

|  |
| --- |
|  |
| Small payments to charity trustees |
|  |
| OG515-7 |
| Last Updated: 10/11/2020Last Reviewed: 10/11/2020 |
|  |
|  |

|  |
| --- |
|  |

**OG515-7 Small payments to charity trustees**

**Last reviewed: 10 November 2020**

**Last updated: 10 November 2020**

**Contents**

[**OG515-7 Small payments to charity trustees 1**](#_Toc125636291)

[**Policy Statement/Overview 2**](#_Toc125636292)

[**Summary of the guidance 2**](#_Toc125636293)

[**Casework Guidance 2**](#_Toc125636294)

[**B1 Key points 2**](#_Toc125636295)

[**B2 Handling initial queries about small payments to trustees 3**](#_Toc125636296)

[**B3 Applying the small payments policy at registration stage 4**](#_Toc125636297)

[**B4 What if the trustees insist on our authority? 4**](#_Toc125636298)

[**Legal/Policy framework 4**](#_Toc125636299)

[**E1 Definitions 4**](#_Toc125636300)

[**Payments 4**](#_Toc125636301)

[**Small payments 4**](#_Toc125636302)

[**E2 Law – key points 5**](#_Toc125636303)

[**E3 Policy – key points 5**](#_Toc125636304)

[**E4 Why have a small payments policy? 5**](#_Toc125636305)

[**E5 Where the total of all payments will be over £1,000 pa 5**](#_Toc125636306)

[**E6 Disclosing and reporting trustee payments 6**](#_Toc125636307)

[**Q&A 6**](#_Toc125636308)

[**F1 What does our small payments policy do? 6**](#_Toc125636309)

[**F2 How is the total amount paid to trustees calculated? 6**](#_Toc125636310)

[**F3 What if the value of all payments in any year will total £1,000 or more? 6**](#_Toc125636311)

[**F4 What if there is an express prohibition in the charity's governing document? 7**](#_Toc125636312)

[**F5 Does our small payments policy apply to gifts to retiring trustees? 7**](#_Toc125636313)

[**F6 How will this effect a trustee’s tax and/or benefits? 7**](#_Toc125636314)

[**F7 How should small payments be reported in a charity's accounts? 7**](#_Toc125636315)

**Policy Statement/Overview**

The Commission's policy on payments to charity trustees is set out in [Trustee Expenses and Payments (CC11)](https://www.gov.uk/government/publications/trustee-expenses-and-payments-cc11). Section 5.8 of CC11 deals specifically with small payments to trustees and governs our overall approach to these cases.

No payment, except for properly incurred expenses, can be made by a charity to any of its trustees without express authority. This authority might be found in the charity's governing document, it may be provided by s185 of the Charities Act (where it is a payment for services) or it could be granted by the Commission or the court.

However, in the interests of proportionality, and to make the best use of our powers and resources, we do not usually require charity trustees to seek our authority to make small payments to trustees.

Our policy is that we do not expect a charity's trustees to seek authority for a trustee payment where;

* the total of all payments to all trustees during the charity’s financial year will amount to less than £1,000;
* the non-conflicted trustees are satisfied that making the payment is in the best interests of the charity and that any conflicts have been avoided or managed effectively; and,
* there are no other reasons why authority might be appropriate, for example, where we are addressing issues of mis-management of the charity.

Where a charity's trustees rely on this policy to make small payments to trustees, the payments must be handled in a way that is open and transparent and the trustees should report the payments in the charity's accounts.

**Summary of the guidance**

This guidance is intended to help caseworkers to handle initial queries where a charity's trustees are proposing to make small payments to one or more trustees or connected persons, where the total of all payments to all trustees in the charity's financial year is less than £1,000.

The guidance explains our policy regarding small payments to trustees and sets out how we apply this policy (see Legal & Policy Framework of this OG). (Where the total of all payments to all trustees in the charity's financial year will be £1,000 or more, caseworkers should refer to the specific guidance relating to the particular type of payment.)

Within this guidance, where we refer to a trustee who will benefit, this includes instances where the benefit goes to a person connected to a trustee.

**Casework Guidance**

**B1 Key points**

* We do not expect charity trustees to seek formal legal authority before making low value payments or gifts to trustees, as long as:
	+ the total of all payments to all trustees during the charity’s financial year will amount to less than £1,000; and,
	+ we are not engaged with the charity regarding mis-management.

The non-conflicted trustees must be satisfied that making the payment is in the best interests of the charity, taking into account any risk to the charity’s reputation, and should record their reasons and decisions in the minutes of the relevant meeting.

* When calculating the total amount paid to its trustees, trustees should not include the repayment of legitimately incurred expenses.
* The small payments policy applies even where there is an express prohibition in the charity's governing document. The principle that the payment is so small as to be insignificant in the context of a lack of authority applies equally where there is an express prohibition against payment. It is not a good use of the Commission's, or the charity's, time to seek to amend a governing document simply to enable small payments to be made.
* While we cannot advise on tax matters, the Commission understands, from HMRC guidance, that small one-off payments will not normally be counted as income for tax purposes. Larger, more regular or expected payments (for example, where a trustee is employed by a charity) will usually be taxable.

**B2 Handling initial queries about small payments to trustees**

Where we are approached to advise regarding small payments we should refer the enquirer to section 5.8 of CC11 and to our web guidance and [online application form](https://forms.charitycommission.gov.uk/trustee-payments/). The online form enables trustees to see if the payments they are proposing fall within our small payments policy and, if so, to save and print written confirmation from us that our policy is that we do not expect the trustees to apply for authority to make the payments.

We should also explain that:

* the trustees should only make a payment to a trustee where they are satisfied that to do so is in the best interests of the charity and that making the payments will not adversely affect the charity's ability to deliver its objectives
* the trustees must manage the decision making process properly, clearly recording the discussions, and the reasons for making the payments, in the minutes of the trustee meetings. The payments should also be recorded in the charity's accounts
* if the proposed payments do not meet the small payments criteria, and where no express authority exists in the charity's governing document, the trustees will need to apply to us for authority before making any payment. How we deal with that application will depend on the specific circumstances of each case.

When the trustee board is discussing any aspect of a payment to a trustee, the trustee to benefit must not take part in these discussions, except to provide information, if necessary.

**B3 Applying the small payments policy at registration stage**

Where a charity is applying for registration and the trustees tell us that they are intending to make small payments to one or more of the trustees, we should explain the trustees' duties and responsibilities in relation to the payments, but also signpost the trustees to our web guidance and to section 5.8 of CC11. The trustees may be satisfied that they can make payments in line with our small payments policy. However, we may think it appropriate to suggest that the trustees adopt a suitable power, particularly where other amendments are required prior to registration.

**B4 What if the trustees insist on our authority?**

Our small payments policy is intended to reduce the administrative burden on charities and the Commission. Because of this, we should apply the small payments policy in all qualifying cases. If a charity's trustees insist on our express authority for a qualifying payment we should clearly explain this policy and state that, because of this, we will not give express authority. (There may be exceptional circumstances which mean we might think it appropriate to grant authority, this will depend on the particular characteristics of the case.)

# Legal/Policy framework

## E1 Definitions

Within this guidance the following terms are used:

### **Payments**

'Payments' means any payment made to a trustee by a charity (not including properly incurred expenses), this includes:

* payments made to a trustee who is employed by the charity
* payments made to a trustee for the provision of services under the power given by s185 of the Charities Act
* payments made to a trustee for serving as trustee
* payments made to a trustee as compensation for loss of earnings while serving as trustee
* payments or gifts made to a serving trustee, or to a trustee who is retiring from the charity, as a gesture of goodwill (often called an honorarium).

### **Small payments**

‘Small payments’ means any payments (other than the repayment of properly incurred expenses) made to a charity’s trustees, where the total of all payments to all trustees and connected persons will amount to less than £1,000 during the charity’s financial year.

## E2 Law – key points

* No trustee can receive any benefit from his or her charity without proper authority. However, where the total value of all payments is small, we do not expect trustees to seek formal authority before making a payment. As with any trustee payments, the non-conflicted trustees must be satisfied that making the payment is in the best interests of the charity.
* The [Charities SORP FRS 102](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/870619/charities-sorp-frs102-2019a.pdf) [(SORP)](http://www.charitysorp.org/) sets out how trustee payments must be reported in a charity's accounts

## E3 Policy – key points

* Our policy is that it is not a good use of the resources of the Commission or a charity to seek and grant authority for small payments to trustees where the charity is being properly administered and the total of all payments to all trustees during the charity’s financial year will amount to less than £1,000.
* When a charity makes payments to its trustees, we recommend that the trustees follow the reporting requirements of the [Charities SORP FRS102](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/870619/charities-sorp-frs102-2019a.pdf) (SORP), whether or not the charity falls under the SORP (see E6).

## E4 Why have a small payments policy?

No trustee can receive any benefit from his or her charity without proper authority. This is the case regardless of the value of the payment. However, where the value is small it would not be a good use of the charity’s, or the Commission’s, time and resources to seek and grant authority.

Because of this, we have decided that, as a matter of policy, where the total value of all payments to a charity’s trustees (not including expenses) will amount to less than £1,000 in the charity's financial year, we would not expect the trustees to seek our authority before making a payment. This only applies where we do not have an ongoing case regarding mis-management of the charity.

## E5 Where the total of all payments will be over £1,000 pa

Where it is anticipated, or becomes apparent that, the value of all payments from a charity to its trustees collectively (excluding expenses) will total £1,000 or more in any financial year, the payments fall outside of the scope of the small payments policy. Where this is the case, the trustees will need an express authority before making any payment to a trustee. This authority may come from the charity’s governing document, from the Commission, from the court or from the power granted by s185 of the Charities Act to pay trustees for services. If our authority is needed, trustees should use the [online application form](http://forms.charitycommission.gov.uk/contact-us/get-our-permission/pay-trustees/trustee-payments-forms/) to apply for authority. (The various different types of payments a charity can make to its trustees are dealt with in the rest of the OG515 series.)

Where a charity's trustees rely on the small payments policy to make a payment without seeking formal authority, but the total of all payments in the financial year is £1,000 or more, this will mean that the payments are unauthorised trustee benefits.

## E6 Disclosing and reporting trustee payments

The [Charities SORP FRS102](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/870619/charities-sorp-frs102-2019a.pdf) [(SORP)](http://www.charitysorp.org/), which apply to all charitable companies and any other charity with an annual income of over £250,000, set out the requirements for reporting trustee payments in a charity's accounts. (For charities that do not fall under the requirements of the SORPs, we recommend, as a matter of good practice, that the SORPs' requirements are followed when reporting trustee payments.) The SORPs require a charity's accounts to include details of any payments made to its trustees and set out the legal authority under which each payment is made.

Where a charity relies on our small payments policy to make payments, it will not be possible to set out the legal authority. Where this is the case, the accounts should refer to our policy next to the payment details. For example:

'This payment for [explain purposes] was made without authority, but the non-interested trustees were satisfied that the payment was in the best interests of the charity, all conflicts were avoided or managed effectively, and the level of payment did not exceed the value to the charity. This is in line with the Charity Commission's policy on small payments to charity trustees.'

**Q&A**

**F1 What does our small payments policy do?**

Our small payments policy is intended to reduce the administrative burden on charity trustees and on the Commission. We do not expect a charity's trustees to seek our authority before making small payments to one or more of their number. This only applies where we do not have an ongoing case regarding mis-management of the charity (see E4).

**F2 How is the total amount paid to trustees calculated?**

Calculating the total amount which will be paid to all trustees during the charity’s financial year may involve an element of estimation to take into account payments that may be made later in the year. The calculation should include:

* + any payments made, or planned to be made, for the provision of services under s185 of the Charities Act;
	+ any payments made, or planned to be made, to trustees, or connected persons, who are employees of the charity; and
	+ any other one-off payments already made, or planned to be made, before the end of the financial year.

The calculation should not include the repayment of properly incurred expenses.

**F3 What if the value of all payments in any year will total £1,000 or more?**

Where the total value of all payments from a charity to its trustees (excluding expenses) will total £1,000 or more in any financial year the payments fall outside of the scope of the small payments policy and will need express authority (see E5).

**F4 What if there is an express prohibition in the charity's governing document?**

Even where a charity's governing document expressly prohibits trustee payments, the trustees can rely on the small payments policy to make payments. There is no need to remove the prohibition. The small payments policy would fail in its intention if an express prohibition meant that small payments could not be made.

**F5 Does our small payments policy apply to gifts to retiring trustees?**

Yes, where a charity’s trustees decide it is appropriate to give a gift to a trustee who is about to retire from trusteeship this would fall within the small payments policy. This means that no authority is required where the total of all payments to all trustees (including those made to a retiring trustee) is less than £1,000 in the charity’s financial year.

**F6 How will this effect a trustee’s tax and/or benefits?**

If we are asked to advise a charity's trustees about how small payments might affect a trustee's tax position we should always refer the enquirer to [HMRC](http://www.hmrc.gov.uk/index.htm) as we are not able to offer advice regarding tax matters. (However, we can say that the Commission understands, from HMRC guidance, that small one-off payments will not normally be counted as income for tax purposes.)

Similarly, if we are asked to advise regarding how small payments might affect a trustee's benefits we should refer the enquirer to the benefits section on the [gov.uk](http://www.direct.gov.uk/en/index.htm) website.

**F7 How should small payments be reported in a charity's accounts?**

All charitable companies and larger unincorporated charities are expected to report trustee payments in the charity's accounts; for other charities it is a matter of good practice. The accounts should give details of any payments made to its trustees and set out the legal authority under which each payment is made (see E6).