

Part One:

The Essentials

1

Introducing the role

1.1

What is trusteeship¹?

The concept of trusteeship has evolved over many centuries and broadly means that a donor gives or settles property on the trustees for the benefit of a third party.

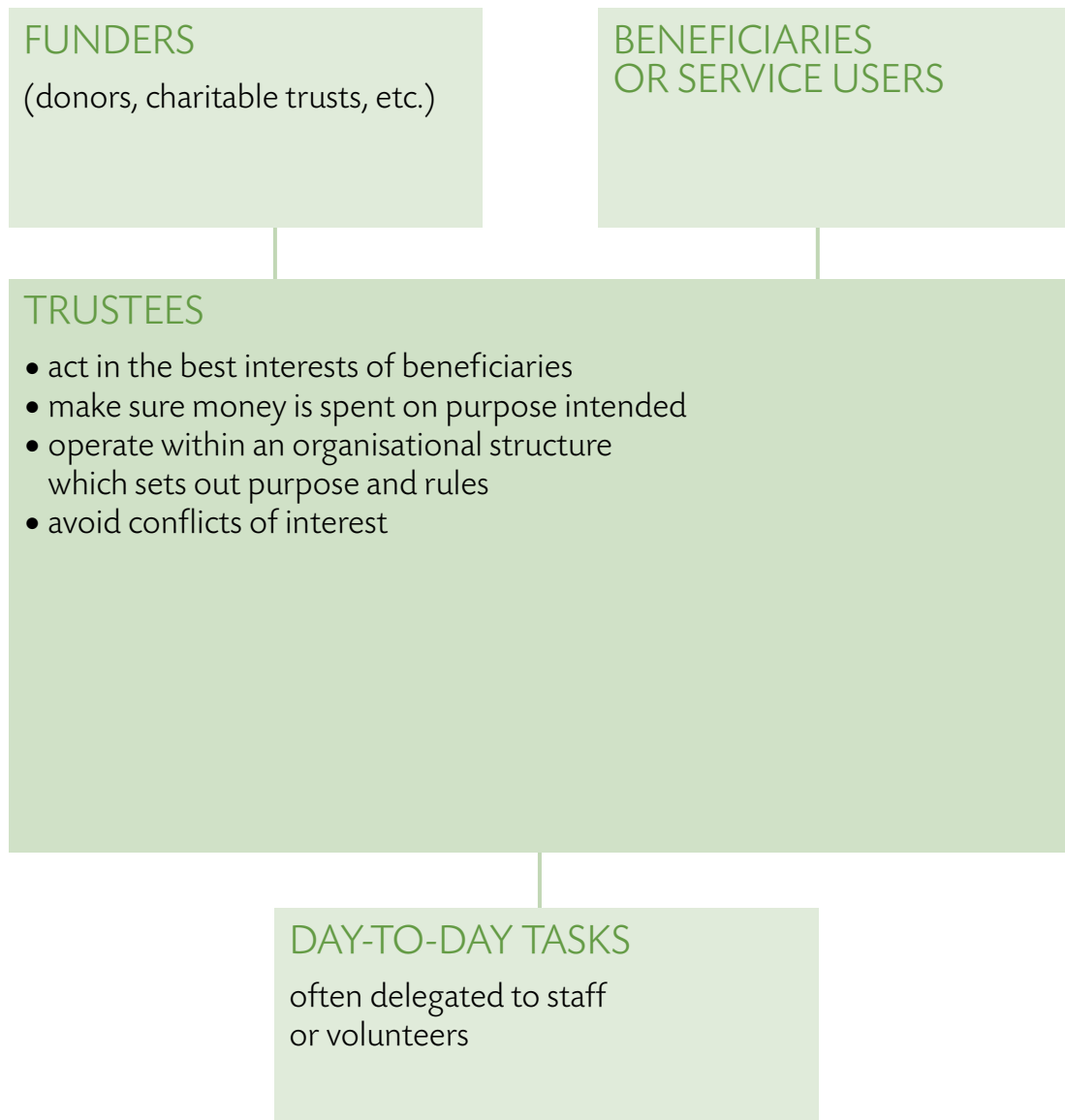
This basic concept is still valid today. Charity trustees are people who are entrusted to look after money (or other resources such as land or property) given to a charity by a person or group of people. As a charity trustee, you must ensure that these resources are used effectively to achieve the particular purpose for which they were given (e.g. money donated by the public to cure heart disease should be spent on this area of work).

Trustees act within charities that generally have a formal structure, a set of rules and often delegate many day-to-day tasks to staff or volunteers. This structure will vary depending on your charity, and will affect your responsibilities and eligibility as a trustee.

This relationship works as follows:

¹ In the Good Trustee Guide, the term trustee refers to a charity trustee – a member of the governing body of a charity that takes formal responsibility for the charity.

² The Good Trustee Guide is aimed at trustees of registered charities.



1.2

Who are trustees (and who aren't)?

Who are trustees?

Section 97 of the Charities Act 1993 defines charity trustees as: 'the persons having the general control and management of the administration of a charity'.

(Visit section 2.2 to find out more about charitable status.)

Trustees may also be called:

- members of the committee
- management committee members
- council members
- executive committee members
- governors.

No matter what title you are given, if you are a member of the governing body of a charity and you are entitled to take part in the decision-making process and vote at meetings, then you are a charity trustee.

NCVO recommends that charities call the people with the legal responsibility for trusteeship 'trustees' and refer to the committee or council on which they sit as the 'board of trustees'. These titles are used throughout The Good Trustee Guide.

In a charitable company, are trustees and company directors the same?

Yes. Trustees are members of the governing body of the charity. If the charity is also a company then they will also be company directors (see section 2.2).

Can I be a trustee even if another group in my organisation is known as 'the trustees'?

In some charities, those known as 'the trustees', and perhaps listed as such in the annual report, are actually patrons (see page 51) (or, in the case of unincorporated charities, merely hold the trust's property – see page 97). Those who take responsibility for controlling the management and administration of the charity may be known by some other term, such as 'the management committee'. It is the latter group who are the trustees in law.

Can staff of charitable companies be 'shadow' directors?

Under the Companies Act 1985, a shadow director is someone in accordance with whose directions the directors of a company (in this instance the trustees of a charitable company) are accustomed to act. If someone is a shadow director, then he or she might be held to be a trustee for certain purposes, sharing the responsibilities and liabilities of trusteeship (for instance, in relation to liability for wrongful trading).

Further Information:

Guidance on the legal status of Charity Chief Executives (acevo, 2006)

Senior staff of charitable companies might be deemed to be shadow directors in circumstances where they dominate a passive board of trustees, e.g. where the management not only advises the trustees but tells them what to do. Trustees should ensure that they do not simply 'rubber stamp' decisions made by senior staff, but make independent decisions, albeit with the advice of senior staff.

Am I a trustee if I am a member of the committee of a local branch?

Some national charities have groups or branches with local committees.

If the branch is constitutionally part of the national charity, then the members of the local committee are not trustees. The trustees are the members of the national governing body, and it is they who ultimately bear responsibility for the effective governance and conduct of the charity, including the work of the local branches. Some charities allocate places on their board of trustees for representatives of local groups.

If each local group is independent, with its own governing document, separately registered as charities but affiliated to a national charity, then the members of the local committees will be trustees of that local group. Age Concern is an example of a charity with this structure (see section 2.4 for more information on branches).

1.3

Can a user of a charity's services be a trustee?

Yes. In most cases nothing prevents users from acting as trustees. Service users, or beneficiaries, can bring a vital perspective to the work of the board. Service user involvement can demonstrate that your charity takes an inclusive approach to involving users in decision making. It can give your charity greater credibility or legitimacy.

On the other hand, involving users at board level, if unplanned, can sometimes risk being tokenistic – that is, simplistic assumptions can be made that a user speaks for or represents all users (see section 19.4). Also, some charities find that there may be more effective ways of bringing the voice of users as well as or instead of board membership, like advisory groups (see section 21.9). Finally, conflicts of interest can occur from time to time between the user's trustee role and service user role and these must be managed (see section 3.6).

How do I become a trustee?

Trustees are elected or appointed in many different ways. These include:

Election	Individuals may be elected at an Annual General Meeting and/or by post. Individuals may be elected by, for example: <ul style="list-style-type: none"> • the entire membership • an 'electoral college' where the right to appoint trustee(s) rests with a specific group of members or stakeholders, e.g. volunteers, interest groups, geographical areas
Co-option	A number of trustees may be appointed by the board of trustees themselves
Appointed from outside	One or more trustees may be appointed by an external organisation, e.g. a local authority
Ex-Officio	One or more trustees may be appointed by virtue of the office they hold, e.g. a mayor or vicar

Check your governing document to see what it says about your charity's procedures for electing or appointing trustees (see section 2.3).

Tip: Visit Part Three to find out more about the practical ways you can improve your recruitment practices and more about governance arrangements for membership organisations.

If a trustee is appointed by an outside organisation, do they have the same responsibilities as other trustees?

Yes. Some charities have a provision in their governing document that gives the right for another organisation to appoint a trustee or trustees. These trustees are sometimes known as representative or nominative trustees and may be appointed for a number of reasons:

- to ensure that vacancies on the trustee board can be easily filled
- to ensure that outside bodies which have an interest in the work of the charity can have an association with it
- to ensure that the charity has a well-balanced cross-section of either the community or service users

No matter how you are elected or appointed you have the same responsibilities as other trustees. If you are appointed by a nominating organisation, you are not there to represent that organisation; you are there to act in the best interests of the charity to which you have been appointed.

You should also note that, if you are appointed by a nominating organisation, you are personally responsible to fulfill your duty as a trustee – this means that, for example, the nominating organisation cannot send alternative people if you cannot attend a board meeting, nor will the responsibility as a trustee rest with them.

There may be occasions when your duty to act in the best interests of the charity is in conflict with the best interests of the organisation that appointed you as a trustee. If this happens, you should follow an agreed policy on how to deal with conflicts of interest. In the absence of an existing policy, you should remove yourself from discussion of the item concerned and your absence should be minuted. This may not, however, absolve you from being jointly responsible and liable for any decision made (see section 3.7).

Note:

there are certain circumstances when the governing document of a charity allows an organisation to be appointed as a 'corporate trustee'. However, this is a specific situation and will be clearly set out in your governing document.

See section 21.8 for further guidance on the role of trustee nominated by outside organisations.

Can individuals attend a board meeting but not be a trustee?

Yes, it is quite common for individuals who are not trustees to attend all or part of board meetings, either occasionally or regularly – but it is very important to be clear about their role as distinct from the role of a trustee. These individuals are sometimes called observers or representatives or may be members of staff – for example:

- In charities that employ staff, it is usual for a chief executive to attend board meetings to report on day to day issues. Sometimes a member of staff may take the minutes of a meeting
- Some charities allow an individual to be elected by service users as a 'representative', to attend all or part of board meetings but not as a trustee (note that it is quite common for users also to act as trustees – see above)
- Sometimes, a member of an outside organisation – an officer or member of a local authority, for example – may regularly attend a board meeting in an advisory capacity, not as a trustee
- A person with particular expertise or experience may sometimes attend board meetings to provide advice, either on a one off or regular basis.

There can sometimes be confusion about whether individuals like these are trustees or not – for example in one charity a local authority member may be a trustee, but not in another. If individuals are attending board meetings but not as a trustee it should be made explicit that the individuals are not trustees and do not take part in decision-making, otherwise they may be found to be liable for decisions taken. You can make this clear in the meeting minutes (for example, by listing non trustees as ‘in attendance’, separate from the list of trustees present) or via a provision in the governing document.

Case study – Whitstable Umbrella Community Support Centre

The Centre is a small charity with a small staff team (manager, finance officer and caretaker) supported by many volunteers. The trustees are elected by members at the Annual General Meeting. The centre manager attends every board meeting to report on day to day issues. A member of the local authority attends board meetings as an observer, and this is made clear in the minutes. A representative of service users, elected by service users but not a trustee, also attends part of every meeting to discuss user issues. Again, their role as ‘in attendance’ is made clear in the minutes. However, users are encouraged to join the board as full trustees and sometimes a service user has moved from being the ‘representative’ to being elected as a trustee.

1.4

Who can and can't be a trustee?

The Charities Act 1993 sets out who is disqualified from acting as a charity trustee. This applies to all charities including excepted and exempt charities.

Company law sets out who is disqualified from acting as a company director. These provisions apply to charities formed as a company limited by guarantee (as well as all other companies).

Who is disqualified from acting as a charity trustee?

Section 72 of the Charities Act 1993 disqualifies people who:

- have unspent convictions for offences involving deception or dishonesty (unless 'spent'), e.g. theft, fare evasion or falsely claiming benefit
- are undischarged bankrupts
- have been at any time removed from trusteeship of a charity by the Charity Commission or the court in England, Wales or Scotland, because of misconduct or mismanagement
- are disqualified from being company directors under the Company Directors Disqualification Act 1986
- have failed to make payments under county court administration orders

- have made compositions (i.e. come to an arrangement) with their creditors and have not been discharged.

As soon as someone comes within section 72 (e.g. the day they are convicted of an offence involving dishonesty) s/he is automatically disqualified from acting as a trustee. It is a criminal offence to act as a charity trustee while disqualified.

Charities can apply to the Charity Commission for a waiver of disqualification under section 72(4) of the Charities Act 1993, either generally or in relation to a charity or a specific class of charities. The Commission will consider what, if any, benefit is likely to result from an applicant acting as a trustee. Under the Charities Act 2006 if the ground for disqualification was removal from the trusteeship by the Charity Commission or the court in England, Wales or Scotland, and five years has passed, then the application for waiver must normally be granted unless there are special circumstances which would justify refusal.

Further information:

Charity Commission publication Finding new trustees – What charities need to know (CC30) and associated operational guidance on disqualification and waivers (OG41 & OG42)

Who is disqualified from acting as a company director?

Under the Company Directors Disqualification Act 1986 the court may disqualify people:

- who have been convicted of criminal offences relating to the promotion, formation, management or liquidation of a company
- who have been persistently in default of company legislation for filing accounts and other documents
- who have been found guilty of fraudulent trading or fraud
- whose conduct as a director has made them unfit to be involved in the management of a company.

Further information:

Companies House Directors and Secretaries Guide (GBA1) – available from the Companies House website (see resources section).

Are there any other factors affecting eligibility?

- Trustees of unincorporated charities cannot be under the age of 18. It is possible for a director of a charitable company to be under 18, but the Companies Act 2006 introduces a minimum age of 16. This is due to come into force in October 2008. In some circumstances parents can be liable for the actions of their children and parents of under 18s considering becoming directors of charitable companies should be made aware of the duties and responsibilities.
- Further information:**
Further advice on the appointment of under 18s can be found on the Charity Commission website (Statement from the Commission regarding young people under 18 years old as charity trustees, linked from Charity Commission publication CC30). Remember that there are other ways of involving people in a charity besides becoming a trustee.
- The governing document of a charity may include restrictions on who may become a trustee of that charity, for example requiring them to live in a certain area or to be of a particular religious denomination.
 - The Charity Commission states that

*'It is important that anyone appointed as a trustee is made fully aware of his or her responsibilities and liabilities. It is unfair to impose on someone a range of duties that that person cannot properly understand and cannot, or does not want to, carry out.'*³
 - The Criminal Justice and Court Services Act 2000 bans certain individuals from being a trustee of children's charities, e.g. anyone who commits one of a number of serious offences (generally against children) and who is subject to a disqualification order under the Act, made by the Court. Further information on this can be obtained from the Criminal Records Bureau (CRB).
 - Some organisations working with children must check with CRB before employing individuals and this would include charity trustees. The Charity Commission also strongly recommends that trustees of charities working with children and vulnerable adults who are eligible to obtain disclosures from CRB should do. Further information on this can be found in the Charity Commission publication CC30 Finding New Trustees: What charities need to know
 - All prospective charity trustees should sign a declaration of eligibility to act which should also cover CRB checks. See section 19.7 for a model declaration.

³ Charity Commission publication *Users on board* (CC24) Crown Copyright.

Checklist

Have you considered asking your board or committee to review the names it uses for the people and the committees, so that those who are the trustees in law understand their status?

Have you checked your governing document to see what it says about your charity's procedures for electing/appointing trustees?

Are any members of your trustee board appointed by outside organisations?

If so, are they clear that they must act in the best interests of your charity?

If individuals who are not trustees attend your board meetings do you make this clear in the minutes of the meeting?

Are you a trustee of a national charity with local branches?

Are the local branches separate legal entities?

If your charity has local branches, does your board need to review how it exercises its responsibilities for the activities of the local branches and how the local branches ensure their accountability to the national trustees?

Has your board checked that your trustees are eligible for trusteeship under the terms of your governing document, and that these disqualify only those you would wish to exclude?

Is there someone in your charity who is responsible for checking that trustees are not disqualified?

Do you ask new trustees to sign a declaration of commitment to the charity and eligibility to act as a charity trustee? (See the model declaration, section 19.7)

If your charity works with children, young people or vulnerable adults, have you obtained a CRB disclosure for trustees if required by law or if eligible to do so?

1.5

What do trustees do?

Although in practice many day-to-day tasks can be delegated to staff (where they are employed) or to individual board members, volunteers or others, the central responsibilities of trustee boards are the same no matter the size of the board or the nature of the charity. These responsibilities are taken up in other parts of the guide in more detail but can be summarised into 12 essential areas (see box).

The 12 essential board responsibilities at a glance:

Set and maintain vision, mission and values

The trustee board is responsible for establishing the essential purpose of the charity as set out in the objects of its governing document. They are also responsible for guarding the ethos and values of the charity.

Develop strategy

Together, the trustee board (and chief executive where employed) develop long-term strategy. Meeting agendas reflect the key points of the strategy to keep the organisation on track.

Establish and monitor policies

The trustee board creates policies to govern organisational activity. These cover guidance for staff and/or volunteers, systems for reporting and monitoring, an ethical framework for everyone connected with the organisation and the conduct of trustees and board business.

Ensure compliance with the governing document

The governing document is the rulebook for the charity. The trustees must ensure it is followed. In particular, the charity's activities must comply with the charitable objects in the governing document.

Ensure accountability

The trustees should ensure that the charity fulfils accountability as required by law to (including): The Charity Commission, HM Revenue and Customs and the Registrar of Companies (if it is a company limited by guarantee). This includes publishing annual reports and accounts. The charity should also be accountable to other groups who are sometimes known as stakeholders: donors, beneficiaries, staff, volunteers and the general public.

Ensure compliance with the law

Trustees are responsible for checking that all the charity's activities are legal.

Maintain proper fiscal oversight

The trustees are responsible for effectively managing the charity's resources and funding so it can meet its charitable objects. The trustee board: secures sufficient resources to fulfill the mission, monitors spending in the best interests of the charity, approves the annual financial statement and budget, protects the charity against liability by providing insurance, seeks to manage risk for the charity and ensures compliance with the law.

Respect the role of staff / volunteers

The trustee board recognises and respects the domain of staff and / or volunteer responsibility. At the same time, it creates policy to guide staff and/or volunteer activities and safeguard the interests of the charity.

Maintain effective board performance

The board keeps its own house in order. It engages in productive meetings, effective committees with adequate resources, development activities and regular reviews of its role. The board is also responsible for overseeing trustee board recruitment.

Promote the organisation

Through their own behaviour, their governance oversight and their activities on behalf of the charity trustees enhance and protect the reputation of their charity. They are good ambassadors for the charity.

Where staff are employed:

Set up employment procedures

The trustee board creates comprehensive, fair and legal personnel policies. These protect the charity and those who work for it. They cover recruitment, support, appraisal, remuneration and discipline.

Select and support the chief executive

If necessary, the trustee board creates policy covering the employment of a chief executive. They also select and support the chief executive and review their performance.

Tip: turn to Part Four to find out how you can use the list of responsibilities above to carry out a governance review.

What is governance?

Governance is about leadership and ensuring that an organisation is effectively and properly run. The twelve responsibilities above are based on principles of good governance.

Good governance is the board's responsibility, but governance covers more than the board's duties and responsibilities – governance takes in how the board is appointed and supported and how the board works to ensure decisions are taken properly and the work of the charity is effective and furthering its purposes.

Governance is distinct from day-to-day management and operations delegated to staff and volunteers. Sandy Adirondack wrote that 'governance is not necessarily about doing; it is about ensuring things are done'.⁴

Governance has been high on the agenda for charities in recent years. Since the publication of the previous edition of the Good Trustee Guide in 2002, two frameworks of good governance have been developed to help guide trustees and organisations. Both frameworks are used in the Good Trustee Guide to help trustees understand and carry out their roles and responsibilities:

⁴ *The Good Governance Action Plan for Voluntary Organisations*, Sandy Adirondack (NCVO, 2002)

The Code of Governance was drawn up in 2005 by a founding group of support and membership bodies – the Association of Chief Executives of Voluntary Organisations (acevo), Charity Trustee Networks, the Institute of Chartered Secretaries and Administrators (ICSA) and the National Council for Voluntary Organisations – and endorsed by the Charity Commission. The Code sets out a statement of best practice in governance, designed around seven principles. The seven principles, explored in chapter 5, are useful in understanding more about what a well governed organisation should look like, and are good starting points to review the board and organisation's effectiveness and put in place good practice.

Further information:

Good Governance: A Code for the Voluntary and Community Sector is available from the NCVO website (see resources section).

The National Occupational Standards for Trustees and Management Committee Members were drawn up by the UK Workforce Hub in conjunction with the Governance Hub in 2005 and set out the competencies that all trustees should develop to ensure that they are able to carry out their role effectively. The standards are particularly useful for individual trustees to help understand their duties and responsibilities and for boards to help plan training and development. The 'NOS' – as they are sometimes referred to – are explored in more detail in chapter 17.

Further information:

National Occupational Standards for Trustees and Management Committee Members is available from the UK Workforce Hub website (see resources section).

I am a new trustee.

How can I find out more about my roles and responsibilities?

The Good Trustee Guide covers all of the main areas of a trustee's responsibility. You can use the Guide as a reader to find out more about your responsibilities, as a reference guide to check individual issues as they arise or as a guide to develop your board or review its effectiveness. The Guide also provides links throughout to more detailed and comprehensive sources of guidance – for example, the Charity Commission provides more detailed advice on some of the areas covered in this chapter regarding trustee eligibility.

Remember, trustees are not expected to be experts in every topic confronting the board. But they are expected to understand their duties and responsibilities. All trustees should be provided with an introduction, or induction, into their responsibilities as a trustee, covering the essential information needed. Turn to section 20.3 to find a sample induction programme and checklist.