



An Rialálaí
Carthanas

Charities
Regulator

Due Diligence on prospective charity trustees

Legal Disclaimer

This document is issued by the Charities Regulator under section 14(1)(i) of the Charities Act 2009, to encourage and facilitate the better administration and management of charitable organisations. It is published as part of a suite of guidance, intended to provide support to charity trustees to meet their legal duties, by putting in place systems, processes and policies which ensure charities are managed in an effective, efficient, accountable and transparent way.

This document is not, nor is it intended to be, a definitive statement of the law and it does not constitute legal advice. Charity trustees are recommended to consult their governing document or to obtain their own independent legal advice where necessary. The Charities Regulator accepts no responsibility or liability for any errors, inaccuracies or omissions in this document.

Due Diligence on prospective charity trustees

Introduction

It is important for the board of a charity to conduct due diligence on a prospective charity trustee in order to ensure that the individual understands the role, is able to perform his or her duties and that he or she is a suitable person to be a charity trustee. Part of the process of carrying out due diligence on a prospective charity trustee may involve the following:

- Checking references;
- Considering conflicts of interest or loyalty;
- Garda vetting;
- Considering legal restrictions.

Checking references

It is essential for references to be taken to verify the skills, experience and qualifications of the potential candidate. The board of charity trustees may consider the following:

- Is the candidate known to the current board of charity trustees or the CEO?
- What reference checks can the board of charity trustees do in respect of the potential candidate?

Considering conflicts of interest or loyalty

A conflict of interest is any situation in which a charity trustee's personal interests or loyalties could, or could be seen to, prevent the charity trustee from making a decision in the best interests of the charity. This personal interest may be direct or indirect, and can include interests of a person connected to the charity trustee.

When the board of a charity is considering the suitability of a prospective charity trustee they should ensure the candidate understands what is meant by conflicts of interest or loyalty and declares any potential conflicts of interest prior to his or her appointment to the board.

Conflicts of interest can and do arise from time to time within charities, so the potential for conflicts of interest may not be sufficient to prevent the appointment of an otherwise well qualified charity trustee. Therefore, it is important to identify the conflicts of interest and to make sure that they are managed appropriately.

However, if such conflicts are likely to arise frequently, this may affect the ability of the charity trustee to perform his or her duties. This is particularly important where personal interests may be significant enough to make it necessary for the charity trustee to withdraw from meetings or decision making processes so often that he or she cannot make a useful contribution to the management and control of the charity.

Garda vetting

The board of a charity should consider if prospective charity trustees should be vetted by the National Vetting Bureau before appointing them to the board of charity trustees. This is something that existing charity trustees must consider in the context of the requirements of the National Vetting Bureau (Children and Vulnerable Persons) Acts 2012 to 2016 and the charity's own Safeguarding and Vetting Policies, where applicable.

Considering legal restrictions

Not everyone is qualified to act as a charity trustee. Grounds for being disqualified from being a charity trustee include if a person:

- is adjudicated bankrupt;¹
- enters into a formal court approved insolvency arrangement with the Insolvency Service of Ireland;
- is convicted on indictment of an offence;
- is a company that is in the course of being wound up.²

Some charities may also have further grounds on which an individual is prohibited from serving as a charity trustee, which would be outlined in the charity's governing document.

1 If a person has been discharged from bankruptcy he or she can hold the position of a charity trustee.

2 For further detail and a full list of disqualifications from being a charity trustee, please consult section 55 of the Charities Act 2009.

It is important that these grounds are communicated to any prospective charity trustee and that they be asked to confirm in writing that they are not disqualified. It is the responsibility of existing charity trustees to ensure that prospective charity trustees are appointed in accordance with the charity's governing document and that they are not disqualified from being a charity trustee under the Charities Act 2009 or the charity's governing document.

Should a prospective charity trustee require information to help him or her decide on whether to join the board of charity trustees or not, the existing charity trustees should be willing to provide all appropriate information.

Other Relevant Documents

This document should be read in conjunction with our guidance documents on **'Recruitment and Induction of Prospective Charity Trustees'**, **'Induction Pack Checklist'**, **'Guidance for Charity Trustees'**, **'Managing Conflicts of Interest'** and **'Charity trustee declaration to accompany an application for registration under S39 of the Charities Act 2009.pdf'**.