

**Question (1)** Can the BPS pay recompense to its members for elected, governance roles?

**Answer (1)** Generally speaking, no.

Subject to specific exceptions, Trustees cannot be paid for acting as Trustees.

Members undertaking governance roles in Divisions within the BPS do so on an unpaid basis because, subject to the aforesaid exceptions, trustees fulfilling governance roles at the highest level within the BPS above those members are unable to charge for doing so.

**Legal Detail (1)** Trustees

The Royal Charter of the BPS (Clause paragraph 13) provides for the President and Honorary General Secretary to receive payment “*to compensate them for the sum or sums of money lost from employment or deducted from their earnings by their employers in respect of time spent on the conduct of the business of the Society...*”

Via the Privy Council, the Charity Commission has provided a restricted interpretation of what this means in an email dated 21 October 2016 (10:37), stating: “*We would advise that where a governing document contains a prohibition (in this case preventing all trustees save the president and Honorary General Secretary from receiving remuneration) then a change to this provision (say to provide remuneration beyond reimbursement of salary lost or to extend benefits to other trustees) would require an application for a Scheme.*”

Any proposal to pay either of these officers outside of those terms or to pay any of the other Trustees for acting in that role would require specific approval from the Charity Commission, which will only provide authority where payment for serving as a Trustee would be clearly in the interests of the charity and provide a significant and clear advantage over all other options. The Commission will normally only provide this approval where the charity’s complexity of operation has led to an unusually high burden of Trusteeship and the Trustee Board should show why the charity will not be as effective without payment.

Non-trustee members

The Royal Charter makes clear that the governance of the BPS by the trustees is, with the exception of the President and the Honorary General Secretary, undertaken on a voluntary, unpaid, basis. Within the BPS there are various Divisions which are run by members and which exist to further members’ professional interests, focussing on training and practice. It would run counter to the ethos enshrined in the Royal Charter if members exercising a governance function within Divisions of the BPS were able to be paid for exercising that role, when those charged with governance of the entire organisation – including those Divisions – are prevented from doing so.

**Comment (1)** Unpaid governance has always been a distinctive feature of charitable activity and greatly enhances public confidence and trust in charities. There is a general expectation that charity assets should be used directly for the purposes of the charity. As a consequence, any departure from this position is only likely to occur in exceptional circumstances, and needs to be fully justified by Trustee Boards as being clearly in the interests of their charity. (Section 5.2 “Trustee Expenses and Payments” CC11 Guidance of the Charity Commission).

**Question (1a) Payment for services?**

**Answer (1a) Trustees**

It is possible for a minority of Trustees to receive remuneration for services they provide to the BPS in accordance with Section 185 of The Charities Act 2011.

**Non-trustee members**

See Question 2 below.

**Legal Detail (1a) Trustees**

It would be possible for Trustees of the BPS to receive remuneration for (non-Trustee) services<sup>1</sup> that they provide to the BPS if four conditions are met:

- The amount or maximum amount of the remuneration is set out in a written Agreement between the charity and the Trustee and does not exceed what is reasonable in the circumstances.
- Before entering that Agreement, the Trustees decided they were satisfied that it would be in the best interests of the charity for the services to be provided by the relevant Trustee.
- The total number of Trustees benefitting in this way constitute a minority of the persons on the Board.
- The trusts of the charity do not contain any express provision that prohibits the Trustee from receiving remuneration.

**Non-trustee members**

See Question 2 below.

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**Question (2) Can the BPS pay members for services provided?**

**Answer (2)** The BPS can pay members for required services<sup>2</sup> which are rendered.

**Legal Detail (2)** Again, paragraph 13 of the Royal Charter of the BPS provides: “*Nothing herein contained shall prevent the payment in good faith of reasonable and proper remuneration to any officers or servants of the Society or to any Member of the Society, for any services actually rendered to the Society...*”

There are a large number of Divisions and member groups within the BPS which require governance, but in charities a fundamental distinction is made between those who exercise strategic oversight and scrutiny (most commonly, charity Trustees) which is undertaken as a rule on a voluntary basis, and those who perform an executive function, which is commonly a paid role.

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<sup>1</sup> Charity Commission guidance CC11 explains that a charity can pay a trustee for the supply of any services over and above normal trustee duties [i.e. governance] (see section 4.1) e.g. delivery of a lecture, a piece of research work.

<sup>2</sup> which do not include a governance function: see footnote 1

In the context of the BPS where only the President and the Honorary General Secretary are permitted (within strict confines) under the terms of the Royal Charter to receive any remuneration for acting as Trustees and otherwise a specific case would have to be made to the Charity Commission for them or for any other trustees to receive payment for exercising this role, this distinction holds good and militates against payment to members for discharging any governance role, and which should be performed on a voluntary basis.

Otherwise, a situation could arise where Members are paid by their employer (or by themselves) for doing their normal, executive, day job, whether in academia or in practice, but then receive payment for exercising a governance role in the work of a division which is there to serve them and their fellow professionals in their day role. In those circumstances there would be a blurring of the boundaries between 1) strategic & governance roles and 2) executive roles, which is anathema to charities.

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**Question (3) Can the BPS employ members to do roles that they are currently doing?**

**Answer (3)** Governance roles should be unpaid, following the principle that unpaid governance has always been a distinctive feature of charitable activity and greatly enhances public confidence and trust in charities.

It is possible for members to be engaged on a paid basis to deal with non-governance work (see below).

**Legal Detail (3)** See 2 above. As there is a general expectation that charity assets should be used directly for the purposes of the charity, regarding non-governance roles it would seem logical for the BPS first to ascertain whether existing employees could undertake the required role and if not then to consider retaining members on a contractual, self-employed basis, always following any required competitive selection and then only for a defined project over a short timescale.

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**Question (4) Can members of the BPS be seconded to BPS from their employer?**

**Answer (4)** Within the Royal Charter there is no specific provision for members' employers to be reimbursed by the BPS for their employee's time in being seconded to it. There is only reference to "*remuneration...to any member of the Society [our emphasis] for any services actually rendered to the Society.*"

This does not mean it would not be possible for the BPS to enter such an arrangement where the trustees considered it would advance the BPS's objects and is not a governance role, but any such secondment would be exceptional, where the conditions outlined below applied.

**Legal Detail (4)** Presumably such an arrangement would require the BPS to pay an employer both salary and on costs for the work done by their employee for the benefit of the BPS. Such an arrangement should only be considered where the required work cannot be undertaken by someone already under contract to the BPS and therefore who is accountable to it (i.e. as an employee of the BPS or as a self-employed contractor) or the work cannot be undertaken on a voluntary basis.

**CONSOLIDATED LEGAL ADVICE TO THE TRUSTEES OF THE BRITISH PSYCHOLOGICAL SOCIETY (THE "BPS") ON THE QUESTION OF REMUNERATION**

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Also, the BPS should be mindful of CC11 guidance section 7, which makes clear that the Commission focuses on the value of the work to the charity and not the amount lost by the individual who has provided services.

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**Question (5)** Can the BPS pay honoraria to its members?

**Answer (5)** There is no specific provision in the Royal Charter enabling the BPS to pay honoraria.

However, the Charity Commission does not object to trustees/members/others receiving tokens of appreciation for their involvement (see below).

**Legal Detail (5)** In the interests of proportionality the Charity Commission does not usually require charities to seek its authority where the total value of all Trustee payments (excluding expenses) is less than £1,000 in any financial year, although the Trustees need to be satisfied that these payments are in the best interests of the charity (Section 5.8 of CC11).

There is no specific guidance in respect of honoraria to non-Trustee members, but the same principle would apply of enabling Trustees to provide a token of appreciation to those who have contributed towards its work, provided such appreciation remained at a "token" level, failing which see answers to questions 1 to 4 above.

**Freeths LLP**

**(Ref:RDN/1308/L889-5)**

**3 August 2017**