

# Legal Duties of Charity Trustees

28 June 2017

Wheel Annual Conference: Learning Zone - Masterclass

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# Today's Presentation

- **Who we Are & What we Do**
- **Core Trustee Duties**
- **Ten Tips for Trustees**

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# Who we Are & What we Do

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## Our Mission

- Regulate, in the public Interest
- Ensure Charities comply with the law
- Support best practice in the governance, management and administration of Charities



## Our Vision

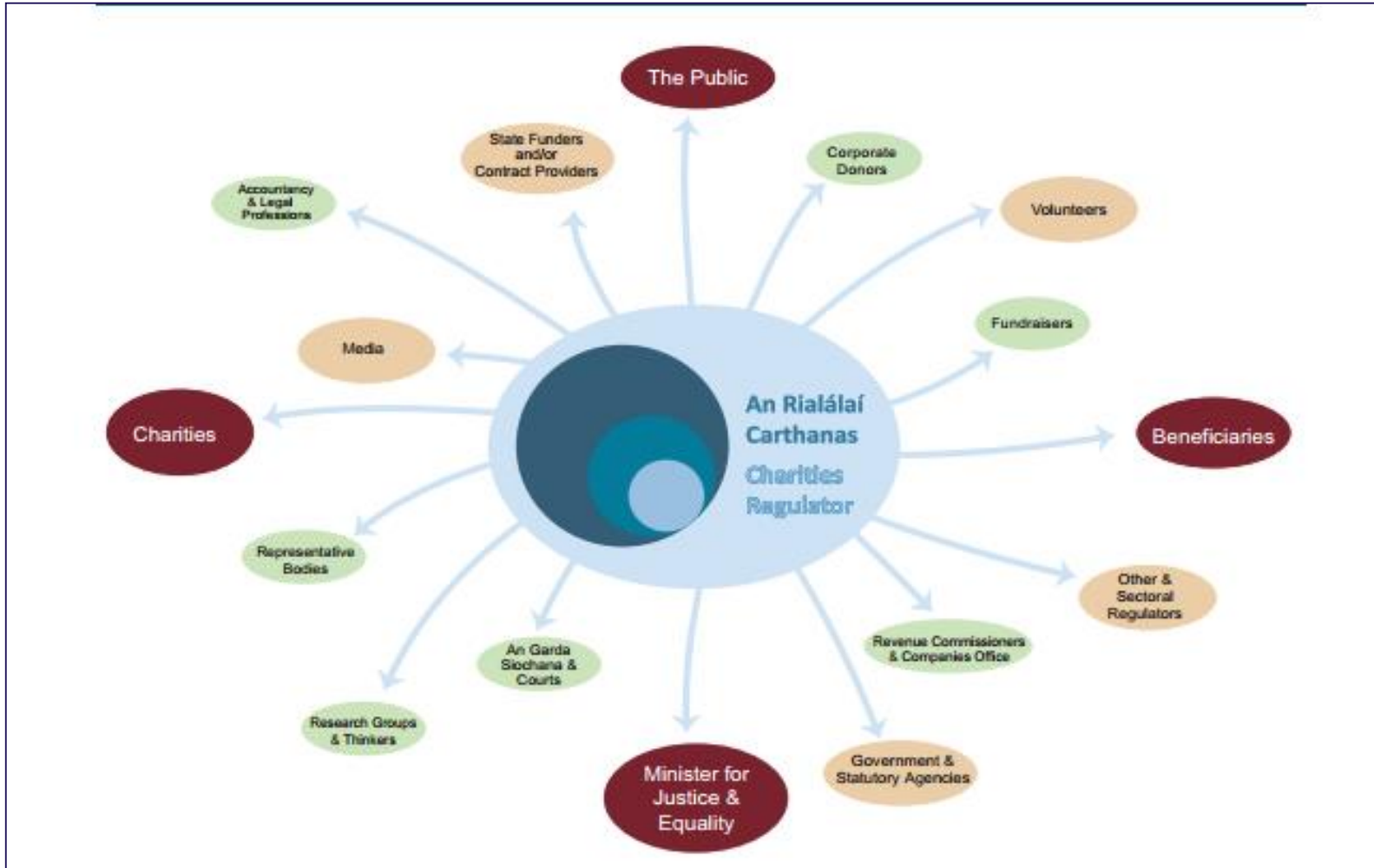
- A vibrant, trusted Charity Sector, valued for the public benefit it provides

# Role of Charities Regulator

*Charged with responsibility for supervising charities in Ireland and its main functions are:*

- *To increase public trust and confidence: increase public trust and confidence in the management and administration of charitable trusts and charitable organisations,*
- *to establish and maintain the Register of Charities;*
- *to ensure and monitor compliance by charities with the provisions of the Charities Act, 2009;*
- *to carry out investigations into charities where considered necessary;*
- *to issue guidelines and codes of conduct for the benefit of charities and charity trustees on matters related to charities and charity law.*

# Our Stakeholders



# Building a Proportionate Infrastructure

*A public consultation at end 2016 identified:*

- Charity SORP form basis for accounting and reporting framework;
- Amendments to Charities Act 2009 required to ensure proposed regulations apply to companies and that thresholds for audit & SORP are increased;
- Updates required to draft Charity Accounting & Reporting Regulations;
- A programme of education, including **publication of guidance, required for charity trustees** and other interested parties in relation to the proposed accounting and reporting requirements.

# Definition of Charity Trustee

Charities Act says it depends on your legal structure. The following are some examples:

If the charity is a **company**, the charity trustees are the directors and other officers (company secretary) of the company;

If the charity is **an unincorporated body or a body corporate** (other than a company) the charity trustees include any officers or people acting officially in the management and control of the organisation such as members of the board of management or governing committee;

If the charity has been **established under a trust deed**, the charity trustees are the trustees specified in the trust deed.



# Not Everyone can be a Charity Trustee

A person may cease to be qualified to act as a charity trustee. Reasons include:

- is adjudicated bankrupt;
- enters into a formal court approved insolvency arrangement with the Insolvency Service of Ireland;
- is convicted on indictment of an offence;
- is a company that is in the course of being wound up.

*For further detail and a full list of disqualifications from being a charity trustee, please consult section 55 of the Charities Act 2009.*

Some charities may also have further grounds on which an individual is prohibited from serving as a charity trustee, which would be outlined in their governing document.

# Who is Baking the Cake?

**CHARITY TRUSTEES** are responsible for all aspects of the governance and management of their Charity – they are the bakers.

They are accountable to:

- the Charities Regulator
- its donors
- its beneficiaries
- the public

We will support Charity Trustees BUT we need the input of all stakeholders to achieve our vision.

*“Charity trustees are the people who **exercise control over** and are **legally responsible** for the management of a charity and are **collectively responsible**”*

*“Charity Trustees can delegate tasks however they **cannot delegate accountability**”*

*“It’s so much more than attending board meetings, you’re legally responsible for an organisation.... you may find yourself making decisions about matters (financial and legal) that you feel in no way qualified for.”*

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# Core Trustee Duties

# Where do Duties come from?

- Your governing document (constitution of your charity);
- Legislation (statute); (specific duties Charities Act 2009)
- Common Law (the body of Irish law based on established practice and decisions of the courts).

*There are also many other legislative requirements including as Company Directors – Company Law, Health & Safety, Employment Law, Revenue, Data Protection etc.*

# General Trustee Duties

## 1. Comply with your charity's governing document.

*You must read and comply with the terms of the governing document of your charity. You must ensure that you understand the charitable purpose of your charity, the public benefit that it is providing and the extent of your powers and duties as a charity trustee.*

Charity trustees may not profit from carrying out their duties as a charity trustee. You cannot accept a salary specifically for acting as a charity trustee, nor receive other benefits for this. However, you may be reimbursed for reasonable expenses, which you incur in carrying out your duties

# General Trustee Duties

2. Ensure that your charity is carrying out its charitable purposes (only) for the public benefit.

Charitable purposes as set out in the Charities Act 2009 are:

- the prevention or relief of poverty or economic hardship;
- the advancement of education;
- the advancement of religion;
- any other purpose that is of benefit to the community.

These charitable purposes must be beneficial to the public or a section of the public.

Any personal benefit that ensues must be strictly ancillary to and necessary for the furtherance of the public benefit.



# General Trustee Duties

## 3. Act in the Best Interests of your Charity

- Always do what is best for the Charity
- Declare conflicts of Interest.
- Never influence a decision where you feel conflicted.

## 4. Act with reasonable care and skill.

- Bring your personal experience and skills to bear on your role
- Take time to perform your role effectively
- Invest in training/upskilling

# General Trustee Duties

5. Manage the assets of your charity.
  - Ensure all property is properly accounted for.
  - Assets must be used to further your charitable purpose only.
  - Ensure they are not used improperly or for unauthorised purposes
  - Your funds must not be wasted or misappropriated
  - Budget for the short, medium and long term
  
6. Make appropriate investment decisions.
  - Exercise due care and skill
  - Invest in the best interests of the charity
  - For trusts – if you invest outside of the scope of the trust deed you could be held personally liable.

# Specific Duties – Charities Act 2009

1. Ensure that your charity is registered on the Charities Regulator's Register of Charities.
2. Ensure that your charity keeps proper books of account.
3. Ensure that your charity provides an annual report and annual accounts to the Charities Regulator.

# Specific Duties – Charities Act 2009

4. Ensure your Charity prepares and submits accounts to Regulator
5. Ensure that your charity prepare and submits an annual report to the Regulator
6. Inform the Charities Regulator if you have reasonable grounds to suspect a theft or fraud has occurred in your Charity

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# Ten Tips for Trustees

# GOVERNANCE

Know the Law

Closing  
Your  
Charity

Charitable Purpose  
and Public Benefit

Implement an  
Effective Risk  
Procedure

Impartial  
Decision  
Making

Trustee  
Performances

Know Your  
Governing Document

Recruiting  
New Trustees

Accountability and  
Transparency are  
Paramount

Fundraising  
Management

# Contact Us

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