Sarah Brown Charity Law WS

LEGAL • GOVERNANCE • TRAINING

FACTSHEET

The Role of a Scottish Charity Trustee

This factsheet explains the role of the charity trustee of a charity registered in Scotland and how to carry it out in practice.

If you are setting up a new charity, you may also find our factsheets How to set up a charity in Scotland and Choosing the right legal structure helpful.

Charity trustees are the people responsible for the overall control and management of a charity. They may be called directors, board members, governors or management committee members. The term "the board" is often used to refer to the charity trustees collectively.

The role can be rewarding, offering an opportunity to help a charity achieve its purposes and make a difference. It can also offer valuable opportunities for personal development, helping you build new skills and broaden your experience. It also brings legal duties and responsibilities. Every trustee should understand the charity, take an active part in its governance and have enough time to carry out the role properly.

Trustees act collectively and remain responsible for oversight, even when they delegate particular tasks to office-bearers, committees, staff or advisers. Being a volunteer, or relying on someone with more experience, does not remove a trustee's responsibilities.

To help you put this guidance into practice, the "Six essential questions" section provides prompts for board discussion. If you have been invited to join a charity as a trustee, the checklist near the end of this factsheet sets out practical questions to ask before accepting the role.

1. Eligibility to act

Some people are automatically disqualified from acting as charity trustees. The rules cover a range of circumstances, including certain convictions, insolvency-related restrictions and removal from particular positions.

Eligibility must be kept under review. Obtain appropriate declarations, check any additional eligibility requirements in the governing document and ask trustees and relevant senior managers to report changes in circumstances. A disqualified person must not act unless OSCR has granted an applicable waiver.

The expanded rules, in force from 31 August 2025, also apply to people carrying out certain senior management functions within charities, whether as employees or volunteers. The functions carried out

matter, rather than the job title alone.

Before appointment, check eligibility. If there is any doubt, check the current guidance from the Scottish Charity Regulator (OSCR).

2. Core legal duties

The main duties of trustees of Scottish charities are set out in the Charities and Trustee Investment (Scotland) Act 2005, as amended. In carrying out their role, trustees must:

- **Act in the interests of the charity.** Decisions must be made for the charity's benefit, rather than to further a trustee's personal interests or those of another organisation.
- **Seek, in good faith, to ensure that the charity acts consistently with its purposes.** Trustees should understand the charitable purposes in the governing document and make sure the charity's activities and use of resources support them.
- **Act with care and diligence.** The standard is the care and diligence reasonably expected of someone managing another person's affairs. Trustees should obtain enough information, ask questions and take advice where needed.
- **Manage conflicts of interest.** Trustees must put the charity's interests first. Where another duty prevents a trustee from doing so in a matter involving the person or organisation that appointed them, they must disclose the conflict and not participate in the discussion or decision.
- **Ensure compliance with Scottish charity law.** This includes duties imposed on the charity and any directions, requirements or notices issued under the legislation.
- **Address breaches of duty.** Trustees must take reasonably practicable steps to ensure that a breach by another trustee is corrected and not repeated, and that a trustee in serious or persistent breach is removed.

These duties apply to every trustee, not only the chair or other office-bearers. Use them as a checklist when preparing for meetings, making decisions and reviewing how the charity is run.

3. Know the charity and how decisions are made

The governing document sets out what the charity exists to do and the rules for running it. Depending on the legal structure, it may be called a constitution, articles of association, trust deed or rules.

The charity must continue to have only charitable purposes and provide public benefit in carrying them out. Trustees should consider who benefits, any private benefit or harm arising from the charity's activities, and whether conditions on access to its benefits are unduly restrictive.

Trustees should understand:

- The charity's legal structure, whether it is incorporated or unincorporated, and what this means

for trustees' potential personal liability. For more on the options, see our factsheet Choosing the right legal structure.
- The charity's purposes, activities and plans, and who benefits from its work.
- How trustees are appointed, how long they serve and how they can leave or be removed.
- Whether the charity has a wider membership beyond the trustees, the respective roles of members and trustees, and which decisions are reserved to members. The rules for trustee and members' meetings, including notice, quorum and voting, and when members should be consulted or their approval is required under the governing document and applicable law.
- What authority has been delegated, to whom, and how decisions and progress are reported back to the board.

Read meeting papers in advance, ask for clarification where needed and make sure significant decisions and the reasons for them are recorded.

The board's role is to set direction and oversee the charity's work. In a small charity, trustees may also carry out day-to-day tasks. Where this happens, it is helpful to be clear whether a trustee is taking part in a board decision or carrying out a day-to-day task in an operational role.

4. Understand the financial position

Financial responsibility belongs to the whole board, not only the treasurer, finance trustee, accountant or senior staff. Every trustee should receive clear, timely financial information and understand it well enough to take part in decisions.

At a minimum, trustees should understand:

- What money is available and whether cash flow is sufficient to meet commitments.
- Actual income and spending compared with the budget.
- Which funds are restricted to particular purposes and which are available for the charity's general work.
- The level and purpose of reserves.
- Significant liabilities, contractual commitments and funding risks.
- What the figures mean for the charity's plans and ability to continue its work.

Trustees should also ensure that proportionate financial controls are in place, including clear arrangements for authorising payments, checking bank transactions and approving significant commitments.

Trustees should not approve budgets, accounts or major commitments without understanding the information provided. They do not all need to be accountants, but they do need to ask when something is unclear. If financial difficulties arise, address them early and obtain appropriate advice.

5. Identify and manage conflicts of interest

A conflict can arise where a trustee's personal or business interests, or duties to another organisation, could affect their ability to act in the charity's interests. For example, the charity may be considering a contract with a trustee's business or a proposal involving another organisation on whose board they serve.

Trustees should declare actual or potential conflicts as soon as they arise. The charity should maintain a register of interests and have a clear procedure for managing conflicts, consistent with its governing document and the law.

Declaring a conflict is not always enough. Depending on the circumstances, the trustee may need to leave the discussion and take no part in the decision. The remaining trustees should check that they can still form a quorum and record how the conflict was managed.

A trustee appointed by another organisation must act in the charity's interests, rather than simply follow the appointing organisation's instructions.

6. Check the rules before paying trustees

Trustees usually carry out their role without payment. Scottish charity law allows payment for services in certain circumstances, but the governing document and statutory conditions must be checked before any arrangement is agreed. The rules also cover payments to people connected with trustees.

The conditions include:

- The governing document must not prohibit the payment.
- There must be a written agreement setting out the maximum amount to be paid.
- The trustees must be satisfied that the arrangement is in the charity's interests and that the amount is reasonable.
- Less than half of the trustees may be paid by the charity or connected with someone who is paid for services.

Conflicts must also be managed properly. Obtain advice before agreeing employment, consultancy or other paid arrangements involving a trustee or connected person.

Reimbursement of properly incurred out-of-pocket expenses is different from payment for services. The charity should have a clear expenses policy and keep appropriate supporting records.

7. Keep reporting and compliance under review

Trustees should make sure the charity has arrangements for meeting its legal and regulatory obligations. These include:

- **Annual reporting.** Submit the annual return and required documents to OSCR within nine months of the financial year end. To meet that deadline, prepare the required accounts and trustees' annual report and arrange the appropriate external scrutiny in time for submission.
- **Accurate charity and trustee information.** Keep information held by OSCR up to date. Trustee names are published on the Scottish Charity Register, subject to the applicable exemption process.
- **Publicising charitable status.** Make sure the charity's registered name, any working name, Scottish charity number and required statement of charitable status appear on the documents and communications covered by the rules, including its website home page, external letters and emails, fundraising materials and contracts. A SCIO must also identify itself as a SCIO where this is not clear from its name.
- **Changes to the charity.** Check whether OSCR's prior consent or notification is required before changing the charity's name, purposes, governing document or structure, or taking steps to wind it up.
- **Overseeing fundraising.** Where the charity fundraises, trustees should oversee how money is raised, including fundraising carried out on its behalf. Make sure fundraising complies with relevant law, donations are used for the purposes for which they were raised and any required written agreements with professional fundraisers or commercial organisations are in place before fundraising begins.
- **Other applicable requirements.** Identify the laws and regulatory requirements arising from the charity's legal structure and activities. Common examples include company law, employment law, data protection law and safeguarding requirements. Where the charity fundraises, it should also follow the Code of Fundraising Practice, which sets fundraising standards alongside the law rather than replacing it.

Tasks can be allocated to staff or advisers, but trustees should know who is responsible, what the deadlines are and how completion will be checked.

8. Champion good governance

Good governance is about how a charity is led, how decisions are made and how trustees oversee its work. It helps trustees fulfil their duties and keep the charity focused on its purposes. Governance arrangements should be practical and proportionate to the charity's size, activities and risks.

Practical ways to strengthen governance include:

- **Recruiting thoughtfully.** Consider the skills, experience and perspectives the board needs, and plan for future vacancies.
- **Providing induction and ongoing training.** Give new trustees the governing document, recent accounts, budget, key policies and other information they need to understand the charity and their role. Provide opportunities for all trustees to refresh and develop their knowledge throughout their time on the board.
- **Using clear roles descriptions and lines of delegation.** Record the responsibilities of office-bearers, committees and staff, including limits on authority and reporting arrangements.

- **Managing risk.** Identify what could prevent the charity from achieving its purposes, assess how likely each risk is and how serious its impact could be, and agree how to respond. Keep the main risks and agreed actions under review, with clear responsibility for following them up.
- **Protecting people.** Make sure the charity has safeguarding arrangements appropriate to its activities, including safe recruitment, relevant checks, training and clear procedures for reporting and responding to concerns. Trustees retain oversight even where safeguarding tasks are delegated to staff or volunteers.
- **Keeping policies under review.** Make sure policies are understood and used in practice, rather than simply adopted and filed away.
- **Working constructively and disagreeing well.** Make space for different perspectives, listen to one another and welcome constructive challenge. Disagree respectfully, focusing on the issue rather than the individual and keeping the charity's interests at the heart of the discussion. Handle confidential information appropriately, agree clear standards of conduct and make sure concerns can be raised and addressed.
- **Reviewing how the board works.** Consider whether meetings, information, trustee development and succession arrangements remain effective, and review the governing document periodically.

If your charity needs support with trustee responsibilities or governance, please contact us using the details below. We can review governing documents and governance arrangements, clarify trustee responsibilities and provide practical trustee induction and training.

Six essential questions

Use these questions as a starting point for board discussions, proposals and major decisions. The questions about information and finances help individual trustees check their understanding; those about purposes, risks, learning and engagement help the board review the charity's work more broadly.

1. Are we furthering our charitable purposes, and doing so effectively?
2. Do I have enough information to make a decision?
3. Do I understand the current financial position?
4. Have we considered the internal and external risks and challenges?
5. Are we learning and improving as an organisation?
6. Are we engaging effectively with beneficiaries, funders and the wider community?

Becoming a charity trustee: questions to ask before you accept

Before accepting a trustee role, take time to understand the charity, what will be expected of you and the support available. Use these questions to guide a conversation with the chair or other trustees.

- What does the charity do, who benefits and what are its priorities?
- What is the charity's legal structure, and does it provide limited liability protection for trustees?
- What is expected of me, including time, meetings and any additional responsibilities?
- Can I see the governing document, recent minutes, latest accounts, current budget and key policies?
- How is the charity funded, and what financial pressures or major commitments should I understand?
- What are the main risks and any significant unresolved issues?
- How are decisions made, and what has been delegated?
- What interests do I need to declare?
- What induction, training and support will I receive, and who can I ask for help?

Useful official guidance

- OSCR: Guidance and good practice for charity trustees
- OSCR: Guidance on disqualification criteria for charity trustees and those undertaking a senior management function
- OSCR: Annual reporting

How we can help

We provide practical legal advice and governance support for Scottish charities. Our services include:

- **Legal and governance training for charity trustees**, tailored to your charity's structure, priorities and needs.
- **Reviewing and updating governing documents and governance arrangements.**
- **Developing practical governance policies, role descriptions and delegation arrangements.**

To discuss training or support for your charity, please get in touch using the details below.

E: info@sarahbrowncharitylaw.com | T: 01738 718 338 | W: sarahbrowncharitylaw.com

Sarah Brown WS is accredited by the Law Society of Scotland as a specialist in charity law.

Important note

This factsheet gives general information only. It is not legal advice and may not cover your circumstances. The law and regulatory guidance can change. Please take specific advice before acting or deciding not to act. Sarah Brown Charity

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