Stewardship
Active generosity

Charity FAQ series:

Can I pay my church or charity trustees?

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- tell others in your church or charity about our resources

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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.

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About Stewardship

Stewardship helps Christians be the best stewards of the resources God gives them.

We have been working with generous Christians and the ministries they support for over a century. Today, we help over 30,000 donors discover the joy of generosity as they give more than £110 million every year to over 12,000 church, charity and individual partners. Our professional services also equip, grow and strengthen those partners so they can create more impact for God's Kingdom.

Introduction and health warnings

This Briefing Paper is a collection of common questions asked by charities. It takes account of changes made by Charities Act 2022.

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.

Further help

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 for churches and Christian charities, please visit: www.stewardship.org.uk/consultancy-helpline.

Important note: 'Provision of services'

The law permits trustees 'to provide services' to their charity where certain safeguards are met. It should be emphasised at the outset that 'provision of services' in this context does not include acting as a trustee, nor does it permit a trustee to be employed. Rather, it refers to independent services provided, for example, as a decorator or a professional advisor.

Can trustees be paid?

The general rule is that a trustee cannot be paid for acting as a trustee, nor receive any benefit from their position as a trustee. This rule is extended to persons 'connected with'[1] the trustee such as family members and business partners. References below to 'trustee' therefore include persons 'connected with' a trustee.

The general rule is founded on the principle that payment could lead to a conflict of interest. Charity trustees must always act in the best interests of their charity and in pursuance of its charitable purposes. There are, however, limited exceptions:

- Statutory powers permit payment for the provision of goods or services by the trustee or the trustee's business to the charity, where certain safeguards are in place to ensure that the trustees always act in their charity's best interests.
- The charity's governing document[2] may also contain limited powers to benefit a trustee. Usually this will be a standard clause allowing for payment of professional services of an accountant or lawyer and allowing for reasonable interest on loans or rent. Modern governing documents, especially those prepared by Stewardship[3], will contain a power to

[1] See the Appendix for further detail on 'connected persons'.
[2] Typically, a Trust Deed (unincorporated charity), Constitution (charitable incorporated organisation) or Articles of Association (charitable company limited by guarantee).
[3] Stewardship offers a charity formation service, specifically designed for churches and Christian charities.

pay church leaders who are also trustees. These powers are required to have appropriate safeguards included and these procedures should be followed in every case.
- The Charity Commission or the Court can give consent to the payment of a trustee in circumstances defined in the consent.
- Where the payment is within the Charity Commission's guidance on 'small payments or honorariums' (detailed below).

The statutory power can be used regardless of any powers in the governing document. In other words, the trustees can choose between using the statutory powers or any permissive powers in their charity's governing document, provided that the charity's governing document does not expressly prohibit such a payment. However, the statutory power cannot be used to pay or benefit a trustee for acting as a trustee, nor to allow the trustee to be employed.

Breach of the 'no remuneration' rule

Any payment or benefit which is not authorised by one of the means above constitutes a breach of fiduciary duty and the trustee may be required to pay back the value of any payments made, or benefits received.

However, the Charity Commission or the court have power, in exceptional circumstances, to order the payment or remuneration to, or the retention of an unauthorised benefit received by, a trustee where the trustee has done work for the charity and it would be inequitable for the trustee not to be remunerated for that work, or not to retain the benefit received. Note: this power does not extend to connected persons who may have benefitted from their connection to the trustee.

Charity Commission guidance on small payments or honorariums

The Charity Commission's guidance on small payments and honorariums[4] states that: 'You do not usually need authority from the Charity Commission if your payment is 'small'.'

Small payments fall within the Commission's policy where, for non-company charities, an individual payment is £1,000 or less, for company charities an individual payment is £200 or less, and (for companies and non-companies), the total of all payments to all trustees during the charity's financial year will amount to less than £1,000. For such a payment, the remaining trustees must be satisfied that making the payment is in the best interests of their charity and that any conflicts have been avoided or managed effectively. The trustees should record their decisions and reasons for them and report the payments in the charity's accounts. This exception may be applied, for example, to a token payment or small gift made on the occasion of the retirement of a long-standing trustee.

The Commission's policy should not be read as automatically allowing a gift of up to £1,000 to a trustee (for example, on retirement). Not only does the threshold apply to **all** trustee payments in a financial year, each gift or payment should meet the additional tests, set out above. Further, the Commission refer to retirement gifts by company charities as only requiring Charity Commission authority where the gift is more than £200.

[4] Gov.UK: Employing a trustee or connected person

Legitimate out of pocket expenses

Trustees may be reimbursed by their charity for legitimate out-of-pocket expenses incurred as a result of carrying out their duties as trustees. This does not include compensation for loss of earnings whilst carrying out those duties. See also Q8.

Accounts disclosure

Section 9 of the Charities SORP (2019) requires trustees' remuneration to be disclosed in the charity's public annual accounts. Charity Commission guidance recommends that all charities, including those not preparing accounts under the SORP, make similar disclosures[5].

Further information

For an overview, see the Charity Commission guide Charities paying a trustee or a connected person: understand the rules (CC11) - GOV.UK.

2 Can a trustee be self-employed?

A trustee cannot usually be paid for acting as a trustee nor be employed by the charity but, subject to the following comment, they can be paid for other services provided to their charity. The following rules apply to trustees providing goods and/or services to the charity as self-employed persons:

Five specific conditions (set out in Charities Act 2011) 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 best interests of the charity for the goods or 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[6].
- The governing document of the charity does not contain any express provision that prohibits the trustee in question from being remunerated.
- The trustees must have regard to Charity Commission guidance on the making of trustee remuneration agreements.

So long at the charity's Governing Document does not expressly prohibit the trustee receiving remuneration, the statutory rules above are in addition to and do not affect any entitlement to

[5] Gov.UK: Employing a trustee or connected person
[6] See the Appendix for further detail on 'connected persons'.

remuneration contained in the Governing Document, an order of the court or the Charity Commission or any other statutory provision.

The trustee who is receiving benefit from the church or charity must declare a conflict of interest at any trustees' meeting where their remuneration, or the terms of their written agreement, are 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; for which, see Q3 below.

3 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 the court. Outside of this, a trustee should not be employed by the charity, whether for acting as a trustee or otherwise.

In church settings, the Charity Commission had previously been more willing to agree to the employment of key personnel, such as a Minister, Pastor or Lead Elder, who were also trustees. Now, however, they appear to be taking a more restrictive approach and therefore this should not be automatically expected. Where this is agreed to, it may be achieved 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 the document to insert such a clause. Stewardship's Charity Formation team can guide you further on this.

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 the 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 (rather than a non-trustee) should be employed to do a particular job.

The trustee who is receiving benefit from the church or 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.

4 When do we need to have specific clauses in the governing document?

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 charity's Governing Document[7] if you wish to remunerate a trustee or a 'connected person'[8] such as a close relative of a trustee (see Q5)[9].

If a suitable trustee remuneration clause 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. Alternatively, (though this is less likely to be accepted as it is an option rarely favoured by the Charity Commission) the trustees could seek consent of the Charity Commission to amend the Governing Document to include such a clause. A suitable case would need to be made and, as a 'regulated alteration', consent of the Commission cannot be assumed.

The Commission do not take the question of payment of charity trustees lightly. Further information, including examples of the grounds for seeking consent, are set out in the Charity Commission guide Charities paying a trustee or connected person.

5 What about spouses of paid staff as trustees?

Salaries or other benefits paid to the spouses or close relatives of a trustee are very likely to be 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.

The Charity Commission has been known to consider that spouses of trustees who are financially independent of their spouse do not have 'a common purse' and as such can be considered separately from the trustee themselves in considering their employment. However, this is a nuanced issue and we would always recommend taking experienced charity lawyers'

[7] Typically, a Trust Deed (unincorporated charity), Constitution (charitable incorporated organisation) or Articles of Association (charitable company limited by guarantee).
[8] See the Appendix for further detail on 'connected persons'.
[9] Exceptionally, the Charity Commission may be prepared to agree that payments to a connected person, who is financially independent of the trustee, do not confer a benefit on the trustee and therefore do not need specific authorisation in the Governing Document.

advice before employing a spouse of a trustee unless it is absolutely clear that you are permitted to do so.

6 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 outnumber family members.

Whilst family members are a specific category of people who may have 'emotional conflicts of interests', this can also apply to close friendships. It is very important that the trustee group is independently minded, so that no one individual or small group can dominate. A number of recent charity failures show that a trustee group which does not ask challenging questions can weaken good governance. Trustees should consider whether their personal friendships with key leaders or staff mean they cannot genuinely be independent in their decisions. Of course, there can be many benefits to having a range of people on a board, rather than a group of people who know one another or have similar backgrounds or experiences. This can bring a greater robustness and breadth of contributions to the direction of the charity.

7 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 act in the best 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.

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 (that is paying a salary or other benefit) and reimbursing a trustee for **specific** out of pocket expenses, actually incurred, during the course of their 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, petrol and so on, 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 and benefit.

Allowances may also be subject to PAYE and National Insurance for the same reason. The remuneration 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 best 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.

What about Trustee Indemnity Insurance?

The payment of premiums for Trustee Indemnity Insurance out of the funds of a charity constitutes a benefit to trustees. However, there is a statutory power enabling such insurance to be taken out, subject to certain safeguards.

The statutory power cannot be used if the Governing Document expressly prohibits insurance of this kind to be taken out. However, the power **can** be used notwithstanding any provision in the Governing Document that prohibits trustees from receiving personal benefit from the charity.

Before taking out the insurance, the trustees must be satisfied that it is in the best interests of the charity to do so. One factor that is relevant here is the ability of the charity to recruit trustees who may be reluctant to take on that responsibility without this protection.

The statutory power applies to insurance designed to indemnify charity trustees against personal liability in respect of:

- any breach of trust or breach of duty committed by them in their capacity as charity trustees

- any negligence, default, breach of duty or breach of trust committed by them in their capacity as directors or officers of an incorporated charity

However, indemnity must be excluded in respect of:

- a fine imposed in criminal proceedings
- any sum due to a regulatory authority as a penalty
- any criminal proceedings in which the trustee is convicted of an offence arising out of their fraud or dishonesty, or **wilful or reckless misconduct**
- any liability that arises out of any conduct which **the trustee knew (or must reasonably be assumed to have known) was not in the interests of the charity, or where the trustee did not care whether the conduct was in the best interests of the charity**

Put another way, if trustees act diligently and honestly, any honest mistakes are likely to be covered by the insurance. But trustee indemnity insurance is not there to enable a trustee to take unwarranted risk or to act without the diligence required of a trustee with similar experience and knowledge.

Appendix

Persons 'connected with' a charity trustee (s188, Charities Act 2011)

The law sets out which persons are 'connected with' a charity trustee for the purposes of establishing whether or not a trustee of persons connected with them have received remuneration or other benefit. Connected persons to a trustee include:

- their children, grandchildren, parents, grandparents, the trustee's siblings, and any of these people's spouse or civil partner
- their spouse or civil partner
- a business partner, or the business partner of any person in the two preceding bullet points
- an institution which is controlled by the trustee or any person in the preceding three bullet points, or where two or more of these persons taken together control the institution
- a body corporate (for example, a limited company) in which the trustee or any person in the first three bullet points has a substantial interest, or where two or more of these persons taken together have a substantial interest

Definitions:

"**Children**" include stepchildren.
"**Spouse or civil partner**" includes two people who are not married, nor in a civil partnership but live together as if they were married or in a civil partnership.
A person **controls an institution** if the person is able to secure that the affairs of the institution are conducted in accordance with their wishes.
A person has a **substantial interest** in a body corporate if the person:

a) has an interest in the nominal value of more than one-fifth of the share capital
b) is entitled to exercise, or control the exercise of, more than one-fifth of the voting power at any general meeting of that body