

Charity FAQ Series

Payment & employment of trustees

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IMPORTANT NOTICE: Please note that the information given in this briefing paper relates to the law for England and Wales; and whilst many of the responses may apply equally to Scotland and Northern Ireland, readers from those regions should seek legal advice before applying them.

Introduction and Health Warning

This Briefing Paper is a collection of common questions asked by charities. The answers are necessarily brief and are intended to provide an overview of the issues related to each. It may be necessary for your charity to obtain more specific advice relevant to your particular circumstances.

Stewardship's team of charity consultants will be pleased to help or to point you in the direction of appropriate advice. For details of our low cost consultancy helpline service for churches and Christian charities, please visit:

<http://www.stewardship.org.uk/smartweb/support-services/consultancy:-employers>

Q1. Can Trustees be paid?

Generally no. A trustee cannot be paid for acting as a trustee – only for other services that they may additionally provide to the charity and then only as permitted by law. The legal principle is that trustees are unpaid and must not benefit in any way from their connection with the charity. There are very limited exceptions to this rule which are explored further in this Briefing Paper.

All trustees may be reimbursed by the charity for out of pocket expenses incurred as a result of carrying out their duties as trustees (for which see Q8).

In all cases, the Charity Commission will regard persons 'connected with' the trustee as being the same as the trustee themselves. Connected persons are widely defined but, for our purposes, will generally mean close family members. So, a payment to or benefit provided to the spouse of a trustee will be regarded as a payment/benefit to the trustee themselves.

Trustees that allow payments out of the charity's funds without proper authority may be asked to pay sums back out of their own pocket.

In the context of churches, one of the key exceptions to the 'no payment to trustees' rule is where the Governing Document of the charity expressly permits such payments. Take care though; such powers are often, of necessity, quite limited. Modern governing documents, especially those prepared by Stewardship, will contain a power to pay church leaders who are trustees. These powers are required to have appropriate safeguards included and these procedures should be followed in every case.

In most instances, remuneration paid to trustees will need to be disclosed in the charity's public annual accounts.

Further information is available in the Charity Commission guidance 'Trustees expenses and payments' www.charity-commission.gov.uk/publications/cc11.aspx

Q2. Can a trustee be self employed?

A trustee cannot usually be paid for acting as a trustee but, subject to the following comment, they can be paid for **other** services provided to their charity. The following rules apply to trustees providing services to the charity as **self employed persons**:

Five specific conditions (set out in Charities Act 2006) need to be met before they can benefit or otherwise be paid from their charity's funds:

- the remuneration is set out in a written agreement between the charity and the trustee and that remuneration does not exceed what is reasonable in all the circumstances
- before the agreement is entered into, the (other) trustees are satisfied that it is in the interests of the charity for the services to be provided at the agreed amount of remuneration
- the number of remunerated trustees remains a minority of the total number of trustees, taking account of 'connected persons'
- the governing document of the charity does not contain any provision that would prevent the trustee in question from being remunerated
- the trustees must have regard to Charity Commission guidance on the making of trustee remuneration agreements.

The above statutory rules are over-ridden by any provision contained in the Governing Document of the charity or an Order of the court or the Charity Commission.

Generally, the trustee who is receiving benefit from the church / charity must declare a conflict of interest at any trustees' meeting where their remuneration is being considered and must absent themselves from the discussion, having no input or vote on it.

These rules do not apply to trustees who are under a contract of employment with the charity.

Q3. Can a trustee be employed?

There is a presumption in law that trustees must not benefit from their position of trust, but there are limited exceptions: where the governing document of the charity explicitly authorises the employment of a trustee, or if permission has been given by the Charity Commission or by a Court of Law. Outside of this, a trustee should not be employed by the charity whether for acting as a trustee or otherwise.

In the church setting, the Charity Commission have been more willing in recent years to agree to employment of key personnel, such as a Minister, Pastor or Lead Elder, who is also a trustee. This may be by agreement and registration of the original founding (or Governing) document of the charity which includes a suitable employment clause, or by agreeing to a later amendment to that document to insert such a clause. Stewardship's charity formation team can advise you on this further.

For a person who is **employed** by a charity to also be a trustee, the governing document of the charity **must** contain this 'remuneration clause' permitting paid employment of a trustee or a restricted group of trustees. Before permitting such a clause, the Charity Commission will want to be satisfied that inclusion is in the best

interests of the charity and that suitable controls will be in place to ensure that the clause is not abused. Being 'in the interests of the charity' means showing that there are good reasons why a trustee should be employed to do a particular job rather than a non-trustee.

The trustee who is receiving benefit from the church / charity must declare a conflict of interest at any trustees' meeting where their remuneration or any other benefit or interest is being considered and must absent themselves from the discussion, having no input or vote on the matter.

The statutory rules set out in Q2 cannot be used to provide authority to pay employed trustees.

Q4. When do we need to have specific clauses in the deed?

Since the statutory rules set out in Q2 cannot be used to provide authority to pay employed trustees, you will need specific clauses in the deed if you wish to remunerate a trustee **or a close relative of a trustee** (see Q5). We also recommend that if the trustees think that at any time in the future they may wish to remunerate a trustee, a trustee remuneration clause is inserted. If this is not present in the Governing Document, then the trustees will need to apply to the Charity Commission on a case by case basis for consent to remunerate a specifically named trustee. It will generally be easier to have the clause included from the outset rather than to seek the consent of the Commission later.

Q5. What about spouses of paid staff as trustees?

Salaries or other benefits paid to the spouses or close relatives of a trustee are considered to be benefits to that trustee. This is because of the 'connected persons' rule which says that anyone who has a (defined) personal or business connection with a trustee is considered for these purposes as if they and the (actual) trustee are one and the same. You will, therefore, need a trustee remuneration clause in your governing document if you wish to pay salaries to relatives of trustees. Trustees should always ensure that a majority of trustees (including close relatives) are **not** remunerated.

Q6. Is it all right to have one family group heavily represented on the board?

See also Q5. Although there is nothing wrong with a husband and wife team serving on a trustee board, a charity should ensure that one family group does not dominate the trustees' meetings. The board of trustees should always comprise at least enough independent trustees so that non-family members out-number family members.

Q7. What rate of pay is right for trustees?

The rate of pay of a trustee should be carefully considered by the other trustees who should always put first the interests of the charity and not the interests of the individual trustee or employee. Remuneration must not be excessive, taking account of the role and duties in question. It may be helpful to gather data from other charities as to what they pay persons in a similar role. Sector pay surveys may help here.

Q8. I am a pastor. I don't receive a salary, but do get expenses paid for. Is this OK if I am also a trustee?

There is a sharp distinction between remunerating a trustee (i.e. paying a salary or other benefit) and reimbursing a trustee for **specific** out of pocket expenses, actually incurred, during the course of his/her duties as a trustee. All trustees can receive reimbursement for out of pocket expenses.

However, where 'pastors' expenses' involve (often substantial) round sums being taken out of church's charitable funds to cover, say, living expenses, books, a car and petrol etc., in order that the pastor can carry out their pastoral work, a remuneration clause is needed in the governing document if the pastor is also a trustee. This is because expense allowances that do not relate to specific expenses incurred by the pastor will be regarded as remuneration / benefit. Cash allowances may also be subject to PAYE and National Insurance for the same reason. The remuneration / benefit package including expense allowances of this nature should be considered and approved by the trustees as a whole, bearing in mind that their primary duty is to always act in the interests of their charity. The pastor should acknowledge a conflict of interest and be absent from that part of the trustees' meeting(s) in which the trustees make decisions on those expense allowances.