The Essential Trustee

6 main duties

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

Comply with your charity's governing document and the law

Act in your charity's best interests

Ensure your charity is accountable

Manage your charity's resources responsibly

Act with reasonable care and skill

The Governance Jigsaw – The Essential Trustee (CC3)

It's about knowing:

- what your charity can and can't do within its purposes
- how your charity is fulfilling its purposes and benefiting the public
- what difference your charity is really making

It's about being:

- familiar with your governing document
- up to date with filing accounts, returns and any changes to your charity's registration details
- aware of other laws that apply to your charity

It's not about being:

- an expert - but you do need to take reasonable steps to find out

It's about:

- making balanced, informed decisions
- recognising & dealing with conflicts of interest
- ensuring trustee benefits are allowed
- being prepared to question and challenge
- accepting majority decisions

It's not about:

- preserving the charity for its own sake
- serving personal interests

It's about:

- managing risks, protecting assets (reputation) and people
- getting the resources your charity needs
- having and following appropriate controls and procedures
- dealing with land and buildings
- responsibility for, and to, staff and volunteers

It's about:

- using your skills and experience
- deciding when you need advice
- preparing for meetings
- getting the information you need (financial, management)
- being prepared in case something does go wrong

It's about:

- meeting legal accounting and reporting requirements
- being able to show that your charity complies with the law and is effective
- being accountable to members and others with an interest in the charity
- ensuring that staff and volunteers are accountable to the board
- welcoming accountability as an opportunity not a burden

CHARITY COMMISSION
FOR ENGLAND AND WALES

GUIDANCE

The essential trustee: what you need to know, what you need to do

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1. About this guidance

This guidance explains the key duties of all trustees of charities in England and Wales, and what trustees need to do to carry out these duties competently.

Trustees have independent control over, and legal responsibility for, a charity's management and administration. They play a very important role, almost always unpaid, in a sector that contributes significantly to the character and wellbeing of the country.

Trusteeship can be rewarding for many reasons - from a sense of making a difference to the charitable cause, to new experiences and relationships. It's also likely to be demanding of your time, skills, knowledge and abilities. Being aware of the duties and responsibilities covered in this guidance will help you carry out your role in a way that not only serves your charity well but also gives you confidence that you will be complying with key requirements of the law.

You should read this guidance if you are a trustee of any charity based in England or Wales, including:

- a registered charity
- a charity that is not required by law to register
- a charity that is required to register, but has not yet done so

You should also read this guidance if you are thinking about setting up a charity or becoming a trustee in England or Wales.

The charity regulators in **Scotland** and **Northern Ireland** have their own guidance for trustees.

If you are involved in running a charity but don't know whether you are a trustee, check the charity's governing document. (This is the document that sets out the charity's rules; it may be a constitution, trust deed, articles of association or similar document.) It will tell you which body has ultimate authority and responsibility for directing and governing the charity. All properly appointed members of that body are charity trustees in law, whatever they are called (trustees, directors, committee members, governors or something else).

If you are a member of that body, you are automatically a charity trustee. You share, with all members of that body, equal responsibility for the charity.

The Charity Commission expects trustees to take their responsibilities seriously. Using this guidance and ensuring you give sufficient time and attention to your charity's business will help. The Commission recognises that most trustees are volunteers who sometimes make honest mistakes. Trustees are not expected to be perfect - they are expected to do their best to comply with their duties. Charity law generally protects trustees who have acted honestly and reasonably.

1.1 Must and should - what they mean

In this guidance:

- 'must' means something is a legal or regulatory requirement or duty that trustees must comply with
- 'should' means something is good practice that the Commission expects trustees to follow and apply to their charity

Following the good practice specified in this guidance will help you to run your charity effectively, avoid difficulties and comply with your legal duties. Charities vary in terms of their size and activities. Consider and decide how best to apply this good practice to your charity's circumstances. The Commission expects you to be able to explain and justify your approach, particularly if you decide not to follow good practice in this guidance.

In some cases you will be unable to comply with your legal duties if you don't follow the good practice. For example:

Your legal duty	It's vital that you
Act in your charity's best interests	Deal with conflicts of interest
Manage your charity's resources responsibly	Implement appropriate financial controls Manage risks
Act with reasonable care and skill	Take appropriate advice when you need to, for example when buying or selling land, or investing (in some cases this is a legal requirement)

Trustees who act in breach of their legal duties can be held responsible for consequences that flow from such a breach and for any loss the charity incurs as a result. When the Commission looks into cases of potential breach of trust or duty or other misconduct or mismanagement, it may take account of evidence that trustees have exposed the charity, its assets or its beneficiaries to harm or undue risk by not following good practice.

1.2 How to use this guidance

You may want to read all of this guidance to get a better understanding of trustees' duties overall, or you may want to find out more about a specific topic. As a minimum the Commission recommends that you read the summary of trustees' duties in section 2:

- section 2 of this guidance gives a summary of trustees' duties
- section 3 explains whether you can legally be a trustee
- sections 4 to 9 explain the 6 key duties of trustees in more detail
- section 10 explains when trustees can be liable and how to reduce the risk
- sections 11 and 12 provide more detail about charity structures, and the roles of charity officers
- section 13 contains definitions of technical terms used in this guidance

2. Trustees' duties at a glance

This is a summary of trustees' main legal responsibilities, which are explained in detail in the rest of this guidance. You should read this section as a minimum, and ensure you fully understand your responsibilities by referring to the rest of the guidance as necessary.

Before you start - make sure you are eligible to be a charity trustee

You must be at least 16 years old to be a trustee of a charity that is a company or a charitable incorporated organisation (CIO), or at least 18 to be a trustee of any other charity.

You must be properly appointed following the procedures and any restrictions in the charity's governing document.

You must not act as a trustee if you are disqualified, unless authorised to do so by a waiver from the Commission. The reasons for disqualification are shown in the disqualifying reasons table and include:

- being bankrupt (undischarged) or having an individual voluntary arrangement (IVA)
- having an unspent conviction for certain offences (including any that involve dishonesty or deception)
- being on the sex offenders' register

You can read the automatic disqualification guidance for charities which explains the disqualification rules in more detail.

There are further restrictions for charities that work with children or adults at risk. See section 3 for more information.

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

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

- ensure you understand the charity's purposes as set out in its governing document
- plan what your charity will do, and what you want it to achieve
- be able to explain how all of the charity's activities are intended to further or support its purposes
- understand how the charity benefits the public by carrying out its purposes

Spending charity funds on the wrong purposes is a very serious matter; in some cases trustees may have to reimburse the charity personally.

See section 4 for more information.

Comply with your charity's governing document and the law

You and your co-trustees must:

- make sure that the charity complies with its governing document
- comply with charity law requirements and other laws that apply to your charity

You should take reasonable steps to find out about legal requirements, for example by reading relevant guidance or taking appropriate advice when you need to.

See section 5 for more information.

Act in your charity's best interests

You must:

- do what you and your co-trustees (and no one else) decide will best enable the charity to carry out its purposes
- with your co-trustees, make balanced and adequately informed decisions, thinking about the long term as well as the short term
- avoid putting yourself in a position where your duty to your charity conflicts with your personal interests or loyalty to any other person or body
- not receive any benefit from the charity unless it is properly authorised and is clearly in the charity's interests; this also includes anyone who is financially connected to you, such as a partner, dependent child or business partner

See section 6 for more information.

Manage your charity's resources responsibly

You must act responsibly, reasonably and honestly. This is sometimes called the duty of prudence. Prudence is about exercising sound judgement. You and your co-trustees must:

- make sure the charity's assets are only used to support or carry out its purposes
- avoid exposing the charity's assets, beneficiaries or reputation to undue risk
- not over-commit the charity
- take special care when investing or borrowing
- comply with any restrictions on spending funds or selling land

You and your co-trustees should put appropriate procedures and safeguards in place and take reasonable steps to ensure that these are followed. Otherwise you risk making the charity vulnerable to fraud or theft, or other kinds of abuse, and being in breach of your duty.

See section 7 for more information.

Act with reasonable care and skill

As someone responsible for governing a charity, you:

- must use reasonable care and skill, making use of your skills and experience and taking appropriate advice when necessary
- should give enough time, thought and energy to your role, for example by preparing for, attending and actively participating in all trustees' meetings

See section 8 for more information.

Ensure your charity is accountable

You and your co-trustees must comply with statutory accounting and reporting requirements. You should also:

- be able to demonstrate that your charity is complying with the law, well run and effective
- ensure appropriate accountability to members, if your charity has a membership separate from the trustees
- ensure accountability within the charity, particularly where you delegate responsibility for particular tasks or decisions to staff or volunteers

See section 9 for more information.

3. Who can be a trustee and how trustees are appointed

You must make sure you are allowed to be a trustee:

- there are some restrictions on who can be a trustee – there are minimum age limits and some factors that automatically disqualify people from being trustees
- you must be properly appointed, and should know how long your appointment lasts
- if you are not properly appointed, the trustees' decisions or actions may be invalid, potentially creating disputes or putting charity assets at risk
- if you are a trustee of a charity that provides 'regulated activities' for children or adults, be prepared for your charity to request a DBS check on you

3.1 Who can be a trustee

3.1.1 Minimum age

You must be at least 16 years old to be a trustee of a charitable company or a charitable incorporated organisation (CIO), unless the charity's governing document says you must be older. You must be at least 18 to be a trustee of any other type of charity.

3.1.2 Disqualification

You must not act as a trustee if you are disqualified under the Charities Act, unless your disqualification has been waived by the Commission. Reasons for disqualification include if you:

- are disqualified as a company director
- have an unspent conviction for an offence involving dishonesty or deception (such as fraud)
- are an undischarged bankrupt (or subject to sequestration in Scotland), or have a current composition or arrangement including an individual voluntary arrangement (IVA) with your creditors
- have been removed as a trustee of any charity by the Commission (or the court) because of misconduct or mismanagement
- are on the sex offenders' register

You can read the automatic disqualification guidance for charities which explains the disqualification rules in more detail.

If any of the current or new disqualification reasons apply to you, you may be able to get your disqualification lifted (or 'waived') by the Commission. The Commission will carefully consider whether granting a waiver is appropriate, although there are some situations where it has no power to grant a waiver – for example, where a trustee is disqualified as a company director.

Read more about **trustee disqualification**.

3.1.3 Fit and proper persons

Charities that want to claim UK tax reliefs and exemptions (eg Gift Aid) must meet the management condition in the Finance Act 2010. This requires all of the charity's managers (including trustees) to be 'fit and proper persons'.

Find out more - see the **HM Revenue and Customs guidance**.

3.1.4 Disclosure and Barring Service (DBS) checks

There are legal restrictions under safeguarding legislation on who can be involved in working with children

and adults at risk. In addition, the DBS undertakes criminal records checks of individuals, which charities can use to ensure that they are eligible and suitable for the trustee role. The type of check that can be made depends on the nature of the charity's activities and the role that the trustee plays. For example, if you are a trustee of a charity that provides 'regulated activity' for children or adults, you should expect your charity to request an enhanced DBS check on you: where it is satisfied that the role is eligible, this will include a check against the relevant barred list.

Find out more about **safeguarding and DBS checks**.

3.2 How trustee appointments begin and end

You must follow any rules in your governing document about:

- who appoints new trustees
- when, and how, new trustees are appointed
- who can be a trustee - the governing document may impose conditions
- how long appointments last and whether a trustee can be re-appointed
- how trustees can **resign or be removed**

If your governing document has no specific provisions for these things, your charity must comply with the relevant legal provisions:

- companies must comply with company law provisions for appointing and removing directors
- unincorporated charities must comply with Trustee Act 1925 provisions

CIOs must include provisions in their constitutions for appointment and removal of trustees.

The Commission can use its powers to appoint or remove trustees if the charity's trustees (or members, if applicable) are unable to do so.

Read more about **legal powers to remove and appoint trustees**.

3.3 What to consider when recruiting trustees

When charities recruit new trustees, they should think about:

- the skills and experience the current trustees have, and whether there are any gaps
- ensuring new trustees are eligible to act
- ensuring new trustees don't have **serious conflicts of interest**, or getting Commission consent and putting procedures in place to manage the conflicts
- how to help new trustees to understand their responsibilities and the charity's work

It's also important for trustees to be interested in the charity's work and be willing to give their time to help run it.

Members or beneficiaries on your board

Many charities' governing documents allow or require:

- some or all of the trustees to be elected by the members (this is usual practice for charities with voting members other than the trustees)
- the trustee body to include beneficiaries
- other groups or organisations, such as local authorities, to appoint trustees

It's important to listen to the views and perspectives of members, beneficiaries and other bodies with an interest in your charity. Having people as trustees is one way of obtaining these views. But all trustees, regardless of how they are appointed, must act solely in the interests of the charity; it's not their role to act on behalf of any particular group. They must also manage conflicts of interest, including conflicts of loyalty to their appointing body.

Find out more:

Trustee board: people and skills - how to appoint the right people with the right skills

Finding new trustees: what charities need to know

Charity trustee: declaration of eligibility and responsibility

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Avoid mistakes - make sure trustee appointments are valid

Be careful to follow the rules in your charity's governing document and the law when appointing trustees. If trustee appointments breach these rules they are not valid. The validity of actions and decisions they were involved in could be called into question. But even if a trustee isn't validly appointed, they can still be held liable for their actions and decisions.

Improper trustee appointments can often lead to disputes. In the worst cases this can harm the charity's reputation, alienate supporters, put charity assets at risk (including by loss of funding) or ultimately leave the charity unable to function.

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

You and your co-trustees must make sure that everything your charity does helps (or is intended to help) to achieve the purposes for which it is set up, and no other purpose. This means you should:

- ensure you understand the charity's purposes as set out in its governing document
- plan what your charity will do, and what you want it to achieve
- be able to explain how all of the charity's activities are intended to further or support its purposes
- understand how the charity benefits the public by carrying out its purposes

Spending charity funds on the wrong purposes is a very serious matter; in some cases trustees may have to reimburse the charity personally.

4.1 Understanding the charity's objects and powers

You should read the objects clause in your charity's governing document and ensure you understand:

- what the charity is set up to achieve (its purposes)
- who the charity is there to benefit (its beneficiaries)
- how they will benefit (what the charity will do for or with them)
- any order of priority to the services and benefits the charity provides
- any restrictions on what the charity can do or who it can help (geographical or other boundaries; or specific criteria that beneficiaries must meet)

The objects might be quite broad and general, or they might be quite narrow, specifying what services or activities the charity can provide in order to achieve its purposes.

You can find out more about governing documents in section 5 of this guidance.

The charity may have specific powers in its governing document. Charities also have powers from the Charities Act and other laws. You must only use these powers in ways that further your charity's purposes.

Find out more about **charitable purposes**.

Some charities produce 'mission statements' or other summaries of their aims and activities. When checking the scope of your charity's objects or powers, be careful not to rely on such statements instead of the charitable purposes set out in the governing document, as the wording may be less precise. If you need to check whether your charity can lawfully undertake a particular activity, you should check against the objects clause rather than any other statement of the charity's mission or aims. Otherwise you could end up carrying out activities in breach of the charity's governing document.

4.2 Public benefit

All charities must be for the public benefit. Trustees must have regard to the Commission's **public benefit guidance PB1, PB2 and PB3** when making decisions they are relevant to. This would include reviewing the charity's activities or considering new ones.

Public benefit is essential to:

- charitable status - to be a charity an organisation must have only charitable purposes for the public benefit
- a charity's operation - its activities must all be focussed on carrying out the charity's purposes for the public benefit
- a charity's accountability - trustees must be able to explain how their charity's activities are or have been for the public benefit

This means that you should understand, and be able to explain:

- what the charity is set up to achieve - its purpose
- why the charity's purpose is beneficial - this is the 'benefit aspect' of public benefit
- how the charity's purpose benefits the public or a sufficient section of the public - this is the 'public aspect' of public benefit
- how the charity will carry out (or 'further') its purpose for the public benefit

4.3 Planning and reviewing your charity's work

You and your co-trustees are responsible for deciding and planning how your charity will carry out its purposes.

All charity trustees should, therefore, decide together what activities the charity will undertake, and think about the resources it will need. Trustees of larger charities should take responsibility for setting the charity's strategic aims and direction, and agreeing appropriate future plans.

Involving the charity's staff, volunteers and others with an interest in the charity in the planning process can be helpful.

As part of your planning process, you should work out what funds and other resources the charity will need and where it will get them. See section 7 of this guidance for more detail.

You and your co-trustees should periodically review what the charity is achieving, and how effective the charity's activities are. Thinking about the difference your charity makes may help you to explain more clearly how it benefits the public. It may also help you to decide whether it could be more effective in carrying out its purpose by changing what it does.

Find out more:

Inspiring Impact

Charity governance, finance and resilience: 15 questions you should ask

You and your co-trustees should also review the charity's objects from time to time and make sure that they are still appropriate, relevant and up to date. Circumstances change over time and this could affect whether:

- the charity's beneficiary group still exists, and is still a '**sufficient section**' of the public
- the geographical 'area of benefit' in which the charity can operate is still relevant
- the need that the charity was set up to meet still exists, and meeting it is still for the public benefit
- there may be better ways of meeting the need for which the charity was set up

If your charity's objects are no longer effective, you must consider how these could be changed or take other action to enable the charity's resources to be applied for its purposes.

In the past many charities helped people by providing goods including food, clothing or fuel. Many charities have decided that they can meet current needs more effectively with cash payments or vouchers, and have updated their objects. Some charities still work effectively by providing goods (such as food or medical equipment).

Charities are often set up for a particular locality. Changes over time may mean that there are no longer enough people who need the charity's services in that place. In these circumstances, charities can expand their area of benefit to include neighbouring areas.

Two charities providing similar (or complementary) services in the same area may decide to collaborate or merge for greater efficiency.

4.4 Updating your charity's objects

Charities can modify or add to their objects if necessary, using powers in the governing document, company law or the Charities Act. They can't usually change their objects completely; the governing document and charity law do not usually allow it. If your charity is planning to update its objects, you and your co-trustees should consider what the charity was originally set up to do, and how circumstances have changed. Most charities must obtain permission from the Commission before changing their objects.

You should also review the other provisions in your charity's governing document and update them if they no longer meet the charity's needs - see section 5 of this guidance.

Governing documents are legal documents. You must follow the correct procedures to amend them, and it's important to word any changes correctly. You should consider taking appropriate advice about any changes. Use one of the **Commission's model governing documents** or an **approved governing document**, to ensure that your governing document has all the provisions and powers you need.

Find out more:

How to make changes to your charity's governing document

How to write charitable purposes

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

You and your co-trustees must:

- make sure that the charity complies with its governing document
- comply with charity law requirements and other laws that apply to your charity

You should take reasonable steps to find out about legal requirements, for example by reading relevant guidance or taking appropriate advice when you need to.

5.1 Your charity's governing document

You and your co-trustees must make sure that the charity complies with the governing document, which usually contains key information about:

- what the charity exists to do (its purposes, as explained in its objects clause)
- what powers it has to further its objects
- who the trustees are, how many trustees there should be and how they are appointed and removed
- whether the charity has members and, if so, who can be a member
- rules about trustees' (and members') meetings; how they are arranged and conducted; how decisions must be made and recorded, and so on
- how to change the governing document
- how to close the charity down

There may also be rules limiting how powers can be used, who can vote at meetings, or which rules can be changed.

Every trustee should have an up to date copy of their charity's governing document and regularly refer to it. If you don't have a copy, or don't know what it is, ask your fellow trustees. If they don't have a copy, the Commission can usually provide one (if your charity is a registered charity).

The governing document is essential to your charity. You and your co-trustees may need to review it from time to time to ensure that it continues to meet the charity's needs. Governing documents are legal documents. You must follow the correct procedures to amend them, and it's important to word any changes correctly. You should consider taking appropriate advice about any changes. Use one of the **Commission's model governing documents** or an **approved governing document**, to ensure that your governing document has all the provisions and powers you need.

Read more about **governing documents**.

5.2 Charity law - registration, accounting, reporting and other requirements

Charities set up in England or Wales must register with the Commission unless they are:

- exempt charities
- excepted from registering
- very small (below the annual income threshold for compulsory registration, currently £5,000) and not a CIO (all CIOs must register)

Find out **whether your charity needs to register or is exempt or excepted**.

Charities that operate in Scotland or Northern Ireland may also have to register there.

All charities must keep proper financial records and prepare annual accounts. Trustees must arrange for accounting books and records (including cash books, invoices and receipts) to be kept for a specified period. Read more: **Retention of Accounting Records**.

All registered charities:

- must inform the Commission of any changes to the information on the register of charities, including trustee details and changes to the governing document
- must send an annual return (or annual update) and other information to the Commission
- must comply with any additional accounting and reporting requirements such as filing annual accounts and reports with the Commission, depending on the size of the charity
- should report to the Commission any serious incident in their charity, as soon as possible after it occurs (see section 8.3 for more details)

Exempt charities may have to send accounting information to their principal regulator.

Find out more about **accounting and reporting requirements for charities**.

Charities whose income is over £250,000, and all charitable companies, must prepare their accounts and trustees' annual report in accordance with the Statement of Recommended Practice - Accounting and Reporting by Charities (Charities SORP).

Find out more about the **Charities SORP**.

A registered charity with an income over £10,000 in its last financial year must state that it's a registered charity on any fundraising documents and on many of its financial documents, including cheques, invoices and receipts. This includes electronic documents such as emails and websites. You don't have to state the charity's registration number, but it's good practice to do so.

5.3 Other laws and regulations

Charities and their trustees may be subject to a range of other laws and regulations depending on what the charity does, where it works and how it is set up. Some laws apply to all charities, such as equality, data protection and copyright law. It is important to be aware of the laws that apply to your charity, for example if it:

- is a company, CIO or community benefit society
- employs staff
- owns or rents premises
- operates vehicles
- provides:
  - legal, financial or other regulated advice
  - housing or accommodation
  - medical or care services
  - works with children or adults at risk
- undertakes activities that are subject to regulations, such as fundraising
- wants to benefit from Gift Aid or other tax reliefs
- works in Scotland, Northern Ireland or outside the UK

The Commission doesn't expect every trustee to be a legal expert. You and your co-trustees should take reasonable steps to find out about legal and regulatory requirements and keep up to date, for example by getting mailings from the Commission and other sources, reading relevant guidance and attending appropriate training. The charity should also have systems and procedures to ensure that it complies with legal requirements.

Where there is concern about a specific issue, the trustees may wish to consider taking independent advice from a suitably qualified person.

Find a solicitor - Law Society

Legal advice for small charities - LawWorks

Avoid mistakes - know your governing document

If the trustees don't comply with the governing document, the charity might undertake activities outside its objects. It might fail to follow the correct procedures, or take actions it has no power to take. Actions and decisions could be invalid and have to be reversed as a result.

If you don't follow rules about who can be a member or a trustee, or how to arrange and run meetings, it often leads to disputes, which can prevent the charity from operating effectively.

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6. Act in your charity's best interests

You must:

- do what you and your co-trustees (and no one else) decide will best enable the charity to carry out its purposes
- with your co-trustees, make balanced and adequately informed decisions, thinking about the long term as well as the short term
- avoid putting yourself in a position where your duty to your charity conflicts with your personal interests or loyalty to any other person or body
- not receive any benefit from the charity unless it is properly authorised and is clearly in the charity's interests; this also includes anyone who is financially connected to you, such as a partner, dependent child or business partner

6.1 Understanding the charity's interests

Acting in the charity's best interests means always doing what the trustees decide will best enable the charity to carry out its purposes, both now and for the future. It's not about serving:

- the interests of trustees or staff
- the personal interests of members or beneficiaries
- the personal interests of supporters, funders or donors
- the charity as an institution in itself, or preserving it for its own sake

Sometimes trustees need to consider **collaborating or merging with another charity**, or even spending all of the charity's resources and **bringing it to a close**.

6.2 Making decisions

You and your co-trustees are ultimately responsible for deciding what activities the charity will undertake, what resources it will need, how it will obtain and use them. Collective decision making is one of the most important parts of the trustee role. Some decisions are simple and straightforward; others can be complex or far reaching in their consequences. When you and your co-trustees make decisions about your charity, you must:

- act within your powers
- act in good faith, and only in the interests of your charity
- make sure you are sufficiently informed, taking any advice you need
- take account of all relevant factors you are aware of
- ignore any irrelevant factors
- deal with conflicts of interest and loyalty
- make decisions that are within the range of decisions that a reasonable trustee body could make in the circumstances

You should record how you made more significant decisions in case you need to review or explain them in the future.

Read more about **decision making**.

Avoid mistakes - be prepared to challenge assumptions

Trustees must make decisions solely in the charity's interests, so they shouldn't allow their judgement to be swayed by personal prejudices or dominant personalities.

Trustees must act collectively (jointly). Part of their role is to critically and objectively review proposals and challenge assumptions in making decisions. No one should be able to direct the trustees or drive decisions through without sufficient consideration. Trustees who simply defer to the opinions and decisions of others aren't fulfilling their duties.

Decisions don't usually have to be unanimous (depending on your governing document), but once the trustees have made a decision, they must all comply with it, including any who disagree. If you strongly disagree with your fellow trustees' decision, you can ask for your disagreement to be recorded in the minutes of the meeting. If you think that your fellow trustees are acting in breach of their duty, you should discuss the matter with the chair or your fellow trustees. If you are still concerned, contact the Commission. Ultimately, you may feel that you have to resign in order to distance yourself from the decision.

The Commission can only advise or intervene in relation to trustees' legal duties; it can't arbitrate in disputes between trustees.

6.3 Dealing with conflicts of interest and conflicts of loyalty

You can only comply with your duty to act in the charity's best interests if you prevent your personal interests from conflicting (or appearing to conflict) with the best interests of the charity. This means recognising and dealing with conflicts of interest.

A conflict of interest is any situation where your personal interests could, or could appear to, prevent you from making a decision only in the charity's best interests. For example, if you (or a person connected to you, such as a close relative, business partner or company):

- receive payment from the charity for goods or services, or as an employee
- make a loan to or receive a loan from the charity
- own a business that enters into a contract with the charity
- use the charity's services
- enter into some other financial transaction with the charity

Even when you receive no financial benefit, you could have a conflict of loyalty. For example if your charity has business dealings with your employer, a friend, family member, or another body (such as a local authority or charity, or a charity's trading subsidiary) that you serve on.

This means you and your co-trustees:

- should identify, and must declare conflicts of interest (or loyalty)
- must prevent the conflict of interest (or loyalty) from affecting the decision
- should record the conflict of interest (or loyalty) and how it was dealt with

How you prevent a conflict of interest from affecting a decision will depend on the circumstances and the seriousness of the conflict of interest. You must follow any specific conflict of interest provisions in your governing document. If a trustee (or a person connected to a trustee) stands to benefit directly or indirectly, the conflicted trustee(s) should withdraw from the discussion and decision making process. If the non-conflicted trustees can demonstrate that a conflict of loyalty involves no material benefit and poses a low risk to decision making in the best interests of the charity, they may permit the affected trustee to participate. Directors of charitable companies must have specific authority in the company's articles to do this. For the most serious conflicts of interest it may mean obtaining permission from the Commission, deciding not to proceed with a proposal or even resigning as a trustee.

Avoid mistakes - deal with conflicts of interest

Conflicts of interest (and conflicts of loyalty) are more common than people often think. If one of your fellow trustees appears to have a conflict of interest you should say so; you are not calling their integrity into question by doing so.

In deciding how to deal with a conflict of interest, trustees should be mindful of what feels right, and also how others might view the trustees' actions.

Where conflicts of interest have not been identified or properly dealt with, it can have negative impacts on both the charity and individual trustees including financial cost and reputational damage. Because the trustees have acted in breach of their duty, decisions may be called into question or legally challenged. The Commission may have to take regulatory action to protect the charity from further harm or to deal with any misconduct or mismanagement by the trustees.

Read more about **conflicts of interest**.

6.4 Payments and other benefits to trustees

Charities can't usually pay their trustees. When you become a trustee, you usually volunteer your services and receive no payment for your work. This is called the voluntary principle. You can, however, reclaim reasonable expenses that you incur such as travel and childcare - being a trustee shouldn't mean being out of pocket.

These restrictions apply to trustees (or someone with a financial connection to a trustee, such as their partner, dependent children or a business partner) benefiting by:

- supplying goods or services to the charity eg building work or specialist services, even if the trustee offers better value or expertise than other suppliers
- being employed by the charity or by a trading subsidiary owned by the charity
- receiving material benefits as a beneficiary of the charity
- being paid to act as a trustee; this is very unusual and only permitted in exceptional circumstances
- entering into a property transaction (or any other financial transaction such as a loan) with the charity - this is called self-dealing

In some circumstances, one or more trustees (or persons with a financial connection to a trustee) do receive payments or other benefits from their charity. This is only permitted if:

- the benefit is specifically authorised by the governing document, the Charities Act (or other relevant legislation), the Commission or the courts; any specified procedures must be strictly followed
- even if the benefit is authorised, the non-conflicted trustees are satisfied that allowing it is in the charity's best interests
- the conflict of interest is managed; so in most cases the conflicted trustee(s) can't be involved in the decision and only a minority of trustees can benefit

Read more about **payment of trustees**.

Find out whether you need permission, and how to apply.

7. Manage your charity's resources responsibly

You must act responsibly, reasonably and honestly. This is sometimes called the duty of prudence. Prudence is about exercising sound judgement. You and your co-trustees must:

- make sure the charity's assets are only used to support or carry out its purposes
- avoid exposing the charity's assets, beneficiaries or reputation to undue risk
- not over-commit the charity
- take special care when investing or borrowing
- comply with any restrictions on spending funds or selling land

You and your co-trustees should put appropriate procedures and safeguards in place and take reasonable steps to ensure that these are followed. Otherwise you risk making the charity vulnerable to fraud or theft, or other kinds of abuse, and being in breach of your duty.

7.1 Managing risks

A risk is anything that could, if it happened, affect your charity achieving its purposes or carrying out its plans. All charities face some risks. The risks your charity might face will depend on factors such as its size, funding and activities. For example, managing property, employing staff, using volunteers, using IT, working with children or people at risk, or implementing change all involve elements of risk.

You and your co-trustees should manage risk responsibly. You have a duty to avoid exposing your charity to undue risk. This doesn't mean being risk averse. Risk management is the process of identifying and assessing risks, and deciding how to deal with them. It may involve an element of responsible risk taking, and is central to how trustees make decisions.

The Commission's guidance on risk management sets out the basics of dealing with risks and includes a risk management model, made up of the following steps:

1. Establish a risk policy.
2. Identify risks (what could go wrong).
3. Assess risks (how likely is it, and how serious would it be).
4. Evaluate what action to take (eg avoid it, transfer it, insure against it, accept it).
5. Review, monitor and assess periodically.

Find out more:

How to manage risks in your charity

Institute of Risk Management guide for charities

Charities: how to protect vulnerable groups including children

Some charities work in areas or undertake activities that involve greater exposure to risks such as fraud, financial crime, extremism or terrorism. Charities should assess their exposure to these risks and take proportionate action. If your charity needs to address these risks, you may find the Commission's toolkit on **protecting charities from harm** helpful. Chapter 2 of the toolkit includes a practical guide to due diligence, based on 3 principles:

- know your donor (for example, if your charity receives large donations, particularly anonymous or cash donations or with conditions attached)
- know your partner (if your charity relies on partners or intermediaries to carry out any of its work)
- know your beneficiaries (for example if your charity makes grants of cash or other financial support directly to individuals)

Charities must also assess and manage safeguarding risks. For example, they must ensure that their beneficiaries or others who come into contact with their charity do not, as a result, come to harm. For example, many charities come into contact with or provide activities for those who may be experiencing, or at risk of, abuse or neglect. This includes:

- children and young people under 18 years of age
- adults (aged 18 and over) at risk

Even where work with children or adults at risk does not form part of the core business of the charity, trustees must be alert to their responsibilities to protect from risk of harm those with whom the charity comes into contact.

Read more about **protecting vulnerable groups**.

These principles will help you and your co-trustees to carry out their legal duties and manage the risks to the charity's beneficiaries, assets and services.

7.2 Budgeting

You and your co-trustees need to work out what funds and other resources your charity will need and where the charity will get these from. A charity can only succeed in meeting its aims if it manages its money and other resources properly. You will need to plan and monitor its income and outgoings so that it can meet its short, medium and long term goals.

Find out more:

Managing charity assets and resources

Charity governance, finance and resilience: 15 questions you should ask

Financial difficulties in charities

7.3 Getting the funds your charity needs (income generation)

Most charities get their funds through one or more of the following methods:

- fundraising (asking for donations, legacies or grants)
- trading (selling goods or services)
- investment
- leasing or letting land or buildings

In practice, it's best to avoid relying on a single source of income. You and your co-trustees are responsible

for deciding how your charity will obtain funds. You should think about:

- how much money the charity needs
- the costs, benefits and risks of different methods of generating income
- any legal requirements that the charity must comply with, including fundraising regulations, and restrictions on commercial trading
- any potential reputational issues
- whether you need advice

If your charity is already bringing in funds, you and your co-trustees should ensure that its income generation is on target, complies with the law and is not exposing the charity to undue risk.

Find out more:

Fundraising legally and responsibly

Institute of Fundraising code of fundraising practice and good practice guides

Charity trading: selling goods and services

How to invest charity money

7.4 Charities and their trading subsidiaries

Charities need to use a trading subsidiary if they carry out commercial (non-charitable) trading which exceeds the threshold for paying income or corporation tax, or involves significant risk.

A trading subsidiary is a separate company controlled by the charity. The charity can raise money from trade without exposing its assets to risk or being liable for income or corporation tax.

There are, however, risks which trustees need to be aware of and manage:

- the charity exists for charitable purposes, but the trading subsidiary exists to generate income; their aims and interests are different; you need to distinguish between them
- if the trading subsidiary starts to fail, the charity must not bail it out; this would be putting the charity's funds at risk
- charity trustees who are also directors of the subsidiary have a conflict of interest
- if a charity trustee is also a director of the trading subsidiary, the restrictions on payments and benefits to trustees also apply to any payments or benefits as a director

7.5 Managing funds and keeping them safe

You and your co-trustees are responsible for your charity's money. Your charity should have effective processes for handling money, to help avoid poor decisions and accidental errors, as well as theft and fraud. Failure to do so is likely to result in a breach of your duty. You should:

- set a budget and keep track of it
- put in place clear policies and procedures to deal with income and expenditure
- ensure the charity keeps accurate records of income and expenditure
- have robust and effective **financial controls** in place

- protect the charity from **financial crime such as theft or fraud**
- put appropriate safeguards in place for money, assets and staff if **the charity operates outside of the UK**
- have an appropriate **reserves policy**
- ensure the charity receives **tax reliefs** to which it is entitled

If something does go wrong, you should inform the Commission and (if appropriate) the police. See the section on what to do if something goes wrong in section 8 of this guidance.

Find out more:

Charity money: how to keep it safe

Charities: due diligence checks and monitoring end use of funds

7.6 Managing property (land and buildings)

If the charity owns or rents land or buildings, you and your co-trustees should:

- make sure the property is recorded as belonging to the charity - see section 11 of this guidance
- know on what terms it's held
- ensure it's properly maintained and being correctly used
- make sure the charity has sufficient insurance

You should regularly review whether the property is suitable for the charity's purposes, and whether any property the charity lets to generate income is still a good investment.

Decisions about property are important, so think about the advice and information you may need in order to make decisions in the charity's interests.

Most charities can buy, sell or lease land when they need to. When selling or leasing land, trustees must try to get the best deal for the charity (unless they are making the disposal to further the charity's purposes). So all charities should, and registered charities must:

- obtain written advice, including a valuation, from a qualified surveyor before agreeing a sale or granting a lease for more than 7 years
- advertise the sale or lease, unless the surveyor advises otherwise

Otherwise, you are likely to need permission from the Commission for the sale or lease.

A charity's governing document may specify that land or buildings must be used for a particular purpose. This is called designated land (or 'specie land'). Special conditions apply to leasing or selling designated land.

Land belonging to a charity (particularly designated land) might be permanent endowment. This restricts how you can use the proceeds of sale.

You must get permission from the Commission to sell or lease property to or from a trustee, someone closely connected to a trustee, or an employee of the charity.

Before taking out a mortgage or loan secured against your charity's land you must get written financial advice and ensure that:

- the loan is needed and used for an activity that fits with your charity's purposes
- the terms of the loan are reasonable
- the charity will be able to repay the loan

Otherwise you will need permission from the Commission to proceed.

Find out more about **buying, selling, leasing or mortgaging charity property**, including designated land and **permanent endowment**.

7.7 Staff and volunteers

As part of your overall responsibility for the charity, you and your co-trustees have responsibilities towards any volunteers or staff.

You must ensure that:

- the charity complies with relevant law including employment, pension, equality and health and safety law
- volunteers are clearly distinct from employees in terms of responsibilities and rights; for example by not requiring volunteers to work set hours, nor paying them more than expenses they actually incur

You should ensure that:

- people are clear about what they are supposed to do, through appropriate job descriptions for staff or role descriptions for volunteers
- people are aware of the rules and boundaries within which they must work, for example, when representing or speaking on behalf of the charity
- people work safely
- people know what to do if there's a problem
- people know what they need to report and who they report to
- senior managers are not disqualified (see below)

You and your co-trustees should ensure that the charity has appropriate procedures and policies in place, staff and volunteers get appropriate training, and people know they must comply with policies and procedures. You also have an important role in promoting effective working relationships between trustees, senior staff (if any), staff and volunteers.

If your charity has senior managers – typically carrying out chief executive or finance director roles – you and your co-trustees should ensure that you have procedures in place to check if they will be disqualified by law from acting in that role. The reasons for disqualification are the same as for trustees – see section 3.1.2.

You can read the automatic disqualification guidance for charities which explains the disqualification rules in more detail.

Find out more:

How to manage your charity's volunteers

Charity staff: how to employ paid workers

Pension rules for charities

Pensions (Charity Finance Group guidance)

Avoid mistakes - don't rely too much on individuals

Things can go wrong when trustees place too much reliance on individuals, and don't implement sufficient safeguards to ensure accountability. This can result in the charity falling victim to fraud or theft, or beneficiaries suffering abuse. These kinds of occurrences could cause the charity serious reputational and other damage.

All charities should have appropriate financial controls which ensure that more than one person is involved in receiving income and authorising expenditure. These should cover all payment methods that the charity uses - cheque, cash, credit card, charge card, debit card, prepaid card, telephone or internet banking or other electronic means. Handling cash brings increased risk, so try to avoid cash payments wherever possible.

When other people raise funds on behalf of the charity, whether they are volunteers or paid professionals, you should ensure there are proper controls over the funds raised. This is to make sure that the charity receives the full amount due to it.

Read more about **financial controls**.

If something does go seriously wrong, you should take prompt action to deal with it and report it to the Commission. Find out more in section 8.3 of this guidance.

8. Act with reasonable care and skill

As someone responsible for governing a charity, you:

- must use reasonable care and skill, making use of your skills and experience and taking advice when necessary
- should give enough time, thought and energy to your role, for example by preparing for, attending and actively participating in all trustees' meetings

This is sometimes called the duty of care.

8.1 Using your skills and experience

As a trustee, you must use your skills and experience to inform decision making and benefit your charity. For example, the Trustee Act 2000 says that trustees must "exercise such care and skill as is reasonable in the circumstances". What is reasonable in the circumstances will depend on any special knowledge or experience that the trustee has or claims to have. It also depends on whether a trustee is acting in a professional or paid capacity, and what it would be reasonable to expect such a person to know.

The Trustee Act 2000 applies to trustees of unincorporated charities. Company law and the Charities Act impose similar duties on directors of charitable companies and trustees of CIOs (see section 11 of this guidance). In addition, all trustees have a general duty of care which they must apply to all aspects of their role.

8.2 Taking advice when you need to

Trustees should recognise and acknowledge when they need advice. This is particularly important if the charity (or its property) may be at risk, or if they could act in breach of their duties, for example, when:

- buying or selling land (most charities must take advice from a surveyor or other qualified person when selling charity land)
- investing charity funds
- entering into novel, long-term, complex or high-value contracts
- considering legal action

Some larger charities employ their own professional advisers; most charities are more likely to obtain advice externally.

Find out more:

It's your decision: charity trustees and decision making

How to invest charity money

Other sources of help and advice

8.3 What to do if something does go wrong

Most problems in charities can be resolved by the trustees themselves, sometimes with some advice. However, in serious cases the Commission may need to advise the trustees or take action to protect the charity.

If something does go wrong, you should take prompt and appropriate action to:

- prevent or minimise any further loss or damage
- if appropriate, report it to the Commission, the police if a crime has been committed, and any other regulators that the charity is accountable to
- plan what you will say to your staff, volunteers, members, the public or the media
- take reasonable steps to prevent it from happening again - review controls and procedures, take appropriate advice

The Commission requires charities to report serious incidents. A serious incident is an adverse event, whether actual or alleged, which results in or risks significant:

- loss of your charity's money or assets
- damage to your charity's property
- harm to your charity's work, beneficiaries or reputation

The most common type of incidents are frauds, thefts, significant financial losses, criminal breaches, terrorism or extremism allegations, and safeguarding issues.

If a serious incident takes place, you need to report what happened and explain how you are dealing with it, even if you have reported it to the police, donors or another regulator.

The Commission can then decide what action, if any, is appropriate. Trustees must avoid exposing their charity to undue risk and should take reasonable steps to assess and manage risks to its activities, beneficiaries, property and reputation. Reporting serious incidents to the Commission demonstrates that you have identified a risk to the charity and that its trustees are taking appropriate action to deal with it. It also means the Commission can respond positively to any enquiries from the public or media.

If trustees fail to report a serious incident that subsequently comes to light, the Commission may consider this to be mismanagement and take regulatory action, particularly if further abuse or damage has arisen following the initial incident.

Find out more:

How to report a serious incident in your charity

8.4 When the Commission would become involved

The Commission will get involved if it is concerned that trustees are not fulfilling their duties towards their charity, either because they don't understand them or are unwilling or unable to fulfil them.

In some cases, the Commission may decide that it's sufficient to advise the trustees about their duties. In more serious cases, when charities' assets, reputation, services or beneficiaries have been harmed or are at significant risk, the Commission may open a statutory inquiry, which will allow it to:

- obtain and assess evidence
- use enforcement powers to protect the charity's assets or secure their proper application

Opening an inquiry does not always mean the Commission suspects wrongdoing. The Commission's aim in such cases is to stop abuse or damage and put charities back on a proper footing for the future.

Read about the Commission's work to prevent, detect and tackle abuse and mismanagement in charities and promote charity law: **Tackling abuse and mismanagement in charities**.

9. Ensure your charity is accountable

You and your co-trustees must comply with statutory accounting and reporting requirements. You should also:

- be able to demonstrate that your charity is complying with the law, well run and effective
- ensure appropriate accountability to members, if your charity has a membership separate from the trustees
- ensure accountability within the charity, particularly where you delegate responsibility for particular tasks or decisions to staff or volunteers

9.1 Complying with accounting requirements

All charities must produce accounts and provide a copy of the most recent to anyone who asks. (You can charge to cover your costs.) The Commission will take regulatory action against charities that persistently fail to provide copies of accounts when asked by members of the public or a regulator.

Exactly what accounts your charity must produce depends on whether the charity is a company and how much income it receives. Different rules apply to exempt charities. Find out more about **accounting and reporting requirements for charities**.

Charities whose income is over £250,000, and all charitable companies, must prepare their accounts and trustees' annual report in accordance with the Statement of Recommended Practice - Accounting and Reporting by Charities (Charities SORP).

Find out more about the **Charities SORP**.

All registered charities must also provide information annually to the Commission. The rules vary according to your charity's size and structure. Registered charities with:

- income up to £10,000 should complete the relevant sections of the annual return, which include updates to trustees
- income above £10,000, and all CIOs, must prepare and file an annual return form
- income above £25,000, and all CIOs, must also file copies of their trustees' annual report and accounts

Failure to submit accounts and accompanying documents to the Commission is a criminal offence. The Commission also regards it as mismanagement or misconduct in the administration of the charity. Providing timely, accurate and informative financial information that will help funders, donors, beneficiaries and others to understand your charity and its work will encourage trust and confidence in it.

Remember, those trustees who sign the trustees' annual report and accounts are signing on behalf of the whole trustee body so all of the trustees are responsible for the accounts.

Find out more about **annual returns**.

Your charity may also have to report to other regulators, for example, if its activities include providing social housing, education or social care. Companies must also submit accounts and annual returns to Companies House annually.

9.2 Being accountable to people with an interest in the charity

It's important to take account of what your members, beneficiaries, supporters and funders say. Use this information to inform decisions and improve the charity's services. If your charity has a wider voting membership in addition to the trustees, your governing document may contain specific provisions about when to involve members in decisions, for example through general meetings.

Charities should consider the benefits of having appropriate **procedures for dealing with complaints**, and ensuring they are easy to find and easy to follow.

You and your co-trustees must ensure that your charity complies with the law, and should be able to demonstrate that it is legally compliant, well run and effective in carrying out its purposes. If you can't demonstrate these things, you should be able to explain what steps you are taking to address any difficulties.

You may find it helpful to review your charity's compliance and good practice using:

- a governance code, such as **Good Governance: a Code for the Voluntary and Community Sector**
- a quality standard, such as **PQASSO**, or another standard that is suitable for your charity
- benchmarking (comparing and learning) with another organisation
- an independent review by a suitably qualified adviser

Read about **public trust and confidence in charities**.

9.3 Trustees and delegation

Trustees often delegate day to day activities to particular trustees (such as the chair), volunteers or staff. Many charities also have power to delegate decision making to sub-committees or senior staff. Delegation can help trustees to govern more effectively, but they cannot delegate their overall responsibility. Trustees always remain collectively responsible for all decisions that are made and actions that are taken with their authority.

You and your co-trustees should set out in writing the limits of any delegated authority. You should also put clear reporting procedures in place, so you can ensure the delegated authority is exercised properly. This could include staff job descriptions, volunteers' role descriptions and committees' terms of reference. A periodic review of any delegated authorities can help to ensure that those authorities are properly managed.

The trustees should consider and decide what decisions they will not delegate. High risk and unusual decisions should not be delegated. You should agree appropriate guidelines to help assess what is likely to be high risk or unusual. Staff, particularly senior staff, can have an important role in informing trustee decision making by providing information and advice.

Trustees might be told that they should not interfere in day to day operations. You should allow staff and volunteers to carry out any functions that have been delegated to them. But you and your co-trustees must be able to ensure that delegated authority is being properly exercised, through appropriate monitoring and reporting procedures (and, where appropriate and possible, independent checking).

It's important to have clear and appropriate channels of communication between staff and trustees and ensure these are followed.

Avoid mistakes - ask questions (even ones that seem 'awkward' or 'stupid')

Part of your role is to hold people (including staff, volunteers and fellow trustees) to account for how they carry out their role or use the charity's resources. This can mean asking probing or challenging questions about information at trustee meetings, or being prepared to say 'I don't understand what this means'. You should receive timely information in a format that you can understand and use, and if necessary ask for explanations, training or a different presentation. For example, all trustees, not just the treasurer, are responsible for the charity's finances and should be able to understand, consider and comment on financial information.

10. Reduce the risk of liability

It's extremely rare, but not impossible, for charity trustees to be held personally liable:

- to their charity, for a financial loss caused by them acting improperly
- to a third party that has a legal claim against the charity that the charity can't meet

Understanding potential liabilities will help you to protect yourself and your charity by taking action to reduce the risk. This includes complying with duties covered in this guidance. It also includes deciding whether your charity should become incorporated.

10.1 Personal liability to the charity

Trustees can be held liable to their charity for any financial loss they cause or help to cause. This applies to any type of charity whatever its legal form.

The law generally protects trustees who have acted honestly and reasonably from personal liability to their charity. The Commission and the courts:

- can relieve trustees from liability if they have acted honestly and reasonably and have not benefited from their actions
- rarely enforce liability on an unpaid trustee who has made an honest mistake
- expect higher standards from trustees who act in a professional capacity or are paid for being trustees

Trustees who receive an unauthorised payment or benefit from their charity have a duty to account for (ie repay) it. The Commission can't relieve trustees from this duty.

There is no legal protection for trustees who have acted dishonestly, negligently or recklessly. However, there may be financial protection for those trustees who have made an honest mistake and can rely on the indemnity provisions in the charity's governing document, insurance cover or relief from the Commission or the court.

Find out more:

Charity Commission policy on restitution and the recovery of charitable funds misappropriated or lost to charity in breach of trust

10.2 Liability to third parties

Charities or their trustees can become liable to a third party who has a claim against the charity such as:

- breaches of an employee's terms, conditions or rights
- failing to pay for goods or services, or to fulfil the terms of a contract
- a member of the public being injured on the charity's premises
- liability to any staff pension scheme

If the charity is incorporated, the charity itself will be liable for the claim. Some types of incorporated body (companies, CIOs and Community Benefit Societies) can specifically limit the liability of their trustees and members.

If the charity is unincorporated, the trustees have to sign contracts and other agreements personally, and will have to meet any claim. The charity can normally meet any liabilities that you incur as a trustee provided you have acted honestly and reasonably. (Some charities also have power to indemnify trustees against liability arising from an honest mistake.) But if you incur liabilities that exceed the value of the charity's assets, you could be liable for any amount that the charity can't cover.

Find out more about your charity's legal structure – see section 11 of this guidance.

Find out more:

Vicarious liability of a charity or its trustees

10.3 Criminal liability

In some cases, the charity or its trustees can become liable for offences committed by the charity's staff (for example, under the Bribery Act or corporate manslaughter law).

Find out more about the **Bribery Act** (Transparency International guidance).

10.4 Reduce the risk of personal liability

To reduce the risk of becoming personally liable, you should:

- ensure trustees understand their responsibilities
- ensure the charity can meet its financial obligations, particularly before agreeing to any contract or substantial borrowing
- ensure the charity can meet any obligations to staff pension schemes
- hold regular trustee meetings and keep proper records of decisions made and the reasons for those decisions
- ensure you prevent conflicts of interest from affecting decisions
- ensure any transactions with and benefits to trustees or connected persons are properly authorised
- take appropriate advice from a suitably qualified person when you need to
- if you delegate any powers, give clear written instructions and make sure the instructions are being followed
- ensure the charity has effective management and financial controls including:
  - keep receipts and records of income and expenditure
  - receive regular financial reports
  - file accounts on time
- ensure the charity is complying with other laws that apply to it
- consider whether the charity needs additional insurance or needs to become incorporated

If your charity is unincorporated and employs staff or enters into other contracts, the trustees should seriously consider changing the charity into an incorporated form. You may need to take professional advice about this, particularly in relation to any pension liabilities which could be triggered by incorporation.

Read more about:

How to manage risks in your charity

Charities and insurance

Changing your charity into a company or CIO

Pension rules for charities

Pensions (Charity Finance Group guidance)

11. Your charity's legal structure and what it means

It's important to know your charity's legal structure (eg trust, association, CIO, company) because it affects whether:

- the charity itself can enter into contracts or employ staff, or the trustees must do these things personally
- land is held by the charity itself or by the trustees (or someone the trustees appoint for that purpose)
- trustees' liability is limited
- trustees have specific legal duties that go with that legal structure

11.1 Different legal structures for charities

An 'incorporated charity' is one that's set up in a legal form which makes the charity itself a legal entity. This is called 'legal personality', and means the charity can own property or enter into contracts in its own name. Incorporation gives trustees more protection from personal liability. Some incorporated forms can limit trustees' liability to third parties. The law places duties on board members to prevent the abuse of limited liability.

An 'unincorporated charity' doesn't have legal personality, so can't hold property or enter into contracts in its own name. Trustees' personal liability is unlimited.

This table summarises the characteristics of different legal forms and what they mean for trustees.

Legal form or structure	Incorporated (legal personality)	Title to land held by	Contracts/ employment in the name of	Liability to third parties limited	Additional duties on trustees
Trust	No	Trustees for the charity	Trustees personally (for the charity)	No	No
Association	No	Trustees for the charity	Trustees personally (for the charity)	No	No
Company	Yes	The charity	The charity	Yes	Company law
Charitable Incorporated Organisation (CIO)	Yes	The charity	The charity	Yes	Charities Act and CIO regulations
Corporation created by Act of Parliament	Yes	The charity	The charity	Yes unless excluded by the Act	No
Royal charter body	Yes	The charity	The charity	Incorporation gives some protection	No
Community Benefit Society	Yes	The charity	The charity	Yes	Co-operative and Community Benefit Societies Act

Find out more:

Charity types: how to choose a structure

Running a limited company: Directors' responsibilities

Royal Charter charities

11.2 Unincorporated charities (trusts and unincorporated associations) - holding land

Charities set up by a trust deed, constitution or similar governing document are unincorporated. This means they are not legal bodies in their own right and can't hold property in their own name; it must be held for the charity by trustees.

If the charity trustees don't want to hold legal title for any land or other property themselves, they can appoint a nominee, holding trustees (other individuals) or a custodian trustee (a company or other corporate body that has power to hold property for the charity). The governing document may explain how to do this.

Holding and custodian trustees aren't charity trustees; they can't make decisions about the management of the charity or its property, and must follow the lawful directions of the charity trustees.

You may find it simplest to vest the land in the Official Custodian for Charities. Read about **The Official Custodian for Charities' land holding service**.

Apply to transfer land or property to the Official Custodian.

12. Charity officers - the chair and treasurer

Some trustees have special roles, such as the chair and the treasurer. They are known as officers. You must comply with any specific provisions for officers in your governing document. Trustees can also nominate a trustee to take the lead on a particular matter.

Charity officers don't automatically have any extra powers or legal duties than their co-trustees, but may carry out specific roles or have specific responsibilities delegated to them. However, all trustees remain jointly responsible for the charity. For example, all trustees share responsibility for finances (not just the treasurer). A chair can only make decisions in accordance with any provision in the governing document or delegated authority agreed by the trustees, and should notify the other trustees of any decisions made.

12.1 The treasurer

The treasurer usually takes the lead at board level on:

- making sure the charity keeps proper accounts
- reviewing the charity's financial performance
- drawing up or reviewing policies for finance and investment
- ensuring that the charity has robust and effective financial controls in place
- liaising with finance staff and with the charity's independent examiner or auditor
- reporting on financial matters to the members, in a membership charity

In larger charities the treasurer may share these responsibilities with a finance committee, and staff may carry out day to day finance functions.

Find out more:

The Honorary Treasurer's Forum

12.2 The chair

The role of the chair may vary depending on the charity's circumstances. The chair usually:

- helps plan and run trustee meetings (and in a membership charity, members' meetings)
- takes the lead on ensuring that meetings are properly run and recorded
- takes the lead on ensuring that trustees comply with their duties and the charity is well governed
- might have a second or casting vote if a vote on a trustees' decision is tied, but only if this is specified in the charity's governing document
- may act as a spokesperson for the charity
- acts as a link between trustees and staff
- line manages the chief executive on behalf of the trustees

A Chair's Compass - A guide for chairs of charities and non-profit organisations.

13. Technical terms used in this guidance

This section explains some legal and technical terms used in this guidance.

'Beneficiary' or 'beneficiaries' means a person or group of people eligible to benefit from a charity. A charity's beneficiary group is usually defined in its governing document. Some charities call their beneficiaries clients or service users.

The 'Charities Act' is the Charities Act 2011. This guidance occasionally refers to specific powers under this Act.

A 'charitable incorporated organisation', or 'CIO', is an incorporated legal form designed specifically for charities. See section 11 of this guidance for more detail.

A 'charity' is any organisation set up under the law of England and Wales for solely charitable purposes.

The 'Commission' means the Charity Commission, the regulator for charities in England and Wales.

A 'community benefit society' is an incorporated legal form in which charities can be set up. It is similar to a limited company. Community benefit societies are registered by the Financial Conduct Authority. Charitable community benefit societies are currently exempt charities.

'Excepted charities' don't have to register with the Commission or submit annual returns. Apart from that, the Commission regulates them and can use any of its powers if it needs to. This only applies to specified churches, Scout and Guide groups and armed forces charities whose income is below £100,000. Read more about **excepted charities**.

An 'exempt charity' is exempt from registration and direct regulation by the Commission. Most exempt charities have a different charity regulator (or 'principal regulator'). Trustees of exempt charities have the same basic duties as other charity trustees. Read more about **exempt charities**.

The 'governing document' is the legal document that sets out the rules that govern a charity. These include the charity's objects and, usually, how it must be administered. It's usually a trust deed, constitution, CIO constitution or articles of association. Some charities have a different type of document such as a conveyance, will, royal charter or Commission scheme. **Find out more about governing documents**.

'Have regard to' does not have a strict legal definition, but generally means 'take into account' or 'consider', rather than 'comply with'.

'In the charity's best interests' means what the trustees believe will best enable the charity to carry out its purposes for the public benefit. See section 6 of this guidance for more detail.

An 'incorporated charity' means a charity formed as a company, CIO, royal charter body, community benefit society or a corporation created by Act of Parliament. Being incorporated means the charity itself is a legal body. It can own property or enter into contracts in its own name. Incorporation gives trustees more protection from personal liability. See section 11 of this guidance for more detail.

Misconduct includes any act (or failure to act) that the person committing it knew (or ought to have known) was criminal, unlawful or improper.

Mismanagement includes any act (or failure to act) that may cause charitable resources to be misused or the people who benefit from the charity to be put at risk.

A charity's 'purpose' is what it is set up to achieve (for example, relieving poverty or promoting health). A charitable purpose is one that:

- falls within one or more of 13 'descriptions of purposes' listed in the Charities Act
- is for the public benefit (the 'public benefit requirement')

A charity's 'objects' are a written statement of its purposes - they must be exclusively charitable.

A 'registered charity' is a charity registered with the Commission.

A 'suitably qualified person or adviser' is someone who the trustees could reasonably expect to be competent to advise them about a particular matter. This includes professional advisers (such as solicitors, accountants and surveyors). It could also include (for example) a member of the charity's staff, a suitably qualified trustee or an adviser from another organisation.

'Trustee' means a charity trustee. Charity trustees are the people responsible for governing a charity and directing how it is managed and run. The charity's governing document may call them trustees, the board, the management committee, governors, directors, or something else. The Charities Act defines the people who have ultimate control of a charity as the charity trustees, whatever they are called in the charity's governing document:

- a 'custodian trustee' is a corporation appointed to hold property for a charity; it isn't a charity trustee and must act on the lawful instructions of the charity trustees
- 'holding trustees' are individuals appointed to hold property for a charity; they aren't charity trustees, they must act on the lawful instructions of the charity trustees and in accordance with any provisions in the governing document

An 'unincorporated charity' is a charity set up as a trust or association. Being unincorporated means the charity isn't a legal body (so it can't hold property or enter into contracts) in its own right. Trustees' personal liability isn't limited. See section 11 of this guidance for more detail.