



FACTSHEET 23

Users on Board Organisations

User Involvement

Many charities involve users in an effort to improve services. The term 'user involvement' describes a whole range of ways in which user's views and preferences can be sought and their influences brought to bear on a charity's services, including:

- Regular consultation
- Sub-committees and user groups
- Inclusion of users on the trustee body

The position of the Charity Commission is that they welcome user involvement as a way of helping a charity achieve its aims more effectively. The Charity Commission does stress however, that all Trustees must act in the best interests of the charity and not for their own interests or gain. There may be instances where a Trustee's own interest and the interest of the charity may be the same or clash, leading to a conflict of interest.

The Charity Commission recommend that charities establish a Register of Interest for their Trustees where individuals are able to record any actual or potential conflicts openly. This Register does not make an issue of the integrity of trustees, rather it looks at the management of a potential to profit from the position of Trustee.

It is in the interests of the Trustees themselves and the public image of the charity that they demonstrate that any potential conflict has been

identified and steps taken to avoid it.

Principle of Benefit

As a general principal, Trustees cannot receive any benefit (including services, facilities, funds or any other benefit of measurable value) from their charity unless they have express legal authority to do so.

Express legal authority may only be derived from:

1. A Clause in the Charities Governing document
2. The Charity Commission
3. A court of law

The above statement does not include the repayment of genuine and reasonable out-of-pocket expenses (such as travel costs, childcare and special equipment).

The principle works on the basis that if Trustees are not allowed to receive any benefit, they will not have any conflict of interest when they come to allocate charity resources.

Conflict of Interest

All Trustees, whether users or not, need to be alert to possible conflicts of interest and to minimise their effects. It should be remembered that even if a Trustee advises the charity of a potential conflict, they still should not benefit without express legal authority.

A declaration of Conflict of Interest

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will however reduce the chance of an action being challenged on the grounds it was in private interest rather than the charity's interest.

If Conflicts of Interests are ignored, they might eventually damage the charity. Charity transactions may be challenged if they are found to have been affected by a conflict of interest.

Conflicts of Interest may also result in:

Misused resources

Funder's requirements not being met

Discrimination against some users

Mismanagement as the charity is run for self interest against the principles of the charity.

Arranging for Trustees not to take part in any decision that will directly affect their own personal interests of their relatives is a simple way of reducing the risk that a transaction may be challenged on Conflict of Interest grounds.

Indirect Benefit

Benefits that are universally available to all users or are of inconsequential measurable value will not usually cause a problem. For example, in a charity with open management, all of the Trustees may be drawn from that membership and receive the same benefit as any other member.

Similarly, some benefits such as the provision of information sheets on a subject will be inconsequential and unlikely to require any action by the Trustee.

Trustees should exercise their judgement on what may be considered universal or inconsequential benefit. If there is any doubt, contact Dudley CVS or the Charity Commission, 2nd Floor, 20 Kings Parade, Queens Dock, Liverpool, L3 4DQ; Tel: 0870 333 0123; website: www.charity-commission.gov.uk.

Appointment of Trustees

A charity's governing document may lay down rules as to who can be Trustees.

Some charities are legally required to have users as trustees. A legal requirement to have user Trustees will come from:

- A Charity's governing document—many village hall charities, for example, are required to have their management

committee made up of representatives elected from the local groups who use the hall.

- From Statute Law—for instance, some schools are required by law to have a number of parent/governors.

Some funders make it a condition of their grant or contract that the charity must have user Trustees. The charity can only appoint user Trustees if they have adequate legal authority to do so within their governing document.

Legal requirements on eligibility for Trusteeship:

Age—a person under the age of 18 years cannot be a trustee of a charitable trust or of a charitable unincorporated association. An attempt to appoint someone under the age of 18 years as a Trustee is not legally valid. There is no minimum age limit for directors of companies (including charitable ones), however, a person appointed as a company director has to be old enough to understand the duties of a director,.

People who cannot manage their own affairs:

If a person lacks the capacity or comprehension to manage their own affairs it is deemed that they cannot manage the affairs of the charity.


Disqualification:

There are a number of specific grounds that disqualify (prohibit) a person from being a charity Trustee:

- Undischarged bankrupt
- Unspent conviction for an offence involving deception or dishonesty.

FURTHER HELP

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