



WRIGLEYS
— SOLICITORS —

Yorkshire Funders Forum
Duties of a Trustee Workshop
21 March 2024



Overview

- The Charity Commission and Charity Law
- Trustee duties
- Grant making
- Policies
- Conflicts
- Serious incident reporting
- Further guidance

Charity Commission – risk-based approach




 Conflicts of Interest


 Relationships with non-charities

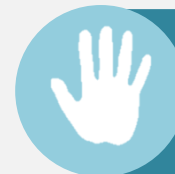
 Serious Incident Reporting

 Fraud and Cyber Crime

 Double defaulters

 Safeguarding

 Related Party Transactions

 Terrorism / PREVENT funding

Charity law

Charities Act 2011

NB: Charities Act 1992; Charitable Institutions (Fund-Raising) Regulations 1994; Charitable Institutions (Fund-Raising) (Amendment) Regulations 2009

Charities (Protection and Social Investment) Act 2016

Charities Act 2022

What is a charity in England & Wales?



CHARITY

“...“charity” means an institution which –

- a. is established for **charitable purposes only**, and*
- b. falls subject to the **control of the High Court...**”*

s1, Charities Act 2011



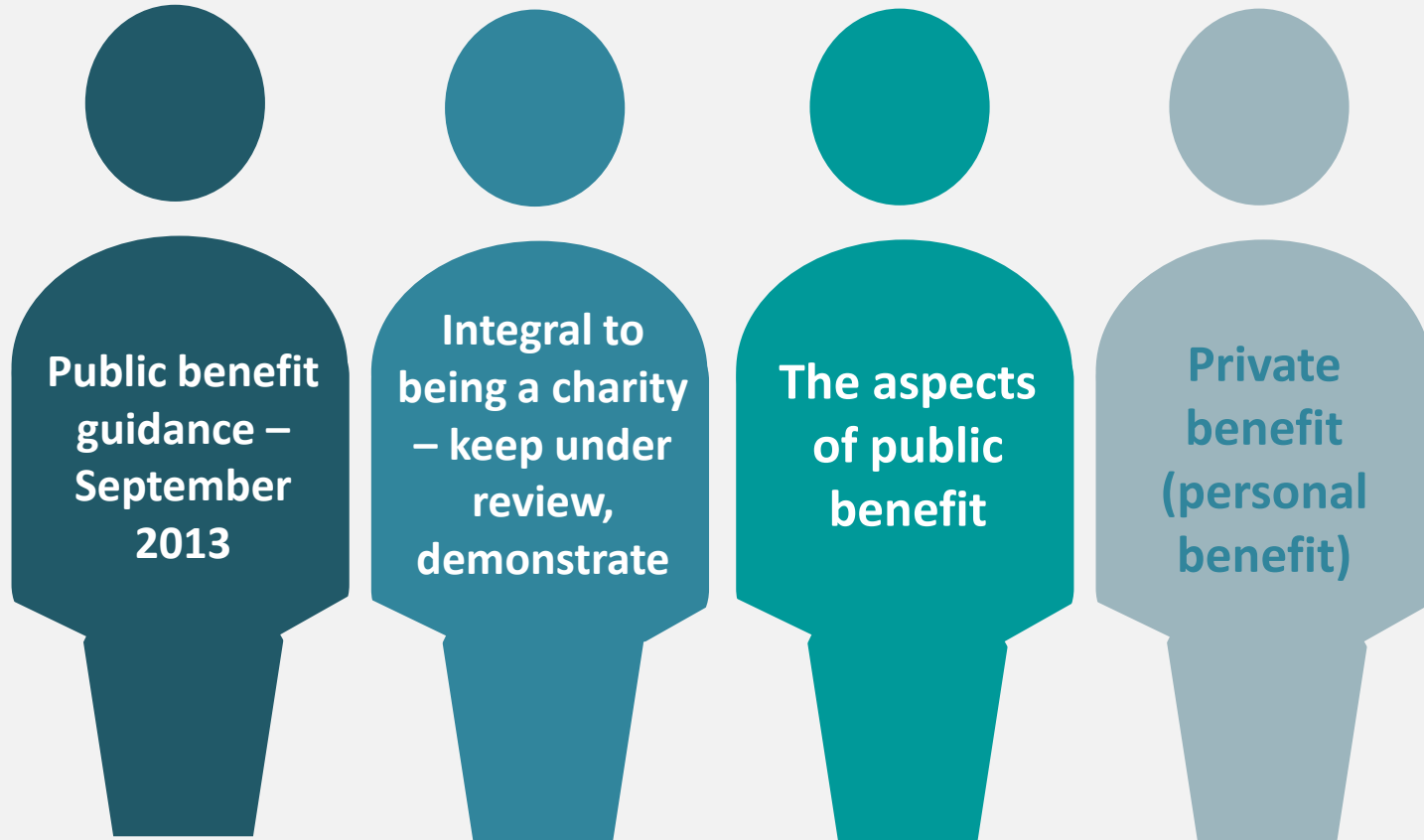
CHARITABLE PURPOSE

“...a charitable purpose is a purpose which -

- a. falls within **section (3)(1)**, and*
- b. is for the **public benefit...**”*

s2, Charities Act 2011

Public benefit



The Essential Trustee guidance – 6 main duties



1. Ensure your charity is carrying out its purposes for the public benefit



- Governing document
- Refer back to the objects
- Demonstrate how your charity is advancing its charitable purposes and benefiting the public
- 13 [charitable purposes](#) + public benefit [PB1, PB2 and PB3](#)
- Due diligence using the Charity Commission [Register of Charities](#) where making grants

2. Comply with your charity's governing document and the law

- Governing document: objects, powers, trustees, conflicts, meetings
- Charity law - read [guidance](#) and take advice if required
- Accounting and reporting requirements
 - Inform the Commission of any changes such as trustee details and amendments to the governing document (may also need consent to some changes)
 - [Annual return](#)
 - Additional requirements depending on the size of the charity such as filing annual accounts and reports
 - [Serious incident reporting](#)



3. Act in your charity's best interests



- Collective decision making – see guidance: It's your decision: charity trustees and decision making ([CC27](#))
- Independent judgement & informed decisions
- Ask questions / challenge
- Recognise, declare and deal with conflicts of interest and conflicts of loyalty (identify, prevent, and record) – see guidance: [Managing conflicts of interest in a charity](#)
- Not to profit/accept benefits
- Restrictions on payments and other benefits to trustees and connected persons

4. Manage your charity's resources responsibly

- Protect (and maximise) assets
- Avoid exposing the charity's assets to undue risk, take special care when investing, and do not over-commit the charity
- Manage funds and keep them safe
- Due diligence on beneficiaries
- Ensure funds are transferred properly (bank transfer, not cash)





5. Act with reasonable care and skill

- Objective and subjective test
- Required standard of care can be increased but not reduced e.g. for professionals
- Make use of your skills and experience and take advice when necessary
- Take advice when investing charity funds. See guidance: Investing charity money: guidance for trustees ([CC14](#))
- Give enough time, thought and energy to your role (for example by preparing for, attending, and actively participating in all trustees' meetings)

6. Ensure your charity is accountable

- Staff and volunteers accountable to the board
- Stakeholders – e.g. beneficiaries and funders
- Charity Commission
- Comply with accounting and reporting requirements. See Charity reporting and accounting: the essentials November 2016 ([CC15d](#))





Questions?

Grant making

- [Charitable purposes](#) and [public benefit](#)
- [Grant funding an organisation that isn't a charity](#)
- It's your decision: charity trustees and decision making ([CC27](#))
- [Work with other charities](#) (charity to charity grant funding)
- In line with grant making policy

Grant making policy

Points to consider:

- What are your priorities for support?
- Will the charity be open for unsolicited applications?
- What will your grant making may look like:
 - Lots of small grants or a few larger grants?
 - Over what time period will you operate?
 - Public benefit
- Different documentation required for different levels of grants
- Schedule annual review of policy and update if required

Policies

- Recommended: grant making policy and policy on [investing charity funds](#)
- Annual return will ask if the charity has policies and procedures on:
 - [internal charity financial controls](#)
 - [Financial](#)
 - [risk management](#)
 - [trustee expenses](#)
 - [trustee conflicts of interest](#)
 - [serious incident reporting policy](#)
- Can be simple, straightforward documents

Effective decision making

Act within your powers

Act in good faith and in the interests of the charity

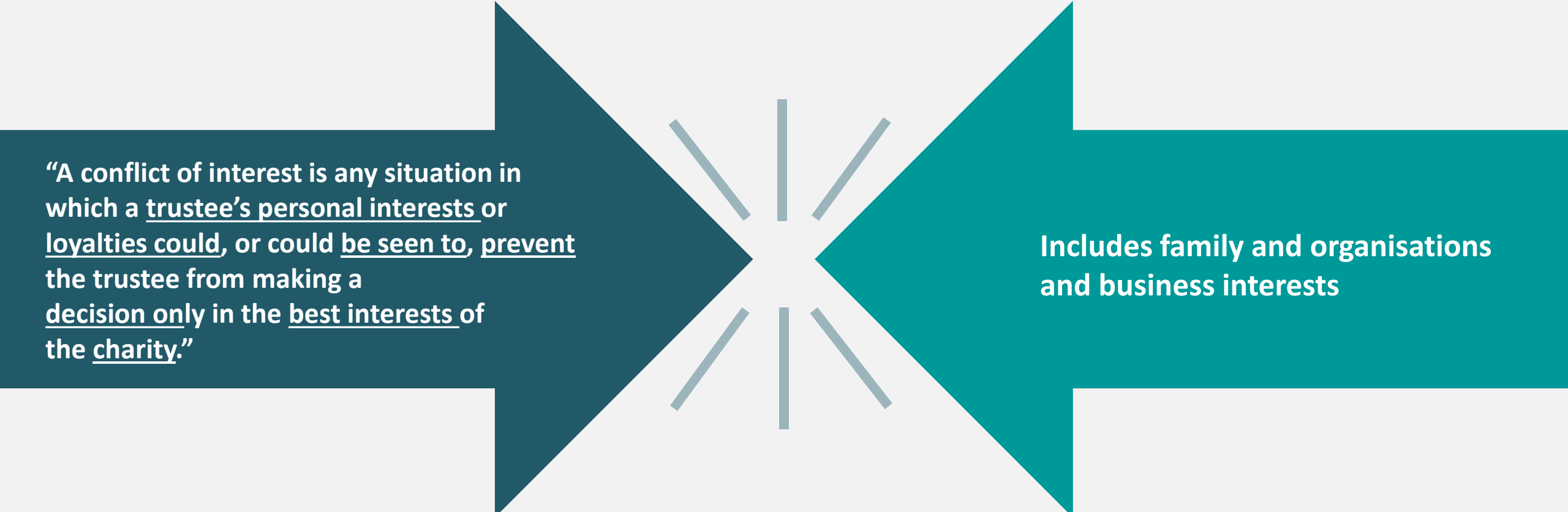
Be sufficiently informed

Take into account all relevant factors, ignore irrelevant factors

Manage conflicts

Make a decision with the range of reasonable decisions

What is a conflict of interest/loyalty?



“A conflict of interest is any situation in which a trustee’s personal interests or loyalties could, or could be seen to, prevent the trustee from making a decision only in the best interests of the charity.”

Includes family and organisations and business interests

Declarations of interests

Identify



All trustees should declare:

- actual/ potential conflicts of interest
- *standing agenda item*
- *register of interests*

Prevent



Conflict of interests need to be avoided or managed

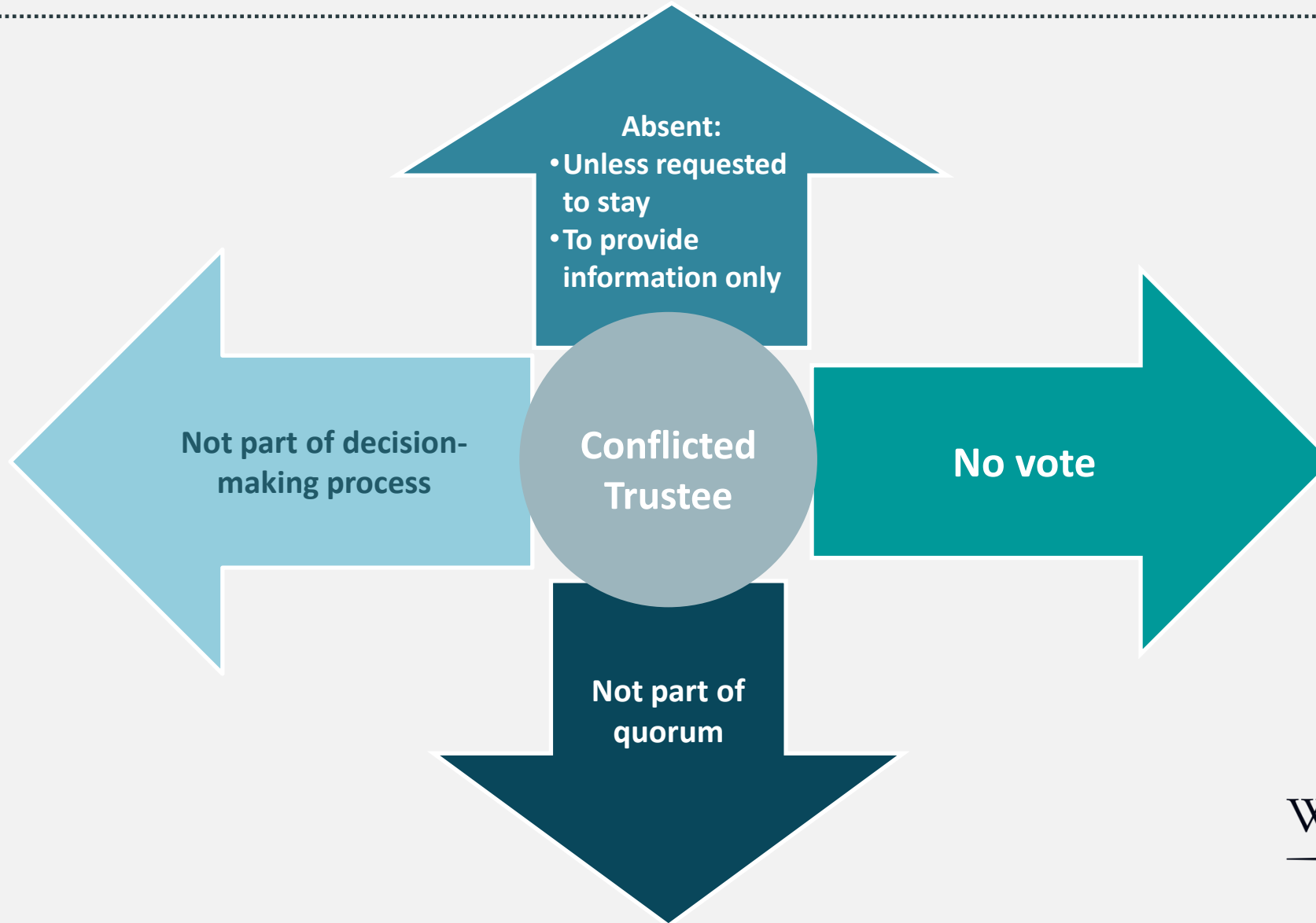
Record



Record in minutes of meeting:

- The conflict
- How addressed

Decision-making



Serious Incident Reporting

A serious incident is *“an adverse event, whether actual or alleged, which results in or risks significant:*

- *harm to your charity’s beneficiaries, staff, volunteers or others who come into contact with your charity through its work...*
- *loss of your charity’s money or assets*
 - *damage to your charity’s property*
- *harm to your charity’s work or reputation*

....“significant” means significant in the context of your charity, taking account of its staff, operations, finances and/or reputation.”

[Guidance: How to report a serious incident in your charity](#)

Serious Incident Reporting

Shift in focus – not just beneficiaries and vulnerable adults

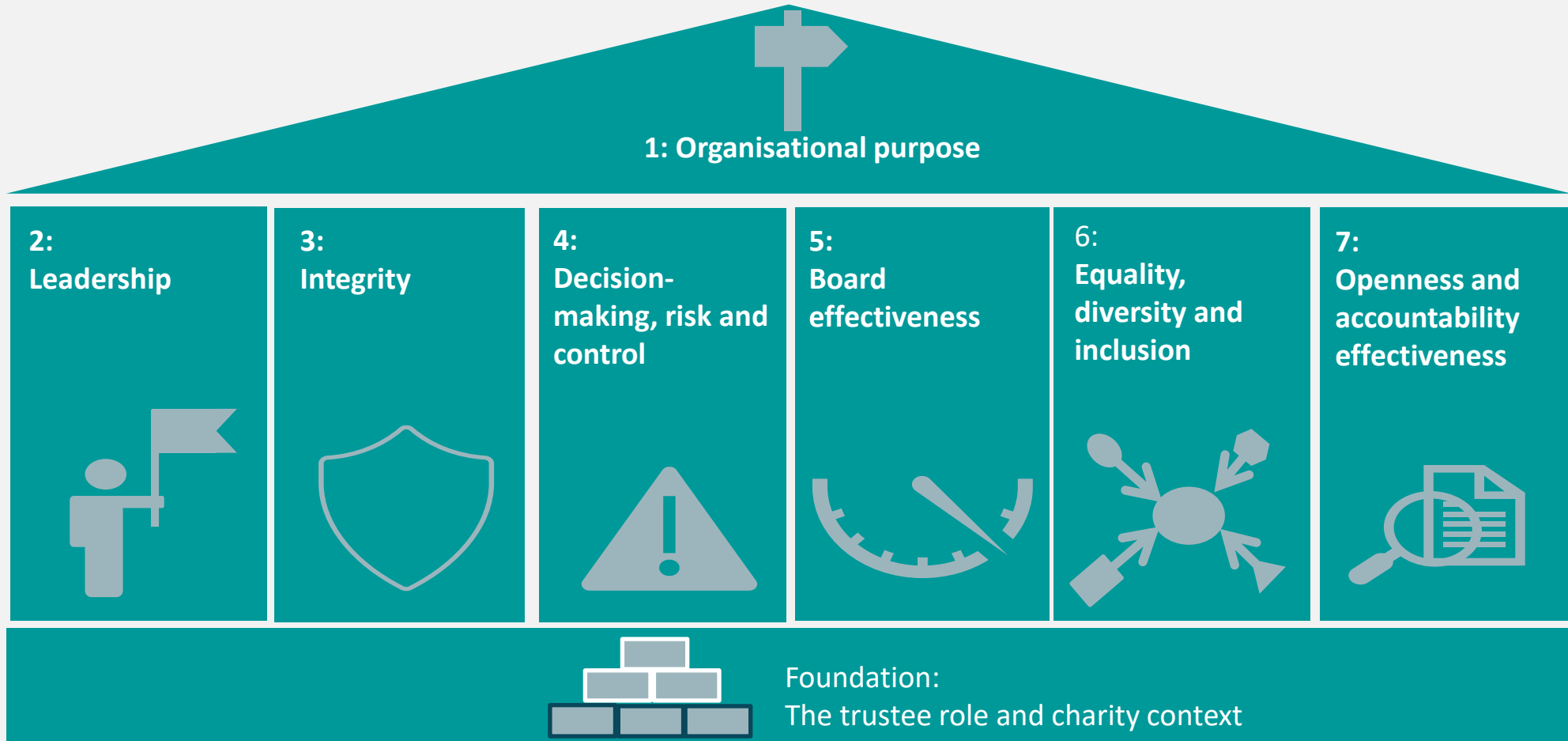
Duty on the trustees to report

Advice on reporting incidents involving partners
[\(CC – Dec 2019\)](#)

[Examples table: deciding what to report](#)

Declaration in annual return

Other useful information – the Charity Governance Code



Other useful information – Charity Ethical Principles



Beneficiaries first



Integrity



Openness



Right to be safe





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Questions?

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