

- member of multi-agency panels, but may be invited on a specific occasion if our role and remit is recognised as important in a particular case.

28. Under the Act, charity trustees are responsible for their charities, and are defined as those who have “the general control and management of the administration of the charity” (section 177 of the Act). Charity law strikes a careful balance between the role and duties of charity trustees and the role and duties of the Commission as regulator of charities in England and Wales. For example, the Commission is generally not authorised to exercise functions corresponding to those of a charity trustee in relation to a charity, or otherwise to be directly involved in the administration of a charity (section 20(2) of the Act). Under the common law, the Commission’s role in reviewing charity decision-making mirrors that of the High Court – it will not generally intervene unless a decision is outside the range of reasonable decisions that a body of trustees can take. In these limited circumstances, if charity trustees take an improper decision, the Commission would have power to intervene, on the basis that this is potentially a breach of trust (common law) and misconduct/mismanagement (under the Act). If the Commission needed to intervene it would usually do so by opening a statutory inquiry under the Act and by considering using its protective and remedial powers, which enable the Commission to address misconduct/mismanagement in the administration of a charity and also take action to protect charitable assets.
29. The duties of charities, and their charity trustees, include both common law and statutory obligations. The statutory obligations include the duty to apply to the Commission to register a charity where it meets the legal thresholds, and to prepare and file annual returns, accounts and reports with the Commission if the charity meets the financial thresholds. Those charities that are companies will have additional responsibilities under company law. Charity trustees also have fiduciary duties to their charities under common law, which include acting exclusively in the charity’s best interests and managing its assets and resources prudently, which includes to avoid exposing the charity’s assets, beneficiaries or reputation to undue risk.
30. What this means in practice, as described in our guidance to trustees, is that trustees of all charities must protect people who come into contact with the charity and its work, including staff and volunteers as well as charities that work particularly with groups such as adults at risk or children. Trustees have a duty of care to the charity which will include taking the necessary steps to safeguard and take responsibility for its people including children and adults at risk. They must always act in their best interests and ensure they take all reasonable steps to prevent any harm to them. Trustees also have duties to manage risk and to protect the reputation and assets of the charity. Failure by trustees to safeguard those in their care or failure to manage risks adequately would be a regulatory concern to the Commission and we may regard it as misconduct or mismanagement in the administration of a charity, which is a ground for exercising our protective and remedial powers under the Act.
31. In the context of safeguarding issues, the Commission therefore has an important but specific role, focused on the conduct of the trustees and the steps they take to protect the charity, its beneficiaries now and in the future, and other persons who come into contact with the charity. Our role includes making sure that charities have adequate systems in