

INFORMATION SHEET 23

November 2009

Disqualification of Trustees and Directors

Under the Charities Act 1993, certain people are disqualified from acting as charity **trustees**. The law on **disqualification** of charity **trustees** applies to **trustees** of all registered, excepted and exempted charities. The law on **disqualification** of company **directors** applies to **directors** of all companies, whatever their charitable status. Company law contains similar provisions for company **directors**.

WHO IS DISQUALIFIED FROM ACTING AS A CHARITY TRUSTEE?

(This includes holding **Trustees**, of all charities, including exempt and excepted charities.)

Section 72 of the Charities Act 1993 disqualifies people who:

- have unspent convictions for offences involving deception or dishonesty
- are undischarged bankrupts
- have been at any time removed from trusteeship of any charity by the Charity Commission, High Court or the Court in England, Wales or Scotland, because of misconduct or mismanagement in the administration of the charity, are disqualified from being company **directors** under the Company **Directors Disqualification** Act 1986
- have failed to make payment under County Court administration orders
- have made compositions (or an arrangement) with their creditors which have not been discharged (including Individual Voluntary Arrangements - IVA)
- as set out in the organisations governing document
- does not meet some other external requirement i.e. working with children or vulnerable adults etc.
- are subject to a **disqualification** order under the Company **Directors Disqualification** Act 1986, unless permission has

been given to act as a director of a charitable company.

As soon as someone comes within Section 72, for example, the day they are convicted of an offence involving dishonesty, they are automatically disqualified from acting as a trustee. It is a criminal offence to act as a charity trustee while disqualified. It is also an offence for anyone knowingly to offer such a position to a person who is disqualified from working with children and vulnerable adults.

CAN TRUSTEES OBTAIN AN EXEMPTION FROM DISQUALIFICATION?

Charities and charity trustees may apply to the Charity Commission for a waiver from **disqualification**, either generally or in relation to a charity or a particular type of charity. The Commission will consider what, if any, benefit is likely to result from an applicant acting as a trustee. The following factors are likely to be relevant:

- the nature and seriousness of the commission, bankruptcy or offence
- the nature and financial control of the charity's property and assets
- the degree of risk of misappropriation of funds
- the risk of damage to the charity's reputation
- the nature of the charity's work, in particular if it works with offenders and/or ex-offenders
- any relevant previous disqualifications or Charity Commission inquiries
- the views of the other trustees
- any relevant provisions in the charity's governing document

The Commission may wish to take into account other factors that apply to a particular case. A Charity Commission waiver cannot override a **disqualification** provision in an organisations governing document.

WHO IS DISQUALIFIED FROM ACTING AS A COMPANY DIRECTOR?

Under the Company Director's **Disqualification** Act 1986, the Court

may disqualify people:

- liable for wrongful trading whilst winding up a company
- undischarged bankrupt
- who have been convicted of criminal offences relating to the promotion, formation, management or liquidation of a company
- who have been persistently in default of company legislation for filing accounts, annual returns or other documents
- who have been found guilty of fraudulent trading or fraud
- whose conduct as a director has made them unfit to be involved in the management of a company.

A waiver is not possible if the person is an uncharged bankrupt or prohibited from being a Trustee by the Company **Directors Disqualification** Act 1986 and permission has not been granted for him or her to act as director of any other company. If a person has been disqualified for more than five years following removal as a charity trustee by the Charity Commission, High Court or court of session, the Commission must grant any request for a waiver unless it has a good reason not to.

It is an offence, punishable by a fine and up to 2 years imprisonment to serve as a trustee/company director of a charity while disqualified.

The Charity Commission and GVOC recommend all **Trustees** and Company **Directors** sign a declaration, when appointed or elected declaring they are not disqualified as a Trustee.

Model forms are available from the Charity Commission. Registers noting bankruptcies, individual voluntary arrangements and disqualified **directors** are available from the Insolvency Service and Companies House.

FURTHER INFORMATION AND READING

Charity Commission:

Charity Commission Direct

PO Box 1227

Liverpool

L69 3UG

Tel: 0845 300 0218 8am – 8pm

Fax: 0151 703 1555

Email: enquiries@charitycommission.gov.uk

www.charitycommission.gov.uk

Companies House:

Crown Way, Maindy, Cardiff CF14 3UZ

Tel: 0303 1234 500

Textphone: 02920 381245

Email: enquiries@companies-house.gov.uk

Open Monday to Friday 8.30am – 6.00pm, Saturdays 9.00am – 1.00pm

www.companies-house.gov.uk

Good Trustee Guide Book available from the Directory of Social Change.

Voluntary Sector Legal Handbook available from the Directory of Social Change.

This information is intended for guidance only and is not a comprehensive statement of the law. Please contact GVOC staff for further advice and information.

For further information,

Contact GVOC between 8.45 am and 4.45 pm - Monday to Friday

Telephone: 0191 478 4103 Fax: 0870 705 8702

E-mail: enquiries@gvoc.org.uk Internet: www.gvoc.org.uk

Registered Charity No. 510764