

An Rialálaí
Carthanas

Charities
Regulator

Guidance for Charity Trustees



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This guidance document is subject to periodic review and updating. Please refer to the Charities Regulator's website www.charitiesregulator.ie for the most up-to-date version of this document.

Contents

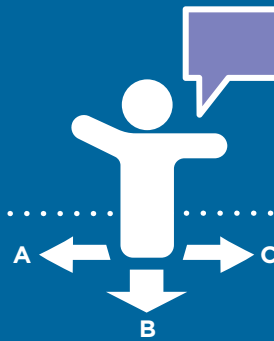
1. About the Charities Regulator	5
2. Introduction	6
3. About Charity Trustees	7
4. General Duties of Charity Trustees	11
5. Duties of Charity Trustees under the Charities Act 2009	13
6. Final Points to Note	16



COMPLY WITH
YOUR CHARITY'S
GOVERNING
DOCUMENT



ENSURE YOUR
CHARITY IS CARRYING
OUT ITS CHARITABLE
PURPOSES FOR THE
PUBLIC BENEFIT



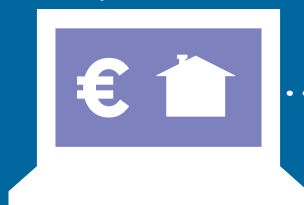
ACT IN
THE BEST
INTERESTS OF
YOUR **CHARITY**



ENSURE YOUR
CHARITY KEEPS
**PROPER BOOKS
OF ACCOUNT**



ACT WITH
REASONABLE
CARE AND SKILL



MANAGE THE
ASSETS OF
YOUR CHARITY

1 About the Charities Regulator

The Charities Regulatory Authority ('Charities Regulator') was established in October 2014, as Ireland's statutory independent authority for the regulation and protection of charitable organisations. Its general functions under the Charities Act 2009 ('Act') are to:

- ▶ increase public **trust and confidence** in the management and administration of charitable trusts and charitable organisations;
- ▶ promote **compliance** by charity trustees with their duties in the control and management of charitable trusts and charitable organisations;
- ▶ promote the **effective use of the property** of charitable trusts or charitable organisations;
- ▶ ensure the **accountability** of charitable organisations to donors and beneficiaries of charitable gifts, and the public;
- ▶ promote understanding of the requirement that charitable purposes confer a **public benefit**;
- ▶ establish and maintain a **register of charitable organisations**;
- ▶ ensure and monitor **compliance** by charitable organisations with the Act;
- ▶ carry out **investigations** in accordance with the Act;
- ▶ encourage and facilitate the **better administration and management** of charitable organisations by the provision of information or advice, including in particular by way of issuing (or, as it considers appropriate, approving) guidelines, codes of conduct, and model constitutional documents;
- ▶ carry on such activities or **publish** such **information** (including statistical information) concerning charitable organisations and charitable trusts as it considers appropriate, **provide information** (including statistical information) or **advice**, or make proposals, to the Minister on matters relating to the functions of the Regulator.

2 Introduction

Charity trustees are the people who exercise control over, and are legally responsible for, the management of a charity. They are volunteers who give their time to improve, protect and support the charitable purposes and activities that occur in Ireland. Although they are volunteers, the role of a charity trustee carries significant responsibility. The board of trustees of a charity is collectively responsible for the oversight of that charity. While charity trustees can delegate tasks, they cannot delegate accountability.

These Guidelines are issued by the Charities Regulator under section 14 (1) (i) of the Charities Act 2009, to encourage and facilitate the better administration and management of charitable organisations. The Charities Regulator expects charities to be controlled and managed in a way which protects their charity's reputation and encourages public trust and confidence in their charity. The Charities Regulator holds the view that well-intentioned, well-informed charity trustees are key to increasing public trust and confidence in the sector.

This guidance document has been developed to assist charity trustees to understand their duties. Any person involved, or considering becoming involved, in the board of management or executive committee of a charity should, in the first instance, familiarise themselves with the content of this guidance.

The Charities Regulator will require the trustees of each registered Irish charity to be able to explain and justify their approach to controlling and managing their charity, particularly if they decide not to follow the good practice set out in these guidelines.

The expression "charity trustees" is an umbrella term for the group of people who ultimately exercise control over and are legally responsible for, the management of a charity. People acting in this capacity have always been charity trustees and had associated legal obligations. However, some may not be aware of the duties for which they are responsible.

3 About Charity Trustees

Who are the charity trustees of a charity?

Charity trustees are the people who exercise control over and are legally responsible for the management of the charity. The title of a charity trustee in a particular charity will depend on its legal structure. The following are some examples:

- ▶ If the charity is a **company**, the charity trustees are the directors and other officers of the company;
- ▶ If the charity is **an unincorporated body or a body corporate** (other than a company) the charity trustees include any officers or people acting officially in the management and control of the organisation such as members of the board of management or governing committee;
- ▶ If the charity has been **established under a trust deed**, the charity trustees are the trustees specified in the trust deed.

If you are unsure as to whether you are a charity trustee or not, then it is important that you check the legal structure of your charity to clarify your position and consult your charity's constitution or deed of trust ('governing document').

How do I become a charity trustee?

Different charitable organisations will have different procedures for appointing charity trustees. In some cases there may be an election process or the charity trustees may continue in office until they resign or are removed. In other cases, the charity trustees may serve fixed terms of office. The governing document of your charity should set out how charity trustees are appointed and continue in office.

Some charities may prohibit an individual from serving as a charity trustee in certain circumstances, which would be outlined in their governing document.

Where do the duties of a charity trustee come from?

Your duties as a charity trustee come from the following:

- ▶ The governing document of your charity;
- ▶ Legislation (statute);
- ▶ Common Law (the body of Irish law based on established practice and decisions of the courts).

Charity trustees have specific duties under the Charities Act 2009 and are also required to ensure that their charity complies with the requirements of other relevant legislation e.g. data protection legislation, employment legislation, health and safety legislation etc. Where a charity is a company, a charity trustee who is also a director of the company has additional duties under company law and common law in their capacity as company directors.

For further information on the responsibilities of a company director, please refer to the website of the Office of the Director of Corporate Enforcement, which can be found at the following link:

Companies/Directors/Secretaries Responsibilities -

<http://www.odce.ie/en-gb/companylawyou/companiesdirectorssecretaries/responsibilities.aspx>

Will I get paid for being a charity trustee?

Charity trustees may not profit from carrying out their duties as a charity trustee. You cannot accept a salary specifically for acting as a charity trustee, or receive other benefits for this. However, you may be reimbursed for reasonable expenses, which you incur in carrying out your duties. There is provision in section 89 of the Charities Act 2009 for charity trustees to enter into a written service agreement with a charity but this section is not yet operative. The Charities Regulator will provide further guidance on remuneration in due course.

Can anyone be a charity trustee?

A person may cease to be qualified to act as a charity trustee. Grounds for being disqualified from holding the position of a charity trustee include if a person:

- ▶ is adjudicated bankrupt;
- ▶ enters into a formal court approved insolvency arrangement with the Insolvency Service of Ireland;
- ▶ is convicted on indictment of an offence;
- ▶ is a company that is in the course of being wound up.

For further detail and a full list of disqualifications from being a charity trustee, please consult section 55 of the Charities Act 2009.

Some charities may also have further grounds on which an individual is prohibited from serving as a charity trustee, which would be outlined in their governing document.

What if I suspect someone is not permitted under law to be a charity trustee?

It is an offence for someone to act as a charity trustee if they are not qualified to hold the position. It is also an offence for a charity trustee (or a staff member) to comply with a direction from a person who is not qualified to hold the position of charity trustee if they knew or had reasonable grounds for knowing that the person was not qualified to hold that position.

People convicted of either of these offences may also be held personally liable for the debts of their charity arising from the actions of the disqualified charity trustee or as a result of any act done in compliance with a direction of the disqualified charity trustee.

If you suspect someone is not permitted under law to be a charity trustee you should consider raising your concern with the charity itself in the first instance. In many cases, this will allow the concern to be resolved by the board of charity trustees. If you are unable to raise the concern with the charity, or if you have raised the concern and no action has been taken, you should raise a concern with the Charities Regulator by completing our online concern form.

What if a charity trustee does not do their job properly?

Charity trustees are responsible for the affairs of the charity and must carry out their duties diligently. If they fail to do so they may be guilty of a breach of trust. Charity trustees may be held personally liable for any loss or damage that their charity sustains as a result of their actions. However, if it can be shown that the charity trustees have acted honestly and reasonably then they may not be personally liable.

The High Court may, on the application of the Charities Regulator, make an order removing a charity trustee from office. The Charities Regulator can also prosecute charity trustees for offences under the Charities Act 2009 in certain circumstances.

What do I do if the charity closes?

If your charity decides to end its operations, charity trustees should comply with the relevant provisions of the charity's governing document, which may require that any remaining funds or property are transferred to a charitable organisation with similar objects.

You should also notify the Charities Regulator of the closure and provide a final set of accounts as well as details of the distribution of remaining assets. The Charities Regulator will provide further guidance on winding up in due course.

Charity trustees should also be mindful that depending on their organisation's structure they may have other legal obligations to notify and engage with other bodies such as the Companies Registration Office (CRO).



4 General Duties of Charity Trustees

What are the general duties of a charity trustee?

General duties of charity trustees come from common law. Although not an exhaustive list, below are some of the main duties of a charity trustee:

Comply with your charity's governing document

You must read and comply with the terms of the governing document of your charity. You must ensure that you understand the charitable purpose of your charity, the public benefit that it is providing and the extent of your powers and duties as a charity trustee.

Ensure that your charity is carrying out its charitable purposes for the public benefit

You must ensure that your charity's activities advance the charitable purpose(s) only and that those purposes are for the public benefit. Charitable purposes as set out in the Charities Act 2009 are:

- a) the prevention or relief of poverty or economic hardship;
- b) the advancement of education;
- c) the advancement of religion;
- d) any other purpose that is of benefit to the community.

These charitable purposes must be beneficial to the public or a section of the public. Any personal benefit that ensues must be strictly ancillary to and necessary for the furtherance of the public benefit.

For a list of purposes that fall under "purpose that is of benefit to the community", please see section 3(11) of the Charities Act 2009.

Act in the best interests of your charity

You must always do what is best for your charity and you must be impartial in carrying out your duties. You must undertake your responsibilities diligently and you should work together with other charity trustees to promote the purpose of your charity.

A conflict of interest may arise if your personal interests clash with the performance of your duties as a charity trustee.

If a situation arises whereby you have potential to gain personally from your role as a charity trustee i.e. a conflict, you must always act in the best interests of your charity. If you feel conflicted to the extent that it impacts on your ability to make a decision in your role as charity trustee, you should declare your conflict of interest and not influence the particular decision.

Act with reasonable care and skill

You must act with reasonable care and skill using your personal experience and skills in carrying out your duties. You should allow enough time to ensure that your role is performed effectively. Charity trustees often delegate day-to-day activities but you cannot delegate overall responsibility. If specialist help is needed for your charity e.g. financial advice, you should obtain the appropriate advice.

Manage the assets of your charity

You must manage the assets of your charity and ensure that all of the property of your charity is accounted for and documented properly. You must ensure that your charity's assets are used only to carry out its purposes. The charity's assets should not be used improperly or for unauthorised purposes. You must take care to ensure that the funds of your charity are not misappropriated or wasted.

You should plan your charity's budget and consider the short, medium and long term financial needs of your charity.

If you accept a role as a charity trustee in an established charity, you should satisfy yourself that all of the charity's property is accounted for and is in order.

Make appropriate investment decisions

You may often be required to make decisions regarding investment of your charity's money. In doing so, you must exercise due skill and care and act in the best interests of your charity when investing its assets.

If, as a charity trustee operating pursuant to a trust deed, you invest or agree to the investment of money outside of the scope of your authority, you may be held personally liable for any loss.

Are there additional duties as a charity trustee?

Yes, under the Charities Act 2009 there are additional duties for charity trustees, which are outlined in the next section of this guidance document.

5 Duties of Charity Trustees under the Charities Act 2009

The Charities Act 2009 sets out additional duties for charity trustees, as well as those outlined previously. It is important to remember that you may not profit from carrying out your duties as a charity trustee. However, reasonable expenses incurred in carrying out your duties may be reimbursed by your charity.

What are the additional duties of charity trustees under the Charities Act 2009?

Ensure that your charity is registered on the Charities Regulator's Register of Charities

You must ensure that your charity is registered with the Charities Regulator and you must keep your details up to date with us. It is an offence to knowingly or recklessly provide false or misleading information to the Charities Regulator when registering your charity.

It is an offence for any person on behalf of a charitable organisation, or for a body corporate that is a charitable organisation, to carry on activities in the State, if the charitable organisation is not registered, or deemed to be registered.

If a body is representing itself as being a charity, it will be guilty of an offence if it has failed to register with the Charities Regulator.

Ensure that your charity keeps proper books of account

You must make sure that your charity keeps proper books of account. The books of account must have entries from day to day of all money received and paid out by your charity. A record of the assets and liabilities of your charity must also be maintained.

Under the Charities Act 2009 you must ensure that books of account are preserved for at least six years from the end of the financial year to which they refer.

Ensure that your charity prepares and furnishes financial accounts to the Charities Regulator

Ministerial regulations regarding the form and content of annual statements of account for charitable organisations are yet to be introduced. The regulations are currently being finalised following a period of public consultation.

The current position of the Charities Regulator is:


- ▶ You must make sure that your charity prepares and furnishes a statement of accounts for each financial year to the Charities Regulator. Charity trustees must arrange for the accounts to be audited within nine months of the end of the relevant financial year, subject to exceptions as outlined in section 50 of the Charities Act 2009.
- ▶ If your charity's gross income or total expenditure is less than €10,000 in a financial year then under section 48(6) of the Charities Act 2009, the requirement to prepare an annual statement of accounts currently does not apply.

It is optional to submit a profit and loss account or an income and expenditure account and statement of assets and liabilities of your charity to the Charities Regulator.

- ▶ If your charity's gross income or total expenditure is less than €100,000 in a financial year, an income and expenditure account and a statement of assets and liabilities of your charity may be submitted to the Charities Regulator instead of a statement of accounts.
- ▶ Currently, education bodies and companies are exempted from submitting accounts to the Charities Regulator. However, such bodies may have obligations to submit their accounts elsewhere, e.g. in the case of companies they must file annual accounts with the Companies Registration Office. It is your responsibility as a charity trustee to review the relevant legislation on a regular basis, to ensure that your charity is meeting applicable accounting requirements.

Ensure that your charity prepares and furnishes an annual report to the Charities Regulator

Regardless of the size of your charity, you must prepare and submit an annual report to the Charities Regulator regarding your activities in that financial year. This annual report is due within 10 months after the end of each financial year and should include the financial accounts of your charity (if applicable). Please visit the Charities Regulator's website www.charitiesregulator.ie to access the Charities Regulator Annual Reporting User Guide (S.40).

 **Ensure the Charities Regulator is informed if you are of the opinion that there are reasonable grounds for believing a theft or fraud has occurred (Disclosure obligation)**

If, in the course of your duties, information comes into your possession that causes you to form the opinion that there are reasonable grounds for believing that an offence under the Criminal Justice (Theft and Fraud Offences) Act 2001 has been, or is being, committed, you have a duty to disclose this to the Charities Regulator in writing, as soon as may be.

You should provide the Charities Regulator with a report in writing, as soon as may be, outlining the particulars of the grounds upon which your opinion was formed.

Failure to provide a report in writing to the Charities Regulator in such circumstances is an offence under section 59(2) of the Charities Act 2009, as is knowingly submitting a false report.

 **Ensure that you comply with directions issued by the Regulator**

You must comply with any statutory direction in writing by the Charities Regulator to provide information or documentation to enable us to carry out our functions. This includes producing documents and records or providing explanations as to the whereabouts of these documents if not produced.

Failure to comply with such a direction is an offence under section 68 of the Charities Act 2009.

You must also assist an inspector appointed by the Charities Regulator to investigate your charity. This includes producing any documents and records required for the investigation and you may be required to attend before an inspector. An inspector may also require you to furnish documents relating to your bank account if they have reasonable grounds to believe that money connected with any act by you, constituting misconduct in respect of the charity, passed through your account.

It is an offence to obstruct or interfere with an Inspector who is exercising a power conferred on him or her by a warrant issued under section 69 of the Charities Act 2009.

Please note this duty to comply with directions issued by the Regulator also applies to former charity trustees of your charity.

6 Final Points to Note

- ✓ Each charity trustee and the board as a collective should be proactive in satisfying themselves that appropriate and transparent structures are in place, to ensure all aspects of the oversight and management of their charity are functioning correctly.
- ✓ Charity trustees should ensure that decisions taken are within the terms of their charity's constitution or deed of trust and the relevant governing document should be reviewed regularly to ensure it remains fit for purpose.
- ✓ Any sub-committees of a board should work to, and within clear Terms of Reference. This document should be reviewed regularly to ensure it remains fit for purpose and within the scope of the charity's governing document.
- ✓ If you have a concern about your charity, you should consider raising your concern with the board of trustees of the charity in the first instance. In many cases, this will allow the concern to be resolved by the charity trustees. If you are unable to raise the concern with the charity, or if you have raised the concern and no action has been taken, you should identify the most appropriate bodies to raise your concern with. You may raise your concern with the Charities Regulator by completing our online concern form.

This guidance document is to assist charity trustees in understanding their duties but should not be regarded as a legal interpretation of the Charities Act 2009 or any other law and does not constitute legal advice. It is not, nor is it intended to be, a definitive statement of the law in this area and charity trustees are recommended to obtain their own legal advice where necessary. The Charities Regulator accepts no responsibility or liability for any errors, inaccuracies or omissions in this guidance document.



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Charities Regulator
3 Georges Dock
IFSC
Dublin 1
D01 X5X0
Telephone: 01 633 1500

www.charitiesregulatoryauthority.ie

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