

Appointment of a Trustee to a Trust or Charity

Legal Status

1. Trustees will be appointed under a Trust Deed. The role and responsibilities of a trustee will depend, therefore, upon the provisions of the trust deed and/or scheme (collectively referred to as its “governing documents”) and the general law relating to trusts and charities.
2. It is quite common for companies to be set up as trusts with charitable objects. In this case the trustees will also be directors of the company and will have the obligations set out in Appendix C as well as the obligations set out in this section. Councillors involved with charitable companies should ensure that they understand the capacity in which they have been appointed.

Duties

3. The role of a trustee is generally to fulfil the objects of the trust and apply the income and, if appropriate, the capital of the trust in accordance with the provisions of its governing documents.
4. Trustees are subject to various duties, including the duty to:
 - act for the benefit of the charity and its beneficiaries;
 - preserve the capital of the charity (unless the trust deed gives the trustees the right to spend the capital or the charity is small and the trustees have resolved to spend the capital under the Charities Act 1993);
 - make sure income is spent only on the things authorised in the governing documents;
 - invest the capital only in authorised investments, having first taken professional advice;
 - produce annual accounts;
 - act with reasonable care and skill in administering the trust; and
 - to act unanimously (unless the trust deed allows majority decisions).
 - comply with the Charities Acts and other legislation affecting the charity.
5. The Charity Commission’s website - www.charitycommission.gov.uk - contains useful guidance, in particular Publication CC3 - “Responsibilities of Charity Trustees” which outlines the basic principles that should guide trustees when administering their charity:
 - the income and property of the charity must be applied for the purposes set out in the governing document and for no other purposes;
 - the trustees must act reasonably and prudently in all matters relating to the charity and must always bear in mind the interests of the charity. They should not let their personal views or prejudice affect their conduct as trustees;
 - trustees should exercise the same degree of care in dealing with the administration of their charity as a prudent businessman would exercise in managing his or her own affairs or those of somebody else for whom he or she was responsible; and

- where trustees are required to make a decision which affects a personal interest of one of their members that person should not be present at any discussion or vote on the matter.

Liability

6. Trustees are jointly and severally liable to the charity for breaches of trust. They may incur personal liability for losses incurred if they:
 - act outside the scope of the trust deed;
 - fall below the required standard of care;
 - make a personal profit from the trust assets;
7. Trustees will incur personal liabilities under contracts they enter into in the name of the charity. They are, however, entitled to be reimbursed from the charity's funds for all liabilities and expenses properly incurred by them, provided this is authorised by the trustees in accordance with the trust deed.

Observer Status

8. The Council may appoint a councillor to a trust or charity simply in the role as an observer. A councillor acting as an observer should avoid exceeding this role by becoming directly involved in the management of the charity or by being part of the formal decision making process as they may be deemed to be a trustee for the purposes of determining liability.

Insurance and Indemnity

9. An indemnity can be given from the trust fund provided the trustee has acted properly and within their powers. Trustees may take out insurance to protect themselves against personal liability except criminal liability. Payment of the premiums must be authorised by the trust deed if they are to be met from charitable funds.
10. Accordingly, a Trustee will usually only be liable for his/her own activities or for losses arising from his/her "wilful default". The phrase "wilful default" has been held, in this context, as meaning knowingly committing a breach of duty or being reckless as to whether an act or omission is a breach of duty. It would be no defence that the Trustee was unaware of what was contained in the governing documents and was thus unaware of whether something was in breach of duty or not.
11. Officers will advise you whether the Charity has taken out any relevant insurance that covers you as a Trustee in the carrying out of your responsibilities as such. However where insurance is not provided you should raise this as an issue and ask the Charity to take out and maintain appropriate insurance against Trustees' liability. Councillors should be aware that the effectiveness of such insurance will depend on the Charity having the resources to maintain the insurance, which it may not if it becomes insolvent and ensuring that it is both regularly reviewed in terms of cover and renewed. Councillors can also rely on the limited immunity from legal proceedings provided by Section 265 Public Health Act 1875. The principles set out earlier apply equally to Members serving on Trusts, namely that the Councillor must be performing a statutory function and must be acting in good faith. It will not apply if there has been dishonesty by the Councillor.