

Duties of Trustees

1. Distinction between Members and Trustees/Directors

The Trustees of North Yorkshire Sport may also be members of North Yorkshire Sport.

The important distinction between these separate capacities:

- Members' liability – limited to nominal “guarantee” sum of, say, £1.00 if company insolvent
- Trustees liability - £1.00 guarantee does not apply to them to limit their liability for breach of governance duties

2. Duties of Trustees

Limited liability status of North Yorkshire Sport will normally protect Trustees against “**operational liabilities**”, e.g., third party claims against North Yorkshire Sport itself for debt, breach of contract or negligence.

But distinguish “**governance liabilities**” for Board’s own breach of duty, breach of trust or non-compliance with statutory duties.

Trustees can be personally liable for such breaches and limitation of liability to £1.00 does not apply.

A. Statutory duties under company law

Companies Act 2006 - Statutory Statement of Directors’ Duties

The Companies Act 2006 codified directors’ duties in statute law for the first time

There are 7 duties for directors:

1. To act within their powers
2. To promote the success of the company
3. To exercise independent skill and judgement
4. To exercise reasonable care, skill and diligence
5. To avoid conflicts of interest
6. Not to accept benefits from third parties
7. To declare interests

The new statutory duties reflect the existing common law, and will be interpreted in accordance with existing case law and principles.

B. General statutory duties

- Duties to employees and creditors
- Duties to comply with regulations relating to health and safety, child protection, environment, data protection, building and planning legislation etc.
- Duty to file documents with Companies House and Charity Commission
- Duties under insolvency legislation, e.g., to avoid “wrongful trading”
- Directors/Trustees of North Yorkshire Sport have a role to review the effectiveness and processes in place for risk management & internal controls and that this review is conducted on an annual basis.

C. Common law duties of good faith and honesty under company/charity law (“fiduciary duties”)

Directors/Trustees must:

- Act in good faith and in the best interests of the charitable company
- Use their powers for the purpose for which they were conferred
- Not exceed powers that are set out in the governing document
- Not let personal interest conflict with duty to act in best interests of charitable company
- Not take advantage of position to make personal profit

D. Duties of care and skill

Directors/Trustees are:

- Expected to act reasonably and prudently
- Expected to display such care, skill and diligence as would be displayed by reasonable and prudent persons in the management of their own affairs
- Only required to display the level of skill which can be expected from a person possessing that director’s level of skill
- Not expected to be experts unless appointed as such
- Take an active role
- Responsible for safeguarding and protecting North Yorkshire Sport’s assets

Potential Personal Liability of Trustees/Directors for Governance Liabilities

Claims for:

- Breach of trust – failure to manage conflicts of interest, acting in North Yorkshire Sport’s objects or powers, unauthorised trustee benefits
- Breach of duty of care – ignoring financial position, failure to assess risks, allowing reckless projects which fail, imprudent investments
- Statutory breach – ‘wrongful trading’ (i.e. incurring debts knowing there is no reasonable prospect of them being paid), failure to file accounts with Companies House

Charity Commission says that it is only likely to enforce personal liability where a trustee has acted dishonestly or recklessly. Under Charities Act 2011 the Charity Commission (as well as courts) can relieve a trustee from personal liability for breach of trust or breach of duty if the trustee has acted honestly and reasonably and ought fairly to be excused.

3. Governance Role of Board of Trustees is

- To set values, ethos, strategies, policies, and budgets
- To employ right staff to manage the day-to-day operation of North Yorkshire Sport, and monitor their performance
- Risk and compliance assessment
- Stewardship of North Yorkshire Sport's assets and finances
- To provide direction and facilitate change

4. Delegation by Board

A. Delegation of Management to and Operational Matters to Chief Executive and senior staff

Distinction between governance and management -

"The purpose of the Board is to direct an Association's affairs; management should be delegated to the Association's staff" (National Housing Federation Code of Governance)

Trustees are not in day-to-day control and do not have to act personally.

Scope of Management:

- In addition to the job description, there will be a formal statement of executive staff limitations. This will be detailed within a formal delegation of powers to the Chief Executive
- Schedule of Matters Reserved for the Board

B. Delegation of Powers to Committees under Articles

Trustees may delegate the exercise of some powers to committees under the terms of North Yorkshire Sport's governing document.

Terms of reference will be established in writing and subject to review.

C. Delegation of powers to Chair under Articles

Responsibilities of Chair

- Ensuring proper and efficient conduct of Trustee meetings
- Providing leadership to Board of Trustees
- Articulating and maintaining values, mission and ethos of North Yorkshire Sport
- Setting objectives
- Supporting and if appropriate, challenging the Chief Executive
- Appraising performance of Chief Executive
- Ensuring Board as whole works in partnership with staff
- Establishing standards – dealing with ineffective/over-bearing/absent Trustees
- Acting as ambassador for North Yorkshire Sport to enhance external relations
- Facilitating change, encouraging innovation

D. Delegation and Collective Responsibility

- Responsibility for North Yorkshire Sport lies collectively with the full Company Board, as a team with shared purpose
- The Board should not allow a small group of Trustees to act without reference to the full Board
- A clear understanding of the levels of decision making by staff or committee will be put in place. However, the Board will be the legal body responsible for implementing such decisions therefore trustees must feel empowered to challenge such decisions where they feel it is appropriate to do so and within an agreed code of conduct agreed by the company Board.

5. Conflicts of Interest

Personal Interests or Loyalties

Trustees must avoid any conflict between their personal interests or other loyalties to other organisations and the interests of North Yorkshire Sport.

Examples:

- North Yorkshire Sport contracts with a business in which Trustee (or spouse) is interested

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- Trustee owns land adjacent to proposed building project
 - Trustee is consultant to lending institution or investment adviser
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- Trustee's relative employed on staff
 - Trustee's own organisation leases land to North Yorkshire Sport

A degree of conflict may be permitted, for example,

- By North Yorkshire Sport's governing document which permits a minority of Trustees to receive remuneration in prescribed cases
- Under new provisions in Charities Act 2011 permitting payment of trustees for goods or services if not prohibited in governing document and subject to controls
- Under new provisions in the Companies Act 2006 permitting an authorisation of conflict procedure for directors

New statutory duty under s.175 Companies Act 2006 to avoid "situational conflicts"

The Trustees of a limited company will also be subject to s.175 Companies Act 2006 which introduced a new duty for all company Trustees to avoid conflicts which are termed "*situational conflicts*". Section 175 states

'A director of a company must avoid a situation in which he has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company.'

Trustees should avoid a situation in which he/she has a direct or indirect interest that conflicts with interests of company.

Examples of situational conflicts:

- Multiple trusteeships – e.g., Trustee is on Board of competing company
- Advisory positions – Trustee has another "hat", e.g., is the lawyer or accountant to North Yorkshire Sport, or is a consultant to a competing organisation

Duty not infringed if matter unlikely to give rise to a conflict, or if the specific conflict situation can be authorised by Board resolution under provisions in North Yorkshire Sport's Articles.

Charities

The Charity Commission's guidance on nominated trustees stresses that there is no difference between a trustee nominated by an outside body or region and one selected by the charity's own Board or members. The Commission states:-

'Nominated trustees may be appointed in a different way but they have the same legal duties and responsibilities as any other charity trustee.... It is not the role of the nominated trustee to represent the interests of the organisation which nominated him or her.'

All trustees must act solely in the best interests of the charity. Where a potential conflict of interest for a trustee arises on a particular issue, he or she should not take part in the discussion or vote on that issue.'

For these reasons any individuals who are elected as Trustees to the North Yorkshire Sport Board as representatives of a particular stakeholder or region must act in best interests of the North Yorkshire Sport charity as a whole, and not just to further the interests of the body that nominated them. They must remain objective and not act under a mandate as representatives of this body.

Breach of trust

Failure of charity trustees to manage conflicts of interest can lead to a charge of breach of trust and Charity Commission or charity itself may seek restitution from individual trustee personally.