

HMRC Fit and proper persons helpsheet

Who is this helpsheet for?

This helpsheet and the model declaration are for use by 'managers' of a charity, Community Amateur Sports Club (CASC) or other organisation entitled to UK charity tax reliefs. The term 'managers' applies to the trustees of charities, directors of corporate charities, directors of corporate trustees, CASC officials and any other persons having general control and management over the running of the charity or the application of its assets. For example:

- In a typical small local charity a manager for the purposes of the fit and proper persons test could include the Chairperson, Treasurer, Secretary and the rest of the management committee who would have control over expenditure.
- 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.

If you are a 'manager' of a charity you should read this helpsheet and, if appropriate, sign a declaration based on the model below. You can use the model declaration below or copy the wording onto your own stationery. The charity, CASC or other organisation entitled to charity tax reliefs should keep the signed declaration in case HM Revenue & Customs (HMRC) ask to see it. The signed form should not be sent to HMRC unless HMRC asks to see it.

Why is there a 'fit and proper persons' test?

The 'fit and proper persons' test is a statutory requirement. The test requires that individuals who are 'managers' of the charity, CASC or other organisation are 'fit and proper persons' to be managers of such a body. It exists to ensure that charities, CASCs and other organisations 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.

What does 'fit and proper' mean?

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

In signing a declaration like the one below you are confirming that you will ensure that funds are used for charitable purposes and also disclosing certain information about your past that may impact on whether or not you are indeed 'a fit and proper person'. When a charity notifies HMRC of certain new managers, 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:

- the individual has been involved in tax fraud or other fraudulent behaviour including misrepresentation and/or identity theft
- HMRC has knowledge of the individual's involvement in attacks against, or abuse of, tax repayment systems
- 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 managers, 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.

What do I need to do?

- If you are confident you 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 sign a declaration and give it to the charity.
- 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 give the declaration to the charity. The charity will then need to decide what to do.

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

I've signed the declaration so what happens next?

The charity will keep the declaration and in certain cases pass your details to HMRC. If HMRC have any concerns about you they will contact you to clarify the situation.