

What are the risks of becoming a trustee?

The experts give Reach newsletter readers their views

The rewards of being a trustee, and giving back to society, should outweigh any worries about liabilities which potential trustees might have. However, anyone considering taking up the role will want to know what legal duties, responsibilities and potential liabilities are involved. While most people in the sector would find it difficult to name a single situation in which a trustee has actually suffered personal loss and liability, anyone wishing to become a trustee should know what the potential risks could be. Andrew Studd and Sukanya Ransford of the law firm Russell-Cooke LLP explore the issues from a legal point of view.

Many of us are concerned about managing risk in the activities we undertake. Trustees will want to know what risks they could potentially face and claims that may be brought against them. Despite the potential risks, cases where action has been taken by the Charity Commission or by the courts against trustees are almost unheard of amongst the 180,000 registered charities in England and Wales. The Charity Commission and the courts appreciate that trustees are only volunteers and they do not seek to punish them except in the most serious cases of fault or neglect. So don't be put off.

Trustees' duties

Liabilities arise out of the [duties the trustee](#) takes on for the organisation they are appointed by. These are personal obligations which come with being a trustee. By accepting the 'job' of trustee, you agree to do the 'job' properly. The law and the governing document set out the minimum that must be done to achieve this. If you fall below that minimum, the charity itself, the Charity Commission or the courts may take action which may result in personal liability. Such action is in fact very rare. Personal liability generally only arises if the failure to discharge duties actually results in loss to the charity or improper gain to the trustee.

If trustees do not discharge these duties they may be personally liable to replace the loss, be liable to criminal prosecution or be barred from being a trustee in the future. One of the main duties of a trustee is not to receive any personal benefits or payments, be they direct or indirect, unless the governing document or the Charity Commission has authorised it. Any such benefit that a trustee does receive could result in the trustee being obliged to repay the benefit he received. This is why individuals cannot be paid for carrying out their duties as trustees.

Duties of company directors

Trustees of charitable companies have additional [statutory duties](#). As trustees of a charitable company they will also be directors. Company directors have a series of duties under the Companies Act 2006 which are very similar to those of trustees. Like trustee duties, these arise because they are directors of an incorporated body and can be enforced against them personally.

The Charity Commission has produced a number of helpful documents summarising what trustees' duties are, in particular CC3 *The Essential Trustee* and CC60 *Hallmarks of an Effective Charity*. The Charity Commission emphasises that it is only likely to enforce personal liability where a trustee has acted dishonestly or recklessly. Under the Charities Act 2006 the Charity Commission now has the ability to relieve a trustee from personal liability for breach of trust or breach of duty if the trustee has acted honestly and reasonably and ought fairly to be excused.

Where do liabilities come from?

Liabilities fall into the two categories of governance liabilities and operational liabilities. Governance liabilities arise from the duties that a trustee has. For example, where a trustee has entered into a contract with an organisation that benefited the trustee the trustee has to repay the improperly obtained profit.

Operational liabilities are liabilities incurred by the organisation because of what the organisation does. For example, where the trustee of an unincorporated charity has signed a lease for the organisation and it fails to pay the rent. Unlike governance duties, they do not arise from the trustees' personal duties. Where operational liabilities ultimately fall will depend upon whether the organisation is incorporated, i.e. whether it was established as (or has become) a company limited by guarantee or other corporate entity. If the charity is [incorporated](#) then operational liabilities generally fall on the organisation.

Remember that incorporation alone will not protect you from all liabilities. Even if the charity is incorporated, there are some provisions of the law under which a trustee may still be liable if they have contravened the law, e.g. health and safety. Similarly, if a trustee directly authorises a wrong, for example libels someone or instructs someone to act in a way that leads to loss being caused by trespass, then a trustee as well as the organisation may be liable.

By registering at Companies House you receive the protection of limited liability, but registration requires a number of obligations such as filing annual returns and keeping proper registers of who are the members and who are the directors. If you fail in these duties, the company and you may be fined, or in extreme cases, imprisoned.

Insuring the organisation

Insurance of the organisation and its activities and assets is always an important duty for trustees and trustee [indemnity insurance](#) can offer protection for trustees. Typically it covers omission or negligence, breach of statutory duty, errors in investment decisions, breach of trust, libel and slander, wrongful trading and a wrongful act in respect of an employee (e.g. discriminatory behaviour).

For an in depth review of the duties, responsibilities and potential liabilities involved in being a trustee download [Becoming a trustee](#).



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