

The Role and Duties of Charity Trustees

Source: <https://scvo.org.uk/running-your-organisation/governance/roles-responsibilities>

Members of governing bodies go by a variety of names – ‘Trustees’, ‘Management or Executive Committee Members’ or ‘Directors’. The name depends on your legal status, governing document and custom and practice. If you’re registered as a company, you’ll have a ‘Board of Directors’. If you’re a charity, it will be ‘Trustees’. The title matters little. What’s more important is that the individuals involved are familiar with the duties and liabilities associated with their role.

What should the governing body do?

Trustees are there to lead, control and supervise the organisation’s activities. It’s the part of the organisation with formal power and responsibility, which are detailed in the governing document, and backed up by law. If things go wrong, it’s the trustees that will be called to account. They need to be aware of this and act in the best interests of the organisation and its beneficiaries, following all requirements of law and regulation. This is sometimes referred to as the need for ‘due diligence’.

To enable the organisation to meet its aims, trustees should perform the following functions:

- Set and maintain the vision, mission and values of the organisation.
- Develop direction, strategy and planning.
- Ensure the organisation has the structure and resources for its work.
- Establish policies and procedures to govern organisational activity, including guidance for the board, volunteers and staff.
- Establish systems for reporting and monitoring.
- Manage risk and ensure compliance and accountability with the governing document, external regulators and the law.
- Make certain that the financial affairs of the organisation are conducted properly and are accurately reported.

Who can join a governing body?

There are no specific legal restrictions to who can be a management committee member of an unincorporated voluntary association that doesn’t have charitable status. Any prohibitions kick in when an organisation either incorporates (becomes a company) and/or gets charitable status.

Incorporation

Company directors have to be over the age of 16. You can’t be a company director if you’re an undischarged bankrupt or disqualified by a court from holding a directorship, unless given leave to act in respect of a particular company or companies.

Charitable Status

You can’t be a charity trustee if you’re an undischarged bankrupt, or have an unspent conviction for dishonesty or an offence under the Charities and Trustee Investment (Scotland) Act 2005. Other disqualifications include being removed under either Scottish or English Law or the courts from being a charity trustee, or a person disqualified from being a company director. For more information see the OSCR ‘[Guidance for Charity Trustees](#)’. In addition people who have committed a serious offence against children may be disqualified as trustees.

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As well as these legal considerations, there are other things to think about when looking at who can be a trustee. You should think about the age and capabilities of your trustees and the composition of your board.

Regulation

It's the responsibility of all trustees to ensure that the organisation fulfils its obligations to its regulators, e.g. [OSCR](#), [Companies House](#), the [Care Inspectorate](#), and it should have procedures setting out who will do this, when and how. Regulators commonly require annual accounts and an update and notice of changes to basic organisational information, and usually have strict deadlines. The regulatory burden is likely to increase the larger and more complex your operation becomes. Failure to comply with regulatory requirements can have serious consequences.

Service Users

Involving service users in the governance and management of your organisation can generate new ideas, challenge assumptions, increase accountability, and help ensure that services are as relevant as possible. Involvement can cover a range of activities, from consultation, through to working in partnership to develop projects or services, right up to service users leading projects, services or organisations. However, there are often many practicalities to be overcome in order to achieve genuine user involvement. It's important to consider service users' motivations for getting involved, the support needs they may have, and the barriers they could face. A [register of interests policy](#) is a useful tool to help service users understand that they may have different priorities when they are acting as a trustee, and have a legal obligation to put the interests of the charity first.

The governing document

It's essential that your trustees are familiar with their governing document, It's the 'user manual' for the organisation and will set clear boundaries on its activities. You should review your governing document periodically, paying special attention to the part setting out the purpose of the organisation. If this no longer reflects its circumstances and aspirations, it will be time to update it. Wider approval eg from organisational members, and in some case regulators, may be necessary. If you're a registered charity you'll need consent from OSCR before you change your purposes as this could affect your charitable status. Your trustees should regularly assess the risks associated with the organisation's current and planned activities and decide whether its legal status is fit for purpose

Collective Responsibility

All trustees collectively have the ultimate responsibility for running a voluntary organisation, for its property, [financial policies and procedures](#), staff and volunteers. They can be personally responsible for what it does, depending on the organisation's legal structure Trustees can delegate some of their authority (e.g. to staff), but they can never delegate their responsibility.

As responsibility is collective, if there are any legal or financial repercussions from decisions made by the trustees, then all members of that group are legally liable in equal proportion. The behaviour of one trustee is the concern of all the others. If a trustee is absent from a meeting, they are still responsible for decisions made when they were not present. Their absence does not absolve them from responsibility or liability.

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Payment

Trustees are almost always unpaid as voluntary sector organisations are established for public benefit, and not for personal gain. A common exception is where a trustee is the best person to do a specific piece of work for the organisation, which would in any event be purchased. They may then be paid a one-off fee. Good practice dictates that trustees should not receive any routine remuneration for their time or effort, though of course all out-of-pocket expenses should be reimbursed.

For Scottish charities, payment of trustees is allowed under certain conditions, including:

- the maximum level of payment is written down and agreed
- that this level is reasonable and in the charity's best interests
- that the charity's governing document allows such payment
- that only a minority of the trustees receive such payment or are connected with trustees who do.

This would allow employees to join the board of a charity, but is not recommended as it can maximize the potential for conflicts of interest (the employee would theoretically also be their own employer) and is frowned upon by some funders.

Staff and volunteers

The trustees have responsibility for the overall governance and direction of the organisation, and have a duty of care for volunteers and staff. If you have paid staff it's important to be clear about separate roles and responsibilities, and legal liabilities. There should be policies and procedures on delegated decision-making and tasks. Some tasks should never be delegated to staff, eg: the recruitment, support, supervision and appraisal of your lead employee, final decisions on key staffing issues such as disciplinary and grievance procedures. Trustees have key legal obligations including:

- ensuring employees receive written terms of employment
- consulting with employees with regard to redundancies, mergers and health and safety
- ensuring employee liability insurance is in place.

The lines between governance and management are easily blurred, particularly for organisations without paid staff. But the broad difference is that governance is about strategy, and management is about operations.

Governance	Management
Overview of organisation as a whole	Day to day operation of projects
Long-term direction	Short to medium-term implementation of plans
Processes and frameworks for effective working	Detailed planning and supervision
Accountable for actions and decisions	Responsible for delivery

Specific Roles

Whilst each trustee has equal legal and financial responsibility, there are specific roles such as Chair, Treasurer and Secretary. These are often referred to as 'office bearers'. Their roles can vary between different organisations, but there are some core duties:

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Chair

The Chair or Convener has a leadership role and is usually delegated the line-management of the chief executive on its behalf. Key duties can include:

- preparing agendas for the meeting in consultation with the staff and other trustees
- ensuring meetings are run efficiently, and discussion and decision-making is democratic and fully participative
- holding the casting vote in the event of a split decision
- ensuring that AGMs and EGMs are carried out according to the governing document.

The Chair may also represent the organisation at external events and meetings, act as a cheque signatory, and take part in staff recruitment. Many organisations also appoint a Vice-Chair to share the workload and deputise for the Chair.

Treasurer

It's important that all trustees collectively play their part in financial monitoring and decision making. The treasurer's primary role is to assist and advise the board in overseeing the finances (download sample financial policies and procedures), even if paid staff deal with much of the day-to-day financial business. Some of the tasks can include:

- controlling and accounting for the organisation's finances
- issuing receipts for cash received, keeping records of cash paid out, and being a counter signatory to any major banking transaction
- overseeing bookkeeping
- presenting financial reports, raising issues and answering questions at regular meetings and the AGM
- liaising with the auditors or financial examiners for the annual review of accounts
- ensuring statutory returns are made to any relevant regulators

Secretary

The Secretary can be responsible for many specific tasks, some of which will be regular practical administrative duties of paid staff in larger organisations. These can include:

- convening meetings and booking rooms
- dealing with correspondence and being a cheque signatory
- preparing agendas for meetings (in consultation with the Chair)
- taking the minutes of meetings and ensuring back-up information is available where required.

Unless your governing document states it as a requirement, you no longer have to have a company secretary under company law. The position of a 'company secretary' has a specific legal meaning, and is responsible for ensuring that regulations are complied with. Their duties include:

- preparing paperwork for meetings
- overseeing procedures for the operation of the board (eg organising the AGM)
- providing the Registrar of Companies with required information eg financial returns, changes in directors, and notification of where the organisation's records are kept.

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The company secretary doesn't have to be a board or staff member, or anyone directly connected to the organisation. If a board member is the company secretary they retain all the normal rights and responsibilities of a director – including the right to make decisions and vote at board meetings. If a member of the company is the company secretary they retain the normal rights and responsibilities of membership including the right to vote at general meetings. If the secretary is someone else, e.g., a staff member, the position does not automatically make them a member of the board, or a member of the organisation, and they have none of the rights or responsibilities of either.