

What the law expects of Trustees of Scottish charities

It is the principal duty of charity trustees to maintain overall control of the charity. This means to ensure the charity is administered effectively and can account for its activities and outcomes both to OSCR and the public.

Charity trustees: general duties

A charity trustee must: -

- 1. act in the interests of the charity**
- 2. seek, in good faith, to ensure, that the charity operates in a manner that is consistent with its objects or purposes**
- 3. act with care and diligence that is reasonable to expect of a person who is managing the affairs of another person**
- 4. to ensure that the charity complies with the provisions of this Act, and other relevant legislation (e.g. employment law, health and safe and disclosure).**

Charity trustees as a body are collectively or corporately responsible for all the activities of the charity. In other words, all charity trustees are equally accountable for their organisation – they have a collective general duty.

For details see: 'Guidance and Good practice' OSCR June 2016

GOVERNANCE

The Duties and Responsibilities of Charity Trustees

1. Trustees have ultimate responsibility for directing the affairs of a charity, ensuring it is solvent, well run, and delivering the charitable outcomes for the benefit of the public;
2. Work together to ensure that the charity complies with charity law and with the charity regulator OSCR and any another relevant regulator;
3. Ensure that the charity does not breach any of the requirements or rules set out in its governing document and it remains true to the charitable purpose and the objects set out there;
4. Comply with the requirements of other legislation and other regulators that govern the activities of the charity;
5. Act with integrity, and avoid any personal conflicts of interest or misuse of charity funds or assets;
6. Demonstrate independent decision-making when required;
7. Use charitable funds and assets reasonably, and only in furtherance of the charity's objects;
8. Avoid undertaking activities that might place the charity's endowment, funds, assets or reputation at undue risk. Ensure that the charity is and will remain solvent;
9. Take special care when investing the funds of the charity, or borrowing funds for the charity to use;
10. Use reasonable care and skill in their work as trustees, using their personal skills and experience as needed to ensure that the charity is well run and efficient;
11. Consider getting external professional advice on all matters where there may be material risk to the charity, or where the trustees may be in breach of their duties.

GOVERNANCE

Legal obligations

To protect themselves as well as the organisations, Trustees should be satisfied that the organisation is meeting its legal obligations with respect to:

- Statutory contracts and agreements
- contracts of employment and employment legislation
- equal opportunities legislation - in relation to both employment and service delivery
- lease, licence or tenancy agreements for premises, and other leases or licences
- health and safety legislation
- child protection
- Disclosure
- Safeguarding
- Disability Discrimination Acts
- Fundraising
- Insurance requirements
- Financial record-keeping and information, PAYE, national insurance, other taxes, VAT
- Bank accounts, loans, overdrafts
- Work done by the organisation under a service agreement or contract
- GDPR (data protection)
- Copyright and intellectual property law
- Charities Acts
- Cyber security

An example of adherence to legal obligations would mean the Trustees have a process in place to ensure staff have child protection training; and indeed, that they are trained as well if this were appropriate.

Governance roles and relationships

Who decides and who acts?	Board or Development Officer?
1. Changes to key priorities within (i) the business / strategic plan and (ii) front line practice	
2. Formal response to serious break down in relations between two key staff	
3. Response to staff member who informally contacts a Board member to complain about bullying (i) by DO or (ii) a Member	
4. The DO is drafting a proposal to a major funder. The staff formally request a pay increase is included.	
5. Board remit re. significant changes in Health and Safety requirements	
6. Board member found to have contravened policy on confidentiality	
7. How to respond to intimate relationship developing between a staff and Board member	
8. Response to discovery that DO deliberately withheld information on risk during strategic planning to ensure project was agreed to by the Board	

GOVERNANCE + MANAGEMENT (operations)

	Governance	Management
Vision and values	Act as guardians of vision and values	All in accordance with vision + values
Strategic planning	Ensure clear direction and strategic framework including priorities and targets. Ensure pattern of monitoring, risk assessment, reporting and review	Survey needs and impact; draft strategic options; devise work programmes; follow agreed priorities and targets; regularly report on activities, outcomes/ outputs.
Policy framework	Agree programme, priorities, ratify, review and amend	Draft policies; implement ratified policies; account for impact and recommend changes at reviews
Personnel	Establish principles, policies and procedures; be fair employer; enact role in discipline and grievance procedures. Have agreed procedure for Trustee misconduct	Ensure policies are up to date and best practice; provide supervision and appraisal; monitor workloads; enact proper procedures if issues of conduct or capacity
Finance	Ensure proper processes in place; review risk; check and sign off accounts; safeguard investments; be 'cheque esignatory'.	Operate and overview financial systems; prepare budgets and account for expenditure; process for 'cheque signatory'.
Funding	Ensure enough funding for running organisation; establish and review fundraising strategy and ensure ethical standards	Carry out fundraising activities; report on ethical issues, outcomes, opportunities and threats
Compliance	Ensure all legal requirements are met, e.g. charity law, health and safety & reviewed Ensure regular risk assessment	Ensure systems up to date and complied with by all in the organisation. Review and report on changes, issues and impact.
External relations	Establish and review strategy for maintaining and developing external networks, liaison and partnerships,	Attend priority groups and working parties; support partnership arrangements; report on outcomes and issues.

Governance: Trustee self- reflection

As a Trustee of BDT do you feel comfortable that you are able to ...	Yes	Somewhat	No
1. Uphold the culture, values, policies and objects of BDT.			
2. Understand your role and place in the governance of BDT			
3. Prepare for and participate in BDT Board meetings			
4. Use information to make critical decisions (not opinions)			
5. Manage your own learning and development as a Trustee			
6. Remain alert to and responsible about conflicts of interest			
7. Ensure you understand how BDT operates (e.g. structure, services, funding)			
8. Ensure you know about the external environment in which BDT operates (e.g. policies/ priorities of local and Scottish Government).			
9. Take part in strategic planning and in assessing and reviewing risks			
10. Understand the expectations of Boards in relation to charity law and other statutory regulation (e.g. Health and Safety).			
11. Engage with the processes for financial management at BDT and take part in scrutiny of the financial situation.			
12. Promote inclusion and diversity			
13. Support and co-ordinate with other Board members			
14. Attend and contribute to Board reviews, training and Away Day.			

Governance Quiz

For each of the following questions, choose the statements you believe to be true. (In some cases it will be more than one.)

1. How would you describe the role of the Trustee?

- a) Someone who is subordinate to the Chair
- b) Someone appointed for their expertise in a particular area
- c) One among equals
- d) Someone heading up a functional responsibility, e.g. Treasurer

2. To what extent should a Trustee participate in board matters?

- a) Only when asked to do so by the Chair
- b) On matters related to their areas of expertise
- c) Being prepared to offer opinions, advice and to ask questions on all items on the agenda

3. Is the Trustee responsible for board decisions made when they are not there?

- a) No: Not if they raise an objection that is minuted
- b) Yes: Whenever a decision is taken at a properly constituted board meeting
- c) No: They would never be held responsible for decisions made in their absence

4. If, as a Trustee, you are a lone dissenter in a decision, are you still responsible for its implications?

- a) Yes, under collective responsibility
- a) No, you made your position clear
- b) No, if you resigned as a result

5. The principle is that charity trustees cannot be paid for being a trustee, but can you pay a charity trustee for other services they may provide.

- a) No: not under any circumstances (other than expenses)
- b) Yes, without any restriction.
- c). Yes: if the constitution allows it, and less than half the total number of charity trustees are getting paid.

6. Who is accountable for the Chair's decisions?

- a) The Chair
- b) The Development Officer
- c) The Board of Trustees

7. Who is responsible for the finances of a charity

- a) The Chair
- b) The Development Office
- c) The Treasurer
- d) The Board of trustees

9. If a Trustee is invested in the interests of a particular group, e.g. theatre, community users or the local authority, which of the following actions should they take?

- a) Withdrawal from voting / from influencing the discussion.
- b) Voting only in the best interests of the BDT
- c) Vote for the interests of the organisation or group.