



23 April 2012

Our ref: ICAEW Rep 60/12

Charities Act 2006 Review
C/O Office for Civil Society
4/16, HM Treasury
1 Horse Guards Road
London SW1A 2HQ

By email charitiesactreview@cabinet-office.gsi.gov.uk

Dear Sirs

Charities Act 2006 Review – Call for Evidence: The role of trustees

ICAEW welcomes the opportunity to comment on the *Charities Act 2006 Review – Call for evidence: The role of trustees* published by the Cabinet Office in February, a copy of which is attached as an Appendix.

ICAEW is a world-leading professional accountancy body. We operate under a Royal Charter, working in the public interest. ICAEW's regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the UK Financial Reporting Council. We provide leadership and practical support to over 138,000 member chartered accountants in more than 160 countries, working with governments, regulators and industry in order to ensure that the highest standards are maintained.

ICAEW has a Charities Technical Sub-Committee and a Charities & Voluntary Sector Group with over 3,000 members. Many ICAEW members are active in charities and the voluntary sector; approximately 30,000 are charity trustees, treasurers, school governor and in other voluntary roles.

We should be happy to discuss any aspect of our comments and to take part in all further consultations on this area.

Yours sincerely

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APPENDIX

Charities Act 2006 Review – Call for Evidence

The role of trustees

Issue:

Charity trustees are a vital element of both individual charities and the sector as a whole. The Charities Act 2006 Review is looking at whether the Act has supported the role of trustees. It is also considering the role and responsibilities of charity trustees and working to identify ways in which the recruitment and retention of trustees by charities, and the work of charity trustees themselves, could be supported and facilitated.

Background:

Charities are run by groups of trustees, who have overall responsibility for making sure that the charity is properly run (including its financial management) and achieving its charitable aims.

The vast majority of charity trustees are volunteers and are generally paid only their expenses. Charity trustees are subject to a range of legal duties and obligations which regulate the way in which they make decisions about the charity and the use of its assets. Their duties broadly cover:

- Ensuring the charity complies with charity law, the charity's own governing document, and other relevant legislation (eg employment law, health and safety etc);
- Acting with integrity, avoiding conflicts of interest and misuse of funds;
- Ensuring the charity remains solvent, and exercising prudence when investing the charity's money or borrowing on its behalf;
- Using the charity's funds and assets responsibly to further the charity's aims, without exposing them to undue risk;
- Using reasonable care and skill in their work, seeking professional advice where appropriate.

Where a charity is unincorporated (e.g. a trust or unincorporated association), charity trustees will also be responsible for holding the charity's assets and can, where the charity has insufficient funds to pay its debts or where the charity trustees have breached their duties, be held personally liable for debts or losses. For all charities, a trustee may be personally liable if he/she has breached his or her duties to the charity causing loss to the charity. Trustee indemnity insurance will provide cover to trustees in most but not all cases.

Charity trustees are supported in fulfilling their duties by guidance and advice from the Charity Commission, which regulates the sector in England and Wales (Scotland and Northern Ireland have similar but different arrangements).

The Charities Act 2006 made several changes to the law which were intended to support charity trustees and address concerns about potential personal liability:

1. It provided a new general power for charities to purchase trustee indemnity insurance with the charity's funds, subject to certain safeguards.
2. It gave the Charity Commission the same power as the High Court to relieve a charity trustee of personal liability for breach of trust or duty where the trustee had acted honestly and reasonably and ought to be excused.
3. It made provision for the Charitable Incorporated Organisation (CIO), which although not yet in force, was designed to offer a limited liability structure designed specifically for charities.
4. For charities with no prohibition in their constitution on paying trustees, it provided a new general power to pay trustees for the provision of services to the charity, subject to certain safeguards. This

power does not extend to payment of a trustee for the services of acting as a trustee or as an employee of the charity.

The Review aims to understand whether these changes have been effective (note that there is a separate call for evidence on organisational forms, including the CIO). The Review will also consider if these changes have had any impact on the willingness of individuals to volunteer as a trustee.

There are already thousands of people volunteering as charity trustees; at the end of March 2005, the Charity Commission had records of at least 890,000 charity trustee positions.¹ However, the Commission's most recent research found that 39% of charities at least sometimes experience difficulties in filling trustee vacancies, up from 31% in 2001.² Although the picture may have changed since then, this is a significant proportion and indicates that finding volunteers for these important roles may still not always be easy.

In addition, the same research found that existing trustees tended to be from a relatively small group of people; in particular, 76% were aged 45 and over (42% over 60), while only 0.5% were under 24 years old.³ This may indicate that there are, or are seen to be, barriers to others getting involved. Furthermore, use of word of mouth and personal recommendation as a method of attracting new charity trustees stood at 81%, compared to 68% in 2001. This approach does not encourage diversity, or necessarily ensure all trustees are the best candidates for the job.

The Charities Act 2006 review seeks to understand what the barriers to recruitment and retention of trustees are, so that recommendations can be made on how to address them and encourage a wider range of people with different skills to volunteer as charity trustees.

Who should respond?

Anyone can respond, and all responses will be considered. However, we are particularly interested to hear from charity trustees, as well as charities and their staff who are involved in the recruitment and support of trustees.

Deadline for responses:

The deadline for receiving responses to this call for evidence is 16 April 2012.

How to submit your response:

Please send your response by e-mail to charitiesactreview@cabinet-office.gsi.gov.uk

Alternatively you can write to:
Charities Act 2006 Review
C/O Office for Civil Society
4/16, HM Treasury
1 Horse Guards Road
London SW1A 2HQ

¹ The Charity Commission, *Start as you mean to go on: Trustee recruitment and induction research report* (2005), page 4

² The Charity Commission, *Start as you mean to go on: Trustee recruitment and induction research report* (2005), page 2.

³ The Charity Commission, *Start as you mean to go on: Trustee recruitment and induction research report* (2005), page 4

Question 1 (charity trustees only): What issues did you consider in deciding whether to take on the role of charity trustee (e.g. time commitment, level of responsibility etc)?

Not applicable.

Question 2 (for charities only): Have you experienced difficulty in recruiting trustees? If so, what were the difficulties you encountered?

Not applicable.

Question 3: Are you aware of any barriers (actual or perceived) that discourage people from becoming charity trustees and, if so, what are they?

There are currently lots of trustee databases run by a wide range of organisations publicising trustee roles. As a result, finding a suitable trustee role for an individual can be a time consuming exercise. Developing a better integrated and more effective process for publicising trustee roles with particular competencies by location would be very helpful.

In addition to the above, we believe that the key perceived barriers for individuals becoming trustees are a lack of understanding in the duties and responsibilities of trusteeship, the significant time commitment involved and concerns about liabilities. The Charity Commission's Trustee Week has been a good initiative to increase awareness of the role of charity trustees but more could be done.

The different legal forms which exist can create confusion about trustees' roles and responsibilities and liabilities. Trustees of incorporated charities have additional duties as directors under the Companies Act but have limited liabilities to third party claims because the charity is incorporated. On the other hand, the roles and responsibilities of trustees of trusts or unincorporated charities are clearer but there is an increased risk of personal liability.

Another area of concern relates to breach of trust or duty (please see question 5). While all trustees are potentially liable for breach of trust or breach of duty, in practice, the Charity Commission may grant relief from liability of breach of trust (totally or partially), if it considers the individual has acted honestly and reasonably and ought to be fairly to be excused. It is our experience, that this point is not very well known and perhaps could be better publicised.

The Act does give powers for trustees to purchase trustee indemnity insurance out of the assets of the charity which, in general, gives protection against breach of trust claims committed as a trustee as well as other claims. However, there is no standardisation in the type of liabilities which might be covered under trustee indemnity insurance which may contribute to confusion regarding what trustees are personally liable for.

Finally, we think that another barrier for people becoming trustees is that employers are not always willing to allow their staff the time off to attend meetings during work time. This is a cultural issue and perhaps needs to be tackled at a high level (government/Charity Commission), with encouragement given to corporates to allow staff to undertake charitable work in work time.

Question 4: How do you think becoming a charity trustee could be made more attractive to a wide range of people (for example more flexibility, providing more support and information, covering expenses such as child care, or limited remuneration (subject to safeguards) etc)?

In our view, diversity in terms of gender, age, background and skills in trustee boards needs to be encouraged. For example, according to the Charity Commission's figures, the average age of trustees in England and Wales is 57; two thirds are aged 50 or over. Only 0.5% of trustees in England and Wales are aged between 18-24 (compared with 12% of the population as a whole).

Our members' experience suggests that Boards of Trustees need guidance, training and advice on areas such as finance, strategic and risk management as well as change management.

The starting point for encouraging diversity is the charity. In our view, charities should conduct regular assessments and evaluations of their board of trustees to ensure that they have the right mix of skills, age, gender and so on to run the charity. A regular review of the board of trustees to ensure diversity could be included in the legislation. However, this should not be onerous in terms of frequency or detail and should not stipulate quotas.

More individuals might volunteer if there was a mentoring system in place to support, guide and advice trainees. This mentoring system might include larger charity trustees mentoring smaller charity trustees and also older, more experience trustees mentoring younger individuals. There could be closer ties to schools via initiatives such as the Duke of Edinburgh Awards which would encourage 16-18 years olds to volunteer as a 'trainee trustee' and contribute towards their community. This would help to dismiss some of the myths involved in being a trustee for younger individuals as well as encourage general volunteering.

Where charities are finding that recruiting trustees is difficult, for specific tasks, it may be appropriate to consider the use of non-trustees on sub-committees. This is most useful where there is a sub-committee requiring some formal skills base, for example, investment, audit and clinical sub-committees.

Sometimes the appointment of trustees is not a transparent process, particularly if the company is limited by guarantee where membership may be limited to the signatories to the memorandum and articles of association or the trustees. Encouragement should be given to broaden the membership base so that AGMs are a relatively public forum at which authority to vote is held in the hands of a range of stakeholders and not just the trustees.

Increased flexibility may encourage more individuals to volunteer as trustees e.g. sharing a trustee role (similar to job-sharing), varying the trustee meeting times and locations. While this should be encouraged, we do not believe it should be enshrined in legislation since charities should be allowed the flexibility to set up and review their board of trustees as they see fit in order to meet their charitable purposes. In addition, we think that encouraging corporates to consider allowing employees' time to volunteer as trustees would be beneficial.

Providing more information and support may encourage more trustees to volunteer. It would be helpful if the Commission could develop guidance on key areas to be included in induction training for trustees by size of charity/legal form. This guidance could then form the basis of a more tailored induction programme to be used by the charities.

The current guidance by the Commission Trustee expenses and payments (CC11) allows trustees to be entitled to have their expense met from funds of the charity. These expenses

include a wide range of costs, such as travel and providing childcare or care of other dependants while attending to trustee business. So, we do not believe that any changes are needed in the area of expenses related to trustee business. However, we think a change in the sector is needed to create an environment where it is the norm for volunteers to claim expenses, including child care expenses. This could be incorporated as part of the charity's recruitment and induction process for trustees.

We have received mixed feedback on whether it is advisable to consider limited remuneration to trustees. Trustees are typically highly motivated by the cause of their charity and this should form the basis of their recruitment, not payment. However, limited remuneration with appropriate safeguards to manage conflicts of interest may encourage more individuals to volunteer as trustees, especially those looking after dependants or who have to other commitments. However, this would have to be carefully thought through and consulted on since it is not clear what is meant by "limited remuneration" and how this may work in practice.

Question 5: Do you think that the changes made by the Charities Act 2006 - see numbered paragraphs 1 – 3 on page 2 - give sufficient comfort to charity trustees? If not, what more should be done?

Please see question 3 above.

Question 6: Has the new power to pay a trustee for non-trustee services been useful to you? Please give details.

We are not aware of many charities that have used the power to pay a trustee for non-trustee services. We suspect that many trustees with specialist skills will feel that this is part of their role as a trustee of a charity and, therefore, do not want payment.

Our experience suggests that trustees are cautious about using the services of a trustee for non-trustee work. For example, a trustee may resign so that there is no conflict between being a trustee and his company providing paid work to the charity. Alternatively, trustees may choose a less desirable company so that the trustee concerned can remain on the board and avoid any perceived conflict of interest. Both of these outcomes are undesirable, and the solution is for trustees to be transparent in their dealings and robust in defence of their decision.

While trustees are supposed to focus their time on strategy and governance issues, in smaller charities, they may also be focused on operational issues, increasing the time commitment for volunteering as a trustee. If time commitment is of concern to possible candidates, having more detailed guidance on expectations of trustees by charities and what should be covered under non-trustee service may help.

It would be helpful to have further guidance on what charities should do if they wish pay trustees for non-trustee services where the charity's constitution prohibits the payment of trustee services, but the rationale for this was due to the law at the time rather than an express prohibition by the charity.

Question 7: Do you think that changing the law to allow all charities to pay their trustees for their services as a trustee/Chair of Trustees would:

- a) help fill chair/trustee vacancies?
- b) encourage recruitment and retention of a more diverse range of candidates?

c) have an effect on public trust and confidence in charities? Please give details.

An effective charity board is a crucial lynchpin in a charity. To be effective, charities need appropriate skills, knowledge and experience.

While volunteering is at the core of what it means to be a trustee, we believe that in certain limited circumstances, paying trustees may be beneficial to the charity, for example, the complicated nature of some larger charities may require specialist skills on the board of trustees in order to ensure effective decision making. As mentioned in question 4, paying trustees a limited remuneration may also be a way of encouraging more individuals to volunteer but this requires a careful and more detailed analysis of practical considerations.

In general, we think that the position of paid trustees needs reviewing. Whether this area could be extended and regulated in a similar fashion to company non-executive directors remains to be seen. Further consultation on this is needed in order to avoid unintended consequences to the charity sector and other sectors which are structured in similar ways, for example, school governors. Volunteering has been a central crux of trusteeship for hundreds of years so changing this well-embedded principle would require public debate and consultation.

Question 8: Do you have any other comments about the role of trustees?

None

Respondent details:

Name:	Anne Davis	
Position:	Head of Charity and Voluntary Sector	
Organisation Name:	ICAEW	
Organisation size (income) – charities only	Not applicable	
Is your organisation a charity?	No	

What happens next?

- We will acknowledge receipt of all responses, although we cannot provide a detailed response to each individual submission.
- All responses will be considered in forming the report of the review.
- The aim is for the report of the review to be laid in Parliament and published in July 2012.

The small print:

All information in responses, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004). If you want your response to remain confidential, you should explain why confidentiality is necessary and your request will be acceded to only if it is appropriate in the circumstances. An automatic confidentiality disclaimer by your IT system will not, of itself, be regarded as binding on the department. Contributions to the review report will be anonymised if they are quoted, unless we contact you and you give us your permission to use a particular quote.

Individual contributions will not be acknowledged unless specifically requested.