# Charity Commission Criteria for Selecting New Trustees

## 1. Overview

The Charity Commission requires all charities—large or small, incorporated or unincorporated—to appoint trustees in accordance with:

1. **The charity's governing document**, and
2. **The legal rules on trustee eligibility and appointment.**

These two requirements form the foundation of lawful trustee recruitment. The Commission does not prescribe a single method (election, co-option, nomination, or appointment). Instead, it requires charities to follow the rules that apply to *their* charity.

## 2. Requirement 1: Follow the Governing Document

The Commission's guidance *Finding and appointing new trustees (CC30)* states:

"You must follow what your governing document says. If you don't do this, your trustee decisions may be invalid." *(Charity Commission – CC30)*

This means:

- If the governing document specifies a method of appointment, that method must be followed.
- If the governing document is **silent**, trustees must rely on **trust law**, including the Trustee Act 1925.
- If the governing document is outdated or unworkable, trustees may seek Charity Commission consent to amend it.

For older unincorporated charities, it is common for governing documents to be silent on modern governance issues such as:

- how to replace ex-officio trustees who decline to act,
- how to remove trustees,
- how to address conflicts of interest,
- how to fill vacancies,

In such cases, the Commission expects trustees to use **statutory powers** to maintain a functioning trustee body.

## 3. Requirement 2: Follow Legal Rules on Trustee Eligibility

CC30 states:

"You must follow: • relevant rules in your charity's governing document • legal rules about who is allowed to be a trustee." *(Charity Commission – CC30)*

Legal rules include:

- trustees must not be disqualified under the Charities Act 2011,
- trustees must be willing and able to act,
- trustees must act only in the charity's best interests,
- trustees must not have conflicts of interest that make them unsuitable.

The Commission does **not** require trustees to be elected unless the governing document requires it. It does **not** prohibit trustees from appointing successors. It does **not** discourage trustee co-option. It does **not** require "popular vote" or member elections unless the governing document mandates them.

## 4. Requirement 3: Ensure Trustees Have the Skills and Understanding Needed

The Commission expects charities to consider the skills and experience required for effective governance.

CC30 states that charities should:

- identify the skills needed,
- recruit individuals who can contribute to the charity's work,
- ensure new trustees understand their duties.

CC3 (*The Essential Trustee*) reinforces this:

"Trustees should have the skills and experience needed to run the charity well." *(Charity Commission – CC3)*

This does **not** mean trustees must be experts. It means they must be capable of fulfilling the role responsibly.

## 5. Requirement 4: Ensure Appointments Are Properly Made and Recorded

The Commission requires trustee appointments to be:

- properly authorised,
- properly minuted,
- properly documented,
- properly notified where required.

CC30 emphasises that improper appointments may be invalid. This is why minute-book entries, declarations of acceptance, and clear records are essential.

## 6. Requirement 5: Use Trust Law When the Governing Document Is Silent

Where a governing document does not specify how to replace trustees or how to deal with vacancies, the Commission expects trustees to rely on **trust law**, including the **Trustee Act 1925**.

Under **section 36(1)** of the Trustee Act 1925:

*The continuing trustees may appoint a new trustee to fill a vacancy.*

This statutory power applies to **all types of vacancies**, including:

- ex-officio roles that no longer exist,
- ex-officio officeholders who decline to act,
- trustees who resign,
- trustees who are unfit or unwilling,
- trustees who cannot act due to conflict of interest.

The Commission routinely accepts trustee appointments made under the Trustee Act 1925 for older charities whose governing documents do not contain modern appointment or removal mechanisms.

## 7. Requirement 6: Act Only in the Charity's Best Interests

CC3 states:

"Trustees must act only in the charity's best interests." *(Charity Commission – CC3)*

This means trustee appointments must be made:

- to protect the charity's assets,
- to ensure continuity of governance,
- to maintain legal compliance,
- to avoid unmanaged vacancies,
- to ensure the charity can function.

The Commission does **not** support leaving trustee positions vacant if doing so harms the charity's ability to operate.

## 8. Summary of Charity Commission Criteria

To appoint trustees lawfully, a charity must:

1. **Follow its governing document**
2. **Follow legal rules on trustee eligibility**
3. **Ensure trustees have appropriate skills and understanding**
4. **Record appointments properly**
5. **Use trust law (including the Trustee Act 1925) where the governing document is silent**
6. **Act only in the charity's best interests**

These criteria apply to all charities, including older unincorporated charities governed by historic schemes such as the 1921 Scheme.