

Via email

17 February 2015

Dear Sir,

### **CC3: the essential trustee consultation**

I am pleased to submit the Institute's response to the above consultation and trust the comments are useful to your deliberations on the revised version of the Commission's guidance: CC3 – the essential trustee.

#### **About ICSA**

The Institute of Chartered Secretaries and Administrators (ICSA) is the professional body qualifying and supporting company secretaries and corporate administrators in all sectors of the UK economy. Members are educated in a range of topics including finance, HR, company law, administration and governance, which enable them to add value to any organisation.

ICSA is the leading UK and international voice on governance in all sectors and delivers a professional education that gains its strength in the breadth of the syllabus; designed to assist boards and work with senior managers to identify and maximise opportunities within relevant legal frameworks and established best practice.

The Institute has some 10% of UK Members directly employed in the not-for-profit sector, with many more involved on a voluntary basis in capacities such as trustees and school governors. In formulating the Institute's response to the above consultation document, members with involvement ranging from large multi-million pound charities to small, local organisations were approached for their views given the depth of their knowledge of the sector, compliance with relevant legislation and the importance of sound governance arrangements in effecting a change within the communities in which they operate.

#### **Response to consultation questions**

##### **Q1. When did you last use the current version of 'The essential trustee'?**

Chartered secretaries are likely to use the guidance regularly as part of their role supporting and advising boards. Whether as trustees, trainers or board secretaries, CC3 will be signposted to new and established trustees as part of their induction programme or any ongoing development of the board.

##### **Q2. Which version of the guidance do you find most helpful overall? Please say why?**

The current version of CC3, with its short and long answer format, could be seen as providing trustees with an option to avoid reading some of the fundamental aspects of the guidance and thereby not fully understanding their role and duties. The new format does not provide the reader with the same opportunity to avoid reading the full document, if committed to reading it in its entirety. Some aspects of the current version, however, would benefit being included in the version being consulted on. For example, the further information and advice section of the previous version would be a helpful addition to the draft version.



**Q3. Is the explanation of trustees' responsibilities clear and easy to understand? If not, what didn't you find clear? How could the commission make it clearer?**

The wording is straightforward and the precis for each section makes it clear what is to be covered. While the new version aims to be short and concise, the continuous reference to further information may mean that trustees do not follow up that information when it would really be in their best interests. It is appreciated however, that this is an introduction to the role of charity trustee and the guidance should not put people off reading it in its entirety. With that in mind, the balance may be appropriate.

**Q4. Does the guide cover all the essentials that trustees need to know about their duties? If not, what is missing?**

As mentioned above, the guide provides a short overview of the core duties of a charity trustee. The regular signposting to further guidance is helpful – especially when read online with the hyperlinks. Trustees reading paper copies may find it more difficult to access the information required in a single sitting.

**Q5. Do you understand the distinction between what trustees 'must' and 'should' do?**

It could be argued that the distinction in this version is clearer than the current one, with less opportunity for misunderstanding.

**Q6. Which of the following statements about what trustees 'should' do are helpful in explaining what it means:**

- a) minimum good practice requirements
- b) specified good practice
- c) there is no specific legal requirement
- d) the commission expects you to comply
- e) if you don't comply, the commission may ask you to explain and justify your decision
- f) if you don't comply, you may be in breach of a legal duty
- g) if you don't comply, it is difficult to see how you can satisfy your legal duties
- h) if you don't comply, the commission may treat this as evidence of misconduct or mismanagement.

Within the 2014 version of the Higher Education Code of Governance (produced by the CUC), the distinction used is thus:

"... '*should*' statements illustrate the activities that are normally conducted in order to achieve the '*musts*.'" (page 6)

A mixture of d) and g) may therefore reflect the sentiment articulated by the CUC code, which in turn could lead the Commission to believe that a charity is not being run appropriately. The final definition of 'should' within CC3 would benefit from acknowledging that failing to follow a 'should' does not necessarily mean that the trustees are acting inappropriately, but that further information may be required as to why the methods adopted have been selected over the 'shoulds' defined in the document. This model is common in the corporate governance world, and is familiarly known as the 'comply or explain' approach.

Some flexibility in the definition would be beneficial as it will enable trustees to be creative and innovative in developing the governance arrangements for their organisation that work. A rigid application of 'should' could therefore limit the opportunity for governance arrangements to evolve.

**Q7. Do you think the guidance strikes the right balance between:**

- **reassuring trustees that the law protects them if they comply with their legal duties, and**
  - **highlighting the potential consequences of acting negligently or in bad faith?**
- If not, where does the balance need to be adjusted?**

After due consideration and reflection, the version of CC3 being consulted on tends to lean towards the potential consequences. Changing the text in section 11.1 round by having the paragraph on acting honestly after the first sentence in this section, would be more reassuring to trustees. The section could then go on to talk about issues pertaining to acting negligently.

**Q8. 'The essential trustee' is a familiar title to trustees and charity advisers. Should the commission keep this title? If not, what should the guide be called instead?**

It has been suggested that inserting 'charity' into the title may clarify the audience the guidance is aimed at. 'The essential charity trustee' would therefore make it clearer for those trustees that have been given the document as part of an induction or training programme and have not downloaded it for themselves.

**Q9. Some trustees seem to be unfamiliar with their duties. What more could the commission do to raise awareness of this guidance? How could your organisation help?**

Along with signposting the guidance to potential trustees via a range of sector umbrella and representative bodies the Commission could ensure that links are sent to trustees when asking them to update charity details and submit annual returns. This would mean that at least one trustee, or senior manager, would be reminded of the existence of the document. Hopefully that individual would then pass on the link to trustees as part of their annual self-evaluation or regular review of their governance and training needs.

ICSA will continue to signpost this, and other relevant Commission guidance, when producing documents and training packs aimed at new and existing trustees. Members will be aware of the new version and are likely to automatically update their in-house programmes and information packages for trustees.

### **Specific comments on the new version of CC3**

The following substantive comments are offered to assist the Commission in its final draft of CC3. Any style or grammatical comments have been omitted as it is assumed the final version will be proofed for house-style and other errors.

Introduction:

Perhaps include a paragraph on the role of the Commission, its role and powers when regulating charities. A clear statement that this guidance supersedes previous guidance may be helpful to readers.

Furthermore, the document could help to frame the positive benefits of being a trustee by outlining the reasons why trustees volunteer for the role. This may help to even the balance between providing reassurance and highlighting the potential consequences.

Definitions:

The list of definitions currently appears a little haphazard. It may improve the flow of the document if the definitions appear alphabetically or are grouped together, such as all types of organisational structure or trustee are placed together.

The definitions for each type of trustee could be made clearer, especially 'professional trustee'.

There should also be a short definition of public benefit included, with a hyperlink or signpost to further information on the subject.

Charity resources:

The guidance tends to lead readers to the assumption that all charities employ staff. As this is not the case, it may be worth reviewing the text to ensure that the situation affecting the majority of charities is reflected, thereby adding staffing issues as an additional concern rather than a primary factor.

Section 6:

It would be beneficial to add a hyperlink to further guidance on authorised benefits in the first set of bullet points in this section.

Section 12:

It would be useful to add a section on Charity Commission Schemes along with other types of organisations charities may adopt.

It is hoped that the above comments are useful to you in your deliberations relating to the revised version of CC3. Should you wish to discuss any points in further detail, or how ICSA may be able to assist you in your endeavours on this topic, please do not hesitate to contact me.

Yours faithfully,

Louise Thomson FCIS  
Head of Policy, Not for Profit  
ICSA

Email: [lthomson@icsa.org.uk](mailto:lthomson@icsa.org.uk)  
Tel: 020 7612 7040