

## 2.0 Charity trustees

### Recruiting trustees

The aims of a childcare charity are best achieved by the participation of a range of different families, so charities should encourage the composition of trustees to be drawn from a diverse range and be representative of the local community, with various skills and experiences to offer.

It is essential that anyone who is interested in becoming a trustee is provided with information on the responsibilities and level of commitment required to enable them to make an informed decision on whether to undertake the role.

Trustees must be at least 18 years of age (or 16 years in the case of charitable companies and CIOs), capable of managing their own affairs and prepared to act in the best interests of the charity. The [list of reasons](#) that will automatically prevent someone from being a trustee or senior manager include:

- unspent conviction for an offence involving dishonesty or deception
- unspent conviction for specified terrorism offences
- unspent conviction for a specified money laundering offence
- unspent conviction for specified bribery offences
- unspent conviction for the offence of contravening a Charity Commission Order or Direction
- unspent conviction for offences of misconduct in public office, perjury, or perverting the course of justice
- unspent convictions for aiding, attempting or abetting the above offences
- being on the sex offenders register
- unspent sanction for contempt of Court
- disobeying a Commission Order
- being a designated persons (under specific anti-terrorist legislation)
- being a person who has been removed from a relevant office
- director disqualification
- insolvency

Only if it is in the best interests of the charity, for an individual who is well-qualified and who would otherwise be unavailable to the charity, can the individual apply to the Charity Commission for a waiver, with the charity's support, to appoint or retain them as a trustee or senior manager.

There are further requirements in place, to safeguard the children in the care of the charity from harm, which may disqualify certain individuals from being trustees. For example, if they have been

convicted or charged with an offence against a child or certain offences against an adult, or are included in the Disclosure and Barring Service (DBS) barred list of people who are unsuitable to work with children. Ofsted will undertake background checks on new trustees to determine their suitability.

All prospective trustees should be made aware of the disqualifying conditions, prior to being asked to sign a Trustee Eligibility Declaration form ([www.gov.uk/government/publications/confirmation-of-charity-trustee-eligibility](http://www.gov.uk/government/publications/confirmation-of-charity-trustee-eligibility) ). Charities can check the Individual Insolvency Register at [www.insolvencydirect.bis.gov.uk/eiir/](http://www.insolvencydirect.bis.gov.uk/eiir/), the Disqualified Directors Register at [www.gov.uk/search-the-register-of-disqualified-company-directors](http://www.gov.uk/search-the-register-of-disqualified-company-directors) and the Register of Removed Trustees at <https://apps.charitycommission.gov.uk/trusteeregister/search.aspx?RegisteredCharityNumber=&CurrentLanguage=English&SubsidiaryNumber=&DocType&>, to find out whether an individual is on a register of people disqualified from acting as a trustee. If it came to light that a disqualified individual has been appointed as a trustee of a charity, their appointment will be void.

### Appointing trustees

Trustees are appointed each year by the members of the charity at the Annual General Meeting (by election), with the ability to appoint new trustees after the Annual General Meeting by the other trustees (by co-option).

When trustees are removed or appointed, the records of the charity must be updated with the Charity Commission at [www.gov.uk/change-your-charitys-details](http://www.gov.uk/change-your-charitys-details) and Companies House at [www.companieshouse.gov.uk/seclogin?tc=1](http://www.companieshouse.gov.uk/seclogin?tc=1) if appropriate. Ofsted must also be notified of any changes to the trustees of the charity within 14 days, using form EY3. Each new trustee will also need to complete a declaration and consent form for Ofsted to process their criminal records and suitability checks.

	Charitable incorporated organisations	Charitable companies	Unincorporated associations
Minimum trustees required	3	5	5
Minimum family members required*	Two thirds	60%	
Length of time a trustee can serve continuously	10	14	10

\*Trustees who need to have children attending the group at the time of their election.

For charities running to an Alliance governing document, permission can be sought from the Alliance to run with less than the minimum required trustees and/or family members, under certain circumstances, whilst the charity makes every effort to recruit family members. However, practically, trustees cannot be reduced to less than three as this would obstruct decision making. The maximum length of time is set as new people can bring a fresh perspective, as well as new

ideas and skills that can help to advance the charity's work. Permission can be sought from the Alliance to increase this limit to 14 consecutive years.

A good induction for new trustees is important for a smooth transition into the role, to ensure that they feel welcome and have the information to carry out their job effectively. The induction programme (*2.1 Trustee induction programme*) introduces the work of the charity and its employees and volunteers; providing trustees with an understanding of the rules outlined in its governing document, its financial situation, how the childcare provision operates, everyone's roles within the charity and any outstanding issues or projects.

### **Trustees' roles and responsibilities**

Trustees of childcare charities take on a number of obligations; as a charity trustee, a company director (where applicable), an employer and a registered childcare provider. Trustees must act in the best interest of the charity and its beneficiaries in all their dealings. The main duties include:

- To act collectively with the other trustees to manage the charity. Individually, trustees do not have any powers; they must act on the directions agreed by all the trustees.
- To carry out their duties themselves and cannot delegate their governance responsibilities to others unless they have received the legal authority to do so.
- To follow the charity's governing document, which outlines the rules for how it operates, including the objectives it is trying to achieve, the powers available to the trustees to enable them to achieve the objects and the directions for governing the charity.
- To act prudently and with care when directing the affairs of the charity; seeking support and guidance from advisors when necessary to ensure that the charity's assets and reputation are not put at risk.
- To protect the assets of the charity and use them wisely to ensure that they are not wasted or misused on activities which do not promote the purposes of the charity.
- To keep financial records and accounts, which explain all of the charity's transactions, assets and liabilities.
- To avoid and declare any possible conflicts that might arise between personal interests or loyalties and their trustee duties; removing themselves from discussions and decision-making in these situations.
- To ensure they do not accept any direct or indirect financial or material benefit from being a trustee, unless explicit authority is given by the Charity Commission or by a court order.
- To comply with any statutory duties and legislation that govern the activities of the charity, including:
  - Carrying out all duties and managing the charity and its affairs in accordance with the legal

framework provided by the charities acts and companies acts (where applicable).

- Satisfying all employment and employment related legislation when recruiting and managing employees to carry out the charity's activities. Fulfilling the requirements of the Statutory Framework for the Early Years Foundation Stage to provide high quality care and education for children as part of their role as a registered provider of childcare with Ofsted.

Under the Companies Act 2006 there are also specific statutory duties for directors of companies to ensure that they act in the best interest of the company (which have shared qualities that overlap with many of the duties of charity trustees). These duties are to:

- Act within powers; following the articles of association and only using the powers of a director for their proper purpose.
- Promote the success of the company; always acting to the advantage of the organisation and its beneficiaries.
- Exercise independent judgment; not being influenced by other individuals/organisations, or their interests, when making decisions.
- Exercise reasonable care, skill and diligence; in the overall directorship of the company and in particular tasks assigned to individual directors, to a standard which is appropriate for the size, complexity and needs of the company. Training or support should be provided to ensure that all directors are able to perform to a level appropriate to their particular organisation.
- Avoid conflicts of interest; declaring whenever a situation arises, or a transaction with the company is proposed, in which they, or a connected person or organisation, have an interest. Failure to declare an interest is an offence for a director.
- Not accept benefits from third parties which are offered to them because they are a director of the company or which could in any way influence their actions as a director.

As company directors, the trustees/directors of charitable companies must also ensure the following statutory documents are maintained and submitted to Companies House as and when required. Processing fees apply for submissions to Companies House and there are penalties, or possible prosecution, for late filing.

- A Confirmation Statement (annual return) must be filed with Companies House at least once every 12 months.
- Accounts must be submitted within 9 months of the company's financial year end.
- A register must be kept of the members of the company.
- Registers must also be kept of the directors/trustees, the directors'/trustees' usual residential addresses and of the company secretaries. Whenever there is a change in any of these details, the registers must be updated and the relevant form (Forms AP01/3, TM01/3 and CH01/3) filed

with Companies House within 14 days.

- Changes to the registered office address of the company must be submitted to Companies House (Form AD01).
- Copies of certain resolutions, such as special resolutions, as stipulated in the governing document, must be filed within 15 days of being passed. A resolution is a formal decision or agreement of members or directors/trustees of the charitable company; a special resolution requires a 75% majority of votes cast.

### *Officers*

For unincorporated associations and charitable companies, 'officer' roles are assigned to trustees. These are trustees who are given certain key tasks to perform, whilst reporting back to the trustees for directions and authorisation. The officers' positions are:

- Chair: To act as a representative for the trustees, facilitate meetings of the charity and usually line-manage the more senior charity employees.
- Treasurer: To oversee the finances of the charity and ensure they are effectively managed.
- Secretary: To manage the correspondence and organise meetings of the charity.
- The trustees must support one another to ensure that no one person is given too much work or responsibility; regularly reviewing and discussing their respective workloads to identify whether such duties could be done more effectively. Example role descriptions are included in appendix 2.4.

Whilst the charitable incorporated organisation constitution does not allocate officer roles, the duties still need to be undertaken. The aim is to share the duties out amongst all trustees, for instance, by a different trustee chairing each meeting or acting as secretary.

### *Delegating tasks*

Trustees may delegate certain tasks to employees or volunteers, but in doing so, take on the responsibility of directing them and managing their work. For example, the day-to-day running of the childcare provision will be delegated to an experienced and qualified team of early years practitioners, with the manager of the team reporting to the trustees; a bookkeeper or administrator to manage the financial or administrative tasks of the trustees and, in charitable companies, may delegate to them the responsibilities of the company secretary.

In the case of a charitable company, the secretary of the charity is also the company secretary. The company secretary is a separate role, with responsibilities relating to the administration of the company to satisfy Companies House requirements, such as:

- Maintaining the statutory registers of members, directors and secretaries, directors' interests, and charges.

- Ensuring that all statutory forms and paperwork are filed to Companies House within the required timeframe (including the Directors' Report and accounts, and forms for the confirmation statement and changes to the registered office, directors and secretaries and their details and accounting reference date).
- Providing members (and auditors where applicable) with notice of meetings.
- Sending Companies House copies of resolutions and agreements that must be filed.
- Supplying a copy of the accounts to members of the company, debenture holders (a debenture is a document which acknowledges that the company owes a debt or a loan to the holder) and those entitled to attend general meetings.
- Keeping records of resolutions and minutes of meetings.
- Ensuring that people entitled to do so can inspect the company records.
- Keeping hold of the company seal (where applicable).

### *Holding trustees*

As unincorporated charities do not have their own legal identity, freeholds, leases and licenses for land or buildings cannot be signed in the name of the charity. Individual holding trustees must be appointed to hold property in trust on the charity's behalf. This does not apply to incorporated charitable companies or CIOs, as they are a legal entity and can therefore enter into contracts on their own behalf.

The role of holding trustees is very different to the trustees who govern the charity. Their roles relate specifically to holding the legal title to any property owned by a charity on its behalf and their legal responsibilities are determined by the terms of the freehold, lease or license for the property that they are holding. Legal advice should always be sought before entering into such an agreement so that the responsibilities and liabilities connected with it are fully understood. Holding trustees are not involved in the management of the charity and must act only on the directions of the charity trustees; unless it is unlawful or in breach of the purposes or the terms on which the property is being held. Therefore, they should take care to carry out their duties in line with the conditions of the agreement for the property and the charity's governing document, and meet regularly with the charity trustees to keep them fully advised of all matters that arise in relation to the property and any necessary actions required for its management or under the terms of the lease, licence or mortgage.

In general, any person who is eligible to be a charity trustee can become a holding trustee, including charity trustees. This can be beneficial as the title of the property is held directly by the people with the authority to administer the charity and its assets, rather than a third party. However, it can also be an advantage to appoint holding trustees who are willing to act for a good length of time. For unincorporated associations, charities must have at least two but no more than

four holding trustees.

### **Reducing the risk of personal liability**

Personal liability can occur when there is a breach of obligations; this could be in relation to the governance of the charity (e.g. a trustee may be personally liable if they act against the rules of their governing document or have accepted payment for their role without having the legal authority to do so) or the work of the charity (e.g. if an unincorporated charity has insufficient funds to pay the redundancy entitlement for a charity employee). Liabilities can also arise in connection with the committing of criminal offences; the neglect, error or omission of statutory duties; failing to comply with the rules of the governing document; breaching the terms and conditions of an agreement or contract; and carrying out or authorising a wrongful act.

As unincorporated charities do not have their own legal identity, the charity itself cannot be liable for any actions taken in its name. Therefore, in most cases, the liabilities associated with the operations of the charity fall on the charity trustees. As the trustees are required to act collectively, the liability is usually collective also.

Charities can take simple steps to reduce the risk of personal liability to trustees and members, such as:

- following the rules within the charity's governing document at all times
- seek professional advice whenever necessary to ensure responsibilities are understood and that the trustees comply with the law and follow good practice
- ensure the finances of the charity are well-managed, adequately controlled and that appropriate levels of reserves are in place to cover expenses as they become due
- ensure the governing document contains suitable provision to indemnify the trustees out of the assets of the charity where they have acted lawfully and in good faith, as is provided in Alliance governing documents
- establish procedures to identify, monitor and effectively manage any risks to the charity
- obtain legal advice before entering into contracts, agreements or borrowing money on behalf of the charity
- avoid conflicts of interest to prevent a breach of trust occurring
- ensure that the charity has appropriate insurance cover
- incorporate the charity

Regular assessments should enable the trustees to identify and continually monitor any potential risks to the charity and its activities, and plan a response so that they can act promptly and minimise the impact on the charity if a risk does occur. Charities that are required to have their accounts audited must have a risk management statement within their annual report confirming

that the trustees have considered the major risks for the charity and have effective procedures in place to manage the risks should they arise. The input of employees can also be invaluable in helping to develop and implement the risk assessment for the charity. When identifying and developing a strategy to address potential risks, trustees and employees should be careful to consider a wide range of internal and external factors, however improbable they might seem at the time, for example:

- physical risks, such as a fire or burglary at the premises
- legal risks, such as a claim made by a staff member for wrongful dismissal
- financial risks, such as the loss of grant funding, cash flow issues or fraud
- strategic risks, such as a breach of the charity's purpose
- human resource risks, such as difficulty in recruiting staff with the required qualifications and skills, or a lack of financial experience amongst the trustees
- operational risks, such as the loss of Ofsted registration
- government risks, such as changes in legislation or an increase in taxes/VAT
- local authority risks, such as a change in the admissions policy for local schools
- press risks, such as media coverage which is damaging to the reputation of the charity
- public health risks, such as a flu pandemic or a falling birth rate

Having adequate insurance cover for the charity's activities and assets is an important part of risk management. Some forms of insurance are required by law or for Ofsted registration, such as employers' liability insurance and public liability insurance. In addition, management protection insurance is also available, which would cover trustees for third party claims resulting from unintentional errors. Please contact the Alliance Insurance team at [insurance@eyalliance.org.uk](mailto:insurance@eyalliance.org.uk) for further information.

### **Difficulty recruiting trustees**

With children attending early years provision for only a few years before the transition to school, there is often a high turnover in families holding membership with childcare charities. This can present challenges when recruiting and retaining trustees, so it is important to ensure that active engagement with new members takes place to encourage their involvement in the charity. Keeping families who are on the waiting list informed about the charity and its activities will help them to feel included from the moment they express an interest in their child attending the provision. After they start, regular communications from the trustees should promote an understanding of the work they do and the vital importance of their role within the charity.

If it is proving difficult to recruit trustees, an understanding of what is deterring families is needed to try to resolve the issue(s). For instance, if someone does not have much time or is worried about



the amount of work they will have to do, look at whether there are ways of reducing the number of hours they need to commit to the role. Perhaps share part of the person's duties amongst other trustees or look at whether there is a justified need and the means to employ a bookkeeper or administrator to help support the trustees with certain tasks. These employees will never take on the full responsibilities of the trustees but can be of great assistance with managing the day-to-day administration.

For individuals who are concerned that they do not have the necessary experience, skills or time, they should be reassured that their involvement is of value and that there will always be suitable tasks that they will be able to help out with. They could also be offered workshops to assist them in their role, or the opportunity to take part in mentoring exercises with more experienced trustees.

Concerns over personal liabilities may also deter individuals from wishing to be a trustee. However, individuals can be advised of the key steps to reduce such risks, as outlined in *2.0 Charity trustees*

Often the role played by charities in the community means that there are many local people and organisations that have an interest in supporting the charity. The grandparents of the children attending the setting may like to get more involved, or the parents who have registered their younger children for a future place. Also consider asking contacts from other local organisations that work closely with the setting, such as schools, community centres, libraries, synagogues, mosques or churches.

Experienced staff members may also be keen to be appointed as a trustee. But this can only be done by charities with governing documents which do not prohibit this type of payment, such as the Alliance 2011 version for unincorporated associations, 2012 for charitable companies or 2013 for CIOs; providing a number of requirements are satisfied (see *3.0 Good governance*). To be elected as a trustee, they would firstly need to be either a family or affiliate/other member; the latter of which can be approved at the trustees' discretion. There would have to be effective procedures in place to manage any potential conflicts of interest that could arise with their dual role as an employer and an employee (see *3.2 Conflicts of interest policy*). However, they could provide invaluable support and guidance to the trustees on matters relating to the provision of childcare and could also take on the role of the Nominated Individual with Ofsted.

## **Resignation**

Trustees wishing to resign should inform the remaining trustees in writing; specifying the position (if appropriate) they are resigning from, the date they wish to step down, and wherever possible, the reasons for their resignation. To ensure sufficient time is given to appoint a replacement, trustees should aim to provide as much notice as possible.

For a resignation to take effect the trustees must ensure that the minimum number of trustees is retained, as outlined laid out in the governing document.

This is to prevent the charity being left with too few remaining trustees to manage its affairs. A

trustee would be neglecting their legal responsibilities if they left the charity in such circumstances and may risk personal liability. The remaining trustees have a responsibility to assist with the appointment of a replacement for the post, so that the charity continues to observe the rules of its governing document.

Sometimes circumstances outside of a trustee's control, such as poor health, may mean that they are unable to provide notice. The remaining trustees must take such factors into account and will need to support the individual by delegating their workload amongst the other trustees; either temporarily, to assist them if they wish to remain in post, or until a new trustee is appointed to take over their role.

It can be useful to ask retiring trustees to complete an exit interview questionnaire to provide feedback on their experiences of the role and to identify improvements that can be made to attract and retain future trustees. A sample exit interview questionnaire for retiring trustees is included in *3.8 Exit interview questionnaire for retiring trustees*.