



## Checklist for charity trustees - protecting charitable status

Charity trustees must be in control of the management and administration of their charity and act with appropriate care and diligence in the interests of their charity and not of any third party. They are collectively responsible for ensuring that the charity complies with the law. The following checklist covers some of the key areas that charity trustees should consider both in view of legislative and regulatory requirements, but also as a matter of good practice.

### General

- Do we review the charity, its constitution, activities and governance arrangements, on a regular basis as a matter of good practice?

### Constitution

- Are our charity's purposes up to date and consistent with its current activities?
- Are our charity's purposes charitable according to the 2005 Act? (If we want to update our purposes, a charity must seek OSCR's consent first.)
- Does the charity's constitution make it clear what charitable purposes it is pursuing, or do these have to be inferred?
- Have we accounted for differences in legislation between Scotland and other parts of the UK? Does the charity's constitution allow charitable assets to be used for purposes that are not charitable in Scotland?

### Governance and administrative arrangements

- Does the way that our charity is set up, including any founding legislation, inhibit us as charity trustees from carrying out our duties? If so, we should seek ways to enable this to be changed.
- Can we, as charity trustees, make decisions solely in the interests of the charity?
- Do we have a robust conflict of interest policy and clear lines of authority?

### Public benefit

- Is there any undue restriction on accessing the charity's benefit? If so, what are we doing to facilitate access, for instance by mitigating fees and offering other forms of accessing our services and facilities?
- Does the public benefit that the charity provides fit with its charitable purposes?
- Do the charity's activities give private benefit to individuals and how does this private benefit compare to the public benefit it provides?



## Activities

- Can we provide evidence that the charity's activities advance its charitable purposes, for instance, if we are aiming to advance health?
- Does our trustees' annual report describe the charity's activities and explain how the charity delivers public benefit?
- Are we sure that our charity or proposed charity will carry out the planned activities?
- If the charity is not active, should we wind it up? (If so, we must obtain consent from OSCR before winding up.)
- Is there a reason why the charity is inactive yet still passes the charity test?

## Umbrella bodies

- If our charity is part of a group structure, have we considered establishing or updating a model constitution, and working with the umbrella body to do so?
- What further support can we seek from an umbrella body, such as advice on governance or help in maintaining continuity when charity trustee boards change frequently?