



Checks on Trustees

(November 2018)

Who can be a Trustee?

Anyone who sits on a committee that ultimately controls the day to day running of a charity will be seen as a charity trustee. However there are rules that limit how people get to be a trustee. All charities will have a **governing** document (usually called a constitution or articles). These will set out any criteria such as being a member, age etc. It will also have rules about how trustees are appointed, usually elected by members or appointed by the other trustees. All appointments **must** follow the rules set out in the governing document to the letter or any such appointment could be challenged and so any decisions they took part in.

As well as any rules in the governing document charity law lays down some criteria that automatically bars someone from being trustee. Therefore they cannot be appointed if they meet one of these **and** if they are already a trustee and then subsequently meet one of the criteria they **must** immediately resign. In August 2018 the list was expanded to include some more criteria. If a trustee does fall into one of these they can apply for a waiver from the Charity Commission but cannot be appointed, or remain, as a trustee until this is obtained.

Someone is automatically disqualified from being a charity trustee if, in summary:

- Being under age (over 16 years to be a director of a charitable company limited by guarantee or a charitable incorporated organisation, or over 18 years for trusts and unincorporated associations)
- Being on the sex offenders register
- An unspent conviction for an offence involving: deception or dishonesty; terrorist offences; money laundering; bribery; misconduct in public office, perjury, or perverting the course of justice; contravention of certain Charity Commission preventative orders; or attempting, aiding or abetting the above offences
- Contempt of court
- Designated individuals under specific anti-terrorist legislation
- Guilty in the High Court of disobeying a Charity Commission order or direction
- Removed from: trusteeship, or as an officer, agent, or employee of a charity by the Charity Commission or High Court for misconduct or mismanagement; a position of management or control of a charity in Scotland for mismanagement or misconduct; being a director under the Company Director Disqualification Act 1986, including Company Directors Disqualification (Northern Ireland) Order 2002; directorship due to being an undischarged bankrupt; or directorship because of an ongoing composition or arrangement with creditors.

For more information look at the Commission guidance on disqualification at: www.gov.uk/guidance/automatic-disqualification-rules-for-charity-trustees-and-charity-senior-positions

How do you check?

As a minimum a standard form should be signed by newly appointed trustees as the declaration that a person understands trusteeship and is not disqualified in law from appointment. The Charity Commission have one at:

www.gov.uk/government/publications/confirmation-of-charity-trustee-eligibility or Bournemouth CVS can supply a Word version. The Commission recommends that this is regularly renewed by trustees.

Also all trustees need to fulfil HMRC's Fit and Proper Person's test. HMRC have a model declaration at:

www.gov.uk/government/uploads/system/uploads/attachment_data/file/597664/Fit-and-proper-persons-helpsheet-and-declaration.pdf

External Checks (you can also check some public registers but do not have to)

1. The Individual Insolvency Register maintained by the Insolvency Service, which contains details of:
 - Bankruptcies
 - Debt Relief Orders
 - Individual Voluntary Arrangements

www.bis.gov.uk/insolvency/personal-insolvency/individual-insolvency-register by visiting the local Official Receiver's office in Southampton, or by post or fax.
2. The register of disqualified directors maintained by Companies House.
<https://beta.companieshouse.gov.uk/>
3. The Charity Commission's register of removed trustees records all who have been removed either by an Order of the Commission or of the High Court.
<http://apps.charitycommission.gov.uk/trusteeregister/search.aspx?RegisteredCharityNumber=&CurrentLanguage=English&SubsidiaryNumber=&=DocType&>
4. Trustees of charities working with children or vulnerable adults are also entitled (not a legal requirement) to obtain a DBS (criminal record) check. NB it is a criminal offence to request a DBS unless you can show that someone's role, such as above, is exempt from the Rehabilitation of Offenders Act. If trustees have close and unsupervised contact with beneficiaries then they will be in a regulated activity and be eligible to obtain an enhanced DBS and barred list check. The Charity Commission would expect checks to be carried out on trustees if you are entitled to. For more information look at:
www.gov.uk/government/organisations/disclosure-and-barring-service or at our factsheet about Safeguarding at:
www.bournemouthcvs.org.uk/documents/ProtectingChildrenandVulnerableAdultsDecember16.pdf, or contact us.

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