



Charity Trustees

The term charity trustees can apply to a number of people in different organisations, for instance, a company, a trust or a voluntary association can all be charitable. Charity Trustees are the people who are responsible for the “general control and management” of the administration of the charity. These people are often known as directors, trustees, management committee members or committee member or office bearers. The definition of a charity trustee is considerably wide in that it can include a number of people connected to the charity who are not formally appointed; these people are often known as “shadow trustees.” With the introduction of the Charities and Trustee Investment (Scotland) Act 2005 (the “Act”), in April 2006 the level of duties and responsibilities of Charity Trustees has increased.

General Duties

In terms of the Act, a charity trustee has four general duties; to act in the interests of the charity; to operate in a manner consistent with the charities purpose; act with due care and diligence; and comply with the law.

Duty to Act in the Interests of the Charity

Firstly, a charity trustee must act in the interests of the charity, thereby putting the interests of the charity before their own. If the trustee is prevented from doing so, resulting in a conflict of interest, they must disclose this conflict and take no further part in any decision on the matter in question. If there is a conflict of interest between the charity and another charitable organisation or organisation affiliated to the charity, the charity trustees must put the interests of the charity first. Charity trustees must work together to ensure that the charity is always put first.

Duty to Operate in a manner consistent with the Purpose

The purpose of a charity is set out in the constitution or governing documents. Charity trustees must be familiar with these documents to ensure the charity is adhering to the terms. All activities conducted by the charity must fall within the aims, objectives and purpose as laid out in the constitutional documents.

Duty to act with Care and Diligence

Charity trustees have a duty of care and a duty to act diligently in carrying out all aspects of their role. This implies that trustees need to take more care than they would if they were acting on their own behalf. Trustees have a responsibility to devote sufficient time to the charity to ensure the proper administration of the charity. When ensuring due care is taken in running the charity, trustees have a responsibility to seek the advice from professionals when appropriate.

Duty to Comply with the Law

There are various statutory obligations imposed on trustees. As well as the various duties contained in the 2005 Act trustees must consider the law in connection with health and safety legislation, employment law, the law of delict, human rights legislation and so forth. This legislation must be complied with and can impact upon the day to day running of the charity.

Specific Duties

Reporting to OSCR

The duty to report to Office of the Scottish Charity Regulator (OSCR) is a statutory duty. Charity trustees must sign a declaration that they understand their duties and ensure the details are accurate; trustees must notify OSCR of any changes. An annual return and audited accounts must be sent to OSCR. It is the duty of the charity trustees to notify OSCR of any changes to the structure or constitution of the charity.

Financial Records and Reporting

Charitable trustees must keep accounting records which are sufficient to show the income and expenses of the charity, record the assets and liabilities and disclose the financial position of the charity at any time. At the end of the financial year the trustees must prepare a statement of account, including a report of activities which must be independently examined or audited. A signed copy of the audited statement must be sent to OSCR at the same time as the annual return.

Fundraising

Section 81 of the Act requires a formal agreement between the charity and any professional fundraiser or commercial organisation involved in raising funds.

In terms of Section 82 of the Act, the charity can obtain interdict banning fundraising on their behalf.

Providing Information to the Public

Documents issued on behalf of Charities must contain information such as the name and registered number. This applies to letters, forms and all correspondence including adverts etc.

Charities must, if the request is reasonable, provide a copy of their constitution or governing document or latest statement of account to anyone who asks for them. The Charity is able to charge a fee for this, as long as it doesn't exceed the cost of supplying the copies.

Payment

Trustees must not be remunerated from Charity assets unless certain conditions are met:-

1. The maximum amount of payment is set out in a written agreement
2. The amount is reasonable
3. It is in the interest of the Charity for the services to be provided
4. The Constitution does not prohibit it

Breach of Duty

It is worth bearing in mind that charity trustees have collective or corporate responsibility. Trustees are expected to act together and are equally responsible for the actions of the charity. Trustees have a collective responsibility to ensure that any breach of a duty is corrected and any trustee who does not adhere is ultimately removed. If there is a breach of a duty or evidence of misconduct the OSCR can step in and invoke its powers under the Act. These can ultimately include the suspension or removal of a trustee or directing the charity to cease representing itself as a charity.

Disqualification

In terms of the Act there are a number of persons who are disqualified from being charity trustees. This includes people who have been convicted of offences involving dishonesty, undischarged bankrupts, disqualified directors and charity trustees who have been removed from office by the courts. If a disqualified person acts as a charity trustee they are guilty of an offence which is punishable by a fine or up to two years imprisonment, or both. It is therefore good practice for all prospective trustees to sign a statement confirming they are not disqualified.

A charity trustee is responsible for the overall management of the charity. Acting in the best interests of the charity can be straight forward when acting in good faith and honesty. The duties of a trustee may seem vast, however by taking the role seriously, understanding the duties and seeking the appropriate advice, the role of a charitable trustee is often very rewarding.

OSCR has a number of publications available to assist Charity trustees in fulfilling their duties. Their website can be found at www.oscr.org.uk



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