arrangements they choose for their charity, and the appropriate and proportionate levels of checks that are built into them, meet the charity's needs and help it to deliver services effectively.

Trustees must follow any relevant clause in the charity's governing document that specifies who is authorised to sign cheques and authorise expenditure. If there is no such provision, the bank mandate must specify at least two trustees as signatories, unless the trustees can reasonably claim that it is necessary for employees to sign cheques to allow the charity to operate.

It is up to trustees to decide, as a matter of policy, how many accounts they have. There are benefits and disadvantages in holding more than one account. Trustees should ensure that their charity has the number and types of accounts which are appropriate to its needs.

Charities should consider using banks which operate accounts that are specifically designed for charities.

Where charities are operating internationally or in complex environments, there may be a need to have non-UK bank accounts in countries where charitable services are to be delivered. But trustees still need to be in complete control of such accounts. This may require additional financial reporting and additional risk management procedures.

3. Operating bank accounts - what financial controls should be used?

Modern banking systems are generally highly sophisticated and reliable, but this does not mean that the banking system is entirely risk-free and that trustees can simply assume that charitable funds held in a bank account will always be secure. Apart from the risk of loss caused by honest mistake or lack of attention to procedures, trustees should be aware that charities, like other organisations, are vulnerable to fraudulent activity.

Financial controls over cash held in bank and building society current accounts and deposit accounts are important as they provide assurance about the security of cash holdings, and ensure that the amount of cash held, at any one point in time, can be identified.

Trustees must ensure that they exercise full supervisory control over their charity's bank accounts. In practice, this means the trustees of smaller charities will need to do so personally. For larger charities, they may need to delegate day to day supervision and control to a member of staff. If they do this, they need to ensure that the member of staff is properly supervised; that the trustees receive regular reports; and that arrangements are in place for them to inspect banking records.

Trustees must consider what practical controls need to be in place in order to protect funds held in bank accounts, in particular with respect to payments by cheques, debit cards, credit cards, charge cards, direct debits, standing orders and Bacs direct debit; and in relation to electronic banking.

Individuals who are unconnected to a charity must not be given signatory rights to the charity's bank accounts. It would be a breach of trustees' duty of care if they allowed a third party to access the charity property as they would be unable to safeguard its application for the purposes of the charity.

Charities should not allow the opening of any account in the name of a charity, or an account which receives their charitable funds, if it is owned or controlled by a third party. Where, for example, funds are raised for the charity by third parties, they should be deposited in accounts which are in the charity's name and controlled by the charity.

We recommend that:

- bank reconciliations are prepared at least monthly for all accounts, reviewed by a second person and any discrepancies resolved
- a list of all its bank accounts is kept and reviewed for dormant accounts which should be closed
- the opening or closing of accounts should either be authorised by the whole trustee body, or if delegated, the trustees should be informed of changes

- third parties should not be allowed to open bank accounts in the charity's name, or use the charity's bank account to receive or transfer money
- the costs and benefits of the current and deposit accounts held are regularly reviewed to ensure bank charges and/or rate of interest are competitive and that the credit rating of the institution is acceptable
- for internet banking, a dual authorisation system is used

4. Exchanging foreign currency

Charities may use their own banks, or registered Money Service Businesses (including bureaux de change), in order to exchange sterling for other currencies (or vice versa).

In order to discharge their legal duties, trustees need to ensure they consider a range of factors when using these services, including checking that the institutions they use are legitimate and authorised to operate or are registered with the appropriate agency (such as HMRC or the Financial Conduct Authority); the cost of making the transactions and the exchange rate risks.

Trustees should ensure, as with any other financial transaction, that adequate financial controls are in place. Transactions should be properly authorised, and properly recorded and documented with the use of receipts and other records; and there should be regular budget monitoring, including a review of foreign exchange gains and losses. In turn, this analysis should be taken into account when considering and planning future project activities.

5. Donations from, and payments to, sources outside the UK

Depending on the circumstances, and applying the charity's risk management processes, trustees will need to take care, and may need to take extra steps, in identifying, verifying, and handling donations received from sources outside the UK; and in applying money outside the UK.

Whilst trustees can accept anonymous donations, trustees should be able to identify and be assured of substantial donations. Good due diligence helps assess the risks, ensures it is appropriate to accept the money and gives assurance the donation is not from any illegal or inappropriate source.

If a charity, as part of its work, is moving money to an organisation overseas, including charities or NGOs, then it should try to do so by way of electronic bank transfer to a bank account held in the name of the organisation. Payments will usually go through international bank clearing systems.

However, in some countries banking services will not be common and business may be conducted in cash or using alternative systems. This may impact on a charity's ability to transfer money to that country for use there, and/or it may affect the charity's ability to fund activities or give aid to beneficiaries. Even if a country does have banking services, the regulation and reliability of those services will differ from country to country.

These factors need to be taken into account by trustees of charities, and in some cases additional safeguards such as specific transaction monitoring, to ensure the money has reached its intended destination, may be required.

The Finance Act 2010 states that charities' expenditure overseas could be considered non-charitable and therefore liable for tax if organisations do not take the steps HMRC considers are reasonable to ensure that the funds were used for charitable purposes. If a charity cannot provide evidence that it took the necessary steps, the expenditure may be deemed non-charitable and tax exemptions would be restricted accordingly.

6. Using and transacting in cash

If formal banking facilities are available it is difficult to see how cash transfers, with all their inherent risks, are compatible with the duty on trustees to protect their charity's funds and ensure that they are used for the charity's proper purposes. This may be challenging for charities operating in certain countries. There may be some areas that do not allow for any other methods of moving funds, for example in an area of conflict where no formal banking system is operating. The Commission strongly advises trustees, their employees, volunteers and agents against moving significant amounts of cash from one location to another on their person or in personal luggage. This could involve an unacceptably high degree of personal and financial risk.

Payments in cash should be kept to a minimum due to the greater risk that handling cash presents, and the difficulties that can arise in establishing clarity and control over significant cash transactions. For more significant or regular amounts trustees need to be sure this is justified in particular or exceptional circumstances; and that consideration has been given to appropriate controls and the regulatory framework in the UK and elsewhere.

There are particular requirements to declare cash to HMRC when leaving or entering the UK, currently above a threshold of 10,000 euros. Details of how to declare to HMRC are set out on [GOV.UK](https://www.gov.uk).

7. Cash transfers - what financial controls should be used?

Given the safeguards that are already in place, charities should use the banking system where possible. However, where a charity needs to make payments in cash we recommend that:

- cash payments are for small amounts only
- cash should be paid out of a petty cash float specifically kept for such payments, and not from incoming cash
- details of payments should be entered in a petty cash book
- supporting documentation for the cash payment should be authorised by someone other than the person who maintains the petty cash or the person making the payment
- the balance of petty cash in hand, and the records, should be kept securely
- regular spot checks of the petty cash float should be made by an authorised person independent of the person who maintains the petty cash

Trustees must make sure that full records of receipt are made and kept and they take appropriate steps to ensure who they are paying the cash to is legitimate, and that the money will be used as intended if it is for charitable use.

8. Using cash couriers

There is no rule which states that charities cannot use them in principle but there are significant risks with them. The trustees need to be aware of the risks and be able to show that they have taken appropriate steps to manage those risks to the charity.

In some cases, the risks may be so high, that it means the charity trustees cannot use them without exposing the charity to undue risk and risking their own personal liability.

A significant risk for charities that use cash couriers is that this method of transfer is now recognised as a method which has been used to move funds for terrorist purposes. Cash smuggling is also one of the major methods used by terrorist financiers, money launderers and organised criminals to move money in support of their activities.

Another risk is that there is no requirement for cash couriers to be registered as a Money Service Business with HMRC, so extra care in using them is required. Charities should, as with other agents and partners, ensure that appropriate due diligence is carried out on the cash courier, and that they take reasonable steps to safeguard the money. At the very least, we would expect trustees to have agreed in writing what is expected from the agent, how much money is being carried and in what currency, when it is to arrive by, and who it is to be paid to and how at the end destination. This should be in place and agreed before the money is handed over.

9. Using intermediaries

In this guidance these are defined as organisations, used by charities to move funds, which are outside the formal banking system. In particular these are:

- Money Service Businesses - including bureaux de change and agents using alternative remittance systems, referred to as Informal Value Transfer Systems (IVTS)
- Payment services
- Cash couriers
- Other charities or NGOs

Trustees should, where possible, use the charity's banking arrangements to receive, hold and move funds, unless there are exceptional or particular circumstances. For example, some charities work in environments where the use of methods outside formal banking is common. In such cases we recognise that charities may need to use these methods if banking facilities are not available. They are, however, more inherently risky than traditional banking methods and, therefore, trustees need to ensure that these risks are mitigated and appropriate safeguards are in place.

These methods are likely to be less transparent and require greater resource and effort on the part of the charity to ensure adequate systems are in place to protect the charity, and to ensure proper records are kept to show the legitimate movement and use of charitable funds.

Trustees should ensure that funds transferred by such methods are strictly limited to meeting essential needs where conventional banking systems cannot be used and avoid, where practical, making subsequent transfers until receipt of a previous transfer can be confirmed.

In order to ensure that the charity's funds are properly safeguarded and applied in furtherance of the charity's purposes, trustees must be satisfied and, if necessary be able to show, that:

- their use of intermediaries is in the best interests of the charity
- they have considered the risks and conducted effective risk management to assess these risks (as well as the benefits and advantages) and they are satisfied that proper and adequate safeguards and controls are in place to protect the charity's funds
- particular consideration has been given to practical aspects of risk management and the general political and social context of the transactions
- all the relevant regulatory issues have been considered and addressed

10. What risk management issues should be considered when using intermediaries?

If a charity needs to use intermediaries to transfer the charity's funds the trustees should assess and manage the associated risks. In view of the range of options now available for moving funds using intermediaries, it is important that trustees consider the full range of options and make decisions based on a proper assessment of the benefits and risks associated with particular methods. It would also be prudent to seek advice from other charities working in similar geographical areas or conditions, from appropriate regulators, or from experienced people who have relevant experience in this field. Trustees should also shop around and compare the costs of various service providers including the arrangements of their own bank. The key factors for trustees to consider include:

Speed - how urgent is the proposed transaction? Would it be acceptable to allow the transaction to go through the formal banking system, possibly taking a little more time, or is there a pressing need to transfer funds through intermediaries where that is quicker?

Cost - whilst trustees should always be mindful of the cost of transactions, this is not the over-riding consideration.

Security - this is a fundamental issue for trustees who should be satisfied, through their risk management arrangements, that the proposed transaction is not putting charitable funds at any undue risk.

Financial controls - are the charity's financial controls robust enough for the use of these methods or are additional safeguards required for a particular transaction?

Regulation in the UK - the trustees must be satisfied, through appropriate checks of the registered or other status of service providers, that they are regulated, whether it is by the FSA, HMRC, or some other appropriate body.

Regulation overseas - Trustees should consider the legality of transactions, including IVTS transactions, in the destination countries for transferred funds, and as far as possible be aware of the local laws affecting these transactions.

Political and social conditions in the destination country - charities should consider the local or regional conditions of the destination country in their risk management, for example the general security of the country and its financial sector.

The international context - the very nature of IVTS makes them susceptible to money laundering and terrorist financing. In this context trustees need to be aware of the international backdrop to these issues, in particular the Financial Action Task Force's (FATF) **Special Recommendation VI Alternative Remittance** which focuses on informal money and value transfer systems, and recommends that countries should require licensing or registration of persons or legal entities providing money transfer services, including through informal systems.

11. Using intermediaries - what financial controls should be used?

In principle the appropriate controls in respect of transfers using intermediaries should match as far as possible the financial controls, record keeping and assurance systems associated with formal banking. Trustees will need to consider how the controls associated with the use of intermediaries compare with those for formal banking and ensure that parallel controls are in place before funds are remitted.

Whether transfers are made through formal banking or intermediaries, trustees must monitor such transactions, and get assurance that the funds have reached the right place and are properly applied in order to discharge their duty of care to the charity.

Trustees should consider a wide range of financial controls, risk management and assurance procedures, for example:

- Trustees should be able to demonstrate effective management and conduct when using intermediaries, including identification and management of any problems and proper decision making.
- Trustees should document and agree the policy and the circumstances when such methods may be used.
- Expenditure should be subject to the same authorisation procedures as for bank payments using formal banking.
- There is an obligation for charities to keep proper records, so an audit trail must be kept for each transaction in the chain of transactions including payment vouchers (equivalent to cheques) and post transaction documentation (equivalent to bank statements) providing details of the intermediary's name and address, amount and date of payment, and the name of the person making the payment, the fee charged and the payee. The trail should show the funds going to the intermediary from a UK bank account and evidence of collection at the final destination.
- Transaction records and receipts should be sought from those that business is conducted with and clear accounting records kept of these.
- Checks should be carried out to confirm that the funds have been received by ultimate recipient and an accounting record kept, such as an email or other notification.
- Subsequent transfers should, where practical, be avoided until receipt of a previous transfer can be confirmed.

Manage a conflict of interest in your charity

How to identify, deal with and record conflicts of interests within your charity.

Published 23 May 2013

From:

[The Charity Commission](#)

Applies to:

England and Wales

Contents

1. [About conflicts of interest](#)
2. [How to identify a conflict of interest](#)
3. [How to deal with a conflict of interest](#)
4. [How to record a conflict of interest](#)

About conflicts of interest

You have a legal duty to act in your charity's best interests when [making decisions as a trustee](#). If there's a decision to be made where a trustee has a personal or other interest, this is a conflict of interest and you won't be able to comply with your duty unless you follow certain steps.

For example, if you're a trustee, you would have a conflict of interest if the charity is thinking of making a decision that would mean:

- [you could benefit financially or otherwise from your charity, either directly or indirectly through someone you're connected to](#)
- [your duty to your charity competes with a duty or loyalty you have to another organisation or person](#)

Conflicts of interest are common in charities – having a conflict of interest doesn't mean you've done something wrong. But you need to act to prevent them from interfering with your ability to make a decision only in the best interests of the charity.

Follow a 3 step approach (identify, prevent, record) so that you are able to comply with your duty and avoid:

- making decisions that could be overturned
- risking your charity's reputation
- having to repay your charity if you make unauthorised payments to trustees

How to identify a conflict of interest

Legal requirement: you must declare a conflict of interest immediately you are aware of any possibility that your personal or wider interests could influence your decision-making.

Have a standard agenda item at the beginning of each trustee meeting to allow trustees to declare any actual or potential conflicts of interest.

It's good practice to have a written conflicts of interest policy to:

- tell your existing trustees how to identify and disclose conflicts of interest
- help prospective trustees identify possible conflicts of interest before they're appointed

You can also keep a register of interests – make sure you change this if trustees' circumstances change and when new trustees are appointed.

How to deal with a conflict of interest

Once a conflict of interest is identified, [prevent it from affecting your decision-making](#) by:

- finding an alternative way forward which doesn't involve the conflict of interest (particularly if the issue is serious)
- taking appropriate steps to manage the conflict (if it's less serious), which will usually mean that the person affected doesn't take part in discussions about the issue

Follow any instructions on managing conflicts of interest in your charity's governing document. In some situations you need to comply with legal restrictions. For example, if your charity plans to [sell land to one of its trustees](#), or [pay a trustee for goods or services](#).

If there's nothing about the conflict of interest in your charity's governing document or the law, you will still need to make sure that it is declared and consider whether the conflicted trustee should withdraw from discussions and voting on the matter.

You will have to ask the Charity Commission to authorise a decision in advance if:

- it is going to involve any [benefit to a trustee that hasn't already been authorised](#)
- the conflict of interest is serious but there's no alternative way forward that will remove it
- most or all of your trustees share the conflict of interest

How to record a conflict of interest

Keep a written record of the conflict of interest and how you dealt with it in the minutes of your meetings. Explain:

- what sort of conflict of interest it was
- which trustee or trustees were affected
- if any conflicts of interest were declared in advance
- an outline of the discussion
- if anyone withdrew from the discussion
- how you and the other trustees made the decision in your charity's best interests

Legal requirement: if you prepare accruals accounts, they must include details of payments and benefits to your charity's trustees and people connected to them. You must say why the payments were necessary and the legal authority you had to make them.

It's good practice to include details of trustee payments and benefits if you prepare receipts and payments accounts.

1. Home (<https://www.gov.uk/>)
2. Charity fundraising: a guide to trustee duties (CC20) (<https://www.gov.uk/government/publications/charities-and-fundraising-cc20>)



**CHARITY COMMISSION
FOR ENGLAND AND WALES**

1. (<https://www.gov.uk/government/organisations/charity-commission>)

Guidance

Charity fundraising: a guide to trustee duties

Published 7 June 2016

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1. Introduction

Many charities need to ask the public for money. They rely on public generosity - an enduring feature of our society, but one that can never be taken for granted - to carry out their important work helping those in need. In return the public place their trust in charities to raise money in a considerate and responsible way and to use it effectively.

Charity trustees have overall responsibility and accountability for their charity and this includes its fundraising. They have a key role to play in setting their charity's approach to raising funds, making sure that it is followed in practice and reflects their charity's values. Getting this right can be very rewarding, a valuable and visible result of a trustee's commitment to their charity, those that it supports and those that support it.

As the regulator of charities in England and Wales, the Commission expects charities that fundraise to do so in a way which protects their charity's reputation and encourages public trust and confidence in their charity. This includes following the law and recognised standards, protecting charities from undue risk, and showing respect for donors, supporters and the public.

The Commission recognises the commitment required of trustees and the challenges they can face in getting fundraising right. It has updated this guidance to support them in discharging their responsibilities.

2. About this guidance

The purpose of this guidance is to help trustees comply with their legal trustee duties when overseeing their charity's fundraising. It sets out 6 principles to help them achieve this. These are summarised at section 3.

It focuses primarily on matters within the Commission's regulatory remit. It is not a guide to the wide range of laws and regulations that apply to specific types and aspects of fundraising, but it provides links to sources of information about these rules.

In addition to this guidance an accompanying checklist (<https://www.gov.uk/government/publications/charities-and-fundraising-cc20>) has been produced, which consists of a series of questions to help trustees evaluate the performance of their charity against the advice in this guidance. The checklist (<https://www.gov.uk/government/publications/charities-and-fundraising-cc20>) should be read in conjunction with the guidance. It can be used to identify those sections that are relevant to a particular charity.

The guidance also explains what the Commission does to regulate fundraising by charities and how this links to the system of self-regulation of fundraising activity.

There is separate guidance about the fundraising rules in Scotland (<http://www.oscr.org.uk/charities/managing-your-charity/trustee-duties>) and Northern Ireland (<http://www.charitycommissionni.org.uk/charity-essentials/running-your-charity-guidance/>).

2.1 Who should read this guidance and when does it apply

This guidance is about all types of fundraising from the public for the benefit of charities and their beneficiaries. It applies whether or not:

- fundraising from the public is a small or major part of the charity's approach to raising money
- the fundraising is carried out by the charity, by a subsidiary trading company fundraising on behalf of the charity, or by another person or organisation on the charity's behalf

It applies to the trustees of all charities that fundraise in England and Wales, registered and unregistered.

The Commission also encourages other key people involved in charity fundraising to be familiar with the responsibilities of trustees set out in this guidance. These include senior charity staff and charity staff working on governance, compliance, controls and risk management; trading company directors and senior staff; and professional fundraisers and businesses and consultants working in fundraising. Members of the public can use this guidance to find out how fundraising is regulated and how to raise a concern or make a complaint about fundraising.

2.2 ‘Must’ and ‘should’: what the Commission means

In this guidance:

- ‘must’ means something is a legal or regulatory requirement or duty that trustees must comply with
- ‘should’ means something is good practice that the Commission expects trustees to follow and apply to their charity

Following the good practice specified in this guidance will help you to run your charity effectively, avoid difficulties and comply with your legal trustee duties (<https://www.gov.uk/government/publications/the-essential-trustee-what-you-need-to-know-cc3>). Charities vary in terms of their size and activities. Consider and decide how best to apply this good practice to your charity’s circumstances. The Commission expects you to be able to explain and justify your approach, particularly if you decide not to follow good practice in this guidance.

In some cases you will be unable to comply with your legal duties if you do not follow the good practice. For example:

Your legal duty	It’s vital that you
Act in your charity’s best interests	Deal with conflicts of interest
Manage your charity’s resources responsibly	Implement appropriate financial controls Manage risks
Act with reasonable care and skill	Take appropriate advice when you need to, for example when buying or selling land, or investing (in some cases this is a legal requirement)

Trustees who act in breach of their legal duties can be held responsible for consequences that flow from such a breach and for any loss the charity incurs as a result. When the Commission looks into cases of potential breach of trust or duty or other misconduct or mismanagement, it may take account of evidence that trustees have exposed the charity, its assets or its beneficiaries to harm or undue risk by not following good practice.

Other terms used in this guidance are defined in section 12.

2.3 Fundraising and your trustee duties

First and foremost, it is you and your co-trustees who are legally responsible for your charity’s fundraising.

Operating effective control over your charity’s fundraising is a vital part of your compliance with your legal duties. Three of them are particularly relevant to this guidance:

- acting in the best interests of your charity
- managing your charity’s resources responsibly, which includes protecting and safeguarding its reputation
- acting with reasonable care and skill

These duties are not new. They are part of your existing trustee duties. You should be familiar with the Commission's guidance on your trustee duties set out in *The essential trustee: what you need to know, what you need to do* (CC3) (<https://www.gov.uk/government/publications/the-essential-trustee-what-you-need-to-know-cc3>).

The trustee body should be made up of people who are able to devote time to running the charity and possess the appropriate skills and abilities.

You and your co-trustees can delegate day to day activities, and their management, to paid staff and others. This is normal practice in many charities and can help trustees to govern more effectively. This guidance recognises that many trustees, rather than carrying out day to day tasks and functions themselves, will have 'systems in place' for achieving this. But you cannot delegate your ultimate responsibility. Your systems and processes should allow you and your co-trustees:

- to hold others to account for how they carry out their role
- access to the right information and advice, to the appropriate level of detail, and in the best format; you and your co-trustees should have the ability and willingness to critically interpret and, where necessary, question the information you receive
- to be assured that your charity's fundraising is compliant with the fundraising approach that you have set, the standards required by your trustee duties, and wider law and best practice

The Commission expects trustees to take their responsibilities seriously. Using this guidance and ensuring you give sufficient time and attention to your charity's business will help. The Commission recognises that most trustees are volunteers who sometimes make honest mistakes. Trustees are not expected to be perfect - they are expected to do their best to comply with their duties. Charity law generally protects trustees who have acted honestly and reasonably.

3. Take responsibility for your charity's fundraising - 6 principles at a glance

This is a summary of the principles which you and your co-trustees should follow to help you meet your responsibility for your charity's fundraising. To ensure that you fully understand your responsibilities and the specific requirements in each area, you should refer to the rest of the guidance as necessary.

Taking responsibility for your charity's fundraising means:

Planning effectively

This is about you and your co-trustees agreeing or setting, and then monitoring, your charity's overall approach to fundraising. Your fundraising plan should also take account of risks, your charity's values and its relationship with donors and the wider public, as well as its income needs and expectations. See section 4.

Supervising your fundraisers

This is about you and your co-trustees having systems in place to oversee the fundraising which others carry out for your charity, so that you can be satisfied that it is, and remains, in your charity's best interests. It means delegating responsibly so that your charity's in-house and volunteer fundraisers, and any connected companies, know what is expected of them. If you employ a commercial partner to raise funds for your charity, the arrangement must be in the charity's best interests and comply with any specific legal rules and standards that apply. See section 5.

Protecting your charity's reputation, money and other assets

This means ensuring that there is strong management of your charity's assets and resources so that you can meet your legal trustee duty to act in your charity's best interests and protect it from undue risk. It includes ensuring that there is adequate consideration of the impact of your charity's fundraising on its donors, supporters and the public, making sure that your charity receives all the money to which it is entitled, and taking steps to reduce risk of loss or fraud. See section 6.

Identifying and ensuring compliance with the laws or regulations that apply specifically to your charity's fundraising

The legal rules that apply to various types of fundraising can be detailed and complex. They cover compliance in important areas such as with data protection law, licensing, and working with commercial partners. There are new rules in the Charities (Protection and Social Investment) Act 2016 which affect some charities that fundraise. You should make sure that your charity has access to sufficient information and appropriate advice to ensure that its fundraising complies with all relevant legal rules. See section 7.

Identifying and following any recognised standards that apply to your charity's fundraising

These are in the Fundraising Regulator's Code of Fundraising Practice (<https://www.fundraisingregulator.org.uk/code-of-fundraising-practice/>). The Code outlines both the legal rules that apply to fundraising and the standards designed to ensure that fundraising is open, honest and respectful. The Commission expects all charities that fundraise to fully comply with the Code. See section 8.

Being open and accountable

This includes complying with any relevant statutory accounting and reporting requirements on fundraising and using reporting to demonstrate that your charity is well run and effective. In your fundraising communications it is about being able to effectively explain your fundraising work to members of the public and your charity's donors and supporters. See section 9.

4. Plan effectively

This section is about planning and monitoring your charity's fundraising. It tells you that you and your co-trustees should agree or set your charity's overall approach to fundraising. Your charity's values should be reflected in its planned fundraising activity, and there should be effective systems in place to monitor implementation of your plan.

Appropriate involvement in your charity's fundraising will depend on its size, structure and complexity, and how planning is done will vary. If yours is a charity where senior staff or others take the lead on developing plans, you and your co-trustees should be able to question, challenge and (if necessary) robustly discuss their proposals.

As a minimum, you and your co trustees should:

- decide your charity's overall approach to getting the resources it needs to fund its work (income generation)
- set or agree your charity's fundraising strategy - this is your plan for:
 - what funding your charity needs from its fundraising, now and in the future
 - why it is needed
 - how and when it will be achieved

Your plan may not need to be lengthy or complex. But it should include issues such as:

- the fundraising methods to be used

- the resources your charity will use and the costs it will incur
- the financial, reputational and other risks your charity may face and how they should be avoided or managed
- how your charity's fundraising will reflect its values; some charities have developed explicit published values to define what they do and how they go about it - whether or not your charity's values are implicit or explicit, you and your co-trustees have an important role in setting and protecting them - this includes thinking about how you go about your fundraising activity so that you can express the needs of your charity to raise money for its work, whilst maintaining a positive and respectful approach to your donors and the wider public
- regularly monitor progress against the strategy you have set or agreed, looking carefully and critically at the areas of highest risk

You and your co-trustees must not expose your charity to undue risk. You should have effective systems in place to identify and regularly review the key risks your charity faces in all areas of its fundraising. This doesn't mean never taking risks. It's about recognising and assessing risk and deciding how to deal with it.

The Commission's guidance on risk management (<https://www.gov.uk/government/publications/charities-and-risk-management-cc26>) sets out the basics of dealing with risks and includes a risk management model.

There are free resources to help charities who are setting fundraising plans and strategies, including those produced by the Institute of Fundraising (<http://www.institute-of-fundraising.org.uk/blog/what-should-feature-in-a-fundraising-strategy/>).

5. Supervise your fundraisers

This section is about the fundraising carried out for your charity by staff, volunteers and others – including trading subsidiaries and organisations your charity works with to raise money. It tells you to have effective systems in place to keep control of this fundraising.

5.1 Delegation to employees

If you and your co-trustees do not carry out the fundraising yourselves, it is likely to be run by your charity's staff or by other organisations. Where, as is normal practice in many charities, you decide to delegate the day to day management of fundraising to your employees, you should have effective systems in place so that:

- delegation is clearly documented (for example in staff job descriptions, volunteers' role descriptions and committees' terms of reference) understood and implemented
- clear reporting procedures are in place, which include guidance on any particular matters that are to be reported to the trustees
- there are checks that the delegated authority is exercised properly
- you receive regular and fully documented reports back on agreed matters, presented in a way you can understand and use, and which allows you to exercise proper oversight

Avoid mistakes - be clear about your role as a trustee of a fundraising charity

Be careful to get your involvement right. This means not ignoring fundraising or leaving it solely to others so that you can focus on the charity's work with its beneficiaries. If you do this you are not fulfilling your legal trustee duties. Remember you and your co-trustees are accountable if something goes wrong.

Equally, where you have made staff responsible for the day to day management of your charity's fundraising operation, avoid becoming over involved. You should allow your staff to carry out the functions which you have assigned to them. Proper trustee oversight is about making sure that staff are accountable and work within the

parameters you have set. You can use your systems and processes to maintain scrutiny and control.

5.2 Working with volunteers

Many charities rely on significant volunteer effort to raise vital funds for their work. As with your fundraising staff, you and your co-trustees should have effective systems in place so that the work of the fundraising volunteers recruited by your charity is overseen. This is so that they:

- are clear about what they are supposed to do
- are aware of the rules and boundaries within which they must work, for example, when representing or speaking on behalf of the charity
- work safely
- know what to do if there's a problem
- know what they need to report and who they report to

There should be appropriate systems in place, so that volunteers get appropriate training and know they must comply with policies and procedures.

Find out more about managing your charity's volunteers (<https://www.gov.uk/guidance/how-to-manage-your-charitys-volunteers>).

You can also read more about working with volunteers in the Code of Fundraising Practice (<https://www.fundraisingregulator.org.uk/code-of-fundraising-practice/>).

5.3 Working with commercial partners

Working with commercial partners to raise funds can bring significant benefits to your charity, provided risks are identified and managed.

You and your co-trustees must have sufficient systems in place so that your charity's arrangements with any commercial partner:

- are in the best interests of your charity
- do not allow remuneration or reward for the commercial partner which is excessive in relation to the funds raised
- are fully compliant with any specific legal requirements that apply. For example, 'professional fundraising' or 'commercial participation' arrangements are subject to the requirements summarised at Annex 1
- make clear in any statement soliciting funds from the public for the charity:
 - the remuneration or reward to the commercial partner, or
 - how the funds raised will be distributed between the charity and the commercial partner

Before decisions are made about whether an agreement with a commercial partner is in your charity's best interests you should have effective systems in place to ensure that:

- the partner is a suitable and appropriate body to work with - a significant aspect of a trustee's legal duty to protect charitable assets, and to do so with care, means that there should be proper due diligence (<https://www.gov.uk/government/publications/charities-due-diligence-checks-and-monitoring-end-use-of-funds>) checks on those organisations that work closely with the charity; ensuring that the appropriate level of research and checks are carried out will help you and your co-trustees to satisfy yourselves about the solvency, integrity and reputation of the partner and their ability to deliver to an acceptable standard
- the arrangement with the partner is consistent with your charity's:
 - fundraising strategy and values
 - expectations of how its fundraising should be carried out

- the fundraising to be carried out is for a purpose for which your charity is set up
- the costs of the arrangement are justifiable in the best interests of the charity
- the terms of the arrangement ensures that your charity has proper control of funds
- the terms of the arrangement will protect your charity against undue risk, including to its:
 - reputation
 - finances
 - data
 - name, image, logo and intellectual property
- there is appropriate review and control of any fundraising communications to be used such as scripts, written marketing material, advertisements, and packaging
- compliance with the agreement is monitored
- the arrangement is free from any conflicts of interest which haven't been recognised and properly dealt with, and from any unauthorised benefit to connected parties
- your charity has appropriate review processes to review arrangements to ensure they remain in the best interests of the charity throughout their duration

Remember that:

- no legal document should be signed unless the terms are in the best interests of your charity
- you should take appropriate advice when you need to
- if it has an agreement with a professional fundraiser or commercial participator, your charity is entitled to inspect the books, records and other documents which the partner holds about your charity for the purposes of the agreement – your charity should take advantage of this to ensure that it is obtaining a fair and full return from the arrangements

Find out more about working with commercial partners in the Code of Fundraising Practice (<https://www.fundraisingregulator.org.uk/code-of-fundraising-practice/>).

5.4 Working through your trading company

Many charities own trading companies which are set up to raise funds for the charity.

Trustees must have systems in place to routinely monitor the performance of their trading subsidiaries and they need to remember, in all decisions made in regard to a trading subsidiary, that the best interests of the charity are paramount.

Find out more about subsidiary trading companies in Trustees trading and tax: how charities may lawfully trade (<https://www.gov.uk/government/publications/trustees-trading-and-tax-how-charities-may-lawfully-trade-cc35>).

In most instances, the Charities Act 1992 (the 1992 Act) excludes a charity's trading company from being a 'professional fundraiser' or 'commercial participator' where the company is raising money for the charity that owns it.

But even where a company is not required to comply with the 1992 Act, it should operate on a similar basis where this will allow the parent charity to:

- operate effective control of the fundraising, or
- provide transparency to its supporters, donors and the public about the fundraising arrangement

For example, the company:

- and the charity can formalise arrangements through a written agreement

- can make an appropriate solicitation statement - for instance, in a charity shop, by displaying a notice by the till indicating to customers that any profits which are made in the shop are given by the company which runs the shop to the charity which owns the company

The Office for Civil Society has produced detailed guidance

(<http://webarchive.nationalarchives.gov.uk/20081230001423/http://www.cabinetoffice.gov.uk/media/110668/amended%20guidance%20final.pdf>) on the current requirements of the 1992 Act.

Avoid mistakes - keep oversight of commercial partnerships made by your subsidiary trading company

Sometimes a partnership or agreement is made between a charity's subsidiary trading company and a commercial organisation, as part of the trading subsidiary's work to raise funds for the charity.

These arrangements can bring benefits for a charity and are not in themselves a cause for concern. But you and your co-trustees must have sufficient systems in place to oversee them.

This is so that, as with arrangements that your charity enters into directly, you and your co-trustees can be sure that the arrangement is in the best interests of your charity, properly protects its name and reputation and is subject to appropriate review and control.

You should have effective systems in place so that, where products or services are sold through or in the name of the charity, the nature of the commercial partnership and the fee or commission received by the charity is clear and transparent.

6. Protect your charity's reputation, money and other assets

This section is about your duty to manage and protect your charity's reputation and other assets from undue risk. It tells you to have effective systems in place to:

- identify the reputational risks your charity may face in its fundraising and to plan for their management
- plan for the charity resources which you will use to fundraise
- manage and be able to justify your fundraising costs
- protect the money raised in your charity's name

6.1 Protect your charity's reputation

Fundraising is often a key way in which charities interact with supporters, donors and the public. This means that a charity's approach to fundraising has the potential to significantly build or damage its reputation.

The reputational risks faced by a charity will vary significantly. You and your co trustees should have effective and appropriate systems in place to identify and manage the key reputational risks your charity may face from its fundraising.

Your approach to managing reputational risk from fundraising should include, but is not limited to:

- taking account of likely donor, supporter and public perception when deciding about income expectations and other goals - this includes assessing the reputational risks when using particular methods of fundraising and agreeing the level of your fundraising costs
- following the principles in this guidance so that:
 - legal rules and recognised standards are followed
 - there is effective control over

- your charity's fundraising approach
 - the fundraising that staff or other people or organisations carry out for your charity
 - the assets and resources you use and raise
 - your systems for assessing and responding to criticisms and complaints
-

Avoid mistakes – be able to justify your fundraising costs

Very high fundraising costs can seriously damage a charity's reputation.

Where an arrangement with a commercial partner is significantly boosting a charity's income it is easy for trustees to overlook other issues. But you and your co-trustees should have effective systems in place for showing that your agreement with any third party is in your charity's best interests and protects its reputation.

Trustees should be aware that some fundraising companies use models which mean that the charity receives only a very small proportion of the money donated by the public, both at start-up and at later stages of the fundraising. These models can damage a charity. They can attract negative media coverage, complaints and regulatory intervention. This is because they can create the perception that the charity is being exploited or abused for private gain, and therefore mismanaged.

If you are considering an agreement with a commercial partner, be careful to balance your focus on increasing the charity's income with attention to its wider best interests. You should think about how the charity's donors, supporters and the public might view your fundraising approach, if only a small part of their donation reaches the charity. You must be able to justify your fundraising costs and show how they are in the charity's best interests.

Find out more about fundraising costs in section 6.4.

Remember you can take appropriate advice from a suitably qualified person if you need to.

6.2 Planning and monitoring fundraising finance

You and your co-trustees should be fully aware of your charity's overall financial position and be able to demonstrate how fundraising supports its long term strategy for the achievement of its objectives. You should have effective systems in place so that:

- your charity's sources of income are analysed, to identify risks from over dependence on any one source
- there is a realistic budget for fundraising, against which results are monitored
- any investment of the charity's money is balanced with the expected income, ensuring it is an appropriate investment
- individual business plans and budgets are, where appropriate, drawn up for any new or significant fundraising activities or appeals
- the progress and financial performance of the charity's fundraising, including its costs and any risks, is monitored

You can find out more about financial management in:

Managing charity assets and resources (<https://www.gov.uk/government/publications/managing-charity-assets-and-resources-cc25>)

Charity trustee meetings: 15 questions you should ask (<https://www.gov.uk/government/publications/charity-trustee-meetings-15-questions-you-should-ask>)

Financial difficulties in charities (<https://www.gov.uk/guidance/financial-difficulties-in-charities>)

6.3 Managing assets and keeping them safe

You and your co-trustees should have effective financial controls and safeguards in place which are appropriate to your charity's size, activities and complexity. These include having systems for:

- making sure that the charity receives all of the money to which is entitled, where people are given permission to raise money on its behalf
 - protecting income received from:
 - public collections
 - other fundraising and sponsored events
 - your trading activity
 - clarifying to the public, and being clear internally, which funds you are raising on a restricted basis - these restricted funds must only be used in the way specified
 - having a policy on donations which identifies when accepting donations may not be in the interests of the charity
 - ensuring complete and accurate returns are made so that the charity receives tax reliefs (<https://www.gov.uk/charities-and-tax/overview>) to which it is entitled
 - protecting the other charity assets used in your fundraising. This may include the charity's data, name, image, logo and intellectual property
-

Avoid mistakes – operate effective control over cash collections

Although most people who fundraise and support charities have honest intentions, cash-based fundraising can be attractive to both opportunist and organised fraudsters. So you and your co-trustees must have adequate controls in place where you give permission for people to collect money on your charity's behalf. The fundraising must be compliant with any relevant legal rules and you should follow good practice for secure collection, counting, and banking of the money. This will help you to meet your legal duty to safeguard your charity's assets. It will also help reassure the public that they can donate safely to fundraisers and charities, and that funds will be applied for general charitable purposes.

Remember that if your charity gives people who fundraise for you official charity material such as badges, tins or tabards, there should be a record of this and everything should be collected back promptly. The charity's accounts must show the gross amount of funds raised before the deduction of any fundraising costs and expenses and these deductions must be shown as a separate expenditure item in the accounts.

You can find out more about controls for cash collections in [Internal financial controls for charities](https://www.gov.uk/government/publications/internal-financial-controls-for-charities-cc8/internal-financial-controls-for-charities) (<https://www.gov.uk/government/publications/internal-financial-controls-for-charities-cc8/internal-financial-controls-for-charities>) and you can check your approach using the [internal financial controls checklist](https://www.gov.uk/government/publications/internal-financial-controls-for-charities-cc8) (<https://www.gov.uk/government/publications/internal-financial-controls-for-charities-cc8>).

6.4 Managing and explaining costs

There is no set amount that a charity should spend on fundraising costs and the Commission recognises that costs can vary between different forms of fundraising, different causes and from year to year.

You and your co-trustees must be satisfied that your fundraising costs are in your charity's best interests. You should be able to explain your costs and be transparent about how money is spent and how your charity benefits.

Any effective charity will need to spend funds on both its general administration and on fundraising, but you and your co-trustees should:

- know, overall, how much the charity's fundraising costs, and have systems in place for setting costs for specific fundraising activities
- have systems in place so that the cost of fundraising is justifiable - this means it should be proportionate to the income and other benefits it produces, and in the charity's best interests
- ensure that there are systems in place to ensure that costs are fair to the charity, before arrangements with a professional fundraiser, commercial participator, or other third party are entered
- have systems in place so that there is transparency for donors, giving them a fair indication about the extent to which the charity will benefit from their support:
 - often this indication will be given in the solicitation statement (<http://www.institute-of-fundraising.org.uk/code-of-fundraising-practice/legal-appendices/solicitation-statements/>) that professional fundraisers, commercial participators and other paid fundraisers must make to donors in a wide range of circumstances including in face to face, telephone, advertising and website fundraising
 - where these rules do not apply, but your charity is paying for a fundraising service, its reputation can be subject to unacceptable risk if it doesn't give donors a fair indication of the arrangement and its costs in a solicitation statement or a statement in a similar form
- follow any requirements in the applicable Statement of Recommended Practice (SORP) about how fundraising costs are allocated and presented
- be able to explain to donors, supporters and the public how your charity works and why its costs are necessary

6.5 Fundraising fraud

Whilst the vast majority of charitable appeals and collections are legitimate, fundraising fraud does occur.

Find out more about common types of fundraising fraud (<https://www.gov.uk/government/publications/disaster-appeals-charity-commission-guidance-on-starting-running-and-supporting-charitable-disaster-appeals-cc40>). You can also read the Commission's regulatory alerts (<https://www.gov.uk/government/collections/regulatory-alerts-charity-commission>) about risks and vulnerabilities that could affect your charity.

Find out more about protecting your charity's property from the Commission's Compliance toolkit (<https://www.gov.uk/government/collections/protecting-charities-from-harm-compliance-toolkit>). The toolkit includes a detailed checklist (<https://www.gov.uk/government/publications/charities-fraud-and-financial-crime>) describing anti-fraud measures which your charity might find useful.

6.6 Suspicious donations

The Commission is aware of cases where donations to charities have been used to facilitate money laundering or other criminal activity.

You and your co-trustees should have effective systems in place so that:

- the know your donor (https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/550694/Tool_6.pdf) principle is operated (for example, if your charity receives large donations, particularly anonymous or cash donations or with conditions attached)
- staff and volunteers are aware of this risk

You and your co-trustees should be alerted to any suspicious donations.

6.7 Intervening where an appeal is being run using your charity's name without permission

In many cases, an appeal may have been launched by a well-meaning member of the public who intends to donate the funds raised to your charity. They may not have contacted your charity prior to raising funds on your behalf. But the unauthorised use of a charity's name is a serious issue that could damage a charity's reputation.

Where unauthorised fundraising comes to your charity's attention, you and your co trustees should have effective systems in place to:

- contact the people running the appeal promptly; in some circumstances, such as a local cake sale or other small scale event, it may be appropriate to give permission to fundraise on the charity's behalf and provide some guidance to the organiser to ensure the collection is done legally - otherwise, your charity should formally authorise the fundraising or ask the organisers to stop
- be aware that, where your request is not met, fundraising rules allow you to seek an injunction restraining someone from raising funds in the charity's name - find out more (<http://webarchive.nationalarchives.gov.uk/20081230001423/http://www.cabinetoffice.gov.uk/media/110668/amended%20guidance%20final.pdf>)
- report unauthorised fundraisers who do not cooperate, and whom you suspect may be involved in fraudulent activities - the reporting should be to the police and the Commission

Decisions about the charity's money and resources are important, so think about the advice and information you may need in order to make decisions in the charity's interests.

7. Follow fundraising laws and regulation

This section is about the range of legal rules that apply to different types and aspects of fundraising. It tells you to have effective systems in place so that your charity fully complies with any legal rules which apply to its fundraising.

This list gives an indication only of some of the legal rules which apply to different types and aspects of fundraising. In each case you can use the Code of Fundraising Practice (<https://www.fundraisingregulator.org.uk/code-of-fundraising-practice/>) to find out more about the rules and how they apply to your charity's fundraising.

There are legal rules about:

- what is required of a professional fundraiser or commercial participator
- the statements that paid fundraisers must make, in some circumstances, when asking for funds from the public
- when charities must display their registered charity status on a range of documents and on their website
- collecting cash in the street
- collecting cash, or goods or direct debit details door to door
- lotteries and raffles
- data protection when collecting or handling personal details such as names, contact details and credit or debit card details
- avoiding unsolicited calls to numbers registered with the Telephone Preference Service (TPS) and Corporate Telephone Preference Service (CTPS)
- fundraising involving children
- event fundraising
- commenting on your charity's fundraising activity when preparing charity accounts or reports which are subject to the Statement of Recommended Practice (SORP)

Fundraising rules can be detailed and complex. You should consider taking appropriate advice and be satisfied that the people and organisations you authorise to fundraise for your charity are competent to comply with these rules.

You should report a serious incident to the Commission if your charity is being investigated by the police or another regulator for any reason.

Find out more about the legal requirements which apply to fundraising from the Code of Fundraising Practice (<https://www.fundraisingregulator.org.uk/code-of-fundraising-practice/>). You may also find some information about legal rules from Annex 1 and the organisations listed at Annex 2.

8. Follow the recognised standards for fundraising

This section is about the recognised standards, set out in the Code of Fundraising Practice (<https://www.fundraisingregulator.org.uk/code-of-fundraising-practice/>), that apply to different types and aspects of fundraising. It tells you to have effective systems in place so that your charity complies with any standards which apply to its fundraising.

This list gives an indication only of some of the standards which apply to different types and aspects of fundraising. There are standards about fundraising charities:

- using enclosures in direct mail packs
- ensuring that any third party fundraisers engaged by your charity comply with the Code of Fundraising Practice (<https://www.fundraisingregulator.org.uk/code-of-fundraising-practice/>)
- providing information to children and parents/guardians on how to fundraise safely
- carrying out a proportionate process of due diligence when engaging in a fundraising partnership with a business
- processing unsubscribe requests in a timely way
- not making marketing telephone calls under the pretext of administrative calls
- ensuring that face to face fundraisers are properly trained
- making a record of the issue and return of any charity collection materials
- securing cash donations and banking them as soon as possible
- not sharing personal data without explicit consent
- including opt-out information on fundraising communications sent to a named individual

The Fundraising Regulator (<http://www.fundraisingregulator.org.uk/>) regulates charities' compliance with recognised standards.

To find out more about the standards which apply to fundraising, you can look at the Code of Fundraising Practice (<https://www.fundraisingregulator.org.uk/code-of-fundraising-practice/>). You may also find out some information about standards from the organisations listed at Annex 2.

9. Be open and accountable

This section is about your charity being answerable for its fundraising. It tells you to have effective systems in place so that your charity's fundraising is explained clearly and openly, fully complies with accounting and reporting obligations, and is appropriately open to challenge by complainants.

9.1 Complying with the accounting framework

Every registered charity must produce an annual report and accounts that explain where its money comes from and how the charity expended the funds.

Some larger charities must comply with particular rules and requirements about how they account for and report on their fundraising activity. These requirements are set out in the Applicable SORP.

This reporting is so that the readers of accounts and reports can understand what the fundraising activities were, how much was spent on raising funds, what was involved, and how the income raised assisted the work of the charity.

Smaller charities using the SORP might find some or all of this reporting useful to do as well.

Reporting requirements, introduced by the 2016 Act, require larger charities to state what has been done to protect vulnerable people and other members of the public from behaviour, in the course of fundraising, which:

- is unreasonably intrusive or persistent, or
- involves placing undue pressure on a person to donate

Find out more about the 2016 Act in Annex 1 and about charity reporting and accounting

(<https://www.gov.uk/government/publications/charity-reporting-and-accounting-the-essentials-march-2015-cc15c/charity-reporting-and-accounting-the-essentials-march-2015>).

9.2 Being open about complaints

You and your co-trustees should have effective procedures for dealing with complaints

(<https://www.gov.uk/government/publications/cause-for-complaint-rs11>), which are easy to find and easy to follow.

Your systems should ensure that:

- there is a complaints procedure that is accessible, open and transparent
- any concerns raised by the public, supporters, donors or others are addressed in a timely and direct fashion

9.3 Clearly wording your appeals

When running appeals, information on the following issues is recommended:

- the identity of your charity and what it does
- what the funds raised are for and how they will be used
- any secondary purpose of an appeal
- how to donate
- the Gift Aid arrangements
- what deductions will be made for expenses

Failed appeals

Being clear about the purpose(s) of an appeal is particularly important. Careful thought should be given to the terms and wording used in your appeal.

If the purpose specified in the appeal cannot for some reason be achieved, or you raise too much or too little money, it can present difficulties which can only be resolved by formal and often time consuming and costly processes. These difficulties can be avoided if proper attention is paid to the wording of appeals. Your wording should say clearly what will happen to any surplus funds and what will happen to donations if not enough funds are raised.

The Commission's guidance Disaster appeals: Charity Commission guidance on starting, running and supporting charitable disaster appeals (<https://www.gov.uk/government/publications/disaster-appeals-charity-commission-guidance-on-starting-running-and-supporting-charitable-disaster-appeals-cc40/disaster-appeals-charity->

commission-guidance-on-starting-running-and-supporting-charitable-disaster-appeals) includes general information about running and wording successful appeals.

10. How is fundraising regulated?

It is subject to a self-regulatory system which sets and enforces clear standards of conduct for fundraising.

The standards, which have been developed to ensure that fundraising is open, honest and respectful, are set out in the Code of Fundraising Practice (<https://www.fundraisingregulator.org.uk/code-of-fundraising-practice/>).

10.1 The Fundraising Regulator's role

The Fundraising Regulator (<http://www.fundraisingregulator.org.uk/>):

- regulates all types of fundraising by charities based in England and Wales
- uses the Code to adjudicate on concerns and complaints about fundraising
- uses its register to promote visible compliance amongst charities with the Code
- has sanctioning powers to use if necessary

10.2 Complaints about fundraising

Charities based in England and Wales

For charities based in England and Wales, the Fundraising Regulator deals with most types of complaints.

Anybody can contact the Fundraising Regulator to complain about fundraising.

If the Fundraising Regulator cannot deal with a complaint, they will send it to the right body or help the complainant to contact them.

Charities based in Northern Ireland

Arrangements for fundraising regulation are currently being considered in Northern Ireland. Until arrangements are finalised, complaints about fundraising can be sent to the Fundraising Regulator (see contact details above) or, where the complaint extends to a charity's governance, to the Charity Commission for Northern Ireland (<http://www.charitycommissionni.org.uk/>).

Charities based in Scotland

For charities based in Scotland the self-regulatory system is being strengthened. Both the charity sector and the Office of the Scottish Charity Regulator (OSCR (<https://www.oscr.org.uk/>)) will have enhanced roles. An independent panel is being developed to manage complaints that cannot be resolved by charities themselves. A fundraising hub (<https://fundraisingcomplaints.scot/>) has been created to deal with complaints or concerns about fundraising.

10.3 The Commission's role

The Commission does not regulate against the standards in the Code, but we do have a role in fundraising regulation where there is evidence:

- that trustee actions or failings, in fulfilling their duties towards their charity, pose a serious risk to the charity
- of a serious risk to charitable funds, or to public trust and confidence

In this role we will work closely with the Fundraising Regulator, and other regulators, to identify cases where, in addition to breaches of fundraising standards, these sorts of regulatory concerns may arise.

Find out more about Commission intervention on fundraising issues in section 11.

10.4 The role of other regulators

There are also other laws and regulations relevant to fundraising such as the rules on data protection, collections in public spaces and running lotteries. The rules for these are set and enforced by other regulators, including those listed at Annex 2.

11. Why is it important to follow this guidance?

11.1 The consequences of improper or poor fundraising practice

Where trustees do not keep their charity's fundraising in line with the law and recognised standards, or fail to balance their need to raise money with an approach which protects their charity from risk, there can be serious consequences for the affected charity and, sometimes, for charities generally.

The consequences of improper or poor fundraising practice can be costly for a charity. They include:

- negative reputational consequences and complaints which can cause lasting damage to a charity and, sometimes, charities generally, with the potential to jeopardise the vital public support that charities rely on to fund their long term work
- legal consequences such as fines or penalties, or trustee liability if the charity incurs a loss as a result of a breach of trustee duty
- regulatory challenge or intervention which can be by the Fundraising Regulator, the Commission, or other organisations and agencies with a role in regulating fundraising

The Commission expects the trustees of charities that fundraise to comply with their trustee duties, specific fundraising law, and to follow recognised standards.

The Commission has written this guidance to help trustees meet these requirements and expectations. They can use the checklist (<https://www.gov.uk/government/publications/charities-and-fundraising-cc20>) to check their approach.

11.2 Commission intervention on fundraising issues

The nature of any intervention by the Commission will depend on the seriousness of the risk to a charity or charities generally. The Commission will assess this using its risk framework (<https://www.gov.uk/government/publications/risk-framework-charity-commission>). This also sets out the different types of regulatory engagement that the Commission has with charities where problems, poor practice or abuse have been identified.

Where trustees fail to act properly or make a mistake the Commission always expects them to act promptly to put things right and prevent a recurrence of the same or similar issue.

Where trustee actions or failings present a serious risk to the charity, the Commission is likely to regard this as mismanagement or misconduct and to take remedial action.

Intervention always depends on the seriousness of the issue and is sometimes undertaken alongside or in support of other agencies.

11.3 Fundraising issues that may be serious enough to trigger Commission intervention

These include:

- serious risks to a charity's reputation or its other assets
- failure to protect and account for all funds raised
- weak governance or trustee oversight of the charity's activities, resources or reputation
- commercial participation/professional fundraising arrangements which do not comply with the law and which cannot be shown to be in the charity's best interests
- high fundraising costs that:
 - risk seriously undermining the charity's reputation
 - arise as a result of lack of oversight by the trustees
 - cannot be justified by the trustees as being in the charity's best interests
- damage to public trust and confidence caused by the charity's fundraising activities
- where conflicts of interest and private benefit have not been properly controlled
- serious and/or frequent failures in the conduct of fundraising (for example, persistent unlicensed fundraising or failure to provide required information) which put funds and reputation at risk
- methods of fundraising which are either inappropriate for a charity, or which would be a breach of trust and which pose a significant risk to public trust and confidence
- arrangements which amount to tax evasion or seek to exploit tax legislation artificially, including tax avoidance schemes
- criminality which exposes related concerns about misconduct and mismanagement in the administration of a charity - for example fraud, theft, false accounting, tax fraud (including the making of fraudulent Gift Aid claims), or failing to obtain legal authority to fundraise

11.4 The Commission's jurisdiction over funds raised as charitable appeals

Where funds are raised as charitable appeals for charities, or for charitable purposes, the Commission has jurisdiction over those funds and those holding the funds. It can intervene if necessary to ensure that funds are applied to the charities, or for the charitable purposes for which they have been raised.

Where funds are raised as charitable appeals, the sorts of issues that may be serious enough to cause the Commission to intervene, sometimes alongside or in support of other agencies, are:

- where fraudsters misuse a charity's name or otherwise use dishonest methods to deceive the public into giving money
- when funds raised for charitable purposes or in the name of a charity are used, or are at risk of use for private, illegal or other non-charitable purposes
- where funds raised by other individuals or bodies for charities are not properly accounted for or are at risk of loss or diversion
- where the Commission's intervention is needed to protect public trust and confidence

12. Terms used in this guidance

12.1 Key terms in fundraising regulation

The Fundraising Regulator (<http://www.fundraisingregulator.org.uk/>) is the body responsible for adjudicating against the Code on concerns and complaints about fundraising.

The Code of Fundraising Practice (<https://www.fundraisingregulator.org.uk/code-of-fundraising-practice/>) (the Code) sets out the legal requirements and recognised standards which apply to different types of UK fundraising activity.

'Self-regulation' is the system for setting and making adjudications against the standards in the Code.

This guidance uses the term 'recognised standards' to refer to the standards included in the Code.

12.2 Technical terms used in this guidance

This section explains some legal and technical terms used in this guidance.

The 1992 Act is the Charities Act 1992 (http://www.opsi.gov.uk/acts/acts1992/Ukpga_19920041_en_1.htm).

The 2011 Act is the Charities Act 2011 (<http://www.legislation.gov.uk/ukpga/2011/25/contents>).

The 2016 Act is the Charities (Protection and Social Investment) Act 2016

(<http://www.legislation.gov.uk/ukpga/2016/4/contents/enacted/data.htm>).

The 1994 Regulations are The Charitable Institutions (Fund-Raising) Regulations 1994

(<http://www.legislation.gov.uk/uksi/1994/3024/regulation/1/made>).

'Applicable SORP' is the term used to describe the SORP to be used by the charity to prepare its accounts on an accruals basis which is in effect for the financial year for which the accounts are being prepared. Find out more about the Charities SORP (<https://www.gov.uk/government/publications/charities-sorp-2005>).

'Beneficiary' or 'beneficiaries' means a person or group of people eligible to benefit from a charity. A charity's beneficiary group is usually defined in its governing document. Some charities call their beneficiaries clients or service users.

A 'charity' is any organisation set up under the law of England and Wales for solely charitable purposes.

'Commercial participator' means a commercial enterprise, rather than fundraising business, that takes part in a promotional venture, such as an advertising or sales campaign, where the public are informed that contributions will be given to or applied for the benefit of a charity. A commercial participator may be subject to the same regulatory requirements as professional fundraisers if all of its activities are for 'charitable purposes'.

A third party may still be a commercial participator even if it enters into a contract with a subsidiary trading company (rather than the charity itself) if it is represented that the funds go to charity. A subsidiary trading company may be a commercial participator if it makes similar representations in relation to a charitable institution that does not control it.

The 'Commission' means the Charity Commission, the regulator for charities in England and Wales.

'Commercial partners' includes, but is not limited to, professional fundraisers and commercial participators. It means any commercial organisation that the charity or its subsidiary trading company works or partners with to raise funds for the charity. The terms professional fundraiser and commercial participator are defined in this glossary.

A 'fundraising agreement' is a written agreement signed by both parties that sets out the objectives and terms under which a professional fundraiser or commercial participator may raise funds on behalf of a charity.

The 'governing document' is the legal document that sets out the rules that govern a charity. These include the charity's purposes and, usually, how it must be administered. It's usually a trust deed, constitution, CIO constitution or articles of association. Some charities have a different type of document such as a conveyance, will, royal charter or Commission scheme.

'In the charity's best interests' means what the trustees believe will best enable the charity to carry out its purposes for the public benefit.

'Misconduct' includes any act that the person committing it knew (or ought to have known) was criminal, unlawful or improper.

'Mismanagement' may include doing something which:

- loses or misuses charitable resources
- undermines a charity's reputation
- puts beneficiaries at risk

A charity's 'purpose' is what it is set up to achieve (for example, relieving poverty or promoting health). A charitable purpose is one that:

- falls within one or more of 13 'descriptions of purposes' listed in the 2011 Act
- is for the public benefit (the 'public benefit requirement')

A 'professional fundraiser' is anyone who carries on a commercial fundraising business, wholly or mainly fundraising for charitable purposes; or any other person who is paid to solicit money or other property for charity. This does not include:

- a charity or a 'connected company'
- any officer or employee of the charity or connected company
- a trustee of the charity, acting as trustee
- any public charitable collector, other than promoters
- people who solicit funds on TV or radio
- any commercial participator
- anyone who is paid no more than £1,000 for a particular appeal, or no more than £10 per day or £1,000 per year where there is no specific appeal

'Restricted funds' are funds subject to specific trusts that fall within the wider purposes of the charity. Restricted funds may be restricted income funds, which may be spent at the discretion of the trustees in furtherance of some particular aspect of the purposes of the charity, or they may be endowment funds where the assets must be invested or retained for actual use rather than spent.

A 'solicitation statement' is a statement that must be made by:

- professional fundraisers when soliciting funds from the public
- commercial participators when explaining how a charity will benefit from a promotional venture
- any other fundraiser who is not a volunteer when taking part in a public collection

The statement must explain the individual's or body's relationship with the charity and the payment that they or the charity will receive.

'Subsidiary trading company' means any non-charitable trading company owned by a charity or charities to carry on a trade on behalf of the charity (or charities), including a company which is wholly owned by a charity or more than one charity, even if it is not technically a 'subsidiary' of any of the charities which own it.

'Trustee' means a charity trustee. Charity trustees are the people responsible for governing a charity and directing how it is managed and run. The charity's governing document may call them trustees, the board, the management committee, governors, directors, or something else. The 2011 Act defines the people who have ultimate control of a charity as the charity trustees, whatever they are called in the charity's governing document.

'Values' mean the commitments a charity makes to going about its work in a certain way. Charity values are usually communicated to a charity's employees, volunteers, the other people it works with, and the public - to help them to understand how the charity does things, what behaviours it expects and what its intentions are.

Although values can be expressed in any way, some examples of charity values are 'collaborative', 'respectful', 'child-focused', 'independent', 'we strive to keep our promises'.

There is no requirement for a charity to have explicit values.

Annex 1. A summary of legal requirements included in Charities Acts legislation and regulations

1. Working with professional fundraisers and commercial participators

Where a charity uses a professional fundraiser to raise funds on its behalf, or enters an arrangement with a commercial participator, specific rules apply. They require:

- written agreements between charities and professional fundraisers/commercial participators which comply with specific requirements
- professional fundraisers, commercial participators, and charity staff paid to fundraise in public places to make a solicitation statement satisfying certain requirements
- some larger charities to include statements about their approach to professional fundraising/commercial participation in their annual report

The Office for Civil Society has produced detailed guidance

(<http://webarchive.nationalarchives.gov.uk/20081230001423/http://www.cabinetoffice.gov.uk/media/110668/amended%20guidance%20final.pdf>) on these requirements.

1a. Written agreements

Professional fundraising or promotions by commercial participators are not permitted unless there is a written agreement. The written agreement must be signed by all parties and include the following:

- the name and address of each party, the date, the duration of the agreement and the terms of the agreement's termination
- a statement of its principal objectives and methods used
- that the funds must be transferred to the charity as soon as possible
- that professional fundraisers and commercial participators acting for a charity must inform the giving public of the details of the charity for which they are collecting and how much the professional fundraiser or commercial participator is receiving
- that professional fundraisers must state the method by which their remuneration is to be calculated and the actual amount of this, if it is known, at the time the statement is made - otherwise the remuneration must be estimated and the estimate must be calculated as accurately as is reasonably possible
- that commercial participators must state for each product or item of service purchased by a member of the public the precise amount or the percentage of the price paid that will be given to the charity or charities, or must state the sum they are giving in connection with the promotional venture
- if more than one charity is a party to the agreement, it must contain a provision setting out how the proportion in which each of the charities is to benefit under the agreement is to be determined

The following items will be required to be included in the written agreement when the 2016 Act is implemented on 1 November 2016:

- details of any fundraising standards or scheme for fundraising regulation that the professional fundraiser or commercial participator has voluntarily subscribed to
- how the professional fundraiser or commercial participator will protect vulnerable people and other members of the public from behaviour which:

- is an unreasonable intrusion on a person's privacy
- is unreasonably persistent
- places undue pressure on a person to give money or other property
- how the charity will monitor compliance with the agreement

Written agreements - transitional guidance for 2016 Act requirements

The requirements introduced by the 2016 Act will apply from 1 November 2016.

However, until 31 March 2017, the Fundraising Regulator will take a flexible approach in its expectations of updated agreements between charities, professional fundraisers and commercial participators to take into account reasonable contingency arrangements which may be required as a consequence of the new duty.

Right to inspect books and records

The 1994 Regulations require professional fundraisers or commercial participators who are parties to agreements with charities to keep and to make available to the charity on request and at all reasonable times, any books, documents or other records (however kept) which relate to the charity and kept for the purposes of the agreement.

1b. Solicitation statements

Paid fundraisers, including charity staff, trustees who are paid, professional fundraisers and commercial participators, must declare their status by making a solicitation statement when requesting money or property for the benefit of one or more charities.

Most fundraisers are obliged to make solicitation statements, including:

- professional fundraisers when requesting money or property for the benefit of one or more charities
- commercial participators when representing that the contribution will be made to one or more charities during a promotional venture
- other paid fundraisers engaged in door-to-door or street collections, such as trustees, officers and employees who are officially acting on behalf of their charity (or a connected company) who are paid for collecting

A paid fundraiser must state:

- for which charity or charities they are fundraising, or, if relevant, that they are fundraising for charitable purposes and not for the benefit of a specific charity or charities
- the proportions in which the charities will benefit (if they are fundraising for more than one charity) or how the proceeds of the appeal will be distributed to different charities (if they are fundraising for charitable purposes)
- whether they are an officer or employee of a charity or connected company or trustee of such an institution and are acting as a collector in that capacity
- that they are paid for acting as an officer, employee or trustee, or for acting as a collector

A professional fundraiser, in addition to the above requirements, must state how their remuneration, in connection with the appeal, is to be calculated and the amount of that remuneration.

Commercial participator solicitation statements vary from other paid fundraisers. A commercial participator must clearly indicate:

- which charity or charities will benefit from the promotional venture

- if there is more than one charity that will benefit from the venture, in what proportions the charities will respectively benefit
- what proportion of the proceeds of the goods, services or promotional venture sold will be given to the charity or charities, or the total amount of the donation given to the charity as a result of sale of goods, services or running the promotional venture

1c. Reporting on professional fundraising/commercial participation arrangements

The 2016 Act requires some larger charities to include new statements in the trustees' annual report which cover, but are not limited to, their arrangements with professional fundraisers or commercial participators. These new requirements are outlined next.

2. Reporting requirements for larger charities that fundraise

Every registered charity must produce an annual report and accounts that explains where its money came from and how the charity expended the funds.

Some larger charities must comply with particular rules and requirements about how they account for and report on their fundraising activity. These requirements are set out in the Applicable SORP. The following requirements are added for some charities by the 2016 Act.

If section 144(2) of the 2011 Act applies to a financial year of a charity, the trustees' annual report for that year must include a statement of each of the following for that year:

- the fundraising approach taken by the charity, or by anyone acting on its behalf, and whether a professional fundraiser or commercial participator carried out any fundraising activities
- details of any fundraising standards or scheme for fundraising regulation that the charity has voluntarily subscribed to
- details of any fundraising standards or scheme for fundraising regulation that any person acting on behalf of the charity has voluntarily subscribed to
- details of any failure by the charity, or by any person acting on its behalf, to comply with fundraising standards or scheme for fundraising regulation that the charity or the person acting on its behalf has voluntarily subscribed to
- whether the charity monitored the fundraising activities of any person acting on its behalf and, if so, how it did so
- the number of complaints received by the charity, or by a person acting on its behalf for the purposes of fundraising, about fundraising activity
- what the charity has done to protect vulnerable people and other members of the public from behaviour which:
 - is an unreasonable intrusion on a person's privacy
 - is unreasonably persistent
 - places undue pressure on a person to give money or other property

The reporting requirements introduced by the 2016 Act apply to accounting periods beginning on or after 1 November 2016.

3. Other Charities Acts requirements and provisions

Statements about charitable status

The 2011 Act requires registered charities with an income above £10,000 a year to state they are a registered charity on a range of documents including on their website, advertisements and other documents such as receipts. This requirement extends to any notices, advertisement or documents used to fundraise. There are additional rules for charities that also operate in Scotland.

Failed appeals

An appeal for funds can fail if it raises insufficient funds or funds in excess of the purpose of the appeal. If an appeal for a specific purpose does not raise sufficient funds, donors may be entitled to a refund. If it raises excess funds, legal authorisation or a scheme, made under the 2011 Act, from the Commission may be needed before the excess funds can be directed to a similar purpose.

Find out more about failed appeals in Disaster appeals: Charity Commission guidance on starting, running and supporting charitable disaster appeals (<https://www.gov.uk/government/publications/disaster-appeals-charity-commission-guidance-on-starting-running-and-supporting-charitable-disaster-appeals-cc40>).

The 1992 Act contains special requirements about written statements and refunds in relation to telephone fundraising and broadcast appeals. Where a donor pays £100 or more to a professional fundraiser or commercial participator, regardless of the amount received by the charity, the donor has the right to a refund if it is requested within seven days of either receiving the required written statement from the telephone fundraiser or of the broadcast appeal.

Find out more about these rules in Office for Civil Society guidance Charitable Fundraising: Guidance on Part 2 of the Charities Act 1992

(<http://webarchive.nationalarchives.gov.uk/20081230001423/http://www.cabinetoffice.gov.uk/media/110668/amended%20guidance%20final.pdf>).

Injunctions

The 1992 Act and the 1994 Regulations enable charities to seek an injunction restraining someone from raising funds in the name of the charity where any of the following apply:

- the fundraiser is using methods to which the charity objects
- the fundraiser is not a fit and proper person to raise funds for the charity
- the charity does not wish to be associated with that fundraising venture

Find out more about the rules in the 1992 Act and 1994 Regulations in Office for Civil Society guidance Charitable Fundraising: Guidance on Part 2 of the Charities Act 1992

(<http://webarchive.nationalarchives.gov.uk/20081230001423/http://www.cabinetoffice.gov.uk/media/110668/amended%20guidance%20final.pdf>).

Annex 2. Sources of information

Organisations with a role in fundraising regulation

Compliance with the Code of Fundraising Practice

The Fundraising Regulator (<http://www.fundraisingregulator.org.uk/>) is the body responsible for supervising charities' compliance with the Code and adjudicating on complaints.

The Institute of Fundraising (<http://www.institute-of-fundraising.org.uk/home/http://www.institute-of-fundraising.org.uk/home/>) (IOF) is the membership organisation for fundraising professionals and fundraising organisations and provides supporting guidance and information.

Lotteries, cash collections and collections of goods

The Gambling Commission (<http://www.gamblingcommission.gov.uk/>) regulates commercial gambling and the National Lottery. Its work includes licensing forms of gambling, such as lotteries, which raise money for good causes.

Local Authority Licensing departments grant licenses for collections by charities of cash or other goods, such as clothing. A license is usually required whether the collection is carried out in the street or door to door. Where the collection is in a London Borough (excluding the City of London), licenses are granted by the Metropolitan Police (<http://content.met.police.uk/Site/licensing>). Collections in the City of London are licensed by the City of London Corporation Licensing Service (<http://www.cityoflondon.gov.uk/business/licensing/Pages/default.aspx>). The public can check with the charity itself whether a collection is licensed, or they can contact their local authority's licensing department.

Advertising and marketing

The Advertising Standards Authority (<http://www.asa.org.uk/About-ASA/About-regulation.aspx>) is the UK's self-regulator for advertising across all media. Like all other advertisers, charities must ensure that their advertisements are not misleading, harmful or offensive.

Ofcom (<http://www.ofcom.org.uk/about/>) is the communications regulator for the TV and radio sectors, fixed line telecoms, mobiles, postal services, plus the airwaves over which wireless devices operate. With regard to charity appeals, Ofcom has a number of rules in the Broadcasting Code to protect viewers and listeners.

Data protection

The Information Commissioner's Office (http://ico.org.uk/about_us) (ICO) is the UK's independent authority set up to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals. All fundraising that involves recording or taking down personal details is subject to data protection laws. Charities that use face-to-face fundraising, online fundraising, direct mail, events, broadcast or telephone fundraising and which handle personal details such as names, contact details and credit or debit card details should be aware of and comply with the Data Protection legislation and rules. ICO has compiled advice and guidance (http://ico.org.uk/for_organisations/sector_guides/charity) for charities which cover these topics.

Fraud

Action Fraud (<http://www.actionfraud.police.uk/>) provides a central point of contact for information about fraud and financially motivated internet crime. If a charity or the public becomes aware of a charity scam, or are the victim of one, they should report (http://www.actionfraud.police.uk/report_fraud) it. They can also contact local police (<http://www.police.uk/>), the local authority trading standards service, and the appropriate charity regulator.

Tax

HM Revenue and Customs (<https://www.gov.uk/government/organisations/hm-revenue-customs>) (HMRC) is the UK's tax authority. Its work includes preventing and stopping tax avoidance and evasion.

Other charity regulators

The Charity Commission for Northern Ireland (<http://www.charitycommissionni.org.uk/>) (CCNI) is the regulator of charities in Northern Ireland. The Scottish Charity Regulator (<http://www.oscr.org.uk/>) (OSCR) is the regulator of charities in Scotland. Some charities in England and Wales are exempt from registration and direct regulation by the Commission. Their trustees have the same basic responsibilities as those of a registered charity, but

some Charities Act requirements do not apply. Most, but not all, exempt charities now have principal regulators (<https://www.gov.uk/government/publications/exempt-charities-cc23>), responsible for overseeing their compliance with charity law.

Guidance referred to in this publication

Commission guidance

The essential trustee: what you need to know, what you need to do

(<https://www.gov.uk/government/publications/the-essential-trustee-what-you-need-to-know-cc3>)

Charities and risk management (<https://www.gov.uk/government/publications/charities-and-risk-management-cc26>)

How to manage your charity's volunteers (<https://www.gov.uk/guidance/how-to-manage-your-charitys-volunteers>)

Trustees trading and tax: how charities may lawfully trade (<https://www.gov.uk/government/publications/trustees-trading-and-tax-how-charities-may-lawfully-trade-cc35>)

Managing charity assets and resources (<https://www.gov.uk/government/publications/managing-charity-assets-and-resources-cc25>)

Charity governance, finance and resilience: 15 questions trustees should ask

(<https://www.gov.uk/government/publications/charity-trustee-meetings-15-questions-you-should-ask>)

Financial difficulties in charities (<https://www.gov.uk/guidance/financial-difficulties-in-charities>)

Internal financial controls for charities (<https://www.gov.uk/government/publications/internal-financial-controls-for-charities-cc8>)

Disaster appeals: Charity Commission guidance on starting, running and supporting charitable disaster appeals (<https://www.gov.uk/government/publications/disaster-appeals-charity-commission-guidance-on-starting-running-and-supporting-charitable-disaster-appeals-cc40>) which includes general information about running and wording successful fundraising appeals

Charity reporting and accounting: the essentials March 2015 (<https://www.gov.uk/government/publications/charity-reporting-and-accounting-the-essentials-march-2015-cc15c>)

Charities: due diligence checks and monitoring end use of funds

(<https://www.gov.uk/government/publications/charities-due-diligence-checks-and-monitoring-end-use-of-funds>)

Protecting charities from harm: compliance toolkit (<https://www.gov.uk/government/collections/protecting-charities-from-harm-compliance-toolkit>)

How to report a serious incident in your charity (<https://www.gov.uk/guidance/how-to-report-a-serious-incident-in-your-charity>)

Risk framework: Charity Commission (<https://www.gov.uk/government/publications/risk-framework-charity-commission>)

Regulatory alerts: Charity Commission (<https://www.gov.uk/government/collections/regulatory-alerts-charity-commission>)

Other key guidance referred to

The Fundraising Regulator's Code of Fundraising Practice (<https://www.fundraisingregulator.org.uk/code-of-fundraising-practice/>).

The detailed guidance

(<http://webarchive.nationalarchives.gov.uk/20081230001423/http://www.cabinetoffice.gov.uk/media/110668/amended%20guidance%20final.pdf>) on the current requirements of the 1992 Act produced by the Office for Civil Society.



1. Home (<https://www.gov.uk/>)
2. Citizenship and living in the UK (<https://www.gov.uk/browse/citizenship>)
3. Charities, volunteering and honours (<https://www.gov.uk/browse/citizenship/charities-honours>)

VAT for charities

1. Overview

As a charity you don't pay VAT when you buy some goods and services (<https://www.gov.uk/vat-charities/what-qualifies-for-relief>).

Community amateur sports clubs (CASCs) don't qualify for the same VAT reliefs (<https://www.gov.uk/tax-relief-casc>) as charities.

How to get VAT relief

You must prove to the person who's selling the goods or services to you that you're eligible for relief (<https://www.gov.uk/vat-charities/how-to-claim-relief>). You don't need to be registered for VAT.

When you must register for VAT

You must register for VAT if your charity's VAT taxable turnover (<https://www.gov.uk/vat-charities/registration>) (the total value of everything you sell that isn't exempt from VAT) is more than £85,000.

You can choose to register if it's below this, for example if you want to reclaim VAT on your supplies.

Get help with VAT

Contact HM Revenue and Customs (<https://www.gov.uk/government/organisations/hm-revenue-customs/contact/charities-and-community-amateur-sports-clubs-casc>) (HMRC) if you have questions about VAT for your charity.

2. What qualifies for VAT relief

Charities pay VAT on all standard-rated goods and services they buy from VAT-registered businesses. They pay VAT at a reduced rate (5%) or the 'zero rate' on some goods and services.

What qualifies for the reduced rate

Your charity pays 5% VAT on fuel and power if they're for:

- residential accommodation (for example, a children's home or care home for the elderly)
- charitable non-business activities (for example, free daycare for the disabled)
- small-scale use (up to 1,000 kilowatt hours of electricity a month or a delivery of 2,300 litres of gas oil)

If less than 60% of the fuel and power is for something that qualifies, you'll pay the reduced rate of VAT on the qualifying part and the standard rate (20%) on the rest.

Qualifying fuel and power includes gases, electricity, oils and solid fuels (such as coal). It does not include vehicle fuel.

What qualifies for the zero rate

Find out about the conditions you must meet so that your charity pays no VAT (the zero rate) when you buy:

- **advertising and items for collecting donations** (<https://www.gov.uk/government/publications/vat-notice-7011-charities/vat-notice-7011-charities#advertising-and-goods-connected-with-collecting-donations>)
- aids for disabled people (<https://www.gov.uk/government/collections/vat-reliefs-for-charities-disabled-and-older-people>)
- **construction services** (<https://www.gov.uk/government/publications/vat-notice-7011-charities/vat-notice-7011-charities#construction>)
- drugs and chemicals (<https://www.gov.uk/government/publications/vat-notice-7011-charities/vat-notice-7011-charities#drugs-and-chemicals>)
- equipment for making 'talking' books and newspapers (<https://www.gov.uk/government/publications/vat-notice-7011-charities/vat-notice-7011-charities#equipment-for-producing-talking-books-and-newspapers>)
- lifeboats and associated equipment, including fuel (<https://www.gov.uk/government/publications/vat-notice-7011-charities/vat-notice-7011-charities#lifeboats-slipways-and-launching-and-recovery-equipment>)
- medicine or ingredients for medicine (<https://www.gov.uk/government/publications/vat-notice-7011-charities/vat-notice-7011-charities#medicinal-products>)
- resuscitation training models (<https://www.gov.uk/government/publications/vat-notice-7011-charities/vat-notice-7011-charities#resuscitation-training-models>)
- medical, veterinary and scientific equipment (<https://www.gov.uk/government/publications/vat-notice-7016-charity-funded-equipment-for-medical-veterinary-etc-uses/vat-notice-7016-charity-funded-equipment-for-medical-veterinary-etc-uses#what-is-medical-equipment>)
- ambulances (<https://www.gov.uk/government/publications/vat-notice-7016-charity-funded-equipment-for-medical-veterinary-etc-uses/vat-notice-7016-charity-funded-equipment-for-medical-veterinary-etc-uses#what-is-an-ambulance>)
- **goods for disabled people** (<https://www.gov.uk/government/publications/vat-notice-7017-vat-reliefs-for-disabled-people/vat-notice-7017-vat-reliefs-for-disabled-and-older-people#goodseligible>)
- motor vehicles designed or adapted for a disability (<https://www.gov.uk/government/publications/vat-notice-7016-charity-funded-equipment-for-medical-veterinary-etc-uses/vat-notice-7016-charity-funded-equipment-for-medical-veterinary-etc-uses#which-motor-vehicles-other-than-ambulances-qualify-for-zero-rating>)
- rescue equipment (<https://www.gov.uk/government/publications/vat-notice-7016-charity-funded-equipment-for-medical-veterinary-etc-uses/vat-notice-7016-charity-funded-equipment-for-medical-veterinary-etc-uses#which-rescue-equipment-qualifies-for-zero-rating>)

VAT-free goods from outside the EU

Charities don't pay VAT on goods imported from outside the EU as long as they're benefiting people in need by providing:

- basic necessities
- goods to be used or sold at charity events
- equipment and office materials to help run your organisation for the benefit of needy people

- goods to help deal with disasters within the EU

3. How to claim VAT relief

To get VAT relief you must give your supplier:

- evidence that you're a charity
- a written declaration or 'certificate' confirming that you're eligible for the relief

Evidence of charitable status

This can be either your:

- Charity Commission registration number
- letter of recognition from HM Revenue and Customs ([HMRC](#))

Scottish and Northern Irish charities must provide their letter of recognition from [HMRC](#).

Written declaration

You must give your supplier an eligibility declaration or certificate when they sell you goods or services at zero rate VAT. There are examples of declarations and certificates for different goods (<https://www.gov.uk/government/publications/vat-notice-7016-supplement>).

If you're buying building or construction services at zero VAT, the certificate must follow a set format (<https://www.gov.uk/government/publications/vat-notice-708-buildings-and-construction/vat-notice-708-buildings-and-construction#the-certificates>).

The written declaration or certificate should be separate from the order form or invoice for the goods or services your charity is buying.

4. Charities and VAT registration

As a charity, you must register for VAT (<https://www.gov.uk/vat-registration/how-to-register>) with HM Revenue and Customs ([HMRC](#)) if your VAT taxable turnover is more than £85,000.

You can choose to register if it's below this, for example to reclaim VAT on your supplies.

If you're registered for VAT you must send a return (<https://www.gov.uk/vat-returns>) every 3 months.

Work out your taxable turnover

To work out your VAT taxable turnover (<https://www.gov.uk/vat-registration/calculate-turnover>) add up the total value of everything you sell in a 12-month period that isn't:

- exempt from VAT
- outside the scope of VAT

Check what VAT rate applies (<https://www.gov.uk/rates-of-vat-on-different-goods-and-services#charities>) to your charity's activities.

Exempt from VAT

You can't charge VAT on exempt goods and services (such as the provision of welfare services). You can't normally reclaim VAT on any goods and services purchased in relation to an exempt business activity.

You can't register for VAT if all your business activities are exempt from VAT.

Outside the scope of VAT

Income from non-business activities is 'outside the scope' of VAT (you can't charge or reclaim VAT on them). This includes:

- donations where nothing is given in return
- grant funding given to support your charitable activities where nothing is given in return
- activities where your organisation doesn't make a charge

Read more about what counts as a business activity (<https://www.gov.uk/government/publications/vat-notice-7011-charities/vat-notice-7011-charities#deciding-whether-your-activities-are-business-or-non-business>).

Charging VAT

Once you've registered you must charge VAT at the correct rate on everything you supply.

Reclaiming VAT

If you're registered you may be able to reclaim VAT when you file your VAT Return (<https://www.gov.uk/vat-returns/overview>).

You can reclaim the VAT you were charged on goods and services relating to your taxable business activities.

Exports outside the EU

If you supply goods outside the EU free of charge (for example as aid) you can treat this as a zero-rate business activity (0% VAT) so you can reclaim the VAT on any associated costs.



DECLARATION OF INTERESTS

NAME OF TRUSTEE:
ADDRESS:

EMPLOYMENT OR BUSINESS: Any employment, office, trade, profession or vocation carried on for profit or gain

SPONSORSHIP: Any payment or provision of any other financial benefit

CONTRACTS: Any contract which is made between myself or my spouse or partner and the Green Street Green Association under which goods or services are to be provided or works are to be executed and which has not been fully discharged

GIFTS AND HOSPITALITY: The details of the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £25.

MEMBERSHIP OF OTHER CHARITIES AND PUBLIC ORGANISATIONS, such as a school governing body:

MEMBERSHIP OF CAMPAIGNING GROUPS OR ORGANISATIONS SET UP TO INFLUENCE PUBLIC OPINION, such as a political party or trade union: