



Lions Clubs International

Trustee Training

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Training Notes

About Your Trainer



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Claris is a consultant working with Wrigleys' clients nationwide. Claris qualified as a Barrister in 1994. Previous experience includes working as a lawyer with the Charity Commission and as an in-house legal adviser for registered charity "Interchange Trust", where she gained invaluable experience at the 'coalface'.

Claris advises on a wide range of charity law issues including charity formations, incorporations, mergers and collaborations, trustees' powers and duties, public benefit, dealing with the Charity Commission and governance issues.

Claris regularly speaks and chairs conferences about charity law and practice issues for the voluntary sector, lawyers and other professionals. She has written articles for amongst others, Charity Finance, Third Sector and the Bursars' Review.

Claris is a member of the Charity Law Association.

Duties of a Lions Charity Trustee

26 January 2019

The duties of a charity trustee spring from a variety of sources. This training focuses on the main duties that underpin good governance which stem from the general law as well as the Charities Act 2011. These notes are intended to enable Lions Club International MD 105 (LCI MD105) to provide the trustees of local Lions clubs with an overview of their duties as a charity trustee, together with information on how to reduce the risks involved.

Part One: General Duties

The general duties of charity trustees can be summarised as follows:

1.1. Ensure the charity carries out its purposes for the public benefit

Charity trustees have an individual and collective responsibility to ensure their charity carries out its charitable purposes for the public benefit and for no other purpose.

As a charity trustee you should:

- Ensure you understand your charity's purposes which will be set out in the 'objects clause' of your charity's governing document.
- Plan what your charity will do to further its purposes.
- Be able to explain how all the charity's activities (i) further its charitable purposes **and** (ii) delivers public benefit.
- Keep the charity's purposes and activities under review to ensure it is operating as effectively as possible.

1.2. Comply with the governing document and the law

Compliance with the governing document

A fundamental duty of a charity trustee is to manage and administer the charity according to the terms set out in the governing document. It is therefore important to read and understand the provisions of the governing document. For a Lions club CIO, this will be the CIO constitution. For a Lions club charitable trust this will be the charity's trust deed(s).

The governing document should be:

- Given to all trustees.
- Brought to trustee meetings (and members meetings in the case of a Lions Club CIO).
- Kept safely and passed to successor trustees.

Compliance with the law

Charity trustees must also ensure that the charity complies with all laws or regulations that apply to it, including charity law requirements. You can find out what legal or regulatory requirements apply to your charity by:

- Familiarising yourself with freely available guidance. The guidance on the Charity Commission's website is a good starting point and it often signposts readers to other sources from where it is possible to find out more about any laws or regulations that may be relevant to your charity.
- Taking professional advice, where appropriate.

1.3. Act in your charity's best interest

It is important that as charity trustees you:

- Make balanced and informed decisions.
- Question, challenge and fully debate issues before reaching a decision.
- Accept majority decisions and work collaboratively to implement decisions in the interests of the charity.
- Are able to identify and deal with any conflicts of interest or conflicts of loyalty. Charity trustees' conflicts of interest are the most common reason for the Charity Commission to exercise its regulatory powers to open an inquiry into the charity. Therefore a charity trustee must be careful not to put himself in a position where his own interest or the duties he owes to any other organisation might conflict with the interests of the charity. If a trustee finds himself in a position of conflict he must normally declare the interest, withdraw from the meeting and take no part in discussions relating to this issue.
- Do not receive any benefits from the charity unless it is properly authorised and clearly in the interests of the charity. This rule also applies to those closely connected to a charity trustee.

1.4. Manage your charity and its resources responsibly

To fulfil this duty as charity trustees you must:

- Ensure that the charity's assets are applied only for its objects and not for any other purpose.
- Ensure the charity is and will remain solvent. Do not over-commit the charity.
- Avoid activities that might place the charity's beneficiaries, funds or assets at undue risk.
- Protect the charity's assets, including its reputation. The Lions name, logo and reputation are valuable assets.
- Maximise the charity's assets.
- Take particular care when investing or borrowing funds.

It is a case of acting prudently to achieve the right balance between 'competing duties'.

1.5. Act with reasonable care and skill

As a charity trustee, you are not expected to be an expert. But you are expected to be diligent.

- Charity trustees must carry out their duties with the care and skill expected of a prudent person in the exercise of his own business affairs.
- If a trustee has a specific skill, a higher level of competence will be expected from him in his area of expertise. So, for example, a trustee who is an accountant would have a higher duty of care in relation to financial matters.
- A charity trustee must act personally and give sufficient time to the role, by preparing for and attending meetings and ensuring they have the information they may need in order to make sound decisions.
- Decisions concerning a charity should be taken by the charity trustees acting together and usually by majority.
- Charity trustees can delegate administrative duties to staff and agents. Delegation does not mean that the charity trustees no longer need to take responsibility for the actions of delegates as they remain liable for these, whether the delegates are fellow trustees, staff or agents.
- If something goes wrong as a charity trustee you are responsible for getting the charity back on track and for deciding if you need to take external advice to sort out the problem. If it is a 'serious incident' you must report it to the Charity Commission.

1.6. Ensure your charity is accountable

As a charity trustee you are responsible for:

- Ensuring your charity complies with its legal, accounting and reporting obligations.
- Being able to show that your charity fulfils its charitable purposes effectively.
- Ensuring everyone involved in the charity is accountable. This means being accountable to members and stakeholders, as well as ensuring staff and volunteers are accountable to the trustees.
- Advocating and embracing accountability as a means to help your charity fulfil its purposes more effectively.

Part Two: Statutory Duties

The Charities Act 2011 imposes additional statutory duties and obligations on charity trustees. The main statutory duties and obligations are set out below:

2.1 Duty to register

Unless a charity is exempt or excepted from registration, the charity trustees are under a duty to apply for it to be registered with the Charity Commission.

All Lions Club CIOs must be registered.

Any Lions Club charitable trust with income of over £5k must be registered.

2.2. Ongoing duty to supply information to the Charity Commission

Trustees of registered charities are under a duty to notify the Charity Commission if the charity ceases to exist or of any changes to the registered details (and to supply particulars of the changes).

They are also under a duty to notify the Charity Commission of (and where necessary obtain their prior consent to) any changes that are made to the governing document.

If the Commission institutes an inquiry into the charity, the charity trustees must furnish information and give evidence.

It is an offence knowingly or recklessly to give false or misleading information to the Commission. It is also an offence to alter, conceal or destroy charity documents which may be required by the Commission.

2.3. Accounts, Annual Returns and Annual Reports

All charity trustees are under a duty to keep accounting records, prepare accounts (which must be retained for at least 6 years) and to make the accounts available to the public on request. Thereafter the statutory requirements vary according to the size, nature and structure of the charity.

Failure to comply with the statutory requirements regarding charity accounts, annual returns and reports is a criminal offence.

2.4. Disposals and mortgaging of charity land

A few local Lions clubs own or have some interest in land. Those that do, should be aware that an order from the Charity Commission will be required to dispose of or mortgage charity land, unless they can follow a prescribed statutory procedure set out in the Charities Act 2011.

2.5. Registered Charity Status

Official Documentation, Emails and Online

Every Lions Club CIO and most Lions Club charitable trusts must disclose their name and registered charity status on some official documents.

The exact rules vary depending on the size and structure of your Lions Club charity. If you adopt a 'belt and braces' approach by including your charity's name and its charity registration number on all its official documentation, emails, website and online platforms you ought not to fall foul of the rules.

Locations

A Lions Club CIO must display its registered name (which should include 'CIO') at:

- the registered office;
- any other place chosen for people to use to inspect the CIO's records;
- any other place from which the CIO operates, unless that place is primarily living accommodation.

Failure to comply with the statutory requirements is a criminal offence.

2.6. Acting as a charity trustee

You must be 18 or over to act as a trustee of a Lions Club charitable trust. Whereas anyone aged 16 or over can be trustees of a Lions Club CIO.

Section 178 of the Charities Act 2011 disqualifies certain people from acting as charity trustees and the list has recently been widened. Anyone who acts while disqualified commits a criminal offence.

A Lions Club charity that works with children or adults at risk may also need to carry out a DBS check on its trustees, staff or volunteers. Whether DBS checks need to be carried out and the level of checks depends on the extent of contact the individual in question has contact with children or adults at risk.

2.7. Fundraising

Trustees must ensure that any fundraising activities by or on behalf of the charity are properly undertaken and that all funds collected are properly accounted for. The Charities Act 2011 regulates charitable fundraising and in particular the information charities need to give concerning commercial participators and professional fundraisers.

The statutory obligations:

- Include a duty to provide certain information on fundraising literature.
- Impose controls and safeguards which govern the use and activities of professional fundraisers and commercial participators.

2.8. Investment duties

When investing funds the trustees must have particular regard to any specific powers of investment and any limitations thereon contained in the Governing Document.

When exercising any power of investment, the trustees must have regard to the:

- The suitability of the type of investment for the charity; and
- The need for diversification of investments.

The trustees can delegate the management of investments to agents by means of a written agreement. The charity should have an investment policy statement and any delegation should be kept under regular review.

2.9. Public Benefit

The Charity Commission has published guidance on the public benefit requirements. Charity trustees must report on the public benefit delivered by the charity's activities. They also have a duty to have regard to such guidance when exercising any powers or duties for which the guidance is relevant.



Part Three: How to Protect Yourself

3.1. First steps

Before accepting a trusteeship you should ask to see the Governing Document and the latest Annual Report and Accounts of the charity. You should take the first opportunity to meet fellow trustees and anyone else involved in the administration of the charity to find out about its activities and the way it is run. For Lions Club CIOs any property should be held in the name of the CIO. For Lions Clubs that have not yet incorporated as a CIO, where any property of the charity is held in the name of individual trustees you need to ensure that it is held in the names of people who are currently the charity trustees.

New trustees should have some induction training to introduce them to the role of a trustee and the charity should ensure that there is regular on-going training for trustees. So well done for coming to today's training!

3.2. Incorporation

The charity trustees of a Lions club CIO have the protection of limited liability because the CIO can hold and deal with land, enter contracts, sue and be sued in its own name. Any Lions club that has incorporated as a CIO has already taken this step to protect its trustees and put itself on a more secure footing.

3.3. Delegation

As previously stated charity trustees remain liable for the actions of delegates. When delegating there are a number of steps you can take to protect yourself and to ensure that the charity is run properly:

- Ensure that you have the power to delegate, which will be found in the governing document;
- Ensure the scope of any delegated authority is clearly laid down in writing with instructions that important matters should be promptly reported to the trustees and the full board of trustees should make the final decision on major matters of policy or resources. There should be written terms of reference to ensure trustees and employees know the extent of any delegated authority;
- Have clear and regular reporting procedures which are enforced in practice;
- Ensure that there is at least one trustee on any sub-committee;
- Ensure that the job specifications for employees are clear;
- Ensure that any delegation is kept under annual review by the trustees to monitor its success.

3.4. Risk Management Policy

The charity should have a risk management policy in place to review and manage the risks it faces. The trustees, key staff and volunteers should familiarise themselves with the policy and it should be regularly reviewed.



3.5. Insurance

The trustees need to ensure that the charity is adequately insured. Charities are also encouraged to ensure that they keep their premiums as low as possible.

Lions club trustees should also understand the extent to which they are either already covered by, or may need, indemnity insurance which typically covers trustees against certain types of liability, such as liability for innocent breach of trust. Charity funds can only be used to pay for indemnity insurance if there is an express power in the governing document or if the trustees can rely on the statutory power in section 189 of the Charities Act 2006. Lions Club CIOs that have adopted the model constitution have the power to use the charity's funds to pay for trustee indemnity insurance subject to certain conditions set out in Section 189 of the Charities Act 2011.

3.6. Regular governance reviews

Trustees should carry out regular governance reviews to ensure the charity is complying with relevant legal requirements. This should be done at least every 5 years and all policies and procedures as well as the Governing Document should be thoroughly reviewed.

3.7. Seek advice

If you are in any doubt about your duties or the risks involved in a particular course of action you should take advice from those with expertise in the area in which decisions have to be made. LCI MD 105 is on hand to help.

3.8. Ask the Commission

The Charity Commission has an express power under section 110 of the Charities Act 2011 to give advice on any matter affecting the performance of a charity trustee's duties and to give formal advice relating to the "proper administration of the charity" and the charities generally. However due to resource constraints the Charity Commission does not give as much bespoke advice as it once did. Instead the Charity Commission provides a lot of general guidance and information on its website.

3.9. Seek the sanction of the Court

In an exceptional case, it may be appropriate to seek the sanction of the court.

Part Four: Personal Liability

Charity trustees will be personally liable in certain circumstances: where they are in breach of trust or where the assets of an unincorporated charity are insufficient to meet liabilities to third parties.

Breach of trust

- Where a charity trustee is in breach of trust he or she may face a claim for restitution – to make good losses to the charity flowing from the breach. For example if the charity incurs losses as a result of an imprudent decision, or where a trustee has received unauthorised remuneration, or a trustee has profited from their position. In such cases, proceedings may be brought against a trustee to recover the losses or authorised profits.
- The Court has the power to grant charity trustees relief from personal liability where they have acted honestly and reasonably and ought fairly to be excused. The Charities Act 2011 extended the power to grant relief to the Charity Commission, but this is rarely used.
- The Charity Commission (and the court) do not expect charity trustees to be infallible but they do expect them to be diligent. “The Commission recognises that most trustees are volunteers who sometimes make honest mistakes. Trustees are not expected to be perfect - they are expected to do their best to comply with their duties. Charity law generally protects trustees who have acted honestly and reasonably”

The Essential Trustee (CC3).

These notes are of a general nature only. They are no substitute for taking legal advice on particular situations. No liability will be accepted by Claris D’cruz Ltd for any action taken or omitted to be taken in reliance on the notes or training.

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Appendix 1: Duty not to profit:

Charity trustees are under a duty not to profit by virtue of their position as trustees. The general rule is that charity trustees must act gratuitously. This is an absolute duty and will be applied strictly. There are a number of exceptions:

- Trustees may reclaim reasonable expenses incurred in the course of carrying out their duties.
- Trustees can enjoy benefits provided by the charity that are freely available to all.
- A trustee of a Lions Club CIO that has adopted the model constitution may receive a benefit from the Club as a beneficiary of the Club, provided that a majority of the trustees do not benefit in this way.
- Trustees can receive such remuneration or other benefits as the Governing Document expressly provides. The Lions Club CIO model constitution expressly allows certain trustee benefits subject to safe guards, which must be followed.
- Only a minority of trustees can be paid for their services to the charity at any given time.
- If a trustee receives an unauthorised benefit in his position as a charity trustee, he is under a duty to repay the payment he receives to the charity even if the benefit was inadvertent and/or the charity has not made a loss. Either the court, or the Charity Commission, can grant relief from liability where they believe a trustee has acted honestly and reasonably and ought to be excused; but this power is rarely exercised.

Given the Lions 'We Serve' ethos Lions charity trustees should not usually receive any benefit. The only exceptions would be 'benefits' received on the same terms as a member of the public or in rare cases as a beneficiary.

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