



# **SAVE OUR SHROPSHIRE CIO POLICY DOCUMENT**

## **POLICY: BEING A TRUSTEE**



## 1. Purpose of Policy Document

- 1.1. Save Our Shropshire CIO (SOS CIO) is a registered charity that supports education and facilitation of projects that will enable the people of Shropshire to reach Net-Zero Carbon emissions by 2030 and reduce to negative beyond 2030.
- 1.2. This Policy documents the general aspects of the role of being a Trustee, and specific aspects which a Trustee must manage within the scope of Save our Shropshire CIO.
- 1.3. Trustees are responsible for the general control and management of the administration of a charity.
- 1.4. All trustees must comply with charity law (and other relevant laws). It is therefore very important that in the interest of themselves as individuals and their charities, they should familiarise themselves with the areas covered by this note.

## 2. The key trustee duties

### 2.1. Act in best interests of the charity.

A trustee must act in good faith, act in the best interests of the charity, exercise independent judgment, and ensure that his/her decisions are unaffected by his/her personal interests or views

### 2.2. Manage conflicts of interest

- 2.2.1. A trustee must disclose to the charity any conflict of interest. This applies not only to a conflict between his/her duties to the charity and his/her own personal interests, but also a conflict between his/her duties to the charity and any duties he/she has to any other organisation.
- 2.2.2. Where such a conflict is significant, he/she must avoid being involved in any decision of the other trustees relating to it. Where it is a substantial conflict, he/she must remove its source by giving



up the potential benefit or other source of conflict or by resigning as a trustee.

**2.2.3.** Our Charity constitution include provisions which provide a specific procedure for handling conflicts, and Trustees should familiarize themselves with the constitution in this respect. SOS CIO also has a specific policy document which deals with Conflicts of Interest, with which Trustees should familiarize themselves.

**2.2.4.** A trustee of a charity must not take advantage of information or anything else he/she gains as a trustee of that charity.

### **2.3. Personal benefit**

**2.3.1.** A trustee must not accept any sort of direct or indirect benefit, advantage, or gain from being a trustee unless authorised by the charity's constitution or by the Charity Commission. Charity law permits charity constitutions to include power to permit certain types of benefit, for example, payment to a trustee in consideration of goods/services provided by him/her to the charity in certain circumstances.

**2.3.2.** Reimbursement of proper expenses and receipt of training is allowed.

**2.3.3.** Advice should be taken before a charity makes any sort of payment or allows any benefit to a trustee (other than payment of actual expenses) or where a trustee is also a beneficiary.

### **2.4. Administer the charity properly, in particular follow the constitution and the law**

**2.4.1.** A trustee must ensure that the charity only acts in accordance with its constitution (available on our website), charity law, and all other laws and regulations applicable (for example, in relation to data protection, fundraising, campaigning, charity trading, tax, VAT, reporting and accounting, employment, equality and discrimination, health & safety, safeguarding of children and young adults). The Charity Governance Code is a useful document to read in this respect, and can be found here [CLICK HERE](#) .



2.4.2. A trustee must also ensure that the charity acts in accordance with the proper requirements of the Charity Commission and of any other relevant regulatory authority (for example, CQC in relation to health and social care services, Ofsted in relation to education/skills and children's and young people's services, and the Information Commissioner in relation to personal data.) The Charity Commission has prepared a document entitled "The essential trustee: what you need to know, what you need to do", which is required reading for any Trustee. It can be found here [CLICK HERE](#).

2.4.3. As to the duty to comply with the charity's constitution, the key elements are:

2.4.3.1. **Objects** - The charity's assets, funds, rights, licences, and other resources must only be applied for its own specified charitable 'objects'. These are set out in its constitution, and trustees must ensure that they know what the charity's objects are. Even if some intended expenditure or activity would be of a charitable nature in law, a charity may not expend any sum or engage in any activity if to do so would go beyond its objects. On any occasion when considering expending any resources, trustees should also consider whether there is a more effective way of furthering the charity's objects than the way planned. A trustee may become personally liable to reimburse charity resources applied outside its objects.

2.4.3.2. **Powers** - A charity may only do what its constitution allows or what a statute authorises it to do. For example, a charity cannot take a lease of property unless its constitution expressly gives it power to do so, even if the premises leased would be used for any of the charity's objects. Where relevant, a trustee must have regard to the Charity Commission's guidance on "public benefit" when exercising the powers of the charity.

2.4.3.3. **Policies**. Save Our Shropshire has developed, and will continue to develop formal written policies and procedures to help manage the charity properly. These cover a range of subjects, e.g. financial procedures, health & safety, safeguarding, data confidentiality, and volunteers. They are identified with the phrase "Policy XX – [Policy Name]"



2.4.3.4. **Political Activity.** A charity cannot be established, either in whole or in part, for a political purpose. By “political purpose” the Charity Commission means any purpose directed at furthering the interests of any political party; or securing, or opposing, any change in the law or in the policy or decisions of central government, local authorities or other public bodies, whether in this country or abroad (including supranational institutions such as the UN, EU, WTO and IMF).

This is because the courts (and therefore the Commission) are unable to take a view on whether any particular change in policy or the law is for public benefit. To do so would be to usurp the role of Government.

A charity can however engage in political activities, by which the Charity Commission means any activities directed at securing, or opposing, any change in the law or in the policy or decisions of central government, local authorities or other public bodies, whether in this country or abroad (including supranational institutions such as the UN, EU, WTO and IMF).

Charities are able to engage in political activities provided that:

- these are in furtherance of a charitable purpose;
- there is a reasonable expectation that the proposed activities will further the purposes of the charity to an extent justified by the resources committed;
- the activities will not be allowed to dominate the activities which the charity carries out in order to further its objects directly;
- the trustees have assessed any reputational and other risks, and can comply with the law and any other regulatory requirements; and
- any political activities are undertaken in accordance with the guidelines set out in THE Charity Commission publication CC9 – ‘Campaigning and political activity guidance for charities’, which is available on the Charity Commission website [CLICK HERE](#)

## 2.5. Safeguard assets

2.5.1. A trustee must ensure that money is not lost, that money is invested prudently, that the charity does not refuse to accept money or property donated to it, and that the charity does not pay



money to anyone unless either the charity is legally bound to do so or by making the payment it will advance the charity's purposes. (This, for example, means that an "ex gratia" payment cannot be made.).

**2.5.2.** It requires a trustee to take measures to ensure that he/she is aware of all of the charity's assets and resources, and to ensure that the trustees have, implement, and monitor, proper financial procedures.

**2.5.3.** A trustee must also ensure that other assets are protected, for example that land/buildings are maintained, protected and insured; that its reputation, name, logo and other intellectual property are safeguarded; and that the charity correctly manages and fulfils all of its obligations to staff.

**2.5.4.** Any lease, sale, or mortgage of land or buildings by a charity must be in accordance with the restrictions and requirements of the Charity Act 2011, to ensure that proper value is received on their disposal.

## **2.6. Act prudently**

**2.6.1.** A trustee must ensure that the charity remains solvent, that its assets and funds are used wisely, and that it does not undertake any activities which could put its assets or reputation at undue risk.

## **2.7. Act with care**

**2.7.1.** A trustee must act with all due reasonable care and skill, and must use any knowledge or skill the trustee has or holds him/herself out as having. For example, a trustee may have some particular business or professional experience. The duty might in some cases require trustees to select appropriate advisers and follow their advice.

## **2.8. Act collectively**

**2.8.1.** All trustees must act together as a group. This means that they must all take part in discussion and in decision-making, but it does not usually mean that their decisions have to be unanimous.



They can freely delegate to any trustee/s or staff members power to implement a decision of the trustees, but no one or more of them (even if Chair, Treasurer, Secretary, etc) may make a decision individually, even in an emergency, except as follows:

2.8.1.1. Where there is clear power to do so in the constitution (but not otherwise), all of the trustees may delegate to one or more trustees powers to make decisions. Such delegation arrangements may well be needed to enable one or more trustees (rather than, say a meeting of all trustees) to deal with emergency situations. Any such delegation should be by means of a formal adoption of written terms of the delegation at a trustees meeting which sets out those terms in its minutes.

2.8.2. If something goes wrong, the trustees are ultimately responsible and accountable for whatever the charity does, even if they have properly delegated the power to make a decision or to implement it.

## **2.9. Independence**

2.9.1. The Charity commission requires a charity to be independent in the sense that anyone who exercises powers in relation to the governance of a charity is bound to act solely in the interests of the charity. This is not just a requirement at the point when a body is registered as a charity. Charities must remain independent throughout their existence.

2.9.2. The trustees must ensure that the charity is able to operate entirely independently of any other charitable or non charitable organisations that it may be working closely with. The trustees must:

- be free to make their own decisions on matters affecting the administration of the charity;
- be able to take their own legal and financial advice;
- draw up their own policies and business plan;
- manage conflicts of interest e.g. a trustee who was subject to a conflict of interest would not participate in discussions and would not count in the quorum;
- be able to preserve and exercise their discretion to select beneficiaries and provide services;



- not commit themselves simply to giving effect to the policies and wishes of other organisations; and
- not agree to conditions that undermine the confidentiality of their discussions.

**2.9.3.** The Charity should remain independent of the state as outlined in their guidance RR7 '*The Independence of Charities from the State*' [CLICK HERE](#). This publication summarises the Charity Commission's views about the extent to which charities are required by law to be independent of the State. (By "the State" they mean the governmental authorities that make up national and local government.)

**2.10. Education.** Education must be provided for the public benefit and must be advanced in line with Charity law. A document describes the key elements of this and can be found here [CLICK HERE](#). The key characteristics are summarised as follows:

- The subject of the education must be of educational merit or value (see section D2);
- The educational process has to be structured in such a way that it actually educates an audience, rather than just adding to factual information (see section C4).
- The education can have an uncontroversial broad value base, but should allow those being educated to make up their own minds on controversial issues (see section C5).


The Charity Commission expects an organisation that is advancing education in this area to have structured processes in place to ensure that it is advancing education for the public benefit. In line with this we have a programme of courses for delivery to specific audiences – namely:

- Householders/Individuals which they can receive either on-line electronically or at some convenient location
- Parish Councillors or Local councillors, which will focus on how these bodies can support the aims of the charity for the benefit of the public at large.

**2.11. Ensure restrictions on funds are observed**

**2.11.1.** Where Save Our Shropshire CIO receives any money for a specific purpose ("restricted funds"), a trustee must ensure that it is only used for that purpose. Trustees cannot authorise any other





use of restricted funds unless they have consent from the donor. See our Fundraising policy for details on this process.

### 3. Liabilities

**3.1.** A trustee's potential legal liabilities come from both statute and case law. They can give rise to potential liabilities as follows:

#### **3.1.1. Governance Liabilities**

Governance liabilities can arise from the duties that are imposed on a trustee automatically by the law, and those duties arise from the nature of his/her position as a steward of a charity. Such duties are personal to him/her, and a failure by him/her to discharge any such duty is usually called a "breach of duty" or "breach of trust". Liability can arise as a result where the duty breached is to the charity and it suffers loss as a result.

Such a liability can be enforced: by the Charity Commission, by the charity itself, or by a court. This may be a civil court, for example, for a loss due to imprudent investment, or it may be by a criminal court, for example, to recover money lost due to dishonest misuse of funds.

The Charity Commission has stated that it is only likely to enforce personal liability where a trustee has acted dishonestly or recklessly.

Trustees will be personally liable for certain wrongs committed by them, for example, if the charity is insolvent and the trustees are guilty of wrongful or fraudulent trading (whether or not the charity is incorporated). There may also be personal liability for failures to file certain company or other documents, and for certain breaches by trustees of health and safety, environmental, discrimination, tax and other laws.

#### **3.1.2. Operational Liabilities**

Operational liabilities arise either from what Save Our Shropshire CIO does or from its constitution.

For example, Save Our Shropshire CIO might contract with a local authority to provide services to service users in return for fees, or SOS CIO might hold a lease on premises used by it, or it might employ staff.

In all those cases it will have entered into a legal relationship (a services or employment contract, or a lease) under which it could become liable, for example, for failure to provide services, pay rent, dismiss an employee fairly, or comply with other terms of the contract or lease.



Another example might be where SOS CIO runs a fundraising event, and in doing so it is negligent in some respect, that causes injury or loss to a participant, and the charity is therefore liable for his/her injury or loss.

As Save Our Shropshire CIO is an incorporated organisation, then the liability for debts and other liabilities incurred by the charity (for example, to suppliers or staff) remain its sole liability even if it has insufficient assets to meet the liability - its trustees will not be personally liable and the liabilities of the charity remain its liabilities alone.

## 4. Insurance

**4.1.** Shropshire CIO will provide and pay for insurance for its trustees to protect them from personal liability.

**4.2.** This insurance policy will cover some governance and operational liabilities and legal costs of trustees (“Indemnity Insurance”) but it is essential to check what any proposed Indemnity Insurance actually does and does not cover.

**4.3.** Such insurance typically has a number of exceptions and limitations. Trustees need to fully understand the extent of these.

**4.3.1.** The policy only applies where a trustee has acted in good faith, and they do not cover a number of risks to trustees.

**4.3.2.** The policy does not include cover for criminal fines or penalties, a trustee’s costs in defending criminal proceedings if he or she is convicted of fraud, dishonesty or reckless conduct, or where the trustee’s liability results from a deliberate disregard of the interests of the charity.