

Yorkshire Funders

Duties of a Trustee

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Training delivered by:

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Also attending online, 20 people from grant-making organisations.

## Training overview

This session covers requirements and recommendations for best practice within the framework of the Charities Act 2011 & the amendment of Charities Act 2022, which has now been fully implemented.

The Charity Commission is currently very stretched and is therefore adopting a risk-based approach. If any of the key topics relate to your organisation, understand the risks and ensure they are mitigated against.

## Session Summary

Trustees need to have an understanding of the Charities Act 2011 (& amendment of 2022) and what can and can't be done within its framework. Statutes are available online here – [Charities Act 2011](#) & [Charities Act 2022](#). Other acts may also impact on your organisation dependent on what you are funding (e.g. Charitable Institutions (Fund-Raising) Regulations 2014).

Charities Act 2011 defines a charity – a charity must set out how it meets this in its application. The definition of charity is that it is established “for charitable purposes only” – therefore everything a charity does must further its objects so make sure you know what yours are. It's a good idea to refer and cross-refer to the objects throughout your work.

There are 13 charitable purposes listed in the Charities Act – this list encompasses everything that constitutes charitable purposes. [Click here to view.](#)

For an organisation to be a charity, each of its activities must be for the public benefit. Beneficial means identifiable and capable of being proved by evidence that an activity is beneficial and can't be outweighed by any harm. More importantly, an activity must benefit the public or a section of the public – guidance and case law of definition of “benefit”. Any personal or private benefit must be incidental.

### **6 Main Duties of a Trustee (from [Charity Commission's CC3 guidance](#) – see [CC3A](#) for abridged version)**

- 1) Comply with charity's governing document and the law - Ensure your charity is carrying out its purposes for the public benefit – per your governing document. You need to be able to demonstrate how your activities are for public benefit and further the charitable purposes of your charity.

Look up your charity on the Charity Commission [Register of Charities](#) to see what you have listed and sense check it.

2) Comply with your charity's governing document and the law – be familiar with your governing document and comply with legal, accounting and reporting requirements. Annual returns must be filed within 10 months of your year end. Serious incident reporting must be made in a timely manner and not wait till filing annual return.

3) Act in your charity's best interests – the Charity Commission has a new focus on acting collectively as trustees to make balanced and informed decisions. Trustees must be able to question and challenge during the decision-making process and for it be noted that this has happened.

4) Manage your charity's resources responsibly – trustees have a duty to protect and maximise a charity's assets – assets should only be used to support or carry out a charity's purposes. Take special care when investing or borrowing funds not to over-commit the charity. Have procedures and safeguards in place. Do due diligence on beneficiaries when grant making and make any transfers by bank transfer for record-keeping purposes.

5) Act with reasonable care and skill – minimum required standard of care but this can be higher for professionals (e.g. legal professionals amongst trustees) – take professional advice where necessary (e.g. when investing). Give enough time, thought and energy to your role – prepare, attend and participate in trustees' meetings.

6) Ensure your charity is accountable – staff and volunteers must be accountable to the board. There is also an external element to accountability – stakeholders, beneficiaries, funders and charity commission are examples.

Question - if the charitable objects of my charity are out of date, how easy is it to update?

Not very easy but it is possible – to amend object, you have to provide good reasons. (Technical changes e.g. geographical or general modernisation are easier). The Charity Commission must consider the original purpose of the charity. The Charities Act amendment of 2022 has introduced an extra test re how the objects meet social criteria – the commission is making it harder for organisations to change their objects, especially without compelling supporting evidence.

### **Trustee duties around grant making itself**

Every grant maker should have a grant-making policy and decision-making framework. This is not always the case. From a legal perspective, such policies gives you a document to refer back to if the commission were ever to investigate the charity or in the event of trustee disagreement.

Your grant-making policy should cover off grant-making compliance with charitable objects. If an applicant is a registered charity but their application falls outside your objects, discussion can be had to see if it could fall within in. A key point with regard to grant-making policy is that each case will be slightly different - consider the merits of each application – there isn't a one size fits all approach, therefore familiarity with the policy and process can be helpful.

Is it a grant or contract? Take advice if in doubt. Some documents titled "grants agreement" may in fact be contracts. Consider monitoring requirements carefully – a grant agreement would have claw back in it if used outside purposes agreed.

### **Grant funding non-charities**

Charitable organisations are listed on the register of charities (unless income under £5k). Refer back to the definition of charity and seek advice if needed. Consider applications on a case-by-case basis and do your due diligence – for example, if an organisation is a CIC have they adopted this structure to shortcut or simplify the application process?

Be aware that some areas may align with the charitable purposes of your organisation but might not meet the public interest requirement.

Remember that you can only fund charitable activities and within your objects.

[Grant funding an organisation that isn't a charity](#) – see this guidance from charity commission.

Trustees should carry out a risk assessment to ensure they aren't exposing their charity to undue risk. Thorough due diligence is needed. Look at the applicant's structure to consider any risk of private benefit and what can be done to mitigate any risk. Make sure that the terms & conditions of any grant are clear especially with regard to what it can be used for and claw back conditions are stated if used outside of areas specified. Monitoring requirements must also be clearly documented.

If the commission can't see in a set of minutes why a decision was taken or not taken, they will presume that conversation never happened – trustees need to be able to demonstrate how a decision was reached in the event that the commission investigates. Likewise, documenting why you haven't funded an application can be useful evidence. Record-keeping is key from a legal compliance perspective.

### **Grant-making policy**

Key considerations – always link funding priorities for spending back to objects. Consider what your grant-making will look like – to help futureproofing and budgeting. For example, is spending down a consideration for your charity and has this been considered when grant making?

Also consider appropriate documentary requirements for grants of different levels – protect yourself by having sufficient documentation to protect the funds granted. If you use a lighter-touch grant letter, make sure it covers off key points and that you are protected.

Consider what is published and in the public domain and what is internal – public-facing documents can be useful, especially to save time on rejections if your charity accepts unsolicited funding applications.

### **Policies**

These can be simple, straightforward documents. Your annual return will ask if the charity has various policies around controls, finances, risk, expenses, conflicts of interest and serious incident reporting.

The Charities' Commission is particularly interested in conflicts of interest and serious incident reporting at the moment.

In terms of what such policies should contain, looking at what other charities similar to your own have online can be really useful.

### **Effective Decision Making**

What does your governing document say and what does the Charity Commission guidance say?

Act within your objects and powers (per your governing document). Be informed and act in good faith. Be aware of conflicts of interest.

Be aware of delineation between trustees and staff with operational responsibilities especially around decision-making if this applies to your charity.

### **Conflicts of Interest**

The Charity Commission [has guidance on this](#) – financial conflicts are of particular importance if a trustee could gain financial benefit from a decision made. This includes buying/leasing assets to/from a trustee.

Loyalty conflict is a second danger – if a trustee's decision involves an organisation linked to the trustee. Decision-making must be seen to be independent.

#### What are the benefits/drawbacks to trustees claiming out-of-pocket expenses?

Modern constitutions will include clauses saying expenses can be claimed – check your governing document. Benefits/drawbacks of this is a question for the trustees. Ensure anything claimed is in the best interest of the charity and not excessive.

#### The list of required policies includes financial – what does this need to cover?

This depends on the profile of an organisation. Generally, it would clarify roles, authority and responsibility for financial decision-making (e.g. who can authorise expenditure.) The decision-making process should be set out. Where trustee sign off required also.

#### Where a trustee is a donor is this a conflict of interest?

Yes, sensible practice would be for that trustee to recuse themselves from that decision-making process. Document the process. The level of conflict will vary dependent on circumstances – manage this carefully.

### **Declarations of Interest**

Trustees need to identify relevant conflicts and declare any actual or potential in writing. Having a conflicts of interest policy in place is useful and will help with this. It is good practice to include this as the first item on the agenda at every meeting and to keep a register of interests updated.

Trustees need to take action to prevent a conflict from impacting on their decision-making on a case-by-case basis. Managing the decision-making process is key – a conflicted trustee should not be part of the decision-making process, would need to leave the meeting or be requested to stay for information provision only, should not count towards quorum and must not have a vote on the issue.

It is vital to keep accurate records of the decision-making process and rationale behind the decision, especially if you have decided something is not a conflict of interest.

#### Serious Incident Reporting

See Charity Commission definition and [guidance how to report](#).

Anything criminal should be reported to relevant agencies as well as The Charity Commission – those requirements are your responsibility to know as trustees.

If any incidents happen that might involve press interest, a serious incident report is recommended.

Trustees have ultimate responsibility. For borderline incident not reported, it is especially important to keep records. There is also a declaration included in the annual return – but do not wait until submitting annual return if needing to report.

## Other useful information

[Charity Governance Code](#) – due for update early this year. This is an aspirational document but is a tool for continuous improvement – there are seven principles with descriptions, rationale, key outcomes & best practice.

[Charity Ethical Principles](#) -developed by NCVO and relevant to charities of all sizes – this is a framework to guide decision-making – voluntary but encouraged and complementary to the charity governance code.

### Questions

If our charitable objects are fairly narrow, do we need to avoid unrestricted grant funding to a charity with broader objects than their own?

Trustees should specify that it is restricted to your objects. You may determine that this has been covered in the application and decision-making process. Consider restricting to your objects whilst still offering unrestricted funding but ensure good monitoring regarding how they are using the money.

When bringing in people with more diverse views onto panels, do you have to have something in your objects to delegate decision-making?

It is helpful to have in your governing document (e.g. trustees can delegate to committees). Review to see if there's something in there to give the trustees the power to do that. If not, put a policy in place "e.g. trustees have oversight of the organisation and have resolved to give responsibility to X and Y to this committee", also setting out reporting.

## Feedback to Yorkshire Funders

If you have got any questions, feedback, top tips, links etc on any of this please get in touch as Yorkshire Funders knows our members are sources of incredible insights and knowledge that is valuable to others.

Get in touch via Alex, [Alex@yorkshirefunders.org.uk](mailto:Alex@yorkshirefunders.org.uk)