

Guidance

Charities that are connected with non-charitable organisations: maintaining your charity's separation and independence

Contents

[Who this guidance is for](#)

[Get it right from the start](#): the key duties and principles that apply to all relationships

[Common issues](#) for trustees when managing the charity's connection with non-charitable organisations – advice for trustees on:

- Providing funding to the non-charitable organisation
- Receiving funds from the non-charitable organisation
- Completing shared projects or delivering services together
- Involving the non-charitable organisation in fundraising
- Sharing names, branding and websites
- Sharing communications
- Sharing information or data
- Sharing premises or staff

[If things go wrong](#)

[Applying to register](#) a charity that is (or will be) connected with a non-charitable organisation: what you need to tell us

[Terms used in this guidance](#)

Who this guidance is for

This guidance is for trustees of charities that have a long-term close relationship with a connected non-charitable organisation such as a:

- trading subsidiary
- commercial business
- not-for-profit organisation or social enterprise

By 'connected' we mean the connection between the charity and the non-charitable organisation is deliberate, for example through the ownership of shares, common personnel, or

purposely having the same or similar name. A longer list of indicators is given later in this section.

Parts of this guidance may be used by charities that (routinely) enter into short term relationships with non-charitable third parties. However, you should read this guidance if your charity has a long-term relationship with a connected non-charitable organisation and if that relationship was deliberately set up or is continuing to be maintained.

Why you need to read it

A charity can only have a relationship with a connected non-charitable organisation if it furthers or will help further the charity's purposes and is in the charity's best interests.

If this type of relationship is to be successful for the charity, the charity's trustees – the people who are ultimately responsible for the charity – need to be clear about their legal duties. They need to recognise the regulatory and legal risks and challenges that can arise as a result of the relationship, and what they need to do to address them.

We have designed this guidance to help trustees:

- **comply with their legal duties** using the key principles that apply to all relationships, and the guidance on common situations, to keep the charity properly separate from the non-charitable organisation
- **preserve** their charity's unique status and the range of tax and other benefits available to it
- **prevent** the benefits of charitable status being applied to the non-charitable organisation
- **protect the charity's separate public image and reputation**
- **take the right steps if things go wrong**

Keep your charity separate: key features

When managing your charity's relationship with a connected non-charitable organisation, you must comply with your legal duties. This will help you keep the charity separate from the non-charitable organisation. Key features of a charity that is separate are:

- the charity is always actively in charge of how its funds and resources are spent, and actively protecting its image and reputation
- the charity is always working on achieving its charitable purposes (which can involve the non-charitable organisation)
- the charity is not supporting – or funding – non-charitable purposes or projects or promoting private benefit of the connected organisation
- the relationship is always in the charity's best interests, including to its public image and reputation

Where the Commission needs to review a charity's relationship with a connected non-charitable organisation, this is the guidance that we will expect trustees to have applied to the issue.

The Commission will also expect trustees to have applied to their management of their relationship with a connected organisation, the relevant principles in the [Governance Code](#), for example the leadership principle.

Is your charity “connected” with a non-charitable organisation?

Use this list of indicators to see if your charity is connected with a non-charitable organisation. This list is not exhaustive; there may be other indicators of a connected relationship.

Ownership	Does the charity own all or most of any shares in the non-charitable organisation?
Membership	Is the non-charitable organisation the sole or significant member of the charity? Or is the charity the sole or significant member of the non-charitable organisation?
Appointment	Does the non-charitable organisation have the right to appoint and remove the trustees of the charity?
Common personnel	Are there some people who are directors (trustees), senior executives, or employees at both the charity and the non-charitable organisation?
Identity	Does the charity and non-charitable organisation purposely share the same or similar name, branding, website, or premises?
Funding	Does the non-charitable organisation regularly fund the charity? Or does the charity regularly give grant or investment funding to the non-charitable organisation?
Shared projects / initiatives	Do both organisations routinely share projects or initiatives?
Shared mission or common goals	Do both organisations work towards common goals or have a shared mission?

If any of these applies to your charity, this guidance is relevant to managing your relationship with the non-charitable organisation.

Examples of connected organisations:

Ownership: a common example of control through the sole ownership of shares is a trading subsidiary owned by a charity. The charity will often be the sole member of the subsidiary. Some of the trustees may also be appointed directors of the subsidiary.

Regular or material funding: a charity may receive regular donations from a commercial company or social enterprise that has set it up. (Charities set up by commercial

companies are often called ‘corporate foundations’.) The company may have rights to appoint and remove trustees.

Shared mission or identity: a not-for-profit organisation (such as a Community Interest Company) and a charity may have similar or overlapping aims, although the charity will be restricted to exclusively charitable purposes for the public benefit. They may also share staff, the same name, branding or directors.

Shared projects: a charity may regularly work with a non-charitable organisation to raise funds, raise awareness, or deliver charitable services where these further the charity’s purposes.

Support for overseas organisations: a charity which establishes or is established by a not-for-profit organisation based overseas may further its purposes by transferring some of its funds to that organisation.

‘Must’ and ‘should’: what the Commission means

In this guidance:

- ‘must’ means something is a legal or regulatory requirement or duty that trustees must comply with
- ‘should’ means something is good practice that the Commission expects trustees to follow and apply to their charity

Following the good practice specified in this guidance will help you to run your charity effectively, avoid difficulties and comply with your legal duties. Charities vary in terms of their size and activities. Consider and decide how best to apply this good practice to your charity’s circumstances. The Commission expects you to be able to explain and justify your approach, particularly if you decide not to follow good practice in this guidance.

[Back to contents](#)

Get it right from the start: the key duties and principles that apply to all relationships

This section explains the key duties, and the principles which may be drawn from them, that the Commission expects trustees to apply to all relationships between charities and their connected non-charitable organisations. These are relevant whether the charity is connected with one (wholly-owned) subsidiary, or whether it is connected with a number of non-charitable organisations in a more complicated group structure.

Guidance in this section covers the following:

1. [Comply with your trustee duties](#)
2. [Keep the charity separate – don't blur the boundaries](#)
3. [Make independent decisions](#)
4. [Avoid conflicts of interest and conflicts of loyalty](#)
5. [Personal benefits: avoid or authorise](#)
6. [Use written agreements](#)
7. [Be open and accountable](#)
8. [Manage the risks, review the relationship](#)

1. Comply with your trustee duties

As trustees, you must manage your charity's relationship with the connected organisation in ways that comply with your legal duties, which are set out in detail in ['The essential trustee'](#) CC3. You must:

- ensure your charity is carrying out its purposes for the public benefit
- comply with your charity's governing document and the law
- act only in your charity's best interests
- manage your charity's resources responsibly
- act with reasonable care and skill
- ensure your charity is accountable

Complying with these duties – when establishing the relationship, reviewing it, or entering into new transactions – will help you protect the charity by ensuring that your actions and decisions are always in its best interests and in accordance with your duties.

These are some examples of how your legal duties are relevant to the charity's relationship with a non-charitable organisation

- **Ensure the charity is carrying out its purposes**

For example, if your charity makes grants to the non-charitable organisation to deliver projects for it, you must ensure that these projects only further your charity's purpose and that they are for the public benefit.

The charity must not further the wider or related purposes of the non-charitable organisation. This includes any political purposes that the non-charitable organisation may have.

- **Comply with the charity's governing document and the law**

Your charity must act within the terms of its governing document and must comply with other relevant legislation: for example, exchanges of data about donors or beneficiaries with the non-charitable organisation must comply with data protection law.

- **Act only in the interests of the charity**

You should regularly review the relationship with the non-charitable organisation to ensure it continues to be in the charity's best interests and is not exposing the charity

to undue risk. Where the charity has established the non-charitable organisation, this must be, from the outset, in the charity's best interests.

You should be aware of the different purposes of the charity and of the non-charitable organisation, and of how their interests differ.

Even though the non-charitable organisation is helping you to further your charity's purposes for the public benefit, there may be reasons why it may not be in the charity's best interests to continue with the relationship. For example, because of its other activities, other relationships, or ways in which it achieves its aims, or because it does not represent the best option for the charity. You must be alert to the risks and how these might change, and you must be prepared to end the relationship if necessary.

- **Manage the charity's resources responsibly**

For example, where you are involving the non-charitable organisation in campaigns to raise money for the charity (or you raise funds for the charity on a shared website), you must ensure that you will have proper control of all the funds raised.

- **Act with reasonable care and skill**

You must use your skills and experience to inform your decision-making, but obtain independent professional advice when the case calls for it. For example, when entering into property transactions or written agreements with the non-charitable organisation.

- **Ensure your charity is accountable**

For example, if you are raising funds on a shared website, it must be absolutely clear on the website whether these funds are for the charity or for the non-charitable organisation.

2. Keep the charity separate – don't blur the boundaries

Here are some common situations where there is a risk of the boundary between the charity and the non-charitable organisation becoming blurred and therefore of the charity risking its independence.

- **Shared staff/resources:** the trustees must properly decide what to charge the non-charitable organisation when sharing the charity's resources with it
- **Decision-making:** the charity and the non-charitable organisation will have some interests and/or personnel in common which can affect the charity's independence. Trustees must therefore be able to evidence that their governance, management and decision-making are fully independent and always made in the charity's sole interests
- **Funding:** a decision to fund the non-charitable organisation must be made in accordance with trustees' legal duties, whether it is an investment or social investment for the charity, or to carry out the charity's purposes, or to provide the charity with services such as administrative, IT or HR services

- Shared or similar names/branding: the identity of the charity should always be clear and separate from the connected non-charitable organisation so that (for example) supporters, creditors, regulators and the public at large can readily identify the actions, interests and finances of the charity

In all these examples, the risk is that too close an association with the connected organisation results in the trustees failing to fully consider the charity's best interests independently of the non-charitable organisation – and other legal duties, such as the duty to act with reasonable care and skill.

Not only can this continue to cause the blurring of boundaries between the charity and the non-charitable organisation, it can seriously risk the charity's resources being used to support or subsidise the non-charitable organisation. This would be another breach of trustee duty.

There is detailed guidance in '[Common issues for trustees](#)' on the examples given above.

Example – An example of how the potential for blurring can be avoided

A commercial company which sells and installs solar panels is setting up a charity as part of its commitment to corporate social responsibility. The proposed charity will relieve sickness in Kenya by providing medical facilities and grants to help with medical costs.

There are a number of ways in which the proposed charity and the company will be connected: they will share an almost identical name and, in the first year, the proposed charity's funding will consist entirely of a grant from the company. It will also operate from the company's premises in Kenya, though at a nominal rent.

There is potential for boundaries to be blurred, but the company's evidence that the charity will be separate and independent is that:

- its trustees will be appointed by relevant organisations in Kenya
- it will have its own website, and will be responsible for its own communication and fundraising
- the trustees will be tasked with producing a business plan to show how they will raise funds because the company will reduce its funding over the next three years by 50%
- while the name is similar, the charity will operate in a completely different field from the company and will be responsible for its own website, communications and fundraising: the company demonstrates that the risk of public confusion, and of the company's interests interfering with the charity's, is low

Don't further non-charitable purposes

A charity, unlike any other type of organisation, is regulated by the Charity Commission (and/or the High Court) and must have purposes that are exclusively charitable. A non-charitable organisation, on the other hand, is not subject to this restriction and is able to pursue purposes and activities that do not further charitable purposes for the public benefit.

This means that, when undertaking joint projects with the non-charitable organisation, or giving or receiving funding from it, the charity's trustees must be clear that:

- this represents an effective way of furthering the charity’s purposes for the public benefit, and is in the charity’s best interest
- the charity’s resources are not being used to further non-charitable purposes

Political activities

Acting outside your charity’s purposes is a particular risk where the non-charitable organisation has aims that are political or undertakes political activity to achieve its aims. And the risk can be greater where that organisation has set up a charity in a related field. Whereas the charity is established to pursue its objects under charity law, the non-charitable organisation has discretion as to how to achieve its aims including by undertaking political activity.

It may be legitimate for the charity itself to undertake political activity in furtherance of its purposes for the public benefit as outlined in our guidance CC9. However, when the same activity is carried out through a connected non-charitable organisation and is either funded by the charity or closely associated with it, the charity runs the risk of operating outside the scope of the guidance or otherwise not for the public benefit.

Read: [Campaigning and political activity: guidance for charities](#) (CC9)

Example – Don’t risk furthering non-charitable purposes

A charity and a non-charitable organisation have a close connection because:

- they both work in the field of education about the economy
- the non-charitable organisation is the main funder of the charity

In addition, the charity delivers a substantial proportion of its annual activity jointly with the connected organisation. For example, in the last year, 3 of the charity’s 4 research projects and 21 of its 26 seminars were carried out jointly with the non-charitable organisation.

Whilst these programmes of research and seminars were all about the economy and were agreed between both organisations, the trustees of the charity have not based their decision about joint working on whether each programme would further the charity’s own purposes: to advance education in the economy for the public benefit.

As a result, the trustees are unable to justify, in response to the Commission when it investigates a complaint about inappropriate activities, how the charity’s spending of funds on these programmes has furthered the charity’s purpose. This causes the Commission to be concerned enough to investigate further whether the trustees are in breach of their duties by allowing the charity’s funds to be wrongly applied for non-charitable purposes. The Commission also shares its information with HMRC, which may assess if there is a tax liability on the funds used for non-charitable purposes.

3. Make independent decisions

The principles of trustee decision-making require trustees to:

- act within their powers
- act in good faith and only in the interests of the charity
- make sure they are sufficiently informed
- take account of all relevant factors and ignore any irrelevant factors
- manage conflicts of interest
- make decisions that are within the range of decisions that a reasonable trustee body could make

Establish procedures to ensure that these principles are applied to decisions made by the charity, for example:

- how you as trustees will identify the range and type of information you will need to make informed decisions. The Commission expects that this should include information from sources that are independent of the non-charitable organisation, and when the case calls for it, advice from professional advisors acting independently for the charity
- what information you will need from the non-charitable organisation, and how you will scrutinise and check this
- whether you have processes that enable you to recognise and identify if you are conflicted in your considerations about the non-charitable organisation; this does not just include conflicts of interest but conflicts of loyalty as well (see next section). It also includes senior staff if they make recommendations to you and are conflicted
- whether you have enough independent trustees to form a quorum at meetings so that you can avoid any conflicts of interests or loyalty that arise as a result of any trustees also being employed at or having interests in the non-charitable organisation (see next section)

Remember that as trustee, you do not represent the interests of any organisation that may have appointed you.

Read: [It's your decision: charity trustees and decision-making](#) (CC27)

4. Avoid conflicts of interest or conflicts of loyalty

As trustees, you have a legal duty to act only in the best interests of your charity. You must avoid putting yourselves in a position where your duty to the charity conflicts with your personal interests or loyalty to any other person or body.

As trustees of charities that are connected with non-charitable organisations, you will face conflicts of interest or loyalty if you have overlapping roles at, or interests in, the non-charitable organisation. For example if:

- a trustee is also a director of the charity's subsidiary company
- directors or employees of the non-charitable organisation are also trustees of the charity
- trustees or persons connected to them own shares in the non-charitable organisation
- trustees are personally connected to individuals at the non-charitable organisation (which may include the person who founded the charity)

- trustees support the aims or purposes of the non-charitable organisation (which may be similar to the charity's purposes)

A senior charity employee making recommendations to the trustee board could also face a conflict of interest or loyalty in the same way as trustees.

The existence of a conflict of interest or loyalty does not reflect on the integrity of the affected individual, but it must be properly identified, disclosed and addressed.

The Commission expects the charity to have enough independent trustees on the trustee board (taking into account personal interests and loyalties) so that a quorum can be formed and valid decisions can be made when conflicted trustees have to be excluded from certain decisions.

If that is not possible (or if the charity has a sole trustee), the Commission's authorisation must be obtained before you can make any decision where the conflict affects all or so many of you that no-one can validly make an independent decision. Authorisation can only be given where the intended decision can clearly be shown to be in the charity's best interests. You will need to show that you have followed the principles, as far as you are able, of [trustee decision-making](#).

The Commission expects you, as trustees, to identify, disclose and effectively address any conflicts of interest or loyalty that affect you or your charity and to keep a full record of how you have done so in line with legal requirements and the charity's governing document. This should include your independent assessment of how the transaction is in the charity's best interests. You should do this also when senior staff (who might otherwise make recommendations to the board or help review the relationship with the non-charitable organisation) are conflicted.

Use the Commission's guidance to properly address conflicts

To ensure you comply with your legal duty to act only in the best interests of the charity, you should handle conflicts using the following steps.

- **identify the conflict – it's a conflict if:**
 - the individual or a person connected to them could benefit financially or otherwise from the charity or as a result of the charity's particular arrangement with the non-charitable organisation
 - the individual's duty to the charity competes with a duty or loyalty they have to another organisation (even if it shares a similar aim or purpose) or to another person
- **prevent the conflict from affecting the decision:**
 - find another way forward so that the conflict does not arise
 - manage the conflict, usually by making sure the person affected doesn't take part in discussions about the issue and the final decision; you need to also follow relevant legal requirements and procedures in your governing document. You should also consult and follow your charity's conflicts of interest policy if there is one
 - if the conflict cannot be managed, ask the Commission to authorise it before making the decision
- **record how the conflict was handled**
 - in minutes of the meeting

Read [Conflicts of interest: a guide for charity trustees](#) (CC29)

5. Personal benefits: avoid or authorise

Where a conflict of interest is also going to give a trustee (or someone connected to them) some sort of benefit from the charity, it will need to be authorised. This includes where the benefit is received from the non-charitable organisation as well as when it is received from the charity.

Examples of benefits that need authorisation include:

- the salary of a trustee who is employed by the charity's wholly-owned subsidiary
- fees or payments for services or goods received by a trustee from the charity's wholly-owned subsidiary
- a trustee who is a shareholder with a substantial interest in the non-charitable organisation which sells goods or services to the charity
- a trustee who is a shareholder with a substantial interest in the non-charitable organisation to which the charity sells or leases property (read guidance on [disposing land](#))

The payment of reasonable out-of-pocket expenses is not a personal benefit.

In some cases, benefits to trustees or connected persons may be authorised by specific wording in the charity's governing document or under charity law. Otherwise, the trustees must ask the Commission to authorise the benefit.

To obtain the Commission's authority, you will need to evidence in your application how the transaction is in the charity's best interests. You will need to show that you have followed the principles of trustee decision-making.

If you do not obtain authority where it is required, the decision or transaction could be challenged and the trustees may be under a duty to account for the benefit received from the unauthorised payment.

The charity [SORP](#) requires charities that prepare accruals accounts to disclose information on trustee benefits received from the charity or a related entity.

Read: [Trustee expenses and payment \(CC11\)](#)

Example – Benefit to owner of connected company

An educational charity and a commercial company are linked because the charity's Chair owns the commercial company.

The charity's main activity is to deliver guidance and mentoring to young people in its locality. The trustees have decided that one of the ways it will do this is by giving the commercial company a grant to deliver this guidance and mentoring.

The Chair:

- faces a conflict of interest because of her ownership of the commercial company
- stands to benefit from the charity's grant because the charity is a source of free funding which is beneficial to the commercial company's profit margin

She and the trustees must therefore ensure that the decision is free from conflict of interest and that there is authority for her to benefit in this way, either in the charity's governing document or from the Commission.

6. Use written agreements / contracts

Even if the role of the non-charitable organisation is only to support the charity (for example, because it holds charitable assets or provides an income to the charity), it is still a separate organisation.

So, ensure you have written agreements in place to protect the charity (and to protect the non-charitable organisation), for example if you are challenged about the arrangements you have in place or if a dispute develops between the charity and the non-charitable organisation.

You should do this even if the arrangement appears to be informal, for example a member of staff from the connected organisation working for the charity one day a week. Having a written agreement that is fit-for-purpose is evidence of your complying with your trustee duties and, consequently, of keeping the non-charitable organisation at arm's-length.

Joint working, obtaining services from the connected organisation, involving it in major projects for the charity, or providing it with grant-funding will in general always require an agreement, to – as a minimum – clearly set out the requirements, the responsibilities of each party and allow a way to exit from the arrangement.

Examples of other matters where you should have an agreement or contract include:

- data sharing with the non-charitable organisation (which must comply with the law)
- the sharing of the charity's name, logo or other branding by the non-charitable organisation
- when sharing a website, to set out responsibilities for editorial control
- when sharing staff or premises between the charity and the non-charitable organisation
- making sure the non-charitable organisation's communications or actions are not wrongly attributed to the charity, or to ensure they do not give the impression that there are not two separate entities in existence (the charity and the non-charitable organisation)
- the provision of other services as appropriate (for example, if these involve safeguarding)

These are examples, this list is not exhaustive and you should consider the need to obtain relevant professional advice to decide whether an agreement should be drawn up.

Where you are satisfied that the risks are low, a letter or short agreement may be enough. In other cases, you may need a more detailed agreement or contract, and you should consider whether you need professional advice (from someone independent) on preparing the document.

The agreement must provide adequate protection to the charity, and you must be prepared to enforce it if required.

7. Be open and accountable

You and your co-trustees are accountable for ensuring:

- the charity's compliance with the law and its governing document
- that its funds are only used to further its purposes for the public benefit
- that key information about the charity and its finances is available to the public

Where your charity has a connection with a non-charitable organisation, this means that you need to identify and report on the separate flow of the charity's funds and how they are used to further the charity's purposes.

You should also be open with those who benefit from, support, or do business with the charity so that they can easily distinguish it from the non-charitable organisation. The identity of the charity should always be clear and separate from the connected non-charitable organisation so that (for example) supporters, creditors, regulators and the public at large can readily identify the actions, interests and finances of the charity.

The following legal requirements are particularly relevant to managing the relationship in a way that is open and accountable:

- all charitable incorporated organisations (CIOs) must state in their key documentation that they are a CIO: similarly, all other registered charities with yearly incomes over £10,000 must be clear in their key documentation that they are a registered charity
- all registered charities must keep accounting records to show accurately how money is raised and used
- registered charities that prepare accruals accounts (all charitable companies regardless of income, and any other charities with yearly incomes over £250,000) must comply with accounting and reporting requirements for reporting on relationships and transactions with related parties
- all CIOs and all other registered charities with an annual income of more than £10,000 must submit an annual return, including confirmation of whether or not they have a trading subsidiary
- additional legislation or requirements may apply as appropriate, for example the requirements for organisations raising funds for charities to disclose certain information, as outlined in our guidance [Charity Fundraising](#) (CC20)

In addition, you should:

- be able to demonstrate through your record-keeping that you are acting independently of the non-charitable organisation, and that your arrangements with it comply with your legal duties and with restrictions on charitable expenditure - see [HMRC guidance on non-charitable expenditure](#)

For example, you must be able to show that your decisions about completing joint activities, or give funding to the non-charitable organisation, or accepting funding from it in exchange for products or services, further the charity's purposes for the public benefit and are in the charity's best interests.

- proactively take other steps as appropriate to mitigate the risks of the charity being confused for the non-charitable organisation, especially where the charity shares a very similar name or shares the same website or premises. This includes being aware that the non-charitable organisation, in its actions or statements, is not giving the impression that the charity is not a separate organisation
- apply relevant standards such as the [Fundraising Code](#) and [Governance Code](#), or explain why it is not in the charity's interests to do so. The Fundraising Code contains standards about clearly identifying the intended purpose and use of money raised, for example, and the Governance Code contains a standard of openness and accountability

Example – Consequences of not being open enough

The charity exists to relieve the needs of refugees and asylum seekers in the UK. Its main activity is a national free advice line. Its main marketing tool is a TV advert on certain cable/satellite television channels. It is very well known among certain community groups particularly in London.

The charity has a successful trading subsidiary, which shares the same name and is allowed to use the charity's logo. The subsidiary does not have a website, and uses the charity's website if it needs to.

The subsidiary runs English language courses in order to raise an income for the charity. It fills its courses mainly by leafletting community centres and particular places of worship.

The Commission has received complaints from some beneficiaries that the courses are very expensive. They ask if charities can charge high fees.

When the Commission contacted the charity, trustees explained:

- the subsidiary's aim was to make the best commercial return, it was not intended that the target customers would be refugees
- they do charge everyone one price, which is considered to be competitive and fair
- the charity itself does not do any selling, for example through its advice line

In response to the Commission's concerns, the charity decided to complete a survey. This confirmed that most of those asked could not differentiate the charity from the trading subsidiary.

The trustees recognised that they had not fully considered the consequences of not being clear enough, publically, about the respective roles of the charity and the subsidiary. They recognised the implications of their beneficiaries confusing the charity for the subsidiary. As a result, they are taking a number of steps including re-branding the subsidiary and making it clearer on their website about the subsidiary's existence, purpose and activities.

8. Manage the risks, review the relationship

Having a relationship with a connected non-charitable organisation will bring new risks to your charity, and these will increase depending on:

- how many such relationships your charity has
- whether the non-charitable organisation is wholly-owned (and wholly-controlled) by the charity
- the purpose of the non-charitable organisation, for example whether it is a commercial business or a not-for-organisation
- the nature of the relationship

You must be clear from the outset, when planning and setting up the relationship, how – having assessed other options – the relationship will be in the charity's best interests.

Once the relationship is set up (or if the charity was established by a non-charitable organisation) you should, to comply with your duty of acting in the charity's best interests, keep the relationship under review. You should adopt a risk management process that is tailored to fit the circumstances of the relationship, for example the particular risks associated with:

- sharing the same name, branding or website
- having similar or overlapping purposes, or working in a similar field
- being connected with a non-charitable organisation that undertakes political activities
- providing regular or material funding to the non-charitable organisation
- sharing resources such as staff

(See ['Common issues for trustees'](#) for guidance on these features.)

You should also consider the particular risks presented by having a wholly-owned subsidiary, such as the risk that the trustees' ability to act in the charity's best interests will be affected if they are not completely objective in their assessment of the subsidiary, its performance or the extent to which it is necessary to the charity or its operations. There are associated risks of, for example, providing the subsidiary with free access to charity premises or staff without making proper assessments in the charity's best interest.

Your risk management process should enable you to both regularly review the relationship in a way that is appropriate for the nature of the relationship, and review it in response to the risks changing.

In a general review or [due diligence](#) exercise, the Commission would expect the trustees to take into account factors such as:

- the governance of the non-charitable organisation
- its reputation
- the nature of its activities
- the relationships it has with other parties
- the full scope of its operations and any conflicts with your charity's purposes, activities, funding, or other interests

You may also need to consider factors such as the extent to which the relationship:

- affects your ability to make decisions about how best to further your charity's purposes for the public benefit
- affects your ability to make other decisions about the charity, for example how it raises funds
- has introduced a general sense of loyalty towards the non-charitable organisation that affects how well you comply with your legal duties
- affects the public's view of the charity

You should consider what information you need, including from independent sources, to help you act objectively and comply with your legal duties.

You also need to be alert to the risks changing, impacting on the charity and on the charity's public profile, whether nationally, locally, or just amongst its beneficiaries. This includes any risks raised by the strategies, plans or activities that the non-charitable organisation sets or embarks on. While it can pursue its purposes how it sees fit, it remains the trustees' responsibility to consider what impact this might have on the charity, including to its public image and reputation. Where the charity is majority or sole shareholder, this should include thinking about what action to take in that role to protect the charity's interests from the decisions or actions of the non-charitable organisation that the trustees consider a risk to the charity.

So, in order to respond to the risks changing, you must be able to:

- identify that an incident has occurred
- complete a proper risk assessment
- decide what actions to take, including whether it is in the charity's best interests to continue the association or not

Ending the relationship must be an option in your risk management process that you are prepared to consider.

The Commission expects that you would be able to provide evidence of your active management of your charity's relationship with its connected non-charitable organisation if asked.

Read: [Charities and risk management](#) CC26

Example – Responding to a risk incident

The charity is a corporate foundation, established over 10 years ago by a commercial organisation. They share a very similar name, and the organisation provides half the charity's funding each year. The charity's purpose is the relief of poverty; it is in the middle of a 5 year plan to fund projects in south east Asia.

The commercial organisation obtains over 90% of its products from a particular country in south east Asia. One of the factories of its main supplier there has suffered from a major fire resulting in significant loss of lives. There is major news coverage, and it is reported that the supplier was in breach of local health and safety regulations. The commercial business has decided to continue its relationship, for the time-being, with the supplier.

There is significant national news coverage of the accident and of the commercial organisation.

The trustees must respond to this incident and consider the impact on the charity: its beneficiaries, funding streams and its reputation. We expect them to identify what information they need to make their assessment, to complete that assessment objectively, and decide what action is needed to protect the charity. They should also consider whether they need to report the incident to the Commission; if they do they will need to explain what happened and their response. (See advice on [reporting serious incidents](#)).

Further reading

In addition to guidance that has been signposted above, see:

[A guide to Corporate Foundations](#) - if your charity is connected with a commercial company
[The Independence of Charities from the State](#) - if the connection is to a local authority

[Back to contents](#)

Common issues for trustees when managing the charity's connection with a non-charitable organisation

Use this section to help you with issues if your charity's activities include the following:

- Providing funding: [Grant-funding the non-charitable organisation to deliver projects that will further your charity's purposes](#)
- Providing funding: [Paying the non-charitable organisation to provide services to the charity](#)
- Providing funding: [Investing in the non-charitable organisation](#)
- [Receiving funds from the non-charitable organisation](#): The non-charitable organisation paying the charity for products or services
- [Completing shared projects or delivering services together](#)
- [Involving the non-charitable organisation in fundraising](#)
- [Sharing names, branding and websites](#)
- [Sharing communications](#)
- [Sharing information or data](#)
- [Sharing resources \(premises or staff\)](#)

There may be other ways, or other circumstances, that apply to your charity's relationship with the non-charitable organisation which is not covered here. In those circumstances, apply the guidance in '[Get it right from the start](#)'.

Grant-funding the non-charitable organisation to deliver projects that will further your charity's purposes

As trustees, you must make sure that everything your charity does helps (or is intended to help) to achieve the purposes for which it is set up, and no other purpose. This means you should:

- ensure you understand the charity's purposes as set out in its governing document
- plan what your charity will do, and what you want it to achieve

You cannot use the charity's funds to further non-charitable purposes.

In order to achieve the charity's purpose, you may provide **grant-funding** to the connected non-charitable organisation.

You may also fund activity that may be particularly risky to the charity's funds, assets or operations. The activities must be ones that the charity could itself undertake but has chosen not to because of the risks.

For example, a charity set up to provide medical aid in disaster areas provides a grant to the connected non-charitable organisation to employ local doctors and other health professionals.

Or a housing charity funds the modernisation of its properties through the non-charitable organisation (a wholly-owned subsidiary) to protect the charity from the risks of the project.

Grant-funding

Read our [guidance on grant-funding non-charitable organisations](#). This explains that you can only fund projects or services that help achieve your charity's purposes for the public benefit and not for any wider objectives of the non-charitable organisation. You may fund project support costs only where these relate directly to the projects or services being delivered under the terms of the grant. You cannot fund the connected organisation's general running or administrative costs.

Grant-funding a connected organisation brings new risks that could harm the charity, such as the following.

- If the non-charitable organisation is a body with [political aims](#) and campaigns for changes in the law on issues that are relevant to the charity, there is a risk that the primary purpose of the charity's grant to it would be to advance the political purposes of the connected organisation; this would be a breach of trust

- If the non-charitable organisation has similar but wider purposes than the charity: not specifying clearly how the grant may be spent risks it being used in ways that further the non-charitable organisation's wider aims; this would also be a breach of trust
- The risk to the charity if it was alleged or perceived that the reason for the charity's funding is to support the connected organisation's aims, especially if the charity also shares a very similar [name, branding and/or website](#), or is connected in other ways.
- The risk to the charity's reputation if the association with the non-charitable organisation became controversial

So your processes for awarding grants to the non-charitable organisation must take into account the risks.

The following questions should also help you consider the particular issues of grant-funding a connected organisation.

1. Do the activities you are funding match the priorities you have identified for furthering your charity's purposes and helping your beneficiaries?

If they do not, you risk not complying with your trustee duties, such as the duty to act only in your charity's best interests. You also risk being challenged about your reasons for involving the non-charitable organisation.

2. Does your charity only (or primarily) further its aims by funding / supporting the connected organisation?

If so, you would need to be able to show how it is in the charity's best interests (and not those of the non-charitable organisation) to fund only the non-charitable organisation. You would need to show that the charity's purpose is not, in fact, to support or further the aims of the non-charitable organisation.

We would expect to see that the trustees have explored different ways of furthering the charity's purposes and to have good reasons for ruling them out.

3. If you operate by mainly grant-funding the non-charitable organisation, have you considered the risk of your charity's beneficiaries or donors, or the public at large, confusing the charity with the non-charitable organisation?

Providing regular or material funding to the non-charitable organisation can increase the risk that your beneficiaries, supporters and the public in general cannot easily distinguish the charity from the non-charitable organisation.

It also increases the risk that the charity will be associated with the non-charitable, including political, purposes and activities of the connected organisation. You must evidence that your funding of the non-charitable organisation does not represent an undue risk to the charity.

4. Have you identified and properly dealt with any conflicts of interest or loyalty because there are individuals linked to the non-charitable organisation?

If not, your decision could be challenged.
You could be in breach of your duty to act only in the best interests of the charity.

5. Have you identified that any benefit to the non-charitable organisation is no more than incidental?

If funding from your charity leads to more than [incidental benefit](#) to the non-charitable organisation, this would be in breach of your duty to deliver public benefit.

6. Have you completed appropriate [due diligence](#), so that you are satisfied that the non-charitable organisation:

- is an appropriate organisation for the charity to give funding to
- can carry out the activities being funded to the required standard
- will deliver public benefit

The lack of appropriate due diligence will expose the charity to undue risk. You risk being challenged about your reasons for funding the non-charitable organisation.

7. Do you provide appropriate terms and conditions?

8. How do you check that these are complied with?

9. Have you considered in what circumstances the funding may be terminated? For example, if the non-charity's actions significantly risk harming the charity's reputation. How would you respond to such an incident?

Not providing appropriate terms and conditions, not properly checking that these are followed, or not thinking about whether the charity could be harmed by the relationship, will expose the charity to undue risk.

This includes not being clear that the grant cannot be used for anything other than the activities specified, which must align with your charity's purposes: the grant cannot fund non-charitable activities including the non-charitable organisation's general administrative or running costs.

HMRC rules

There are HMRC requirements to consider. HMRC will tax expenditure that cannot be evidenced as having been provided in support of the charity's purposes. See: [HMRC guidance on non-charitable expenditure](#)

[Back to contents](#)

Paying the non-charitable organisation to provide services to the charity

You and your co-trustees must make sure that everything your charity does helps (or is intended to help) to achieve the purposes for which it is set up, and no other purpose. This means you should:

- ensure you understand the charity's purposes as set out in its governing document
- plan what your charity will do, and what you want it to achieve

Whilst you cannot spend the charity's funds on non-charitable purposes or activities, **you may fund the non-charitable organisation in return for essential services to the charity.**

For example, a charity which runs care homes enters a contract with its subsidiary to provide catering services at its homes.

A charity can obtain specialist services, such as IT or building services, from the non-charitable organisation, which it may have set up for this purpose. It should keep these arrangements under review.

It cannot automatically renew its contract with the non-charitable organisation. The charity's choice of provider for next time must be made objectively so that it can select the option that represents the best deal for the charity. This may be the non-charitable organisation again, but as trustees your selection must follow an exercise that demonstrates that contracting with the non-charitable organisation represents the best deal for the charity.

If you automatically renew the contract, you could be challenged that your decision was based on factors other than the charity's sole best interests.

How you make your assessment will depend on factors such as the size of your charity, what it does, and the service you are looking for. Nevertheless, the Commission expects you to use the principles of [proper decision-making](#) to help you do this and to record, on each occasion, how you have made your decision. Consider also the factors listed below.

The duty to further your charity's purposes for the public benefit:

1. How are the services necessary to the charity and its operations, and the achievement of its purposes?
2. In addition, where the charity is obtaining services such as research from the non-charitable organisation:
 - how has the topic or subject matter of the research been determined
 - how has the method of research been determined
 - how have the terms of the research been decided
 - what expertise does the non-charitable organisation have in undertaking research or in the subject matter
 - what steps will be taken to ensure the research is not influenced by the interests or views of the non-charitable organisation and will be impartial
 - how will the decision be made to contract with the non-charitable organisation
3. Have the final decisions been made by the trustees only, acting only in the charity's interests?

The duty to act in the charity's best interests:

4. What information did you look at to make your decision? For example, did you consider other providers or options; did you consider the performance of the non-charitable organisation?
5. Did you avoid any conflicts of interest or loyalty?

<p>The duty to manage the charity's funds responsibly:</p>
<p>6. Does the non-charitable organisation provide in the circumstances the best value for money?</p>
<p>7. Are there risks of contracting with the non-charitable organisation (reputational, financial, other)? How did you take these into account?</p>
<p>8. Does the contract / agreement properly protect the charity? Did you use independent professional advice?</p>
<p>The duty to comply with your charity's governing document and the law:</p>
<p>9. Where a trustee or connected person will receive benefit as a result of the arrangement, is this authorised by the charity's governing document or the Charity Commission?</p>

HMRC rules

There are HMRC requirements to consider. HMRC will tax expenditure that cannot be evidenced as having been spent in support of the charity's purposes. See: [HMRC guidance on non-charitable expenditure](#)

[Back to contents](#)

Investing in the non-charitable organisation

You and your co-trustees must make sure that everything your charity does helps (or is intended to help) to achieve the purposes for which it is set up, and no other purpose. This means you should:

- ensure you understand the charity's purposes as set out in its governing document
- plan what your charity will do, and what you want it to achieve

You cannot spend the charity's funds on furthering non-charitable purposes. You may, however, **invest in the non-charitable organisation**, usually the charity's trading subsidiary; but you must comply with the legal requirements that apply to the investment of charity funds.

For example, the trustees of a local hospice have set up a trading subsidiary to open and run a charity shop in the town's high street. They looked into different investment options and obtained relevant professional advice, for example to produce feasibility plans. They assessed the risks and benefits and considered the amount of investment a subsidiary would need, before deciding to provide the funding.

As trustees, you may invest the charity's funds:

- to make the best financial return for the level of risk the charity can support

- to further the charity's purposes with the possibility of receiving a financial return (programme related investment)
- in a way that will, in part, further the charity's purposes and achieve a financial return (social investment)

There are specific legal duties and decision-making processes associated with making any of these categories of investment, which you must comply with when investing the charity's funds. Guidance on these is available in [Charities and investment matters](#) (CC14).

There is also guidance specifically on investing in a trading subsidiary in [Trustees, trading and tax](#) (CC35). Generally, a charity cannot gift support to the subsidiary such as by donating funds or stock or by settling its bills or debts. You cannot commit to provide support to help the subsidiary out of financial difficulty. Where you decide that it is in the charity's best interests to provide assistance, for example through a loan or a new injection of capital, this must be an investment decision in accordance with the legal requirements.

You should also read other parts of this guidance as relevant to your management of the trading subsidiary, for example '[Get it right from the start](#)' and [sharing premises and staff](#) in this section.

HMRC rules

There are HMRC requirements to consider. HMRC will tax expenditure that cannot be evidenced as having been spent on the charity's purposes. This includes investment spending. See: [HMRC guidance on non-charitable expenditure](#)

[Back to contents](#)

Receiving funds: the non-charitable organisation paying the charity for products or services

As we explain in [Trustees, trading and tax: how charities may lawfully trade](#) (CC35) a charity-owned subsidiary can pass funds to the parent charity in the form of a share dividend, interest and capital repayments of a loan, or as a donation.

A non-charitable organisation may donate to the charity. The donation may be for all or any of the charity's purposes but it cannot be for something that is outside your charity's purpose, or direct the trustees in their decision-making.

You may also need to consider whether there will be a reputational impact from accepting a donation from the connected organisation (for example, because of the manner in which the funds were raised). Where appropriate, undertake '[know your donor](#)' checks.

The non-charitable organisation funding the charity to provide products or services

A non-charitable organisation can provide funding to the charity in return for products or services to itself or to beneficiaries, for example research or training, or services such as health, language or recreational services for beneficiaries.

These services may be similar to those the charity delivers to achieve its purposes. Even so, you should always make sure, before you agree, that the activities being requested will further the charity's purposes. Don't assume that because the non-charitable organisation has similar purposes to the charity, that it would necessarily be acceptable to undertake the activities being requested.

Example

The charity has purposes to advance education and routinely and/or to a large degree, provides research to the non-charitable organisation for a fee. The trustees consider that the research falls within the charity's purposes. The non-charitable organisation may have similar or overlapping purposes.

Where the research is used by the non-charitable organisation in a way that enables it to propagate political or controversial views, or a particular point of view, the trustees would need to be able to demonstrate how this is furthering the charity's purpose for the public benefit.

It may be difficult for the trustees to be able to do this in these circumstances, and particularly where they have accepted the non-charitable organisation's scope for the research or subject matter without making their own proper assessment. In addition, where they have not considered any implications for the volume of research that they provide, and/or where they have not monitored the consequences of providing the research in the past. The reputational damage to the charity could be extremely serious.

Make an informed decision using our decision-making guidance to consider whether to agree to the proposals. Keep a record of how you made your decision.

Read: [It's your decision: charity trustees and decision-making](#) (CC27)

Consider additional factors such as:

1. Whether the activity fits in with your assessment of the needs and priorities of your beneficiaries
2. Whether there are implications about furthering your purposes for the public benefit, as explained above
3. Whether you have a choice about accepting the funding and any terms attached to it
4. Whether you can obtain your own legal and financial advice, if appropriate, in negotiating the terms of the contract
5. Whether the funding arrangements preserve your rights to select beneficiaries or which services your charity will provide
6. Whether this will represent the whole, or a significant part, of your charitable output
7. Whether it will expose the charity to undue risks
8. Whether you will be free to make your own decisions on matters outside the scope of the funding arrangement

9. Whether it will introduce a general sense of loyalty affecting the trustees' consideration of other matters relating to the non-charitable organisation
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Completing shared projects or delivering services together

Read the advice in the previous section if you are planning to deliver a shared service or complete a shared project with the non-charitable organisation.

As explained in the previous section, make sure the project definitions, or the nature of the service, falls within the charity's purposes and that they are for the public benefit. And consider the extent to which the charity may be – or may be seen to be – undertaking activities that further the non-charitable organisation's aims or purposes. (Read the example given above).

Use the advice and the bullet points in the previous section to consider whether there are additional implications, such as any risks to the charity's reputation of the project and the charity's involvement in it

[Back to contents](#)

Involving the non-charitable organisation in fundraising

Charities can involve the non-charitable organisation in its campaigns to raise funds for the charity, or employ it to fundraise on its behalf. There may be cost savings to this, the non-charitable organisation may have expertise in this area or it may have a greater reach.

As trustees, you need to assess both the merits and the risks of such joint fundraising.

You also need to read – and think about how you will put into practice – our guidance on '[Charity Fundraising](#)' (CC20) so that you can comply with your legal duties. You should also read the [Code of Fundraising Practice](#).

The Commission's guidance sets out six principles that you should follow to help you meet your legal responsibilities, including **the need to plan effectively**. If you want to involve the non-charitable organisation in your fundraising, read particularly the sections on '**supervising your fundraisers**' and '**being open and accountable**'. (Read also the relevant sections of the Fundraising Code.)

For example, be aware that:

- you must have carried out proper due diligence to be satisfied that the selected partner (the non-charitable organisation) is suitable to work with and will not lead to undue risk
- the agreement entered into with the selected partner must protect the charity and enable it to have proper control of funds
- If the selected partner (the non-charitable organisation) is a 'professional fundraiser' or 'commercial partner', the arrangement must comply with any specific legal rules and standards that apply

Not all non-charitable organisations undertaking fundraising will be professional fundraisers or commercial participators. However, the Commission expects as good practice that charities should operate within these same principles when they enter into arrangements with third parties in circumstances when the legal rules do not apply.

Actively consider the charity's reputation

- Consider whether the fundraising methods to be used are appropriate. Think about the potential for the charity being harmed, particularly its public image and reputation
- Be open with the public – for example in the appeal literature – that you are jointly fundraising. Be clear about the precise purpose of the fundraising and what proportion (if any) will go as a fee to the non-charitable organisation or on shared projects. (What fee to pay the non-charitable organisation must be in the charity's best interests)
- Consider the impact of the charity and non-charitable organisation sharing the [same name and branding](#), and if it is difficult to easily distinguish which is the charity and which is the non-charitable organisation. The public must be clear whether they are being approached by, and giving to, the charity or the non-charitable organisation. They must understand that these are separate organisations
- If you share a website with the non-charitable organisation, and it routinely allows the public to donate, make it absolutely clear whether these donations are for the charity or for the non-charitable organisation. It may not be enough to only say what projects the funds will support

In addition, remember that as charity trustees:

- You may only raise funds for the purposes of the charity and may not raise funds for a non-charitable organisation
- You may raise funds in furtherance of your own purposes and apply those funds to support a project carried out by the non-charitable organisation if that project furthers only your charity's purposes; see the section in this guidance on [grant-funding](#) a non-charitable organisation

Be clear about this in your communications and fundraising literature, to protect the charity and its reputation

- You must not create the impression that the purpose of a donation to the charity is to support the purposes of the non-charitable organisation. It must be made clear that insofar as the charity will make grants to the non-charitable organisation it will only be for such projects that are exclusively charitable
- You must, as part of protecting the charity, take steps to ensure the non-charitable organisation is clear to the public that there are two separate organisations (itself and the charity) and is clear about whether donations it is collecting are for itself or the charity.
- You remain responsible to ensure that the funds you raise are applied in furtherance of your charity's purposes. You must retain discretion over the application of funds you raise

[Back to contents](#)

Shared names, branding and websites

Some charities share the same name, branding and/or website as the non-charitable organisation. There can be benefits: if the non-charitable organisation already has a successful brand, or if it provides a ready-made website, the charity may save significant costs and be able to take advantage of valuable opportunities.

However, such sharing can introduce significant risks for the charity and the potential for serious harm:

- the risk of public confusion – the perception that these are not entirely separate entities especially where they have similar or overlapping purposes or they operate in the same field
- the risk of internal confusion
- the risk that the main benefit of the sharing is to the non-charitable organisation such that the arrangements promotes a private benefit.

Public confusion could result in:

- donations being made to the non-charitable organisation when the intention was to donate to the charity (and the consequent loss of Gift Aid)
- the perception or allegation that the charity is being used to raise funds with the benefit of tax advantages for the purposes of the non-charitable organisation
- concerns or complaints about the legitimacy or appropriateness of activities thought to be due to the charity, when these are in reality due to the non-charitable organisation
- concerns that the trustees have allowed the charity's assets to be applied on supporting the non-charitable organisation
- the consequent impact of any or all of these on the charity's reputation

So, your decision to enter into or continue with sharing must be based on more than the financial value to the charity. You should be able to demonstrate that it is clearly in the charity's best interests; that it will help it to further its own purposes for the public benefit; and that it does not expose it to undue risk.

The Commission expects the trustees to be able to provide their written evidence to support their decision if asked to do so. The evidence should include objective information that has allowed you to make a robust assessment of the benefits and the risks.

Your assessment should take into account how the charity works with the non-charitable organisation, for example if it provides it with funding. But you should also consider the possibility that the charity's reputation could be seriously harmed by the association even if there are no links other than a shared name, branding or website, simply because it is not easy to distinguish which is the charity and which the non-charitable organisation.

You should also be mindful of the risk of the non-charitable organisation in its statements or actions not making it clear that it is a separate organisation to the charity. Or of it introducing risks to the charity because of its other activities, other relationships or how it conducts its

business or invests its money. Your processes should enable you to identify if these happen, and help you decide how to deal with them – such as to end the association if the case calls for it. Your [written agreement](#) with the non-charitable organisation should enable you to act.

Where the charity shares a website with the non-charitable organisation, your processes must cover the changing of web content without the charity's knowledge and agreement. This may be within a framework already agreed about what changes can be made by the non-charitable organisation (and by the charity) without the other's authority. Consider amendments that may impact the public's view of the charity, including confusion about whether there is one or separate entities.

Ultimately, the charity should be careful about whether it is allowing itself, through its association with the non-charitable organisation, to be used as a vehicle to raise funds for or promote the purposes of the non-charitable organisation.

Enter into a contract or written agreement in respect of the name, logo, branding or website

If you are entering into an arrangement to share a name, logo, branding or website, you need to consider the legal implications. There should be a licence agreement in place to allow the charity to use these, if owned by the non-charitable organisation – and vice versa – and the terms of usage, for example about sub-licencing. The agreement should include provisions on exiting the arrangement and review periods.

If the name, logo, branding and website (ie the intellectual property) are owned by the charity, the trustees must consider what fee to charge the non-charitable organisation. As part of their decision-making, they should record their reasons for not charging any fee or for charging a subsidised fee: they can only do this if they can evidence it is clearly in the charity's best interests. You will need to have authority for this if not charging a fee would lead to a trustee or connected person obtaining a trustee benefit because of their connection to the non-charitable organisation (eg through their ownership of the company).

[Back to contents](#)

Shared communications

Your charity may issue joint communications with the non-charitable organisation. You must ensure that these are necessary and in the charity's best interests. You must also make sure the charity's reputation is protected. For example, where the joint message is about something that may be of particular public interest.

There are risks to issuing joint messages, which could cause the charity serious harm. These include:

- the risk of public confusion – the perception that these are not entirely separate entities especially if there are shared features such as name, website and goals
- the risk of internal confusion – among staff, volunteers and trustees
- the risk of the charity's reputation being harmed by controversial statements issued by the non-charitable organisation

Where communications are not about a shared message, but are issued unintentionally as a shared message, these risks will be greater.

So, ensure you have suitable processes in place, such as by making sure joint messages are not issued by the non-charitable organisation about the charity or on its behalf without the charity's prior knowledge and agreement. Establish processes that are appropriate for your charity and type of communication (eg a press release or a newsletter to beneficiaries).

Where the charity shares a website with the non-charitable organisation, your processes must cover the changing of web content without the charity's knowledge and agreement. This may be within a framework already agreed about what changes can be made by the non-charitable organisation (and by the charity) without the other's authority. Consider amendments that may impact the public's view of the charity, including confusion about whether there is one or separate entities.

As part of your processes and risk assessment, take into account whether there are additional factors in play, such as local or general elections when public attention on charities can be greater and when there are additional specific rules that apply. See: [Charities, Elections and Referendums](#).

[Back to contents](#)

Sharing information or data

You must comply with data protection legislation including the General Data Protection Regulations (GDPR) which are effective from May 2018. The Regulations cover the processing of data, for example that relevant privacy notices are given to individuals (donors or beneficiaries) before the charity can share information about them.

Similarly, the charity must act lawfully when accessing data from the non-charitable organisation about supporters, donors or members.

Ensure you are aware of the legal requirements – get advice from a specialist if necessary – and implement processes to help you comply. This should include checking that charity officers are working in accordance with the processes.

In addition to the harm to the charity and its reputation, you could find yourselves liable for any fines that may be levied on the charity for non-compliance.

[Back to contents](#)

Sharing resources

A charity can benefit from its links with a connected non-charitable organisation by being given access to the organisation's staff, premises or other resources for a nominal charge (though it may make full charge). Alternatively, the charity's staff may be appointed to paid roles at its trading subsidiary, and charity premises may be made available to a (new) trading subsidiary.

As trustees, you must properly assess whether you should enter into, or continue, such arrangements. Use the principles of decision-making to help you.

Read: [It's your decision: charity trustees and decision-making](#) (CC27)

For example, one of the principles is to make an informed decision: so consider what other options are available and weigh up the benefits and risks of each option. Avoid any conflicts of interest or loyalty that apply.

Consider also:

- whether the arrangement may [blur the boundaries](#) or introduce a sense of loyalty that affects trustees' consideration of other matters relating to the non-charitable organisation
- how conflicts of interest or loyalty will be managed where senior staff are employed at both organisations
- whether it could lead to the public confusing the charity with the non-charitable organisation, for example if both operate from the same premises

You must also ensure that the charity is protected through an appropriate agreement or contract covering the terms of the sharing; for example, the rent/fee payable, who is responsible for maintenance or repairs, what procedures apply to dealing with staff performance, when the sharing comes to an end.

This applies equally when the non-charitable organisation is the charity's wholly-owned subsidiary.

See below specific points in relation to the sharing of premises and the sharing of staff.

Sharing premises

Where you share premises or there is a landlord/tenant relationship and the non-charitable organisation owns the property, consider factors such as the following:

- | |
|--|
| 1. Is it suitable for the charity and the charity's reasons for needing premises? |
| 2. If the charity is paying rent, is it paying more than the market rate? |
| 3. Does the agreement or contract protect the charity and its interests? Have you used independent advice? For example, liabilities for repair, maintenance, and wear and tear; and security of tenure so that the charity can confidently deliver its services. |

The charity should not be required to pay for liabilities relating to any non-charitable use, for example breach of lease covenants.

Where the charity owns the property, consider factors such as the following:

- | |
|---|
| 1. Is the charity charging market rate? |
|---|

The charity cannot make a nominal charge (including to its wholly-owned trading subsidiary) unless this can be justified as being demonstrably in the charity's best interests. You must also ensure there are arrangements to review the arrangement.

2. Is there an agreement or contract in place that protects the charity and its interests? Have you used independent advice? For example, liabilities for repair, maintenance, and wear and tear.

The non-charitable organisation should not be subsidised where the payment of liabilities in relation to its use of the property is concerned, unless this can be justified as being an investment clearly in the charity's best interests.

3. Have you obtained formal authority if needed?

Authority would be needed if a lease is to be granted and:

- the non-charitable organisation donated the property to the charity
- the non-charitable organisation is controlled by a trustee or a person connected to a trustee
- if the proposal is to charge the connected body less than the market rate

See [Disposing of charity land](#) (CC28).

Sharing staff

Where the non-charitable organisation will provide one or more staff member to work for the charity, consider factors such as the following.

1. Will officers at the charity be able to assess whether the staff are suitable for the role? Do you have a choice in the selection of staff?

2. Will officers at the charity be able to say whether they are meeting the job description or the job objectives?

You should ensure you can contribute to reviews and can access procedures to deal with any performance issues.

3. Where the charity pays the non-charitable organisation for staff time, will the charity pay more than it would pay its own member of staff?

Where appropriate, obtain independent advice or information to agree rates of pay.

4. Do you have processes to ensure there is accurate recording of the time spent on the charity's work?

5. Will you be able to draw up formal agreements to cover the arrangements?

Ensure the charity is not liable for employment costs or liabilities which relate to staff activities carried out for the non-charitable organisation.

You must ensure the charity is adequately protected, for example if there is a dispute between the parties.

6. Where the non-charitable organisation provides for the employment of staff, particularly senior staff, at the charity, are there processes to ensure the senior staff are not conflicted in their decisions or their recommendations to trustees?

Where the charity is providing staff to its trading subsidiary, consider factors such as the following:

1. Will the charity charge the market rate?

The charity cannot make a nominal charge unless this can be justified as being demonstrably in the charity's best interests. You must also ensure there are arrangements to review the arrangement.

2. Do you have processes to ensure there is accurate recording of the time spent on the work of the trading subsidiary?

3. Is there a formal agreement in place to cover the arrangements?

You must ensure the charity is not liable for employment costs or liabilities which relate to staff activities carried out for the trading subsidiary.

You must ensure the charity is adequately protected, for example if there is a dispute between the parties.

The employment of a trustee at the non-charitable organisation, such as the charity's trading subsidiary, will be a trustee benefit and will therefore require authorisation. There may be authorisation in the charity's governing document; if not you must contact the Commission to obtain prior authority.

You must be able to show that the trustee was the most suitable person for the role at the trading subsidiary and that the charity's interests are best served by having a trustee appointed to that position. You must avoid any perception that the arrangement has been set up – or is being maintained – to benefit the paid trustees.

Conflicts of interest must be avoided in accordance with the [Commission's guidance](#): paid trustees must not take part in any decisions relating to reviewing the relationship with the non-charitable organisation.

Read the section on ['personal benefits'](#) and our guidance [Trustees, trading and tax](#) (CC35).

[Back to contents](#)

If things go wrong

The risks to the charity of not complying with your duties or not managing the charity separately from the connected organisation include:

- the risk of (public/internal) confusion – that these are not separate entities leading to concerns that the charity has a non-charitable purpose or is furthering the non-charitable purposes of the connected organisation
- the risk that your decisions and actions, as trustees, are inappropriately influenced by the interests of the non-charitable organisation or organisations closely connected with it

The consequences can include:

- trustee liability if the charity suffers a loss as a result of a breach of trustee duty
- legal consequences such as fines or penalties
- the charity's reputation being harmed, which can cause lasting damage to the charity and, sometimes, to charities generally
- regulatory intervention by the Commission to investigate concerns or complaints
- removal from the register (see example below)
- HMRC investigation and penalties

Commission intervention

Where trustees have made honest mistakes or can demonstrate that they have acted in good faith in their actions, the Commission will expect them to act promptly to put things right and prevent a recurrence of the same or similar issue.

Where there has been a serious breach of trustees' legal duties, which has resulted in the charity experiencing serious harm or being exposed to undue risk, the Commission is likely to regard this as mismanagement or misconduct; this may lead to proactive remedial action.

The Commission could also conclude that the charity is not established for exclusively charitable purposes for the public benefit but is established in part to further non charitable purposes. The outcome of such a conclusion may lead to its removal from the register; the trustees could face financial liabilities as a result, such as repayment of tax.

Example

A registration application is received from a proposed charity established to relieve poverty through the provision of housing. In its application, it declared its links with a commercial organisation, belonging to the proposed charity's founder. The commercial body will be used to help the charity find accommodation for beneficiaries, for a small fee, though this is not the only body to which referrals will be made. The proposed charity will appoint some independent trustees to manage the links to the commercial body. The proposed charity is registered.

Three years later, during an investigation, it is found that:

- 100% of referrals are being made to the commercial organisation
- the commercial organisation is placing beneficiaries into overcrowded premises and unlawfully claiming housing benefit, thus benefitting from these referrals
- all the trustees, including the new ones, are either personally or commercially connected to the founder

As a result, the Commission considers that the organisation is not and never was a charity and removes it from the register. A referral is made to HMRC to look at whether it needs to reclaim any tax now due.

Actions you can take

Use this guidance when you set up a new relationship, when you manage or review the relationship generally, and when you consider new transactions or new terms with it.

Be aware of the impact on the charity of the relationship even where you do not work together with the non-charitable organisation: that is if your relationship only involves sharing the same name or website, for example. Impact does not just include impact on finances and assets, it includes impact on the charity's public image and reputation.

Make decisions properly and be aware that even if trustees are not receiving benefit (financial or otherwise) they can be conflicted if they have roles at the non-charitable organisation or support its aims or purposes. Manage these conflicts properly.

Think about whether the charity's purpose overlaps with the aims of the non-charitable organisation. Be aware that the non-charitable organisation can pursue its aims in ways that will not be appropriate for the charity.

If things do go wrong, take appropriate action to minimise any financial loss or harm to the charity's beneficiaries or assets, including its reputation.

If it is a serious incident (or you think it is a serious incident), you also need to report it to the Commission. A serious incident is an adverse event, whether actual or alleged, which results in or risks significant:

- loss of your charity's money or assets
- damage to your charity's property
- harm to your charity's work, beneficiaries or reputation

If you are [reporting a serious incident](#) to the Commission, you will need to explain what happened and how you are dealing with it.

Examples of how it might go wrong

Charities connected with trading subsidiaries:

It might go wrong if the trustees:

- transfer a significant volume of activities to the subsidiary, which the trustees have been informed are not legitimate for the charity to undertake, together with funding
- continually contract with a subsidiary for services to the charity without considering whether there are other companies that provide better value for money
- provide loans to the subsidiary without considering whether these represent a sound investment
- enter into the sharing of premises or the sharing of staff without proper agreements

Charities connected with commercial companies:

It might go wrong:

- if the charity regularly raises funds through the non-charitable organisation without review, and the trustees continue despite rising fees charged by the non-charitable organisation or it being associated with controversy that may damage the charity
- if the charity's purposes are related to the company (for example, the promotion of the environment where the company sells 'green' products) and if, over time, the charity's activities leads to the promotion of the company's products. As a result, the charity is not promoting its purposes for the public benefit because it is providing the company with a non-incidental commercial benefit
- if the charity and the commercial company share premises or staff without proper agreements

Charities connected with organisations operating with an overlapping purpose or cause:

Where there is also a shared name, website and/or premises, and the charity and the non-charitable organisation undertake some joint activity, or the charity provides the non-charitable organisation with grant-funding, or with materials such as research products.

It might go wrong:

- if the trustees do not manage the risks of the close association with the non-charitable organisation with the result that beneficiaries, supporters or the public at large cannot identify which is the charity and which is the non-charitable organisation
- if the charity cannot demonstrate – to the public, to the Commission or to HMRC – that it is not supporting the 'wider' cause; ie the non-charitable aims of the connected organisation

Charities connected with a not-for-profit organisation established overseas:

It might go wrong if the trustees always transfer all the funds raised by the charity to the organisation abroad, for it to make all the spending decisions. This may include a grant back to the charity.

[Back to contents](#)

Applying to register a charity that is (or will be) connected with a non-charitable organisation: what you need to tell us

The registration application form asks for information about any connections the proposed charity may have with non-charitable organisations.

We need to know this so that we can be sure that the proposed charity has purposes that are exclusively charitable for the public benefit; and that the relationship with a non-charitable organisation will not stop it from operating independently when furthering those purposes for the public benefit.

It will also give us the opportunity to check whether any charity we are registering will need advice to help it comply with the law after registration.

So, use the application form to provide as much information as you can to help us understand the connection and how it will help the proposed charity to further its purposes, including:

- the nature of the connection – this [list of indicators](#) might help
- the type of organisation you are connected with, for example commercial, not-for-profit, charity in another country
- the non-charitable organisation's business or aims
- why the proposed charity is working with that organisation and what it hopes to achieve
- plans for funding or working together
- how many individuals will be trustees/directors at both organisations
- whether it is intended that trustees will receive benefit from the proposed charity's work with the non-charitable organisation
- any rights of trustee appointment or removal that the non-charitable organisation has
- how the proposed charity will be kept separate from the non-charitable organisation

We would expect to see that trustees can demonstrate independence in:

- their governance of the proposed charity
- the activities they will undertake to further its charitable purposes and in the selection of projects
- how meetings where decisions will be made will be conducted and recorded
- how funds will be raised, held, accounted for and spent
- their choice of accounting or legal services
- how they identify and avoid conflicts of interests and loyalty
- how they manage the risks of the relationship, including reputational risks

Examples of documentation we need to see, relevant to the purposes and operations of your proposed charity:

- a written agreement (or memorandum of understanding) between the proposed charity and the organisation setting it up
- the proposed charity's conflicts of interest policy
- statements made on fundraising literature, including websites, about the proposed charity's independence
- your grant-making policy, including how you will monitor and evaluate grants
- your policy for agreeing to any joint activities, or for considering proposals that the non-charitable organisation delivers services (for example research)
- your policy for how the charity will select its beneficiaries, projects and generally apply its funds
- your policy on managing risks
- your policy on sharing personal data including special categories of data

We would expect to see these in final draft form, if they have not yet been signed.

Further reading

- [‘Get it right from the start’](#)
- [The essential trustee](#) CC3
- [Conflicts of interest: a guide for charity trustees](#) CC29
- [It’s your decision: charity trustees and decision-making](#) (CC27)
- [What makes a charity?](#) CC4
- [Charities and risk management](#) CC26
- If the proposed charity has been established by a commercial company: [A guide to Corporate Foundations](#)
- If the proposed charity has been established by a local authority: [The Independence of Charities from the State](#)
- [Governance Code](#)

[Back to contents](#)

Terms used in this guidance

Beneficiary or beneficiaries: means a person or group of people eligible to benefit from a charity’s work. A charity’s potential beneficiary group is usually defined in its governing document. Some charities call their beneficiaries clients or service users.

Breach of duty: this means a breach of any trustee duty. For charity trustees, these duties depend on the nature of the charity. Trustees of unincorporated charities have duties under the trustee acts and directors of charitable companies have duties under the Companies Act 2006. The Charities Act 2011 sets out the duties for trustees of CIOs.

A charity’s ‘purpose’ is what it is set up to achieve (for example, relieving poverty or promoting health). A charitable purpose is one that:

- falls within one or more of 13 ‘descriptions of purposes’ listed in the Charities Act
- is for the public benefit (the ‘public benefit requirement’)

Charitable incorporated organisation (CIO): this is an incorporated form of charity which is not a company.

Commercial participator: means a commercial enterprise, rather than fundraising business, that takes part in a promotional venture, such as an advertising or sales campaign, where the public are informed that contributions will be given to or applied for the benefit of a charity. A commercial participator may be subject to the same regulatory requirements as professional fundraisers if all of its activities are for ‘charitable purposes’.

A third party may still be a commercial participator even if it enters into a contract with a subsidiary trading company (rather than the charity itself) if it is represented that the funds go to charity. A subsidiary trading company may be a commercial participator if it makes similar representations in relation to a charitable institution that does not control it.

Conflict of interest: a conflict of interest is any situation in which a trustee’s personal interests or loyalties could, or could be seen to, prevent them from making a decision only in the best interests of the charity.

Conflict of loyalty: means a particular type of conflict of interest, in which a trustee's loyalty or duty to another person or organisation could prevent the trustee from making a decision only in the best interests of the charity.

Connected non-charitable organisation: this means the charity has a long-term relationship with a non-charitable organisation, where there is a deliberate link such as through the ownership of shares or common personnel. A longer list of indicators is provided in this [table](#).

Connected person: in broad terms this means family, relatives or business partners of a trustee, as well as businesses in which a trustee has an interest through ownership or influence. The term includes a trustee's spouse or unmarried or civil partner, children, siblings, grandchildren and grandparents, as well as businesses where a trustee or family member holds at least one-fifth of the shareholding or voting rights. If in doubt about whether a person or business is a connected person seek advice from a solicitor or other person qualified to advise on the matter.

Where a charity is either paying a connected person for goods or services, or disposing of land to a connected person, the Charities Act 2011 defines what a connected person is at s188 (for goods and services) and s118 (for land disposals).

Governing document: means the legal document that sets out a charity's objects and, usually, how it is administered. It is usually a trust deed, constitution, or articles of association. Otherwise it could be a conveyance, will, Royal Charter, Charity Commission scheme or some other formal document.

In the charity's (best) interests: means in the (best) interests of carrying out the charity's objects, both now and in the future. It does not mean the interests of the charity as an entity in itself (charities do not exist in order to perpetuate themselves). Nor does it mean the personal interests of its trustees, staff or members.

SORP: The Statement of Recommended Practice - Accounting and Reporting by Charities, issued in March 2005, sets out the recommended practice for the purpose of preparing the trustees' annual report and for preparing the accounts on the accruals basis. The accounting recommendations of SORP supplement accounting standards. The Charities (Accounts and Reports) Regulations 2008 require the methods and principles of SORP to be followed when accounts are prepared under the Charities Act. However, charities where a more specific SORP applies, for example Common Investment Funds, Registered Social Landlords or Higher and Further Education establishments should follow the more specific SORP instead. The accounting recommendations of the SORP do not apply to charities preparing receipts and payments accounts.

Trading subsidiary: means any non-charitable trading company owned by a charity to carry on a trade on behalf of the charity. This included a company which is wholly owned by a charity or owned by more than one charity, even if it is not technically a 'subsidiary' of any of the charities which own it.

Trustee: means a charity trustee. Charity trustees are the people who have overall responsibility for governing the charity. They decide its strategy and direct its management. They may be called trustees, the board, managing trustees, the management committee,

governors, directors, or something else. The Charities Act 2011 defines them as trustees because of their responsibility.

Trustee benefit: this means any instance where money, or other property, goods or services, which have a monetary value, are received by a trustee from the charity. The law says that trustees cannot receive a benefit from their charity, whether directly or indirectly, unless they have an adequate legal authority to do so. The potential for a trustee to benefit from the charity also creates a conflict of interest which the trustees need to address effectively. The term trustee benefit does not include any payments to trustees which are for their proper out of pocket expenses.

[Back to contents](#)

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