



Update on Legislation & Regulation (2019)

Tim Rutherford

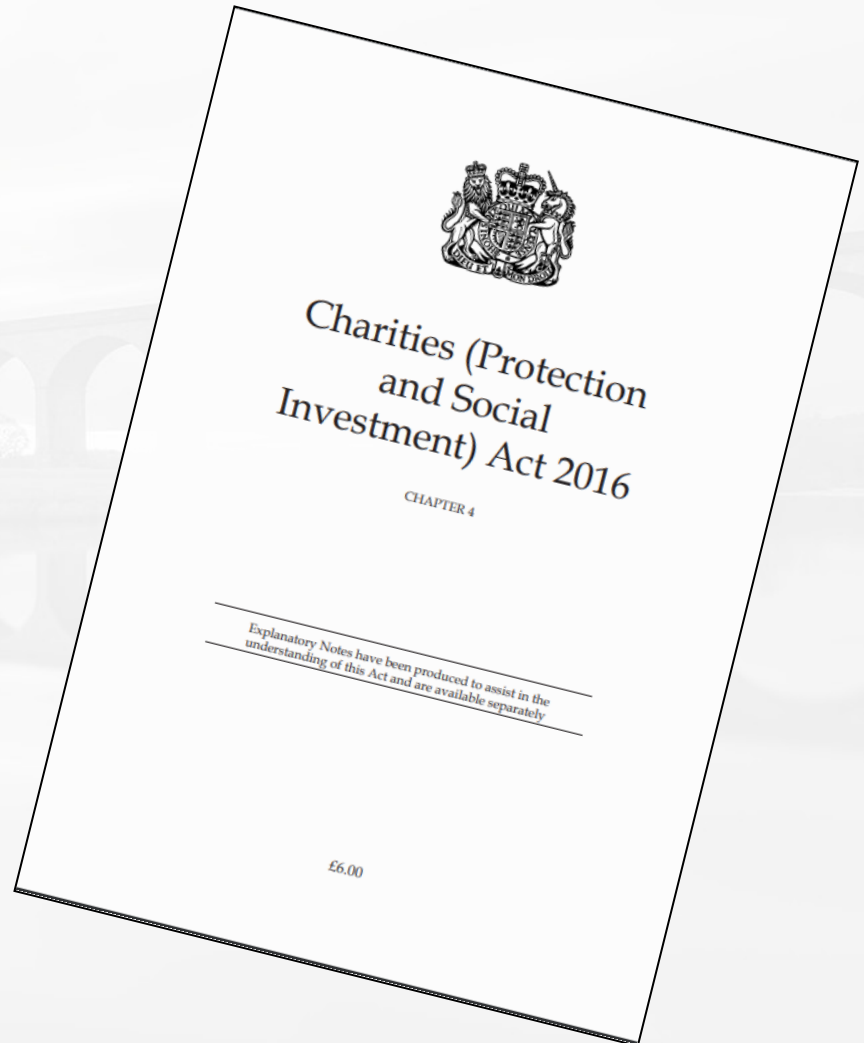
Partner and Head of Stone King's Charity & Social Enterprise Sector Group

Agenda



Automatic Disqualification

- DO NOT:
 - appoint or retain TRUSTEES or SENIOR MANAGERS who are disqualified
 - unless they have been granted a WAIVER.
- Have processes in place to ensure current Trustees or Senior Managers are not disqualified



Reasons for disqualification:



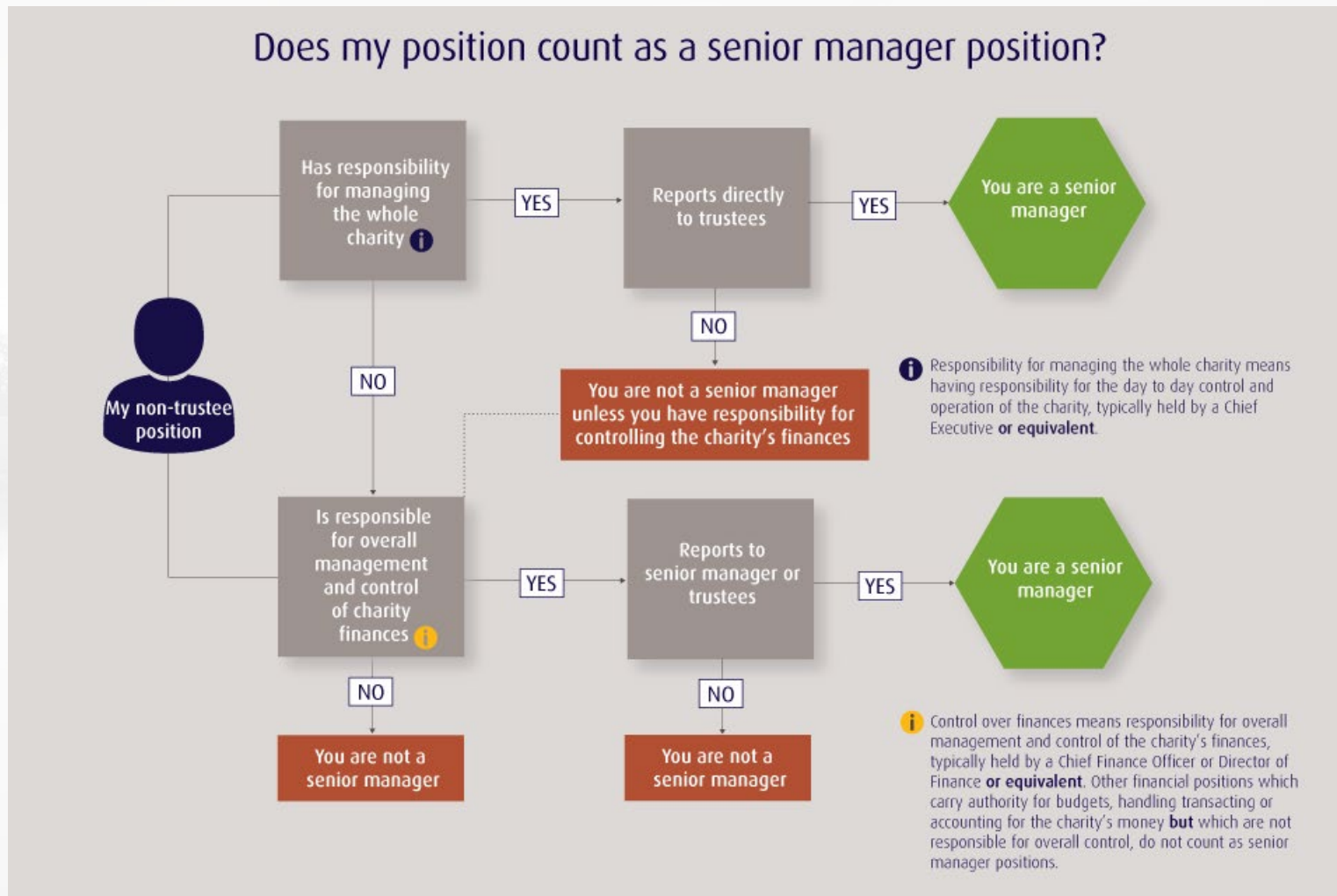
- Convictions for offences of dishonesty or deception
- Being declared bankrupt
- Being disqualified from being a company director
- Several terrorism-related, money laundering and bribery offences
- Violating certain Charity Commission orders relating to finances or property
- Misconduct in public office, perjury or perverting the course of justice
- Disobeying an order or direction of the Commission on application to the High Court
- Attempting, aiding or abetting these offences
- Civil contempt of court relating to false statements
- Being a designated person for reasons linked to terrorist activity by the Treasury
- Being subject to notification requirements under the Sexual Offences Act 2003

What is a Trustee?



- *“The persons having the general control and management of the administration of a charity”*
(Section 177, Charities Act 2011)
- AND:
 - “Shadow Trustees”
 - Officers of a company (or other corporate body, e.g. a CIO) that is acting as a corporate trustee of a charity
 - A trustee for a charity

What is a Senior Manager?



Source: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/673796/senior_manager_position.png

What should you do?

Trustee positions
Automatic disqualification declaration

This example should be used alongside the [existing trustee declaration](#)¹ form by:

- Charities to satisfy themselves that individuals who hold (or who are applying for) a trustee position are not disqualified from holding that position. Charities can ask the individual to complete this declaration alongside the existing [trustee declaration form](#) if they have not already done so.
- Individuals who hold, or are applying for, a trustee position, to declare that they are not disqualified from holding that position.

Charities must make sure any declaration forms are handled and processed in accordance with duties under the General Data Protection Regulation (GDPR).

Individuals are automatically disqualified from acting as a trustee of a charity if:

- one or more of the reasons in Annex A apply; and
- [they](#) have not obtained a waiver of that disqualification from the Charity Commission.²

Completing the declaration

Read the automatic disqualification [guidance](#)³ to decide if you are disqualified.

Complete and sign this declaration to confirm that you are not disqualified.

If one of the disqualification reasons does apply, you may be able to [apply for a waiver from the Charity Commission](#)⁴ which will allow you to act as a trustee.

Pass a copy of the completed declaration to the trustees for the charity's records (the declaration should not be sent to the Charity Commission).

Declaration

I declare that:

- I am not disqualified from acting as a trustee; and
- I will inform the trustees promptly if, after the date of this declaration, one or more of the disqualification reasons applies to me.

Full Name:

Signature: _____ Date: _____

Charity Name and Number:

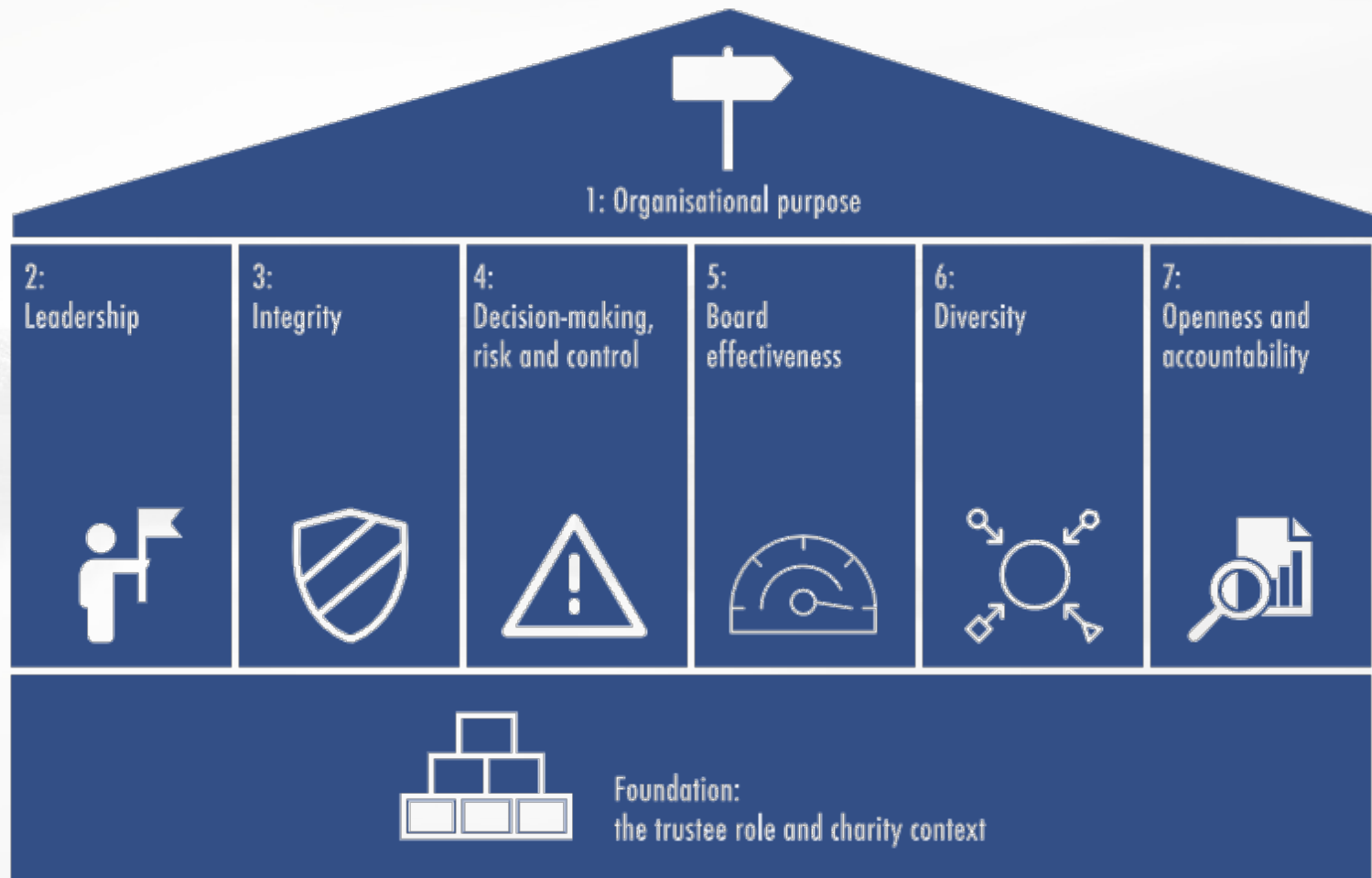
¹ <https://www.gov.uk/government/publications/confirmation-of-charity-trustee-eligibility>
² <https://www.gov.uk/guidance/automatic-disqualification-rules-for-charity-trustees-and-charity-senior-positions>
³ <https://www.gov.uk/guidance/automatic-disqualification-rules-for-charity-trustees-and-charity-senior-positions#apply-waiver>



- ☐ Ask Trustees / Senior managers to complete a declaration form
- ☐ Search the Insolvency Register
- ☐ Search the disqualified directors Register
- ☐ Search the register of persons removed as a charity trustee
- ☐ Ask Google?

- ☒ Ask the individual to apply for a Waiver?
- ☒ Remove the individual as a Trustee / Senior Manager

Code of Governance



Source: <https://www.charitygovernancecode.org/en/front-page>

A Governance Reminder



The Garden Bridge Trust and decision making:

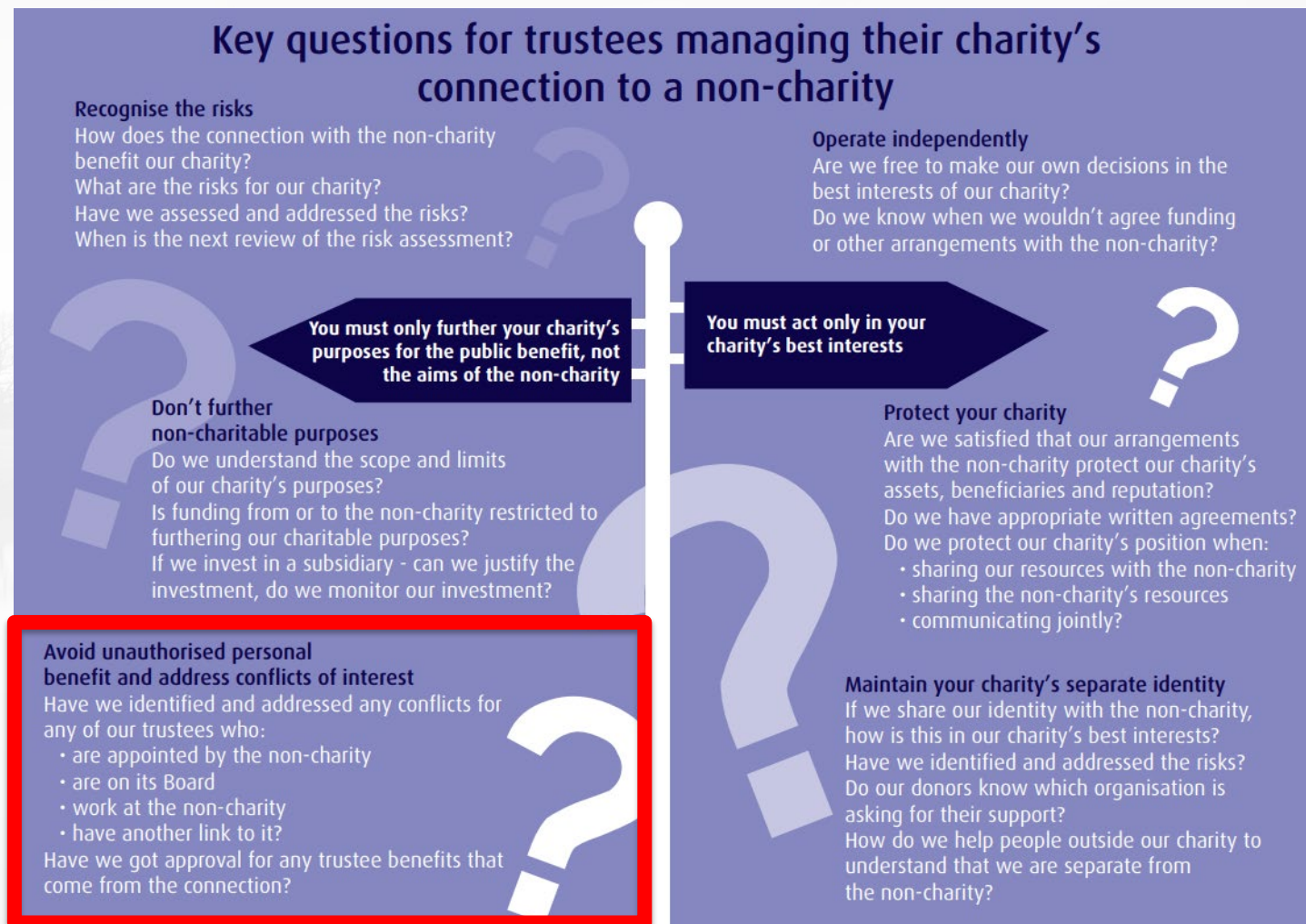
- Power to make decisions
- Follow principles of decision making
- Range of decisions a reasonable body of Trustees could have made

Code of Ethics



Source: https://www.ncvo.org.uk/images/documents/policy_and_research/ethics/Charity-Ethical-Principles.pdf

Working with non-charities, relevance?



Source: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/790809/connection_to_non-charity_A4.pdf

Refusal of gifts



Do you have a policy in place?

What's coming next?

- Continued implementation of the Charity Commission's strategy
- Mergers & Collaborations
- Law Commission Charities Bill?
- Charity Tribunal referral on investment duties?
- Consultation on fee charging by the Charity Commission?
- 5th Money Laundering Directive?



Questions?





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