



CHARITY COMMISSION  
FOR ENGLAND AND WALES

GUIDANCE

## It's your decision: charity trustees and decision making (CC27)

---



# Contents

1. Introduction	2
2. Principles for good decision making - in more detail	5
3. Other things to think about	9
4. Why it's important to follow this guidance	13
5. Sources of further information	15

# 1. Introduction

## 1.1 What is this guidance about and who does it apply to?

This guidance explains in detail how charity trustees should approach making decisions affecting their charity. For a quick summary, see **Charity meetings: making decisions and voting**.

The principles in this guidance should inform trustees' approach to decision making generally. It is important to apply them when making significant or strategic decisions, such as those affecting the charity's beneficiaries, assets or future direction. The Charity Commission doesn't expect trustees to follow them step-by-step for minor decisions.

You can also find out about some of the legal and practical things that trustees need to do to make sure that decisions are properly made and recorded.

The guidance applies to trustees of all charities in England and Wales, registered, unregistered or exempt. This includes corporate charity trustees.

## 1.2 Trustees and decision making - introduction and summary

### What are the principles of trustee decision making?

Legal requirement: these are the principles that the courts have developed for reviewing decisions made by trustees. Trustees must:

- act within their powers
- act in good faith and only in the interests of the charity
- make sure they are sufficiently informed
- take account of all relevant factors
- ignore any irrelevant factors
- manage **conflicts of interest**
- make decisions that are within the range of decisions that a reasonable trustee body could make

They must be able to show how they have followed these principles. The commission explains the principles in more detail in section 2 of this guidance.

The principles are interdependent. For example, managing conflicts of interest is also part of using correct procedures, acting in good faith and disregarding irrelevant factors. You can only be confident that your decision is within the range of decisions that a reasonable trustee body could make if you have followed the other principles.

Following good practice principles in governance will also support effective decision making and help ensure that the charity complies with the law.

### Why is it important to follow this guidance?

Charities are independent. The trustees are responsible for governing the charity and making decisions about how it should be run. Making decisions is one of the most important parts of the trustees' role. Some decisions are simple and straightforward; others can be complex or far reaching in their consequences. Trustees can be confident about decision making if they understand their role and responsibilities, know how to make decisions effectively and are ready to be accountable to people with an interest in their charity.

The commission cannot run charities or act on the trustees' behalf. It expects, trusts and supports trustees to make the best decisions they can for their charity. Where it can, the commission will help trustees to get things back on track if something goes wrong despite their best efforts. The commission will only use its regulatory powers where, in line with its **risk framework**, it identifies that it is appropriate to do so.

Following the principles of decision making will:

- help trustees to ensure they act within their powers and charity law
- allow trustees to be reimbursed by the charity for the costs and expenses of carrying out the decision
- help the trustees to show that they have acted properly
- help to protect trustees if something goes wrong
- If trustees don't follow the principles of decision making:
  - they could be responsible for financial loss or reputational damage to the charity
  - their decision could be invalid, or might have to be reversed
  - they could open the charity to the risk of legal action, and themselves to the risk of personal liability
  - the commission might have to get involved and use its powers to protect the charity's property and put things right

### **What else do trustees need to think about when making decisions?**

Trustees must take decisions in a way that meets the requirements of charity law and their governing document. This includes:

- following any specific requirements in the governing document about making decisions and conducting meetings
- taking decisions jointly (collectively), making sure all trustees have the opportunity to participate
- if using a power to take decisions outside of a meeting, strictly following the provisions of this power
- if delegating to staff or sub-committees, having clear and robust reporting procedures and lines of accountability in place
- recording decisions properly, so there is no doubt about what was decided and why

For more detail, see section 3 of this guidance, which also explains what to do if a trustee disagrees with a decision, and how members and employees can be involved in decision making.

### **When do trustees need to ask the commission for advice?**

Trustees can get advice or guidance to inform their decisions from a range of sources, including the **GOV.UK** website. Trustees should feel confident about following its guidance and applying it to their situation; they do not need to check their understanding with the commission.

There are a few situations when trustees do need to contact the commission, because only it can give the advice or permission they need, or because it is in the charity's interests to ask for specific advice. Section 3.8 of this guidance explains more about these situations, and where to get more information.

## 1.3 Some terms used in this guidance

The word 'must' is used where there is a specific legal or regulatory requirement that you must comply with. 'Should' is used for minimum good practice guidance you should follow unless there's a good reason not to.

Charities Act: means the Charities Act 2011.

Beneficiary or beneficiaries: means a person or group of people eligible to benefit from a charity's work. A charity's potential beneficiary group is usually defined in its governing document. Some charities call their beneficiaries clients or service users.

Governing document: means the legal document that sets out a charity's objects and, usually, how it is administered. It is usually a trust deed, constitution, or articles of association. Otherwise it could be a conveyance, will, Royal Charter, scheme of the commission or some other formal document.

Trustee means a charity trustee: charity trustees are the people who have overall responsibility for governing the charity. They decide its strategy and direct its management. They may be called trustees, the board, managing trustees, the management committee, governors, directors, or something else. The Charities Act defines them as trustees because of their responsibility.

Professional trustee: means someone (such as a solicitor or accountant) who is a trustee as part of their business or profession. It would also include a trustee who has (or claims to have) specialist knowledge or experience of something.

In the (best) interests of the charity: means in the (best) interests of carrying out the charity's objects, both now and in the future. It does not mean the interests of the charity as an entity in itself (charities do not exist in order to perpetuate themselves). Nor does it mean the personal interests of its trustees, staff or members.

Property: means a charity's assets, including land and buildings, money, investments, vehicles and equipment.

A reasonable person (sometimes called a prudent business person): is a test based on what the courts would expect an informed and responsible person to do in a situation. To act 'reasonably' means to act in this way.

A suitably qualified person or adviser: is someone who the trustees could reasonably expect to be competent to advise them about a particular matter. This includes professional advisers (such as solicitors, accountants and surveyors). It could also include a member of the charity's staff, a professionally qualified trustee or an adviser from an umbrella body or another charity.

Stakeholders: are people who have an interest in the charity. This could include beneficiaries, supporters, members, staff and funders.

## 2. Principles for good decision making - in more detail

This section explains in more detail the principles of decision making that are summarised in section 1.2.

### 2.1 How do trustees act within their powers?

Legal requirement: trustees must only make decisions that are consistent with their charity's objects and powers. These powers come from the law and the charity's governing document. If trustees are not sure about their powers they should take advice from the commission (including by reading its guidance) or from a suitably qualified person.

Some powers may have conditions or restrictions attached, or specify procedures that the charity must follow. Trustees must be careful to abide by any conditions or procedures that apply to a power. Trustees must not use powers for purposes for which they weren't intended, for example, to get around another rule in their governing document. To deliberately misuse a power would be a breach of their duty to act in good faith (see section 2.2).

Correct procedures include checking that the trustees have been properly appointed and are able to act in accordance with charity law and the governing document. See sections 5.3 and 5.4 of **The essential trustee (CC3)**.

It also includes identifying and managing conflicts of interest, and if necessary, obtaining permission from the commission for a conflict or a benefit to a trustee (or a person connected with a trustee). See the commission guidance **Manage a conflict of interest in your charity**.

### 2.2 What does it mean to act in good faith?

'Good faith' means genuine, honest intention or motives; trying to do the right thing, in the interests of the charity. In contrast, the opposite would be bad faith. Bad faith could include:

- acting in a way that the trustees didn't honestly believe was in the interests of the charity
- intentionally benefiting someone in a way that is not in the charity's interests
- deliberately using a power for a purpose for which it was not intended

If trustees have acted in bad faith:

- they may not be entitled to reclaim from the charity any associated expenses that they have incurred
- their decision could be challenged in law (see section 4.2)
- the commission might need to become involved (see section 4.3)
- the trustees might have to repay the charity for any losses they had caused (see section 4.4)

### 2.3 How do trustees make sure they are sufficiently informed?

Trustees need to be able to demonstrate that their decisions are based on sufficient and appropriate evidence. What this means in practice will depend on the circumstances. It includes deciding whether to take advice from a suitably qualified person. Factors such as:

- the cost or value involved
- the complexity of the issue

- any controversy affecting the issue
- the impact of the decision
- how far reaching it is, and
- how urgent it is

can have a bearing on what is adequate in the circumstances.

The commission would expect trustees to read any relevant guidance and think about how it applies to their circumstances.

One way trustees can properly inform themselves is by doing risk assessments - and keeping them up to date. The commission's guidance on **Charities and risk management (CC26)** can help. It explains different kinds of risks that charities may face, different ways of managing risks, how to identify and assess risks, and other information trustees may need.

For example, if trustees were buying land, they would want to know its value, whether the seller had 'good title', any restrictions on its use, risk of flooding or subsidence, planning applications affecting it, and so on. They would normally want advice from a surveyor and a solicitor.

Trustees who are taking advice should do what they can to ensure that their adviser has sufficient expertise and is adequately and accurately informed about the matter. Whilst trustees remain responsible for the decision they take, if they have considered and acted on appropriate advice, this is likely to protect them.

The commission doesn't expect trustees to see into the future. It is about what that they could reasonably have known or found out at the time. If something goes wrong or a decision is challenged, the courts and the commission take account of the fact that most trustees are not legal or technical experts.

Minutes, reports or other formal records should show, if appropriate, how the trustees obtained information and advice, and the options they explored.

Sometimes it might be helpful to consult stakeholders about important decisions. The people who are consulted should be clear that the final decision will be made by the trustees, but conducted well, consultation can help:

- trustees make informed decisions, taking into account the views of others and assessing the impact of their proposed decision
- those directly affected to be involved in decisions that affect them
- show that there is openness and transparency about the proposals, particularly important where they will have significant impact (such as the withdrawal of a service)
- the charity show that it listens and responds to comments and concerns when formulating decisions

## 2.4 What does it mean to take account of all relevant factors?

There may be a variety of factors to consider depending upon the circumstances and the importance of the decision. In some circumstances, the trustees may want to take advice on their responsibilities.

Depending on the circumstances, relevant factors could include, for example:

1. Is the proposed decision in the best interests of the charity? (This is always likely to be a key consideration.)
2. If the proposed decision affects the charity's activities, is it consistent with the charity's objects?
3. Have the trustees had regard to the commission's public benefit guidance?
4. Do the trustees have all the powers they need to make and then carry out the decision?
5. Are there any alternatives to consider?
6. Do the trustees have sufficient professional or specialist advice to enable them to make an informed decision? If they propose not to follow it in any regard, why is it in the best interests of the charity not to do so?
7. What are the risks/benefits of the proposed decision?
8. How could this affect the charity's reputation? Are there any steps the charity should take to manage or mitigate reputational risks?
9. Will the decision affect the future ability of the charity to further its purpose effectively? If it will have a negative impact, can it still be clearly justified as being in the charity's interests?
10. Does the charity have sufficient funds to carry through the decision and continue past implementation?
11. If the trustees have consulted the charity's stakeholders, what have they learned from that consultation? How much weight should they give to stakeholders' views?
12. If the trustees commit to the proposed decision, will there be any opportunity to withdraw at a later stage without incurring costs or penalties which may be unaffordable?

Minutes or other formal records should show that the trustees actively considered these issues. The written record should be sufficient to allow someone to understand the issues, the decision and the reasons for it.

Trustees may need to reconsider from time to time whether a decision is still in the best interests of the charity. This may be particularly important during an on-going project or activity where circumstances may change over time.

## 2.5 How do trustees identify irrelevant factors?

Legal requirement: trustees have to decide what is relevant or irrelevant in the circumstances. They should always consider the charity's objects and what it is trying to achieve. Trustees must make the best decision they can based on sound information. They should not allow personal prejudices to sway their judgment; to do so would be a breach of duty (see 3.2 and 4.2).

Some examples of irrelevant considerations:

Trustees who were selling land that was surplus to their charity's needs disliked the highest bidder and accepted the next highest offer. They allowed their personal prejudices to affect their judgment, and the charity lost money as a result. The trustees' decision was not based on any objective concern such as an identifiable risk to the charity's reputation.

A charity for the relief of financial hardship received a substantial offer from a developer wishing to purchase land which the charity let to provide its income. There was local opposition to development of the site on conservation grounds. The trustees had to disregard these objections as they had no bearing on the objects of the charity. (They might, however, have needed to consider whether there was any risk of adverse publicity or loss of confidence or support from local partners or funders, and what the impact of this could be.)

Trustees deciding which supplier to use for a particular service must objectively weigh up the different options and decide which represents the best deal for the charity. They should not be influenced by the impact that their decision might have on a close friend or relative's business.

Trustees deciding a charity's ethical investment policy must ignore their personal views about alcohol, tobacco or the arms trade. They must only decide to exclude certain investments if it is relevant to the charity's objects or beneficiaries, or if they conclude that particular investments are likely to adversely affect support for the charity. (See further guidance on **ethical investment**).

## 2.6 How do trustees ensure their decision is within the range of decisions that a reasonable trustee body could make?

Legal requirement: in any situation there is likely to be more than one option that the trustees could choose.

The trustees must decide which option is in the best interests of the charity. The courts and the commission cannot judge whether the trustees' decision was 'right', or the 'best decision' or not. The commission can only consider whether the decision was within the 'range of decisions' that a reasonable trustee body could have made, and whether the trustees have followed proper processes and the principles in this guidance.

Trustees should identify the options open to them. They should take time to stand back from their decision and consider:

- have they given enough time and consideration to this decision
- have they missed anything
- have they taken and considered professional or other specialist advice or read any relevant guidance where they should have done so, and if they have not followed the advice or guidance, can this be justified
- is this the kind of decision the charity's beneficiaries or supporters would expect the trustees to make (and if not, how much weight should the trustees give to these views)
- can the trustees justify the decision in the circumstances
- could this decision appear inconsistent with decisions the trustees have made in the past, and if so, can the difference in approach be explained
- what grounds could anyone have for saying the trustees had acted unreasonably

Obviously, the extent to which they need to do this depends on the significance and potential impact of the decision for the charity.

## 3. Other things to think about

This section looks at some of the legal and practical aspects of decision making by trustees. Trustees must take decisions in a way that meets the requirements of charity law and their governing document. Decisions need to be properly recorded so there is no doubt about what was decided.

### 3.1 Do all the trustees have to be involved in making a decision?

Legal requirement: trustees have a duty to make decisions 'collectively' (jointly). It does not usually mean that the trustees must all agree, or that a decision can only be made if every trustee takes part. For most decisions it means that:

- all the trustees have a duty to participate in the decision making process (unless they have a conflict of interests)\*
- the decision making process must comply with the procedures in the governing document (eg concerning quorum, voting, a sufficient majority, sufficient power if making decisions outside formal meetings etc)
- all trustees who are taking part in the decision should be allowed to ask questions and express their views
- once a decision has been made, trustees must support and carry out that decision (see 3.3 for when trustees disagree with a decision)

\* Of course, sometimes a trustee will be unavailable for a particular meeting or decision. But an absent trustee will still share responsibility for the decision that the other trustees made.

It is part of a trustee's role to exercise independent judgement, constructively question and challenge proposals. No one should be able to direct the trustees or drive decisions through without discussion. Trustees who simply defer to the opinions and decisions of one person are not fulfilling their duties.

A charity's governing document may require all trustees to agree to some decisions. (For example, if decisions can be made by written resolution without a meeting, it may require every trustee to agree.) Some charities' governing documents provide for decision making by consensus rather than voting (meaning no one taking part dissents from the final decision).

### 3.2 Do decisions have to be made at trustee meetings?

Legal requirement: trustees must usually make decisions at properly called meetings.

The only exceptions are where:

- the charity has a power to make decisions in some other way, eg by written resolution or telephone conference, or
- the trustees all agree with the decision, and making the decision without a meeting does not breach any requirements of their governing document

There can be risks with making decisions by telephone or email. It can make it difficult for all the trustees to fully participate in the discussion, understand all aspects of the issue and the information they need to consider.

Some charities have power to authorise the Chair to make urgent decisions between meetings (sometimes called 'Chair's actions'). A Chair cannot make decisions outside of policies already agreed by the trustees, and should notify the trustees of decisions made. Even if not required by the governing document, the commission recommends that any such decisions should be reviewed and subject to confirmation by the trustees at their next meeting.

### 3.3 Supposing the trustees cannot agree?

Legal requirement: constructive debate and challenge are signs of healthy governance. They reflect the diversity of experience and independence of thought that the commission encourages trustee bodies to have. Once a decision has been made following the proper procedures, however, even if the trustees do not all agree, they must all abide by that decision.

If a trustee strongly disagrees with a decision, they can ask for their disagreement to be recorded (see 3.4). Sometimes, a trustee might feel so strongly that a decision is not in the interests of the charity that they have no choice but to resign. But a trustee who disagrees because of personal motives or prejudices rather than a genuine belief about the interests of the charity is not complying with the principles in this guidance or their duty as a trustee.

Even if a trustee asks for their disagreement with a decision to be recorded, they can still, under the principle of collective responsibility, be held jointly responsible. This is only likely to be an issue if a third party has a grievance against the charity.

If the trustees are in dispute, and cannot reach a decision, they could consider formal mediation or other alternative dispute resolution. See the guidance **Disagreements and disputes in charities**.

### 3.4 How should trustees record their decisions?

Trustees should keep a written record of their decisions. The usual way to record decisions is in the minutes of their meetings. If a decision is made in another way (see 3.2) it needs to be recorded in a similar way to a decision made at a meeting.

The charity's governing document (and any other rules or standing orders) may require the trustees to keep minutes and may specify what should be recorded. If not otherwise required, the record should show, for example:

- the full date of the meeting
- who attended the meeting (and whether it was quorate)
- any conflicts of interest, and whether anyone withdrew from discussion of any items
- what the trustees decided
- the main reasons for the decision
- the factors that the trustees considered or decided to disregard
- whether the trustees took advice, from whom, and (where appropriate) their reasons for not following any advice they took
- key points of any discussion

- if the matter went to a vote, the results of the vote
- whether any trustee(s) strongly disagreed with the decision and asked for their disagreement to be recorded

The level of detail should be in proportion to the significance and potential impact of the decision. If the trustees relied on a report or other document that is mentioned in the minutes, a copy should be attached. Recording decisions in this way:

- helps to ensure certainty about what was decided
- helps to resolve different recollections about the decision
- reduces the likelihood that the decision could be successfully challenged
- helps trustees to show that they have acted properly and complied with their duties

### 3.5 Making decisions and managing risks

Making decisions is also closely linked to managing risk. It is important for trustees to be aware and informed about risk. This does not always mean avoiding risk altogether; it is better to recognise risks and take appropriate steps to manage them. There is usually some element of risk in decision making, and sometimes innovation only comes about through measured risk-taking. For further information see the commission guidance on **Risks and how to manage them**.

Sometimes someone might disagree with a decision and try to get it changed. That's why (for key decisions) it will help trustees if they can show how they have followed the principles outlined in this guidance in reaching their decision.

### 3.6 Delegation and the role of staff and sub-committees

Many charities have power to delegate decision making to staff, sub-committees, or individual trustees. This can help trustees to govern effectively. Where trustees delegate decision making, they must always retain ultimate responsibility and accountability for all decisions that are made.

For example, one trustee is often designated the Treasurer, taking the lead on financial and accounting matters. But the Treasurer is not solely responsible for these matters. All trustees share responsibility for the charity's finances and accounts and need to actively participate in discussions and decisions about them.

Where trustees delegate, they must have clear and robust reporting procedures and lines of accountability in place, to ensure that delegated authority is exercised properly. High risk and novel decisions should not be delegated. Trustees should agree appropriate guidelines to help assess what is likely to be high risk or novel.

Where the trustees are making a decision, staff can play an important role in providing information and advice. Trustees should, however, be aware of potential conflicts of interest that might affect staff.

### 3.7 The role of members in decision making

Some charities have members who can participate in decision making by voting in general meetings. There is not space in this guidance to fully explore the role of members, but:

- members can and should play a vital role in terms of furthering the charity's objects and holding the trustees to account
- trustees must comply with any requirements in their governing document to hold members' meetings or involve members in decision making

- members cannot bind trustees to do something which is not permitted by the charity's governing document or which would be a breach of their duty

For guidance on managing the relationship between the trustees and members, see **Membership charities (RS7)**.

### 3.8 When should trustees ask the commission for advice before making a decision?

In most cases the commission expects trustees to read its guidance and apply it to their particular circumstances, taking appropriate advice where they identify that they need to. They do not normally need to ask for commission advice.

There are a few situations where trustees should seek commission advice:

- when only the commission (or the court) can give authoritative advice, for example, if trustees need advice about their responsibilities or powers in a particular (perhaps novel or complex) situation, or their governing document is unclear
- when they require legal authority (permission) from the commission - they will need to contact the commission to agree what permission is appropriate and what information it will need; the commission has **online forms** for many of the permissions trustees may need
- in certain cases, the commission can give trustees formal advice (see section 3.9) instead of permission (for example, in relation to taking legal proceedings)
- complex charity **mergers** and restructuring
- where the commission, or the trustees themselves, have identified **serious concerns** about the administration of a charity
- in any other situation where trustees may be unable to comply with their legal duties unless they get the commission's advice

The commission's **Risk framework** and **Risk application guidance** explain in more detail when it might exercise its powers in relation to a charity.

### 3.9 What sort of advice can the commission give?

The commission can give charities (individually or generally) any advice or guidance that it thinks will encourage or enable better charity administration.

The commission also has powers to give formal advice to trustees about their legal duties or the administration of their charity. Trustees who want formal advice have to request it in writing. The commission cannot advise trustees what action to take; it can advise whether what they want to do is consistent with their powers and duties or not.

Any trustee who follows the commission's formal advice in good faith will be considered in law to have acted properly. Similarly, the commission would also consider any trustee who has tried to follow its informal advice in good faith to have acted properly.

## 4. Why it's important to follow this guidance

### 4.1 What are the benefits of following this guidance?

If trustees follow the principles set out in this guidance when making decisions:

- it will help them to ensure that they act within their powers and the trusts of the charity
- they will be entitled to meet the costs and expenses of carrying out the decision from the charity's funds

Some decisions don't work out as intended. Trustees are only responsible for acting on what they could reasonably have known when they made the decision, even if the decision goes wrong. Neither the courts nor the commission could judge whether the decision itself was right or wrong if the trustees had power to make it and it was within the range of decisions that a reasonable body of trustees could have made.

The courts would not hold trustees personally liable for a breach of duty if they have acted honestly and reasonably. (The trustees might have to repay any benefit they had received but were not entitled to have.)

### 4.2 What are the consequences of not making a decision properly?

Depending on the impact of the decision, there may often be no adverse consequences at all for the charity or its trustees; but the consequences for them can be serious, particularly if:

- an improperly made decision results in financial loss or damage to the charity's reputation
- a trustee receives an unauthorised personal benefit
- there is uncertainty about whether a decision is valid or not, putting the charity at risk of litigation or financial loss

This could result in the commission getting involved (see 4.3). In some cases it could result in trustees having to take action to recover losses, or even repay the charity themselves (see 4.4).

If trustees make a decision improperly, they are likely to have committed a breach of trust. This means a breach of any of their **legal duties**. Trustees of charities formed as companies also risk breaching their duties as directors under company law. Trustees can be held personally liable for any loss to the charity resulting from a breach of trust which they committed or were party to. Trustees who receive an unauthorised personal benefit may have to refund the benefit to the charity.

If trustees did not follow the principles in this guidance:

- they might make a decision that was outside their powers or the charity's trusts, which would be automatically invalid ('void')
- their decision could otherwise be open to challenge ('voidable'), on the grounds that they had acted in breach of their duties (for example, in bad faith)

If their decision was invalid, or was successfully challenged and overturned by the court, this could result in financial loss to the charity. For example, if a third party lost money as a result, they might sue the charity. Someone who had purchased property, goods or services from the charity in good faith would still be entitled to receive them.

In some cases this might result in trustees having to repay the charity to cover the financial loss (see 4.4).

### 4.3 When would the commission become involved?

The commission is unlikely to ask questions about any decision made by charity trustees unless there is good reason to suspect that:

- they acted outside the charity's objects and powers
- they took into account factors which were irrelevant
- they did not properly manage a conflict of interest
- they took a decision that no reasonable body of charity trustees in possession of the facts could have taken

The commission would not consider a complaint against trustees unless there was good evidence to support it.

The commission has a statutory objective to ensure that trustees comply with their legal obligations in managing charities. It also has a statutory function to identify and investigate abuse and mismanagement in charities. It does this in a number of ways through its regulatory work.

When a concern comes to its attention, the commission consider the seriousness and extent of the risk involved and how the trustees are dealing with it. In most cases, problems in charities can be resolved by the trustees themselves, sometimes with commission advice. However, in the most serious cases the commission may need formally to investigate matters by opening a statutory inquiry. It carries out inquiries to identify and investigate concerns about the most serious cases of non-compliance and abuse in charities. This is likely to be where the issue itself is serious and where there is evidence or serious suspicion of misconduct or mismanagement. A serious breach of trust (such as making an improper decision) could indicate misconduct or mismanagement in the administration of the charity. The commission might also open an inquiry where there is a high risk to the charity or to public confidence in charity more widely. This will include where charity assets, services or beneficiaries are at significant risk of abuse or harm.

Where the commission has opened a statutory inquiry, this allows it to use powers to protect the charity, its assets and beneficiaries. This might also result in trustees being removed from office. For more information see the guidance **Statutory inquiries into charities: guidance for charities (CC46)**.

For further information about its regulatory approach, see the commission's **risk framework**.

### 4.4 When might trustees have to repay the charity?

Where unpaid volunteer trustees have tried to do the right thing, it is very unlikely that the question of their having to repay the charity will arise. The commission and the courts only expect trustees to try to do their best, taking account of their knowledge and experience. There are higher standards for professional trustees or trustees who are paid to act, because of the skills and experience they are expected to have.

Where there is evidence of significant wrongdoing by trustees or others involved with the charity, however, the commission will take it seriously. Trustees might ultimately be required to repay losses incurred by the charity which have been caused by their improperly made decisions. And if trustees have received an unauthorised benefit, even in good faith, they might have to repay it.

For further details, see the guidance **How the commission ensures charities meet their legal requirements**.

There is a difference between being personally liable to the charity because of a breach of duty, and being liable to a third party for a debt that an unincorporated charity cannot meet. For further information see **Charities and insurance (CC49)** and **Change your charity structure**.

It should be noted, however, that cases where trustees are held personally liable are rare.

## **5. Sources of further information**

### **5.1 Other resources**

**Good Governance: a code for the voluntary and community sector**

**Codes of Conduct for Trustees** (CTN/Small Charities Coalition, 2008)