



your experts in church properties

UNDERSTANDING PROPERTY TRUST DEEDS

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A Church Growth Trust Briefing Paper



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TABLE OF CONTENTS

1.0	Introduction	4
2.0	Knowing Your Property Trust Deed	4
3.0	Keeping Your Documents Safe.....	4
4.0	Objects	5
5.0	Trustees' Powers.....	5
5.1	Power to mortgage	6
5.2	Power to let.....	6
5.3	Power to sell	6
5.4	Power to gift.....	7
5.5	Power to insure and repair	8
6.0	Trustees.....	8
6.1	Appointment of trustees.....	8
6.2	Removal of trustees	9
6.3	Trustees' meetings	9
7.0	Connection with Assembly.....	9
8.0	National Property Trusts	10
9.0	Changing the Trust Deed.....	10
10.0	Dissolution	11
11.0	Further Information	11

1.0 Introduction

If you are a trustee of a gospel hall or other independent church property, this briefing paper is for you. It aims to help you understand the Trust Deed under which the property is held. Each Trust Deed is unique, but there are a number of similarities with Trust Deeds, particularly those set up for Open Brethren properties. This briefing paper is not intended to be a comprehensive guide to Trust Deeds relating to properties and will not be able to cover all aspects of every Trust Deed. It will attempt to cover the main aspects of Trust Deeds which relate to property, particularly those that are Open Brethren properties.

Historically with Open Brethren properties a Trust was set up to hold the property (gospel hall or chapel) and this was separate from the charity set up for the assembly/church, who occupied the property. More recently when a church is setup the church charity has the power to hold property and the church building is usually held by the same charity which operates the congregation. This paper only relates to the separate Trusts set up for holding church properties.

Where you as trustees of a Trust for a church property are not clear on what your Trust Deed says, what you are allowed to do and particularly where you are considering the sale or disposal of the property, you should seek legal advice from a solicitor who has experience and expertise in charity matters.

2.0 Knowing Your Property Trust Deed

A trustee of any charity should be familiar with the governing document for that charity. In the case of many independent churches and Open Brethren assemblies, the governing document for the property trust is usually a Trust Deed or Declaration of Trust. Sometimes the Declaration of Trust is included within the original Conveyance of the property or it is a separate document. Each of your property trustees should have a copy of this document and should be familiar with its content. This document sets out the reasons for the charity (i.e. its objects or purposes), the powers that you have as a trustee and the procedures that you need to follow for holding meetings and appointing trustees. Unless you are familiar with the Trust Deed you will not know whether you are fulfilling the objects of the Trust, acting within your powers and following the correct procedures.

3.0 Keeping Your Documents Safe

Knowing where your documents are and keeping them safe is important. These include the original Trust Deed, any documents relating to the appointment and retirement of trustees and other documents relating to the title to the property. Many trustees have lost their documents through fire, theft or forgetting where they have been stored. Why not consider Church Growth Trust's secure document storage service, where important documents are stored in fire-proof and secure cabinets and made available to you through a secure online link. See the paper on this service: [\[link\]](#).

Some of the problems with losing documents are reduced by having the title to your property registered with the Land Registry. Church Growth Trust's briefing paper on "church properties - do we need to register the title" will help you to consider these issues. There are a number of advantages to registering the title to the property and, if you have not

already done so, you should seriously consider doing so. The appointment of a new trustee to a property Trust is a trigger event for you having compulsorily to register the title to the property. When the title is already registered, appointing a new trustee will require the renewal of the registration in the names of the new trustees.

4.0 Objects

The objects or purposes of a charity are the whole reason for the Trust being set up in the first place. It is what makes it a charity. Surprisingly it is sometimes difficult to see what the objects are, as the Trust Deed may not say specifically “the objects are...”. It is important however to find and understand the objects.

In some cases the objects may be very broad, such as “to advance the Christian faith”. In many cases they contain the words “to use or permit the trust property to be used by...”, followed by references to either the original assembly/church that the building was erected for or more generally to any church that occupies the building. If it is only for the original assembly, this can cause problems if the assembly closes (or changes in character) and may limit the use of the property by any other church.

The objects often refer specifically to doctrines and practices that are permitted by the Trust Deed. These can be very brief and only refer to a number of biblical principles¹ or they can be quite detailed, including setting out bible references. Almost all “practices” refer to believer’s baptism and breaking of bread meetings on the first day of the week. Breaking bread may be a requirement on every “Lord’s day” or may be more flexible with the words “where practical” included. In some cases practices can contain very specific requirements, ranging from the role of women in meetings to the use of drums!

As a trustee you are responsible to ensure that any occupying church is preaching and acting in line with the doctrines and practices. If not, you will need to consider what action needs to be taken, how serious the variation is and how flexible you can be.

It is not possible to change the objects of the charity without the Charity Commission’s approval (even if the charity is not formally registered) and the Charity Commission would normally require good reasons for changing these. Where the doctrines and practices are tied in to the objects, it is also not possible to change these without the Charity Commission’s consent.

5.0 Trustees’ Powers

Trust Deeds can be very specific or incredibly vague on what powers the trustees have. It is important for you to understand what powers you have, as these may limit what you can or cannot do with the property.

¹ Such as “set forth in the sacred scriptures and under the teaching and guidance of the Holy Spirit and in accordance with the principles and usages which are common to Protestant Evangelical Free Churches in England”

5.1 Power to mortgage

Do you know whether there is a specific power in the Trust Deed to take a mortgage? This is important if you are considering a major building project and need to borrow funds. Most Trust Deeds do allow this.

If there is no express power to mortgage the property in the Trust Deed, you may need to rely on general powers which are available under statute². In either case you as trustees must comply with Section 124³ of the Charities Act 2011 before mortgaging or charging the property.

5.2 Power to let

Can you let the property and charge a rent to the original assembly or a new church? It might be that the Trust Deed only allows the original assembly to occupy and that no rent can be charged. If the assembly closes and you wish to let the property to a new church, it is helpful to have this specific power. However you can normally rely on the general powers of property management given to trustees under statutory powers⁴, which would include being able to let properties.

5.3 Power to sell

Is there a power to sell the property and, if so, under what circumstances? Some trustees think they can sell the property as and when they wish to, but often the Trust Deed will only allow a sale if certain circumstances take place (e.g. the assembly has closed). It may even be that the Trust Deed does not allow a sale at all.

You also need to consider what any proceeds from a sale (or rent) can be used for. If they can only be used on the existing building or a new building in the same town/village, this may be "permanent endowment"⁵. If you are not selling the property to build a new gospel hall in the same vicinity and are not able to use the sale proceeds for the limited requirements of the Trust Deed, this can mean that the funds are sterilised and are no longer serving any useful purpose. In this case it would be necessary to try to agree with the Charity Commission a broadening of the criteria for using the sale proceeds. In some cases you would need to agree with the

² Section 6 (as amended) of the Trusts of Land and Appointment of Trustees Act 1996

³ Section 124 of the Charities Act 2011 stipulates a procedure for charity trustees to follow if they are securing any borrowing by mortgaging their land. They are required to obtain and consider 'proper advice' in writing on whether the loan is necessary in order for the charity trustees to pursue the particular course of action for which the loan is taken out; whether the terms of the loan are reasonable having regard to the status of the charity as a prospective borrower; and the charity's ability to repay on the terms agreed with the lender (i.e. without prejudicing its other charitable activities).

⁴ Section 6 (as amended) of the Trusts of Land and Appointment of Trustees Act 1996

⁵ Permanent endowment is money or property that was originally meant to be held by a charity forever or only disposed of in certain circumstances, such as allowing a sale only when the proceeds are to be used to replace the property being sold with alternative premises. This is usually set out as a restriction in the charity's governing document. See also the statutory definition of permanent endowment which is "property held subject to a restriction on its being expended for the purposes of the charity" (Section 353(3) Charities Act 2011).

Charity Commission a Scheme⁶ as to the use of the property or the proceeds of sale. It would be advisable for you to seek legal advice on such a matter. In some cases Church Growth Trust has agreed with the Charity Commission that the proceeds can be given to certain work within a specified radius of the property and, in other cases, the proceeds can be given to a much broader range of activities, which the previous assembly would have supported.

As trustees you also need to check the Trust Deed to see whether there is an “ultimate beneficiary”. An ultimate beneficiary is a body, such as Echoes of Service or the Muller Foundation, that is entitled to the proceeds of any sale. This makes it difficult (if not impossible) to gift the property to any other charity, without the agreement of the ultimate beneficiary. In some cases it may be possible to agree a compromise (e.g. a compensatory payment) with the beneficiary.

The Trust Deed will usually specify what the sale proceeds can be used for. You cannot deviate from this. There is often however an opportunity for the trustees to gift the proceeds to wider causes than those specifically mentioned, particularly if there is a phrase such as “or other charitable purposes as the trustees may think fit”. However you need to ensure that this is not merely widening the specific requirements, but is allowing you to make gifts for wider purposes than those specified in the Trust Deed⁷. It is likely that these wider purposes would still need to be in line with the main objects of the Trust Deed (e.g. supporting churches that have the doctrines and practices set out in the Trust Deed).

Some Trust Deeds would set up a “trust for sale” if the original purposes of the Trust fail (e.g. the original assembly closes), which would require you as trustees to sell the property. Usually the sale can be postponed, if the property can still be used for other uses within the original objects (e.g. letting to another evangelical church) or there are specific reasons given within the Trust Deed for postponing the sale.

When gifting proceeds from a sale, the costs relating to the sale (e.g. estate agent’s and solicitor’s fees) can be deducted from the overall proceeds. Any loans or other debts would also need to be paid from the proceeds.

5.4 Power to gift

Often the Trust Deed does not give a specific power to gift the property, which may cause problems if you as trustees wish to give the property to another church or to a national property-holding charity such as Church Growth Trust. Where the Trust Deed allows you to “otherwise dispose of”, some would interpret this as including gifting the property. However strictly speaking this is not the case. Even when there

⁶ A Scheme is drawn up by the Charity Commission and can change all or parts of the charity’s governing document (Trust Deed).

⁷ Some examples: "for the furtherance of the teaching of the doctrines and the observance of the practices mentioned in the schedule hereto"; "for the furtherance of the Gospel either in Great Britain or in foreign lands... or for the promotion of the Lord's work in any other way they may deem fit in their absolute discretion" and "or for such other purposes as the trustees may in their uncontrolled discretion deem to be conducive to the advancement of the work of God".

is no specific power to gift the property, there is often a way round this, under the principles set out in a case known as *Re Collard's Will Trusts*. Where it is possible to sell the property at full value to another charity and then gift the proceeds of the sale to that same charity, the Charity Commission will usually allow a shortcut, so that the property can be gifted to the charity. You would have to look carefully as to whether the charity being gifted the property does meet the criteria set out in the Trust Deed. It would usually be advisable as trustees for you to seek legal advice before adopting this course.

5.5 Power to insure and repair

You will have the power to insure and repair the property. Normally it is a requirement of the Trust Deed for you as trustees to do so, but often only in terms of the funds that are available. Some Trust Deeds allow you to raise funds from the assembly, but this is not always the case. It is usually possible to arrange for the occupying church to take on the responsibilities for insuring and repairing the property, as part of their occupation and letting arrangements.

6.0 Trustees

It is important to understand the responsibilities of being a trustee, who can be a trustee and how to conduct trustees' meetings. Trust Deeds will vary in the details on these matters, but each one will be different. It is important therefore to be familiar with your Trust Deed. As trustees of the property Trust you have responsibility for managing the property. This is a potential liability for you that should not be taken lightly. There will be a requirement to meet with the other trustees and make responsible decisions. You may wish to retire for reasons of long service, age or health. However you may have difficulty finding new trustees.

6.1 Appointment of trustees

If you are considering appointing new trustees, you will need to check the procedure for doing so in the Trust Deed. New trustees of the property can be appointed by a Deed of Appointment, which is usually prepared by solicitors acting for the trustees, or they may be appointed by a Memorandum of Appointment and again, this is usually drawn up by solicitors (although Church Growth Trust can normally help with this). It is normal for trustees to have the power to appoint new trustees, but in some cases the occupying assembly is required to nominate new trustees. Does your Trust Deed require the new trustee to be a member of the assembly or involved in a similar type of church? It is usual for the trustee to have to confirm their agreement to the doctrines and practices. It is important to follow the correct procedure to ensure that the new trustee is properly appointed. If the right procedures are not followed people may believe they are trustees, but in reality they are not.

As mentioned earlier the appointment of a new trustee is a trigger event for the title to the property being compulsorily registered with the Land Registry. Where the title has not previously been registered the Land Registry are happy to accept Deed or Memorandum of Appointment to show the trustees are the owners. Where the title is already registered the Land Registry will also require a Transfer to be signed.

6.2 Removal of trustees

There is usually a procedure for trustees being able to retire, often by giving written notice to the other trustees. If there is a requirement for a minimum number of trustees and the retirement of a trustee would reduce the number of trustees to below the minimum, the retiring trustee will not be able to retire, unless a new trustee is appointed.

It should also be borne in mind that where a trustee of the property retires he/she will not cease legally to be a trustee of the property, unless he/she retires by a Deed or Memorandum of Appointment/Retirement. This is particularly important if the title to the property is registered at the Land Registry, as it will be necessary for the retiring trustee to transfer the title to the remaining/new trustees. This also applies where the trustee is a party to a mortgage of the property, as he/she will continue to be liable for the mortgage even if he/she has retired as a trustee. The trustee will need to formally transfer the mortgage to the remaining/new trustees and arrange for the solicitors to draw up a Deed of Release.

The Trust Deed will also sometimes set out how a trustee can be removed by the other trustees or by the assembly. This can be for a variety of reasons, ranging from:

- The trustee no longer being a member of the assembly;
- The trustee no longer being able to sign up to the doctrines and practices;
- The trustee being unsuitable for moral or health reasons;
- The trustee living outside the UK.

Unless there are specific procedures for doing so, it is difficult to remove trustees if they are being difficult or have been put out of fellowship by the assembly.

6.3 Trustees' meetings

If the Trust Deed sets out procedures for holding meetings, such as giving specific periods of notice, then these need to be followed. Usually there is a requirement for a quorum (minimum number of trustees attending a meeting) for a valid decision to be made. Often there is provision for decisions to be made by a majority, but if no such provision is made then all decisions have to be made unanimously.

Even if the Trust Deed does not require minutes to be made of meetings, it is good practice to record the trustees' meetings and decisions taken.

7.0 Connection with Assembly

Sometimes the Trust Deed not only prescribes the management of the property, but also the operation of the assembly/church itself. In those cases the Trust Deed may contain rules for the regulation of the assembly, such as rules about meetings for making decisions and qualifications for membership. In most cases however the Trust Deed refers to the assembly only in terms of it being allowed to use the property. There are often prohibitions on uses within the property and these can be as varied as not holding theatrical performances, bazaars or dancing.

In some cases the assembly have the power to appoint trustees and other major decisions (e.g. selling property or raising a mortgage) have to be either approved by the assembly or instigated by them. If the assembly no longer exists, decisions will usually revert to the trustees.

Although there may appear to be an overlap between the assembly and the property, in almost all cases the property Trust is not the governing document for the assembly. Although the assembly may not have its own governing document, it is operating as a separate charity and it is therefore important for you as property trustees to ensure that you are not managing the affairs of the assembly and that there are separate financial records for each charity. This also means that the property is not generally owned by the assembly, although it is often held for its benefit. It is owned by the property Trust. Where the annual income of the assembly is over £5,000 and it wishes to take advantage of the tax benefits of being a charity (e.g. Gift Aid), it will need to register as a separate charity. See Church Growth Trust's paper "Does our church need to register?".

8.0 National Property Trusts

In many Trust Deeds, particularly those set up for the Open Brethren, there is a power for the trustees to gift the property to specific national trust-holding bodies, such as the East of England Evangelization Trust/United Kingdom Evangelization Trust (UKET) or the Western Counties and South Wales Evangelization Trust. Church Growth Trust is the successor to UKET. If there is a specific clause to this effect in the Trust Deed, there are no issues with gifting the property as mentioned above. Property can be gifted to the trust-holding body free of the existing trusts.

9.0 Changing the Trust Deed

You may wish to make changes to your Trust Deed. This could for example be to reduce the minimum number of trustees or to change the procedure for meetings. It is often possible to do this by passing a Resolution under Section 280 of the Charities Act 2011. This section allows you as trustees by resolution to change provisions in your Trust Deed relating to your powers of administration or the procedures to be followed in connection with administration. If the Trust includes a separate membership of the assembly, as well as trustees (e.g. a trusteeship and a separate membership of the assembly also), then any changes must be approved by that membership. This power could be used for example to insert in the Trust Deed an express power to charge/mortgage the property, if one is desired, or to allow trustee resolutions to be passed by email or to hold meetings by conference call.

The objects or any dissolution clause within the Trust Deed cannot be changed without the Charity Commission's approval, even if you are not registered with them.

10.0 Dissolution

If the assembly become so small that it is impractical to continue operating as an assembly, you as trustees will need to consider your options which may include:

- Disposing of the property by gift to another Trust, which has similar purposes;
- Disposing of the property by sale and distributing the net proceeds to other assemblies or for purposes similar to the Trust's purposes;
- Transferring the property to one of the national organisations such as Church Growth Trust, so that they can find another evangelical congregation to continue the gospel work from the property;
- Applying to the Charity Commission for a Scheme to use the property or its letting/sale proceeds as close as possible to the Trust's purposes.

Which of these options are available to you as trustees may be constrained by the terms of your Trust Deed and advice should be taken by you before making any decision.

11.0 Further Information

If you would like your Trust Deed to be reviewed, or wish to have help with drafting a Resolution, or if you have any questions that have been raised by this briefing paper, please feel free to contact Church Growth Trust: Giles Arnold; telephone: 01536 647164; mobile: 07721 666660; email: giles.arnold@churchgrowth.org.uk.