

Barham Park Trust
Governance and Guidance Documents
2023

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[Barham Park is situated in the west of Brent, on the west of Wembley and bordering Sudbury. Following the recent boundary review, it now falls within the Wembley Central Ward.](#)

[Having been given to the people of Wembley, the park is held and managed by the Barham Park Trust, of which Brent Council is the Trustee. The Park is about 10 hectares in area. It includes the Barham Park building hosting a range of community-based tenants and a range of park features.](#)

1. Details of the Trust and its Assets

The land (which includes various buildings), known as Barham Park was given on trust by conveyances (dated 1936) to the Council (originally Wembley Urban District Council, of which the London Borough of Brent is the successor) in 1938. The terms of the trust are 'to preserve the same for the recreation of the public in such manner and subject to such regulations in all respects as the Council may from time to time think proper' ([Charitable Purpose](#)).

The Charity was registered with the Charity Commission in 1963 (Registration number 302931). At the time of the bequest it was not clear, as a matter of law, whether land for recreational purposes was to be regarded as a 'charitable purpose'. The Recreational Charities Act 1958 clarified the law following a court case and the land was registered.

The land is situated within the London Borough of Brent and comprises of an extensive park and gardens. It includes a children's playground, rose gardens, a war memorial, lawns and established trees and shrubs. The children's playground and war memorial have been added since the land was given on trust. [The main house](#), which formed part of the estate, fell into disrepair in the 1960's and was demolished. The land on which it stood still forms part of the site. Various other buildings remain on the site. Save for the sale of the houses at 776 & 778 Harrow Road (located by number 8 on the map), the site remains the same as it was in 1938.

No funding or other assets were bequeathed. The cost of managing, maintaining and developing the site has largely been met by the Council. Some rental has been received by the Trust from use of the land and there is also Trust capital from the sale of the two houses. External funding, such as a grant of £10,000 from Natural England has also been obtained from time to time. However, competition for such funding is very strong.

Following the sale of the two houses capital funds were available to the Trust. A decision was taken by the Barham Park Trust Committee in February 2013 to use these funds to improve the park and undertake works to the buildings so that they could be let. The future use of the buildings was also considered and this includes offers of use to outside organisations and the council which has resulted in increased income to offset some of the costs of maintenance of the park.

[The park won Green Flag status \(a national standard for parks and open spaces\) in 2009, 2010 and 2011. The last parks survey undertaken in 2010 showed that it was the third most popular park in Brent.](#)

2. Constitutional Arrangements

The Council as a corporate body is the trustee (rather than individual members) and accordingly it is for the Council to make decisions about the Trust in its role as Trustee. The Local Government Act 2000, The Local Authorities (Functions and Responsibilities) Regulations 2000 (as amended) and the Council's Constitution provide that all functions of the Council, which are not the preserve of others, are 'executive' functions. In the case of the Trust function, no restriction exists and accordingly it falls to the Council's Executive ([the Leader and the Cabinet](#)) to make decisions.

At a meeting of the [Executive \(now called the Cabinet\)](#) 12th November 2012 members agreed the following arrangements for decisions to be made by the Council:

- i) note the Barham Park Trust status as a charitable trust
- ii) arrange for the trustee functions in relation to Barham Park Trust to be discharged by a sub-committee of 5 members of the Executive to be known as 'Barham Park Trust Committee'
- iii) agree the membership and terms of reference of the Barham Trust Committee of the Executive as set out in below [\(note: the below reflects minor change since 2012 such as changed titles\)](#)

THE MEMBERSHIP AND TERMS OF REFERENCE OF THE BARHAM PARK TRUST COMMITTEE OF THE CABINET

Membership

The sub-committee comprises 5 members of the Cabinet appointed by the Cabinet.

Chair and Vice Chair

To be appointed by the Barham Park Trust Committee

Quorum

3 Cabinet members

Terms of Reference

The Cabinet has agreed to delegate the following executive functions to the committee:-

- (1) the trustee functions in relation to Barham Park Trust including decisions to dispose of land, vary or cease the charitable purpose, or change the trustee, except those functions it has delegated to officers;
- (2) an annual review of how the trust is carrying out its charitable purposes and a review of the Trust's finances; and
- (3) any other matter which the Director Environment & Leisure Services considers ought to be referred to the committee for a decision.

The Committee shall meet not less than once per year.

These arrangements are set out in [Table 4, Part 43](#) of the Constitution. This is a [sub-ExecutiveCabinet](#) committee and the conduct of the meetings shall be in accordance with the rules set out in the Council's Standing Orders paragraph [44 to 4713](#).

Day to day management of the Trust assets has historically been undertaken by a group of officers [the Assistant Director Regeneration and Major Projects, the Assistant Director Neighbourhood Services and the Deputy Director Finance and Corporate Resources](#), collectively known as the 'Barham Park Trust Management Team' [representing parks, property and assets, finance and legal services](#). On 12th November 2012 the [ExecutiveCabinet](#) made the following formal arrangements for day to day management of the trust;

- iv) delegate the day to day trustee functions and decision making to the Assistant Director Neighbourhood Services in consultation with the Assistant Director Regeneration and Major Projects and the Deputy Director Finance and Corporate Services who shall collectively be known as the 'Barham Park Trust Management Team'
- v) the officers in iv) above are delegated such executive powers relating to their service areas as are necessary to carry out the day to day trustee functions and, in so far as they relate to Barham Park Trust matters, these powers are the same as those delegated to Directors in those service areas under Part 4 of the Constitution.

[In September 2022, the following delegation was made by the Barham Park Trustee Committee:](#)

[To authorise that the day to day Trustee functions and decision making of the Barham Park Trust be delegated to the Council's Director of Environment & Leisure following the Council's senior management restructure process and to authorise any previous decisions of the Trust Committee to delegate authority to the Operational Director of Environmental Services that have yet to be exercised to be delegated to the Council's Director of Environment & Leisure.](#)

[Following the delegation of September 2022,](#)

The Barham Park Trust Management Team ('BPTMT') terms of reference ~~were~~ agreed in February 2012 ~~and are as are amended as~~ follows:

- To oversee the management of Barham Park on behalf of the Council (the Trust) acting in its charitable function of preserving the park 'for the recreation of the public'.
- To ensure [Executive Cabinet](#) Members are kept informed and that appropriate matters are raised at the [Executive Cabinet](#) for decision.
- To ensure annual accounts are submitted to the Charity Commission.
- To meet as and when required to make a discrete decision but ~~on~~ no less than ~~two~~ [once per occasions a](#) year in pursuance of the above.
- Minutes of meetings of the BPTMT are [to be](#) maintained by officers.

3. Annual Accounts and Returns

The Charity Commission guidance ~~on~~ [Local Authorities as Charity trustees—Cllrs Guide to a Council's role as Charity Trustee - trustee](#) (copy [provided in the attached as](#) Appendix ~~six~~ 1) provides that the finances of the Trust must be kept separate from those of the council. The assets must be accounted for separately and income and expenditure should be channelled through discreet cost centres. The local authority may top up the finances of the Trust but no funds should pass from the trust to the council. The council must observe the Commission's registration and reporting requirements.

The Trust is required to submit annual accounts and returns to the Charity Commission within ten months of the end of the financial year. The accounts summarise the money received and paid out by the Trust in the financial year and a statement is provided giving details of its assets and liabilities at the end of the year. The annual return is used to provide the Charity Commission with basic financial information, details of contacts, trustees and activities of the Trust.

The accounts will be brought to the Barham Park Management Team and Barham Park Trust Committee for approval.

With regard to the accounts they will be managed in the following way in order to ensure a clear division between Council and trust funds and to provide up to date detailed accounts for the trust income and expenditure:

- The accounts are produced using distinct cost centres held centrally, outside of individual departments
- ~~Quarterly monitoring reports and annual accounts will be based on returns from~~ [Regeneration and Major Projects and Environment and Neighbourhood Services](#) [Environmental and Leisure Services](#) signed off by the relevant ~~Assistant~~ Director. These reports will be compiled by the central finance team.

- The quarterly financial reports will be reported to the [Director of Environment & Leisure Barham Park Trust Management Team](#).
- [The financial reports will be reported annually to the Barham Park Trust Management Team.](#)
- The annual accounts [will be](#) approved by Barham Park Trust Management Team and Barham Park Trust Committee

4. Dealing with Trust land

The law relating to charity land, its use and disposal is complex and detailed. The advice will depend on the proposed use, the type of disposal, and the value. Each decision on use of trust land will require individual consideration, and in many cases legal advice will be required. These general comments should not be substituted for advice on specific disposals.

The Barham Park Trust land and premises are held as "designated land" (formerly called permanent endowment) for the recreation of the public. The 1936 conveyance does not state that the Charity has the power to sell or let designated land.

However, the Charity and Trust legislation provides means by which disposals can take place. The legislation allows for some small disposals by the Trust without the involvement, or only limited involvement, of the Charity Commission. There are however, various procedural requirements which need to be followed in many of those cases, including advertising, the involvement of a qualified surveyor etc. For those disposals which have a more significant impact upon the Charity, involvement of the Charity Commission is required, including in some cases an [approved](#) 'Scheme' provided by the Commission in advance of any disposal.

5. Making decisions about the Trust

The detail above regarding the division of roles [between](#) members and officers sets out how decisions will be made regarding the management of the Trust funds and assets in order to fulfil the terms of the Trust.

In accordance with the law and Charity Commission guidance it is essential that decisions regarding the Trust are made on the basis of what is in the best interests of the Trust and separate from any other interest, be that personal, or that of the Council, or other bodies. Issues regarding conflict of interest are addressed below.

A charity (which includes Barham Park Trust) is an entity established exclusively for purposes which are capable of being charitable and which are for the public benefit.

The trustee (the council through its [executive Cabinet](#)) has ultimate responsibility for directing the affairs of the charity and ensuring it is solvent, well run and delivering the charitable outcomes for the public benefit for which it has been set up. Trustees have a duty to act solely in the interests of the charity and its beneficiaries.

The Charity Commission recognises that Councils are well suited to being charity trustees but there are certain common pitfalls that must be avoided.

These are:

- Failure to comply with the restrictions which are placed on the use of charitable assets

- Conflicts which can arise between things that would be popular with the electorate and the obligations of the trustee imposed by the terms of the charity
- Ignorance of the terms ~~or~~ of the charity or its assets.

This governance document, together with the procedures put in place for management of the Trust, the on-going advice and input of professional staff and the safeguards in place for council activity generally (e.g. The Council's Members' Code of Conduct) are designed to ensure that these matters are effectively addressed. Members and Officers will also be provided with training as and when required.

The principles highlighted in the guidance are:

- The Trust must be independent — it must exist and operate solely for the charitable purpose and not as a means of carrying out the policies or directions of the Council.
- While on-going management can be delegated to officers, responsibility for significant decision making and oversight rests with members, and management should be kept separate, as far as possible, from the business of the Council.
- the terms of the Trust must be clearly understood.

The [Commissions](#) guidance ([Appendix 1](#)) sets out ten tips for councils in their role as charity trustee which provides a useful checklist by which the Council can periodically measure its effectiveness and compliance.

6. Identifying Conflict of Interest and dealing with this

The Charity Commission guidance documents pay particular attention to conflicts of interest for charity trustees. This ~~is~~ ~~has a~~ particularly relevant for the Council which has two roles — one as sole trustee to Barham Park Trust, and the other in its statutory role. [The Charity Commission highlights that conflicts of interest affect charities of all types and sizes which can lead to decisions that are not in the best interests of the charity and which are invalid or open to challenge. In addition they may be damaging to a charity's reputation or public trust and confidence in charities generally.](#)

The Charity Commission's [Guidance, Conflicts of interest: a guide for charity trustees, updated as of 31 October 2022](#), provides detailed general guidance on conflict of interest, [a copy is attached as Appendix 2, and also particular notes on the position for Local Authorities](#)

Set out below are extracts from the Guidance ~~titled Conflicts of Interest which is included in the Appendices to these governance documents.~~

2. Conflicts of interest: at a glance summary (legal requirement)

Trustees have a legal duty to act only in the best interests of their charity. They must not put themselves in any position where their duties as trustee may conflict with any personal interest they may have.....

3.1 What is a conflict of interest? (legal requirement)

A conflict of interest is any situation in which a trustee's personal interests or loyalties could, or could be seen to, prevent the trustee from making a decision only in the best interests of the charity.....

..... Even the perception that there is a conflict of interest can damage the charity. Where the perception is not accurate because there is no conflict of interest, the trustees should always be able to respond appropriately to the situation by managing the risks to the charity and being prepared to explain how they have made their decisions only in the best interests of the charity.

Conflicts of interest relate to a trustee's personal interests and the interests of those connected to them. This means that there is a conflict of interest where there is a proposed transaction between the charity and a connected person. Similarly, there is a conflict of interest where there is a benefit or a potential benefit to a connected person.....

3.2 Where and how do conflicts of interest arise?

Conflicts of interest usually arise where either:

- there is a potential financial or measurable benefit directly to a trustee, or indirectly through a connected person
- a trustee's duty to the charity may compete with a duty or loyalty they owe to another organisation or person

"2. What is a conflict of interest and what issues does it raise?"

A conflict of interest is any situation in which a trustee's personal interests, or interests that they owe to another body, may (or may appear to) influence or affect the trustee's decision making.

It is inevitable that conflicts of interest occur. The issue is not the integrity of the trustee concerned, but the management of any potential to profit from a person's position as trustee, or for a trustee to be influenced by conflicting loyalties. Even the appearance of a conflict of interest can damage the charity's reputation, so conflicts need to be managed carefully."

The law states that trustees cannot receive any benefit from their charity in return for any services they provide to it without express legal authority. No such express authority is provided for in relation to Barham Park Trust so no benefit must be received by the council, members or officers. This provision is to ensure that they are not in a position where their personal interests and their duty to the charity conflict.

A conflict of interest can arise in a variety of ways: direct financial gain may arise where a member or officer is paid for services, or the award of a contract to an organisation in which the member or officer has an interest. Indirect financial gain may arise if a spouse would benefit, and non-financial gain may arise where the trustee is also a user of the charity service. Conflict of loyalties may arise where the trustee member is also a member of the local authority.

It is important to identify circumstances in which a conflict of interest may arise and to have in place mechanisms for dealing with it effectively. The Charity Commission recommends that there be a register of interests of m members, that at the beginning of each meeting members declare any such interest and that they withdraw from the meeting where the interest amounts to a conflict of interest, and that records be kept of such interests.

In Brent the Code of Conduct applies to members sitting on the Barham Park Trust executiveCabinet sub committee. The Code includes a duty to declare a Disclosable Pecuniary Interest and to withdraw from participation in that item where such a personal financial interest arises. Members may in some circumstances be required to withdraw from participation where other personal interests arise. The Code also provides that members must not improperly advantage or disadvantage themselves or others when deciding matters. This also applies to decisions taken as a member of the executiveCabinet sub committee. In addition to these rules members are clearly advised of the requirement that they should not vote on matters where they are biased. Members are asked to declare their personal and Disclosable Pecuniary Interests at the beginning of each meeting and these are recorded. The meetings of the sub committee are held in public (save for exceptions relating to confidential matters and where certain

exemptions apply), and the register of Disclosable Pecuniary Interests is publicly available. This provides transparency and openness in the Trust decisions.

In relation to members' involvement with Trust matters the other risk of conflict aside from a 'personal' conflict is between the members' roles as councillors and their statutory responsibilities, and those as trustee to Barham Park Trust. This issue is highlighted in the guidance [at paragraph 8](#);

[Conflicts can arise between things that would be popular with the electorate and the obligations of the trustee, imposed by the terms of the charity](#)"Charities, such as playing fields, are sometimes managed by the local authority as sole trustee, or by members of the local authority, as trustees. It is especially important when this is the case that the local authority as trustee, or its members as trustees, are clear when they are dealing with charity business and when they are dealing with local authority business. When they are dealing with charity business, they must only consider the best interests of the charity and not those of the local authority

In circumstances where a conflict of interests between the Council and the Trust arises, members must only consider the best interests of the Trust when deciding Trust business. Where one or more members of the [sub](#)-committee considers their role within the council is such that they are unable to put the interests of the Trust first or risk the appearance of not doing so, for example as a result of any appearance of bias, then they should not vote, nor participate in the decision making on that item.

Conflict can equally arise with regards officer decisions. There is a register of officers' personal interests and in situations where an officer of the Council is so closely connected with a statutory function that it makes it impossible for them to put the Trust interests first then the Trust decision shall be taken by other senior officers who are not involved in matters which directly conflict with those of the Trust.

7. [Charity Commission Guidance](#)

The Charity Commission has published various guidance documents, [including the Essential Trustee Guidance \(attached as Appendix C\)](#) which are on its web site ([Charity Commission guidance - GOV.UK \(www.gov.uk\)](#)). Those which are most relevant to the position regarding the management of Barham Park Trust are included in these governance notes [in theas](#) Appendices.

There is a specific guidance note for Councillors: Councillor's Guide; to a council's role as charity trustee ([Appendix A](#)). This is produced jointly with the Local Government Association and the Charity Commission. It specifically addresses the situation where a local authority is itself the sole trustee of a charity. It is intended to help councils and council members fulfil their role as trustee responsibly and in accordance with charity law, and is designed to help the council avoid some of the financial and reputational pitfalls that can occur when things go wrong. Members and officers involved with the Trust are advised to read this and it is the principles and processes set out in that document which are followed by the Council in its dealings with the Trust.

[8th January 2013](#)

[5th September 2023](#) [Local authorities as trustees – Page 1 of 2](#)

[Charity Commission](#)

[The regulator for charities in England and Wales](#)

[Local authorities as trustees](#)

[This section provides guidance for local authorities which are sole corporate trustees for charities in their area.](#)

[Overview](#)

[Councillors' guide to a council's role as charity trustee](#)

[A quick guide jointly published by the Local Government Association and the Charity](#)

[Commission](#)

[Detailed guidance](#)

[Types of charities under local authority control](#)

[Checking who's the trustee](#)

[Understanding the council's relationship to a charity](#)

[Trustee checklist](#)

[The issues of which a trustee needs to be aware](#)

[Other governance checklists for local authorities](#)

[Checklists for topics such as fitness for purpose and planning for change](#)

[Property transactions, transfers of land and funds and consolidation of small funds](#)

[Guidance for local authorities on dealing with charity property correctly, with links to further resources](#)

[See also:](#)

[Recreation grounds and King George's Fields](#)

[Charities and Public Service Delivery \(CC37\)](#)

[Small charities guidance](#)

[The Boost Initiative](#)

[Read Aloud](#)

[Email Updates](#)

http://www.charity-commission.gov.uk/Charity_requirements_guidance/Specialist_guidance/07/01/2013-Local-authorities-as-trustees Page 2 of 2

[Twitter](#)

[Youtube](#)

[Other help for charities](#) Page 1

Councillors' guide: to a council's role as charity trustee

Introduction

This guide has

been jointly produced by the Local Government Association and the Charity Commission. It specifically addresses the situation where a local authority is itself the sole trustee of a charity. Many local authorities hold assets that are subject to charitable trusts. Often this is because a donor has left land or property to a council on condition it is used for a public purpose – such as a museum, art gallery or recreation ground. In such a situation the local authority has the status of charity trustee.

This brief introductory guide is intended to help councils and council members fulfil this role responsibly in accordance with charity law and to avoid some of the financial and reputational pitfalls that can occur when things go wrong. This guide does not address the wider set of issues relating to council staff or members being trustees of other charities or the relationship between local authorities and external charitable bodies more generally.

What is a charity?

A charity is an organisation or entity established exclusively for purposes which are capable of being charitable and which are for the public benefit. In England and Wales, charitable purposes are defined in the Charities Act 2011. Public benefit is explained in Commission guidance.

The people who serve on the governing body of a charity are called charity trustees. The beneficiaries might be the population of a local area, or a particular type of person, such as those suffering from a medical condition. Trustees have and must accept ultimate responsibility for directing the affairs of a charity, and ensuring that it is solvent, well-run, and delivering the charitable outcomes for the public benefit for which it has been set up. Trustees have a duty to act solely in the interests of the charity and its beneficiaries.

A corporate body such as a local authority can also be a charity trustee. Where a local authority is trustee, the property in question is often land or buildings intended for a particular purpose, but councils as

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trustees can also hold financial investments or other funds, often for the purpose of awarding grants to the community. In either case, it is essential to ensure that the assets are held and applied in accordance with the charity's particular purpose.

Charity law and the Charity Commission

There are about 180,000 registered charities in England and Wales with a collective income of around £50 billion a year. All charities must comply with charity law which defines charities and how they are run.

The Charity Commission is the independent regulator of charities in England and Wales. Its aim is to provide the best possible regulation of charities in order to increase charities' effectiveness and public trust and confidence in the work they do. Most charities with an income above £5,000 per year must register with the Commission.

The council's role as charity trustee

Local authorities are empowered by Section 130 of the Local Government Act 1972 to receive and hold gifts on charitable trusts. This may include money or assets left by donors, or charitable trusts created by ancient royal charters or Acts of Parliament.

Local authorities are well suited to being charity trustees; in particular councils are:

rooted in the local community;

open and transparent in their dealings; highly accountable for their actions; and have the high standards of public conduct embedded in the way they work.



Zoca/ Government Association



There are similarities between the rules and regulations that apply in discharging the functions of a local authority and those of a charity. While many of these underlying principles of prudence and transparency will apply equally to managing charitable trusts, there are also differences. An understanding of these differences is essential if local authority trustees are to perform this role effectively and with the minimum of risk. A number of councils have encountered problems in this area, most notably because:

councils, used to exercising wide discretion in the way they manage their assets, may not have fully recognised and complied with the restrictions on the use of charitable assets;

conflicts can arise between things that would be popular with the electorate and the obligations of the trustee, imposed by the terms of the charity;

where assets were left to the council many years ago, the precise terms of the charity, or even the fact that it is a charity, may have been forgotten or overlooked.

Fictional Case Study A — Southbeach Borough Council

Scenario: Southbeach Borough Council plans a major refurbishment of the sea-front Pavilion Rooms, to include a new art gallery, public meeting rooms and tourist information centre. The Council's solicitor has checked and the building was left to the Council in 1948 on charitable trusts to be used for "public gatherings, artistic or cultural or other activities for the benefit of the people of Southbeach."

Issues and promotion of tourism is not a legally charitable purpose. The Council has a conflict of interests between its desire as a public authority to promote tourism and its duty to act in the charity's interests.

As trustee, the Council must ensure that the purposes of the charity are fulfilled. Depending on the terms of the trusts perhaps a proportion of the charitable use could be accommodated within council premises elsewhere to allow a Tourist Information Centre to be incorporated in the refurbished Pavilion. Alternatively, if there is genuinely spare capacity within the Pavilion, perhaps a Tourist Information Centre could be accommodated through a commercial lease from the charity to the Council. In either case, Charity Commission advice and authorisation are likely to be needed.

Fictional Case Study B — Touchline District Council

Touchline District Council is trustee of a recreation ground in an out-of-town location which is little used. It was bequeathed in 1967 by a local citizen as a public recreation ground within the meaning of the Recreational Charities Act 1958. Last year the Council leased the site to the Touchline Football Club to facilitate their expansion plans and the Club has now laid out pitches, spectator areas and has built a substantial Clubhouse.

Issues and solutions: Under the Recreational Charities Act the facilities must be available to members of the public at large. Accordingly, permitting the exclusive use of the grounds by one club would not meet this requirement. In granting the lease, the Council has acted outside its powers and in breach of the charitable trusts. This situation may be complicated to resolve and local feelings are likely to run high, but open public access must be restored as soon as possible on this site or a suitable replacement provided by the Council. Charity Commission advice and authorisation may be required, particularly if the Council is considering an exchange of charity land for land it holds in a corporate capacity.

Managing

Trusts safely

Local authorities have the skills, public knowledge and professional resources to manage charitable trusts very effectively but care needs to be taken to ensure that unnecessary problems do not arise. Councils and council members should be aware of the following principles:

For a body to be a charity, it must be independent, i.e. it must exist and operate solely for charitable purposes, not as a means of carrying out the policies or directions of the local authority.

Where a local authority is a trustee of a charity, it is the corporate body, acting in accordance with its usual procedures, which is "the trustee." While ongoing management may be delegated to officers, responsibility for decision-making and oversight rests with the councillors.

The terms of the charity must be clearly understood. Nearly all problems that occur stem from a lack of clarity regarding these terms, or indeed failing to recognise that a charity exists in the first place. If there is any doubt about the terms of a charity or how they should be interpreted, appropriate advice should be sought, for example from legal advisors or from the Commission.

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The management of the charity should be kept separate, as far as possible, from the business of the local authority. Depending on the size and circumstances of the charity, it may make sense for a committee of councillors to be allocated this task. It must not be forgotten, however, that responsibility continues to rest with the whole council.

Equally the finances of the trust must be kept separate from those of the council. The assets must be accounted for separately and income and expenditure should be channelled through discrete cost centres. The local authority may top up the finances of the trust but no funds should pass from the trust into the council's own accounts — although the council may, depending on the circumstances, recover the costs of administration.

If the original terms of the charity can no longer be realistically followed, because circumstances have changed, the local authority should approach the Commission to see if the charity's governing document can be amended or updated. The Commission can advise on the most appropriate way of doing this.

The Commission's registration and reporting requirements must be observed. For example, all charities must produce annual statements of accounts under charity law. Depending on the financial size of the charity, it may have to register with the Commission, or be subject to higher levels of accounting scrutiny.

If any issues arise about whether the terms of the trust have been properly followed, the local authority should contact the Commission and work with them in finding a solution.

Fictional Case Study C — Heritage City

City Council

Council

Scenario: Heritage City Council is trustee of a charity whose investments include a number of properties, with the income applicable for charitable purposes that benefit the inhabitants of the City. One large building has become semi-derelict and a developer has offered the Council £3 million for the site which it wishes to convert to a night club and casino. The Council feels obliged to accept the windfall but local residents are outraged.

Issues and solutions: As trustee the Council must act exclusively in the best interests of the charity. It must make its decision based on consideration of the charity's interests alone. The trustee must manage its conflict of interests and not take account of factors that are irrelevant to the charity (such as the Council political interests). It must adequately inform itself before making a decision.

Taking appropriate independent professional advice, the trustee should consider whether the offer of £3 million represents the best sale price that the building is likely to achieve. The property should be marketed unless the charity's professional advisor advises otherwise. The trustee could consider whether it should take account of any risk to the charity's reputation. There may be a range of issues on which the trustee might require the Commission's advice, depending on the particular trusts on which the building is held.

In this case, however, the conflict of interest may be unmanageable because of the rules against self-dealing; the Council would have to act as both charity trustee and planning authority. The Council might need legal authority from the Charity Commission either to act notwithstanding the conflict of interest, or to bring in an independent "trustee" to act for the charity for this transaction (which might be preferable in the circumstances).

The trustee might have found it helpful to have a pro-active asset management plan in place. This might have increased the range of potential options for maximising the return on the charity's assets.

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Useful Guidance

Available from the Charity Commission website

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The Essential Trustee (CC3)

Local Government
Charity Toolkit

Sales, leases, transfers or
mortgages: What trustees need to know - Charities Act 2006:
What Trustees Need to Know - a plan E

en.gov.uk

Commission and the Office of the Third Sector

about disposing of charity land (CC28) - also
published jointly by the Charity

Public benefit guidance

3

Ten tips for councils in their roles as charity trustee

1. Ensure that any charitable assets, for which the local authority is the trustee, are clearly identified.
2. Make sure you are clear about the objects of the charity set out in its governing document as these dictate how any such asset may be used, in accordance with charity law.
3. Make sure that any charitable assets, for which the council is the trustee, are managed independently in accordance with their charitable purpose and any restrictions in the governing document.
4. Recognise that charity trustees have a duty to be prudent and to act solely in the best interests of the charity.
5. Ensure there is a clear line of responsibility for the management of all charities for which the local authority is the trustee.
6. Ensure that there are clear guidelines for officers and councillors about roles, responsibilities and decision making in the administration of charities.

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~~7. Ensure you have a clear process for identifying and managing any conflicts of interest that arise where the local authority is the trustee of a charity.~~

~~8. Actively manage any charity for which the council is the trustee—keeping records up to date, submitting the necessary returns to the Charity Commission and reviewing investments, risks and opportunities on a regular basis.~~

~~9. Periodically review whether it continues to be in the best interests of the charity for the local authority to remain as trustee.~~

~~10. Follow Charity Commission guidance (and obtain appropriate advice) if you are planning to dispose of charity land, alter the charitable purpose or other terms of the governing document, or take action where trusts have become dormant.~~

~~*with thanks to Richard Eggington, Chief Executive, Stratford upon Avon Town Trust~~

in England and Wales

Types of charities under local authority control

Charity Commission

The regulator for charities

Types of charities under local authority control

Charities where the local authority is trustee of a public facility

A public facility could include:

- open spaces, such as recreation grounds, playing fields (including some King George's Fields), public gardens, common land, allotments and car parks
- cultural facilities, such as concert halls, art galleries, museums and buildings of architectural or historic interest
- other civic buildings, such as reading rooms, town halls, libraries and leisure centres
- war memorials

This is not an exhaustive list and nor will all public facilities be charitable property. They may be part of the local authority's statutory property. You will need to check the basis on which the local authority acquired control of the property to see whether it is held on charitable trusts.

It is important to know if the property is charity property, or not, because that will affect how the local authority can deal with it, for example, if it wants to develop the property or sell it. See [Property transactions, transfers of land and funds and consolidation of small funds for more information](#).

Charities where the local authority is trustee of a fund including appeals

in England and Wales

~~These include school prize funds and grant-making funds.~~

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Checking who's the trustee

2

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Charity Commission

The regulator for charities

Checking who's the trustee

You're a councillor or a council employee. You attend a charity's trustee meetings or deal with the charity's day-to-day administration.

● Are you there because you are a trustee?

● Or are you carrying out the charity's business on behalf of the council because it is the trustee of the charity?

● Or is there some other reason for your involvement, perhaps representing the council in another capacity, eg as a major funder of the charity?

It's important to understand your role and what its responsibilities and liabilities might be. These questions can help you to check.

1. Has the Council the right to appoint one or more trustees to the charity's board?

If the Council has appointed you as a trustee:

• you, rather than the Council, have responsibility for the administration of the charity

• you will be personally liable for the decisions you make

in England and Wales

~~• you must act in the interests of the charity, not those of the Council~~

~~2. Does the charity's governing document specify that the Council is the trustee?~~

~~If the Council is itself the charity trustee:~~

~~• you are not a trustee and do not have the responsibilities or liabilities of a trustee~~

~~• you may be managing the charity's affairs on the Council's behalf~~

~~If the Council is only the custodian trustee, then~~

~~• it does not have the responsibilities of a charity trustee~~

~~• it must act only on the directions of the managing trustees (eg the management committee of a village hall) unless to do so would create a breach of trust~~

~~Checking who's the trustee~~

~~Page 2 of 2~~

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~~3. Has the charity voluntarily invited you as a representative of the Council to inform/observe its meetings?~~

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~~You have no legal responsibility for the charity. You cannot make decisions relating to its administration nor vote at its meetings.~~

See also:

● [The Essential Trustee: what you need to know \(CC3\)](#)

● [A guide to conflicts of interest for charity trustees](#)

● [What are holding trustees and custodian trustees?](#)

● [Read Aloud](#)

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<http://www.charity-commission.gov.uk/Charity-requirements-guidance/SDecialist-211...-07/01/2013>
[Other governance checklists for local authorities](#)

[Charity Commission](#)

[The regulator for charities](#)

[Other Governance checklists for local authorities](#)

[Good governance means having the right systems in place for running your charity. These checklists can help you.](#)

in England and Wales

● [Checking the charity is fit for purpose – reviewing the charity's aims and administration to see if they are still relevant and effective](#)

● [Managing and planning for change – considering the charity's future](#)

● [Managing small funds – reviewing small trust funds](#)

● [Read Aloud ' Email Updates](#)

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in England and Wales

Checking the charity is fit for purpose

Charity Commission

The regulator for charities

Checking the charity is fit for purpose

Charities are created to meet particular social and economic needs. These needs are likely to change over time and charities should adapt to continue being relevant and effective to those they are meant to serve.

These questions help you to review whether your charity is still fit for purpose:

"1. Is the charity still capable of carrying out its objects?"

C "Are there still enough people who can properly benefit from the charity? Is the nature of the benefit/service offered by the charity relevant to modern needs?"

"2. Could the charity's assets be more efficiently/effectively used in conjunction with another similar charity?"

"Is the scale of the charity's assets too small to achieve sufficient impact on their own? Is the cost of administering the assets out of proportion to the size of those assets?"

"3. If the charity has permanent endowment capital, would it be useful to be able to spend all or some of the capital as income?"

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~~"Eg if the charity is small and you want to wind it up."~~

~~"4. Are the trustee arrangements still appropriate?"~~

~~"Is it still in the charity's interest for the charity trustee/custodian trustee to be the local authority? Would it be useful to have some/all independent trustees? Would the charity benefit from having user trustees?"~~

~~"5. Does the charity have all the administrative arrangements and powers it needs?"~~

~~"Does the governing document allow you to do the things that you need to do to run the charity effectively?"~~

~~"6. Does the charity have the appropriate legal form?"~~

~~"If it is an unincorporated body, would it be suitable to set up a new charity that is a corporate body to which its assets could be transferred?"~~

See also:

~~● [The Hallmarks of an Effective Charity \(CCI 0\)](#)~~

~~● [The Essential Trustee \(CC3\)](#)~~

~~● [Good Governance: a Code for the Voluntary and Community Sector](#)~~

~~● [Read Aloud](#)~~

~~<http://www.charity-commission.gov.uk/Charity-requirements-guidance/Specialist-guidance/07/01/2013>~~

~~[Checking the charity is fit for purpose](#)~~

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[Managing and planning for change checklist](#)

[Charity Commission](#)

[The regulator for charities](#)

[Managing and planning for change checklist](#)

If you plan for change and manage it effectively then you will avoid problems. Here are questions to help you consider your charity's future.

1. [Have you considered the future sustainability of the charity you manage – balancing what is needed now with what will be needed in the future?](#)

2. [Have you identified the mix of skills, knowledge and experience which the charity needs?](#)

3. [Have you reviewed whether your charity's governing document gives you the powers you need to achieve the charity's purposes and to manage resources effectively?](#)

4. Have you started to review and assess the risks faced by the charity in all areas of work and to plans for the management of those risks?

5. Have you considered whether collaborations and partnerships with other organisations could improve efficiency, the use of funds and the better delivery of benefits and services to your charity's users?

6. Have you reviewed whether the charity's purposes as set out in the governing document are up to date and relevant to the needs of your charity's users?

7. Do you identify emerging trends in the environment in which your charity operates and use this information as part of your planning processes?

8. Have you ensured financial sustainability by managing cash flow and monitoring and reviewing financial performance during the year?

9. Have you considered the sources of your charity's income and have a strategy in place to raise the funds it needs – diversifying sources of income as far as possible?

10. Are you complying with your legal obligations (and best practice), as set out in the Statement of Recommended Practice (SORP), to produce annual accounts and a report which includes an explanation of what the charity has done for the public benefit during the year?

See also:

● [Milestones: Managing key events in the life of a charity \(RS6\)](#)

● [The Hallmarks of an Effective Charity \(CCI 0\)](#)

● [Avoiding problems in running your charity \(risk management\)](#)

● [Read Aloud](#)

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[Property transactions, transfers of land and funds and consolidation of small funds](#)

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[Property transactions, transfers of land and funds and consolidation of small funds](#)

[Guidance for local authorities which are sole corporate trustee of charitable funds and assets and which are considering changing the way these assets are managed.](#)

● [Property transactions – information for local authorities on selling and leasing charity land with links to further guidance](#)

● [Transfer of assets \(land and buildings\) – what local authorities need to think about when considering transferring charitable assets to another body](#)

● [Consolidating/transferring small funds – options available to consolidate several small charity funds](#)

● [Making mergers work: Helping you succeed – the Commission's mergers toolkit](#)

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Commission

The Commission for the Environment in England and Wales

Public Access to the Commission's Information

The Commission is committed to transparency and openness in its operations. This document sets out the Commission's policy on public access to its information.

The Commission's information is held in accordance with the Freedom of Information Act 2000 and the Environmental Information Regulations 2004.

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Property transactions

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Charity Commission

The regulator for charities in England and

Property transactions

All charities have to follow rules for managing transactions involving the disposal of an interest in land eg selling or leasing. These rules are to make sure that the charity's financial interests are protected and that the services it provides to its users are able to continue, as far as possible.

Many charity transactions involving a disposal of an interest in land do not require our authority. However, all trustees have a legal duty of care towards their charities. We strongly recommend that trustees should consider properly all reasonable options when making decisions that will have a significant effect on charity land and its use. Our general guidance on dealing with property explains when our authority is required and highlights issues to consider when selling or buying land.

Specific issues for local authorities which are charity trustees

1. Conflicts of interests

Local authorities also have to manage the conflicts of interest that can arise because of the different 'hats' they may be wearing—for example, as land-holding charity trustees, as the provider of statutory amenities, and as planning authorities.

Guidance on conflicts of interest

2. Consulting the local community

Where a local authority is the trustee of charity land, there is often another important factor to take into account – the voice of local inhabitants. This is because the land is often a facility intended for local community use eg a recreation ground or public building. Proposals for a major change in the way the land is used, or for the sale or lease of a significant part, or all, of the land, will have an impact on its use by the public. There are likely to be strong local views.

We encourage trustees to review their charity's purposes regularly to check that they are still relevant to the needs of its users. A local authority as a charity trustee is entitled to consider the suitability and the viability of the charitable property it manages, and to make proposals for the future of charity land and other assets.

However, we know from our casework that, if such proposals are not managed carefully, they can create problems for the local authority, including financial loss and reputational risk.

See also:

<http://www.charity-commission.gov.uk/Charity-guidance/Specialist>

Property transactions

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● Sales, leases, transfers or mortgages: What trustees need to know about disposing of charity land (CC28)

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<http://www.charity-commission.gov.uk/Charity-requirements-guidance/Specialist-07/0>

[Transfer of assets 1](#)

[Charity Commission](#)

[The regulator for charities in England and](#)

[Transfer of assets \(land and buildings\)](#)

[The general principle is that charity property being transferred must:](#)

- [continue to be charity property](#)
- [continue to be used for similar purposes to those for which it was originally used](#)

[However, a charity cannot generally transfer its property to a non-charitable body or for a non-charitable purpose — eg charity land could not be transferred to a local authority to form part of its statutory property, even if it were to be used for purposes similar to those formerly undertaken by the charity.](#)

[Here are some things to think about before transferring charity assets to another body:](#)

1. Have you checked that the land is a charitable asset, and is not part of the Council's statutory property?

2. Is the land you want to transfer 'designated land'?

This is land which was acquired to be used for the purposes of the charity. If you have such land, you can't use the simplified process of the Charities Act for transferring land, and you usually can't change the use of the land without the Commission's involvement, even if you transfer it to another body to manage.

3. Do you need to manage a possible conflict of interest arising because the Council is both the charity trustee and a local authority with an interest in the land in its statutory capacity?

4. Have you involved the local community in the proposals to transfer the land?

5. Is the transfer the best way of serving the charity's beneficiaries in future?

6. Is the body to which the land is to be transferred a charity?

If not, that body would have to hold the property on charitable trusts separate from its other assets.

7. Does the body receiving the land have sufficient resources to manage and maintain the land?

8. Have you considered what legal methods are open to you to carry out the transfer?

(land and buildings)

Page of 2

Transfer of assets 2

You may be able to use a simplified process if the land is not 'designated land' (see question 2). You should check to see if the charity's governing document gives you power to transfer the trusteeship of the charity. You might need a Scheme from the Commission in some circumstances eg:

- if there is no clear power to permit the transfer if the land is designated land and its use will be changed if the receiving body isn't a charity if the transfer involves innovative methods eg a lease-back arrangement

See also:

Transferring property to another charity – guidance on the simplified process for small charities to transfer land and funds

Sales, leases, transfers or mortgages: What trustees need to know about disposing of charity land (CC28)

Asset Transfer Unit – provides guidance and support concerning the transfer of under-used land and buildings to community ownership and management

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<http://www.charity-commission.gov.uk/Charity>

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[Charity Commission](#)

[The regulator for charities in England and Wales](#)

[Disposals of land and buildings – recreation ground charities](#)

[\(Infosheet SCUIO\)](#)

[There are several questions that trustees often ask about disposal of all or part of the recreation ground held for their charity. The following may be of some assistance in helping you to decide whether or not you, as the trustees of the charity, may proceed with the disposal you are proposing.](#)

[More complete explanations of what is required for disposals in general can be found in our guidance Sales, leases, transfers or mortgages: What trustees need to know about disposing of charity land \(CC28\)](#)

[If you cannot find the answer you can use our online forms to contact us.](#)

[Do we need the Commission's consent before selling or leasing all or part of our recreation ground?](#)

[In the majority of cases the land held by recreation ground charities must be used for a particular purpose or for particular purposes of the charity. The following guidance covers most situations.](#)

[Situation A](#)

[For many recreation ground charities, the effect of selling or leasing all or part of the ground without replacing it will mean that the trustees will no longer be able to carry out the charity's](#)

~~purposes. It is normally possible to assess this by looking at your charity's governing document (which is likely to be in the form of a trust deed or a Charity Commission Scheme).~~

~~If it is clear from that document that:~~

~~• the only purpose for which the charity is set up is the provision of a recreation ground; and~~

~~• there are no provisions enabling you to sell or lease the charity's property and use the proceeds for other purposes; and~~

~~• there is no power of amendment which would allow you to change the purposes or objects of the charity;~~

~~you will need to approach us in good time before any sale or lease takes place. This is because you will have no power to dispose of the property and you will need to apply to us for a Scheme to~~

~~provide the necessary power and new purposes.~~

~~<http://www.charity-commission.gov.uk/Charity> 211...~~

- ~~• Our guidance Changing your charity's governing document (CC36) explains what a Scheme involves. You will also need to comply with the provisions of Part 7 of the Charities Act 2011. Because the governing document states that the land must be used for the purposes of a recreation ground, you will be required to give public notice of the disposal – s. 121 of the Charities Act 2011. Details of these various requirements can be found in Sales, leases, transfers or mortgages: What trustees need to know about disposing of charity land (CC28).~~

~~Before approaching us, you should be able to explain:~~

- ~~• why it is better for the charity that you should dispose of the land. For example, why the land is no longer suitable to serve the purposes of the charity; • how the disposal will be of benefit to the charity or will enable you to achieve the purposes better; • if you are not going to replace the land, why the purposes of the charity can no longer suitably be served by providing land for use.~~

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~~If you are replacing the land with other land as suitable or more suitable for the purpose(s) of the charity, the purposes of the charity are not altered as the provision of the facilities provided by the charity will continue to exist, albeit on a different ground in a different location.~~

Situation B

~~If you already have the power to dispose of all or some of the property (or you have a power of amendment which will allow the trustees to give themselves such a power) then any disposal must proceed in accordance with the requirements of Part 7 of the Charities Act 2011. This sets out what the trustees must do. In our guidance Sales, leases, transfers or mortgages: What trustees need to know about disposing of charity land (CC28) there is a section explaining the requirements.~~

~~Our consent is only needed if the disposal is to be to a connected person or if you cannot comply with the requirements of Part 7 of the Charities Act 2011 or if you are not intending to replace land designated to be used for the purposes of the charity.~~

~~A section of our guidance in CC28 explains who a 'connected person' might be. Very broadly a connected person covers anyone or any organisation that has a link with the charity which may give rise to conflict of interest. Common examples include trustees or employees of the charity, their close relatives, and organisations over which people on these categories can exercise some influence.~~

~~When you approach us for consent you must show us that:~~

- ~~• you are securing the best terms reasonably obtainable in the circumstances and no better offer is likely to be received from a third party; and that you have advertised widely enough to ensure this is the case (For example, we may need to see a copy of a report for valuation purposes and possibly copies of adverts you have placed in appropriate publications.); and~~
- ~~• any conflict of interest is properly managed and the transaction is open and transparent, thereby avoiding the risk of challenge or criticism (For example, if the connected person is a~~

~~<http://www.charity-commission.gov.uk/Charity-guidance>~~

~~trustee they may be required by the governing document of the charity to withdraw from any meetings where the transaction is discussed. We may need to see copies of the minutes of any meetings to ensure this happened.)~~

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~~We will then consider whether we can make an Order to give our consent for the disposal to proceed or, in the case of non-replacement of designated land, whether a Scheme will be necessary.~~

~~What sort of arrangements allowing other organisations to use our recreation ground would the Commission accept?~~

~~It is quite common for sports clubs to ask recreation ground charities for permission to use part of the ground on a regular or permanent basis. In such a case you must be satisfied that this will not interfere with the charity's object of providing a recreation ground for the local inhabitants. If such use will prevent reasonable public access to all or part of the ground then it is likely that the arrangement will not be in the best interests of the charity, that is, it will hinder the furtherance of the purposes of the charity.~~

~~Examples:~~

~~• If a local football club wishes to use as of right the ground one afternoon a week during the winter season for matches, the club may come to an arrangement allowing the club to prepare suitable holes for posts to be slotted in on match days and have reasonable time available to mark out a pitch. If this does not interfere with public access for the rest of the time then this may be acceptable if you, as trustees of the recreation ground, ensure that the club's usage is subject to a formal agreement (such as a licence or hire agreement) and that the club pays the going rate for its usage. The trustees of the recreation ground will need to take care that the arrangement does not become extended resulting in the football club taking over the ground for more and more of the time so that the public is increasingly excluded from enjoying the facility.~~

~~• The trustees may decide that the recreation ground is large enough so that, even if you were to allow the football club permanent use of part of it, there would still be sufficient space for the public to use. The part to be occupied by the club would be surplus to the requirements of the charity. In such a situation, you may well need a formal document, perhaps taking professional advice on the terms of the use by the club. The earlier advice on selling and leasing applies. • If the whole ground were used only by a sports club and no other group or individuals wanted to make use of it, then the charity would not be achieving its objects by the continued retention of the ground. The ground should be sold or let as a whole so that the proceeds could be used to further the charity's objects in some other way, for example by obtaining other land to set up as a new recreation ground in a new location. Any such sale or lease would need to be considered in the light of the answer to the first question above and would have to be on market terms to the buyer who made the best offer.~~

(SCU 10)

Can we build facilities such as a sports hall or cycle track on the charity's playing field or recreation ground?

When considering any proposals which would entail giving over all or part of a playing field or recreation ground to a single interest or 'specialist' activities, you must be satisfied that implementation of the proposals would not interfere with the charity's object of providing a playing field or recreation ground for the local inhabitants generally, if that is the object of the charity. If the end result would prevent use by the public generally in accordance with the object of the charity on a permanent basis, then it may be that the proposals are not in the best interests of the charity.

You must also consider whether the development of the property would fall within the objects of the charity by checking the charity's governing document and any other deeds relating to the land to see if there is any restriction on the use of the property.

For example, sometimes trustees are prohibited from erecting any buildings on the land or from using it for any purpose other than as an open space.

If you can put up a building on the land, you will then need to consider who is allowed access to the building. If the building is to be a pavilion for the sole use of a sports club using the ground and no members of the public are to be allowed to use the facility then that may be too restrictive and not fulfil the trusts of the charity. On the other hand, the pavilion or club house might be available for use by anyone using the ground in accordance with the object(s) of the charity.

Can we grant leases or licences to owners of land adjoining our recreation ground to allow them access to their homes?

If the recreation ground is fully used, the answer will generally be "No", because any proposals along these lines impinge on the use of the ground by the public. As with any other property transaction you must be satisfied that the proposals are in the best interests of the charity. If there is some reason why it is good for the future of the ground to implement proposals along these lines, you, as trustees, should consider:

• why the adjoining owners need such access and whether it and how much it increases the value of their properties;

~~• whether the use of the recreation ground for recreational purposes would be affected; and~~

~~• whether the value of the recreation ground would be affected.~~

~~If a case could be made for granting access then you would have to bear in mind that, given your duty to obtain the best price reasonably obtainable, you would have to charge not just a market price but as much as the adjoining owner was prepared to pay.~~

~~Even if the access is to be by way of licence only, it would probably be unwise to allow the neighbours access over the charity's land without a formal document entered into after taking and considering the appropriate professional advice since they could acquire rights which you did not intend. You should take professional advice from at least a solicitor and a surveyor.~~

~~<http://www.charity-commission.gov.uk/Charity> [guidance/Specialist](#)~~

(SCU 10)

~~Are there any considerations that we need to take when we know the land involves Miners' Welfare property?~~

~~In cases involving Miners' Welfare property or property which was formerly Miners' Welfare property, there may be some kind of "claw back" provisions where all or a percentage of the proceeds of sale are returned to the donor organisation if the land is sold at any time or on the dissolution of the charity. In these cases you should take independent legal advice to ensure you fulfil your obligations as set out in the governing document.~~

Generally

~~We aim to give trustees of charities much more freedom in taking straightforward but important decisions, in consultation with their professional advisers if necessary, freeing them from the need always to justify their actions to us in detail but ensuring they comply with the requirements of the law. However, if, having read this information sheet and the guidance recommended, the proposals for disposal are outside the scope of what we have covered and you are still in doubt, you should use our online forms to contact us.~~

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Disposals of land and buildings - recreation ground charities

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Section 1: Introduction

This document is intended to provide a comprehensive overview of the project's objectives and scope. It is designed to serve as a reference for all stakeholders involved in the project.

Section 2

This section details the project's goals and the key deliverables. It outlines the timeline and the resources required to complete the project successfully.

Section 3

Section 3.1

Section 3.2

Section 3.3

Section 3.4

Section 4: Conclusion

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Commission

charities in England and Wales

[Good governance](#)

[Charity](#)

[The regulator for](#)

[Good governance for charities](#)

[Our key guidance The Hallmarks of an Effective Charity sets out six standards that will help trustees improve the effectiveness of their charity, and uphold the principles that our regulatory framework exists to support. This section sets out our guidance and other resources to help trustees translate these principles into good practice in governance.](#)

[Basic principles of good governance](#)

[Hallmarks of an effective charity – the underlying principles of running a charity effectively](#)

[Good Governance: a Code for the Voluntary and Community Sector – a practical and easy-to-use guide to help charities develop good practice](#)

[Recruiting trustees](#)

[I want to find new trustees – our guidance on the things you need to think about before recruiting new trustees, plus links to useful resources](#)

[Finding new trustees a 'start to finish' guide to help charities to recruit new trustees effectively and increase the range of skills and experience on their board](#)

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● [Involving young people in running a charity – how to bring the experience, perspective and enthusiasm young people offer to the board of your charity](#)

● [Users on Board: Beneficiaries who become trustees – explains the issues that can arise when beneficiaries of a charity become trustees](#)

● [Trustee expenses and payments – explains the restrictions on the extent to which charity trustees may receive remuneration and the circumstances where payments may be made](#)

[Other governance resources](#)

● [Charities and the Equality Act – what the Equality Act means for charities which support specific groups of people](#)

● [Managing conflicts in your charity – explains our approach to disputes and where we can and cannot help](#)

● [Conflicts of interest – an introduction and links to further guidance to help trustees identify and manage potential conflicts of interest.](#)

● [Changing your charity's Governing Document – explains the various ways in which trustees can amend and update their charity's governing document themselves, and where we can help in those cases where trustees don't have the power to make amends](#)

[Good governance](#) 2

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● [Appointing Nominees and Custodians – explains the provisions for the appointment of nominees and custodians brought in by the Trustee Act 2000 and the requirements for trustees choosing to exercise these powers](#)

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● [Incorporating Charity Trustees – provides information about the incorporation of trustees under the Charities Act 2011](#)

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[Charities and Meetings](#) – guidance on the law and good practice when arranging charity meetings

[Charities and Insurance](#) – explains the various forms of insurance, and the circumstances in which trustees may need to consider obtaining them

[Questions to consider at key stages in the life of a charity](#) – a quick reference checklist of questions trustees should consider as their charity develops, with links to guidance and resources we provide

[Incorporating an existing charity as a company](#) – guidance on changing the status of a charity from unincorporated to some form of incorporated structure with limited liability

[The Companies Act 2006](#) – explains the impact of the Act for charitable companies

[Providing alcohol on charity premises](#) – explains the legal and practical problems that can arise when selling alcohol from charity premises

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<http://www.charity-commission.gov.uk/Charity>

[Conflicts of Interest Landing](#)

[Charity](#)

[The regulator for](#)

[Conflicts of Interest](#)

A conflict of interest is any situation where either of the following may influence, or appear to influence, a trustee's decision making:

[the trustee's personal interests](#)

[interests or loyalty that the trustee owes to another person or body](#)

[For example:](#)

[if a trustee is an electrician and the charity wants to pay them for rewiring their property](#) [if the trustees are making a decision that affects another organisation that one of them is involved with](#)

[if a trustee has been appointed by a local authority and the charity is negotiating a contract with that local authority](#)

It's important that trustees identify and manage any conflicts of interest that arise. If a situation looks like a conflict of interest, it may be best to treat it as one.

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~~You can find out more information about how to do that in this section.~~

~~A guide to conflicts of interest for charity trustees – helps trustees of all charities to identify and manage conflicts of interest~~

~~Trustee expenses and payments (CCI 1) – gives guidance on when trustees may be paid, and how to manage the arising conflicts of interest~~

~~Conflicts of interest and the Companies Act 2006 – questions and answers – advises directors of charitable companies about conflict of interest provisions in company law~~

~~Conflicts of interest guidelines for arts charities – for the trustees of arts charities, drawn up jointly by the Commission and the Department of Culture, Media and Sport (DCMS)~~

~~Conflicts of interest checklist – to help trustees of all charities manage conflicts of interest~~

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[Landing](#)

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<http://www.charity-commission.gov.uk/Charity-requirements>

[conflicts-of-interest](#)

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[The regulator for](#)

[A guide to conflicts of interest for charity trustees](#)

[\(Version 02/1-1\)](#)

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Common terms

~~Governing document means any document which sets out the charity's purposes and, usually, how it is to be administered. It may be a trust deed, a constitution, memorandum and articles of association, rules, conveyance, will, Royal Charter, Scheme of the Commissioners or, in relation to an appeal, the published terms of the appeal inviting donations.~~

~~Trustees—means charity trustees. Charity trustees are the people who are responsible for the general control of the management of the administration of the charity. In the charity's governing document they may be called trustees, managing trustees, committee members, governors or directors, or they may be referred to by some other title.~~

~~Trustee board—means the charity's governing body. This may be called the management committee, executive committee or board of directors, or may be referred to by some other title.~~

~~<http://www.charity-commission.gov.uk/Charity-requirements-myidanc.c/Charity-onve-07/04/201>~~

~~1. Who is this guide for?~~

~~This guide is for trustees of all charities, regardless of the size or type of charity. The guide seeks to help trustees identify and manage conflicts of interest.~~

~~A number of our existing publications contain information about conflicts of interest in particular situations, such as Trustee expenses and payments (CCI 1). The intention of this guide is not to look in depth at these particular situations, but to provide an overview of conflicts of interest, and how to deal with them, and to signpost sources of further information, provided both by the Commission and by other organisations.~~

~~This guide sets out the legal and regulatory requirements in relation to conflicts of interest and offers advice to trustees on complying with these requirements. There is also a checklist to help trustees follow the correct procedures when dealing with a conflict of interest.~~

~~Whilst this guide applies to the trustees of all charities, directors of charitable companies are also subject to the provisions of the Companies Act 2006 in relation to conflicts of interest, and are required to declare any interest in contracts or proposed contracts. That Act also limits or does not allow certain types of conflict of interest, such as sales of property or loans from the charitable company to directors of that company.~~

Commission

charities in England and Wales

Companies House provides a wide range of guidance for company directors
www.companieshouse.gov.uk

2. What is a conflict of interest and what issues does it raise?

A conflict of interest is any situation in which a trustee's personal interests, or interests that they owe to another body, may (or may appear to) influence or affect the trustee's decision making.

It is inevitable that conflicts of interest occur. The issue is not the integrity of the trustee concerned, but the management of any potential to profit from a person's position as trustee, or for a trustee to be influenced by conflicting loyalties. Even the appearance of a conflict of interest can damage the charity's reputation, so conflicts need to be managed carefully.

3. What does the law say about conflicts of interest?

The law states that trustees cannot receive any benefit from their charity in return for any service they provide to the charity unless they have express legal authority to do so. "Benefit" includes any property, goods or services which have a monetary value, as well as money. This legal authority will come either from a clause in the charity's governing document or, where there is no adequate clause in the governing document, from us or the Court.

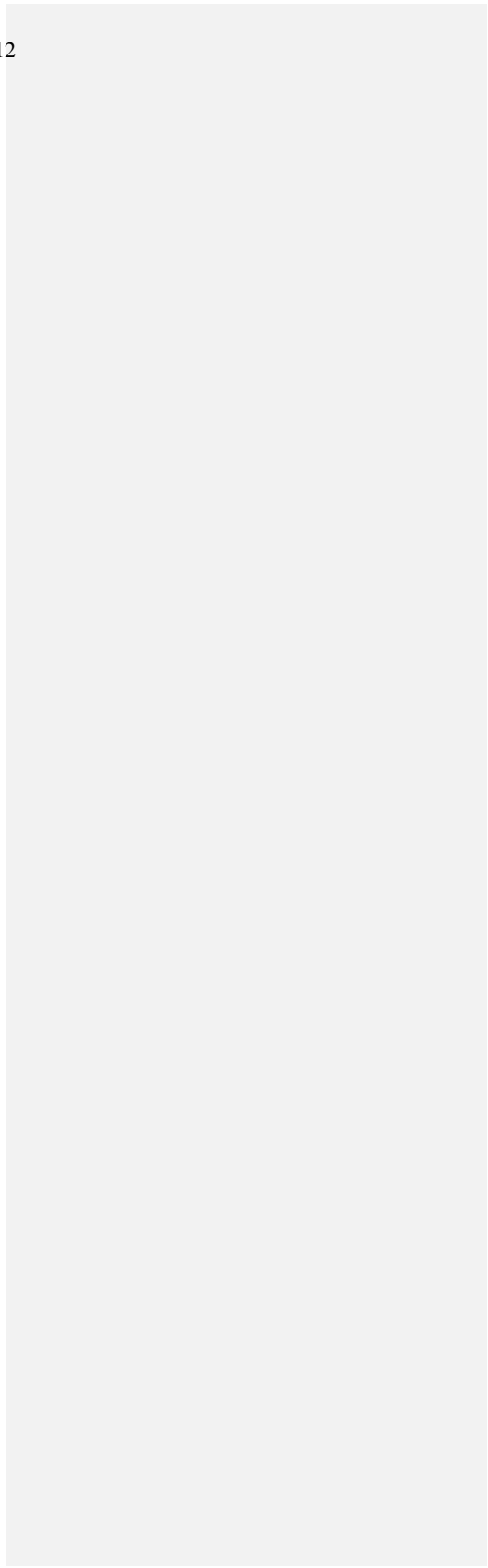
The rule that a trustee cannot receive any benefit from his or her charity without explicit authority is based on the principle that trustees should not be in a position where their personal interests and their duty to the charity conflict, unless the possibility of personal benefit from which the conflict of interest arises is transparent. Transparency is achieved by requiring explicit authorisation of the benefit, and by ensuring that any particular conflict of interest is properly and openly managed.

It is the potential, rather than the actual, benefit from which the conflict of interest arises which requires authority. In order to avoid a breach of trust and to ensure transparency, authority is

[A guide to conflicts of interest for charity trustees](#)

<http://www.charity-commission.gov.uk/John;tw>

requirements_guidance/Charity_gove_07/01/2013



required where there is a possibility of benefit. This will avoid accusations of impropriety, which could in turn have a damaging effect on the charity's reputation.

Not all benefits enjoyed by trustees need to be authorised by the governing document, the

Commission or the Courts. It is perfectly acceptable to repay reasonable out of pocket expenses to trustees. Any costs that are necessary to allow a trustee to carry out his or her duties as a trustee can be classed as expenses and recovered from the charity or met directly by the charity. This may include travel costs and the cost of providing care for a dependent whilst attending a trustee meeting or when undertaking trustee business. It may also include the cost of providing documents in Braille or on audio tape for a trustee who is blind, or providing special transport, equipment or facilities for any trustee with a disability

Benefits that are available to all, or that are of inconsequential or little measurable value, will not normally need to be authorised, such as the use of the village hall facilities by one of the village hall trustees. This would not need to be authorised, as the facilities are available to all members of the local community, which includes the trustees.

Where a trustee has a conflict of interest or loyalties on a particular issue, but there is no potential for profit, the governing document may still require this trustee to declare his or her interest and take no part in deciding that issue. Any requirement of this kind must be strictly complied with.

4. How do I identify a conflict of interest?

Conflicts of interest may come in a number of different forms:

- direct financial gain or benefit to the trustee, such as:
- payment to a trustee for services provided to the charity • the award of a contract to another organisation in which a trustee has an interest and from which a trustee will receive a financial benefit
- the employment of a trustee in a separate post within the charity, even when the trustee has resigned in order to take up the employment • indirect financial gain, such as employment by the charity of a spouse or partner of a trustee, where their finances

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are interdependent, non-financial gain, such as when a user of the charity's services is also a trustee, conflict of loyalties, such as where a trustee is appointed by the local authority or by one of the charity's funders, or where a friend of a trustee is employed by the charity

Further information about the most frequent situations where conflicts of interest arise can be found in section 8.

We expect trustees to be able to identify conflicts of interest when they arise and to ensure, if they receive a material benefit as a result of the conflict of interest, that the benefit is authorised. We will provide authority where there are clear advantages to the charity.

If there is no material benefit to a trustee, no authority will be required, but the trustees will need to ensure that the conflict of interest is properly managed. Further information about managing

conflicts of interest can be found in section 7.

<http://www.charity-commission.gov.uk/Charity>

Where we find, or are alerted to, an unauthorised benefit, the action we take will depend on the extent of the benefit and conflict of interest and the impact which it has on the charity. We will also take into account other factors, such as the reason why the trustees did not obtain authority. We are likely to be more supportive if the trustees can show that the failure to obtain authority was an oversight. However, we will generally not take a sympathetic line where we have previously advised the trustees that the benefit needs to be authorised or where a solicitor is acting for the trustees.

Where the arrangements are in the interests of the charity we will give advice on the management of conflicts of interest and the authorisation of future benefits to trustees. However, we may investigate in some cases, with the possibility that we might use our statutory powers to protect the charity. These include where trustees appear to have placed their personal or other interests ahead of those of the charity in order to derive significant benefit at the charity's expense, and where they have deliberately ignored the requirements of the law or of previous advice.

More information about how we evaluate complaints made to us can be found in [Complaints about charities \(CC47\)](#).

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5. What do I do if I identify a conflict of interest affecting a trustee?

If the trustee board has identified a conflict of interest, the first thing to do is to find out whether or not the trustee or trustees involved will receive a material benefit from the conflict of interest and, if so, whether the benefit is authorised.

The first place to look to see if the necessary authority exists is the charity's governing document. If the governing document does provide authority, the trustee board must ensure that the authority is used appropriately, and that the necessary arrangements are in place to manage the conflict of interest.

If the governing document does contain authority, it will usually be in relation to a trustee benefit arising from a specific type of conflict of interest, rather than a general authority for trustee benefits arising from all types of conflict of interest. For example, it may include authority to pay a trustee who is also a solicitor or accountant for work done on behalf of the charity, but it is unlikely to authorise any other type of payment to a trustee, such as payment to a trustee who is a builder for repairs carried out to the charity's property.

If the benefit from which the conflict of interest arises is not authorised by the charity's governing document, trustees will need to apply to us for the necessary authority. If the trustees are in any doubt about whether the governing document contains sufficient authority, we would encourage them to take professional advice or seek advice from us.

In order for us to consider authorising the benefit, trustees will need to show why it is in the charity's best interests to permit the benefit and resulting conflict of interest. We will also need to be satisfied that there are arrangements in place to ensure that the conflict of interest will be properly managed once the benefit has been authorised.

It is important to remember that it is not simply enough for the benefit arising from the conflict of interest to be authorised. Trustees also need to ensure that the charity has adequate procedures in place to manage the conflict of interest once the benefit has been authorised.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/141111/charity-commission-gov-uk-requirements-guidance/Charity-commission-requirements-guidance-07-01-2013.pdf

Further information about managing conflicts of interest can be found in section 7.

6. In what circumstances will the Commission authorise a benefit arising from a conflict of interest?

There is a relationship between the potential benefit to the trustee and the strength of the case the trustees will need to make. Charities will need to be able to demonstrate that the arrangement is in the best interests of the charity and that the conflict of interest is transparently managed.

Trustees will need to consider things like:

- whether or not the benefit and conflict of interest will be ongoing or a one-off situation

- the procedures which the trustees have in place to ensure that conflicts of interests are managed transparently

See [Trustee expenses and payments \(CCI 1\)](#) for more information

7. How can conflicts of interest be managed effectively?

All trustees need to be alert to possible conflicts of interest which they might have and to how they can minimise their effects. A key aspect of minimising the effects of conflicts of interest is to be open and transparent about such situations when they arise. We recommend that all trustees advise their charity of any actual or potential conflicts of interest of which they are aware, as soon as they arise.

We recommend that charities have a policy on how they will deal with any conflicts which arise as a result of the work which the charity undertakes. A policy can include guidance on the procedures to follow when a trustee is subject to a conflict of interest, such as:

- the removal of the trustee concerned from the decision making process

- managing the conflict of interest once a decision has been made

- recording details of the discussions and decisions made

~~We also recommend that trustees establish a register of interests. In recording all their other interests openly, any actual or potential conflicts of interest can be identified more easily. The register of interests should be regularly updated.~~

~~It is good practice at the beginning of a meeting for every charity trustee to declare any private interest which he or she has in an item to be discussed, and certainly before any discussion of the item itself. Simply declaring that a conflict exists and withdrawing from the discussion and any decision making will be all that is required if the trustee is not receiving any material benefit as a result of the conflict of interest. However, if a trustee is receiving a material benefit this will need authority.~~

~~We would encourage trustees to make the operation of the charity as transparent as possible. With this in mind, the charity may wish to make their policy on conflicts of interest available to the public. The charity may also wish to make some or all of their register of interests publicly~~

~~<http://www.charity-commission.gov.uk/Charity> [gove...](#)~~

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~~available. This information may be subject to the provisions of the Data Protection Act 1998, and trustees may wish to take advice about making personal information publicly available.~~

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~~Further information about the Data Protection Act is provided by the Information Commissioner at www.ico.gov.uk~~

~~A number of organisations provide model conflict of interest policies and model registers of interest, such as the Institute of Chartered Secretaries and Administrators (CSA)~~

~~It is good practice to ensure that prospective new trustees consider the question of possible conflicts of interest before they are appointed. If new trustees are elected by the charity's membership, we recommend that the membership is made aware of any possible conflict of interests involving the individuals standing for election, so that they can take this into account when voting. This is particularly important where personal interests may be significant enough to make it difficult for the individual concerned to make a full and rounded contribution to the decisions and discussions of the trustee body.~~

~~We strongly recommend that all charities disclose benefits received by trustees in their report and annual accounts. This can help protect trustees from accusations that they are benefiting in a hidden way. It is a legal requirement for charitable companies, those non-company charities with a gross annual income or expenditure over £100,000, and smaller charities which prepare their accounts on an accruals basis, to disclose benefits to trustees.~~

~~Further information on charity accounts can be found in [Charity Reporting and Accounting: The essentials \(CCI-5b\)](#).~~

~~8. What are the most common situations in which conflicts of interest can occur?~~

~~There are a number of situations in which conflicts of interest commonly occur, and of which you, as trustees, should be aware.~~

~~Direct financial gain or benefit to a trustee~~

~~Payment of trustees~~

The most common type of direct financial gain to a trustee is the payment of a trustee. By payment we mean:

- payment to a trustee for a service provided to the charity, such as painting the charity's premises, or legal or accountancy services
- payment for acting as a trustee
- payment for a separate post within the charity, such as headteacher or chief executive, to someone who is also a trustee

If trustees wish to pay one or more trustees, such payment will need to be authorised, either by a clause in the charity's governing document, or by an Order of the Court or the Commission. This authorisation is needed even if the trustee will be providing a service to the charity at below market

cost, since the conflict of interest will still exist.

<http://www.charity-commission.gov.uk/Charity-law> In the case of a trustee also being employed in a separate post within the charity, or a trustee being paid for a service provided to the charity, the conflict of interest may result in a liability to repay salary or other related benefits. It should not be assumed that such conflict can be overcome merely by the person concerned resigning as a trustee, either before or after taking up the post. The only instance where authority may not be needed is where, practically, the trustees can show that there is no conflict of interest. In our view, this is confined to the fairly narrow circumstance where the trustee concerned:

- has had no significant involvement with the trustees' decision to create or retain the post, or with any material aspect of the recruitment process

- where that person resigns as a trustee in order to apply for the employed post in advance of a fair and open competition for it

All other circumstances require an express authority.

Further information about the payment of trustees, including how to apply for our authority to pay a trustee, is contained in our publication *Trustee expenses and payments (CCI 1)*.

Trustees as directors of a subsidiary trading company

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~~When a charity establishes a trading company to undertake a wider range of activities than the charity, often a number of the charity trustees also become directors of the trading company. This clearly creates the potential for conflicts to arise between the interests of the charity and the interests of the trading company.~~

~~A charity trustee cannot be paid for his or her services as a director, or employee, of the subsidiary trading company (or, of course, as an employee or trustee of the charity), unless authority is contained either in the governing document or has been provided by us.~~

~~Further information about charities and the extent to which they can trade can be found in Trustees, trading and tax (CG35).~~

~~Sale of land to a trustee~~

~~Any sale or lease of land to a trustee or to someone closely connected to a trustee, even if it is at full market value, will need to be authorised by the Commission.~~

~~Further information about selling, leasing and mortgaging land, and how to apply for our authority is contained in Sales, Leases, Transfers or Mortgages (CC28).~~

~~Use of trustee's property by the charity~~

~~There may be circumstances in which a trustee of a charity is willing to allow that charity to use the trustee's land at little or no cost to the charity. Whilst the use of the land for little or no payment will be in the charity's interests, if the charity then puts buildings on the land or makes improvements to an existing property, unless the charity has a formal interest in the land, any buildings or improvements to the property might be returnable to the trustee.~~

~~<http://www.charity-nmqqinn-onv-11k/Charity> onv~~

~~Similarly, a trustee may loan money to the charity at a favourable rate of interest, or at no interest, without any security. Whilst the situation may be clearly in the charity's interests, we recommend that it should be formally documented.~~

In any situation where a trustee is loaning money to the charity of which they are a trustee or letting the charity use their property, we expect trustees to protect themselves and the interests of the charity by ensuring that formal agreements are in place.

Indirect financial gain or benefit to a trustee

The most common situation in which a trustee will receive an indirect financial benefit from the charity is when a close relative, such as a spouse or partner, is employed by the charity. By being involved in the appointment or payment of their spouse or partner to a paid position within the charity, the trustee could be seen to benefit, at least indirectly, from the appointment and the resulting payment.

If the trustee is wholly or partially dependent upon the financial support of his or her spouse or partner, the payment could be said to directly benefit the trustee. Even if the trustee has other income, if he or she and his or her partner or spouse are living in the same household, and are reliant on joint income and share joint expenses, the payment received contributes to the "joint purse" and the trustee is receiving some benefit through the contribution to these expenses.

Despite the fact that the payment is not being made directly to a trustee, the payment will still need to be authorised, and if there is no suitable power in the charity's governing document, the trustees will need to apply to the Commission for the necessary authority.

If the trustee is not receiving a financial benefit, there will still be a conflict of loyalties and the trustee will need to follow certain procedures, which are outlined in the section on conflicts of loyalty.

Further information about the payment of spouses or partners of trustees and how to apply for our authority is contained in Trustee expenses and payments (CCI 1).

Non-financial gain

Users as trustees

Many charities involve users in the effort to improve services, including appointing users as trustees of the charity, and we welcome user trusteeship as a way of helping a charity achieve its aims more effectively.

Defining what is a personal interest can be a difficult area in the context of user trustees. However, the key to this is the size and nature of the proposed transaction in relation to the number of people who will benefit. Essentially, the question is whether the decision to be taken by the trustees will confer a direct tangible benefit on the user trustee which is exclusive to him or her and which is not shared with other users.

For example, a user trustee in a charity that helps people with cerebral palsy might apply for assistance from an independent living scheme run by the charity. Obviously, this trustee would be

<http://www.charity-nmmiQQinn-111<10har;tx,'form;rpm.ante-aidance/Charity.gov> 07/01/2013

~~in a position where they might gain from the award of a grant or direct assistance, and this situation would need to be authorised.~~

~~However, often there will be circumstances where user trustees will be asked to take a decision which indirectly affects them or a relative, such as the level of fee to be charged for a service provided by the charity. We consider that a decision would indirectly affect a trustee if:~~

~~• it results in the user trustee or relative receiving something which will also be more generally available to other users outside the trustee body, or; • it is a general policy or practice decision affecting the service in which the user trustee or relative, along with other users, participates.~~

~~User trustees can take part in such decisions, but should declare their interest at the outset.~~

~~More detailed information about users of the charity being trustees can be found in Users on Board: Beneficiaries as trustees (CC24).~~

~~Conflicts of loyalty~~

~~Trustees should bear in mind that when they are dealing with the business of the charity, their overriding duty is to act in the best interests of the charity. There may be situations in which a trustee's loyalty to the charity conflicts with their loyalty to the body which appointed them, to another charity of which they are a trustee or to a member of their family. Such conflicts of loyalty will not stop anyone from being a trustee, but they can occasionally cause conflicts of interest.~~

~~Any trustee who has a conflict of loyalty should declare this and it should be included in the register of interests. They should also declare the interest at the beginning of any meeting at which an issue is to be discussed that is subject to the conflict and should take no further part in the discussions on the issue. This will help to ensure transparency and avoid any accusations of impropriety.~~

~~Nominative or representative trustees~~

~~Trustees appointed by another organisation, such as by a local authority, (sometimes referred to as nominative or representative trustees) have exactly the same duties and responsibilities as other trustees. They must act independently of the organisation which appointed them and act only in the best interests of the charity. There may well be occasions where such trustees will have to act in a way which conflicts with the interests of the organisation appointing them. In~~

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~~such circumstances the best interests of the charity must come first; this duty overrides all other considerations.~~

~~Failure to act in the best interests of the charity could constitute a breach of trust for which a personal liability (financial or otherwise) could arise.~~

~~Where a conflict of interest arises in relation to a particular issue, for example in relation to a property transaction, the trustee concerned should not vote on it and should withdraw from any meeting at which it is considered.~~

~~It is a good idea to ensure that when nominated or representative trustees are appointed, the trustees are fully trained in their responsibilities as trustees and that the appointing body is also made aware of these responsibilities.~~

~~Further information can be found in our guidance on charities and local authorities. Information about trustee responsibilities is contained in The Essential Trustee: What you need to know (CC3).~~

~~Ex-Officio trustees~~

~~An ex-officio trustee is a trustee who is in that position by virtue of their office. Normally this relates to positions such as the Vicar of a parish or the Mayor of a town. Ex-officio trustees have exactly the same responsibilities as other trustees to act in the best interests of the charity.~~

~~Local authorities as trustees~~

~~Charities, such as playing fields, are sometimes managed by the local authority as sole trustee, or by members of the local authority, as trustees. It is especially important when this is the case that the local authority as trustee, or its members as trustees, are clear when they are dealing with charity business and when they are dealing with local authority business. When they are dealing with charity business, they must only consider the best interests of the charity and not those of the local authority.~~

~~Further information can be found in our guidance on charities and local authorities.~~

~~9. What are the consequences of an unmanaged conflict of interest?~~

~~There can be a number of consequences arising from an unmanaged conflict of interest.~~

~~If a trustee has received a benefit from the charity which is not authorised, either by the charity's governing document or by the Court or the Charity Commission, they will be acting outside the terms of the charity's governing document and may be in breach of trust. Even if the governing document does provide a power for trustees to receive benefits from the charity, if this power has been used in a way which is not in the best interests of the charity (for example, if a trustee is buying part of the charity's property for a much reduced price) then a breach of trust might still have occurred. If a breach of trust has occurred, then the transaction could be challenged by the Commission or by another interested party, such as a beneficiary of the charity. Where a trustee has received an unauthorised benefit, or where a trustee doesn't personally benefit but does not act in the best interests of the charity, the transaction may not be valid and the trustee could be liable to pay back the value of the benefit to the charity.~~

~~In cases where it seems that trustees have deliberately placed their own interests ahead of those of the charity in order to gain significant benefit at the expense of the charity, we will investigate and, if appropriate, refer the matter to the police.~~

~~An unmanaged conflict could also adversely affect the way in which the trustee body operates. Trustees may find it difficult to make a decision on a matter which involves a fellow trustee. You may feel that you should decide in favour of the trustee as you know him or her, or that, for the same reason, you should decide against him or her, even if the trustee's and the charity's interests are the same. You may also feel uncomfortable voting against the interests of a fellow trustee.~~

~~http://www.charity-commission.gov.uk/Charity_requirements_guidance/Charity_governance/07/01_4004-Q~~

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~~In addition to the legal consequences of an unmanaged conflict of interest, trustees also need to be aware of the effect that an unmanaged conflict can have on the charity's reputation. If those outside the trustee body have the impression that the trustees have acted in their own interests rather than those of the charity, this could damage the reputation of both the charity and the trustees, even where the trustees have acted in the charity's best interests. This could affect the charity's fundraising and the confidence of staff, volunteers and beneficiaries in the charity. Additionally, if the publicity is widespread, trustees may need to devote time and resources to defending the decision they have made, which will divert resources away from carrying out the objects of the charity.~~

~~When dealing with conflicts of interest, trustees should be aware of how the situation may appear to someone from outside the charity, and make sure that a policy and procedures are in place which will allow trustees to demonstrate that such situations have been dealt with properly.~~

~~10. ————— What do I do if I discover an unauthorised trustee benefit?~~

~~If you, as a trustee, realise that there is an unauthorised trustee benefit, we would encourage you to tell us about it, particularly if a significant breach of trust has occurred. This should be accompanied by an explanation of why the breach of trust occurred, how the trustees would prevent a similar situation occurring in the future and what benefits, if any, the charity received from the situation.~~

~~Details of how we will deal with unauthorised trustee benefits can be found in section 4.~~

~~11. ————— Where can I find further information and advice?~~

~~Further information on what to do if you are an employee of a charity or someone else with an interest in the charity and you discover an unauthorised trustee benefit can be found in Complaints about Charities (CC47).~~

~~In addition to the organisations mentioned in this guide, there are a number of organisations which provide advice on dealing with conflicts of interest together with a range of advice for trustees, which can be accessed from the Useful websites area on our website.~~

~~12. ————— Checklist for trustees~~

1. If you have identified that a conflict of interest exists, are you, or is the trustee concerned, receiving a material benefit as a result of that conflict of interest? (details of benefits which need to be authorised can be found in section 3 of this guide).

"If no, go to Q3. "

"If yes, go to Q2. "

2. Is the benefit arising from the conflict of interest authorised:

By the charity's governing document?

By the Charities Act?

specifically, by the Charity Commission (see section 6 of the guide)?

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"If no, you must apply to the Commission for authority for the proposed benefit (see section 6 of the guide). Go to Q3." "If yes, have the charity's trustees

Commission for authority for the proposed benefit (see section 6 of the guide). Go to Q3." "If yes, have the charity's trustees

3. Are there procedures in place to manage the conflict of interest effectively (see section 7 of the guide)?

"If no, the charity's trustees must ensure that suitable conflicts of interest procedures are put in place." "If yes, go to Q4."

4. Have the charity's trustees ensured that any benefit received by the trustees is disclosed in the annual report and accounts (see section 7 of the guide)?

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