

Legal Responsibilities of Charity Trustees

(extracts from a guide by solicitors Bates Wells and Braithwaite)

Charity trustees are the people who have the general control and management of a charity's administration: in short, they are ultimately responsible for the charity.

PRIMARY RESPONSIBILITIES OF CHARITY TRUSTEES

The overriding duty of all charity trustees is to advance the purposes of their charity. In doing so they have several basic responsibilities.

1. Trustees are responsible for the proper administration of the charity

Trustees must make sure that the charity's assets and resources are used only for the purposes of the charity. They must make sure that the charity is run in accordance with its constitution, charity law and all other laws and regulations which affect its activities.

2. Trustees must accept ultimate responsibility for everything the charity does

The trustees are responsible for the vision, mission and management of the charity. They are accountable if things go wrong.

3. Trustees have to act reasonably and prudently in all matters relating to their charity

The law imposes a duty of care on the trustees of charities. This is sometimes expressed as a duty 'to exercise such care and skill as is reasonable in the circumstances'. The duty will be greater if a trustee has (or claims to have) any special knowledge or experience, or if their business or profession means they can reasonably be expected to have special knowledge or experience. In matters where trustees are not expert, they will be expected to take appropriate advice. This duty is very significant. Essentially, provided trustees can show that they are acting reasonably, in a way which furthers the legal objectives of the charity, it is unlikely that they can be criticised under charity law.

4. Trustees must safeguard and protect the assets of the charity

A charity's assets include its investments, cash, land, intellectual property, staff and reputation.

5. Trustees have a duty to act collectively

Decisions and responsibilities are shared, so all trustees should take an active role. Trustees can act by majority (unless the constitution says otherwise), but all the trustees are collectively responsible for decisions made by the trustees (unless they make it clear that they disagree with a particular decision, but they are overruled). Some trustees will have particular roles. For instance, the chair is likely to be a figurehead for the organisation, and to have a special relationship with senior members of staff. The treasurer will be responsible for explaining the financial situation to the rest of the trustees. But responsibility for decision-making still lies with the board as a whole.

6. Trustees must act in the best interests of their charity

The interests of the charity are paramount. Trustees should not allow their personal interests or views to override this: they must exercise independent judgement.

7. Trustees must avoid any conflict between their personal interests and those of the charity

The main implication of this is that, unless there is specific legal authority, charity trustees cannot receive any benefit from the charity. The law is very strict about ensuring that trustees cannot influence decisions in their favour. Conflict of interest is a very wide term and also includes a duty of loyalty to another organisation.

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See also Charity Commission guidance: CC3 – The Essential Trustee: What you need to know.

www.charity-commission.gov.uk/publications/cc3.aspx