

Trustee training: Regulatory and governance update – Part one – Q&A responses

For more information on any of the answers provided, please contact the partners quoted using the information below:

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| Question | Answer |
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| <p>You mentioned that “all charities are in receipt of public money”, is this true?</p> | <p>To clarify what we mean by “all charities are in receipt of public money” - in the UK, charities have significant fiscal advantages in that they are not required to pay direct tax (income tax, corporation tax, capital gains tax etc.) provided their income is applied for charitable purpose. The public money charities receive, therefore, are those funds that would have to be paid to HMRC were it not for their charitable status.</p> |
| <p>Are there set requirements for how trustees are engaged: employed or freelance? Does the trustee need to be set up as a freelance consultant/company?</p> | <p>The mechanism for appointing trustees will usually be set out in the charity’s governing document (trust deed, Articles of Association or similar) and there should be a written policy that sets out not just the legal process as explained in the governing document, but also the practical steps to be taken in terms of assessing the skills needed, the process for “finding” and appointing a trustee and the process for inducting the new trustee. There are requirements to file details of trustees with the regulators (e.g. Charity Commission, Companies House). Except in a few exceptional cases, trustees are not engaged on a paid basis and will not be employees or freelancers. Where a charity is also a company, the trustees are appointed as directors and are deemed to be officers of the company.</p> |
| <p>When listing the trustees in a set of accounts, do you have to list the trustees at the time of signing the accounts or as at year end?</p> | <p>The answer to this is both.</p> <p>In the trustees report there is a requirement to set out who the trustees were throughout the year (which includes those who were present at the beginning and then may have resigned throughout) and in the section at the front of the accounts, the SORP states that you need a list of the trustees at the time the accounts are approved.</p> |

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| <p>Is it best if the chairman takes the CEO's performance review, or two other trustees? Would you expect the board to set the salaries of all the senior management team or just the CEO? Would you delegate this to the CEO?</p> | <p>There is no right or wrong answer to this – it is very much a matter of choice for the charity to set its policy for the performance review of the CEO.</p> <p>It is often deemed best practice for the performance review to be undertaken by two trustees – one of whom might be the Chair of Trustees. If the Chair and the CEO have a close working relationship, there are both advantages and disadvantages to the Chair being one of the two trustees who undertakes the performance review.</p> <p>In terms of the salaries, some charities have established a remuneration committee which considers the salaries of the senior management team and makes recommendations regarding salary levels and other benefits to the trustees. Such a committee might take advice and consider suggestions from the CEO in order to reach recommendations concerning senior management salaries. It would be normal to delegate the setting of all other salaries to the senior management team albeit the trustees should always receive a report on this and confirm their overall approval.</p> |
| <p>Are there any circumstances in which hypothecated funds can be used for other purposes, provided it remains within the scope of the charitable purposes?</p> | <p>There are certain funds which charities may have earmarked for a certain purpose.</p> <p>Restricted funds are where the donor or a grant agreement has set specific parameters as to how the money should be spent and therefore these funds can only be used for this purpose. For the most part, these restrictions cannot be changed, however, if there is surplus at the end of a project or for some reason the project can no longer go ahead in the specified format, you can write to the donor and request for the restriction to be lifted/alterd and the funds reassigned elsewhere. There are limited circumstances in which restrictions may be released without explicit consent, but only where efforts have been made to alert donors to the relevant circumstances.</p> <p>The other type of hypothecation is known as designation and this is where the trustees have set funds aside for specific purposes and just as it's their right to be able to set funds aside, it's also within their power to release them again for general use.</p> |

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| <p>Do you have any tips of the sort of questions you should be asking if your charity is receiving grant funding either from public sector funders or from other charities?</p> | <p>At the moment key questions I would ask would be around relaxing performance and delivery criteria within the exceptional circumstances of COVID-19.</p> <p>However more generally speaking, one of the things we have been seeing is that increasingly funders are interested in co-production or thinking about how you can best design the work together. Do they have ideas that you can incorporate? Or certain things they would like to see achieved? It may also be worthwhile comparing any monitoring requirements with data you already produce and agreeing where your own data may be acceptable in lieu of that usually required by the funder.</p> <p>I would also recommend going to the funding page of their website that lists out the key funding criteria and common do's/don'ts and that way you know what they are looking for before you even begin your application.</p> |
| <p>Is it correct that the code is being revised next year, and if so, do we have a feel for the areas that are likely to be enhanced or added?</p> | <p>The Code is due to be “refreshed” by the end of 2020. Between November 2019 and February 2020, a consultation was launched by the Steering Group responsible for the Code. This received over 800 responses and the consultation report published in August 2020 can be found here.</p> <p>The group has decided that, in order to strike a balance between updating the code and the potential disruption to those using the Code, the next review with potential “far reaching” changes should be in 2023. It is expected that the 2020 refresh will address issues such as structure, language and user-friendliness and to add more signposts to useful resources.</p> |
| <p>Do charities have to have an auditor, and do they have to pay tax?</p> | <p>See the slides for when an auditor is required. Auditors do have to pay tax, charities have exemptions from many taxes but not all. The main taxes that many charities do pay are VAT (if unable to recover), Employers’ National Insurance Contributions and a proportion only of business rates (up to 20% though some local authorities grant 100% relief to charities).</p> |
| <p>Could you expand on the point about the board meeting with the auditors independent of the</p> | <p>Reserving some time for a meeting between some or all of the trustees and representatives of the auditor is good governance in all sectors. It most often happens during the meeting at which the auditor presents the findings from their work which will often be to an audit or finance committee but may be to the whole trustee body. It is a specific provision</p> |

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| <p>executive team? Is this common best practice?</p> | <p>for good governance included in the Charity Governance Code [ref paragraph 4.8.3] and a charity making disclosures about its application of the Code would need to explain why this was considered unnecessary if not done.</p> |
| <p>Are there general thresholds which you would suggest to determine whether we should have an investment policy in place?</p> | <p>An investment policy should be in place for all charities, the question is whether that policy concludes that there should be any investment in risky assets rather than cash only and, if so, whether social investment and or ethical considerations should be a part of the policy. It's difficult to be prescriptive about thresholds but a key reason for considering investment would be if there is a persistent balance of excess cash that if invested would be expected to provide a return that outstrips the effort, expense and risk of doing so.</p> |
| <p>If you have a strategic relationship and give funding to others to distribute as grants, what information needs auditing? Is it just the list of grants that they have awarded or do we need them to submit audited statements re how they manage the grants e.g. payments made etc.?</p> | <p>This really depends on proportionality – often, agreeing how the process will work, with an appropriate amount of due diligence checking, and receiving details of who was funded and why will be sufficient. Often, however, the requirements of the ultimate funder or the programme's materiality to your whole charity may lead to greater depth of review.</p> |
| <p>Do you have any thoughts about having a specific impact funding to follow on from a completed project?</p> | <p>This is very much a matter for agreement between funder and funded but impact data should only be required if the incremental costs of providing it are covered by the grant. We see examples where a blanket requirement to assess impact mainly just adds to cost and burden and the data is not actually used by the funder. At the other end of the spectrum, for innovative projects looking to influence wider practice, impact assessment should be a core requirement</p> |
| <p>Amanda mentioned that committees will not have decision making powers. While I realise that the Board continues to be responsible always, I thought it was ok to delegate</p> | <p>It's best practice for a sub-committee of the trustees to make recommendations to the full trustee board rather than have decision making powers itself. This is because as a sub-committee is charged with considering and reviewing information and making decisions that would otherwise be the responsibility of the board but where it is deemed more effective and efficient for a small group of trustees to discuss an issue in</p> |

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| <p>some decision making to committees etc.?</p> | <p>more detail. Typical examples would be the remuneration of senior management (see above), the consideration of the annual accounts and report of the auditors, investment performance etc. The trustees should always receive a report from each sub-committee summarising its work and recommendations.</p> |
| <p>Are there material differences between governing charities with a Royal Charter versus other charities?</p> | <p>Not ones that are intrinsic to the Royal Charter as governing instrument. However, the historic nature of many such charities, often pre dating charity law (even that of 1601!) means that many have governance structures that don't reflect "standard" charity practice. There is often a need to manage the historic and heritage aspects of the roles of councils and courts of such bodies with their modern charity law duties. Although many have implemented governance changes to address this, many charter bodies still have very large trustee bodies and occasionally some ambiguity around which group of people do constitute "the trustees" for charity law purposes. A small number of Royal Charter bodies have charity registration which applies to some, but not all, of the activities which fall under the Royal Charter.</p> |
| <p>Is a grant policy required for all charities, or is it only required if it disburses grants?</p> | <p>The latter.</p> |