

Checklist of factors for trustees to consider before employing and paying a trustee:

It is important that before trustees make a detailed consideration of the factors listed below, they have first carefully explored whether there are any better alternatives to employing and paying a trustee to provide a service to the charity.

Those factors which we could expect all charities to consider, regardless of their size or type, are marked with an asterisk. However, we acknowledge that with such a wide variety of charities, the considerations surrounding the payment of trustees will vary: not all factors will apply in all cases, whilst in some cases other factors may also be relevant.

Factors to consider in any case where a trustee is being paid:

- *What procedures will the remaining unpaid trustees put in place to manage the conflict of interest?

We expect trustees to recognise that a conflict of interest exists (which may also include conflicts with outside commitments, eg other trusteeships, business interests), and take adequate steps to minimise its effects. We recommend that trustees develop a written policy on how they deal with the issue.

- *Have arrangements been made to disclose any payments to trustees in the charity's annual report/accounts?

The trustees should be aware of the requirements of the Charities SORP (Accounting and Reporting by Charities: Statement of Recommended Practice (SORP 2000) in this area. If the trustees prepare accounts on an accruals basis,

there is a requirement to list in the notes to the charity's accounts the individuals receiving payment, together with details of the amounts of the payments. We strongly recommend that all charities disclose payments made to trustees. (See the Publications section of our website for the Charities SORP.)

- Do the trustees have appropriate budget provisions and financial forecast systems in place?
- Have the trustees consulted the charity's stakeholders (ie major funders, members, beneficiaries, donors)? If they have done so, what was their response?

Trustees need to consider the impact their decision to pay a trustee might have on those with an interest in the charity.

- *Are the number of trustees to be paid in the minority on the trustee body?

Depending on the size and constitution of the trustee body, we generally recommend that no more than one or two trustees should be employed and paid. The higher the proportion of paid trustees, the greater the risk of potentially damaging conflict of interest.

- Should independent advice be taken before deciding the level of payment?

The trustees may wish to consider taking impartial and independent advice to help them decide on pay arrangements. This is particularly important if a majority of the trustees are to be employed and paid.

Additional factors to consider when paying a trustee for services provided to the charity?

- Have the trustees obtained quotes for the work to be done, and drawn up a shortlist of individuals or companies which should be asked to tender for the work?

As a matter of good practice, we would expect trustees to obtain a number of quotes so they can ensure (and demonstrate) that they are obtaining value for money.

- Does the contract contain features to protect the charity's interests?
- Do the trustees have any arrangements for testing or challenging invoices which might be disputed?

If trustees are in doubt about the validity of an invoice, they may wish to have procedures in place to verify it, possibly

including independent scrutiny.

- Was the affected trustee prevented from seeing confidential information about the tender process?

We recommend that trustees who are tendering for work should absent themselves from the meeting or part of the meeting at which related matters are discussed, even if that is not actually a condition of the trustee payment authority. This includes discussions leading up to the decision to go to tender.

Additional factors to consider when paying a trustee for being a trustee:

- *What evidence do the trustees have to show a lack of willing volunteers with the required skills?

The trustees should be able to demonstrate the steps they have taken to recruit an unpaid trustee, eg by advertising the vacancy and approaching individuals and organisations. Trustees may, however, wish to attract trustees from social and economic backgrounds who cannot afford to act as a trustee unless paid. We appreciate there may be good reasons for recruiting trustees on lower incomes, and that employing and paying them for carrying out the duties of a trustee may be more in the interests of the charity than the use of volunteers.

- *Could the duties for which the trustee is to be paid be shared amongst the whole trustee body, or could the number of trustees be increased to spread the workload?

Trustees should consider what other options there are apart from paying a trustee.

- *Are all the duties to be undertaken appropriate to a trustee or could they properly be delegated to an agent or employee?
- *How will the charity ensure the payment represents value for money?

We recommend that paid trustees are in the minority. The trustees may wish to consider taking impartial and independent advice to help them decide on the pay arrangements, and to check that the charity is obtaining value for money.

- *What arrangements are in place for reviewing performance and for assessing whether there is a continuing need for paid trusteeship?

The trustees may wish to set a time limit for the paid

arrangements to continue. This will enable the trustees to review the situation at the end of the period and to extend the period of payment, if necessary.

- *What arrangements are in place for bringing payment to an end, and how will this affect the trusteeship of the individual in question?
- *Has the impact on the degree of personal liability been discussed with the trustee in question?

A higher standard of care is expected of a paid trustee.

Additional factors to consider if an employee is also a trustee:

- *Is the position of paid employment to be advertised on the basis of fair and open competition, and if not, why not?

If the trustees consider that one of their number would be particularly suited to the job, they would need to say why, in relation to the abilities of that individual.

- *How has the payment package been determined?

Trustees should take steps to compare rates with similar employment elsewhere, take independent advice where appropriate, and ensure that there is a system of periodic review.

- *Why is it desirable for employment to be combined with trusteeship, and what special dimension will this bring to decision-making?

There is nothing to prevent employees or advisers attending trustee meetings to give advice and guidance on relevant matters. Trustees would need to demonstrate why the roles of employee and trustee should be combined.

- *Does the need to employ a trustee apply to the individual or the post?

The trustees should consider whether the person holding that particular post (for example, an artistic director or chief executive) should always be a trustee, or whether an exceptional person who currently happens to occupy that post would bring vital skills to the trustee body.

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- *Is there clear segregation between the duties performed as a trustee and those carried out as an employee of the charity?
- *How will performance be measured?

The trustees should ensure there is an objective and independent performance appraisal system in place.

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- *What arrangements are in place for bringing employment to an end, and how will this affect the trusteeship of the individual in question?

The trustees should give particular attention in the contract of employment to any performance element in the pay, commissions or compensation for loss of earnings.

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Additional factors to consider if payment is to the spouse or partner of a trustee, or to a related or connected party:

Trustees need to consider whether the connection is sufficiently close to involve a potential conflict of interest. There will be a potential conflict wherever a charity employs parties related to a

charity trustee, including members of the immediate household of the trustee, or any close relative. This ordinarily includes the child, parent, brother, or sister, of a trustee. It also extends to the employment by the charity of businesses where a trustee is managing director or has a significant interest as an employee or shareholder, and to any businesses owned by a trustee, or in which he or she is a partner.

- Is the employment of the spouse or partner etc expedient in the interests of the charity.

- *Is the financial package proposed reasonable in terms of cost, and in relation to the charity's income?

- *Has the post been advertised on the basis of free and open competition? If not, what evidence is there that there are no more suitable candidates with the necessary skills or expertise?

- Why is the spouse or partner considered the person most qualified or suited to the job?

- Can it be confirmed that the trustee involved did not take part in any discussion or vote/decision concerning the appointment or the terms of the employment contract, and that he or she did not in any way influence the decision of the trustees as a body (eg by lobbying for the appointment)?

- *Have the trustees compared the rate being paid for the spouse/partner's appointment with similar posts elsewhere, and will they conduct periodic reviews to ensure that proper value for money is being obtained?

- *Are proper arrangements in place to manage the conflict of interest? The trustees will need to ensure that the conflicted trustee:
 - will not, for the duration of the spouse or partner's appointment, take part in any discussion or decision

concerning the terms of the employment contract; and

- will not participate in, or have influence in relation to, any review by the trustee body of the spouse or partner's performance, payment, or conditions.

These factors are primarily important for minimising the conflict of interest, but in our experience they also drastically reduce the potential for acrimonious dispute within the trustee body.

The trustees may also need to consider whether there is any likelihood of any termination of the spouse/partner's contract affecting the continuing trusteeship of the other spouse/partner - or otherwise having an adverse effect on trustee relations.