

PRACTICAL GUIDE

Understanding Property Trust Deeds

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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	5
5.2	Power to let.....	6
5.3	Power to sell.....	6
5.4	Power to gift.....	8
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.....	10
8.0	National property trusts	10
9.0	Changing the Trust Deed	10
10.0	Trustees' remuneration	11
11.0	Dissolution.....	12
12.0	Further information.....	12

1.0 Introduction

If you are a trustee of a gospel hall or other independent church property, this practical guide 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 practical guide 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 manages the congregation and the church funds. 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 practical guide 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!

Sometimes limits are placed on what can be done with the income of the Trust so that it may not be used for purposes beyond the church’s own needs. Equally, there may be restrictions on the use of the church premises, the effect of which is that the premises may not be used by other groups such as childcare groups or other community groups.

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.

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.

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”

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; although lenders prefer to see an express power in the Trust Deed. 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. Even if there is power to let the church property, the Trust Deed may require that rental income may only be spent on the church's own needs and/or purposes.

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 Charity Commission a Scheme⁶ as to the use of the property or the proceeds of sale. The new use would have to be consistent with the spirit of the original gift and allow the charity to carry out its purposes more effectively. 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 International (formerly Echoes

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).

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

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.

When charity trustees are selling, leasing or otherwise disposing of land or buildings they will need to comply with the provisions of Sections 117 to 123 Charities 2011 which are quite complex and usually involve obtaining in advance of the contract for disposal a Surveyor’s Report in accordance with The Charities (Qualified Surveyors’ Reports) Regulations 1992. This is intended to assist the trustees to avoid disposing of the property at an undervalue. Unfortunately, there is no de minimis value below which the Report is not required. Legal advice as to compliance with these provisions should be obtained at an early stage so that the necessary steps under the procedure required do not cause delay. In certain cases, particularly where there are trustees or connected parties common to both the charity disposing of the property and the party acquiring the property, the consent of the Charity Commission to the disposal is required.

In cases where the Trust Deed stipulates that the land/buildings must be used for particular purposes, as will often be the case with church premises, the trustees must, unless the Charity Commission waives the requirement, give not less than a month’s notice of the proposed disposition and consider any representations received. This requirement does not apply where the premises to be disposed of are to be replaced with other premises to be held on the same trusts as the premises being disposed of; nor does it apply where the interest being disposed of is a lease for less than two years.

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".

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 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 may 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. Section 34 of the Trustee Act 2000 gives trustees a statutory power to insure, even if the Trust Deed does not give a power. 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 (which can be used when trustees are authorised by the Trust Deed to be appointed by resolution at a meeting of the trustees) 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 still accept a Deed of Appointment or Memorandum of Appointment to change the registered proprietors, but they will also accept a Transfer, duly executed by the outgoing trustees and the continuing trustees who are registered as proprietors in favour of the new trustees, as an alternative.

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.

Similarly, if the trust property is leasehold, the retiring trustee and the continuing trustees will need to assign the lease to the remaining trustees and any new trustee, for which a licence to assign may be needed from the landlord. The outgoing trustee will also want to be released by the landlord from liability under the lease.

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 or even outside the local area.

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.

Ideally, meetings of trustees are face to face, but meetings by video link in which every trustee can see and hear every other person at the meeting are permissible even if there is no express authority for these in the Trust Deed. However, it would still be advisable to regulate non face to face meetings in the Trust Deed or by amendment of the Trust Deed (see below at section 9). Meetings by telephone conference are permissible, but only if they are authorised by the Trust Deed or an amendment of it (see below at 9 again) because the important element of being able to see other participants at the meeting is absent.

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 adopt a formal legal structure such as Trust Deed or a Charitable Incorporated Organisation and 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 and sometimes an automatic gift of the trust property to such an organisation is the default position upon closure of the assembly. 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.

A charity can, under Section 62 of the Charities Act 2011, apply (indeed trustees have a duty to apply) to the Charity Commission for a Scheme to change the purposes for which its property is used if at least one of the following criteria applies to the charity's purposes:

- a. They cannot be carried out any more or not in line with the Trust Deed;
- b. They have been fulfilled or are how met in other ways;
- c. They do not allow for the use of all the charity's income or property (e.g. the letting of the church hall to another group if it is no longer used by the assembly);
- d. They refer to outdated definitions of areas, places or groups of people (this could particularly apply to church Trust Deeds written many years ago);
- e. They are not charitable anymore;
- f. Where two or more charities with similar purposes want to merge but do not have legal power to do so.

10.0 Trustees' remuneration

Sometimes the Trust Deed will authorise the payment of trustees for services rendered to the charity (e.g. the payment of solicitors and accountants in respect of their professional fees), but in older Trust Deeds it is unusual for there to be any provision for payment of trustees. Trustees may be reimbursed their expenses which are not remuneration. If there is no authority for the remuneration of trustees in the Trust Deed then remuneration can only be paid to them under the authority granted by Section 185 of the Charities Act 2011 or under a permission granted specifically and expressly by the Charity Commission.

Section 189 of the Charities Act 2011 authorises charity trustees or persons connected (see below as to these) to be paid subject to certain conditions:

Condition A – The amount or maximum amount of the remuneration is set out in a written agreement which sets out the services to be provided by the trustee and the remuneration must not exceed what is reasonable in the circumstances;

Condition B – The trustees, before entering into the agreement, were satisfied that it would be in the best interests of the charity for the services to be provided by the trustee;

Condition C – The total number of trustees receiving remuneration is a minority of the trustees;

Condition D – There is no express provision in the Trust Deed prohibiting the trustee from receiving remuneration.

This statutory permission for remuneration of a trustee does not apply to remuneration paid simply for being a trustee nor to remuneration as an employee of the charity. This is the difference between payment for services rendered under a contract for services, which is covered by the statutory permission, and being paid under a contract of service as an employee, which is not. For example, if a trustee's spouse is to be given a contract of employment, that would not be covered by the statutory permission. However if she, as an accountant, prepares a set of accounts for the church for a fee, that arrangement could be covered by the statutory permission.

For the purpose of these rules, a “connected person” is defined by Section 188 of the Charities Act 2011 and broadly covers family, relatives, business partners of a trustee and also a business in which a trustee has an interest.

Before making any agreement within Condition A above the trustees must have regard to the guidance given by the Charity Commission on their website entitled “Trustee expenses and payments” where the relevant passage is Section 4⁸. The trustees must also follow the ‘duty of care’ required by the Trustee Act 2000. The trustee who is to receive remuneration must withdraw from the meeting of the trustees when it is considered and will not be counted in the quorum.

If the Trust Deed does contain an express power to remunerate a trustee it may be limited in some way, such as for administrative duties, in which case the statutory power of Section 185 above may be used by the trustees to pay remuneration for other services not covered by the express power, such as working on maintenance of church premises or providing building supplies.

11.0 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 as described in Section 9 above.

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.

12.0 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 practical guide, please feel free to contact Church Growth Trust: Giles Arnold; telephone: 01536 647164; mobile: 07721 666660; email: giles.arnold@churchgrowth.org.uk.

⁸ <https://www.gov.uk/government/publications/trustee-expenses-and-payments-cc11>