

Trustee remuneration: views from the sector

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Charity Commission overview

**Rosie Chapman, Executive Director
Policy and Effectiveness**



Charity Commission overview



- Legal framework
- How it is applied
- Charity Commission research and casework experience

Legal Framework



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- Common law principle – no trustee shall receive any benefit* from their charity without express authority
- * *Benefit = property, goods, services, money*
- Underlying principle - should not be conflicted between duties & personal interests unless authorised by a governing document, statute, or an order of the Commission or the Court
- *Payment of Charity Trustees (CC11)*

Duty of Care – Trustee Act 2000



- Trustees to exercise reasonable care and skill having particular regard to:
 - (a) Any special knowledge or experience that he has or holds himself out as having
 - (b) If acting in the course of a business or profession, to any special knowledge or experience that is reasonable to expect of a person acting in that kind of business or profession
- Similar duties and requirements apply for trustees of charitable companies (directors)

What does that mean in practice?



- All trustees – expected to act honestly, in good faith, with level of proficiency and competence
- Trustees remunerated on basis of their special knowledge or experience (e.g. investment experts) are expected to meet higher standard
 - may be held accountable if loss incurred by failing to exercise that expertise
- Few cases, but not unknown
- Not the same test for trustees remunerated so that they can act as trustees (e.g. user trustees, SU sabbatical officers)

Five “payments”



- Payment for a service
- Payment for being a trustee
- Compensation for loss of earnings
- Contracted employment
- Small payments or gifts

(Last two bullet points not covered today)

Payment for *goods or services* – current position



- In some cases – may have an express power to employ trustees to provide specific goods or services
- Must show clear advantage to charity
- Must manage conflict – i.e.. not party to any discussion re. terms and conditions
- Fill in form in ‘Apply for it’ section of website or phone 0845 300 0218

Payment for *goods or services* – changes the new Act will bring



- New power in Charities Act 2006 (early 2008) means no need for a separate power or our authority
- Conditions:
 - Must be a written agreement between charity and trustee setting out amount
 - Trustee board must be satisfied payment is reasonable
 - Must be in best interests of charity
 - Must be only a minority of trustees
 - Must be no express prohibition in governing document
 - Must follow Commission guidelines
 - Must follow 'duty of care' in Trustee Act 2000
 - Conflict of interest must be managed.

Payment for *being a trustee*



- New Charities Act power does not cover this type of payment – express power needed
- Legal test for authorising – Expediency, in the interests of the charity: benefits of payment outweigh ‘loss’ of charitable assets
- Need to make a strong case (and even more so, the more trustees its proposed to pay)

Questions we will ask



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- Evidence to show lack of suitable volunteers? What else have has been tried?
- Duties appropriate to a trustee?
- How has rate been decided and is it reasonable?
- What is amount in relation to the charity's total income?
- Are a majority of trustees to be paid?
- How will conflicts of interest be managed?
- How will remuneration be reviewed – including its value for money, and performance?
- Have any other regulators or stakeholder been consulted (e.g.. Housing Corporation)?
- Has the impact on trustees liability been discussed?

Payment for *being a trustee*



- Payment as a means of improving board diversity
 - One of factors that we will consider
 - Where it's clear that costs of voluntary trusteeship preventing promising candidates applying
 - Some charities may need to recruit those on low incomes

But...

We encourage charities to ensure candidates are aware that reasonable expenses will be repaid – trustees should not be expected to be out of pocket.

Payment for *being a trustee*



- Includes requests for chief executives to become trustees
- If no authorised power in charity's governing document, still need to seek Charity Commission authorisation
- "Expediency" test also applies

Compensation for *loss of earnings*



- Where for e.g. employer unwilling to pay for time spent on charity business or is self-employed
- Same principles as trustee remuneration apply
 - Need to demonstrate in the interests of the charity
 - Unless power exists, will need authority from the Charity Commission
- Compensation must be reasonable
- Do not expect payments to necessarily be full replacement of earnings – should put case for value of time to *charity*

What our research tells us



Of top 100 charities (by annual income):

- 77 do not pay their trustees
- 10* paid non-executive trustees for being a trustee, of which
 - 8* of these paid one or two trustees only (usually chair or vice chair)
 - 2* of these paid every board member
 - With one exception, payments to chairs averaged £23,372*
 - Payments to all other non-exec board members were between £5,000 and £18,000*.
- 13* paid executive trustees (e.g. chief executive or minister)
- Housing and religious charities stand out as separate sub-groups

* *These figures have been updated following subsequent research after the seminar – see [‘Key findings from recent research into trustee payments’](#) for full details.*

Trends amongst large charities



- 1442 charities with incomes over £5m (overseen by Large Charities Division)
- Of these, 41* trustee payment cases considered in just over two years (nb. number of cases may be higher than number of charities involved)
- Only some related to payments for being a trustee - in past two years, 7 charities given power to remunerate trustees for their role as trustee
- LCD currently have 6 remuneration cases open (as at 1 February)

* *These figures updated since the November seminar – see ['Key findings from recent research into trustee payments'](#) for full details.*

What our other casework tells us



- Commission opens around 1,300 cases per year relating to remuneration – this includes expenses, payment for services, general queries, as well as requests for authorisation for being paid for being a trustee
- 2005/06 Annual Returns showed charities with income over £250,000 paid out total of £46.6 million to trustees
- Equates to 0.14% of total expenditure of these charities
- 38% of this amount is paid out on expenses (£4,100 p.a. average)

nb. figures correct at time of writing. See [‘Key findings from recent research into trustee payments’](#) for further details.

Questions for later



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1. Does remuneration have consequences for the voluntary ethos of the sector?
2. Can charities continue to recruit trustees with the required expertise without offering remuneration?
3. Is the diversity of boards enhanced by trustee remuneration?
4. Does trustee remuneration have an impact on the public's perception of the sector? If so, what do you think that impact is?
5. Trustees who are paid may have a higher duty of care – what do we understand by this? [_](#)