

A Guide to Corporate Foundations



The Charity Commission

The Charity Commission is the independent regulator of charities in England and Wales. Its aim is to provide the best possible regulation of charities in England and Wales in order to increase charities' effectiveness and public trust and confidence. Most charities must register with the Commission, although some special types of charity do not have to register. There are some 190,000 registered charities in England and Wales. In Scotland the framework is different, and the Commission does not regulate Scottish charities.

The Commission provides a wide range of advice and guidance to charities and their trustees, and can often help with problems. Registered charities with an annual income of over £10,000 must provide annual information to the Commission. The Commission has wide powers to intervene in the affairs of a charity where things have gone wrong.

More information about the Commission together with a range of guidance for charities can be found on our website www.charitycommission.gov.uk, or by contacting Charity Commission Direct:

Telephone: **0845 300 0218**

Typetalk: **0845 300 0219**

By post: **Charity Commission Direct**
PO Box 1227
Liverpool
L69 3UG

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A1. What is this guidance about?

The Charity Commission is the independent regulator of charities in England and Wales. Our aim is to provide the best possible regulation of charities in England and Wales in order to increase charities' effectiveness and public confidence and trust. The Commission provides a wide range of advice and guidance to charities and their trustees, and can often help with problems. We have wide powers to intervene in the affairs of a charity when things have gone wrong. We also have a number of statutory duties, one of which is to act in a way which is compatible with the encouragement of all forms of charitable giving.

This guidance is about charitable corporate foundations – charities established by commercial companies. This is just one of the ways in which commercial companies can engage in or support charitable giving. Others include one-off gifts, sponsorship of chosen charities, payroll giving and workplace volunteering schemes. A charitable corporate foundation will typically receive most of its income from the company. This income may come from:

- investment income on assets originally given by the company;
- regular donations from the company;
- an endowment linked to a company's profits;
- a gift of shares; or
- money raised by the company's customers or employees.

Some companies also provide 'in-kind' support – for example office space, seconded staff, IT equipment or business expertise.

There are over 100 corporate foundations in England and Wales benefiting the public in a variety of ways. Their activities range from tackling domestic violence and rehabilitating young offenders through to developing solutions

to environmental and healthcare challenges around the world. Corporate foundations can provide:

- a structure and focus for corporate giving;
- a means of engaging with the voluntary sector; and
- the opportunity to share and apply expertise in an effort to tackle challenging social issues.

Many corporate foundations are high-profile, sharing the name of the company that set them up, and can have a significant amount of media exposure. There can be reputational benefits for the company and the corporate foundation from their association.

Through its work the Commission identified a range of common issues facing corporate foundations. As a result, we organised a seminar at which charity trustees and employees of these charities discussed their experience of managing their charity and the opportunities and challenges this presents.

This document is our follow up to the seminar. It is aimed at existing corporate foundations, the companies that set them up and those who may be thinking of setting up a corporate foundation in the future. However, the legal requirements and good practice recommendations outlined below are also applicable to other charities.

Each section signposts existing Commission guidance that provides more detailed information about the issues identified at the seminar and through our work with corporate foundations. The document also includes a number of case studies. They present the Commission's views on some common questions for corporate foundations. The final section provides links to other organisations that provide advice, training and other resources.

This document is intended to be a summary of the law, rather than a detailed statement of the law with all the fine distinctions that can apply in diverse, individual cases.

A2. 'Must' and 'should': what we mean

In this guidance, where we use '**must**', we mean it is a specific legal or regulatory requirement affecting the trustees of a charity. Trustees must comply with these requirements.

To help you easily identify those sections which contain a legal or regulatory requirement we have used the **L** symbol next to that section.

We use '**should**' for items we regard as minimum good practice, but for which there is no specific legal requirement. Trustees should follow the good practice guidance unless there is a good reason to depart from it.

A3. Some technical terms used

Conflicts of interest

A conflict of interest is any situation in which a trustee's personal interests may, or may appear to, influence or affect the trustee's decision making.

Conflicts of loyalty

Conflicts of loyalty are situations in which, although the trustee does not stand to gain any benefit as a result of a particular transaction, their duty to the body which appointed them, another organisation, another charity of which they are a trustee, or to a member of their family or other connected person may (or may appear to) influence or affect their decision making.

Endowments

Endowments in the context of this guidance are funds set up to provide income used to further the charity's purposes.

Governing document

Governing document means a legal document that sets out the charity's purposes and, usually, how it is to be run. It may be one or more of the following: trust deed, constitution, articles of association, will, conveyance, Royal Charter, Scheme of the Commission, or other formal document.

Independence

Charitable corporate foundations must be independent of the companies that set them up. This means that they must exist only to further charitable purposes for the public benefit and not the purposes of the company. This is not just a requirement at the point when a body is registered as a charity; charities must only act to further their charitable purposes throughout their existence.

Independence is also about the charity trustees exercising their responsibilities in the best interests of the charity. This is set out in more detail in section D.

Public benefit

Public benefit is the legal requirement that every organisation set up for one or more charitable purposes must be able to demonstrate that its purposes are for the public benefit if it is to be recognised, and registered, as a charity in England and Wales. See our guidance, *Charities and Public Benefit*.

Trustee

The term 'trustee' means charity trustee. Charity trustees are responsible for the general control and management of the administration of the charity. In the charity's governing document they may be known as trustees, directors, board members, governors or committee members.

B

Setting up a corporate foundation

B1. Factors to consider if you are a company thinking of setting up a corporate foundation

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- Establishing a corporate foundation is one of the options available to a company thinking about how to donate to charity, perhaps as part of its corporate social responsibility programme. In deciding to set up a corporate foundation consideration should be given to the fact that the foundation must be set up only to further charitable purposes for the public benefit. For further information about registering a charity and the legal and regulatory framework in which they operate please see *Registering as a Charity* (CC21).
- If the company wants to set up an organisation which has the purpose (even in part) of promoting the interests of the company, for example as a public relations exercise, then such an organisation cannot be a charity. A charity has to be established for exclusively charitable purposes. Whilst there is no objection to the company's corporate social responsibility (CSR) policy and the purposes of the charity coinciding, the company cannot have a controlling influence.

There are two key principles of charity law which are particularly relevant when setting up and running a corporate foundation:

- a charity must have exclusively charitable purposes for the benefit of the public; and
- the trustees must act in the best interests of the charity, rather than the company.

The following list includes some of the factors that the Commission would consider when deciding whether or not a corporate foundation is established for exclusively charitable purposes.

Whether the trustees would:

- be able to negotiate and agree funding terms with the company that would enable the charity to further its charitable purposes; explain how any proposed funding condition might affect this; and ultimately decline funding that was subject to conditions that were not in the charity's interests;

- be free to make their own decisions on matters outside the scope of funding arrangements with the company;
- be able to take their own legal and financial advice;
- draw up their own policies and business plan;
- conduct arms-length negotiations with the company;
- manage conflicts of interest eg a trustee who was subject to a conflict of interest would not participate in discussions and would not count in the quorum;
- be able to preserve and exercise their discretion to select beneficiaries and provide services (whilst complying with any conditions of funding from the company which the trustees had accepted as being in the charity's interests);
- not commit themselves simply to giving effect to the policies and wishes of the company; and
- not agree to conditions that undermined the confidentiality of their discussions (such as the presence at their meetings of an observer from the company).

As a charity must be established and operate for the public benefit, the organisation would also need to be able to demonstrate that any private benefit to the company (for example by participating in a joint advertisement) is a necessary result or by-product of carrying out the charity's purposes (see section F12 of our guidance *Charities and Public Benefit*).

This is not an exhaustive list and there are likely to be other examples, depending on the nature of the corporate foundation and its arrangements with its founder. If an organisation had few, or none, of these characteristics, it is unlikely that it would be established for exclusively charitable purposes.

Case study

A company provides funding to the foundation on an annual basis. It has informed the charity that it wants the charity's activities to be in keeping with the priorities the company identified in its corporate social responsibility (CSR) programme. This will be included in their annual CSR report. It is also considering whether to attach other conditions to the next round of funding for the foundation.

Corporate foundations are legally separate organisations from the company with their own charitable purposes, governance and executive structures. This does not prevent a charity's trustees deciding to undertake work that may be commensurate with a specific corporate social responsibility programme, but only if it furthers the charity's purposes for the public benefit and is in the best interests of the charity. A real or perceived threat to the independence of a charity could have a negative impact upon the reputation of the charity and its company donor.

As a donor, the company can attach conditions to any donation it makes about how the money is to be used. Ultimately it is for trustees to decide whether the conditions still allow the money to be applied in furtherance of the charity's purposes and whether it is in the best interests of the charity to accept any conditions attached. It will be necessary for them to consider whether the conditions would interfere with their ability to make decisions that are in the best interests of the charity. There may be reputational impacts on the charity and the company if projects supported before the conditions were in place can no longer be supported. Similarly, although the company could include the charity's activities in its annual CSR report, it should be made clear that the charity is a legally separate organisation, taking its own decisions. The diversification of funding streams can help to alleviate this problem and also place the charity on a more secure financial footing.

B2. Some practical issues that can arise

Appointment of trustees

The company may seek to include the right to appoint trustees to the new corporate foundation and to maintain this right throughout its existence under the terms of the new corporate foundation's governing document. In principle, there is nothing wrong with this. The company may be well-placed to identify individuals that would make a positive contribution to the corporate foundation. However, the company must exercise that power by selecting the individuals best suited to carry out the responsibilities of trusteeship. Those appointed by any third party to be trustees of a charity – like all charity trustees – must act solely in the best interests of the charity and not in the interests of the organisation that appointed them.

Names

Corporate foundations may take all or part of their name from their founding company. They sometimes use the company's logo too, for example on the charity's publications. Corporate foundations and companies must be aware that even if they share similar names and logos, they are separate entities with different interests and objectives and must act solely in the interests of their respective organisations. Charities with an income of over £10,000 are required to make it clear in certain written or electronic communications that they are a registered charity (section 5 of the Charities Act 1993). It may also be helpful to clarify that the foundation is a separate body for the avoidance of any doubt.

In deciding a name (including whether to incorporate the name of the company) the trustees must act in the best interests of the charity. For a corporate foundation, using their

founding company's name can be beneficial. Having a well-known brand as part of the charity's name and using its logo can help to attract interest in the charity and its activities. However, in using a company's name and logo, corporate foundations must be mindful of the legal implications that can arise, for example intellectual property issues. They should also consider the wider reputational risks that could arise from use of the shared name. Clearly a

company's reputation may be enhanced through its association with a charity, but the trustees must ensure that they continue to only act in the best interests of the charity.

We recommend that corporate foundations and companies seek professional advice, but one way in which the risk might be managed is to have licence agreements in place that set out the terms on which names and logos can be used.

Case study

Charity x has a trustee body made up of six independent trustees (ie they have no connection to the company) and two trustees appointed by the company that set up the charity. At a trustee meeting, one of the appointed trustees (who is also an employee of the company) informs the board they have recently spoken to the Chief Executive of the company, and they have suggested that the charity should use one of the company's preferred suppliers.

All trustees have a duty to act in the best interests of the charity. Trustees are also under a duty of prudence which means that they must ensure that charitable funds and assets are used reasonably. Therefore using one of the company's preferred suppliers may be to the charity's advantage, for example if a better rate can be achieved for the charity.

Any decision related to the application of the charity's funds is a matter for the trustees. Individual trustees who have a conflict of loyalty need to manage this conflict carefully and follow any relevant provisions in the charity's governing document and, if the charity is a company, the Companies Act 2006 (refer to Conflicts of Loyalty section below for further information). The trustees will also need to consider whether there is any private benefit to the company from the arrangement, for example if a better rate would also be achieved by the company and be satisfied that any private benefit is a necessary result or by-product of carrying out the charity's purposes.



Factors to consider if you are running an existing corporate foundation

C1. Independence



The principle of independence continues when a corporate foundation has been set up. Trustees must always exercise independent judgment and properly manage any conflicts of interest. This is particularly important for corporate foundations, where the company may seek to influence or direct its decision making. There are reputational risks for the corporate foundation (and potentially the company) if the public perceive that the corporate foundation is for the benefit of the company rather than the public.

C2. The role of trustees



As for any charity, the trustees of a corporate foundation must accept ultimate responsibility for directing the affairs of a charity, and ensuring that it is solvent, well-run and delivering the charitable outcomes for which it has been set up. Trustees acting prudently, lawfully and in accordance with the governing document can normally use the charity's resources to meet any liabilities. However, if the trustees act imprudently, or are otherwise in breach of the

law or the governing document, they may be personally responsible for liabilities incurred by the charity, or for making good any loss to the charity. For more information on the duties and responsibilities of trustees, including liability, see our publication *The Essential Trustee: What you need to know* (CC3).

C3. Conflicts of interest

It is good practice to have provisions in the charity's governing document to manage conflicts of interest. This should include measures to ensure that conflicted trustees should not participate in discussions or be included in any quorum or vote. It is also good practice to have a conflicts of interest policy whether or not conflict of interest provisions are included in the governing document. This might include declaring interests and keeping a register of interests.

L If a trustee will receive a benefit from their charity they must have express legal authority to do so. 'Benefit' includes any property, goods, or services which have a monetary value, as well as money. For further information please see our guidance *Trustee Expenses and Payments* (CC11).

Case study

Charity x has a trustee body made up of ten independent trustees and four trustees appointed by the company that set up the charity. One of the appointed trustees (who is also a senior employee of the company) knows that the charity's funding from the company is going to be stopped over the next year. However the charity is meeting to decide what contracts it is going to enter into for the next three years.

A trustee must act only in the best interests of the charity. Where a trustee is a privy to information that could have an impact upon the charity they would need to consider this very carefully. If the information about the company is confidential then they will need to consider whether they can properly continue to act as a trustee; they may need to resign from their position as a trustee rather than make decisions where they have a conflict of interest/loyalty.

C4. Conflicts of loyalty

A conflict of loyalty can arise in situations where, although the trustee does not stand to gain any benefit as a result of a particular transaction, their duty to the body which appointed them may (or may appear to) influence or affect their decision-making. For example, the trustee bodies of corporate foundations sometimes include employees of the founding company. In some instances, the founding company will pay the salaries of the foundation's staff and/or provide funding for core services.

L Many corporate foundations are established as charitable companies. Although the Commission always considered that directors of charitable companies (as for all charities) had to manage conflicts of interest, since 1 October 2008 directors have had a specific statutory duty to avoid a situation in which they have, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company.

Trustees appointed by another organisation have exactly the same duties and responsibilities as other trustees. They must act independently of the organisation which appointed them and act only in the best interests of the charity.

Further information on conflicts of interest/loyalty and managing them is available on our website in *A Guide to Conflicts of Interest for Charity Trustees*.

See also *Charitable Museums and Galleries: A guide to conflicts of interest policies, trustee benefits and transactions between trustees and charities*. Whilst the guidance is intended principally for charitable museums, galleries and libraries, the legal requirements and good practice recommendations are also applicable to other charities.

Case study

A corporate foundation is set up and funded by a company that sells products to businesses and to the general public. The company wants to use the foundation's database of charity contacts for its own direct marketing purposes. The intention is that the company will approach these contacts directly, referring to a 'donation' having been made to them by the company (when in fact the donation has come from the foundation) and suggesting they might be interested in buying some of the company's products or services.

In these circumstances, the trustees of the foundation should consider:

- The Data Protection Act 1998. The trustees will need to seek their own legal advice about whether it would be a breach of the Act to process information in this way. Clearly, the trustees must not undertake any action which is unlawful.
- If processing the information is lawful, the trustees would need to consider whether it is in the best interests of the charity to do so. It would be relevant to consider the relationship of trust built up between the charity and its beneficiaries, the fact that the proposed statement is misleading and the private benefit passing to the company. In these circumstances, it is difficult to see how the trustees could decide that this would be in the charity's interests.

C5. Funding

A company that sets up a charity often provides the corporate foundation's main source of income. This may take the form of an annual donation and/or gifts in kind and other services. It is for the trustees to decide how to apply the charity's funds in furtherance of the charity's purposes. However, it is legitimate for the founder to make donations to the corporate foundation with conditions attached. It is then for the trustees to decide whether such conditions will allow the donation to be applied in furtherance of the corporate foundation's charitable purposes, and whether it is in the foundation's interests to accept donations on those terms.

Particular difficulties can arise if the conditions attached (either expressly or implicitly to a donation or service) would cause the trustees to act outside of the corporate foundation's purposes or restrict their ability to make their own decisions solely in the interests of the corporate foundation. Examples of such conditions might include rights to nominate particular clients or beneficiaries or the ways in which beneficiaries are selected. There may be circumstances where it is not appropriate for the charity to accept the funds.

L Trustees are responsible for deciding how their charity's funds are applied. They must not accept any terms or conditions that would cause the charity to act outside its charitable purposes or contrary to the terms of the governing document.

Trustees should consider the charity's income sources and have a strategy in place to raise funds. They should actively seek to diversify the charity's income sources as far as possible and look to actively mitigate the risks to the charity of a single corporate donor.

Where the charity has a principal funder, suitable terms of reference/memoranda of understanding should be agreed. This will make it clear whether the support provided by the company is by way of a loan or donation. These documents should be separate from the charity's governing document/s. Memoranda of understanding may also be useful in setting out other aspects of the relationship between the charity and company – eg how they refer to each other on websites or at joint events.

L If the charity owns shares in the company, as part of their investment responsibilities, the trustees should still consider diversification of the charity's assets on a regular basis. This is a legal requirement if the trustees are exercising the powers of investment in the Trustee Act 2000.

Case study

The Commission is contacted by a member of the public who claims that charitable funds are being used to subsidise a company owned by the individual who founded the charity. They also allege that the charity is providing grants in countries that the company is looking to expand into.

A charity's funds must be applied in furtherance of its purposes and not used for any other purpose. It would be difficult to see how subsidising the company would further the charity's purposes. The only basis for doing so would be if the proper investment criteria was followed and the conflict of interest was managed. Providing grants may further the charity's purposes but in this case the private benefit to the company may be more than incidental. The Commission may need to use its powers to intervene in order to protect the charity, its assets and beneficiaries.

C6. Agreements

Where a corporate foundation enters into an agreement with a company it is important that they have a clear understanding of the terms on which they enter into it. Any agreement should be documented so that the charity knows what it is entitled to and what it is responsible for.

This includes:

- Funding. Trustees should be clear about the conditions upon which they receive funding – eg whether it is a donation or a loan and whether there are any specific conditions attached.
- Seconded employees. Some companies provide support by having employees seconded to a charity. The charity should

have an agreement with the company that sets out the terms of employment and who has contractual responsibility for that individual.

- Use of premises and equipment. Where an external party provides a charity with access to its premises and/or equipment the terms should be documented and agreed between the two parties – eg how long the charity can use the facilities, the length of the notice period and whether they have any legal responsibility for the maintenance and upkeep of the building.

Case study

A company wants the foundation it has set up to support its marketing promotions. The idea is for the foundation to make a donation to charity for every new product sold by the company.

Charities can work with companies on joint promotions to fundraise for the charity and will need to consider the implications of Part II of the Charities Act 1992 and the Charitable Institutions (Fund-raising) Regulations 1994. However, in this instance because it is the foundation making the donations to charity rather than the company the foundation should explain to the company that this is a marketing exercise intended to benefit the company through sales of company products and therefore the private benefit is more than incidental. It would not be appropriate for the charitable foundation to participate in this scheme.

For further information, refer to our guidance *Charities and Commercial Partners*.

C7. Confidentiality

L Trustees must be able to discuss the charity's business independent of external influences. Provisions in a charity's governing document (or funding agreement) that inhibit confidential discussion by the trustees may indicate that the charity is not independent – eg where a charity's governing document allows representatives of the founding company (who are not trustees) to be present at trustee meetings. If applicable, regulations should be drawn up providing for third parties to be present at trustee meetings in certain circumstances, specifying the basis on which they may attend and the limits of their participation.

L Trustees should be aware of their duties concerning information they receive in their role as a trustee. They may use knowledge gained in their role as a trustee to benefit themselves or other organisations, but they must not do so if it has been given in confidence or is not available to the general public and has special value.

Trustees should review the charity's structure and governing document regularly to ensure they are suitable, up to date and an effective means by which to further the charity's purposes.

D

Further information and advice

D1. Related Commission publications

Some of these publications cover specific subject areas, but many of the legal requirements and good practice recommendations are also applicable to other charities.

The Essential Trustee: What you need to know (CC3)

The Essential Trustee: An introduction (CC3a)

The Hallmarks of an Effective Charity (CC10)

Charities and Fundraising (CC20)

Registering as a Charity (CC21)

Choosing and Preparing a Governing Document (CC22)

Finding New Trustees: What charities need to know (CC30)

Complaints about charities (CC47)

Charitable Museums and Galleries: A guide to conflicts of interest policies, trustee benefits and transactions between trustees and charities

The Independence of Charities from the State (RR7)

Charities and Commercial Partners

Most of our publications are available in both HTML and PDF format on our website www.charitycommission.gov.uk.

If you wish to receive printed copies of any of our publications, please call Charity Commission Direct on **0845 300 0218** between 08:00 and 20:00 weekdays and 09:00 and 13:00 on Saturdays (except national holidays). We also have a typetalk service on 0845 300 0219 for hearing or speech impaired callers.

Alternatively, write to:

Charity Commission Direct
PO Box 1227
Liverpool L69 3UG

D2. External publications

Corporate foundations - Building a sustainable foundation for corporate giving (2003, Business in the Community)

The Changing nature of corporate responsibility- what role for corporate foundations? (2007, The SMART Company for Charities Aid Foundation)

D3. External organisations

Association of Chief Executives of Voluntary Organisations (ACEVO)

The membership body for chief executives of voluntary organisations. ACEVO works to connect, develop and represent the sector's leaders.

Association of Chief Executives of Voluntary Organisations

1 New Oxford Street
London WC1A 1NY

Tel: 0845 345 8481

Fax: 0845 345 8482

Email: info@acevo.org.uk

Website: www.acevo.org.uk

Association of Charitable Foundations (ACF)

ACF is a membership organisation for trusts and foundations in the UK. Their aim is to provide a framework in which trusts and foundations can learn from each other's experience, explore matters of common concern and achieve good practice in grant-making.

ACF (Association of Charitable Foundations)
Central House
14 Upper Woburn Place
London WC1H 0AE

T: 020 7255 4499

Email: acf@acf.org.uk

Website: <http://www.acf.org.uk/>

Charities Aid Foundation (CAF)

CAF is a charity that focuses upon transforming the way donations are made and the way charitable funds are managed. It has produced a number of reports related to corporate foundations and the specific issues that they face.

CAF (Charities Aid Foundation)
25 Kings Hill Avenue
Kings Hill
West Malling
Kent ME19 4TA

T: 01732 520 000

Email: enquiries@cafonline.org

Website: <http://www.cafonline.org/>

National Council for Voluntary Organisations (NCVO)

NCVO produces a wide range of information and support services for those working in the voluntary sector.

National Council for Voluntary Organisations
(NCVO)
Regents Wharf
8 All Saints Street
London
N1 9RL

T: 020 7713 6161

Email: ncvo@ncvo-vol.org.uk

Website: www.ncvo-vol.org.uk

Office of the Scottish Charity Regulator (OSCR)

OSCR regulates charities operating in Scotland.

Office of the Scottish Charity Regulator (OSCR)
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9 Riverside Drive
Dundee
DD1 4NY

T: 01382 220446

Email: info@oscr.org.uk

Website: <http://www.oscr.org.uk/>

Notes

This publication can also be accessed at the Charity Commission's website: www.charitycommission.gov.uk

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