

## Appendix 1

### Briefing Note on the Duties of Charitable Trustees

The Charitable Trustees are the people who are in overall control and management of a charity. They are usually the directors of the “company”. They are responsible for the charities governance and strategy and for making sure the charities administered effectively. They have to account for its activities and outcomes.

This is governed by the Charities and Trustees Investment Scotland Act (the 2005 Act). This sets out in section 66 four general duties which are fundamental to charitable trustees and a number of specific duties which charity trustees must observe. The general duties are:

1. A Trustee must act on the interest of the charity.
2. Ensure that the charity operates in a manner consistent with its purposes. Trustees have to be careful to carry out their duties in accordance with the Articles of Association.
3. Trustees require to act with the care and diligence that it is reasonable to expect of a person who is managing the affairs of the charity.
4. Trustees have to ensure that the charity complies with the terms of the 2005 Act and any other appropriate legislation.

In order to ensure that the charity is complying with these regulations the Trustees have to consider regularly the following:

1. A review of the charity’s constitution and governance.
2. Confirm that the charities purposes are up to date and consistent with its activities and ensure that the charities purposes are allowed in terms of the 2005 Act.
3. Ensure that the articles make it clear what charitable purposes the charity is pursuing.
4. Is there a robust conflict of interest policy and clear lines of authority?
5. Does the way the charity is set up inhibit the Trustees from carrying out their duties?
6. Can the charity make decisions solely in the interest of the charity?
7. Is there any undue restriction on accessing the charities benefit?
8. Does the public benefit that the charity provides fit in with its charitable purposes?
9. Are we sure that the charities activities advance its charitable purposes and is there adequate monitoring in place?
10. Does our annual report describe the charity’s activities and explain how the charity delivers public benefit?

It is important to distinguish these duties from the general duties of Directors of Limited Companies which although may seem to be similar they in fact concentrate on the success and profit of the Company, namely

- To act within powers as set out in the company's constitution, i.e. the Company's Articles and Memorandum of Association;
- To promote success of the company;
- To exercise independent judgment;
- To exercise reasonable skill, care and diligence;
- To avoid conflicts of interests;
- Not to accept benefits from third parties;
- To declare any interest in any proposed or existing arrangements or transactions with the company.

There would be no profit element in a charity (other than good management of the funds) and success would be measured differently.

### **Specific Duties of Charities**

Charitable Trustees also have a duty:

1. To update the charities details with OSCR for example changing purposes and advising them that we have updated the purposes with Companies House.
2. Reporting to OSCR. Charitable Trustees have certain statutory duties to supply information to OSCR namely 1) annual monitoring, 2) charity accounting and 3) making changes to the charity.
3. Financial record keeping and reporting in terms of Section 44 of the 2005 Act charities require to keep proper accounting records, prepare a statement of accounts including reporting its activities, have the statement of accounts independently examined or audited and send a copy of the accounts along with the annual return to OSCAR.

Accounting records require to be kept for a minimum of 6 years from the end of the financial year in which they were made.

4. Fundraising – Trustees have responsibility to ensure that this is carried out properly although this should not affect NAVT.
5. Providing information to the public.

Trustees must make sure that the charity meets the legal requirements when advertising and referring to their charitable status.

### **Publicising the Charitable Status**

Where the name of the Trust does not make it clear that it is a charity, Trustees have to be careful to include the words Charity, charitable body or a charity registered in Scotland in all material referring to the Trust.

AS NAVT does not include these words in its name reference to its charitable status will have to be included in all communications with the public, including all the application forms and monitoring forms.

### **Payment of Trustees**

Charity Trustees must act in the interest of the charity. Although not paid any personal benefit to a charity trustee has to be treated with caution.

### **Trustee Investment Powers**

Trustees have general powers of investment. The 2005 Act also allows charity Trustees to make any kind of investment of the trust estate including an investment in property and also to acquire property for any other reason.

Before a trustee invests they require to have regard to:

1. The suitability to the trust of the proposed investment.
2. The need for diversification of investments in so far as it might be appropriate.
3. Trustees should take proper advice about how the power should be exercised and when reviewing investments.

The investment of NAVT funds will be strictly controlled and reported upon by the Council's Finance Services all in terms of the appropriate legislation.

### **Breach of Duties**

OSCR which regulates charities is able to take action where there is evidence that charity trustees are behaving improperly which will be proportionate depending on the type of breach. If the misconduct is severe a trustee may also be guilty of a criminal offence.

Trustee charities also have a duty to consider what action to take in the interest of the charity if they become aware of unauthorised fundraising. This particular problem should not apply to NAVT as it is not a fundraiser .

Finally, it should be noted that the trustees are not there to work for the interests of the Council or in the case of Co-opted directors/trustees their charitable or business interests. The interests of the Trust must come first and if the trustee cannot honestly do that they would require to declare an interest and leave the meeting during the discussion (if that was the decision of the Board).