

DEPARTMENT OF CO-OPERATIVES AND FRIENDLY SOCIETIES

Guidance Notes

Fit and Proper Trustees

GUIDANCE NOTES FOR FIT AND PROPER TRUSTEES

Introduction

This guidance explains the key responsibilities of all trustees of Registered Charitable Organizations in Jamaica, and what trustees need to do to carry out these responsibilities competently.

Trustees have independent control over, and legal responsibility for, a charity's management and administration. They play a very important role, almost always unpaid, in a sector that contributes significantly to the character and well-being of the country.

The Charity's Authority expects trustees to take their responsibilities seriously. Using this guidance and ensuring you give sufficient time and attention to your charity's business will help. The Authority recognises that most trustees are volunteers who sometimes make honest mistakes. Trustees are not expected to be perfect - they are expected to do their best to comply with their duties.

Duties of Trustees

Below is a summary of Trustees' main legal responsibilities.

1. **Ensure the Charity is carrying out its purposes for the public benefit.** – Understand the charity's purpose as set out in its governing document and carry out its purposes in accordance with the laws. Spending charity funds on the wrong purposes is a serious matter, in some cases trustees may have to reimburse the charity personally. The objects clause in the charity's governing document sets out the following:

- The Charity's Purpose
- The beneficiaries of the Charity.
- How the beneficiaries are benefited.
- The order of which services are to be prioritized and the benefits provided.
- Any restrictions on what the charity can do or to whom it can/cannot benefit.
(geographical or specific criteria)

Trustees are responsible for deciding and planning how the charity will carry out its purposes which should include the activities to undertake and the resources needed. Involving the charity's staff and volunteers with an interest in the charity in the planning process.

2. **Comply with your charity's governing document and the law** – Trustees must ensure that the charity complies with the governing document, which usually contains key information about:

- what the charity exists to do (its purposes, as explained in its objects clause)
- what powers it has to further its objects
- who the trustees are, how many Trustees there should be and how they are appointed and removed.
- whether the charity has members and, if so, who can be a member
- rules about Trustees' (and members') Meetings; how they are arranged and conducted; how decisions must be made and recorded.
- how to make amendments to the governing document
- how to windup the operations of a charity

The governing document is essential to the charity. Trustees may need to review it from time to time to ensure that it continues to meet the charity's needs. Governing documents are legal documents. The correct procedures must be followed to amend them, and it's important to word any changes correctly. Any amendments made must be sent to the Charity's Authority for our records, in the established format.

3. **Act in the Charity's best interest** – This means always doing what the Trustees decide will best enable the charity to carry out its purposes, both now and for the future. Collective decision making is one of the most important parts of the trustee role. Some decisions are simple and straightforward; others can be complex or far reaching in their consequences. When decisions are made the following must be a guide:

- act within the powers set out in the governing document.
- act in good faith, and only in the interests of your charity.
- make sure to be sufficiently informed, taking any advice needed.
- take account of all relevant factors made aware of
- deal with conflicts of interest and loyalty
- make a record of decisions made
- don't shy away from consulting with the Charities Authority

3.1 Dealing with Conflict of Interest -A conflict of interest is any situation where your personal interests could, or could appear to, prevent you from deciding only in the charity's best interests. For example, if you (or a person connected to you, such as a close relative, business partner or company):

- receive payment from the charity for goods or services, or as an employee
- make a loan to or receive a loan from the charity
- own a business that enters into a contract with the charity
- use the charity's services
- enter into some other financial transaction with the charity

Even when no financial benefit is received, this could have a conflict of loyalty. For example if the charity has business dealings with the employer, a friend, family member, or another body (such as a local authority or charity, or a charity's trading subsidiary) that a trustee serves on.

This means the trustees:

- should identify, and must declare conflicts of interest (or loyalty)
- must prevent the conflict of interest (or loyalty) from affecting the decision
- should record the conflict of interest (or loyalty) and how it was dealt with

4. **Manage the Charity's resources responsibly** – The Trustee must act responsibly, reasonably and honestly. This is sometimes called the duty of prudence. Prudence is about exercising sound judgement. Trustees must:

- ensure 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
- Do not over-commit the charity
- take special care when investing or borrowing (if allowed)
- comply with any restrictions on spending funds or selling land

The Trustees should put appropriate procedures and safeguards in place and take reasonable steps to ensure that these are followed. Otherwise there will be a risk making the charity vulnerable to fraud or theft, or other kinds of abuse, and being in breach of your duty.

4.1 Managing Risk - A risk is anything that could, if it happened, affect the charity achieving its purposes or carrying out its plan. The risks the charity might face will depend on factors such as its size, funding and activities.

Trustees should manage risk responsibly. They have a duty to avoid exposing the charity to undue risk. This doesn't mean being risk averse. Risk Management is the process of identifying and assessing risks, and deciding how to deal with them. It may involve an element of responsible risk taking, and is central to how Trustees make decisions.

Some charities work in areas or undertake activities that involve greater exposure to risks such as fraud, financial crime, extremism or terrorism. Charities should assess their exposure to these risks and take proportionate action. Therefore, Trustees must practice the following due diligence:

- Knowing their donors (in particular if receiving large donations or donations with conditions attached and anonymous donations)
- Knowing their partners (if any)
- Knowing their beneficiaries (if making grants of cash or financial support directly to individuals)

4.2 **Managing funds** – Trustees are responsible for the Charity’s money. The charity should have effective processes for handling money, to help avoid poor decisions and accidental errors, as well as theft and fraud. Failure to do so is likely to result in a breach of duty. The Trustee should:

- set a budget and keep track.
- put in place clear policies and procedures to deal with income and expenditure.
- ensure the charity keeps accurate records of income and expenditure.
- have robust and effective financial controls in place.
- protect the charity from financial crime such as theft or fraud.
- ensure the charity receives tax reliefs to which it is entitled.

5. **Act with Reasonable care and Skill** – Trustees must use reasonable care and skill, making use of the skills and experience and taking advice when necessary. Trustees must use their skills and experiences to make informed decisions that benefit the charity.

Trustees should recognize and acknowledge when they need advice. This is particularly important if the charity (or its property) may be at risk, or if they could act in breach of their duties, for example, when:

- Buying or selling land
- Investing charity funds
- Entering into contracts of high-value, complex or long-term.
- Considering legal action.
- Endorsing particular campaigns or events

In cases where problems arise which are of a serious nature the Charities Authority should be involved which may lead to taking action to protect the Charity. If something does go wrong, the Trustee should take prompt and appropriate action to:

- prevent or minimise any further loss or damage
- if appropriate, report it to the Charities Authority, the police if a crime has been committed, and any other regulator that the charity is accountable to
- take reasonable steps to prevent it from happening again - review controls and procedures, take appropriate advice.

6. **Ensure the Charity is Accountable** – Trustees must comply with statutory accounting and reporting requirements. Trustees should also:

- Be able to demonstrate that the charity is complying with the law.
- Ensure appropriate accountability to members, if the charity has a membership separate from the Trustees.
- Ensure accountability within the charity, particularly where responsibility is delegated to staff or volunteers.

6.1 Accounting Requirements -All Registered Charitable Organisations must produce annually by the 31st of March of each year Annual Returns and Financial Statements for the preceding year ended December 31. Failure to submit, the Charities Authority will regard this as mismanagement or misconduct in the administration of the charity. Providing timely, accurate and informative financial information that will help funders, donors, beneficiaries and others to understand the charity and its work will encourage trust and confidence in it.

Remember, those trustees who sign the trustees' annual report and accounts are signing on behalf of the whole trustee body so all of the Trustees are responsible for the accounts.

6.2 Trustees and Delegation - Trustees often delegate day to day activities to particular Trustees (such as the chair), volunteers or staff. Many charities also have power to delegate decision making to sub-committees or senior staff. Delegation can help Trustees to govern more effectively, but they cannot delegate their overall responsibility. Trustees always remain collectively responsible for all decisions that are made and actions that are taken with their authority.

The Trustees should consider and decide what decisions they will not delegate. High risk and unusual decisions should not be delegated. The Trustee should agree appropriate guidelines to help assess what is likely to be high risk or unusual. Staff, particularly senior staff, can have an important role in informing trustee decision making by providing information and advice.