

Voluntary and Community Action

Trustee Liability – and how to reduce the risks

Development Information Sheet No. 4

March 2008

This is one of a range of Information Sheets produced on organisational, management and development issues. Our Development Officer also offers impartial and confidential advice and guidance on a wide range of issues.



It is important that people who voluntarily give their time to run charities and community groups should be aware of, and feel comfortable with, the limited risks that are involved. This information sheet provides an overview of the situation. Do seek further guidance and advice if you are unsure of any aspect of this information sheet or if you have questions about a particular situation.

What is Liability?

Liabilities arise out of the personal duties of trustees and the activities of the organisation. The trustee board is responsible for the consequences of actions taken, or not taken, by the organisation, its staff, volunteers and other trustees. What this means is that the trustees may be held responsible for making good any loss or damage (financial or otherwise) to the organisation or to third parties and may be held personally responsible.

Putting it in Proportion

It is very unlikely any liability will arise if you always:

- act reasonably
- comply with your governing document
- take appropriate professional advice where you don't know enough to make a decision
- take appropriate professional advice where you are required to by law.

'If trustees act prudently, lawfully and in accordance with their

governing document then any liabilities they incur as trustees can be met out of the charity's resources' (source: Responsibilities of Charity Trustees, The Charity Commission).

Charity trustees can apply to the Charity Commission, as well as the courts, for relief from personal liability for a breach of trust where the trustee has acted honestly and reasonably. This will only apply where mistakes have been honestly made. Deliberate breaches of trust by trustees will be taken very seriously.

What can Trustees be Held Liable For?

The extent to which trustees are personally liable for their organisation depends on the type of liability. Personal liability can arise from:

Debts or Contracts the Organisation Cannot Pay

For example, where the organisation has signed a contract or lease but runs out of money and cannot make agreed payments.

VOLUNTARY
ACTION
COMMUNITY



Whether or not the trustee board is liable will depend on the organisation's **legal structure**:

- *Companies limited by guarantee offer protection against this.* This is because the organisation has a legal identity (or 'personality') in its own right. Any contracts or agreements are made in the name of the organisation, not the individual trustees. If a company runs out of money then normally the members are only liable to the extent of an agreed nominal amount (usually £1 or £5).
- *Unincorporated associations do not offer protection against this.* This is because the organisation does not have a legal identity in its own right. Any contracts or agreements are made in the names of the trustees personally. If the organisation runs out of money then the individual trustees can be held personally liable for any outstanding debts.

Breach of Trust

Where trustees break their duty to act in the best interests of the organisation - for example by not following the constitution or paying trustees when not allowed.

Whether or not the trustee board is liable will depend on whether or not the trustees acted honestly and reasonably and ought fairly to be excused.

It doesn't matter what your organisation's legal status is.

Trustee liability insurance generally covers this but only when you have acted honestly and reasonably.

Breach of Statutory Duty

Where the trustees break the law - for example by failing to take income tax off the wages or salaries of a member of staff.

Trustees can always be held personally liable for this type of act.

It doesn't matter what your organisation's legal status is.

Trustee liability insurance won't cover this.

Wrongful Trading

When an organisation continues to trade when trustees knew or ought to have known there was no reasonable prospect of the organisation avoiding insolvent liquidation.

This applies to organisations that are companies limited by guarantee and trustees of these organisations can be held personally liable in these situations.

Trustee liability insurance may cover this.

Personal Guarantees

When a trustee provides a personal guarantee to enable a contract to be approved.

The trustee providing the guarantee can always be held personally liable for this type of act.

It doesn't matter what your organisation's legal status is.

Acting in Reckless Disregard

Where the trustees, for example, failed to check that a decision was legal, failed to operate the

'IF TRUSTEES ACT PRUDENTLY, LAWFULLY AND IN ACCORDANCE WITH THEIR GOVERNING DOCUMENT THEN ANY LIABILITIES THEY INCUR AS TRUSTEES CAN BE MET OUT OF THE CHARITY'S RESOURCES'
THE CHARITY COMMISSION

organisation properly or did not take advice when they should have known to.

Trustees can always be held personally liable for this type of act.

It doesn't matter what your organisation's legal status is.

Trustee liability insurance won't cover this.

If you Disagree with the Rest of the Board

If you feel a board decision is irresponsible make your views known and have the disagreement minuted. However, trustees are judged to act collectively and you could still be considered liable for any decisions made by the board. If you lack confidence in your colleagues on the board you might wish to consider resignation.

How to Limit Liability

The most effective way for a group of trustees to reduce the risk of liability is to ensure good

management including:

- following your governing document
- induction for new trustees
- taking professional advice when needed
- having sound management and financial controls
- checking laws that might affect your activities e.g. employment, health and safety, data protection
- not taking on obligations you know that the organisation may not be able to meet
- monitoring and reviewing activities and procedures
- clear role descriptions and training for trustees.

Trustee Indemnity Insurance

Trustees can be insured by their charity against personal liability. Typically this may cover:

- omission or negligence
- breach of statutory duty



GOVERNANCE IS 'THE PROCESS BY WHICH A GOVERNING BODY ENSURES THAT AN ORGANISATION IS EFFECTIVELY AND PROPERLY RUN GOVERNANCE IS NOT NECESSARILY ABOUT DOING; IT IS ABOUT ENSURING THINGS ARE DONE'
 SANDY ANDIRONDACK

Reducing the risk

Ensuring the board gets training

Ensuring there are clear roles and responsibilities

Keeping a record of decisions

Regularly reviewing and keeping to the Governing Document

Ensuring good management

Obtaining professional advice

A cartoon illustration of a man in a suit holding a large umbrella. He is standing in the rain, looking thoughtful.

Question? Discuss which of these areas in your organisation is strongest and which it needs to improve in?

Written and produced by Mosaio. www.mosaio.uk.net

- errors in investment decisions
- breach of trust
- libel and slander
- wrongful trading
- a wrongful act in respect of an employee (e.g. discriminatory behaviour)

It will generally not cover:

- personal liability of trustees under contracts or leases
- protection against financial claims or debt which the organisation cannot meet
- situations where the trustee could be described as having been reckless.

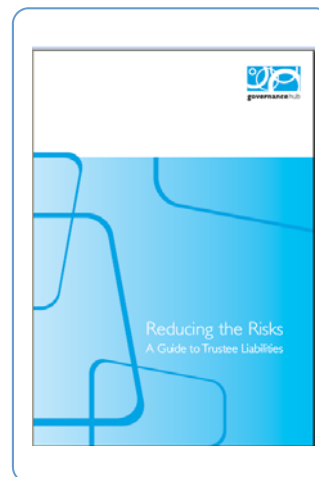
Before taking out insurance, consider whether the limited range of protection will be worth the premium you will have to pay. Remember! Trustees who have behaved honestly very rarely suffer financial loss as a result of being trustees and dishonest and reckless actions would not be covered by insurance anyway.

The information in this sheet is intended for guidance only. It is not a substitute for professional advice and Voluntary and Community Action cannot accept any responsibility for loss occurring as a result of any person acting upon it.

Further Information and Advice

- Reducing the Risk – A Guide to Trustee Liabilities: downloadable free from the Governance Hub – www.governancehub.org.uk
- Companies House
Tel: 870 333 3636,
www.companieshouse.gov.uk
- Charities and Insurance (CC49), a Charity Commission booklet downloadable from www.charity-commission.gov.uk
- Voluntary and Community Action has produced a series of information sheets to support trustees:
 1. Roles and Responsibilities of Trustees
 2. Induction of New Trustees
 3. Recruiting Trustees.

- see our contact details below.



Voluntary and Community Action

**Bossard House
West Street
Leighton Buzzard
Bedfordshire LU7 1DA**

**Tel: 01525 850559
Fax: 01525 376281
mail@action-centralbeds.org.uk
www.action-centralbeds.org.uk**

How can we help?

Contact our Development Officer if you would like more information on being a trustee or support and training for your management committee or board.

If you are interested in becoming a trustee, please contact our Volunteer Centre who can put you in touch with suitable, local opportunities.

Please give us a call on 01525 850559 or email development@action-centralbeds.org.uk or volunteer@action-centralbeds.org.uk