Running your charity

Support for trustees on key aspects of running a charity effectively

The Charity Commission for Northern Ireland

The Charity Commission for Northern Ireland is the regulator of charities in Northern Ireland, a non-departmental public body sponsored by the Department for Social Development.

Our vision

To deliver in partnership with other key stakeholders in the charitable sector "a dynamic and well governed charities sector in which the public has confidence, underpinned by the Commission's effective delivery of its regulatory and advisory role."

Further information about our aims and activities is available on our website www.charitycommissionni.org.uk

Equality

The Charity Commission for Northern Ireland is committed to equality and diversity in all that we do.

Accessibility

If you have any accessibility requirements please contact us.

Online or in print

If you are viewing this document online, you will be able to navigate your way around by clicking on links either within the contents page or text.

We have produced a glossary that provides further information, definitions and descriptions of some key terms. The words in **bold green type** indicate words that are found in the glossary towards the end of this document. If you are reading the document online you can click on the word and it will link you to the definition in the glossary.

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Section 1: Overview

The purpose of this document is to assist **charity trustees** in understanding their duties and encourage them to adopt good practice in all aspects of their operational activities. An integral part of good governance and effective performance is compliance with the law and willingness to be engaged in a process of continual improvement.

The majority of standards set out in this document are based on the principles of best practice but some are legal requirements. Failure to adhere to the legal requirements could result in charity trustees being in breach of trust.

The document provides information on five key areas for charities.

- Duties and responsibilities of charity trustees.
- The public benefit requirement.
- Finance, funding, reporting and accountability.
- Good governance.
- Risk and insurance.

The Commission hopes to develop and add to this document in the future.

Section 2: About this document

What does this supporting document cover?

This supporting document is not a full description of legal matters affecting your charity, nor is it a substitute for advice from a charity's own professional advisers. Instead, it is aimed at providing a general introduction and overview of key governance matters for charities, as well as highlighting areas where charity trustees may need to seek further advice.

Charities may also be subject to other legislation and sometimes regulation. For example, charitable companies also have to comply with the requirements of company law under the Companies Act 2006. More information on this can be accessed from Companies House.

Who does this supporting document apply to?

This supporting document is aimed at people who are **charity trustees**, including members of management committees, directors of charitable companies or someone acting on behalf of a charity, for example a solicitor, accountant, agent or adviser. It is also aimed at anyone considering taking up trustee responsibilities and duties.

What are legal requirements and best practice?

In this document, where we use the word 'must' we are referring to a specific legal or regulatory requirement. We use the word 'should' for what we regard as best practice, but where there is no specific legal requirement. Charity trustees should follow best practice guidance unless there is a good reason not to.

Where can you find definitions of key terms?

You will find definitions of key terms in the glossary towards the end of this document. If you are viewing the document online, you can click on a word in **bold green type** and you will be brought straight to the definition in the glossary.

Charity legislation

References in this document to 'the Charities Act' are to the **Charities Act (Northern Ireland) 2008** as amended by the **Charities Act (Northern Ireland) 2013**. Please check our website www.charitycommissionni.org.uk to make sure you are using the latest version of forms and guidance.

Section 3: Duties and responsibilities of charity trustees

Charity trustees play an essential role in running charities, bringing valuable experience, skills and knowledge to the organisation and the charitable sector. Charity trustees are the people who have overall control of the charity and responsibility for making sure it is doing what it was set up to do and is operating within its charitable **purposes** for the public benefit. They lead the charity and decide how it is run. While being a charity trustee can be an interesting and rewarding role, trustees should be aware of the significant level of responsibility involved.

Charity trustees are collectively responsible for all the activities of their charity. They must all observe the requirements of the **Charities Act**, trustee and other relevant legislation and have a shared duty of care for the charity.

The rules relating to **legal capacity** or **legal authority** to act on behalf of an organisation as a charity trustee are complicated. This document aims to assist charity trustees in understanding what is expected of them, collectively and individually, in keeping with relevant charity and trustee legislation.

3.1 Who are charity trustees?

Charity trustees are the people who are legally responsible for the control, management and administration of a charity. In the charity's **governing document**, they may be known as trustees, directors, board members, governors, committee members, a council of management or charity trustees.

3.2 Who can be a charity trustee?

Trustees of unincorporated charitable organisations must be 18 years or over. Directors of companies can be 16 years or over under company law and therefore can be trustees of charitable companies.

Some people are disqualified by law from acting as charity trustees. These disqualifications are set out in the Charities Act and broadly include but are not limited to anyone who:

- has been convicted of an offence involving deception or dishonesty, unless the conviction is spent under the Rehabilitation of Offenders (Northern Ireland) Order 1978

- is an **undischarged bankrupt** or has made an arrangement with creditors
- has previously been removed as a charity trustee by the Commission or the courts
- is subject to disqualification under company legislation.

Charity trustees should sign a form before their election or appointment to confirm that they are not disqualified.

3.3 What should a new trustee be aware of?

Before you become a trustee, you should learn as much as possible about what being a trustee will mean for you and what will be expected of you. For instance, for an existing, larger charity, we would suggest that you read the charity's **annual report**, important policies and annual **accounts**.

You may also find it useful to meet with the existing charity trustees, senior staff and, if possible, some of the people who benefit from the charity's work. Some charities may also invite you to sit in on a trustee meeting as an observer before you formally join. There may also be training available for new charity trustees.

You should also view a copy of the charity's **governing document**. This is the charity's main constitutional document and sets out what the charity's purposes are and how it is to be administered. Further advice should be sought from the other charity trustees or the charity's secretary if required.

3.4 Compliance with the Charities Act and other legislation

Charity trustees must:

- ensure the charity complies with charity law and with the requirements of the Commission as regulator
- make sure the charity acts in accordance with the requirements imposed by other relevant legislation or regulators, for example company law, trustee law, health and safety law, employment law, the Bribery Act and data protection law
- ensure that the charity is registered with the Commission when called forward to do so
- prepare **annual returns**, **reports** and accounts as required by law
- ensure the charity does not breach any of the requirements or rules set out in its governing document and remains true to its charitable purposes
- act with integrity and avoid any misuse of charity funds or assets
- avoid potential conflicts of interest and handle any that do arise in such a way as to promote accountability and transparency.

3.5 Acting with care and diligence

Charity trustees must:

- be familiar with the charity’s governing document and ensure it remains effective
- ensure the charity is and will remain solvent
- use charitable funds and assets properly and only in furtherance of the charity's purposes
- avoid undertaking activities that might place the charity's endowment, funds, assets or reputation at undue risk
- take special care when investing the funds of the charity or borrowing funds for the charity to use
- use reasonable care and skill in their work as charity trustees, including using their personal skills and experience to ensure the charity is well-run and efficient
- consider getting external professional advice on all matters where there may be risk to the charity or where the charity trustees may be in breach of their duties.

3.6 Acting in the best interests of the charity

Charity trustees must act in the best interests of the charity and only within the purposes of the charity. An effective charity is accountable to the public as well as to others who have an interest in it (stakeholders). A charity can demonstrate accountability by being clear, open and transparent.

Charity trustees must act at all times in the best interest of the charity. When they do not act in this way a breach of trust or breach of duty of care may occur. Breaches of trust or duty of care can take various forms and in serious cases it may mean that the charity trustees are personally liable for any debts or losses sustained by the charity as a result of their actions.

Section 4: Public benefit

4.1 The public benefit requirement

Public benefit is at the heart of what it is to be a charity. The **Charities Act** sets out the legal requirement that all charities have charitable **purposes** that are for the public benefit. More information can be found in the Commission's statutory guidance, *The Public benefit requirement,* which is available on www.charitycommissionni.org.uk

Once registered with the Commission, the trustees of each charity will be required to demonstrate how they have carried out their charity's purposes for the public benefit as part of the **annual return** process.

The Charities Act states that **charity trustees** must have regard to the Commission's *Public benefit requirement* statutory guidance when exercising any powers or duties to which the guidance is relevant. The statutory guidance explains what is required to show that a charity's purpose is for the public benefit. This is relevant to the operation of your charity so that you understand how to carry out your charity's purposes for the public benefit.

4.2 Operating for the public benefit

Charity law says that once a charity has been set up, its charity trustees must operate as a charity in accordance with:

- charity law
- the charity's purposes.

Charity trustees should know what their charity's purposes are and how they are for the public benefit. A charity's trustees have a legal duty to operate it in a way that is consistent with its purposes being for the public benefit, including consideration of:

- what the benefits are
- risk of harm
- deciding who benefits
- access to facilities restrictions
- membership
- charging
- incidental benefit
- equality considerations
- reporting on public benefit.

4.3 What are the benefits?

When carrying out your charity's purposes, you should understand how each of your charity's purposes is beneficial so that the public can benefit in that way.

Where a charity's work gives rise to significant benefit which does not flow from its purposes, this may indicate that the charity is carrying out activities that fall outside its purposes. If a charity reviews its **governing document** and it appears that the activities being carried out are not helping it achieve its purposes, the charity trustees may wish to consider whether it would be appropriate for the charity's purposes as set out in the governing document to be altered.

4.4 Risk of harm

Decisions charity trustees make about operating their charity for the public benefit might affect the level of **harm** arising as a consequence. Harm may be to beneficiaries, potential beneficiaries or to members of the public.

Trustees need to be aware that operating a charity includes managing the risks associated with carrying out the charity's purposes for the public benefit.

This means that any harm which might result must not outweigh the benefit to the public that the purpose provides.

Charity trustees should:

- identify risks relating to harm
- minimise risks relating to harm
- make sure that any harm that might arise is a minor result of carrying out the purpose.

4.5 Deciding who benefits

Decisions concerning who benefits from the charity must be made in a way that is consistent with the charity's purposes.

A charity must operate for the benefit of the public or a section of the public in accordance with its purposes and it is the charity trustees who are responsible for ensuring that it does so.

Restrictions that flow from an organisation's purposes are important in identifying whether a purpose is for the public benefit, and therefore will be considered when the organisation applies to register as a charity.

Charity trustees may make other decisions which can affect who can benefit which are relevant when running the charity.

Factors that can have the effect of restricting who can benefit include, but are not limited to:

- restrictions on access to a charity's facilities
- membership
- charging.

To determine if the restriction is justified, the charity trustees must consider:

- the purposes of their organisation
- why the restriction is there
- the needs of the beneficiaries
- the resources available to the organisation.

4.6 Access to facilities restrictions

If a charity runs a facility for the public benefit, any restrictions on public access must be justified in the circumstances.

Restrictions might include:

- who can access the facility
- what can be accessed
- when it can be accessed.

There is no set requirement for a charity's opening hours. However, as a matter of good practice, trustees should ensure that the facility is available frequently enough to cater for all types of visitor given the nature of the facility provided by the charity.

Charity trustees must ensure they comply with the law regarding access to facilities. For example, where appropriate, trustees must have regard to any legal provisions regarding access to facilities by people with a disability.

4.7 Membership

A charity can deliver its benefit through a membership structure. In some cases, people have to be members of a charity in order to benefit. In other cases, benefit extends beyond the membership.

Charity trustees cannot adopt an arbitrary method of implementing a membership policy so as to ensure, for example, that the membership does not contain people who might not agree with them. Access to membership may, in certain circumstances, be properly limited where this is linked to the charity's aims. For example membership might be limited:

- to people living in a particular geographical area
- where a particular membership structure is a suitable way of carrying out the charity's purposes for the public benefit, provided that all those who might benefit can apply to join and there are objective criteria for deciding membership
- where practical reasons dictate a limit on membership numbers, such as limited space or where there is limited access to recreational facilities for health and safety reasons. In such cases it is reasonable to have a waiting list for membership provided the next available membership is offered on a 'first come, first served' basis.

Where people do not have to be members to benefit, then a restricted membership is not relevant. For example, in the case of a professional body or **learned society**, membership may be restricted to members of a particular profession or to people who have certain academic qualifications. However, the wider public may benefit from:

- learned articles published by the society
- the application of the knowledge to relieve sickness gained by a medical professional from being a member of a professional body or learned society.

4.8 Charging

Charities can charge for the services or facilities they offer. They usually do this because:

- the services or facilities they provide are expensive to run
- they need to charge in order to operate, for example a charity may hire out its facilities on occasion.

A charge can range from something small or a one-off payment such as small entry fees to attend events at a community centre or the annual membership of a scouting group, up to a large annual fee for moving into a residential care home. It is up to the charity trustees to determine charges. If the charges that a charity makes are more than the poor can afford, its trustees must make provision for the poor to benefit, as part of their duties in relation to operating for the public benefit.

This provision must be related to the charity's purpose and must be more than minimal or 'tokenistic'.

It is up to charity trustees to decide what provisions to make for the poor to benefit.

Examples include:

- offering reduced fees or other financial support
- universities offering means tested bursaries or other types of assisted places
- fee-charging schools sharing educational or sports facilities with non fee-charging schools
- art galleries or theatres offering concessionary tickets.

It is unlikely that the purposes set out in a charity's governing document would refer to the charging of fees, but the governing document might include a power to do so.

4.9 Incidental benefit

There is **private benefit** where an individual or an organisation who is not an intended beneficiary of the charity receives a benefit from it. In some cases it may be proper for such a benefit to arise; in some cases not. Recipients of private benefit might include charity trustees, employees, businesses and local authorities. Private benefits are acceptable where they are **incidental**.

If people or organisations who are not the intended beneficiaries of a charity receive a benefit from it, then the benefit must be incidental. To be properly regarded as an incidental benefit the benefit should normally be significantly less valuable than the main charitable benefit provided to the beneficiaries.

Benefit to people who are not the charity's intended beneficiaries are incidental when they contribute towards achieving the charity's purposes and/or are a necessary result or by-product of carrying out the purposes.

Examples include:

- local businesses benefiting from increased trade as a result of a charity undertaking projects to regenerate the area
- payment received by charity employees, for example the manager of a charity shop
- payment received by veterinarians in respect of fees for the treatment of animals at an animal sanctuary.

Above all, charity trustees must ensure that any benefit to people other than their intended beneficiaries is:

- a result of carrying out their charity's purposes; and
- is incidental.

4.10 Equality considerations

Charities must also have due regard to equality laws in carrying out their charitable purposes. All organisations, including charities, are subject to equality legislation. The main equality laws in Northern Ireland, as stated by the Equality Commission, include the following:

- Equal Pay Act (Northern Ireland) 1970 (as amended)
- Sex Discrimination (Northern Ireland) Order 1976 (as amended)
- Disability Discrimination Act 1995 (as amended)
- Race Relations (Northern Ireland) Order 1997 (as amended)
- Fair Employment and Treatment (Northern Ireland) Order 1998 (as amended)
- Equality (Disability, etc.) (Northern Ireland) Order 2000
- Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003
- Special Educational Needs and Disability (Northern Ireland) Order 2005
- Disability Discrimination (Northern Ireland) Order 2006.

The Northern Ireland Act 1998, section 75 places an obligation on public authorities, some of whom are charities, to have due regard to the need to promote equality of opportunity between people based on the following nine characteristics:

- age
- having or not having a disability
- gender
- marital status
- religion
- political opinion
- ethnicity
- sexual orientation
- having or not having dependents.

In addition, the Northern Ireland Act 1998, section 76, makes it unlawful for public authorities, some of whom are charities, to discriminate against people on the ground of religious belief or political opinion.

The purposes of public bodies or some bodies wholly funded by public bodies must not discriminate on the above grounds if they are charities unless there is an exemption/exception under equality law for their particular purposes.

4.10.1 Exceptions for charities

There may be some exceptions to these pieces of legislation for charities, for example, if the charity's purpose is to tackle a particular disadvantage faced by people who share one of these characteristics. Charity trustees will need to refer to the relevant legislation. The Commission will produce separate equality guidance in consultation with the Equality Commission.

4.11 Reporting on your charity's public benefit

Charity trustees will have a duty to report on the main activities undertaken by their charity to further its charitable purposes for public benefit. At present there is no requirement for registered charities to report to the Commission, however, this will change from spring 2014 when the interim reporting programme will launch.

Further information on the interim reporting requirements consultation and public benefit reporting is available on our website www.charitycommissionni.org.uk

Section 5: Finance, funding, reporting and accountability

The **Charities Act** and other legislation place a number of duties on **charity trustees**.

The key duties relate to:

- the register of charities
- financial record keeping and reporting
- fundraising
- serious incident reporting
- closure and mergers.

5.1 Charity details on the register of charities

The Charities Act requires the Charity Commission to maintain a public register of charities in Northern Ireland. Charities must notify the Commission of any change to their charity. It is important that the register of charities is accurate and up to date as this will help increase public confidence and transparency, one of the key reasons for having a publicly accessible register.

As part of our online services, you will be able to view and amend most of the details the Commission holds on your charity, including:

- area of operation
- what your charity does
- how your charity does its work
- who your charity benefits through its work
- the financial year end date of your charity
- the bank/building society account details of your charity
- the charity contact including their name, address and telephone number
- charity website address
- email address for use by the Commission
- public email address
- details of your charity trustees.

There are certain details about your charity which you will not be able to amend through our online services. Details which cannot be changed without the consent of the Commission include:

- the name of your charity
- the classification of charitable activity your charity falls under

- your charity's purposes / objects as they appear in your governing document
- how your charity meets the public benefit requirement.

Should any of these amendments be required, you must contact the Commission. Contact details are provided at the end of this document.

5.2 Financial record keeping and reporting

There is a legal duty for charities to keep proper books of **accounts** with respect to the affairs of the charity. These records must be kept for at least six years. Charities must also prepare consecutive statements of accounts which must consist of a receipts and payments or income and expenditure account.

Charitable companies: Charities that are companies are bound by the requirements of the Companies Act 2006 and must adhere to the form of accounts and audit thresholds laid out in company law. Currently charitable companies must prepare their accounts on an accruals basis in accordance with the charity Statement of Recommended Practice (SORP). New UK accounting standards are due to come into effect on 1 January 2015 and these changes require a new SORP. Once approved, the new SORP will take effect for financial years beginning on or after 1 January 2015.

Unincorporated charities: The Department for Social Development (DSD) in Northern Ireland is developing secondary legislation which will set out the accounting and reporting requirements for registered charities. Until this happens newly registered charities are not required to prepare their accounts in a particular format. However, at present, if you elect to prepare your accounts on an accruals basis in accordance with United Kingdom accounting standards you must follow the charity SORP 2005. There are currently no audit requirements for unincorporated charities. However, a charity may be required to prepare audited accounts if it is stated in their governing documents or a condition of funding. This will change when the new accounting and reporting regulations come into effect, which is expected to be in spring 2015.

5.2.1 Charities registered before April 2014

Charities that were registered with the Commission before 1 April 2014 are not required to report to the Commission on accounting periods before that date. They are, however, required to report on their first full financial period commencing on or after 1 April 2014.

5.2.2 Charities registered after April 2014

Interim reporting requirements: The Commission has developed reporting proposals for registered charities, which came into operation on 1 April 2014, and will remain until the full accounting and reporting regulations made by DSD come into effect. This will allow the Commission to continue its regulatory work in the interim period, before the full regulations go live. These proposals, known as the interim reporting requirements, are designed to obtain key information on registered charities, enabling the Commission to carry out its regulatory and monitoring work while increasing transparency and accountability within the charitable sector.

Under the interim requirements, registered charities are required to complete and submit to the Commission:

- an **annual return** form providing information on the charity's activities, governances and finances
- accounts and reports in the format they currently prepare them.

When the full accounting and reporting regulations come into effect charities will be required to prepare their accounts and have them audited or independently examined as laid out in charity law.

Full guidance on *Charity reporting: Interim arrangements and the annual return* is available on our website.

5.3 Fundraising

5.3.1 What is fundraising?

Fundraising is a necessary function of most charities and is aimed at ensuring adequate resources are available to meet their charitable purposes.

The choice of fundraising method is a matter for charity trustees to decide. A *Code of Fundraising Practice* has been developed and issued by the Institute of Fundraising and provides useful advice in this area. A copy of the code can be downloaded from www.institute-of-fundraising.org.uk. Fundraising is currently a self regulated activity and the charity should set and follow its own standards of fundraising practice.

Some of the most common methods of fundraising include public donations, special events, attracting sponsorship and applying for grants for the work the charity does. In addition, charities may also obtain funding by reclaiming income tax paid on donations (through the **HMRC Gift Aid scheme**) from the profits of their trading subsidiaries and from investment income.

Charity trustees should consider the following questions before undertaking any fundraising activities.

- How much money is needed?
- How much is the fundraising activity likely to raise?
- Are grants available from local or central government, grant-making charities or companies?

- What resources are available to support fundraising?
- What proportion of the funds raised will remain with the charity after fundraising costs have been met?

Sometimes a fundraising appeal can leave a charity with more money than is needed to accomplish the purpose of the appeal, or too little money to accomplish it.

You may need to apply to the Commission for a scheme that provides for the money to be applied to another charitable purpose. Further guidance on *Requesting a Scheme* is available on our website.

5.3.2 How fundraising differs from trading

It is important for charity trustees to be able to distinguish between 'fundraising' and 'trading' as a charity and to be aware of this distinction in carrying out their duties. Trading is a commercial activity and may involve buying and selling, therefore bringing in the possibility of some risk to charity assets. Charities cannot carry on trading activities except within limited permitted circumstances and it can put their charitable tax relief and exemptions at risk.

Trading profits must be applied to the charity's purposes. Charitable trading may be exempt of income tax where:

- trade is undertaken in the course of a charity carrying out its primary purpose where the profits are applied to that purpose, for example a religious charity selling Bibles
- trade is not a primary purpose activity but is **ancillary** to the carrying out of a primary purpose, for example a theatre operating a cafe during show times
- trade is mainly carried out by a charity's beneficiaries for example the manufacture and sale of items by disabled people working for a charity whose purpose is the relief of disabled persons.

Fundraising relies on the goodwill of the public. If charity trustees are unsure about trading, they should seek independent legal and / or tax advice.

5.3.3 Types of fundraising

Before undertaking any fundraising exercise, it is essential that a charity develops a fundraising strategy. Charities should be sensitive to public opinion when fundraising as concerns about a charity's fundraising techniques can damage its reputation and reduce public confidence in the sector. The Commission has published two thematic reports which touch on areas of concerns around fundraising - *Concerns about charity fundraising* and *One hundred lessons to be learned*. These are available on our website www.charitycommissionni.org.uk.

There are some aspects of fundraising which are subject to specific regulation. Common types of fundraising include:

Street collections: Permits for street collections in Northern Ireland are issued by the Police Service for Northern Ireland (PSNI). Application forms for a permit can be obtained from your local PSNI station and should be completed and returned no later than the first day of the month prior to the month in which the collection is to be held. Street collectors should ensure that all collection boxes are sealed and that no nuisance is caused to members of the public because of the street collection.

House-to-house collections: These include visits to public houses, factories and offices to collect money or to sell things on the basis that part of the proceeds will go to a charity. Licences for house-to-house collections are issued by the PSNI and an application form can be obtained from the local PSNI station in the area where the collections are to be made. Further information can be found in our *Guidance on charity doorstep collections*, available on the Commission's website www.charitycommissionni.org.uk

Tax: charity fundraising may be subject to certain tax benefits. Guidance on these benefits should be sought from HMRC and, if necessary, an independent tax adviser.

5.4 Serious incident reporting

Serious incidents should be reported to the Commission in writing immediately. It is the charity trustees' responsibility to report any serious incidents to the Commission.

The incidents we consider serious are mainly concerned with criminal or unlawful activity, or very serious incidents about a charity that may affect its funds, property, beneficiaries or reputation. You should also tell us if you have referred a trustee or an employee to the Disclosure and Barring Service where there has been an allegation of abuse or mistreatment of any of the charity's beneficiaries. Some incidents may not actually be criminal but suggest risks of potential criminal activity or other risks which, if they became reality, would cause serious **harm** to the charity.

If you have any doubt about whether an incident is serious you should report it to us anyway.

The Commission will consult on requirements around serious incident reporting at a later date.

When you report a serious incident, we will generally ask you for further details. You may not have all of these but please be prepared to provide as much relevant information as possible about the incident.

You should report the incident by emailing us at concernsaboutcharities@charitycommissionni.org.uk and providing as much detail as possible regarding the incident.

5.5 Closing or merging

Closure: Charity trustees may decide it is time to close the charity. This could be due to a number of factors, for example:

- a loss or reduction in funds
- a lack of members
- your charity is becoming a company.

You should let us know if you have closed your charity so we can remove it from the *register of charities* and ensure that all assets are dealt with correctly. You should also read your charity's governing document to see if it contains a 'dissolution clause', that is special instructions for what you should do to close your charity.

Merger: The merger of charities means two or more charities joining together to form one organisation. In some cases a new charity is formed to take over the work and assets of the charities involved.

Charity trustees may decide to merge their charity with another to make better use of charitable funds and property, and provide better services for your beneficiaries. For example if two charities in the same area are doing similar work and competing for funding, a merger may be the best way to secure funding and provide a united voice.

When thinking about a merger you may need to take legal advice. For example, the treatment of legacies on mergers can raise difficulties as can issues such as pension liabilities, employee transfers and property holdings.

It is only compulsory to notify us of a merger when a **vesting declaration** is made. In all other cases it would be best practice to notify the Commission.

You must ensure:

- your governing document allows the merger
- all the charities involved have similar aims.

If these two conditions do not apply, you will need to get permission from us before the merger takes place. If you do not require our permission you should let us know a merger has taken place. This can be done at any time after the transfer of property involved in the merger has taken place.

A notification must:

- specify the transfer(s) of property involved in the merger and the date on which the merger took place
- include a statement that appropriate arrangements have been made to discharge any liabilities of the transferring charity.

If a vesting declaration is made in connection with a charity merger, you must let us know that the merger has taken place. This must be done once the property transfer or the last of the property transfers, has taken place. The notification must:

- specify the transfer(s) of property involved in the merger and the date on which the merger took place
- include a statement that appropriate arrangements have been made to discharge any liabilities of the transferring charity
- set out the fact that the declaration was made
- set out the date the declaration was made
- set out the date the vesting of title took place.

Notifying us of mergers enables us to update the register of charities and the register of mergers. The Commission intends to produce more detailed guidance on mergers and closures in the future.

Section 6: Good governance

Good governance includes the systems and processes that ensure the overall direction and effectiveness of an organisation. It is concerned with leadership, accountability, the best management of resources and making sure the organisation is properly run.

The Developing Governance Group in Northern Ireland has developed and produced *The Code of Good Governance* for the voluntary and community sector in Northern Ireland. The code outlines seven key principles of good governance, providing a valuable checklist for charities in complying with best practice guidelines and meeting their statutory responsibilities.

6.1 The seven key principles of The Code of Good Governance

The seven key principles of the code are:

Leadership: leadership is one of the key roles of any management committee/board. Every voluntary and community organisation should be led and controlled by a management committee/board which ensures delivery of its objects, sets its strategic direction and upholds its values.

Responsibilities and obligations: the management committee/board members are equally responsible in law for committee/board actions and decisions. They are collectively responsible and accountable for ensuring that the organisation is performing well, is solvent and complies with all its obligations.

Effectiveness: the management committee/board should have clear responsibilities and functions and should organise itself to carry out these responsibilities effectively.

Performing, reviewing and renewing: the management committee/board should periodically review its own and the organisation's effectiveness and take any necessary steps to ensure that both continue to work well and meet legal requirements.

Delegation: the management committee/board should set out the functions of subcommittees, officers, staff and anyone performing duties on behalf of the management committee/board in clear delegated authorities and should monitor their performance.

Integrity: the management committee/board should view maintaining the integrity and interest of the organisation as primary overriding duty. They should act reasonably at all times in the interests of the organisation and of its present and future beneficiaries, users and / or members.

Openness: the management committee/ board should be open, responsive and accountable to its users, beneficiaries, members, partners, funders and others with an interest in its work.

Copies of the code can be accessed from www.diycommitteeguide.org Further information can also be sought from the Northern Ireland Council for Voluntary Action (NICVA) and Volunteer Now.

While the code is recommended best practice, compliance with it is not a legal requirement. However, charities within Northern Ireland and other voluntary and community groups are strongly encouraged to follow these set of agreed standards. Charities who do comply with the code should state this in their **annual report** and any other relevant published material, as this helps to increase public confidence and trust.

6.2 Conflicts of interest

Charity trustees are expected to put the interests of the charity before their own or that of any other organisation or person. Not only is it the responsibility of the individual charity trustee to act in the interests of the charity but it is also the duty of their fellow charity trustees to take reasonable steps to ensure they do. Charity trustees need to be aware of actual conflicts of interest and anticipate any possible or perceived conflicts that may arise.

Examples of conflicts include the following areas.

- Where a company in which a charity trustee has an interest is bidding for work from the charity, the trustee should not take any part in the supplier appointment process. If this does occur the charity will be open to accusations of unfairness.

- Where the spouse of a charity trustee has some financial recompense from the charity it may give the trustee an indirect benefit, especially if they have joint finances.

- Where a charity trustee or a person connected to them becomes interested in applying for a job with the charity that trustee should declare an interest. They should not take part in any discussions around the position, such as setting rates of pay, holidays or job description, for instance. If this does occur the charity will be open to accusations of unfairness in the recruitment process as it could be deemed that one candidate had an unfair advantage over others.

It is good practice that the charity agrees a code of conduct for managing conflicts of interest. Collectively, the charity trustees should take all reasonable steps to ensure that a trustee who has acted improperly regarding a conflict of interest has corrected the situation and the offence is not repeated.

6.3 Practical steps which a charity can take where there is a potential conflict of interest

It is unlikely that conflicts of interest can be entirely avoided but they should be managed in such a way as to promote accountability and transparency within the charity, avoiding any adverse affect. Below are examples of practical steps to follow should a conflict of interest arise.

- Declare a conflict: once a conflict of interest has been identified it must be declared by the charity trustee at the earliest opportunity.

- Leave the meeting: the charity trustee who has declared a conflict should leave the meeting while the other charity trustees decide whether their absence is appropriate or necessary.

- Decide on next steps: these will be dependent on the conflict and it is up to the remainder of the charity trustees to decide how best to protect the charity's interests. The other charity trustees, for example, may decide there is no conflict, or that it is of such a low level it can be tolerated, and the charity trustee can attend the meeting. Another solution may be that the trustee absents themselves from the part of the meeting when the conflicting activity is being discussed and voted upon. If conflicts are serious or frequent, the charity trustee may need to resign from their post or cease the conflicting activity.

- Record the process: the process followed should be clearly recorded in the minutes and a register of interests should be kept, where charity trustees can openly record their interests.

6.4 Charity trustee remuneration and expenses

Trustees might receive money out of the charity's funds for the following reasons:

i) Payment for trusteeship
ii) Payment for services
iii) Payment to cover out of pocket expenses

i) Payment for trusteeship: Unpaid trusteeship is a distinctive feature of charities. There is an expectation that charity assets should be used directly for the purposes of the charity. There is no general power to pay charity trustees for acting as trustees. To do this the charity must have authority either in its governing document, or from the Commission or the Courts. Payment for trusteeship may only be made where this is clearly in the best interests of the charity and it provides a significant and clear advantage over all other options.

It is important for charities to note that payment for trusteeship will be a breach of trust if the appropriate authority is not in place.

ii) Payment for services: Payment of charity trustees (or people connected to trustees) for the provision of services over and above normal trustee duties is allowed by the **Charities Act**.

Some examples of services are the delivery of a lecture, entering into a maintenance contract with the trustee's firm or the provision of computer equipment.

Section 88 of the Charities Act allows for the remuneration of a charity trustee, or a person connected to a charity trustee, provided the following conditions are met:

- The amount of remuneration is agreed in writing between the charity (or charity trustees) and the person providing the service and is reasonable in the circumstances
- The charity trustees decide that the payment to that particular person is in the best interests of the charity
- The total number of charity trustees who are either receiving payment or who are connected to someone receiving payment are in the minority
- The governing document of the charity does not contain an express prohibition on charity trustees receiving remuneration.

According to the Charities Act, the following people are considered connected with a trustee:

(a) a child, parent, grandchild, grandparent, brother or sister of the trustee
(b) the spouse or civil partner of the trustee or of any person falling within paragraph (a)
(c) a person carrying on business in partnership with the trustee or with any person falling within paragraph (a) or (b);
(d) an institution which is controlled—
(i) by the trustee or by any person falling within paragraph (a), (b) or (c), or
(ii) by two or more persons falling within sub-paragraph (i) when taken together;
(e) a body corporate in which—

(i) the trustee or any connected person falling within any of paragraphs (a) to (c) has a substantial interest, or
(ii) two or more persons falling within sub-paragraph (i), when taken together, have a substantial interest.

In the case of accounts prepared on an accruals basis, the payment to the trustee, or person connected to the trustee, must be disclosed on the charity's **accounts.** In all other cases, it is best practice to provide these details on the accounts.

Any discussions regarding payment for services must take place in the absence of the particular trustee whose services are to be used or who is connected to the person whose services are to be used.

iii) Out of pocket expenses: these are refunds by a charity of legitimate and reasonable payments which a trustee has made personally in order to meet their duties as a trustee. Expense claims should normally be supported by bills and receipts. Examples of out of pocket expenses could be those relating to travel, postage and use of a telephone.

Charities should ensure that they have an expenses policy in place.

6.5 Vulnerable people and AccessNI checks

The law surrounding AccessNI checks is complex and charities need to understand how it applies to them.

Trustees of charities which work with children or vulnerable adults are not required to carry out AccessNI checks on each charity trustee. This is because the law states that trustees are not in regular or close contact with the vulnerable. However, the charity can obtain AccessNI checks if they think there is a risk and they wish to do so.

Trustees should note that the information they receive from AccessNI will not include information about whether or not the trustee is included on a list of those individuals who are barred from working with children or vulnerable people. However, AccessNI will give information which they believe will assist charities to decide whether or not the trustee being checked is a suitable person to be a trustee of a charity which works with children or vulnerable adults.

Charities should have a policy on how they propose to protect the vulnerable and ensure their safety.

Please note that this information refers to checks on the trustees of charities. Charities must ensure that they are complying with the relevant employment legislation when considering checks to be made on employees or prospective employees.

6.6 Campaigning and political activity

The independent nature of the charitable sector is of fundamental importance to society, and is greatly valued by the public. The guiding principle of charity law in terms of campaigning, political activity and elections is that charities should be, and be seen to be, independent from party politics.

Charities in Northern Ireland have strong links to their beneficiaries, and more generally to their local communities, commanding high levels of public trust and confidence, and representing a variety of diverse causes. This means that charities are uniquely placed to campaign and advocate on behalf of their beneficiaries. When charities seek to change the law or government policy, certain rules apply.

The Commission has produced separate guidance on campaigning and political activities for charities in Northern Ireland. You may find this guidance helpful in identifying activities that charities can properly undertake under the existing law and factors charities you should assess if you are planning for campaigning and political activity.

Section 7: Risk and insurance

7.1 Charities and risk management

It is important for **charity trustees** to realise that risk management is a dynamic process and requires continual monitoring and assessment. There should be communication with staff at all levels to ensure that risk management is rooted in the culture of the charity.

Charity trustees, staff and volunteers handle risk as an everyday part of their work and risk management can be as simple as basic contingency planning for a process. It may be beneficial to set up a central risk register so that all staff are aware of the risks posed to them in their work.

Charity trustees should have a structured approach to risk in place, for example a risk management policy. In doing so, they are working to protect the charity and its beneficiaries from **harm**.

7.2 Types of risk faced by charities

In its lifetime, a charity will experience a variety and range of risks. It is the responsibility of charity trustees to manage actual and potential risks to ensure the charity can continue to meet the needs of beneficiaries, at present and in the future. For example:

- for a charity which provides assistance to those in financial need, a period of economic uncertainty can bring about an increased demand for the charity's services alongside a corresponding decrease in funding
- there may be risks for charities in operating trading subsidiaries or entering joint ventures and they may need to check with their insurers before engaging in this.

Risks can be internal, for example arising from inappropriate organisational structure, or external, for example changes in the law or regulatory requirements.

The risk management strategy will depend on the type of risks faced by the charity.

7.3 Who is responsible for risk management?

Whilst all staff, charity trustees, board members, volunteers, and employees of a charity, should be tasked with assessing and managing risks, the charity trustees hold ultimate responsibility. By adapting and implementing sufficient risk assessment policies and procedures, charity trustees can help ensure that:

- significant risks are known and monitored, enabling charity trustees to make informed decisions and take timely action
- the charity makes the most of opportunities and develops them with the confidence that any risks will be managed
- strategic and future planning are improved
- the charity's aims are achieved.

7.4 What action should be taken to manage risk?

Charity trustees are responsible for setting the charity's strategic aims, objectives and direction as well as identifying and managing risks arising from its activities. A risk policy will help charity trustees to identify risks and take appropriate action.

There are a number of ways in which risk can be managed, depending on the likelihood and impact of the risk:

- Transfer: transferring the financial consequences to third parties or sharing it, usually through insurance or outsourcing
- Treat: management or mitigation of risk
- Tolerate: accepting or assessing a risk that cannot be avoided if the activity is to continue.

An example of risk management would be a charity suffering from a decrease in donations in the wake of the economic downturn identifying that it should step up its fundraising activities and look into alternative sources of finance.

7.5 Top tips to reduce or avoid charity trustee personal liability

Charity trustees have a variety of responsibilities which may carry liabilities. If charity trustees act properly in accordance with their duties then any liabilities they incur, financial or otherwise, can usually be met out of the charity's resources. In cases where a breach of trust has occurred, charity trustees can be relieved of their personal liability provided they have acted in an honest and reasonable way.

To manage internal risk, actions that charity trustees should take include:

- familiarising themselves with the charity's governing document
- ensuring they understand their duties, liabilities and responsibilities accessing training if appropriate
- establishing effective induction procedures for new charity trustees
- taking professional advice when needed, or required by legislation

- taking account of generic guidance published on the Commission's website or acquiring professional expertise when unsure about their duties as charity trustees.

To manage external risk, it is advisable for charity trustees to:

- know which powers can be delegated
- implement effective internal management and financial controls
- find out what areas of law might affect the charity's activities, such as employment, health and safety, human rights and data protection
- ensure that before they enter into a contract, they are satisfied the charity has the resources to meet its obligations under the contract and understand the consequences of breaching the contract.

7.6 Insurance

One of the ways that a charity can protect its assets and cover its liabilities is to obtain insurance cover and review this cover on a continuing basis. It is charity trustees' responsibility to ensure the organisation is appropriately and adequately insured. It is good practice, however, to assign an individual charity trustee or staff member to oversee the issue of insurance. They will be the main point of contact with the insurance broker and can report to the charity's trustees on a regular basis.

The charitable sector is diverse and different charities will require different types of insurance. Some examples of common insurance policies include:

Employers' liability insurance: If your organisation employs staff on a full or part time basis the law requires that you have employers' liability insurance. This covers paid employees in the event of an accident, injury or illness made worse a result of work or the employer's negligence. The policy must explicitly mention volunteers if the charity works with volunteers. This is a legal obligation under the Employers' Liability (Compulsory Insurance) Act 1998.

Public liability insurance: If your organisation provides advice, information or offers counselling services, public liability insurance is necessary to protect the charity from claims for negligent advice or information. If you are involved with volunteers then the policy should cover loss or injury to or by volunteers. This type of insurance is essential when working within the community and protects an organisation from claims made by the public for death, injury, loss or damage to property due to negligence or misconduct of the organisation or staff. Generally, public liability insurance covers anybody other than employees who come into contact with an organisation and its premises.

Buildings insurance: If an organisation leases or owns a building, it will need to be insured against damage by fire and ‘other perils’. Other perils covers damage which is likely to occur, for example storm, flood, burst pipes, accidental or malicious damage.

Consequential loss insurance: This covers a situation where, for example, an organisation wishes to ensure that it will have a place to house its activities and staff while a property is being rebuilt as a result of damage. It will also provide for loss of income if the organisation has to suspend fee-paying activities, such as education courses.

Trustee indemnity insurance: Trustee indemnity insurance is a policy that protects charity trustees personally from any claims made against them. This may be paid out of the funds of the charity to protect the charity trustees as far as possible from personal loss or bankruptcy as a result of a breach of trust or a breach of duty as a trustee. However, indemnity must not extend to any trustee liable in criminal proceedings or any actions which a trustee knew or reasonably should have known were not in the best interests of the charity. The court may relieve a trustee from personal liability if it is found that they acted honestly and reasonably.

This is not an exhaustive list of insurance policies and many other types of insurance are available, such as legal expenses insurance, travel insurance and professional indemnity insurance. You should seek professional advice should you wish to obtain further information about insurance policy options available for your organisation

7.7 Volunteers and insurance

Volunteers can generally be insured under employers’ liability insurance, depending on the type of work involved. Policies should explicitly mention volunteers as they may not be automatically covered.

Glossary

Term	Definition
Accounts	A structured record of monetary transactions. This may take the form of a credit and debit basis, maintained manually or as a computer record.
Ancillary	Supplemental to primary purpose activities but not directly associated with the primary purpose.
Annual report	A comprehensive report on an organisation's performance throughout the preceding year, including financial operations.
Annual returns	Every charity, regardless of its size needs to complete and file an annual return. This document provides the Charity Commission and the public with important information regarding the actions of the charity and its financial situation.
Charities Act (Northern Ireland) 2008	References to 'the Charities Act' are to the Charities Act (Northern Ireland) 2008 (as amended). The full content of the 2008 Charities Act can be found at www.legislation.gov.uk Not all of the sections of the Charities Act are in force yet. Details of those sections that are in force are available on the Commission's website www.charitycommissionni.org.uk
Charities Act (Northern Ireland) 2013	The Charities Act (Northern Ireland) 2008 is the main piece of legislation establishing the Charity Commission for Northern Ireland, setting out its functions and powers. The Charities Act (Northern Ireland) 2013 is a much shorter act and was primarily brought in to amend the definition of a charity in the Charities Act (Northern Ireland) 2008.

Term	Definition
	The full content of the 2013 Charities Act can be found at www.legislation.gov.uk
Charity trustees	These are the people who are legally responsible for the control and management of the administration of the charity. In the charity's governing document they may be called trustees, managing trustees, committee members, governors or directors or they may be referred to by some other title. Some people are disqualified by law from acting as charity trustees. These disqualifications are set out in the Charities Act and broadly include but are not limited to anyone who: • has been convicted of an offence involving deception or dishonesty, unless the conviction is a spent conviction under the Rehabilitation of Offenders (NI) Order 1978 • is an undischarged bankrupt or has made an arrangement with creditors • has previously been removed as a trustee by the Commission or by the courts • is subject to disqualification under company legislation.
Governing document	A charity's governing document is any document which sets 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, conveyance, will, Royal Charter, Scheme of the Commission or other formal document.
Harm	Something that causes damage, injury or loss-physical, mental, environmental or social.
HMRC Gift Aid scheme	The Gift Aid scheme is for gifts of money by individuals who pay UK tax. Gift Aid donations are regarded as having basic rate tax deducted by the donor. Charities or CASCs (Community Amateur Sport Clubs) take your donation - which is money you've already paid tax on - and reclaim the basic rate tax from HM Revenue & Customs (HMRC) on

Term	Definition
	its 'gross' equivalent, the amount before basic rate tax was deducted.
Incidental	This is something that happens, or is likely to happen, in an unplanned conjunction with something else. It is likely that there may be incidental benefit that results from a charity achieving its charitable purposes. For example, a charity with purposes to relieve poverty may have a number of volunteers. The volunteers may find their lives enriched by the activities they are carrying out. This is a benefit not directly related to the charitable purposes and, while worthwhile, will not be taken into account when assessing the charity's public benefit. If people or organisations benefit from a charity, other than a beneficiary, then the benefit must be incidental, that is, it directly contributes towards achieving the charity's purposes and/or it is a necessary result or by-product of carrying out those purposes. Examples of a private benefit that is incidental include paying reasonable salaries to a charity's staff, which is an example of a benefit that contributes directly to achieving the charity's purpose, or where there is an increase in profits to local businesses as a result of charitable regeneration projects, which is an example of a necessary by-product of those projects being carried out. If private benefit is more than incidental then it may mean that the organisation is set up for private benefit and therefore may not be charitable.
Learned society	A learned society is an organisation that exists to promote an academic discipline or profession, or a group of related disciplines or professions.
Legal authority	Permission by or in accordance with law to perform a certain act.

Term	Definition
Legal capacity	The legal ability, power, right and competency to perform a certain act.
Membership	Being part of an organisation or group.
Personal characteristics	A feature that helps distinguish, describe, identify and tell a person apart from another.
Private benefit	There is private benefit where an individual or an organisation gains from their involvement with a charity. In some cases it may be proper for such a benefit to arise, in some cases not. Charities can provide private benefit so long as the benefit is incidental, that is, it directly contributes towards achieving the charity's purposes and/or is a necessary result or by-product of carrying out those purposes. An example of a private benefit that is incidental is paying reasonable salaries to a charity's staff; this benefit contributes directly to achieving the charity's purpose. Another example would be where there is an increase in profits to local businesses as a result of charitable regeneration projects, which is a necessary by-product of those projects being carried out.
Purposes	The purposes of a charity will usually be defined by what its governing document states it is set up to do. According to the Charities Act, all the organisation's purposes must: • fall under one or more of the list of 12 descriptions of charitable purposes in the Charities Act, and • be for the public benefit.
Undischarged bankrupt	This is someone who has been declared bankrupt,

Term	Definition
	and is not yet discharged from bankruptcy.
Vesting declaration	A deed made by the trustees of the transferring charity to vest title in property to the trustees of the receiving charity.

Useful contacts

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. We would encourage trustees to make use of the wide range of organisations that can help them run their charity as effectively as possible.

Charity Retail Association	Association of Charity Shops 5th Floor Central House 14 Upper Woburn Place London WC1H 0AE **Telephone**:020 7255 4470 **Website: www.charityretail.org.uk**
Charity Commission for England and Wales (CCEW)	PO Box 1227 Liverpool L69 3UG **Telephone:** 0845 300 0218 **Website:** www.charitycommission.gov.uk
Companies House	Second Floor The Linenhall 32-38 Linenhall Street Belfast Northern Ireland BT2 8BG **Telephone:** 0303 1234 500 **Website:** www.companieshouse.gov.uk
Department for Social Development	Lighthouse Building 1 Cromac Place Gasworks Business Park Ormeau Road Belfast BT7 2JB **Telephone:** 028 9082 9000 **Website:** www.dsdni.gov.uk

Department of Enterprise, Trade and Investment	Netherleigh House Massey Avenue Belfast BT4 2JP **Telephone:** 028 9052 9900 **Website:** www.detini.gov.uk
Department of Health, Social Services and Public Safety	Castle Buildings Stormont BELFAST BT4 3SJ **Telephone:** 028 90520500 **Website:** www.dhsspsni.gov.uk/
Department of Justice and Equality	Charities Regulation Unit Department of Justice & Equality 51 St. Stephen's Green Dublin 2 **Telephone:** 00353 (0)1 6028264 **Website:** justice.ie/en/JELR/Pages/Charities
Equality Commission for Northern Ireland	Equality House 7-9 Shaftesbury Square Belfast BT2 7DP **Telephone:** 028 9050 0600 **Website:** www.equalityni.org

Fundraising Standards Board (FRSB)	Fundraising Standards Board 61 London Fruit Exchange Brushfield Street London E1 6EP **Telephone:** 0845 402 5442 **Website:** www.frsb.org.uk
HM Revenue and Customs (HMRC)	Charities Correspondence S0708 PO Box 205 Bootle L69 9AZ **Telephone:** 0845 302 0203 **Website:** www.hmrc.gov.uk/charities
Human Rights Commission for Northern Ireland	Temple Court 39 North Street Belfast BT1 1NA **Telephone:** 028 9024 7844 **Website:** www.nihrc.org
Institute of Fundraising	Park Place 12 Lawn lane London SW8 1UD **Telephone:** 020 7840 1000 **Website:** www.institute-of-fundraising.org.uk/
Labour Relations Agency	2-6 Gordon Street Belfast BT1 2LG **Telephone:** 02890 321442 **Website:** www.lra.org.uk/
Northern Ireland Council for Voluntary Action (NICVA)	61 Duncairn Gardens Belfast BT15 2GB **Telephone:** 028 9087 7777

Website: www.nicva.org

Volunteer Now

129 Ormeau Road
Belfast
Co Antrim
BT7 1SH

Telephone: 028 9023 2020
Website: www.volunteernow.co.uk/

Further information on our activities is available from:

Charity Commission for Northern Ireland
257 Lough Road
Lurgan
Craigavon
BT66 6NQ

www.charitycommissionni.org.uk

Email: **admin@charitycommissionni.org.uk**
Tel: 028 3832 0220

Fax: 028 3832 5943
Textphone: 028 3834 7639

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