



FIT AND PROPER TRUSTEE & DECLARATION POLICY

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- 1 *Fit and Proper Trustee Declaration (to be completed by all trustees)*

1 INTRODUCTION

This policy exists to ensure that no trustee or prospective trustees of Tain and North Highland YMCA SCIO referred to as Tain YMCA for the purpose of this document is legally disqualified from serving as a charity trustee. The policy exists to inform trustees and prospective trustees of Tain YMCA with the requirements of the Charities and Trustee Investment (Scotland) Act 2005.

The policy applies solely to trustees of Tain YMCA and any other persons having general control and management over the running of the charity or the application of its assets as agreed by the Board of Directors¹.

Trustees of Tain YMCA are required to read this policy and sign the declaration provided as an appendix to this policy. Tain YMCA will keep the signed declaration on file for reference, as appropriate, should it be required by any statutory agency, e.g. Office of the Scottish Charity Regulator (OSCR), HM Revenue & Customs (HMRC), Police Scotland, etc.

2 WHY IS THERE A 'FIT AND PROPER PERSON' TEST?

The 'fit and proper person' test is a statutory requirement. The test requires that individuals who are 'managers' (trustees) of the charity are 'fit and proper persons' to be managers of Tain YMCA. It exists to ensure that charities such as Tain YMCA, entitled to charity tax reliefs, are not managed or controlled by individuals who might misuse the tax reliefs the organisation receives. Unfortunately fraudsters have been known to exploit charity tax reliefs so the fit and proper persons test exists to help prevent that. Tain YMCA asks that trustees and prospective charity trustees declare that they are not disqualified from serving as charity trustees because **anyone who acts as a charity trustee while disqualified is guilty of an offence punishable by imprisonment, or a fine, or both.**

3 WHAT DOES FIT AND PROPER MEAN?

An individual is 'a fit and proper person' and suitable trustee if they ensure, or are likely to ensure, that charity funds and tax reliefs are used only for charitable purposes.

In signing the declaration trustees are confirming that they will ensure that funds are used for charitable purposes and also disclosing certain information about their past that may impact on whether or not they are indeed 'a fit and proper person'.

When a charity notifies HMRC of certain new trustees, HMRC cross-checks that person's details against any information it has and will raise any concerns it has if there is anything to indicate the person may misuse the charity funds and tax reliefs. Factors that may lead to HMRC deciding that an individual manager is not a fit and proper person include where:

¹ In a larger charity a manager for the purposes of the fit and proper persons test would include all trustees or directors of a corporate charity but may also extend to certain employees who are able to determine how a significant proportion of the charity's funds are spent. For example, most large charities have a Board of Trustees and an Executive Board of senior employees. In such a case the trustees and members of the Executive Board would be managers of the charity.

- the individual has been involved in tax fraud or other fraudulent behavior including misrepresentation and/or identity theft
- for whom HMRC have knowledge of involvement in attacks against, or abuse or, tax repayment system
- the individual has used a tax avoidance scheme featuring charitable reliefs or using a charity to facilitate the avoidance
- the individual has been involved in designing and /or promoting tax avoidance schemes
- the individual has been barred from acting as a charity trustee by a charity regulator or Court, or has been disqualified from acting as a company director.

However, just because a person has been, say, barred from acting as a charity trustee or one of the other points above applies, it does not always follow that the charity will not be eligible for tax reliefs. When considering the application of the fit and proper persons test to particular trustees, HMRC will take account of the likely impact on the charity's tax position. For example any person who has no dealings with HMRC and no control over spending charity funds, even if the person is not a fit and proper person, is unlikely to affect the charity's eligibility to tax reliefs.

3 WHO WOULD BE DISQUALIFIED?

Sections 69 and 70 the Charities and Trustee Investment (Scotland) Act 2005 set out the circumstances that would disqualify an individual. In general terms if a person has been convicted of an offence involving dishonesty, or of an offence under the Act, or is an undischarged bankrupt, they may not serve as a charity trustee. Nor may they do so if they have been removed from serving as a charity trustee, or from acting in a management position within a charity, under previous charity law; nor if they have been disqualified from serving as a Company Director. A person is not disqualified if their conviction is spent by virtue of the Rehabilitation of Offenders Act 1974. If you are uncertain whether or not you are disqualified, you are required to discuss this with the Chairman.

4 WHAT ARE THE STATUTORY DUTIES AND RESPONSIBILITIES OF THE TRUSTEE?

Tain YMCA considers it of great importance that charity trustees are made aware of the duties and responsibilities of their position at the outset. Section 66 of the Charities and Trustee Investment (Scotland) Act 2005 sets out the general duties of charity trustees, who must:

- ☐ act in the interests of the charity, putting its interests before their own interests or those of any other person or organisation
- ☐ seek, in good faith, to ensure that the charity operates in a manner that is consistent with its objects or purposes
- ☐ act with the care and diligence that is reasonable to expect of a person who is managing the affairs of another person
- ☐ ensure that the charity complies with the provisions of the Act.

Any breach of these duties will be treated as misconduct in the administration of the charity.

6 WHAT DO I NEED TO DO?

All trustees and prospective trustees are required to complete the attached declaration form to confirm that they are not disqualified from acting as charity trustees.

We ask for the date of birth of each trustee for two reasons. We need to ensure that each trustee is over the age of 16 as those under the age of 16 do not as a general rule have the legal capacity to enter into the transactions associated with being a charity trustee.

We also need to be able to distinguish between trustees who have the same name and address. **Providing us with information which you know or suspect to be false may be a criminal offence under section 26 of the Charities and Trustee Investment (Scotland) Act 2005.**

If you are confident you are a 'fit and proper trustee' and will do your best to ensure that charity funds and tax reliefs are used only for charitable purposes and do not need to disclose any information listed on the declaration then you should complete and sign the attached declaration and submit it in a sealed envelope to Tain YMCA.

If you are confident you will do your best to ensure that charity funds and tax reliefs are used only for charitable purposes but you do need to disclose any information listed on the declaration then you should sign the declaration suitably amended - for example by crossing out the relevant bullet point - and provide details in the final box before you submit the declaration to Tain YMCA. Tain YMCA Executive team will then need to decide what to do.

If neither of the above applies you should not sign the declaration.

7 WHAT HAPPENS NEXT?

Tain YMCA will keep the declaration and share this information, where required, with OSCR, HMRC and Police Scotland who will, in certain cases carry out random spot checks of this information against various databases (for example, those of Companies House and the Accountant in Bankruptcy's Register of Insolvencies) to satisfy themselves that Tain YMCA's trustees are not disqualified from acting as charity trustees.

Responsibility for Policy –

Operational Practice: Senior Youth and Community Worker

Executive Responsibility: Board of Management of the Tain and North Highland YMCA

ACCEPTED AS FIT AND PROPER TRUSTEE & DECLARATION POLICY BY THE BOARD OF MANAGEMENT AT ITS MEETING ON

SIGNED _____ Chairman of the Board

SIGNED _____ Senior Youth and Community Worker

This policy will be reviewed at 18 month intervals.

Appendix 1



'FIT AND PROPER TRUSTEE' DECLARATION

Name of Organisation in full:	Tain and North Highland YMCA SCIO
Name of individual:	
Role in the organization:	

I, the undersigned, declare that: (PLEASE TICK)

- ☐ I am willing to act as a charity trustee in respect of the above named organisation and am fully aware of the organisation's purposes as set out in its constitution and of my duties and responsibilities as a charity trustee of the organisation.
- ☐ I am not disqualified from acting as a charity trustee (see sections 69 and 70 of the Charities and Trustee Investment (Scotland) Act 2005
- ☐ I have not been convicted of an offence involving deception or dishonesty (or any such conviction is legally regarded as spent)
- ☐ I have not been involved in tax fraud or other fraudulent behavior including misrepresentation and/or identity theft
- ☐ I have not used a tax avoidance scheme featuring charitable reliefs or using a charity to facilitate the avoidance
- ☐ I have not been involved in designing and /or promoting tax avoidance schemes
- ☐ I am not undischarged bankrupt
- ☐ I have not made compositions or arrangements with my creditors from which I have not been discharged
- ☐ I have not been previously been removed from serving as a charity trustee, or been stopped from acting in a management position within a charity
- ☐ I have not been disqualified from serving as a Company Director
- ☐ I will at all times seek to ensure the charity's funds, and charity tax reliefs received by this organisation, are used only for charitable purposes

Title:	
Name in full:	
Previous names known by:	
Address :	
Postcode:	
Previous address if moved in past 12 months:	
Date of birth:	
Occupation:	
NI Number:	
National Identity Card Number (if you have one):	

☐ If you have signed this declaration but want to make any information known or clarify any points please add them on separate sheet and tick box

Name (print):	
Signature:	
Date:	

Please return completed declaration in a sealed envelope to Tain AND North Highland YMCA SCIO