

TRUSTEES &
GOVERNANCE

Trustee expenses and payments



The Charity Commission

The Charity Commission is the independent regulator of charities in England and Wales. Its aim is to provide the best possible regulation of charities in England and Wales in order to increase charities' effectiveness and public confidence and trust. Most charities must register with the Commission, although some special types of charity do not have to register. There are some 190,000 registered charities in England and Wales. In Scotland the framework is different, and the Commission does not regulate Scottish charities.

The Commission provides a wide range of advice and guidance to charities and their trustees, and can often help with problems. Registered charities with a gross annual income or expenditure over £10,000 must provide annual information and accounts to the Commission. The Commission has wide powers to intervene in the affairs of a charity where things have gone wrong.

More information about the Commission together with a range of guidance for charities can be found on our website www.charitycommission.gov.uk, or by contacting Charity Commission Direct:

Telephone: **0845 300 0218**
Typetalk: **0845 300 0219**
By post: **Charity Commission Direct**
 PO Box 1227
 Liverpool
 L69 3UG

Contents

A.	Foreword	2
B.	Key points about expenses and trustee payments	3
C.	Introduction and meaning of terms	5
D.	Payment of expenses to a trustee	9
E.	Paying trustees for services	16
F.	Paying for trusteeship	35
G.	Employing a trustee or connected person	49
H.	Compensating trustees for loss of earnings	59
I.	Further information and advice	65

A. Foreword

Dear Reader,

Charities are distinctive, but what makes them so? The voluntary principle - the willingness of those who run charities to give time freely for the benefit of others and not for their own financial reward - would be at the top of the list for many people. There are over 900,000 charity trustees in England and Wales, and the overwhelming majority embody this spirit of volunteering by acting without payment of any kind, or with only their basic expenses covered.

This is an important principle and helps to sustain trust and confidence in charities. It is, and should remain, the norm. Any departure from it is a significant step requiring careful deliberation and proper authority. The golden rules for paying a trustee are not, however, just to do with having the power legally to make the payment. First and foremost, it is about considering whether payment would be in the charity's best interests and better help it achieve its purposes. It is also about managing, and being seen to manage, the conflicts of interest which may arise, and being open and accountable to those with an interest in the charity. Sticking to these rules will help trustees manage this issue in a way which brings advantage to their charity, whilst managing the inevitable risks.

Our guidance is designed to help trustees of charities in England and Wales get trustee payments - and expenses to which they are legitimately entitled - right. In the case of paying a trustee for goods and services, the Charities Act 1993 requires trustees to "have regard" to our guidance when they make the agreement, so our guidance in section E carries particular weight.

We hope that you find the guidance useful, and that, if it is an issue for your charity, it enables you to manage trustee payments in an informed and confident manner, keeping the interests of your charity, those it serves, and those who support it, at the heart of any decision.

Dame Suzi Leather

Chair

Andrew Hind

Chief Executive



B. Key points about expenses and trustee payments

This section summarises the main points for charity trustees to consider. They are based on a mixture of case law, charity law, and good practice, and are covered in more detail in the guidance.

- The concept of unpaid trusteeship has been one of the defining characteristics of the charitable sector, contributing greatly to public confidence in charities.
- The basic principle is that trustees must not put themselves in a position where their personal interests conflict with their duty to act in the interests of the charity unless authorised to do so.
- However, trustees are entitled to have their **expenses** met from the funds of the charity. Expenses can include a wide range of costs including, for example, travel and other costs of attending meetings, specific telephone and broadband charges, travelling on trustee business, and providing childcare or care of other dependants while attending to trustee business.
- Charities can pay some of their trustees for the supply of **services**. The power to do this, and the conditions attached to using it, were introduced by the Charities Act 2006 as a change to the Charities Act 1993. The power is summarised in this guidance. The power cannot be used if the governing document prohibits this type of payment.
- A charity trustee may only be paid for **servicing as a trustee** where this is clearly in the interests of the charity and provides a significant and clear advantage over all other options. There is no general power in law for this type of payment – a charity would need a specific authority which may be found in its governing document, or be provided by the Commission, or, more rarely, the Courts.
- Where a charity proposes to employ a trustee in some other role, or where a charity wishes to compensate a trustee for **loss of earnings** to enable them to attend meetings during working hours, it must firstly ensure that it has the necessary authority. If it is not provided by the governing document, the charity will need to approach the Commission or the Courts.
- In any case where a charity wishes to make a payment, but has **no clear power** to do so, the trustee board must apply to the Commission for authority **before** the payment is made.

- Properly assessing any potential **risks** and managing **conflicts of interest** are important factors when a charity is proposing to pay trustees. Trustee boards should be open and transparent about their decision to pay, and be prepared to justify it if publicly challenged. For all charities, disclosing such payments in the **charity accounts** in accordance with Charity SORP guidelines is not only a legal requirement for companies and larger charities but will help charities of all sizes dispel any perception that payments might have been made in secret.
- Charities should have clearly defined procedures for identifying and managing **conflicts of interest**. Ideally, these procedures should be set out in the charity's governing document.
- As good practice, a trustee board should regularly **review** the performance of each trustee (including the chair). This is particularly important where a trustee is receiving a payment from the charity.
- Ensuring that the opportunity to be a trustee is open to all is one of the keys to achieving strong, effective boards of trustees. Clear policies on payment of expenses can help with this. Other forms of payment, including compensating individuals for loss of earnings, can also be used as a tool to attract promising candidates who might otherwise be unable to afford to serve.
- If a trustee board is considering whether to make a payment to a trustee (as opposed to reimbursement of expenses) there are six key factors to consider:
 - Who will receive the payment - will it be a trustee, or a person or business connected with a trustee?
 - What is the payment expected to cover?
 - Is the payment clearly in the best interests of the charity?
 - Is there a legal authority for it?
 - What conditions must be met if the payment is to be made?
 - How will any conflict of interest be managed?

The guidance on trustee expenses and payments applies equally to charity trustees and persons or businesses connected with them.

C. Introduction and meaning of terms

The concept of unpaid trusteeship has been one of the defining characteristics of the charitable sector, contributing greatly to public confidence in charities. This does not mean that a trustee can never receive any payment or benefit from his or her charity; there are sometimes good reasons why it can be in a charity's interests to make a payment to a trustee. Trustee boards need, though, to minimise the risks to their charity's reputation and operation. This guidance is designed to clarify the law and good practice where trustee boards propose to make payments to one or more of the trustees.

C1. What this guidance covers

The guidance explains:

- What can be classed as legitimate trustee expenses. We emphasise that trustees should not be 'out-of-pocket' as a result of the work they carry out on behalf of their charity (section D).
- How charities can use the power introduced by the Charities Act 2006 to pay trustees for services, and the conditions they must meet when doing so (section E).
- The limited circumstances where payment may be made for carrying out trustee duties, and the issues trustee boards need to address when considering these payments (section F).

- When Commission authority is needed if a trustee, former trustee, or person connected with a trustee, takes up paid employment with a charity. We also cover situations where an employee of a charity becomes a trustee, as well as where the spouse or partner of a trustee, or a person or business connected with a trustee is employed by a charity (section G).
- When a trustee may be paid reasonable compensation for loss of earnings (section H).

To support charity trustees' use of this guidance, we have included examples within the guidance. We have also included details of other relevant guidance, and contact details of organisations that can also provide useful advice affecting the issue of trustee remuneration.

C2. This guidance and earlier versions

This guidance replaces the previous version, *Payment of Charity Trustees* (CC11). It is a complete revision in a different format, and explains the rules introduced by the Charities Act 2006 which apply to paying trustees to provide goods or services.

The new guidance provides a general introduction and overview, and highlights those areas where charities may need further advice. As with our previous guidance, we have also included some guidance on areas of good practice.

C3. What do we mean by 'expenses' and 'trustee payments'?

Expenses are normally refunds by the charity of costs a trustee has had to meet personally (or which have been met on his or her behalf) in order to carry out trustee duties. In some cases, these expenses may be paid in advance. A refund of properly incurred expenses is not a trustee payment, nor does it count as any kind of personal benefit.

Trustee payments are a financial or other measurable benefit paid to a trustee, or to a 'connected person' (see section C4), from a charity's funds in return for work the trustee has carried out for the charity. In most cases, this involves paying a trustee for services over and above normal trustee duties - for example, plumbing, painting the charity's premises, or legal or accountancy work. But it can also include payment for acting as a trustee, and payment to a trustee as an employee of the charity in a separate role (for example a chief executive, head teacher, or religious leader who also sits on a charity's board).

Trustee payments might also be made 'in kind' - for example, free use of the charity's facilities or services for which users normally have to pay.

C4. Meaning of other terms and expressions

'Must' and 'should': In this guidance, where we use 'must', we mean it is a specific legal or regulatory requirement affecting trustees or a charity. Trustees must comply with these requirements. To help you identify those sections which contain a legal requirement we have used the **L** symbol next to the short answer in that section.

We use 'should' for items we regard as minimum good practice, but for which there is no specific legal requirement. Trustees should follow good practice guidance unless there is a good reason not to.

Although we have tried to write this guidance in everyday language, there are a number of technical terms we need to use in places. This list explains some of them:

- **Breach of trust:** A breach of any duty imposed on a trustee. For charity trustees, these duties may be found in the provisions of a charity's governing document, laws and regulations, or Orders of the Court or the Charity Commission.
- **Charitable company:** A company formed and registered under the Companies Act 2006 for **exclusively** charitable purposes; this definition includes charitable companies registered under the Companies Act 1985, or which were in existence before that.
- **Conditional power of payment:** Where use of a power to pay trustees can only be used with our prior written approval.
- **Conflict of interest:** In this guidance, we use this term to mean any situation in which a trustee's personal financial interests may (or appear to) influence or affect the decisions made by a trustee for their charity.
- **Connected person** is defined at s.73B(5) of the Charities Act 1993 and broadly means family, relatives or business partners of a trustee. It also covers businesses in which a trustee has an interest through ownership or influence. The term includes a trustee's spouse or unmarried or civil partner, children, siblings, grandchildren and grandparents, as well as businesses where a trustee or family member holds at least one-fifth of the shareholding or voting rights. The full definition is contained in Schedule 5 of the 1993 Act. If in doubt about whether a person or business is a connected person, refer to Schedule 5, or seek advice from a solicitor or other person qualified to advise on the matter.
- **Court:** Usually means the High Court, but can mean any other court in England and Wales with jurisdiction over charities.
- **Governing document:** A legal document setting out the charity's purposes and, usually, how it is to be administered. It may be a trust deed, constitution, memorandum and articles of association, will, conveyance, Royal Charter, Scheme of the Commission, or other formal document.

- **Prohibition on payment:** An express instruction against paying trustees. This would usually be couched in negative terms, for example: *“The trustees shall not pay...”* or *“No trustee shall be paid...”*. But a form of wording that says *“All trustees must act gratuitously”* would also be a prohibition.
- **Scheme:** A legal document made by us or the Court which either sets out all the rules for running a charity (and is therefore its **governing document**), or which amends the powers of a charity (thereby forming part of its governing document).
- **SORP 2005** means the publication *Accounting and Reporting by Charities: Statement of Recommended Practice*.
- **Trustee:** A charity trustee; charity trustees are the people who are responsible for the general control and management of the administration of the charity. In the charity's governing document they may be collectively called trustees, the trustee board, managing trustees, committee members, governors or directors, or they may be referred to by some other title.
- **The 1993 Act:** The Charities Act 1993, as amended by the Charities Act 2006.
- **The 2000 Act:** The Trustee Act 2000.
- **User trustee** means any trustee who makes use, as a beneficiary of the charity, of the equipment, facilities, services or support that are provided as part of the charitable purposes of his or her charity.

D. Payment of expenses to a trustee

This section explains the legal position with regard to trustee expenses. The law entitles charity trustees to claim legitimate expenses while engaged on trustee business. No separate authority is needed in the charity's governing document or from us.

D1. What are trustee expenses?

The short answer

Expenses are refunds by a charity of legitimate payments which a trustee has had to meet personally in order to carry out his or her trustee duties. Expense claims should normally be supported by bills or receipts, except where it is impractical to expect this, for example, where very small amounts are claimed.

In more detail

Any reasonable costs that allow trustees to carry out their duties can be classed as legitimate expenses. So long as the charity only pays the trustee for the actual cost or expense, the payment is not taxable. The following are examples of expenses:

- the reasonable cost of travelling to and from trustee meetings, and on trustee business and events. This can include the cost of using public transport, taxi fares, and petrol allowances to the level permitted by HM Revenue & Customs (HMRC) before tax becomes payable;
- reasonable refunds for the cost of meals taken while on charity business;
- the reasonable cost of childcare, or care of other dependants (for example, an elderly parent) whilst attending trustee meetings;
- the cost of postage and telephone calls on charity business;
- the costs of a trustee's telephone rental and broadband subscription, so long as these are split to reflect the percentage of time relating to usage on behalf of the charity;

- communication support: translating documents into Braille for a blind trustee, or into different languages; provision of alerting and listening devices, and other special aids for people with hearing impairment;
- the costs of buying training materials and publications relevant to trusteeship;
- providing special transport, equipment or facilities for a trustee with a disability; and
- cost of reasonable overnight accommodation and subsistence (including any essential care costs) while attending trustee meetings or other essential events such as voluntary sector conferences or specialist training courses.

Payments which do not count as expenses

Sections D4 and D5 cover payments which are not expenses and which either cannot legitimately be made (D4) or which can only be made if there is suitable authority (D5).

It is also worth noting that reimbursement of trustees for purchases they have personally and properly made on behalf of the charity are not counted as expenses and are accounted for as part of the charity's general expenditure.

D2. Do charities need an expenses policy?

The short answer

It is good practice for charities to have an expenses policy.

In more detail

Paying reasonable expenses is a good way of ensuring that the whole trustee board participates in running the charity and, more generally, of ensuring that being a trustee is open to all. For example, this might be particularly relevant when seeking to recruit younger trustees or to ensure that people on low incomes can participate. Unless by personal choice, no trustee should be 'out of pocket' as a result of carrying out their normal duties and responsibilities. Charities should have a written expenses policy,

setting out what is recoverable as an expense and what is not, and they should ensure the policy is clearly understood by all the trustees. If trustee boards are in doubt about whether something qualifies as an expense, they should take advice. If we decide that an item is a trustee benefit rather than an expense, and there is no power in the governing document to make the payment, we may be able to approve it if it can be shown to be in the charity's interest to do so.

D3. Can trustee expenses be paid in advance?

The short answer

Where they consider it useful, trustee boards can make arrangements for advance payment of reasonable out-of-pocket expenses.

In more detail

Repayment of expenses should be dealt with as quickly as possible and can be made in cash, particularly for smaller items. Advance payment can be particularly useful where the cost can be predicted, for example babysitting costs while attending a board meeting, a standing order for a broadband connection, or perhaps the cost of staying at a hotel when attending a conference. It will also be particularly helpful for trustees on low incomes or state benefits who simply cannot afford to wait for repayment.

If the actual cost of expenses exceeds the amount advanced, then adjustments can be made. But trustee boards must be clear that any pre-payment scheme they put in place has appropriate safeguards and does not constitute a private benefit. In particular, they should ensure that any sums not spent are returned to the charity.

Where payment exceeds actual cost:

Any payment kept by a trustee over and above the actual cost of the expenses will be an unauthorised private gain, and liable for repayment to the charity.

Entitlement to benefits: State benefit rules have clarified that entitlement to benefits will be unaffected by payment for expenses paid in the future. In case of any dispute, clear record keeping will enable a charity to show that such payments are a reimbursement, and not income for the trustee concerned.

D4. What payments would not be legitimate trustee expenses?

The short answer

Expenses which are excessive, and/or which do not relate to legitimate trustee activities.

In more detail

The following are all examples of payments which are not legitimate trustee expenses or payments:

- payment of hotel accommodation or travel costs for spouses or partners who are not themselves travelling on charity business;
- payment of private telephone bills for business unrelated to the charity;
- payment of private medical insurance;
- petrol mileage rates above the levels approved by HMRC for claimable expenses; and
- in the case of a trustee nominated by a local authority, expenses already allowed for under that authority's statutory or contractual arrangements.

There are many other examples. Generally, charities should be wary of the risk of excessive or false trustee expense claims. Any misuse of charity assets for private benefit can damage public confidence in a charity, can affect the charity's ability to operate for the public benefit and is likely to amount to mismanagement or misconduct. The trustee may also be liable to repay the charity for any excessive or false trustee expense claims.

D5. What legitimate payments not counted as expenses might need authority?



The short answer

Some types of payment are often confused with expenses, when they are actually trustee benefits which HMRC will consider can be taxed as income. They can only properly be paid out of charity funds if there is suitable authority for doing so.

In more detail

The following are all examples of payments which are not expenses, and which we might need to authorise:

- compensation for loss of earnings whilst carrying out trustee business (see section H);
- allowances: for example, a personal clothing allowance;
- honoraria (small or token sums not intended to reflect the true value of the service provided - see section F8);
- payment for use of a trustee's property (or part of it) for storage and use of charity equipment.

D6. How should trustee expenses be accounted for?



The answer

Charities that have to prepare accruals accounts must follow the Statement of Recommended Practice (SORP 2005) which sets out accounting requirements for charities. In practice, this covers all company charities, as well as all other types of charity with gross yearly incomes of more than £100,000.

As part of the SORP requirements, charities must disclose as a note to their accounts:

- the total amount of trustee expenses;
- the nature of the various expenses; and
- the number of trustees involved.

For this purpose, expenses do not include purchases made on behalf of the charity for which a trustee has been reimbursed. If trustees have received no expenses, this should also be stated.

We recommend that all charities should follow this approach to accounting for expenses, even if they are not formally required to follow the SORP requirements.

E. Paying trustees for services

This section focuses on the power that allows charities to pay trustees for additional services they provide to their charity over and above normal trustee duties. This includes goods supplied in connection with the provision of services. Trustees must take this guidance into account before they enter into an agreement under this power.

Introduction

Trustees can be paid for providing services (and, in some cases, goods) to the charities for which they are trustees. The power to do this was added to the 1993 Act by the 2006 Act. Sections 73A - C of the 1993 Act describe a set of conditions which trustee boards must follow in deciding when payment is appropriate. The power also applies to:

- payments for services and goods provided by 'connected persons' - broadly, family members or businesses connected with a trustee (see section C4); and
- any trustees or nominees that may have been appointed simply to hold the title to a charity's property.

The conditions that must be followed are outlined in section E3.

Situations not covered: charities cannot rely on the law to pay their trustees where:

- the charity wishes to pay a trustee for being a trustee (see section F);
- the charity wishes to employ a trustee or a connected person under a contract of employment (see section G);

- the charity's governing document has a strict **prohibition** against payment for services (see sections C4 and E10); and
- the conditions for making the payment cannot be met (see section E3).

Terms used: For convenience, reference to **services** in the remainder of this guidance includes any **goods** provided to a charity, in connection with the provision of a specific service.

E1. What services can a charity pay its trustees for?

The short answer

A charity can pay a trustee for the supply of any services over and above normal trustee duties. The decision to do this must be made by those trustees who will not benefit. They must decide that the service is required by the charity and agree it is in the charity's best interests to make the payment and must comply with certain other conditions (see section E3).

In more detail

Examples of services that may be provided by a trustee in return for payment under the power in the 1993 Act include:

- the delivery of a lecture;
- a piece of research work;
- the use of a trustee's firm for a building job;
- the use of a trustee's premises or facilities;
- entering into a maintenance contract with a trustee's firm;
- providing curtains or decorating materials for hall premises;
- providing timber for a building; or
- providing specialist services such as estate agents, land agents, management and design consultants, computer consultancy, builders, electricians, translators, and graphic designers.

The power cannot be used to allow payment for auditing services as a trustee cannot legally act as an auditor for his or her charity.

E2. What if a charity already has a power to pay its trustees for services?

The answer

The 1993 Act power is additional to any other form of authority to pay a trustee which exists in law or in a charity's governing document.

Where a power in a charity's governing document is:

- more restrictive than the 1993 Act power, for example, if it only allows payment for professional services, the charity can use the power in the 1993 Act, provided there is no prohibition against remuneration for other services in the charity's governing document; or
- less restrictive than that in the 1993 Act, the charity can rely on its own power.

Conditional powers: Many charities have a power to pay trustees which requires our prior written consent, before it can be used. This is known as a conditional power. The need for our consent has now been removed where charities can meet the conditions of the 1993 Act power, which are explained in section E3.

E3. What conditions must be met before paying a trustee for services?



The answer

There are a number of conditions, all of which must be met before payment can be made validly. The conditions are that:

- there is a written agreement between the charity and the trustee or connected person who is to be paid (see section E4);
- the agreement sets out the exact or maximum amount to be paid (see section E4);
- the trustee concerned may not take part in decisions made by the trustee board about the making of the agreement, or about the acceptability of the service provided (see sections E4 and E5);
- the payment is reasonable in relation to the service to be provided (see section E6);
- the trustees are satisfied that the payment is in the best interests of the charity (see section E7);
- the trustee board follows the “duty of care” set out in the 2000 Act (see section E8);
- the total number of trustees who are either receiving payment or who are connected to someone receiving payment are in a minority (see section E9); and
- there is no prohibition against payment of a trustee (see section E10).

It is also a condition that, before entering into this type of agreement, trustees must “have regard” to our guidance on the subject. We have used section E to provide this guidance and trustees must be able to show that:

- they are aware of this guidance;
- in making a decision where the guidance is relevant, they have taken it into account;
- if they have decided to depart from the guidance, they have a good reason for doing so.

E4. Can the written agreement to pay for a service simply be a record in the charity's minutes? If not, is there a standard format for the agreement?



The short answer

No, recording the proposed arrangement in the charity's minutes will not be enough to meet the conditions for an agreement. There must be a separate written agreement which must cover certain issues, but there is no set format. This will depend on the nature of the service being provided, and the level of detail needed to cover it. Legal advice should be sought if an arrangement is likely to continue for some time, or if it is particularly complex.

In more detail

Content of the agreement: Although there is no set format, there are certain elements the agreement must contain:

- an accurate description of the service to be provided;
 - the name of the trustee or connected person (including a business) who will receive the payment;
 - details of the amount, if a 'one-off' or fixed-term payment, or else the maximum amount for services to be provided over the duration of the agreement. Where the benefit is a 'payment in kind', details of the benefit and its approximate value must be given.
- As a matter of good practice, it should also contain the following statements to show that the trustee board has considered these factors and has therefore complied with its duties when reaching a decision (see sections E6 and E7):
- A statement that the trustee concerned (including one who is connected to a person providing a service) will withdraw from any discussion of the trustees which has any bearing on the terms of the agreement or the acceptability of the standard of service provided. This should not, however, prevent a trustee or connected person from providing information which the trustee board may need in order to reach a decision.

- A statement that the trustee concerned will not vote on any of these matters, and must not be included when deciding whether a quorum exists at a meeting to discuss them.

Signing the agreement: The agreement must be signed by someone authorised by the trustees to do so. This could be one or more of the trustees who do not stand to benefit under the agreement, or someone who is not a trustee but who has a sound knowledge of the matter. The agreement should also be signed by the trustee or connected person who is to be paid.

Keeping a record of the agreement:

As the agreement forms part of the charity's accounting records, it must be retained for at least 3 years in the case of a charitable company (6 years is recommended for best practice), and 6 years in the case of a non-company charity.

E5. Why are there requirements for withdrawing from meetings and not voting, and should these be recorded in the agreement?



The short answer

The requirements are designed to ensure that any trustee who stands to benefit cannot influence the trustees' decisions relating to that benefit. Including a statement in the agreement that these requirements apply is not required by law but can help demonstrate to those who fund or use the charity that proper steps are being taken to manage the conflict of interest.

In more detail

Requirement to manage conflict of interest: One of the conditions that must be met when using the power is that the trustee concerned must not take part in any discussion or vote on any decision of the trustee board in setting the terms and conditions of the payment, or any decision to allow or continue with the payment.

It will not be a breach of this requirement if, before its discussion, the trustee board simply asks the person concerned to provide any information necessary to help make a decision.

Breach of condition: If this condition is not met, we can require the repayment of all or part of any money received, including the monetary value of any 'payment in kind'. We can also require the charity to withhold further payment.

If the condition is breached, it will not affect the validity of the services provided.

Further advice: Our *Guide to conflicts of interest for charity trustees* provides more detailed advice about managing conflicts of interest in the Guidance for Charities area of our website.

E6. What constitutes a 'reasonable payment'?



The short answer

There are a number of factors to take into account, relating to affordability, price and quality. In terms of price and quality, trustee boards should normally test the market and use comparisons for similar work to ensure they are paying no more than the 'going rate'.

In more detail

Factors to consider: When considering whether a payment is reasonable, trustee boards should consider:

- whether the charity can afford the payment;
- the value to the charity of the services provided by the trustee;
- the quality of the service and the reliability of the supplier;
- any costs previously paid by the charity in obtaining those services;
- how much other organisations pay for similar services in similar circumstances; and
- the implications for the reputation of the charity with its donors, funders, members and supporters, and with the general public.

Making comparisons: Trustee boards should obtain quotations from other suppliers, unless the amounts involved are very small. Proper records should

be kept of these, and of any other information used in making comparisons. Generally, the higher the costs, the more trustee boards need to be able to show they have properly tested the market and have obtained value for money. And where a charity has a policy on procurement and purchasing, trustees should ensure they comply with its terms when paying for services from a trustee.

Tendering may not be required: A full tendering exercise (ie obtaining bids from interested suppliers) will not always be economic or appropriate - for example, if the transaction is relatively small, and a good quality service can be provided quickly and at low cost. Trustee boards should ensure a proper record is kept of the basis for their decision, including why the level of payment is considered reasonable - preferably by reference to payments in similar situations.

E7. How do trustees decide that this sort of payment is 'in the best interests of the charity'?

L

The short answer

Before making a decision, trustee boards must be satisfied that the arrangement is in the best interests of the charity. This means they should be satisfied that the service is required by the charity. They should also be able to show there is a clear advantage to the charity in using one of its trustees instead of someone else. In many cases, this will involve a simple financial advantage, but there can be other factors that might influence a decision to pay a trustee. These should be weighed against any likely disadvantages; for example, that the person would be barred from contributing to decisions about the scope of the service and its terms and conditions.

In more detail

Value for money: The service must be needed by the charity, and the trustee concerned must be sufficiently experienced and skilled or qualified to deliver it. There may be a cost advantage in using a trustee, but this does not always mean work should be done 'on the cheap'. Quality is important, and speed of delivery might

also be a factor. Trustee boards must be satisfied that the charity will be receiving value for money, and that there will be no adverse affect on its reputation, or levels of support and funding. The board must ensure that the charity can afford the cost of the service, without any adverse impact on the charity's activities.

Knowledge of the charity: A particular knowledge of the charity and its working environment can sometimes be an advantage. A trustee board may decide that for less - or no more - than the market rate, it can use the skills of a trustee who knows the specific requirements of the charity, and is perfectly competent to do the work in question.

Purchase of goods: Where goods are supplied by a trustee in connection with a service provided, again there must be a clear advantage. This will normally mean items being supplied at

a favourable rate. Where quality is also a factor, there should still normally be a significant 'value for money' advantage to the charity.

When there is no advantage: Where there is an unfavourable financial comparison with an outside supplier, and no weight of special expertise or knowledge that would tip the scales, the charity should use the supplier who is not a trustee. There would be no clear advantage in using the trustee, because of the need to manage the conflict of interest (see sections E4 and E5).

E8. What is meant by the 'duty of care' and how does it influence the decision to pay trustees for the provision of a service?

L

The short answer

The 1993 Act requires trustees who use the power to pay trustees for services to follow the duty of care set out in the 2000 Act. This means that the trustee board must act honestly and in good faith, and must exercise all reasonable care and skill in reaching their decision.

In more detail

Exercising all reasonable care and skill means allowing for:

- any special knowledge or experience a person has or says they have; and
- any special knowledge it is reasonable to expect from a business or professional person when acting in either capacity.

The level of competence and proficiency required of a trustee will vary according to the level of expertise the person has.

In order to fulfil their duty of care when deciding to pay one of their trustees, we would expect trustee boards to:

- exercise the power responsibly in the best interests of the charity;

- take professional or other appropriate advice when in doubt;
- be clear that payment of a trustee can be justified;
- ensure that conflicts of interest are properly and openly managed;
- ensure that agreements are complied with and that any poor performance is identified and addressed;
- retain the agreement as part of the charity's records as required by law; and
- disclose the payments in the charity's accounts.

E9. How many trustees can be paid at any one time for providing services?



The answer

The 1993 Act says that the power can only be used if, at the time in question, the total number of trustees receiving payment from the charity's funds will be in a minority on the trustee board.

When assessing this, the trustee board needs to take into account the number of trustees who are receiving directly or indirectly (through a connected person) any **trustee payment** as defined in section C4. This means they need to include:

- any trustees connected to persons or businesses receiving payment;
- any trustees who are receiving payment for being trustees;
- trustees who are also paid employees of the charity; and
- trustees receiving any other form of trustee benefit.

For the purpose of deciding if the meeting is quorate, those trustees who face a potential conflict of interest as a result of the issue being discussed should be excluded.

If there are only two trustees, the new power cannot be used, since paid trustees would not then be in a minority. If there is no other authority for the payment, either our approval will be needed, or, if the governing document allows it, the trustees can appoint an additional unpaid trustee, which would then allow the new power to be used.

E10. Can a charity pay one of its trustees for services even if its governing document prohibits this?



The short answer

No. In these cases, payment can only be made after the prohibition has been removed by the Commission or, in some cases, by the charity itself. The effect of removing the prohibition will be to enable a charity to use the power in the 1993 Act to pay trustees for services: it would not allow any other form of trustee payment.

(See E2 for the position where there is a **conditional power**, rather than any outright prohibition.)

In more detail

When a charity can remove a prohibition. A charitable company may remove a prohibition on payment by amending its governing document without involving us so long as:

- there are enough members (who are not also trustees) to form a quorum to consider the alteration.

Members who are also trustees should not vote on the resolution to remove the prohibition. The power to make this change is available, in the case of companies, through the wide power of amendment in the Companies Acts.

When our consent to the removal of a prohibition is needed. An unincorporated charity cannot use the power of amendment under section 74D of the 1993 Act. An unincorporated charity will either need to:

- apply to us for a short Scheme to remove the prohibition; or
- approach us for written consent if its governing document already contains a suitable power of amendment which can only be used with our prior consent.

Where a charitable company does not have any members, or enough members who are not trustees to form a quorum to consider an amendment to remove a prohibition, our consent will be needed. They will need to seek an Order under s.26 of the 1993 Act from us.

When we are asked to provide consent or make a Scheme or Order in these cases, we will take into account any evidence about the reasons for including the prohibition and whether the change will be in the charity's interests.

E11. Can the agreement to pay a trustee for a service be amended?

The short answer

Yes - by a majority decision of the trustees who do not stand to gain. It is also necessary in these cases either for the trustee being paid to agree the change or for the contract to provide for such a change.

In more detail

Any change to the terms and conditions of the agreement must be discussed and approved by a meeting of the trustee board in the absence of the trustee who is providing the service (or who is connected to someone doing so). The new terms must be in the best interests of the charity, and they must be agreed by a majority vote of the trustee board - again excluding the trustee concerned, who must not form part of the quorum for the purpose of the meeting. The

trustee board's decision to vary the terms should be recorded in the minutes of the meeting at which that decision is taken. (As with the original agreement, the trustee concerned can be asked to provide information to the trustee board ahead of any discussion.)

An agreement can usually only be varied with the agreement of all the parties. If this is the case, an amended written agreement should be made.

E12. Must these payments be mentioned in the charity's accounts?



The short answer

Yes, in the case of accounts prepared on an accruals basis – in other words, charitable companies and those other types of charity with a gross yearly income of more than £100,000.

In more detail

Under the SORP 2005 accounting framework, charities that prepare their accounts on an accruals basis must give details of payments and other benefits to charity trustees and connected persons - including family members and businesses. They are also required to say under what legal authority the payment is made, together with the reason for it.

Although there is strictly speaking no need for this in the case of charities that prepare accounts on a receipts

and payments basis, we recommend, as best practice and to enhance transparency, that similar details are provided. This can help protect trustees from accusations that they are benefiting in some hidden way.

(See *Charity Reporting and Accounting: The Essentials April 2008* (CC15a) - available on the Publications page of our website.)

E13. What if a charity wants to pay for a service to be provided by a trustee or connected person, but cannot comply with all of the conditions of the 1993 Act power?

The answer

If not all of the conditions set out in section E3 can be met, trustee boards are advised to contact us with the details before making any payment, to see if we can give our approval. We will not approve any proposal involving excessive costs, or which will result in an unacceptable personal benefit, or anything else clearly against the interests of the charity. But if a proposal is reasonable in terms of cost, conflicts of interest are managed and it represents a clear advantage to the charity, rather than to the individual concerned, we will usually authorise it. We will take into account the overall level of trustee payment, and any other relevant circumstances when assessing such cases including whether such a payment is expressly prohibited.

F. Paying for trusteeship

This section explains the limited circumstances in which trustee boards can pay a trustee for carrying out trustee duties.

F1.What is the difference between paying a trustee for the provision of a service and paying for trusteeship?

The short answer

While there is a general power to pay a trustee for providing services, there is no such general power to pay a trustee for carrying out trustee duties. Charities cannot do this unless they have a suitable authority, either in the charity's governing document, or one provided by us or the Court.

In more detail

Paying a trustee for the provision of a service usually involves a charity making a one-off or occasional payment to a trustee who is to provide it with a specific service that is quite separate from his or her normal trustee duties. Many charities already have a specific power to do this in their governing documents. If not, they can usually rely on the power contained in the 1993 Act, described in section E of this guidance.

In contrast, payment for trusteeship means that a trustee receives payment from a charity for carrying out his or her normal trustee duties. In some cases, payment will be made on a continuous basis whenever these

duties are carried out; or it may take the form of a periodic or annual allowance; or it may be made on an occasional basis, intended to reflect only a certain aspect of the trustee role, or to enable a trustee to attend a specific meeting or event.

Crucially, there is no general power in charity law for trustee boards to make such payments, and normally they cannot do so unless their governing document specifically allows it, or unless they have authority from the Commission or the Court. (There are only very limited exceptions to this - occasionally where charities may be regulated primarily by legislation other than the Charities Acts.)

Without such authority, any such trustee payment is a **breach of trust** (see section C4) - even if the charity benefits from the transaction. As this might mean the trustee board or the individual trustee who has been paid being made liable to repay all or part of the payment, trustee boards without a suitable power should seek authority **before** any payment is made. Unauthorised payments may be evidence of misconduct or mismanagement.

F2. Is paying for trusteeship contrary to the voluntary principle?

The short answer

Unpaid trusteeship has always been a distinctive feature of charitable activity, and greatly enhances public confidence and trust in charities. There is a general expectation that charity assets should be used directly for the purposes of the charity. As a consequence, any departure from this position is only likely to occur in exceptional circumstances and needs to be fully justified by trustee boards as being clearly in the interests of their charity.

In more detail

There are circumstances where payment may be justified (see section F3), but trustee boards need to be clear they can justify a decision to pay one or more of their trustees, and that they can also manage the risks involved in doing this. A major risk area will be the need to manage conflicts of interest, as discussed in sections B1 and E5. The more trustees who stand to benefit, the bigger the risk and potential disadvantage, particularly in terms of conflicts of interests.

Trustee boards should consider carefully whether there is likely to be any adverse effect on the reputation of

the charity amongst its supporters and users - the charity might attract criticism if payment appeared to be excessive and widespread. An open and transparent approach to explaining the reasons for payment, and to accounting for them, will help reduce the level of risk.

Trustee payment must only be incidental to the purposes of a charity, and if a charity appears to be becoming a vehicle for trustee payment, we will use our powers to protect its assets. In an extreme case, charitable status could be placed in jeopardy.

F3. When can paying for trusteeship be justified?

The short answer

When there is a clear and significant advantage to the charity that will outweigh any disadvantages.

In more detail

If we are asked to approve a payment, we will normally only do so where a charity's complexity of operation has led to an unusually high burden of trusteeship. This will usually involve a trustee exercising a higher degree of responsibility and supervision in a complex field of activity, perhaps because of the breadth and range of activities undertaken by the charity.

It is often argued that payment can overcome difficulty in recruiting new trustees. There are, however, many methods of recruitment, including targeted advertising and online publicity, use of specialist agencies and trustee brokerage services, and use of open selection processes. Before considering payment, we advise charities to review the effectiveness of their recruitment mechanisms; see our guidance *Finding new trustees: What charities need to know* (CC30).

In many cases, simply paying legitimate reasonable expenses may be all that is needed to reassure potential recruits that they won't be out of pocket by taking on trusteeship; generally, we recommend that all charities have a written expenses policy (see section D).

But if trustee boards are convinced that only payment of a more direct benefit will enable them to obtain the skills, experience, and diversity they need for the charity, we will consider a reasoned case based on the factors set out in section F4. This includes payment where compensation for loss of earnings is a factor (see section H).

Case Study

A large grant-making charity applied for remuneration for future Chairs and certain trustee posts on the basis of the high level of time and commitment involved. The charity felt that, without offering payment for the time commitment and for the responsibilities that come with oversight of a multi-million pound organisation, it could not attract the right calibre of candidate, and would be likely to attract only those who were retired or 'well-off'. It provided evidence that, even with a well targeted recruitment campaign, it was struggling to attract the right calibre of candidate.

We approved payment for Chairs, but rejected an application for payment of five other trustee posts, for which the charity wished to attract experts in its field. There was little similarity in time commitment compared with the Chair, and no evidence that these posts were difficult to recruit for; indeed, previous recruiting campaigns suggested the opposite was the case, as a number of well-qualified candidates had come forward.

There are many reasons for becoming a trustee – financial reward rarely ranks among them. Identification with a particular cause or purpose, a sense of serving the community, or the opportunity for personal development, can all attract people to trusteeship. Where this is the case, charities should find no difficulty filling trustee vacancies. Generally we advise that trustee boards look at a number of recruitment methods before they

consider trustee payment as an option: we would need to see evidence that there is a lack of volunteers with the right skills.

It is likely that a charity will expect a trustee who is paid to have special knowledge and experience and that consequently the level of care and skill expected of that trustee will be higher than for someone who is not paid.

F4. What factors should trustees cover when applying to us to approve a payment?

The short answer

The trustee board should show why the charity will not be as effective without payment. If it is proving difficult to recruit new trustees without payment, the board should normally provide evidence that it has made a serious attempt to recruit trustees on an unpaid basis. It is not in the interests of a charity to pay a trustee if it is easy to appoint one with the right skills and competence to act without payment.

In more detail

Main factors to consider: The trustee board need to show:

- What steps have been taken to recruit trustees without payment - if none, then reasons should be given.
- Why it considers there are clear and significant advantages to the charity in paying a trustee rather than, for example, spreading duties among other trustees, or increasing the number of unpaid trustees (if the governing document allows it).
- Whether the functions to be carried out are genuinely those of a trustee - as distinct from functions of an employee or a consultant. Has the charity made the right balance between its executive and non-executive functions?
- That the payment can be shown to be reasonable and affordable, and will not affect the charity's ability to carry out its objects.
- What risks they have identified and how they will manage them (see section F2).
- How the unpaid trustees will be able to review performance (including dealing with poor performance), judge value for money and, if necessary, bring the payments to an end.
- How the conflicts of interest will be managed, so that the 'conflicted' trustee can still take an effective role in the governance of the charity.

In cases where we are able to provide authority, we would normally expect to give this where the number of trustees benefiting is in a minority.

Making comparisons: To manage or help avoid conflicts of interest and to provide objective evidence, charities may find it useful to consider 'benchmarking' (testing what is the 'going rate' for a similar job in a broadly similar organisation), or using review mechanisms - such as payment committees or outside bodies - to review pay scales.

In some cases, we may include provisions for benchmarking or review in our payment authority.

Consultation: In some cases, particularly where larger charities wish to pay significant numbers of trustees (for example, payment of chairs and regional chairs, payment of whole boards), the trustee board may wish to consider whether it would help to consult with those with a significant interest in the charity or any of its stakeholders. 'Stakeholders' can include anyone with a direct interest in the charity's operation: funders, donors, users and beneficiaries, members, staff, volunteers, business/operating partners, and other relevant regulators or agencies.

Case Study

A large educational trust running a group of schools had expanded considerably, and was looking to extend its operations still further into Academy schools. The trust was attempting to recruit a new Chair with a commitment of around 60 days per year; it sought authority for reasonable payment in recognition of the increased time commitment and complexity the role of Chair now demanded.

We were satisfied the trust had conducted an extensive advertising campaign, including use of a leading recruitment agency. The results showed considerable reluctance to undertake the commitment required on an unpaid basis. We agreed the proposed remuneration of the Chair, subject to our further approval to any subsequent increases in the agreed rate of payment.

F5. Can charities offer trustee benefits to help improve the diversity of their boards?

The short answer

It is more and more the case that charities wish to attract trustees from a wide variety of age ranges and social and economic backgrounds. In urging charities to seek greater diversity on their trustee boards, we recognise the advantages of recruiting and retaining trustees who have a particular knowledge of the communities and areas in which their charity operates. We support the view that people should not be excluded from trusteeship because of their economic circumstances. Not every trustee will always be able to give their time freely, and we accept that in some cases, particularly where loss of earnings will cause hardship, an element of financial compensation might be justified.

In more detail

A trustee board that reflects the composition and diversity of a changing society and of its beneficiaries is something all charities should strive to achieve. A diverse board is more likely to contain a broader range of skills, knowledge and experience than one which is more narrowly based. Effective recruitment and induction are key to this. Where charities need to draw on a wider trustee base, with new skills, ideas, and abilities to help them deliver better services to their communities, they may need to look at introducing new practices to encourage more diverse recruitment. These might include some of the factors mentioned in section F4, and also in our guidance

Finding new trustees (CC30), available on our website.

But where it is clear that the potential loss of earnings are preventing promising candidates from applying, charities can consider whether some reasonable financial assistance will help with their recruitment. We do not suggest, though, that paying trustees should be seen as an automatic solution to widening the trustee base.

Expanding diversity: When preparing to recruit new trustees, a charity should, in general, seek to increase or at least maintain the diversity of its trustee board. On one level, this may involve enabling the users of the charity's services to be properly

represented on its trustee board. Provision of special facilities or equipment may help with this (see our guidance *Users on Board: Beneficiaries who become trustees* (CC24)).

But in a much wider sense, having a more diverse board means taking positive steps to recruit trustees from parts of the community which may not traditionally have played a large role in charity governance: for example, young or unemployed people, people from ethnic minority communities, or people with disabilities. Some charities may have a specific need to recruit trustees who are on low incomes or from economically deprived areas. We believe it is important that people in this position should not be prevented from becoming charity trustees because of financial hardship.

Use of expenses: Direct payment for being a trustee is not necessarily the best way to secure wider representation on the trustee board. Wherever possible, charities should ensure they can offer reasonable upfront expenses for the cost of transport, meals, childcare, and accommodation when on charity business. It is important that no-one fears they will be out of pocket by becoming a trustee. This is especially

the case where young people, the elderly, and people on state benefits or low incomes are concerned; we recommend advance payment of expenses where cost is likely to be an obstacle to anyone carrying out trustee duties. See section D for further details on the use of a clear expenses policy.

Loss of earnings: In more problematic cases, it may be more than simply a question of being able to rely on expenses. Changing working patterns mean there is no standard working day for many people. This can mean some trustees are unable to attend meetings outside conventional working hours, and some may find it difficult to get paid time off work to attend meetings. Ideally, trustee meetings should be held at times that are most convenient to all, and at readily accessible venues; but we recognise this may not always be possible. In some instances, particularly where prospective trustees are self-employed or on low incomes, and are likely to lose out financially when acting on charity business, some level of financial compensation for loss of earnings may be a practical option to support their continued involvement. This issue is discussed in more detail in section H.

Case Study

A charity providing social care and support across a wide spectrum of social need, including disability, wished to appoint a disabled person who was in employment as a consultant to serve on its trustee board. The board felt it important to secure the services of the person concerned in order to give a wider perspective on its work. To avoid financial hardship as a result, we authorised reasonable payment to the new trustee as a direct replacement of loss of earnings while active on trustee business.

F6. What if the person is receiving state benefits?

The short answer

Care should be taken where a trustee is receiving state benefits. The rules governing benefits and tax credits are complex, and charities will want to ensure that payment of a trustee does not result in a reduction in their entitlement to benefits.

In more detail

Any trustee who feels this might be a concern (either to them or to a member of their household) should obtain written advice from the relevant benefits office. Where it would help to clarify the position, the charity should be prepared, with the consent of the trustee, to contact the benefits adviser on the trustee's behalf.

Further details: *A Guide to Volunteering While on Benefits* is published by the Department of Work and Pensions, and is available on its website:
www.dwp.gov.uk/publications/dwp/2006/vg1-2006.pdf

F7. What is the position of sole trustees?



The short answer

Where a charity has a single or 'sole' trustee (which might be an individual, or a corporation such as a local authority, or a bank or insurance company), payment decisions cannot be taken without a conflict of interest. Realistically, there is little advantage to any charity in its sole trustee being paid to act as trustee. It will be significantly more difficult to make a case for payment, particularly where statutory funds might also be available to administer the charity.

In more detail

We will not normally authorise a proposed payment where a fee-charging company requests a provision that reflects its published commercial scales of payment, rather than a rate that reflects the value of work actually done for the charity. Where we are required to approve a payment provision, our authority will limit payment to a reasonable charge in relation to that work.

A sole trustee may not profit from any charges it makes to a charity. For example, if it costs a local authority £150 per hour to employ a solicitor, it can charge any trust it administers up to £150 per hour. It cannot charge £200 per hour, even if that is the rate a solicitor in private practice would charge the trust - unless the charity's governing document or the Commission has authorised charging on this basis.

F8. Is authority needed for small payments or gifts?



The short answer

In the interests of proportionality and the best use of our powers and resources, we do not usually require charities to seek our authority where the total value of all trustee payments (excluding expenses) is less than £1,000 in any financial year. The trustees still need to be satisfied that these payments are in the best interests of the charity. We would, however, expect trustees to apply for authority in cases where, for example, we are addressing issues of mismanagement with them.

In more detail

Are total trustee payments below £1000 per annum? Generally, we do not expect charities to seek any authority for a small trustee payment where the payment will still mean that total payments (excluding expenses) to all their trustees during the financial year will not exceed £1000. This includes where trustee boards wish to make a small one-off payment (often known as an honorarium) to a trustee, for which there is no strict legal entitlement and no agreed amount, but which represents a gesture of appreciation and goodwill for services rendered to the charity - perhaps for long service. Payments that would result in the charity exceeding the £1,000 threshold are treated the same as payments for being a trustee, and will need our approval. The trustees

still need to be satisfied that payments below the £1,000 threshold are in the best interests of the charity.

Gifts to retiring trustees: This approach includes gifts to trustees who are retiring or leaving to take up another post, usually involving token payments or small gifts (see OG92 C10 *Gifts to Retiring Trustees* on the Operational Guidance page of our website). It is difficult to place hard and fast rules on what is an acceptable value of gift in these situations; it is for the trustee board to judge whether a person's length of service and quality of contribution to the charity should be acknowledged with a leaving gift directly out of charity funds, taking account of any possible effect on the charity's reputation.

Tax and benefits: A small one-off honorarium would not normally be classed as income by HM Revenue and Customs, and should not be taxable. But a large, regular or 'expected' honorarium can be classed as taxable earnings, and can also affect benefit claims. If such payments are not authorised by the charity's governing document, the trustee board must seek our authority if the total trustee payments to an individual trustee will be more than £1,000 for that year.

Further information is available on HMRC website www.hmrc.gov.uk

G. Employing a trustee or connected person

This section explains when our express authority is required where a trustee, former trustee, or connected person takes up paid employment with his or her charity. It also covers circumstances where an employee of a charity becomes a trustee, and the potential need for our authority when the spouse or partner of a trustee, or any other connected person, is employed by the charity.

G1. Can a trustee also take up a separate position as an employee?

The short answer

Charity trustees may become employees of their charities in a variety of circumstances. Charities need to be aware, though, that the employment **may** need to be approved by us.

In more detail

Sometimes a charity might need to employ someone for a particular job on a full or part-time basis, and the trustees may feel one of their number is ideally suited, through knowledge or motivation, to take on the job.

Need to justify decision: A trustee may be in a strong position to provide the necessary skills and experience, but because charities rely on the confidence of the public (donors and beneficiaries alike) and must comply with the law on trustee benefits it is essential they are open and transparent about the processes and

decision-making which lead to the employment. Any decision to employ a trustee or former trustee must be completely justifiable, and must be made without favouritism or improper influence. This means a trustee or former trustee should not gain an 'inside track', or any unfair advantage because of their position, and potential conflicts of interest must be properly and openly managed. (See section G4; see also section C of this guidance, and *A Guide to Conflicts of Interest for Charity Trustees* on the Guidance for Charities page of our website.)

G2. When must Commission approval be obtained to the separate appointment of a trustee as an employee?

L

The short answer

If decisions about the recruitment or appointment were made while the individual was (or continues to be) a trustee, our approval to the employment must be obtained if there is no other express authority for it. Without an express authority, there may be a liability for the employee-trustee to repay earnings to the charity or for the trustees who authorised the appointment to reimburse the charity. This does not occur very often, but it can arise in the event of a legal challenge from a third party (either within or outside the charity), or as the result of a Commission inquiry.

In more detail

No authority is needed if there is already a suitable express power. But otherwise, our authority will be needed if:

- the person takes up the employment while still a trustee; or
- the job offer is made while the person is a trustee, even though he or she later resigns as a trustee; or
- the person resigned as a trustee before the formal job offer was made and took part in an open recruitment process, but played a major part in the trustees' decision to create or retain the post, or in devising the recruitment process.

The last point covers any situation where a trustee or ex-trustee lobbied or canvassed for a post, or was involved in devising the job specification or any other major aspect of the recruitment process, including advertising. It also covers involvement in agreeing terms and conditions for the post.

G3. How should trustee boards apply for approval?

The short answer

If the individual trustee's salary and benefits are, or will be, below £50,000 per annum, the trustee board (other than the person benefiting) can apply to us using the Declaration and Application form CSD-1381C available on the 'Apply for it' page of our website.

The form cannot be used where the salary and benefits in any year are expected to exceed £50,000, or where the trustee or ex-trustee concerned canvassed for the post, or was involved in devising the job specification or advertising for the post - again including involvement in settling the terms and conditions of the employment.

Whether the form is used, or a case is made out separately, trustee boards should note that we cannot authorise any payments retrospectively, but can only authorise new or continuing payments.

In more detail

Whether completing the form or making out a separate case, trustee boards need to show that the post is genuinely required for the effectiveness of the charity, and has not been created or tailored to meet the needs of the trustee or former trustee. The person appointed should not have gained any 'inside track' advantage in securing the post, and there should not have been any lobbying, undue influence, or collusion in relation to the appointment.

Main factors to consider in all cases:

Trustee boards need to satisfy us that the post is genuinely required, and is not weighted towards the experience of a colleague or ex-colleague. They need to show that:

- The charity has a need for the work to be carried out.
- The person has the appropriate knowledge and skills for the job.

- Payment for the job is reasonable in relation to the work being carried out: How does it compare with payment for similar duties elsewhere? Is the charity obtaining value for money?
- The risks identified in section F2 have been considered and managed.
- (Usually) the job has been subject to an open and transparent selection process.
- (Where relevant to the charity) stakeholders have been consulted (see section F4).

If the person is to continue as a trustee, we need to know why this is necessary, and what arrangements are in place for managing any conflict of interest. How will performance be assessed? Does the trustee board have independent and objective mechanisms for appraisal in place?

Recruitment process: The trustee board needs to ensure the selection criteria properly meet the needs of the charity, and that there is a good balance in the job specification between skills, experience, and qualifications. An open recruitment process will help to show that the post has not been created simply to benefit the trustee.

If we are asked to authorise an arrangement with no open recruitment process, and where there may be doubt about the suitability of a trustee or ex-trustee to do the job, or evidence of improper influence on the selection process, we may require a proper recruitment exercise to be conducted, and for the post to be openly and properly advertised.

G4. Can an employee become a trustee?

(This section also applies where employees or paid directors of subsidiary trading companies owned by the charity are appointed to its trustee body.)

The short answer

If an employee becomes a trustee, their employment usually occurs before their trusteeship and so is not a benefit arising from the trusteeship. Accordingly, there is no liability to repay any earnings received **before** the start of the trusteeship. In view of the potential conflict of interest **after** the start of the trusteeship, however, it can be helpful to obtain authority to permit the trustee-employee to retain any increases in payments made after that date where these are not within an agreed employee pay structure – see section G6.

In more detail

Points to consider: Whilst combining the role of trustee and employee can occasionally be advantageous for the charity, the benefits would need to clearly outweigh the difficulties that can come with this dual role. The trustee board should be particularly clear why it is not sufficient for the relevant employee simply to attend their meetings (in a non-voting capacity) in order to contribute to discussion. If this sort of arrangement is established, there will need to be clear procedures for managing the potential conflict of interest (see below).

Declaring an interest: The person concerned may be said to have an economic interest in retaining the employed post, and with enhancing its terms and conditions. In order to properly manage this potential conflict of interest, we recommend the trustee board ensures the person concerned declares an interest, and that this is clearly recorded in the minutes and any register of interests the charity keeps.

Withdrawal from discussion: The trustee-employee should take no part in collective discussion or voting on the

contractual terms and conditions of the employed post, or in any review of performance relating to it. This also includes any decision on whether it is in the charity's interests to continue with the post. For greater transparency,

we recommend any withdrawals from relevant meetings by the trustee-employee are clearly minuted. For the most influential posts within a charity, however, this can be problematic as the following case study demonstrates.

Case Study

The case of one charity highlighted what can sometimes be a difficulty with this type of arrangement, as we refused to renew a power of remuneration that would have allowed the Chief Executive Officer to continue as a trustee. The person concerned was also the founder of the charity, and our main concern was that the trustee board was not taking adequate steps to strengthen its governance, so it could take decisions independently of the CEO and review his performance.

A key aspect of this case study was the need for stronger governance arrangements so that decisions could be made in the interests of the charity by the whole trustee body, free from the influence of the paid chief executive. Where the governance arrangements are strong – for example, they include clear procedures for managing conflicts of interest in an open and transparent manner – concerns about conflict of interests and undue influence are greatly reduced.

For example, the governance model for many church charities allows or requires the priest, pastor or vicar to be a trustee because it can be important for those in such a pivotal role within these charities to be involved in their strategic oversight and leadership. So long as the potential conflicts of interest which they face are properly declared and managed, this type of arrangement can be beneficial to the charity.

G5. Is Commission approval required?

The answer

Without an express authority, the validity of the trustee-employee arrangement described in section G4 could be susceptible to a legal challenge - either by us, or by a third party. In practice, it may be very unlikely that an arrangement that is open, transparent, and clearly in the interests of the charity, would be challenged. But if trustee boards are in doubt about whether they have a suitable authority, they should contact us for approval in order to reduce the risk of a challenge which, even if unsuccessful, could cause financial and/or reputational damage.

Any authority we give will be subject to our usual conditions designed to ensure the proper management of the conflict of interest, and that payment is reasonable in relation to the nature of the employment.

G6. Is approval needed for future pay increases?

The answer

Where a trustee-employee is not being paid explicitly for being a trustee, negotiations in relation to pay and salaries should be completely outside the trusteeship role. We do not need to approve annual increases in salary or benefits for a trustee-employee which constitute a reasonable incremental progression within an established and transparent employee pay structure.

However, where salary increments, bonuses, or other tangible benefits are substantial, and not clearly justifiable by reference to any formal pay scale, our authority would be required if trustee boards wished to avoid potential legal challenge.

Generally, trustee boards should be wary of agreeing to any payment or benefits which might be regarded as excessive in relation to the employment, and which might cause concerns about unacceptable levels of private benefit within their charity.

G7. What is the position where a trustee's spouse or partner or other 'connected persons' become paid employees of the charity?



The short answer

Our approval must be obtained if there is financial interdependence between the parties **and** there is no other authority for the transaction.

In more detail

Contracted employment: If a trustee's spouse or partner becomes a paid employee on a full or part-time contract, then if **they are financially interdependent**, the trustee could profit from the employment. In law, this can be a trustee benefit, requiring express authority. This also applies to businesses owned by a trustee, or in which the trustee is a partner, a managing director, or has any financial interest. It can also apply to employment with a subsidiary owned by the charity.

Need for openness: Trustee boards should be aware of the possible need for authority, and ensure no improper influence has been brought to bear in the charity's decision to employ a firm or individual. Any arrangement with a connected person should be open and

transparent, so that it can be seen to be made in the charity's interests. The trustee board should ensure any potential conflict of interest is declared and recorded in its minutes, and that the trustee concerned does not take any part in the board's discussions and decisions concerning the terms and conditions of the connected person's employment.

Seeking our approval: Authority is only required where there is a potential financial dependency between a trustee and a connected person who is employed. If no such link exists, then no approval is needed - though any potential conflict of interest still needs to be managed. If trustee boards are in doubt about the need for authority, we recommend they take advice.

Where it is decided approval is needed, if the paid employment is for less than £50,000 per annum, we recommend use of the declaration and application mentioned in section G3. If no open recruitment has taken place, or if it appears the trustee concerned has not been sufficiently distanced from the decision-making or recruitment process, we may seek further information. Where payment will be more than £50,000, the trustee board will need to make a full case based on the factors outlined in section G3.

H. Compensating trustees for loss of earnings

This section explains our policy where a trustee board seeks to pay reasonable financial compensation to secure or retain the services of a trustee who might otherwise struggle to play a full trustee role.

H1. When can payment be made to cover loss of earnings while on trustee business?

The short answer

As with other forms of trustee benefit, a charity can make these payments if there is suitable authority, and if there is a clear and positive advantage to the charity in doing so.

In more detail

This type of payment is not a routine **expense** (see section D) and must be treated as a **trustee payment** (see section C3). There must therefore be an express authority for it, either within the charity's governing document, or provided by us. Some charities do have a suitable power to compensate for loss of earnings, but this is still relatively uncommon in governing documents. Where there is no suitable existing authority, we are prepared to provide one if the trustee board can show that payment is in the charity's interests.

Advantage to the charity: The circumstances in which a trustee board may wish to consider this type of payment are where a potential or existing trustee:

- brings particular skills or perspective which are valuable to the charity; and
- cannot afford to serve as a trustee because his or her employer does not pay for time spent on charity business during working hours; or
- is self-employed, and would lose out financially by carrying out trustee duties in normal business hours.

The same considerations apply as for any payment of a trustee; the trustee board needs to show why it is clearly advantageous to the charity to pay for the services of the person concerned. This will depend on the abilities and experience the person concerned can bring to the trustee board. Details of any especially relevant skills, knowledge or expertise should be provided. In addition, the trustee board need to consider whether the person could act as an unpaid adviser, or whether it would be possible to recruit a suitable replacement without the need for payment.

The trustee board also need to show the basis on which the compensation is calculated, and explain why this is value for money.

Conditions of authority: If the arrangement is approved, our authority will normally impose a condition that:

- reimbursement must not exceed the amount which could be regarded as reasonable payment for the work undertaken on behalf of the charity.

The trustee being compensated must **not** be a party to the application for authority. The person may have been required to provide factual information to the trustee boards, but it should be confirmed that he or she has not otherwise played a part in their decision to make the payment, or in setting the terms and conditions of the payment.

Case Study

A leading disability charity wanted to ensure blind and visually impaired people are always able to have a voice on its trustee board. In this case, the charity wished to enable three trustees (including the chair) with valuable specialist skills to contribute regularly to the board, without any financial hardship to themselves as a result. One was self-employed, the other two had to forego fees from other work on a number of occasions when attending trustee meetings and acting on charity business.

We recognised the contribution made by these trustees, whose expertise ranged from IT support, disability employment services, Access to Work issues, and the needs of visually impaired people. We authorised payment by the charity to reflect their duties on the occasions when they would otherwise lose out. This was based on the charity's assessment of rates comparable to the chair and non-executive directors of NHS Trusts. As a result, the charity was able to retain the expertise of these three trustees, and further empower its users on the trustee board. The charity makes the point that it does not wish only to appoint trustees who can afford to be trustees.

H2. Is there any set guideline for the level of loss of earnings to be compensated?

The short answer

There is no strict maximum or 'set' figure for compensation. Ultimately, it is for trustee boards to assess the level of payment in the light of the particular trustee's contribution to their charity, and whether the charity can readily afford the payment.

In more detail

Compensation payments should not necessarily be a full replacement of earnings, nor should highly paid trustees be reimbursed in full for lost salary. Rather, the payment should reflect the reasonable value of the work done on behalf of the charity. But, as with other trustee payments, the charity must ensure payment will not harm its ability to carry out its purposes in the interests of its beneficiaries. Charities with a limited income will need to be especially clear they can absorb the cost without any adverse effect on their activities. We would not normally expect a charity in financial difficulty to consider making compensation payments to its trustees.

H3. Are there any risks in making payments for loss of earnings?

The answer

As well as the risks to be managed that we describe in section F2 for paying a trustee, there are other potential disadvantages that charities might need to consider before making loss of earnings payments:

- Only trustees who are employed or self employed can benefit in this way; trustees who are unemployed, but still giving up their free time and energy for the charity, may view this as biased and unfair.
- There may be problems where the trustee concerned believes the level of payment should reflect their actual loss of earnings, rather than what is reasonable in terms of the benefit to the charity.
- Although payment may be effective on specific occasions, if it becomes a regular feature there it may remove the incentive to keep any loss of earnings to a minimum - eg by holding meetings outside of the trustees' usual working hours.

H4. Must there be a written agreement between the charity and the trustee concerned?

The short answer

Not in all cases, but there can be distinct advantages in having one.

In more detail

Where they are likely to be in operation on a regular basis, compensatory arrangements should be recorded in a written agreement, which should be kept as part of the charity's accounting records. This provides a mechanism for the trustee board to determine and monitor value for money, and otherwise protect the charity's interests. We do not expect a charity to meet exactly the same conditions for an agreement required

when paying a trustee under the 1993 Act power for the provision of goods or a service (see section E). But generally, an effective agreement should address the amount and terms of payment, the level and type of task expected from the trustee, and also arrangements for performance review, assessment of continuing need, and the circumstances in which the arrangement will come to an end.

I. Further information and advice

There are many resources that charity trustees can use to help them carry out their duties. This is not a definitive list of all the sources of information available, but it offers a good starting point. We encourage trustees to make use of the wide range of organisations that can help them run their charity as effectively as possible. You can find details of other sources of information in the Useful Links area of our website.

I1. External Organisations

Charity Trustee Networks (CTN)

Offers trustees mutual support by encouraging and developing self-help trustee network groups providing consultancy and mentoring.

Charity Trustee Networks
3-4 Frensham Suite
Friary Court
13-21 High Street
Guildford
Surrey GU1 3DG
Tel: 01483 230280
Fax: 01483 303932
Email: info@trusteenet.org.uk
Website: www.trusteenet.org.uk

Companies House

The incorporation authority for limited companies. Also runs seminars for newly appointed directors and company secretaries.

Companies House
Crown Way
Maindy
Cardiff CF14 3UZ
Tel: 0870 333 3636
Minicom: 02920 381245
Email: enquiries@companies-house.gov.uk
Website: www.companieshouse.gov.uk

Directory of Social Change (DSC)

The Directory promotes positive social change and provides a wide range of resources for trustees.

Directory of Social Change
24 Stephenson Way
London NW1 2DP
Tel: 020 7391 4800
Email (London): enquiries@dsc.org.uk
Website: www.dsc.org.uk

Ethnic Minority Foundation (EMF)

EMF develops resources for black and minority ethnic organisations, these include networking and training opportunities and a trustee register.

Ethnic Minority Foundation
Forbes House
9 Artillery Lane
London E1 7LP
Tel: 020 7426 8950
Email: enquiries@ethnicminorityfund.org.uk
Website: www.ethnicminorityfund.org.uk

Institute of Chartered Secretaries and Administrators (ICSA)

ICSA is the professional body for chartered secretaries. It produces a number of best practice guides and guidance notes. It also maintains a trustee register available to charities looking for new trustees.

Institute of Chartered Secretaries and Administrators (ICSA)

16 Park Crescent

London W1B 1AH

Tel: 020 7580 4741

Fax: 020 7323 1132

Email: info@icsa.co.uk

Website: www.icsa.org.uk

National Association for Voluntary and Community Action (NAVCA)

This organisation is the national umbrella body for 250 Councils for Voluntary Service in England. A local Council for Voluntary Service provides advice, support and information to voluntary organisations and charities in their area, including help with registration. If you would like details of your local Council for Voluntary Service please contact NAVCA as above. Similar organisations to the NAVCA exist for voluntary organisations and charities based in Wales. Please contact WCVA (see below).

NAVCA

The Tower

2 Furnival Square

Sheffield S1 4QL

Tel: 0114 278 6636

Fax: 0114 278 7004

Email: navca@navca.org.uk

Website: www.navca.org.uk

National Council for Voluntary Organisations (NCVO)

NCVO produces a wide range of information and support services for those working in the voluntary sector. NCVO produces 'The Good Trustee Guide' which contains practical information on all aspects of a trustee's role. Its website also includes details of a Trustee Brokerage Network Group which is a network of brokerage placement services who match trustees with vacancies on the boards of voluntary organisations (www.trusteebank.org).

National Council for Voluntary Organisations (NCVO)

Regent's Wharf

8 All Saints Street

London N1 9RL

Tel: 020 7713 6161

Fax: 020 7713 6300

Freephone: 0800 2798 798

Email: helpdesk@ncvo-vol.org.uk

Website: www.ncvo-vol.org.uk

Wales Council for Voluntary Action (WCVA)

WCVA is the voice of the voluntary sector in Wales. It represents the interests of, and campaigns for, voluntary organisations, volunteers and communities in Wales. It provides a comprehensive range of information, consultancy, funding, management and training services. Charities can use the WCVA website to find their nearest County Voluntary Council (CVC).

The Criminal Records Unit of WCVA is a registered umbrella body with the Criminal Records Bureau and is able to countersign Disclosure applications on behalf of other voluntary organisations in Wales.

Wales Council for Voluntary Action

Baltic House,

Mount Stuart Square

Cardiff, CF10 5FH

Tel: 029 2043 1700

Helpline: 0800 2888 329

Email: enquiries@wcva.org.uk

Website: www.wcva.org.uk

12. Charity Commission guidance

Available on the Publications page of our website:

- Finding new trustees: what charities need to know (CC30)
- Users on board: Beneficiaries who become trustees (CC24)
- Changing your charities governing document (CC36)
- Charity reporting and accounting: the essentials April 2008 (CC15a)

Available on the Guidance page of our website:

- A guide to conflicts of interest for charity trustees
- Gifts to retiring trustees

Available on the 'Apply for it' page of our website:

- Trustee payment: new power to pay for services provided by a trustee (CSD-1381A)
- Guidance note in respect of contracted employment of a trustee (CSD-1381B)
- Declaration and application form in respect of contracted employment of a trustee (CSD-1381C)

13. Other sources of information and advice

- Details of tax allowances and relief for business travel and expenses, including approved mileage allowances can be obtained from HM Revenue & Customs website: www.hmrc.gov.uk

- Good Governance: A Code for the Voluntary and Community Sector

The Code has been published by the National Governance Hub (a partnership of organisations working to improve governance of charities and other voluntary and community organisations). The Commission has contributed to the development of the code in partnership with NCVO, ACEVO, Charity Trustee Networks and ICSA. The code is a practical and easy-to-use guide to help charities develop good practice. You can download copies of the code from www.governancehub.org.uk/code_of_governance.html

- A Guide to Volunteering While on Benefits (VG1)

This guide is published by the Department for Work and Pensions, and is available on its website www.dwp.gov.uk

- Information Sheets produced by Volunteering England (an independent voluntary agency that “works to support and increase the quality, quantity, impact and accessibility of volunteering throughout England”).

- Volunteering and State Benefits
- Volunteer Expenses
- Volunteer Travel Expenses
- Reimbursing Care Expenses to Volunteers

Although aimed at volunteers generally, they contain practical advice that is useful for trustee boards, and can be downloaded from www.volunteering.org.uk

This publication can also be accessed at the Charity Commission's website: www.charitycommission.gov.uk

© Crown copyright 2008. This publication may be reproduced free of charge in any format or medium provided that it is reproduced accurately and not used in a misleading context. The material must be acknowledged as Crown copyright and the title of the publication specified.

This publication is printed on paper obtained only from sustainable resources and is totally chlorine free.

Supplied by Linney Group.

xxxxxx xx/2008

**You can obtain large-print versions
of this publication from the Charity
Commission on 0845 300 0218**

Charity Commission

Telephone: **0845 300 0218**

Typetalk: **0845 300 0219**

By post: **Charity Commission Direct**

PO Box 1227

Liverpool

L69 3UG

Website: **www.charitycommission.gov.uk**