



GUIDANCE AS TO THE ROLE OF A CHARITY TRUSTEE

Introduction

1. Overriding principle: a charity trustee must always act only in furtherance of the charitable objects for which the charity concerned was established and in the charity's best interests. To do otherwise will be in breach of the charitable trusts on which the charity's property is held.

Who is a charity trustee?

2. Section 24 of the [Charities Registration and Regulation Act 2019](#) defines a charity trustee as being a person who has the general control and management of the administration of a charity. Depending on the type of institution, the charity trustees will be described with different terms in the governing instrument, for example:-

- an unincorporated association: members of the committee;
- a company limited by guarantee: directors or members of the Council of Management;
- a trust: trustees;
- a foundation: council members.

3. The charity trustees share equal responsibility for the charity with their fellow charity trustees.

4. A person must not be appointed as a charity trustee if they are, or continue in that role if they later become, disqualified from being a trustee under section 25(1) of the 2019 Act, which provides that a person is disqualified for being a charity trustee who —

- (a) has been convicted of an offence (whether in the Island or elsewhere) involving dishonesty;
- (b) is subject to a disqualification order or disqualification undertaking under the Company Officers (Disqualification) Act 2009 or to an order or undertaking of equivalent effect (whether in the Island or elsewhere);
- (c) is an undischarged bankrupt (whether in the Island or elsewhere);
- (d) has made a composition or arrangement with, or granted a trust deed for, creditors and has not been discharged in respect of it;
- (e) is the subject of an order under section 39(2)(a) of this Act or section 10(2)(a) of the Charities Registration Act 1989 (power to act for protection of charities); or
- (f) is subject to the notification requirements of Schedule 1 to the Criminal Justice Act 2001 or to equivalent notification requirements elsewhere in the British Islands (i.e. is placed on the sex offenders' register).

5. Section 25(5) provides that it is an offence for any person to act as a charity trustee whilst disqualified for being a charity trustee by virtue of this section, with a maximum penalty on summary conviction of 12 months' custody and/or a £10,000 fine.

6. The Attorney General may by written decision waive the application of subsection (1) in relation to any person where the Attorney General considers that the public interest does not require that person to be, or to continue to be, disqualified either —

- (a) generally; or

(b) in relation to a particular charity or particular class of charities.

7. For more information about the effect of disqualification, see section 25.

What are the responsibilities of a charity trustee?

8. Charity trustees have the following responsibilities:-

- ensuring that their charity is carrying out the purposes for which it is set up, and no other purpose;
- ensuring that their charity is being operated in compliance with its governing instrument, with the requirements of charity law and any other applicable laws;
- acting in the best interests of their charity;
- managing their charity's resources responsibly;
- acting with reasonable care and skill; and
- ensuring that their charity is accountable.

9. The Charity Commission for England and Wales publish detailed [guidance](#) on the role of trustees, much of which is directly relevant to the role of a charity trustee under Manx law. The Attorney General recommends that all charity trustees refer to this guidance. Please be aware that, although the general principles are common to both jurisdictions, the statutory requirements may differ and charity trustees should ensure that they are aware of the requirements under Manx law.

How can charity trustees ensure that they are properly discharging their responsibilities?

10. Know your governing instrument, in particular the following provisions:-

- (a) objects;
- (b) who is a trustee: eg committee member, trustee, director, council member;
- (c) number of trustees required;
- (d) method of appointment/removal;
- (e) holding of meetings, including quorum;
- (f) difference between role of trustees and that of members (if any).

11. Understand what activities can be undertaken within the existing objects.

12. Review the charity's governing instrument at least annually to ensure it remains fit for purpose.

13. Ensure that the charity has in place all policies and procedures which are required under relevant legislation or can be considered to be best practice eg safeguarding policies, accounting control systems, grant making policies.

14. Be aware of statutory requirements eg filing accounts, reports, notification of changes, including the time limits, and the requirement to state information concerning the charity on documents, communications, etc (regulation 20) and remember that responsibility for compliance rests with all trustees.

15. Ensure that the details of the charity held on the register are up to date and that the correspondence addresses provided are effective means of communicating with the charity,

in particular that the e-mail address notified for correspondence remains current and the inbox is checked regularly.

What happens if charity trustees do not properly discharge their responsibilities?

15. Failure to comply with the statutory requirements to file accounts, reports or notification of changes within the time limit provided is an offence for which each trustee may be liable on summary conviction to a maximum fine of £10,000. A similar penalty applies should the charity fail to comply with the requirement under regulation 20 of the Charities Regulations 2020 to state specified information on its documents, correspondence and other materials.

16. If the charity trustees are not carrying out their role properly, for example, they are mismanaging the charity's funds, they are not operating the charity in accordance with its governing instrument or they are carrying out activities which fall outside the charity's objectives, the Attorney General is able to use his powers as regulator (see sections 33-39 of the 2019 Act), which include the power to hold an inquiry into the charity or to seek an order from the High Court to remove or suspend charity trustees. If the court removes a charity trustee, that person is thereafter disqualified for being a charity trustee under section 25.

17. If the actions of the charity trustees are such that they can be said to be acting in breach of trust, i.e. in breach of the duty that they owe to the charity, and this results in financial losses or in funds being misapplied, the charity trustees may be required personally to account for those losses or funds.

18. It should be remembered that charity trustees generally have a wide discretion as to how the charity is operated and the way in which the charitable benefit is delivered. Thus, provided the charity's activities remain within its objectives, the fact that charity trustees may make decisions with which others disagree is not, in itself, indicative of misconduct or mismanagement. For the Attorney General to seek to use his regulatory powers, there would usually have to be reasonable grounds to suspect that the trustees are acting, or have acted, improperly.

19. Should the charity trustees, or indeed anyone connected with a charity, have any concerns about whether particular activities, whether proposed or actual, can be carried out within the charity's objectives or whether the charity, or the charity trustees, have the power to take certain decisions or to carry on particular activities, they should review the available guidance and, if any concerns remain, contact Charities Administration to discuss the matter.

Charities Administration

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