

Users on Board

*Beneficiaries who
become trustees*

Users on Board: Beneficiaries who become trustees

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Who is this guidance for?

1. This guidance is aimed at charities that provide services to individuals and involve, or wish to involve, those individuals in the development of the services or facilities that are supplied to them. However, the general principles outlined might be useful to any charity seeking input from their users.

Meaning of words and expressions used

2. In this guidance:

Trustees means **charity trustees**. Charity trustees are the people who are responsible for the general control and management of the administration of the charity. In the charity's governing document they may be called trustees, managing trustees, committee members, governors, or directors, or they may be referred to by some other title.

Relative should be considered in the widest sense of anyone closely connected to a user who would be considered to have a clear and direct interest in how the charity is run. This might include blood relations, relatives by marriage, a partner of the same or different sex, step children or children outside of marriage.

Users in this guidance includes anyone who uses or benefits from a charity's services or facilities, whether provided by the charity on a voluntary basis or as a contractual service, perhaps on behalf of a body like a local authority. 'User' will mean different things to different charities, and a number of people around the person directly receiving a service will also often benefit from the service. For instance in a charity that undertakes research into a particular medical condition, the 'user' could be the person with that condition, his or her carers, medical and educational professionals offering advice on the condition and so on. Even if support is not provided direct to relatives, guardians or carers, they might have a clear and direct interest in how the charity is run because of their relationship and responsibility, sometimes financial or legal, for the actual users.

Must is used to refer to actions that trustees, or their agents or employees, are obliged to take by law.

Recommend or **advise** are used where we are suggesting to the trustees actions which we consider to be good practice but which do not represent a legal requirement.

User involvement

3. Charities exist to serve their users and potential future users and to provide services that satisfy their needs as completely as possible. Well-run charities try continuously to

improve their services in ways that have a direct, positive impact on the lives of users, exploring a variety of ideas and methods to achieve this.

4. Many charities involve users in the effort to improve services. The term 'user involvement' describes the whole range of practical ways in which users' views and preferences can be sought and their influence brought to bear on a charity's services.

5. User involvement might include:

- informal discussions with users about the charity's services;
- regular user consultation groups and questionnaires on services provided;
- formal or informal input by users through sub-committees or user groups;
- inclusion of former or potential users on the trustee body or inclusion of users' guardians/carers;
- a trustee body made up partly of users and partly of non-users;
- a trustee body made up totally of users.

6. There is no 'best' form of user involvement. It is a matter of deciding what is most suitable for a particular charity and its users at any one time. A large number of factors can influence the suitability of different forms of user involvement, for example:

- the identity, wishes and skills of the users;
- the type of service the charity provides;

Our position on user involvement

- the charity's stage of development;
- the charity's ethos and its attitude to organisational change;
- the requirements of funders, members and supporters; or
- the practices of similar charities.

Many charities adopt several forms of user involvement at the same time, or move from one to another over time.

7. We welcome user involvement as a way of helping a charity achieve its aims more effectively. Many forms of user involvement are straightforward and present no problems. A list of some of the many guides on how to involve users can be found at the end of this guidance.

8. This guidance looks at user trusteeship in particular, as this form of user involvement raises complex issues that need to be addressed. User trusteeship needs to be introduced with care to avoid any problems with conflicts of interest that someone who is both a user and a trustee might experience. Our aim is to help charities foresee and avoid problems that might occur.

9. This guidance suggests ways to ensure that user trusteeship:

- delivers effective management of the charity and its resources;
- identifies conflicts of interest and ways of minimising their effects;
- meets legal requirements on eligibility for trusteeship.

Effective management

10. The inclusion of users as trustees is a decision that each charity should consider based on its own circumstances and needs. User trusteeship will be appropriate for some charities but not for others. First and foremost, each charity should consider whether user trusteeship would enhance the effective management of the charity and have a positive impact on the delivery of its services.

11. Users can contribute their direct experience to the development of services and help other trustees develop a greater knowledge of the user perspective. Taking on trusteeship can restore a sense of ownership and empowerment to users. It can help reduce inequality and discrimination. It can increase support for a charity among other users, and lead to more cohesive communities. It can broaden a charity's contacts and influence and, sometimes, open up avenues of funding that were previously closed.

Responsibilities of trustees

12. All trustees, whether they are users or not, have responsibilities in law. Further information can be found in our guidance **The Essential Trustee: What you need to know (CC3)**. To summarise, trustees have full responsibility for their charity and must:

- act together with the other trustees and in person and not delegate control of the charity to others;
- act strictly in accordance with the charity's governing document;
- act in the charity's interests only and without regard to their own private interests;

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- manage the charity's affairs prudently and take a long-term as well as a short-term view; and
 - not derive any personal benefit or gain from the charity without express legal authority.

13. It is important that **anyone** appointed as a trustee is made fully aware of his or her responsibilities and liabilities. It is unfair to impose on someone a range of duties that that person cannot properly understand and cannot, or does not want to, carry out.

14. User trustees may sometimes feel that they are appointed solely to advise on issues of service delivery, or to speak on behalf of the users. This is not the case. They have equal standing with all other trustees and should see their role not just in terms of contributing to improvements in services. Effective trustees are those who contribute to maintaining high standards of governance and management as well as to improving service provision. There is no such thing as a single interest trustee.

15. As with any other trustee, induction for user trustees at the start of trusteeship and continuing training and support thereafter are very important. Effective training for all trustees will help to consolidate a person's strengths, to minimise weaknesses and to make up for any lack of knowledge and experience.

16. It is important for charities to ensure that all meeting arrangements are fully accessible to all trustees in terms of physical access and timing and that support systems are in place for any trustee who needs them.

Conflicts of interest

17. As mentioned above, all trustees must act only in the best interests of the charity and not for their own private interests or gain. There may be situations where a trustee's own interest and the interests of the charity arise simultaneously or appear to clash. For example, in a charity providing grants for educational purposes, a child of one of the trustees might apply for support. Or a user trustee in a charity that helps people with cerebral palsy might apply for assistance from an independent living scheme run by that charity. Obviously these trustees would be in a position where they might gain from the award of a grant or direct assistance. The issue is not the integrity of the trustee concerned, but the management of any potential to profit from a person's position as a trustee.

18. Charity transactions that are affected by a conflict of interest are valid unless and until they are challenged by us or by someone interested in the charity. Obviously, no transaction that is in the charity's interest to sustain is going to **be** challenged, even though it is affected by a conflict of interest. But if a conflict of interest transaction **is** challenged, it is at risk of being invalid unless it is authorised (see the next paragraph). This may have legal consequences (for example, a grant will, if invalidly made, have to be repaid to the charity, see also paragraph 24). It is in the interests of the trustees themselves and the public image of the charity, that clear methods of demonstrating that any potential conflict has been avoided are used.

19. As a general principle, trustees cannot receive any benefit (which includes services, facilities, funds or other benefits of measurable value) from their charity unless they have express legal authority to do so. This legal authority will come either:

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- from a clause in the charity's governing document; or
 - where there is no adequate clause in the governing document, from us or the Court.

20. This does not include the repayment of reasonable out of pocket expenses for trustees. Any costs that are necessary to allow a trustee to carry out his or her duties as a trustee can be classed as expenses and recovered by the trustee or met directly by the charity. This may include travel costs and the cost of providing care for a dependent whilst attending a trustee meeting, or when undertaking trustee business. It may also include the cost of providing documents in Braille or on audio tape for a trustee who is blind, or providing special transport, equipment or facilities for any trustee with a disability.

21. The principle that a trustee cannot receive any benefit works on the basis that if trustees are not allowed to receive any benefits from their charity, they will not have any conflict of interests when they come to allocate charity resources. It is part of a wider rule that trustees should not put themselves into a position where their duties as trustees might conflict with their personal interests. Trustees who are also users of the charity's services are potentially in a position of conflicting interests because of their dual involvement, and should be mindful of the need to identify any conflicts.

22. All trustees, whether users or not, need to be alert to possible conflicts of interest and to minimise their effects. A key aspect of minimising the effect of conflicts of interest is to be open and transparent about such situations wherever they arise. We recommend that all trustees advise their charity of any actual or potential conflict of interests of which they are aware. However, even if a trustee advises their

charity of a potential conflict, if there is no actual authority to allow the trustee to benefit, this will not necessarily eliminate the risk that a transaction that directly affects his or her own interests will be invalid. But if a trustee is open about the fact that he or she has a personal interest in a particular transaction of the charity, it is less likely that the transaction will be thought not to be in the charity's interests, and, therefore, less likely that it will be challenged.

23. If conflicts of interest are ignored they might eventually damage the charity. Transactions, including the provision of services to users, might be challenged if they are found to have been affected by a conflict of interest. Beyond this, conflicts of interest can result in resources being misused, funders' and donors' expectations going unmet, other users being discriminated against and, ultimately, a charity being run for self-interest against all the principles of charity.

24. Where we find a charity to be run for self-interest, we will use our powers to correct the situation, ensuring that the activities of the organisation remain wholly charitable. A trustee who knowingly receives a benefit from the charity without proper authorisation will be in breach of trust and may be required to pay back to the charity any gain he or she has made.

25. Charities might wish to establish a register of interests for their trustees. Individuals are able to record any actual or potential conflicts openly. We recommend that such a list be updated regularly.

26. Charities might also consider establishing a policy on how they deal with any conflicts that are likely to arise as a result of the work they undertake. This can include guidance on when a trustee needs to withdraw from certain

decisions. Even if a trustee **does** withdraw from a decision that directly affects his or her own interests, this will not necessarily eliminate the risk that a transaction that results from the decision will be invalid. For that, there must be an explicit authority to allow the trustee to benefit, **if** he or she withdraws from the decision. But if a trustee **does** withdraw from such a decision, it is less likely that the transaction that results from it will be thought not to be in the charity's interests, and, therefore, less likely that the transaction will be challenged.

27. Arranging for user trustees not to take any part in decisions that **directly affect** their own personal interests or those of their relatives is a simple way of reducing the risk that a transaction will be challenged on conflict of interest grounds. In advising someone to avoid a potential conflict of interest, or to withdraw from any decision in which that person has a personal interest, we are not making any comment about the person's integrity.

28. We regard a decision as **directly affecting** a user trustee or relative if it results in the user trustee or relative receiving something (a service, facility, funds, or some other benefit) that will be personal to that trustee and not be shared with other beneficiaries.

29. For example, in a charity that provides medical equipment for people with a particular illness, a user trustee might apply to be given a piece of equipment to ease his or her symptoms. The piece of equipment would be used exclusively by that trustee. Or in a charity that helps people in financial need, a trustee may apply for a grant to pay an essential bill, such as heating or water, because they cannot afford to meet the cost of that bill.

30. In these situations, we strongly advise the user trustee or relative to declare an interest before discussions take place and not to take any part in such a decision. In some cases, the other trustees may wish to invite the trustee involved to remain for part of the discussion to answer questions on the issue. Check the charity's governing document for any specific provisions on dealing with conflicts of interest.

31. We regard a decision as **indirectly affecting** a user trustee or relative if:

- it results in the user trustee or relative receiving something which will also be more generally available to other users outside the trustee body; or
- it is a general policy or practice decision affecting the service in which the user trustee or relative, along with other users, participates.

32. For example, in a charity providing medical equipment for people with a particular illness, the trustees may be making a decision on the different types of equipment that the charity will provide. Inevitably a user trustee will have an interest in the broad categories of equipment that is provided, but the equipment will be available to all potential users. User trustees and relatives may take part in such decisions but should declare any personal interest at the outset.

33. Benefits that are universally available to all users, or are inconsequential or of little measurable value will not usually cause a problem. For example, in a charity with an open membership, all of the trustees might be drawn from that membership and receive the same benefits as any other member. Any organisation

with a closed or restricted membership cannot be a charity if its benefits are directed to its members.

34. Similarly, some benefits, such as the provision of an information sheet on a subject will be inconsequential and unlikely to require any action by the trustees.

35. We advise that the trustees exercise their judgement on what could be considered a universal or inconsequential benefit. If there is any doubt about how to deal with any of these matters, contact us for advice.

36. Any transactions, including transactions that are authorised, that result in a material benefit being received by a trustee, or a person connected with a trustee must be disclosed in the notes to the charity's accounts, if those accounts have to give a true and fair view. Generally this would apply to charities that prepare their accounts on an accruals basis. (See our guidance **Charity Reporting and Accounting: The essentials (CC15)**). However, we strongly recommend that **all** charities disclose benefits received.

Appointment of user trustees

37. A charity's governing document may lay down rules as to who can be its trustees. We can always give a charity advice on whether or not it has adequate legal authority to appoint user trustees. We will, if necessary, provide that authority for the charity. This authority would be subject to the condition that user trustees are excluded from making decisions directly affecting their or their relatives' interests. There will then be no legal risk to any transaction that results from such a decision, so long, of course, as the trustee(s) comply with the condition.

38. If the charity has a power to amend or change its governing document, it may be possible to use this power to remove a bar on the appointment of user trustees but we recommend that trustees obtain our advice before doing so. A decision to use a power of amendment in this way might itself be open to challenge on the basis that its effect is to confer a benefit on trustees.

39. With a new charity, a bar on user trustee appointments will, of course, only be included in the governing document if that is thought appropriate by those who are setting the charity up. If the charity is expected to have user trustees, we advise that it be made a condition that user trustees are excluded from taking any part in decisions directly affecting their or their relatives' personal interests. If this is done, there will be no legal risk to any transaction that results from such a decision, so long, of course, as the trustee(s) comply with the condition.

40. Some charities are legally required to have users as trustees. A legal requirement to have user trustees will generally come either:

- From a charity's governing document.

Many village hall charities, for example, are required to have their management committee (who are their charity trustees) made up of representatives elected from the local groups who use the hall; or

- From statute law.

For instance, some schools are required by law to have a number of parent-governors.

Trustee bodies

41. Some funders make it a condition of their grant to, or contract with, a charity that the charity must have user trustees. The charity can, of course, only agree to this condition if its governing document does not prohibit the appointment of user trustees, and it does, in fact, have the required number of user trustees.

42. The most effective trustee bodies will include a variety of people with a range of skills, interests, views, and perspectives. It is important that no single interest group dominates a trustee body or exercises undue influence.

43. Subject to anything in the governing document of a charity, there is no legal bar to every trustee being a user. Some charities might find that by having all user trustees they will provide a much better service to their other users and ensure the effective management of the charity. However, as with any trustee body, what is important to guard against is having a group of trustees with a single agenda.

44. Some charities might find that having any users on the trustee body would be unworkable. For example, charities where the users are transient, or seek only one off or confidential advice and support.

45. However, as a guide, we would suggest that where the proportion of user trustees makes up a third or less of the trustee body, there are unlikely to be any problems with any one group of trustees with a single interest or motivation being accused of taking control of the direction of the charity.

Legal requirements on eligibility for trusteeship

46. As we have already explained, it is up to each charity to decide the most appropriate and effective proportion of user trustees.

47. Anyone, whether or not a user, who is thinking of becoming a trustee should check beforehand that there is no legal bar to his or her appointment as a trustee. If a person does find that they are not qualified to act as a trustee, they can still make a positive contribution to the charity by becoming involved in more general ways, such as belonging to advisory groups.

48. The three main areas of eligibility to consider are:

- Age.

A person under the age of 18 cannot be a trustee of a charitable trust or of a charitable unincorporated association. An attempt to appoint someone under 18 as a trustee is not legally valid. By contrast there is no minimum age limit for directors of companies (including charitable ones). Nevertheless a person appointed as a company director has to be old enough to understand the duties of a director.

- People who cannot manage their own affairs.

A decision that a person does not have the capacity for trusteeship will usually flow from a more general conclusion, that a person lacks the capacity or comprehension to manage his or her own affairs and could not, therefore, manage the affairs of the charity.

- Disqualification.

There are a number of specific grounds that disqualify - in effect, prohibit - a person from being a charity trustee. They include bankruptcy (undischarged) and having a conviction (unspent) for an offence involving deception or dishonesty. The full list of grounds for disqualification is in section 72 of the Charities Act 1993 and in our guidance **The Essential Trustee: What you need to know (CC3)**. The Criminal Justice and Court Services Act 2000 also bans certain individuals from being a trustee of children's charities. Again full details can be found in our guidance **CC3**.

49. We can give charities more advice on these and other legal issues to do with eligibility for trusteeship.

Sources of further guidance

50. There are a number of organisations that offer guidance or advice on involving service users and managing and dealing with conflicts of interest. A few of these are listed below.

- National Council for Voluntary Organisations (NCVO)
Regent's Wharf
8 All Saints Street
London N1 9RL
Tel: 020 7713 6161
Helpdesk: freecall 0800 2 798 798
Minicom: 0800 01 88 111
E-mail: helpdesk@askncvo.org.uk
Internet: www.ncvo-vol.org.uk

NCVO provides information, advice, support and publications to voluntary organisations in England.

NCVO has produced a "**Model Code of Conduct for Voluntary Sector Trustee Boards**" which adopts the Nolan Committee's 'Seven Principles of Public Life'. It contains guidelines on how to avoid conflicts of interest, together with a Trustee Declaration that is applicable to any charity or voluntary organisation.

It is available free of charge by sending a stamped addressed envelope marked 'Trustee Code of Conduct' to The Trustee Advice Service, at the address listed above or by telephoning the Helpdesk number.

- **Association of Chief Executives of Voluntary Organisations (acevo)**
1 New Oxford Street
London
WC1A 1NU
Tel: 0845 345 8481
Fax: 0845 345 8482
E-mail: info@acevo.org.uk
Internet: www.acevo.org.uk

acevo is the only professional association for chief executives of voluntary organisations in England and Wales.

acevo has produced guidelines on involving users in the running of voluntary organisations, "**Preparing for the future: Involving users in the running of voluntary organisations**", price £10.00. Copies can be obtained by e-mail, phone or in writing from acevo. Contact the Publications Officer.

Further Reference

For further information you may find it useful to refer to the following Charity Commission publications:

- CC3 The Essential Trustee: What you need to know
- CC11 Payment of Charity Trustees
- CC15 Charity Reporting and Accounting: The essentials
- CC21 Registering as a Charity
- CC35 Charities and Trading
- CC48 Charities and Meetings
- CC60 The Hallmarks of an Effective Charity

Mae'r rhan fwyaf o'n cyhoeddiadau ar gael yn Gymraeg. Am wybodaeth ar y cyhoeddiadau sydd ar gael ffoniwch y Comisiwn Elusennau Uniongyrchol ar 0845 300 0218.

For a complete list of all our publications and audio-cassettes, please ask for:

- CC1 Charity Commission Publications

To obtain copies of any of the above publications you can either:

- view and print from our website:
www.charitycommission.gov.uk;
- order during opening hours - Monday to Friday 08:00 - 20:00 and 09:00 - 13:00
Saturdays by telephoning us on **0845 300 0218**; or
- write to **Charity Commission Direct, PO Box 1227, Liverpool, L69 3UG.**

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