

The essential trustee (CC3): new version
A contribution from the Society of Biology to the Charity Commission

February 2015

- 1. Please say what kind of charity or charities you are involved with or responding on behalf of (including their charity number if applicable), and what your role is. The commission particularly wants to hear from charity trustees.**

The Society of Biology is a registered charity (No. 277981) and is incorporated by Royal Charter. We are a single unified voice, representing a diverse membership of individuals, learned societies and other organisations from across the life sciences. Many of our member organisations¹ are also registered charities, and a proportion of our individual members will undertake trustee responsibilities. This response is representative of the views of the Society of Biology's trustees, in collaboration with our member organisations.

- 2. In the new version of 'The essential trustee' is the explanation of trustees' responsibilities clear and easy to understand? If not, what didn't you find clear? How could the commission make it clearer?**

The new version is well written in terms of style and absence of jargon. Trustees' responsibilities are made clear, and links leading to explanatory webpages are helpful in certain cases². Problems arose with the 'must' and 'should' distinction however - see below.

- 3. The commission uses 'must' to explain legal requirements and 'should' to explain minimum good practice. The new version explains more directly that minimum good practice is not optional, and there are consequences of not following it. Do you understand the distinction between what trustees 'must' and 'should' do?**

The document explains this distinction to a limited extent but it is not clear why some of the 'shoulds' are not 'musts'. There are also some examples of 'need to'; it may be clearer to replace this wording with 'must'. The document provides a good idea of what is required and expected, but lack of clarity on what would constitute illegality.

The Society understands that the Charity Commission lacks the resource to investigate all potential misdemeanours; however the document must make clear the difference between a breach of duty and something that is illegal.

¹ A full list of the Society of Biology's member organisations is included as an appendix.

² For example, 'Read more about [accounts](#)', pg 23

This issue could be addressed by clearer guidance on seeking legal advice. That is, Page 11 states '*the commission doesn't expect you to be a legal expert, but you should take reasonable steps to find out about legal requirements. This could include taking independent advice from a suitably qualified person*'.

It is not clear if this qualified person must be a legal expert, and the document gives no information on what the minimum good practice requirement is. Greater detail here would help trustees establish the level of specific advice needed.

There are also areas of the document where stronger wording is needed, and where the language used contradicts practice. For example;

Page 7: '*When you appoint new trustees, you should think about...*

We recommend that this wording is stronger than 'think about' for some of the items listed; for instance 'ensuring that new trustees are eligible to act' is essential.

Page 10: '*You must make sure that the charity (and the trustees) complies with the governing document.*'

The value of making this a 'must' is significantly reduced, if not eliminated, if having a governing document is only a 'should'. If we understand this correctly, the need for a governing document should be defined as a 'must', whereas the list of what is included in that document can be defined as 'should'. If any specific content is a 'must' then that is to be made clear to assist when organisations are reviewing and potentially re-wording their governing documents.

4. Which of the following statements about what trustees 'should' do are helpful in explaining what it means (please answer for each):

- a. minimum good practice requirements**
- b. specified good practice**

Both a and b would be useful if used together for explaining what should be done.

- c. there is no specific legal requirement**

This statement is very helpful.

- d. the commission expects you to comply**

This statement is not helpful – an explanation of the consequences of not complying is needed.

- e. if you don't comply, the commission may ask you to explain and justify your decision**

This statement is more helpful than d, but again the use of 'may' leads to ambiguity. Again, there is a need for clarity on the consequences if the Commission is not satisfied by the explanation. This will determine the importance of the action.

- f. if you don't comply, you may be in breach of a legal duty**
- g. if you don't comply, it is difficult to see how you can satisfy your legal duties**

For both f and g, a 'must' action may be more appropriate. Clarity is needed in f, again around the use of 'may'.

h. if you don't comply, the commission may treat this as evidence of misconduct or mismanagement

Again, if this is so, a 'must' action may be more appropriate, and the use of 'may' creates ambiguity.

Which of these statements applies best is dependent on context, but minimum good practice requirements would be helpful, as would a clear statement of legal duties.

5. Do you think the guidance strikes the right balance between:

- **reassuring trustees that the law protects them if they comply with their legal duties, and**
- **highlighting the potential consequences of acting negligently or in bad faith?**

The general tone of the document is of potential consequence rather than protection. Greater clarity on what constitutes illegality, and what doesn't, would help to address this.

Furthermore, Section 11.2 on reducing the risk of personal liability appears to apply to the governing body of the organisations whereas, elsewhere in the document, the guidance applies to individual trustees. Clarity on these issues would be beneficial.

6. Some trustees seem to be unfamiliar with their duties. What more could the commission do to raise awareness of this guidance? How could your organisation help?

The guidance itself could be more specific about good practice associated with informing trustees of their responsibilities. For instance, mandating that charitable organisations have processes in place to issue and record the reading of the trustee guidance, via a signed declaration or similar.

Induction procedures of trustees vary according to organisation, but umbrella bodies like the Society of Biology are well placed to work with the Charity Commission to provide training opportunities for new trustees of our member organisations and similar learned society organisations.

Member organisations of the Society of Biology:

Full Organisational Members

Agriculture and Horticulture Development Board
 Amateur Entomologists' Society
 Anatomical Society
 Association for the Study of Animal Behaviour
 Association of Applied Biologists
 Biochemical Society
 Biosciences KTN
 British Andrology Society
 British Association for Lung Research
 British Association for Psychopharmacology
 British Crop Production Council
 British Ecological Society
 British Lichen Society
 British Microcirculation Society
 British Mycological Society
 British Neuroscience Association
 British Pharmacological Society
 British Phycological Society
 British Society for Gene and Cell Therapy
 British Society for Immunology
 British Neuroscience Association
 British Society for Matrix Biology
 British Society for Medical Mycology
 British Society for Neuroendocrinology
 British Society for Parasitology
 BSPB – British Society of Plant Breeders
 British Society for Plant Pathology
 British Society for Proteome Research
 British Society for Research on Ageing
 British Society for Soil Science
 British Society of Animal Science
 British Toxicology Society
 Experimental Psychology Society
 The Field Studies Council
 GARNet
 Gatsby Plants
 Genetics Society
 Heads of University Centres of Biomedical Science
 Institute of Animal Technology
 Laboratory Animal Science Association
 Linnean Society of London
 Marine Biological Association
 MONOGRAM – Cereal and Grasses Research
 Community
 Nutrition Society
 The Rosaceae Network
 Royal Microscopical Society
 Science and Plants for Schools
 Society for Applied Microbiology
 Society for Endocrinology
 Society for Experimental Biology
 Society for General Microbiology

Society for Reproduction and Fertility
 Society for the Study of Human Biology
 SCI Horticulture Group
 The Physiological Society
 Tropical Agriculture Association
 UK Environmental Mutagen Society
 UK-BRC – Brassica Research Community
 UK-SOL – Solanacea Research Community
 University Bioscience Managers' Association
 VEGIN – Vegetable Genetic Improvement Network
 Wildlife Conservation Society Europe
 Zoological Society of London

Supporting organisational members

Association of the British Pharmaceutical Industry (ABPI)
 Association of Medical Research Charities
 Astrazeneca
 BASIS Registration Ltd.
 Bayer
 BioIndustry Association
 Biotechnology and Biological Sciences Research Council (BBSRC)
 The Donkey Sanctuary
 The Ethical Medicines Industry Group
 Food and Environment Research Agency (FERA)
 Forest Products Research Institute
 Huntingdon Life Sciences
 Institute of Physics
 Ipsen
 Lifescan (Johnson and Johnson) Scotland Ltd
 Medical Research Council (MRC)
 MedImmune
 Pfizer UK
 Plant Bioscience Limited (PBL)
 Royal Botanical Gardens Kew
 Royal Society for Public Health
 Select Biosciences
 Syngenta
 The British Library
 Understanding Animal Research
 Unilever UK Ltd
 Wellcome Trust
 Wiley Blackwell