

# GUIDE FOR CHARITY TRUSTEES IN NORTHERN IRELAND



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This is a challenging time for the development of charity law and the third sector in Northern Ireland and this key sector represents a long established and important part of Cleaver Fulton Rankin's core advisory services. We provide specialised legal advice to local and national charities, social enterprises and not for profit organisations of all sizes.

As a bit of background Cleaver Fulton Rankin is the only Northern Ireland firm rated as top tier in Charity Law by Chambers UK, A Client's Guide to the Legal Profession 2009 and 2010 and Jenny Ebbage, Charity Law Partner, is noted as a leading individual. The Guide comments:

*"the firm (Cleaver Fulton Rankin) has proved itself to be the go to firm for both local charities and foreign ones operating in Northern Ireland" and continues, "the practice is noted for its broad coverage and offers clients advice on a range of issues, from pure charity law to employment and property advice", sources report that the lawyers are particularly adept at fostering "wonderfully positive working relationships with clients, putting them at ease in every eventuality".*

An integral part of any charitable organisation is its trustees. Being a trustee is a key and wide ranging role in any charity and so we have compiled this *Guide for Charity Trustees in Northern Ireland* (the "**Guide**") to raise awareness of the duties and responsibilities of charity trustees in Northern Ireland and have set out some of the main provisions of charity law in Northern Ireland. This Guide covers the following topics:

- who are charity trustees
- general duties of charity trustees
- specific duties of charity trustees
- charity trustee remuneration
- the role of the new Charity Commission for Northern Ireland

Whilst this Guide aims to help charity trustees to identify how they can fulfil their duties and responsibilities, charity trustees should seek specialist legal advice for further clarification or assistance.

Please note that this Guide also highlights aspects of the new Charities Act (Northern Ireland) 2008 (the "**Act**"), and although many of these provisions are not yet in force as at the time of issuing this Guide, the Act provides a useful starting point for charity trustees. By taking note of what will be required by the Act, charity trustees can take steps now to prepare themselves and their charities to be compliant with the Act when it is fully implemented.

## THE CHARITY TRUSTEES

### Who are Charity Trustees?

The individuals who make up the governing body which controls a company, trust or a voluntary association may be known by different names, for example, directors, trustees, management committee members or committee members. If the organisation is a charity and those individuals have general control and management of it, no matter how they have been appointed, what they are called, or how they are elected, these people are defined by the Act as being “charity trustees”. The duties, responsibilities and liabilities of “charity trustees” within the meaning of the Act apply to all of them.

### Who can't be a Charity Trustee

The governing document of a charity should specify who is eligible to be elected or appointed to the governing body. It is the responsibility of individual charity trustees and in the interest of charity to ensure that no charity trustees are disqualified from being a charity trustee. Anyone taking up the position should sign a declaration to confirm that they can and are willing to take up the position. Also the Act says that the following individuals are disqualified from acting as charity trustees:

- someone with a conviction for an offence involving dishonesty or deception;
- an undischarged bankrupt;
- someone who has been barred under Scottish or English Law or the courts from being a charity trustee; or
- a person disqualified from being a company director.

## GENERAL DUTIES OF CHARITY TRUSTEES

Charity trustees are those responsible for the general control and management of the administration of a charity and they carry out these functions within the context of the charity's legal framework.

It is the principal duty of charity trustees to maintain general overall control of the charity as they are responsible for the governance and strategy of the charity. This does not mean that charity trustees necessarily undertake day-to-day operations. Charity trustees need to ensure that the charity is administered effectively, and is able to account for its activities and outcomes to the public and regulators.

There are several general duties which are fundamental to charity trustees carrying out their role properly such as:

- ensuring that the charity operates in a manner that is consistent with its charitable purposes and its governing document;
- acting in the interests of the charity;
- safeguarding and protecting the charity's assets;
- avoiding conflicts of interest between their personal interests and those of the charity;
- managing and investing charity property prudently; and
- ensuring that the charity complies with the provisions of the Act, and other relevant legislation.

The rest of this Guide explains in more detail how these general principles should be applied by charity trustees.

### Operating in a manner consistent with the charity's purposes and its governing document

Charity trustees must always carry out their duties in accordance with the specific terms of their charity's governing document. The governing document will set out the purposes of the charity and the powers it has to act, and will include provisions for how the charity is to be run. Charity trustees must ensure that:

- all the activities of the charity fall within the charitable purposes listed in the governing document of the charity;
- the charity complies with the terms of its governing document;
- the charity's assets are only used for the charitable purposes set out in the governing document; and
- that the charity demonstrates public benefit.

### **Acting in the Interests of the Charity**

Charity trustees are expected to put the interests of the charity before their own interests or those of any other person or organisation.

Individual charity trustees should avoid circumstances in which there is a conflict between their personal interests and those of the charity. Where there is such a conflict, they must put the charity's interests first.

The charity must have clear and effective policy and procedures for dealing with conflicts of interest.

### **Managing and Investing Charity Property Prudently**

Charity trustees must take particular care of the charity's affairs as they are managing the affairs of another person. Charity trustees are expected to take even more care than they would if acting for themselves in a personal capacity.

Charity trustees must ensure the charity is run properly, responsibly and lawfully, ensure the charity is solvent, act as guardians of the charity's assets, invest charity assets wisely, comply with powers of investment and charity trustees have a duty not to profit from their position as charity trustee.

### **Compliance with the Act and other legislation**

Charity trustees must ensure that the charity complies with the provisions of the Act and other applicable charity legislation and with the requirements imposed by other relevant legislation or regulators, for example:

- tax law and practice
- health and safety law and regulations
- company law (in the case of charitable companies)
- data protection law
- equality law
- employment law

### **Collective responsibility**

The charity trustees as a body are collectively responsible for all the activities of the charity. This means that all charity trustees are equally accountable for how the charity is run. They have a collective general duty of care for the charity, and they must all observe the requirements imposed by legislation. Charity trustees are expected to act together as a board or committee to realise the values and purposes of the charity and to comply with legislative and regulatory requirements.

Generally, charity trustees cannot delegate their responsibilities to others, although they can delegate some of their functions. So, for instance, sub-committees, operational volunteers or paid staff may well perform tasks and activities associated with these responsibilities. However, ultimate accountability remains with the charity trustees.

If a charity trustee fails in his or her duty, it is the obligation of the other charity trustees to take reasonable steps to ensure that the misconduct is rectified and not repeated. They also need to ensure that anyone guilty of serious or persistent misconduct or breaches of their duties no longer remains a charity trustee.

## SPECIFIC DUTIES OF CHARITY TRUSTEES

Charity trustees also have a statutory duty of care which includes a duty “to exercise such skill and care as is reasonable in the circumstances”. This means that the duty of care of a charity trustee with special knowledge or experience will be greater. For example, if a charity trustee is acting in the course of a business or profession, e.g. is an accountant or solicitor, then that charity trustee will be expected to have the experience it is reasonable to expect of a person acting in that business or profession. This statutory duty will apply to issues such as investments, buying or selling land, insurance, application of grants and exercise of discretionary power.

In addition to the general duties of charity trustees outlined above, the Act also puts additional specific duties on charities which charity trustees must ensure are met. Although these duties are not in force as at the time of issuing this Guide the duties include:

- providing charity details for inclusion on the Northern Ireland Charity Register;
- reporting to the Charity Commission for Northern Ireland;
- financial record keeping and reporting;
- fundraising; and
- providing information to the public.

### **Charity details on the Northern Ireland Charity Register**

The Act requires the Charity Commission for Northern Ireland to maintain a Register of Northern Ireland Charities (the “**Register**”) but it is the charity trustees who have the responsibility to apply for the charity to be registered. The Register has not yet come into force as at the time of issuing this Guide. The Register will be open to the public and will contain the following information:

- the name of the charity;
- the principal office;
- the charity’s purposes; and
- certain other information (such as whether the charity is a “designated religious charity”).

### **Reporting to the Charity Commission for Northern Ireland**

The Act requires charities on the Register to supply certain information to the Charity Commission for Northern Ireland. However, this requirement has not come into force as at the time of issuing this Guide. An accurate Register aims to provide transparency, and to increase public understanding and confidence in Northern Ireland charities.

When applying to register as a Northern Ireland charity, applicants must supply basic information for the Register. As individuals, charity trustees must sign a declaration that they understand their duties. Charity trustees are responsible for ensuring that the details on the Register remain accurate and charities must notify the Charity Commission for Northern Ireland of any change to the information set out in the charity’s entry in the Register.

### **Financial records and reporting**

Charities must keep accounting records of sufficient detail that are able to disclose at any time with reasonable accuracy, the financial position of the charity at that time, to:

- show, day by day, the money received and spent daily by the charity
- record the assets and liabilities of the charity
- disclose the financial position of the charity at any time.

The Act sets out specific requirements for charities, however, they have not come into force at the time of issuing this Guide. Under the Act, at the end of the financial year charities must prepare a statement of account, including a report of activities, which must be independently examined or audited.

## **Fundraising**

The Act provides charities with greater control over those who fundraise for them. There are provisions to regulate the relationship between professional fund raisers or others who fund raise for charities. However, they have not come into force at the time of issuing this Guide.

## **Providing information to the public**

The way in which charities refer to themselves, for example on their stationery, is important to ensure members of the public understand which organisations are charities. The fact an organisation is a charity should be stated on all correspondence, notices, bills and invoices, website and emails, for example. There are additional disclosure requirements for charities who are also companies. Charity trustees should seek advice or further information on what must be disclosed.

## **CHARITY TRUSTEE REMUNERATION**

Charity trustees must act in the interest of the charity, and any personal benefit to a charity trustee, whether direct or indirect, has to be treated with some caution.

A charity trustee must not be remunerated from charity assets for providing services to a charity unless certain conditions set out in the Act are met. The governing document should also be consulted. Charity trustees should seek legal advice if considering remunerating charity trustees.

### **What is remuneration?**

Remuneration in this context would include a benefit or payment received:

- for being a charity trustee
- under a contract of employment
- for other services to or on behalf of the charity

Remuneration includes payment made either to a charity trustee personally or to a person with whom the charity trustee is connected. The Act has a very wide definition of the persons who are “connected” with the charity trustee. These include:

- immediate family and domestic partners
- a company in which the charity trustee or persons connected with them may have a substantial interest
- a person carrying on business with a trustee or any immediate family or domestic partner of a trustee

### **Trustee indemnity insurance**

Some charities may wish to take out trustee indemnity insurance, which provides cover for legal expenses and awards made against individual trustees. At present, the charity’s constitution must include specific power to purchase trustee indemnity insurance out of the charity’s funds however the Act provides that trustee indemnity insurance can be purchased provided certain requirements are met. Charity trustees should seek legal advice and advice from their insurer.

### **The Role of Charity Commission for Northern Ireland**

The Charity Commission for Northern Ireland is made up of a Chief Commissioner, Deputy Commissioner, with an additional five Commissioners.

The Charity Commission for Northern Ireland has the following general functions:

- determining whether institutions are or are not charities
- encouraging and facilitating the better administration of charities
- identifying and investigating apparent misconduct or mismanagement in the administration of charities and taking remedial or protective action in connection with misconduct or mismanagement
- determining whether public collection certificates should be issued, and remain in force, in respect of public charitable collections
- obtaining, evaluating and disseminating information in connection with the performance of any of the Charity Commission for Northern Ireland's functions or meeting any of its objectives, this includes the establishment and maintenance of an accurate and up-to-date register of charities
- giving information or advice, or making proposals, to the Department for Social Development on matters relating to any of the Charity Commission for Northern Ireland's functions or meeting any of its objectives.

## Charity Law and Social Enterprises



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