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Checklist for university trustees

This checklist is to help university trustees and their delegates ensure that the university acts in accordance with charity law and its constitutional powers.

It consists of main questions and subsidiary questions. Each main question (in bold) is numbered and followed, in most cases, by explanatory material including some subsidiary questions. The subsidiary questions are intended to help answer the main questions.

A university should be able to answer yes to each applicable main question.

1. Are the trustees acting within the university's objects and powers?

The trustees need to be able to make a connection between carrying out the university's aims within their own powers in the university's charter or other governing document on the one hand and anticipated outcomes of the research (as at the time of their decision) on the other.

If the university's charter does not have an objects clause, consider producing a summary of the university's aims as evidenced by, for example, the fact that over many years it has aimed to promote education and learning for the public benefit.

The trustees will need to satisfy themselves that the particular research in question falls within the aims of the university, including ensuring that it is for the public benefit, and within their powers as trustees ([see separate checklist on university research contracts](#)).

2. Are the trustees exercising reasonable diligence and care and acting in good faith, having properly informed themselves and taken account of all relevant factors before making any decision?

Can the trustees ensure that any decision they take regarding the undertaking of research is legally sound and, if challenged later, can be justified?

Have the trustees adequately informed themselves (from information that could reasonably be known at the time) in order to make the decision?

Have they taken into account all relevant factors and disregarded any irrelevant, improper, or irrational factors? In considering whether a factor is relevant, the university's objects and powers will virtually always be the overriding considerations.

Is their decision within the range of decisions that a reasonable trustee body could have made?

3. Are there proper procedures in place to manage a conflict of interest?

Have the trustees taken steps to manage any conflicts of interest that arise, i.e. any situation where a trustee's personal interests, or interests they owe to another body, may (or may appear to) influence or affect the trustee's decision making?

4. If the authority for making decisions about research is delegated, is there a proper framework of policies and procedures for decision making in place?

The framework needs to ensure that contracts for research will be authorised only if the legal requirements for charitable research are met and the terms are reasonable and in the university's interests, in relation to the circumstances that can be known to the university at the time.

If the trustees exercise their powers to delegate decisions about individual contracts or research proposals, they remain responsible for ensuring that proper decisions are made.

Have the trustees put in place a robust process for the authorisation of contracts under which either they personally (or properly selected delegates appointed under powers available to the trustees) examined the details of particular contracts, taking further professional advice as needed?

Is the process designed to ensure that contracts are only authorised if:

- (a) the research is in an area which furthers the aims of the university; and
- (b) the research is for the public benefit (with any private benefit being incidental); and
- (c) the terms agreed by the university are reasonable in relation to the circumstances that could reasonably be known to the university at the time; and
- (d) the university's interests are protected?

5. Are there adequate records of the decision making process, in particular any exceptions to the university's normal pricing policy or terms and conditions?

6. Is there appropriate supervision and training of the university's staff involved in authorising contracts?

7. Is there a process for ensuring that the conduct of any research approved is well managed and cost-effective, and that research proposals and results are properly evaluated in order to ensure quality?

This is necessary in order to be able to demonstrate that the research effectively furthers the university's aims.

8. Does the process ensure that the trustees will fulfil their duty to take reasonable steps to (a) protect the university's interest in any intellectual property rights and (b) either ensure their use to further the university's aims or maximise the return that the university receives from them?

The trustees have a duty to secure the protection of inventions capable of protection as intellectual property, through patent or other appropriate means.

If the university is carrying out charitable research on behalf of a non-charitable body by collaborative sponsorship, contract research or under a spin-out, does it share in any return on the exploitation of the resulting intellectual property? Can the university exercise an appropriate degree of legal control over the use of such intellectual property and receive a proper share in any benefits arising from such use, even if the intellectual property rights must be held by someone else?

If a university owns intellectual property which is not currently required to be applied to its own aims, and it has financial value, is it being exploited for the benefit of the university, e.g. by selling or licensing it?

7. In the case of non-charitable research, are there procedures in place to ensure that it is carried out in accordance with the rules and guidelines on non-charitable trading?

Is the activity regular, organized, and actively managed in a commercial manner? If so, it is a trading activity. If it amounts to trading, and is undertaken through an agreement with a commercial company or a non-charitable trading subsidiary of the university, is any intellectual property to be made available to the company (whether by transfer or licence) for a proper market consideration?

This does not apply where the use of intellectual property by a non-charitable company is an application in furtherance of the aims of the university for the public benefit and such use is enforceable under an agreement between the parties. Where the intellectual property could be used to further the aims of the university, it is not required to charge full or any value, provided that the use of the intellectual property to further charitable purposes falls within the aims and powers of the university and any private benefit is incidental.

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