

Trustee roles and responsibilities

This information sheet considers the responsibilities of managing charity trustees and gives advice and guidance on good practice



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Introduction

There are around 10,000 village halls throughout the country and most of these are registered charities. The people who manage these halls are charity trustees often referred to as managing charity trustees. This information sheet considers the responsibilities of managing charity trustees and gives advice and guidance on good practice.

However, it is only a guide and any trustee with specific problems should seek advice from their local ACRE Network member, the Charity Commissioner or a Solicitor experienced in Charity Law.

The Charities Act 2011 sets out how all charities in England and Wales are registered and regulated including the role of trustees managing a charity. See ACRE Information Sheet 11: The Charities Act 2011 for further guidance.



1. Trustees

The Charities Act 2011 (s177) defines charity trustees as 'the persons having the general control and management of the administration of a charity'.

A village hall charity will normally have two sets of trustees:

- charity or managing charity trustees and
- holding or custodian trustees.

Although they are both trustees of the charity they have very different functions. In this Information Sheet the term, 'trustees' is to be read as meaning the charity or managing charity trustees unless otherwise stated.

Charity or managing charity trustees

These are the people who manage the charity on a day to day basis and in a village hall this will be the management committee. When an individual is appointed to the committee and accepts the appointment, by signing the minute book (or in any other way set out in the governing document), that person becomes a trustee of the charity. It is important that there is a good induction programme in place for new committee members so that they can fully understand their new role. Every new committee member should read through the governing document carefully so that they are aware of their responsibilities.

Holding trustees

A village hall charity will usually provide for a second set of trustees to be appointed to hold the land or property on behalf of the charity. These are the holding (or custodian) trustees. Their sole function is to hold the title to the property. They should not be involved in the day to day running of the charity, which is the responsibility of the managing charity trustees (unless the governing document gives them certain other rules or responsibilities). Holding/ custodian trustees can be either:

- individuals
- a body corporate, a parish council
- the Official Custodian for Charities (The Charity Commission).

Where individuals are appointed to be holding trustees it

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must be remembered that these individuals will need to be replaced from time to time, as, for example, when a present trustee wishes to retire or on the death of a trustee. For this reason many charities prefer to choose a permanent trustee to be the holding or custodian trustee, e.g. the parish council or the Official Custodian for Charities. By doing this there is no danger that the charity will be left without a holding trustee for any reason and, in addition, the charity is also saved the periodic expense of appointing new holding trustees.

In view of the different role of the two types of trustees it is recommended that a holding trustee should not also be a managing charity trustee. However, there is no legal restriction against doing so unless it is forbidden by the governing document. For example, see ACRE's Model Documents for village halls. Further details are provided on page 14.

2. The responsibility of charity trustees

The responsibility of the trustees will depend on whether they are holding trustees or managing charity trustees.

Holding trustees are only liable to hold the charity's assets and to carry out any instructions of the managing charity trustees, in so far as such instructions are not in breach of the governing document.

Managing charity trustees have a much greater responsibility as they are responsible for the general control and management of the administration of the charity. They must ensure that they always act for the good of the charity and its beneficiaries and that in doing so they comply with the terms of the governing document and any legislation. The management committee of a village hall is comprised of elected and co-opted members and representatives of user groups of the hall. When a representative of a user group becomes a member of the management committee they become a trustee of the village hall and they must remember that their first responsibility is to the village hall charity as a whole and not to their

organisation or group.

Their responsibilities can be summarised as follows:

To act reasonably and prudently (the statutory duty of care): although there is no statutory definition of 'reasonable' or 'prudent', case law has said that a trustee should 'exercise the same degree of care in dealing with the administration of the charity as a prudent businessman would exercise in managing his own affairs or those of someone else for whom he was responsible.' In practical terms this means, amongst other things, not speculating with the charity's assets; ensuring that the charity assets are fully insured against loss; complying with all and every legal requirement (see below).

- (a) Insurance - it is very important that trustees fully insure the charity and its assets against loss; a charitable village hall will require, as a minimum, buildings and contents insurance, public liability insurance and employers' liability insurance if applicable. It should be noted that these are likely to be the absolute minimum and many charities will require wider insurance protection and should seek professional advice. In this way, should any problems occur the charity's assets should not be prejudiced.
- (b) Maintaining accurate financial control - all trustees must be aware of the charity's finances. Trustees are responsible for maintaining the financial stability of the charity. They must ensure that accurate records are maintained and that they comply with all the accounting requirements required by law. These requirements are set out in the Charities Act 2011. The Charities Act 2006. Further information is available in ACRE's Information Sheet 11 The Charities Act 2011

With regard to investments, trustees are bound by:

- their governing document e.g., trust deed, Will, Scheme of the Commissioners or other formal document

Trustees are responsible for maintaining the financial stability of the charity

- Statute – in particular the Trustee Act 2000.

The Trustee Act 2000 sets out a general power of investment which allows a trustee to invest trust funds in any kind of investment, excluding land, in which they would be allowed to invest if they were the absolute owner of those funds. This automatic power only applies where there is no specific provision within the charity's governing document which restricts or excludes the power. Any specific provisions in the governing document deed will take precedence. The Charity Commission provide advice on the provisions of the Act.

When deciding where to invest, trustees must have regard to the long term needs of the charity and try to maintain the charity's assets, especially land. When making decisions about investing charity funds trustees must take a prudent approach i.e. those investments which are 'safe' and not speculative. There are several investments specifically designed for charities and further information on these is available from the Charity Commission.

To act together: Trustees should meet regularly and act together in the administration of the charity. The act of one trustee may render all the trustees liable and trustees must ensure that they are kept fully informed; it is no defence for a trustee to claim he/she did not know what was happening. Where a trustee does dissent from the majority view his/her dissent should be fully recorded in the minute book.

To advance the purposes of the charity: All managing charity trustees have a primary duty to further the purposes of the charity. For a charity, such as a village hall, the charitable objectives will be providing suitable and effective accommodation for the activities within their community. ACRE's model trust deed sets out the objects as being for the 'use of the inhabitants of the Parish of [] without distinction of sex, sexual orientation, age, disability, nationality, race or political, religious or other opinions, including use of the Property for meetings, lectures and classes or other forms of recreation and leisure time occupation in the interests of social welfare and with the object

of improving the conditions of life for the said inhabitants’.

To avoid a conflict of interest: Trustees must be seen to be above reproach when dealing with the charity’s assets. Therefore, where there is any question of a trustee being personally affected by a decision of the trustees, that trustee must declare his/her interest and withdraw from any discussion or vote.

To act for the charity: Village halls often have clauses in their governing documents to include ‘representatives’ of other local charities, voluntary organisations, user group representatives etc. as members of their management committee. These individuals become managing charity trustees and should not act as ‘representatives’ of their external body. They are entitled to put their organisation’s views, but if there is a clash of interest a decision must be made in the best interest of the charity.

To act gratuitously: Under normal circumstances a trustee of a charity cannot benefit financially from their position. A trustee cannot be paid by the charity even where the payment would be for work outside the role of the trustee, e.g. as a caretaker, unless expressly permitted by the Trust Deed or with the consent of the Charity Commission. This precludes the payment of honoraria to trustees, although reasonable out-of-pocket expenses such as travel expenses for stationery, telephone calls may be reimbursed. The Charities Act 2006 does allow managing charity trustees to receive payment for providing goods or services, where certain conditions are satisfied, providing any payment is a fair price for the work involved. An example may be electrical, plumbing or legal work, use of a trustee’s firm for building work. Managing charity trustees proposing to make such payments should refer to Charity Commission guidance which is available on their website. See page 14 for further information.

Delegation of responsibility: Trustees will be ultimately liable for the running of the charity and this responsibility cannot be avoided by delegating decisions to others. However, trustees have limited

Under normal circumstances a trustee of a charity cannot benefit financially from their position.

power of delegation in some matters. For example:

- where the governing document permits, some decisions can be delegated to committees or sub-committees but the trustees will still be responsible to oversee these committees. In some circumstances, for example, where the management committee is very large, it can be expedient to set up a sub-committee where some members have certain delegated decision making functions and limited financial powers. In order to do this, specific power must be given in the hall's trust deed. Most village halls are unlikely to have this power, and in order to alter the deed, it will be necessary to write to the Charity Commission to ask them to alter the deed. The Charity Commission will only permit such a power if it can be demonstrated that it is both reasonable and necessary in the particular circumstances and that there is sufficient overall control by the management committee.
- trustees can appoint experts where necessary and are entitled to rely on their expertise. However, they must still retain full control of the administration.
- the practical implementation of decisions can be delegated to specific officers, employees or agents.

3. Good practice for managing charity trustees

Managing trustees of village halls are increasingly aware of their responsibilities and liabilities as trustees and the need to be aware of legislation effecting them and the hall charity.

Section 4 looks at issues surrounding personal liability and trustee indemnity insurance in more detail.

However, it is important to remember that the liability of trustees is no greater now than it was before, and that providing trustees act prudently and reasonably there should be few concerns. The following good practice guidelines should help trustees ensure that such liabilities are not incurred:

- become familiar with the governing document,

i.e. trust deed, Will, Scheme of the Commissioners or other formal document. All charity trustees should be fully aware of the terms of their trust and act accordingly

- attend meetings
- establish effective induction procedures for new trustees. ACRE's publication, Your village hall management committee provides a sample induction pack
- act collectively, i.e. obtain committee approval before signing contracts
- keep written minutes of decisions
- ensure the treasurer presents regular financial reports and prepares a budget each year
- ensure that the property and the committee are adequately insured
- obtain professional advice when needed or required by law
- act with due care and prudence e.g. do not commit the committee to spend money it does not have
- ensure the property is properly maintained
- find out what areas of law might affect the village hall's activities e.g. health and safety, employment
- keep all licences up to date
- seek advice if unsure of duties (either from ACRE or your local ACRE Network member), through its village hall advisers, or the Charity Commission).

All trustees should be fully aware of the terms of their trust and act accordingly

4. Liability of trustees

Even in the best run organisations problems occur from time to time and many trustees have concerns regarding personal liability. Liability will depend on the circumstances, but in principle, a trustee may be liable in the following circumstances:

- if they have acted in breach of the governing document
- if they have acted unwisely with charity assets resulting in a loss to the charity
- if they have acted illegally.

A breach of trust may arise for example where the

trustees have made grants outside the charity's objects. In such cases it will be for the Charity Commission to decide whether to require the trustees personally to make good any loss. Where a loss arises despite the best and reasonable efforts of the trustees, it is not probable that they will be held liable.

In addition to their responsibility as trustees, the management committee may have additional liability. A village hall charity is not regarded as a separate legal entity and its trustees must therefore act on its behalf. It is the trustees who sign contracts, employ staff, obtain licences etc. and it is the trustees who must sue or be sued if things go wrong. It is important, therefore, to minimise the risk to individuals and this can be done by following the good practice guide outlined in Section 3.

The Charities Act 2011 (s191) has granted the Charity Commission the power to relieve trustees from personal liability for breach of trust or duty where they have acted honestly and reasonably and ought to be fairly excused. Trustees are now able to apply to the Charity Commission, as well as the courts, for relief from personal liability. This applies where trustees have acted honestly and reasonably, and in accordance with the wishes of all the trustees. Further information is available in ACRE's Village Hall Information Sheet 35, Trustee liability and trustee indemnity insurance.

5. Trustee liability insurance

Trustee insurance is usually of two kinds:

1) to protect the charity assets from fraud or mismanagement by a trustee or trustees

This insurance (sometimes known as a Fidelity Guarantee) may form part of the standard village hall insurance policy and further details should be obtained from a broker.

2) to protect an individual trustee against personal loss arising from his or her role as trustee.

This insurance covers trustees against personal liability when legal claims are made against them. The Charities Act 2011 (s189) has introduced the right of trustees to buy this insurance out of charity assets without an explicit power from the Charity Commission or from their governing document. This is providing that that trustees are satisfied that it is in the

charity's best interests to buy this with the charity's money and that the governing document does not expressly prohibit the purchase.

In deciding whether to take out this insurance trustees should balance the benefits of the protection to the trustees, and the charity, against the cost of the premium. Individual trustees can of course pay their own premiums if they wish. There may, for example be a benefit to a charity where there are problems with recruiting new trustees and taking out the insurance is what is necessary to encourage people to join the committee. Trustee liability insurance is no protection against intentional wrongdoing or the making of improper profits and even when liabilities are negligence-based, many kinds of damage will be excluded. Providing trustees acted honestly and reasonably there should be few concerns about personal liability and village hall charities may feel that Trustee liability insurance is not worthwhile.

The Charities Act 2006 introduced the right of trustees to buy trustees liability insurance

6. Appointment and retirement of managing charity trustees

6.1 Appointment

The appointment of trustees is decided, in most circumstances, by the governing document. This may specify that a holder of a particular office is to be a trustee e.g. a vicar of a parish, or that the committee is to be made up of representatives of the user groups plus elected officers (see ACRE's Model Documents for Village Halls). It should also set out the method of appointing new trustees and the procedure for appointment. This governing document will take precedence, but where the governing document does not make provision for the appointment of new trustees there is legal provision to enable new trustees to be appointed and the law will not allow a trust, charitable or otherwise, to fail for the want of a trustee. Where there are difficulties with the appointment of a new or additional trustee legal advice should be sought. Further information on the appointment of new trustees is also available from the Charity Commission.

Almost anyone over 18 can be a charity trustee.

It is an offence to act as a managing charity trustee whilst disqualified unless the Charity Commission has granted a waiver. The Charity Act 2011 (s178) lists the disqualifications as follows:

- has been convicted at any time of any offence involving deception or dishonesty, unless the conviction is legally regarded as spent (offences falling within this section are those where the definition of the offence requires proof of dishonest intention); or
- is an undischarged bankrupt; or
- has made compositions with his creditors and has not been discharged; or
- has at any time been removed by the Commissioners or by the court in England, Wales or Scotland from being a trustee because of misconduct; or
- is disqualified from being a company director; or
- is subject to an order under section 429(2)(b) of the Insolvency Act 1986.

Note: Where a person is already a trustee, who would have been disqualified for one of these reasons, they must cease to be a trustee and failure to do so is an offence for which he or she may be prosecuted.

6.2 Retirement of a charity trustee (see note above)

A charity trustee can resign or retire if the governing document permits it. The trustee must follow the procedure set out in the governing document. No charity should be put in a position where there are no trustees and if this seems likely, advice should be sought from ACRE through its village hall advisers or the Charity Commission.

Where an individual holding trustee wishes to resign he/she should not do so if this would leave less than 2 holding trustees remaining. In this case a new trustee should be appointed at the same time as the present holding trustee retires.

Sources of further information and advice

The ACRE Network provides an information and advice service for village hall management committees through its network of village hall advisers. A link to the contact details is available on the ACRE website www.acre.org.uk

ACRE produces a range of village hall publications and information sheets to support this service which are available from your local ACRE member.

ACRE publications that may be of interest to readers of this information sheet are listed below:

Your village hall management committee offers guidance on the constitutional and organisational issues involved in managing a village hall and includes a sample induction pack for new managing charity trustees.

The following information sheets may also be of interest:

Information Sheet 11, Charities Act 2011

Information Sheet 35, Trustee liability and trustee indemnity insurance

Information Sheet 41, Accounting and village halls

Information Sheet 35, Trustee liability and trustee indemnity insurance

The Charity Commission publish a range of publications and guidance which are available on their website: www.charity-commission.gov.uk

For copies of all village hall model documents contact your local ACRE Network member

Useful contacts

ACRE

The Quadrangle, Woodstock,
Oxfordshire
01285 653477

www.acre.org.uk

Charity Commission Offices

0870 333 0218

www.charitycommission.gov.uk

Charity Commission Leaflets

Available from Charity
Commission or online:

- CC3 The Essential Trustee:
What you need to know
- CC15b Charity Reporting and
Accounting:
the essentials