

# How does the 2006 Charities Act affect the role of Trustees?

## Payment of Trustees

The role of Trustee is still a voluntary one but the Act does, however, allow for trustees to be paid for providing goods or services to a charity if certain conditions are satisfied. This is not payment for being a trustee or for any type of contractual employment within the charity.

### ***In more detail:***

The benefits: Charity trustees, or those connected to them, may receive payment more easily for providing goods or services to the charity where there is a clear benefit to the charity. This could include, for example, legal work, plumbing or electrical services.

### ***The rules:***

Charities will be able to pay their trustees for providing goods or services as long as:

- the terms are set out in a written agreement;
- the amount is reasonable given the services provided by that person;
- the trustees are satisfied that the arrangement is in the best interests of the charity – this will usually mean that it will save the charity money or provide a better quality service;
- if more than one trustee is being paid, the benefiting trustees are a minority of the charity's trustees;
- the governing documents of the charity do not contain anything that might prohibit the relevant person from receiving that pay; and
- trustees who stand to benefit take no part in any decision about the agreement.

**Safeguards:** There are additional safeguards to prevent misuse of the power. One is the duty to have regard to the Commission's guidance; the other is the requirement to act in accordance with the duty of care set out in the Trustee Act 2000. The duty of care states that a trustee '...must exercise

such care and skill as is reasonable in the circumstances, having regard in particular:

a) to any special knowledge or experience that he has or holds himself out as having, and

b) if he acts as trustee in the course of a business or profession, to any special knowledge or experience that it is reasonable to expect of a person acting in the course of that kind of business or profession.'

The provisions will come into force in early 2008.

## **Trustee liabilities**

### ***In brief***

We know that personal liability causes worry for existing and potential trustees, even though it is rare for a trustee to suffer actual financial loss. The Act grants the Commission a new power to relieve trustees from personal liability for breach of trust or duty where they have acted honestly and reasonably and ought fairly to be excused.

The Act also recognises that it is reasonable for charities to buy trustee indemnity insurance, and removes most of the obstacles to this. Trustees may pay the premiums with the charity's money, subject to certain limitations and conditions.

### ***In more detail: personal liability***

When charities run into problems, trustees may be personally liable for any resulting debts or losses. To date, the Commission has not been able to give trustees any firm assurance that they will not be held liable, as only the courts can give this assurance.

However, trustees will now be able to apply to the Commission as well as the courts for relief from personal liability.

The power applies only where trustees have acted honestly and reasonably and ought fairly to be excused. The Commission will still take deliberate breaches of trust very seriously.

### ***In more detail: trustee indemnity insurance***

Until now, charities have usually needed the Commission's approval to buy indemnity insurance for their trustees. Trustees now no longer need an explicit power from the Commission or from their governing document before buying such insurance.

The Act sets out certain conditions:

- Trustees must satisfy themselves that it is in the charity's best interests to buy indemnity insurance with the charity's money.
- The charity's governing document must not expressly prohibit the purchase of indemnity insurance, but trustees can now buy indemnity insurance where the governing document simply states a general prohibition against personal benefit.

**Limitations:** Any indemnity insurance policy must exclude some specific areas, mainly in relation to covering costs and fines from trustees acting in bad faith.

**Disqualified trustees:** Where someone has been disqualified from acting as a charity trustee, the Commission must grant an application to waive the disqualification after five years, unless there is good reason not to. This applies only to trustees who were disqualified from acting as a trustee because of misconduct or mismanagement in the administration of the charity in England or Wales.

The provisions came into force on 27 February 2007.

**This leaflet is adapted from “Charities Act 2006 – What Trustees need to Know” produced by The Office of the Third Sector and the Charity Commission.**

**It is meant as general guide to the changes brought in by the 2006 Charities Act, if you have any specific queries please contact our Community Development Worker Amelia Hughes on 01432 343 932 or [amelia@herefordshireva.org](mailto:amelia@herefordshireva.org)**