mfw chartered accountants

Ashford (01233) 504954
Cranbrook (01580) 714111
Dover (01304) 204006
Herne Bay (01227) 373271
Maidstone (01622) 683627
Sittingbourne (01795) 479111

Charities in Scotland - Trustees' Responsibilities

It is often considered an honour to act as a trustee for a charity and an opportunity to give something back to the community. However, becoming a trustee involves a certain commitment and level of responsibility which should not be underestimated.

Whether you are already a trustee for a charity, be it a local project or a household name, or are thinking of becoming involved, there are a number of responsibilities that being a trustee places upon you.

We outline the main responsibilities below, with a particular emphasis on accounting and audit requirements for Scottish charities.

Background

The charities sector in Scotland is generally overseen by the Office of the Scottish Charity Regulator (OSCR), also known as the 'Scottish Charity Regulator'. The OSCR is a non-ministerial government department which is the independent regulator and registrar for Scottish charities.

The OSCR plays an important role in the charity sector and is in place to give the public confidence in the integrity of charities and to help charity trustees to understand and comply with their legal duties.

A key part of the OSCR's work is to provide advice to trustees. A great deal of useful advice can be found on the OSCR website, where there is a section dedicated to charity trustees' duties.

Types of charity

The main legislation which charities in Scotland operate is the Charities and Trustee Investment Act (Scotland) 2005 (the 2005 Act). Charities can be created in a number of ways, but are usually either:

- incorporated under the Companies Act 2006 or earlier (limited company charities)
- incorporated under the 2005 Act through The Scottish Charitable Incorporated Organisations Regulations 2011 ('the General Regulations') (Scottish charitable incorporated organisations, SCIOs); or
- created by a declaration of trust (unincorporated charities).

Each of these charities needs to register and file their accounts with the OSCR and limited companies are additionally registered with Companies House.

The type of the charity will determine the full extent of a trustee's responsibilities.

Who is a trustee?

The 2005 Act defines trustees as 'persons having the general control and management of the administration of a charity'. This definition would typically include:

- for unincorporated charities and SCIOs, members of the executive or management committee
- for limited company charities, the directors or members of the management committee.

Charities need at all times to fulfil the charitable purpose for which they were created and it is the duty of all the trustees to ensure this.

Trustee restrictions and liabilities

In addition to the responsibilities of being a trustee, there are also a number of restrictions which may apply. These are aimed at preventing a conflict of interest arising between a trustee's personal interests and their duties as a trustee. These provide that generally:

- trustees cannot benefit personally from the charity, although reasonable out of pocket expenses may be reimbursed
- trustees should not be paid for their role as trustee.

There are limited exceptions to these principles which are set out in the 2005 Act. Where trustees do not act prudently, lawfully or in accordance with their governing document they may find themselves personally responsible for any loss they cause to the charity.

Trustees' responsibilities

The OSCR guidance 'Charity Trustee Duties' explains what it means to be a trustee. Trustees have full responsibility for the charity and a general duty to act in the interests of the charity. This means they should:

- operate in a way which is consistent with the charity's charitable purposes
- follow the law and the rules in the charity's governing document
- act with care and diligence
- manage any conflict of interest between the charity and any person or organisation that may appoint the charity's trustees.

Trustees have a duty to make sure that their charity's funds are only applied in the furtherance of its charitable objects. They need to be able to demonstrate that this is the case, so they should keep records which are capable of doing this.

Charity trustees must put the interests of the charity before their own needs or those of any relatives or business interests. Where a decision must be taken where one option would be in the interests of a trustee and another in that of the charity a trustee should make sure the other trustees know of the conflict and should not take part in the discussion or decision.

Charity Trustee Duties also provides information on some specific duties contained in the 2005 Act. The guidance sets out trustees' duties to:

- **updating your charity's details** - provide all the information needed to keep the Scottish Charity Register up to date
- **reporting to the OSCR** - comply with the statutory duty to supply certain information to the OSCR regarding annual monitoring, charity accounting and making changes to your charity
- **financial record keeping and recording** - keep proper accounting records and prepare an annual statement of account and annual report which are externally scrutinised and sent alongside the annual return to the OSCR
- **fundraising** - take control of how the charity raises funds
- **provide information to the public**.

These duties are shared by every individual in charge of the charity. No individual charity trustee (for example the Chair or Treasurer) has more responsibility than any other trustee.

Accounting requirements

The 2005 Act requires that charities:

- keep full and accurate accounting records (and funds requirements are of particular importance here)
- prepare charity accounts and an annual report on its activities
- ensure an audit or independent examination is carried out
- submit an annual return, annual report and accounts to OSCR (and, for limited company charities, to Companies House).

The extent to which these requirements have to be met generally depends upon the type of charity and how much income is generated.

Funds requirements

An important aspect of accounting for charities is the understanding of the different 'funds' that a charity can have.

Essentially funds represent the income of the charity and there may be restrictions on how certain types of funds raised can be used. For example, a donation may be received only on the understanding that it is to be used for a specified purpose.

It is then the trustees' responsibility to ensure that such 'restricted' funds are used only as intended.

Fundraising

The effective management and control of fundraising is also an important trustee responsibility. The Scottish Fundraising Standards Panel oversees fundraising standards and deals with fundraising complaints for Scottish registered charities in line with the Code of Fundraising Practice.

The annual report

The annual report is often a fairly comprehensive document, as legislation sets out the minimum amount of information that has to be included. The report generally includes:

- a trustees' report (which can double as a directors' report and a strategic report, if required for charitable companies)
- a statement of financial activities for the year
- an income and expenditure account for the year (for some charitable companies)
- a balance sheet
- a statement of cashflows
- notes to the accounts (including accounting policies).

Audit requirements

Whether or not a charity requires an audit will depend mainly upon how much income is received or generated and their year end:

- all charities where income exceeds £500,000 require an audit
- all other charities require an independent examination. Where 'accruals' accounts are prepared the independent examiner must be suitably qualified.

There are other criteria to consider, particularly regarding total assets, and we would be pleased to discuss these in more detail with you.

Reporting requirements

There is a comprehensive framework in place that determines how a charity's accounts should be prepared.

Unincorporated charities with income below £250,000 may prepare receipts and payments accounts, unless their governing document says otherwise.

All other charities must prepare accounts that show a 'true and fair' view and are referred to as 'accruals' accounts. To show a 'true and fair' view the accounts generally need to follow the requirements of the Charities Statement of Recommended Practice (SORP). The SORP can be viewed at www.charitysorp.org/ and charities are able to build a bespoke version of the SORP dealing with their own circumstances.

How we can help

A trustee's responsibilities are many and varied. If you would like to discuss these in more detail or would like help in maintaining your charity's accounting records or preparing its annual report please contact us.

We are also able to advise on whether or not an audit or independent examination will be required and are able to carry this out.

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