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| Paying half, or more than half of a charity’s trustees board for serving as trustees |
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| OG515-8 |
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**OG515-8 Paying half, or more than half, of a charity's trustees board for serving as trustees**

WARNING

References to amending governing documents, mergers, land disposals, permanent endowment and special trusts in this OG have not been updated to reflect Charities Act 2022 changes.

From 7 March 2024, the Charities Act 2022 made changes to the legal requirements relating to amending governing documents, charity mergers and disposals of charity land.

From 14 June 2023, the Charities Act 2022 made changes to charity land, permanent endowment (both expenditure of and borrowing from) and charity names.

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**Policy Statement/Overview**

The Commission's overall policy on payment 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 specifically covers payment for serving as a trustee. Staff need to have read that guidance for a full understanding of how we describe our policy on trustee payments.

Where we are asked to authorise a proposal that will mean that half, or more than half, of a charity's trustees are paid for serving as trustee we apply a more stringent test than we would where the trustees to be paid form a minority of the board. This is principally because of the extensive conflicts of interest, the reputational risks and potential impact on public benefit that arise as a result of paying half, or more than half, of the board.

We accept that there may be exceptional circumstances that mean that the payment of half, or more than half, of a charity's board is necessary. Where we are approached to authorise this scale of board payment we will only agree to do this where we are satisfied that making the payments is expedient in the interests of the charity and we will only decide that this is the case where the trustees have made a convincing case, with supporting evidence, that:

**Having fully and objectively considered all reasonable alternatives, the payment of all of the trustees is clearly and demonstrably the best option available to the charity.**

We expect that we would only authorise a payment that would result in half, or more than half, of a charity's trustees being paid for serving as trustee in exceptional circumstances. This would usually be where:

* the charity's circumstances are so complex, and/or
* the level of responsibility on the trustees is so great, and/or
* the specialist skills required of the trustees are so particularly difficult to find,

that payment is the only way to ensure that the charity is capable of recruiting and retaining trustees of the necessary calibre so that the charity can effectively deliver its objectives to its beneficiaries.

When considering providing our authority to a proposal to pay half, or more than half, of a charity's board, we will take into account how the trustees intend to deal with the risks attached to the proposal. If we are able to provide authority, we must be satisfied that the proposal is in the interests of the charity, one aspect of this will be that the risks, conflicts of interest and any other relevant issues can be adequately managed, and that sufficient safeguards have been included.

Broadly, we expect trustees to:

* consider all available alternative options regarding trusteeship
* take and act on appropriate advice
* consult key stakeholders
* have in place robust procedures for dealing with the conflicts of interest, setting rates of pay, managing the trustees' performance and measuring the charity's performance

before deciding that paying the whole of the trustee board is clearly the best option available to the charity.

By granting authority to make the payments, we are also authorising the trustees to act while conflicted. Once authority has been granted, the trustees must still ensure that they take all decisions relating to the management of the charity solely in the interests of the charity and without any regard to their personal interests. They may also need to demonstrate that this is the case. To facilitate this we will usually require there to be appropriate safeguards in place before we grant authority.

**Summary of the guidance**

This guidance should be read in the light of OG515-5 Payment for serving as trustee and [Trustee Expenses and Payments (CC11)](https://www.gov.uk/government/publications/trustee-expenses-and-payments-cc11). It is intended to help caseworkers to:

* handle initial queries from trustees who are considering seeking our authority to pay half, or more than half, of the board for serving as trustee
* ensure we have sufficient information to consider a case where we are asked to authorise such a proposal
* decide whether or not we are prepared to grant authority.

# Casework Guidance

## B1 Scope of this guidance

This OG deals primarily with cases where every member of a charity's trustee board is being paid for serving as trustee. In cases that don't involve the payment of the whole board, but where half, or more than half, of the trustee board are to be paid, most of the issues still apply but there are additional issues to consider in this type of case, these are set out in B6.2.

For ease of reference in this guidance, where we say 'whole board payment' we mean any instance where half, or more than half, of a charity's trustees are being paid.

This guidance deals specifically with cases where the trustees are being paid for serving as trustee. Where the board members are being paid for different reasons (for providing services, trustee as employee, etc) we should deal with each kind of payment in accordance with the guidance for that specific payment but should ensure that the trustees' proposals for dealing with the conflicts of interest are sufficiently robust before we agree to authorise the proposal.

This guidance is designed to be read in the light of OG515-5 Payment for serving as trustee. This guidance deals with the additional issues that arise where the whole of the board is to be paid for serving as trustee.

## keypointsB2 Caseworking key points

* A charity trustee can only be paid for serving as trustee where there is an express authority to do so. This authority might be set out in the charity's governing document or can be provided by the Commission or the court.
* We apply a more stringent test for proposals in these cases than we do where the trustees to be paid form a minority of the board (see OG515-5). This is because of the additional challenges this brings (for example, the unavoidable conflicts of interest for the trustees and the difficulty in making objective judgements). We will therefore only authorise whole board payment where we are satisfied that, having considered all alternatives, payment is clearly and demonstrably the best option available to the charity. We expect that we will authorise this scale of payment only where the charity's circumstances are exceptional.
* The model letter and factsheet sets out all the factors that we expect the trustees to have explored in order to satisfy themselves that there is a case to support their application to us for authority.
* Trustees need to provide us with all the information set out in the model letter before we can consider the case – we should reject as incomplete any application where the trustees do not provide all of this information.
* Section B5.4 sets out the circumstances that might lead us to authorise, reject or refuse an application.
* The reputation of the charity, and how this will be affected by any proposal to pay the whole of the board, is an important factor. We  expect the trustees to consult key stakeholders (including funders and, where relevant, principal regulators) before deciding to take the proposal forward, unless there are good reasons for not doing so.

Where we decide to authorise the proposal we will do this by Scheme, Order, s198 consent or, in the case of a CIO, by s226 consent, as appropriate.

## B3 Handling an initial approach by trustees who are proposing to pay the whole of the board for serving as trustee

Where we are asked to advise a charity's trustees who are considering paying all of the trustee board for serving as trustee we should first of all check that the charity is up to date with its filing obligations. This is not only because it is our policy not to engage with charities that are in default (unless this engagement is key to bringing the charity back into line) but also because seeing the most up to date accounts is an important part of our decision making process. The accounts provide information about the charity's financial circumstances that we should see as part of our consideration when deciding whether or not to authorise a proposal. If the charity is not up to date with its filing obligations we should tell the applicant that we will not consider the application and that they will have to resubmit this once the accounts, etc, have been filed.

If the charity is up to date with its filing obligations we should then check to see if there is an existing power to pay the whole of the board in the charity's governing document. If there is, we should inform the trustees of this and ensure that they are aware that they must fully consider the implications of using the power and comply with the terms of the power before making the payments (see B4.1).

If there is no existing power, and the trustees wish to apply for our authority, we should respond using the model text in G1 and attach the factsheet in G2. The model text includes links to our published guidance and sets out the evidence that the trustees should provide so that we can consider authorising the proposal. The factsheet includes further information about the issues the trustees should consider before deciding to apply for authority.

## B4 How might whole board payment be authorised?

### **B4.1 Where there is an existing power to pay the whole board for serving as trustee**

In some cases, a charity's governing document may contain a power to pay all of its trustees for serving as trustee. Just because this power exists this doesn't mean that the trustees can make payments without giving the proposal full consideration. We expect trustees to consider the same criteria as set out in the factsheet at G2 before deciding to make the payments. Having done this, the trustees must comply with any terms and conditions attached to the use of the existing power.

### **B4.2 Where there is no existing power to pay the whole board for serving as trustee**

If there is no power to pay all of a charity's trustees, the proposal will need the authority of the Commission before any payments can be made. While trustees can use the trustee payment application form to apply for authority for most types of trustee payments, this form cannot be used where the whole of the trustee board is to be paid. This is to reinforce the message that paying the whole of the board is extremely unusual and certainly not something that might be considered relatively routine to the extent that an application for authority can be made by completing an online form. The factsheet at G2 sets out the issues the trustees need to consider before deciding to apply for authority and the model text at G1 includes a list of the information and evidence that the trustees need to provide so that we can consider authorising the proposal.

### **B4.3 Where there is an express prohibition against trustee benefit in the charity's governing document**

If there is an express prohibition in the charity's governing document, this will need to be removed before the trustees can be paid for serving as trustee. While we will consider the case in the same way as we would where the GD is silent, we expect the trustees to provide additional information about why they think it is appropriate to overturn the express prohibition and go against one of the key characteristics of the charity. This question is included in the model text.

## B5 Handling cases where our authority is required

### **B5.1 The application**

Once the trustees have considered the implications of paying all of the trustees for serving as trustee, taken expert advice, carried out appropriate consultation and undertaken an independent review, they will need to formally apply for authority to make the payments. The application should be made in writing and should deal with each of the points set out in the model letter, unless there is good reason why any of these do not apply (in that case the applicant should explain why this is the case).

### **B5.2 Have the trustees provided all of the information we need?**

The model text asks the applicant to provide some general information about the trustees and when the payments will start and end, we need this information should we decide to authorise the proposal.

The applicant is then asked to provide answers to specific questions about the proposals and to include appropriate supporting documentation (copies of legal advice, the report of the independent governance reviewers, etc). These questions are designed to give us sufficient information to consider whether or not to authorise the payments.

We expect the applicant to provide clear answers to each of the questions and include appropriate supporting information, if they do not, there should be a satisfactory explanation of why not. Where there is insufficient evidence, where the answer to any question does not provide sufficient information to consider the case or where a question is not answered and there is no explanation why not, we will reject the application as incomplete. If we do this, we should suggest that the trustees reapply once all of the required information is available.

Once we have all of the information and supporting documentation we need we should consider the case made to decide if we are prepared to authorise the proposal.

### **B5.3 Making our decision - level of authority**

As with all caseworking decisions, we must take the decision at the appropriate Authorised Officer level. The AO decision making levels are set out in OG702. This OG states that the power to authorise the payment of the whole of a charity's trustee board can be taken by any Authorised Officer but only after taking advice from the Authorised Officer's Director. The Director can then decide at what level the decision can be taken, this will depend on the circumstances of the individual case.

In addition to this, assessing the case against our Risk Framework will raise the risk of this type of case to the degree that the case must be conducted with appropriate technical and legal advice. This may require advice from members of the Legal SMT or even the Board, this will, of course, depend on the particular circumstances of the case.

When making our decision we should carefully consider the case made and the supporting documentation provided. We should only agree to authorise a proposal where the trustees have made a convincing case that, having considered all reasonable alternatives, paying the whole of the trustee board is clearly and demonstrably the best option available. Whatever decision we make we should clearly record this, and the reasons for this, on the case record.

### **B5.4 Making our decision - considering the case**

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We will consider each case on its merits, by looking at the answers to the questions in the model letter, the supporting evidence and any other relevant information the trustees supply. The questions are set out below along with some indicative advice of when we might, or might not, authorise the payments. As well as looking at how the trustees have dealt with each of the criteria in the model letter, we will also consider the case as a whole. When doing this we might decide to refuse to provide authority if the trustees' overall case is weak and not convincing or if it appears that the trustees have not fully explored all reasonable alternatives to paying the whole of the board.

How can the charity afford to make the payments without this having a significant negative effect on its ability to carry out its objectives?

* It should be clear, from the case made, the charity's accounts and the charity's financial adviser's report, that using charitable funds to make the payments will not prevent the charity from effectively delivering its objectives to its beneficiaries. Where we are not satisfied that the charity can afford to pay the trustees without this materially impairing its ability to deliver its objectives, we can refuse to authorise the proposal.

What steps have been taken to recruit trustees with the necessary skills and experience who could act without payment? If no steps have been taken please explain why not.

* The trustees of the charity should have taken all reasonable steps to recruit unpaid trustees. This might include advertising on the charity's website, in the press (sector, local and/or national) or through trustee recruitment networks. If the trustees have decided not to carry out a recruitment exercise they will need to provide a clear and convincing explanation why this was not appropriate. Reasons for not trying to recruit unpaid trustees might be that the charity works in such a specialised field that there is a very limited pool of potential candidates, and these candidates have been approached personally, or where the charity has already lost trustees to other similar organisations working in the same field that can pay. If the steps taken by the trustees seem inadequate, eg, if there has been advertising, but this was unlikely to have been seen by potential trustees, we can reject the application and suggest that the trustees carry out a fuller, more targeted, advertising campaign before reapplying for authority. Where the trustees have told us they have not carried out a recruitment exercise, and their reasons for this are unconvincing, we can refuse to authorise the proposal.

Have the trustees considered increasing the size of the board to reduce the workload on each trustee to the extent that payment is not necessary?

* It may be that the charity already has a large board and that increasing the size of the board will lead to governance difficulties or that the trustees have tried and failed to appoint additional trustees. Alternatively, the charity might work in such a complex environment where the roles and responsibilities are so great that not even sharing the roles among a larger number of trustees would reduce the burden to the extent that payment was not necessary. Where the trustees have not looked at increasing the size of the board and/or their reasons for not doing this are unconvincing, we can refuse to authorise the proposal.

Explain the duties for which the payments are to be made and explain why these have to be carried out by trustees rather than paid employees or volunteers.

* It should be clear that the roles that the trustees are carrying out can only be carried out by trustees and cannot be delegated. This would usually be where the roles are directly related to leading the charity or setting the strategic direction of the charity. This would include making decisions about priorities and signing off future business plans and policies but would not usually include day to day management decisions or administrative tasks that could be carried out by paid employees or volunteers. If the trustees' duties involve tasks and functions that appear to be more the role of paid staff rather than trustees, eg, dealing with administrative matters or managing volunteers, we can refuse to authorise the proposal and might suggest that the trustees look to redistribute the workload from trustees to staff before considering again whether or not whole board payment is necessary.

What is it about the charity's circumstances that mean that the roles and responsibilities of the trustees are so complex and/or onerous that paying the trustees is the only way to ensure that the charity can effectively deliver its objectives?

We might decide to authorise a proposal where:

* the charity works in a highly regulated environment that means that the trustees are required to be involved in complex negotiations with outside agencies (government, regulators, etc)
* the specialist skills, knowledge and experience necessary to be a trustee are particularly difficult to find
* the complexity of the charity's field of operation requires the trustees to commit a significant amount of time to the charity that is measurably higher than that of charity trustees working in less complex areas.

However, if none of these apply, and there are no other convincing grounds addressing this question, we can refuse to authorise the proposal.

What expert advice have the trustees taken about this proposal and what did this say?

* We would usually expect the trustees to have taken advice from legal advisers and accountants and to have engaged an independent body to carry out a governance review. The advice should consider whether or not there are any legal barriers to making the payments (if authority is granted) and if the charity's financial position is such that the payments are affordable. The financial advice should also cover the income tax and VAT position surrounding the making of the payments. The governance review should clearly set out what it is about the charity's circumstances that mean that payment of the whole board is a reasonable proposal for consideration. If the expert advice is inadequate, or has been provided by someone who does not appear to be qualified to advise, we might refuse to authorise the proposal. Similarly, if the trustees have taken adequate advice but have not acted on this advice or where this advice has flagged up issues that might call the proposal into question and these have not been adequately addressed eg, in board minutes, we can refuse to provide authority.

What consultation has taken place with the charity's stakeholders on this proposal and what was the result of the consultation?

* We expect the trustees to have consulted key stakeholders about the proposal as part of the decision making process. The trustees might carry out the consultation themselves or may engage a third party to do this. Whoever manages the consultation, we would usually expect this, as a minimum, to seek the views of funders, beneficiaries, members, staff, volunteers and, if appropriate, the charity's principal regulator. The form of consultation is a matter for the trustees to decide but it could encompass an invitation to comment on the charity's website, face to face focus groups, written requests to targeted individuals and organisations and/or discussions at a meeting of members. Whatever the format of the consultation, the results of this should clearly indicate that there will be no opposition to the proposal or, if there is, this will not have a significant negative effect on the charity's ability to carry out its objectives (by reducing income or negatively affecting the charity's public image, etc). If no consultation has taken place, if the consultation appears to have been inadequate or if the results of the consultation are particularly negative and/or have been ignored without explanation, we can refuse to authorise the proposal. Failure to carry out adequate consultation, or to effectively deal with any concerns that were raised following consultation might have a negative effect on the reputation of the charity and/or the Commission.

What risks associated with the proposal have been recognised and how will these be managed?

* The trustees' consideration of the proposal, the expert advice taken, the governance review or the consultation may have highlighted a number of risks attached to the proposal. External risks may be reputational or financial while internal risks might be connected to ensuring that the trustees can manage the charity effectively, and as objectively as possible, in the light of the conflicts that will exist. The trustees' proposals to deal with these risks should be robust and practical. If there are risks that are apparent to us that the trustees have not recognised, or where the trustees' proposals for managing any risks appear inadequate, we can refuse to authorise the proposal.

How will the conflicts of interest be managed?

* We expect the trustees to have in place a written conflicts of interest policy. This should cover how the charity will deal with any issues that are directly, or indirectly, related to the payment of the trustees. In addition to their own conflicts of interest policy the trustees should read our guidance: [Managing conflicts of interest: a guide for trustees](https://www.gov.uk/guidance/manage-a-conflict-of-interest-in-your-charity). We would usually accept that the trustees' proposals to deal with the conflicts are reasonable if they follow the terms of the charity's conflicts policy (if it has one) and, in any case, our guidance. If the charity does not have a written conflicts of interest policy, or if the trustees cannot or will not comply with this policy, we can refuse to authorise the proposal.

How, and by whom, will the performance of the trustees be evaluated and reviewed?

* It would be reasonable for the performance of the trustees to be evaluated and reviewed by a committee of key stakeholders, this might be the remuneration committee or could be a group put together specifically for the purposes of performance reviews. The members of the committee should have clear guidelines about performance management, this should include guidelines on handling poor performance. If there is no clear procedure for evaluating performance, if the process for doing so is inadequate or if it appears that any of the people (or any corporate bodies) tasked with carrying out the evaluation are connected to the trustees, or are otherwise conflicted, we can refuse to authorise the proposal.

How, and by whom, will the expected improvements in the charity's performance be measured?

* We would expect the trustees to prepare business plans that demonstrate how the charity will be able to provide an improved service to its beneficiaries, or how the charity's future will be secured, as a result of making the payments. The business plans should include a built in review timetable that sets out what action will be taken if the planned targets are not met, this should include provisions to re-assess if the payments are still necessary. If the charity has no business plan in place showing planned improvements in performance, if the process for evaluating this and managing underachievement are insufficient or if any of the people (or corporate bodies) tasked with carrying out the evaluation are connected to the trustees, or are otherwise conflicted, we can refuse to authorise the proposal.

How will the trustees ensure that the charity's circumstances are regularly reviewed to ensure that paying the whole of the board is still necessary?

* We expect the trustees to have in place a programme to regularly review the circumstances of the charity to make sure that the reasons for seeking whole board payment still apply. This might be written into the business plan and should include a timetable of review points and information about who will carry out the review. This applies in all cases, except where the payment, and our authority, runs only for a short period of time so that a new case will need to be made should the trustees decide that it is appropriate for the payments to continue. If the trustees do not have such a programme in place, and do not intend to establish one, we can refuse to authorise the payments.

If there is a prohibition against trustee payment in the charity's governing document, why do the trustees think it is appropriate to go against this key characteristic of the charity?

* We would expect the trustees to make an even more compelling case in support of the application where there is an express prohibition in the charity's governing document. This prohibition will have been included by the founders of the charity, or, if not, will have been deliberately added at a later date. In this case, it will be even more difficult to say that payment of the whole of the board might be appropriate where earlier trustees had clearly set out that no trustee was to be paid by the charity.

Why do the trustees believe that, having considered all reasonable alternatives, paying the whole of the board is clearly the best option available to the charity?

* The information provided in support of the case, read as a whole, should be convincing to the extent that any reasonable person would agree that, having considered all reasonable alternatives, payment of the whole board is clearly and demonstrably the best option available to the trustees. The case in support of the application should set out the current position of the charity, why it is unable to fully serve its beneficiaries at present and why having paid trustees will help to alleviate the difficulties the charity faces. We would also expect the case to cover what alternatives have been considered and why these are not suitable. If it appears that the trustees have not considered, or given proper regard to, all reasonable alternatives or, if it is unlikely that a reasonable person would agree, from the case made, that payment of the whole board is clearly the best option available to the trustees, we can refuse to authorise the proposal.

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### **B5.5 How do we provide authority?**

How we provide authority depends on the circumstances of the particular case and the type of charity. We will, in all but exceptional circumstances, provide authority by amending, or authorising the amendment of, the charity's governing document. This will serve as a reminder to the trustees and supporters that the whole of the board is being paid. If the charity is a company, the amendment will need our consent under s198 of the Charities Act, a CIO will need our consent under s226 of the Charities Act while an unincorporated charity will usually need a Scheme to make the changes (see OG518, OG715 and OG500). That said, it may be that the proposal is to pay all of the board for a limited time, say to help the charity through a difficult period, requiring a greater input of time and effort by the trustees. In this case, and if there is no express prohibition in the charity's governing document, we might decide to make a s105 Order authorising the proposal. The Order would usually set out an end date by which time the payments must cease.

Further information about how we provide authority is available in section B3 of OG515-5.

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### **B5.6 Attaching conditions to the authority**

We would usually ensure that any authority we give will be conditional on one or more of the criteria set out below, which ones we require will depend on the circumstances of the particular case:

* we would usually time limit the authority so that there will, in effect, be a compulsory review of the effectiveness of making the payments if the trustees decide to apply for additional authority
* we might refer to the process for managing pay rises, particularly if this refers to external pay scales (public sector pay scales, for example)
* we might refer to the terms of service of the trustees and ensure that new trustees are appointed only after a full and open recruitment campaign has been carried out.

### **B5.7 What do we do if we decide not to grant authority?**

If we are not satisfied with the trustees' case that paying all of the trustees is clearly and demonstrably the best option available, or where the safeguards attached to the proposal are inadequate, we will refuse to authorise the proposal. In making this decision we must take into account the relevant human rights legislation (see OG71 and [Equality Act: guidance for charities](https://www.gov.uk/government/publications/equality-act-guidance-for-charities)). We should record the reasons for our decision on the case file and inform the applicant of our decision review procedure.

## B6 Additional factors to consider in certain cases

### **B6.1 Paying a sole trustee for serving as trustee**

Where the proposal is to pay a sole trustee (either an individual or a corporate trustee) for serving as trustee this is a different kind of whole board payment but the same principles apply. Section B5 of OG515-5 sets out what we need to consider where a sole trustee is to be paid and contains advice on case handling.

### **B6.2 Where the payments are made to the majority, but not all, of the board members**

Where half (or more than half), but not all, of the trustees are being paid for serving as trustee it might be even more difficult to manage the charity in the light of the conflicts, etc that this will bring. This will mean that the charity will have a two tier board, comprising those trustees who are paid and those who are not, with the paid trustees forming a majority on the board. While it may be possible for the unpaid trustees to form a quorum to deal with issues directly relating to the pay and performance of the paid trustees, any other discussions and decisions relating to the charity will have a bearing on the performance of the charity and, therefore, ultimately, could affect the degree of financial reward for the paid trustees. This might mean there is a perception that the paid trustees' motivation in taking decisions includes consideration of any impact the decision might have on their own financial reward. This can be most starkly illustrated if the trustees have to decide whether or not to wind up the charity.

The trustees must consider the potential negative effects this might bring to the charity when making their decision to pursue majority board payment.

Where the majority of charity's trustees are being paid we would usually expect the charity to have in place the same mechanisms to manage performance, deal with pay rises, etc, as if the whole of the board was being paid but the unpaid trustees could take part in the various discussions, remuneration committees, etc relating to the paid trustees. We must also be satisfied that the proposal is expedient in the interests of the charity. A two tier board which has a negative effect on the governance of the charity is unlikely to satisfy us that this is the case.

### **B6.3 Dealing with whole board payment at registration**

When considering registering a charity with whole board payment provisions, our main concern is to decide if this means that the charity has been established for private, rather than public, benefit. Only if it is clear that the charity is established exclusively for the public benefit, and any private benefit is incidental, will we consider registering the charity. We must deal with this before we register the charity.

Broadly, it is a matter for the founders of a charity to decide whether or not to include a power to pay the whole of the board in the charity's governing document, this, in itself, would not be a reason to refuse to register the charity.

Once we have decided that the charity is established exclusively for the public benefit we will look at the conditions attached to the use of the power, and the processes for managing the conflicts of interest, pay, performance, etc, to see if these are practical and sufficiently robust so that the charity will operate for the public benefit. We might need to discuss the proposals with the applicant to ensure this is the case. We will consider the proposal against the same criteria as set out in the model text at G1. This information may be available in the application or supporting materials, if not, we will ask the applicant to provide any information we need.

We will only register a charity with the power to pay the whole of the board where we are satisfied that:

* the charity is established exclusively for the public benefit
* the private benefit is incidental
* the processes for managing the conflicts of interest are robust and practical
* the proposals to manage pay and performance are sufficiently independent and workable
* the payments are affordable to the charity and will not adversely affect its ability to deliver its objectives

If we do register a charity with the provision to pay the whole of the board we would usually mark this for monitoring to ensure the power is used in accordance with the statements from the trustees. Where we do mark a charity for monitoring we will tell the trustees that we have done so.

### **B6.4 Universities and Academies**

The governors of an Academy Trust are trustees of an exempt charity. As such, they must comply with charity law. This means that they can only receive and retain benefit from the trust on the same terms as any other charity trustees. Any proposal to pay a director of an Academy Trust may be authorised by the Commission in the usual way and may also need the consent of the Department for Education. Where the Academy's governing document requires the consent of the DfE we should refer the applicant to the DfE in the first instance (see our [guidance for Academies](http://www.charitycommission.gov.uk/detailed-guidance/specialist-guidance/schools%2C-colleges-and-universities/academy-schools-guidance-on-their-regulation-as-charities/)).

Similarly, some universities have a power to pay the whole of the trustee board set out in the governing document. Where we are approached to amend this power, or to authorise the adoption of such a power, where this does not currently exist, we will consider this in exactly the same way as we would any other whole board payment case.

In each of these cases, the trustees may have to consult the charity's principal regulator before approaching us with a proposal. The principal regulator for English universities is HEFCE, while for English Academies, this is the DfE. (Welsh universities are registered with the Commission and there are no Academies in Wales.)

NOTE: In addition to the obligation on the trustees, we are required, under section 28 of the Charities Act, to consult the principal regulator of an exempt charity before we exercise any powers under the Act (see OG717-1).

### **B6.5 Registered Social Housing Providers**

All Registered Social Housing Providers (RSHPs) work under a regulatory framework that contains a power that allows the whole of the board of directors of RSHPs to be paid for serving as director. Where the RSHP is also a charity, the existence of this power to pay does not over-ride the provisions of charity law so the authority of the Commission is still required before any payments can be made. Where we are asked to provide this authority we will consider the application on the same terms as we would any other application for whole board payment.

# Case Studies

## D1 Where we authorised the payment of the whole of a charity's trustee board

The following two case studies are examples of where we authorised the payment of the whole of a charity's trustee board for serving as trustee. NOTE - These cases took place before we had the model text so the criteria used to gather information to make our decision were those set out in OG515-5. While this didn't affect our decision making at the time, any cases we handle from now will be considered against the criteria set out in the model text and factsheet.

### **D1.1 Medical research charities**

### **Background**

This case involved a single application from one legal firm acting on behalf of four charities. Each of the four charities worked in the field of scientific research, development and training and had recently been the subject of a major governance review led by their principal funder. This review had suggested that the charities would benefit by having the power to pay every member of the trustee board.

The annual income of the charities ranged between £12m and £36m.

### **The case in support of the application**

The main argument was that the medical research sector was so complex and specialised that it was always difficult to find people with the necessary skills, experience and free time to act as trustee.  Having the power to pay the whole of the board would reduce these difficulties and would also drive up the professionalism of the trustees and enhance the sense of obligation the trustees might feel towards their charity. The charities already had in place procedures for managing performance and conflicts of interests and had carried out an appropriate benchmarking exercise that had set the rate of pay at between £170 and £230 per day.

### **Our consideration of the case**

We considered the application and the supporting evidence submitted by the trustees. The case made in support of the application satisfactorily dealt with each of the points we required regarding process (decision making, managing conflicts, pay and performance, etc) and it was clear from the evidence that:

* the charities worked in such a specialised field that it was reasonable to say that the skills, experience and time commitment required of the trustees would mean that the pool of potential trustees able to work without pay would be particularly small
* the overall level of proposed remuneration was small and making the payments would not negatively impact on the charities' ability to deliver their objectives
* the case made in support of the application was strong, particularly in demonstrating that the field of potential trustees was small, bringing with it recruitment issues, and the trustees' proposals to deal with the conflicts of interest, pay and performance appeared robust and practical. (The charities had each recently adopted new Articles of Association, following the governance review, these now included a conflicts of interest policy covering trustee benefit as well as setting out the process to deal with performance reviews.)
* the trustees had considered all reasonable alternatives and, having done so, were agreed that paying the whole of the trustee board was clearly the best option available.

We agreed to authorise the proposal and did so by giving s198 consent to allow each of the charities to amend their Articles of Association. This decision was taken by a properly appointed Authorised Officer, in consultation with the officer's Director, in accordance with our Authorised Officer policy (See OG702).

### **D1.2 Registered Social Housing Provider**

### **Background**

The charity provided residential accommodation throughout England and had an annual income of £275m. The case involved the renewal of a power to pay the whole of the charity's board that was granted, by Order, in 2003 (see E4.2 for details of this earlier case). This authority was time limited and was about to come to an end. This previous decision to authorise whole board payment was taken by the Commission's Board. This time the proposal was to amend the charity's governing document to adopt an ongoing power to pay.

### **The case in support of the application**

The trustees' application was based on the assertion that, for an organisation of this size working in such a complex field, whole board payment was necessary to recruit and retain trustees with the necessary skills, knowledge and experience. Many non-charitable Registered Social Housing Providers had paid directors. This meant that this charitable RSHP was struggling to recruit trustees in a competitive market where payment was offered elsewhere. The charity worked in a legally complex environment, with dual regulation by the Homes and Communities Agency and the Commission.

The proposed payments ranged from a maximum of £35,000pa for the Chair to £25,000pa for ordinary trustees.

### **Our consideration of the case**

We considered the application alongside the information we held from the previous application for authority. As the trustees were already being paid under the earlier authority, the processes for managing the conflict of interest, pay and performance, etc, appeared robust and had proved to be practical. It was also clear that:

* the charity worked in a heavily regulated complex sector meaning that finding trustees with the necessary knowledge, skills and experience was particularly difficult
* the charity was struggling to recruit suitable trustees, this was made more difficult because other organisations working in the same field were able to pay directors so suitable candidates were more inclined to go where they would be paid for their time
* the payments were affordable and were a very small proportion of the charity's income
* the external regulation by the HCA, and the controls on the levels of payment imposed by the HCA, meant that there were additional safeguards over and above those that we would impose
* the trustees had considered all reasonable alternatives and, having done so, paying the whole of the trustee board was still clearly the best option available to the charity.

We agreed to authorise the proposal, subject to some minor amendments to the wording of the draft payment clause. We gave s198 consent to the new wording. This decision was taken by a properly appointed Authorised Officer, in consultation with the officer's Director, in accordance with our Authorised Officer policy (see OG702).

## D2 Where we refused to authorise the payment of the whole of a charity's trustee board

##

### **Background**

The charity worked in promotion of the arts and had an annual income of over £100m. We were approached by the charity's legal advisers seeking authority for a proposal to pay the Chair and five other trustees of the charity for serving as trustee. We had previously authorised the payment of three trustees for serving as trustee, this new proposal would mean that all of the trustees were being paid.

### **The case in support of the application**

The case in support of the proposal was based on the fact that the charity worked in a highly complex field, worked closely with several government bodies within several different regulatory frameworks and had a particularly large income. The additional information in support of the proposal to pay the Chair was based on the onerous time commitment required of the Chair, this had increased significantly in recent years and the Chair was currently working for the charity for approximately 12 days a month. The case supporting the payment of the other trustees was based on the fact that the time commitment required had increased recently to up to 1.5 days per month and that two recent recruitment exercises had produced a fairly small number of applicants (the first; 17 applicants, the second; 7), although this had resulted in the appointment of two well qualified trustees.

The proposed payment to the Chair was £40,000pa while the payments to the other trustees would be around £6,000pa.

### **Our consideration of the case**

We considered the information provided in support of the application to pay the Chair and were satisfied that the proposal was expedient in the interests of the charity, so we agreed to authorise this. However, we were not convinced by the case in support of the proposal to pay the other trustees and so we refused to authorise this. Our reasons for refusal were:

* the time commitment required was not particularly onerous and no more than might be expected of an unpaid trustee of a charity of this size and type
* it was not clear that the trustees had considered all alternatives, for example delegating some of the tasks currently required of the trustees to paid employees, or increasing the size of the board, before deciding that paying the whole of the board was clearly the best option available
* we did not agree that the lack of the ability to pay trustees was having a negative effect on the charity's ability to recruit trustees of suitable calibre. While the last two recruitment exercises had produced a relatively small pool of candidates, the candidates who had been appointed were very well qualified to be trustees and were described by the other trustees as 'excellent appointments'.

This decision was taken by a properly appointed Authorised Officer, having taken advice from the officer's Director, in accordance with our authorised officer policy (see OG702).

## D3 Learning points from case studies

* One of the main learning points coming out of these case studies is that we will consider each case entirely on its own merits. In the case study at D1 the case officer was made aware that there were trustees of other charities in the same field who were considering applying for authority to pay the whole of the board but were waiting to see the outcome of this case before applying. We made it clear to the solicitor, who was also acting for these other charities, that there is no element of precedent setting in authorising whole board payment, each case and charity is unique and we will consider each case as a separate entity without taking into account any previous decisions.
* We will also look carefully at the responsibilities, specialist skills and time commitment required of the trustees when considering authorising whole board payment. Only where these are particularly onerous, meaning that it is difficult to recruit or retain trustees of suitable calibre, would we consider authorising the proposal.
* We will examine any recruitment exercise, not only to see if it appears reasonable to say that the charity will struggle to find sufficient candidates but to see if having a small number of candidates will actually result in difficulties in recruiting suitable trustees.
* While the fact that the payments are affordable is not, on its own, a factor that would cause us to authorise whole board payment, we will still consider affordability when making our decision. Only where it is clear that the charity can afford to make the payments without materially impairing its ability to deliver its objectives would we authorise a proposal.

# Legal/Policy Framework

## keypointsE1 Legal key points

* A charity can only pay a trustee for serving as trustee if it has a clear authority to do so. There is no default legal power that applies to charities, but authority may be found in the charity's governing document or can be granted by the Commission or the court.
* Reporting trustee payments in the charity’s accounts is a legal requirement for companies, and larger charities, and a matter of good practice for other charities (sections 9.1 - 9.32 of the [Charities’ SORPs 2015](http://www.charitiessorp.org/)).
* Our position regarding the distinction between minority and majority board payment; that we take a much firmer approach to majority board payment cases, is reflected in the principles set out in condition C of section 185 of the Charities Act. This states that, in order to rely on the statutory power to pay trustees for the provision of services, the trustees who will benefit, directly or indirectly via a connected person, should form a minority of the trustee board. In our guidance, we refer to this power applying except where 'half or more than half' of the trustees will benefit. Where all of the trustees of a charity are conflicted, because they are being paid by the charity, this presents a greater risk to the ability of the charity to operate, or be seen to operate, solely for the public benefit. This exists, to a lesser extent, where half or more of the members of the trustee board are being paid.

## keypointsE2 Policy key points

Our policy on whole board payment is based on the Charities Act and caselaw and was developed during a number of key cases (see E4).

Our two main concerns in deciding whether or not to authorise whole board payment are:

* will this affect the charitable status of the organisation, will it still operate solely for the public benefit?
* will the proposal raise any regulatory concerns that might cause us to refuse to provide authority? Are the trustees' proposals for dealing with the conflicts of interests sufficiently practical and robust?

Where we are asked to authorise the payment of all of a charity's trustees we will consider the case made against the criteria set out in the model text and will take into account any other relevant information. If the trustees' responses to the points in the text are unclear or unconvincing we will reject the case as incomplete. Only when we have all of the information we need will we consider the case as a whole. Having done this we might decide to authorise the proposal. We will only do this where the trustees have made a convincing case that:

**Having fully and objectively considered all reasonable alternatives, the payment of all of the trustees is clearly and demonstrably the best option**

**available to the charity.**

This is a greater test than we apply where the proposal is to pay a minority of the members of a trustee board. We apply this stricter test because of the additional risks attached to whole board payment.

## E3 What are the risks attached to whole board payment?

### **E3.1 The possible perception that the trustees took the decision to pursue whole board payment in order to benefit themselves rather than the charity.**

The trustees must, of course, be involved in making the decision to apply for consent to pay the whole of the board, and in the application process, because they are responsible for the administration of the charity. However, in making such a decision, there will inevitably be a conflict of interest and there may be a perception that the trustees are acting in their own personal interests rather than in the interests of the charity. The likelihood of this happening might be reduced where the initial suggestion that whole board payment could be appropriate comes from an independent source (eg an independent review of the governance of the charity). If the trustees made the initial decision to consider whole board payment themselves, where this was not put forward by an independent party, they should be able to demonstrate that the decision was taken as objectively as possible. In all but exceptional cases we expect the trustees to engage an independent body to carry out a governance review to see if this supports the trustees' proposals.

We will take into account the decision making process, the source of the original suggestion and the findings of the independent governance review when considering giving consent to the proposal. We also expect the independent body that carried out the review to be available to deal with any questions we might have about the review and any other queries about the proposal relevant to this body.

### **E3.2 Will paying the whole of the board bring governance difficulties to the charity?**

While our authority to make the payments will also authorise the trustees to act when conflicted, the trustees must still ensure that they take all decisions relating to the management of the charity solely in the interests of the charity and without any regard to their personal interests. They should be able to demonstrate that this is the case.

It will be relatively straightforward to deal with issues directly related to the pay and performance of the trustees (by using independent parties for appraisals and linking rates of pay to published pay scales externally) but having a paid board might impact on governance in other ways. Any decision the trustees take will impact on the performance of the charity and this might have an effect on the level of personal benefit. The trustees may have to make a decision about changing the focus and activities of the charity that might result in the responsibilities, and/or specialist skills required of the trustees, changing to the extent that payment might no longer be required. Or, ultimately, the trustees may need to take a decision about whether or not the charity should continue. In this case, there could be a perception that the paid trustees' decision making includes consideration of any impact this might have on their own financial reward.

### **E3.3 Can the charity continue to operate for the public benefit?**

Where the whole of a charity's board is being paid this might lead to questions as to whether or not the charity is still being administered for the public benefit. Part of the trustees' reporting duties is to include a public benefit statement in the Trustees' Annual Report. In preparing this statement, the trustees should take into account any impact that payment of the whole of the board might have on the charity working exclusively for the public benefit.

### **E3.4 Will this have any negative effect on funding streams?**

The fact that the whole of a charity's board is being paid might cause problems with funders, both individual and corporate. Before going ahead with the proposal to pay the whole of the board, the trustees should consider any impact this might have. The consultation with key stakeholders should include questions to deal with this and the trustees should only go ahead with the proposal where they are satisfied that the benefits of having a paid board clearly outweigh any negative effects this might have on funding.

**Q&A**

**F1 What do we mean by 'paying half, or more than half of a charity's trustee board'?**

Generally, where we say 'paying half, or more than half, of a charity's trustee board' we mean instances where the number of trustees receiving benefit of any kind from the charity, or from an organisation connected to the charity, either directly or via a connected party, makes up more than a minority of the board. However, this guidance only deals with the issues that trustees and the Commission have to address where a charity's trustees are proposing to pay half, or more than half, of the members of the trustee board for serving as trustee. For other payments and trustee benefits see F2.

**F2 What if the whole of the trustee board is receiving other benefits from the charity?**

Where all of the trustees are receiving different kinds of benefits from the charity, other than payments for serving as trustee, for example payments:

* to replace lost income while serving as trustee
* made to trustees as employees of the charity
* for providing services to the charity
* received indirectly, via a connected party

it will usually be easier to manage the conflicts and other issues surrounding the payments. Where we are dealing with a case concerning payments other than payments for serving as trustee caseworkers should refer to the guidance for the particular type of payment and take into account the additional issues raised because the whole board is being paid.

**F3 What do trustees need to consider before deciding to pay all of the trustees for serving as trustee?**

We expect trustees to:

* consider all reasonable alternative options regarding trusteeship
* take and act on appropriate advice
* consult key stakeholders
* have in place robust procedures for dealing with the conflicts of interest, setting rates of pay, managing the trustees' performance and measuring the charity's performance

before deciding that paying the whole of the trustee board is clearly the best option available to the charity.

**F4 When might trustees think it appropriate to pay all of the trustees for serving as trustee?**

Paying the whole of a trustee board for serving as trustee can only be justified in exceptional circumstances. This might be where the charity works in an exceptionally complex regulatory environment meaning that the trustees' workload and responsibilities are so onerous, or the specialist skills required so hard to find, that it is not possible to recruit and retain trustees without payment.

**F5 What types of charity might want to pay their whole board?**

The trustees of any kind of charity, no matter how large or small, or in what field they operate, may decide that it is in the charity's best interests to pay the whole of the charity's board. However, where we refer to charities working in an 'exceptionally complex regulatory environment' this might usually apply to charities working in the housing, education, medical or other similar sectors. Of the limited times we have authorised full board payment in the past the majority of these have been for charities working in these fields.

# Model text

## G1 Advising trustees who are considering paying the whole of a trustee body for serving as trustee

Paying charity trustees for serving as trustee is a significant step away from the voluntary principle of trusteeship that underpins the whole of the charitable sector. In the vast majority of cases, charity trustees give their time freely for the benefit of others without the need for any kind of financial recompense beyond the repayment of reasonable expenses. However, we accept that, in a small minority of cases, the roles and responsibilities of trustees are so great, and the time commitment, specialist knowledge, skills and experience required of a trustee are so onerous, that paying a trustee for the time spent carrying out the normal duties of trustee brings a clear and significant advantage to the charity. Where this is the case, and where there is no existing power to pay the trustee, the other trustees can apply to the Commission for authority to make the payment.

Where the proposal will mean that half, or more than half, of the charity's trustees will be paid for serving as trustee this brings with it additional challenges that need to be dealt with before we can consider granting authority. It is particularly important to deal with the conflicts of interest that this will bring. Our guidance: [Managing conflicts of interest: a guide for trustees](https://www.gov.uk/guidance/manage-a-conflict-of-interest-in-your-charity), contains useful information and advice for trustees when they are faced with conflicts of interest, the trustees should read this guidance when they are considering how to manage any conflicts or potential conflicts.

(Throughout the rest of this note, and in the factsheet, where we refer to 'whole board payment' this also covers majority board payment, where half, or more than half, but not all, of the members of the trustee board are being paid for serving as trustee.)

Before deciding to make any trustee payment, the trustees should read the guidance on our website, this includes a link to our publication [CC11 Trustee Expenses and Payments](https://www.gov.uk/government/publications/trustee-expenses-and-payments-cc11). Trustees need to think carefully about the charity's interests and how any payments to trustees will be compatible with these, CC11 sets out the issues that the trustees should consider. Where the trustees have decided that paying the whole of the board is in the best interests of the charity, and where no authority exists, they will need to apply for authority from the Commission. We will only authorise the payment of the whole of a charity's trustee board where the trustees have made a robust case, supported by relevant evidence, that, having considered all reasonable alternatives, this is clearly and demonstrably the best option available to the charity. In all but exceptional circumstances, we expect the trustees to have engaged an independent reviewer to carry out a governance review of the charity. This review should have come up with the suggestion that paying the whole of the board might be appropriate or, where the independent review took place after the trustees had decided to explore whole board payment, this should confirm that this is appropriate.

Before deciding to apply for authority to pay the whole of the trustee board, the trustees should take into account a number of criteria, these are set out in the attached factsheet. Broadly, we expect trustees to:

* consider all reasonable alternative options regarding trusteeship
* take and act on appropriate advice
* consult key stakeholders
* have in place robust procedures for dealing with the conflicts of interest, setting rates of pay, managing the trustees' performance and measuring the charity's performance

before deciding that paying the whole of the trustee board is clearly the best option available to the charity.

If, having fully considered all reasonable alternatives, and considered each of the criteria set out in the factsheet, the trustees believe that paying the whole of the trustee board is clearly the best option available to the charity you will need to apply for our authority. So that we can consider whether or not to grant authority please provide answers to the following questions (including copies of evidence where appropriate). If the trustees have not considered any one of the points below please explain why not.

* How many trustees does the charity currently have?
* What are the trustee requirements in the charity's governing document (including how trustees are appointed)?
* How many trustees are to be paid?
* What are the names of the trustees to be paid?
* How long does each of the trustees to be paid have left to serve before their term of office comes to an end?
* When will the payments start and end?
* What is the proposed level of payment for each trustee and how was this calculated?
* How can the charity afford to make the payments without this having a significant negative effect on its ability to carry out its objectives?
* What steps have been taken to recruit trustees with the necessary skills and experience who could act without payment? If no steps have been taken please explain why not.
* Have the trustees considered increasing the size of the board to reduce the workload on each trustee to the extent that payment is not necessary?
* Explain the duties for which the payments are to be made and explain why these have to be carried out by trustees rather than paid employees or volunteers.
* What is it about the charity's circumstances that mean that the roles and responsibilities of the trustees are so complex and/or onerous that paying the trustees is the only way to ensure that the charity can effectively deliver its objectives?
* What expert (legal, accountancy, etc) advice, have the trustees taken about this proposal and what did this say? (Please provide copies of the advice and include any independent governance review that might have taken place.)
* What consultation has taken place with the charity's stakeholders on this proposal and what was the result of this consultation?
* What risks associated with the proposal have been identified and how will these be managed?
* How will the conflicts of interest be managed?
* How, and by whom, will the performance of the trustees be evaluated and reviewed?
* How, and by whom, will the expected improvements in the charity's performance be measured?
* How will the trustees ensure that the charity's circumstances are regularly reviewed to ensure that paying the whole board is still necessary?
* If there is a prohibition against trustee payment in the charity's governing document, why do the trustees think it is appropriate to go against this key characteristic of the charity?
* Why do the trustees believe that, having considered all reasonable alternatives, paying the whole of the board is clearly the best option available to the charity?

On receipt of this information, and supporting evidence, we will consider the case you have made to decide if it is appropriate to authorise the payments. Please ensure that the trustees have fully dealt with each of the points above before submitting the application, we can only consider the case with all of this information and we will reject an application where any of the required information is missing or incomplete.

## G2 Whole board payment factsheet

### **FACTSHEET**

This factsheet is an important part of the decision making process where trustees are considering paying half, or more than half, of a charity's trustees for serving as trustee. This details a number of factors that the trustees should consider when making their decision and also sets out the kind of actions that we expect the trustees to take as part of the process of applying for authority.

### **What trustees should consider before deciding to apply for authority to pay half, or more than half, of the trustee board**

**1. Overarching considerations**

Paying the whole of a trustee board is a significant step for a charity due to the nature of the risks that this will bring and is something that is appropriate only where a charity's circumstances are exceptionally challenging.

Before deciding to pay the whole of the charity's board, the trustees should have clearly identified how the charity will benefit from the proposal and balance the expected benefits against any potential negative effects this might have on the charity and its reputation. Many of the largest charities in the country operate without any paid trustees so there is no direct link between the size of a charity and the perceived need to pay trustees.

When deciding to pay all of the trustees for serving as trustee the trustees should, as a starting point, take into account the same factors as they would where the proposal is to pay just one trustee for serving as trustee, these factors are set out in [CC11 - Trustee Expenses and Payments](https://www.gov.uk/government/publications/trustee-expenses-and-payments-cc11). In addition, because of the increased risks attached to whole board payment, the trustees should take the following steps:

* take advice on the proposal, from suitably qualified advisers, to encompass legal points (are there any legal reasons why the payments could not be made?) and any tax or accountancy implications, as well as the affordability of the payments
* consult stakeholders and take account of their views when making the decision
* have in place robust, practical and appropriate procedures for:
	+ independently setting and reviewing the rates of pay
	+ managing the trustees' performance
	+ measuring the charity's performance to ensure that paying the whole of the board is achieving its aims
	+ keeping the arrangement under review to see that this is still appropriate
	+ bringing the arrangement to an end
* consider each individual trustee's roles and responsibilities to be sure that it is necessary to pay each of the trustees. This includes checking that the roles that the trustees are carrying out are actually trustee roles and not something that should or could be carried out by paid employees
* ensure that paying the whole of the board will not affect the charity's ability to continue to work exclusively for the public benefit
* make a case, including supporting evidence, as to why, having considered all reasonable options (increasing the size of the board, etc) this is clearly the best option available to the charity.

**2. Consider all available alternative options**

Before we consider granting authority to the proposal to pay the whole of a trustee body we must be satisfied that the proposal is expedient in the interests of the charity. In order for us to be so satisfied, the trustees are likely to have to have taken into account the findings of the independent review and considered all reasonable alternative options. Having done this, the trustees should satisfy themselves that paying the whole of the board is clearly the best option available to the charity. The kind of options we would expect the trustees to have explored would include, as a minimum:

* making reasonable and proportionate efforts to recruit trustees with the necessary skills and experience who would be prepared to serve without payment. Depending on the type and size of the charity this might include advertising for trustees in the local or national media and on the charity's website
* looking at the size of the board and the workload of the trustees. Could recruiting additional trustees mean that the burden on the current trustees is reduced to the extent that payment is not necessary? Could some of the tasks currently carried out by the board be delegated to paid employees or volunteers?
* examining the specific roles and responsibilities of each trustee, is the burden on each trustee so great that payment of each trustee is clearly the best option available?

**3. Consult suitably qualified advisers**

In this type of case we would consider suitably qualified advisers to be a legal adviser, accountant and/or any other relevant and suitably qualified advisers, for example, governance experts. The advice should cover the affordability of the proposal as well as any legal and accountancy issues. When considering an application for authority to pay the whole of a trustee board we expect to see copies of the advice the trustees have taken when making their decision.

**4. Consult stakeholders**

One of the main risks where a charity decides to pay the whole of its board is the potential damage to the charity's reputation. Introducing whole board payment represents a significant change to the character of the charity. We expect this change to be communicated to key stakeholders and their views sought in order to understand how the change might affect their relationship with the charity. For example, a negative reaction to the proposal might result in a fall in the charity's income and so have a detrimental effect on the charity's ability to deliver its objectives. In all but exceptional cases, we expect this to be a formal consultation exercise specifically tailored to seek feedback from the charity's key stakeholders.

Stakeholders will usually include:

* beneficiaries
* funders (individual and corporate)
* paid staff and volunteers
* (for exempt charities) the charity's principal regulator
* any other relevant regulators
* any other organisation that is involved in collaborative working with the charity.

The results of any consultation should be used to inform the trustees' decision and we would expect the trustees to submit a summary of the consultation as part of the evidence in support of their application for authority.

**5. Setting rates of pay**

Where the trustees to be paid for serving as trustee form a minority of the board, it is possible for the other trustees to set the rates of pay, as long as any conflicts of interest are properly managed. However, where the proposal is to pay all of the trustees it is not appropriate for the trustees to set the rates themselves. The trustees' advisers should recommend an appropriate method of setting the rates of pay; using an independent remuneration body and/or using a relevant payscale (for example, NHS payscales for health charities) are two acceptable options.

The following two elements should be included as part of the process of setting rates of pay:

* the rate for the role of each trustee should be considered separately. While the roles and responsibilities of the board as a whole mean that payment of the whole board might be appropriate this does not necessarily mean that each trustee should receive the same level of payment. The rate of pay for each trustee should be set by looking at the role, responsibilities, skills and workload of that particular trustee and setting an appropriate rate for that individual role. (This does not mean that each trustee must be paid different rates, this analysis might indicate that it is appropriate to pay each trustee the same amount.)
* roles should be benchmarked against similar roles in other organisations working in the same sector (and, usually, geographic area) then setting rates of pay at that level or lower.

We expect to see the analysis and conclusions for both of these elements, as well as any other factors that the trustees took into account, as part of the application for authority.

**6. Managing trustees' performance**

Whilst it is a matter of good practice to monitor the performance of all charity trustees, this is particularly important when the trustees are being paid for serving as trustee. There should be a formal procedure to monitor the performance of each trustee to ensure that they are working to the standard that is expected of the role. This would usually include a written agreement made between the charity and the trustee setting out:

* what is expected of the trustee
* who will review the performance
* how performance will be effectively and objectively monitored and managed (including how poor performance will be managed)
* how pay increases might be set, and
* when and how the arrangement will come to an end.

The trustees should supply us with details of how their performance will be managed based around these factors.

**7. Considering the terms of service of the trustees**

When deciding to pay the whole of the board, the trustees should look at the terms of service of the trustees to ensure that these will allow a frequent and regular turnover of trustees. This will mean that there will be opportunities for new candidates to be appointed to the paid trustee role. If one of the reasons for adopting a power to pay the whole of the board is to enable the charity to attract trustees of the necessary calibre, it would be reasonable to expect a full and open trustee recruitment exercise to take place regularly to allow this to happen.

If the current terms of service of trustees do not allow for an acceptable level of turnover we would usually expect the trustees to amend the trustee provisions so that these call for frequent and regular recruitment to the board.

**8. Measuring improvements in the charity's performance**

As well as managing the performance of the individual trustees, part of the proposal should set out how paying the whole of the trustee board will result in measurable improvements in the performance of the charity or will secure the future of the charity. How improvements will be measured will depend on the type of charity and the kind of work it carries out, but in most cases we might expect there to be a business plan showing projected improvements in the charity's ability to deliver its objectives and better serve its beneficiaries. Comparing actual performance to the plan will allow judgements to be made about whether or not the charity's performance has improved as a result of making the payments and therefore whether or not the payments should continue.

**9. Keeping the arrangement under review**

The trustees should ensure that they have in place an agreed procedure to regularly review the position of the charity to ensure that the circumstances that led to the payment of the whole board still apply and that paying the whole of the board is still clearly the best option available. This might be a written policy including a timetable of review points or could be a standing item at trustee or general meetings. Where we give authority we would usually include provisions that mean regular reviews are required or we may time limit our authority to ensure that the trustees have to reapply for authority, making a new case, at some point in the future.

**10. Making the decision**

We would usually expect the initial recommendation to pay the whole of the board to come from an independent source and not from the trustees themselves, this might arise following a governance review or other independent review of the charity's activities. At the point that the proposal to consider paying all of the trustees arises, the trustees are immediately conflicted and this conflict must be managed throughout the application process. While the trustees must be involved in the application process, as they are responsible for the management of the charity, they should ensure that their decision making process is robust, transparent and as objective as possible. It is also important that the trustees clearly record their decisions, and the reasons for making these, in the charity's records. Further advice regarding the making of decisions can be found in the guidance on our website: I[t's your decision: charity trustees and decision making](https://www.gov.uk/government/publications/its-your-decision-charity-trustees-and-decision-making).

**11. Other points the trustees should consider**

Having decided that the specific circumstances of the charity mean that paying the whole of the trustee board is clearly the best option for the charity, the trustees should consider additional issues relating to the current trustee provisions and the individual trustees before applying for authority.

Is the board too big?

* Part of the trustees' decision making process should include considering if increasing the size of the board would reduce the burden on the individual trustees to the extent that payment would not be necessary. Having done this, and, if appropriate, dismissed it as an option, the trustees should then decide whether or not the trustee board should be reduced in size to reduce the total amount that needs to be paid to the trustees. If the trustees decide that this is appropriate, they can reduce the number of trustees to the minimum number required by the governing document or they could use a power of amendment to change the trustee provisions.

Are the current trustees the best for the job, could the charity find better trustees if payment is available?

* If the charity has authority to offer payment to all of its trustees, the current trustees should consider if there are other potential trustees who might bring better skills, knowledge and experience to the charity over and above those of the current trustees. Considering this as an option would be acting in the best interests of the charity, this is expected of all charity trustees at all times. If the trustees decide that there might be better qualified trustees available, now that they will be paid, it would be reasonable to expect the trustees to carry out an appropriate recruitment exercise setting out the roles and responsibilities of the trustees, as well as the level of pay that will be available. Alternatively, it may be the case that these people were identified when the trustees were looking for people who could act as trustee without pay. In any case, we would expect the trustee provisions of the charity's governing document to contain mechanisms to ensure that each of the trustee positions is recruited to regularly, via a full and open recruitment exercise, to ensure that there is an opportunity to regularly replace the serving trustees