

WHO'S IN CHARGE OF A CHARITY?

Factsheet 4



This factsheet owes a debt of thanks to Geoffrey Hand, a Consultant Charity Governance guru. Look at his thoughts on who runs a charity?

Who's in charge of a charity? The answer is always "the Trustees", right? Unfortunately, things are sometimes less straightforward than you would hope.

It's elementary to most charity trustees that their Governing Document is their charity's "bible". Pretty much every charity trustee knows its Governing Document sets out what the charity is about, how the charity is run, who are the people in charge and how they get to be the people in charge. So, it really matters.

It's your Governing Document that sets out who's in charge of a charity.

What's in a name?

It often happens that a Governing Document adopts a variety of particular names to describe "the people in charge". They may be called "Trustees", "the Board of Trustees" or just "the Board"; maybe also "the Executive", "the Council", "the Executive Council", "the "Board of Management" or perhaps even just "the Committee".

Often it is obvious who are "the people in charge", whatever they are called. But that is not always the case, especially when two different groups in one charity both claim to be "the people in charge".

Real-life Example (1)

A real but anonymous charity's Governing Document called for both "a Committee" and for "Trustees". The Committee was to have "a Chair, a Vice-Chair, a secretary plus four other members" with a quorum of five. The Trustees had "to number no fewer than two nor more than six" all of whom "must be Members" with a quorum of three.

The Trustees said they were the trustees and so they were "the people in charge". They told the Charity Commission they were the trustees and were recorded as such on the Commission's Register. The Committee disagreed. So, who were "the people in charge"?

Who's in charge of a charity? The Golden Rule

There is a golden rule: "It's not the name that matters, it's what they do". Section 177 of the Charities Act 2011 is crystal clear. It provides that charity trustees are "the persons having the general control and management of the administration of a charity", regardless of their title.

Real-life Example (2)

The charity's Governing Document was in fact clear as to who did what. "The Trustees were to hold the legal title to the charity's land as directed by resolution of the charity's members"; "the Committee" was to "manage all the affairs of the Charity and have the power to do everything necessary for that purpose". But the Trustees would not accept that reality – until they took on board Section 177. The Golden Rule left no room for doubt. "The people in charge" were the Committee and not the Trustees. The Trustees had no choice but to back down and did so – shortly before they resigned.

Managing Trustees and Holding Trustees

In charities, "the people in charge" are properly called "Managing Trustees" (in this case "the Committee") and those not in charge "Holding Trustees" (in this case "the Trustees"). So if Holding Trustees act as if they are Managing Trustees they are living dangerously; their decisions will be invalid and they may be personally liable for the consequences. And the Managing Trustees have a legal duty to assert their authority. So as ever, charity trustees will never go far wrong if they observe and act on their Governing Document which, for trustees, is always their bible.

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