

Guidance note

Specimen code of conduct for charity trustees (England & Wales)

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Specimen code of conduct for charity trustees (England & Wales)

Introduction

This ICSA guidance note is aimed at trustees in England and Wales¹ and can be adapted for any size of charity to reflect good practice for each organisation's needs. This document, and others in the series, should provide sufficient detail for trustees, and others interested in governance, to think about the governance arrangements within their own charity, and apply those aspects of good practice that are most appropriate and proportionate.

It is good practice for each charity to undertake a periodic review of their governance arrangements as the charity evolves, and where appropriate, amend policies, procedures, and the governing document² to ensure that they remain fit for purpose and are structured in the most effective way to meet the charity's objects and environment in which it operates.

This guidance note has been updated to reflect the findings of the Charity Commission and ICSA's review project into the governance arrangements in newly registered charities.³ The information in this document expands upon, and consolidates, the principles highlighted in *Good governance: A code for the voluntary and community sector*.⁴

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.⁵

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- 1 Whilst principles of good governance transcend 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.
 - 2 There are specific actions that must be taken in order to change a charity's governing document depending on the corporate structure of the organisation; in all cases changes to the charity objects will require approval from the Charity Commission. See ICSA guidance note on changing a charity's governing document for further details.
 - 3 Please see the ICSA website
 - 4 This can be downloaded from www.governancecode.org
 - 5 Further details on the role of the charity secretary can be found in an ICSA guidance note of the same title.

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

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Specimen code of conduct for charity trustees (England & Wales)

Overall purpose

The purpose of the specimen code of conduct below is to provide trustees with clear guidelines as to their standard of behaviour, responsibilities, and good practice in fulfilling their obligations to the charity they represent.

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.

This guidance note should be read in conjunction with the specimen trustee role description and the model conflicts of interest policy.⁶ For further information on the legal responsibilities of a charity trustee, please refer to *CC3 The Essential Trustee: What you need to know* published by the Charity Commission.⁷

When considering introducing a code of conduct for charity trustees, due regard should be given to the charity's governing document to ensure that the code reflects the powers of the trustees. Ultimately, the governing document's provisions and relevant legislation must take precedence over any code of conduct.

For charitable companies, trustees and directors have additional statutory duties to fulfil. Further information on these can be found in the ICSA guidance note – *The duties of charity trustees*.

⁶ Available from the ICSA website.

⁷ This can be downloaded from the Charity Commission website

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Specimen code of conduct for charity trustees

Delete/insert square brackets [] as appropriate

This code of conduct provides trustees with guidelines as to the standards and behaviours that *[name of charity]* expects from the board of trustees (individually and collectively) when acting on behalf of, or representing, the charity.

This code of conduct should be read in conjunction with:

- the duties and responsibilities of trustees⁸
- any role descriptions for trustees
- any statement of expectations issued by the charity⁹
- the charity's governing document
- the charity's meeting etiquette protocol¹⁰
- the charity's policy and procedures covering conflicts of interest, anti-money laundering and anti-bribery, the declaration, acceptance and refusal of gifts and hospitality
- the charity's mission, vision and values.

Why we have a code of conduct

The board of *[name of charity]* has ultimate responsibility for all actions carried out by staff and committees *[and volunteers]* throughout the charity's activities. This responsibility includes the stewardship of charitable resources *[and the provision of services and/or activities to the community]*.

The board of trustees is therefore determined to ensure the organisation inspires confidence and trust amongst its *[beneficiaries, members, staff, partners, supporters, funders and suppliers]* by demonstrating integrity and avoiding any potential or real situations of undue bias or influence in the decision-making of the charity and in dealings with staff and volunteers.

The governing document of *[name of charity]* makes provision for the *[appointment/ election]* of trustees, practice and procedure of trustee decision-making, tenure of office and ultimately the removal of trustees. This code of conduct complements the charity's governing document.

⁸ See guidance note *The duties of charity trustees (England & Wales)* which can be found on the ICSA website.

⁹ Specimen documents can be found on the ICSA website.

¹⁰ Specimen documents can be found on the ICSA website.

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Appointment and tenure

The board of trustees comprises [*appointed/elected/co-opted/nominated*] individuals. The term of office for individual trustees is [*three years*], after which period the trustee may be able to stand for re-election [*to a limit of nine years/with a break of one year between the final third term of office*]. A trustee must not be disqualified from acting as such [*and must be a member of the charity*] in order to stand for election or appointment.

The board of trustees should represent the interests of all the charity's [*beneficiaries/members/stakeholders*] The trustee owes his/her duty to the charity and not to any individual, organisation or constituency that appointed them.

Induction and training

In order for trustees to be effective in performing their legal duties and responsibilities, it is essential that individual trustees, and the board as a whole, are aware of the nature of the work of the charity and its operating environment [*including the roles of staff and volunteers*]. In order to prepare and support trustees, [*name of charity*] will provide a comprehensive induction and ongoing development opportunities, in line with the statement of expectations.¹¹ Individual trustees are invited to speak to the [*chairman and/or charity secretary*] about any further information or training needs.

Trustees are expected to attend induction and training programmes, given reasonable notice, in line with any individual or collective requirements identified [*by the trustee or the periodic board performance appraisal or the chairman*].

The [*name of charity*] operates a buddying/mentoring system whereby existing trustees are paired with newly [*appointed/elected*] trustees to develop a swift understanding of the more informal aspects of the work of the board. Further information on the buddying/mentoring system will be provided by the charity secretary upon induction.

The board of trustees, [*collectively*] [*and/or individually*] is expected to undertake a performance appraisal exercise to assess the skills set and competencies available to the charity and to identify areas for future development and training. This process will be led by the chairman.

¹¹ A model statement of expectations can be found on the ICSA website.

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Role and function of trustees

The charity will provide trustees with guidance outlining their specific role and responsibilities.¹² In fulfilling their general roles and responsibilities individual trustees must:

- adhere to the charity's rules and policies, including the governing document, any standing orders and bye-laws, and support its charitable objects
- act in the best interests of the charity at all times, taking professional advice where necessary
- contribute to the work of the board of trustees in order for it to fulfil its role and functions as defined in the governing document and legislation
- recognise that their role is a collective one and that any task or function delegated to an individual trustee or trustee committee does not relieve the other trustees of the responsibility for that task or function¹³
- support and assist the chief executive, where applicable.

Conflicts of interest

The board of trustees has a legal obligation to act in the best interests of [*name of the charity*], and in accordance with the charity's governing document, and to avoid situations where there may be a potential, real or perceived, conflict of interest.

Trustees should not exert any influence to garner any preferential treatment for themselves or their family, or other connected persons or organisations (refer to conflict of interest policy).¹⁴ Trustees should be aware of, and act in accordance with, the charity's policy and procedures on identifying and managing conflicts of interest.¹⁵

Upon appointment, and at least annually, trustees are required to complete a declaration of interest form. This document must be updated when a material change occurs. A register of interests will be maintained by the [*charity secretary*], and will be made available to the public, in line with the charity's conflicts of interest policy.

Failure by a trustee to declare an interest, real or perceived, could result in the complaints process being instigated by the charity. Depending on the circumstances and severity of

12 See guidance notes *The duties of charity trustees (England & Wales)* and *Model role description for charity trustees (England & Wales)* which can be found on the ICSA website.

13 Further information on delegations can be found in the ICSA guidance note on trustee liability

14 Refer to *A Guide to Conflicts of Interest for Charity Trustees*, by the Charity Commission for further information, along with the ICSA *Best practice guide managing conflicts of interest in the not-for-profit sector*.

15 The ICSA guidance note on conflicts of interest provides further information on identifying and managing conflicts.

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the conflict, this may result in the trustee being removed from office [*in accordance with the charity's governing document*].

Standards of conduct

Trustees are required to adhere to the highest standards of conduct in the performance of their duties. This code of conduct respects and endorses the seven principles of public life promulgated by the Nolan Committee¹⁶ and all trustees are expected to perform their duties in accordance with them. The seven principles are:

- selflessness
- integrity
- objectivity
- accountability
- openness
- honesty
- leadership.

In addition, the charity requires trustees to perform their duties in accordance with the vision, mission and values of the organisation. Trustees are encouraged to:

- value fellow trustees, even when there are differences in opinion
- adhere to the charity's meeting etiquette¹⁷
- trustees should treat the charity's [*directors, other employees and fellow trustees*] with respect and in accordance with the charity's policies.
- be mindful of conduct which could be deemed to be unfair or discriminatory
- conduct themselves in a manner which reflects positively on the charity when attending external meetings or any other events.

All trustees are expected to understand, agree and promote the charity's equal opportunities policy in every area of their work. The board's activities should not prejudice any part of the community on the grounds of age, disability, gender, gender reassignment, pregnancy and maternity, race, nationality, religion or belief, or sexual orientation.¹⁸ Any actual or perceived prejudicial action, views or comments shall be investigated and dealt with in line with the complaints procedure and could result in the trustee being removed from office.

¹⁶ Further details can be found at: www.public-standards.org.uk

¹⁷ A specimen board etiquette document can be found on the ICOSA website.

¹⁸ Section 149 of the Equality Act 2010

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Stakeholder engagement

Trustees are accountable to a range of interested parties for their actions and as such decision-making and governance issues should be as transparent as possible, except for when confidentiality is required¹⁹ or there is likely to be a breach of the charity's data protection policy.

[Trustees are accountable to the membership]. In order to demonstrate their accountability to the charity's wider community and the Charity Commission, trustees are encouraged to attend events and provide opportunities to meet, talk and listen to *[the members/ partner organisations they represent/ and the public]*, in order to best understand their views and concerns.

Trustees should be fully aware of their representative functions and should not become personally involved in those operational matters that should rightly be handled by the appropriate member of staff *[or other designated person as detailed in the charity's policy]*. Trustees are advised to act as a conduit for forwarding public comments and concerns to the appropriate staff member, when presented with a complaint from *[a member, user, beneficiary or the general public]*.

Visiting the charity

In fulfilling their core duties and responsibilities, trustees will be expected to visit charity property. For activities other than attending board or committee meetings or *[member events organised by the charity]*, trustees are requested to follow the procedure below:

- for group visits, arrangements will be discussed and agreed between the chairman and charity secretary, in liaison with appropriate staff
- for individual visits, the trustee should speak directly to the charity secretary *[or follow the charity's established procedure]*.

The charity will make every effort to accommodate the request of the trustee, but may not always be able to agree to specific dates, times or site visits.

Personal visits to the charity, or volunteer activity or participation in fundraising events that is not related to the trustee role is not covered by this procedure but trustees must abide by the rules of the event.

¹⁹ Trustees are legally accountable to the Charity Commission, and other regulatory and statutory bodies, and their membership, where they have them. In addition, the evolution of good governance is leading to a wider call and acceptance by some charities, to be seen to improve their transparency and accountability to the wider public, informal and potential funders.

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Expenses

The position of trustee is unremunerated, though reasonable out-of-pocket expenses are paid. Please refer to [*name of charity's*] policy on trustee expenses and how to claim for reimbursement for costs incurred on behalf of the charity.

Further information about expenses can be gained by speaking directly to [the charity secretary] [*finance director*].

Trustees must not receive any financial or non-financial benefit that is not explicitly authorised by the governing document or the Charity Commission.²⁰

Meetings

Trustees have a responsibility to attend meetings of the board.²¹ When this is not possible they should submit an apology to the [*chairman*] [*and/or*] [*charity secretary*] in advance of the meeting. Trustees are expected to attend for the duration of each meeting.

Absence from the board of trustee meetings without good reason established to the satisfaction of the board could result in the individual trustee being removed from office, in accordance with the governing document.

Non-attendance of [*three*] [*four*] [*six*] consecutive board meetings will result in the trustee being deemed to have resigned their position, unless the grounds for absence are regarded as satisfactory by the board of trustees. An appeals process is available for those trustees wishing to argue against their removal.

If a trustee wants to submit an item for inclusion in the board's agenda, they should forward their request to the charity secretary [*at least 14 working days*] before the meeting. Late items of an urgent nature may be added to the list of any other business, at the discretion of the chairman, in discussion with the charity secretary.

²⁰ Unless authorised to do so by the governing document, statute, or by the Charity Commission, trustees should not benefit from the position they occupy. The Charities Act 2006 amended the position regarding the payment of trustees for undertaking activities outside of those of being a trustee, or the provision of services. Section 185, Charities Act 2011 provides for trustees to be remunerated for services to the charity if certain conditions are met.

²¹ See the Charity Commission's publication Charities and Meetings, CC48 for further information on meetings.

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Meetings of the board shall be held in private, and in accordance with [*name of the charity's*] meeting etiquette. The board of trustees may decide to invite named staff and other individuals to all or part of a meeting to discuss a particular item. All due consideration will be given to ensure that any confidential or sensitive items remain as such. Such invitations will be agreed by the chairman and facilitated by the charity secretary.

Mediation

A mediation process is available to the board, and individual trustees, for use when there has been a breakdown of communication or trust between the trustees and charity management. Further information should be requested from the chairman or charity secretary.

Before the mediation process is instigated, the [*chairman*] [*vice chairman*] and [*complainant*] should have met in an attempt to resolve the matter.

Confidentiality

All trustees are required to respect the confidentiality of the information they are exposed to as a result of their membership of the board of trustees. All trustees, when dealing with difficult and confidential issues, are required to act with discretion and care in the performance of their role.

Trustees should only speak to the media with the express permission of the [*chairman*] [*chief executive*] [*charity secretary*]. In situations concerning potential whistleblowing matters, trustees are encouraged to adhere to the charity's whistleblowing policy to resolve the matter, in the first instance.

Any allegations of breaches of confidentiality will be investigated under the complaints policy and could result in the removal of any trustee involved in such a breach, in accordance with the governing document.

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Ceasing to be a trustee

Trustees must continue to comply with the qualifications required to hold a trustee position throughout their period of tenure, as defined in the willingness to serve declaration.²² Any changes that would render the trustee ineligible to serve must be forwarded to the charity secretary.

As previously mentioned, failure to attend [*three*] [*four*] [*six*] consecutive meetings will result in the trustee being deemed to have resigned their position unless the grounds for absence are deemed to be satisfactory by the board of trustees. An appeals process is available for trustees wishing to challenge such decisions.

Trustees may resign their office ahead of their three-year tenure by writing to the [*chairman*] [*charity secretary*]. Depending on the reasons and circumstances of the resignation,²³ the chairman may decide to formally record those particulars in the minutes of the next board meeting.

The confidentiality requirements referred to above continue to apply after the trustee leaves office.

Code non-compliance

In addition to this code of conduct, a complaints policy operates to cover allegations made against trustees that appear to breach the spirit of the code or specific conditions of service. Ideally any penalties for non-compliance would never need to be applied.

Non-compliance with the code of conduct may result in action being taken as follows:

- where misconduct takes place, the [*chairman*] [*vice-chairman*] may be authorised to take such action as may be immediately required, including the exclusion of the person concerned from a meeting
- where such misconduct is alleged, it shall be open to the board of trustees to decide, by simple majority of those in attendance, to lay a formal charge of misconduct. In such instances it will be the responsibility of the board to:

²² A specimen willingness to serve declaration can be found on the ICSA website.

²³ For instance, where a trustee does not agree with the decision(s) of the board and can no longer support the charity. Conversely, a trustee resigning may request that the reason for his/her resignation is recorded appropriately.

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- inform the trustee in writing of the nature of the allegation of the breach, detailing the specific action or behaviour considered to be detrimental to the charity, and inviting and considering their response within a defined timescale
- inviting the trustee to address the board in person if the matter cannot be resolved satisfactorily through correspondence
- deciding, by simple majority of those present and voting, whether to uphold the charge of the breach and conduct detrimental to the charity
- impose such sanctions as shall be deemed appropriate. Sanctions will range from the issuing of a written warning as to the trustee's future conduct and consequences, and the removal of the trustee from office
- where the board cannot agree on a course of action in a situation that is deemed detrimental to the charity, the charity has the power to remove the trustee.²⁴

Further information regarding any aspects of this code of conduct can be requested from the charity secretary.

²⁴ This will depend on the powers contained within the charity's governing document.



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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.

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April 2014



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