

**Borders Youth Theatre  
Trustee Remuneration Guidelines  
Draft**



These Guidelines are intended to summarise conditions under which a BYT Trustee may be paid for services provided to BYT either in the capacity as a Trustee or under a contract of employment. (Out of pocket expenses incurred in carrying out the duties of a Trustee shall not be considered remuneration.)

The full conditions are set under section 67 of the Charities and Trustee Investment (Scotland) Act 2005 (the 2005 Act) and in Section 5 of O.S.C.R. publication *Guidance for Charity Trustees*, appropriate parts of which are attached as Appendices A and B respectively.

- 1 The BYT Trustees (also referred to as the Management Committee) must at all times act in the interests of Borders Youth Theatre. Any remuneration to a Trustee or a person 'connected' to a Trustee - payment or benefit in kind - must at all times be in the interests of Borders Youth Theatre.
- 2 A BYT Trustee or a person 'connected' to a BYT Trustee shall not receive payment or benefit in kind unless the following conditions are met:  
(in this context, 'connected' includes immediate family and domestic partners and companies or partnerships with which the Trustee is connected)
  - there is a written agreement between BYT and the provider which specifies a maximum amount of remuneration which is reasonable.
  - the Trustees are satisfied that it is in the interests of BYT that these services are provided by that provider
  - that at any time, the number of Trustees receiving remuneration under a written agreement is always less than half of the total number of Trustees
- 3 To support this, the Trustees shall
  - maintain a register of interests of Trustees
  - ensure that there is a written agreement specifying the services to be provided and indicating the maximum sum to be paid
  - ensure that the best interests of BYT are served by any written remuneration and that such agreement is recorded in relevant minutes

**Notes**

Some remuneration will relate to occasional or unplanned services - for example, covering an activity for an absent worker or to a short project. It

Other remuneration will relate to the provision of larger or longer services. In these circumstances, BYT Trustees will ensure that suitable providers are sought widely perhaps through a widely advertised selection process or by seeking competitive tenders

## Appendix A

*Charities and Trustee Investment (Scotland) Act 2005 (asp 10) 39*

*Part 1—Charities*

*Chapter 9—Charity trustees*

*Remuneration*

### **67 Remuneration for services**

(1) A charity trustee may not be remunerated for services provided to the charity (including services provided in the capacity as a charity trustee or under a contract of employment) unless subsection (2) entitles the trustee to be so remunerated.

(2) Where a charity trustee of a charity—

(a) provides services to or on behalf of the charity, or

(b) might benefit from any remuneration for the provision of such services by a person with whom the trustee is connected,

the person providing the services (the "service provider") is entitled to be remunerated from the charity's funds for doing so only if the conditions set out in subsection (3) are met.

(3) Those conditions are—

(a) that the maximum amount of the remuneration—

(i) is set out in a written agreement between the service provider and the charity (or, as the case may be, its charity trustees) under which the service provider is to provide the services in question, and

(ii) is reasonable in the circumstances,

(b) that, before entering into the agreement, the charity trustees were satisfied that it would be in the interests of the charity for those services to be provided by the service provider for that maximum amount,

(c) that, immediately after entering into the agreement, less than half of the total number of charity trustees of the charity fall within subsection (4), and

(d) that the charity's constitution does not contain any provision which expressly prohibits the service provider from receiving the remuneration.

(4) A charity trustee falls within this subsection if the trustee is—

(a) party (in the capacity of a service provider) to a written agreement of the type described in subsection (3)(a)(i) under which any obligation is still to be fully discharged,

(b) entitled to receive remuneration from the charity's funds otherwise than by virtue of such an agreement, or

(c) connected with any other charity trustee who falls within sub-paragraph (a) or (b).

(5) Nothing in subsections (1) or (2) prevents a charity trustee or other service provider from receiving any remuneration from a charity's funds which that service provider is entitled to receive by virtue of—

(a) any authorising provision of the charity's constitution which was in force on 15 November 2004,

(b) an order made by the Court of Session, or

(c) any enactment.

(6) For the purposes of subsection (5)(a), an "authorising provision" is a provision which refers specifically to the payment of remuneration—

(a) to the service provider concerned,

(b) where that service provider is a charity trustee, to a charity trustee, or

(c) where that service provider is connected to a charity trustee, to any person so connected.

(7) Where a charity trustee or other service provider is remunerated in contravention of this section, the charity may recover the amount of remuneration; and proceedings for its recovery must be taken if OSCR so directs.

## **68 Remuneration: supplementary**

(1) In section 67—

“benefit” means any direct or indirect benefit,

“maximum amount”, in relation to remuneration, means the maximum amount of the remuneration whether specified in or ascertainable under the terms of the agreement in question,

“remuneration” includes any benefit in kind (and “remunerated” is to be construed accordingly),

“services” includes goods that are supplied in connection with the provision of services.

(2) For the purposes of that section, the following persons are “connected” with a charity trustee—

(a) any person—

(i) to whom the trustee is married,

(ii) who is the civil partner of the trustee, or

(iii) with whom the trustee is living as husband and wife or, where the trustee and the other person are of the same sex, in an equivalent relationship,

(b) any child, parent, grandchild, grandparent, brother or sister of the trustee (and any spouse of any such person),

(c) any institution which is controlled (whether directly or through one or more nominees) by—

(i) the charity trustee,

(ii) any person with whom the charity trustee is connected by virtue of paragraph (a), (b), (d) or (e), or

(iii) two or more persons falling within sub-paragraph (i) or (ii), when taken together,

(d) a body corporate in which—

(i) the charity trustee has a substantial interest,

(ii) any person with whom the charity trustee is connected by virtue of paragraph (a), (b), (c) or (e) has a substantial interest, or

(iii) two or more persons falling within sub-paragraph (i) or (ii), when taken together, have a substantial interest,

(e) a Scottish partnership in which one or more of the partners is—

(i) the charity trustee, or

(ii) a person with whom the charity trustee is, by virtue of paragraph (a) or (b), connected.

(3) For the purposes of subsection (2) a person who is—

(a) another person’s stepchild, or

(b) brought up or treated by another person as if the person were a child of the other person,

is to be treated as that other person’s child.

(4) Section 105 sets out when a person is to be treated as being in control of an institution or as having a substantial interest in a body corporate.

## **Appendix B**

### **Office of the Scottish Charity Regulator : Guidance for Charity Trustees**

#### **Section 5 Charity trustee remuneration**

*Because charity trustees must act in the interests of the charity, any personal benefit to a charity trustee, whether direct or indirect, has to be treated with some caution. Sections 67-68 of the Act deal with one particular aspect of this – the remuneration of charity trustees.*

*Section 67 specifies that a charity trustee **must not** be remunerated from charity assets **unless** certain conditions set out in the Act are met.*

##### **5.1 What is remuneration?**

*Remuneration in this context would include payment or benefit in kind:*

- *for being a charity trustee*
- *under a contract of employment*
- *for other services to or on behalf of the charity*

*This may include payment made either to a charity trustee personally or to a person with whom the charity trustee is connected. Section 68(2) defines the persons who are "connected" with the charity trustee. These include:*

- *immediate family and domestic partners*
- *a company in which the charity trustee or persons connected with them may have a substantial interest, or*
- *a Scottish partnership in which the charity trustee or a person with whom the trustee is connected is a partner*

*Out-of-pocket expenses paid to charity trustees, for instance travel expenses to attend meetings, would not be considered remuneration.*

##### **5.2 Conditions for remuneration**

*The specific conditions under the Act that would allow charity trustees to receive remuneration are:*

- *the maximum amount of the payment is set out in a written agreement*
- *the maximum amount is reasonable in the circumstances*
- *it is in the interests of the charity for the services to be provided by the charity trustee for that amount (this must be agreed before the agreement is entered into)*
- *after the agreement is entered into, only a minority of the charity trustees receive remuneration*
- *the charity's constitution or governing document does not expressly rule it out*

*What is "reasonable remuneration" has to be considered with a view to all the circumstances, but there are often professional associations that will provide guidance for charity trustees. Consulting such an association would be one way in which the trustees could satisfy themselves that an amount of remuneration was reasonable. Another way would be to obtain at least two separate quotes for the service to be given by the charity trustee.*

*Charities that had trustees receiving remuneration when the Act came into force in April 2006 and are not exempt from the conditions regarding remuneration (see 5.3 below), must review these arrangements. They will have to consider if it is in the charity's interest for them to receive that benefit and whether the amount is reasonable. A clear minute should be made of the decision reached.*

*If it is agreed that the payments are in the interests of the charity and the amount is reasonable then, as long as the majority of trustees remain unpaid, a written agreement will need to be drawn up setting out the maximum amount to be paid.*

### **5.3 Exemptions from the conditions for remuneration**

*The Act states that the above conditions regarding charity trustee remuneration do not apply if:*

- *there is a specific provision in the constitution or governing document authorising remuneration to trustees that was in force on 15 November 2004 (the day the Charities and Trustee Investment (Scotland) Bill was introduced into the Scottish Parliament)*
- *there is legislation or an order is made by the Court of Session that allows charity trustees to receive remuneration*

*However, it must be remembered that charity trustees are still bound by their general duty to act in the interests of the charity. If the remuneration appears to be excessive, or the majority of the charity's trustees appear to benefit, there may be a breach of duty. This would constitute misconduct.*

*The date of 15 November 2004 is only relevant if the constitution or governing document specifically permits the payment of remuneration. If the constitution is silent, or only has a general empowerment provision, then the conditions set out in section 5.2 for the remuneration of charity trustees apply.*

### **5.4 Examples of remuneration**

*The examples given below, of where charity trustees may or may not receive remuneration should not be seen as definitive. They are given for illustrative purposes only.*

*Where all the conditions for remuneration are fulfilled (see 5.2) or charities are exempt from these*

*conditions (see 5.3) then some examples where charity trustees may receive remuneration are:*

- *when a local tradesman is a charity trustee and provides services to the charity*
- *when employees of the charity are members of a board either because of their position, e.g. chief executive, or because they are elected, e.g. as staff representative*
- *when a local solicitor or accountant is a charity trustee, and the solicitor's or accountant's firm provides services to the charity at an agreed price.*

*Some examples where charity trustees should not receive remuneration include:*

- *when all, or the majority of, the employees of the charity are closely related to the charity trustees (i.e. they are "connected persons" under section 68 (2))*
- *when a company or firm owned or controlled by a charity trustee or their relatives charges the charity excessive amounts for services*