

Responsibilities as Girlguiding and Charity Trustees

The responsibility for managing a charity falls upon the charity trustees.

In guiding, the charity trustees of a unit or area are typically:

- the voting members of a County or Country/Region Executive Committee
- the members of a Division or District Committee
- the Leader and any Assistant Leader(s) of a unit.

If a unit leader has general control and management of the administration of a unit (including the unit funds) and complies with Girlguiding UK procedures then she is in fact fulfilling her obligations as a charity trustee' Under the Charities Act 1993

Trustee Eligibility as a Charity Trustee

Most people over 18 years of age can become trustees.

The circumstances in which it may be a criminal offence to accept or continue with an appointment as charity trustee (of Girlguiding Clwyd) are summarized below. Full details can be obtained from the Legal Consultant at CHQ.

Unless the disqualification has been waived by the Charity Commissioners under Section 72(4) Charities Act 1993, it is a criminal offence under that section for any individual to act as a charity trustee if they are subject to:

- Unspent conviction for an offence involving dishonesty or deception
- Undischarged bankruptcy or sequestration of estate
- Any form of undischarged composition with creditors
- Removal as a charity trustee or trustee for a charity by the High Court or Charity Commission on grounds of misconduct or mismanagement
- Removal from being concerned in the management or control of any body by the Court of Session in Scotland
- Unexpired disqualification as a company director
- Undischarged County Court administrators order for payment of debt

In addition, it is a criminal offence under Section 35 and 36 Criminal Justice and Courts Services Act 2000 for an individual to take up or retain a 'regulated position' (including charity trusteeship of a children's charity) if that individual has been:

- Listed as unsuitable to work with children under the Protection of Children Act 1999
- Prohibited from Teaching under the Education Act 2002
- Listed as unsuitable to work with children under the Education Act 1996
- Subject to a disqualification Order under Part II CJCSA 2000 as a result of offences against children

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Charity trustees are responsible for the general control and management of the administration of a charity.

Trustees and their responsibilities

- Trustees have and must accept ultimate responsibility for directing the affairs of a charity, and ensuring that it is solvent, well-run, and delivering the charitable outcomes for the benefit of the public for which it has been set up.
- Trustees should make sure that they keep up to date with the charity's activities and how the charity is run.
- Trustees should ensure they give sufficient time and energy to conducting the business of the charity such as through regular attendance at meetings to make strategic decisions.

Compliance - Trustees must:

- Ensure that the charity complies with charity law, and with the requirements of the Charity Commission as regulator; in particular ensure that the charity prepares reports on what it has achieved and Annual Returns and accounts as required by law.
- Ensure that the charity does not breach any of the requirements or rules set out in its governing document (Constitution) and that it remains true to the charitable purpose and objects set out there.
- Comply with the requirements of other legislation and other regulators (if any) which govern the activities of the charity.
- Act with integrity, and avoid any personal conflicts of interest or misuse of charity funds or assets.

Duty of prudence - Trustees must:

- Ensure that the charity is and will remain solvent (keep yourself informed about the Charity's activities and financial position).
- Use charitable funds and assets wisely, and only in furtherance of the charity's objects.
- Avoid undertaking activities that might place the charity's endowment, funds, assets or reputation at undue risk.
- Take special care when investing the funds of the charity, or borrowing funds for the charity to use.

Duty of care - Trustees must:

- Use reasonable care and skill in their work as trustees, using their personal skills and experience as needed to ensure that the charity is well-run and efficient.

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- Consider getting external professional advice on all matters where there may be material risk to the charity, or where the trustees may be in breach of their duties.

If things go wrong

The Charity Commission offers information and advice to charities on both legal requirements and best practice to help them operate as effectively as possible and to prevent problems arising. In the few cases where serious problems have occurred The Charity Commission has wide powers to look into them and can put things right. Trustees may also be personally liable for any debts or losses that the charity faces as a result. This will depend on the circumstances and the type of governing document for the charity. However, personal liability of this kind is rare, and trustees who have followed the requirements will generally be protected.

What should I do before I become a trustee?

You should take all reasonable steps to find out as much as you can about the charity, and about what will be expected of you as a trustee.

You should also get a copy of the charity's governing document (constitution), and read it.

How long does the appointment of a trustee last?

If the governing document does not specify the length of service of a trustee, the appointment continues until the trustee dies, resigns or is removed from office.

A trustee whose term of office has expired can be appointed for a further term of office, unless the governing document prohibits it.

Can a trustee resign?

Yes – it is usually straightforward for a trustee to resign. But in some situations, especially with unincorporated charities, it is important to check the charity's governing document carefully.

Can trustees delegate their responsibilities?

Trustees can generally delegate certain powers to agents or employees, but will and must always retain the ultimate responsibility for running the charity

How do trustees make decisions?

All decisions by the trustees concerning a charity are taken by all the trustees, acting collectively and as a team. However, the decisions need not be unanimous; a majority decision is sufficient unless the charity's governing document states otherwise. Subject to any power of delegation there is a general rule that trustees must take personal responsibility for their decisions, and that all decisions concerning the charity must be taken by the trustees acting together

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Can a charity's property be held by someone other than the trustees?

The trustees of unincorporated charities may find it convenient for the title to land owned by the charity to be held by the Official Custodian for Charities or by a custodian trustee or a holding trustee. Trustees also have a power to appoint a nominee to hold the title. Whether and how they do this depends on the charity's governing document and the law.

Can trustees be paid for their duties?

Generally, no. Most trustees are unpaid, and must not benefit in any way from their connection with the charity. There are limited exceptions to this rule, and the 1993 Act allows trustees to be paid in certain circumstances for providing services to the charity over and above their normal trustee duties.

Trustees are not entitled to receive any payment out of the charity's funds other than reasonable and necessary out-of-pocket expenses (legitimate payments which a trustee has had to meet personally in order to carry out their trustee duties), such as the cost of travel to attend trustee meetings. Additionally, they must not benefit, either directly or indirectly, from the charity by, for instance:

- taking a lease of the charity's property;
- borrowing money from the charity; or
- making contracts to do business with the charity.

There is an exception where the governing document explicitly allows payment to trustees, and/or allows them to do business with the charity. Any personal benefit must strictly comply with the terms and conditions of the authority allowing the benefit. The Charity Commission can also authorise a transaction between a charity and a trustee personally, where the trustees can show a clear advantage to the charity. In addition the 1993 Act contains provisions that allow payment of trustees, but only for the provision of goods or a service to their charity over and above their normal trustee duties. This does not include contracted employment or payment for acting as a trustee. More information can be found in the Charity Commission publication, 'Trustee expenses and payments (CC11)'.

Can a trustee be employed by the charity?

Generally no; because trustees must not gain from their position. Again, there are limited exceptions to this rule.

The exceptions are where the governing document of the charity explicitly authorises it, or if permission has been given by us or a court of law. More information can be found in the Charity Commission publication, 'Trustee expenses and payments (CC11)'.

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What are charity trustees' duties in relation to fundraising?

Trustees must ensure that they have proper control of funds where people are raising money on their behalf or where they employ a professional fundraiser. They must ensure that funds are spent (or earmarked) for the purposes for which they were raised.

All funds raised should be paid into a bank account in the charity's name before deduction of any expenses. In certain circumstances this is a legal requirement.

Trustees must always ensure that:

- any appeal properly describes what donations from the public will be used for; and
- where professional fundraisers are employed as agents for the charity, a contract is drawn up.

In addition to these legal requirements, trustees should always:

- be aware of good fundraising practices, such as the Institute of Fundraising's Codes of Fundraising Practice;
- insist on approving both the fundraising methods and any appeal literature that will be used on their behalf;
- consider the financial risks – complete financial risk assessment;
- think carefully about the wording that explains the purpose of any fundraising appeal. Where an appeal has a specific purpose (such as to purchase a particular piece of equipment), it is helpful to specify how the funds can be applied if the main purpose of the appeal fails or if there are any surplus funds left over (for example, the general purposes of the charity);
- determining the amount you need to raise will help you choose the most appropriate method of fundraising for your appeal and provide an estimate of how long it will take to achieve that target (set a start and finish date for any appeal for a specific purpose);
- consider if professional advice is required;
- do you have enough volunteers to run the appeal? and do they need any training?
- look at the fundraising costs that the charity will be required to meet, be prepared to be open and honest about the costs of such an appeal if asked; and
- explain in their Annual Report the effectiveness of fundraising.

More information can be found in the Charity Commission publications, 'Charities and Fundraising (CC20)' and 'Charities and Commercial Partners (RS2)'

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What are the financial duties of trustees?

The trustees of every charity must ensure that its finances are used appropriately, prudently, lawfully and in accordance with its objects.

This could include making decisions about fundraising, the provision of services, and investments. This is an important duty in any charity. Whatever the size of the capital and income of the charity, proper financial management is the key to the success of the charity and its ability to help its beneficiaries.

What are the principles for trustees?

Trustees must act reasonably and prudently in all matters relating to the charity and must always bear in mind that their prime concern is the charity's interests. The charity's income and property must be applied only for the purposes set out in the governing document.

The charity's expenditure must be applied fairly among people who are properly qualified to benefit from it. The trustees of charities with permanent endowment must maintain a fair balance between the interests of present and future beneficiaries, for example when selecting investments. Accumulation of surpluses: The income of a charity must be applied for its purposes within a reasonable period of receipt, unless the trustees have an explicit power to accumulate it. Without such a power, the trustees should not allow the charity's income to accumulate unless they have a specific use for it in mind. If the trustees are allowed discretion about the use of the charity's property, but are in any doubt about the proper use of that discretion, they should ask the Charity Commission for advice. More information can be found in the Charity Commission publication, 'Tell it like it is: The extent of charity reserves and reserve policies (RS13)'.

Trustees must act reasonably and prudently in all matters relating to the charity and need always to bear in mind that their prime concern is its interests. They must not let any personal views or prejudices affect their conduct as trustees. They must exercise an appropriate degree of care in administering their charity. See also section H concerning the duty of care referred to in the Trustee Act 2000. Conflict of interest: Where trustees are required to make a decision that affects the personal interests of one of the trustees, the charity's governing document may require that that person should not be present at any discussion or vote on the matter. Even if the governing document does not require this, trustees should follow this procedure as a matter of good practice.

More information can be found in the Charity Commission publication, 'Conflicts of interest for Charity Trustees'.

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What duties do trustees have towards charity property?

Trustees must always act to protect property owned by the charity. If a charity has permanent endowment, particular care must be taken to maintain its value. Trustees are accountable for the charity's solvency, continuing effectiveness and the preservation of its endowments. They must exercise overall control over its financial affairs. They should ensure that the way the charity is administered is not open to abuse by unscrupulous associates or employees; and that their systems of control are rigorous and constantly maintained. More information can be found in the Charity Commission publication, 'Internal Financial Controls for Charities (CC8)'.

Land and buildings: If the charity owns land or buildings, trustees need to know on a continuing basis what condition it is in, that it is being properly used, and that adequate insurance is in place. The Trustee Act 2000 confers a power to insure property but it does not impose a duty to do so. However, the trusts of many charities do impose a positive duty to insure: if trustees fail to insure property this will be a breach of trust. More information can be found in the Charity Commission publication, 'Charities and Insurance (CC49)'.

Cash management: Money not needed for immediate expenditure should be invested. We recommend that if expenditure is expected in the near future, surplus cash is deposited to earn interest. Investments need to be reviewed periodically to ensure they remain suitable for the charity's needs. Wherever possible, we suggest that funds are placed in a range of investments so as to avoid substantial losses caused by the failure of a single investment or institution.

Bank accounts: Trustees must follow any relevant clause in the charity's governing document that specifies who is authorised to sign cheques. More information can be found in the Charity Commission publication, 'Internal Financial Controls for Charities (CC8)'.

Protecting endowed property: In particular, trustees need to ensure that property which is permanent endowment is used in a way that produces enough money for expenditure while at the same time safeguarding the value of the investment. Where they are satisfied that it would be more effective and in the charity's interest to cover the cost of a project by spending permanent endowment as well as income, a charity's trustees can resolve to do so if they comply with certain conditions. More information can be found in the Charity Commission publication, 'Permanent Endowment: What is it and when can it be spent?'

Debts and money due:

Trustees must ensure that all income due to the charity is received and that all tax and rating relief due is claimed.

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What powers do charity trustees have when investing funds?

The Trustee Act 2000 gives trustees a general power of investment. This allows trustees to place funds in any kind of investment as though they were the absolute owner of those funds: trustees must comply with certain conditions when using this power. The general power of investment is in addition to any existing power, but is subject to any restrictions and exclusions in the charity's governing document.

When exercising any power of investment trustees must follow standard investment criteria on the suitability and diversification of investments. They must also review the investments from time to time, and take proper advice when investing or reviewing those investments. They must also comply with the duty of care except, in the case of a constitutional power of investment, where it is excluded.

Can trustees buy land?

Yes – trustees have a general power to buy land (this term includes buildings). The Trustee Act 2000 and the Trusts of Land and Appointment of Trustees Act 1996 give trustees of unincorporated charities the power to acquire and manage freehold or leasehold land in the United Kingdom. The land can be acquired as an investment, for occupation by beneficiaries, or for any other reason.

Can trustees sell or lease land belonging to the charity?

Yes. Most charities can sell land unless the trusts on which it is held prevent this. There are certain requirements which they must meet when selling a charity's land. In more detail Power to sell or lease land: The governing documents of many charities (including most charitable companies) will give the trustees power to dispose of land. Those that lack such a power may be able to rely on statutory powers in the Trustee Act 2000 and the Trusts of Land and Appointment of Trustees Act 1996, provided that this is consistent with the charitable trusts on which the land is held.

A trustee will want to be satisfied that any disposal will be in the charity's best interests. For example, consider whether it would be better to retain the land for longer and perhaps continue taking any income from it, so as to earn more for it later. Or, in spite of the money that could be realised, consider continuing to use it for the benefit of the charity. As trustees it is part of your responsibility to think carefully before disposing of valuable assets of your charity which may be useful in the future.

Before trustees may sell, lease or otherwise dispose of land or buildings, they will normally have to follow a statutory procedure. More information can be found in the Charity Commission publication, 'What Trustees need to know about Disposing of Charity Land (CC28)'. Briefly, trustees must instruct a qualified surveyor and must consider the advice given. Trustees must not sell land for less than the best price reasonably obtainable.

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To lease land for more than seven years, trustees must follow the statutory procedure for sales, but there is a simpler procedure for some leases for seven years or less.

If, in either case, trustees are unable to follow the statutory procedure, or they wish to sell land to a person connected with them, they must obtain an order from The Charity Commission.

When the property being sold or leased is subject to trusts requiring it to be used for charity's specific purposes, the trustees must normally give public notice of the disposal. They may also need to apply to The Charity Commission for a scheme to give them power to sell the property; this should be done before the property is marketed.

Different considerations may apply to a sale by one charity to another charity. The trusts of the first charity may authorise the disposal of the land to the other charity for less than the best price reasonably obtainable.

Can the charity borrow money on the security of its land?

Generally, a charity can borrow money and give a charge (ie a mortgage) on its land as security for the loan but its trustees must comply with certain conditions.

Before they mortgage a charity's property, trustees must get advice from a person with ability in, and experience of, financial matters who has no personal interest in the proposed loan. This person can be a trustee or employee of the charity, and must advise on whether the loan is necessary for the charity, whether the terms are reasonable, and whether the charity will be able to repay the loan on those terms.

Trustees should seek advice in the same way even where the borrowing, such as a temporary overdraft, is unsecured. If trustees do not seek advice on matters on which they are not themselves experts, they could be regarded as having acted imprudently. This may leave them personally liable for the consequences. More information can be found in the Charity Commission publication, 'What Trustees need to know about Disposing of Charity Land (CC28)'.

What are the liabilities of charity trustees?

A conscientious and committed trustee need have few worries about personal liability. But it is important for all trustees to understand their position.

If trustees act prudently, lawfully and in accordance with the governing document, then any liabilities (ie debts or financial obligations) that they incur as trustees can normally be met out of the charity's resources. However, if trustees incur liabilities

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or debts that amount in total to more than the value of the charity's assets they may not be able to cover themselves in full out of the charity's property, even if the liabilities have been properly incurred.

If the trustees act imprudently, or are otherwise in breach of the law or the governing document, the position is different. Here, trustees may be personally responsible for liabilities incurred by the charity, or for making good any loss to the charity. Since trustees act collectively in running a charity, they will usually be collectively responsible to meet any such liability.

The Charity Commission can take proceedings to court for the recovery, from trustees personally, of funds lost to charity as a result of a breach of trust by the trustees. However, there is only a small likelihood that trustees will have to pay out of their own pocket towards a financial loss suffered by the charity, or towards compensating a third party who has suffered a financial loss as a result of their dealings with the charity. In cases where a breach of trust causes a loss to the charity, The Charity Commission can relieve trustees of their liability to pay, provided they have acted honestly and reasonably. Despite this, we appreciate there are genuine concerns about the risk of personal liability. Reducing risk: The Charity Commission strongly recommends that trustees are particularly careful when entering into substantial contracts or borrowings to ensure that the charity has the means to meet its obligations. If trustees are clear about all the potential risks and identifying the areas, if any, where their charity might be exposed, trustees can take preventative action to lessen the possibility of personal liability. For example, it is recommended that trustees:

- familiarise themselves with the governing document;
- establish effective induction procedures for new trustees;
- take professional advice when needed or required by statute;
- take advice from the Commission or a professional expert when unsure about their duties;
- clarify what powers they have to delegate authority either to an agent or employees;
- implement effective internal management and financial controls;
- find out what areas of law might affect the charity's activities, such as employment, health and safety, human rights and data protection; and
- before they enter into a contract, satisfy themselves that the charity has the resources to meet its part of the contract and understand the consequences of breaching the contract.