



The Governance
Institute

Charity Law and Governance

Mark scheme

November 2018

Section A

Question number	Answer	Mark
1	10 months (1)	
Total		(1)

Question number	Answer	Mark
2	The person could be held liable for the charity's debts incurred whilst they were unlawfully acting as a trustee. (1) The person could incur a criminal penalty. (1) Reward other valid responses.	
Total		(2)

Question number	Answer	Mark
3	True	
Total		(1)

Question number	Answer	Mark
4	Award up to 4 marks for any four of the following: Monitoring mechanisms include regular management accounts (1) which will provide an overview of financial performance (1), or key performance indicators (1). These will show how effectively a charity is achieving key business objectives (1). A charity may also use a balanced scorecard (1). This will give an overview of a small number of data items (1). It may also have reporting on performance against plans (1). Reward other valid responses. Marking guidance: Answers can cover fewer than four points in more detail, in order to achieve 4 marks.	
Total		(4)

Question number	Answer	Mark
5	Trustee Act 2000 (1) Marking guidance: Accept 'Trustee Act', without the year.	
Total		(1)

Question number	Answer	Mark
6	i. Trust deed (1) ii. Declaration of trust (1) Reward other valid responses. Marking guidance: Accept 'Scheme'. Do not accept other terminology that applies to non-trusts.	
Total		(2)

Question number	Answer	Mark
7	C Payment of reasonable expenses.	
Total		(1)

Question number	Answer	Mark
8	A charity may trade in direct pursuit of its charitable purposes. (1) The charitable funds and assets must not be used for private or commercial gain by others. (1) Any relevant restrictions in the charity's constitution must be observed. (1) Trading with the principal aim of raising funds may only be carried out by the charity to a limited extent, taking into account the tax exemption threshold and charitable status. (1) Reward other valid responses. Marking guidance: It is not essential for answers to use the phrase 'primary purpose trading'. However, if they do use it, do <i>not</i> award a mark if there is no explanation to demonstrate understanding of that phrase. The same two points apply if answers use the phrase 'non-primary purpose trading'.	
Total		(4)

Question number	Answer	Mark
9	Award up to 2 marks for any two of the following: <ul style="list-style-type: none"> • Questionnaires (1) • Group discussions (1) • Individual interviews (1) • Observation (1) Reward other valid responses.	
Total		(2)

Question number	Answer	Mark
10	i. In relation to 'benefit' in the requirement for public benefit there must a beneficial charitable purpose (1) and; ii. that benefit must be identifiable. (1) Reward other valid responses. Marking guidance: Accept: the benefit must be capable of being evidenced (1).	
	Total	(2)

Section B

Question number	Answer	Mark
11	<p>The Code of Fundraising Practice is a code setting out recognised standards for charity fundraising. (1)</p> <p>Compliance with the Code is expected by the Charity Commission. (1)</p> <p>The Code sets out four key principles that should be observed in all charity fundraising – Legal; Open; Honest; Respectful. (1)</p> <p>The Code should be followed when a charity fundraises directly itself or when any other person or organisation fundraises on the charity's behalf with the permission or authority of that charity. (1)</p> <p>To support the Code there are also two rulebooks on street fundraising and door to door fundraising. (1)</p> <p>Reward other valid responses.</p>	
Total		(5)

Question number	Answer	Mark
12	<p>The liability of members is limited. (1)</p> <p>A member cannot be required to pay more than a specified limit towards the company's debts. (1)</p> <p>That is possible because the limited liability organisation is responsible for its own debts. (1)</p> <p>In a share company the member's liability is limited to the member's shareholding. (1)</p> <p>In a guarantee company the member's liability is the amount of the guarantee. (1)</p> <p>The directors are also protected because the company has its own legal identity. (1)</p> <p>Reward other valid responses.</p>	
Total		(6)

Question number	Answer	Mark
13	<p>The advantage of using a Code is that it will set out a clear framework for governance, which an organisation can follow (1). This can be particularly useful for a charity, which may have limited resources to devote to developing its own governance framework (1). Using a Code also enables an organisation to benchmark itself against other similar organisations (1). This can be seen with any of the following Codes: <i>Charity Governance Code</i>; National Housing Federation Code of Governance; UK Corporate Governance Code.</p> <p>Marking guidance: Award only one mark (1) for listing one or more of the above Codes, or any other relevant Governance Code and one mark (1) for giving an example of how it can be used to set out standards and principles.</p> <p>Reward other valid responses.</p>	
Total		(6)

Question number	Answer	Mark
14	<p>A charity might use a parent and subsidiary group structure by establishing a wholly owned subsidiary trading company (1) to undertake commercial trading activities to generate funds for the parent charity. (1)</p> <p>A charity might establish a group structure to manage risk (1) placing particular activities into separate subsidiaries. (1)</p> <p>A charity may place different parts of its charitable activities into subsidiary charities (1) to enable focused governance for each part, for example, for each care home. (1)</p> <p>Reward other valid responses.</p>	
Total		(6)

Question number	Answer	Mark
15	<p>Voting at general meetings will be by a show of hands (1) or a poll vote (1). A poll vote is conducted by the use of voting papers (or electronic devices) (1). A proxy may also be able to vote (1). A proxy is a person appointed by a member to attend, speak and vote on his or her behalf (1). A member of a company has a statutory right to appoint a proxy (1).</p> <p>Reward other valid responses.</p> <p>Marking guidance: A candidate may also choose to explain ordinary and special resolutions. If so, a maximum of three marks can be awarded, if no other answer is given.</p>	
Total		(6)

Question number	Answer	Mark
16	<p>The trustees must obtain and consider a written report from a qualified surveyor. (1)</p> <p>The surveyor must be instructed by the board of trustees. (1)</p> <p>The surveyor must act exclusively for the charity. (1)</p> <p>The full board must consider the report. (1)</p> <p>The board must be satisfied that the proposed terms of the sale are the best that can reasonably be obtained for the charity. (1)</p> <p>If the surveyor recommends it, the proposed sale must be publicly advertised. (1)</p> <p>Reward other valid responses.</p>	
Total		(6)

Section C

Question number	Indicative content
17	<p data-bbox="272 338 1050 369"><u>ABC Charitable Trust – your general legal duties as a trustee</u></p> <p data-bbox="272 425 1398 490">Welcome to the ABC Charitable Trust’s board, we are pleased that you have agreed to join the board. This briefing note gives you guidance on your general duties as a charity trustee.</p> <p data-bbox="272 501 1398 600">As a charity trustee you have general legal duties under charity law. The duties are drawn from decisions of the courts, they are not specifically set out in the Charities Act. It is a legal requirement that trustees fulfil their duties.</p> <p data-bbox="272 611 1331 676">The duties provide principles that you should apply as you carry out your role as a charity trustee.</p> <p data-bbox="272 687 1385 719">The duties also provide the context in which charity trustees govern and manage their charity.</p> <p data-bbox="272 730 1394 828">This is a summary of the general duties of charity trustees, using the categories in the Charity Commission core guidance for trustees (The Essential Trustee – what you need to know, what you need to do CC3):</p> <ul data-bbox="292 887 1214 1128" style="list-style-type: none">i. Ensure the charity carries out its purposes for the public benefit.ii. Ensure the charity complies with its governing document and with the law.iii. Act in what the trustee believes to be the charity’s best interests.iv. Manage the charity’s resources responsibly.v. Act with reasonable care and skill.vi. Ensure the charity is accountable. <p data-bbox="272 1184 1406 1317">The overriding duty of a trustee is to act in what they honestly believe to be the best interests of the charity’s charitable purposes, for the public benefit. The obligation of honesty means that a trustee should not put themselves in a position where their personal interests or loyalties may conflict with the interests of the charity.</p> <p data-bbox="272 1328 1315 1359">The trustees must ensure the charity operates within its charitable purposes at all times.</p> <p data-bbox="272 1370 1401 1435">It is important that trustees read and understand the charity’s governing document, so that they can ensure the charity follows it.</p> <p data-bbox="272 1447 1394 1545">With regard to legal compliance, trustees are expected to take reasonable steps to establish what the law requires and comply with that. Trustees can seek appropriate professional advice to help them do this.</p> <p data-bbox="272 1556 1369 1621">In managing the charity, trustees must act honestly, responsibly and reasonably – they must demonstrate prudence, exercising sound judgement.</p> <p data-bbox="272 1632 1353 1731">Proper financial management is an important part of this duty to manage resources responsibly, for example trustees must ensure the charity remains solvent and can meet its financial obligations.</p> <p data-bbox="272 1787 1054 1818">Note: ‘charitable purposes’ may also be called ‘charitable objects’.</p>

Level	Mark	Descriptor
	0	No rewardable material.
Level 1	1–5	<ul style="list-style-type: none"> • A few key points relating to the general legal duties of trustees are identified but are not directly linked to the question and are accompanied by little detail. • The answer demonstrates limited understanding of trustees' legal duties. This is communicated in a basic way with simple or generalised statements. • Points made are superficial and not directly linked to the requirements of the question. • The answer includes limited advice given in relation to the new trustees. <p>Award up to a maximum of only 5 marks if the answer comprises a list of recalled knowledge on the topic and does not attempt to address the requirements of the question.</p>
Level 2	6–10	<ul style="list-style-type: none"> • Some points regarding the general legal duties of trustees are identified, some of which are relevant to the question and described in detail. • The answer demonstrates some understanding of trustees' legal duties and expresses some ideas with clarity. • Some points made are relevant and linked to the requirements of the question. • The answer includes some advice given in relation to the new trustees.
Level 3	11–15	<ul style="list-style-type: none"> • A range of points regarding the general legal duties of trustees are identified, the majority of which are linked to the question and described in some detail. • The answer demonstrates a good understanding of trustees' legal duties and is communicated in a logical writing structure. • A range of points made a relevant and linked to the requirements of the question. • The answer includes good advice given in relation to the new trustees.

Question number	Indicative content
18	<p>This question requires candidates to identify some recent developments in charity governance. The question can be answered fully from the material that is in the study text, but candidates can also refer to some more recent developments, such as the publishing of the Charity Governance Code, or the recent publicity regarding safeguarding in charities.</p> <p>There have been a number of events since 2015 that have meant that charities have begun to focus more on governance, and that have influenced how we perceive good governance. There have been some very public governance failures within charities, such as the collapse of Kids Company. There was also the public outcry about the fundraising methods of some charities; which raised concerns on how trustees govern their charities. The increasing number of inquiries by the Charity Commission has also brought to light a range of governance failures. Finally, in 2017 the Charity Governance Code was published. This takes on a completely different format and sets out higher standards than the previous Good Governance Code. The new Code is structured around the principles of leadership; integrity; decision making, risk and control; diversity; board effectiveness and being open and accountable.</p> <p>These recent events, and the new Code, place a greater focus on boardroom behavior. Whereas previously, good governance was often thought to be demonstrated principally by looking at structures and processes, the Walker report also stated that best practice in boardroom behavior was characterised by:</p> <ul style="list-style-type: none"> • a clear understanding of the role of the board; • the appropriate deployment of knowledge, skills, experience and judgment; • independent thinking; • the questioning of assumptions and established views; and • a supportive decision-making environment. <p>In recent years, it has been more common for organisations to give consideration to the personality of the directors; the balance of relationships; and group dynamics. Events since 2015 have highlighted the need for this. The events in Kids Company, and the concerns about fundraising have highlighted that many Trustees do not have a full understanding of the work being carried out by the charity. These examples also raised the question of whether there was sufficient independent thinking, and the questioning of assumptions on the boards. Publicity in regard to failures in charities mean that trustees are being held to greater account, and attention is being drawn to the need for a board to operate effectively. There are a number of factors which impact on the effectiveness of board meetings; including the documentation and information that the board receives and a focus on the board role and behaviour.</p> <p>Effective boards need to have a clear understanding of their role, and this is now seen as a key component of good governance. The apparent lack of understanding of the work being carried out in some charities also means that there is now more focus on effectively monitoring systems; internal controls and risk management.</p> <p>The increasing number of Charity Commission inquiries means that boards are now more aware of the need to be able to demonstrate their understanding of their role, and give full consideration to good governance. The new Code also includes, for the first time, a recommendation that charities report on whether the Code has been adopted and is being followed. There is already an increase in the use of good governance mechanisms such as skills audits; performance reviews; and succession planning. As the Code becomes more widely used, this may be added to even further.</p>

Level	Mark	Descriptor
	0	No rewardable material.
Level 1	1–5	<ul style="list-style-type: none"> • A few key points relating to the key elements of good governance in a charity and the impact of events on the understanding of good governance are identified but are accompanied by little detail. • The answer demonstrates limited understanding of good governance and the impact of events since 2015. This is communicated in a basic way with simple or generalised statements. • Points made are superficial and not directly linked to the requirements of the question. • The answer includes limited discussion of good governance and the impact of events. <p>Award up to a maximum of only 5 marks if the answer comprises a list of recalled knowledge on the topic and does not attempt to address the requirements of the question.</p>
Level 2	6–10	<ul style="list-style-type: none"> • Some points regarding the key elements of good governance in a charity and the impact of events on the understanding of good governance are identified, some of which are relevant to the question and described in detail. • The answer demonstrates some understanding of good governance and the impact of events since 2015, and expresses some ideas with clarity. • Some points made are relevant and linked to the requirements of the question. • The answer includes some discussion of good governance and the impact of events.
Level 3	11–15	<ul style="list-style-type: none"> • A range of points regarding the key elements of good governance in a charity and the impact of events on the understanding of good governance are identified, the majority of which are described in some detail. • The answer demonstrates a good understanding of good governance and the impact of events since 2015 and is communicated in a logical writing structure. • A range of points made are relevant and linked to the requirements of the question. • The answer includes a detailed discussion of good governance and the impact of events.

Question number	Indicative content
19	<p>Jo, the Honorary Secretary, should be advised of the following points in regard to each of the information requests:</p> <ol style="list-style-type: none"> <li data-bbox="276 365 1412 741">i. It is the clear recommendation of the Charity Commission that minutes are kept for the lifetime of the charity. As the charity is a company, there are also legal requirements set out in the Companies Act 2006. These state that minutes must be kept of all general meetings, and all board and committee meetings, for 10 years. Six years is therefore too short a period for the retention of minutes. In addition, it may be necessary to retain agenda papers if these are necessary to understand the minutes. Attempts could be made to see if older minutes have been retained in some form, i.e. there may still be copies of the meeting papers available. However, care should be taken that only the approved minutes are retained. If not, the response to the member should acknowledge that the charity is aware that it should keep minutes for longer, and that it will now start to do so. <li data-bbox="276 797 1412 1173">ii. Ideally, a minute book should be used to keep a copy of all the original agreed minutes. These minutes should be signed by the chair of the meeting (or the next meeting) once approved. Copies of minutes can be stored on a computer, and electronic copies of documents could be acceptable as long as their integrity can be shown. Therefore, at the very least, the electronic copy should be a pdf, unalterable, copy of the signed minutes; including the signature. The fact that the Secretary is unable to identify which of the Word versions is the correct one is a good example of the problems that can occur if minutes are kept in this way. Also, even if she knew which was the final version, a Word copy of the minutes as drafted would not be sufficient. Jo may need to go back to the papers circulated of the meeting to see which version of the minutes was submitted for approval. Once identified, she should seek to have them signed and retained in hard copy. <li data-bbox="276 1229 1412 1529">iii. For charitable companies, minutes signed by the Chair of the meeting at which the business was transacted or by the Chair of the next succeeding meeting are evidence of the proceedings. When minutes have been signed in this way they are prima facie evidence of the proceedings. Whilst they can be set aside by the court if inaccuracies can subsequently be established, the fact that these are of a meeting from two years previously, and that they have already been agreed as a true record, means it would be very unusual for them to be challenged in this way. Jo should be advised to respond to the member that the minutes have already been agreed, by the members, and that it is not appropriate for them to be re-visited at the next meeting. <li data-bbox="276 1585 1412 1816">iv. A company member has no right to inspect the minutes of a company. Under common law, a member of a company only has the right to inspect the minutes of general meetings. The member should be advised of this. Whilst charity boards often want to be as transparent as possible, publishing the minutes of board meetings can mean that they are drafted in a way that does not fully reflect the discussions and decisions at the meetings. As an alternative the board could still provide a report back following each meeting, summarising the discussions and leaving out confidential business. <li data-bbox="276 1872 1412 2101">v. As the charity has income of below £25,000 it does not need to submit its annual report and accounts to the Charity Commission, but it still has a legal duty to prepare them. This is particularly the case as it is a company. Also, the annual report and accounts need to be filed with Companies House within 9 months of the financial year end, and so this charity appears to be overdue on this filing. Also, sections 171 and 172 of the Charities Act 2011 state that a charity must provide a copy of its annual report and accounts to any person who requests them. A reasonable fee can be charged. Companies limited by

	<p>guarantee have a requirement to circulate annual reports and accounts to members. Jo has misinformed the supporter in this instance and should send the annual report and accounts to them. If these have not been prepared, this needs to happen urgently and they must be filed with Companies House. A fine will be payable.</p>
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Level	Mark	Descriptor
	0	No rewardable material.
Level 1	1–5	<ul style="list-style-type: none"> • A few key points relating to the legal requirements in regard to minutes and annual reports and accounts are identified but are not directly linked to the scenario and are accompanied by little detail. • The answer demonstrates limited understanding of the legal requirements. This is communicated in a basic way with simple or generalised statements. • Points made are superficial and not directly linked to the scenario in the question. • The answer includes limited advice given to the Honorary Secretary on the information requests. <p>Award up to a maximum of only 5 marks if the answer comprises a list of recalled knowledge on the topic and does not attempt to address the requirements of the question.</p>
Level 2	6–10	<ul style="list-style-type: none"> • Some points regarding the legal requirements in regard to minutes and annual reports and accounts are identified, some of which are relevant to the scenario and described in detail. • The answer demonstrates some understanding of the legal requirements and expresses some ideas with clarity. • Some points made are relevant and linked to the scenario in the question. • The answer includes some advice given to the Honorary Secretary on the information requests.
Level 3	11–15	<ul style="list-style-type: none"> • A range of points regarding the legal requirements in regard to minutes and annual reports and accounts are identified, the majority of which are linked to the scenario and described in some detail. • The answer demonstrates a good understanding of the legal requirements and is communicated in a logical writing structure. • A range of points made a relevant and linked to the scenario in the question. • The answer includes good advice given to the Honorary Secretary on the information requests.