

Running your charity

Support for charity trustees on key aspects of running a charity effectively



The Charity Commission for Northern Ireland

The Charity Commission for Northern Ireland is the regulator of charities in Northern Ireland, a non-departmental public body sponsored by the Department for Communities.

Our vision

To deliver in partnership with other key stakeholders in the charitable sector “a dynamic and well governed charities sector in which the public has confidence, underpinned by the Commission’s effective delivery of its regulatory role.”

Further information about our aims and activities is available on our website www.charitycommissionni.org.uk

Equality

The Charity Commission for Northern Ireland is committed to equality and diversity in all that we do.

Accessibility

The Commission’s website has been designed to **W3C standards** of accessibility and includes a number of features to enhance accessibility for a wide range of individuals. These include colour contrast and resize options. Materials may be made available in alternative formats on request. If you have any accessibility requirements please contact us.

Online or in print

If you are viewing this guidance online, you will be able to navigate your way around by clicking on links either within the contents page or text.

We have produced a glossary that provides further information, definitions and descriptions of some key terms. The words in **bold green type** indicate words that are found in the glossary towards the end of this guidance. If you are reading the guidance online you can click on the word and it will link you to the definition in the glossary. The words in *blue italics* indicate other guidance or databases.

Please check our website www.charitycommissionni.org.uk to make sure you’re using the latest versions of forms and guidance.

Contents

Section 1:	Overview	5
Section 2:	About this guidance	6
Section 3:	Duties and responsibilities of charity trustees	8
	3.1 Who are charity trustees?	
	3.2 Shadow directors and persons with significant control	
	3.3 Who can be a charity trustee?	
	3.4 Can someone with a learning difficulty or mental health impairment be a charity trustee?	
	3.5 What should a new charity trustee be aware of?	
	3.6 Compliance with the Charities Act and other legislation	
	3.7 Acting with care and diligence	
	3.8 Acting in the best interests of the charity	
	3.9 Serious incident reporting	
	3.10 Safeguarding policies	
	3.11 Keeping your charity's governing document up to date	
	3.12 Changing your charity's structure	
	3.13 Planning and reviewing your charity's work	
Section 4:	Public benefit	17
	4.1 The public benefit requirement	
	4.2 Operating for the public benefit	
	4.3 What are the benefits?	
	4.4 Risk of harm	
	4.5 Deciding who benefits	
	4.6 Access to facilities restrictions	
	4.7 Membership	
	4.8 Charging	
	4.9 Incidental benefit	
	4.10 Equality considerations	
	4.11 Reporting on your charity's public benefit	

Section 5:	Finance, funding, reporting and accountability	24
5.1	Charity details on the register of charities	
5.2	Financial record keeping	
5.3	Charity banking	
5.4	Annual reporting to the Commission	
5.5	What are Reserves?	
5.6	Fundraising	
5.7	Closing or merging	
Section 6:	Good governance	30
6.1	The five key principles of The Code of Good Governance	
6.2	Conflicts of interest	
6.3	Practical steps which a charity can take where there is a potential conflict of interest	
6.4	Charity trustee remuneration and expenses	
6.5	AccessNI checks	
6.6	Campaigning and political activities	
Section 7:	Risk and insurance	35
7.1	Charities and risk management	
7.2	Types of risk faced by charities	
7.3	Who is responsible for risk management?	
7.4	What action should be taken to manage risk?	
7.5	Top tips to reduce or avoid charity trustee personal liability	
7.6	Insurance	
7.7	Volunteers and insurance	
Appendix 1:	Declaration for new charity trustees	39
Appendix 2:	Glossary	40
Useful contacts		45
Useful links and guidance		48
Contact details		49

Section 1: Overview

The purpose of this guidance is to assist **charity trustees** in understanding their duties and encourage them to adopt good practice in all aspects of running their charity. An integral part of good governance and effective performance is compliance with the law and willingness to be engaged in a process of continual improvement. The guidance is also intended to support and encourage all forms of charitable giving and voluntary participation in charity work.

The majority of standards set out in this guidance are based on the principles of best practice but some are legal requirements. Failure to adhere to the legal requirements could result in charity trustees being in breach of trust.

The guidance provides information on five key areas for charities.

- Duties and responsibilities of charity trustees.
- The public benefit requirement.
- Finance, funding, reporting and accountability.
- Good governance.
- Risk and insurance.

This guidance will continue to develop as we identify additional information that may be of assistance to charity trustees.

Section 2: About this guidance

Who does this supporting guidance apply to?

This guidance is aimed at **charity trustees**, who may also be referred to by other terms, such as trustees, members of management committees, or directors of charitable companies or they may be referred to by some other title. These individuals fall within the description of 'charity trustees' as defined in section 180 of the Charities Act (Northern Ireland) 2008. These are the people who have the general control and management of the administration of a charity.

It may also be of use to someone acting on behalf of a charity, for example a solicitor, accountant, agent or adviser. It is also aimed at anyone considering taking up charity trustee responsibilities and duties.

What does this supporting guidance not cover?

This supporting guidance is not a full description of legal matters affecting your charity, nor is it a substitute for advice from a charity's own professional advisers. Instead, it is aimed at providing a general introduction and overview of key governance matters for charities, as well as highlighting areas where charity trustees may need to seek further advice.

Charities may also be subject to other legislation and sometimes regulation. For example, charitable companies also have to comply with the requirements of company law under the [Companies Act 2006](#). Similarly, charitable industrial and provident societies are also subject to additional legislation and best practice.

What are legal requirements and best practice?

In this guidance, where we use the word 'must' we are referring to a specific legal or regulatory requirement. We use the word 'should' for what we regard as best practice, but where there is no specific legal requirement. Charity trustees should follow best practice guidance unless there is a good reason not to.

Where can you find definitions of key terms?

You will find definitions of key terms in the glossary towards the end of this guidance. If you are viewing the guidance online, you can click on a word in **bold green type** and you will be brought straight to the definition in the glossary.

Charity legislation

References in this guidance to 'the Charities Act' are to the **Charities Act (Northern Ireland) 2008**.

Key terms

The following are some key terms that it will be useful to understand when reading this guidance. They, and other terms, are also listed in a glossary at [appendix 2](#).

Charity trustees: These are the people who are legally responsible for the control and management of the administration of the charity. In the charity's governing document they may be called trustees, managing trustees, committee members, governors or directors or they may be referred to by some other title. Some people are disqualified by law from acting as charity trustees. These disqualifications are set out in the Charities Act and broadly include but are not limited to anyone who:

- has been convicted of an offence involving deception or dishonesty, unless the conviction is a spent conviction under the Rehabilitation of Offenders (NI) Order 1978
- is an undischarged bankrupt or has made an arrangement with creditors
- has previously been removed as a trustee by the Commission or by the courts
- is subject to disqualification under company legislation.

Governing document: A charity's governing document is any document which sets out the charity's purposes and, usually, how it is to be administered. It may be a trust deed, constitution, memorandum and articles of association, conveyance, Will, Royal Charter, Scheme of the Commission or other formal document.

Purposes: The purposes of a charity will usually be defined by what its governing document states it is set up to do. According to the Charities Act, all the organisation's purposes **must:**

- fall under one or more of the list of 12 descriptions of charitable purposes in the Charities Act, and
- be for the public benefit.

Section 3: Duties and responsibilities of charity trustees

Charity trustees play an essential role in running charities, bringing valuable experience, skills and knowledge to individual organisations and the charitable sector. Charity trustees are the people who have overall control of the charity and responsibility for making sure it is doing what it was set up to do and is operating within its charitable **purposes** for the public benefit. They lead the charity and decide how it is run. While being a charity trustee can be an interesting and rewarding role, charity trustees should be aware of the significant level of responsibility involved.

Charity trustees are collectively responsible for all the activities of their charity. They must all observe the requirements of the **Charities Act, Trustee Act** and other relevant legislation and have a shared duty of care for the charity. The rules relating to **legal capacity** or **legal authority** to act on behalf of an organisation as a charity trustee are complicated. This guidance aims to assist charity trustees in understanding what is expected of them, collectively and individually, in keeping with relevant charity and trustee legislation.

The Commission has produced guidance to support charity trustees in complying with their legal obligations and best practice requirements. It provides information on how the Commission monitors and identifies non-compliance, and the consequences for charity trustees where non-compliance is identified. The *Monitoring and compliance guidance* is available in the *Concerns and decisions* section of our website.

3.1 Who are charity trustees?

Charity trustees are the people who are legally responsible for the control, management and administration of a charity. In the charity's **governing document**, they may be known by a number of terms, for example, trustees, directors, board members, governors, committee members, a council of management or charity trustees. If there is a requirement for a minimum number of charity trustees, or a quorum, set out in your charity's governing document then the charity must have that number of charity trustees. If there is no minimum requirement then there must be at least one charity trustee however best practice is a minimum of three.

3.2 Shadow directors and persons of significant control

A shadow director is someone not formally appointed as a director of a charitable company, but who gives instructions (rather than professional advice) on which the directors of a charitable company are accustomed to act.

A person of significant control in relation to a charitable company is:

- a person who is also not a member of the board of directors, and
- regularly or consistently directs or influences a significant number of the charity's directors, or
- who is regularly consulted and whose views influence decisions made by the charity directors.

An example of a [person with significant control](#) over a charitable company might be an elected representative or an employee of a local authority who regularly attends charity trustee meetings.

A shadow director or person of significant control (as defined by the Companies Act) who regularly exercises control or authority over the actions and decisions of a charity may be held to be a charity trustee/director for the purposes of charity/company law. As such, they may share the responsibilities and liabilities of trusteeship or directorship. This does not apply to professional advice given to charity trustees by a solicitor or accountant at the request of the charity trustees.

The Charities Act defines charity trustees as those '*persons having the general control and management of the administration of a charity*'. This definition is wide and may include persons who are not appointed to a trustee board, but who have control and management in the administration of a charity. Where persons such as local authority employees, elected representatives or others such as senior employees, parent company trustees or trustees' relatives, who are not properly appointed, regularly attend trustee meetings, such persons may owe **fiduciary duties** to the charity. They may also share the legal liabilities of trusteeship. The level of participation and influence such individuals have should be given careful consideration by the charity trustees.

Whether or not a person is acting as a shadow director will depend on the circumstances associated with their position. Ask yourself, am I regularly making recommendations to the board, on a range of decision-making processes, on which the charity trustees are accustomed to act? If you know you are not a director of a charitable company (and do not want to risk being a shadow director), only operate within the authority given to you by the charity trustees, refer all significant matters back to the charity trustees and allow them to take all decisions. If you attend trustee meetings, do so only to advise and not *direct* the charity trustees. The minutes should record this and also show you as "in attendance", not "present". Minutes should be retained for future reference.

If you are unsure about your role and responsibilities or the role of an un-appointed attendee at your charity trustee meetings you may wish to seek legal advice.

3.3 Who can be a charity trustee?

Charity trustees must comply with the rules set out in their charity's governing document, including rules regarding who can be a charity trustee, when and how charity trustees are appointed and how long appointments can last. If a charity's governing document does not set out rules in this area then the charity must comply with any relevant legal provisions. For example, for companies there are company law provisions for removing and appointing directors while trusts and unincorporated associations must comply with trust law.

Trustees of unincorporated charitable organisations must be 18 years or over. Directors of companies can be 16 years or over under company law and therefore can be charity trustees of charitable companies. When recruiting charity trustees it is important that charities think about the skills and experience required, including whether there may be gaps in terms of the skills and experience of existing charity trustees. Some people are disqualified by law from acting as charity trustees. These disqualifications are set out in the Charities Act and broadly include but are not limited to anyone who:

- has been convicted of an offence involving deception or dishonesty, unless the conviction is spent under the Rehabilitation of Offenders (Northern Ireland) Order 1978
- is an **undischarged bankrupt** or has made an arrangement with creditors
- has previously been removed as a charity trustee by the Commission or the courts
- is subject to disqualification under company legislation.

Charity trustees should sign a declaration form before their election or appointment to confirm that they are not disqualified. A [template declaration form](#) has been provided at *appendix 1* and may also be downloaded from the Commission's website.

If a potential charity trustee is disqualified, you may also find the Commission's guidance on [Waiving trustee disqualification](#) useful.

Section 86 of the Charities Act (Northern Ireland) 2008, which sets out persons disqualified for being trustees of a charity, does not apply to charities to which the Commission has granted religious designation. This is set out in the [Charities Act 2008 \(Designated Religious Charities\) Order \(Northern Ireland\) 2016](#).

3.4 Can someone with a learning difficulty or mental health impairment be a charity trustee?

Learning difficulties or mental health impairments do not prevent someone from acting as a charity trustee. A person with a learning disability or mental health issue can bring valuable experience and perspective to the trustee board, either as a charity trustee or in an advisory capacity.

When considering any new appointment to their board, charity trustees must be mindful of their responsibility to act in the best interests of the charity. Consideration should also be given to the individual needs of potential appointees with a severe learning disability or mental health issue. Charity trustees are equally and jointly responsible in law for the management and administration of their charity.

A charity trustee must be considered capable of managing their own affairs and as such, should not be incapable of acting as a trustee by reason of a mental disorder within the meaning of the [Mental Health \(Northern Ireland\) Order 1986](#). This may rule out some people who are at the more severe end of the spectrum acting as charity trustees but would not necessarily prevent them from becoming involved in other voluntary aspects of the charities work.

3.5 What should a new charity trustee be aware of?

Before you become a charity trustee, you should learn as much as possible about what being a charity trustee will mean for you and what will be expected of you. For instance, for an existing, larger charity, we would suggest that you read the charity's important policies and annual **accounts** and reports.

You may also find it useful to meet with the existing charity trustees, senior staff and, if possible, some of the people who benefit from the charity's work. Some charities may also invite you to sit in on a trustee meeting as an observer before you formally join. There may also be training available for new charity trustees.

You should also view a copy of the charity's **governing document**. This is a legal document which represents the rule book for the charity, setting out its purposes and how it is to be administered. Further advice should be sought from the other charity trustees if required.

3.6 Compliance with the Charities Act and other legislation

Charity trustees must:

- ensure the charity complies with charity law and with the requirements of the Commission as regulator
- make sure the charity acts in accordance with the requirements imposed by other relevant legislation or regulators, for example company law, trustee law, health and safety law, employment law, the Bribery Act and data protection law
- ensure that the charity is registered with the Commission when called forward to do so
- prepare **annual returns, reports** and accounts as required by law
- ensure the charity does not breach any of the requirements or rules set out in its governing document and remains true to its charitable purposes
- act with integrity and avoid any misuse of charity funds or assets
- report any **serious incidents** to the Commission and explain how these are being managed.
- avoid actual and potential conflicts of interest and handle any that do arise in such a way as to promote accountability and transparency.

3.7 Acting with care and diligence

Charity trustees must:

- be familiar with the charity's governing document and ensure it remains effective
- ensure the charity is and will remain solvent
- use charitable funds and assets properly and only in furtherance of the charity's purposes
- avoid undertaking activities that might place the charity's assets, endowment, funds, property or reputation at undue risk
- take special care when investing the funds of the charity or borrowing funds for the charity to use
- use reasonable care and skill in their work as charity trustees, including using their personal skills and experience to ensure the charity is well-run and efficient
- consider getting external professional advice on all matters where there may be risk to the charity or where the charity trustees may be in breach of their duties.

3.8 Acting in the best interests of the charity

Charity trustees must act in the best interests of the charity and only within the purposes of the charity. An effective charity is accountable to the public as well as to others who have an interest in it (stakeholders). A

charity can demonstrate accountability by being clear, open and transparent. Charity trustees must act at all times in the best interest of the charity. When they do not act in this way a breach of trust or breach of duty of care may occur. Breaches of trust or duty of care can take various forms and in serious cases it may mean that the charity trustees are personally liable for any debts or losses sustained by the charity as a result of their actions.

3.9 Serious Incident Reporting

Given nature of the work undertaken by charities and the challenging environment in which they work, there is a possibility that **serious incidents** may occur. A serious incident is an adverse event, whether actual or alleged, which results in, or risks:

- a significant loss of charity money or **assets**
- damage to charity property, or
- harm to the work of the charity, its beneficiaries or reputation.

All charities, no matter what their size or income, are expected to report serious incidents to the Commission. These must be full and frank in their disclosure of the problem. When submitting an annual monitoring return, charity trustees **must** declare whether all serious incidents or other matters have been brought to the Commission's attention.

The Commission has produced additional guidance on [Serious Incident Reporting](#) to help charity trustees identify reportable incidents. The guidance provides examples of reportable incidents and explains how these should be reported to the Commission as well as other relevant authorities. Further information on reporting requirements for registered charities is available under Section 5 of this guidance: [Finance, Funding, Reporting and Accountability](#).

3.10 Safeguarding policies

The law surrounding the safeguarding of vulnerable groups is complex and it can be difficult for charities to understand how it applies to them. Requirements relating to individuals who work with children and vulnerable adults are established within the safeguarding legislation for Northern Ireland. Obligations to safeguard children and young people and promote their welfare are also contained in international law. Trustees of charities that work with children or vulnerable adults are responsible for ensuring their organisation complies with the law.

It is the responsibility of charity trustees to ensure that they have appropriate safeguarding arrangements including appropriate staff and volunteer checks, policies and procedures in place to meet the needs of the charity and its beneficiaries. Appropriate training should be provided to all staff and volunteers, on the policies and procedures to be followed if

they have concerns about the safety or welfare of a child or vulnerable adult.

Charity trustees should promote an organisational culture that prioritises safeguarding, so that it is safe for those affected to come forward, and to report incidents and concerns with the assurance they will be handled sensitively and properly. Charities should also satisfy themselves that partner organisations working with children and/or vulnerable adults have adequate safeguarding arrangements in place, including appropriate staff and volunteer policies and processes. Further information is available from:

- [NIDirect](#)
- [The Department of Health](#)
- [Volunteer Now](#)

[Section 6.5](#) of this guidance provides additional information on charity trustees and AccessNI checks.

When reporting a serious incident to the Commission involving an alleged or actual safeguarding matter, charity trustees must be mindful of their legal obligation to adhere to relevant statutory safeguarding requirements as well as their own internal safeguarding policies and procedures. The Commission does not investigate safeguarding matters nor does it hold sensitive information relating to safeguarding matters. Where a safeguarding issue arises which may impact on the work of the charity, its beneficiaries or reputation, it is important that charity trustees inform the Commission that an incident has occurred, outlining what action if any they have taken to address the matter, for example, whether they have undertaken an internal investigation, contacted their local Health and Social Care Trust [Gateway team](#) or reported the incident to the PSNI.

3.11 Keeping your charity's governing document up to date

Charity trustees must ensure that they keep the charity's governing document effective and up to date. It is important that charities ensure they follow the proper procedures if they need to make changes to their governing document. These procedures may be set out in the governing document itself, or in legislation.

In some cases charity trustees can't make these changes themselves, usually because the proposed change is to the charity's purposes or because the governing document itself doesn't allow the proposed change to be made. In these circumstances the Commission may need to give consent to ensure the charity can continue to operate within an effective legal, accounting and governance framework. For further information on managing your charity and making changes to its governing document

see the range of guidance available in the [Manage your charity](#) section of the Commission's website.

Once the governing document has been updated and adopted by the charity, a copy should be forwarded to the Commission together with a note of the specific changes made.

3.12 Changing your charity's structure

Sometimes a charity may want to change its legal structure, for example, from an unincorporated association to a charitable company. A charity's legal structure determines:

- who will run it and whether it will have a wider membership
- whether it can enter into contracts or employ staff in its own name
- whether its charity trustees are personally liable for what it does.

The following are examples of where a charity may wish to change its structure.

- The charity trustees of a growing unincorporated charity decide to change to a charitable company – also known as incorporation – because the charity needs to employ staff.
- An unincorporated charity isn't a legal body in its own right so it can't enter into contracts in its own name. The charity trustees have to enter into contracts personally. They can be liable if something goes wrong and they are at fault. The charity trustees of an unincorporated charity therefore decide to incorporate so that the charity can enter into a contract in its own name.

Changing to a different charitable structure usually involves setting up a new charity, transferring the original charity's assets and liabilities to it, then closing the original charity. This can be complex and the charity trustees must decide that it is in the charity's interests. You may wish to consider seeking professional advice if you are considering a change to your charity's structure.

The nature of the charity's governing document will depend on its structure. Types of governing document include a constitution for an association, a trust deed for a trust, a will for a will trust, articles of association for a company and rules for an Industrial and Provident Society.

If you are changing the structure of your charity you may find it helpful to refer to one of the Commission's model governing documents. A model governing document is a template which your organisation can use and adapt to your needs by, for example, tailoring some clauses so they are specific to your organisation and adding your organisation's purposes.

These are available in the *Start up a charity* section of the Commission's website.

3.13 Planning and reviewing your charity's work

Charity trustees are responsible for deciding and planning how a charity will carry out its purposes. Factors to consider include, but are not limited to:

- what activities will help to achieve the charity's purposes
- what outcome you hope to achieve
- what resources might be required
- how activities will be evaluated
- consultation with stakeholders
- what risks there might be and how these can be managed.

Section 4: Public benefit

4.1 The public benefit requirement

Public benefit is at the heart of what it is to be a charity. The Charities Act sets out the legal requirement that all charities have charitable **purposes** that are for the public benefit. More information can be found in the Commission's statutory guidance, *The Public benefit requirement*.

All registered charities are required to submit a trustees' annual report on an annual basis that includes information on how the charity has met the public benefit requirement during the year. Public benefit reporting is a key element within the trustees' annual report.

The Charities Act states that **charity trustees** must have regard to the Commission's *Public benefit requirement* statutory guidance when exercising any powers or duties to which the guidance is relevant. The statutory guidance explains what is required to show that a charity's purpose is for the public benefit. This is relevant to the operation of your charity so that you understand how to carry out your charity's purposes for the public benefit.

4.2 Operating for the public benefit

Charity law says that once a charity has been set up, its charity trustees must operate as a charity in accordance with charity law and with the charity's purposes. Charity trustees should know what their charity's purposes are and how they are for the public benefit. A charity's trustees have a legal duty to operate it in a way that is consistent with its purposes being for the public benefit, including consideration of:

- what the benefits are
- risk of harm
- deciding who benefits
- access to facilities restrictions
- membership
- charging
- incidental benefit
- equality considerations
- reporting on public benefit.

4.3 What are the benefits?

When carrying out your charity's purposes, you should understand how each of your charity's purposes is beneficial so that the public can benefit in that way.

Where a charity's work gives rise to significant benefit which does not flow from its purposes, this may indicate that the charity is carrying out activities that fall outside its purposes. If a charity reviews its **governing document** and it appears that the activities being carried out are not helping it achieve its purposes, the charity trustees may wish to consider whether it would be appropriate for the charity's purposes as set out in the governing document to be altered. Please see our website for guidance on making changes to your charity's governing document.

4.4 Risk of harm

Decisions charity trustees make about operating their charity for the public benefit might affect the level of **harm** arising as a consequence. Harm may be to beneficiaries, potential beneficiaries or to members of the public. Charity trustees need to be aware that operating a charity includes managing the risks associated with carrying out the charity's purposes for the public benefit. This means that any harm which might result must not outweigh the benefit to the public that the purpose provides. Charity trustees should:

- identify risks relating to harm
- minimise risks relating to harm
- make sure that any harm that might arise is a minor result of carrying out the purpose.

4.5 Deciding who benefits

Decisions concerning who benefits from the charity must be made in a way that is consistent with the charity's purposes.

A charity must operate for the benefit of the public or a section of the public in accordance with its purposes and it is the charity trustees who are responsible for ensuring that it does so.

Restrictions that flow from an organisation's purposes are important in identifying whether a purpose is for the public benefit, and therefore will be considered when the organisation applies to register as a charity.

Charity trustees may make other decisions which can affect who can benefit which are relevant when running the charity. Factors that can have the effect of restricting who can benefit include, but are not limited to:

- restrictions on access to a charity's facilities
- membership
- charging.

To determine if the restriction is justified, the charity trustees must consider:

- the purposes of their organisation
- why the restriction is there
- the needs of the beneficiaries
- the resources available to the organisation.

4.6 Access to facilities restrictions

If a charity runs a facility for the public benefit, any restrictions on public access must be justified in the circumstances. Restrictions might include:

- who can access the facility
- what can be accessed
- when it can be accessed.

There is no set requirement for a charity's opening hours. However, as a matter of good practice, charity trustees should ensure that the facility is available frequently enough to cater for all types of visitor given the nature of the facility provided by the charity.

Charity trustees must ensure they comply with the law regarding access to facilities. For example, where appropriate, charity trustees must have regard to any legal provisions regarding access to facilities by people with a disability.

4.7 Membership

A charity can deliver its benefit through a membership structure. In some cases, people have to be members of a charity in order to benefit. In other cases, benefit extends beyond the membership.

Charity trustees cannot adopt an arbitrary method of implementing a membership policy so as to ensure, for example, that the membership does not contain people who might not agree with them. Access to membership may, in certain circumstances, be properly limited where this is linked to the charity's purposes. For example membership might be limited:

- to people living in a particular geographical area
- where a particular membership structure is a suitable way of carrying out the charity's purposes for the public benefit, provided that all those who might benefit can apply to join and there are objective criteria for deciding membership
- where practical reasons dictate a limit on membership numbers, such as limited space or where there is limited access to recreational

facilities for health and safety reasons. In such cases it is reasonable to have a waiting list for membership provided the next available membership is offered on a 'first come, first served' basis.

Where people do not have to be members to benefit, then a restricted membership is not relevant. For example, in the case of a professional body or **learned society**, membership may be restricted to members of a particular profession or to people who have certain academic qualifications. However, the wider public may benefit from:

- learned articles published by the society
- the application of the knowledge to relieve sickness gained by a medical professional from being a member of a professional body or learned society.

4.8 Charging

Some charities charge for the services or facilities they offer. These charges can range from something small to a large, annual fee or a one-off payment. Charities usually have these charges because the services or facilities they provide are expensive to run or they need to charge in order to operate. For example a charity might charge:

- a membership fee, which helps pay to hire a local community centre
- an hourly fee for use of the internet on its premises
- an entry fee to visit the historic property it manages
- a fee to provide meals to older people.

If the charges set by a charity are more than the poor can afford, the charity trustees must make provision for the poor to benefit. It is up to charity trustees to decide what provisions to make for the poor to benefit. Any provision that they make for the poor must be related to the charity's purpose and must be more than minimal or 'tokenistic'. Otherwise the charity is not being operated in accordance with the public benefit requirement.

Examples include:

- offering reduced fees or other financial support
- universities offering means tested bursaries or other types of assisted places
- fee-charging schools sharing educational or sports facilities with non-fee charging schools
- art galleries or theatres offering concessionary tickets.

In most cases charging fees is an operational matter for charities which does not present an obstacle to charity registration. However if an organisation's governing document refers, directly or indirectly, to a

power to levy charges the Commission will have to consider this information more closely.

The Commission will need further information in this case so that it can assess whether an organisation, with these powers in its governing document, is established for exclusively charitable purposes.

4.9 Incidental benefit

There is **private benefit** where an individual or an organisation who is not an intended beneficiary of the charity receives a benefit from it. In some cases it may be proper for such a benefit to arise, in some cases not. Recipients of private benefit might include charity trustees, employees, businesses and local authorities. Private benefits are acceptable where they are **incidental**.

If people or organisations who are not the intended beneficiaries of a charity receive a benefit from it, then the benefit must be incidental. To be properly regarded as an incidental benefit the benefit should normally be significantly less valuable than the main charitable benefit provided to the beneficiaries.

Benefit to people who are not the charity's intended beneficiaries are incidental when they contribute towards achieving the charity's purposes and/or are a necessary result or by-product of carrying out the purposes.

Examples include:

- local businesses benefiting from increased trade as a result of a charity undertaking projects to regenerate the area
- payment received by charity employees, for example the manager of a charity shop
- payment received by veterinarians in respect of fees for the treatment of animals at an animal sanctuary.

Above all, charity trustees must ensure that any benefit to people other than their intended beneficiaries is:

- a result of carrying out their charity's purposes and
- is incidental.

The Commission has produced a [Purposes and public benefit toolkit](#), available in the *Registration support* section of our website, which includes a section on identifying private benefit. This guidance may be helpful to you in understanding private benefit.

4.10 Equality considerations

Charities must also have due regard to equality laws in carrying out their charitable purposes. All organisations, including charities, are subject to equality legislation. The main equality laws in Northern Ireland, as stated by the Equality Commission, include the following:

- [Equal Pay Act \(Northern Ireland\) 1970](#) (as amended)
- [Sex Discrimination \(Northern Ireland\) Order 1976](#) (as amended)
- [Disability Discrimination Act 1995](#) (as amended)
- [Race Relations \(Northern Ireland\) Order 1997](#) (as amended)
- [Fair Employment and Treatment \(Northern Ireland\) Order 1998](#) (as amended)
- [Equality \(Disability, etc.\) \(Northern Ireland\) Order 2000](#)
- [Employment Equality \(Sexual Orientation\) Regulations \(Northern Ireland\) 2003](#)
- [Special Educational Needs and Disability \(Northern Ireland\) Order 2005](#)
- [Disability Discrimination \(Northern Ireland\) Order 2006](#).

The Northern Ireland Act 1998, section 75 places an obligation on public authorities, some of whom are charities, to have due regard to the need to promote equality of opportunity between people based on the following nine characteristics:

- age
- having or not having a disability
- gender
- marital status
- religion
- political opinion
- ethnicity
- sexual orientation
- having or not having dependents.

In addition, the Northern Ireland Act 1998, section 76, makes it unlawful for public authorities, some of whom are charities, to discriminate against people on the ground of religious belief or political opinion.

The purposes of public bodies or some bodies wholly funded by public bodies must not discriminate on the above grounds if they are charities unless there is an exemption/exception under equality law for their particular purposes.

4.10.1 Exceptions for charities

There may be some exceptions to these pieces of legislation for charities, for example, if the charity's purpose is to tackle a particular disadvantage

faced by people who share one of these characteristics. Charity trustees will need to refer to the relevant legislation.

To support charity trustees in understanding how their charity may be affected by equality obligations, the Commission has produced *Equality guidance for charities in Northern Ireland*. The guidance, available in the *Charity essentials* section of our website, provides an overview of key aspects of equality legislation which may affect charities, including in terms of how they meet the public benefit requirement and how they deliver their services. There is information about equality obligations, exceptions for charities and the rules that govern the use of exceptions.

It is important to note that the Commission does not monitor organisations on their equality obligations as that is the role of the Equality Commission for Northern Ireland. The Equality Commission provided essential assistance in producing the guidance.

4.11 Reporting on your charity's public benefit

Charity trustees of registered charities have a duty to report on the main activities undertaken by their charity to further its charitable purposes for public benefit.

All registered charities must:

- report annually on how they have continued to meet the public benefit requirement and
- confirm that they have had due regard to the public benefit requirement guidance produced by the Commission.

This is known as public benefit reporting. Further information on accounting and reporting requirements and public benefit reporting is available on our website www.charitycommissionni.org.uk

Section 5: Finance, funding, reporting and accountability

The Charities Act and other legislation place a number of duties on charity trustees. The key duties relate to:

- the register of charities
- financial record keeping and reporting
- fundraising
- serious incident reporting
- closure and mergers.

5.1 Charity details on the register of charities

Once a charity is registered, the trustees have a number of duties which they must comply with under the Charities Act, from annual reporting to ensuring the charity's entry on the *register of charities* is kept up to date.

Charities must notify the Commission of any change to their charity, such as, contact details, trustee names following an AGM or other charity information. Charity trustees can use the [Online services](#) facility to view and amend most of the details the Commission holds on their charity, including:

- area of operation
- what your charity does
- how your charity does its work
- who your charity benefits through its work
- the bank/building society account details of your charity
- the charity contact including their name, address and telephone number
- charity website address
- email address for use by the Commission
- public email address
- details of your charity trustees.

There are certain details about your charity which you will not be able to amend through our online services. Details which cannot be changed without the consent of the Commission include:

- the name of your charity
- your charity's purposes / objects as they appear in your governing document
- how your charity meets the public benefit requirement.
- the financial year end date of your charity

Keeping the register of charities accurate and up to date helps increase public confidence and transparency. Charity contact details are also used to issue reminders to the charity of its annual reporting deadline. While these are issued as a courtesy, if a charity's details are incorrect or out of date, the charity will miss these reminders. This could lead to the charity missing its annual reporting deadline, for example, and being shown as in default on the public register.

The deadline for submission of a charity's annual monitoring return (AMR) is calculated using the financial year end date provided by the charity, at the time of registration (see 5.3 Annual Reporting to the Commission). If this date is entered incorrectly, this could result in the charity missing its AMR submission deadline, placing the charity *in default* on the register.

Charities seeking to change their financial year end date on the register for any reason, can enter a new date using the online registration system. This automatically issues a change of financial year end request to the Commission, which is normally approved or rejected within 5 working days of receipt of this request. In the event that a request is rejected the Commission will follow this up with an email explaining why. A charity must not change its financial year end more than once in any three year period without the Commission's consent.

Should any other amendments be required, you must contact the Commission. Contact details are provided at the end of this guidance. It is a criminal offence, under Section 25 of the Charities Act, for any person to knowingly or recklessly provide false or misleading information to the Commission.

5.2 Financial record keeping

Section 63 of the Charities Act requires all registered charities which are not companies to keep proper accounting records. By law, charity trustees must ensure that accounting records are kept in respect of the charity and that those records are sufficient to show and explain all the charity's transactions.

Section 63 of the Charities Act also specifies that charities must keep records for at least six years from the end of the financial year/ period in which they are made. This is the case even when a charity ceases to exist, unless the Commission consents in writing to the records being destroyed or otherwise disposed of. However, charity trustees should be aware that the length of time they need to keep records may also be governed by other legislation or by agreement with funding bodies. The records kept by charities will vary depending on circumstances and may be manual or computerised.

For charities that are companies, sections 386 and 388 of the Companies Act 2006 set out additional requirements for companies to keep adequate accounting records.

5.3 Charity banking

The most prudent and responsible way to protect charitable funds and to evidence the movement of those funds, is to establish a bank account in the charity's name. Where possible, charity trustees should only use bank accounts that operate within the regulated banking system, overseen by the Financial Conduct Authority.

Charity trustees must at all times act in the best interests of the charity. This includes discharging their legal duty to keep charity funds safe. The financial services offered by banks and financial institutions can provide a safe, responsible, efficient and transparent way for charities to conduct their financial affairs. The use of cash and other methods to transfer and move funds, should be based on a reasonable decision by the charity trustees, in the circumstances, with associated risks assessed and appropriately managed.

Further information on [charity banking](#) is available on the Commission's website. The Commission's [Serious Incident Reporting](#) guidance identifies reportable incidents involving the loss or theft of charity funds.

5.4 Annual reporting to the Commission

It is a legal requirement for registered charities to report annually to the Commission. This is essential to keep the [register of charities](#) up to date, promote the transparency and accountability of the charitable sector, and to allow us to monitor and regulate charities in Northern Ireland effectively. At annual reporting, a charity **must**:

1. complete and submit an online annual monitoring return
2. submit the charity's annual accounts
3. submit the charity's trustees' annual report
4. submit an independent examiner's or audit report.

Full accounting and reporting regulations for registered charities went live in Northern Ireland on 1 January 2016. A registered charity must ensure its charity accounts and reports comply with these regulations from their first full financial year beginning on or after 1 January 2016 or their date of registration with the Commission if later. Further information is available in the suite of accounting and reporting guidance available in the [Annual reporting](#) section of the Commission's website www.charitycommissionni.org.uk

5.5 What are charity reserves?

Charity reserves are that part of a charity's income which is available to spend at the discretion of the charity trustees. Reserves are generally intended for future unexpected needs or to pursue an opportunity in line with the charity's purposes. Charities benefit from different types of funding and fundraising activities and how each charity operates can also vary significantly. For this reason the level of reserves appropriate to each charity's circumstances will differ and may mean that a charity does not hold any reserves.

Reserves planning should be part of the overall strategic planning that is carried out by the charity trustees. This means having a clear understanding of how the charity is currently funded, where you want the charity to be in the future and how reserves will be used to help you get there. The process of developing a reserves policy can help clarify a charity's financial position, its main sources of income, the flow of funds into and out of the organisation and any restrictions placed on funds received. This exercise can also help charity trustees to identify key financial risks to which the charity may be exposed.

Establishing a reserves policy also enables charity trustees to explain to funders, donors, beneficiaries and the public why it holds a particular level of reserves or why the charity trustees have decided not to hold reserves.

The Charities (Accounts and Reports) Regulations (Northern Ireland) 2015, require even the smallest registered charities to carry out a review at the end of their financial year and report on their financial position as part of their trustees' annual report. This should include the charity trustees' position in relation to holding or not holding reserves.

The Commission has produced *Developing a reserves policy* guidance to assist charity trustees to understand the benefits of having a reserves policy. It is also designed to help donors, funders, beneficiaries, members of the public and other stakeholders to understand the importance of charities holding appropriate reserves.

5.6 Fundraising

5.6.1 What is fundraising?

Fundraising is a necessary function of most charities and is aimed at ensuring adequate resources are available to meet their charitable purposes. Fundraising can take many forms including: grant applications, corporate sponsorship, street collections and events, direct marketing; lotteries and ballets; third party fundraising; or online giving. Charities may also receive funds from the profits of their trading subsidiaries and from investment income. Charity trustees must ensure that their charity

and anyone fundraising on behalf of their charity does so with regard to relevant legal requirements and with the best interests of the charity in mind.

5.6.2 Regulation of fundraising

Fundraising across the UK is largely self-regulated, guided by fundraising practice standards which are overseen by the **Fundraising Regulator**. Fundraising is underpinned by charity law and other relevant legislation such as, data protection law and specific legislation in relation to street collections, house to house collections and lotteries. Charities that rely on charitable trading must also be mindful of tax law.

The Commission has developed fundraising guidance, *Fundraising for charities – a guide for charity trustees and the public*, designed to support charity trustees to understand their obligations in relation to fundraising. It also directs them to relevant guidance on fundraising practice and associated issues such as privacy and data protection. It is also aimed at the general public, providing guidance on how to raise a complaint about poor fundraising practice.

Thematic reports, *Concerns about charity fundraising* and *One hundred lessons to be learned* also relate to fundraising. These reports are intended to benefit charity trustees by highlighting common problems and helping charities to get the basics right.

5.6.2 How fundraising differs from trading

It is important for charity trustees to be able to distinguish between 'fundraising' and 'trading' as a charity and to be aware of this distinction in carrying out their duties. Trading is a commercial activity and may involve buying and selling, therefore bringing in the possibility of some risk to charity assets. Charities cannot carry on trading activities except within limited permitted circumstances and it can put their charitable tax relief and exemptions at risk.

Trading profits must be applied to the charity's purposes. Charitable trading may be exempt of income tax where:

- trade is undertaken in the course of a charity carrying out its primary purpose where the profits are applied to that purpose, for example a religious charity selling Bibles
- trade is not a primary purpose activity but is **ancillary** to the carrying out of a primary purpose, for example a theatre operating a cafe during show times
- trade is mainly carried out by a charity's beneficiaries for example the manufacture and sale of items by disabled people working for a charity whose purpose is the relief of disabled persons.

If charity trustees are unsure about trading, they should seek independent legal and / or tax advice.

5.6.5 Charitable tax relief and rates relief

Charities may also obtain funding through the **HMRC Gift Aid scheme** by reclaiming income tax paid on donations. Additionally, there are exemptions for charities in relation to the payment of rates on non-domestic properties. For further information see the website of the [Department of Finance](#).

5.7 Closing or merging

Any charity, large or small, can find itself in circumstances where it may need to merge with a similar organisation. Additionally, there may come a time when a charity needs to close.

It is important that charity trustees regularly review their charity's effectiveness and how the charity is meeting the needs of beneficiaries. Some charities may identify that a merger would be a helpful way of meeting those needs more effectively. This may result in the closure of one or more charities as they merge into another. Other charities may close as a result of unrelated factors, including loss of funds or a lack of members.

The Commission has produced [Mergers and closures guidance](#) setting out the charity law requirements where a charity is considering a merger or facing closure. It also explains the processes that charities should use to notify the Commission of a merger of any charity or, where the charity is registered with the Commission, its closure.

Section 6: Good governance

Good governance includes the systems and processes that ensure the overall direction and effectiveness of an organisation. It is concerned with leadership, accountability, the best management of resources and making sure the organisation is properly run.

The Developing Governance Group in Northern Ireland has developed and produced *The Code of Good Governance* for the voluntary and community sector in Northern Ireland. The code outlines five key principles of good governance, providing a valuable checklist for charity trustees in complying with best practice guidelines and meeting their statutory responsibilities.

6.1 The five key principles of The Code of Good Governance

The five key principles of the code are summarised below.

Roles and responsibilities: An effective board (the charity's trustees) will provide good governance and leadership by understanding its role and responsibilities. The members of the board are equally responsible in law for the board's actions and decisions. They are collectively responsible and accountable for ensuring the organisation is performing well, is solvent and complies with all its obligations.

Working together: An effective board will provide good governance and leadership by working well both as individuals and as a team. The board will have a range of appropriate policies and procedures, knowledge, attitudes and behaviours to enable individuals and the board to work effectively. The board will plan for its own development and renewal.

Delivery of organisational purpose: An effective board will provide good governance and leadership by ensuring delivery of organisational purpose. The board has ultimate responsibility for directing the activity of the organisation delivering its stated purpose.

Exercising control: An effective board will provide good governance and leadership by exercising appropriate control. As the accountable body, the board will maintain and regularly review the organisation's system of internal controls, performance, and policies and procedures.

Being open and accountable: An effective board will provide good governance and leadership by behaving with integrity and by being open and accountable. The board will be open, responsive and accountable, acting at all time with integrity, in the interest of the organisation and its beneficiaries.

Copies of the code, and a range of valuable resources and information, can be accessed from www.diycommitteeguide.org

While the code is recommended best practice, compliance with it is not a legal requirement. However, charities within Northern Ireland and other voluntary and community groups are strongly encouraged to follow these agreed standards. Charities that do comply with the code should state this in their **annual report** and any other relevant published material, as this helps to increase public confidence and trust.

6.2 Conflicts of interest

Charity trustees are expected to put the interests of the charity before their own or that of any other organisation or person. Not only is it the responsibility of the individual charity trustee to act in the interests of the charity but it is also the duty of their fellow charity trustees to take reasonable steps to ensure they do. Charity trustees need to be aware of actual conflicts of interest and anticipate any possible or perceived conflicts that may arise. Examples of conflicts include the following areas:

- Where a company in which a charity trustee has an interest is bidding for work from the charity, the charity trustee should not take any part in the supplier appointment process. If this does occur the charity will be open to accusations of unfairness.
- Where the spouse of a charity trustee has some financial recompense from the charity it may give the charity trustee an indirect benefit, especially if they have joint finances.
- Where a charity trustee or a person connected to them becomes interested in applying for a job with the charity that charity trustee should declare an interest. They should not take part in any discussions around the position, such as setting rates of pay, holidays or job description, for instance. If this does occur the charity will be open to accusations of unfairness in the recruitment process as it could be deemed that one candidate had an unfair advantage over others.

It is good practice to establish a [conflicts of interest policy](#) and register of interests. Charity trustees should also be asked to complete a declaration of interests form on their appointment to the board. Collectively, the charity trustees should take all reasonable steps to ensure that a charity trustee who has acted improperly regarding a conflict of interest has corrected the situation and the offence is not repeated.

6.3 Practical steps which a charity can take where there is a potential conflict of interest

- It is unlikely that conflicts of interest can be avoided entirely but they should be managed in such a way as to promote accountability and transparency within the charity, avoiding any adverse effect. Below are examples of practical steps to follow should a conflict of interest arise.
- **Declare a conflict:** once a conflict of interest has been identified it must be declared by the charity trustee at the earliest opportunity.
- **Leave the meeting:** the charity trustee who has declared a conflict should be asked to leave the meeting while the other charity trustees decide whether their absence is appropriate or necessary.
- **Decide on next steps:** these will be dependent on the conflict and it is up to the remainder of the charity trustees to decide how best to protect the charity's interests. The other charity trustees, for example, may decide there is no conflict, or that it is of such a low level it can be tolerated, and the charity trustee can attend the meeting. Another solution may be that the charity trustee absents themselves from the part of the meeting when the conflicting activity is being discussed and voted upon. If conflicts are serious or frequent, the charity trustee may need to resign from their post or cease the conflicting activity.
- **Record the process:** the process followed should be clearly recorded in the minutes and the charity's register of interests should be updated.

6.4 Charity trustee remuneration and expenses

Unpaid trusteeship is a distinctive feature of charities which contributes greatly to public confidence and trust in them.

However, there are circumstances when a charity will provide some form of payment to its charity trustees, for example, reimbursing charity trustees for out-of-pocket expenses incurred as part of their work for the charity. This is important to help ensure the position of charity trustee is accessible to people from a range of backgrounds and that no trustee is out of pocket as a result of work carried out on behalf of the charity.

If the correct policies and processes are followed, charity trustees may also be paid where they provide services to the charity that are distinct from their role as a charity trustee. In exceptional circumstances and, again, if the correct processes are followed, a charity may also seek to remunerate a charity trustee for their trusteeship.

When considering the issue of payments to charity trustees it is important to remember that charity trustees must act in the best interests of the charity and ensure that their own personal interests do not come into conflict with the interests of the charity.

For more information on charity trustee expenses and payments please read the Commission's *Guidance on trustee expenses and payments* which is aimed at helping charities to be informed and confident when identifying whether they can, or should, make a payment to a charity trustee.

6.5 AccessNI checks

The law surrounding **AccessNI checks** is complex and charities need to understand how it applies to them. Charity trustees of charities which work with children or vulnerable adults are not necessarily required to carry out AccessNI checks on each charity trustee. This is because the law states that the role of a charity trustee is not generally one that brings an individual into regular or close contact with the vulnerable. However, the charity can obtain AccessNI checks if the charity trustees will have regular or close contact with children or vulnerable adults, or if they think there is a risk and they wish to do so.

Charity trustees should note that the information they receive from AccessNI will not include information about whether or not the charity trustee is included on a list of those individuals who are barred from working with children or vulnerable people. However, AccessNI will give information which they believe will assist charities to decide whether or not the charity trustee being checked is a suitable person to be a trustee of a charity which works with children or vulnerable adults.

Please note that this information refers to checks on charity trustees. Charities must ensure that they are complying with the relevant employment legislation when considering checks to be made on employees and prospective employees and safeguarding legislation for Northern Ireland, with respect to volunteers with regular unsupervised access to children or vulnerable adults.

Further information is available through the NIDirect website:
www.nidirect.gov.uk/campaigns/accessni-criminal-record-checks

6.6 Campaigning and political activity

The independent nature of the charitable sector is of fundamental importance to society, and is greatly valued by the public. The guiding principle of charity law in terms of campaigning, political activity and elections is that charities should be, and be seen to be, independent from

party politics. Charities in Northern Ireland have strong links to their beneficiaries, and more generally to their local communities, commanding high levels of public trust and confidence, and representing a variety of diverse causes. This means that charities are uniquely placed to campaign and advocate on behalf of their beneficiaries. When charities seek to change the law or government policy, certain rules apply. The Commission has produced separate guidance on campaigning and political activities for charities in Northern Ireland. You may find this guidance helpful in identifying activities that charities can properly undertake under the existing law and factors charities you should assess if you are planning for campaigning and political activity.

Section 7: Risk and insurance

7.1 Charities and risk management

It is important for **charity trustees** to realise that risk management is a dynamic process and requires continual monitoring and assessment. There should be communication with staff at all levels to ensure that risk management is rooted in the culture of the charity.

Charity trustees, staff and volunteers handle risk as an everyday part of their work and risk management can be as simple as basic contingency planning for a process. It may be beneficial to set up a central risk register so that all staff are aware of the risks posed to them in their work.

Charity trustees should have a structured approach to risk in place, for example a risk management policy. In doing so, they are working to protect the charity and its beneficiaries from **harm**.

7.2 Types of risk faced by charities

In its lifetime, a charity will experience a variety and range of risks. It is the responsibility of charity trustees to manage actual and potential risks to ensure the charity can continue to meet the needs of beneficiaries, at present and in the future. For example:

- for a charity which provides assistance to those in financial need, a period of economic uncertainty can bring about an increased demand for the charity's services alongside a corresponding decrease in funding
- there may be risks for charities in operating trading subsidiaries or entering joint ventures and they may need to check with their insurers before engaging in this.

Risks can be internal, for example arising from inappropriate organisational structure, or external, for example changes in the law or regulatory requirements.

The risk management strategy will depend on the type of risks faced by the charity.

7.3 Who is responsible for risk management?

Whilst all staff, charity trustees, board members, volunteers, and employees of a charity, should be tasked with assessing and managing risks, the charity trustees hold ultimate responsibility. By adapting and

implementing sufficient risk assessment policies and procedures, charity trustees can help ensure that:

- significant risks are known and monitored, enabling charity trustees to make informed decisions and take timely action
- the charity makes the most of opportunities and develops them with the confidence that any risks will be managed
- strategic and future planning are improved
- the charity's purposes are achieved.

7.4 What action should be taken to manage risk?

Charity trustees are responsible for setting the charity's strategic aims, objectives and direction as well as identifying and managing risks arising from its activities. A risk policy will help charity trustees to identify risks and take appropriate action.

There are a number of ways in which risk can be managed, depending on the likelihood and impact of the risk:

- **Transfer:** transferring the financial consequences to third parties or sharing it, usually through insurance or outsourcing
- **Treat:** management or mitigation of risk
- **Tolerate:** accepting or assessing a risk that cannot be avoided if the activity is to continue.
- **Terminate:** the risk by doing things differently, removing the risk where it is feasible to do so.

An example of risk management would be a charity suffering from a decrease in donations in the wake of the economic downturn identifying that it should step up its fundraising activities and look into alternative sources of finance.

7.5 Top tips to reduce or avoid charity trustee personal liability

Charity trustees have a variety of responsibilities which may carry liabilities. If charity trustees act properly in accordance with their duties then any liabilities they incur, financial or otherwise, can usually be met out of the charity's resources. In cases where a breach of trust has occurred, charity trustees can be relieved of their personal liability provided they have acted in an honest and reasonable way.

To manage internal risk, actions that charity trustees should take include:

- familiarising themselves with the charity's governing document
- ensuring they understand their duties, liabilities and responsibilities accessing training if appropriate

- establishing effective induction procedures for new charity trustees, including signing a charity trustee declaration form before their election or appointment to confirm that they are not disqualified
- taking professional advice when needed, or required by legislation
- taking account of generic guidance published on the Commission's website or acquiring professional expertise when unsure about their duties as charity trustees.

To manage external risk, it is advisable for charity trustees to:

- know which powers can be delegated
- implement effective internal management and financial controls, including controls over charitable fundraising
- find out what areas of law might affect the charity's activities, such as employment, health and safety, human rights and data protection
- ensure that before they enter into a contract, they are satisfied the charity has the resources to meet its obligations under the contract and understand the consequences of breaching the contract.

7.6 Insurance

One of the ways that a charity can protect its assets and cover its liabilities is to obtain insurance cover and review this cover on a continuing basis. It is charity trustees' responsibility to ensure the organisation is appropriately and adequately insured. It is good practice, however, to assign an individual charity trustee or staff member to oversee the issue of insurance. They will be the main point of contact with the insurance broker and can report to the charity's trustees on a regular basis.

The charitable sector is diverse and different charities will require different types of insurance. Some examples of common insurance policies include:

Employers' liability insurance: If your organisation employs staff on a full or part time basis the law requires that you have employers' liability insurance. This covers paid employees in the event of an accident, injury or illness made worse a result of work or the employer's negligence. The policy must explicitly mention volunteers if the charity works with volunteers. This is a legal obligation under the Employers' Liability (Compulsory Insurance) Act 1998.

Public liability insurance: If your organisation provides advice, information or offers counselling services, public liability insurance is necessary to protect the charity from claims for negligent advice or information. If you are involved with volunteers then the policy should cover loss or injury to

or by volunteers. This type of insurance is essential when working within the community and protects an organisation from claims made by the public for death, injury, loss or damage to property due to negligence or misconduct of the organisation or staff. Generally, public liability insurance covers anybody other than employees who come into contact with an organisation and its premises.

Buildings insurance: If an organisation leases or owns a building, it will need to be insured against damage by fire and 'other perils'. Other perils covers damage which is likely to occur, for example storm, flood, burst pipes, accidental or malicious damage.

Consequential loss insurance: This covers a situation where, for example, an organisation wishes to ensure that it will have a place to house its activities and staff while a property is being rebuilt as a result of damage. It will also provide for loss of income if the organisation has to suspend fee-paying activities, such as education courses.

Trustee indemnity insurance: Trustee indemnity insurance is a policy that protects charity trustees personally from any claims made against them. This may be paid out of the funds of the charity to protect the charity trustees as far as possible from personal loss or bankruptcy as a result of a breach of trust or a breach of duty as a charity trustee. However, indemnity must not extend to any trustee liable in criminal proceedings or any actions which a trustee knew or reasonably should have known were not in the best interests of the charity. The court may relieve a trustee from personal liability if it is found that they acted honestly and reasonably.

This is not an exhaustive list of insurance policies and many other types of insurance are available, such as legal expenses insurance, travel insurance and professional indemnity insurance. You should seek professional advice should you wish to obtain further information about insurance policy options available for your organisation

7.7 Volunteers and insurance

Volunteers can generally be insured under employers' liability insurance, depending on the type of work involved. Policies should explicitly mention volunteers as they may not be automatically covered.

Appendix 1: Declaration for new charity trustees

Note that this is an example template that a charity may wish to use and can be tailored depending on the charity's needs. It is not for use when registering with the Commission.

Name of organisation: _____

Name of charity trustee: _____

Charity trustee eligibility and responsibility

By signing this form, you declare that you:

- Are willing to act as a charity trustee
- Understand your organisation's purposes (objects) and rules set out in its governing document
- Are not prevented from acting as a charity trustee because you:
 - Have an unspent conviction for an offence involving dishonesty or deception
 - Are currently declared bankrupt (or subject to bankruptcy restrictions or an interim order)
 - Have an individual voluntary arrangement (IVA) to pay off debts with creditors
 - Have made a composition or arrangement with, or granted a trust deed for, creditors and this has not been discharged
 - Are subject to a moratorium period under a debt relief order or a debt relief restrictions order
 - Are disqualified from being a company director
 - Have previously been removed as a trustee by the Commission or the High Court due to misconduct or mismanagement, or removed as a charity trustee by any other charity regulator or Court in the UK
 - Are disqualified or barred from acting as a trustee of this charity under the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 (as amended by the Protection of Freedoms Act 2012).

You also declare that:

- The information you provide is true, complete and correct
- You will comply with your responsibilities as a trustee set out in the Charity Commission for Northern Ireland's guidance.

Charity trustee declaration

Name (Print)	Signature	Date (DD/MM/YYYY)

Appendix 2: Glossary

Term	Definition
Accounts	A structured record of monetary transactions. This may take the form of a credit and debit basis, maintained manually or as a computer record.
Ancillary	Supplemental to primary purpose activities but not directly associated with the primary purpose.
Annual report	A comprehensive report on an organisation's performance throughout the preceding year, including financial operations.
Annual returns	Every charity, regardless of its size needs to complete and file an annual return. This guidance provides the Charity Commission and the public with important information regarding the actions of the charity and its financial situation.
Charities Act (Northern Ireland) 2008	<p>The Charities Act (Northern Ireland) 2008 is the main piece of legislation establishing the Charity Commission for Northern Ireland and setting out its functions and powers.</p> <p>References to 'the Charities Act' are to the Charities Act (Northern Ireland) 2008. The full content of the Charities Act can be found at www.legislation.gov.uk</p> <p>Not all of the sections of the Charities Act are in force yet. Details of those sections that are in force are available on the Commission's website www.charitycommissionni.org.uk</p>
Charity trustees	<p>These are the people who are legally responsible for the control and management of the administration of the charity. In the charity's governing document they may be called trustees, managing trustees, committee members, governors or directors or they may be referred to by some other title.</p> <p>Some people are disqualified by law from acting as</p>

Term	Definition
	<p>charity trustees. These disqualifications are set out in the Charities Act and broadly include but are not limited to anyone who:</p> <ul style="list-style-type: none"> • has been convicted of an offence involving deception or dishonesty, unless the conviction is a spent conviction under the Rehabilitation of Offenders (NI) Order 1978 • is an undischarged bankrupt or has made an arrangement with creditors • has previously been removed as a trustee by the Commission or by the courts • is subject to disqualification under company legislation.
Governing document	<p>A charity's governing document is any document which sets out the charity's purposes and, usually, how it is to be administered. It may be a trust deed, constitution, memorandum and articles of association, conveyance, will, Royal Charter, Scheme of the Commission or other formal document.</p>
Fiduciary duties	<p>A fiduciary duty is an obligation owed by a fiduciary to a beneficiary. Examples of fiduciary duties of charity trustees include a duty of confidentiality, a duty to ensure conflicts of interest are managed appropriately and a duty not to profit from their position.</p>
Fundraising Regulator	<p>The Fundraising Regulator is the independent regulator of charitable fundraising, established to strengthen the system of charity regulation and restore public trust in fundraising.</p>
Harm	<p>Something that causes damage, injury or loss-physical, mental, environmental or social.</p>
HMRC Gift Aid scheme	<p>The Gift Aid scheme is for gifts of money by individuals who pay UK tax. Gift Aid donations are regarded as having basic rate tax deducted by the donor. Charities or CASCs (Community Amateur Sport Clubs) take your donation - which is money you've already paid tax on - and reclaim the basic rate tax from HM Revenue & Customs (HMRC) on its 'gross'</p>

Term	Definition
Incidental	equivalent, the amount before basic rate tax was deducted.
	<p>This is something that happens, or is likely to happen, in an unplanned conjunction with something else. It is likely that there may be incidental benefit that results from a charity achieving its charitable purposes. For example, a charity with purposes to relieve poverty may have a number of volunteers. The volunteers may find their lives enriched by the activities they are carrying out. This is a benefit not directly related to the charitable purposes and, while worthwhile, will not be taken into account when assessing the charity's public benefit.</p>
	<p>If people or organisations benefit from a charity, other than a beneficiary, then the benefit must be incidental, that is, it directly contributes towards achieving the charity's purposes and/or it is a necessary result or by-product of carrying out those purposes.</p>
	<p>An example of a private benefit that is incidental is where there is an increase in profits to local businesses as a result of charitable regeneration projects, which is a a necessary by-product of those projects being carried out.</p> <p>If private benefit is more than incidental then it may mean that the organisation is set up for private benefit and therefore may not be charitable.</p>
Learned society	A learned society is an organisation that exists to promote an academic discipline or profession, or a group of related disciplines or professions.
Legal authority	Permission by or in accordance with law to perform a certain act.
Legal capacity	The legal ability, power, right and competency to perform a certain act.

Term	Definition
Membership	Being part of an organisation or group.
Personal characteristics	A feature that helps distinguish, describe, identify and tell a person apart from another.
Private benefit	<p>There is private benefit where an individual or an organisation gains from their involvement with a charity. In some cases it may be proper for such a benefit to arise, in some cases not.</p> <p>Charities can provide private benefit so long as the benefit is incidental, ie it directly contributes towards achieving the charity’s purposes and/or is a necessary result or by-product of carrying out those purposes.</p> <p>An example of a private benefit would be where there is an increase in profits to local businesses as a result of charitable regeneration projects, which is a necessary by-product of those projects being carried out.</p>
Purposes	<p>The purposes of a charity will usually be defined by what its governing document states it is set up to do. According to the Charities Act, all the organisation’s purposes must:</p> <ul style="list-style-type: none"> • fall under one or more of the list of 12 descriptions of charitable purposes in the Charities Act, and • be for the public benefit.
Serious incident	<p>Serious incidents are mainly concerned with criminal or unlawful activity, or very serious incidents about a charity that may affect its funds, property, beneficiaries or reputation.</p> <p>Charity trustees should report serious incidents to the Commission immediately, not waiting until they submit their annual return to notify us. Some incidents may not actually be criminal, but may suggest risk of potential criminal activity or other risks which, if they became reality, would cause serious</p>

Term	Definition
	<p>harm to the charity.</p> <p>If you have any doubt about whether an incident is serious, report it to us anyway.</p>
Trustee Act	<p>The Trustee Act (Northern Ireland) 1958 as amended by the Trustee Act (Northern Ireland) 2001, is the main piece of legislation which establishes the powers, duties and responsibilities of trustees in Northern Ireland.</p>
Undischarged bankrupt	<p>This is someone who has been declared bankrupt, and is not yet discharged from bankruptcy.</p>
Vesting declaration	<p>A deed made by the trustees of the transferring charity to vest title in property to the trustees of the receiving charity.</p>
W3C Standards	<p>W3C accessibility standards consist of a set of guidelines for making content accessible especially to those web users who have a disability. This standard is recognised internationally.</p>

Useful contacts

There are many resources that charity trustees can use to help them carry out their duties. This is not a definitive list of all the sources of information available. We would encourage trustees to make use of the wide range of organisations that can help them run their charity as effectively as possible.

Charities Regulatory Authority (CRA) Ireland

Charities Regulator
3 George's Dock
IFSC
Dublin 1
D01 X5X0

Telephone: +353 (0)1 633 1500

Website: www.charitiesregulatoryauthority.ie

Charity Commission for England and Wales (CCEW)

PO Box 211
Bootle
L20 7VX

Telephone: 0300 066 9197

Website:

www.gov.uk/government/organisations/charity-commission

Charity Retail Association

Association of Charity Shops
5th Floor Central House
14 Upper Woburn Place
London
WC1H 0AE

Telephone: 020 7255 4470

Website: www.charityretail.org.uk

Companies House

Second Floor
The Linenhall
32-38 Linenhall Street
Belfast
Northern Ireland
BT2 8BG

Telephone: 0303 1234 500

Website: www.companieshouse.gov.uk

**Department for
Communities**

Lighthouse Building
1 Cromac Place
Gasworks Business Park
Ormeau Road
Belfast
BT7 2JB

Telephone: 028 9082 9000

Website: www.communities-ni.gov.uk

Department of Health

Department of Health
Information Office
C5.20
Castle Buildings
Stormont
Belfast
BT4 3SQ

Telephone: 028 9052 0500

Website: www.health-ni.gov.uk

**Equality Commission
for Northern Ireland**

Equality House
7-9 Shaftesbury Square
Belfast
BT2 7DP

Telephone: 028 9050 0600

Website: www.equalityni.org

**HM Revenue and
Customs (HMRC)**

Charities Correspondence S0708
Charities, Savings and International 2
HM Revenue and Customs
BX9 1BU
United Kingdom

Telephone: 0300 123 1073

Website: www.hmrc.gov.uk/charities

**Human Rights
Commission for
Northern Ireland**

Temple Court
39 North Street
Belfast
BT1 1NA

Telephone: 028 9024 3987

Website: www.nihrc.org

**Information
Commissioner's
Office**

Information Commissioner's Office
3rd Floor
14 Cromac Place
Belfast
BT7 2JB
Tel: 028 9027 8757 or 0303 123 1114
Website: www.ico.org.uk

**Labour Relations
Agency**

2-6 Gordon Street
Belfast
BT1 2LG

Telephone: 02890 321442
Website: www.lra.org.uk/

**Northern Ireland
Council for Voluntary
Action (NICVA)**

61 Duncairn Gardens
Belfast
BT15 2GB

Telephone: 028 9087 7777
Website: www.nicva.org

**The Fundraising
Regulator**

2nd floor
CAN Mezzanine Building
49-51 East Road, London
N1 6AH

Telephone: 0300 999 3407
Website: www.fundraisingregulator.org.uk

Volunteer Now

34 Shaftesbury Square
Belfast
BT2 7DB

Telephone: 028 9023 2020
Website: www.volunteernow.co.uk/

Useful links and guidance

Suite of guidance on registering as a charity in Northern Ireland

Suite of guidance on charity accounting and reporting

PBR1 Public benefit requirement guidance

CCNI EG042 Monitoring and compliance guidance – getting it right

CCNI EG058 Matters of material significance guidance

CCNI EG059 Serious Incident Reporting – a guide for charity trustees

CCNI EG060 Formal meetings with the Charity Commission

CCNI EG046 Making payments to trustees

CCNI EG043 Equality guidance for charities

CCNI EG061 Fundraising for charities – A guide for charity trustees and the public

Data protection: Key requirements for charity trustees

Cyber security: small charity guide

Disqualified trustees: a thematic report

Regulated activity

HSCT Gateways services teams

The Department of Health - Safeguarding children, young people and adults at risk of harm from abuse, exploitation and neglect

Volunteer Now – safeguarding vulnerable groups

The Revised Code of Good Governance

www.fraudadvisorypanel.org

Charity banking – regulated financial sector

Further information on our activities is available from:

**Charity Commission for Northern Ireland
257 Lough Road
Lurgan
Craigavon
BT66 6NQ**



www.charitycommissionni.org.uk

Email: admin@charitycommissionni.org.uk

Tel: 028 3832 0220

Fax: 028 3832 5943

Textphone: 028 3834 7639

 Follow us on Twitter @CharityCommNI

This guidance is available in large print or other formats on request