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Trustee Training: Regulatory and Governance Update

8 September 2021

10:00 – 11:00

Agenda

- Introductions and virtual housekeeping - Amanda Francis
- Part one: Trustees' responsibilities including public benefit - Amanda Francis
- Part two: Financial governance - Edward Finch
- Q&A - Chair: Amanda Francis
- Thank you and close

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Part one: Trustees' responsibilities including public benefit

Amanda Francis

Charities and changing public expectations

- Recent issues surrounding charities mean that the public is less inclined to look favourably on charities and give them “the benefit of the doubt”
- Intense media scrutiny
- The Charity Commission is shining the spotlight on charity governance and the quality of trusteeship
- Charity trustees need to be able to demonstrate an understanding of their duties
- Higher moral and ethical standards – not a matter of ensuring legal compliance only
- There is no such thing as a “private charity”!!

All of the above highlight the growing need for charities and their trustees to demonstrate good governance to:

- Ensure compliance with the law and relevant legislation; and
- Promote a culture where everything is focussed on achieving the charity’s objectives and vision.

Overall responsibility and eligibility

The Essential Trustee: what you need to know, what you need to do (Charity Commission guidance CC3). The overriding duty is to advance the purposes of the charity.

Trustees have ultimate responsibility for directing the affairs of the charity, and ensuring that it is solvent, well run, and delivering the charitable outcomes for which it has been set up.

To act as trustee you must be:

- Eligible to serve
- Appointed properly and know when your appointment ends

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.

CC3



GUIDANCE

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



JULY 2015
New format November 2016

Duties of trustees



Compliance with the regulatory landscape

- Complying with the governing document
- Remaining true to charitable purpose and objects
- Compliance with charity law including public benefit requirements
- Prepare reports, accounts and annual returns
- Compliance with the requirements of other laws and regulators
- Act with integrity and avoid any personal conflicts of interest or misuse of charity funds or assets

Public benefit – general points

- The public benefit requirement has raised complex questions which have been both controversial and political
- Public benefit is not defined in the Act i.e. there is no statutory definition
- The Commission bases decisions on established case law (common law) accepting that the concept of public benefit may change over time to reflect current social and economic conditions
- Public opinion cannot decide what is or is not charitable or for the public benefit
- It is not a question of whether a purpose is capable of being for the public benefit but whether there is sufficient evidence to conclude that it will result in public benefit

Guide 1: The public benefit requirement

- A charity has to demonstrate that it has been established for a purely charitable purpose which is for the public benefit (NB its purposes must be for the public benefit not the actual activities carried out to fulfil the purposes)
- To meet the public benefit requirement:
 - The organisation's purposes must be beneficial
 - Any detriment or harm resulting from the purpose must not outweigh the benefit
 - A sufficient section of the public must benefit. ("sufficient section" is not defined and this will be dealt with case by case).
 - There must be nothing more than "incidental private benefit" arising as a result
- Where a charity has more than one purpose, each purpose must meet the necessary requirements on its own.

Guide 2: Running a charity

- Public benefit assessment needs to be ongoing
- Fee charging is permissible but in doing so the trustees must not exclude the poor from benefitting and any benefit must be more than a mere token
- It is the trustees who must decide how to carry out the charity's activities:
 - There is no right or wrong answer
 - Identify potential beneficiaries and give proper thought to how best to achieve the charity's purpose and achieve maximum public benefit
 - Justify the decision if necessary

Guide 3: Reporting

- Trustees must report on public benefit on an annual basis within their annual trustees' report.
- This does not have to be a separate section of the report.
- Explain:
 - The purposes the charity is there to achieve
 - What has been done during the year to achieve those purposes i.e. tell the charity's story using narrative, quotes, photographs and charts
- Confirm that the trustees have had regard to the Charity Commission's guidance on public benefit
- Charity Commission study - results

Acting only in the best interests of your charity

- Independent decision making and accepting collective responsibility
- Make balanced and adequately informed decisions, balancing short and long term objectives
- Board engaging with key issues including safeguarding matters
- Active discussion of policies & procedures
- Conflicts of interest and keeping the charity separate – don't blur the boundaries : **Declare; Depart; Document**
 - Personal benefits : avoid or authorise
 - Written agreements with connected entities including trading subsidiaries : data, name and/or logo, website, premises and staff
- Paper and/or electronic audit trail

Duty of Prudence

- The principles:
 - Income and property must be applied for purposes set out in the governing document
 - Act reasonably and prudently in all matters – safeguard the charity’s reputation and do not over commit the charity
 - Risk management and internal controls
 - Financial reserves and solvency
- Charity assets:
 - Land & buildings
 - Investments
 - Managing funds and keeping them safe
 - Staff and volunteers

Reasonable care and skill

- Use reasonable care and skill
- Risk management
- Take advice when necessary
- Duty of care to beneficiaries:
 - Safeguarding
 - Effective whistle blowing procedures
 - Complaints policy
- Serious Incident Reporting

Being accountable

- Annual report and accounts
- Annual returns
- Relationship with your auditor
- Serious Incident Reports
- Reputation
- Financial planning and reserves

If things go wrong

- Serious incident reporting and taking steps to minimise further loss or damage
- Normal position
- If trustees act negligently, recklessly or deliberately in breach of the law or their duties
- Reducing risk

Reducing risk

- Understanding your responsibilities
- Knowing your governing document
- Sound induction procedures
- Dealing with conflicts of interest and maintaining a register of interests
- Making decisions properly
- Being prepared to challenge assumptions
- Asking questions
- Not being too trusting
- Regular meetings
- Taking advice when needed
- Effective management and financial controls
- Knowing the laws and regulations that affect the charity
- Ensuring the charity has the resources needed to meet contractual obligations
- Taking minutes
- Retaining key documents

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Part two: Financial governance

Edward Finch

Outline

- Accounts and audit
- Investments
- Grant making
- Internal control
- For part two
 - Risk management
 - Reserves
 - Going concern

Accounts and audit

- Responsibility for:
 - Keeping sufficient accounting records
 - Preparation of accounts
 - Annual report
 - Filing
 - Appointing examiner/ auditor
 - Annual return
- Interaction with management?

Accounts

- Requirements vary with legislative framework
 - Companies Act 2006
 - Charity law in E&W, Scotland, NI
- Smaller non-company charities (including CIO's) can use receipts and payments
 - Up to £250k of income
- All companies and larger non-companies use “accruals basis” – the Statement of Recommended Practice

Annual report

- Requirement of Charities Act 2011 (&/ or other UK equivalent)
- Companies may combine content with directors' report and strategic report
- Content set out in SORP
- Simple requirements for small charities with additional requirements for "large" charities – i.e. income > £500k

External scrutiny

- Audit required if:
 - Income exceeds £1 million; or
 - Gross assets exceed £3.26m and income exceeds £250,000
- Independent examination required if
 - Exemption from audit claimed and income > £25,000
- Appointment by trustees
 - Auditor must be appropriately registered
 - Independent examiner
 - Suitably experienced if income < £250,000
 - Appropriately qualified if income £250,000 - £1m

Trustees' role in year end reporting

- Review and feedback on audit strategy
- Accounting policies and presentation
- Approval of accounts and report
 - As a body
- Provision of information and explanations – including letter of representation
 - With backing assurances from management?
- Consideration of auditors findings
 - Including holding management accountable for actions

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Investments

Investment advice

- Required except when the Trustees reasonably conclude in all circumstances it is unnecessary or inappropriate
- Is given by a person reasonably believed to be qualified to give it
- An agreement to manage investments on a discretionary basis must be governed by formal agreements
- Best practice to agree risk parameters and overall strategy in writing

Investment policies – objectives and benchmarks

- Balancing risk and return
- Absolute measures vs. tracking and indices
- Asset allocation
- Agree with the Fund Manager
- Ethical considerations

Categories of investments

- Financial investments – for example
 - Shares and paper debt
 - Property held to rent
 - Unitised funds
- Programme related investments – for example
 - Loans to other charities
 - Loans to beneficiaries – eg. micro finance
 - Shares in purely mission related businesses
- “Mixed motive”
 - CC14 offers no example...

Programme Related Investment (PRI) and “Mixed motive”

- PRI – clearly related to furtherance of the charity’s objects
 - Losses are charitable expenditure
 - Investments carried at cost
 - Separate policies and disclosure
- Mixed motive – some correlation with objectives
 - Must be justified before investing
 - Consider professional advice
 - Private benefit acceptable?
 - Statutory power in Charities (Protection and Social Investment) Act 2016

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Grant making

Basic principles

- Making payments to others to further charitable objectives
 - Partnership working and consortia
 - Conduit funding
 - Charity to charity “donations”
- Flexibility vs. strategic funding
 - SORP emphasises the tension
 - Many organisations have “strategic” and demand led funds
 - Original donors’ intentions?

Control issues

- Adequate due diligence in advance of funding
- Monitoring – qualifying expenditure for tax purposes? (HMRC)
- Delivery of outputs
- Reports on progress
- Scheduling and authorisation of payments

Accounting and reporting

- Trustees' report
 - Grant making policy
- Accounts
 - Grants shown in notes
 - Analysis of significant grants to institutions
 - Number of grants to individuals
 - Analysis of grants and apportioned support costs by activity

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Internal control

Internal financial control

- CC8 – Internal financial controls for charities:
 - Regular review of controls
 - Monitoring through:
 - Budget
 - Internal audit?
- Special attention to financial crime
 - Fraud
 - Bribery etc
 - Cyber threats and data protection
- Closely linked to risk management and reserves policies

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Q&A

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Thank you for
attending!