



CONSULTATION ON CHARITY COMMISSION GUIDANCE CC3 - ESSENTIAL TRUSTEE

ICAEW welcomes the opportunity to comment on the consultation paper on the draft guidance *Essential Trustee (CC3)* published by the Charity Commission on 25 November 2014, a copy of which is available from this [link](#).

This ICAEW response of 17 February 2015 reflects consultation with the Charity Technical Sub-Committee of the ICAEW Business Law Committee.

The Sub-Committee includes representatives from public practice and the charity sector and the Business Law Committee is responsible for ICAEW policy on business law issues and related submissions to legislators, regulators and other external bodies.

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1. We are commenting in general terms rather than in response to the specific questions raised, but where a comment is relevant to a particular question we have identified the question number in square brackets.
2. In general, we believe that the Guide is a reasonable guide to the essential duties of a trustee and is clearly written. We see no reason to change the name of the Guide. [3,4,8]
3. We believe that the use and explanations of 'must' and 'should' will be helpful to trustees [5-7]. The approach might be perceived as emphasising the potentially onerous nature of being a trustee but it is important that trustees take their responsibilities seriously and are equipped to understand the risks involved. [7].
4. The sections on avoiding mistakes are particularly helpful. It would be useful if these could be updated periodically to reflect any other common mistakes that the Charity Commission may become aware of.
5. We note that the Charity SORP use the term 'de facto trustee' but the Guide does not. Assuming that the term 'Trustee' as defined in the Guide is broad enough to cover de facto trustees, it might be helpful to make this clear.
6. While the Guide highlights areas where trustees may make material mistakes, it might be helpful to include more guidance on steps trustees 'could' take to improve their performance to address potential softer types of failings, for instance:
 - how to develop their skills as Trustees
 - making sure they are prepared for meetings in advance/read papers etc
 - developing forward looking strategy with a view to sustainability
7. In order to Claim tax reliefs and exemptions a charity must meet the management condition (as required by Finance Act 2010) that its managers (including trustees) are 'fit and proper persons'. At present in sections 2.1 and 3.1 of the guidance "Who can be a trustee?" there is no reference to this requirement. For most charities it will be "essential" that its trustees are fit and proper persons. As a result, it would be helpful if this requirement was included in these sections. Reference could be made to the HMRC website for further details about meeting this requirement www.gov.uk/government/publications/charities-fit-and-proper-persons-test. [4]
8. Guidance has recently been issue by the Commission giving guidance to Charity trustees on the proper use of tax reliefs, 'Charity tax reliefs: guidance on Charity Commission policy'. It might be helpful if reference to this could be made in section 7 of the Guidance, 'Manage your charity's resources responsibly'. A suitable bullet point might be:
 - Take note of The Charity Commission guidance on the use of charity tax reliefs [4]