

Harpham & Lowthorpe Village Hall

# Duties & Liabilities of a Trustee

Stephen Harrison  
November 2020

# Duties & Liabilities of a Trustee

As a Trustee you will be a member of a Charitable Incorporated Organisation set-up to run and maintain the Harpham & Lowthorpe Village Hall, with the sole objective of ensuring that it stays available as an events venue for the present and future inhabitants of our community, without favour or prejudice.

## Your Role

As a Trustee we'd like you:

- a) To pro-actively participate in the governance of the village hall, by debating and voting on future expenditure and fund-raising events at our regular committee meetings;
- b) To help deliver events by volunteering to set-out the tables and chairs, to sell the raffle tickets, and/or lend-a-hand in the kitchen etc.;
- c) To promote the use of the hall by our local community, whenever a suitable occasion arises;

And, if within your comfort zone:

- d) To devise and table costed proposals for fund-raising events that may be of interest to our local community, and if approved by the committee, implement the necessary steps to allow the event to happen;
- e) To devise and table costed proposals for work that would maintain and/or improve the hall facilities and grounds;
- f) To propose ideas on how the running costs of the hall and its grounds may be reduced;
- g) To identify and report any lapses in our adherence to our Constitution.

## Your Obligations

As a Trustee you will be expected to adhere to our Constitution, a copy of which can be found here:

<https://www.harphamandlowthorpevillagehall.com/wp-content/uploads/Constitution.pdf>

This rather lengthy document details legal obligations that apply to all our Trustees; the key aspects of which are summarised below.

- h) Trustees must comply with the Charities Act 2011, the Trustee Act 2000 and any other applicable UK law, for example The Equality Act 2010. This does not mean that you need become an expert on such laws, for if you adhere to the obligations herein and do not set out to defraud our charity, then you will effectively be complying with the applicable law.
- i) Trustees must act only for the public benefit, and ensure that our charity is carrying out the purposes for which it is set up, and no other purpose.
- j) Trustees must act in our charity's best interest, and:
  - do what they (and no one else) decide will best enable our charity to carry out its purposes;
  - make balanced and adequately informed decisions, thinking about the long term as well as the short term;

## Duties & Liabilities of a Trustee

- avoid putting themselves in a position where their duty to our charity conflicts with their personal interests or loyalty to any other person or body;
  - not receive any benefit from our charity unless it is properly authorised and is clearly in the charity's interests; this also includes anyone who is financially connected to them, such as a partner, dependent child or business partner;
- k) Trustees must act responsibly, reasonably and honestly. This is sometimes called the duty of prudence. Prudence is about exercising sound judgement, so Trustees must:
- make sure our charity's assets are only used to support or carry out its purposes;
  - avoid exposing our charity's assets, beneficiaries or reputation to undue risk. So, for example, we would be negligent in our duty if we failed to hold sufficient insurance cover to protect our assets;
  - not over-commit our charity, so for example, do not commission any work for which we do not have the funding;
  - take special care when investing or borrowing;
  - comply with any restrictions on spending funds or selling land.
- l) Trustees must use reasonable care and skill, when applying their skills and experience and recognise when it would be prudent to seek professional advice. They should also give enough time, thought and energy to their role, for example by preparing for, attending and actively participating in all trustees' meetings.
- m) Trustees must treat each other with respect and not bully, harass, intimidate, nor discriminate against one another, and also:
- treat all hall users with equal dignity, respect and worth;
  - ensure that no member of the public is disadvantaged, or treated less favourably than others, in terms of access to the hall facilities;
  - ensure that the hall is accessible for all members of the community.
- n) Trustees must comply with statutory accounting and reporting requirements, and also:
- be able to demonstrate that our charity is complying with the law, is well run and effective;
  - ensure accountability within our charity, particularly when responsibility for a task or decision is delegated to staff or volunteers.

Should you wish to know 'chapter and verse' about your Trustee obligations, then we recommend you read the following excellent guide produced by the Charity Commission for England & Wales:

<https://www.gov.uk/government/publications/the-essential-trustee-what-you-need-to-know-cc3/the-essential-trustee-what-you-need-to-know-what-you-need-to-do>

# Duties & Liabilities of a Trustee

## Your Liabilities

**Please do not be afraid**, as the potential liabilities that you will accrue from becoming a Trustee are little more than those you would face in your normal daily life.

Listed below are the types of risk that arise from being a Trustee of a charity. In most instances they will be mitigated by the “legal form” of our charity, and the insurance policies that we have in place.

1. *Liabilities to third parties that occur in the course of running the charity, e.g. debts to suppliers, staff wages, utility bills etc.* – As we are a Charitable Incorporated Organisation it is the charity itself rather than its Trustees, that is responsible for its debts and any liabilities that might arise from its legal dealings. This stays the case even if the charity has insufficient funds to meet its liabilities, for although the charity would become insolvent, the Trustees would still face no liabilities. However, there is an exception when a charity fails in its duty of care to its creditors - See next risk.
2. *Liabilities arising from wrongful trading* – Should it become evident that the charity faces insolvency, then it is the duty of the Trustees to take steps to mitigate the losses faced by its creditors. The Trustees would therefore be held collectively liable under law for any action they sanction which increases a creditor’s losses, e.g. ordering goods and/or services that they knowingly cannot pay for.
3. *Liabilities arising from a wrongdoing under civil law, e.g. someone suffers personal injury or loss when using the village hall* – The charity has insurance in place to protect itself and its Trustees from liabilities that arise from being an employer, and from dealing with the public. Our policies cover amongst many things:
  - a. Legal liability for bodily injury or third-party property loss caused by a negligent act by a Trustee;
  - b. Legal costs and expenses in defending prosecutions under health and safety legislation;
  - c. Unintentional libel and slander by a Trustee, up to a set amount;

We have also put in place Trustee Indemnity Insurance, should a Trustee cause loss or bodily injury as the result of a wrongful act, and be directly sued for damages by the wronged individual.

4. *Vulnerability to legal action instigated by the charity* - You can be held personally liable to our charity if we suffer loss or damage that you cause, or help to cause, through recklessness, or dishonesty.
5. *Vulnerability to legal action instigated by the Charity Commission or the Attorney General (or the other Trustees) in the case of a breach of trust.* – This might arise when we collectively fail to look after the charity’s resources, and the charity suffers a loss, then the Charity Commission may seek recourse from the Trustees themselves. However, the law is weighted to protect Trustees who have acted in good faith, honestly and reasonably.
6. *Liabilities arising from serving as a Trustee while disqualified* - It is a criminal offence (punishable by a custodial sentence and/or a fine) committed by the individual, to act as a charity trustee whilst disqualified. To qualify you must:

## Duties & Liabilities of a Trustee

- a. Be at least 16 years old;
- b. Not be bankrupt, or have an Individual Voluntary Arrangement;
- c. Not have an unspent conviction for certain offences involving deception or dishonesty;
- d. Not be on the sex offenders' register.

In summary, provided you do not act dishonestly, or with gross-negligence, or recklessly, then you are protected from personal liability by our insurance cover, or relief from personal liability by the Charity Commission.

If you like to know more about Trustee liabilities, then we recommend you read the documents available on the website links below.

<https://blogs.ncvo.org.uk/wp-content/uploads/guest/trustee-liability-guide.pdf>

<https://www.gov.uk/government/publications/vicarious-liability-of-a-charity-or-its-trustees>