

Delegation by trustees

The trustees can delegate the exercise of specified powers on the charity's behalf provided the charity's constitution empowers them to do so and there is no statutory restriction on the particular delegation proposed. Note that there are particular controls over the delegation of discretionary investment powers (relevant to unincorporated charities in England and Wales — see the Trustee Act 2000, and to all charities in Scotland — see the Charities and Trustee Investment (Scotland) Act 2005).

The individual rules in the particular constitution must be observed in relation to general delegation, for example on the establishment, size and composition of a sub-committee and on its subsequent conduct. Any delegation does not remove the collective and individual responsibilities of the trustees. They must supervise the body to which they have delegated powers and monitor the exercise of those powers. It is essential that there is clarity over exactly what has been delegated and what the body can therefore do — and what it cannot do (e.g. whether it can incur expenditure on the charity's behalf and, if so, under what conditions and subject to what financial limits).

Regular and appropriate reporting and provision of information back to the trustees is key as part of the monitoring/supervision process. Clear and accurate records of the original delegation, any subsequent changes to it and of the activities of the body to which it was made should also be maintained. That will include minutes of board meeting and sub-committee meetings.

It is good practice for committees and sub-committees to operate under written terms of reference approved by the board. Those should be reviewed and updated periodically.

Conflicts of interest

Trustees must always act in the charity's best interests and must not allow their judgment to be clouded by personal interests. Any potentially conflicting personal interest which is material in nature ought to be declared to the whole trustee body so that

- the board is aware of it
- any potential conflict of interest (i.e. between the charity's interests and the trustee's personal interests) can be identified and eliminated or managed
- any constitutional bar on interested trustees can be observed (for example an interested trustee may be prevented from attending/counting in quorum and/or voting at the relevant trustees' meeting(s))
- any potential harm to the charity arising from a potential conflict can be prevented
- the trustees can be seen to be acting 'with clean hands' and the charity's governance can be seen to be independent and effective.

Potentially conflicting interests also include financial and other material interests and also extend to the interests of family members (e.g. spouses and children) or other

bodies to which a trustee is connected (the trustee's employer or his own business, the company in which a trustee holds shares, the local authority which the trustee serves as a councillor or officer etc.).

It is good practice to maintain a register of trustees' personal interests and to update it periodically and also whenever a trustee notifies a new or altered interest. All new trustees should be asked to notify relevant potentially conflicting interests to the charity. Where a particular agenda item may relate to a trustee's potentially conflicting interests the chairman should address the matter at the commencement of the meeting, before any discussion on that item occurs or any decision is taken on it.

Authority to enter into contracts

A person cannot enter into contracts on behalf of a charity unless authorised to do so. The authority ultimately flows from the trustee board either by specific authorisation, by formal resolution in relation to a particular matter, or by a more general delegated authority. Individual trustees have no automatic authority to deal with the charity's contracts by themselves. Some staff members may have implied authority by their role (which would be indicated through their job title, job description etc). However it is strongly advisable to provide clear, documented, specific delegated authority rather than relying on any suggested implied authority.

Certain contracts will be of particular importance, or be subject to particular legal rules, so that full trustee board approval of the specific contract and its terms is necessary. The Charity Commission expects land transactions to be authorised by the full trustee board, for example.