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# **GOOD PRACTICE FOR CHARITY TRUSTEES**

**(December 2018)**

**A Church Growth Trust Briefing Paper**



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## TABLE OF CONTENTS

1.0	Introduction .....	4
2.0	Who are the trustees .....	4
3.0	What are you a trustee of? .....	4
4.0	Can you change the governing document? .....	5
5.0	What are the duties of a trustee? .....	5
5.1	Duty of compliance .....	5
5.2	Duty of Prudence .....	6
5.3	Duty of care.....	6
6.0	Who should be a trustee?.....	6
6.1	Spiritual characteristics.....	6
6.2	Skills.....	7
6.3	Legal requirements & exclusions .....	7
6.4	Church leaders as trustees.....	7
6.5	Getting appointments right .....	7
6.6	Getting retirements right.....	8
6.7	Removal of trustees .....	8
7.0	Can you delegate powers/functions? .....	8
8.0	Trustees' meetings.....	8
9.0	What should you do with the charity's assets? .....	9
9.1	Resources .....	9
9.2	Budgeting & Accounts.....	9
9.3	Responsibility for properties.....	9
9.4	Property transactions.....	9
10.0	What about your Liabilities and Risks? .....	10
10.1	Potential liabilities of trustees .....	10
10.2	Risk Management .....	10
10.3	Insurance.....	10
11.0	Can you pay trustees?.....	11
12.0	Additional Information.....	11
	Appendix 1: Practical suggestions for keeping on the straight and narrow .....	13
	Appendix 2: Holding effective trustees meetings.....	14
	Appendix 3: property (land) transactions.....	16

## **1.0 Introduction**

This briefing paper is not intended to be a definitive guide on how to be a trustee. It is however aiming to help you as trustees, particularly of a church charity or a charity holding a church property, to understand your basic responsibilities and to ensure you put in place good practice within your charity.

Further help can be obtained from the Charity Commission's guidance papers (see Additional Information section below) and by contacting Church Growth Trust.

## **2.0 Who are the trustees**

Charity trustees are defined as the persons having the general control and management of the administration of a charity<sup>1</sup>. In other words, it is a functional test; so, where there is no written constitution/governing document<sup>2</sup>, if someone is performing the role of trustee in practice, at law they are a trustee. Thus, for example, the deacons of a Baptist Church or PCC members of a Parish Church are automatically the church trustees by virtue of their function. In the same way, elders (and possibly deacons) in a Brethren assembly are the trustees of the assembly where there is no governing document and/or the charity is not registered. It is however recognised that there are two distinct roles, where the spiritual leaders are responsible for the spiritual direction of the church and the trustees are responsible for the legal framework under which the church operates. See section 6.4 below.

## **3.0 What are you a trustee of?**

You may be a trustee of a property trust or a church/assembly/congregation or another form of charity. The charity may have a Trust Deed, Memorandum & Articles of Association (M&A) of a Charitable Company or a Constitution for a Charitable Incorporated Organisation (CIO). This will be the governing document for the charity. For simplicity all these documents are referred to in this paper as either "governing document" or "trust document". The charity may not have any formal governing document at present, as is the case for many small churches/assemblies.

Your authority comes from the charity's governing document and the exercise of your powers is constrained by the provisions of that document and general charity law. Trustees need to be aware of the provisions of the original trust document and to observe them. Each trustee should have a copy of the trust document and its provisions should be considered at regular intervals and updated, if necessary.

Be aware of what is and is not covered by your charitable objects (purposes). There is a danger of expanding the scope of activities beyond existing trusts. For example, if the purposes are limited to advancing the Christian faith, running a school (i.e. advancing education) goes beyond this.

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<sup>1</sup> Section 177 of Charities Act 2011

<sup>2</sup> Governing documents are normally Trust Deeds, Memorandum & Articles for a charitable company or a Constitution for a charitable incorporated organisation.

The objects often refer specifically to doctrines and practices that are permitted by the trust document. These can be very brief and only refer to a number of biblical principles or they can be quite detailed, including setting out bible references. As a trustee you are responsible to ensure that the 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.

#### **4.0 Can you change the governing document?**

If you do not have a formal governing document, you will need to consider formalising this. Church Growth Trust, in conjunction with Partnership UK and the Western Counties and South Wales Evangelization Trust, have produced a model CIO for elder-led assemblies to use. This is freely available on CGT's website<sup>3</sup>.

If you have a document already, you may wish to update or amend this to take account of changing circumstances. It is usual for changes to certain clauses such as the objects (purposes clause) and dissolution (what happens when the charity closes) to be prohibited from amendment without the prior consent of the Charity Commission. This applies even when the charity is not formally registered with the Charity Commission. Where any doctrines and practices are tied in to the objects, it is also not possible to change these without the Charity Commission's consent.

If there is a power in the existing trust document to change the trusts, follow this. Where there is no specific power, it is now possible under Section 280 of the Charities Act 2011 to change the trusts, including any of the powers exercisable by the charity trustees in the administration of the charity or regulating the procedure to be followed in any respect in connection with its administration, by the trustees passing a resolution to modify these trusts. This could be to reduce the minimum number of trustees or to change the procedure for meetings. It could also be used to insert in the trust document an express power to charge/mortgage the charity's property, if one is desired, or to allow trustee resolutions to be passed by email or to hold meetings by conference call.

If you are unsure whether you can change something, ask Church Growth Trust or you can apply to Charity Commission.

#### **5.0 What are the duties of a trustee?**

There are three main duties of charity trustees:

- Duty of Compliance;
- Duty of Prudence and
- Duty of Care

##### **5.1 Duty of compliance**

Trustees must ensure that their charity is compliant with various things, including charity law and other legislation. To do so, trustees need to keep up to date with

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<sup>3</sup> <https://churchgrowth.org.uk/model-cios/>

legislation. This can be achieved by signing up to email bulletins from the Charity Commission, Church Growth Trust, Stewardship or solicitors specialising in charity law. It is also necessary for you to understand the purposes, powers and limitations of your charity, by being familiar with the governing document for your charity. Each of your trustees should have a copy of the trust 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 document, you will not know whether you are fulfilling the objects of the charity, acting within your powers and following the correct procedures.

The essential concept of trusteeship is that you have the full legal powers of an owner, but are managing funds/property subject to pre-existing purposes and requirements (trusts). Like a steward, you are controlling and managing assets on behalf of someone else.

#### 5.2 Duty of Prudence

As a trustee you must ensure the charity is managed well, that you have the correct people and other resources in place and are not putting the assets of the charity at undue risk. Both The Trustee Act 2000 and the common law duty of trustees measure the behaviour of the trustees against that expected of the ordinary prudent person of business. This test includes a subjective element to allow for the particular skills and experience of the trustee in question.

#### 5.3 Duty of care

As a trustee you are required to act in the best interests of the charity. Part of this requires you as a trustee to "exercise the same degree of care in dealing with the administration of your charity as a prudent man/woman of business would exercise in carrying out his/her own or his/her business affairs." This means that a trustee can be held liable if he/she acts without such care and thereby causes a loss to the charity.

### 6.0 Who should be a trustee?

Being a trustee is a valuable and important role. It is not to be taken lightly, but also not to be feared. The key is basic awareness/knowledge and ongoing care/diligence. There should be no "sleeping trustees".

#### 6.1 Spiritual characteristics

A trustee should be mature, responsible and trustworthy. He/she should be actively involved in the life and work of the church or charity. However, there can be a case for a trustee who is more removed to bring an outside view or to meet a skills need, but the person should still have a heart for the work of the charity. For churches, trustees need to be committed to the vision and values of the church and able to work with the church leadership. These "qualifications" are likely to be more important than any professional or other specialist skills or knowledge, given the essentially spiritual nature of churches and Christian charities.

## 6.2 Skills

A range of suitable skills, knowledge and experience brought by trustees can be helpful. It is also always possible to get specialist input without necessarily appointing the person as a trustee. Non-trustees can attend trustees' meetings and contribute as required.

## 6.3 Legal requirements & exclusions

A trustee needs to be 18 years or older. He/she should have no unspent conviction for an offence of deception or dishonesty, not be an undischarged bankrupt, not someone who has been removed from trusteeship by the Charity Commission or a Court and not someone disqualified under the Company Directors Disqualification Act 1996 or section 429(2) of the Insolvency Act 1986. Unless there is a power within the trust document to remunerate/pay trustees as an employee or for services, someone who is employed or providing services for the charity (or someone who is a close relative/connected person to the employee/service provider) cannot be a trustee.

## 6.4 Church leaders as trustees

It will depend on the governance and leadership structures in your church tradition, but there is a good case to start from the position of making your spiritual leaders and trustees the same people (if you have no governing document in practice they will be the same). There is inevitable overlap in the two roles. Charity Trustees are defined as the people responsible for controlling the management and administration of the charity. The spiritual leadership of a church rests with the church leadership. There must be a healthy tension between the two, if they are not identical, where for instance the elders set out the vision and activities to fulfil the vision; whilst the trustees set out the legal requirements or restrictions that would allow or prevent the activities from taking place. A briefing paper produced by Stewardship explains more fully the relationship between spiritual leaders and trustees<sup>4</sup>.

For paid leaders to be trustees, there must be specific power of remuneration in the charity's governing document (unless within the very limited exceptions initially brought in by the Charities Act 2006<sup>5</sup>) and this is covered in section ?? below.

## 6.5 Getting appointments right

You need to keep the trustee body up to the strength required by the trusts. This is particularly important if there is a minimum number of trustees required (total trustees and quorum for making decisions at meetings). The method specified for appointment of new trustees should be followed and properly recorded – whether by a resolution in the minutes of a trustees' meeting, or by a formal Deed or Memorandum of Appointment. If the charity's property includes land/buildings, this must be a formal Deed of Appointment or Land Registry Transfer to transfer legal title. This is now compulsory and is also a trigger event for registering the title to property, if this has not already been registered. It is recommended that you keep records of appointment with the original trust document and property deeds.

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<sup>4</sup> Guide to churches on spiritual leadership and trustees—  
<https://www.stewardship.org.uk/downloads/briefingpapers/>

<sup>5</sup> Now under the Charities Act 2011

Church Growth Trust's Document Storage Service may be of help, providing secure and fire-proof storage for your key documents and 24 hours online access via our secure server for you to view, download, print or email any of your documents<sup>6</sup>.

#### 6.6 Getting retirements right

As with appointments, retirement of trustees needs to be dealt with properly. You should check the trust provisions, which may just require notice in writing be given to 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.

#### 6.7 Removal of trustees

If you need to remove a trustee, check first whether there is a power to do so. If so, follow it. If not, it is down to persuasion (or if you have good grounds, by application to the Charity Commission). A trustee who is out of the United Kingdom for 12 months can be removed by the appointment of a new trustee in his/her place.

### 7.0 Can you delegate powers/functions?

Delegation of powers is usually possible, but you should make sure there is proper reporting back to the whole trustees' board. Inevitably, not all functions can be exercised by the trustees as a whole. Delegation is often inevitable, particularly if there are paid leaders who may not be trustees.

There is a need for any sub-group to report back to the whole trustees' board. Notes of meetings should be copied to all trustees. Keep in mind that the trustees as a whole remain responsible for any actions taken by a sub-group, or an employee.

Delegation to your treasurer can be a heavy burden. Make sure there is adequate support and accountability. Consider use of management accounts (i.e. showing month by month actual income and expenditure in the various categories compared to budget and previous year's equivalent figures).

### 8.0 Trustees' meetings

If the trust document 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.

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<sup>6</sup> <https://churchgrowth.org.uk/secure-document-storage/>

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.

Whatever the trust document says, the trustees need to meet as often as is necessary to carry out the effective management of the affairs of the charity and to fulfil their duty of care. An annual meeting may well be sufficient in the case of a trust which deals only with church buildings. More frequent meetings will be required in the case of a congregational trust. Three or four formal meetings a year may be appropriate.

If the trustees are also the spiritual leaders, trustees meetings could be incorporated into leaders meetings. Separate minutes of trusteeship matters should then be kept. It is normal to appoint a chairman of the trustees to chair meetings and a secretary to be responsible for keeping minutes. Meetings should always be minuted, with all decisions carefully recorded, and the minutes kept safely. See Appendix 2 for more detailed guidance on holding and recording meetings.

## **9.0 What should you do with the charity's assets?**

### **9.1 Resources**

Trustees should regularly look at the resources of the charity to see whether these are being fully used and consider what other resources may be required to meet the purposes of the charity. These would include buildings, finance and people.

### **9.2 Budgeting & Accounts**

This area is not covered in this paper, but is covered in Stewardship's paper "Financial controls in churches/small charities", which are available, along with various other helpful papers, on Stewardship's website<sup>7</sup>.

### **9.3 Responsibility for properties**

As a trustee of a property, you need to be aware of the condition of the property. Trustees are required to maintain any property held in trust, but only to the extent that they have funds for that purpose. You also need to ensure there is adequate buildings insurance cover in place and that the property is insured for the full replacement cost. Be careful to ensure the sum insured does not lag behind real costs over time. Consider asking to see the insurance premium renewal receipt each year.

### **9.4 Property transactions**

Always take legal advice before you embark on any sale or purchase of land. There are particular requirements in the charities legislation to be complied with on sales or mortgages of land. See Appendix 3 for more detail. Make sure your legal advisor has charity law experience.

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<sup>7</sup> <https://www.stewardship.org.uk/downloads/briefingpapers/Financial-controls-in-churches-and-small-charities.pdf>

## 10.0 What about your Liabilities and Risks?

### 10.1 Potential liabilities of trustees

Trustees are jointly and severally responsible for the liabilities of the charity. You act collectively and actions taken and agreements entered into by one or more trustees affect the others. Therefore, if a minority trustee is particularly unhappy about a certain course of action decided upon by the majority, his/her ultimate option is to resign. Short of this, he/she should have his/her objections recorded in writing in the minutes of any meeting.

There are two basic types of liability that a trustee may incur:

- Liability for breach of trust - A breach of trust occurs when the trustees act outside their powers (e.g. using funds for the wrong purposes, or without proper care). If a loss to the charity results, the trustees can be required to make it up from their own resources.
- Liability to third parties - This is not a matter of trust law, but of contract or tort. If, for example, you as trustees enter into a building contract, you are liable to pay the contractor the price of the work, whether or not there are sufficient funds in the church/charity bank account.

Some limitations apply for a charitable company or CIO. If you are in doubt about any particular course of action you propose to take, you can ask the Charity Commission for advice in writing, on which you can then rely.

### 10.2 Risk Management

The Charity Commission, in their general guidance to Trustees, state “Trustees must... avoid exposing the charity’s assets, beneficiaries or reputation to undue risk”<sup>8</sup>. No matter what size you are, each charity should take a systematic approach to the consideration and management of risk. Charities with annual income above £25,000 are required to report on risk management in the Annual Report and Accounts. Stewardship’s Risk Assessment Toolkit is inexpensive and available on their website<sup>9</sup>. They have identified over 50 main areas of risk for churches to manage, from child protection and fire safety to reputation and record keeping. This Risk Assessment Toolkit will help you to get to grips with these important issues. The Charity Commission also include a risk management model in their Charities and Risk Management guidance<sup>10</sup>.

### 10.3 Insurance

Insurance should be in place to cover property and other assets. You should regularly check that you are getting the best deal – in terms of extent of cover and cost. Specialist church insurers, rather than commercial insurers, are usually better. There will be a need for other insurance cover for liabilities to third parties, including:

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<sup>8</sup> <https://www.gov.uk/government/publications/the-essential-trustee-what-you-need-to-know-cc3>

<sup>9</sup> From Stewardship’s online shop for £50.

<http://www.stewardship.oxatis.com/PBSCProduct.asp?itmID=9361118>

<sup>10</sup> <https://www.gov.uk/government/publications/charities-and-risk-management-cc26>

- public liability insurance;
- employer’s liability insurance (where relevant).

Employers’ liability insurance is a legal requirement where staff are employed. Check with your insurer or insurance intermediary as to whether cover is required or advisable where you use volunteers for charity business. You may also wish to obtain trustees’ liability insurance. This often is included in the charity insurance packages.

### 11.0 Can you pay trustees?

In the past, remuneration of trustees has not been possible without a specific power (for example, in a charity’s trust deed or by virtue of a Charity Commission Order). Remuneration includes being given a benefit (e.g. favourable terms on occupying a house) or paid a donation, a wage/salary or for services. It applies to the person being paid or to any connected person (as a close relative) to someone who is being paid. To do so, without specific powers, would be breach of trust and render the trustee vulnerable to repayment of the remuneration or benefits received. Under section 185 of the Charities Act 2011, the provisions essentially remain the same, but remuneration will be permissible if certain safeguards are complied with, there is no express provision in the trusts of the charity that prohibits that person receiving remuneration and remuneration is provided for services to the charity as opposed to remuneration for acting as a trustee/director or employee of the charity. The latter is still generally prohibited.

The new rules will not override any provision in a charity trust document and therefore an Order of the Commission or any statutory provision will be required.

### 12.0 Additional Information

Church Growth Trust has a number of relevant briefing papers on its website (<https://churchgrowth.org.uk/briefing-papers-library/>). These include:

- Charitable Incorporated Organisations
- Understanding Property Trust Deeds
- Public Benefit Requirements
- Does our church need to register?

Church Growth Trust also has a Model CIO Pack (<https://churchgrowth.org.uk/model-cios/>).

The Charity Commission has various papers for trustees, including:

- The Essential Trustee – What you need to know CC3<sup>11</sup>
- Charities and Risk Management CC26<sup>12</sup>

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<sup>11</sup> <https://www.gov.uk/government/publications/the-essential-trustee-what-you-need-to-know-cc3>

<sup>12</sup> <https://www.gov.uk/government/publications/charities-and-risk-management-cc26>

Stewardship have a number of briefing papers on governance and accounting matters (<https://www.stewardship.org.uk/resources/briefing-papers>), as well as their Risk Assessment Toolkit<sup>13</sup>.

Practical suggestions for keeping trustees on the straight and narrow are shown in Appendix 1 to this paper.

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<sup>13</sup> From Stewardship's online shop for £50.  
<http://www.stewardship.oxatis.com/PBSCProduct.asp?itmID=9361118>

## Appendix 1: Practical suggestions for keeping on the straight and narrow

1. Periodically check through the provisions of the trust document. Consider a contents sheet as a guide (although beware of summaries which may distort the original meaning).
2. Any amendments should be kept with the original document and copies attached to the copy kept by each trustee.
3. Make sure appointments and retirements of trustees are properly recorded and kept with the trust documents.
4. Make sure any important decisions on financial matters are recorded in written minutes.
5. Provide adequate supervision and support for your treasurer.
6. Have regular management accounts (ideally monthly) showing income and expenditure against budget.
7. Make sure you have adequate insurance cover - including all relevant types of insurance and at the appropriate levels of cover (e.g. full reinstatement value for buildings, adjusted over time to reflect full rebuilding cost).
  - Must have employers' liability cover if employing anyone;
  - Public liability.
8. Knowing when to get professional advice
  - Land transactions and the sale or mortgage of church property;
  - Formal documentation to record changes of trustees if the charity owns land or buildings;
  - Professional help is likely to be needed in preparing accounts and having them examined, where annual income or expenditure is over £25,000. When it is over £500,000, a professional audit needs to be carried out;
  - If managing a portfolio of shares or other investments.
9. Ensure that funds are being handled efficiently and effectively.
  - Getting the best return on deposits;
  - Making sure all tax reliefs are being obtained:-
    - a) No deduction of tax on deposit interest;
    - b) No VAT on publicity materials or advertising;
    - c) No stamp duty on land transactions;
    - d) No capital gains tax;
    - e) No inheritance tax;
    - f) Business rate relief on premises. 100% relief on registered places of worship and at least 80% relief on other premises.
  - Making sure gifts through Gift Aid are administered properly and in line with the HM Revenue and Customs requirements.

## Appendix 2: Holding effective trustees meetings

- 1 General points
  - 1.1 Meetings provide an environment for informed decision making, clarification of responsibilities and monitoring the implementation of decisions: they need to be effective.
  - 1.2. Consult your governing document for any specific requirements and follow them. If unsuitable, consider amending to vary them.
  - 1.3. Have a copy of the governing document available at all meetings for reference purposes.
  
- 2 Calling meetings
  - 2.1. Consider using standard form of notice and an agenda.
  - 2.2. Take account of any time limits that have to be observed (e.g. minimum notice). Have a checklist of these.
  - 2.3. Secretary or person fulfilling that role to be particularly aware of these things.
  
- 3 The Agenda and documentation
  - 3.1. Meetings benefit from an agenda which lists the items of business to be discussed at that particular meeting.
  - 3.2. Settle agenda in advance usually between chairman and secretary.
  - 3.3. It may be useful to indicate on the agenda how much time is expected to be allowed for each item.
  - 3.4. Consider stating the target finish time for the meeting.
  - 3.5. It is helpful to indicate whether an item of business is for discussion or whether a decision needs to be taken.
  - 3.6. To help manage the documentation, consider different colour paper for different reports, etc.
  
- 4 Quorum
  - 4.1. The governing document should specify the quorum requirements. Follow these.
  - 4.2. If it does not, then it would be wise for the trustees to fix it and record it in any rules or standing orders established for the conduct of meetings.
  - 4.3. Factors on settling the level of the quorum: if it is too high, any absences may make it difficult to have a valid meeting; if it is too low, a minority may be able to impose its views unreasonably.
  - 4.4. Quorum throughout the meeting? Probably best to have a rule that the quorum is maintained throughout the meeting, so as to ensure that each item of business is considered by an adequately representative group of people.
  
- 5 Chairing the meeting
  - 5.1. The Chair has the challenging task of keeping the meeting on course, on time, yet still allowing adequate discussion of the items. Make sure you pray for him/her!
  - 5.2. Try not to get too engaged in any one item personally - important to maintain objectivity and keep an eye on the overall management of the meeting.
  - 5.3. Do not permit any one person to dominate the meeting.
  - 5.4. If the meeting needs to come to a decision, the Chair should make sure that all the trustees understand what the decision means.

## 6 Voting

- 6.1. Check the governing document for any particular requirements (note: different majorities may apply to different decisions).
- 6.2. If the governing document does not give details about the number of votes required to pass resolutions at trustees' meetings, the legal position is that decisions are made unanimously, providing there is a quorum present.

## 7 Minutes/Record keeping

- 7.1. The taking and keeping of minutes of some types of meeting can be required by either company law or the governing document of the charity.
- 7.2. Check whether any requirements about minute taking apply to your charity.
- 7.3. Whatever may be the legal requirements, it is good practice that accurate minutes are kept of all meetings. The minutes do not need to be a word for word record, but need to record information that is important to the charity.
- 7.4. Recommended content:
  - the name of the charity;
  - the type of meeting;
  - the date and time the meeting was held;
  - apologies for absence;
  - the names of those present, including in what capacity they attended (e.g. trustee, adviser);
  - the name of the Chair;
  - an accurate, but succinct account of decisions with a note of any pertinent discussion points, information the decision was based on;
  - in the case of each decision: a note of any action required and the names of those responsible for implementation;
  - the date, time and venue of the next meeting.
- 7.5. Minutes are best drafted as soon as possible after the meeting and circulated promptly. This avoids delays in implementing decisions.
- 7.6. As the minutes are the charity's record of decisions, it is important that they are accurate and stored properly. They may need to be used to support decisions approved at meetings.
- 7.7. The minutes of meetings need to be kept during the existence of the charity.

## 8 Alternative forms of 'meetings'

- 8.1. Virtual or electronic meetings
  - Unless the governing document specifically prohibits it, charity trustees may choose to conduct some meetings by electronic means;
  - The electronic means must allow the trustees to both see and hear each other (e.g. by using video conferencing or Internet video facilities);
  - Such virtual meetings should not be a total alternative to a physical meeting - face to face human contact at least once a year is recommended!
- 8.2. Telephone conferencing
  - This may be used for discussions or in those cases where the governing document does not require a meeting.
  - This form of communication does not constitute a valid meeting in the legal sense and so is not suitable where the business concerned has to be transacted at a "meeting".

## Appendix 3: property (land) transactions

### 1 Introduction

These notes draw attention to the general requirements (further detail is set out in Charity Commission Booklet CC28<sup>14</sup>). Churches involved in the sale or mortgage of their properties should always obtain the appropriate professional advice at the time. The relevant sections are 117 to 120 of the Charities Act 2011, the essential provisions of which are set out below.

### 2 Sale of Charity land

(a) No Charity Commission Order is required provided the trustees:-

- obtain and consider a written report on the proposed disposition from a qualified surveyor instructed by the trustees and acting exclusively for the charity;
- advertise the proposed disposition for such period and in such manner as the surveyor has advised in his report; and
- decide that they are satisfied, having considered the surveyor's report, that the terms on which the disposition is proposed to be made are the best that can reasonably be obtained for the charity.

(b) Sale at less than market value

A Charity Commission Order will normally be required. There is an important exception however: where the sale is "to another charity otherwise than for the best price that can reasonably be obtained and is authorised to be so made by the trusts of the [selling] charity"

The Charity Commission is applying this to a sale by one church to another at a discount, where the churches have similar or overlapping objects. This means that you can sell to another church at less than market value, even for a nominal sum. In these circumstances, none of the requirements to take advice or advertise apply. It may be prudent, however, to notify the Charity Commission of the action you propose.

(c) Sale to connected persons

"Connected persons" include trustees or someone who has donated land to the charity or a close relative of either, or an institution in which such a person has a substantial interest. In such a situation a Charity Commission Order is required.

### 3 Mortgaging charity land

(a) No Order of the Charity Commission will be required if the trustees have obtained and considered proper advice given to them in writing on the following matters:

- Whether the proposed loan is necessary in order for the charity trustees to be able to pursue the particular course of action in connection with which the loan is sought by them;
- Whether the terms of the proposed loan are reasonable having regard to the status of the charity as a prospective borrower; and
- The ability of the charity to repay on those terms the sum proposed to be borrowed.

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<sup>14</sup> <https://www.gov.uk/government/publications/sales-leases-transfers-or-mortgages-what-trustees-need-to-know-about-disposing-of-charity-land-cc28>

(b) Further detail/points to note:

- Proper advice is the advice of a person "who is reasonably believed by the charity trustees to be qualified by ability in and practical experience of financial matters and who has no financial interest in relation to the loan, grant or other transaction in connection with which the advice is given"<sup>15</sup>.
- This can be somebody in the church, provided they have the necessary ability and experience, but not a trustee.
- Accountants and solicitors or surveyors (provided they have the necessary experience) should be able to give this advice.

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<sup>15</sup> Section 124 (8) of the Charities Act 2011