

ICSA Model Role Description for Charity Trustees (England & Wales)

This ICSA Guidance Note has been written so that a charity of any size can adapt best practice for their own organisation's needs. This document should provide sufficient detail to enable the reader to think about the governance arrangements within their own charity, and apply that aspect of best practice that is most appropriate. It is good practice for each charity to undertake a periodic review of their governance arrangements as the charity evolves and, where appropriate, amend policies, procedures, and its governing document¹ to ensure that they remain fit for purpose and are structured in the most effective way to meet the charity's objects.

The ICSA Guidance Notes expand upon and consolidate the principles highlighted in *The Code of Governance for the Voluntary and Community Sector*.² Throughout the series, the Institute believes that the Guidance Notes reflect current best practice in this area of charity governance, and provides assistance for those charities that are in a position to enhance their governance arrangements.

This Guidance Note covers charities registered in England and Wales. Whilst principles of good governance should transcend national borders, it is important to bear in mind the specific differences in charity legislation for those charities operating in Scotland, Northern Ireland, and elsewhere.³

For the purposes of this Guidance Note, the ICSA assumes that the charity takes advantage of a paid charity secretary, where staff are employed, who is not the chief executive officer of the organisation.⁴

Overall Purpose

The board of trustees are jointly and severally responsible for the overall governance and strategic direction of the charity, and financial health, probity of its activities, developing the organisation's aims, objectives and goals in accordance with the governing document, legal and regulatory guidelines.⁵

All trustees should be aware of, and understand, their individual and collective responsibilities, and should not be overly reliant on one or more individual trustees in any particular aspect of the governance of the charity. For example, all trustees should be able to read the financial accounts to a level that they can ask questions and comprehend answers of a general nature.

This Guidance Note flags up those areas that trustees should be conversant with, in order to effectively govern the charity and monitor the implementation, and impact of their decisions, as a board.

¹ There are specific actions that must be taken in order to change a charity's governing document depending on the corporate structure of the organisation; in all cases changes to the charity objects will require approval from the Charity Commission. See ICSA Guidance Note 070726 for further details on changing a charity's governing document.

² *The Code of Governance for the Voluntary and Community Sector* can be downloaded from www.governancehub.org.uk.

³ Further Guidance Notes for charities registered and operating in Scotland and Northern Ireland will be available in due course from the ICSA website.

⁴ Further details on the role of the charity secretary can be found in ICSA Guidance Note 070602.

⁵ The Charity Commission's *The Essential Trustee: What You Need to Know (CC3)* 2007, www.charity-commission.gov.uk/Library/publications/pdfs/cc3text.pdf and the ICSA Guidance Note *Specimen Induction Pack for Charity Trustees*, www.icsa.org.uk/index.php?option=com_content&task=view&id=61, provide further information on the responsibilities of charity trustees.

In general, a trustee role description could include:

Main Responsibilities

- To ensure that the charity, and its representatives, function within all legal and regulatory requirements applicable, and in line with the organisation's governing document, continually striving for best practice in governance.
- To maintain the fiduciary duty invested in the position, undertaking such duties in a way that adds to public confidence and trust in the charity.⁶
- To take appropriate professional advice in all matters where there may be a material risk to the charity, or where the trustees may be in breach of their duties.
- To determine the overall direction and development of the charity through good governance and clear strategic planning.⁷
- To avoid any personal conflict of interest.⁸
- To manage and use the resources of the charity so as to optimise its potential.
- To ensure that robust systems are in place for internal financial control and the protection of the charity's funds and assets.
- To undergo a thorough induction upon appointment and ongoing training to remain alert to, and aware of, their duties and responsibilities, and of the environment in which they operate.
- To achieve the purpose of the charity and to pursue the charitable objects, and provide public benefit.⁹

Main Duties

- Ensuring the charity complies with legislative and regulatory requirements, and acts within the confines of its governing document and in furtherance to the charitable objects.
- Acting in the best interest of the charity, beneficiaries and future beneficiaries at all times.
- Promoting and developing the charity in order for it to grow and maintain its public benefit and recognising the situation when it may be more appropriate to wind the charity up where there is no longer a need for the charity to provide the services it does or because the charitable objects are no longer relevant to contemporary social situations.
- Maintaining sound financial management and control of the charity's resources.¹⁰
- Ensuring a fully effective and appropriate system for the recruitment, appointment and monitoring of the work and activities of the chief executive officer and, where applicable, other members of the senior management team.
- Ensuring the effective and efficient administration of the charity and its resources, striving for best practice in good governance.
- Acting as a counter-signatory on charity cheques (including any electronic transactions) and any applications for funds.
- To maintain absolute confidentiality about all aspects of the trustees' business, bearing in mind the over-riding legal obligations placed upon trustees.

⁶ The ICSA Guidance Note *Model Trustee Code of Conduct* 070605 provides further information on the appropriate conduct of charity trustees.

⁷ See the Charity Commission's Operational Guidance *Trustees Responsibilities and How to be an Effective Trustee: Signposts to Published Guidelines*, 2004, for further information – www.charity-commission.gov.uk/supportingcharities/efftrustintro.asp.

⁸ The ICSA Best Practice Guide to *Managing Conflicts of Interest in the Not-for-Profit Sector* (revised edition, 2007) provides further information on all real and perceived conflicts of interest. Extracted copies of the *Model Conflict of Interest Policy* and the *Model Register of Interest* can be downloaded from www.icsa.org.uk/index.php?option=com_content&task=view&id=61. Furthermore, the Charity Commission's Operational Guidance Note *A Guide to Conflicts of Interest for Charity Trustees* (version 03/04) may be useful – www.charity-commission.gov.uk/supportingcharities/conflicts.asp.

⁹ Section 3 of the Charities Act 2006 removes the presumption of public benefit attached to three of the traditional 'heads of charity' articulated in *Pensel*: advancement of education; religion; and relief of the poor. All charities must now have a charitable purpose and also meet the public benefit test. The Charity Commission is responsible for leading on the operation of the public benefit test, after public consultation, and under s4 of the Act, charity trustees must 'have regard' for any guidance issued by the Commission on the matter. This is not likely to come into effect until early 2008.

¹⁰ See the Charity Commission's *Internal Financial Controls for Charities* (CC8), December 2003.

Statutory Duties

Depending on the structure of the charity, and what is contained within the charity's governing document, some of the above duties and responsibilities are specifically covered by statute. The following is a précis of the legal duties trustees must fulfil:¹¹

- Duty of trust;
- Duty to comply with the charity's governing document;
- Duty to act in the best interests of the charity, present and future beneficiaries;
- Duty to avoid conflicts of interest;
- Duty to safeguard assets;
- Duty not to benefit from their position;¹²
- Duty of care;
- Duty to act personally;
- Duty to act collectively; and
- Duty to keep accounts.

For charitable companies, directors and trustees also have specific legal duties under the Companies Act 2006. Information on these can be found in ICSA Guidance Note 0706013.

Accountable to

As the board are responsible and liable for the governance and functioning of the charity, they are accountable in varying degrees to a variety of stakeholders, including: members (where applicable), beneficiaries, funders, the Charity Commission, and other regulators (e.g. Companies House). Close attention must be given to the governing document to ascertain the type of organisational structure and the range of interested parties the charity has.

Furthermore, there is a growing demand within the sector and the wider general public, for charities to be open and accountable for their actions and inactions. Evolving best practice would therefore lead trustees to consider the wider implications of the decisions they make, and to communicate widely the formal reasons behind such decisions or actions. Above all else, trustees must adhere to any legal and regulatory requirements applicable to the charity's activities.

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¹¹ This is just a brief outline of the statutory duties of charitable trustees, for more detailed guidance trustees should approach their charity secretary, or other suitably qualified professional.

¹² Unless authorised to do so by the governing document, statute, or by the Charity Commission, trustees should not benefit from the position they occupy. The Charities Act 2006 has amended the position regarding the payment of trustees for undertaking activities outside of those of being a trustee, or the provision of services. Section 36 provides for trustees to be remunerated for services to the charity if certain conditions are met. This is likely to be introduced in early 2008.