

BACK TO BASICS: A SEMINAR FOR CHARITY TRUSTEES

NPC briefing, December 2013

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On 2 December 2013, NPC and the Clothworkers' Company held a seminar for those wishing to understand the nature of trusteeship and the key things that every trustee needs to know—for those completely new to the role, in need of a refresher, or thinking about becoming a trustee for the first time. This report highlights the main themes discussed during the seminar, summarising the personal advice and expertise of the speakers and drawing on the broad experience of those in attendance.

The seminar was chaired by Michele Acton, Chief Executive at Fight for Sight. The panellists shared their perspectives on the nature of trusteeship, focussing on the following themes:

Ian Joseph (Chief Executive, Trustees Unlimited) outlined the basic elements of a trustee's role, drawing on his previous experience in the charity sector and as a professional recruiter of trustees.

Moira Protani (Partner, Wilsons) talked about the legal duties and liabilities of trustees, the nature and purpose of a governing document, and the regulatory role of the Charity Commission.

Ruth Sutherland (Chief Executive, Relate) talked as a CEO about the importance of communication between trustees and managers, and how to get the most out of this relationship.

Ruth Kaufman (Chair of Trustees, Woman's Trust) gave her 'thoughts from the front-line' based on her personal experiences of trusteeship and chairing a board.

Introduction

According to research by NCVO, there were approximately 840,000 trustee positions in UK voluntary sector organisations in 2010. These positions were filled by only 580,000 trustees, almost half of whom were sitting on two boards. At the time of the NCVO survey, one in seven registered charities reported a shortage in the number of trustees and management committee members in relation to their needs.¹ A common barrier to becoming a charity trustee is a lack of information and understanding—about what is expected of trustees, what the process will entail, the level of commitment it requires and the extent of personal liability. The role comes with a number of responsibilities, expectations and challenges, but it also brings significant rewards. It is sociable and satisfying, and can aid professional development, as well as being of great value to charity beneficiaries and society at large. The discussions at this seminar aimed to break down some of these informational barriers, and provide a solid grounding in the key principles of trusteeship.

¹ NCVO, *Civil Society Almanac*, <http://data.ncvo.org.uk/a/almanac12/almanac/voluntary-sector/volunteering/how-many-trustees-of-voluntary-organisations-are-there-in-the-uk/>

The essentials of trusteeship

What is a trustee?

Trustees are voting members of the governing body of an organisation. Depending on the organisation's structure, they may be referred to as councillors, the board, the management committee or the executive committee.² Regardless of job title, the important point is that trustees are legally responsible for the running of the charity. They are usually elected or appointed, although the specifics of this will depend on the procedures outlined in the charity's governing document. Though the day-to-day running of the charity may be delegated to employees or other committees, the legal responsibility for its running remains with trustees at all times.

You must be clear on who is a trustee and who is not, as this has implications for individuals' powers and responsibilities. People who are *not* trustees may attend board meetings, occasionally or frequently. However, the chair needs to be very clear about their role, and why they are there. Attendees who are not trustees should not take part in decision-making processes, as ultimate authority and accountability remains with trustees.

As a trustee you have legal responsibility for everything the charity does. Not just in meetings, but 365 days a year. You don't need to do everything yourself, but you need to make sure it happens. The buck stops with you.

Ian Joseph—Chief Executive, Trustees Unlimited

What are the tasks of the board?

Day-to-day tasks might be delegated to individual members of the board, or staff members and volunteers, but there are a number of responsibilities that are central to the role of the board. Regardless of the size or focus of the charity, the board is broadly tasked with: setting and maintaining the organisation's vision, mission and values; establishing and monitoring policies; promoting the organisation through their networks and more widely; and, where relevant, setting out employment procedures. In addition, the board must:

- **Ensure compliance with the governing document**—The significance of the governing document is discussed in more detail below. However, its importance cannot be overstated. Any trustee should have an in-depth familiarity with the organisation's governing document, whilst any prospective trustee should be sure to read it before joining the board.

[The governing document] is the bible of your organisation—your constitution. It's what everything flows from.

Ian Joseph—Chief Executive, Trustees Unlimited

- **Develop strategy**—A good board should provide strategic leadership to the organisation and work to improve the outcomes that it achieves for its beneficiaries. The entire justification for the board's existence is to ensure that the organisation is working effectively in pursuit of its objects, as they are set out in the governing document.
- **Ensure accountability**—Even where tasks are delegated, it is your responsibility as a trustee to make sure adequate safeguards and checks and balances are in place to avoid fraud and incompetence. Equally, there should be checks and balances inside the board—no one trustee should be given excessive powers or sole responsibility. For example, avoid making the same person responsible for signing the contracts and the cheques. Adequate reporting and monitoring processes are a minimum requirement for good governance.

² Note that if the charity is also a limited company, then the 'directors' and the 'trustees' will be the same people.

- **Ensure compliance with the law**—You should be aware of what the organisation’s status as a legal entity means, in terms of the activities that it can and cannot pursue. Charities are also required to meet certain standards in terms of their finances and reporting. The Charity Commission and the Charities Act 2011 are your two main sources of legal obligation (to be discussed in more detail in the section below).
- **Maintain proper fiscal oversight**— The board is responsible for the financial health of the charity. Here it can be very reassuring to have expertise on the board in the form of an accountant. However, the chair cannot fully delegate responsibility in this regard, and should make sure that the whole board has good visibility and understanding of the organisation’s finances.
- **Select and support a chief executive**—Where your charity employs staff or delivers a service, your relationship with the management team, as discussed in more detail below, is central to the smooth running of the charity. As a trustee, it is your job to carefully select an appropriate candidate and support them in their duties, in the context of an open and flexible relationship.

In order to keep the organisation running smoothly and to ensure that these tasks are fulfilled effectively, board members should always keep in mind the need to:

- **Maintain effective board performance**—Ideally, reflection time should be built into board meetings to give trustees a chance to evaluate their performance as a unit. You should look to ask questions, including: Are meetings efficient? Do we stay on topic in our discussions? Are there any steps we can take to make better use of our time during meetings? Are trustees coming to meetings effectively prepared?
- **Respect the role of staff and volunteers**—There should be a clear delineation of the respective roles of executive and non-executive members of the organisation. However, this should not preclude regular and effective interaction and communication

The primary duties of trustees

Moira Protani outlined three primary duties at the core of a trustee’s actions:

1) Observe the terms of the governing document

The governing document tells you a number of essential things about your role and powers as a trustee. It sets out:

- **What your charitable purpose is**—Beware of ‘mission drift’. This can be a real risk, particularly in times of recession where resource constraints may dictate the activities you choose to pursue. You should ensure that all your activities are relevant to the charitable objects set out in the governing document, and equally ensure that it remains relevant and up-to-date.
- **How trustees are appointed**—Trustees can be appointed in a variety of ways. They may be selected by the board; elected by the charity’s members; ‘co-opted’ by the board between official election points for specialist purposes; be an ‘ex officio’ trustee (becoming a trustee by virtue of another post, such as a mayor or head teacher); or they may be appointed or nominated by a third party, such as a local authority.³ The specific method of appointment will be specified by the governing document, and should be followed exactly.
- **The powers of the charity**—The powers of your organisation will vary significantly depending on its legal status (as an unincorporated charity or limited company etc.) All charities are limited to some extent in what they have the power to pursue. For example, charities do not generally have the power to carry out large scale non-charitable trades. Before taking any action, you should check the powers that are granted under your governing document.

³ This method is common amongst community charities. However, Moira Protani noted that—if drafting a governing document yourself—you should bear in mind the complications that a third-party appointer can pose.

- **The structure of your organisation**—The governing document will outline the form that the organisation is to take—whether it's a membership organisation, an unincorporated charity, a company limited by guarantee etc. This will have implications for your duties and powers as a trustee.
- **Who is responsible for the management and administration of the charity**—This comes back to the idea that, regardless of their title, the governing document will determine who has specific legal duties.

Regardless of specific titles, what matters is who is responsible under the governing document for the administration and running of the charity.

Moira Protani—Partner, Wilsons

2) Safeguard the assets of the charity

The safeguarding of assets is an important duty of the trustees. Tasks may be delegated, including those that involve a degree of subjective decision-making, such as the hiring and firing of staff. In these cases, trustees must be satisfied that there are sufficient safeguards in place to avoid financial loss caused by incompetence or fraudulent activity.

Where trustees are controlling investment, they are expected to invest for maximum return and seek professional advice. However, as set out in NPC's [blog](#) on the recent debate regarding Comic Relief's investment portfolio, seeking maximum return need not extend to investing in organisations that directly conflict with the charity's objects.

Trustees should diversify their investments to minimise risk. Investing in the charity's own trading subsidiary may be acceptable, but it is a decision that should only be taken on proper advice.

It is rarely unnecessary or inappropriate to seek advice on your investments.

Moira Protani—Partner, Wilsons

3) Avoid conflicts of interest

There is a basic legal presumption that a trustee should be a volunteer. He or she may claim reasonable expenses, but in general trusteeship should not be carried out in return for remuneration. You should avoid 'self-dealing'. This is where trustees buy or sell good or assets, provide services to, or receive services from, a charity.

There are three exceptions to the self-dealing rule:

- **If it is permitted in the governing document**—Sometimes trustees are permitted, for example, to lend money in return for reasonable interest, or to be paid for professional services.
- **Where it is authorised by the Charity Commission**—Trustees may dispose of charity-owned land to a trustee, for example, but this would require the explicit [approval](#) of the Charity Commission.
- **Under Section 185 of the Charities Act 2011**—This permits the remuneration of trustees for services so long as there is a maximum set on the amount of remuneration; the board has deemed the arrangement to be in the best interest of the charity; the total number of 'interested' parties should be a minority of the board; and that doing so is not prohibited by the governing document.

What is the role of the Charity Commission?

The Charity Commission exists to increase public trust and awareness of charities, and ensure that trustees are accountable to the public and compliant with their legal obligations. Its two principal functions are to register charities, and to regulate charities—taking remedial action against misconduct and mismanagement.

Though it has recently [been criticised by the NAO](#) for being too cautious in its regulation of charities, the Charity Commission does have extensive powers, and these are set to increase in the coming years. It can provide authority for charities to change their governing documents, remunerate their trustees, or take action which is not authorised by the governing document. The Commission also monitors charities' reports and accounts for evidence of compliance, and carries out spot-checks on trustee eligibility. Where necessary, it can open inquiries into charity trustee conduct, freeze bank accounts, suspend and remove trustees and appoint new trustees or receivers.

If you observe your three primary duties as a trustee, there will be no need for the involvement of the Charity Commission.

Moira Protani—Partner, Wilsons

'Thoughts from the front line'

Ruth Kaufman talked from her experience as Chair of Trustees at the Woman's Trust and board member at the Operational Research (OR) Society, outlining a number of key recommendations for what to keep in mind and what to avoid:

The fundamentals

- **Every role is different**—You can learn a lot about the nature of the role and your duties, but many aspects are unique to you and your organisation. The nature and aims of the charity, its culture and processes, its stage of development or strategic plans will all impact the challenges involved in trusteeship. You should be clear, though, on what's expected from you, and what you want from the experience. Before joining, you should expect at the very minimum to see the accounts and the governing document, and speak to the board.
- **Manage the boundaries**—It may not be straightforward as to 'who does what' in a charity. Trustees may not be able to stick solely to strategy, for example, if the organisation is under-resourced. What is important, though, is that everybody knows where the boundaries of various roles are and buys in to where they are drawn.
- **You can't delegate governance**—As a trustee, depending on your circumstances, you can do as much or as little as you want. You can delegate tasks, or you can get involved in the day-to-day operations. One thing you cannot do is delegate the task of governance—responsibility and liability ultimately remains with you.
- **Work as a team**—In most cases, the executive board is only one part of the organisation and there should be considerable interaction with the rest of the charity. Make sure to address disagreements and support one another where appropriate.

Things to avoid

- **Assuming you know it all**—It's up to you as a trustee to ensure that you are as well informed as possible regarding the health of your organisation and the state of the sector. Failing to do so risks a failure to adequately pursue the charity's objects.

You, as an individual, may have ‘unknown unknowns’, but the organisation and the sector have almost none. It’s your job to talk to people and find out what these are.

Ruth Kaufman—Chair of Trustees, Woman’s Trust

- **Assuming gaps in your knowledge will be balanced out elsewhere**—Particularly as a new trustee, raising objections or questions can be difficult. However, assuming that the other members of the board always know best risks endangering your organisation. You are there, after all, for you input. There is a balance here, of course, as you shouldn’t sacrifice the board’s efficiency. Assess how risky a gap in your knowledge could be and act accordingly. As a rule, never accept incomplete knowledge of a topic where you are being asked to make a decision.
- **Becoming too emotionally involved**—Conflicts of interest can be emotional as well as legal. Trustees must be able to take a step back from the organisation and ‘bring the outside in’. As ever, this is a balance—you may have little choice but to support the day-to-day running of the organisation, depending on its structure, size and resources.

The more you throw yourself into the day-to-day work, the harder it gets to make difficult decisions.

Ruth Kaufman—Chair of Trustees, Woman’s Trust

Managing the relationship with your CEO

In her capacity as Chief Executive of Relate, Ruth Sutherland talked about the importance of the relationship between trustees and the chief executive, and how to get the most out of it. Her main recommendations were:

- **You are ultimately dependent on each other to get things done**—As a trustee you must appreciate that management and governance are interrelated and interdependent. From both sides, you need to be aware of each others’ concerns and work to ensure the efficient running of the charity.
- **The relationship between board and CEO should be ‘high challenge’ and ‘high support’**—Insufficient challenge misses the opportunity to drive progress and efficiency, whilst insufficient support may make the relationship combative.
- **Respect the CEO’s unique perspective**—It is important to have oversight of the way that service governance (the day-to-day) and corporate governance (the strategy) interact, particularly for service-providing charities. Your CEO has the best visibility in this respect, and you should listen carefully to his or her views.
- **Be aware of the wider implications of senior management relationships for organisational culture**—As Ruth put it, the way you act in the relationship between senior managers is ‘writ large’, and will set the tone for the rest of the organisation. As such you should endeavour to be flexible, supportive and put the assistance of beneficiaries ahead of all else.
- **Relationships with the CEO are a concern for the whole board**—The CEO’s relationship with the board should be managed *through* the chair, but should not be a purely bilateral relationship between CEO and chair. It is important that all trustees have a good awareness of the service governance of the charity.
- **Heed and challenge your CEO’s assessments**—A principal role for the CEO on the corporate side of the organisation is to synthesise and relay information to influence the strategic decisions of the board. This should be carefully considered and taken on board, but as a trustee you are also charged with exploring the CEO’s assumptions and justifications, rather than just accepting and ‘rubber stamping’ advice.

What is it that ignites your leadership? What is it that brings you together? And what is it that pulls you apart? Work together and find your shared passions.

Ruth Sutherland—Chief Executive, Relate

Discussions with our attendees

Could you spell out the liability of trustees?

Moira Protani was keen to stress that there is no need to be fearful of legal repercussions, so long as you observe your three primary duties: to observe the terms of the governing document, safeguard the charity's assets and avoid conflicts of interest. As part of an unincorporated charity, there is the possibility that if you overreach and develop a contractual relationship, you could become personally liable. This situation is unlikely, however, and liability would be limited and avoidable.

If you were to neglect your primary duties and incur a 'fiduciary liability' you are, in theory, held personally liable as a trustee. However, in practice—given the voluntary nature of the role—trustees are very rarely held personally liable, and are likely to be excused by the courts and the Charity Commission.

Do you have any guidance on periods of tenure and the rotation of trustees?

A large part of this will depend on what is set out in the governing document. This may specify a period of tenure for trustees, whether or not it is renewable, and whether a sunset clause may be imposed on a particular tenure.

In the absence of any direction from the governing document, Moira Protani pointed to Lord Hodgson's review of the Charities Act 2006, which states that *'trusteeship should normally be limited in a charity's constitution to three terms of no more than three years' service each*, and recommends that any charity not including this measure in its governing document should be required to explain why in the annual report. Remember, though, that this is 'best practice', rather than a formal rule.

Ian Joseph felt that a first tenure period of two years, followed by two more periods of four years, was a preferable approach, as it allows an earlier exit if things aren't working out with a new trustee.

Ultimately, this may not always work in practice. Things to remember are:

- If you're creating a governing document, think about how people might exit the board, and build in appropriate processes for this.
- Make sure that completing tenures are in rotation, so that you don't lose all the board's assets at once!
- In practice, it can be very difficult to recruit trustees. Ruth Sutherland recommends remaining flexible. If you do have very long-serving members of the board, support them and make use of their expertise in bringing in new members.

What do you do when things aren't working out with a new trustee?

Some form of appraisal process for board members is a good idea. This should be an opportunity for the chair to appraise trustees individually, and in turn to be evaluated as chair by an independent party and through trustee feedback. A discussion surrounding a trustee's commitment and value, in the context of the charity's governance and overall goals, can be very important for keeping strategy on track.

'Formal' appraisals are likely to meet some resistance, so it's important to think about how this process is framed. Ultimately the aim is to ensure that the charity is getting the most out of what each trustee has to offer, that they

are adding value and helping the charity to progress against its objectives. It might be a good idea for trustees to set individual goals and development objectives with the chair, to form the basis of this discussion.

Can you change your governing document?

The short answer is yes. In fact, the Charity Commission recommends that the governing document is kept under regular review to ensure that it reflects what the charity does and the way it operates. Trustees are bound to act in accordance with the governing document, so it is important that this doesn't become outdated. The process required to make changes is somewhat dependent on your organisation's legal structure. In some cases, a governing document may already grant trustees power to change the organisation's purposes. Generally, any changes regarding a charity's purposes or that may provide benefit to the trustees or people connected to them will require the consent of the Charity Commission. You should consult the [Charity Commission's guidance](#) to clarify the consent required for any changes you make to your governing document.

Tips for trustees

| Tips for trustees | Questions trustees could ask |
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| Understand what you are there to achieve | <ul style="list-style-type: none"> • Why does my organisation exist? • Where is it going in the future? • Are we meeting our objects in the most effective and efficient way? |
| Make sure you're adding as much value to the board as possible | <ul style="list-style-type: none"> • What are the gaps in my knowledge and how can I fill them? • What are the specialisms that I bring to the organisation? • How can I monitor my performance and that of the board? • Is it time to exit? What can be done to help with the recruitment of a successor? |
| Understand your responsibilities | <ul style="list-style-type: none"> • What does the governing document say? • What are the reporting responsibilities to the Charity Commission? • What activities require further consent? |

Final thought

There are some downsides to being a trustee—it's a responsibility that you can't walk away from lightly. But you're always learning, developing, meeting new people, doing something useful—and it's all hugely satisfying.

Ruth Kaufman—Chair of Trustees, Woman's Trust

Resources for those considering trusteeship

Reach, *Recruiting Great Trustees*, www.reachskills.org.uk/great-trustees

NCVO, *Trustee Bank*, www.ncvo.org.uk/practical-support/governance/trustee-bank

Charity Job, *Trustee Listings*, www.charityjob.co.uk/jobs/Trustees

Trustees Unlimited, *Become a trustee*, www.trustees-unlimited.co.uk/become-a-trustee

Office for Civil Society, *Job listings*, www.civilsociety.co.uk/jobs

Further resources

Charity Commission (2011), *Changing your Charity's Governing Document*

www.charitycommission.gov.uk/media/94091/cc36text.pdf

Lord Hodgson (2012), *Trusted and Independent: giving charity back to charities – review of the Charities Act 2006*

www.gov.uk/government/consultations/charities-act-2006-review

Charities Act 2011, www.legislation.gov.uk/ukpga/2011/25

Office for Civil Society website, Governance pages, www.civilsociety.co.uk/governance

Our speakers:

Ian Joseph, Trustees Unlimited, www.trustees-unlimited.co.uk

Moira Protani, Wilsons, www.wilsonslaw.com

Ruth Sutherland, Relate, www.relate.org.uk

Ruth Kaufman, Woman's Trust and the OR Society, www.womanstrust.org.uk, www.theorsociety.com