

Brabners
personal



**Charitable
Giving**

From Philanthropy to Charity Trusteeship

When we decide to give back to our communities and support causes close to our hearts, there are many ways we can go about this. From donating money or items to an existing charity, volunteering your time and talent, becoming a charity trustee, or even setting up your own charity - we can all make a difference to those in need.

With many opportunities to contribute, assessing how you can make the most of your charitable giving, and what that might mean for you and your chosen charity is important. We can help you to understand the

benefits of philanthropy, how to maximise the impact of your efforts, and the responsibilities that come with undertaking the role of a trustee.

We are here to guide you in your role as donor, volunteer or trustee, helping you to navigate the requirements and responsibilities placed on you as you give back.

Our charity experts are dedicated to working with all those involved in the Charity Sector advising on any and all legal issues that they face, helping you to achieve your philanthropic aims.



Starting your philanthropic journey

As you reach the stage in your life where you have the means to give back, you should take the time to decide how best to achieve this and make the biggest impact.

Philanthropy is essentially strategic charitable giving. Most of us either make regular or one-off donations to charities or causes that are important to us or inspire us, but we rarely have a relationship with how that money is spent. Taking a philanthropic approach to giving ensures that this relationship and the objectives you want to achieve with your giving can indeed be accomplished.

Do I have to be wealthy to be philanthropic or give a minimum amount?

Philanthropy is about strategic giving, not the amount you give. If you think carefully about the cause you want to give to and the impact you want your giving to have, weigh the options and make the gift, that is philanthropy in action.

A gift of £10 can be philanthropic if you take this approach, but similarly a gift of £1m might not be philanthropic if you just wrote a cheque and didn't give it any thought.

I don't know where to start! How can I take those first steps?

A great starting point would be to think about the causes that are important to you.

For example, you might want to see an end to homelessness. Do some research into the work that is done to address homelessness and start to think about where you believe money would be well spent. I.e. is your money best spent trying to get homeless

people into accommodation, or perhaps providing resources to groups that aim to prevent homelessness in the first place?

If you are thinking of donating a significant amount of money you could engage with a Philanthropy Advisor. They can guide you through the process, including setting clear objectives and helping you to understand where your money can do the most good.

Should I give now or in my Will when I die?

There are tax benefits to giving both during your lifetime and on death. However, research consistently shows that philanthropists aren't motivated to give for tax reasons, so you should instead focus on the impact of giving and the benefit to you and others.

On a personal level, giving during your lifetime is hugely rewarding. It also allows you to create relationships with charities that you might want to benefit when you die, so that the work your money does after your death is still true to your own values.

Do I need to give money to be philanthropic?

Although the word philanthropy is usually synonymous with the giving of money, it may be that you can create a far better outcome for your chosen cause by being generous with your time. It may be that you have skills or experience that would hugely benefit an existing charity or campaign. You could further the cause by volunteering or even becoming a charity trustee. The key is to think strategically about the objective you want to achieve and how you

can use your skills or experience to further that objective. That might involve volunteering or in some cases even becoming a trustee of an existing charity.

Do I have to set up my own charity to give?

For some, setting up a charity is a step on their journey. However, there are plenty of alternatives and if you are starting out on your philanthropic journey, you should consider these options alongside setting up a charity:

- **Direct giving:** You pay money directly to the charity or cause you want to support.
- **Donor Advised Funds (DAFs):** These are charities in their own right. You deposit money with them and can (to a degree) dictate how those monies are used. The DAF will charge a small percentage fee to cover their overheads and compliance obligations.
- **Community Foundations:** If you are interested in having a local benefit, Community Foundations are a great place to start. They are similar to DAFs but tend to operate in a restricted geographical area, which means they know what the area's needs are.

You could contribute towards existing projects or work with them to develop new ones which meet your objectives.



Charity trusteeship - Getting more directly involved

Having considered your options you may have decided to set up a charity, or that you would like to give your time to an existing charity by becoming a trustee. It is also possible you have been invited (maybe even many times!) by someone in your own network to join the board of trustees of a local charity, or you may already be a trustee for one or a number of organisations.

There are however a number of things you need to know before making the jump into charity trusteeship.

A crucial position for the operation and strategic direction of your charity, trusteeship can be extremely rewarding. However, the duties and responsibilities enshrined in charity law (and often company law) are extensive, so having a keen understanding of what is expected of you, and the support of charity law experts will help you to meet the needs and aims of your charity.

What do charity trustees do?

The Charities Act 2011 describes charity trustees as “the persons having the general control and management of the administration of a charity”. In other words, the charity trustees are the people responsible for governing a charity and directing how it is managed and run.

Whilst the fundamental nature of the role is the same regardless of the size and status of the charity concerned, a trustee's day to day involvement can differ substantially from one charity to the next. So for example, in a small, local charity operated entirely by volunteers, the trustee role can be very "hands on" - mopping the floors at the local community centre - whereas in a very large charity, the trustee role will be far more strategic, meeting perhaps quarterly but otherwise delegating the day to day activities to a chief executive and senior management team.

However, regardless of the charity's size, area of operation and benefit, it is the trustees who share ultimate responsibility for the charity.

What are my duties and responsibilities as a charity trustee?

In the vast majority of cases the role of charity trustee will be voluntary. However, the duties and responsibilities that apply to the role are extensive whether voluntary or remunerated. The overriding duty of charity trustees is to promote the charitable purposes of their charity, as set out in its governing document. However, the Charity Commission (the regulator of charities in England and Wales) identifies six key duties that trustees must comply with:

1. Ensure your charity is carrying out its purposes for the public benefit;
2. Comply with your charity's governing document and the law;
3. Act in your charity's best interests;
4. Manage your charity's resources responsibly;
5. Act with reasonable care and skill; and
6. Ensure your charity is accountable.

There are further duties and responsibilities that apply in particular circumstances as well as general legal obligations. For example, additional legal requirements might arise as a result of the charity's activities, such as providing services to beneficiaries (including children and vulnerable beneficiaries), employing staff or supplying goods and services.

Whilst trustees are not necessarily expected to understand every legal complexity that applies to the charity, they do carry responsibility for ensuring compliance and this is where professional advisors are key.

Is my charity regulated?

Most charities in England and Wales are regulated by the Charity Commission (for England and Wales). Depending on your charity's geographical area of operation, you might also be regulated by the Office

of the Scottish Charity Regulator (OSCR) or the Charity Commission for Northern Ireland (CCNI).

A charity's activity can also attract regulation from a range of other sources. For example, charities focused on education might fall under the remit of Ofsted and charities delivering health and social care services are likely to be regulated by the Care Quality Commission (CQC).

Some charities are exempt, and don't need to register with the Charity Commission, but these charities will have an alternative "principal regulator". Examples include registered providers of social housing, academy schools, further and higher educational institutions and certain museums and galleries. Charities have annual obligations to file reports and (usually) full accounts with their respective regulators.

How might the regulator impact me as a trustee?

Whilst any direct intervention in a charity from a regulator is quite rare, when it does happen the process can be very invasive and stressful for charity trustees, staff and volunteers.

The Charity Commission has a range of regulatory powers at its disposal and whilst the law generally looks favourably on a volunteer charity trustees (the Kids Company is a good example of this, which we will discuss in a blog over the coming weeks), there are countless examples of charity trustees finding themselves, often very publicly, reprimanded for mismanagement and misconduct.

Could I find myself personally liable for the decisions I make?

Charity trustees can be held liable to their charity for any financial loss they cause or help to cause, and this is regardless of the specific legal structure that the charity adopts.

However, the law will generally protect charity trustees who have acted honestly and reasonably from personal liability to their charity. The Charity Commission and the courts have clear powers to relieve honest trustees who have acted reasonably from personal liability and will very rarely seek to pursue trustees (particularly those acting in a voluntary capacity) where an honest mistake has been made.

The risk of personal liability differs depending upon the legal structure that a charity adopts and the activities that it carries out. An incorporated charity offers greater reassurance as it has its own separate legal personality, whereas an unincorporated charity has no legal 'personality' of its own and therefore can only act through its individual charity trustees.

Ensuring you understand and have the right legal structure is therefore of the utmost importance.

Setting up your own charity

Having resolved that you're comfortable with being a charity trustee, you may decide that you still wish to set up your own charity. Perhaps you might wish to have greater control over the purposes for which the charity is set up, and its initial governance arrangements. There are still more options available to you, and decisions to be made.

This is a significant step and it is important to ensure that considerable thought is given to the structure, purposes and the governance structures that are likely to outlive those involved at the outset.

What legal structure should you adopt, taking into account the charitable activities that you are proposing to conduct? How should your charitable purposes be described so as to ensure that you can achieve the outcomes you are hoping for? How should the board of trustees be composed and how should new trustees be appointed in future? How will you deal with trustees who fail to fulfil their duties or who potentially cause detriment to the charity and its reputation?

These are all vital questions to ensure that the charity you wish to establish sets off on the right footing and can adapt to an ever changing social, cultural, economic and political landscape.



How we can help?

Whatever stage of your charitable journey you are at, our dedicated charity law and philanthropy experts can help you to navigate your options. We can advise you on how to focus your activity to make a real difference to your chosen cause, as well as helping you to consider your legal duties.

We can also support you on a range of other charity considerations, such as volunteering or the role of patrons, both from the charity's and a personal perspective.

So, if you are considering engaging in charitable giving or you need advice on your existing charitable activities, please contact our team who will work with you to achieve your philanthropic aims.

The Team



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