



3. Compliance

Tools for success:
doing the right things and doing them right



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About this guide

Your Board needs to be satisfied that your nonprofit organisation is meeting its legal, contractual and financial responsibilities and acting within its governing document.

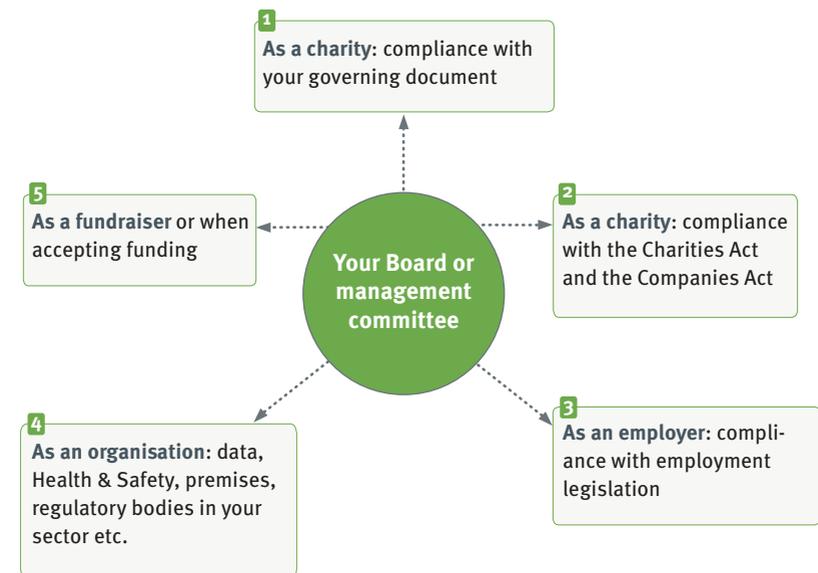
The purpose of this guide is to help you ensure compliance with the law – an area that is often of great concern to small organisations.

Members of your Board or management committee are not expected to have a detailed knowledge of the legislation, but to have an awareness of the legislation and to ensure – via monitoring and checks – that someone in the organisation is taking responsibility for compliance.

This guide offers an overview of the key legislation with which your nonprofit organisation is required to comply, with signposts to sites for further information and advice. In some areas we give the title of the piece of legislation so that you can look it up to check its relevance to your organisation. The focus is largely on the legal form for registered charities, although much of the guidance will also apply to Community Interest Companies (CICs), Charitable Incorporated Organisations (CIOs), Industrial and Provident Societies (IPs) and social enterprises.

Key areas covered in this guide

The diagram below illustrates five key areas where compliance is required – and which are covered in more detail in this guide.



Complying with the law – getting started

A nonprofit organisation's compliance with legislation and good practice can start with well-planned induction programmes for trustees, employees and volunteers.

Induction is vital. It is a gateway for both new trustees – helping them to get up to speed with the role, the organisation and their legal responsibilities – and for employees and volunteers. Induction ensures and can provide evidence that the people in your organisation have an awareness and understanding of key policies and procedures such as equal opportunities, health and safety, data protection etc. (See the **People guide** for a checklist on employee induction).

What legislation must we be aware of?

As a charity, compliance with our governing documents

The key document of a nonprofit organisation is its 'governing document' which sets out the charity's objects and how it is to be administered.

The governing document, as well as the titles of those concerned with governance, may be different depending on the type of nonprofit organisation, but the most common terms are:

Type of nonprofit organisation	Governing document	Usual title of the charity's trustee
Unincorporated association or society	Constitution or rules	The executive or management committee
Charitable company (an incorporated charity)	Memorandum and Articles of Association	Directors
Charitable Trust	Trust deed	Trustees Governors



For different types of nonprofit organisations including social enterprises see www.knowhownonprofit.org/basics

For CICs, social enterprises and IPSs please refer to specialist websites as shown on p.6.



Your trustee induction programme

This will include a variety of activities, spread over a period, including:

- meetings and introductions to other trustees, employees, beneficiaries, service users etc.
- invitations to events, meetings and presentations.

Your organisation's induction pack will include

1. Key internal documents such as:

- A copy of your governing document (see below), a brief history of the organisation, current strategic plan, organisational structure, job description of the director, contact details of other trustees and the organisation
- Latest annual report and accounts
- Minutes of the most recent Board meetings
- Key policies (where available) covering, for example, conflict of interest, trustee code of conduct, financial controls, equal opportunities, human resources.

2. Information on the role and responsibilities of a trustee and governance. You can download the relevant information from the Charity Commission (www.charity-commission.gov.uk): CC3 and CC3(a) 'The essential trustee' (2008); and CC60 'The hallmarks of an effective charity'.



A copy of the 'Good practice in trustee recruitment toolkit' is downloadable from NCVO (www.ncvo-vol.org.uk) and includes a sample trustee induction programme.

Your governing document contains all the information needed to run a charity such as:

- What the charity is set up to do (known as its 'objects')
- How the charity will do those things (known as 'powers')
- Who will run the organisation (the trustees, directors, the Board or management committee)
- How it is to be run and administrative arrangements regarding meetings, voting, looking after money, delegation to sub-committees etc.
- What happens if administrative provisions need to be changed
- What happens if the charity wishes or needs to wind up.

It is a legal requirement that charities comply with their governing documents. This includes ensuring that:

- The charity's activities remain within the objects set out in the governing document
- Any new activities planned are permitted within the objects
- The trustee body is properly and legally constituted
- Trustees have a sound knowledge and understanding of the governing document.



For other 'social purpose' legal forms and documents see:

- www.cicassoc.ning.com – for Community Interest Companies
- www.socialenterprise.org.uk – for social enterprises
- www.fsa.gov.uk – for Industrial and Provident Societies.

As a charity, compliance with charity and company law

All charities must comply with:

1. The Charities Acts, 1992 (Part II), 1993, 2006 (www.charity-commission.gov.uk). Please note: there are plans to consolidate the Charities Acts. Trustees must ensure that their organisation meets the public benefit test as contained within the 2006 Act
2. The Trustees Act 1925, 2000 (www.charity-commission.gov.uk). The most recent Act concerns the powers of trustees regarding investments and delegation
3. Regulation covering people who are disbarred from acting as trustees under the Charities Act 1993 or your Memorandum and Articles (www.charity-commission.gov.uk)
4. Charity Commission regulation requiring compliance (depending on annual income) on the submission of annual returns, reports and accounts (www.charity-commission.gov.uk)
5. The latest and relevant Statement of Recommended Practice (SORP) – i.e. 2005 unless a more specialist SORP applies – published by the Charity Commission (www.charity-commission.gov.uk)
6. Laws on trading, political activities, fundraising, fraud, money laundering and the Bribery Act, and Charity Commission (2008) 'Internal Financial Controls for Charities Checklist (CC8)' (www.charity-commission.gov.uk)
7. Laws on copyright, trade marks, other intellectual property rights and data protection.

Charitable companies

Charitable companies (i.e. those incorporated as a company limited by guarantee) must comply with provisions in the Companies Acts, 1985, 1989, 2006 (www.charity-commission.gov.uk). Additional requirements include filing details of trustees as directors at Companies House.



The Charity Commission (www.charity-commission.gov.uk), the Department of Business Innovation and Skills (www.bis.gov.uk) and the Institute of Chartered Secretaries (www.icsa.org.uk) provide information and support about charitable legal structures and governance regimes.



For information on current legislation affecting charities see www.sandy-a.co.uk. Sandy Adirondack is also the author of *Just about managing – effective management for voluntary organisations and community groups* (2006).

As an employer, compliance with employment law

All employers must ensure their contractual arrangements with employees comply with current employment legislation. Practical assistance and sample or downloadable documents are available from Acas (www.acas.org.uk), Business Link (www.businesslink.gov.uk), and Directgov (www.direct.gov.uk).

Compliance with employment legislation includes:

Contracts of employment

The contract provides important information on the main terms and conditions you are offering. You must ensure that your contracts of

employment are legal and meet the needs of your organisation (i.e. whether you employ permanent, fixed term staff).

A written statement of employment particulars must be issued within two months of an employee starting work – if they are to be employed for more than a month – and should include (amongst other matters) hours of work, notice periods, details of holiday entitlement, sick pay, pay and pay intervals etc. with signposts to other documents such as discipline and grievance procedures.

You may also need ‘non-employment’ engagement letters for people who are not employees, for example volunteers, consultants, contractors.



The Business Link website (www.businesslink.gov.uk) has a model ‘written statement of employment particulars’.

Employment legislation

Employment legislation covers a range of topics. Some will be referenced via the drafting of your contracts of employment (see p.8) such as: discipline and grievance procedures, holiday and sickness pay and leave.

The other major areas of employment legislation you may encounter include the following:

- The Working Time Regulations – ensuring that employees do not work hours in excess of the legal maximum and take sufficient holidays, breaks and time off
- The Transfer of Undertakings Protection of Employees (TUPE) Regulations when considering mergers or transfers of employees from or to your organisation
- The Public Interest Disclosure Act giving legal protection to workers who ‘blow the whistle’ about wrongdoing in the organisation (see www.pcaw.co.uk).



A whistle-blowing policy should

- Make clear the importance your organisation attaches to the identification and rectification of malpractice
- Define malpractice and identify the standard of conduct required of employees
- Specify to whom employees should report suspected malpractice
- Set out the mechanism for investigating alleged malpractice
- Allow whistle-blowers, where possible, to disclose information in confidence or remain anonymous
- Stress that no disciplinary action will be taken against whistle-blowers in respect of disclosures made in good faith
- Consider whether an external body should be identified as an alternative to the employer's procedure.

- Disciplinary and grievance procedures (download the Acas code of practice and guidance at www.acas.org.uk)
- Redundancy (including consultation procedures, entitlement to statutory redundancy payments etc.)
- The Equality Act 2010 (see p.11)
- Discrimination (see p.11)
- Parental rights (maternity/paternity/adoption/parental leave) and dependants' leave
- Flexible working requests (for those with caring roles – for children and other dependants)
- Immigration and work status – ensuring that your employees have the right to work in this country (see www.ukba.homeoffice.gov.uk)
- Specific checks, for example those required for employees working with children or vulnerable adults in your organisation (i.e. Criminal Records Bureau checks including Protection of Vulnerable Adults)

- The Information and Consultation of Employee Regulations which, in certain circumstances require employers with more than 50 employees to consult with and inform employees about workplace issues.



For all areas, information and advice on procedure and practice can be found on the Business Link website (www.businesslink.gov.uk) or from the Acas helpline (08457 474747) or website (www.acas.org.uk) and from the websites mentioned on p.10.

Equal opportunities legislation

Under the Equality Act 2010, people have legal protection against discrimination in the form of the following 'protected characteristics':

- Age
- Sex
- Race
- Religion or belief
- Disability
- Sexual orientation
- Pregnancy and maternity
- Gender reassignment
- Marriage and civil partnerships.

In this section of the guide we concentrate on your responsibilities as an employer. However, equality legislation can cover people who use your services as well as employees and volunteers.

Employers can be held to discriminate by:

1. **Direct discrimination** – occurs when someone is treated less favourably than another person because of a protected characteristic they have or are thought to have ('perception discrimination'), or because they associate with someone who has a protected characteristic ('discrimination by association').

2. Indirect discrimination – can occur when you have a condition, rule, policy or even a practice in your organisation that applies to everyone but particularly disadvantages people who share a protected characteristic. Indirect discrimination can be justified if you can show that you acted reasonably in managing your organisation, i.e. that your action is ‘a proportionate means of achieving a legitimate aim’. A legitimate aim might be any lawful decision you make in running your organisation, but if there is a discriminatory effect, the sole aim of reducing costs is likely to be unlawful.

To help prevent and/or defend a discrimination claim, an employer should have an up-to-date equal opportunities policy which is readily available, consistently enforced, regularly reviewed and made known to managers, supervisors, employees and job applicants. Induction is a good way of making policies known to new employees, volunteers and trustees, but they also need to be systematically reinforced in a variety of contexts.



An equal opportunities policy should:

- Make clear your organisation’s commitment to equal opportunities, non-discriminatory procedures and practices
- List all the forms of discrimination covered by the policy i.e. all the protected characteristics listed on p.11
- State that the policy will cover all current legislation
- Oblige all employees to respect and act in accordance with the policy
- Mention equality of opportunity for all job applicants and employees
- Make clear that any bullying or harassment is totally unacceptable
- Explain the procedure for dealing with complaints and the link to the grievance procedure
- Include the title of the manager or director who has overall responsibility for the policy
- Be regularly updated and communicated
- Be used in training sessions for all employees, volunteers, trustees.



Remember that you can no longer ask applicants about their health before you make an offer of employment (unless it is to ask if they could undertake an intrinsic part of the job or whether you need to make any reasonable adjustment to enable them to attend the interview or take part in a selection test).

Diversity

Many organisations have widened their equal opportunities policies to include diversity. *The good trustee guide* (NCVO, 2003) defines it as being

“ more wide-reaching than equal opportunities. It incorporates the principle that all should receive equal rights but also that, rather than ignoring the differences that exist between people, diversity should instead be recognised and respected. By doing so, it creates an environment where everyone feels valued for their individual talents and where their skills and competencies are fully utilised. ”



For further information and advice on equality and diversity, see www.equalityhumanrights.com

As an organisation, compliance with laws relating to data protection, health & safety, premises etc.

Data protection

The legislation covers everyone about whom you keep personal data – i.e. employees, volunteers, service users, funders etc. The legislation:

- Requires organisations to register if they keep records
- Governs the processing of personal data including ‘personal sensitive data’
- Requires organisations to comply with eight principles
- Allows employees to request to see the personal data held on them.



For further information on data protection, see www.ico.gov.uk

Health & Safety

The Health & Safety at Work etc. Act 1974 places a duty on employers to ensure the health, safety and welfare of employees and others who may be affected by the actions of your organisation. Where relevant, the actual legislation is given to help you check your obligations under each set of regulations or piece of legislation.



Your Health & Safety checklist

- If you employ five or more employees, you must have a written, signed and dated statement of your general policy confirming who takes ultimate responsibility for health and safety (normally the director/chief executive), and how other matters such as risk assessment, fire and emergency instructions, manual handling etc. are managed
- All employees and volunteers should sign to say that they have read and understood the policy. Display a copy on noticeboards
- Inform people of the existence of the policy at induction and reinforce its content regularly. Consult employees on health and safety policy and other relevant matters
- To comply with current legislation, you must:
 - Display a Health & Safety law poster (available from www.hse.gov.uk); an employer’s liability insurance certificate and other notices such as no smoking notices and exit signs
 - Undertake risk assessments (Management of Health & Safety at Work Regulations 1994) including risk assessments under the Control of Substances Hazardous to Health Regulations, covering the use, storage and disposal of chemicals such as cleaning materials
 - Undertake special risk assessments for people under 18 or women who are pregnant or breastfeeding
 - Draft and implement an ‘action in the event of a fire’ procedure (The Regulatory Reform (Fire Safety) Order 2005).

(Your Health & Safety checklist continued)

If you have full responsibility for your premises, you should have carried out a fire risk assessment. If you lease the premises, you may find that the landlord has arranged this. Use the risk assessment to draft your procedure; include assembly points, fire drills etc. in it

- Assess 'workstations' where computers are used and provide eye tests for employees if required (The Health and Safety (Display Screen Equipment) Regulations 1992)
- Assess items which might cause harm if lifted incorrectly or are too heavy (Manual Handling Operations Regulations 1992 (amended 2002); offer employees basic training in manual handling techniques, if lifting is part of their job requirement
- Maintain premises in a clean, tidy and orderly condition (The Workplace (Health, Safety and Welfare) Regulations 1992) ensuring emergency access routes are not blocked, eliminate trailing wires or trip hazards such as frayed carpets or wet floors; maintain equipment in good order
- Provide a First Aid box (The Health and Safety (First Aid) Regulations 1981) and identify an 'Appointed Person' who can monitor the contents of the first aid box and summon medical assistance when required
- Ensure you have an Accident Book in which to record all accidents, however minor (Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995) and that accidents that lead to absence from work of more than three days are reported
- Include Health and Safety when planning training; this can be formal and/or informal training in group or briefing meetings.



For further information, see www.hse.gov.uk



- Health and Safety legislation applies to everyone involved in your organisation – employees, volunteers, beneficiaries, service users, trustees and visitors.



- The Corporate Manslaughter and Corporate Homicide Act 2007 came into force in April 2008 making it possible for employers to be prosecuted for 'a gross breach of duty' if someone has been killed at or by work.

Other legal obligations

Your organisation must also ensure that it meets its legal obligations in other areas to mitigate its risks. These include:

- Complying with lease, licence or tenancy agreements
- Complying with contracts (for example for photocopiers, vehicles etc.)
- Having relevant insurances, displaying (or having a copy on your intranet, or in a shared folder, of) a current Employers Liability certificate, having public liability insurance covering general risks (e.g. fire, theft and flooding, legal action)
- Maintaining accurate and secure financial records and information; complying with income tax, national insurance, other tax, VAT regulations
- Maintaining bank accounts, loans, overdrafts, investments according to agreements (including reserves, ethical considerations, risk).



See www.cfg.org.uk for more information on charity finance; the Charity Commission and HM Revenue and Customs have set up a joint helpline on 08453 020203, to deal with issues relating to charity tax, charity VAT and charity law and practice.

As a fundraiser or an organisation accepting funding, compliance with relevant law

It is essential to be seen to be managing incoming and outgoing money legally and transparently. This includes meeting your legal obligations with regard to:

- Fundraising activities and grant aid funding including rules on public events, collections, lotteries, data protection (when using a database of supporters for fundraising), insurance, risk assessment etc.
- Accepting legacies
- Any requirements imposed by funders
- The requirements of a loan
- Work undertaken under a service agreement or contract
- Requirements made by regulatory bodies such as the Tenant Services Authority, the Care Quality Commission etc. that apply to the type of work you undertake.



See the Charities Commission (www.charity-commission.gov.uk) and www.institute-of-fundraising.org.uk for information and legislation on fundraising.

Must-have policies

A charity needs to have a minimum set of policies and procedures that define, regulate and inform how it operates. Several of the policies you need to have result from your obligations in managing people – see the **People guide** for more information. You must also have a Health and Safety policy if you employ five or more people and anti-discrimination and harassment policies (see pp. 11–17).

Many of the areas mentioned in these guides would benefit from written policies, for example:

- Board responsibilities, conduct at Board meetings, composition of the Board and committees and the selection of new trustees, role profiles, confidentiality, speaking to the media, conflict of interest etc.
- Finance (internal financial procedures including money laundering under the Proceeds of Crime Act), investments, reserves
- Risk management
- Code of conduct – i.e. your ‘organisational rules’ – covering what is acceptable and unacceptable
- Whistle-blowing (see p. 10)
- Child or vulnerable adult protection
- Health and safety.

How do we develop a policy?

When developing a policy:

- Decide whether this is an area where the Board or the Executive should be determining policy
- Arrange for a sub-group, member of staff or individual trustee to produce a draft policy for discussion
- Discuss (including consultation with trustees, employees, volunteers, service users as applicable) and agree the final version
- In the case of Board policy, ensure the entire Board ratifies the document and builds in a date for review.

Adapted from NCVO (2003) *The good trustee guide*

See the **People guide** for suggestions on implementing a policy.



A good policy

- Is easily understood and written in plain, jargon-free English
- Has a definite purpose for its creation
- Is linked to your strategy
- Is flexible and can adapt to change
- Is accessible and known to the organisation
- Is suited to the culture of the organisation
- Is developed through the involvement of employees and interested stakeholders
- Is communicated to all relevant people.

Records we must keep (evidence for compliance and checks)

Your organisation must keep records of:

- Signed Minutes of Board meetings (and sub-committees) to evidence how decisions were made and how the Board has met its legal responsibilities (e.g. reports on health and safety etc.)
- Accounting records (paper and/or electronic) to provide an audit trail and to inform any query made (see www.hmrc.gov.uk/charities); compliance with the charity SORP (www.charity-commission.gov.uk); regulation from the Charity Commission regarding the submission of annual returns, annual reports and accounts
- Evidence of checks on employees including their right to work in this country; disclosure checks with the Criminal Records Bureau (CRB) where applicable.

Courses

Cass Centre for Charity Effectiveness offers training in many aspects of management and governance: www.cass.city.ac.uk/cce

Links to PQASSO

PQASSO is the practical quality assurance system for small organisations designed by Charities Evaluation Services. Independent data suggest PQASSO is by far the most widely-used quality system in the nonprofit sector. For more information, see www.ces-vol.org.uk

Following this guide will help you to meet several of the indicators of PQASSO quality areas 2 (Governance) and 3 (Leadership and management) in the second and third editions of the framework.

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Tools for success: doing the right things and doing them right

1. Introduction
2. Self-assessment
- 3. Compliance**
4. Governance
5. Direction
6. Finance
7. People
8. Operations
9. Connect



Cass Business School

In 2002, City University's Business School was renamed Sir John Cass Business School following a generous donation towards the development of its new building in Bunhill Row. The School's name is usually abbreviated to Cass Business School.

Sir John Cass's Foundation

Sir John Cass's Foundation has supported education in London since the 18th century and takes its name from its founder, Sir John Cass, who established a school in Aldgate in 1710. Born in the City of London in 1661, Sir John served as an MP for the City and was knighted in 1713.

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