

GUIDELINES FOR PAYING TRUSTEES

The Charities Act 2006 introduced a new section 73A into the Charities Act 1993 which gives those charities, without a suitable power in their governing document, the power, subject to certain safeguards and conditions, to pay trustees, and individuals and businesses “connected” with them, **for services provided** to or on behalf of a charity.

Governing Document and Payment of Trustees

A charity whose governing document includes an express prohibition on paying trustees is not entitled to use the new power without first amending its governing document. The Commission’s consent to such an amendment will not be required, **provided the new power does not go beyond the scope of the statutory power.**

This means, for example, that if a community organisation wanted to amend their constitution to allow the payment of trustees **for a service outside their normal trustee responsibilities**, then the charity does **not** need the permission from the Charity Commission to amend their constitution. If the charity wants to amend their constitution to **allow the payment of trustees for the performance of their duties as trustees**, this **requires** the permission of the Charity Commission before allowing the amendment in the constitution to be passed. It is only in exceptional circumstances that the Charity Commission will approve the payment of trustees for their duties as trustees.

Reimbursable Expenses

As volunteers, trustees, however, are entitled to claim legitimate expenses, irrespective of what is said in the governing document. Legitimate expenses are reasonable costs which are incurred by the trustees in order to carry out their duties, such as travel costs, refunds of meal and accommodation costs whilst on the charity’s business, reasonable child or dependant costs, whilst attending trustee meetings etc

Guidelines: Paying Trustees for their Services

If you do decide to pay your trustees for professional or business services provided or supplies to the charity, which are **over and above normal trustee duties**, there are certain guidelines which you will have to consider;

1. A requirement that there must be a written agreement
2. That the payment is no more than is reasonable for the service
3. That the trustees have resolved that paying one of the charity’s trustees is in the best interests of the charity
4. The trustee to whom the payment is to be made (whether directly or to a connected person or organisation) does not participate in any decisions of the trustees in relation to the agreement.
5. At the time in question the total number of trustees receiving payment from the charity’s funds will be less than half and in assessing that proportion the charity must include any trustees connected to persons or businesses receiving payment for services, any trustees who are receiving payment for being trustees and any trustees who are paid employees of the charity.



6. Most charities (preparing accounts on an accrual basis) will need to give details in their accounts of payments and other benefits to charity trustees and those connected with them and are required to say under what legal authority the payment is made and the reason for it. The Commission's recommendation is that in the interests of transparency, best practice requires that all charities include such information in their accounts.

Some examples of when a trustee is able to be paid include secretarial duties (company secretarial duties **not** trustee secretarial duties), the delivery of a lecture, legal and accountancy services (**other than audit services**), use of a trustee's premises or facilities, use of a trustee's firm for a building job, the taking out of a maintenance contract with a trustee's firm and the provision of expert services such as management or design consultants.

Paying Your Trustees for their Services as Trustees

*** Please note – this happens in only exceptional circumstances, and not encouraged by the Charity Commission, nor easy to prove*

The Commission will require the trustees of the charity making the application to pay trustees to show that there is a “**clear and significant advantage to the charity which will outweigh any disadvantage**”.

The Commission guidance, issued in June 2008 says that if asked to approve payment they normally only do so where the charity's complexity of operation has led to **an unusually high burden** of trusteeship. If the nature of the charity's operation is so complex that trustees need to exercise a higher degree of responsibility and supervision, there may be justification for paying appropriate individuals with the specific knowledge and skill involved.

The Commission lists the nature of the information which the trustees will need to provide on any application for authority to pay trustees and includes:

1. Details of the steps taken to recruit suitable trustees without payment
2. The identification and justification of the clear and significant benefits to the charity as the result of paying the trustee
3. Details of the functions to be carried out by the trustee and how they can be distinguished from the function of an employee or consultant.
4. How the amount of the proposed payment is arrived at and how it can be shown to be reasonable and affordable
5. Details of the risks identified as a result of paying the trustee for his or her trusteeship and how they will be managed. The risks the Commission has in mind, include conflict of interest, any effect on the reputation of the charity, any effect on internal management and the effectiveness of the board of trustees, any effect on the charity's financial capacity to meet its charitable objects and the view of members and/or beneficiaries.
6. How the paid trustee/s performance will be reviewed/managed by the unpaid trustees. How those trustees can terminate the payment arrangement and what effect will that have on the paid trustee's position as trustee.

Please note: The Trustee Act places a higher duty of care on trustees who are paid, on the basis of their special knowledge and expertise, and they may be held accountable if a loss is incurred as a result of a failure to exercise that level of expertise.

