

University of St Andrews

University Court

**CHARITY TRUSTEE DECLARATION**

The Charities and Trustee Investment (Scotland) Act 2005 provides that certain individuals are disqualified from acting as charity trustees. Those who are elected, nominated or appointed as members to the University Court are regarded as ‘charity trustees’ under the scope of the Act. University Court members should therefore confirm their eligibility to serve in that capacity by signing the declaration below. The notes overleaf explain the responsibilities of charity trustees and the categories of individual who are disqualified. It should be noted that anyone who acts as a charity trustee whilst disqualified is guilty of an offence that may be punishable by imprisonment, or a fine, or both.

The University of St Andrews has prepared further guidance regarding the provisions of the Act, which can be found in the Court Members’ Handbook (Section 3.6), available at this [link](#). It is recommended that you read this section of the Handbook prior to signing this declaration so that you are fully aware of the duties and responsibilities of being a charity trustee.

I, the undersigned, declare that:

- I am willing to act as a charity trustee by serving as a University of St Andrews Court member.
- I am not disqualified from acting as a charity trustee (see sections 69 and 70 of the Charities and Trustee Investment (Scotland) Act 2005).

**Name** (block capitals): .....

**Signature:** .....

**Date:** .....

## DUTIES AND RESPONSIBILITIES OF CHARITY TRUSTEES

Charity trustees should be made aware of the duties and responsibilities of their position at the outset of their appointment. 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.

You should note that any breach of these duties may be treated as misconduct in the administration of the charity.

## CATEGORIES OF DISQUALIFIED INDIVIDUAL

Sections 69 and 70 of 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, further information may be obtained from the Office of the Scottish Charity Regulator (OSCR) at the following web site [www.oscr.org.uk](http://www.oscr.org.uk). OSCR may, on application from the person disqualified, issue a waiver, which may either lift the disqualification generally, or specifically in relation to a particular charity or type of charity. The specific provisions of the Act are as follows:

### Section 69 - Disqualification from being charity trustee

(1) The persons specified in subsection (2) are disqualified from being charity trustees.

(2) Those persons are any person who—

- (a) has been convicted of—
  - (i) an offence involving dishonesty,
  - (ii) an offence under this Act,
- (b) is an undischarged bankrupt,
- (c) has been removed, under section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40) or section 34 of this Act, from being concerned in the management or control of any body,

- (d) has been removed from the office of charity trustee or trustee for a charity by an order made—
    - (i) by the Charity Commissioners for England and Wales under section 18(2)(i) of the Charities Act 1993 (c. 10), section 20(1A)(i) of the Charities Act 1960 (c. 58) or section 20(1) of that Act (as in force before the commencement of section 8 of the Charities Act 1992 (c. 41)), or
    - (ii) by Her Majesty’s High Court of Justice in England, on the grounds of any misconduct in the administration of the charity for which the person was responsible or to which the person was privy, or which the person’s conduct contributed to or facilitated,
  - (e) is subject to a disqualification order or disqualification undertaking under the Company Directors Disqualification Act 1986 (c. 46) or the Company Directors Disqualification (Northern Ireland) Order 2002 (S.I.2002/3150).
- (3) A person referred to in subsection (2)(a) is not disqualified under subsection (1) if the conviction is spent by virtue of the Rehabilitation of Offenders Act 1974 (c. 53).
- (4) OSCR may, on the application of a person disqualified under subsection (1), waive the disqualification either generally or in relation to a particular charity or type of charity.
- (5) OSCR must notify a waiver under subsection (4) to the person concerned.
- (6) OSCR must not grant a waiver under subsection (4) if to do so would prejudice the operation of the Company Directors Disqualification Act 1986 (c. 46) or the Company Directors Disqualification (Northern Ireland) Order 2002 (S.I.2002/3150).

**Section 70 - Disqualification: supplementary**

- (3) In section 69(2) (b), “undischarged bankrupt” means a person—
- (a) whose estate has been sequestrated, who has been adjudged bankrupt or who has granted a trust deed for or entered into an arrangement with creditors, and
  - (b) who has not been discharged under or by virtue of—
    - (i) section 54 or 75(4) of the Bankruptcy (Scotland) Act 1985 (c. 66),
    - (ii) an order under paragraph 11 of Schedule 4 to that Act,
    - (iii) section 279 or 280 of the Insolvency Act 1986 (c. 45), or
    - (iv) any other enactment or rule of law subsisting at the time of the person’s discharge.