



# GOVERNANCE FACTSHEET – THE BASICS

## The legal duties of trustees

- **Tips for understanding legal duties**
- **Six legal and regulatory duties of trustees**

Use this page to learn about what your boards legal duties are and the considerations required.

Charity law gives trustees a legal responsibility for a given charity. To support this trustees also have specific duties. These are set out by the Charity Commission and show how trustees should govern their charity and conduct themselves.

The main duty of all charity trustees is to advance the purposes of their charity. This should always be a trustee's main focus. A charity's trustees must carry out its charity's purposes for public benefit. This is called 'the public benefit requirement'.

Trustees' duties are set out in the [Charity Commission guidance on the essential trustee \(CC3\)](#). Reading and understanding this guidance is important for all trustees.

## Tips for understanding legal duties

- Read and refer to [CC3 The Essential Trustee: what you need to know, what you need to do](#).
- Read and consider the [Charity Commission guidance on Public Benefit](#).
- Book your place on our [eLearning course on the roles of duties of trustees](#) or browse our [upcoming governance training courses](#).
- Set aside time as a board to discuss the duties. Consider the questions below in relation to each specific duty. Agree a plan for how you will make sure these duties are met.

## Six legal and regulatory duties of trustees

The following six legal duties are taken from the Charity Commission's core guidance: [The Essential Trustee: what you need to know, what you need to do](#). Alongside each duty we've set out some questions that trustees can consider to help ensure compliance.

### **1. Make sure your charity's carrying out its purposes for the public benefit**

You and your co-trustees must make sure the charity is carrying out the purposes for which it is set up, and no other purpose. This means you should:

- Make sure you understand the charity's purposes as set out in its governing document
- plan what your charity will do and what you want it to achieve

- be able to explain how all of the charity's activities are intended to further or support its purposes
- understand how the charity benefits the public by carrying out its purposes.

Spending charity funds on the wrong purposes is a very serious matter. In some cases trustees may have to reimburse the charity personally.

#### **Questions trustees can ask**

- How is our charity's purpose defined in our governing document?
- Does the work of the charity support this purpose?
- If areas of work do not clearly align with the charity's purpose, should we continue with that work?
- Do we have a strategy which sets out how we'll support our purpose?
- How do we know we're making progress with our plans?
- What are the benefits for the public from our work and how do we define those?

See [section four of The Essential Trustee publication](#) for more information.

### **2. Comply with your charity's governing document and the law**

You and your co-trustees must:

- make sure that the charity complies with its governing document
- comply with charity law requirements and other laws that apply to your charity.

You should take reasonable steps to find out about legal requirements, for example by reading relevant guidance or taking appropriate advice when you need to.

#### **Questions trustees can ask**

- Have we seen and read the charity's governing document?
- Does the board receive training on their duties?
- When did we last review our policies to ensure legal compliance?
- What legal and regulatory requirements might impact on our work or a particular project?
- Does the board have access to legal advice?

See [section five of The Essential Trustee publication](#) for more information.

### **3. Act in your charity's best interests**

You must:

- do what you and your co-trustees (and no one else) decide will best enable the charity to carry out its purposes
- make balanced and adequately informed decisions with your co-trustees, thinking about the short and long term

- avoid putting yourself in a position where your duty to your charity conflicts with your personal interests or loyalty to any other person or body
- not receive any benefit from the charity unless it's properly authorised and clearly in the charity's interests– this also includes anyone who's financially connected to you – such as a partner, dependent child or business partner

#### **Questions trustees can ask**

- Are we clear on what the charity is trying to achieve and how it will do this?
- Do we have the appropriate information to make a decision?
- What are the short and longer-term implications of this decision?
- Could I or anyone connected to me benefit from this decision?
- Do we have a policy on managing conflicts of interest?

See [section six of The Essential Trustee publication](#) for more information.

#### **4. Manage your charity's resources responsibly**

You must act responsibly, reasonably and honestly. This is sometimes called the duty of prudence. Prudence is about exercising sound judgement. You and your co-trustees must:

- make sure the charity's assets are only used to support or carry out its purposes
- avoid exposing the charity's assets, beneficiaries or reputation to undue risk
- not over-commit the charity
- take special care when investing or borrowing
- comply with any restrictions on spending funds or selling land.

You and your co-trustees should put appropriate procedures and safeguards in place and take reasonable steps to make sure these are followed. Otherwise you risk making the charity vulnerable to fraud or theft, or other kinds of abuse.

#### **Questions trustees can ask**

- Are we using the charity's funds to support its purpose?
- Do we have a clear and current picture of the charity's financial position?
- Where are the charity's financial risks?
- Are there a set of financial procedures in place to protect the charity and how do we know these are fit for purpose?
- Does the charity require an external audit?

See [section seven of The Essential Trustee publication](#) for more information.

#### **5. Act with reasonable care and skill**

As someone responsible for governing a charity, you:

- must use reasonable care and skill, making use of your skills and experience and taking appropriate advice when necessary
- should give enough time, thought and energy to your role, for example by preparing for, attending and actively participating in all trustees' meetings

**Questions trustees can ask**

- Do I use my skills, experience and insight to their full potential as a trustee?
- Does everyone contribute to the board in a meaningful way?
- Are we aware of the skills we have in the room and where we might have skill gaps?
- Does everyone come to the meeting prepared having read and understood the papers?
- Do the agendas in our meetings allow enough time to share ideas?

See [section eight of The Essential Trustee publication](#) for more information.