

Guidance note

Prospective charity trustee due diligence

Contents:

Introduction

Overall purpose



Prospective charity trustee due diligence

Overall purpose

Benefits of being a trustee

Whilst the role of trustee is a serious duty, there are various positive aspects to the role that can help an individual on a personal and professional basis:

- the knowledge that you are contributing to a worthwhile cause
- building self-confidence and experience of committee work
- acquiring new skills – personal and professional – through training and information and sharing
- the enjoyment to be had from working with a group of individuals from different backgrounds who share a similar passion for a particular cause.

The role of charity trustee is one that can offer considerable satisfaction, challenges and experiences, but it should not be forgotten that the position can be quite onerous and require a significant time commitment.

Before applying for a trustee position, potential trustees should undertake some research into the work a prospective charity performs and its governance arrangements. This will provide assurance that there is a match between the charity and the skills and interests of the prospective trustee.

This guidance note covers registered charities in England and Wales. Whilst principles of good governance transcends national borders, it is important to bear in mind the specific differences in charity legislation for those charities operating in Scotland, Northern Ireland, and elsewhere.

If you have any feedback on the content of these resources, or additional questions that you'd like to discuss, please contact the ICSA information centre: **020 7612 7035** | informationcentre@icsa.org.uk

© ICSA, 2014

The information given in this guidance note is provided in good faith with the intention of furthering the understanding of the subject matter. While we believe the information to be accurate at the time of publication, ICSA and its staff cannot, however, accept any liability for any loss or damage occasioned by any person or organisation acting or refraining from action as a result of any views expressed therein. If the reader has any specific doubts or concerns about the subject matter they are advised to seek legal advice based on the circumstances of their own situation.

Prospective charity trustee due diligence

This guidance note has been drafted to reflect the findings of the Charity Commission and ICSA's review project into the governance arrangements in newly registered charities.¹ The information in this document expands upon, and consolidates, the principles highlighted in *Good governance: A code for the voluntary and community sector*.²

For the purpose of this guidance note, it is assumed that the charity employs staff including a charity secretary, or other governance and compliance professional, who is not the chief executive officer.³

Why undertake due diligence?

Before accepting an appointment, prospective trustees should undertake their own thorough examination of the charity to satisfy themselves that it is an organisation in which they can have confidence and in which they will be well suited to working. By making the right enquiries, a prospective trustee can reduce the risk of unwelcome surprises and increase the likelihood of success in their role.

Depending on the format of the charity, a trustee could find themselves potentially liable for a range of risks.⁴ It is therefore advisable for a potential trustee to have as many facts at hand to help decide whether this is the right position, with the right charity.

How to undertake due diligence?

The prospective trustee should read the charity's latest annual report and look at the website to see how the charity articulates its position on fulfilling its charitable objects in the sector within it operates. The prospective trustee should pay attention to:

- its governance arrangements
- diversity of income streams
- recent performance, including impact, strategy, risks and uncertainties, sustainability and financial performance.

1 Please see the ICSA website

2 This can be downloaded from <http://www.governancecode.org/>

3 Further details on the role of the charity secretary can be found in an ICSA guidance note of the same title.

4 See ICSA's guidance note on trustee liabilities for further information.

Prospective charity trustee due diligence

The prospective trustee should also look at the charity's entry on the Charity Commission's website to review regulatory compliance.⁵ Other sources of information a prospective trustee may wish to review include:

- any reports produced by the charity other than the annual report, such as an impact report or annual review
- marketing material
- press coverage

It should be noted that published material is unlikely to reveal wrongdoing; however a lack of transparency may be a reason to proceed with caution.

In addition to the information garnered from published documents and regulatory returns, the prospective trustee may have a number of questions they would like answered to help them with their decision.

Before accepting a role, a prospective trustee may have pre-appointment meetings with the chairman, chief executive, charity secretary and possibly existing trustees. It may be beneficial to meet these people in pairs, or in small groups (rather than solely relying on one-to-one meetings) as this can give an indication of the dynamics between trustees. It may be useful to observe a board or committee meeting.

If the individual is joining with the intention of taking on the role of chairman of the charity or chair of the audit committee,⁶ meetings should be set up with the auditors or independent examiner and other professional advisers.

The prospective trustee should check scheduled trustee meeting dates for the year ahead at an early stage in the due diligence process to ensure he/she will be able to attend most, if not all, of the planned meetings in the first year.

The prospective trustee should be aware that the charity will be unable to disclose certain confidential or sensitive information prior to the formal appointment.

5 For charities registered in other jurisdictions, see the website of the relevant regulator. For charitable companies limited by guarantee, see Companies House website.

6 Where the charity has one.

Prospective charity trustee due diligence

Due diligence questions

The list below is not exhaustive, but is intended to be a helpful basis for the pre-appointment due diligence process. The answers to some of the questions can be found by reviewing the documents listed in this guidance note. Where answers cannot be found, or should supplementary questions develop, the charity should be approached for the answers, possibly at the one-to-one meetings with key individuals within the charity.

The charity

- what are the exact nature and extent of the charity's activities?
- what is the charity's current financial position and what has its financial track record been over the last three years?
- what is the charity's strategy?
- what are the charity's mission, vision, values and culture as set by the board?
- who are the charity's stakeholders?
- what is the charity's unique position within its area of operation and how does that differ from other charities working in the same or a similar field?
- what are the key issues being faced by the board of trustees at the moment?

Governance

- how well does the charity articulate its position on governance in the annual report?
- what governance challenges has the charity dealt with in the last two years?
- does the charity secretary have a reporting line into the chairman on board governance matters?
- does the chairman report personally on governance, and about the role and effectiveness of the board?
- is the charity embracing or developing best practice that is proportionate to the organisation?
- do the charity's governance arrangements reflect the principles set out in *Good governance: A code for the voluntary and community sector*?
- is succession at both management and board levels covered, and in what kind of detail?
- are you satisfied that the internal regulation of the charity is sound and that you can operate effectively within its stated corporate governance framework?

Prospective charity trustee due diligence

Trustee composition

- who are the current trustees, what is their background and record and how long have they served on the board?
- is the board composition suitably diverse to stimulate independent challenge and thought?
- are there interest groups with a common agenda on the board, and what is their impact?
- are you being brought on to the trustee board to bolster an existing group, or to bring something new? If the latter, what is being expected of you and can you deliver it?
- is there a range of skills on the board and are those skills, experience and aptitudes aligned with the charity's strategic direction, or does the strategy represent new territory for all the board members?
- is the board composition keeping pace with the speed of change at the charity? Does it meet the needs of the organisation?
- what actions are available to the board to acquire the skills they need if they are not represented on the trustee board?

Boardroom behaviours

- what are the dynamics of the relationships between chairman and the chief executive, the chief executive and trustees, and within the trustee board?
- how is the leadership of the chairman perceived?
- does the chairman set clear expectations concerning the charity's culture, values and behaviours, and the style and tone of board discussions?
- is constructive challenge from the trustees welcomed?
- does the chairman allow adequate time for debate?
- does the board have a high level of visibility and lead by example?
- what is the level of communication among trustees between meetings?

Operational matters

- has adequate thought been given to the board's decision-making processes?
- do board papers provide high quality information, at a time far enough in advance of the meetings, to enable informed debate and high-quality decision-making?
- does the board agenda focus on the right things? Have you seen the schedule of matters reserved for the board's decision?
- are committee meetings structured so that there is sufficient time to allow a report to be submitted to the board meeting and is adequate time allowed in board meetings to discuss committee matters?

Prospective charity trustee due diligence

- what is the attitude to site visits? How often does the board collectively or individually visit key locations?
- how is the strategy away-day handled? What matters have been covered on previous away-days?
- what is the practice in a typical board meeting week? Are there meals before or after the meetings enabling the trustees to get to know each other better, meet senior managers and discuss wider issues in a less formal and time-constrained environment?
- how frequently, where and at what time of day are board and committee meetings held? Could you commit to making meetings already scheduled?

Board evaluation

- are there rigorous evaluations of the effectiveness of the board, its committees and the individual trustees?
- in what format have evaluations taken place? Have external evaluations been undertaken?
- what are the key issues that came out of the last board evaluation?
- does the chairman act on the results of board, committee and individual trustee evaluations?
- are there areas for development on the board and what plans are there to tackle them?

Role of trustees

- is the charity clear and specific about the qualities, knowledge, skills, aptitudes and experience that it needs to complement the existing board? Will you be able to make a positive contribution?
- can the chairman explain why you are suited to the role?
- how long is the term of office? What procedures are in place to resign before then? Are there other ways the charity could remove trustees, if so, what are they?
- what is the time commitment required and can you make this commitment? Could you find the time to deal with emergency situations outside of the routine board and committee meetings?
- if the charity is not performing particularly well is there potential to turn it round and do you have the time, desire and capability to make a positive impact?
- does the charity offer a suitable trustee induction programme and adequate ongoing training/professional development? Is it clear from the charity how you will acquire an understanding of the main areas of charity activity, especially areas involving significant risk?
- is there adequate internal support for the trustees (typically from the charity secretary)?

Prospective charity trustee due diligence

- what are the internal protocols: does a new trustee channel everything through the chairman, chief executive or charity secretary?
- would accepting the trusteeship put you in a position of having a conflict of interest?
- is it a good career move? Will you grow in terms of experience and/or ability as a result of joining the board?

Stakeholder relations

- who are the charity's beneficiaries?
- has the charity identified all its stakeholders and put in place appropriate policies and procedures for engaging with each?
- what is the charity's attitude towards, and relationship with, its stakeholders?
- what questions were raised at the previous general meeting?
- how often does the chairman meet key stakeholders; what kind of questions do they ask?
- when do the trustees typically have the opportunity to meet with stakeholders?
- what are the most common themes within the complaints received by the charity and reviewed by the board?

Risk management

- what are the main risks the charity faces, and how are these risks managed?
- what is the risk appetite or tolerance of the charity in the achievement of its charitable and strategic objectives?
- are the risk assessments underpinned by proper analysis?
- does the charity have sound and effective systems of internal controls?
- is there anything about the nature and extent of the charity's activities that would cause you concern both in terms of risk and any personal ethical considerations?
- is any material litigation presently being undertaken or threatened, either by the charity or against it?
- what, if any, liability and indemnity insurance cover is available to trustees?



Trust through governance

ICSA is the chartered membership and qualifying body for professionals working in governance, risk and compliance, including company secretaries.

We seek to develop the skills, effectiveness and profile of people working in governance roles at all levels and in all sectors through:

- A portfolio of respected qualifications.
- Authoritative publications and technical guidance.
- Breakfast briefings, training courses and national conferences.
- CPD and networking events.
- Research and advice.
- Board evaluation services
- Market-leading entity management and board portal software.

Guidance notes are prepared by the ICSA policy team to support the work of company secretaries and other governance professionals working in the business and not-for-profit sectors, and in NHS trusts.

Guidance notes offer authoritative advice, interpretation and sample materials for the many issues involved in the management and support of boards. As such, they are invaluable for those helping their organisations to build trust through good governance.

There are over 100 guidance notes available to ICSA members at www.icsa.org.uk/guidance

The Institute of Chartered Secretaries and Administrators

Saffron House, 6–10 Kirby Street
London EC1N 8TS

April 2014



Institute of Chartered Secretaries
and Administrators