

# Charity law duties and responsibilities

## What we expect of charity trustees

The UK's legislative framework for preventing, protecting and pursuing terrorists and those who support terrorist organisations is complex. Terrorist activity is a crime and charities need to be aware that concerns about terrorist abuse and activity are considered in the UK in that context. Some terrorist-related activities are dealt with under existing criminal legislation, for example, fraud, theft, public order, drugs, forgery and counterfeiting laws.

These laws impact upon charities and their trustees as they do upon all other organisations and individuals in the UK. Trustees are custodians of their charities. They are publicly accountable, and have responsibilities and duties to safeguard their charity and its beneficiaries. Charity trustees' duties under charity law are explained further in *The Essential Trustee: What you need to know (CC3)*.

It is important that charities are transparent and that trustees have appropriate monitoring procedures in place. Charitable donors are entitled to have confidence that their money is going to legitimate causes and reaches the places it is intended to.

- **L** Charity trustees must ensure they and their charity comply with UK laws including counter-terrorism laws.

Where allegations of criminality arise, these will be for the police and law enforcement agencies to assess. The Commission's role and concerns relate to the lawful exercise by the trustees of their duties and responsibilities and ensuring charity is protected.

Deciding to carry out or knowingly supporting any activities that would be criminal, illegal, or otherwise improper for a charity would amount to misconduct on the part of the trustees. So if trustees allowed a breach of counter-terrorism laws to occur during the course of carrying out their role, then aside from any possible criminal investigation, this is likely to amount to misconduct in the administration of the charity. We would have concerns about whether they had properly discharged their charity law duties and responsibilities and would also be concerned about ensuring the charity is properly safeguarded.

It is particularly important to ensure that the charity is not used to commit any criminal offences under counter-terrorism legislation. Where a trustee is convicted for terrorist offences, whether or not this is in their role as charity trustee and whether or not the events directly involved the charity, their link to the charity means this is corrosive to public trust and confidence in charity.

Trustees must also ensure that they fulfil any obligations under UK or international law regarding the reporting of suspicions of terrorist or criminal activity.

- **L** Charity trustees must prevent any misuse of charity funds or assets.

Exploitation by terrorists and criminals of a charity is serious abuse of charity, whether this concerns abuse of assets (eg charity funds), or misuse and exploitation of its name. If trustees know about this, or ought to if they have been vigilant, but do not take any action, they would be failing in their duties as trustees and would not be acting with integrity.

A charity must not provide funding or support to a partner organisation that exposes beneficiaries to activities which directly, or indirectly, promote terrorism. This is so, even if the charity's funding or support were used for legitimate humanitarian aid or other charitable activities. Aside from the risks of committing criminal offences under UK legislation, this is also likely to amount to misconduct on the part of the trustees in managing and administering the work of the charity.

- **L** Trustees must ensure that charitable funds and assets are used reasonably and properly, and only in furtherance of the charity's objects.

Charity trustees are under a legal duty to act in the best interests of the charity. Trustees must act reasonably and prudently in all matters relating to the charity and must always bear in mind that their prime concern is the charity's interests. The use of charity money or property to support criminal purposes, including terrorist purposes, is not a proper use of those funds and is in breach of charity law. It is not acceptable for charities to carry out activities that are criminal, or in the sphere of criminality at risk of prosecution.

- **L** Charities must avoid undertaking activities that may place their funds, assets or reputation at undue risk.

This duty applies in a number of ways. Charity trustees must consider and manage risks to charity property. Charities can take risks, however, in order to fulfil their duties, trustees must implement realistic and reasonable risk management strategies to identify and mitigate risks to the charity's funds and assets. These should be relevant and proportionate given the charity's activities and nature of its operations. Risks may take a number of forms, including operational, financial, reputational and external, as well as compliance with the law and regulations.

Trustees must also exercise overall control over their charity's financial affairs and ensure proper financial records are kept. They should ensure that the way the charity is administered is not open to abuse by unscrupulous associates, employees or partners and that the charity's systems of control are rigorous and constantly maintained. When choosing partners to work with, trustees must conduct proper due diligence checks to ensure that they are appropriate partners for them to work with and take reasonable steps to ensure the charity's funds will be properly used, ensuring their use is monitored.

- **L** Trustees must use reasonable care and skill when carrying out duties.

This applies to both the trustees' own conduct and how they deal with concerns. In terms of their own conduct, expressing strongly controversial or partisan views on a particular issue may compromise the charity's integrity, purposes or activities and may make it unsuitable for an individual to act as a trustee of that charity. This is regardless of whether those views are held or expressed in a personal capacity. Such views may conflict with the individual exercising their objective judgement in the interests of the charity and may interfere with the individual's ability to properly manage the potential harm to public confidence in their charity, and create risks to the charity's operations. In particular it may undermine the charity's ability to deliver services to its beneficiaries.

Trustees must not engage in conduct or activities which would lead a reasonable member of the public to conclude that the charity or its trustees were associated with a proscribed organisation or terrorism in general.

When dealing with concerns which are raised, the greater the risks, the more important it is the trustees can show they have discharged their duty of care. The greater the risks and impact, the higher the duty of care is likely to be.

The risks will vary depending on what activities the charity carries out. For example, there have been incidents where terrorism-related training has occurred within the UK, sometimes using the facilities of otherwise legitimate organisations providing outdoor terrorist training activities. If a charity hires out these kinds of outdoor facilities, its trustees must be aware of the need to carefully scrutinise their customer and beneficiary base and report any suspicions they have.

Trustees should consider getting external professional advice on matters where there may be material risk to the charity, or where the trustees may be in breach of their duties. In higher risk situations, it will be difficult to see how they could show they have discharged their duties without doing so.

## Summary

- Trustees must comply with the law, including counter-terrorism legislation;
- The Commission expects trustees to be vigilant to ensure that a charity's premises, assets, staff, volunteers or other resources cannot be used for activities that may, or appear to, support or condone terrorist activities;
- Trustees must ensure that proper and adequate procedures are put in place and properly implemented to prevent terrorist organisations taking advantage of a charity's status, reputation, facilities or assets;
- Where a charity's activities may give, or appear to give, support to any terrorist activity, the Commission expects the charity's trustees to take immediate steps to dissociate the charity from the activity;
- Charity trustees should take all necessary steps to ensure their activities or views cannot be misinterpreted. The Commission expects trustees to ensure their charitable activities and conduct are open and transparent, and that they do not place the charity at undue risk;
- Charity trustees must ensure they exercise proper control over the charity's financial affairs and safeguard its assets; and
- We expect any person connected with a charity, whether a trustee, employee, volunteer, or beneficiary, to deal with the concerns of a charity's possible links with terrorism responsibly, and to bring this to the attention of the police and the Commission immediately.

Further information on trustees' duties can be found in [CC3 - The Essential Trustee: What You Need to Know](#), the [Trustee Act 2000](#) and the [Charities Act 2006](#) and [Reporting Serious Incidents](#) guidance.