

Different Kinds of Charity Trusteeship – In England and Wales – A Summary

The Kubernesis Partnership LLP – Charity Consultants www.kubernesis.co.uk

Note: This table is only a simplified summary of a few key issues – it is not a full statement of the law.

Types of trustees:	Holding Trustee in an Unincorporated Charity	Charity Trustee in an Unincorporated Charity <i>(Sometimes called a Management Committee Member – but in law, those who have the day to day control of the management and administration of a charity are the charity trustees, whatever term is used)</i>	Charity Trustee in a Charitable Incorporated Organisation (CIO)
Summary of role	<ul style="list-style-type: none"> • Holds the legal title to charitable assets (often land or buildings) in trust for the charitable purposes stated. • Has no day to day responsibilities in running the charity. • Executes documents transferring the title of an asset e.g. on sale/purchase/ mortgage if agreed by the charity trustees. • Must follow the decisions of the charity trustees <i>unless</i> the holding trustee(s) have clear evidence that the charity trustees are acting in breach of charity law or in breach of the requirements of the charity's governing document. 	<ul style="list-style-type: none"> • Responsible for the day to day <i>governance</i> of the charity. • Charity trustees take all decisions on use of resources, spending funds, employment of staff, upkeep of premises, generating income, etc. • In particular all agreements with third parties are made as agreements with the trustees as a body of individuals. • Must ensure that all operational decisions of the charity are fulfilling its charitable objects. • Detailed decisions can be delegated to staff or to committees but the charity trustees remain responsible for everything done by the charity. 	<ul style="list-style-type: none"> • Responsible for the day to day <i>governance</i> of the charity (the CIO). • Charity trustees take all decisions on use of resources, spending funds, employment of staff, upkeep of premises, generating income. • Agreements with third parties are made directly with the CIO – the charity trustees decide but contracts are made with the CIO itself. • Must ensure that all operational decisions of the charity are fulfilling its charitable objects. • Detailed decisions can be delegated to staff or to committees but the charity trustees remain responsible for everything done by the charity.
Key responsibilities	<ul style="list-style-type: none"> • Safeguarding the assets vested in them for the charitable purpose intended. (But operational decisions on use and upkeep of assets rest with the charity trustees.) • A holding trustee may occasionally need to draw matters to the attention of the charity trustees if they overlook key obligations to protect the asset – e.g. keeping it insured or repaired. 	<ul style="list-style-type: none"> • Must account for the work of the charity each year by preparing an Annual Report and Accounts and filing with charity regulator (if registered and over £25K income). • Must take steps to protect the charity's beneficiaries from harm, and protect the charity's assets from damage/deterioration or loss due to fraud. 	<ul style="list-style-type: none"> • Must account for the work of the charity each year by preparing an Annual Report and Accounts and filing with charity regulator (this applies to <i>all</i> CIOs - no lower limit). • Must take steps to protect the charity's beneficiaries from harm, and protect the charity's assets from damage/deterioration or loss due to fraud.
Liabilities	<ul style="list-style-type: none"> • Normally no personal liability unless a holding trustee attempted to dispose of a charitable asset for personal gain or without proper authority from the charity trustees. 	<ul style="list-style-type: none"> • Any contractual agreement is made by the charity trustees themselves – so they could be sued and made personally liable if the charity has insufficient assets to pay its obligations. 	<ul style="list-style-type: none"> • Any contractual agreement is made by the CIO itself as a corporate body. So the charity trustees are <i>not</i> personally liable unless they act recklessly – e.g. if they let the CIO continue making commitments which they know (or should have known) the CIO cannot fulfil.