

17. Trustees Roles and Responsibilities

Contents:

- 1. Trustees..... 1
- 2. The Responsibility of Charity Trustees..... 2
- 3. Liability of Trustees..... 3
- 4. Good Practice for Charity Trustees 4
- 5. Trustee Liability Insurance 4
- 6. Appointment and Retirement of Charity Trustees..... 5
- 7. Further Information and Publications 6



1. Trustees

There are over 8,900 village halls throughout the county and most of these are charitable. The people who manage these halls are therefore the **Charity Trustees** often referred to as Managing Trustees. What does this mean and what are their responsibilities?

This Information Sheet is designed to answer these questions and to offer advice and guidance on **good practice** for trustees of a village hall charity. However, it is only a guide and any trustee with specific problems must seek advice from their Rural Community Council Village Hall Adviser, the Charity Commission or a solicitor.

Who are Charity Trustees?

The Charities Act 1993 (S97) 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 (1) Charity or Managing Trustees and (2) 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 trustees unless otherwise stated.**

(i) Charity or Managing 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 therefore that every new committee member reads through the governing document carefully in order that they are aware of their responsibilities (see Section 2).

(ii) 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 trustees (unless the governing document gives them certain other rules or responsibilities). Holding/Custodian Trustees can be either:

- (i) individuals
- (ii) a body corporate, a parish council
- (iii) the Official Custodian for Charities

Where individuals are appointed to be Holding Trustees it must be remembered that these individuals will need to be replaced from time to time, as, for example, when the present trustees die or wish to retire. 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 trustee. However, there is no legal restriction against doing so unless it is forbidden by the governing document, for example, in ACRE’s Model Documents for village halls.

2. The Responsibility of Charity Trustees

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

- (i) **Holding Trustees** - Holding Trustees are only liable to hold the charity's assets and to carry out any instructions of the managing trustees in so far as such instructions are not in breach of the governing document.
- (ii) **Managing Trustees** - Managing Trustees, however have much greater responsibility. 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 representatives of the user groups plus the elected officers. 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 - 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. 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 arise 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. The Charities Act 1993 introduced new requirements which trustees must follow (for further information on the Charities Act 1993 see Information Sheet VH11).
- (c) With regard to investments, trustees are bound by:
 - (i) their governing document e.g. trust deed, Will, Scheme of the Commissioners
or other formal document
 - (ii) statute - in particular the Trustee Investment Act 1961

NB: the provisions in the governing document deed will take precedence over the 1961 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. The type of investments that trustees are usually permitted to make are those 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 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 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.

A trustee of a charity 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 also precludes the payment of honoraria to trustees although reasonable out of pocket expenses (e.g. for stationery, telephone calls) may be reimbursed.

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 power of delegation in some matters, e.g.:

- (i) where the governing document permits, some decisions can be delegated to committees or sub-committees but the trustees will still be responsible to oversee the committees,
- (ii) trustees can appoint experts where necessary and are entitled to rely on their expertise. However, they **must** still retain full control of the administration.
- (iii) the practical implementation of decisions can be delegated to specific officers, employees or agents.

3. Liability of Trustees

Even in the best run organisations problems occur from time to time and many trustees ask "Will I be liable?" This will depend on the circumstances but in principle a trustee may be liable in the following circumstances:

- (i) if they have acted in breach of the governing document
- (ii) if they have acted unwisely with charity assets resulting in a loss to the charity
- (iii) 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 in Section 4 below. Where a trustee acts properly and in accordance with the wishes of all the trustees, that trustee should be able to be indemnified out of charity assets.

4. Good Practice for Charity Trustees

A Good Practice Guide for Charity Trustees

It is important to remember that the liability of trustees is no greater now than before, but recent legislation has now made trustees more aware of their liabilities and The Charities Act 1992 and 1993 have introduced a criminal responsibility for the first time.

What can Trustees do to minimise the risk? The following guidelines should help:

REDUCING THE RISK TO HALL COMMITTEES

1. Follow the governing document, i.e. trust deed, Will, Scheme of the Commissioners or other formal document
2. Attend meetings.
3. Act collectively, i.e. obtain committee approval before signing contracts.
4. Keep written minutes of decisions.
5. Ensure the treasurer presents regular financial reports and prepares a budget each year.
6. Ensure that the property and the committee are adequately insured.
7. Obtain professional advice.
8. Act with due care and prudence e.g. do not commit the committee to spend money it does not have.
9. Ensure the property is properly maintained.
10. Keep all licences up to date.

5. Trustee Liability Insurance

Trustee liability insurance has come under discussion in recent years, partly as a result of the increasing awareness of trustees as to their responsibilities and liabilities. Trustee insurance is usually of two kinds:

- (a) to protect the charity assets from fraud or mismanagement by a trustee or trustees and
- (b) to protect an individual trustee against personal loss arising from his or her role as trustee.

In (a) 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 your broker.

In (b) where a charity wishes to take out trustee indemnity insurance it will need to seek Charity Commission approval to pay the premium out of the charity's assets. In deciding whether to do so the Commission will want to weigh up the potential risk to the trustees, and the charity, against the cost of the premium. There may be a benefit to a charity in taking out Trustee Liability Insurance and of course individual trustees can pay their own premiums if they wish. When deciding whether to take up insurance, trustees must weigh

up the cost against the protection offered and small charities may not feel it to be worthwhile. Further information however is available from the Charity Commission or NCVO who have a briefing on Trustee Indemnity Insurance.

6. Appointment and Retirement of Charity Trustees

i) 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 must always be sought.

Further information on the appointment of new trustees is also available from the Charity Commission.

Can anyone be a trustee? Yes, almost anyone over 18 can be a charity trustee subject to the exceptions specified in the Charities Act 1993 (Section 72) shown below, i.e. a person who:

- 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

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.

ii) Retirement of a Charity Trustee (see note above)

Can a charity trustee resign or retire? Yes if the governing document permits it. In this case 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 the Charity Commission or ACRE.

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.

7. Further Information and Publications

Responsibilities of Charity Trustees (CC3)
 Responsibilities of Charity Trustees - A Summary (CC3a)
 Internal Financial Controls for Charities (CC8)
 Trustee Investment Act 1961 - A Guide (CC32)
 Charity Accounts - The New Framework (CC51)
 Charity Accounts Under the £10,000 threshold (CC52)
 Accounting for the Smaller Charity. This is for those preparing accounts on the receipts and payments basis (CC54)
 Charities and Meetings (CC48)
 Charities and Insurance (CC49)
 Further information and Charity Commission publications can be obtained from:

The Charity Commission at

London Office:	Northern Office:	South West Office:
Harmsworth House	20 Kings Parade	Woodfield House
13-15 Bouverie Street	Queens Dock	Tangier
London	Liverpool	Taunton
EC4Y 8DP	L3 4DQ	TA1 4BL

0870 333 0123 - single point enquiry line for all offices

Charities Act 1992 and 1993 (Information Sheet VH 11)	ACRE
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Model Documents for Village Halls (Models A & B)	ACRE
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Trustee Liability Insurance	NCVO Regent's Wharf 8 All Saints Street London N1 9RL
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