



Charities Alert

Charities with a connection to a non-charity

April 2019

Guidance for charities with a connection to a non-charity is available in full at <https://www.gov.uk/guidance/guidance-for-charities-with-a-connection-to-a-non-charity>

In a nutshell

On 29 March 2019, following consultation in 2018, the Charity Commission published its guidance for charities with a connection to a non-charity. The guidance makes clear that the Charity Commission expects that

- trustees will have applied this guidance to all connections they have with non-charities;
- trustees will have addressed the risks of any connection; and
- trustees will ensure that the charity's resources are never used to advance non-charitable agendas and interests.

The key message is that, whilst connections with non-charities can make a positive difference for a charity's beneficiaries, it is an area where the Commission's casework has identified concerns. The six principles covered in the guidance are:

- Recognise the risks
- Do not further non-charitable purposes
- Operate independently
- Avoid unauthorised personal benefit and address conflicts of interest
- Maintain your charity's separate identity
- Protect your charity

Background

The Charity Commission's casework has identified examples where charities have not managed their links to non-charitable organisations with care, in some cases allowing charities to be misused to further non-charitable interests, including commercial or private interests. Charities can work with other charitable and non-charitable organisations to further their purposes and make a difference for their beneficiaries. Setting up or maintaining a close relationship with a connected non-charitable organisation can provide benefits to charities, but it can also expose charities to additional and sometimes significant risks. The new guidance sets out six principles for trustees, and three checklists, covering three different common charity / non-charity relationships which can be used to assess the connection. The guidance is intended to apply to a wide range of connections between charities and non-charities. The guidance states that it applies to a charity if it:

Who is this guidance for?



Trustees should be clear about which risks to avoid and which to manage

Any benefit to the non-charity must be incidental

Be independent and be perceived to be independent

Six principles

Recognise the risks

Connections with non-charities can provide a way of managing risk. They may be providing funding directly or creating an effective trading structure to raise funds. Connections may give access to opportunities which strengthen quality, reach or impact, or other valuable resources which save the charity money. However, as with any new arrangement it is important that trustees assess both the risks and benefits of any new connection. If a connection makes a positive difference to its beneficiaries, a process should then be put in place for both managing and monitoring the risks of the relationship, as well as considering whether the connection remains relevant to delivering the charity's objectives.

Where money or risk is involved trustees should review the connection at least once a year.

Do not further non-charitable purposes

Charity law requires charities to have purposes that are only charitable and to deliver public benefit. Trustees will need to be clear how their relationship with the non-charitable organisation fits with their charitable activities. They will need to understand both the similarities and differences to identify where challenges may arise that the resources of the charity are funding or supporting non-charitable activities. It must be clear that any benefit for the non-charity is incidental, that is, a necessary result of by-product of carrying out the charities purposes. For example, where a charity is grant funding a non-charity, trustees must be satisfied that the charity's funds were used for the specific purposes given and that the grant does not result in more than incidental benefit. To assist charity's further, the Charity Commission has guidance around grant funding an organisation that isn't a charity.¹ The Charity Commission has also issued further guidance through CC9 on carrying out campaigning and political activity² which includes working with non-charities.

Further Charity Commission guidance is available to support charities in their decisions.

A connection to a non-charity held by many charities is investment in a trading subsidiary. A subsidiary can benefit a charity by:

providing a return on the investment
eg non-charity trades to raise money for the charity

carrying out activities which the charity could carry out itself to further its objects
eg managing risk and/or tax

managing the administration of the charity or its resources more effectively

If the charity makes investments or loans to support a failing trading company, this may not meet trustees investment duties and can result in tax liabilities if HMRC decides that funding was not given for the benefit of the charity and therefore is non-charitable expenditure. Guidance is available to trustees on both trading and tax (CC35)³ and investment matters (CC14)⁴.

Operate independently

Charities may be set-up by non-charities, who may then be the sole funder or provide a significant income for the charity. These organisations may also appoint trustees to the board. Charities must manage conflicts and policies to ensure that they are both independent and perceived to be independent from their connected organisations. All charity trustees, regardless of their appointment, should be free to make decisions about accepting funding and any terms or conditions attached to it, and making their own decisions about the services provided by the charity and who will benefit. Potential conflicts surrounding appointments from connected non-charities are discussed further below.

¹<https://www.gov.uk/guidance/draft-guidance-grant-funding-an-organisation-that-isnt-a-charity>

²<https://www.gov.uk/government/publications/speaking-out-guidance-on-campaigning-and-political-activity-by-charities-cc9>

³<https://www.gov.uk/government/publications/trustees-trading-and-tax-how-charities-may-lawfully-trade-cc35w>

⁴<https://www.gov.uk/government/publications/charities-and-investment-matters-a-guide-for-trustees-cc14>

Avoid unauthorised personal benefit and address conflicts of interest

All trustees have a duty to act only in the best interests of their charity and should avoid putting themselves in a position where there is a personal conflict or a duty to another person or body.

The Charity Commission guidance makes clear that potential conflicts do not reflect upon the integrity of the trustee affected but are something which must be managed. Conflicts can arise for any number of trustees due to personal circumstances but where a trustee is appointed by a connected non-charity conflicts are more likely. Conflicts may arise where:

- There may be direct or indirect benefit from the charity's arrangement with the connected non-charity (for example the trustee or close relation has a financial interest or shareholding in the other organisation); or
- There is a real, or perceived, duty or loyalty owed to the non-charity (for example paid employment) which may, or may appear to, influence the trustee's decision making at the charity.

Key controls within the charity to manage these relationships include:

- Authorisation in place in advance for any trustees benefit, including benefit to people and companies with a close connection to trustees;
- Processes in place for identifying, removing or managing conflicts that arise; and
- Having enough trustees who are not affected by a conflict of interest.

There is more guidance on managing conflicts in the CC29 conflicts of interest: a guide for charity trustees.⁵

Charities should have enough trustees who are not affected by a conflict of interest.

Maintain your charity's separate identity

It is important that trustees consider the public perception of their activities and those of the connected non-charity, particularly whether the charity's best interests are served by sharing an identity with the non-charity through use of a similar or working name, joint branding or shared website or there the charity and non-charity should have clearly distinct separate identities. Points for consideration where identities are shared may include:



Where there is a shared identity it is particularly important that rules around fundraising are transparent and that the charity does not raise money for use by the connected non-charity in ways that do not further the charity's purposes; that donors are clear from the fundraising communications how and whether any funds are shared; and that donations are not routed to the non-charity.

⁵<https://www.gov.uk/government/publications/conflicts-of-interest-a-guide-for-charity-trustees-cc29>

Trustees must act in the best interests of the charity

A shared identity may be in the charity's best interest but the charity may be negatively exposed to the activities and reputation of the non-charity

Protect the charity's interests including the beneficiaries, the assets, and charity's reputation

Protect your charity's interests

Throughout the guidance the Charity Commission reminds trustees that any connection must be in the best interests of the charity and the benefits risks of the connection and the operational arrangements of the connection must be fully understood before the connection is established and on a regular basis where the connection is renewed or continues. Trustees are required by law to act in the best interests of the charity and protect the charity. The guidance sets out some key considerations for trustees to help them do this.

- Consider the alternatives for achieving your charities objectives
- Carry out appropriate due diligence on the connected non-charity
- Know the risks, how the charity is managing them, and how they might change
- Act with reasonable skill and care, taking professional advice if necessary
- Get value for the charity's money where it is paying for resources or services (for example grant funding) or sharing resources or services (for example with a subsidiary)
- Have appropriate written agreements in place

Next steps

The guidance includes three checklists for the most common scenarios to assist charity trustees in assessing whether they are applying the guidance and identify areas for focus, and an infographic which summarises some of the key questions for trustees. We recommend that Charity trustees review their arrangements and complete the checklist(s) that reflect their current circumstance and consider the points of this guidance as they enter into any connections with non-charities.

charities operating with a non-charity as a subsidiary



charities set up and mainly funded by the non-charity



charities in regular partnering or funding relationship with a non-charity that is not a founder or subsidiary



Contacts

If you would like further, more detailed information or advice and to discuss how this will affect you, please contact your local Deloitte partner or:



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⁶<https://www.gov.uk/guidance/guidance-for-charities-with-a-connection-to-a-non-charity#check-lists>

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