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Running your charity: Guide 2

Who are charity trustees, and what do they do



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Contents

About this guide	3
What are legal requirements and best practice	3
Key terms	3
Who are charity trustees	4
Can I be a charity trustee?	5
What do I need to know about being a charity trustee?	5
Can I be a charity trustee if I have a learning difficulty or a mental-health condition?	6
Who can't be a charity trustee?	6
What do I need to know about recruiting trustees for my charity?	7
Who else in my charity might the law say is a trustee?	7
What do charity trustees do	9
Following laws and regulations	9
Acting with care and attention	10
Acting in the charity's best interests	11
Planning and reviewing your charity's work	11
Support and resources	12
Appendix 1: Key terms	13
Appendix 2: Template declaration for potential trustees	16
More information	17

About this guide

This guide is for anyone who is interested in running a charity. Whether you are just getting started or you have been a charity trustee for years.

This part of the guide is about charity trustees and what they do.

What are legal requirements and best practice

We use 'must' where a charity has to comply with a specific law or regulation. We use 'should' where a charity ought to follow good practice but where there is no specific legal requirement. Charity trustees should follow good practice guidance unless there is good reason not to do so.

Key terms

This guide uses some terms that you may find useful when running your charity. We have highlighted these in **bold green**. A list of the key terms is available in Appendix 1.

Who are charity trustees

Charity trustees play an essential role in running charities. They bring valuable experience, skills and knowledge to individual charities and the whole sector.

Charity trustees are responsible for:

- controlling and managing the charity
- making sure the charity is doing what it was set up to do
- making sure the charity is working to fulfil its **purposes** (what the charity was set up to achieve) for the **public benefit**.

The charity trustees include all the people who:

- are on the board or management committee
- make decisions about what the charity does and how it spends its money.

If your charity has a chairperson, a secretary and a treasurer, they are all charity trustees in addition to others who sit on the committee or Board. In the charity's governing document the charity trustees may also be called governors, directors, or committee members, or have some other title.

Charity trustees must act collectively, which means that each of them is equally responsible for how the charity is run. A charity trustee must not act on their own unless the whole board of charity trustees has delegated this role to that charity trustee.

Being a charity trustee can be interesting and rewarding, but it comes with a high level of responsibility. It's important to understand what's expected of you – as an individual charity trustee and as a group of charity trustees – in charity law and other laws that apply.

Can I be a charity trustee?

You can be a charity trustee if you meet the conditions set out in the law and in the charity's **governing document**. The governing document sets out the charity's purposes and how the charity is run.

The law states that you must:

- be 18 years old or over to be a trustee of an **unincorporated charitable organisation**
- be 16 years old or over to be a director of a **charitable company**.

The charity's governing document may contain other rules on how many trustees there must be for the charity to be able to make legal decisions. And who can be a charity trustee and for how long they can serve as a charity trustee.

When charities recruit new charity trustees, they should make sure they are not disqualified from acting as a charity trustee and they should think about the skills and experience the new charity trustees could bring that the charity doesn't already have.

What do I need to know about being a charity trustee?

Before you become a charity trustee, it's a good idea to find out as much as you can about what will be expected of you. To do this, you can:

- read the charity's governing document, policies, **annual accounts** and reports
- meet with the charity's trustees, senior members of staff and, if possible, people who benefit from the charity's work
- go to a charity trustee meeting – ask if you can attend a meeting as an observer before you formally join
- ask if any training is available for new charity trustees
- ask how many meetings there are per year and what time of the day they are usually held.
- ask if there are any other expectations on trustees, for example, fundraising.

Can I be a charity trustee if I have a learning difficulty or a mental-health condition?

If you have a learning difficulty or a mental-health condition, you may be able to bring valuable experience and perspective to the trustee board, whether it's as a charity trustee or as an advisor.

You can be a charity trustee if:

- the charity trustees believe that appointing you is in the charity's best interests, and
- the law considers you to be capable of managing your own affairs (for example, you are able to make decisions about your personal life, health and finances).

If you have any needs related to your learning disability or mental-health issue, let the charity trustees know. They should think about how they can meet your needs.

Who can't be a charity trustee?

The law 'disqualifies' some people from being a charity trustee. For example, the **Charities Act** states that you cannot be a charity trustee if:

- you have ever been convicted of an offence involving deception or dishonesty, unless the law says your conviction is 'spent' (that is, it no longer applies)
- you are an **undischarged bankrupt** (your bankruptcy is ongoing) or you have made a legal arrangement with your **creditors** (those you owe money to) to pay off your debts
- we or the courts have ever removed you from a position as a charity trustee before
- you are disqualified under company law.

If you apply to be a charity trustee, you may need to sign a declaration to confirm that you haven't been disqualified. If you should become disqualified during your tenure as a trustee, then you should resign.

What do I need to know about recruiting trustees for my charity?

When recruiting new charity trustees for your charity, it's important to:

- follow the rules in your charity's **governing document**
- appoint charity trustees who have the skills and experience your charity needs
- check if any legal reasons would prevent you appointing the trustee.

You can ask potential charity trustees to sign a declaration to confirm that the law does not disqualify them from being a charity trustee. A sample form is available at Appendix 1. Keep the signed forms for your charity's records.

If a potential charity trustee is disqualified, in some circumstances you can ask us to waive the disqualification. For more information, please read our guide to [waiving trustee disqualification](#).

If your charity has a religious designation, the disqualification will not apply. This is set out in the [Charities Act 2008 \(Designated Religious Charities\) Order \(Northern Ireland\) 2016](#). Religious designation is a status that can be given to some charities, providing they meet certain criteria. A number of sections of the **Charities Act** do not apply to charities with religious designation status.

Because being a charity trustee comes with a high level of responsibility, all trustees must be considered capable of managing their own affairs under the [Mental Health \(Northern Ireland\) Order 1986](#).

Who else in my charity might the law say is a trustee?

It's important to know who the law considers to be a charity trustee, because this may mean they have particular legal responsibilities.

Some charitable companies have 'shadow directors' and 'people of significant control'. If those people have enough influence, the law might consider them to be charity trustees.

A shadow director is someone who:

- has not been formally appointed as a director of your charity, and
- gives directions or instructions (but not professional advice) that your charity's directors usually act on.

A senior member of staff, who is not officially a director, but provides advice and guidance to the charity trustees which is regularly acted upon, could be viewed as a 'shadow director.'

A person who has significant influence in a charity is someone who is **not** a member of the board of charity trustees and who:

- regularly or consistently directs or influences the charity's trustees, or
- is often consulted by the charity's trustees, which allows the person to influence the charity trustees' decisions.

An example of a [person with significant control](#) over a charitable company is an elected representative of a local council who regularly attends charity trustee meetings.

If a shadow director or a person of significant control regularly controls or influences your charity's actions and decisions, the law may consider them to be a charity trustee. This may mean that they share the same legal responsibilities as the other trustees. (This doesn't apply to a solicitor or an accountant who is giving professional advice to charity trustees who have requested it.)

If these people regularly attend your trustee meetings, they may have:

- a **fiduciary duty** to the charity (for example, a duty of confidentiality or to manage **conflicts of interest** appropriately)
- the same legal responsibilities as a charity trustee or director if something goes wrong.

With this in mind, you should carefully consider how much involvement and influence these people have.

If you aren't sure whether someone who goes to your charity trustee meetings is a charity trustee, consider getting legal advice.

What do charity trustees do

Charity trustees work together to:

- make sure that the charity is carrying out its purposes for the public benefit
- make decisions about the charity's finances, activities and plans for the future including how they recruit new trustees when the current committee step down
- lead the charity by looking to the future and planning how the charity can have a positive impact.
- review and report on the charity's work.

You might also employ staff.

In everything charity trustees do, there are responsibilities to consider. You'll need to follow two sets of formal rules:

- 1. The charity's governing document.** This sets out your charity's purposes, the powers it has and how it should be managed and run.
- 2. The law that governs your type of charity.** In Northern Ireland, this always includes the **Charities Act**. Depending on the type of charity, you may also have to follow other laws, such as company law and/or trustee law.

Following laws and regulations

As a charity trustee, you'll need to make sure your charity:

- Complies with all the laws and regulations that apply to it (for example, charity law, the Bribery Act, company law, data-protection law, employment law, trustee law, health and safety law and fundraising laws).
- follows our regulations, as the charity regulator
- is registered with us, unless they choose not to register in line with the registration threshold exemption regulations, once these are commenced
- Follows all the rules in its governing document and stays true to its charitable purposes.

You must also:

- prepare **annual monitoring returns, reports** and accounts in line with the laws that apply
- make sure the charity's money and other **assets** (for example, buildings) are protected and not misused
- use [Online services](#) to update information on the register of charities
- report any **serious incidents** to us and explain how your charity is managing them
- try to prevent conflicts of interest – and, if any do happen, deal with them in an open and accountable way
- follow the relevant processes if you close your charity or merge it with another organisation. You can find these in the Commission's [Guide to mergers and closures](#).
- get our permission (if needed) to make changes to your charity.

Acting with care and attention

To act with care and attention, you should:

- understand your charity's governing document and make sure it still works well for the charity
- make financial projections for income and expenditure and monitor this
- make sure your charity can pay its debts, now and in the future
- use the charity's money and assets properly, and only to achieve the charity's purposes
- take extra care when investing your charity's money or borrowing money for the charity
- use your skills and experience to make sure your charity is well run and efficient.

Never do anything that might put the charity's beneficiaries, assets, money, property or reputation at risk. If you're concerned that something may put your charity at risk or stop you acting on your responsibilities, get advice from an advisor or professional outside the charity. A [Helper group](#) may also be able to give you advice.

Acting in the charity's best interests

As a charity trustee, you must always act in your charity's best interests to help it achieve its purposes. For example:

- always make balanced and well-informed decisions, considering what effect the decision will have on the charity in both the short and long term
- never put yourself in a position where your duty to the charity comes into conflict with your own interests or loyalties
- never accept benefits, for example money or hospitality, from your charity unless they have been properly authorised in line with your governing document, charity law, your organisations policies and rules, and they are clearly in the charity's interests. The same applies to anyone who is financially connected to you, such as your partner, your dependent child or your business partner.

If a charity trustee doesn't act in the best interests of the charity, this is called a **breach of duty**. If the breach is serious and leads to your charity getting into debt or losing money, this is a **breach of trust** you and the other charity trustees might have to cover these.

Planning and reviewing your charity's work

As a charity trustee, you'll be involved in deciding and planning how your charity will fulfil its purposes. When doing so, it's important to consider these questions:

- What activities will help to achieve the charity's purposes?
- What do we hope to achieve?
- What resources might we need?
- How will we measure the difference these activities have made?
- Who do we need to consult?
- What are the risks, and how can we manage them?

It is good practice to have a cycle of planning, deciding, acting and then reviewing to see if your decisions and activities are helping the charity to achieve its purposes.

Support and resources

Resource	What it is
Helper groups	<p>Helper groups can support you with:</p> <ul style="list-style-type: none"> • registering your charity • annual reporting • other aspects of managing your charity. <p>Helper groups are organisations that have volunteered to provide this support. Follow the link to see the support each organisation can offer, who they work with, and how to contact them.</p>
Registration workshop podcast	<p>For support with registering your charity, watch our four-part online registration workshop podcast.</p>
Registration tutorial video	<p>Watch our video tutorial on how to apply to register your charity.</p>
Annual monitoring return video	<p>Watch our video tutorial on how to complete and send us your annual monitoring return.</p> <p>See the table below the video for sections that are compulsory for your charity.</p>
Code of good governance	<p>The Code of Good Governance was created by The Developing Governance Group. The DIY Committee Guide can help you put the Code of Good Governance into practice in your charity.</p>

Appendix 1: Key terms

Annual monitoring return: This is the online form that registered charities must complete every year to report on their activities that year. It is also known as the annual return.

Asset: An asset is something of value that your charity owns. Assets can include cash, investments, land, buildings, stocks and shares, patents, copyrights, trademarks and licences, among other things.

Breach of duty: This is when a charity trustee does not fulfil their duties. These duties depend on the nature of the charity. Charity trustees of unincorporated charities have duties under the trustee acts and directors of charitable companies have duties under the Companies Act 2006.

Breach of trust: This is when a charity trustee does not fulfil their duties and acts outside of the charity's governing document. Charity trustees are equally responsible (liable) for any breach of trust to their beneficiaries where the breach results in a loss.

Charitable company: This is a charity that is registered under the Companies Act 2006 (or earlier company law) and is registered with Companies House. It is a type of legal structure for a charity.

Charities Act: The Charities Act (Northern Ireland) 2008 as amended by the Charities Act (NI) 2013 and the Charities Act (NI) 2022. This is the main law that defines what a charity is and how charities are regulated.

Charity trustees: These are the people who are legally responsible for controlling and managing how your charity is run.

Creditor: A creditor is a person or organisation to whom you or your charity owe money for goods, services or loans.

Fiduciary duty: Charity trustees have a fiduciary duty to act in the best interest of the charity. Fiduciary duties include a duty of confidentiality, a duty to manage conflicts of interest appropriately, and a duty not to profit from your position.

Good governance: Good governance means making sure the charity is well managed, keeps to charity law and keeps to any other regulations that apply. Good governance is key to the success of any charity.

Governing document: This is a formal document that sets out your charity's purposes and, usually, how the charity will be run. It may be a trust deed, a constitution, a memorandum and articles of association, a conveyance, a will, a Royal Charter, or a Scheme. What these terms mean and the type of charity that will use them is set out below.

Types of governing documents

Articles of association - define the company's purpose and lay out how tasks are to be accomplished within the organisation, including the process for appointing directors and how financial records will be handled. For companies with older style memorandum and articles of association all provisions in the memorandum are now classed under the articles of association.



Charitable company

Constitution - this is a legal document that sets out its charitable purposes ('objects'), powers, who runs it and who can be a member, meetings and appointments, rules on remuneration, investments and holding land, power to change the governing document and how to close the charity.



Unincorporated association

Rules which set out items such as its name, objects, where it is registered, membership.



Community benefit society

Scheme



A legal document that changes, replaces or extends the trusts of a charity. It may be a fully regulating scheme, covering all aspects of a charity's administration and purposes and replacing the previous governing document, or it may be a scheme that adds to or alters some part of the governing document.

Public benefit: Public benefit is at the heart of what it means to be a charity. It's about who your charity helps and what difference it makes. The Charities Act sets out that a charity's purposes must be for the 'public benefit'.

Public benefit requirement: By law, all charities must have purposes that benefit the public. The law states that **all** a charity's purposes must:

- Fall into one or more of the 12 charitable purposes described in the Charities Act, and
- Be for the public benefit.

The Charities Act calls this the 'public benefit requirement'.

Purposes: A charity's purposes are what the charity is set up to achieve. They are usually set out in the charity's governing document. Some charities call their purposes 'objectives', 'goals' or 'aims'.

Serious incident: A serious incident is something that could lead to:

- the charity losing a large amount of money or assets
- damage to the charity's property
- negative consequences for the charity's work, the people it helps, or its reputation.

Undischarged bankrupt: This is a person who has been declared bankrupt and whose bankruptcy is ongoing.

Unincorporated association is a group of individuals operating for a common purpose for the benefit of its users. Its governing document is usually a constitution or a set of rules. It is not incorporated, so it cannot enter into contracts or own property in its own right and individual members are personally responsible for any debts and contractual obligations.

You can find definitions of other useful terms in the main glossary on the Commission website.

Appendix 2: Template declaration for potential trustees

You can use this template when appointing new charity trustees. Please don't use it when registering your charity with us.

Name of organisation: _____

Name of charity trustee: _____

Eligibility and responsibility

By signing this form, you declare that:

- You are willing to act as a charity trustee
- You understand your organisation's purposes and the rules set out in its governing document
- You are not prevented from acting as a charity trustee because you:
 - Have an unspent conviction for an offence involving dishonesty or deception
 - Are bankrupt (or you are under 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 in a moratorium period under a debt relief order or a debt relief restrictions order
 - Are disqualified from being a company director
 - Have ever been removed as a trustee by the Charities Commission for Northern Ireland or the High Court because of misconduct or mismanagement, or have ever been 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 fulfil your responsibilities as a trustee in line with the Charity Commission for Northern Ireland's guidance.

Charity trustee declaration

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

More information

Website: www.charitycommissionni.org.uk

Email: admin@charitycommissionni.org.uk

Phone: 028 3832 0220

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