

NB The following is a summary of general principles and is not advice in any particular case. (revised 24/11/16)

“trustees” and “charity trustees”

- 1 It is not always apparent to trustees (or perhaps even to the Charity Commission!) that these terms are not synonymous. The requirements of the charities legislation, with which charities’ trustees must comply, apply to their “charity trustees”. Section 177 of the Charities Act 2011 defines charity trustees as “the persons having the general control and management of the administration of a charity”. In *Cifci v Erbil* [2012] EWHC 3170 (Ch), the judge raised, but did not need to answer, the question whether those in de facto control of a charity have ostensible authority to act for it, which, if answered in the affirmative, would make them charity trustees.
- 2 Until the definitions are clarified by the courts, I work in the basis that it can be assumed, for example, that:
 - (a) the committee members and officers of a typical unincorporated body which is a charity are charity trustees;
 - (b) members of a committee, which is no more than a consultative body, are not charity trustees;
 - (c) employed managers, to whom the general control and management of the administration of the charity is delegated, would be charity trustees, which would raise further interesting questions about remuneration under ss 186, 187 of the CA 2011;
 - (d) if the only body which can appoint and remove such managers is a general meeting of the members, it might be argued that all the members are charity trustees;
 - (e) trustees who are merely custodians of the charity’s investments and property and are accountable to the charity for them would not be charity trustees;
 - (f) trustees who are not merely custodians, but who manage the investments and the property and decide how the income is to be applied, would be charity trustees; and
 - (g) trustees who are in (f) above, except that they play no part in decision how the money is applied, are probably (or at least arguably) not charity trustees.
- 3 One area in which the difference can be important is investment. The Charities Act 2011 is silent on the general duties of trustees in relation to investments and the duty to take advice, which are governed by the Trustee Act 2000. The 2000 Act applies to trustees in normal sense of the word, which can but does not necessarily include charity trustees.

END

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