

## Charity Trustee Duties and Liabilities

Working as a trustee for a charity can be a very rewarding experience and provides opportunities for skill development, networking and helping the community. As a member of the board of trustees, you are ultimately responsible for the affairs of the charity and for delivering the outcomes it was intended to create. Although the majority of trustees are volunteers, there is still a certain amount of risk involved in holding one of these positions. Even when acting in good faith, you could be held personally liable for your business decisions.

Before becoming a trustee, you should learn all you can about the charity and what is to be expected of you. This includes reading the governing document, annual reports, policies and accounts and knowing what type of legal structure the charity is. The governing document is the main constitutional document that governs the key aspects of the charity's work. Meeting existing trustees and staff or sitting in on a board meeting can also help you determine what will be expected of you. Make sure you understand all of your responsibilities before and during your time as a trustee.

### Who is Considered a Charity Trustee?

Charity trustees are people who have general control and management of the administration of a charity, regardless of what they are called. This means that anyone, including senior management, directors, board members and committee members can all be considered a trustee and subject to duties under charity laws. Even if your title or job description does not contain the word trustee, know that you may still be considered one based on your responsibilities and actions.

### Trustee Duties

Once you become a trustee, you will have certain duties and be required to follow relevant legislation for your country. The following are general duties all trustees across the UK have:

- **Duty of care.** The trustee must use reasonable care and skill in his or her work with the charity, including using any special knowledge or personal experience available. Trustees should also consider getting external professional advice on all matters where the charity may have a material risk.

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## As a trustee, you must understand the risks and responsibilities involved and how to protect yourself from personal liability.

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- **Duty of prudence.** Trustees must ensure that the charity's finances are used appropriately, prudently, lawfully and in accordance with the charity's objective. This means that the trustee must ensure that the charity is and will remain solvent and make reasonably sound financial decisions regarding funds and assets. Trustees should avoid undertaking activities that might place the charity's endowment, funds, assets or reputation at risk.
- **Duty to comply.** Trustees must ensure that the charity complies with country-specific charity law and with the requirements of the applicable regulator. This includes ensuring that the charity prepares required reports and submits Annual Returns and accounts as required. The charity's governing document may also specify certain

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requirements or rules, such as specific provisions relating to a trustee's duty to avoid personal conflicts of interest. Legislation may also apply depending on the type of work the charity carries out and whether it employs staff or volunteers. For incorporated charities registered with the Companies House, anyone serving as a trustee will likely be considered a director and be subject to principles under the Companies Act 2006.

The following table specifies the main laws that apply to charities and their trustees:

Country	Legislation	Regulator
England and Wales	The Charities Act 2011	The Charity Commission
Scotland	Charities and Trustee Investment (Scotland) Act 2005	Office of the Scottish Charity Regulator (OSCR)
Northern Ireland	The Charities Act (Northern Ireland) 2013	The Charity Commission for Northern Ireland

## Personal Liability

Depending on the circumstances, such as the legal structure of the charity and the charity's governing document, trustees may be held personally liable for any debts or losses the charity incurs. If the trustee acts prudently, lawfully and in accordance with the governing document, any liabilities, including debts or financial obligations, can normally be met by the charity's resources. However, if the trustees incur debt or liabilities that total more than the charity's assets, they may not be able to fully cover themselves with the charity's resources, even if the liabilities have been properly incurred.

If a trustee acts imprudently or is in breach of the law or governing document, he or she may be held personally responsible for any liabilities the charity incurs as a result. Because trustees act collectively, they could be collectively responsible for meeting this liability.

Trustees can help reduce their personal liability risk by taking actions such as the following:

- Familiarising themselves with the governing document
- Establishing effective induction procedures for new trustees
- Seeking professional advice when needed, when unsure about duties or when required by statute
- Implementing effective internal management and financial controls
- Knowing what areas of law might affect the charity's activities, such as employment, health and safety, human rights and data protection
- Ensuring that the charity has the resources to meet its requirements under any contract it signs, and understanding the consequences if there is a breach of contract

## Trustee Indemnity Insurance

Trustee indemnity insurance (TII) covers trustees from having to personally pay legal claims made against them, either by the charity or a third party, for negligence or for a breach of trust or duty. TII can be purchased by the charity as a benefit for the trustee or by the trustee individually. However, there are limits on what the cover will apply to—specifically, costs related to a criminal fine or penalty, and costs from the trustee being convicted of fraud, dishonesty or reckless conduct.

Not only can trustees be held liable for a breach of duties, but the charity itself can also be held liable. TII can include protection for the charity against corporate liabilities arising from claims due to a breach of duties by a trustee or senior management. This can include legal and defence costs, awards and settlements.

Proper insurance cover and other risk management strategies can help ensure that you and your charity are protected against liability. For more information about appropriate cover, contact RS Risk Solutions Ltd today.