



Independent Examiners

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## BRIEFING PAPER

# Code of Conduct for Charity Trustees

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There is a new statutory code of general duties for company directors and best practice dictates that Charity Trustees should bear this in mind. This code comprises 7 general duties:

**(i) Duty to act within powers**

This is a general duty to use powers only for the purposes for which they were conferred. This will mean that trustees will need to be aware of the provisions of the governing document (Trust Deed) in particular with regard to the powers in respect of the Objects of the Charity (usually the Clause following the Objects Clause). Trustees will need to make sure that they act in accordance with specific powers such as delegation, contracts etc.

**(ii) Duty to promote the success of the Charity**

Trustees have a duty to ensure the success of the Charity – this means success in achieving its charitable purposes. Trustees must have a regard to the following:

The likely consequence of any decision in the long term;  
The interests of the charity's employees;  
The need to foster the charity's business - (charitable) relationships with suppliers, customers, beneficiaries, donors etc.;The impact of the charity's operations on the community and environment – CSR (corporate social responsibility);  
The desirability of the charity maintaining a reputation for high standards of conduct;  
The need to act fairly between members of the charity.

There is no intention of the government to impose additional bureaucracy on to charities and this is merely intended to reflect best practice. Trustees should ensure that the items listed above are borne in mind when reaching decisions and are appropriately minuted.

**(iii) Duty to exercise independent judgement**

This is a new requirement and has raised concern. Again, the government has confirmed that trustees are able to rely on others in areas where they are not experts provided that they use their own judgement as to whether to follow the advice given or to take a second opinion.

**(iv) Duty to exercise reasonable care, skill and diligence**

As a general rule, a trustee must:

Use the same degree of **care** as would be reasonably expected from a "sensible and careful business person dealing with his or her own affairs";

Use the same degree of **skill** as would be reasonably expected of someone with the trustee's own knowledge and experience.

For example, a trustee with accountancy skills would be expected to use the skills of a reasonably competent accountant when making decisions.

### **(v) Duty to avoid conflicts of interest**

Trustees should not put themselves in a position where their personal interest or a duty they owe to another person or organisation conflicts with the duty they have to the charity as a trustee. Trustees must make decisions which are entirely unaffected by outside influences. A trustee cannot enter into an agreement with another person as to how he/she will vote at trustee meetings.

The general rule is that if there is a conflict of interest, a trustee should not play a part in the decision-making process unless there is an exception set out in the company's governing document allowing him or her to do so. If there is an exception, a trustee must follow the terms of the exception but must still ensure that he or she can act in a way that serves the best interests of the charity.

### **(vi) Duty not to accept benefits from third parties**

This duty stipulates that a trustee must not accept any benefit from a third party that is conferred because of his or her being a trustee or his or her doing or not doing anything as a trustee. There is no minimum threshold or this and the benefit need not be financial – it could relate to any appointment, interest or position.

This duty is similar to that of the duty to avoid conflicts of interest and needs to be seen alongside the duties on unpaid trustees not to receive benefits from charities where this is excluded by the charity's governing document. In relation to charities, it is usually the case that either trustees should not receive any remuneration beyond reasonable out of pocket expenses or the remuneration is limited according to specific provisions in the governing document.

### **(vii) Duty to declare interest in a proposed transaction or arrangement**

In addition to any specific requirements within a charity's rules, a trustee is required to declare interests where he or she is, directly or indirectly, interested in a proposed transaction or arrangement with the charity. This duty only applies to an interest where the trustee is or ought reasonably to be aware of the interest.

With thanks to Anthony Collins Solicitors

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