

# Charity FAQ Series

**"Can a charity ...?"**

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**IMPORTANT NOTICE:** Please note that the information given in this briefing paper relates to the law for England and Wales; 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 a charity pay or employ its trustees?**

These questions are dealt with in the FAQ Series Briefing Paper 'Payment and Employment of Trustees'.

### **Q2. Can a charity insure trustees against personal liability?**

Where it is in the interests of the charity, trustees can be insured by their charity against personal liability for negligence or similar failure. This insurance does not, however, insure the trustees against the risk of the charity running out of money or incurring costs that are greater than the assets of the charity.

For more detail on when a charity can purchase trustees indemnity insurance and any restrictions that there may be in doing so, please refer to our separate Briefing Paper 'Introduction to insurance for churches and charities'.

### **Q3. Can a charity trustee resign?**

Yes. It is usually straightforward for a trustee to resign. However, especially with unincorporated charities (e.g. non company charities governed by a Trust Deed or Constitution) you should check the governing document carefully. If a trustee's resignation would result in the number of remaining trustees falling below the minimum set out in the Governing Document, a replacement trustee must be appointed before the retiring trustee can do so. Trustees are not allowed to simply walk away from their responsibilities. The retirement (and any new appointment) must be properly recorded, as required by the Governing Document, or alternatively under the provisions of law.

If the retiring trustee's name appears on the title deeds to land, this must also be changed following the required legal procedure.

#### **Q4. Can a charity's trustees delegate their responsibilities?**

Trustees can generally delegate certain powers to agents or employees, but will, and must always, retain the ultimate responsibility for running the charity. It is, therefore, always recommended that if responsibilities are delegated to committees, one or more trustees take an active part in that committee.

Trustees are still responsible for policy and strategic direction. The law defines a trustee as a person "having the general control and management of the administration of a charity". Therefore, the *carrying out* of a decision can be delegated, but care must be taken to ensure that those to whom responsibility is delegated do not take *key decisions*, as they may well then be regarded in law as trustees themselves.

Although it will be the trustees of a Church charity who are responsible for appointing employees and entering into contracts, a Church which is led by its spiritual leaders may wish for a clause to be inserted in the governing document stating that the spiritual government and leadership of the Church Fellowship will remain with the recognised spiritual leadership and that the trustees' powers will be confined to the management of the charity's assets and, in so doing, they shall have regard to the spiritual leadership, provided that they shall not act outside their stated authority and the law.

#### **Q5. Can a charity's property be held by someone other than the trustees?**

The trustees of unincorporated charities (i.e. charities which are not companies) may find it convenient for the legal title to land owned by the charity to be held by the Official Custodian For Charities or by a Custodian Trustee or a Holding Trustee. This avoids the need to register each and every change in the charity's trustees with the Land Registry.

Trustees also have a power to appoint a nominee to hold the title.

#### **Q6. Can a charity's trustees buy land?**

Yes. Trustees have a general power to buy land (this term includes buildings). This power may in some, but not all cases, be restricted by the terms of the charity's Governing Document. Trustees should exercise their statutory duty of care when exercising this power.

#### **Q7. Can a charity's trustees sell or lease land belonging to the charity?**

Yes, most charities can sell land belonging to them provided that to do so is in the charity's best interest and the trusts on which it is held do not prevent this. There are, however, certain legal requirements which must be met. It is recommended before selling or allowing any long term lease to be taken over any land or buildings of the charity that specialist legal advice is obtained.

## Q8. Can the charity borrow money on the security of its land?

Generally, a charity can borrow money and give a 'charge' (i.e. a Mortgage) over its land as security for a loan, but its trustees must comply with certain legal requirements including obtaining certain advice in writing before doing this.

## Q9. Can a charity trade?

Yes, a charity may trade to any extent *directly* to fulfil its stated purposes. So, for example, if one of your charity's objects is "to advance the Christian faith", you can sell Christian books, tapes, CD's etc. to any extent. If you have a coffee shop, the purpose of which is to advance the Christian faith (e.g. you have Christian posters and literature available and the staff are there to gossip the Gospel) then you can trade under the charity umbrella.

However, trading that does not *directly* fulfil the charity's purposes is only permitted if it falls within defined limits ('de-minimis' levels). This is because the charity must exist only for charitable purposes and such trading will fall outside of this.

So, if the purpose of the coffee shop is simply to *raise money* for the charity, then you may need to set up a subsidiary trading company. This is a complex area but, in general, as long as the trading income is below either £5,000, or 25% of the overall annual income of the whole charity (but subject to an upper limit of £50,000 trading income), the trading may be carried out by the charity itself without adverse tax or charity law consequences. Substantial permanent trading activities, e.g. setting up a Charity Shop, will probably need the establishment of a subsidiary trading company. There is guidance available from both HM Revenue and Customs and the Charity Commission on their respective websites.

## Q10. Can a charity have aims that are political?

A charity cannot exist for a political *purpose* (also referred to as an *aim* or *object*). A political purpose is one that is directed at furthering the interests of any political party or securing or opposing a change in the law. An organisation will not be charitable if any of its purposes are political. Charities which are being established to operate abroad should, therefore, ensure that their objects do not include a statement to change the law of a country in any respect. Charities are also not allowed to do anything which will break the law either in this or any other country.

This is not to say that a charity cannot ever engage in political *activity*. It is quite permissible for a charity to undertake political activities where they *support* the charitable purposes. So, whilst a charity cannot have a *purpose* that is to secure a change in the law, they can campaign for such a change, or for changes in Government policy or decisions provided that such change would support the charity's purposes. Charities can also campaign to ensure that existing laws are observed.

To do this, the charity can seek to influence public opinion (including the opinions of politicians) and may publish the views of the political parties or of election candidates, provided the subject matter relates to its purposes and the activity supports its charitable work. In doing so, it must remain independent and must not support or oppose particular parties or candidates.

Political activity must not be the main means of achieving the charity's aims and the charity must not spend an unreasonable amount on campaigning.

The law in this area is sensible: a political party is concerned with securing political office and characteristically has *a range* of policies, most of which have nothing whatsoever to do with the charity's purposes. To support a party, or to criticise it, goes beyond simply furthering the purposes of the charity. If a charity endorses a party because it agrees with one policy, it is effectively supporting the party as a whole and will be endorsing the party's wider policies (say on taxation, education, defence etc.) which are nothing to do with the charity's purposes.

#### **Q11. Can a charity be wound up?**

In certain situations, a charity can be wound up or its assets transferred to another charity. The governing document of the charity should be consulted for the dissolution provisions and appropriate professional advice taken.