AUDIT • TAX • ADVISORY

11 Key Steps for Trustees, 1 Giant Leap for Your Charity

Month to Month Guide

mha MONAHANS

Now, for tomorrow

About MHA

MHA members are progressive and respected accountancy and business advisory firms with offices in over 50 locations across England, Scotland and Wales. Our member firms provide both national expertise and local insight to their clients. As well as advising businesses across the whole of the UK, MHA members, through membership of Baker Tilly International, also help UK businesses who are looking to trade globally (and global businesses looking to trade in the UK). Through Baker Tilly International, MHA members can source 'in country' advice through a network of trusted advisors across 145 territories worldwide.

Our Sector Approach

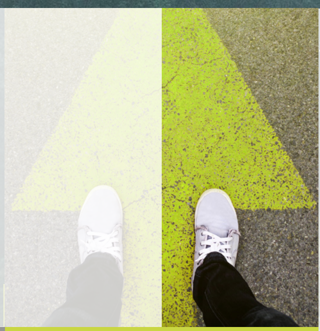
Our award winning teams of charity advisors have the experience and expertise to fully understand the complex and regulatory accounting needs of your organisation.

We act for over 1,600 charitable and not for profit organisations including schools, academies and Further Education institutions. Our clients in the charity and not for profit sector are national, regional, local and international in their reach.

National Reach

50+

Offices nationwide



International Reach

125

Member firms in 145 territories

8

Independent accountancy firms

Combined turnover of

£143m

10th

Largest network in the world by combined revenue

US$3.6bn

Combined member firm revenues

Following on from our governance document, we have created a month to month checklist as a guide for trustees to allow them to upskill and improve standards in a stepped and measured way. The complete checklist in month 12 will aid you from start to finish, improving your knowledge as a trustee over the 12 month period.

Each article covers an area of concern for trustees that you could review within your organisation and leads you through the issues, giving clear advice and signposting where you can find extra guidance.

Working through the checklist will ensure small marginal improvements are achieved at each stage. This will result in a cumulative improvement in trustees' knowledge and in standards within your organisation. It should ensure that you make continual, incremental gains and will assist you in being at the forefront of exemplar trusteeship.

Contents

Finding New Trustees

If only I had a pound for every time a client asked if we know anyone who wanted to be a trustee... It's a challenge and it seems to be an increasing problem for charities of all sizes.

Twitter, Facebook, LinkedIn, websites and blogs are excellent platforms to help charities to get their message to a wider audience.

Charities are looking for quality, skilled, engaged trustees, but can't seem to find them or just as frustrating, can sometimes find them but are not able to retain them for as long as they would like.

The Starting Point

The starting point for trustee recruitment is ensuring the current trustees are fully aware of the process, the reasons for requiring new trustees and are fully on board with the plans. Do they know the timetable, the work required, who will be involved, any budget available to support the process, dates of interviews etc.? It is important to ensure that those who are going to be involved can dedicate the time to the process and be available at the right times, so everything runs professionally.

Assuming you have already completed the skills audit and identified the gap you are trying to fill, now is the time to create a detailed profile of the type of person you are looking for. Someone with 'financial skills' isn't comprehensive enough. You are probably looking for so much more than that. Taking the time to create a detailed set of skills will focus the process but may also attract more of the 'right type' of candidate.

Treat the process as though you were recruiting your most senior member of staff. What skills are you looking for which are essential and which are desirable? These skills should be a mixture of both hard and soft skills, there will be no point in having a person with great finance skills that isn't likely to speak in a meeting and add their opinions into the mix.

You will also need to detail what specifically the role entails, how many board meetings, any sub committee membership, how many ad hoc meetings and the length and timing of meetings. You need to know that the person you recruit can be available when you need them. Someone with the right skills and no time is not the person you need.

The Advert

This can be the most difficult part. Where do you go looking for this time rich, talented individual that will bring skills, ideas and diversity to your organisation? Firstly, think about the type of person you are trying to attract. Where will they be? Either physically or digitally and how can you capture their attention?

An online digital campaign is a great place to start. Twitter, Facebook, LinkedIn, websites and blogs are excellent platforms to help charities get their message to a wider audience. Extend this by asking existing trustees to help you spread the word by liking, sharing and retweeting your content.

Consider the professional networks of your senior team, who do they know that could spread the word for you? Can the charity's accountants, lawyers and bankers help in anyway? Specialist providers may have dedicated pages on their websites to help clients and even newsletters where they could help you spread the word. They can also help promote the trustee position via social media.

You could also approach the Council for Voluntary Action (CVA's) or similar organisations that match potential trustees to charities. A quick Google search of your area should give you some potential organisations to contact.

Most organisations will be looking to ensure a new appointment enhances diversity. Therefore it is worth considering advertising within the student community. Students can be time rich, confident, intelligent and passionate, amongst other things and therefore could be exactly the kind of energy and commitment your organisation needs. It also helps them develop skills that are transferrable to employment.

If the process is treated with the same enthusiasm as finding new income streams, it may not be so difficult after all.

The Recruitment

Now you have some potential candidates, giving the recruitment process proper gravitas will continue to create the impression that this is a sought after role. A shortlist now needs to be drawn up and an interview process undertaken.

At this stage you will know if the candidate has the skills you need, you now need to assess if they are a good fit for your organisation. By fit, we don't mean a carbon copy of all the other trustees, but a fit with your organisations values, whilst remaining challenging and diverse.

When interviewing, ensure you have a plan of questions that cover both the skills required to be a trustee and those skills you are specifically recruiting for. Ensure you ask what the potential candidate's motivation is for wanting to be a trustee, this could be a crucial make or break question for you.

Your next step is to appoint, however, if there is still a question mark over a candidate you could ask them to be an observer for the next planned board meeting to allow both of you to test the water.

The Induction

So now you have someone on board. Firstly, ensure you have gone through the necessary compliance aspect of appointing a trustee. Then your new recruit needs to hit the ground running, take the role seriously, feel empowered from day one to engage and make a difference. The best way to do this is via a thorough induction process.

Induction processes however, are a whole other article!

Did You Know?

The Charity Commission's main guidance is document CC30 "Finding new trustees". There are 65 million people in the UK; statistics from the ONS tell us that in 2015, 81% of these were 16 or over. That's a very large pool to go fishing for trustees. So why does it feel so hard to find them? The reality is, if the process is treated with the same enthusiasm as finding new income streams, it may not be so difficult after all, finding the time to achieve the results may well be the hardest part of the process.

What do you Need for Successful Trustee Recruitment?

- Clearly defined needs
  Exactly what type of expertise would the board benefit from? Define hard skills such as accounting and soft skills such as influencing.
- Clearly defined role
  What does the role entail, what is the time commitment and what impact could they help make?
- A strategic plan of where to market the role
  How wide will the net be thrown? A transparent interview process that lays both parties cards on the table as to what they want out of the relationship.
- A comprehensive and engaging induction process
  A process that gets new trustees up to speed and engaged as early as possible.

How we can Help

If you would like assistance undertaking a skills audit of your board, reviewing your trustee's skills and skills gaps, designing a recruitment process, creating a comprehensive induction process or with any other aspect of trustee recruitment and induction we can help.

Internal Financial Controls

If we asked you how often you carry out a review to challenge the effectiveness of your internal financial controls, what would you say?

Robin Evens
MHA Carpenter Box

Hopefully it's at least once a year, an indication hinted at annually when you complete the charity's annual return and are faced with a similar question; but there will be charities who apply the 'if it ain't broke don't fix it' philosophy and only act once something has gone wrong.

Managing your charity's finances and operations well, will make achieving its objectives much more successful. As trustees with a legal responsibility to protect the charity's assets and mitigate identified risks, having the right set of checks and balances in place at all times is crucial. If you have been fortunate enough not to have suffered any fraudulent activities or theft, breaches or override of controls, or good old human error, this does not mean it will never happen, or that your existing controls continue to be adequate in an ever changing world.

As your charity grows, relies on technology, or becomes more perceptible to outside threats, if financial controls don't evolve, they may well create the opportunity for loss.

What Are They?

What should you be considering? Here are some areas that will need your attention, and further helpful prompts can be found on the CC8 checklist provided from the Charity Commission's website.

- Accounting records maintained, making sure they are up to date and accessible to the right people.
- Regular monitoring and reporting of financial activities.
- Benefits of independent advice and review.
- Risks of exposure relating to financial crime.
- Segregation of duties.
- Practical issues relating to the safekeeping of income and maximising gift aid.
- Controls over expenditure authorisation and internal banking access and limits.
- Assets and investments management.
- Use of funds and restrictions.

It goes without saying, while rigid controls that may no longer be fit for purpose will fail to safeguard, a regular review process to update systems and maintain relevance will not eliminate every possible loss, but it is a strong line of defence and ensures they are as robust as possible.

Your risk register should give you a guideline, as here you should have identified the significant risks that exist for your charity and the controls implemented.

How and How Often?

Do you actually need an annual review? Most likely, but it doesn't have to cover every area, every time.

While some years you may (and should) consider all controls, some years you may focus on areas where change is rife and exposes more risk, new ventures your charity may be exploring and processes that have been flagged as weaker than they should be.

You should be confident that all controls are being assessed over time. It may also be helpful to approach reviews differently year on year, to encourage a fresh approach. This may involve using alternate members of the finance team or other departments, starting with existing controls and shaking them down to test they remain endurable against current threats, or even bringing in an outside resource to undertake a review.

You should also utilise new technology too. So many issues in the third sector rely on judgement and understanding; but why not introduce new software and appliances to your systems that can help monitor, analyse and identify risks and failings in current processes. Embrace technology for the benefits it can bring, merging past knowledge and future insight.

Managing your charity's finances and operations well, will make achieving its objectives much more successful

The Benefits

As trustees you are responsible, you are the guards at the charity's gates, and public perception and trust in your organisation can be tainted in a number of ways.
The philanthropic vision you have and the goodwill you depend upon could be compromised by a disregard for the charity's internal financial controls and practices. When you check the box on your annual return to agree you undertake an annual review of these controls, how comfortable are you that this has been thorough and can stand up to scrutiny?
A transparent system that cares for the charity's assets, manages and mitigates risk, produces timely and accurate accounting information and controls financial transactions, will create opportunities for success.

Don't forget to boast about spending time on these matters! Do you mention that you review these controls annually as part of your Trustees' Report? Turn to any page of the press these days and there are negative stories indicating a lack of care and attention in the not for profit sector; help spread the word that in fact, the majority of the work supported by charities and being pushed forward across the nation is done with honesty and significant diligence.

Did You Know?

The Charity Commission's main guidance is document CC8 "Internal financial controls for charities". Some of it may seem a little out dated, consideration of online banking is as though it's a new technology for example. It has not been updated since July 2012, however the document remains relevant and the checklist is useful. OSCR also includes some guidance in section 5 of their publication "Guidance and Good Practice for Charity Trustees" issued in June 2016.

How do I Know if I am Doing a Good Job?

- The Charity Commission's self assessment checklist
  Do you refer to this source document as a helpful guide to areas that may require your attention?
- Different views
  Do you change the pattern of review year on year, and make sure the right people are involved?
- Take action
  Do you turn recommendations into action plans where an issue arises to keep your controls robust and relevant? Do you monitor if the change has been effective?
- Top down philosophy
  Do you take these controls seriously? Staff and volunteers are more likely to follow, and controls can only be effective if applied by all.

How we can Help

Read the CC8 guidance on internal controls and section 5 of the OSCR publication "Guidance and Good Practise for Charity Trustees" and complete the related checklist. It is also worth considering the March 2017 Charity Guidance – Charity governance, finance and resilience: 15 questions trustees should ask. Although not specifically concerned with internal controls it may help identify any significant issues.

If you have any questions then please do not hesitate to get in touch with a charity sector member of your local MHA firm.

Collaborative Working and Mergers

Many charities are finding increasing pressure on their traditional sources of income.

Jamie Davidson
MHA Henderson Loggie

Local authorities are having to find savings in their budgets due to cuts in central government funding and with the current political uncertainty around Brexit, there is no sign of that changing.

As trustees of charities you need to be innovative in finding either new sources of income or finding different ways to operate more efficiently.

There is potential to find efficiencies by working with other charities through collaborative working or sometimes a decision to collaborate can lead to a formal merger of two or more charities.

Collaborative Working

Collaborative working describes joint working by two or more charities to fulfil their charitable purposes, whilst remaining separate organisations. Types of collaborative working which may be fixed term or permanent include:

- Informal collaborations such as information sharing or lending equipment.
- Outsourced functions such as finance, payroll, or IT.
- Sharing resources, premises, or staffing.
- Joint events, projects, or programmes.

In theory, all of the above could lead to cost savings and may look favourable to funders, however, trustees must ensure that there are clear benefits to the collaborative working arrangement and that the risks are understood before going ahead.

Trustees of charities need to be innovative in finding either new sources of income or finding different ways to operate more efficiently

Trustees must act in the best interests of their charity, so you need to ask yourselves some key questions:

Is the arrangement being considered legally viable?

There are unlikely to be any legal barriers for working collaboratively, providing your charitable objectives are being furthered and the arrangement is permitted by your Governing Document. However, it is likely there will need to be formal legal agreements such as a Memorandum of Understanding, a Service Level Agreement or a contract over the collaboration and formal legal advice should be sought. The structure of the collaboration should be considered as it may be more appropriate to set up a separate legal entity, for example a joint venture.

What are the reasons for collaborating and how will it impact your charity's beneficiaries?

It is important to fully understand your drivers for collaborating, but also your prospective partners' motivations for collaborating. The most common drivers include: cost savings, expertise sharing, greater public awareness and access to new funders. However, the collaboration should not detract from the charity's current projects as there is a risk too much attention may be given to the new collaboration, which could have a negative impact for your charity's core beneficiaries.

What will or might your charity gain and lose from collaborating? Are there significant reputational or financial risks?

With any new arrangement, there is a real risk that the efficiencies and benefits envisaged will not be realised. Barriers for charities working effectively together can include poor communication between parties, lack of responsibility taken by either party and issues surrounding integrating staff and systems. You need to fully understand the organisation you are collaborating with as there is a potential reputational risk to your charity if your partner fails to deliver.

Full Merger

After communication has started between two or more charities, it may become apparent that a merger would be in the best interests of both charities' beneficiaries and be best use of charitable funds. A merger is where two or more separate charities come together to form one organisation. This could be achieved by; forming a new charity which takes over the work and assets of the original charities, one charity could transfer its assets and activities to become part of another charity or one charity could assume control of the other charity, forming a group.

As with collaborative working, you as trustees should not take this decision lightly and need to consider several matters:

Probable Costs of a Merger

There are several costs of a merger which can be considered in advance, including professional fees, costs of integrating systems, relocation expenses and rebranding. The costs of a merger are proper use of charity funds. However, there could be unforeseen costs such as the impact of any disruptions and loss of existing funding, for example if a funder already donated to both charities and then reduces their funding levels.

What Powers are Available to Each Charity to Achieve the Merger?

The charity's governing document must contain the appropriate powers that allow the trustees to authorise a merger. To be able to merge, the charities must have compatible charitable objectives. If these are incompatible but the trustees feel there is a strong case for merger, they can contact the Charity Commission/ OSCR for help with consent and facilitating the merger. It may be once the charities merge, the assets transferred from one charity need to be considered as restricted funds. If the merger does go ahead, in most instances it is required to be registered with the Charity Commission/OSCR.

Level of Due Diligence Exercise Required

As trustees' you need to decide whether it is appropriate to have an in-house due diligence exercise or if a professional adviser should carry out any due diligence required. A due diligence exercise should cover commercial, financial, and legal issues and should help ensure there are no surprises.

Level of Risk Involved with the Merger and how it can be Mitigated

The main risks associated with merging include the disruption of current service delivery, the loss of key staff due to uncertainty and integration issues. These risks can be minimised by having good project management and a detailed project plan with clear milestones which are communicated clearly to the beneficiaries, staff and funders from the outset.

Conclusion

There can undoubtedly be benefits from collaborative working or a merger, but to realise these benefits, careful planning by trustees is required. Strong leadership is required from the outset with well-defined objectives to maximise the success of the arrangement.

As a Trustee What Indicators Should I Look for in my Charity That Collaborative Working or a Merger may be Worthy of Consideration?

- Is funding under pressure or being cut? A merger or working with another charity could give access to new funding sources, as some funders may see partnership working better as value for money.
- Is there a high level of overheads where synergies could be achieved by combining resources?
- Are there opportunities to knowledge share with a similar organisation?
- Is there an opportunity to improve your charity's public profile?
- If your charity is involved in campaigning and lobbying, would working with another party increase creditability?

Did You Know?

The Charity Commission's main guidance is document CC34 "Collaborative working and mergers: an introduction". According to the good merger guide produced by Eastside Primetimers (published on 24th November 2016) the sector saw 54 merger deals between 116 charitable organisations with cumulative income of £799.4m. This is a very small number when you consider how many charities there are in the UK. Moreover, most charities which have participated in a merger have already been in financial distress and have only considered a merger as a final option at or near to point of closure.

Opportunities must exist in the sector for progressive trustees to consider collaborative working or a merger for the potential benefits, rather than as a final measure due to the instability within the sector.

How we can Help

We can provide integration advice including: business planning/projections, due diligence, governance, and structure advice. If you would like to speak to a member of our team about how we can help then please contact us today

Investments

Increasingly, charities are looking to invest funds not just to generate a return, but also to deliver their charitable objectives.

Chris Yeates
MHA Larking Gowen

Why do Charities Invest?

Charities usually invest to generate a return to help them carry out their objectives. This ranges from largescale investment by charities wholly reliant on investment income, to the investment of funds that form part of a charity's reserve buffer.

Increasingly, charities are looking to invest funds not just to generate a return, but also to deliver their charitable objectives. These are known as mixed motive investments. An example is a loan to a subsidiary company where the subsidiary's activities either directly deliver or support the charitable objective.

Virtually all charities undertake some form of investment.

What are your Responsibilities When Making Financial Investments?

As a trustee you have overall responsibility for the investment of the charity's funds. This responsibility cannot be delegated.

When making investment decisions you should use your skills and knowledge in a way that is reasonable in the circumstance (the 'duty of care').

If you can demonstrate that you have considered the relevant issues, taken advice as appropriate and reached a reasonable decision, it is unlikely you will be criticised for your decisions.

Setting Investment Objectives

Trustees should approve an investment policy. The policy is the framework in which investment decisions are made. The policy may be very simple, for example if the charity has limited funds to invest, or more sophisticated, for example, if the charity has significant permanent endowment to invest.

When setting the policy you need to be aware of the immediate, short, medium and long term plans and financial needs of the charity.

The policy will also set out the level of risk you are willing to take. You must be satisfied that the overall risk is right for the charity and its beneficiaries.

This doesn't mean avoiding risk completely. For example, if you are investing funds that you know the charity will need in the short to medium term, the level of risk should be low. However, for funds invested for the longer term, the level of risk can be higher because short term drops in the capital value of invested funds will not impact the charity's operational capabilities.

A good investment policy will cover:

- What is the charity trying to achieve by investing?
- Attitude to risk.
- How much is to be invested and for how long?
- The types of investment the charity wishes to make.
- How investment decisions are made.
- How investment performance is measured.
- Role of investment managers.

What can you Invest in?

Investments that are very high risk or controversial are unlikely to be suitable. If you would be uncomfortable with your investment decision being reported in the media, this is an indicator it is not a suitable investment for a charity.

The most common forms of investment charities make are cash deposits, equities, government securities, unit trusts and property.

You should consider diversifying your investments as a means of managing risk. You can invest ethically, but you must be able to justify why it is in the charity's best interest.

In order to preserve tax advantages, if challenged, you would need to be able to demonstrate that the investment was made for the benefit of the charity and not for the avoidance of tax. As long as best practice is followed this should not be an issue.

How Should you Make Investment Decisions?

The investment policy and key decisions, including rationale, should be recorded in writing.

When making decisions, you need to consider whether external advice is required. Where the only investment is moderate cash deposits, this is unlikely. However, for complex or significant investment decisions this is likely to be necessary. You could also consider appointing a trustee with specialist investment knowledge. When obtaining advice you must ensure the person is suitably qualified and impartial.

For equity investments, an investment manager may be used. Even if you have delegated some investment decisions to an investment manager, you must retain overall control. This can be achieved by ensuring the investment manager acts only in line with your instructions, which are determined by your investment objective and policy. There should also be a regular review of the suitability and performance of the investment manager.

Investments in subsidiaries should be appraised just like any other investments.

Monitoring Performance

Investment performance must be monitored. The 'how' and 'when' should be set out in your investment policy.

You should compare performance with benchmarks and objectives. If investments are under or over performing, you should determine why and consider whether it is acceptable. If it is not, you should be prepared to act.

Mixed Motive Investments

These are investments made both for financial return and to help meet the charitable objective.

You must be able to demonstrate that making the investment is in the best interests of the charity, taking into account both the financial return and advancement of the charitable objective.

Mixed motive investments however, are not permitted where there is an inappropriate level of private benefit as a result of the investment. This is where charities can make mistakes, so take care. For example, investing in a project with a trustee may make financial sense, but if the trustee will also obtain significant financial reward from the investment, and therefore obtain a private benefit, this is unlikely to be an appropriate investment.

Did You Know?

- The Charity Commission's main guidance is document CC14 "Charities and investment matters: a guide for trustees".
- Charity sector investments exceed £85bn.
- Over 60% of charities have some form of investment (not including current accounts).
- Removing the impact of inflation, the sector's investments grew by 34% between 2007/08 and 2014/15.
- Investment income comprises approximately 7% of total charity income.

Bank Deposits

Don't forget cash in the investment policy. Consider:

- **Access:** You must ensure that access to funds is compatible with the charity's cash demand.
- **Which institution:** Cash should only be deposited with reputable institutions. Other factors to consider will be the rates of interest, location etc.
- **Protection:** The Financial Services Compensation Scheme (FSCC) offers protection to account holders on the first £85,000 of funds. You should decide whether to limit deposits in each institution to £85,000. Note that the compensation is available per UK banking licence. Some banks, if part of the same group, will share a licence, meaning accounts with two seemingly different banks will have only one £85,000 available, or example, HSBC and First Direct.

How do I Know if I am Doing a Good Job?

Ask yourself:

- Do you have a written investment policy, approved by the trustees?
- Are you acting in line with the policy?
- Are significant investment decisions, including the rationale, documented?
- Do the trustees have sufficient expertise to make informed investment decisions? If not, is appropriate advice taken?
- Is investment performance regularly reviewed? And just as important, do the actions from the review accord with the results and also the overarching investment policy?
- Is the investment policy regularly reviewed to ensure it remains appropriate to the charity?

How we can Help

We recommend that all charities review their investment policy to confirm it remains relevant and is being applied. If you need any help with drafting an investment policy or with any other areas, please don't hesitate to get in contact with us today.

You must ensure that access to funds is compatible with the charity's cash demand

Trustees Meetings and Decision Making

The board papers arrive in your inbox or on the doormat. You have a quick peek at the agenda, note there are lots of supporting documents, flag it to look at later… but then run out of time and arrive at the meeting unprepared.

Helen Blundell
MHA MacIntyre Hudson

Does that sound like a familiar story? It isn't best practice, but it probably happens more often than it should.

Trustee Meetings

The governing document of your charity will probably set out certain requirements around meetings, such as the frequency, notice periods, who chairs the meeting and how many people must be present in order for the meeting to be quorate and the decisions held to be valid.

Not all decisions have to take place in a meeting, unless your constitution requires it. If there are circumstances where decisions are made by e-mail or telephone conference, don't forget to ensure these decisions are recorded. A framework is needed to record how decisions taken between meetings are made, this should be recorded in the meeting minutes.

Structuring Your Agenda

There is no legally prescribed agenda, but as a matter of best practice you should include:

- Apologies;
- Approval of the minutes of the last meeting;
- Declaration of any conflicts of interest relating to matters to be discussed on the agenda.

If you have an item that you want included in a meeting, consider notifying it in advance so that it can be allocated a time slot if appropriate, or picked up in any other business (AOB) at the end of the meeting.

Top Tips

- Set the agenda with an estimated time allocation for each item.
- Be realistic and don't overfill the agenda.
- Identify the purpose of the item – is it an update/ verbal report, to be discussed, requires a decision, policy review? This is helpful to ensure everyone is prepared for all items.
- Prioritise the agenda – leave the less important items to the end, so if you run over you can defer to the next meeting.
- Include 5 minutes at the end to reflect on what could be improved for future meetings.
- If the item is an update, consider sending it with the board papers instead, allowing time for any questions if relevant.

Preparing for Your Meeting

Informed decision making by charities is at the heart of good governance. That means you need to be informed. Focus on the agenda items with supporting papers where a decision is required.

If you don't understand the context, plans and risks and how they fit with the charity's objects and strategic plan, then it is unlikely that you will be making a valuable contribution to the decision making process.

Even if you aren't able to attend a meeting, you should consider whether you need to provide some input, this could be an e-mail or a conversation with the Chair.

Informed decision making by charities is at the heart of good governance

Participating in Your Meeting

There is usually a lot to get through in meetings, so make sure that your input is relevant and concise. Don't waste time debating the minutiae if it isn't key to the decision making, instead look to delegate this to staff or sub-committees.

Make sure that if there is a decision to be made, everybody is clear on what has been decided and that it is recorded in the minutes. If there are any key factors in reaching a decision, make sure that they are reflected in the minutes. The minutes of your considerations and decisions are the evidence on which you would be judged as to whether you had fulfilled your duties as a trustee.

Not every decision that is made is the right decision with the benefit of hindsight and the regulators recognise that too. In the event of a concern being raised, you would be assessed on whether the decision made is within a range that any reasonable trustee body would make.

The important thing is to know that you have:

- Acted within your powers.
- Reached a decision in good faith, in the interests of the charity.
- Been sufficiently informed (on occasions that might need specialist advice).
- Considered all the relevant factors (ignoring irrelevant factors).
- Managed any conflicts of interest.

From time to time there will be follow on decisions to be made after the meeting. If this is the case, make sure that you are clear on who has the authority to make those decisions and any limitations on that authority. Is there a mechanism for additional consents if required between meetings? Don't leave a meeting with nagging doubts, make sure they are addressed.

Reflecting on Your Meeting

There can be numerous ways of measuring whether the meeting was effective. Did you get through all of the agenda, did you finish early, did you get your say? The important questions should be:

- Did you focus on the right issues? (Or did you stray into micro-detail?)
- Did the trustees have the right information to be able to make informed decisions?
- Was the meeting quorate?
- Were conflicts of interest dealt with properly?
- Did you make a decision or just defer it?

Taking five minutes to reflect on what you could have done differently both as an individual and as a board could help improve the effectiveness of future meetings.

How do I Know if I am Doing a Good Job?

- Are you able to participate in the discussion with an understanding of the issues and impacts?
- Are you proactive in your participation?
- If you are uncomfortable with any issues, have you voiced them?
- Do the minutes make decisions clear and the relevant factors in reaching the conclusion?

Did You Know?

- The Charity Commission's main guidance is document CC48 "Charities and meetings".
- 50% of the issues identified in the Charity Commission's compliance cases were governance related and of those, almost 10% had issues around decision making.
- Trustees are collectively responsible for a decision, even if you were not present or did not agree.
- Your decisions should be made "in the best interests of the charity" and not your personal preferences.
- Trustees are only counted as 'present' if they can both hear and see the meeting. Therefore, people can participate by telephone but would not count towards the quorum unless they can see via a two way video conference.

How we can Help

Remember that the trustees are collectively responsible for decision making.

Why don't you ask for a short agenda item at the next trustees meeting to reflect on how you prepare for, discuss, record and enact your decisions? If you would like any help or advice with your trustee meetings or with decision making, please don't hesitate to get in touch with your local MHA member firm.

The minutes of your considerations and decisions are the evidence on which you would be judged as to whether you had fulfilled your duties as a trustee

Trading and Tax

It's often thought that a typical charity is an organisation that asks for donations and spends the funds on charitable activities.

Chris Harris
MHA MacIntyre Hudson

In fact, donations make up just over 30% of total income for charities (Dec 16, Charity Commission Register), with over 60% coming from trading to raise funds or fees for charitable activities. So charities have twice as much earned income as donations. This article provides information for trustees on how to trade safely.

Trading and Tax

UK charities have preferential tax status (derived from the Elizabethan principle that socially beneficial activity should not be subject to tax). Many involved with the charity sector would suggest that this principle has been lost over time, however HMRC report that the value of benefits to the sector was £3.8bn in 2016/17. In practice there are some taxes that charities pay in full such as National Insurance; some where there are exemptions such as VAT; and others where tax is rarely paid such as corporation tax. The primary guidance from the Charity Commission is set out in Trustees, trading and tax – how charities may safely trade (CC35), alternatively HMRC also provides valuable guidance and most charities will need to consider both.

The Nature of Trading

Donations are not a trade, because nothing is received in return (technically, a non–exchange transaction). Any exchange of goods or services for money is a trade. However, there are complexities and the following issues all need to be considered:

- The number and frequency of transactions.
- The nature of the goods being sold.
- The intention of the charity in acquiring the goods to be sold.
- Whether the goods can be used and enjoyed by the charity.
- The nature and mechanics of the sales.
- The presence or absence of a profit motive.

When a charity is selling an asset, such as an investment or a property, it will not usually be regarded as a trade. However, advice should always be taken considering the specific nature of the transaction.

What Trades are Lawful for Charities

The main aspect is trading that contributes directly to the provision of charitable activity, known as primary purpose trading. A related aspect is ancillary trading, where a secondary activity is provided in support of the primary activity. A third aspect is where the purpose is to raise funds for the charity and the activity does not involve significant risk. Risk is limited by the small scale exemption.

Primary Purpose Trading

This covers the majority of charitable activity and where fees are charged for goods or a service.

Specific examples include:

- Course fees at a charitable school or college;
- Sale of goods manufactured by disabled people at a sheltered workshop;
- Residential care and accommodation at a residential care charity;
- Sale of tickets for a performance by a theatre charity;
- Entrance to a charitable museum or art gallery.

Ancillary Trading

Ancillary trading is where a service is provided that supports the primary activity, such as a café in a theatre for the audience. It must be closely aligned with the primary activity and the purpose of raising funds for the charity is not sufficient to qualify.

HMRC report that the value of benefits to the sector was £3.8bn in 2016/17

Non Primary Purpose Trading

Charities can undertake non primary purpose trading, but the principle is that they are liable for corporation tax (or income tax if they are a charitable trust) unless the activities fall within specific exemptions:

- Lotteries;
- Small scale;
- Fundraising.

If these exemptions do not apply, charities are advised to establish a trading subsidiary. This trading subsidiary would normally be limited by guarantee and in the event that it became insolvent, the charities assets would be protected.

Small Scale Exemption

The small scale has a threshold calculated with reference to the overall income of the charity and the income from the trading activity. For small charities with overall income of less than £20,000, the threshold is £5,000 with a sliding scale at 25% of overall income to a maximum permitted turnover from trading of £50,000.

Fundraising and Lotteries

Most fundraising events are exempt from corporation tax, but they cannot be a trade and therefore provide unfair competition with commercial companies. Therefore, charities need to consider the detailed guidance available in Charities and Fundraising CC20 and in the OSCR publication "Benevolent Fundraising". Lotteries are trading, but there is a specific tax exemption for charities as Lotteries are governed by the Lotteries Act 1976 and this limits the risk.

Trading Subsidiaries

Trading subsidiaries are a commercial company, normally fully owned by a charity, although it is possible to have other shareholders if that route is chosen. The company requires directors and to be administered according to company and tax law. The charity will have to demonstrate why they are investing in a trading company and how this investment is an appropriate use of charitable funds. A trading company should protect the charity's funds from risk and could bring some tax advantages. However, it will involve higher costs of administration.

Funding the Trading Subsidiary

As the owner, the charity will normally be responsible for providing the funding for the subsidiary to operate. Any loan must include properly set out terms of repayment and interest payable.

Donating to the Charity From the Trading Subsidiary

Companies can make donations and treat them as expenses, therefore reducing any taxable profits. However, this is normally limited to small amounts. Trading subsidiaries will donate all unretained profits at the year end. There has been an argument about the form of this transaction, whether it is a donation (an expense) or a distribution of profit, but a gift aid declaration is still made and recognised by HMRC. A trading subsidiary cannot donate under gift aid more than the profit it has available for distribution.

How do I Know if I am Doing a Good Job?

- Make sure the charitable activities of the charity are within those set out in the governing document.
- Make sure any ancillary trading has not, over time, developed its own distinct customers.
- Check that fundraising activities are clear in setting out what is a donation and what is a payment in exchange for a good or service.
- Review the basis of the ownership of a trading subsidiary to make sure that it remains a good investment of charity funds.
- Commission a charity tax review by your specialist charity accountant.

Did You Know?

Charities have twice as much earned income as donations (CC Register Dec 16).

How we can Help

When a charity is not solely funded through donations, the trustees should make sure they understand their tax position. If in any doubt, please do not hesitate to get in contact with us today.

A trading company should protect the charity's funds from risk and could bring some tax advantages

Campaigning, Lobbying and Political Activity

There are some charities that have always embraced campaigning as an important aspect of their work.

Sudhir Singh
MHA MacIntyre Hudson

Others have just started such activities more recently, perhaps in the face of funding cuts, to protect the rights of their beneficiaries. However, there is an increasing view that many charities are discouraged from campaigning, due to fears of being criticised by the public or politicians, or the possibility of regulatory intervention by the Charity Commission (or the Office of the Scottish Charity Regulator in Scotland).

This article aims to demystify the rules on charity campaigning and lobbying, and empower charities to undertake such activities if their trustees choose to do so. The key reference for charities is the Charity Commission's guidance set out in its publication "Campaigning and political activity guidance for charities" (CC9) and for charities registered in Scotland, the OSCR publication "Charities and Campaigning on Political Issues FAQs".

A Simple Summary

The key message is that charities can lawfully carry out campaigning and political activities.

In brief the position is that:

- Charities don't have an obligation to either campaign or undertake political activity;
- If chosen to do so, it must be fundamentally to further the charity's charitable purposes for the public benefit;
- Activities should be in the best interest of the charity's beneficiaries; and
- Remaining neutral at a party political level is essential.

More Detail

Charities cannot be established with their objects (purposes) being primarily to undertake political activities. Since the gateway process for charity registration would normally guarantee this, it might be assumed that such a situation is unlikely to occur.

However, the extension of the definition of charitable purposes from 2006, in areas such as the advancement of human rights, has clouded some of these apparently clear definitions.

Subject to this, the guidance is clear that charities may undertake campaigning and political activities; however, they must not be party political, favouring the general policies of any specific political party. They may support a particular policy, as long as their political independence is not impaired.

When engaging with politicians, charities must be particularly aware of the need to be completely evenhanded in their relationships with political parties. Overt transparency in any such dealings is always advisable to demonstrate neutrality.

If you seek to engage with politicians and political parties be wary, demonstrating even-handedness to all potential parties can involve significant time and cost. CC9 includes a useful checklist on what is appropriate. For trustees this is a helpful tool when campaigning or political activity is being contemplated.

Some charities have established complex group structures with independent entities providing their campaigning 'arm'. In some instances it is questionable whether these structures are really necessary, as these activities may all be considered validly charitable.

Avoiding Regulatory Intervention

Inevitably charities are concerned about triggering intervention by the Charity Commission or OSCR. Charity regulators will respond to issues that arise as with any other complaint or concerns about charities. If your charity is approached by the regulator, that in itself is not necessarily a significant concern. More often than not, once a charity responds to the Commission's enquiries, the matters are resolved swiftly and no public reporting is done of this regulatory action. Guidance in CC9 indicates very few complaints about charities that have been upheld.

Charities can lawfully carry out campaigning and political activities

Elections and the Electoral Commission

Whilst the fundamental essence of guidance on charity campaigning has not changed over recent years, what certainly is vastly different is electoral law affecting charities. In particular the Political Parties, Elections and Referendum Act 2000 (PPERA), and the Transparency of Lobbying, Non Party Campaigning and Trade Union Administration Act 2004 (typically known as the Lobbying Act) have had a significant impact on the charity sector. The Electoral Commission is an independent body set up to regulate party and election finance and set standards for well-run elections. They have prepared helpful guidance for charities that explains the impact of election law on the sector.

The key consideration is where a charity falls within the definition of a non-party campaigner (see definition below). In such situations, charities need to be mindful of expenditure on regulated activities during a regulated period. Where campaigning activities can reasonably be expected to influence people's voting choice, and that expenditure exceeds £20,000 in England, and £10,000 in each of Scotland, Wales and Northern Ireland, during a regulated period, then the charity will need to register with the Electoral Commission. Once registered, charities need to follow the rules and reporting requirements on campaign donations and spending, such as general election spending limits. This can have significant accounting implications for charities, particularly in branch based organisations where detailed records will need to be maintained. Similarly, rules on who can donate and the reporting of donations to the Electoral Commission can be quite onerous.

Key Definitions:

Campaigning: Refers to awareness raising and efforts to educate or involve the public by mobilising their support or to affect public attitudes. Often this involves activities to ensure existing laws are upheld.

Political Activity: Refers to activities which aim to gain support for, or to oppose a change, in law or government policy.

Non-Party Campaigners: Are individuals or organisations that campaign at the time of elections, but are not standing as political parties or candidates.

Regulated Period: Is the time set before an election during which the set rules on spending and donations apply. For UK parliamentary elections, the period is usually the 365 days leading up to the election, for other elections this is normally a four month period.

Did You Know?

Following the summer 2017 General Election, the Charity Commission investigated 41 cases of complaints regarding campaigning activities. Alongside this the Commission published case studies that demonstrated in the majority of these cases complaints were not upheld. The Commission restated their previously expressed view that "charities have a valuable role to play in raising awareness of, and encouraging debate about, issues that affect their beneficiaries and wider society".

How do I Know if I am Doing a Good Job?

- If charities wish to undertake campaigning or political activities, the impetus to do that must be derived from the charity's agreed strategy, so ensure this has been given trustee approval.
- There should be a clear trail from the charity's objects and the best interests of beneficiaries to the activities undertaken.
- Where the activity has any possibility of being party political, then particular care needs to be taken, ensuring clear safeguards are in place.
- During election periods, put in place a formal process to monitor adherence to the Lobbying Act requirements. Since snap elections can take place at any time, campaigning charities may wish to establish a permanent process.
- Actively consider the merits of campaigning - the rise and power of social media provides great opportunities for charities to communicate their causes, but the rapid and relatively informal nature of this form of communication means traditional systems and controls may not be adequate to manage campaigning.

How we can Help

At a time of funding austerity it may be that campaigning is a highly effective way to achieve your charitable aims. Whilst there have been calls to reduce some of the provisions of the Lobbying Act to make it less onerous for charities, this should not necessarily be a barrier to campaigning. Should you like to consider this further, please discuss this with your local MHA contact.

Risk Management

The absence of an effective risk management process can dramatically impede trustees' ability to perform.

James Gare
MHA Monahans

Is Your Approach to Risk Management Fit for Purpose?

Most trustees know that risk management is something that they need to be involved in. However, for many it is seen as just another regulatory hoop their organisation needs to jump through with only a minimal value to the organisation.

It is no secret that charities often have limited resources available to invest in a risk management process, and it probably isn't surprising that the task is sometimes delegated to one or two individuals who may piece together a rudimentary risk register as a desktop exercise. With such a limited perspective of the organisation, the resulting discussions at board level tend to quibble on the deemed severity or likelihood of risks, or focus on one or two key risk areas rather than standing back and considering whether the overarching framework is fit for purpose.

If this describes your organisation's current approach to risk management (either fully or in part), then your organisation is potentially ignoring one of its most useful tools in its governance tool box and the consequences could be catastrophic.

Why Should my Organisation Prioritise its Engagement With Risk Management?

Governance should be about oversight, which means steering the organisation's vision, mission and strategy. In my experience, the absence of an effective risk management process can dramatically impede trustees' ability to perform this role.

If you find that trustees meetings are focusing too heavily on operational decisions rather than the organisation's strategic direction, the chances are that the trustees are not being given enough peripheral information of the organisation and its likely challenges to properly 'steer the ship'.

A properly implemented and effective risk management strategy can address this. By managing risk effectively, trustees can also help ensure that:

- Internal reporting functions, such as management accounts, are constructed to monitor and report on risky aspects of the operation, enabling trustees to make pro-active and timely decisions.
- Reserves policies properly reflect and adapt to the risk environment.
- The charity makes the most of opportunities (risk management isn't just about things going wrong) and develops them knowing that risks will be managed.

What Does an Effective Risk Management Framework Look Like?

To be effective, a risk management framework requires the buy in and involvement of a wide range of people. The idea that one or two individuals can undertake this work from an 'ivory tower' is a common, yet fatal mistake.

Ideally, everyone in the organisation should have an awareness of the risk management framework and be able to feed in their concerns, at any time during the year. Where appropriate, specialist software can be used to allow risks to be identified and passed up the chain for consideration in 'real-time', resulting in a living and breathing system within the organisation. It is also a misnomer that the process should purely focus internally. There is nothing stopping a charity from discussing risk with external stakeholders and indeed this approach should be encouraged. Beneficiaries and key funders can all help contribute towards the organisation's appraisal of risk and many would value being asked for their involvement as it reinforces the message that your charity values stakeholders' views.

How we can Help

If you are a trustee or a Senior Manager, it is worth asking your boards to consider the effectiveness of your charity's risk management framework. It's a simple yet powerful tool that can greatly improve governance within an organisation. If you have any questions arising from this article, or would like to speak to a member of our team about how we can help, please get in touch with your local MHA member firm.

It is also critical to be able to identify and address risks quickly. For example, cybercrime is increasing. In recent months, there have been a number of well publicised cases of large organisations who have been crippled by malicious software, and as auditors we are hearing of more and more attempted attacks against smaller organisations too. The writing is on the wall. Ensure that your IT is fit for purpose or pay the price. Yet, despite this very clear warning, many charities continue to spend a significantly lower amount on cyber security than similar sized commercial organisations. One wonders why, as a sector, it is taking charities so much longer to acknowledge and adapt to this very real and emerging risk?

The framework also needs to effectively prioritise and disseminate the information it collects for different users. Those delivering services are likely to need detailed information on their operations, while trustees will be looking for summarised information on the top risks. This in turn should allow the right types of decision to be made at the right level.

Did You Know?

The Charity Commission's main guidance is document [CC26 "Charities and risk management"](). It is a legal requirement for charities over the audit threshold to discuss risk management in their annual accounts and it is encouraged for smaller charities too. A description of the principal risks, together with a summary of the plans and strategies for managing those risks should be included. If your risk management is effective, this is a good opportunity to demonstrate effective governance.

How do I Know if my Charity is Managing Risk Effectively?

It is helpful for boards to ask themselves the following questions on a regular basis:

- Are you regularly discussing risk at a board level? An annual run through the risk register probably isn't going to be sufficient. Boards should be continually thinking about risk and the mechanisms for identifying and working with them.
- Does risk management help you to make strategic decisions? A risk management framework should steer the organisation's strategy. If you are not receiving the necessary KPIs to monitor your most significant risks and not feeding risks into your strategy (such as your reserve's policy), chances are you are not using the risk management systems to 'steer the ship'.
- Are you listening to everyone in the organisation? Risk management is the responsibility of everyone and the more people who engage with it, the more powerful and useful it will become. It may be a big cultural change to engage staff in this way, but the efforts will pay dividends.
- Are you identifying risk through discussion with your key stakeholders? Stakeholders such as beneficiaries and funders will likely have helpful and unique insights into your organisation's risks. Not listening to them could be catastrophic.
- Are you getting the right information at the right levels in the organisation? Trustees need high level summaries, while other people may require greater detail.

Expenses

It has long been the case that one of the most defining aspects of the charitable sector is that trustees are unpaid.

Steve Fraser
MHA Monahans

This helps enforce the basic principle that trustees must not place themselves in a position which could lead to a conflict between their personal interests, and the duty of care they owe to the charity.

Payments which in certain circumstances can be made to trustees include:

- Expenses.
- Payments in kind – for example, the free use of a charity's facilities.
- For the supply of services.
- For being a trustee.
- As an employee of the charity.

There are strict guidelines around each of these that trustees must be aware of. In some cases, permission might be needed from the Charity Commission, or indeed the courts, before payments can be made. These are complex areas, and trustees should be aware of the guidance given by the Charity Commission in their publication CC11: Trustee expenses and payments and by OSCR in Section 6 of their publication "Guidance and Good Practice for Charity Trustees".

The scope around payments to trustees is wide. Therefore, this article concentrates on the most common type of payment – expenses.

Expenses

There are the best part of 600,000 charity trustees in the UK, with the vast majority of these being unpaid. The Charity Commission has made it clear that they do not expect these trustees to be "out of pocket", although some may choose to be so. Therefore, the claiming of expenses is seen as being perfectly reasonable, if dealt with correctly. By paying reasonable expenses, a charity may also widen the scope of who they might attract as a trustee, and the age range and backgrounds they represent.

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The Charity Commission has made it clear that they do not expect these trustees to be "out of pocket", although some may choose to be so. Therefore, the claiming of expenses is seen as being perfectly reasonable, if dealt with correctly. By paying reasonable expenses, a charity may also widen the scope of who they might attract as a trustee, and the age range and backgrounds they represent. To ensure that expenses are dealt with correctly, it is essential that a charity has a properly thought through expenses policy, which is set out in writing and fully understood by all trustees. It should also be reviewed on a regular basis. The policy should set out what can and can't be claimed as an expense, and how they should be reclaimed.

Expenses are normally seen as costs incurred by trustees (or on their behalf) in carrying out their duties for the charity, and which are refunded by the charity. If properly repaid, expenses are neither a trustee payment nor a personal benefit in kind. Any claims would normally be supported by invoices or receipts, unless this is impractical or the amounts are very small. The need for supporting documentation would normally be dealt with by a charity's expenses policy.

So, what expenses can be reclaimed? As long as they are reasonable and incurred in order to assist a trustee to fulfil their duties, it is probable that a legitimate expense is refundable, unless, of course, the charity's expense policy says otherwise.

The claiming of expenses is seen as being perfectly reasonable, if dealt with correctly

Expenses that can typically be repaid include:

- The costs of travelling to and from trustee meetings, or other charity events. These might include fares for taxis and public transport, or a fuel allowance (although normally only up to HMRC's limit).
- The cost of meals while on charity business.
- The cost of items such as postage, stationery and phone calls while on charity business.
- The cost of training or other materials relevant to a trusteeship.
- The cost of accommodation and subsistence while away from home on charity business, such as training courses or sector conferences.
- The cost of translating documents where this is required.
- The cost of support for disabled trustees, such as specialist transport or translating documents into braille.

If a charity merely refunds costs incurred by trustees, then the payment shouldn't be taxable. However, separate advice should be taken on this issue.

On occasion, it might be necessary for payments to be made in advance of expenses being incurred. For example, when attending a conference where overnight accommodation is payable in advance.

As well as appreciating what is reclaimable as an expense, it is also important to recognise what isn't. What isn't might include:

- Amounts which are excessive, or unreasonable;
- Amounts which are outside of a charity's expense policy;
- Fuel allowances which are more than HMRC's limit;
- The cost of accommodation where a trustee is accompanied on charity business by someone who themselves are not travelling on charity business;
- Costs unrelated to the charity.

It is worth noting that where a trustee is reimbursed for purchases made on behalf of a charity, then these are treated as part of the charity's general expenditure rather than as an expense.

It should go without saying that expense payments made by a charity must be properly accounted for. In addition, charities that prepare accrual accounts, and must therefore follow the applicable SORP, are also required to make certain disclosures in their accounts around trustee expenses.

These include the total amount of trustee's expenses, the nature of the expenses, and the number of trustees involved.

On occasion, it may be unclear as to whether an expense is repayable or not. In these cases, it may be necessary to take advice. If the payment is determined as a trustee benefit rather than an expense, the Charity Commission may still be able to approve it.

As a Trustee, What Should I be Doing?

- Consider carefully "CC11: Trustee expenses and payments" and "OSCR: Guidance and Good Practice for Charity Trustees", and the implications of this for your charity.
- Ensure that your charity has an expenses policy, and that it is fit for purpose.
- Review the policy on a regular basis, or as circumstances change.
- Ensure that all trustees are aware of the policy, and adhere to it.
- Put procedures in place to ensure that the expense policy is adhered to.

How we can Help

The area of payments to trustees, in all their forms, is a difficult one, and one rife with potential problems. Trustees need to consider CC11 and "OSCR: Guidance and Good Practice for Charity Trustees" carefully, and ensure that their charity has the systems and policies to deal with these matters.

If you require any assistance, then please contact us.

Fundraising

Charities spend a great deal of time and resources raising funds through a wide range of activities.

Tracey Johnson
MHA Moore & Smalley

Whilst this would appear to be an inherently good thing in that ultimately funds are raised for the charity, the way that this is done and the costs incurred are often scrutinised and criticised. Adverse stories in the press or Charity Commission investigations often focus on the way that funds have been raised, which causes significant harm to the public perception of the charity.

What are Your Responsibilities as a Trustee?

There are six fundraising principles which summarise the responsibilities of a trustee:

- Plan effectively
- Supervise your fundraisers
- Protect your charity's reputation, money and other assets
- Identify and ensure compliance with laws and regulations
- Identify and follow recognised standards.
- Be open and accountable

Plan Effectively

Any plan for fundraising must initially start as a wider review of the income needed by the charity to achieve its objectives and how this is to be raised. Once the role of fundraising in income generation has been established, the trustees should then set the fundraising strategy.

The fundraising strategy should include details of the fundraising methods to be used, the likely costs, any risks involved and how the fundraising will reflect the values of the charity. Once the plan has been agreed, trustees should regularly monitor the progress of the plan and the activities undertaken.

Supervise Your Fundraisers

You are likely to delegate fundraising activities to employees, volunteers or commercial partners. In terms of employees and volunteers, you should ensure that a fundraising policy is in place which outlines:

- The role of the employee or volunteer;
- The rules which must be complied with, for example when talking to the public;
- The training required, and;
- The reporting requirements so that you can monitor activities effectively.

Where you decide to work with a professional fundraiser, you must be satisfied that this is in the best interests of the charity. Any cost involved must be reasonable in comparison with the money raised. Some fundraisers use a model which results in only a small proportion of funds raised being passed to the charity and there is a risk that this could damage the charity's reputation. The fundraiser is required to tell donors the proportion of income which will be passed to the charity and you need to ensure that this solicitation statement complies with the regulations and is being followed.

Additional due diligence will be required to ensure the fundraiser is suitable and appropriate and that there are no conflicts of interest. The agreement should be regularly reviewed.

We would recommend that if you are considering using a professional fundraiser, you should obtain additional advice at the outset to ensure that the agreement is set up correctly.

A similar situation occurs where the charity has a trading subsidiary. Trustees should be monitoring its performance and ensuring its activities are in the best interests of the charity.

The fundraiser is required to tell donors the proportion of income which will be passed to the charity

Protect Your Charity's Reputation, Money and Other Assets

Any fundraising strategy needs to be incorporated into your risk review. There are likely to be both reputational risks and financial risks associated with fundraising. The plans for mitigating these risks need to be incorporated in to the fundraising strategy. You should be able to justify any costs involved and have procedures in place to ensure that you are receiving all the funds to which the charity is entitled.

Cash collections are a key area of risk and are susceptible to fraudsters. Additional guidance on best practice for cash collections is available as part of a financial controls checklist produced by the Charity Commission.

There have also been cases where donations have been used to facilitate money laundering. You need to ensure that staff understand the risks and perform checks on donations received from donors they don't know. You also need to have procedures in place where funds are being raised on your behalf by a third party. Unauthorised use of your name could impact significantly on the reputation of the charity.

Identify and Ensure Compliance With Laws and Regulations

The laws and regulations governing fundraising are contained in the Code of Fundraising Practice which you should familiarise yourself with. The regulations cover cash collections, running events, the statements that professional fundraisers are required to make to the public, and the rules regarding lotteries and raffles.

Identify and Follow Recognised Standards

Fundraising standards are also contained in the "Code of Fundraising Practice" and cover areas such as using enclosures in direct mail packs, completion of due diligence, training for face to face fundraisers, and security of cash donations.

The Fundraising Regulator regulates charities' compliance with recognised standards. If you register with the Fundraising Regulator you will be included on a public register which demonstrates your commitment to high standards in fundraising. Registration may also increase fundraising opportunities as registration is a prerequisite for fundraising at some sites.

Be Open and Accountable

New legislation was introduced which was effective for accounting periods ending on or after 1 November 2016 and which applies to charities requiring a statutory audit. This legislation included additional accounts disclosure requirements.

These include:

- The approach taken by the charity to activities for the purpose of fundraising;
- Any failure to comply with the fundraising standards;
- Whether the charity monitored activities by any person on behalf of the charity;
- The number of complaints received by the charity in respect of fundraising; and
- What the charity has done to protect vulnerable people. In terms of complaints, there need to be effective procedures in place so that any concerns from the public and donors are addressed in a timely and direct fashion.

Consequences of Getting it Wrong

There are significant consequences of getting fundraising wrong, both in terms of reputational risks and possible intervention by the Fundraising Regulator or the Charity Commission and OSCR in Scotland. Whether you are running a coffee morning or a large charity ball, you need to ensure that you are following the fundraising guidance so you don't get caught out.

How do I Know if I am Doing a Good Job?

- You understand the role that fundraising plays in the overall strategy of the charity.
- You are satisfied that there are adequate controls and procedures in place to ensure that fundraising is undertaken in line with the objects of the charity and is effectively monitored.
- You have made yourself familiar with the Code of Fundraising practice.
- You have included adequate disclosure in the Trustees' Report of your statutory accounts.
- You regularly review the fundraising policy and ensure that any fundraising being undertaken is in the best interest of the charity.

Did You Know?

- The Charity Commission's main guidance is document CC20 "Charity fundraising: a guide to trustee duties".
- Donations made via websites, social media and apps account for 26% of donations in the UK.
- 70% of potential donors agreed they would be more inclined to give to charity if they knew how their money was directly helping.
- In 2015, approximately £185 million was raised by bake sales alone.

How we can Help

Make sure you know how your charity is raising funds and the policies and procedures in place to manage the process. If you have any questions regarding fundraising please contact us today.

Conflicts of Interest

All trustees have a legal duty to act only in the best interests of the charity.

Simon Brown
MHA Tait Walker

Trustees' personal and professional connections can bring benefits to the work of a charity, often forming part of the reason why an individual was asked to join the trustee body. However, those same reasons can give rise to conflicts of interest.

Related Parties – Think Much Wider Than Yourself

A connected person, or 'related party' is someone to whom you are related or closely connected, where personal and or business interests may cross-over.

Usually therefore, you are looking at a 'related party' to include a charity's trustees, their close family members and those entities which they (the trustee or their close family) control or in which they have significant interest, either directly or indirectly.

What is Expected of Trustees

At a glance, trustees have a legal duty to act only in the best interest of the charity. Hence they must not put themselves in a position where their duties as a trustee may conflict with any personal interest they (or their related party connections) have.

Of course, in reality many trustees may end up with a conflict. The key is to be aware of any conflict and manage it effectively.

How do You Manage Conflicts? The Legal Requirements

To manage a conflict, trustees should use the following steps:

1. **Identify conflicts of interest.**
   a. Each trustee has an individual personal responsibility to declare conflicts of interest which affect them.
   b. Trustees should have strong systems in place so they are able to identify conflicts of interest.
2. **Prevent the conflict of interest from affecting the decision. This might include:**
   a. Not pursuing a course of action.
   b. Proceeding in a different way so that the conflict of interest does not arise.
   c. In certain circumstances, not appointing a particular trustee, or securing a trustee resignation may be appropriate.
3. **Record the conflict of interest.**
   a. Trustees should formally record any conflicts of interest and how they were handled.
   b. Trustees must also (where accruals accounts are being prepared) disclose any trustee benefits in the charity's accounts.

Conflicts of interest can arise with the individual trustee themselves, or as a result of a close connection, a 'related party'.

1 Identifying Conflicts of Interest can be the Hard Part

Conflicts of interest usually arise where either:

- There is a potential financial or measureable benefit directly to a trustee, or indirectly through a connected person; or
- A trustee's duty to the charity may compete with a duty or loyalty they owe to another organisation or person.

Can Trustees Benefit From Their Charity?

The obvious answer here is no. However, in fact trustees can benefit from their charity, where there is an explicit authority in place before any decision conferring trustee benefit is made. Of course, any payments made to trustees must still be to the benefit of the charity and be a suitable use of charitable funds. Some examples of benefits to trustees are where the trustees decide to:

- Sell, loan or lease charity assets to a charity trustee;
- Allow the charity to acquire, borrow or lease assets from a trustee for the charity;
- Pay a trustee for carrying out their trustee role;
- Pay a trustee for carrying out a separate paid post with the charity, even if that trustee has recently resigned, or is employed by the charity's trading subsidiary company;
- Pay a trustee, or a person, or a company closely connected to a trustee for providing a service to the charity. This includes anything that would be regarded as a service, including legal, accountancy or consultancy services, through to maintenance work or even things like painting and decorating;
- Employ a trustee's spouse, or other close relative at the charity or the charity's trading subsidiary company;
- Make a grant to a service user trustee, or a service user who is a close relative of a trustee; or
- Allow a service user trustee to influence service provision to their exclusive advantage.

Therefore, as long as the charity has permission to benefit/ pay trustees within their governing document and they take actions to identify, prevent and record the conflict of interest as the issue is being decided upon, then trustees may decide that it is in the charity's best interest to allow this.

2 Preventing the Conflict From Affecting the Decision Making

Having identified a conflict of interest, trustees must then only act in the charity's best interest. This means that trustees must consider the issue of the conflict so that any potential effect on decision making is eliminated.

- In practical terms this means that the conflicted trustee must:
- Declare the conflict to the wider board.
- The wider trustees must then consider removing the conflict of interest.
- The trustees must follow their charity's governing document and the law.
- Where the trustee benefit is authorised in advance, the affected trustee must be absent from any part of any meeting where the issue is discussed. Note the trustee affected should not vote or be counted in deciding whether a meeting is quorate.

3 Record the Conflict of Interest

The Charity Commission and the OSCR expect the charity's written records to document any conflicts of interest and how the trustees have dealt with them. The usual way is to record the trustees' decisions in the minutes of their meetings and where there is a conflict, the written decision should record:

- The nature of the conflict;
- Which trustee or trustees were affected;
- Whether any conflicts of interest were declared in advance;
- An outline of the discussion;
- Whether anyone withdrew from the discussion; and,
- How the trustees took the decision in the best interest of the charity.

How do I Know if I am Doing a Good Job?

- Do you check for conflicts at the start of each meeting?
- Do you ensure that trustees think about their wider connections, including family and business interests?
- Do you fully record (in writing) any conflicts and discussion in dealing with the issue?
- Are you aware of what your charity's governing document says about trustee benefit?

Did You Know?

- The Charity Commission's main guidance is document CC29 "Conflicts of interest: a guide for charity trustees".
- Trustees can be paid by or can receive benefit from the charity.
- Conflicted trustees, who have withdrawn from a decision, cannot be counted when ensuring the meeting is quorate.
- Trustees can be conflicted due to their wider family, their own business interests and their wider family's business interests.

How we can Help

Review your charity's procedures about how conflicts of interest must be handled (create one if it doesn't already exist) and consult your charity's governing document. If you would like any assistance with developing your conflict of interest procedures, please don't hesitate to get in touch with your local MHA member firm.

Checklist

We have created a tool for charity trustees which can help you improve your knowledge and your organisations' governance in a stepped and measured way. Use the month to month checklist to log where you currently are within each area, where you want to be and some strategies you will use to get there, set yourself some time scales and then at the end of your period, reflect on the extent to which you have achieved your goals.

Small marginal improvements will have a cumulative impact, both for yourself as a trustee and on the governance of your organisation and will mean that you are not overwhelmed, trying to focus on too many areas at once. Don't worry if you don't achieve all of your actions. Use this checklist tool as an action plan and a reminder to implement strategies going forward and ensure that the mind-set of small continuous improvement continues within your organisation in the coming months and years.

Reflect on what has been achieved. Your organisation and the third sector world you operate in is constantly evolving. At the end of your period once you have reassessed yourself, creating an action plan for the next 12 months would be useful. Trustees, good luck on your journey.

Questions to ask yourself	Where are you now?	Where do you want to be and how will you get there?	Did you achieve it?
Finding New Trustees - Month 1			
Have we clearly defined our needs?			
Have we developed a strategic plan to market the role(s)?			
Do we have a transparent interview process and a comprehensive and engaging induction process?			
Internal Financial Controls - Month 2			
Do we have controls in place and do I take them seriously?			
Do we change the review pattern year on year?			
Do we turn recommendations into action plans and do we monitor if the change has been effective?			

Questions to ask yourself	Where are you now?	Where do you want to be and how will you get there?	Did you achieve it?
Collaborative Working and Mergers - Month 3			
Have we considered if there is a need for collaborative working or a merger?			
Have we identified if there are any potential organisations that we could work with or merge with?			
Have we assessed the pros and cons of potentially working/ merging with another organisation?			
Investments - Month 4			
Do we have an investment policy and am I acting in line with it?			
Is the investment policy regularly reviewed and updated?			
Do we have sufficient expertise to make informed investment decisions or do we seek appropriate advice?			
Trustees Meetings and Decision-Making - Month 5			
Am I able to participate in discussions with an understanding of the issues and impacts?			
Am I proactive in my participation and do I raise any issues I have?			
Are meeting minutes taken and do they clearly outline the conclusion of decisions and the relevant factors in reaching the conclusion?			

Questions to ask yourself	Where are you now?	Where do you want to be and how will you get there?	Did you achieve it?
Trading and Tax - Month 6			
Have we made sure that our charitable activities are within those set out in our governing document?			
Have we checked that fundraising activities are clear in setting out what is a donation and what is a payment in exchange for goods or services?			
Have we asked a specialist charity accountant to commission a charity tax review?			
Campaigning, Lobbying and Political Activity - Month 7			
Have we considered whether we should be undertaking campaigning or political activities?			
Have we made sure that campaigning / political activity is in line with our charity's objects and is for the best interests of beneficiaries?			
Have we ensured relevant safeguards are in place before campaigning / political activity is undertaken?			
Risk Management - Month 8			
Do we regularly discuss risks and do they help us to make informed strategic decisions?			
Have we considered everyone in the organisations' thoughts?			
Are we identifying risks through discussions with our key stakeholders?			

Questions to ask yourself	Where are you now?	Where do you want to be and how will you get there?	Did you achieve it?
Expenses - Month 9			
Do we have an expenses policy?			
Have we made sure it is fit for purpose and do we review it regularly?			
Have we put procedures in place to ensure that the expenses policy is adhered to?			
Fundraising - Month 10			
Do I understand the role that fundraising plays in the overall strategy of our charity?			
Do we have a fundraising policy in place and is the policy regularly reviewed?			
Do we have adequate controls and procedures in place to ensure that fundraising is undertaken in line with our charity's objects?			
Conflicts of Interest - Month 11			
Do we check for conflicts at the start of each meeting and do we ensure that trustees think about their wider connections?			
Do we fully record any conflicts that arise and the discussions had to deal with the conflict?			
Am I aware of what our charity's governing document says about trustee benefit?			

Never has knowledge and governance been more important in the third sector, and as trustees, the responsibility lies with yourselves. This tool can help you improve both your knowledge of the sector and your organisations' governance in a stepped and measured way.

However, there are many tools, guides and websites you can use to help you on your journey. At MHA, our team of specialist Not for Profit advisors can also help you with bespoke training, assistance with strategy and implementation, controls and so on. If you have a need and don't know where to start, get in touch with your local representative.

This information is up to date as of January 2018

About MHA

Services

- Bespoke training, including financial awareness, governance, VAT and fraud.
- Budgeting and forecasting preparation.
- Business planning for social enterprise 'spin off' activities.
- Charity registration.
- Cost effective payroll services.
- Content advice on trustees' annual report.
- Employment tax issues and the engagement of workers.
- Financial statements audit.
- Formation of subsidiary companies for trading purposes.
- Governance reviews.
- Internal and External Audit
- Internal control procedures.
- Maximising income through gift aid.
- Merger and demerger advice including due dili-gence.
- Reserves policy and accounting for separate funds.
- Risk management and internal controls advice.
- Specific counter-fraud system reviews, systems implementation.
- Tax planning and compliance.
- Trustee responsibilities.
- VAT advice.

MHA is a UK wide association of progressive and respected accountancy and business advisory firms. Each MHA member firm offers a broad range of services including accountancy, tax and corporate finance, as well as sector specialisms.

We are the UK member of the international network, Baker Tilly International. Through our membership of Baker Tilly International we are able to provide premier accounting, assurance, tax and specialist business advice worldwide, drawing on internationally recognised industry and service line experts in 145 territories.

Contact Us

If you require any further information or advice regarding these topics, then please feel free to contact us today.

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