

# CC3 - Responsibilities of Charity Trustees

(Version 03/02)

Contents	Page
What is this guidance about?	2
Meaning of words and expressions used	3
Who are the "charity trustees" of a charity?	4
What is a "nominee"?	5
Can anyone act as a charity trustee or as a nominee?	5
Who appoints new charity trustees?	7
What do trustees need to consider when recruiting new trustees?	8
How do you find new trustees?	9
What steps should trustees take before appointing new trustees?	10
What are the first steps trustees need to take after they have appointed new trustees?	11
How often do charity trustees need to meet?	12
How long does the appointment of a charity trustee last?	13
Can a charity trustee resign?	13
The Trustee Act 2000	14
Statutory duty of care	15
Can trustees be paid for their duties?	16
What principles are needed to guide charity trustees when administering their charity?	17
What else do charity trustees need to take into consideration?	18
Can charity trustees employ agents and delegate their responsibilities?	19
Can charity trustees appoint nominees?	21
What are the liabilities of charity trustees?	21
Can charity trustees use the charity's funds to insure themselves against personal liability?	22

Can charity trustees acquire land?	23
Can charity trustees dispose of land belonging to the charity?	23
Can the charity borrow money on the security of its property?	25
What duties do charity trustees have in respect of charity property?	25
What powers do charity trustees have when investing funds?	27
Common investment funds and common deposit funds	28
What are charity trustees' duties in relation to fund-raising?	28
Is there any requirement for charities to be registered?	29
Are charity trustees required to keep accounts?	30
Do charity accounts need external scrutiny?	33
If the objects no longer serve a useful purpose can the trustees change them?	34
Can a charity be wound up or its assets transferred to another charity?	35
Significant changes from the previous version of this guidance	37

***What is this guidance about?***

1. We are often asked to explain what is expected of someone who is appointed to act as a charity trustee. Trusteeship carries legal responsibilities and duties. To be a charity trustee is not a position of honour without responsibility; it requires time, understanding and effort. This guidance answers some of the more common questions and sets out briefly and simply the duties of charity trustees. It covers such aspects as:

- what is a charity trustee, who can be one, and what personal qualities are needed;

- appointment, length of service and retirement of trustees;
- general principles of trusteeship;
- trustees' powers and duties in relation to charity investments and property;
- what is a "nominee" and why nominees are used in the administration of charities;
- trustees' power of delegation of their duties;
- trustees' statutory duty of care in exercising their powers, and discharging their duties;
- trustees' duties in relation to registration, fund-raising and accounting; and
- trustees' liability.

2. The responsibilities and duties of directors of charitable companies differ in some areas to those of trustees of trusts or unincorporated associations. In this guidance we have flagged up where these differences occur, but have not attempted to describe them in detail here. Usually they will be found in more detailed guidance by us on the particular subject. If you are a director of a charitable company and are in doubt as your responsibilities, please ask us for advice.

3. In this guidance:

The **1993 Act** is the Charities Act 1993.

**Governing document** means any document setting out the charity's purposes and, usually, how it is to be administered. It may be a trust

### *Meaning of words and expressions used*

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deed, constitution, memorandum and articles of association, will, conveyance, Royal Charter, Scheme of the Commissioners, or other formal document.

**Permanent endowment** means property of the charity (ie land, buildings, investments or cash) which the trustees may not spend as if it were income. It must be held permanently, sometimes to be used in furthering the charity's purposes, sometimes to produce an income for the charity. Trustees cannot normally expend permanent endowment without our authority.

**Property** includes not only land and buildings but also investments, cash and other assets.

**Must** is used to refer to actions that trustees, or their agents or employees, are obliged to take by law.

**Recommend** or **advise** are used where we are suggesting to the trustees actions which we consider to be good practice but which do not represent a legal requirement.

### *Who are the "charity trustees" of a charity?*

4. The **charity trustees** are the people responsible under the charity's governing document for controlling the management and administration of the charity (s.97(1) of the 1993 Act). They may be called trustees, managing trustees, committee members, governors, or directors, or they may be referred to by some other title. In the case of an unincorporated association, the members of the executive or management committee are its charity trustees; in the case of a charitable company it is the directors.

5. An **ex officio trustee** is a trustee who is in that position by virtue of their office. Normally this relates to positions such as the vicar of a parish,

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the mayor of a town, etc. Ex officio trustees have the same responsibilities as other charity trustees.

*What is a "nominee"?*

6. A **nominee** is an individual or corporate body, normally appointed by the charity trustees, whose function is to hold the legal title to the charity's property or investments on behalf of the charity trustees. Nominees have no role as such in the charity's management. They must act on the instructions of the charity trustees, unless they are told to do something which is in breach of trust.

7. Custodian trustees and the Official Custodian for Charities are types of nominee. Their roles and responsibilities are defined by statute. Other types of nominee are sometimes called "holding trustees" or "bare trustees". Their role and responsibilities may be defined in the charity's governing document, or in an agreement between the charity trustees and the nominee.

*Can anyone act as a charity trustee or as a nominee?*

8. No-one under the age of 18 can be appointed either as a charity trustee or as a nominee (except that a person under the age of 18 can be the director of a charitable company).

9. Some people are disqualified by law from acting as charity trustees or nominees, including anyone described in section 72(1) of the 1993 Act. This includes:

- anyone who has been convicted of an offence involving deception or dishonesty, unless the conviction is spent;
- anyone who is an undischarged bankrupt;

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- anyone who has previously been removed from trusteeship of a charity by the Court or the Commissioners for misconduct or mismanagement; and
  - anyone who is under a disqualification order under the Company Directors Disqualification Act 1986.

10. It is normally an offence to act either as a charity trustee or as a nominee while disqualified unless we have given a waiver under section 72(4) of the 1993 Act (there are some special provisions applying to the administration of charitable companies).

11. In addition to the disqualifications listed above, the governing document of a charity might also contain a provision which would disqualify certain people from acting as charity trustees. If the governing document does contain such a provision, we could not give a waiver under section 72(4) of the 1993 Act, as these powers cannot override the provisions in a governing document.

12. In addition to the disqualifications detailed in section 72(1) of the 1993 Act, which apply to trustees of all types of charities, the Criminal Justice and Court Services Act 2000 disqualifies certain individuals from holding a range of positions in children's charities, including charity trusteeship. This ban covers, for example, anyone who commits one of a number of serious offences against children and who is subject to a disqualification order made by the Court under that Act. It is also a criminal offence for a disqualified person to knowingly seek appointment to any position covered by this ban including charity trusteeship of a children's charity. It is also an offence for someone to knowingly appoint a disqualified person to such a post.

13. We do not have the authority to give a waiver for this type of disqualification.

14. Further information on this, including how to apply for a waiver, can be obtained from the Criminal Records Bureau information line (0870 9090811) or at [www.crb.gov.uk](http://www.crb.gov.uk).

15. We are currently developing more detailed guidance on the role of the Criminal Records Bureau and procedures to protect the vulnerable. This will be available shortly.

### *Who appoints new charity trustees?*

16. In many cases the governing document says who is to appoint new charity trustees. In some cases it says that some people are to be trustees because of an office which they hold (ie ex officio trustees); common examples are the vicar of a parish or the head teacher of a school. Sometimes a named person is given the right to say who shall be new trustees. Sometimes different organisations are given the right to appoint representatives. If the governing document does not say anything about this, statute allows the existing trustees themselves to appoint new trustees (but the governing document may contain provisions which limit the availability of the statutory power, for example by requiring a quorum of trustees for the transaction of business). A trustee whose term of office has expired can be appointed for a further term of office, unless the governing document prohibits it. This should be checked before a new appointment is made.

17. If there is any difficulty about appointing new trustees, for example because there is no person who has the right to appoint new trustees or because there is not a quorum of existing trustees who can appoint them, we need to be told. We have the power to appoint new trustees in those circumstances.

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***What do trustees need to consider when recruiting new trustees?***

18. Charity trustees should be selected for what they can contribute to the charity. They should not be appointed for their status or position in the community alone; this is the function of patrons. Charity trustees need to be prepared to take an active part in the running of the charity and therefore need to be able - and willing - to give time to the efficient administration of the charity and the fulfilment of its trusts. We recommend that they be selected on the basis of their relevant experience and skills.

19. When recruiting new charity trustees, the existing trustees need to be clear about the purposes and aims of the charity, as well as their broader duties and responsibilities as trustees so that they are able to explain to prospective trustees what is required of them. Trustees may wish to draw up a trustee job description to provide prospective trustees with a balanced account of what is involved in being a trustee, including their duties and responsibilities as a trustee.

20. When trustees are recruiting new trustees, we would recommend that they take the opportunity to look at the skills which are needed to run the charity effectively and identify whether there are any gaps in these skills which could be filled by a new trustee.

21. Prospective trustees should consider whether there would be any possible conflicts of interest if they were to be appointed as a trustee. This is particularly important where personal interests may be significant enough to make it difficult for the individual concerned to make a full contribution to the trustees' discussions and decisions.

22. We recommend that charities have arrangements in place for identifying and managing conflicts of interest and that all

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*How do you  
find new trustees?*

trustees are aware of these arrangements. Trustees should also be aware that some transactions affected by a conflict of interest will be at risk of being invalid, unless they are authorised, either by the governing document of the charity or by an Order from us or the Court.

23. The Institute of Chartered Secretaries and Administrators (ICSA) produces a best practice guide to managing conflicts of interest in the not-for-profit sector. ICSA can be contacted on 020 7580 4741 ([www.icsa.org.uk](http://www.icsa.org.uk)).

24. The traditional methods of recruiting new trustees have been by word of mouth or personal recommendation. However, these methods are more likely to narrow the field from which trustees are drawn and will not provide such a thorough means of finding people with the skills to fill any gaps which the trustees have identified.

25. These methods of recruiting are also likely to work against having a diverse trustee board from a range of ages and social and economic backgrounds. The Commission believes that diversity is an important factor for accountability and promoting public confidence and we would encourage trustees to seek greater diversity across the trustee body.

26. One way of creating a more diverse trustee body is to use more inclusive and transparent methods of recruiting new trustees, such as using trustee brokerage services, networking with other charities and advertising. Advertising can be an effective way of reaching a wider group of people and you can specify the particular skills which you are looking for.

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***What steps should trustees take before appointing new trustees?***

27. Before a new trustee is appointed, the existing charity trustees will need to ensure that the person that they wish to appoint is eligible to act as a charity trustee (see paragraphs 8-12 for details of those people who are disqualified by law from acting as a charity trustee).

28. Charity trustees will need to make the necessary checks on prospective trustees to ensure that they are not disqualified from acting as a trustee. The extent of these checks will depend on the nature of the charity and the perceived risks. For example, trustees of a grant making charity might consider that asking the prospective trustee to sign a declaration confirming that they are not disqualified from acting as a trustee is a sufficient check. Trustees of charities that work in higher risk areas, such as working with children or vulnerable adults, will need to make more detailed checks to ensure that prospective trustees are not disqualified under the Criminal Justice and Court Services Act 2000.

29. It is important that trustees do carry out adequate checks to ensure that any person they wish to appoint as a trustee is not disqualified from acting, since it is a criminal offence for a disqualified person to act as a trustee. If existing trustees appoint a disqualified person as a trustee, this is likely to be a breach of trust.

30. The Commission will carry out an annual sample of newly appointed trustees to ensure that the trustees have made all the necessary checks. As part of each review visit which we carry out we will also ensure that the necessary checks have been carried out by the trustees.

***What are the first steps trustees need to take after they have appointed new trustees?***

31. Detailed guidance about procedures for checking the eligibility of trustees, including the role of the Criminal Records Bureau, will be provided in a new publication, which will be available shortly.

32. Charity trustees can be effective only if they have a sound knowledge of the purposes and activities of the charity, the trusts and procedures which govern the trustees' actions, the organisation and funding sources of the charity and the nature and condition of its property and resources (land, buildings, investments and cash). Trustees of all charities, regardless of their size and purposes, need to consider the needs of new trustees by providing an induction programme suited to the circumstances of the trustee and the charity, that equips them with the tools they need to become effective and valuable trustees as quickly as possible.

33. We strongly recommend that trustees provide newly appointed trustees with a copy of the charity's key documents and an explanation of their purposes and effect. These key documents will usually be the governing document of the charity and a copy of the charity's latest annual report and accounts, together with recent minutes of trustee meetings. If there is any difficulty in obtaining a copy of the governing document, we may be able to help. We advise new charity trustees to take the first opportunity to meet their fellow trustees and anyone else concerned with the administration of the charity.

34. Trustees also need to ensure that, where the property of the charity is held in the names of the charity trustees (and not by a nominee), all the property of the charity is transferred into the names of the people who are the charity trustees at the time.

*How often do charity trustees need to meet?*

35. People who are invited or appointed to be charity trustees also need to be aware of their duties and responsibilities under trust and charity law. We strongly recommend that every trustee reads this guidance carefully when they are appointed.

36. Finally, where necessary, new charity trustees (particularly ex officio trustees) should show that they accept their responsibilities and duties, for example by signing the minute book.

37. Not every charity conducts its business, or all of its business, at meetings of the charity trustees, but many do. Where the business of a charity is conducted in this way it cannot be administered properly unless the trustees meet regularly. How often that needs to be will depend on the size and nature of the charity, but guidelines may sometimes be set out in the charity's governing document.

38. The governing document may require the charity to have a certain number of charity trustees, or may specify a minimum number of trustees who must be present if a meeting of the trustees is to be properly constituted (a quorum). If so, the trustees must ensure that their strength does not fall below the minimum, or, if it does, that it does not stay below that number. If no such requirements are made in the governing document of the charity, then the number of trustees needs to be kept up to an effective working strength. What this number is will depend on the administrative requirements of the charity and the legal rule (if the governing document does not specify otherwise) that no decision can be taken except by the agreement of all or a majority of the trustees.

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*How long does the appointment of a charity trustee last?*

39. If the governing document does not specify the length of service of a charity trustee, the appointment continues until the trustee dies, resigns or is removed from office. However, in some cases the governing document will say that trustees are to serve for a given period (usually a number of years, or, if the trustee is appointed to fill a mid-term vacancy, until the trustee who is replaced would have retired).

40. Trustees appointed to a local charity by a local authority under section 79 of the 1993 Act are usually appointed for a term of four years.

*Can a charity trustee resign?*

41. Generally yes, if the governing document says so (but see paragraph 43 below). The resignation is then handled in the way set out in the governing document. If the governing document does not state anything about this, the trustees may be able to rely on the statutory powers in the Trustee Act 1925, where appropriate. Under these statutory powers, however, a trustee cannot resign without replacement unless there will be at least two trustees or a trust corporation left after the resignation.

42. In some cases, where the title to land belonging to the charity is vested in a charity trustee or nominee who is resigning, the resignation should be effected by deed, or, where the resignation is being effected by a resolution of a meeting of the charity trustees, by a memorandum of the resolution which is executed as a deed. This will automatically transfer the title to the charity's land which was held by the charity trustee or nominee who is resigning into the names of the people who are or become the charity trustees/nominees.

## *The Trustee Act 2000*

43. A trustee cannot use his or her position in order to obtain a benefit (eg employment) from the charity (whether or not he or she resigns before taking up the benefit) without specific authorisation from us or the Courts (see paragraphs 54-56 for more details).

44. This Act defines some of the key statutory powers and duties of trustees and in particular effectively replaces the Trustee Investments Act 1961. Its provisions provide trustees with the powers they need to administer trusts effectively in keeping with modern economic and social conditions.

45. The Trustee Act 2000 is concerned with the administration of property which is held on trust. It does not however apply to the trustees of all types of charities. The Act potentially applies to trustees of:

- charitable trusts (including those which are governed by Schemes);
- charitable unincorporated associations;
- charities which are governed by Act of Parliament or other legislation, but which are not incorporated bodies;
- charities governed by charter; and
- pool charities.

**46. The Act does not apply to the corporate property of charitable companies, or of other charities which are incorporated by or under statute. Where a company is the trustee of any charity falling within the above list, however, the Act will apply to its actions as a trustee.**

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47. Many of the Act's provisions also do not apply to common investment funds (except pooling scheme funds) and common deposit funds.

48. Further guidance on the Trustee Act 2000 may be found on the Operational Guidance page on our website at:

**[www.charitycommission.gov.uk](http://www.charitycommission.gov.uk)**

### *Statutory duty of care*

49. Section 1(1) of the Trustee Act 2000 sets out what it calls the "duty of care". The duty of care is the duty to exercise such care and skill as is reasonable in the circumstances having particular regard to:

- any special knowledge or experience that the trustee has or holds himself or herself out as having; and
- where a trustee acts in the course of a business or profession, to any special knowledge or experience that it is reasonable to expect of a person acting in the course of that kind of business or profession.

50. It is important to note that the duty of care not only applies to trustees in their exercise of a number of specified powers conferred on them by the Trustee Act 2000, but may also apply in their exercise of the same type of power derived from a source other than that Act; for example, when they exercise any investment powers conferred on them by their governing document. The duty of care also applies to the discharge of certain duties imposed by the Act.

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*Can trustees be paid for their duties?*

51. Generally, no. Trustees are not entitled to receive any payment out of the charity's property other than reasonable and necessary out-of-pocket expenses (eg the costs of travel to attend trustee meetings). Furthermore they cannot directly or indirectly benefit personally from the charity by, for instance:

- taking a lease of the charity property;
- borrowing its money; or
- making contracts to do business with the charity.

52. This is a legal rule and breaking it may constitute a breach of trust. A person who commits a breach of trust may have to make good any loss which results to the charity out of their own money. Even if there is no loss, a trustee who makes a profit from dealing with the charity or its property when that is not explicitly authorised (either by the governing document or otherwise) will have to pay the amount of any such profit to the charity.

53. There is an exception to this rule where there is an express provision in the governing document allowing payments to trustees, and/or allowing them to do business with the charity, but even then any personal benefit must be strictly confined within the terms of the exception. In very special circumstances we may authorise a transaction between the trustees and a trustee personally. If you are in any doubt about this, ask us for advice.

54. A trustee cannot be an employee of their charity (nor can an employee be a trustee of the charity) unless there is either an express provision in the governing document of the charity to authorise it, or if the employment is authorised either by us or by the Courts. This is

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a legal rule and breaching it may constitute a breach of trust. A person who commits a breach of trust may have to repay to the charity any benefits (such as a salary) which they have received.

55. If a trustee wants to be employed by their charity they would need to resign their trusteeship. However, a trustee cannot use his or her position in order to receive a benefit from the charity, and then resign, so the trustees would need to obtain an Order from us to authorise the employment in these circumstances.

56. If you are considering employing a trustee, or a former trustee, of the charity you should ask us for advice.

57. You can find more detailed guidance on these issues in **Payment of Charity Trustees (CC11)**.

58. The income and property of the charity must be applied for the purposes set out in the governing document and for no other purpose. It must be applied with complete fairness between persons who are properly qualified to benefit from it. The trustees of charities with permanent endowment must, for example when selecting investments for the trust, maintain a fair balance between the interests of present and future potential beneficiaries.

59. The income of a charity must be applied for its purposes within a reasonable period of receipt, unless the trustees have an explicit power to accumulate it. Without such a power, the trustees should not allow the charity's income to accumulate unless they have a specific future use for it in mind. If the trustees are allowed a discretion about the use of the

*What principles are needed to guide charity trustees when administering their charity?*

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charity property, but are in some doubt about the proper exercise of that discretion, they should ask us for advice.

60. Trustees are required to act reasonably and prudently in all matters relating to the charity and need always to bear in mind that their prime concern is the interests of the charity. They cannot let their personal views or prejudices affect their conduct as trustees. They need to exercise an appropriate degree of care in dealing with the administration of their charity. Whilst the standard of care referred to in the Trustee Act 2000 (paragraph 49 above) only applies directly to the exercise of the powers and the discharge of the duties set out in the Act (or corresponding constitutional powers) it seems likely that it will be applied by analogy to other aspects of charity administration as well.

61. Where trustees are required to make a decision which affects the personal interests of one of their number, the governing document of the charity may require that that person should not be present at any discussion or vote on the matter. Even where it is not a requirement in the governing document, we strongly suggest that trustees should follow this procedure as a matter of good practice.

***What else do charity trustees need to take into consideration?***

62. We recommend that trustees find out what work is being done by similar charities and voluntary organisations operating in the same area. In some cases this can be done by joining an umbrella charitable association co-ordinating work in a particular field. Trustees need to co-operate with other charities and exchange information with them so as to avoid overlapping or duplicating their efforts. We suggest that they also work with local authorities and other statutory bodies which provide services similar or complementary to those of the charity.

*Can charity trustees employ agents and delegate their responsibilities?*

63. Charities should not, however, use their resources to do what is already being done by statutory services financed out of rates or taxes (unless the governing document clearly permits it); however, they may supplement those services by providing additional benefits beyond the actual statutory provision.

64. Trustees are also responsible for setting the strategic aims, objectives and direction of the charity. The identification of risk arising from activities undertaken and the management of identified risk is an important element in helping to ensure the strategic aims and objectives of the charity are achieved. Trustees of charities with gross income in excess of £250,000 are required to make a statement in their annual report (see paragraphs 111-112) as to whether they have given consideration to the major risks to which the charity is exposed and to systems designed to mitigate those risks. Guidance is available on our website ([www.charitycommission.gov.uk](http://www.charitycommission.gov.uk)) as to how a risk management process can be undertaken.

65. The Trustee Act 2000 sets out the powers that trustees have, in addition to any powers expressly stated within the charity's governing document and to any other statutory powers, to delegate certain functions to agents. The functions that may be delegated under the 2000 Act are:

- carrying out a decision that the trustees have taken;
- the investment of assets, including land subject to the trust;

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- the raising of funds for the trust other than by means of profits of trade which is an integral part of carrying out the trust's charitable purpose; and
  - any other function prescribed by an order made by the Secretary of State.

66. Subject to any power of delegation there is a general rule that trustees act in person and decisions concerning the charity are taken by the trustees acting together. They can always invite some of their number to look into particular matters connected with the charity and to make recommendations, but the decision whether or not to act on the recommendations is for the trustees to take together. No single trustee should be allocated a part of the income of a charity or manage any particular aspect alone. In some cases the governing document of a charity may permit the trustees to set up committees with limited powers to carry out particular functions.

67. The trustees of some charities, because of the scale or nature of the work of the charity may, of necessity, have to delegate to employees decisions on day-to-day management matters. In these cases we recommend that the scope of the delegated authority be clearly laid down in writing and instructions given for decisions on important matters to be reported to the trustees. We recommend that the charity trustees establish proper reporting procedures and clear lines of accountability.

68. We strongly recommend that a person acting as delegate of the trustees always makes it clear in dealings with third parties that they are acting in that capacity (particularly if they are not an employee of the charity), and always records in writing what was agreed in conversation.

## *Can charity trustees appoint nominees?*

69. The normal rule is that the charity trustees should jointly hold the title to all the charity's property. This maximises security, but often leads to practical difficulties of administration, particularly where the identity of the charity trustees changes regularly. It is often more convenient to hold the title to property in the name of a nominee, whose identity does not change, or changes only rarely. An explicit statutory or other authority is required to appoint a nominee. The Public Trustee Act 1906 and the Trustee Act 2000 give statutory powers to appoint nominees, and the Charities Act 1993 makes provision for vesting the title to charity land in the Official Custodian for Charities. The constitutions of many charities give wider powers to appoint nominees. Powers to appoint nominees can also be given by the Commission.

70. More information is in our statutory guidance **Appointing Nominees and Custodians: Guidance under s.19(4) of the Trustee Act 2000 (CC42)**.

## *What are the liabilities of charity trustees?*

71. If trustees act prudently, lawfully and in accordance with their governing document then any liabilities they incur as trustees can be met out of the charity's resources. But if they act otherwise they may be in breach of trust and personally responsible for liabilities incurred by or on behalf of the charity, or for making good any loss to the charity. Since trustees are acting collectively in administering a charity, they will usually be responsible collectively (the legal term is "jointly and severally") to meet any liability to a third party which has been incurred by them or on their behalf, but they will normally be able to indemnify themselves out of the property of the charity where the liability has been properly incurred in the administration of the charity.

***Can charity trustees use the charity's funds to insure themselves against personal liability?***

72. In some respects different rules apply to the directors of charitable companies.

73. We are able to take proceedings in court for the recovery, from trustees personally, of funds lost to a charity as a result of a breach of trust by the trustees.

74. We strongly recommend that trustees be particularly careful when entering into substantial contracts or borrowings to ensure that the charity has the means to meet its obligations. If trustees incur liabilities or debts which amount in total to more than the value of the charity's assets they may not be able to indemnify themselves in full out of the charity's property, even if the liabilities have been properly incurred.

75. Trustees can insure themselves out of the funds of the charity against personal liability to third parties arising from acts properly undertaken in the administration of the charity, where the assets of the charity are insufficient to enable them to indemnify themselves out of those assets. This is not a trustee benefit, and explicit authority is not required, though the nature of the charity's business would have to be such as to make expenditure on such insurance reasonable.

76. Insurance against personal liability in other circumstances is a trustee benefit, and explicit authority, granted either by the governing document or by us, is required for payments to be made by the charity for such insurance. Such payments can in any case only be made if that is expedient in the interests of the charity (rather than of the trustees personally). When deciding whether insurance is justified, trustees need to consider the nature of the charity's activities, the degree of risk of personal liability to which the

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trustees are exposed, the number of trustees, the value of indemnity required, and the cost to the charity of paying the premiums demanded.

77. Trustees may use the charity's funds to insure the charity against loss to its own funds resulting from the acts and defaults of the trustees. This is not a trustee benefit if the insurance does not have the effect of relieving the trustees from their own liability for the loss.

78. More information is contained in our guidance **Charities and Insurance (CC49)**.

*Can charity trustees acquire land?*

79. Yes. The Trustee Act 2000 and the Trusts of Land and Appointment of Trustees Act 1996 give trustees the power to acquire and manage freehold or leasehold land in the United Kingdom. The land can be acquired as an investment or for any other reason (which would include use for the purposes of the charity).

80. The trustees should remember that the general power to acquire land is subject to the statutory duty of care (see paragraphs 49 and 50 above).

81. The governing documents of charitable companies will usually give comparable powers to acquire land.

*Can charity trustees dispose of land belonging to the charity?*

82. Generally, yes. The governing documents of many charities (including most charitable companies) will give the trustees power to dispose of land. Those which do not have such a power may be able to rely on statutory powers in the Trustee Act 2000 and the Trusts of Land and Appointment of Trustees Act 1996, provided that this is not inconsistent with the charitable trusts on which the land is held. But

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before trustees may sell, lease or otherwise dispose of land or buildings, they will normally have to follow a statutory procedure which, in certain circumstances, will require trustees to firstly obtain an Order from us consenting to the disposal. Trustees who are considering selling charity property should read our guidance **Disposing of Charity Land (CC28)**, which gives further details.

83. Briefly, trustees must instruct a qualified surveyor who acts for them alone to report to them in writing and must follow his or her advice on the marketing of the property. Trustees must not sell land for less than the best price reasonably obtainable, and their surveyor must confirm that any offer they propose to accept meets this requirement.

84. Trustees wishing to lease their land for more than seven years must follow the statutory procedure for sales, but there is a simpler procedure for some leases for seven years or less.

85. If in either case trustees are unable to follow the statutory procedure, or they wish to sell land to a person connected with themselves they **must** seek our consent.

86. When the property being sold or leased is subject to trusts requiring it to be used for specific purposes of the charity (as an almshouse, for example) the trustees must normally give public notice of the disposal. They may also need to apply to us for a Scheme to give them power to sell such property, and this should be done before the property is put on the market.

*Can the charity borrow money on the security of its property?*

87. Different considerations may apply to a sale made by one charity to another charity. The trusts of the first charity may authorise the disposal of the land to the other charity for less than the best price reasonably obtainable.

88. Generally, yes. However, before they mortgage the charity's property, trustees must normally obtain advice from a person with ability in, and experience of, financial matters who has no personal interest in the proposed loan. This person can be a trustee or employee of the charity, and must advise on whether the loan is necessary for the charity, whether the terms are reasonable, and whether the charity will be able to repay the loan on those terms. More details on mortgages, which legally are disposals, are in our guidance **Disposing of Charity Land (CC28)**.

89. Trustees should seek advice in the same way even where the borrowing, such as a temporary overdraft, is unsecured. Trustees who do not seek advice on matters on which they are not themselves experts could be regarded as having acted imprudently and may be held personally liable for the consequences.

*What duties do charity trustees have in respect of charity property?*

90. Trustees are accountable for the solvency and continuing effectiveness of the charity and the preservation of its endowments. They must exercise overall control over its financial affairs. They should ensure that the way in which the charity is administered is not open to abuse by unscrupulous associates or employees; and that their systems of control are rigorous and constantly maintained. More details and a checklist of controls can be found in our guidance **Internal Financial Controls for Charities (CC8)**.

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91. If the charity owns land, trustees need to know on a continuing basis what condition it is in, if its boundaries are being encroached upon, what can be done with it and how it is or should be used.

92. Trustees are strongly advised to ensure that the land, including any buildings on it, has appropriate and adequate insurance cover. The Trustee Act 2000 confers a power to insure property but it does not impose a duty to do so. However, the trusts of many charities do impose a positive duty to insure, and then if trustees fail to insure property this will constitute a breach of trust. More details are available in our guidance **Charities and Insurance (CC49)**.

93. Money not needed for immediate expenditure should be invested. We recommend that if expenditure is expected in the near future, surplus cash is deposited to earn interest. Investments need to be reviewed periodically to ensure that they remain suitable for the charity's needs. Wherever possible, we suggest that funds are placed in a range of investments so as to avoid substantial losses caused by the failure of a single investment or institution. Bank accounts should be controlled by at least two of the trustees in the absence of explicit constitutional authority to do otherwise. It is unacceptable for either signatory to sign blank cheques for completion by the other signatory. For further guidance on security matters related to a charity's finances, especially as regards electronic banking, see our Useful Guidelines page on our website at **[www.charitycommission.gov.uk](http://www.charitycommission.gov.uk)**.

94. In particular, trustees need to ensure that property which is permanent endowment is preserved and invested in such a way as to produce sufficient funds for expenditure while at the same time safeguarding the real value of

*What powers do charity trustees have when investing funds?*

the invested funds. We are now able to offer trustees the power to use the total return approach to investment, which offers much more flexibility in the way in which trustees analyse their investment returns between the invested funds and the spendable funds. For more information about this, see our guidance **Endowed charities: a total return approach to investment**, which is accessible from the Operational Guidance page on our website.

95. Trustees are obliged to ensure that all income due to the charity is received and that all tax and rating relief due is claimed.

96. The Trustee Act 2000 gives trustees a general power of investment. This allows trustees to place funds in any kind of investment as though they were the absolute owner of those funds. The general power of investment is in addition to any existing power, but is subject to any restrictions and exclusions in the charity's governing document.

97. When exercising this general power of investment (or any other power of investment) trustees must follow standard investment criteria on the suitability and diversification of investments. They must also review the charity's investments from time to time, and take proper advice when investing or reviewing those investments. They must also comply with the duty of care (see paragraphs 49 and 50 above) except, in the case of a constitutional power of investment, where it is excluded.

98. The governing documents of charitable companies will usually give comparable powers of investment; they can be changed where they do not.

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*Common investment funds  
and common deposit funds*

99. Further guidance for trustees in selecting and managing the charity's investments can be found in **Investment of Charitable Funds: Basic Principles (CC14)**.

100. The duties of charity trustees may be simplified by contributing money, on proper advice, to a common investment fund (CIF). These funds are established specifically to meet the needs of charities and operate on lines similar to a unit trust by providing a wide spread of investments and specialised investment management which smaller charities individually cannot afford.

101. There are a number of CIFs, each of which has different objectives. They can take investments only from charities and may have different requirements about minimum investments.

102. Similar to CIFs, but dealing with cash deposits rather than investments, common deposit funds (CDFs) are designed to provide charities with the opportunity to deposit their money along with sums belonging to many other charities and so secure a more favourable rate of interest than if they were investing alone. These funds will also be managed by specialised investment managers.

*What are charity trustees'  
duties in relation  
to fund-raising?*

103. Trustees are responsible for ensuring that any fund-raising activity carried out by or on behalf of their charity is properly undertaken, and that all funds collected are properly accounted for. Where trustees allow or employ people to undertake fund-raising on their behalf, we strongly recommend that they ensure that all funds raised are paid into a bank

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account in the charity's name before deduction of the fund-raiser's expenses. In certain circumstances this is a legal requirement.

104. Trustees must always:

- make sure that any appeal properly describes what donations from the public will be used for; and
- ensure that where professional fund-raisers are employed as agents for the charity, a proper contract is drawn up.

105. In addition to these legal requirements, we would advise that the trustees always:

- insist on approving both the fund-raising methods which will be adopted, and any appeal literature which will be used on their behalf;
- be prepared to be open and honest about the costs of such an appeal if asked; and
- explain in their annual report (see paragraphs 111-112) the effectiveness of fund-raising activities undertaken so that those looking at the accounts of the charity can better understand the methods adopted and the costs disclosed in the accounts.

106. Our guidance **Charities and Fund-raising (CC20)** explains this in more detail.

107. Generally, yes. The 1993 Act requires trustees to register charities in England and Wales with us and to give any information needed for the purposes of registration. Any charity which has permanent endowment, or an income from all sources exceeding £1,000 a year,

*Is there any requirement for charities to be registered?*

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or which uses or occupies land for its own purposes is required to register, though some special classes of charity are exempted or exempted. Further information on the requirements for registration can be found in our guidance **Registering as a Charity (CC21)**.

108. Once a charity has been registered, it is the duty of the trustees to tell us about any changes in the registered particulars, or if it ceases to exist or to operate.

109. While a charity is registered there can be no question about whether or not it is a charity (except for settling the question of whether it should be on the Register). This may well help in obtaining tax and rating relief or in obtaining grants from other charities which can make grants only for charitable purposes.

110. Every registered charity with an income over £10,000 in its last financial year is required to state that it is a registered charity on any appeal documents and on many of its financial documents, such as cheques, invoices and receipts. It is not a requirement to state the charity's registration number, but trustees may wish to do so.

***Are charity trustees required to keep accounts?***

111. Yes. There are legal requirements for the:

- maintenance and retention of accounting records;
- preparation of charity accounts and annual reports;
- audit or independent examination of accounts;
- submission of accounts, annual reports and annual returns to us; and

- availability of accounts to the public.

112. These requirements are contained in Part VI of the 1993 Act (as amended) and Regulations made under that Act. The extent to which any individual charity will have to comply with these requirements depends upon its level of gross income and/or total expenditure. Trustees must familiarise themselves with the appropriate requirements.

113. Briefly, the annual report and accounts are the primary means through which trustees report on their stewardship of their charity and discharge their duties of public accountability. The accounts provide financial information as to incoming resources, their application and the assets and liabilities of the charity. The annual report provides the mechanism through which the trustees provide an understanding of the purposes and administrative structure of the charity. It should explain what the charity is trying to do and how it is going about it and show whether the charity has achieved its objectives during the year. It also provides an opportunity to explain the numerical aspects of the accounts, eg fund-raising costs and their effectiveness. The annual report and accounts should provide a coherent package and therefore we recommend that the annual report should always be attached to the accounts whenever a full set of accounts is provided. The various requirements for the external scrutiny of the accounts recognise the public interest nature of charities.

114. We have produced a range of accounting guidance to assist trustees when they are preparing their annual report and accounts. All of these are available on our website ([www.charitycommission.gov.uk](http://www.charitycommission.gov.uk)) or by phoning our Contact Centre on 0870 333 0123 or

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our publications voicemail orderline on 01823 345427. We recommend that you start by reading **Charity Accounts 2001: The framework (CC61)**, which will explain which requirements apply to your charity. We have also produced two accounts packs, which are aimed at smaller charities and designed to fulfil all legal requirements when completed. These are:

- **Receipts and Payments Accounts Pack 2001 (CC64)**; and
- **Accruals Accounts Pack 2001 (CC65)**.

115. In addition, there is the Statement of Recommended Practice, **Accounting and Reporting by Charities**. This is usually referred to as **SORP 2000**. Up to two copies are free, with further copies costing £5.

116. We expect all charities to follow SORP 2000 (unless a more specialist SORP applies), or to provide a clear explanation of the reasons for any departure from it.

117. The accounting records and statements of account prepared in accordance with these requirements must be preserved for at least six years. Registered charities with gross income or total expenditure of over £10,000 per year must submit their accounts to us annually, normally within 10 months of the end of the relevant financial year.

118. Preparing accounts is, however, only part of proper financial planning and control. It is also essential to make proper estimates about expected income and expenditure in order to plan ahead effectively.

119. Different rules apply to charities which are companies.

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*Do charity accounts need external scrutiny?*

120. Deciding whether and, if so, how the accounts need to be externally scrutinised is not necessarily straightforward; not only are there statutory requirements, but a charity's governing document may also make provision for this. We strongly recommend that you read our guidance **Charity Accounts 2001: The framework (CC61)** for guidance on external accounts scrutiny requirements. However, in general, the statutory requirements mean that all charities with an income or expenditure over £10,000 must have their accounts scrutinised by an "independent person". This can be by independent examination or an audit by a registered auditor. To be "independent" the person concerned should not be:

- a trustee;
- involved in the administration of the charity;
- a major donor or beneficiary; or
- a close relative, business partner or employee of any of the above.

121. However, if the charity's income or expenditure exceeds £250,000 in the current year or either of the two preceding years, the accounts **must** be audited by a registered auditor.

122. A governing document of a charity can impose external accounts scrutiny requirements which are more stringent than the statutory ones; in such a case the trustees may be able to amend the governing document to reflect the statutory requirements. Trustees should contact us for advice in such circumstances. Provisions in a governing document cannot, however, detract from the statutory requirements, which take precedence in such cases.

***If the objects no longer  
serve a useful purpose  
can the trustees  
change them?***

123. Different rules apply to charities which are companies.

124. If you have any questions about your charity's accounts please ring our Contact Centre for advice on 0870 333 0123.

125. We strongly recommend that trustees of charities regularly review the effectiveness of the trusts of their charity (both the objects and the administrative provisions). Sometimes a charity can be made more effective by changes to the administrative provisions but in other cases a change to the objects themselves may be needed.

126. The governing documents of most unincorporated charities will contain a power enabling the trustees or members to amend the administrative provisions, and usually also the objects of the charity. In some cases an amendment to the objects may be made without our intervention, subject to the requirements of the governing document and the general law; in many others the amendment provision will require our written consent. In either case, in redrawing the objects of the charity, the new objects should be kept close to the original intention of the charity and must remain legally charitable.

127. Any trustees intending to make or propose an alteration are strongly advised to seek our views before they proceed.

128. Section 64 of the 1993 Act requires a charitable company to seek our prior consent to any amendment of the company's objects or provisions relating to the way the company's property is used.

*Can a charity be wound up or its assets transferred to another charity?*

129. In cases where the charity's governing document has no amendment provision, or one that does not allow the objects of the charity to be amended, trustees should contact us to see how we can help.

130. Trustees of some small charities with no (or a limited) amendment provision may be able to use the provisions of section 74 of the 1993 Act to amend the trusts of the charity. Further details concerning eligibility and procedures can be found in our guidance **Small Charities: Transfer of Property, Alteration of Trusts, Expenditure of Capital (CC44)**.

131. A charity can only be wound up if:

- all its property is expendable and has been disposed of; or
- the governing document contains a dissolution or winding-up provision; or
- section 74 or 75 of the 1993 Act applies, allowing the trustees of some small charities to wind up the charity by transferring its property to one or more similar charities or by spending its permanent endowment. Full details of eligibility and procedures are given in **CC44** (see above).

132. A provision in the governing document will normally require the assets remaining on dissolution to be passed to a similar charity. The trustees should follow the procedure contained in the dissolution provision closely and send copies of all relevant resolutions to us.

133. If a charity is permanently endowed and the governing document contains no power of dissolution the charity cannot usually be wound

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up unless it fulfils the eligibility requirements for using section 74 or 75 of the 1993 Act (see above). However, we have the power under the 1993 Act to make a Scheme to amalgamate the charity with another or others, if the trustees are satisfied that:

- their charity no longer serves a useful purpose; or
- the purpose for which it was originally established has been fulfilled by other means; or
- an amalgamation with another charity would enable the charity to use its property more effectively.

134. In these circumstances the trustees are under a duty to apply to us for a Scheme to change the purposes of the charity. Guidance on the procedure can be found in **Amending Charities Governing Documents: Orders and Schemes (CC36)**.

135. Whenever a registered charity is wound up or ceases to operate because all its property has been spent or transferred to other charities, the trustees are required to send a copy of the final accounts (showing a nil balance and the fate of the remaining assets) to us, with a request to have the charity removed from the Register of charities.

136. Different rules apply to the winding up of charitable companies.

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## Significant changes from the previous version of this guidance

In this new feature we aim to help the reader already familiar with our guidance to identify the significant changes made in any revised version, so that they may assimilate these changes quickly. The previous version referred to is that of September 1999 (see footnote).

The significant changes are as follows.

- To reflect the coming into force of the Trustee Act 2000 by explaining its effects on trustee responsibilities, in particular explaining the new statutory duty of care associated with exercising the powers granted to trustees by that Act (see especially paragraphs 44-50, 65-70, 79-81 and 96-99).
- To reflect the advent of SORP 2000 and its associated Regulations, and the new range of Commission publications explaining the requirements of these concerning charity accounts and annual reports (see especially paragraphs 111-124).
- To flag up areas where the rules governing charitable companies differ from those governing other charities.
- To clarify trustees' duties relating to the assessment of risk (see paragraph 64).
- To introduce the new concept of the "total return" approach to investment returns and what responsibilities trustees have concerning using this approach (see paragraph 94).

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- To include reference to the new facility to check whether potential trustees are unsuitable people to be working with children, brought in under the Criminal Justice and Court Services Act 2000 (paragraphs 12-15).
  - To include reference to the need for the trustees to check the eligibility of new trustees (paragraphs 27-31).
  - To clarify the issues which trustees need to consider when recruiting and appointing new trustees (paragraphs 18-23 and 27-36) and suggestions on how to find new trustees (paragraphs 24-26).
  - To clarify the rules concerning a trustee resigning to become an employee of the charity (paragraphs 54-56).
  - To explain the meaning of the term "ex officio trustee" (paragraph 5).
  - To update the sections explaining trustees' responsibilities when amending the trusts of a charity or winding one up (paragraphs 125-136).
  - To make it easier for trustees to find more information on particular topics by introducing more effective cross-referencing to other Commission publications and to our website.

Other minor and consequential amendments have also been made to keep the text as up to date as possible.

We would be particularly interested in receiving feedback as to how useful this feature is to readers. As with any other feedback or

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suggestions for improvements to our publications, please write to the Head of Publications at our Taunton office.

### Footnote

A new version of this guidance, with some major revisions, was in fact published in January 2002, with further revisions being made to create the current text. Normal practice would be to refer only to the latest significant changes, but in view of the short timespan since the January revision, the list given here combines the significant changes to this guidance introduced by the two recent reviews, compared with the September 1999 version.

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*We aim to make our publications as useful and easy to read as possible. If you have any suggestions about how this booklet may be improved, please write to the Head of Publications at our Taunton office.*

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## Further Reference

For further information you may find it useful to refer to the following Charity Commission publications:

- CC2 Charities and the Charity Commission
- CC8 Internal Financial Controls for Charities
- CC9 Political Activities and Campaigning by Charities
- CC11 Payment of Charity Trustees
- CC14 Investment of Charitable Funds: Basic Principles
- CC20 Charities and Fund-raising
- CC21 Registering as a Charity
- CC28 Disposing of Charity Land
- CC36 Amending Charities Governing Documents: Orders and Schemes
- CC42 Appointing Nominees and Custodians: Guidance under s.19(4) of the Trustee Act 2000
- CC44 Small Charities: Transfer of Property, Alteration of Trusts, Expenditure of Capital
- CC49 Charities and Insurance
- CC60 The Hallmarks of a Well-run Charity
- CC61 Charity Accounts 2001: The framework

Mae'r rhan fwyaf o'n cyhoeddiadau ar gael yn Gymraeg. Am wybodaeth ar y cyhoeddiadau sydd ar gael ffoniwch ein canolfan cyswllt ar 0870 333 0123.

For a complete list of all our publications, audio-cassettes and video, please ask for:

- CC1 Charity Commission Publications

To obtain copies of any of the above publications you can either:

- view and print from our website:  
**[www.charitycommission.gov.uk](http://www.charitycommission.gov.uk)**;
- order during office hours (08:30 - 18:00 weekdays) by telephoning us on **0870 333 0123**;
- order outside office hours by telephoning our voicemail orderline on **01823 345427**; or
- write to the Distribution Officer at **PO Box 392, Newton Aycliffe, DL5 6YG**.