

Six legal and regulatory duties of trustees

The following six legal duties are taken from the Charity Commission's core guidance: [The Essential Trustee: what you need to know, what you need to do](#).

Alongside each duty we've set out some questions that trustees can consider to help ensure compliance.

Make sure your charity's carrying out its purposes for the public benefit

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

- Make sure 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.

Questions trustees can ask

1. How is our charity's purpose defined in our governing document?
2. Does the work of the charity support this purpose?
3. If areas of work do not clearly align with the charity's purpose, should we continue with that work?
4. Do we have a strategy which sets out how we'll support our purpose?
5. How do we know we're making progress with our plans?
6. What are the benefits for the public from our work and how do we define those?

Example

The board of trustees at Big Town Youth Centre are approached by the local council and offered funding for a project supporting elderly members of the community. Although the funding would be helpful, the board are concerned that the project is not aligned with the charity's purpose and that the work would distract the small staff team from the youth project they run. The board discuss whether running the project would help support the charity's purpose. The trustees also explore if the project supports the charity's strategy which sets out goals for the staff and volunteers. The board decides that although this project with elderly community members is valuable, it doesn't align with the charity's purpose. They agree that taking on the project would mean the team is unlikely to achieve strategic goals. The board choose to decline the funding.

2. 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.

Questions trustees can ask:

1. Have we seen and read the charity's governing document?
2. Does the board receive training on their duties?
3. When did we last review our policies to ensure legal compliance?
4. What legal and regulatory requirements might impact on our work or a particular project?
5. Does the board have access to legal advice?

Example

Many Voices Choir is a charity whose members elect their trustees annually at an Annual General Meeting. The democratic member-led approach is very important to the charity.

However, halfway through the year, a few resignations mean that the board is short on numbers.

A few volunteers have stepped forward to fill the gap, and so the board checks their governing document.

This says in the event of resignations from the board, the remaining trustees have the power to vote on appointing trustees until the next AGM.

This gives the board the confidence that the newly appointed trustees will have the authority to make decisions and that the charity is following its governing document.

The board decides by a majority to appoint the trustees for the six month period.

3. 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
- make balanced and adequately informed decisions with your co-trustees, thinking about the short and long 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's properly authorised and clearly in the charity's interests– this also includes anyone who's financially connected to you – such as a partner, dependent child or business partner

Questions trustees can ask

1. Are we clear on what the charity is trying to achieve and how it will do this?
2. Do we have the appropriate information to make a decision?
3. What are the short and longer-term implications of this decision?
4. Could I or anyone connected to me benefit from this decision?
5. Do we have a policy on managing conflicts of interest?

Example

Barry is a trustee at the Old Boat Conservation Trust. He's a retired boat restorer with incredible knowledge and connections in the industry.

The Trust has been given a rare boat which is in need of conservation.

Barry remains very well connected in the boat restoration world and it's likely several of Barry's friends and former colleagues would be interested in bidding for the contract.

Barry immediately declares that this could create either a conflict of interest or the perception of a conflict of interest.

After discussing it with trustees the rest of the board decide that Barry will not be involved in the decision on either:

- if the restoration project will go-ahead
- or the selection process for a company.

As Barry is an expert, the board agrees he should offer some thoughts on the technical requirements for the restoration. The board has managed the scenario and acted in the charity's best interests.

4. 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 make sure these are followed. Otherwise you risk making the charity vulnerable to fraud or theft, or other kinds of abuse.

Questions trustees can ask

1. Are we using the charity's funds to support its purpose?
2. Do we have a clear and current picture of the charity's financial position?
3. Where are the charity's financial risks?
4. Are there a set of financial procedures in place to protect the charity and how do we know these are fit for purpose?
5. Does the charity require an external audit?

See [section seven of The Essential Trustee publication](#) for more information.

Example

The board of Adventure Community Gardens meets every other month. At each meeting they review the management accounts, cash flow forecast and balance sheet.

The trustees are sent all the information in advance of the meeting to allow them time to prepare. The figures are sent alongside written information which explains what trustees are looking at.

All the trustees receive a finance induction and the chair actively ensures that everyone has the opportunity to ask questions of the treasurer during the meeting.

5. 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

Questions trustees can ask

1. Do I use my skills, experience and insight to their full potential as a trustee?
2. Does everyone contribute to the board in a meaningful way?
3. Are we aware of the skills we have in the room and where we might have skill gaps?
4. Does everyone come to the meeting prepared having read and understood the papers?
5. Do the agendas in our meetings allow enough time to share ideas?

Example

Keisha has a senior role at a bank. Before becoming a trustee she carefully considered the time commitment she could make to the charity of her choice. She had an open and honest conversation about the commitment.

As a result Keisha now plans meeting preparation time into her schedule.

She holds time to prepare fully for meetings and thinks analytically about the risks and opportunities of specific proposals.

She makes sure that she contributes actively in meetings using her expertise from her professional role and lived experience.

6. Make sure 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
- make sure there's appropriate accountability to members, if your charity has a membership separate from the trustees
- make sure there's accountability within the charity, particularly where you delegate responsibility for particular tasks or decisions to staff or volunteers

Questions trustees can ask

1. What are the reporting requirements for the charity?
2. Who are our key stakeholders and how do we keep them informed about the charity's work?
3. Have we set out in writing areas where we have delegated responsibility from the board?
4. How does the board keep informed about what is happening in the charity between meetings?
5. What arrangements are in place for the supervision of the most senior staff or volunteers?

Example

The board of trustees at a students' union prepare an annual plan for how they will monitor and report on work and finances.

This involves mapping out key reporting deadlines for regulators such as the Charity Commission.

It also involves mapping other key stakeholders such as their student members who meet at their Annual General Meeting.

The approach helps the trustees to make sure reports are accurate and prepared in good time.

It also means that trustees open themselves up to scrutiny from their members in the general meeting.

The board has also adopted a practice of taking five minutes at the end of each board meeting to reflect on their discussion and decide what key updates they want to share in their members' newsletter.

<https://www.ncvo.org.uk/help-and-guidance/governance/responsibilities-for-boards/the-legal-duties-of-trustees/#/>