

# THE RED HEN PROJECT

## Guidance on Paying Trustees for Services

### [Taken from Charity Commission Guidance](#)

This guidance focuses on the power that allows charities to pay trustees for additional services they provide to their charity over and above normal trustee duties ('the statutory power'). This includes goods supplied in connection with the provision of services. Trustees must take this guidance into account before they enter into an agreement under this power.

### Introduction

Trustees can be paid for providing services (and, in some cases, goods) to the charities for which they are trustees. The power to do this and the conditions which trustee boards must follow in deciding when payment is appropriate, are set out in the Charities Act. The power also applies to:

- payments for services and goods provided by 'connected persons' - broadly, family members or businesses connected with a trustee
- any trustees or nominees that may have been appointed simply to hold the title to a charity's property

A charity can pay a trustee for the supply of any services over and above normal trustee duties. The decision to do this must be made by those trustees who will not benefit. They must decide that the service is required by the charity and agree it is in the charity's best interests to make the payment and must comply with certain other conditions (outlined below)

Our CIO [Constitution](#) allows for payment of trustees under clause 6(3).

## What conditions must be met before paying a trustee for services?

The following are **legal requirements**

There are a number of conditions, all of which must be met before payment can be made validly. The conditions are that:

- there is a written agreement between the charity and the trustee or connected person who is to be paid (see [section 4.4](#))
- the agreement sets out the exact or maximum amount to be paid (see [section 4.4](#))
- the trustee concerned may not take part in decisions made by the trustee board about the making of the agreement, or about the acceptability of the service provided (see sections [4.4](#) and [5.5](#))
- the payment is reasonable in relation to the service to be provided (see [section 4.6](#))
- the trustees are satisfied that the payment is in the best interests of the charity (see [section 4.7](#))
- the trustee board follows the ‘duty of care’ set out in the 2000 Act (see [section 4.8](#))
- the total number of trustees who are either receiving payment or who are connected to someone receiving payment are in a minority (see [section 4.9](#))
- there is no prohibition against payment of a trustee (see [section 4.10](#))

It is also a condition that, before entering into this type of agreement, trustees must ‘have regard to’ the commission’s guidance on the subject. The commission has used [section 4](#) to provide this guidance and trustees must be able to show that:

- a) they are aware of this guidance
- b) in making a decision where the guidance is relevant, they have taken it into account
- c) if they have decided to depart from the guidance, they have a good reason for doing so

## Can the written agreement to pay for a service simply be a record in the charity’s minutes

No, recording the proposed arrangement in the charity’s minutes will not be enough to meet the conditions for an agreement. There must be a separate written agreement which must cover certain issues, but there is no set format. This will depend on the nature of the service being provided, and the level of detail needed to cover it. Legal advice should be sought if an arrangement is likely to continue for some time, or if it is particularly complex.

## Why are there requirements for withdrawing from meetings and not voting, and should these be recorded in the agreement?

The requirements are designed to ensure that any trustee who stands to benefit cannot influence the trustees’ decisions relating to that benefit. Including a statement in the agreement that these requirements apply is not required by law but can help demonstrate to those who fund or use the charity that proper steps are being taken to manage the conflict of interest.

### **What constitutes a ‘reasonable payment’?**

There are a number of factors to take into account, relating to affordability, price and quality. In terms of price and quality, trustee boards should normally test the market and use comparisons for similar work to ensure they are paying no more than the ‘going rate’.

### **How do trustees decide that this sort of payment is ‘in the best interests of the charity’?**

Before making a decision, trustee boards must be satisfied that the arrangement is in the best interests of the charity. This means they should be satisfied that the service is required by the charity. They should also be able to show there is a clear advantage to the charity in using one of its trustees instead of someone else. In many cases, this will involve a simple financial advantage, but there can be other factors that might influence a decision to pay a trustee. These should be weighed against any likely disadvantages; for example, that the person would be barred from contributing to decisions about the scope of the service and its terms and conditions.

### **What is meant by the ‘duty of care’ and how does it influence the decision to pay trustees for the provision of a service?**

The statutory power requires trustees who use the power to follow the duty of care set out in the 2000 Act. This means that the trustee board must act honestly and in good faith and must exercise all reasonable care and skill in reaching their decision.

### **How many trustees can be paid at any one time for providing services?**

The statutory power can only be used if, at the time in question, the total number of trustees receiving payment from the charity’s funds will be in a minority on the trustee board.

### **Can a charity pay one of its trustees for services even if its governing document prohibits this?**

No. In these cases, payment can only be made after the prohibition has been removed by the commission or, in some cases, by the charity itself. The effect of removing the prohibition will be to enable a charity to use the statutory power to pay trustees for services: it would not allow any other form of trustee payment.

### **Can the agreement to pay a trustee for a service be amended?**

Yes - by a majority decision of the trustees who do not stand to gain. It is also necessary in these cases either for the trustee being paid to agree the change or for the contract to provide for such a change.

### **Must these payments be mentioned in the charity’s accounts?**

Yes, in the case of accounts prepared on an accruals basis - in other words, charitable companies and those other types of charity with a gross yearly income of more than £250,000.

**What if a charity wants to pay for a service to be provided by a trustee or connected person, but cannot comply with all of the conditions of the statutory power?**

If not all of the conditions set out in section 4.3 can be met, trustee boards are advised to contact the commission with the details before making any payment, to see if it can give its approval. The commission will not approve any proposal involving excessive costs, or which will result in an unacceptable personal benefit, or anything else clearly against the interests of the charity. But if a proposal is reasonable in terms of cost, conflicts of interest are managed and it represents a clear advantage to the charity, rather than to the individual concerned, the commission will usually authorise it. It will take into account the overall level of trustee payment, and any other relevant circumstances when assessing such cases including whether such a payment is expressly prohibited.