

# Payment of Charity Trustees

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## *Who is this guidance for?*

1. This guidance is for trustees of charities who are considering paying one or more of their trustees, either:

- for acting as a trustee;
- for providing a service to the charity; or
- where an employee is also a trustee.

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## *Meanings of words and expressions*

2. In this guidance:

**Trustees** means charity trustees. 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 called trustees, managing trustees, committee members, governors, or directors, or they may be referred to by some other title.

**Governing document** means any document that sets out the charity's purposes and, usually, how it is to be administered. It may be a trust deed, a constitution, memorandum and articles of association, rules, conveyance, will, Royal Charter, Scheme of the Commissioners or, in relation to an appeal, the published terms of the appeal inviting donations.

**Must** is used to refer to actions that trustees, or their agents or employees, are obliged to take by law.

**Recommend or advise** are used where we are suggesting to the trustees actions which we consider to be good practice but which do not represent a legal requirement.

## *General principles*

3. The law states that trustees cannot receive any benefit (which includes payment, services, facilities, funds or other benefits of measurable value) from their charity unless they have express legal authority to do so. This legal authority will come either:

- from a clause in the charity's governing document; or
- where there is no adequate clause in the governing document, from us or the Court.

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4. The principle that a trustee cannot receive any benefit works on the basis that if trustees are not allowed to receive any benefits from their charity, they will not have any conflict of interests when they come to allocate charity resources. It is part of a wider rule that trustees should not put themselves into a position where their duties as trustees might conflict with their personal interests.

5. This does not include the repayment of reasonable out-of-pocket expenses for trustees (see paragraphs 12-17).

6. The principle of unpaid trusteeship has been one of the defining characteristics of the charitable sector contributing to the public confidence in charities.<sup>1</sup>

7. However, there may be circumstances in which it is in the best interests of the charity for one or more of the trustees to be paid. If trustees want to pay one of their trustees, they will first need to consider whether or not the governing document of the charity contains a power to pay trustees.

8. If there is such a power, the trustees will then need to consider, with reference to the factors listed in Annex A, whether or not the use of the power is in the best interests of the charity at that time.

9. If the governing document of the charity does not contain a power to pay trustees, then the trustees of the charity will need to approach us for authority. In order to give our authority, the trustees will need to convince us, again with

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<sup>1</sup> The principle of unpaid trusteeship was generally endorsed by respondents to our public consultation on the payment of trustees in late 1999.

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reference to the factors listed in Annex A, that paying a trustee is both necessary and reasonable in the best interests of the charity.

### ***What do we mean by payment?***

10. Payment can be either by money or another material benefit given to a trustee out of a charity's funds in return for a service that the trustee has performed for the charity. An honorarium, even if it is a modest or token sum not intended to reflect the real value of a trustee's service, is a form of payment.

11. There are three broad types of payment:

- the purchase of a service which the trust needs, eg plumbing, painting the charity's premises, or legal or accountancy services;
- payment for "being a trustee"; and
- payment for a separate post within the charity (eg chief executive, headmaster) to a person who is also a trustee.

### ***Expenses***

12. There is an important distinction to be made between payment and expenses. There can often be confusion over this.

13. Expenses are refunds of amounts a trustee has needed to meet personally, or which have been met on his or her behalf, in order to carry out trustee duties. Even in the absence of anything specific in the governing document, the law clearly entitles a trustee to repayment from the charity of expenses that have been properly incurred. The law ensures that the trustee does not profit from his or her role as a trustee, but can recover out-of-pocket expenses.

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14. As a general rule, claims for expenses will be capable of being supported by bills or receipts from third parties. Any costs which are reasonably necessary to allow a trustee to carry out his or her duties as a trustee can be classed as expenses and repaid to the trustee or met directly by the charity.

15. The following are examples of expenses:

- the cost of travelling to and from trustee meetings, and on trustee business;
- the cost of childcare whilst attending trustee meetings;
- the cost of postage and telephone calls on charity business;
- translating documents into Braille for a blind trustee, or into different languages; and
- providing special transport, equipment or facilities for a trustee with a disability.

16. The following are some examples of items which are not expenses, but payments:

- loss of earnings whilst carrying out trustee business;
- allowances, eg financial loss allowance; and
- honoraria (small or token sums not intended to reflect the true value of the service provided).

17. If trustees are in doubt over whether something is an expense, they should contact us for advice. Even if we take the view that it is not an expense and the trustees do not have the

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power in the governing document to authorise the payment, provided that the trustees can show that the payment is necessary and reasonable in the interests of the charity, we will authorise the payment.

### *Conflicts of interest*

18. All trustees must act only in the best interests of the charity and not for their own private interests or gain. There may be situations where a trustee's own interest and the interests of the charity arise simultaneously or appear to clash, such as when a trustee is receiving payment from the charity. The issue is not the integrity of the trustee concerned, but the management of any potential to profit from a person's position as a trustee.

19. There needs to be an express authority for any decision which enables a trustee to benefit. Without such authority the decision can be challenged and may be set aside. If there is no authority then the matter is not resolved by the trustee concerned disclosing the conflict of interest and withdrawing from the discussion and decision making. If a trustee is paid, or receives any other benefit, without authority, claims for restitution may arise (see paragraphs 38-41).

20. Even where there is express authority which enables a trustee to be paid a conflict will still exist. A key aspect in minimising the effect of a conflict of interest is to be open and transparent about such situations whenever they arise. We recommend that all trustees disclose to their charity any actual or potential conflict of interests of which they are aware. We also recommend that charities establish a policy on how they will deal with any conflicts which may arise as a result of the work they undertake. This can include guidance on when a trustee needs to withdraw from a discussion.

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*Different approaches to new and existing charities*

21. If conflicts of interest are ignored (even though there is a valid provision enabling decisions to be taken notwithstanding a conflict) there may still be a risk of a decision being challenged and the charity could be damaged as a result.

22. We strongly recommend that all charities disclose benefits received by trustees in their report and annual accounts. This can help protect trustees from accusations that they are benefiting in a hidden way. It is a legal requirement for charities that prepare their accounts on an accruals basis to disclose benefits to trustees (see our guidance **Charity Accounts: The framework (CC51)**).

23. The law requires us to treat charities which have a power to pay their trustees in their original constitutions differently from charities without such a power but where the trustees wish to be given such a power.

### **New Charities**

24. We must refuse to register an organisation as a charity if it is not established for exclusively charitable purposes. All the powers of a charity must be exercised solely in the best interests of the charity. The existence of a power to pay a trustee (or a right of a trustee to be paid) which would allow a trustee to be paid more than is reasonable, looking only at the interests of the charity, would affect charitable status.

25. The promoters of a charity (those responsible for first preparing the governing document) can include the powers and provisions which they think the trustees need to administer the charity properly and carry out the charity's objects effectively. Anyone starting a charity is free to waive the principle of voluntary trusteeship.

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26. Whilst promoters can choose to waive this voluntary principle, simply because trustees have the power to pay trustees does not by itself justify payment. Our interest with charities that have a power to pay trustees is to ensure that it is exercised properly. Trustees need to make a positive, justifiable decision to exercise the power, based on the factors listed in Annex A and any other relevant factors, which must be in the best interests of the charity.

27. The trustees need to keep this under review - it will not always be right to pay a new trustee simply because previous trustees were paid. The trustees will need to be satisfied that the advantages of promoting the good administration of the charity outweigh the disadvantages created by the conflict of interest which will arise where a trustee is paid. For example the trustee with a conflict of interest might have to withdraw from consideration of some of the issues on which his or her expertise might be helpful, or trustees may, in practice, find it difficult to pursue issues of quality with a fellow trustee.

28. We will monitor the use of a power to pay trustees through the Annual Returns and our monitoring programme. We may ask the trustees for details of why they consider that the use of the power is in the best interests of the charity.

### **Charities without a power to pay trustees**

29. In considering payments to trustees in relation to an existing charity without a power to pay trustees, we take into account the action of the founder or promoter in establishing the charity without such a power. However, we are primarily looking to see whether using charitable funds in this way is likely to be an effective way of furthering the objects of the charity. We also consider whether such payments are in the best interests of the charity in the light of its current circumstances.

*Factors for judging  
whether or not a trustee  
should be paid*

30. Our starting point, following the lead of the Court, is that the office of trustee is unpaid. It is only if the trustees can show that payment is necessary and reasonable for the proper administration of the charity that we authorise it, ie that it is not simply desirable or convenient for a trustee to be paid, but that there are no other workable options.

31. In considering whether or not to authorise the payment of a trustee, we will take into account the factors detailed in Annex A, and the trustees will need to demonstrate that they have considered these factors, in their application to us.

32. There are a wide variety of charities, and the considerations surrounding trustee payment will vary according to the size and type of charity, and the reason for the payment. As a result, not all of the factors listed in Annex A will apply in all cases, and the relative weight of the issues may vary considerably between a large national service provider and a small, local grant-making charity. For example, tenders may be an unnecessary expense for a charity if there is no one else to do the work, the rate is clearly reasonable, and the task is relatively small.

33. A checklist for trustees listing the factors to consider is also available on our website:  
**[www.charity-commission.gov.uk](http://www.charity-commission.gov.uk)**

34. We recommend all trustees to use the checklist as a way of documenting their decision to pay a trustee, whether they are applying to us for a power to pay a trustee or whether they already have the power.

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***Amount of trustee payment in relation to the total income of the charity***

35. If trustees have the power to pay one or more of their trustees for being a trustee, the trustees should ensure that the amount to be paid is a reasonable reward for the value of the trustee's service to the charity. The trustees should also ensure that the amount of the charity's income which is spent on paying trustees is appropriate. This will obviously vary depending on the level of income of the charity and the type of work which the charity is carrying out.

36. The amount should be proportionate to the needs of the charity, and should avoid creating a perception that the interests of the trustees are regarded by them as of greater importance than the interests of the beneficiaries.

37. Levels of payments for providing a service to the charity are less problematic, since these can be compared with other service providers. Similarly, when an employee is also a trustee, it is clear that the payment they are receiving is for the employed post which they hold and not for being a trustee.

***Supervising the work of paid trustees***

38. It is always good practice for a trustee body to have procedures to appraise the contribution of each trustee (including the chairman). This is particularly important if one or more of the trustees receives any payment from the charity, as the trustees collectively need to ensure that the work is being done to an acceptable level and that the charity is receiving value for money.

***Restitution***

39. A trustee who receives any benefit must account to the charity for the benefit unless the retention of the benefit is expressly authorised, either by the charity's governing document or by the Commission or the Court. The charity's right

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to this benefit is an asset of the charity and it is the responsibility of all the trustees to ensure that this happens.

40. This principle applies even though a trustee has provided services in exchange for any payment received and even when the charity has received value for money. It does not make any difference that the trustee in receipt of the payment was absent from the meeting which agreed the arrangements (or was present at the meeting but abstained from voting).

41. The Court can authorise a trustee to keep an unauthorised payment, although this is unlikely to be permitted in any case where there is an express prohibition on payment in the governing document. The Court exercises this authority very sparingly. However, the Court is likely to take into account factors such as:

- the work done by the particular trustee needed to be done;
- the work was commissioned by the other trustees who approved the payment in spite of the absence of an express authority;
- the work has been of substantial benefit to the charity;
- the payment received was reasonable for the effort and skill deployed;
- if the Court had been asked to approve the payment arrangements in advance it would have done so; and
- the trustees acted in good faith.

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42. The Commission has no power to authorise a trustee to keep unauthorised payment. Whilst we are prepared in appropriate circumstances, taking into account the above factors, to indicate that we will not pursue the issue of restitution with the trustees, such an opinion does not rule out a restitution claim being made in Court by a party with a legitimate interest in the matter, eg a beneficiary of the charity.

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## Annex A

### *Factors to consider when paying a trustee*

It is important that before trustees make a detailed consideration of the factors listed below, they have first carefully explored whether there are any other realistic alternatives to paying a trustee.

Those factors which we could expect all charities to consider, regardless of their size or type, are marked with an asterisk. However, we acknowledge that with such a wide variety of charities the considerations surrounding the payment of trustees will vary. As a result, not all of the factors listed will apply in all cases whilst in some cases other factors may also be relevant. The relative weight of the issues may vary considerably between a large, national service provider and a small, local grant-making charity. For example, tenders may be an unnecessary expense for a charity if there is no one else to do the work, the rate is clearly reasonable, and the task is relatively small.

This is not an exhaustive list and there may be other factors which trustees need to take into account.

#### **Factors to consider in any case where a trustee is being paid:**

- \*What procedures will the remaining unpaid trustees put in place to manage the conflict of interest?

We would expect trustees to have recognised that a conflict of interest exists and take steps to minimise its effects. We would recommend that they develop a written policy on how they deal with conflicts of interest.

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For example, a trustee who is paid should leave the meeting when any matter relating to his or her payment or performance is discussed – it is not acceptable for the trustee to remain at the meeting and to simply abstain from voting.

- \*Will the paid trustee have any conflicts with outside commitments (other trusteeships, business interests)? If so, are there sufficient arrangements in place to manage the conflict of interest?
- \*Have arrangements been made to disclose any payments to trustees in the charity's annual report?

The trustees should be aware of the requirements of the Charities SORP in this area. If the trustees prepare accounts on an accruals basis, there is a requirement to list the individuals receiving payment together with details of the amounts of the payments. We strongly recommend that all charities disclose payments made to trustees.

- \*Have the trustees considered consulting the charity's stakeholders (ie major funders, members, beneficiaries, donors)? If they have consulted stakeholders, what was their response?

Trustees need to consider the impact that their decision to pay a trustee might have on those with an interest in the charity.

- \*Are the number of trustees to be paid in the minority on the trustee body?

Depending on the size and constitution of the trustee body, we recommend that no more than one or two trustees should be paid.

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- Are there appropriate independent ways of deciding the level of payment?

One way is for the majority of trustees to be unpaid. The trustees may wish to consider taking impartial and independent advice to help them decide on the pay arrangements.

- Are there appropriate budget provisions and financial forecast systems in place?

**Additional factors to consider when paying a trustee for services provided to the charity:**

- Have the trustees obtained quotes for the work to be done and drawn up a shortlist of those people/companies which should be asked to tender for the work?

As a matter of good practice we would expect trustees to obtain a number of quotes for the work to be done so that they can ensure that they are obtaining the best value for the charity.

- Does the contract contain features to protect the charity's interests?
- How will the trustees be able to demonstrate that the contract is in the charity's interests as represented by value for money?
- Do the trustees have any arrangements for testing or challenging bills which might be disputed?

If trustees are in doubt about the validity of a bill, they may wish to have procedures in place to verify the bill, possibly including independent scrutiny.

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- Was the affected trustee protected from seeing any confidential information about the tender process?

Trustees who are tendering for work should absent themselves from the meeting or part of the meeting at which related matters are discussed. This includes discussions leading up to the decision to go to tender.

**Additional factors to consider when paying a trustee for being a trustee:**

- \*What evidence do the trustees have to show a lack of willing volunteers with the required skills?

The trustees should be able to demonstrate the steps they have taken to recruit an unpaid trustee, eg by advertising the vacancy and approaching individuals and organisations. Trustees may wish to attract trustees from social and economic backgrounds who cannot afford to act as a trustee unless paid. We appreciate that there are particular issues in recruiting trustees on lower incomes and when this is the case the trustees will need to demonstrate that the power to pay will help recruitment and will be in the best interests of the charity.

- \*Could the duties for which the trustee is to be paid be shared amongst the whole trustee body, or could the number of trustees be increased to spread the load of work required of the trustees?

Trustees should consider whether there are any other viable options other than paying a trustee.

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- \*Are all the duties to be undertaken appropriate to a trustee or could they properly be delegated to an agent or employee?
  - \*How will the charity ensure that the payment represents value for money ?

We recommend that paid trustees are in the minority. The trustees may wish to consider taking impartial and independent advice to help them decide on the pay arrangements and to check that the charity is obtaining value for money from the payments.

- \*What arrangements are in place for reviewing performance and for assessing whether there is a continuing need for paid trusteeship?

The trustees may wish to set a time limit for the paid arrangements to continue. This will enable the trustees to review the situation at the end of the period and to extend the period of payment, if necessary.

- \*What arrangements are in place for bringing payment to an end, and how will this affect the trusteeship of the individual in question?
- \*Has the impact on the degree of personal liability been discussed with the trustee in question?

A higher standard of care may be expected of a paid trustee. Further information on trustee liability can be found in our booklet **Charities and Insurance (CC49)**.

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### **Additional factors to consider if an employee is also a trustee:**

- \*Is the position of paid employment to be advertised on the basis of fair and open competition, and if not, why not?

If the trustees consider that one of their number would be most suited to the job, they would need to demonstrate that the individual in question is the best person for the job and the unique abilities of that individual.

- \*If the trustees are looking to fill a vacancy in the trustee body, what have the trustees done to demonstrate a lack of suitable unpaid candidates for the trusteeship with the necessary skills?

The trustees should be able to demonstrate the steps they have taken to recruit an unpaid trustee, eg by advertising the vacancy and approaching individuals and organisations.

- \*How has the payment package been determined?

Trustees should take steps to compare rates with similar employment elsewhere, take independent advice, where appropriate, and ensure that there is a system of periodic review.

- \*Why is it necessary for employment to be combined with trusteeship and what special dimension will this bring to decision making?

There is nothing to prevent employees or advisers attending trustee meetings to give advice and guidance on relevant matters

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Trustees would need to demonstrate why the roles of employee and trustee need to be combined.

- \*Does the situation apply to the individual or the post?

The trustees should consider whether the person holding that particular post (ie the artistic director or chief executive) should always be a trustee or whether an exceptional person who currently happens to occupy that post would bring vital skills to the trustee body.

- \*Is there clear segregation between the duties performed as a trustee and as an employee of the charity?
- \*How will performance be measured?

The trustees should ensure that there is an objective and independent performance appraisal system in place.

- \*What arrangements are in place for bringing employment to an end, and how will this affect the trusteeship of the individual in question?

The trustees should give particular attention in the contract of employment to any performance element in the pay, commissions or compensation for loss of earnings.

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*We aim to make our publications as useful and easy to read as possible. If you have any suggestions about how this booklet may be improved, please write to the Head of Publications at our Taunton office.*

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## Further Reference

For further information you may find it useful to refer to the following Charity Commission publications:

- CC2 Charities and the Charity Commission
- CC3 Responsibilities of Charity Trustees
- CC14 Investment of Charitable Funds: Basic Principles
- CC24 Users on Board: Beneficiaries who become trustees
- CC49 Charities and Insurance
- CC51 Charity Accounts: The framework
- CC60 The Hallmarks of a Well-run Charity

Mae nifer o'n taflenni ar gael yn Gymraeg erbyn hyn. Cewch y wybodaeth ddiweddaraf gan yr Uned Gyhoeddiadau yn ein swyddfa yn Taunton (Ffôn 01823 345182).

For a complete list of all of our publications, audio-cassettes and video, please ask for:

- CC1 Charity Commission Publications

To obtain copies of any of the above publications you can either:

- view and print from our internet site address:  
**[www.charity-commission.gov.uk](http://www.charity-commission.gov.uk)**;
- write to the Distribution Officer at our Taunton office; or
- telephone 01823 345427 and leave a message on the answering machine.