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PRACTICE AND DISTRICT NURSES
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The Lindsay Leg Club Foundation
CRN 1111259

Trustee Duties and Responsibilities

Charity trustees have legal, financial and managerial duties i.e. legal obligations and responsibilities. The following represents a summary of each duty.

Legal duties and responsibilities

Trustees are responsible for the proper administration of the charity in accordance with the law and its trusts, as set out in its governing document. As the governing body of a charity, the trustees have both ultimate power and ultimate responsibility for everything the charity does and how it does it. Their overriding duty is to pursue the objects of the charity as set out in its governing document. The trustees must apply the income and property of the charity exclusively for the charity's objects, applying it fairly between those qualified to benefit from it now and in the future.

Trustees have a fiduciary duty to the charity as a whole. 'Fiduciary' means 'in good faith', so trustees must always act in good faith (i.e. in the benefit that what they are doing is correct), and in the interests of the beneficiaries, setting aside their own interests, preferences and prejudices.

Trustees also have a duty of care. Therefore they must act reasonably and prudently, with the same degree of care that a prudent business person would exercise in managing their own affairs. Note that this is a higher duty of care than that required of company directors who merely have to act honestly and in good faith with a degree of skill commensurate with their knowledge and experience. When dealing with investments the standard of care which trustees must exercise is higher still. They must act with the degree of care that a prudent business person would exercise in managing the affairs of someone for whom they are responsible. In practice this means that trustees need to know about the legal, financial and managerial issues affecting the charity, though they are not expected to have expert knowledge. If they hold themselves out as having expertise in a given area, however, they will be expected to act with a higher duty of care, and this will be taken into account should any issue come to the attention of the courts or the Charity Commission.

If trustees do not seek advice on matters on which they are not experts, be they legal, financial or managerial, they could be judged as having acted imprudently and could be personally liable for the consequences. The Charities Act 1993 requires trustees to seek professional advice in some instances, for example, in relation to certain land transactions.

Trustees have a duty to avoid conflict of interest and should not take part in any discussion or decision where they have a conflict of interest. If ever a trustee's personal, business or professional interests are likely to conflict with those of the charity, the trustee should disclose that interest to their fellow trustees. As a matter of good practice, many charities now keep a public register of their trustees' interests. In some instances trustees may fact not a conflict, but a duality of interest. For example, they may be a trustee or staff member of another charity working in a similar field and owe a loyalty to both organisations. Where this is the case, the trustee must act in the best interest of the charity whose affairs they are then considering.

Trustees also have a duty not to profit from their position as trustees, unless the charity's governing document explicitly specifies otherwise or the Court or Charity Commission authorises a payment. Therefore they must carry out their duties without payment, either in the form of money or preferential access to services. Trustees of unincorporated charities have a statutory right to be reimbursed for any out of pocket expenses incurred in connection with their service as trustees. Trustees of charitable companies can have their expenses reimbursed if the governing document permits this.

Trustees must take their responsibilities seriously. The Charity Commission's leaflet CC3 'Responsibilities of Charity Trustees' states that, 'to be a charity trustee is not a position of honour without responsibility: it requires time, understanding and effort'. Trustees are required to act personally (i.e. to play an active role), meeting as often as is necessary for the proper administration of the charity, giving the time necessary to study board papers before the meetings and keeping themselves informed about the charity's activities. They must also avoid conflicts of interest and must not profit from their position as trustees.

The time trustees need to devote to their trusteeship will vary considerably from one charity to another depending on a number of factors including:-

- the size and complexity of the charity;
- whether or not the charity has volunteers and/or employs paid staff;
- the nature of the charity's work and how it is carried out, i.e. if the charity makes grants to others to carry out activities or if it carries out activities itself;

- whether or not the governing body has to represent the view of its members; and
- the stage of its organisational development.

In some organisations the trustees will have both a governing and a 'hands on' operational role, whilst in others their role will be restricted almost entirely to the charity's governance.

In their governing role, the trustees must ensure that the charity's mission is still relevant and that the charity has clear direction and purpose and a sense of urgency to get on with the work it is established to do. They should develop and agree the charity's strategic objectives and major policies and guard the charity's ethos and values. The board of trustees must set clear objectives, establish the charity's priorities, safeguard its assets (money, property, equipment, human resources), by ensuring that there are adequate financial controls and that any land or buildings the charity owns are well maintained and insured, and use the assets efficiently, effectively and exclusively to benefit those the organisation exists to help. Where day-to-day management and operations are delegated to staff, the board of trustees still remains ultimately responsible for all the charity's activities, so a key responsibility is to appoint the right chief executive, give that person clear direction regarding the charity's objectives, policies, values and ethos, clear guidance about the degree of authority the board of trustees is delegating to them, monitor their performance, offer support and assistance as required and take appropriate action if their performance falls below that expected.

Joint responsibility

Trustees are jointly responsible for the activities of the charity and must act together. No trustee acting alone can bind his or her fellow trustees, unless specifically authorised to do so. However, the board's decision do not have to be unanimous, so the majority bind the minority. Trustees are bound by the decisions of their fellow trustees even if they were not present at a meeting where the decision was taken. Trustees may protect themselves so some extent by having their dissenting vote recorded in the minutes, but if the matter is serious, particularly if a decision constitutes a breach of trust, they should consider resigning.

Joint and several liability

A board of trustees has joint and several liability. This means that if the board of trustees agrees to do something under a contract then the multiple parties that make up the board make one promise which binds all of them and, in addition, each party also makes a separate promise binding him or herself to honour the contract. This does not entitle the person or corporate body to whom the board of trustees has made that promise to receive more in total than they were promised, but it does entitle them to obtain what they were promised either from the board of trustees or from any one or more members of the board.

Financial duties and responsibilities

The financial responsibilities of charity trustees are wide ranging and should not be left to the treasurer or finance committee alone. All the trustees have a duty to be aware of the charity's financial position and they can be personally liable for the misuse of charity funds. They must protect the charity's assets and make sure that the charity complies with the accounting and audit regulations contained in the Charities Act 1993 and any relevant Statements of Recommended Practice (SORP) such as the SORP for charities or for housing associations or the Companies Act 1985 if the charity is a company.

Trustees are responsible for:-

- approving and monitoring budgets;
- ensuring that the charity has adequate resources to meets its commitments;
- ensuring that proper control is exercised over both income and expenditure;
- fund-raising policy and activities;
- overseeing any trading activities;
- ensuring the tax affairs of the charity are managed effectively;
- establishing policies for reserves and investments;
- ensuring that any investments earn the best possible return without putting the capital
- at risk and are in accordance with both the charity's investment policy and its power of
- investment;
- making sure that the assets and income are used exclusively to pursue the charity's objects, adequately protected and managed efficiently and effectively.

In addition, trustees are responsible for ensuring that reasonable steps are taken to prevent and detect fraud and other irregularities. Trustees should make sure that the charity has adequate controls for operating the charity's bank account which cannot be abused by unscrupulous people. Cheques over a certain amount should normally be signed by at least two people, including one trustee, unless there are other controls which give a similar or greater degree of protection. If the charity is large enough to warrant having internal audit staff, these staff should report directly to the trustees.

Any money that a charity has should be placed on deposit if it is needed in the near future, or, if it is not needed in the immediate future, it should be invested in accordance with the Trustee Act 2000, subject to any restrictions in the charity's governing document. However, money must not be allowed to accumulate

unless the trustees have decided to set it aside in a designated fund for a specific charitable purpose, or unless the governing document contains a power to accumulate.

Any funds, land, buildings or other assets which form part of the charity's permanent endowment (that is, assets which have been given to the charity to keep in perpetuity but with the charity benefiting from the income that can be earned from the asset) should be preserved and invested to produce a good income while protecting the real value of the capital.

Managerial duties and responsibilities

Trustees have a number of important managerial responsibilities, which may include responsibilities in relation to:-

- setting strategic objectives;
- strategic planning;
- policy making;
- employing, managing, appraising and rewarding staff;
- managing volunteers;
- giving account to statutory and regulatory bodies as required by law, to funders and to other stakeholders (beneficiaries, volunteers, staff, the general public etc);
- monitoring the work of the charity;
- evaluating the impact and effectiveness of the charity's work;
- managing the charity's property and land;
- managing the charity's public relations; and
- representing the views of the charity.

I have read and understood the above duties and responsibilities. As a serving trustee, I will endeavour to carry them out to the best of my ability.

Signed:.....

Date:.....