



FACTSHEET 24

Trustees & Conflicts of Interest

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 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

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unlikely to require any action by the Trustee.

Trustees should exercise their judgment 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.

Representations on Boards

Some Board members are chosen to represent a particular organisation or group of people.

This is a subtle role requiring particularly delicate application. Board members occupying this role need to bring the views of the people they represent to the Board and also to act corporately in the best interests of the charity.

Where there are differences of view between the Board and the people they represent, the representative has to support the Board and explain why the Board took decisions in the interest of the organisation as a whole.

Anyone who is a registered Trustee of a charity has signed to say that they will act in the charity's interest. This may lead to conflicts of interest. In these cases the representative must put forward the views of the organisation or community they represent and accept and relay any decision made back to that organisation or community without prejudice.

FURTHER HELP

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