



Scottish Episcopal Church

The Diocese of Edinburgh

Growing together in following Christ and sharing God's love

VESTRY TRAINING SESSION Charity Law Notes

Charity law rules – duties of charity trustees

66 Charity trustees: general duties

(1) A charity trustee must, in exercising functions in that capacity, act in the interests of the charity and must, in particular—

- (a) seek, in good faith, to ensure that the charity acts in a manner which is consistent with its purposes,
- (b) act with the care and diligence that it is reasonable to expect of a person who is managing the affairs of another person, and
- (c) in circumstances capable of giving rise to a conflict of interest between the charity and any person responsible for the appointment of the charity trustee—
 - (i) put the interests of the charity before those of the other person, or
 - (ii) where any other duty prevents the charity trustee from doing so, disclose the conflicting interest to the charity and refrain from participating in any deliberation or decision of the other charity trustees with respect to the matter in question.

(2) The charity trustees of a charity must ensure that the charity complies with any direction, requirement, notice or duty imposed on it by virtue of this Act.

(3) Subsections (1) and (2) are without prejudice to any other duty imposed by enactment or otherwise on a charity trustee in relation to the exercise of functions in that capacity.

(4) Any breach of the duty under subsection (1) or (2) is to be treated as being misconduct in the administration of the charity.

(5) All charity trustees must take such steps as are reasonably practicable for the purposes of ensuring—

- (a) that any breach of a duty under subsection (1) or (2) is corrected by the trustee concerned and not repeated, and
- (b) that any trustee who has been in serious or persistent breach of either or both of those duties is removed as a trustee.

Company law rules

The company law rules are not binding on churches within the Scottish Episcopal Church, but one of the duties gives a useful framework for how to approach decision making:

172 Duty to promote the success of the company

(1) A director of a company must act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole, and in doing so have regard (amongst other matters) to—

- (a) the likely consequences of any decision in the long term,
 - (b) the interests of the company's employees,
 - (c) the need to foster the company's business relationships with suppliers, customers and others,
 - (d) the impact of the company's operations on the community and the environment,
 - (e) the desirability of the company maintaining a reputation for high standards of business conduct, and
 - (f) the need to act fairly as between members of the company.
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One Plus: One Parent Families (2008)

Charity trustee lessons to be learned

- Charity trustees must ensure they have, collectively, **the right mix of skills and experience** for the type and scale of the charity for which they are ultimately responsible
- Charity trustees must understand the operating environment faced by their charity and the implications this will have for how the charity is managed
- Charity trustees must maintain overall direction and control of their charity. They must be able to actively hold the Chief Executive and Senior Management Team to account as well as providing strategic direction
- They need to be able to **exercise independent judgment** when weighing up and considering any plans and proposals from the Chief Executive and Senior Management Team, while at the same time **not undermining management authority or de-motivating staff**
- The respective roles and responsibilities of the Board, Chairperson or Convenor of the Board and Chief Executive must be explicitly and clearly defined including the extent of delegated authority
- Charity trustees must **take ownership of their own Board** and should implement a programme for board training, building and renewal that includes regular reviews of performance and skills mix
- Charity trustees must make sure they **receive full and up-to-date financial information** to allow them to fully understand the position of their charity and take informed decisions
- Charity trustees must develop an appropriate **risk management** strategy that identifies possible risks to the charity and must establish systems or procedures to minimise these risks
- At a time of growth and development charity trustees must satisfy themselves that the capacity of the charity's management and governance structures are appropriate for the planned development
- Charity trustees and auditors must maintain a direct relationship to obtain an objective and independent view of the charity and to gain assurance and advice on control systems and governance matters
- Large or complex charities must consider establishing an audit committee to ensure that processes and procedures are monitored and are appropriate for the size and scale of the charity
- Charity trustees must ensure that the organisation seeks external independent professional advice where it faces problems or does not have the required in-house expertise in a particular area