

# Walberswick Common Lands Charity

Founded 1901 - Registered Charity No. 206095

PO Box 73, Halesworth IP19 1AU

Clerk: Matthew Wetmore. email: [clerkwclc@gmail.com](mailto:clerkwclc@gmail.com) tel: 07760 382 628

To: Applicant, Co-optative Trustee Appointment

From: James Darkins, Chairman

Date: 30 May 2022

Subject: Appointment of Co-optative Trustee – Property

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Dear Applicant

Thank you very much for your interest in becoming of Trustee of the Walberswick Common Lands Charity (“the Charity”).

The Charity was founded in 1904, although our earliest records go back to 1815. In essence the Charity has two aspects to its operation. Firstly, it generates income from its land and property. Secondly it uses that income for charitable purposes including maintenance of its land and buildings, environmental stewardship of its land, supporting Walberswick inhabitants who are in need and providing general benefit to the inhabitants of Walberswick.

There are seven Trustees in total; one appointed by the Sole Bay Team Ministry, four Nominative Trustees appointed by the Parish Council and two Co-Optative appointed by the Trustees themselves. Over the past eighteen months we have been undertaking a significant recruitment campaign which means that by year-end all but one Trustee (Hannah Sutton) will be freshly appointed. We now have one final vacancy to fill, a Co-Optative Trustee to succeed me. The Trustees would like to make this appointment sooner rather than later, to enable a smooth transition.

We are seeking a Trustee skilled and experienced in property related matters. The principal source of the Charity’s unrestricted income (circa £120,000 pa) is from over 100 property related agreements. It is also our principal area of financial and reputational risk. The experience we require could have been gained as a Chartered Surveyor, an investment professional or a legal specialist. Ideally the candidate would be able to operate at a strategic as well as operational level.

There are two significant points of difference between the Charity and a typical commercial property investor. Firstly, the Trustees must work within the confines of the Charities Act and Charity Commission guidance. This gives them far less discretion than in a commercial context. Secondly, the majority of the Charity’s counterparties are also members of our community. Which means handling property matters with sensitivity, while sticking to the rules. Which can be challenging.

Aside from property and commercial skills, we are looking for a team player who will positively contribute to the culture of the Charity. The ideal Trustee is someone who has the best interests of the Village at heart and who is willing to roll their sleeves up and get things done. As a volunteer organisation with a part-time Clerk, the latter attribute is essential!

Diversity is important to us, we strive to be inclusive by recruiting a team of Trustees, drawn from all sectors of the community. Our aim is that, between them, the Trustees should be representative of

the Walberswick community. For example, age, gender, ethnicity, lifestyle choice, education and work experience.

The Trustees meet every month (except August), normally at 6:30 pm on the last Thursday. Our meetings last two hours or so, with papers being distributed in advance. Those people who can attend in person meet at the Heritage Hut, with the remainder joining on Zoom. The Heritage Hut is very well set up for these types of mixed attendance meetings. The advantage of this arrangement is that Trustees who work away from Walberswick during the week, or who are travelling, can still join our meetings.

As far as time commitment is concerned, aside from monthly meetings, the property Trustee works closely with our Clerk as property matters come up fairly frequently. Mostly these can be dealt with rapidly via an email or call, but it sometimes involves meeting with counterparties. The property Trustee is not required to undertake legal work themselves, but they would normally instruct our property-specialist legal advisors.

To be clear, we are not recruiting for a Chair of the Charity. That appointment is made by Trustees at the first meeting of each year. Although we welcome candidates who possess the necessary skill and experience.

To assist your understanding of the work and responsibilities of Trustees please find attached:

- A map of the Charity's land
- The 2020 Annual Report and Accounts
- Charity Commission guidance cc28 - Sales leases transfers or mortgages: what trustees need to know about disposing of charity land
- 'The Essential Trustee' – a guide from the Charity Commission

You can also find more about the Charity's work and policies on the Village web site by following this link: <http://walberswick.onesuffolk.net/walberswick-common-lands-charity/about-us/>

I'd be very happy to talk to applicants about our requirements, the wider operation of the Charity and Trustee responsibilities. I can be reached via: [james.darkins@anzac.co.uk](mailto:james.darkins@anzac.co.uk)

Applications for this position close on 26 August 2022. They should be submitted to our Clerk, Matthew Wetmore at: [clerkwclc@gmail.com](mailto:clerkwclc@gmail.com). Please include a cv, plus a letter explaining why you are interested in the position and your relevant experience.

Being a Trustee is a very worthwhile experience, thank you again for your interest in joining our team.

Best wishes

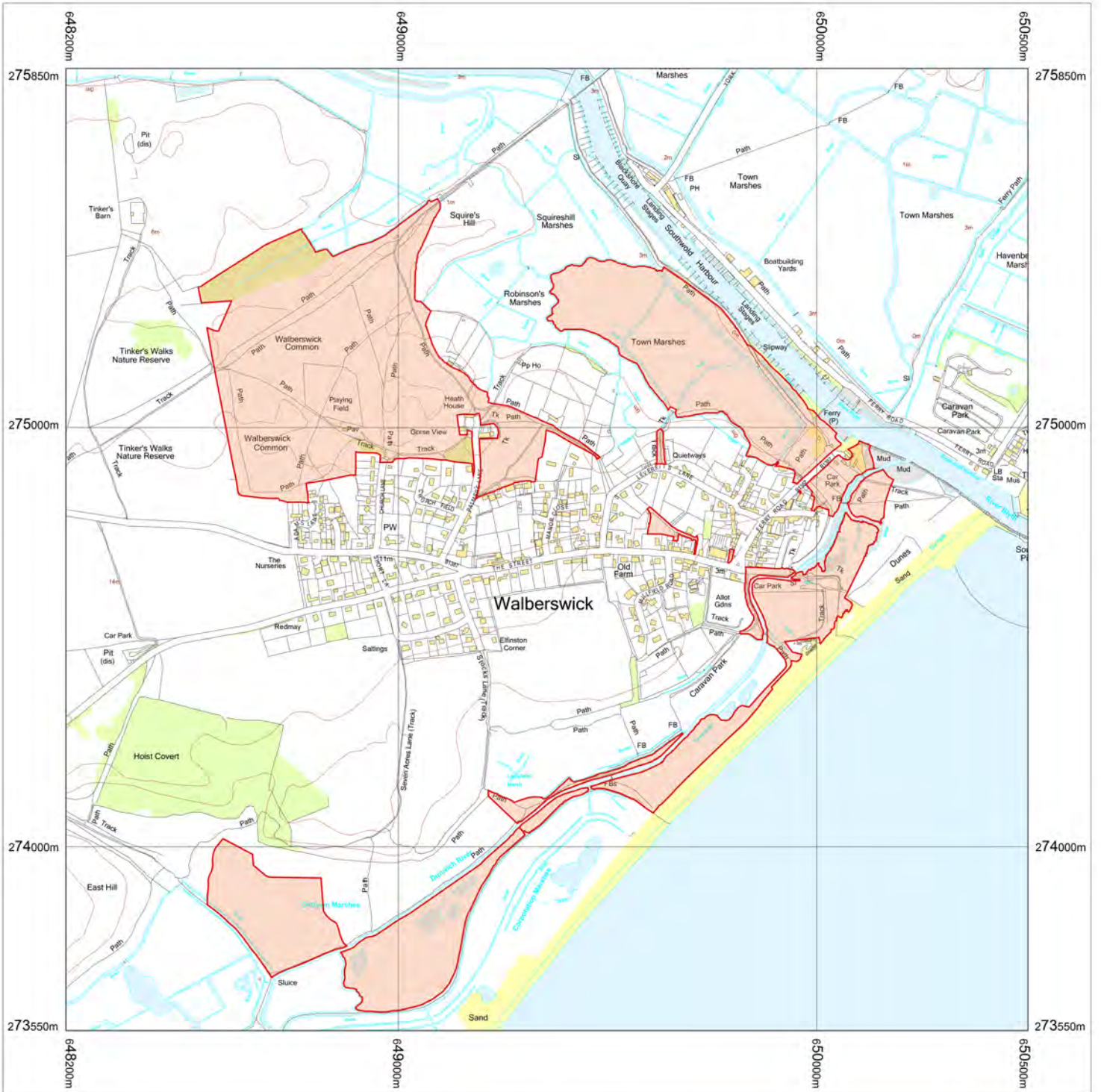


James Darkins  
**Chairman**



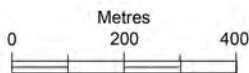
# WALBERSWICK COMMON LANDS CHARITY

Founded 1901 - Registered Charity No. 206095



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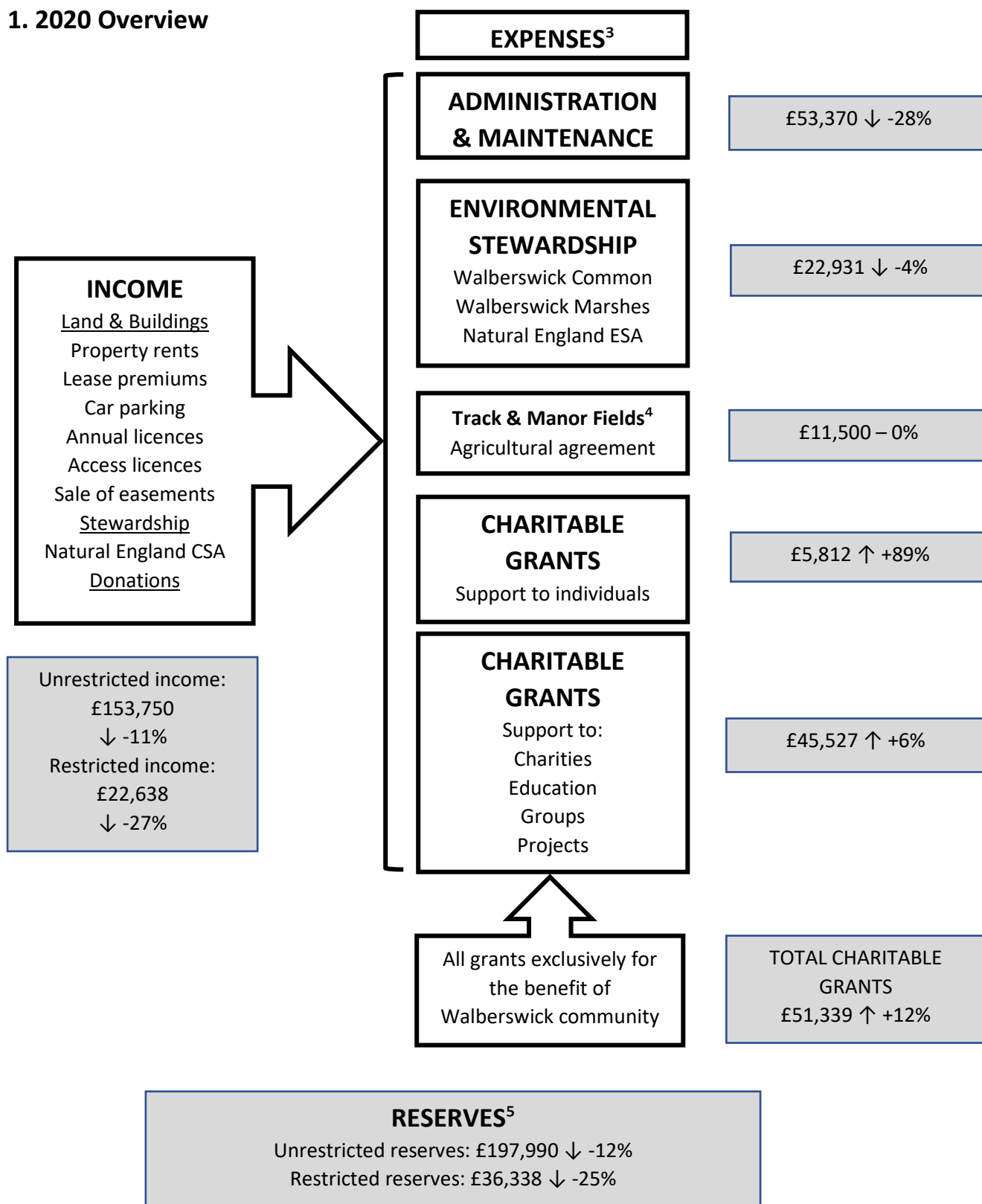
**REPORT OF THE TRUSTEES AND**  
**UNAUDITED FINANCIAL STATEMENTS**  
**FOR THE YEAR ENDED 31 DECEMBER 2020**  
**FOR**  
**WALBERSWICK COMMON LANDS CHARITY**

van Dijk Accountants Limited  
Georgian House  
34 Thoroughfare  
Halesworth  
Suffolk  
IP19 8AP

**CONTENTS OF THE FINANCIAL STATEMENTS**  
**for the Year Ended 31 December 2020**

	<b>Page</b>
<b>Chairman's Report</b>	1
<b>Report of the Trustees</b>	9 to 10
<b>Independent Examiner's Report</b>	11
<b>Statement of Financial Activities</b>	12
<b>Statement of Financial Position</b>	13
<b>Notes to the Financial Statements</b>	14 to 19
<b>Detailed Statement of Financial Activities</b>	20

1. 2020 Overview



Notes:

1. All figures sourced from financial statements to 31 December 2020
2. Percentages show 2020 compared to 2019
3. Expenses exclude any movement in the valuation of investments
4. Agreement with Blois Farms on farming practices adjoining Village
5. Reserves show net current assets, i.e. liquid funds available to the Charity.

## 2. Introduction

On behalf of my fellow Trustees I have pleasure in submitting the Charity's annual report and accounts for the year ending 31 December 2020. Like everyone in our community, 2020 was a year dominated by the global pandemic. We started the year anticipating 7 Trustee meetings and 2 sub-committee meetings. We ended the year having held 19 Trustee meetings and 10 sub-committee meetings!

Our principal concern from the pandemic was to protect the vulnerable in our community; Trustee Hannah Sutton took the lead role on this initiative and her report is below. Our secondary concerns were solvency of the Charity, given our reliance on rents and car parking for our income. Plus, when the first lockdown ended, the impact on our community of increased visitor numbers arising from the boom in domestic tourism. As it turned out, this boom meant our concerns over solvency were unfounded and the Charity was able to slightly increase its surplus and charitable grants.

## 3. Financial statements

The Charity's accounts are prepared on an accrual accounting basis. This means that income and expenditure is recognised at the time transactions occur, rather than when payment is made or received.

<b>EXPLANATION</b>
<b>CLASSIFICATION OF FUNDS</b>
<i>Unrestricted Funds</i> may be used for any purpose provided it complies with the Charities Act and the Charity's Scheme. For example, property rents.
<i>Restricted Funds</i> may only be used for the purpose intended, until that purpose has been met. For example, donations received for the Heritage Hut.

### Unrestricted funds

Unrestricted income was £153,750 a decrease of £18,053 (-11%) compared to 2019. This decrease was a combination of two factors. A reduction of £51,492 in income received from easements and lease premiums compared to 2019, when there were significant one-off items. However over half of this reduction was offset by an increase in the covenanted payment received from Walberswick Car Parks Limited (WCPL) of £27,128.

The total covenanted payment received from WCPL was £70,337, an increase of 63% on the previous year. The Trustees would like to thank the Directors and Operations Manager of the Company for achieving a record year and for the excellent job they do for the Charity, the community and our visitors. Particularly as 2020 was very challenging due to the increase in domestic tourism arising from the pandemic.

Administration and maintenance expenses fell by 28% to £53,370. This welcome reduction was largely due to professional fees falling by 37% compared to 2019, when they were very high due to resolution of the Serious Incident disclosed in last year's accounts. Nevertheless, professional fees are still high at 24% of unrestricted income. This reflects costs associated with incorporation of the Charity (see report below) and an ongoing property rights issue. The Trustees expect these costs will begin to stabilise at more normal levels from 2022 onwards.

## CHAIRMAN'S REPORT – YEAR ENDING 31 DECEMBER 2020

The Charity generated a surplus of £100,380 before charitable grants, a small increase of 3% on the previous year. This increase was due to the fall in income being offset by a greater fall in expenditure. The Trustees made total charitable grants of £51,339 thereby distributing 51% of the Charity's surplus, compared to 47% in 2019.

### Restricted funds

Restricted income was £22,638, a reduction of 27% compared to 2019. This apparent reduction was due to payments received from Natural England in 2019 being artificially high due to receiving a catch-up payment from 2018.

Total expenditure on Environmental Stewardship was £22,931, broadly the same as last year, which is covered in the report below.

### Reserves

At the financial year-end combined net current assets (restricted and unrestricted) stood at £234,328 (2019 £273,394). This represents cash and liquid assets held by the Charity and is best thought of as the Charity's reserves. The Trustees' policy is to keep a minimum level of unrestricted reserves of £75,000, the actual level of unrestricted reserves at year-end was £197,990, an excess over the minimum of £122,990.

### Tangible fixed assets

For the first time the Heritage Hut appears in the Charity's accounts. This property is held on a 10 year lease from Walberswick Parish Council commencing 11 April 2019. The costs associated with refurbishment of the Hut and conversion into a community hub appear as 'leasehold property' under note 4 of the accounts, tangible fixed assets. These costs will be depreciated over the remaining term of the lease. This resulted in a charge to depreciation of £8,250 for the 2020 year. Progress on the Hut is covered in the report below.

## 4. Covid-19 pandemic

Report from Trustee, Hannah Sutton:



*When Covid19 first struck our community in March 2020 no one could foresee how long it was going to affect our beautiful village and its residents also how it was going to affect the Charity.*

*We decided we needed to be on hand to assist residents in any way we could.*

*The first action was to set up a Covid19 response team lead by me which was comprised of four trustees who had close links to the community.*

*We worked closely with Liz Green who set up a huge WhatsApp group of volunteers in the village known as the Walberswick Community Support Group. They all pulled together to assist with shopping, delivery of prescriptions, newspapers and takeaways, dog walking, running errands, driving and in some cases just a chat over the phone. I would like to personally thank Liz and her team who continue to be amazing.*

*The Charity also donated towards the Christmas hampers organised by the Support Group and volunteers. Many received the hampers who had a particularly difficult time*



## CHAIRMAN'S REPORT – YEAR ENDING 31 DECEMBER 2020

during 2020 due to illness or those living alone and not being able to receive the usual in-person support from family and friends during lockdown.

We also have strong links with the Sole Bay Care Fund who assisted many in the village with care and supported living throughout Covid19. They still continue to support which is invaluable and the Charity is proud to support the Sole Bay Care Fund with a yearly donation. As Covid 19 progressed and lockdown continued many could not work due to restrictions or health, we were pleased to support residents with assistance with rent, care packages and donations at this hard time.

I am pleased to say that our strong links with the community meant the Charity was able to give assistance to residents if they needed it.

Thank you to all the residents who contacted me or the team so we could help and give assistance.

Finally, when the lockdown first started, restrictions put the beach and fishing huts out of use for many. As compensation, we offered a rent-free period for the April to June quarter. Many licensees still elected to pay their annual rent in full, for which we are very grateful.

I am always on hand via email at [hannahsutton2013@hotmail.com](mailto:hannahsutton2013@hotmail.com) if anyone needs assistance in the future.

Hannah

## 6. Environmental stewardship

The 2019 countryside stewardship agreement with Natural England continues until the end of 2023 and extends to about 70 hectares of the Charity's land. The annual payments under the agreement average around £21,000. The funding is for, amongst other things, the management of lowland heathland, reedbeds and wet grassland for wintering waders & wildfowl as well as for bracken control. The management of lowland heathland expressly requires the Charity "to provide a mosaic of vegetation which allows all heathland features to flourish, including pioneer heath and bare ground which benefits rarer invertebrates, birds, reptiles and plants."



*Foxgloves flourishing by the old pavilion*

As in previous years, the vast majority of the Charity's environmental work was devoted to management of the heathland of the Common. This work is summarised below.

An area of gorse was cleared from near the old pavilion, at the southern end of compartment 1, as well as at the northern end of the same compartment. Foxgloves are now growing there in abundance.

Extensive clearing of birch and gorse followed to the west of the lane leading to the Bailey Bridge, in compartments 10 and 8. This exposed some WW2 trenches as well as the concrete base of a WW2 gun emplacement.

An area was also cleared a short distance SW of the site of the former railway platform, in the SE corner of compartment 9. This enabled more extensive tractor brush-cutting, topping gorse and birch seedlings to encourage renewed growth of the heather thereby helping to maintain the heathland habitat.

As usual, the brush-cutting took place in February. But this time it was decided to leave some islands within both compartments 1 and 6 (the latter runs parallel to the east edge of the railway cutting). The NW corner of compartment 6 was also left uncut as some woodlarks had been seen there searching for a breeding site.

## CHAIRMAN'S REPORT – YEAR ENDING 31 DECEMBER 2020



*Birch and gorse cleared from Compartments 8 & 10*

Gorse which had been smothering the heather and encroaching on the footpath between compartments 1 and 2 was cleared back. The southern end of the footpath between compartments 10 and 11 was also cleared, together with gorse along the boundary with the sheep field, adjacent to the path to the side of the firebreak north of the playing field, as well as gorse in the railway siding.

An area bordering Palmers Lane south of Sandy Lane, to the west of compartment 19, was cleared of young birch saplings together with the dell at the north end of the railway track. Some soil was exposed in the dell to encourage burrowing insects on the railway embankment.

In 2020, the Charity extended its environmental stewardship work to include Sandy Lane, Bennett's Copse (approached by the track opposite old Fisher's Garage) and Bennett's Drift (by the new bird hide off Leverett's Lane). To make way for new planting, piles of old brashings were cleared as well as collapsed elms shrouded in ivy. This was done sensitively, by only clearing patches rather than great swathes. In addition, several large, self-sown sycamores were felled in Bennett's Copse.

The new planting included some 800 hedge whips as well as oak, wild plum, crab apple, rowan, field maple beech and Scots pine, a few of which were transplanted from the Common. Although the new trees will take some years to mature, they are a key part of the long-term management of the landscape for future generations.



*Marram grass regeneration on the sand dunes*

Under its agreement with Natural England, the Charity is required to control the invasive bracken "by cutting, spraying... with a bracken-specific herbicide, such as Asulox®, so that by year 5 [i.e. the end of 2023] cover of bracken is no more than 10%.". After the application of Asulox, livestock must be kept away from the treated area for at least one month to avoid any risk of it browsing on the bracken. Fortunately, there haven't been any livestock on the Common for a very long time.

Finally, the initiative to preserve the dunes adjoining the beach huts is now in its second year. The marram grass was getting very degraded due to the previous fencing having collapsed, combined with large visitor numbers. Over 2020 the marram grass has grown back strongly, plus ground cover plants have taken hold, all of which is preventing wind-blown erosion of the sand.

## 7. Charitable support

In total the Charity awarded charitable grants to individuals and groups of £51,339 during 2020, an increase of 12% on 2019. This resulted in 51% of the Charity's unrestricted surplus being distributed in grants.

The Trustees make these grants in accordance with policies first adopted in April 2017 and communicated to the Parish Meeting in the same month. You can find those policies here: <https://tinyurl.com/fncp7wu5> . During 2020 we developed 'Here to Help', a guide for prospective applicants, which explains how the Charity goes about providing assistance to individuals in need within Walberswick. The following extract summarises our approach:

*"We understand that asking for charitable assistance can be awkward or embarrassing, particularly in a small community like ours. Please don't be embarrassed, we have Trustees with many years' experience in dealing with potential beneficiaries. All applicants are treated with sensitivity and understanding, plus you can be assured that your application will remain confidential."*

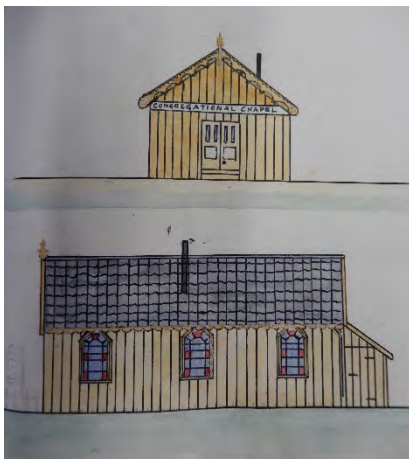
The five largest grants made by the Charity during 2020 were:

- St Andrew's Church – porch restoration      £10,000
- Sole Bay Care Fund      £10,000
- State schools attended by Village children      £ 6,250
- Safe Space – professional advice      £ 4,448
- Additional Speed Indicating Device (SID)      £ 3,276

The Charity continued to support traffic safety in the Village. Following a Village-wide email poll, a second SID was acquired so that the existing SID could stay permanently in place at the entrance to the Village. The Charity also supported the Safe Space team by funding professional advice to come up with recommendations for improvements to traffic management, parking and speed in the Village. In 2020 the team formally became an advisory group to Walberswick Parish Council, now known as the Safe Space Advisory Group.

The remaining grants of £11,564 were in support of national and local charities that provide support to the community, plus funding initiatives like the free minibus service and post office out-reach.

## 8. Heritage Hut



Congregational chapel in early 1900's

Last year we reported that the Charity had taken a 10 year lease on the Heritage Hut from Walberswick Parish Council. The Hut stands on the Village Green and was originally built as a Congregational Chapel in the 1880's.

Over many years of gestation, the Heritage Hut project has evolved from the original concept of providing a safe repository for the Scroll and Village archives, to the vision of creating a community hub and exhibition space, with an exclusively Walberswick focus.

Unfortunately the pandemic caused a delay to commencement of the refurbishment, which meant the project has continued

## CHAIRMAN'S REPORT – YEAR ENDING 31 DECEMBER 2020

into the 2021 financial year. However the Trustees are very pleased with the result and the strong endorsement they have received from the community.

Two donations were received towards the project. Our grateful thanks go to The Scroll Advisory Group and the Walberswick Local History Group for their initial fundraising in 2017 when they raised over £15,804 from grants, donations, coffee mornings and plant sales to start the project off. In addition, Jon Winyard generously raised £2,420 towards the audio-visual installation.

During the 2020 financial year-end the Charity incurred costs of £63,446 on the refurbishment project, including professional fees (before donations). As at the year-end, the estimated net cost to the Charity of the total refurbishment and fit-out project was in the order of £90,000, after taking account of donations. A final report on the refurbishment phase of the project will appear in the 2021 annual report.

### 9. Incorporation

As previously reported, having a corporate structure is now regarded as best practice for charities such as ours, particularly given we have commercial activities which fund our charitable work.

Under our current structure, the Charity is an unincorporated trust consisting of seven individuals, the Trustees. It is not a separate legal entity like a company. This means that the Trustees have to act in their own names on behalf of the Charity. By adopting a corporate structure, a charity can acquire a separate legal personality thereby enabling it to enter into contracts in its own name, especially relating to land and property ownership, banking and investments.

The Charity has been advised that as all of its original land (i.e. the Common, grazing land and reed beds) is classified as '*permanent functional endowment*' land, it must be held on trust for the benefit of the community. This means that rather than the Charity itself becoming a company, the best solution is instead to form a corporate trustee to act as the sole trustee of the Charity. The land and property can then be held on trust directly by the corporate trustee.

The existing Trustees would become directors of the new corporate trustee. Although they would perform their duties as directors rather than as trustees, their duties and responsibilities would remain much the same.

In early 2020, the proposed move to a corporate trustee was approved in principle by two of our stakeholders, Walberswick Parish Council and the Sole Bay Team Ministry. Further stakeholder and community consultation will take place in the second half of 2021.

### 10. Trustees

The first Trustee meeting in January proved to be our last face-to-face meeting of the year. Instead Zoom became the norm and we quickly learned how intense virtual meetings can be. We realised it was much better to have a larger number of shorter duration meetings, hence finishing the year with a record 19 Trustee meetings. This enabled us to respond rapidly to situations as they arose, particularly in the early days of lockdown.

Having served for 8 years, Rita Woodcraft retired as a Trustee at the end of 2020. Rita brought a life-long knowledge of the Village and its community to the Charity, which was always helpful in putting issues into context. She also acted as liaison between the Charity and the Sole Bay Care Fund, which was invaluable in helping to identify those in potential need.

## CHAIRMAN'S REPORT – YEAR ENDING 31 DECEMBER 2020

Rita was a Nominative Trustee, appointed by Walberswick Parish Council. The Council has appointed Karen Lewis in her place. Karen's professional background is in supply chain management and accompanying organisational change, which she has applied to both commercial and charitable organisations. Those who know Karen will also know that she brings considerable energy and enthusiasm to everything she does, we are delighted to have her on board.

Amanda Erlenbach is a Co-optative Trustee, meaning she is appointed by the Trustees themselves. Her term came to an end on 31 December 2020 and we are very pleased that she has agreed to continue to serve as a Trustee. Mandy takes the lead role in environmental stewardship matters for the Charity, her knowledge and passion have been invaluable in expanding our activity in this area.

The Trustees are all volunteers, supported by our part-time Clerk. They are a diverse group, coming from a wide range of backgrounds and representing different stakeholder groups within the Village. Each Trustee has their own role to play in delivering the work of the Charity and I would like to record my appreciation for their hard work and dedication.

### **11. Looking forward**

Like everyone in our community, the Trustees are looking forward to a return to normality during 2021. Our priorities for 2021 are to have the Heritage Hut fully operational, to make substantial progress on incorporation of the Charity and to resolve a private, property rights issue. At the same time, we will continue to provide charitable support to individuals and groups within the community and expand the scope of our environment stewardship work whenever opportunities arise.

As I say every year, but always worth repeating, the number one priority for Trustees remains to be a '*force for good*' in the Walberswick community. With that in mind we are always delighted to consider charitable support for community projects and would welcome your suggestions.

James Darkins  
**Chairman**

26 August 2021

## **WALBERSWICK COMMON LANDS CHARITY**

### **REPORT OF THE TRUSTEES** **for the Year Ended 31 December 2020**

The trustees present their report with the financial statements of the charity for the year ended 31 December 2020. The trustees have adopted the provisions of Accounting and Reporting by Charities: Statement of Recommended Practice applicable to charities preparing their accounts in accordance with the Financial Reporting Standard applicable in the UK and Republic of Ireland (FRS 102) (effective 1 January 2019).

#### **OBJECTIVES AND ACTIVITIES**

##### **Objectives and aims**

The Charity is the largest landowner in and around the village of Walberswick in Suffolk. It receives income from rental of its property and from car parking during the tourist season. Its primary responsibility is the environmental stewardship of its lands. In addition, surplus income may be deployed for the relief of need of Walberswick inhabitants and to support charitable objectives in the Parish of Walberswick.

##### **Social investments**

Annual and ad-hoc grants are made to groups, organisations and charities that either directly support charitable objectives in Walberswick or have the potential to provide such support when needed. Examples include supporting schools where Village children are educated, local outreach agencies caring for the sick and elderly, the village hall, the local minibus service, road safety schemes, flood defences, churchyard maintenance and children's sport and recreational activities. Individual grants are also made to support Walberswick inhabitants who are judged to be in need and suffering hardship.

#### **FINANCIAL REVIEW**

##### **Reserves policy**

It is the Charity's and Trustees policy to maintain reserves at a level it considers necessary to; (a) provide a contingency for emergency repairs, including minor flood damage and (b) meet cash flow fluctuations.

#### **STRUCTURE, GOVERNANCE AND MANAGEMENT**

##### **Governing document**

The Charity is an unincorporated association by its Scheme dated 7 September 2009, amended on 1st November 2018. The Charity was first registered on 4 February 1901.

##### **Recruitment and appointment of new trustees**

The body of seven Trustees consists of one Ex-officio Trustee, four Nominative Trustees and two co-Optative Trustees. The latter two categories are elected for a period of four years. Under the present scheme, the Ex-officio Trustee is the Vicar with pastoral responsibility for the Parish of Walberswick. Nominative Trustees are appointed by Walberswick Parish Council.

##### **Risk management**

The Trustees have a duty to identify and review the risks to which the Charity is exposed and to ensure appropriate controls are in place to provide reasonable assurance against fraud and error

#### **REFERENCE AND ADMINISTRATIVE DETAILS**

##### **Registered Charity number**

206095

##### **Principal address**

PO Box 73  
Halesworth  
Suffolk  
IP19 1AU

**WALBERSWICK COMMON LANDS CHARITY**

**Trustees**

Mr A N Cooke  
Mr J N B Darkins (*Chairman*)  
Ms A Erlenbach  
Reverend B R Fisher (*retired 23 June 2021*)  
Mrs K Goodchild  
Mrs K Lewis (*appointed 1 January 2021*)  
Mrs H J Sutton  
Mrs R M Woodcraft (*retired 31 December 2020*)

**Clerk**

Mr M Wetmore

**Independent Examiner**

P N van Dijk FMAAT  
van Dijk Accountants Limited  
Georgian House  
34 Thoroughfare  
Halesworth, Suffolk  
IP19 8AP

**Legal advisors**

Nicholsons Solicitors, Lowestoft  
Bates Wells, London

**Surveyors**

Durrants, Beccles  
Strutt & Parker, Norwich

**BANKERS**

Barclays Bank PLC

Approved by order of the board of trustees on 22 April 2021 and signed on its behalf by:

A handwritten signature in blue ink, appearing to read 'J N B Darkins', is written over a faint, light blue circular stamp or watermark.

Mr J N B Darkins - Trustee

**INDEPENDENT EXAMINER'S REPORT TO THE TRUSTEES OF  
WALBERSWICK COMMON LANDS CHARITY**

**Independent examiner's report to the trustees of Walberswick Common Lands Charity**

I report to the charity trustees on my examination of the accounts of Walberswick Common Lands Charity (the Trust) for the year ended 31 December 2020.

**Responsibilities and basis of report**

As the charity trustees of the Trust you are responsible for the preparation of the accounts in accordance with the requirements of the Charities Act 2011 ('the Act').

I report in respect of my examination of the Trust's accounts carried out under section 145 of the Act and in carrying out my examination I have followed all applicable Directions given by the Charity Commission under section 145(5)(b) of the Act.

**Independent examiner's statement**

I have completed my examination. I confirm that no material matters have come to my attention in connection with the examination giving me cause to believe that in any material respect:

1. accounting records were not kept in respect of the Trust as required by section 130 of the Act; or
2. the accounts do not accord with those records; or
3. the accounts do not comply with the applicable requirements concerning the form and content of accounts set out in the Charities (Accounts and Reports) Regulations 2008 other than any requirement that the accounts give a true and fair view which is not a matter considered as part of an independent examination.

I have no concerns and have come across no other matters in connection with the examination to which attention should be drawn in this report in order to enable a proper understanding of the accounts to be reached.

P N van Dijk FMAAT  
van Dijk Accountants Limited  
Georgian House  
34 Thoroughfare  
Halesworth  
Suffolk  
IP19 8AP

22 April 2021



**WALBERSWICK COMMON LANDS CHARITY**

**STATEMENT OF FINANCIAL ACTIVITIES**  
**for the Year Ended 31 December 2020**

	Notes	Unrestricted fund £	Restricted fund £	31.12.20 Total funds £	31.12.19 Total funds £
<b>INCOME AND ENDOWMENTS FROM</b>					
General Income	2	153,750	22,638	176,388	202,961
<b>EXPENDITURE ON</b>					
Costs		112,959	34,431	147,390	155,229
<b>NET INCOME/(EXPENDITURE)</b>		40,791	(11,793)	28,998	47,732
<b>RECONCILIATION OF FUNDS</b>					
<b>Total funds brought forward</b>		1,515,263	48,131	1,563,394	1,515,662
<b>TOTAL FUNDS CARRIED FORWARD</b>		<u>1,556,054</u>	<u>36,338</u>	<u>1,592,392</u>	<u>1,563,394</u>

The notes form part of these financial statements

**WALBERSWICK COMMON LANDS CHARITY**

**STATEMENT OF FINANCIAL POSITION**  
**31 December 2020**

	Notes	Unrestricted fund £	Restricted fund £	31.12.20 Total funds £	31.12.19 Total funds £
<b>FIXED ASSETS</b>					
Tangible assets	4	843,064	-	843,064	775,000
Investment property	5	515,000	-	515,000	515,000
		<hr/>	<hr/>	<hr/>	<hr/>
		1,358,064	-	1,358,064	1,290,000
<b>CURRENT ASSETS</b>					
Debtors	6	78,341	20,377	98,718	75,692
Investments	7	129,830	13,161	142,991	214,478
Cash at bank and in hand	8	40,900	12,558	53,458	35,425
		<hr/>	<hr/>	<hr/>	<hr/>
		249,071	46,096	295,167	325,595
<b>CREDITORS</b>					
Amounts falling due within one year	9	(51,081)	(9,758)	(60,839)	(52,201)
		<hr/>	<hr/>	<hr/>	<hr/>
<b>NET CURRENT ASSETS</b>		197,990	36,338	234,328	273,394
		<hr/>	<hr/>	<hr/>	<hr/>
<b>TOTAL ASSETS LESS CURRENT LIABILITIES</b>		1,556,054	36,338	1,592,392	1,563,394
		<hr/>	<hr/>	<hr/>	<hr/>
<b>NET ASSETS</b>		1,556,054	36,338	1,592,392	1,563,394
		<hr/>	<hr/>	<hr/>	<hr/>
<b>FUNDS</b>					
	10				
Unrestricted funds				1,556,054	1,515,263
Restricted funds				36,338	48,131
				<hr/>	<hr/>
<b>TOTAL FUNDS</b>				1,592,392	1,563,394
				<hr/>	<hr/>

The financial statements were approved by the Board of Trustees and authorised for issue on 22 April 2021 and were signed on its behalf by:



Mr J N B Darkins - Trustee



H J Sutton - Trustee

The notes form part of these financial statements

## WALBERSWICK COMMON LANDS CHARITY

### NOTES TO THE FINANCIAL STATEMENTS for the Year Ended 31 December 2020

#### 1. ACCOUNTING POLICIES

##### **Basis of preparing the financial statements**

The financial statements of the charity, which is a public benefit entity under FRS 102, have been prepared in accordance with the Charities SORP (FRS 102) 'Accounting and Reporting by Charities: Statement of Recommended Practice applicable to charities preparing their accounts in accordance with the Financial Reporting Standard applicable in the UK and Republic of Ireland (FRS 102) (effective 1 January 2019)', Financial Reporting Standard 102 'The Financial Reporting Standard applicable in the UK and Republic of Ireland' and the Charities Act 2011. The financial statements have been prepared under the historical cost convention.

##### **Income**

All income is recognised in the Statement of Financial Activities once the charity has entitlement to the funds, it is probable that the income will be received and the amount can be measured reliably.

##### **Expenditure**

Liabilities are recognised as expenditure as soon as there is a legal or constructive obligation committing the charity to that expenditure, it is probable that a transfer of economic benefits will be required in settlement and the amount of the obligation can be measured reliably. Expenditure is accounted for on an accruals basis and has been classified under headings that aggregate all cost related to the category. Where costs cannot be directly attributed to particular headings they have been allocated to activities on a basis consistent with the use of resources.

##### **Tangible fixed assets**

Freehold property is shown at most recent valuation. Any aggregate surplus or deficit arising from changes in market value is transferred to a revaluation reserve.

The Charity has an interest in the Heritage Hut situated on Walberswick Village Green which is held on a ten year lease commencing 11th April 2019. Improvements thereto are being amortised over the remaining term of the lease.

##### **Investment property**

Investment property is shown at most recent valuation. Any aggregate surplus or deficit arising from changes in fair value is recognised in the Statement of Financial Activities.

##### **Taxation**

The charity is exempt from tax on its charitable activities.

##### **Fund accounting**

Unrestricted funds can be used in accordance with the charitable objectives at the discretion of the trustees.

Restricted funds can only be used for particular restricted purposes within the objects of the charity. Restrictions arise when specified by the donor or when funds are raised for particular restricted purposes.

Further explanation of the nature and purpose of each fund is included in the notes to the financial statements.

**WALBERSWICK COMMON LANDS CHARITY**

**NOTES TO THE FINANCIAL STATEMENTS - continued**  
**for the Year Ended 31 December 2020**

**2. GENERAL INCOME**

	Unrestricted funds	Restricted funds	31.12.20 Total funds	31.12.19 Total funds
	£	£	£	£
Access licences	1,140	-	1,140	1,414
Property rent	30,145	-	30,145	35,403
Agricultural agreements	2,051	-	2,051	2,853
Investment income	996	-	996	1,423
Investment restricted income	-	126	126	152
Covenant from Walberswick Car Parks Ltd.	70,337	-	70,337	43,209
Track & Manor fields agreement	-	2,295	2,295	2,295
Environmental stewardship	-	20,217	20,217	28,711
Donations	20,222	-	20,222	1,175
Increase in value of investments	3,881	-	3,881	7,709
Annual licences	13,370	-	13,370	15,517
Easements & lease premiums	11,608	-	11,608	63,100
	<u>153,750</u>	<u>22,638</u>	<u>176,388</u>	<u>202,961</u>

**3. TRUSTEES' REMUNERATION AND BENEFITS**

There were no trustees' remuneration or other benefits for the year ended 31 December 2020 nor for the year ended 31 December 2019.

**Trustees' expenses**

There were no trustees' expenses paid for the year ended 31 December 2020 nor for the year ended 31 December 2019.

**4. TANGIBLE FIXED ASSETS**

	Freehold property £	Leasehold property £	Totals £
<b>COST</b>			
At 1 January 2020	775,000	-	775,000
Additions	-	76,314	76,314
	<u>775,000</u>	<u>76,314</u>	<u>851,314</u>
At 31 December 2020	775,000	76,314	851,314
<b>DEPRECIATION</b>			
Charge for year	-	8,250	8,250
	<u>775,000</u>	<u>68,064</u>	<u>843,064</u>
At 31 December 2020	<u>775,000</u>	<u>68,064</u>	<u>843,064</u>
At 31 December 2019	<u>775,000</u>	<u>-</u>	<u>775,000</u>

**WALBERSWICK COMMON LANDS CHARITY**

**NOTES TO THE FINANCIAL STATEMENTS - continued**  
**for the Year Ended 31 December 2020**

**5. INVESTMENT PROPERTY**

Walberswick Common Lands Charity has title to freehold land and property within the Walberswick area which was valued professionally on 01 May 2018 at £515,000. The trustees do not consider that the value at 31 December 2020 was materially different.

**6. DEBTORS: AMOUNTS FALLING DUE AFTER MORE THAN ONE YEAR**

	31.12.20	31.12.19
	£	£
Trade debtors	98,718	75,692
	<u>98,718</u>	<u>75,692</u>

**7. CURRENT ASSET INVESTMENTS**

	31.12.20	31.12.19
	£	£
COIF accumulation shares	24,999	22,719
COIF income shares	25,735	24,133
COIF deposit accounts 1 & 2	48,199	117,944
COIF sea defence deposit account	7,860	7,839
COIF Track & manor fields deposit account	36,198	41,843
	<u>142,991</u>	<u>214,478</u>

**8. CASH AT BANK AND IN HAND**

	General fund	Restricted	31.12.20 Total funds	31.12.19 Total funds
	£	£	£	£
Cash in hand	5	-	5	17
Bank account no. 1	40,895	110	41,005	25,610
Rent deposit account	-	9,648	9,648	9,702
Track & manor fields account	-	2,800	2,800	96
	<u>40,900</u>	<u>12,558</u>	<u>53,458</u>	<u>35,425</u>

**WALBERSWICK COMMON LANDS CHARITY**

**NOTES TO THE FINANCIAL STATEMENTS - continued**  
**for the Year Ended 31 December 2020**

**9. CREDITORS: AMOUNTS FALLING DUE WITHIN ONE YEAR**

	31.12.20	31.12.19
	£	£
Trade creditors	17,930	9,210
Other creditors	42,909	42,991
	60,839	52,201

**10. MOVEMENT IN FUNDS**

	At 1.1.20	Net movement in funds	At 31.12.20
	£	£	£
<b>Unrestricted funds</b>			
General fund	1,515,263	40,791	1,556,054
<b>Restricted funds</b>			
Restricted	48,131	(11,793)	36,338
	1,563,394	28,998	1,592,392

Net movement in funds, included in the above are as follows:

	Incoming resources	Resources expended	Movement in funds
	£	£	£
<b>Unrestricted funds</b>			
General fund	153,750	(112,959)	40,791
<b>Restricted funds</b>			
Restricted	22,638	(34,431)	(11,793)
	176,388	(147,390)	28,998

**Comparatives for movement in funds**

	At 1.1.19	Net movement in funds	At 31.12.19
	£	£	£
<b>Unrestricted funds</b>			
General fund	1,463,259	52,004	1,515,263
<b>Restricted funds</b>			
Restricted	52,403	(4,272)	48,131
	1,515,662	47,732	1,563,394

**WALBERSWICK COMMON LANDS CHARITY**

**NOTES TO THE FINANCIAL STATEMENTS - continued**  
**for the Year Ended 31 December 2020**

**10. MOVEMENT IN FUNDS - continued**

Comparative net movement in funds, included in the above are as follows:

	Incoming resources £	Resources expended £	Movement in funds £
<b>Unrestricted funds</b>			
General fund	171,803	(119,799)	52,004
<b>Restricted funds</b>			
Restricted	31,158	(35,430)	(4,272)
<b>TOTAL FUNDS</b>	<u>202,961</u>	<u>(155,229)</u>	<u>47,732</u>

A current year 12 months and prior year 12 months combined position is as follows:

	At 1.1.19 £	Net movement in funds £	At 31.12.20 £
<b>Unrestricted funds</b>			
General fund	1,463,259	92,795	1,556,054
<b>Restricted funds</b>			
Restricted	52,403	(16,065)	36,338
<b>TOTAL FUNDS</b>	<u>1,515,662</u>	<u>76,730</u>	<u>1,592,392</u>

A current year 12 months and prior year 12 months combined net movement in funds, included in the above are as follows:

	Incoming resources £	Resources expended £	Movement in funds £
<b>Unrestricted funds</b>			
General fund	325,553	(232,758)	92,795
<b>Restricted funds</b>			
Restricted	53,796	(69,861)	(16,065)
<b>TOTAL FUNDS</b>	<u>379,349</u>	<u>(302,619)</u>	<u>76,730</u>

**WALBERSWICK COMMON LANDS CHARITY**

**NOTES TO THE FINANCIAL STATEMENTS - continued**  
**for the Year Ended 31 December 2020**

**11. RELATED PARTY DISCLOSURES**

Trustees Mrs K Goodchild and Mr J N B Darkins hold on behalf of Walberswick Common Lands one share each in Walberswick Car Parks Limited . Mrs K Goodchild and Mrs R M Woodcraft are also directors of that company. During the year Walberswick Car Parks Limited covenanted £70,337 (2019 £43,209) to Walberswick Common Lands Charity.



**WALBERSWICK COMMON LANDS CHARITY**

**DETAILED STATEMENT OF FINANCIAL ACTIVITIES**  
**for the Year Ended 31 December 2020**

	Unrestricted funds £	Restricted funds £	31.12.20 Total funds £	31.12.19 Total funds £
<b>INCOME AND ENDOWMENTS</b>				
<b>General Income</b>				
Access licences	1,140	-	1,140	1,414
Property rent	30,145	-	30,145	35,403
Agricultural agreements	2,051	-	2,051	2,853
Investment income	996	-	996	1,423
Investment restricted income	-	126	126	152
Covenant from W.C.P.Ltd	70,337	-	70,337	43,209
Track & manor fields	-	2,295	2,295	2,295
Environmental stewardship	-	20,217	20,217	28,711
Donations	20,222	-	20,222	1,175
Increase in value of investments	3,881	-	3,881	7,709
Annual licences	13,370	-	13,370	15,517
Easements & lease premiums	11,608	-	11,608	63,100
	<hr/>	<hr/>	<hr/>	<hr/>
	153,750	22,638	176,388	202,961
	<hr/>	<hr/>	<hr/>	<hr/>
<b>Total incoming resources</b>	153,750	22,638	176,388	202,961
 <b>EXPENDITURE</b>				
<b>Costs</b>				
Administration	13,065	-	13,065	12,795
Property maintenance	1,848	-	1,848	977
Professional fees	36,387	-	36,387	57,639
Rates	211	-	211	203
Insurance	1,829	-	1,829	2,260
Sundries	30	-	30	-
Individual charitable grants	5,812	-	5,812	3,074
Charitable grants	45,527	-	45,527	42,851
Track & manor fields	-	11,500	11,500	11,500
Environmental stewardship	-	22,931	22,931	23,681
Flood defences	-	-	-	249
	<hr/>	<hr/>	<hr/>	<hr/>
	104,709	34,431	139,140	155,229
 <b>Support costs</b>				
<b>Other</b>				
Depreciation of Leasehold property	8,250	-	8,250	-
	<hr/>	<hr/>	<hr/>	<hr/>
Total resources expended	112,959	34,431	147,390	155,229
	<hr/>	<hr/>	<hr/>	<hr/>
<b>Net income</b>	40,791	(11,793)	28,998	47,732
	<hr/> <hr/>	<hr/> <hr/>	<hr/> <hr/>	<hr/> <hr/>

This page does not form part of the statutory financial statements



CHARITY COMMISSION  
FOR ENGLAND AND WALES

GUIDANCE

# Sales leases transfers or mortgages: what trustees need to know about disposing of charity land

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MARCH 2012  
New format February 2017

# Contents

1. Introduction	2
2. Some things to think about before disposing of your charity land	5
3. Simple, short term disposals	9
4. Sales, longer leases and other disposals	11
5. Disposals that need the commission's authority	13
6. Statements and certificates	19
7. Exceptions, exemptions and other situations	22
8. Charitable companies	25
9. Mortgages, loans and grants given on security	26
10. Appendices	30

# 1. Introduction

## 1.1 What is this guidance about?

Trustees must always act in the best interests of their charity. How they demonstrate this is usually left to their discretion, but when it comes to selling, leasing or transferring their charity's land, the law sets out clear requirements to ensure that these important transactions are properly managed in the charity's interests and that the trustees obtain the best price reasonable in the circumstances. In most cases the law enables trustees to dispose of charity land without approaching the Charity Commission for approval.

This guide will help trustees understand the steps they have to take when disposing of their charity's land and when they need the commission's authority. In cases where trustees do need commission authority, it outlines information it requires.

There is a similar regime in place allowing trustees to mortgage or charge their charity's land as security and this guidance helps trustees through this area.

## 1.2 'Must' and 'should': what it means

The word 'must' is used where there is a specific legal or regulatory requirement that you must comply with. 'Should' is used for minimum good practice guidance you should follow unless there's a good reason not to.

## 1.3 Previous guidance

This guidance replaces the previous version of Sales, leases, transfers or mortgages (CC28). It updates it to reflect provisions of the Charities Act 2011 (the Charities Act).

## 1.4 Scope of this guidance

This guidance describes what trustees need to do when they want to sell, lease or otherwise transfer their charity's land or where they mortgage or charge their charity's land as security. This is a complex area and is governed by different laws and regulations depending on the kind of charity and the type of disposal. You should not rely on this guidance to be an accurate or full description of legal matters affecting your charity. It provides a general introduction and overview, and highlights areas where you may need further advice from the commission or from your charity's legal advisers.

## 1.5 Using this guidance

The structure of this guidance follows a sequence assuming the reader is a trustee of a charity wishing to dispose of the land held by or in trust for a charity. The summary decision chart in section 2.6 will help you decide if you can proceed with your disposal of land without the commission's authority. Depending on the type of disposal, whether you need authority or not, you are directed to the appropriate section of the guidance.

Alternatively, if you are considering mortgaging your property or seeking a grant or loan where your charity property will be used as security, you will find information to help you in section 9.

## 1.6 Technical terms used in this guidance

**Charity land:** This is a simple phrase with a technically complex definition; it is land held by, or on trust for, a charity in England or Wales together with any buildings or structures on the land. It covers both land held on charitable trust and land held as corporate property by a charitable company or corporation. The word 'land' also covers any estate, interest or easements over the land. These could include, for example, a right of way or access to equipment on the land. It could also be a right, such as fishing rights in a lake or river on the land. Any of these may be described in the governing document of the charity, a separate governing document, or perhaps a trust deed or will.

**Connected person:** This is anyone closely connected to or associated with the charity. This could be someone working for the charity, paid or unpaid, as a trustee, officer or employee, or someone who has donated land to the charity. It extends to the spouses or civil partners of any of these as well as close relatives of trustees or donors of land and also any institutions or businesses run by any of these people. The full legal definition of this is set out in section 10.1. A disposal of land to a connected person can only be valid if it has been authorised by an order.

**Contract:** This is an agreement between the owner of the land and the person(s) buying, leasing or otherwise taking over the transfer of the land. A contract for the sale, lease or other disposal is completed when the land is transferred to the new owner or lessee.

**Designated land:** Designated property, sometimes referred to as 'specie land' and/or 'permanent endowment', is required by the charity's governing document to be used for a particular purpose of the charity. Many charities own land which is not designated and they are free to use it for any of the purposes of the charity.

**Disposal:** In this context a disposal occurs when charity land is conveyed, transferred, leased or otherwise disposed of. This will obviously include the granting, transfer or surrender of a lease as well as freehold sales but will also include, for example, granting rights such as fishing rights. Other examples might include granting an easement or granting a right of way over land, or granting a wayleave to allow access to facilities on that land. However, entry into (rather than completion of) a contract or agreement for sale, for example, is not a disposal. It is at the point of the transfer or completion of the transaction that the disposal takes place.

**Easement:** This is the right or freedom to do something or the right to prevent someone else from doing something over the real property of another. The right is often described as the right to use the land of another for a special purpose and is established by case law as an interest in land.

**Fine or premium:** A fine or premium is a lump sum or other benefit, other than rent, paid to the charity on the granting of a lease.

**Governing document:** A legal document setting out the charity's purposes and, usually, how it is to be administered. It may be a trust deed, constitution, memorandum and articles of association, will, conveyance, Royal Charter, scheme of the commission, or other formal document.

**Order:** In this document an order is a legal document made by the commission or the Courts under section 105 or 117 of the Charities Act authorising the charity trustees to carry out an act which otherwise they may have no power to do. The commission cannot make an order to do anything which overrides a specific prohibition in the charity's governing document.

**Professional charging clause:** A professional charging clause is a clause written in to the charity's governing document which expressly permits the payment of the trustee(s) concerned out of the funds of the charity for the provision of a service rendered, work carried out or the use of professional or specialist skills or knowledge, or employment by the charity.

Scheme: A legal document made by the commission, normally under section 69 of the Charities Act, used to change almost any aspect of a charity's purposes or administrative provisions which otherwise the trustees have no power to do. The commission has powers under the Charities Act to make a scheme to change a charity's purposes or administrative provisions. A scheme is usually made with the trustees' agreement and only where no suitable power of amendment is available.

The Charities Act: This means the Charities Act 2011.

Trustees: Charity trustees are the people who serve on the governing body of a charity. They may be known as trustees, directors, board members, governors or committee members. Charity trustees are responsible for the general control and management of the administration of a charity.

Wayleave: This is a formal written consent between two parties giving rights to install, inspect, maintain, alter or repair equipment or apparatus located on private land.

## 2. Some things to think about before disposing of your charity land

This section examines some of the reasons you might be considering for disposing of your charity's land and what you must think about before taking things further. It also looks at when authority is and is not needed before proceeding with the disposal.

### 2.1 Why would you want to dispose of your charity's land?

#### Short answer

There may be various reasons for disposing of your charity land. You may, for example, want to relocate the charity to more appropriate premises or release some cash that you can apply to other projects.

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#### In more detail

You will want to be satisfied that any disposal will be in the charity's best interests. For example, you should consider whether it would be better to retain the land for longer and perhaps continue taking any income from it, so as to earn more for it later. Or, in spite of the money that could be realised, you might consider continuing to use it for the benefit of the charity. As trustees it is part of your responsibility to think carefully before disposing of valuable assets of your charity which may be useful in the future.

### 2.2 Does your charity have the power to dispose of the property?

#### Short answer

In many cases trustees can rely on the power contained in the Trusts of Land and Appointment of Trustees Act 1996 (TLATA 1996), commonly called the statutory power. In some cases the trustees may be able to rely on the power in some other statutes. Or there may be wider powers written into the governing document of the charity. Charitable companies will almost always have a power of disposal in their Articles of Association. This will usually be in the form of an explicit power or may be inferred from the 'sweeping up' power which permits the exercise of any other powers which further the objects of the charity.

Where you cannot rely on any of these powers, you may need to contact the commission for an order or a scheme.

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#### In more detail

The statutory power is available in many cases and allows trustees to act as if they were absolute owners of the property; this includes disposing of land. Use of the power is dependent on the trustees:

- exercising it in a way which is compatible with the trusts of the charity
- complying with the requirements of s117 - 121 of the Charities Act - see section 2.5 and also sections 3 and 4
- complying with the standard of care set out in the Trustee Act 2000

In some cases trustees will not be able to rely on the statutory power. Some governing documents contain a clause that expressly prohibits the trustees from disposing of the land. Some charities hold designated land. In these cases you may need an order or a scheme to give you the power to dispose of the land. See section 5 for more detail on this.

The term 'designated land' means land that is required by the terms of the gift to the charity to be used to carry out the charity's purposes. In many cases the land in question can be replaced by other land which would do the job as well if not better than the existing land. Examples of this are:

- a building to provide a meeting place for a charity
- a building to provide a charitable service to the public such as a library or a school

In some cases only the specific piece of land in question can be used and it cannot be replaced. Examples of this are:

- a trust to retain for the public benefit a particular house once owned by a particular historical figure
- a particular area of land of outstanding natural beauty

In these cases you may need a scheme to give you the power to dispose of the land and/or to change the purposes of the charity. See section 5 for more detail on this.

Even where you do have the power to dispose of the land, you may still need authority. This is true, for example, if you are disposing of the property to a connected person - see section 5 for more information about this.

## 2.3 What must you consider before going ahead?

### Short answer (legal requirement)

There are several things you must think about before proceeding with a disposal. For example:

- do the trustees have a power to dispose of the land?
- would the disposal be in the best interests of the charity?
- do the trustees own the title to the land?
- is there anything in the governing document that prohibits the disposal?
- do you need authority from the commission or the Court?

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### In more detail

- whatever you decide to do, as trustees you must always consider what is in the best interests of your charity; this is one of your main responsibilities and must be borne in mind throughout the process of decision making in this important area.
- it is up to you to prove you own the title to the property and also that you have the power to dispose of it - see section 2.2. You must check to see if there are any restrictions in your governing document that might prevent the disposal.
- finally, you must establish whether you need authority. Sections 2.5 and 2.6 will help you decide this.



## 2.4 What else should you consider before going ahead?

### Short answer

You should consider:

- who else would be affected by the disposal
  - what any lease grants to the lessee
- 

### In more detail

Although it shouldn't necessarily be an overriding consideration, you should think about who else would be affected by the disposal - for example, would it affect the beneficiaries, or public support for the charity? In some cases, where you are disposing of designated land, you must carry out a consultation. Even where it is not a legal obligation, it is still good practice.

When leasing the charity's property, you should take legal advice to ensure the terms of the lease do not grant more to the lessee than you intend and that you are able to take back possession of the land at the end of the lease (eg by excluding security of tenure under the Landlord and Tenant Act 1954 in the case of a business tenancy or only granting an assured shorthold tenancy of residential premises).

## 2.5 Do you need the commission's authority?

### Short answer (legal requirement)

In most cases you will be able to dispose of your charity's land without the commission's authority. However, this is dependent on you complying with certain requirements before entering an agreement to dispose - see sections 3 and 4 for more information about this. On the other hand:

- if you cannot comply with these requirements
- you do not do so before entering an agreement
- if your disposal is one that must have authority,

then you will need an order - see section 5 for more information on how to go about this.

---

### In more detail

As trustees you can usually dispose of your charity's land without authority from the commission if you comply with certain legal requirements. These involve, for example, obtaining a survey and valuation of the land, advertising the disposal and deciding you are satisfied the terms for the disposal are the best that can reasonably be achieved. Where you cannot comply with these requirements, or do not do so before entering an agreement to dispose, you must apply to the commission for an order.

However, there are some cases where you will always need an order from the commission before you can proceed with the disposal - see the chart in section 2.6. The most common reason for this is if you are disposing of your land to a connected person - see section 5.

There are special circumstances where you are disposing of designated land and you are not going to replace it - see section 5.9.

In some cases where the title of the charity land is registered in the name of the Official Custodian for Charities, it may be necessary to obtain an order from the commission before making a disposal. You can find more information about this in the HM Land Registry's Practice Guides for **charities** and **CIOs**.

## 2.6 How do you decide if you need an order?

The answer

It depends on:

- the circumstances of the disposal
- to whom you are going to dispose
- whether you have power to dispose
- the type of charity
- whether you can comply with the requirements before entering an agreement to dispose of the land
- in some cases, whether you intend to replace the land or not

The following chart will help you decide whether you need to contact the commission for an order or if you can proceed by complying with the requirements set out in sections 3 and 4.

**Summary Decision Chart PDF Version**

## 3. Simple, short term disposals

This section covers disposals by way of a lease for seven years or less where no fine or premium is paid to the charity. The requirements are less demanding and you should complete this type of disposal without an order unless it involves a connected person - see section 5.

If the lease contains an option for the lessee to renew the lease for a further term and the sum of the terms exceeds seven years, the more demanding requirements set out in section 4 will apply. This will also be the case on the assignment of an existing lease even if it was originally granted for seven years or less or has seven years or less to run.

### 3.1 What are the requirements for simple disposals?

#### Short answer (legal requirement)

As these transactions are relatively low risk and for a relatively short time, the requirements are less demanding than for other disposals. Nevertheless, you must still consider the advice you are given and the terms of the disposal carefully to ensure they are the best that can reasonably be obtained in the circumstances of the disposal. Timing of obtaining your advice is important - see section 3.2.

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#### In more detail

If you are granting a lease of charity property for seven years or less without requiring a fine or premium to be paid, you must:

- obtain and consider a report from someone who has the ability and experience to advise you competently
- decide you are satisfied that the terms proposed for the disposal are the best that can reasonably be obtained

You will only need to obtain an order before proceeding if the disposal is to a connected person or if you have entered an agreement for the disposal before complying with the requirements.

### 3.2 When must you comply with the requirements for simple disposals?

#### Short answer (legal requirement)

To be able to complete the transaction without an order you must comply with the requirements before entering into an agreement to dispose.

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#### In more detail

If you do enter a contract without complying with these self-certification requirements then, to be able to complete the transaction and make the disposal validly, you will need an order before completion. This will inevitably extend the time needed for the disposal.

### 3.3 Who should act as adviser for these types of disposals?

#### Short answer

It is a matter for you as trustees to satisfy yourselves that the person you select has the ability and expertise to provide you with reliable advice on the disposal. There is no objection to one of the trustees or even a suitably qualified employee of the charity acting as the adviser.

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#### In more detail

Although there is no legal requirement for your adviser to possess professional qualifications in this type of disposal, it is recommended you use a qualified person who is a member of some professional body such as the:

- Royal Institution of Chartered Surveyors (RICS)
- Architects' and Surveyors' Institute (ASI)
- Institute of Revenues, Rating and Valuation (IRRV)

However, as trustees you will need to make your own choice of adviser and be prepared to justify your decision if you are challenged about it. If one of the trustees is asked to give the advice you could not pay them unless there is a power such as a professional charging clause in the governing document or you follow the terms of the power to pay a trustee for services (section 185 of the Charities Act).

In these cases there is also no legal requirement for the advice to be given in writing but it is recommended you do not rely on oral advice; this might be misinterpreted and there would be no evidence to produce if you are called upon to justify your decisions in connection with the disposal. It is recommended you take legal advice also to ensure the terms of the lease do not grant more to the lessee than you intended, such as security of tenure, and that you will be able to take possession at the end of the term.

### 3.4 What statements and certificates are needed?

#### The answer (legal requirement)

Legislation requires you to include certain statements and certificates in the disposal documents. For more information on this see section 6.

### 3.5 Can you dispose of designated land?

#### The answer

If you are disposing of designated land and the disposal of this type of land is by means of a lease for two years or less with no fine or premium, you can proceed, complying with the requirements set out in section 3.

If your land is designated land and the above does not apply, there are additional requirements with which you must comply and it is likely you will need a scheme - see section 5.9.

## 4. Sales, longer leases and other disposals

This section covers disposals by way of:

- a sale, transfer or conveyance of freehold land
- a lease for more than seven years
- a grant or release of a right, easement or restrictive covenant
- a lease for seven years or less where a premium or other fine is paid to the charity
- any other type of disposal of an interest in land that is not a mortgage or charge against land eg a surrender of a long lease

You should complete this type of disposal without an order unless it involves a connected person - see section 5.

### 4.1 What are the requirements for sales, longer leases and other disposals of an interest in land?

#### Short answer (legal requirement)

If you are carrying out one of these types of disposals you must:

- obtain and consider a written report from a qualified surveyor
- advertise the disposal following advice from your surveyor
- decide you are satisfied that the proposed terms are the best that can reasonably be obtained in the circumstances of the disposal

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#### In more detail

For disposals involving a sale, longer lease or other disposal of an interest in land not covered by section 3, there are more demanding procedures you must follow. The law requires your surveyor to be qualified (see section 4.3) and you must follow his or her advice on how to market the disposal (or not, if that is the advice). You must receive a written report that complies with the Charities (Qualified Surveyors' Reports) Regulations 1992 - a properly qualified surveyor will know about these regulations and you can find a copy of the regulations in Appendix 10.2.

Generally speaking the surveyor should be engaged to work exclusively for the trustees on a particular disposal. Timing of obtaining your advice is important - see section 4.2.

### 4.2 When must you comply with these requirements?

#### Short answer (legal requirement)

To be able to complete the transaction without an order from the commission you must comply with the requirements before entering into an agreement to dispose.

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#### In more detail

If you do enter a contract without complying with these self-certification requirements then, to be able to complete the transaction and make the disposal validly, you must apply to the commission for an order before completion. This will inevitably extend the time needed for the disposal.

## 4.3 What qualifications must your surveyor have?

### Short answer (legal requirement)

This must be a person who:

- is professionally qualified; for example, a Member or Fellow of the Royal Institution of Chartered Surveyors (RICS)
  - the trustees reasonably believe to have the ability in, and experience of, valuing land of the particular kind and in the particular area in question
- 

### In more detail

The definition of a qualified surveyor relies on professional qualifications together with practical ability and experience. Your surveyor will have letters MRICS or FRICS after his or her name. To satisfy the second requirement the surveyor must:

- have considerable experience of the property market in the town or district where the land is situated
- be familiar with the factors which affect the value of the type of land (eg agricultural, freehold or leasehold residential, light industrial, etc) within the market
- know which methods of marketing and disposal are most likely to succeed in the market of that type of land

## 4.4 What statements and certificates are needed?

### The answer (legal requirement)

Legislation requires you to include certain statements and certificates in the disposal documents. For more information on this see section 6.

## 4.5 What if you want to sell your land at auction?

### Short answer

You can do this if you think it will be in the best interests of the charity. It can be helpful to obtain professional advice.

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### In more detail

Auctions can be a useful way of getting a quick sale but you should put a reserve on the lot in order to achieve at least the value recommended by your surveyor. However, to be able to complete the disposal by auction without an order you must have complied with the requirements before entering the property for the sale. If you have not done so, you must obtain an order before the sale can be completed.

You should write into the conditions of sale that the transaction will be subject to obtaining an order if it turns out the purchaser is a connected person.

## 4.6 Can you dispose of designated land?

### The answer (legal requirement)

See section 5.9.

## 5. Disposals that need the commission's authority

This section describes when you must obtain an order or a scheme from the commission before disposing of charity land. It explains why it is necessary and how to make the application, together with what information the commission needs to see so that your application can be considered.

### 5.1 When will you need an order?

#### Short answer (legal requirement)

If you do not or cannot comply with the requirements set out in sections 3 or 4, you must obtain an order from the commission. When you dispose of your land to a connected person you must always obtain an order even if you can comply with the requirements set out in sections 3 or 4.

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#### In more detail

In many cases you will be able to proceed with the disposal without authority from the commission or the Courts. If you do not or cannot comply with the requirements set out in sections 3 or 4 you must apply to the commission for an order. However, there are some cases where an order will always be needed before you can proceed with the disposal. Most frequently these are cases where you make the disposal to a connected person - see sections 5.2 to 5.4. The commission's authority, probably by scheme, will also be needed if you are selling designated land and you do not intend to replace it - see section 5.9.

### 5.2 When will you need a scheme?

#### Short answer

If you are selling designated land and you do not intend to, or cannot, replace it, authority will be needed. This will usually mean the commission needs to make a scheme for the charity.

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#### In more detail

Where a charity's governing document includes provision that specific property must be used for the purposes of the charity, this is known as designated land. This might be a recreation ground, almshouse, church or school. Charity trustees can sell designated land if there is a power of sale, or where the land is being replaced (as long as replacing the land furthers the purposes of the charity and will be beneficial to the charity). However, if there is no power of sale, and/or the designated land will not be replaced, the trustees must apply to the commission for a scheme to provide a power of sale and/or give new purposes for the charity - see section 5.9.

## 5.3 Why do you need an order?

### Short answer (legal requirement)

An order gives authority for you to proceed with the disposal. It provides assurance that you have carried out the transaction openly and transparently and that it is in the best interests of the charity.

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### In more detail

It is a legal requirement under section 117(1) of the Charities Act that you obtain an order:

- before proceeding with a disposal to a connected person
- where you do not or cannot comply with the requirements of the rest of section 117 of the Charities Act before entering an agreement to dispose

In such cases the commission needs to be sure you have taken the correct measures to manage any conflict of interest and to achieve the best terms for the disposal.

## 5.4 Who is a connected person?

### Short answer (legal requirement)

Certain persons and organisations closely connected to or associated with the charity that the law says are connected persons.

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### In more detail

This includes:

- the trustees themselves
- a donor of land to the charity
- close relatives of either of these
- employees or officers of the charity
- the spouse or civil partner of any of the above persons
- institutions or companies controlled by such people or in which such people have a substantial interest

The full list of who is a connected person for the purposes of a disposal is set out in section 118 of the Charities Act. You can see this list in section 10.1.

## 5.5 How do you obtain an order when disposing of charity land to a connected person?

### The answer

If the disposal is to a connected person the commission's **online form** will help you provide the information needed.

In other cases where you think you need an order, see section 5.6.



## 5.6 When might you ask for an order in non-connected person cases?

### Short answer

The commission may consider making an order if you do not or cannot comply with the requirements of section 117 - 120 where:

- the cost of obtaining a surveyor's report would be out of all proportion to the value of the transaction and the commission can be reasonably certain that the value of the transaction is genuinely low
- the land is in a remote area where it may be difficult to find a qualified surveyor with sufficient knowledge of local land values
- the disposition is proposed for undervalue that is not outside the scope of section 117 by exemption under s117(3)

Generally speaking the commission will want to know why you think you need an order and shall need to see evidence of:

- the value of the land
- how you have advertised the disposal
- your decision making processes including how you have managed any conflict of interest

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### In more detail

In some cases it may be that the cost of obtaining a surveyor's report far outweighs the benefit the charity will receive from the disposal. For example, you may be disposing of easements and the commission has dealt with you recently on similar low value transactions, as valued by your surveyor, in the recent past. You may ask the commission to consider making an order under s117(1) in these circumstances. But the commission will still need some information to consider your reasons, as set out in the bullet list below.

It may be that in the remote area where the charity land is situated it is difficult to find a surveyor or one who is experienced in the particular type of land involved. In these circumstances your only option may be to instruct an estate agent to value the land for you. The estate agent's report should follow a similar pattern and contain similar information as required by a qualified surveyor's report. However, because you will not be able to comply with the requirements of s117 - 120 the commission will have to make an order.

In many cases a disposal under value will be because it is being made to another charity with the same objects. In such a case the disposal will be exempt from the requirements of s117 - see section 7.3. However, there may be other circumstances where a disposal under value would be appropriate. An example of this might be where you are disposing of the property to a public authority which was intending to use the property for a purpose which was compatible with the objects of the charity. Such a disposal is not exempt under s117(3) so you will need to apply for an order to sanction the disposal.

If you need to obtain an order, the commission will need to know:

- the reasons why you think you need an order
- an assessment of the value of the land
- details of advertising you have carried out including when, where and for how long you have advertised, or your reasons for not advertising if that is the case
- minutes of the meetings where the decisions involved in the disposal process have been discussed

This is not an exhaustive list and it may be that, even after receiving your application, the commission will need to contact you for further information. By providing full details you will give the commission the best chance to assess your application. Even if your case is not concerned with a connected person, the online form mentioned in 5.5 will give you a good general outline of the type of information the commission will need to see, so you could use it as a guide or checklist for other, ie non-connected person, cases.

## 5.7 Why do you need to supply this information?

### Short answer

The commission needs to be able to understand the details of the proposed disposal so that it can consider them and come to an informed decision about whether it can make an order or not. Gathering this information will also help you check the details of the case and may assist in your decision making processes.

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### In more detail

When the commission looks at your application it needs to be able to see that you:

- have a realistic valuation for the property
- have understood the professional advice you have received
- have looked at and understood any powers or restrictions contained in your charity's governing document
- know exactly what you are disposing of
- have made the case that the disposal is in the best interests of your charity
- have obtained the best terms for the charity that you can reasonably do in the circumstances
  - this would include information about how you have advertised the property or, if you have not, your reasons for not doing so
- have managed any conflict of interest

## 5.8 Will you still need to give statements and certificates?

### The answer (legal requirement)

Yes - see section 6.

## 5.9 Do you need a scheme if you are disposing of designated land?

### Short answer (legal requirement)

Sometimes - where there is no express power of sale and the statutory power of sale cannot be used, see section 5.2.

If you do not intend to, or cannot, replace the designated land then you will probably need a scheme to give a power of sale and to change the charity's objects. This is because the disposal will mean you can no longer carry out the purposes of the charity for which the land is held. You will also need to give public notice of the proposed disposal - this is in addition to advertising the property in order to obtain the best price.

If you are intending to replace the land using the proceeds from the disposal, and if doing this will further the purposes of, and be beneficial to, the charity, you can usually use the self-certification regime outlined in section 4 unless the disposal is to a connected person.

There may be some cases where disposal of designated land would not have the effect of altering the purposes of the charity, but could still not be effected compatibly with the trusts of the charity - see below for more detail.

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### In more detail

If you dispose of all or most of the designated land without replacement then it is most likely that the existing purposes of the charity for which the land is designated cannot continue. In many cases there will be no power of sale in the charity's governing document. In such circumstances the commission will probably have to make a scheme to provide a power of sale and new purposes for the charity - see **Changing your charity's governing document (CC36)**. Before the commission can consider making a scheme, you will have to demonstrate why the existing purposes of the charity can no longer be carried out.

For example, the provision of almshouses is one of many means of relieving need. In the case of an almshouse charity, the trusts on which the land is held will often require the charity to use it to provide almshouses. These buildings may be designated property. If there is insufficient demand for the almshouses you may decide to sell these and not replace them. In this case, it follows that the charity will no longer be able to carry out the purposes for which it was established, so the purposes will need to be changed. Where this applies you will have to make a case, setting out why this is necessary, before the commission can consider changing the charity's purposes by scheme.

To see if your charity land is designated land, you should look in your governing document or title documents and take appropriate legal advice, if required.

There are some cases where you will not need a scheme, even if you are disposing of designated land and not replacing it. This applies where the extent of the disposal is so small that it will have no impact on the charity's ability to further its objects - examples would include the rededication of a boundary or resolution of a boundary dispute, the grant of an easement or creation of a public right of way over the land. In these circumstances, you only need to comply with the requirements set out in section 4 relying on the power of sale in TLAT 1996.

If the disposal of any part of the designated land is something which is expressly prohibited by the trusts of the charity, then the commission will have to make a scheme to alter the purposes of the charity so as to allow the sale of the property to proceed properly. (Unless the property is subject to a Compulsory Purchase Order, if this applies to you, take legal advice.) The commission's scheme will also provide a suitable outlet for the proceeds of sale if the governing document does not contain any suitable trusts.

In all cases where you are disposing of all or some of your charity's designated land and are not replacing it, you must give public notice of the disposal inviting representations. The notice period must be for at least a month and you must consider any representations you receive. The form and extent of the notice will depend on the size and type of the charity. In the case of a local charity it will usually be acceptable for you to put up a notice on the property itself and insert a second notice in a local newspaper. Larger charities, or charities with specialised activities, should consider advertising in newspapers of wider circulation or in specialised publications connected with the charity's activities. In publishing the notices, you should aim to reach as many beneficiaries, and other people who may have an interest in the charity, as is possible at reasonable cost.

The commission may decide to waive this requirement if it is satisfied that it would be in the best interests of the charity. You, or others on your behalf, would need to apply for this in writing. It may consider this:

- if there has already been public discussion of the proposed disposal or where the trusts of the charity itself impose a more onerous duty, for example, in the case of a village hall where the trustees are required to call a public meeting before disposing of property
- where the disposal only involves only a small part of the land (as in the examples above) and will not affect the ability to carry out the purposes of the charity

In most cases, you can replace designated land, where this will further the purposes of, and be beneficial to, the charity. However, this will not apply if the charity's purposes include the preservation of that land, see section 5.2.

Where there is nothing to prevent replacement, and as long as the disposal is not to a connected person, you will likely be able to use the self-certification regime outlined in section 4. In such a case where it is considered the land is replaced with other land of equivalent amenity value, the replacement property need not be in exactly the same location or of the same structure or the same size or design and not necessarily the same number of units. Provided the entire proceeds of sale are used to provide a suitable new property, almshouse units for example, a reasonable reduction in the number of units can still be considered of equivalent amenity value. Examples of this may be where:

- unpopular bedsits are replaced with fewer flats
- separate kitchens or larger bathroom/wet-room facilities are to be included in the new property thereby reducing the number of units

If there are surplus funds left when the equivalent land or property has been purchased, then if the income arising from the invested funds can be expended on the upkeep, maintenance and improvement of the purpose property, those funds will be held as permanent endowment investment funds - no scheme or other authorisation is required.

If the surplus funds cannot be wholly expended as above, then a cy-pres occasion has arisen and the trustees are under a duty to apply for a scheme to provide a suitable way of spending the income of the charity.

## 6. Statements and certificates

This section explains why statements and certificates are required in the documents when disposing of charity land and also gives information about their format and who must provide them.

### 6.1 Why are these statements and certificates needed?

The answer (legal requirement)

The statements and certificates must be provided to assure the purchaser:

- how the land is held and by what sort of charity
- that the land is being disposed of legally

In this way the purchaser can have confidence in the validity of the transaction.

### 6.2 What information is required in the statements?

Short answer (legal requirement)

In the documents for disposals you must state:

- that the land is held by the charity or in trust for the charity
- whether the transaction is subject to the statutory requirements or whether the charity is exempt or the transaction comes within section 117(3) of the Charities Act

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#### In more detail

It is a legal requirement that you make these statements in the disposal documentation. You should be able to check in the title documents that the land is held by the charity or in trust for the charity. If your charity is exempt from the statutory requirements, the statements must say so and detail which exemption, as set out in legislation, you are relying on - see also section 7 in this guidance. If you are disposing of your land to another charity you must include further statements with additional information - see section 6.6.

In some circumstances there are prescribed forms of statement but in many cases there is no set form of wording; you should seek your own legal advice on this. There is useful guidance in the HM Land Registry's Practice Guides for **charities** and **CIOs**.

### 6.3 What information is required in the certificates?

Short answer (legal requirement)

You must certify you have the power to dispose of the land and that you have followed the correct procedures in either obtaining an order or by following the statutory requirements.

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#### In more detail

It is a legal requirement that you provide such certificates in the disposal documentation (usually just after the statements described in 6.2). The certificate must say if the disposal is authorised by order. If it is not, it must state that you have the power to dispose of the property and that you have complied with the requirements. There is useful guidance on the form of wording for these certificates in the HM Land Registry's Practice Guides for **charities** and **CIOs**, if you are not sure, you should take legal advice before proceeding further.

## 6.4 Who must make these statements and certify correctly, and can this function be delegated?

### Short answer (legal requirement)

It is your responsibility as trustees to make the statements and certify correctly; if you are not sure, you should take legal advice. There may be some scope for delegation depending on the type of charity, either through provisions in the governing document or in legislation.

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### In more detail

In the case of an unincorporated charity, you can delegate to two or more of the trustees the authority to sign the certificates. This would be subject to the trusts of the charity. The trustees may give a general authority to do this or limit it as they think fit. This authority:

- must be given in writing or by resolution of a meeting of the trustees
- may be conferred on any two or more trustees or be restricted to named trustees or in any other way
- will, subject to any restrictions placed on it, have continuing effect until revoked

In a corporation, the trustees can delegate the giving of the certificate to the persons signing the transfer on behalf of the corporation. Where this happens the delegates must indicate in the wording of the certificates that they are giving the certificate in their capacity as representatives of the trustees as a whole rather than as agents for the body corporate. See section 8 and also the HM Land Registry's Practice Guides for **charities** and **CIOs**.

## 6.5 What if the statements or certificates are incorrect or not provided?

### The answer

Generally, the disposal will still be valid in the purchaser's favour, unless the purchaser knew or ought to have known that the statements or certificates were incorrect. This statement stands where the purchaser has acquired the land in good faith for money or money's worth, for example, the exchange of a piece of land of equivalent value. If this is not the case, say, where the disposal was to someone who knew or ought to have known that the statements or certificates were incorrect, the disposal may be void or voidable.

## 6.6 Are the statements or certificates required when disposing of your land to another charity?

### The answer (legal requirement)

Yes - see section 7.

In addition, where the disposal is to another charity, you must include in the disposal documentation a further statement. This must explain:

- that the land disposed of will be held by or in trust for a charity
- whether the receiving charity is an exempt charity
- if it is not an exempt charity, that the restrictions applied by section 117 of the Charities Act regarding requirements for future disposal will apply unless such a disposal is excluded or exempt from these restrictions

Where the disposal will trigger compulsory registration at the HM Land Registry, these statements will assist the Land Registrar in putting appropriate entries on the title eg restrictions.

## 7. Exceptions, exemptions and other situations

This section describes disposals that do not need authority in the form of an order and also do not need trustees to comply with the other requirements of section 117 because they are excepted, exempt or excluded from these requirements.

### 7.1 What situations are excepted, exempt or excluded from the requirements of section 117 of the Charities Act?

The answer (legal requirement)

You can complete any of the following land transactions without following the requirements set out in either section 3, 4 or 5:

- disposals given authority under an Act of Parliament or other statutory provision or scheme - see section 7.2
- a disposal for less than best price to another charity whose objects come within those of the disposing charity - see section 7.3
- a lease to a beneficiary of the charity for less than best price - see section 7.4
- disposal of land by way of a mortgage or grant or other security; these have their own regime - see section 9
- an advowson - see section 7.7
- an option (which is not a disposal) - see section 7.5
- the release of a rentcharge - see section 7.6
- a disposal of land not in England or Wales even if the charity is based there

The following sub-sections give more information about some of these situations. For details of mortgages or grants using charity land as security, see section 9.

### 7.2 Are you making your disposal using power under an Act of Parliament, other statutory provision or scheme?

Short answer

Some charities are set up under an Act of Parliament, or subject to other statutory provision or scheme. Where the Act or provision or scheme expressly gives general or special authority for disposals without the authority being made subject to the sanction of an order of the court, then these charities are specifically excluded or exempt from complying with the requirements of section 117 of the Charities Act.

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In more detail

You need to look carefully at the documentation concerning the trusts of your charity or any subsequent paperwork. In order for the disposal to be exempt from complying with the rest of the sections of section 117, the power must have been expressly given for a particular transaction or classes of transaction. Alternatively, your charity may be the subject of a scheme made by the commission or the Courts that has a similar effect. Again, you will need to look carefully at the wording of any scheme to see whether it affects the way you need to approach a disposal. Your charity will not be exempt from compliance with the requirements of the rest of section 117 merely because the Act of Parliament or scheme gives a general power of sale. If you are not sure, you should take legal advice before proceeding further.

## 7.3 Are you disposing of your land to another charity for less than best price?

### Short answer

Where you are disposing of charity land to another charity, you will be able to do so without an order and without needing to comply with the requirements mentioned in sections 3 or 4 where:

- the disposal carries out the purposes of the first charity and is therefore a practical application of its charitable trusts
- the disposing charity has a power through its trusts to dispose of land to another charity

You will also need to state in the documents for disposal that the disposal falls within section 117(3) of the Charities Act 2011.

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### In more detail

You can proceed as above where the disposal is to a charity whose purposes are no wider than your charity. This may depend on the wording in the disposing charity's trusts - you should look carefully at this. The following example may help to explain.

The disposing charity may have objects for the relief of those in need in area 'A'. If the charity transfers land to another charity, the disposal could be made for less than best price and without the need to obtain an order or to comply with the requirements set out in sections 3 or 4. This can happen as long as the receiving charity is established also for the relief of those in need in area 'A'.

If the receiving charity had objects for the relief of those in need in areas 'A' and 'B', then the trusts relating to the land being transferred would need to be restricted to the relief in need of only those in area 'A'. The property must not be disposed of and the proceeds of sale used for purposes beyond those of the purposes of the giving charity.

There may be a case when a charity is considering disposal of land to an organisation which is also a charity but which has objects which do not fall within those of the disposing charity. This would mean the disposal would have to be made at full market price and would be subject to the full requirements as set out in sections 3 or 4. You must also provide additional statements - see section 6.6.

## 7.4 What if you are leasing to a beneficiary for less than best rent?

### The answer

If you are granting a lease to a beneficiary of the charity, there is no requirement to comply with the procedures set out in sections 3 or 4. This would be where the premises are to be occupied for the purposes of the charity. An example of this is where a housing association is letting property to its tenants for less than the full market value of the lease.

## 7.5 What is an option and is it regarded as a disposal?

### The answer

An option is an agreement which gives someone (the option owner) the legal right, for a price, to demand the disposition of a charity's land to him or her if he or she chooses, on terms which are set out in the option agreement. This, in itself, is not a disposal of land but an agreement to dispose. The disposal does not actually take place until completion.



However, you should normally comply with the requirements set out in section 3 or 4 before granting an option. If you do not or cannot, it will not be possible to comply with these requirements when the time comes to complete on the agreed option and you will need to obtain an order. If the option owner is a connected person, you will need an order anyway - see section 5.

## 7.6 What is a rentcharge?

### Short answer

A rentcharge is an annual fee payable in respect of land to a person who is not the owner of the land and who has no other legal interest in it. If your charity owns a rentcharge of £10 or more the commission's advice is to encourage you, whenever the opportunity arises, to negotiate with the landowner for its release. Depending on the circumstances this type of disposal may or may not require an order from the commission or compliance with the disposal requirements set out in section 4.

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### In more detail

The amount of the rentcharge is usually fixed and bears no relation to the value of the land. It is sometimes difficult to collect, especially where the land has been split up and is now owned by a number of different people. For these reasons it is not a suitable investment for a charity.

Most rentcharges will be extinguished in July 2037 or 60 years after the rentcharge first became payable if this is later. No compensation is payable when this happens. This applies to all existing rentcharges except so called 'estate rentcharges' that are used to enforce the maintenance of infrastructure in certain circumstances (see section 2 of the Rentcharges Act 1977).

Where the charity releases a rentcharge for a payment of at least ten times the annual amount of rentcharge, the release is a disposal outside the scope of the requirements of other disposals and does not require an order from the commission. Where you wish to release the rentcharge for less than ten times the annual amount, you must obtain an order or comply with the procedures set out in section 4, including the necessary statements and certificates in the disposal documents as required.

## 7.7 What is an advowson and does disposal need authorisation?

### The answer

An advowson is the right of presentation to a rectory, vicarage or other ecclesiastical benefice of the Church or England when vacant. The owner of the advowson offers a suitably qualified candidate to the Bishop of the diocese to be instituted as parson or vicar of a living.

Although an advowson falls into the definition of land, the requirements set out in section 4 do not apply and the disposal does not need an order from the commission.

## 8. Charitable companies

This section outlines the requirements in connection with companies when disposing of their charitable land.

### 8.1 Is the land your company holds affected by the requirements for disposals of charity land?

The answer (legal requirement)

Whether the land of a charitable company is held as corporate property or held on trust, it will be land held by, or in trust for, a charity. Accordingly the requirements set out in sections 3 or 4 will apply.

### 8.2 What if the land your company holds is designated land?

The answer

A charitable company cannot itself own designated land as part of its corporate property as by definition it is land held on trust. Therefore the company will not need to comply with the requirements for disposals of designated land set out in 5.9 when disposing of corporate property.

If the company as a trustee of an unincorporated charity holds designated land, then the information in section 5.9 will apply.

### 8.3 Who signs the certificates required?

Short answer

Two directors or a director and the secretary can sign the conveyance or other documents of transfer on behalf of the company - see also section 6.4.

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In more detail

The directors as trustees, and not the body corporate itself, must give the certificates, subject to the proviso mentioned below, even though it is the body corporate which is making the disposal. This must be made clear in the wording of the certificates in the documents of disposal of the property. If the constitution of the company includes a power which is wide enough to enable the directors to delegate the giving of the certificate then they can use it. The delegates may be the signatories for the company itself, if the power permits this.

### 8.4 Can the directors delegate negotiation of the contracts of disposal?

Short answer

If they have the power to do so, yes.

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In more detail

The directors may delegate negotiations to the charity's land committee or sub-committee, for example. The committee's job will be to report to the trustees on the question of compliance with any of the requirements. Restrictions or requirements in connection with the governance of the company will be set out in the Memorandum and Articles and you should look carefully at these before you proceed.

## 9. Mortgages, loans and grants given on security

Section 124 of the Charities Act contains similar restrictions on mortgages or charges to secure the repayment of grants and loans or the discharge of any other obligation as there are on trustees disposing of charity land. This section describes these restrictions and the requirements with which you must comply if you are to proceed with these transactions without the need for commission authority.

### 9.1 Do you need the commission's authority to take out a mortgage or to secure the repayment of a loan or grant or any other obligation?

#### Short answer

In many cases the answer is 'no', as long as you comply with a set of requirements set out in section 124 of the Charities Act. If you do not or cannot comply with these requirements you will need an order from the commission. There are some exemptions from any of these requirements - see section 9.6.

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#### In more detail

As trustees you can take out a mortgage or secure the repayment of a grant or loan, where the charity's land is required as security, without authority from the commission or the Court, if you follow certain procedures and comply with certain legal requirements. There are slightly different requirements when you take out a mortgage to secure the discharge of any other proposed obligation. The requirements are in place to show that the loan or grant is necessary, the terms are reasonable and the charity has the ability to repay.

### 9.2 What are the requirements when taking out a mortgage to secure the repayment of a loan or grant?

#### Short answer (legal requirement)

Before executing a mortgage you must obtain and consider proper advice given to you in writing. This must state:

- whether the loan or grant is necessary for the charity to pursue the course of action it wants to in connection with the loan or grant
  - whether the terms of the loan or grant are reasonable having regard to the status of the charity as the prospective recipient of the loan or grant
  - the ability of the charity to repay on those terms the sum proposed to be paid by way of loan or grant
- 

#### In more detail

To ensure a proper audit trail, you should have:

- all the relevant papers and settled documentation in connection with the transaction
- a copy of the legal opinion from the charity's adviser to the respective lender confirming the ability of the charity to enter in the arrangements
- documents giving an indication of any source of finance for the project which is not being provided by the loan or grant

- a certificate from the charity’s accountant, financial adviser or other appropriate person which shows that the charity trustees have obtained and considered proper advice on:
  - whether it is reasonable for them to enter into the loan or grant agreement on the terms proposed
  - the ability of the charity to discharge any obligation, making any payments, which may be imposed upon it as a result of entry into the agreement on those terms, having regard in particular to any existing borrowing and other liabilities of the charity

Gathering this paperwork is not an essential requirement, unlike the requirements actually to obtain in writing and to consider the advice, but it may be useful to have done so if you were to be challenged at a later date about the proceedings of the transaction.

### 9.3 What are the requirements when taking out a mortgage to secure the discharge of any other proposed obligation?

#### Short answer (legal requirement)

In this case you must obtain and consider proper advice on whether it is reasonable for you as the charity trustees to undertake to discharge the obligation, having regard to the charity’s purposes.

#### In more detail

In other words, the obligation you are proposing to secure must be compatible with the purposes of the charity. For example, it may be acceptable for an almshouse charity aiding the elderly and infirm to guarantee a loan to another charity to enable it to provide more almshouses or refurbish its existing housing stock for use by the elderly and infirm. It would not be acceptable for such an almshouse charity to guarantee a loan for the purpose of building a children’s playground.

It is good practice to keep an audit trail similar to that set out in section 9.2.

### 9.4 What about when you want to repay the sums or discharge other obligations after the date of execution of the mortgage?

#### The answer (legal requirement)

There is no requirement to take advice before paying off loans or discharging obligations.

### 9.5 What is meant by ‘proper advice’?

#### Short answer (legal requirement)

For the purposes of this section of the Act, this is the advice of a person you reasonably believe to be qualified by ability and experience of financial matters and who has no financial interest in relation to the loan, grant or other transaction in connection with which his or her advice is given.

#### In more detail

The commission recommends that the person you choose to give advice should be professionally qualified as well as possessing the abilities and experience mentioned in the legislation as set out above. This could be the charity’s accountant or financial adviser, for example. The person may be another officer, or employee of the charity or one of the charity trustees.

## 9.6 Are there any exemptions from these provisions?

### Short answer

Some charities set up under an Act of Parliament or subject to other statutory provision are specifically excluded or exempt from complying with the requirements of section 124 of the Charities Act because of the power provided in the founding or subsequent documentation.

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### In more detail

You should look carefully at the documentation concerning the trusts of your charity or any subsequent paperwork. From this you should be able to discover if your charity is set up with powers either under an Act of Parliament or other statutory provision. You should study the wording carefully to see if the wording states that your charity is excepted or exempt from the requirements of section 124 of the Charities Act. Alternatively, your charity may be the subject of a scheme that has a similar effect. Again, you should look carefully at the wording of any scheme and, if you are not sure, you should take legal advice before proceeding further.

## 9.7 Do you need to provide statements and certificates in a similar way as when making a disposal of land?

### Short answer (legal requirement)

Yes.

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### In more detail

In any mortgage of land held by or in trust for a charity it must state:

- that the land is held by or in trust for a charity
- whether the charity is an exempt charity and therefore the restrictions do not apply or it is exempt through one of the circumstances mentioned in section 9.6
- if it is not exempt from the restrictions and is therefore subject to them

In addition, where the mortgage is subject to the restrictions of the Act, you must certify either that:

- the commission or the Court has sanctioned the mortgage by an order
- you have power under the trusts to grant the mortgage and that you have complied with the requirements set out in section 9.2 or 9.3

Where the mortgage secures further loans or grants or obligations to be undertaken after the date of the mortgage, the trustees must not take on such further loans or grants or undertake further obligations unless, before doing so, they take proper advice as set out in section 9.2.

## 9.8 What if you cannot comply with these requirements?

### Short answer

In such circumstances you must apply to the commission for an order giving authority for the mortgage.

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### In more detail

If you do need to apply to the commission for an order it will want to see evidence of why you consider that:

- the loan or grant is necessary for the charity to pursue the course of action you want to in connection with the loan or grant
- the terms of the loan or grant are reasonable having regard to the status of the charity as the prospective recipient of the loan or grant
- the charity has the ability to repay on those terms the sum proposed to be paid by way of loan or grant

## 10. Appendices

### 10.1 Meaning of 'connected person' as set out in section 118 of the Charities Act

(1) In section 117(2) 'connected person', in relation to a charity, means any person who falls within subsection (2) -

(a) at the time of the disposition in question, or (b) at the time of any contract for the disposition in question.

(2) The persons are -

(a) a charity trustee or trustee for the charity,

(b) a person who is the donor of any land to the charity (whether the gift was made on or after the establishment of the charity),

(c) a child, parent, grandchild, grandparent, brother or sister of any such trustee or donor,

(d) an officer, agent or employee of the charity,

(e) the spouse or civil partner of any person falling within any of paragraphs (a) to (d),

(f) a person carrying on business in partnership with any person falling within any of paragraphs (a) to (e) above,

(g) an institution which is controlled -

(i) by any person falling within any of paragraphs (a) to (f), or

(ii) by two or more such persons taken together, or

(h) a body corporate in which -

(i) any connected person falling within any of paragraphs (a) to (g) has a substantial interest, or

(ii) two or more such persons, taken together, have a substantial interest.

(3) Sections 350 to 352 (meaning of child, spouse and civil partner, controlled institution and substantial interest) apply for the purposes of subsection (2).

#### Section 350 to 352 of the Charities Act

##### Section 350 Connected person: child, spouse and civil partner

(1) In sections 118(2)(c), 188(1)(a), 200(1)(a) and 249(2)(a), 'child' includes a stepchild and an illegitimate child.

(2) For the purposes of sections 118(2)(e), 188(1)(b), 200(1)(b) and 249(2)(b)

(a) a person living with another as that person's husband or wife is to be treated as that person's spouse;

(b) where two people of the same sex are not civil partners but live together as if they were, each of them shall be treated as the civil partner of the other.

##### Section 351 Connected person: controlled institution

For the purposes of sections 118(2)(g), 157(1)(a), 188(1)(d), 200(1)(d) and 249(2)(d), a person controls an institution if the person is able to secure that the affairs of the institution are conducted in accordance with the person's wishes.

## **Section 352 Connected person: substantial interest in body corporate**

(1) For the purposes of sections 118(2)(h), 157(1)(b), 188(1)(e), 200(1)(e) and 249(2)(e), any such connected person as is there mentioned has a substantial interest in a body corporate if the person or institution in question -

(a) is interested in shares comprised in the equity share capital of that body of a nominal value of more than one-fifth of that share capital, or

(b) is entitled to exercise, or control the exercise of, more than one-fifth of the voting power at any general meeting of that body.

(2) The rules set out in Schedule 1 to the Companies Act 2006 (rules for interpretation of certain provisions of that Act) shall apply for the purposes of subsection (1) as they apply for the purposes of section 254 of that Act ('connected persons' etc).

(3) In this section 'equity share capital' and 'share' have the same meaning as in that Act.

## **10.2 Extract from Statutory Instrument 1992 No. 2980**

### **The Charities (Qualified Surveyors' Reports) Regulations 1992**

#### **SCHEDULE INFORMATION TO BE CONTAINED IN, AND MATTERS TO BE DEALT WITH BY, QUALIFIED SURVEYORS' REPORTS**

1. (1) A description of the relevant land and its location, to include-

(a) the measurements of the relevant land;

(b) its current use;

(c) the number of buildings (if any) included in the relevant land;

(d) the measurements of any such buildings; and

(e) the number of rooms in any such buildings and the measurements of those rooms.

(2) Where any information required by sub-paragraph (1) may be clearly given by means of a plan, it may be so given and any such plan need not be drawn to scale.

2. Whether the relevant land, or any part of it, is leased by or from the charity trustees and, if it is, details of-

(a) the length of the lease and the period of it which is outstanding;

(b) the rent payable under the lease;

(c) any service charge which is so payable;

(d) the provisions in the lease for any review of the rent payable under it or any service charge so payable;

(e) the liability under the lease for repairs and dilapidations; and

(f) any other provision in the lease which, in the opinion of the surveyor, affects the value of the relevant land.

3. Whether the relevant land is subject to the burden of, or enjoys the benefit of, any easement or restrictive covenant or is subject to any annual or other periodic sum charged on or issuing out of the land except rent reserved by a lease or tenancy.



4. Whether any buildings included in the relevant land are in good repair and, if not, the surveyor's advice-
- (a) as to whether or not it would be in the best interests of the charity for repairs to be carried out prior to the proposed disposition;
  - (b) as to what those repairs, if any, should be; and
  - (c) as to the estimated cost of any repairs he advises.
5. Where, in the opinion of the surveyor, it would be in the best interests of the charity to alter any buildings included in the relevant land prior to disposition (because, for example, adaptations to the buildings for their current use are not such as to command the best market price on the proposed disposition), that opinion and an estimate of the outlay required for any alterations which he suggests.
6. Advice as to the manner of disposing of the relevant land so that the terms on which it is disposed of are the best that can reasonably be obtained for the charity, including-
- (a) where appropriate, a recommendation that the land should be divided for the purposes of the disposition;
  - (b) unless the surveyor's advice is that it would not be in the best interests of the charity to advertise the proposed disposition, the period for which and the manner in which the proposed disposition should be advertised;
  - (c) where the surveyor's advice is that it would not be in the best interests of the charity to advertise the proposed disposition, his reasons for that advice (for example, that the proposed disposition is the renewal of a lease to someone who enjoys statutory protection or that he believes someone with a special interest in acquiring the relevant land will pay considerably more than the market price for it); and
  - (d) any view the surveyor may have on the desirability or otherwise of delaying the proposed disposition and, if he believes such delay is desirable, what the period of that delay should be.
7. (1) Where the surveyor feels able to give such advice and where such advice is relevant, advice as to the chargeability or otherwise of value added tax on the proposed disposition and the effect of such advice on the valuations given under paragraph 8.
- (2) Where either the surveyor does not feel able to give such advice or such advice is not in his opinion relevant, a statement to that effect.
8. The surveyor's opinion as to-
- (a) the current value of the relevant land having regard to its current state of repair and current circumstances (such as the presence of a tenant who enjoys statutory protection) or, where the proposed disposition is a lease, the rent which could be obtained under it having regard to such matters;
  - (b) what the value of the relevant land or what the rent under the proposed disposition would be-
    - (i) where he has given advice under paragraph 4, if that advice is followed; or
    - (ii) where he has expressed an opinion under paragraph 5, if that opinion is acted upon; or
    - (iii) if both that advice is followed and that opinion is acted upon;
  - (c) where he has made a recommendation under paragraph 6(a), the increase in the value of the relevant land or rent in respect of it if the recommendation were followed;
  - (d) where his advice is that it would not be in the best interests of the charity to advertise the proposed disposition because he believes a higher price can be obtained by not doing so, the amount by which that price exceeds the price that could be obtained if the proposed disposition were advertised; and

(e) where he has advised a delay in the proposed disposition under paragraph 6(d), the amount by which he believes the price which could be obtained consequent on such a delay exceeds the price that could be obtained without it.

9. Where the surveyor is of the opinion that the proposed disposition is not in the best interests of the charity because it is not a disposition that makes the best use of the relevant land, that opinion and the reasons for it, together with his advice as to the type of disposition which would constitute the best use of the land (including such advice as may be relevant as to the prospects of buying out any sitting tenant or of succeeding in an application for change of use of the land under the laws relating to town and country planning etc).



CHARITY COMMISSION  
FOR ENGLAND AND WALES

GUIDANCE

# The essential trustee: what you need to know, what you need to do

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MAY 2018

# Contents

1. About this guidance	2
2. Trustees' duties at a glance	4
3. Who can be a trustee and how trustees are appointed	7
4. Ensure your charity is carrying out its purposes for the public benefit	10
5. Comply with your charity's governing document and the law	13
6. Act in your charity's best interests	16
7. Manage your charity's resources responsibly	20
8. Act with reasonable care and skill	26
9. Ensure your charity is accountable	29
10. Reduce the risk of liability	32
11. Your charity's legal structure and what it means	35
12. Charity officers - the chair and treasurer	37
13. Technical terms used in this guidance	38

# 1. About this guidance

This guidance explains the key duties of all trustees of charities in England and Wales, and what trustees need to do to carry out these duties competently.

Trustees have independent control over, and legal responsibility for, a charity's management and administration. They play a very important role, almost always unpaid, in a sector that contributes significantly to the character and wellbeing of the country.

Trusteeship can be rewarding for many reasons - from a sense of making a difference to the charitable cause, to new experiences and relationships. It's also likely to be demanding of your time, skills, knowledge and abilities. Being aware of the duties and responsibilities covered in this guidance will help you carry out your role in a way that not only serves your charity well but also gives you confidence that you will be complying with key requirements of the law.

You should read this guidance if you are a trustee of any charity based in England or Wales, including:

- a registered charity
- a charity that is not required by law to register
- a charity that is required to register, but has not yet done so

You should also read this guidance if you are thinking about setting up a charity or becoming a trustee in England or Wales.

The charity regulators in **Scotland** and **Northern Ireland** have their own guidance for trustees.

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If you are involved in running a charity but don't know whether you are a trustee, check the charity's governing document. (This is the document that sets out the charity's rules; it may be a constitution, trust deed, articles of association or similar document.) It will tell you which body has ultimate authority and responsibility for directing and governing the charity. All properly appointed members of that body are charity trustees in law, whatever they are called (trustees, directors, committee members, governors or something else).

If you are a member of that body, you are automatically a charity trustee. You share, with all members of that body, equal responsibility for the charity.

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The Charity Commission expects trustees to take their responsibilities seriously. Using this guidance and ensuring you give sufficient time and attention to your charity's business will help. The Commission recognises that most trustees are volunteers who sometimes make honest mistakes. Trustees are not expected to be perfect - they are expected to do their best to comply with their duties. Charity law generally protects trustees who have acted honestly and reasonably.

## 1.1 Must and should - what they mean

In this guidance:

- 'must' means something is a legal or regulatory requirement or duty that trustees must comply with
- 'should' means something is good practice that the Commission expects trustees to follow and apply to their charity

Following the good practice specified in this guidance will help you to run your charity effectively, avoid difficulties and comply with your legal duties. Charities vary in terms of their size and activities. Consider and decide how best to apply this good practice to your charity’s circumstances. The Commission expects you to be able to explain and justify your approach, particularly if you decide not to follow good practice in this guidance.

In some cases you will be unable to comply with your legal duties if you don’t follow the good practice. For example:

Your legal duty	It’s vital that you
Act in your charity’s best interests	Deal with conflicts of interest
Manage your charity’s resources responsibly	Implement appropriate financial controls Manage risks
Act with reasonable care and skill	Take appropriate advice when you need to, for example when buying or selling land, or investing (in some cases this is a legal requirement)

Trustees who act in breach of their legal duties can be held responsible for consequences that flow from such a breach and for any loss the charity incurs as a result. When the Commission looks into cases of potential breach of trust or duty or other misconduct or mismanagement, it may take account of evidence that trustees have exposed the charity, its assets or its beneficiaries to harm or undue risk by not following good practice.

## 1.2 How to use this guidance

You may want to read all of this guidance to get a better understanding of trustees’ duties overall, or you may want to find out more about a specific topic. As a minimum the Commission recommends that you read the summary of trustees’ duties in section 2:

- section 2 of this guidance gives a summary of trustees’ duties
- section 3 explains whether you can legally be a trustee
- sections 4 to 9 explain the 6 key duties of trustees in more detail
- section 10 explains when trustees can be liable and how to reduce the risk
- sections 11 and 12 provide more detail about charity structures, and the roles of charity officers
- section 13 contains definitions of technical terms used in this guidance

## 2. Trustees' duties at a glance

This is a summary of trustees' main legal responsibilities, which are explained in detail in the rest of this guidance. You should read this section as a minimum, and ensure you fully understand your responsibilities by referring to the rest of the guidance as necessary.

### Before you start - make sure you are eligible to be a charity trustee

You must be at least 16 years old to be a trustee of a charity that is a company or a charitable incorporated organisation (CIO), or at least 18 to be a trustee of any other charity.

You must be properly appointed following the procedures and any restrictions in the charity's governing document.

You must not act as a trustee if you are disqualified, unless authorised to do so by a waiver from the Commission. The reasons for disqualification are shown in the disqualifying reasons table and include:

- being bankrupt (undischarged) or having an individual voluntary arrangement (IVA)
- having an unspent conviction for certain offences (including any that involve dishonesty or deception)
- being on the sex offenders' register

You can read the automatic disqualification guidance for charities which explains the disqualification rules in more detail.

There are further restrictions for charities that work with children or adults at risk. See section 3 for more information.

### Ensure your charity is carrying out its purposes for the public benefit

You and your co-trustees must make sure that the charity is carrying out the purposes for which it is set up, and no other purpose. This means you should:

- ensure you understand the charity's purposes as set out in its governing document
- plan what your charity will do, and what you want it to achieve
- be able to explain how all of the charity's activities are intended to further or support its purposes
- understand how the charity benefits the public by carrying out its purposes

Spending charity funds on the wrong purposes is a very serious matter; in some cases trustees may have to reimburse the charity personally.

See section 4 for more information.

### Comply with your charity's governing document and the law

You and your co-trustees must:

- make sure that the charity complies with its governing document
- comply with charity law requirements and other laws that apply to your charity

You should take reasonable steps to find out about legal requirements, for example by reading relevant guidance or taking appropriate advice when you need to.

See section 5 for more information.

## **Act in your charity's best interests**

You must:

- do what you and your co-trustees (and no one else) decide will best enable the charity to carry out its purposes
- with your co-trustees, make balanced and adequately informed decisions, thinking about the long term as well as the short term
- avoid putting yourself in a position where your duty to your charity conflicts with your personal interests or loyalty to any other person or body
- not receive any benefit from the charity unless it is properly authorised and is clearly in the charity's interests; this also includes anyone who is financially connected to you, such as a partner, dependent child or business partner

See section 6 for more information.

## **Manage your charity's resources responsibly**

You must act responsibly, reasonably and honestly. This is sometimes called the duty of prudence. Prudence is about exercising sound judgement. You and your co-trustees must:

- make sure the charity's assets are only used to support or carry out its purposes
- avoid exposing the charity's assets, beneficiaries or reputation to undue risk
- not over-commit the charity
- take special care when investing or borrowing
- comply with any restrictions on spending funds or selling land

You and your co-trustees should put appropriate procedures and safeguards in place and take reasonable steps to ensure that these are followed. Otherwise you risk making the charity vulnerable to fraud or theft, or other kinds of abuse, and being in breach of your duty.

See section 7 for more information.

## **Act with reasonable care and skill**

As someone responsible for governing a charity, you:

- must use reasonable care and skill, making use of your skills and experience and taking appropriate advice when necessary
- should give enough time, thought and energy to your role, for example by preparing for, attending and actively participating in all trustees' meetings

See section 8 for more information.



## Ensure your charity is accountable

You and your co-trustees must comply with statutory accounting and reporting requirements. You should also:

- be able to demonstrate that your charity is complying with the law, well run and effective
- ensure appropriate accountability to members, if your charity has a membership separate from the trustees
- ensure accountability within the charity, particularly where you delegate responsibility for particular tasks or decisions to staff or volunteers

See section 9 for more information.

## 3. Who can be a trustee and how trustees are appointed

You must make sure you are allowed to be a trustee:

- there are some restrictions on who can be a trustee – there are minimum age limits and some factors that automatically disqualify people from being trustees
- you must be properly appointed, and should know how long your appointment lasts
- if you are not properly appointed, the trustees' decisions or actions may be invalid, potentially creating disputes or putting charity assets at risk
- if you are a trustee of a charity that provides 'regulated activities' for children or adults, be prepared for your charity to request a DBS check on you

### 3.1 Who can be a trustee

#### 3.1.1 Minimum age

You must be at least 16 years old to be a trustee of a charitable company or a charitable incorporated organisation (CIO), unless the charity's governing document says you must be older. You must be at least 18 to be a trustee of any other type of charity.

#### 3.1.2 Disqualification

You must not act as a trustee if you are disqualified under the Charities Act, unless your disqualification has been waived by the Commission. Reasons for disqualification include if you:

- are disqualified as a company director
- have an unspent conviction for an offence involving dishonesty or deception (such as fraud)
- are an undischarged bankrupt (or subject to sequestration in Scotland), or have a current composition or arrangement including an individual voluntary arrangement (IVA) with your creditors
- have been removed as a trustee of any charity by the Commission (or the court) because of misconduct or mismanagement
- are on the sex offenders' register

You can read the automatic disqualification guidance for charities which explains the disqualification rules in more detail.

If any of the current or new disqualification reasons apply to you, you may be able to get your disqualification lifted (or 'waived') by the Commission. The Commission will carefully consider whether granting a waiver is appropriate, although there are some situations where it has no power to grant a waiver – for example, where a trustee is disqualified as a company director.

Read more about **trustee disqualification**.

#### 3.1.3 Fit and proper persons

Charities that want to claim UK tax reliefs and exemptions (eg Gift Aid) must meet the management condition in the Finance Act 2010. This requires all of the charity's managers (including trustees) to be 'fit and proper persons'.

Find out more - see the **HM Revenue and Customs guidance**.

#### 3.1.4 Disclosure and Barring Service (DBS) checks

There are legal restrictions under safeguarding legislation on who can be involved in working with children

and adults at risk. In addition, the DBS undertakes criminal records checks of individuals, which charities can use to ensure that they are eligible and suitable for the trustee role. The type of check that can be made depends on the nature of the charity's activities and the role that the trustee plays. For example, if you are a trustee of a charity that provides 'regulated activity' for children or adults, you should expect your charity to request an enhanced DBS check on you: where it is satisfied that the role is eligible, this will include a check against the relevant barred list.

Find out more about **safeguarding and DBS checks**.

### 3.2 How trustee appointments begin and end

You must follow any rules in your governing document about:

- who appoints new trustees
- when, and how, new trustees are appointed
- who can be a trustee - the governing document may impose conditions
- how long appointments last and whether a trustee can be re-appointed
- how trustees can **resign or be removed**

If your governing document has no specific provisions for these things, your charity must comply with the relevant legal provisions:

- companies must comply with company law provisions for appointing and removing directors
- unincorporated charities must comply with Trustee Act 1925 provisions

CIOs must include provisions in their constitutions for appointment and removal of trustees.

The Commission can use its powers to appoint or remove trustees if the charity's trustees (or members, if applicable) are unable to do so.

Read more about **legal powers to remove and appoint trustees**.

### 3.3 What to consider when recruiting trustees

When charities recruit new trustees, they should think about:

- the skills and experience the current trustees have, and whether there are any gaps
- ensuring new trustees are eligible to act
- ensuring new trustees don't have **serious conflicts of interest**, or getting Commission consent and putting procedures in place to manage the conflicts
- how to help new trustees to understand their responsibilities and the charity's work

It's also important for trustees to be interested in the charity's work and be willing to give their time to help run it.

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## Members or beneficiaries on your board

Many charities' governing documents allow or require:

- some or all of the trustees to be elected by the members (this is usual practice for charities with voting members other than the trustees)
- the trustee body to include beneficiaries
- other groups or organisations, such as local authorities, to appoint trustees

It's important to listen to the views and perspectives of members, beneficiaries and other bodies with an interest in your charity. Having people as trustees is one way of obtaining these views. But all trustees, regardless of how they are appointed, must act solely in the interests of the charity; it's not their role to act on behalf of any particular group. They must also manage conflicts of interest, including conflicts of loyalty to their appointing body.

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Find out more:

**Trustee board: people and skills** - how to appoint the right people with the right skills

**Finding new trustees: what charities need to know**

**Charity trustee: declaration of eligibility and responsibility**

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## Avoid mistakes - make sure trustee appointments are valid

Be careful to follow the rules in your charity's governing document and the law when appointing trustees. If trustee appointments breach these rules they are not valid. The validity of actions and decisions they were involved in could be called into question. But even if a trustee isn't validly appointed, they can still be held liable for their actions and decisions.

Improper trustee appointments can often lead to disputes. In the worst cases this can harm the charity's reputation, alienate supporters, put charity assets at risk (including by loss of funding) or ultimately leave the charity unable to function.

## 4. Ensure your charity is carrying out its purposes for the public benefit

You and your co-trustees must make sure that everything your charity does helps (or is intended to help) to achieve the purposes for which it is set up, and no other purpose. This means you should:

- ensure you understand the charity's purposes as set out in its governing document
- plan what your charity will do, and what you want it to achieve
- be able to explain how all of the charity's activities are intended to further or support its purposes
- understand how the charity benefits the public by carrying out its purposes

Spending charity funds on the wrong purposes is a very serious matter; in some cases trustees may have to reimburse the charity personally.

### 4.1 Understanding the charity's objects and powers

You should read the objects clause in your charity's governing document and ensure you understand:

- what the charity is set up to achieve (its purposes)
- who the charity is there to benefit (its beneficiaries)
- how they will benefit (what the charity will do for or with them)
- any order of priority to the services and benefits the charity provides
- any restrictions on what the charity can do or who it can help (geographical or other boundaries; or specific criteria that beneficiaries must meet)

The objects might be quite broad and general, or they might be quite narrow, specifying what services or activities the charity can provide in order to achieve its purposes.

You can find out more about governing documents in section 5 of this guidance.

The charity may have specific powers in its governing document. Charities also have powers from the Charities Act and other laws. You must only use these powers in ways that further your charity's purposes.

Find out more about **charitable purposes**.

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Some charities produce 'mission statements' or other summaries of their aims and activities. When checking the scope of your charity's objects or powers, be careful not to rely on such statements instead of the charitable purposes set out in the governing document, as the wording may be less precise. If you need to check whether your charity can lawfully undertake a particular activity, you should check against the objects clause rather than any other statement of the charity's mission or aims. Otherwise you could end up carrying out activities in breach of the charity's governing document.

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## 4.2 Public benefit

All charities must be for the public benefit. Trustees must have regard to the Commission's **public benefit guidance PB1, PB2 and PB3** when making decisions they are relevant to. This would include reviewing the charity's activities or considering new ones.

Public benefit is essential to:

- charitable status - to be a charity an organisation must have only charitable purposes for the public benefit
- a charity's operation - its activities must all be focussed on carrying out the charity's purposes for the public benefit
- a charity's accountability - trustees must be able to explain how their charity's activities are or have been for the public benefit

This means that you should understand, and be able to explain:

- what the charity is set up to achieve - its purpose
- why the charity's purpose is beneficial - this is the 'benefit aspect' of public benefit
- how the charity's purpose benefits the public or a sufficient section of the public - this is the 'public aspect' of public benefit
- how the charity will carry out (or 'further') its purpose for the public benefit

## 4.3 Planning and reviewing your charity's work

You and your co-trustees are responsible for deciding and planning how your charity will carry out its purposes. All charity trustees should, therefore, decide together what activities the charity will undertake, and think about the resources it will need. Trustees of larger charities should take responsibility for setting the charity's strategic aims and direction, and agreeing appropriate future plans.

Involving the charity's staff, volunteers and others with an interest in the charity in the planning process can be helpful.

As part of your planning process, you should work out what funds and other resources the charity will need and where it will get them. See section 7 of this guidance for more detail.

You and your co-trustees should periodically review what the charity is achieving, and how effective the charity's activities are. Thinking about the difference your charity makes may help you to explain more clearly how it benefits the public. It may also help you to decide whether it could be more effective in carrying out its purpose by changing what it does.

Find out more:

### **Inspiring Impact**

#### **Charity governance, finance and resilience: 15 questions you should ask**

You and your co-trustees should also review the charity's objects from time to time and make sure that they are still appropriate, relevant and up to date. Circumstances change over time and this could affect whether:

- the charity's beneficiary group still exists, and is still a **'sufficient section'** of the public
- the geographical 'area of benefit' in which the charity can operate is still relevant
- the need that the charity was set up to meet still exists, and meeting it is still for the public benefit
- there may be better ways of meeting the need for which the charity was set up

If your charity's objects are no longer effective, you must consider how these could be changed or take other action to enable the charity's resources to be applied for its purposes.

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In the past many charities helped people by providing goods including food, clothing or fuel. Many charities have decided that they can meet current needs more effectively with cash payments or vouchers, and have updated their objects. Some charities still work effectively by providing goods (such as food or medical equipment).

Charities are often set up for a particular locality. Changes over time may mean that there are no longer enough people who need the charity's services in that place. In these circumstances, charities can expand their area of benefit to include neighbouring areas.

Two charities providing similar (or complementary) services in the same area may decide to collaborate or merge for greater efficiency.

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## 4.4 Updating your charity's objects

Charities can modify or add to their objects if necessary, using powers in the governing document, company law or the Charities Act. They can't usually change their objects completely; the governing document and charity law do not usually allow it. If your charity is planning to update its objects, you and your co-trustees should consider what the charity was originally set up to do, and how circumstances have changed. Most charities must obtain permission from the Commission before changing their objects.

You should also review the other provisions in your charity's governing document and update them if they no longer meet the charity's needs - see section 5 of this guidance.

Governing documents are legal documents. You must follow the correct procedures to amend them, and it's important to word any changes correctly. You should consider taking appropriate advice about any changes. Use one of the **Commission's model governing documents** or an **approved governing document**, to ensure that your governing document has all the provisions and powers you need.

Find out more:

**How to make changes to your charity's governing document**

**How to write charitable purposes**

## 5. Comply with your charity's governing document and the law

You and your co-trustees must:

- make sure that the charity complies with its governing document
- comply with charity law requirements and other laws that apply to your charity

You should take reasonable steps to find out about legal requirements, for example by reading relevant guidance or taking appropriate advice when you need to.

### 5.1 Your charity's governing document

You and your co-trustees must make sure that the charity complies with the governing document, which usually contains key information about:

- what the charity exists to do (its purposes, as explained in its objects clause)
- what powers it has to further its objects
- who the trustees are, how many trustees there should be and how they are appointed and removed
- whether the charity has members and, if so, who can be a member
- rules about trustees' (and members') meetings; how they are arranged and conducted; how decisions must be made and recorded, and so on
- how to change the governing document
- how to close the charity down

There may also be rules limiting how powers can be used, who can vote at meetings, or which rules can be changed.

Every trustee should have an up to date copy of their charity's governing document and regularly refer to it. If you don't have a copy, or don't know what it is, ask your fellow trustees. If they don't have a copy, the Commission can usually provide one (if your charity is a registered charity).

The governing document is essential to your charity. You and your co-trustees may need to review it from time to time to ensure that it continues to meet the charity's needs. Governing documents are legal documents. You must follow the correct procedures to amend them, and it's important to word any changes correctly. You should consider taking appropriate advice about any changes. Use one of the **Commission's model governing documents** or an **approved governing document**, to ensure that your governing document has all the provisions and powers you need.

Read more about **governing documents**.



## 5.2 Charity law - registration, accounting, reporting and other requirements

Charities set up in England or Wales must register with the Commission unless they are:

- exempt charities
- excepted from registering
- very small (below the annual income threshold for compulsory registration, currently £5,000) and not a CIO (all CIOs must register)

Find out **whether your charity needs to register or is exempt or excepted**.

Charities that operate in Scotland or Northern Ireland may also have to register there.

All charities must keep proper financial records and prepare annual accounts. Trustees must arrange for accounting books and records (including cash books, invoices and receipts) to be kept for a specified period.

Read more: **Retention of Accounting Records**.

All registered charities:

- must inform the Commission of any changes to the information on the register of charities, including trustee details and changes to the governing document
- must send an annual return (or annual update) and other information to the Commission
- must comply with any additional accounting and reporting requirements such as filing annual accounts and reports with the Commission, depending on the size of the charity
- should report to the Commission any serious incident in their charity, as soon as possible after it occurs (see section 8.3 for more details)

Exempt charities may have to send accounting information to their principal regulator.

Find out more about **accounting and reporting requirements for charities**.

Charities whose income is over £250,000, and all charitable companies, must prepare their accounts and trustees' annual report in accordance with the Statement of Recommended Practice - Accounting and Reporting by Charities (Charities SORP).

Find out more about the **Charities SORP**.

A registered charity with an income over £10,000 in its last financial year must state that it's a registered charity on any fundraising documents and on many of its financial documents, including cheques, invoices and receipts. This includes electronic documents such as emails and websites. You don't have to state the charity's registration number, but it's good practice to do so.

## 5.3 Other laws and regulations

Charities and their trustees may be subject to a range of other laws and regulations depending on what the charity does, where it works and how it is set up. Some laws apply to all charities, such as equality, data protection and copyright law. It is important to be aware of the laws that apply to your charity, for example if it:

- is a company, CIO or community benefit society
- employs staff
- owns or rents premises
- operates vehicles
- provides:
  - legal, financial or other regulated advice
  - housing or accommodation
  - medical or care services
  - works with children or adults at risk
- undertakes activities that are subject to regulations, such as fundraising
- wants to benefit from Gift Aid or other tax reliefs
- works in Scotland, Northern Ireland or outside the UK

The Commission doesn't expect every trustee to be a legal expert. You and your co-trustees should take reasonable steps to find out about legal and regulatory requirements and keep up to date, for example by getting mailings from the Commission and other sources, reading relevant guidance and attending appropriate training. The charity should also have systems and procedures to ensure that it complies with legal requirements.

Where there is concern about a specific issue, the trustees may wish to consider taking independent advice from a suitably qualified person.

**Find a solicitor - Law Society**

**Legal advice for small charities - LawWorks**

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### **Avoid mistakes - know your governing document**

If the trustees don't comply with the governing document, the charity might undertake activities outside its objects. It might fail to follow the correct procedures, or take actions it has no power to take. Actions and decisions could be invalid and have to be reversed as a result.

If you don't follow rules about who can be a member or a trustee, or how to arrange and run meetings, it often leads to disputes, which can prevent the charity from operating effectively.

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## 6. Act in your charity's best interests

You must:

- do what you and your co-trustees (and no one else) decide will best enable the charity to carry out its purposes
- with your co-trustees, make balanced and adequately informed decisions, thinking about the long term as well as the short term
- avoid putting yourself in a position where your duty to your charity conflicts with your personal interests or loyalty to any other person or body
- not receive any benefit from the charity unless it is properly authorised and is clearly in the charity's interests; this also includes anyone who is financially connected to you, such as a partner, dependent child or business partner

### 6.1 Understanding the charity's interests

Acting in the charity's best interests means always doing what the trustees decide will best enable the charity to carry out its purposes, both now and for the future. It's not about serving:

- the interests of trustees or staff
- the personal interests of members or beneficiaries
- the personal interests of supporters, funders or donors
- the charity as an institution in itself, or preserving it for its own sake

Sometimes trustees need to consider **collaborating or merging with another charity**, or even spending all of the charity's resources and **bringing it to a close**.

### 6.2 Making decisions

You and your co-trustees are ultimately responsible for deciding what activities the charity will undertake, what resources it will need, how it will obtain and use them. Collective decision making is one of the most important parts of the trustee role. Some decisions are simple and straightforward; others can be complex or far reaching in their consequences. When you and your co-trustees make decisions about your charity, you must:

- act within your powers
- act in good faith, and only in the interests of your charity
- make sure you are sufficiently informed, taking any advice you need
- take account of all relevant factors you are aware of
- ignore any irrelevant factors
- deal with conflicts of interest and loyalty
- make decisions that are within the range of decisions that a reasonable trustee body could make in the circumstances

You should record how you made more significant decisions in case you need to review or explain them in the future.

Read more about **decision making**.

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### Avoid mistakes - be prepared to challenge assumptions

Trustees must make decisions solely in the charity's interests, so they shouldn't allow their judgement to be swayed by personal prejudices or dominant personalities.

Trustees must act collectively (jointly). Part of their role is to critically and objectively review proposals and challenge assumptions in making decisions. No one should be able to direct the trustees or drive decisions through without sufficient consideration. Trustees who simply defer to the opinions and decisions of others aren't fulfilling their duties.

Decisions don't usually have to be unanimous (depending on your governing document), but once the trustees have made a decision, they must all comply with it, including any who disagree. If you strongly disagree with your fellow trustees' decision, you can ask for your disagreement to be recorded in the minutes of the meeting. If you think that your fellow trustees are acting in breach of their duty, you should discuss the matter with the chair or your fellow trustees. If you are still concerned, contact the Commission. Ultimately, you may feel that you have to resign in order to distance yourself from the decision.

The Commission can only advise or intervene in relation to trustees' legal duties; it can't arbitrate in disputes between trustees.

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## 6.3 Dealing with conflicts of interest and conflicts of loyalty

You can only comply with your duty to act in the charity's best interests if you prevent your personal interests from conflicting (or appearing to conflict) with the best interests of the charity. This means recognising and dealing with conflicts of interest.

A conflict of interest is any situation where your personal interests could, or could appear to, prevent you from making a decision only in the charity's best interests. For example, if you (or a person connected to you, such as a close relative, business partner or company):

- receive payment from the charity for goods or services, or as an employee
- make a loan to or receive a loan from the charity
- own a business that enters into a contract with the charity
- use the charity's services
- enter into some other financial transaction with the charity

Even when you receive no financial benefit, you could have a conflict of loyalty. For example if your charity has business dealings with your employer, a friend, family member, or another body (such as a local authority or charity, or a charity's trading subsidiary) that you serve on.

This means you and your co-trustees:

- should identify, and must declare conflicts of interest (or loyalty)
- must prevent the conflict of interest (or loyalty) from affecting the decision
- should record the conflict of interest (or loyalty) and how it was dealt with

How you prevent a conflict of interest from affecting a decision will depend on the circumstances and the seriousness of the conflict of interest. You must follow any specific conflict of interest provisions in your governing document. If a trustee (or a person connected to a trustee) stands to benefit directly or indirectly, the conflicted trustee(s) should withdraw from the discussion and decision making process. If the non-conflicted trustees can demonstrate that a conflict of loyalty involves no material benefit and poses a low risk to decision making in the best interests of the charity, they may permit the affected trustee to participate. Directors of charitable companies must have specific authority in the company's articles to do this. For the most serious conflicts of interest it may mean obtaining permission from the Commission, deciding not to proceed with a proposal or even resigning as a trustee.

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### **Avoid mistakes - deal with conflicts of interest**

Conflicts of interest (and conflicts of loyalty) are more common than people often think. If one of your fellow trustees appears to have a conflict of interest you should say so; you are not calling their integrity into question by doing so.

In deciding how to deal with a conflict of interest, trustees should be mindful of what feels right, and also how others might view the trustees' actions.

Where conflicts of interest have not been identified or properly dealt with, it can have negative impacts on both the charity and individual trustees including financial cost and reputational damage. Because the trustees have acted in breach of their duty, decisions may be called into question or legally challenged. The Commission may have to take regulatory action to protect the charity from further harm or to deal with any misconduct or mismanagement by the trustees.

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Read more about **conflicts of interest**.

## **6.4 Payments and other benefits to trustees**

Charities can't usually pay their trustees. When you become a trustee, you usually volunteer your services and receive no payment for your work. This is called the voluntary principle. You can, however, reclaim reasonable expenses that you incur such as travel and childcare - being a trustee shouldn't mean being out of pocket.

These restrictions apply to trustees (or someone with a financial connection to a trustee, such as their partner, dependent children or a business partner) benefiting by:

- supplying goods or services to the charity eg building work or specialist services, even if the trustee offers better value or expertise than other suppliers
- being employed by the charity or by a trading subsidiary owned by the charity
- receiving material benefits as a beneficiary of the charity
- being paid to act as a trustee; this is very unusual and only permitted in exceptional circumstances
- entering into a property transaction (or any other financial transaction such as a loan) with the charity - this is called self-dealing

In some circumstances, one or more trustees (or persons with a financial connection to a trustee) do receive payments or other benefits from their charity. This is only permitted if:

- the benefit is specifically authorised by the governing document, the Charities Act (or other relevant legislation), the Commission or the courts; any specified procedures must be strictly followed
- even if the benefit is authorised, the non-conflicted trustees are satisfied that allowing it is in the charity's best interests
- the conflict of interest is managed; so in most cases the conflicted trustee(s) can't be involved in the decision and only a minority of trustees can benefit

Read more about **payment of trustees**.

**Find out whether you need permission, and how to apply.**

## 7. Manage your charity's resources responsibly

You must act responsibly, reasonably and honestly. This is sometimes called the duty of prudence. Prudence is about exercising sound judgement. You and your co-trustees must:

- make sure the charity's assets are only used to support or carry out its purposes
- avoid exposing the charity's assets, beneficiaries or reputation to undue risk
- not over-commit the charity
- take special care when investing or borrowing
- comply with any restrictions on spending funds or selling land

You and your co-trustees should put appropriate procedures and safeguards in place and take reasonable steps to ensure that these are followed. Otherwise you risk making the charity vulnerable to fraud or theft, or other kinds of abuse, and being in breach of your duty.

### 7.1 Managing risks

A risk is anything that could, if it happened, affect your charity achieving its purposes or carrying out its plans. All charities face some risks. The risks your charity might face will depend on factors such as its size, funding and activities. For example, managing property, employing staff, using volunteers, using IT, working with children or people at risk, or implementing change all involve elements of risk.

You and your co-trustees should manage risk responsibly. You have a duty to avoid exposing your charity to undue risk. This doesn't mean being risk averse. Risk management is the process of identifying and assessing risks, and deciding how to deal with them. It may involve an element of responsible risk taking, and is central to how trustees make decisions.

The Commission's guidance on risk management sets out the basics of dealing with risks and includes a risk management model, made up of the following steps:

1. Establish a risk policy.
2. Identify risks (what could go wrong).
3. Assess risks (how likely is it, and how serious would it be).
4. Evaluate what action to take (eg avoid it, transfer it, insure against it, accept it).
5. Review, monitor and assess periodically.

Find out more:

**How to manage risks in your charity**

**Institute of Risk Management guide for charities**

**Charities: how to protect vulnerable groups including children**

Some charities work in areas or undertake activities that involve greater exposure to risks such as fraud, financial crime, extremism or terrorism. Charities should assess their exposure to these risks and take proportionate action. If your charity needs to address these risks, you may find the Commission's toolkit on **protecting charities from harm** helpful. Chapter 2 of the toolkit includes a practical guide to due diligence, based on 3 principles:

- know your donor (for example, if your charity receives large donations, particularly anonymous or cash donations or with conditions attached)
- know your partner (if your charity relies on partners or intermediaries to carry out any of its work)
- know your beneficiaries (for example if your charity makes grants of cash or other financial support directly to individuals)

Charities must also assess and manage safeguarding risks. For example, they must ensure that their beneficiaries or others who come into contact with their charity do not, as a result, come to harm. For example, many charities come into contact with or provide activities for those who may be experiencing, or at risk of, abuse or neglect. This includes:

- children and young people under 18 years of age
- adults (aged 18 and over) at risk

Even where work with children or adults at risk does not form part of the core business of the charity, trustees must be alert to their responsibilities to protect from risk of harm those with whom the charity comes into contact.

Read more about **protecting vulnerable groups**.

These principles will help you and your co-trustees to carry out their legal duties and manage the risks to the charity's beneficiaries, assets and services.

## 7.2 Budgeting

You and your co-trustees need to work out what funds and other resources your charity will need and where the charity will get these from. A charity can only succeed in meeting its aims if it manages its money and other resources properly. You will need to plan and monitor its income and outgoings so that it can meet its short, medium and long term goals.

Find out more:

### **Managing charity assets and resources**

#### **Charity governance, finance and resilience: 15 questions you should ask**

#### **Financial difficulties in charities**

## 7.3 Getting the funds your charity needs (income generation)

Most charities get their funds through one or more of the following methods:

- fundraising (asking for donations, legacies or grants)
- trading (selling goods or services)
- investment
- leasing or letting land or buildings

In practice, it's best to avoid relying on a single source of income. You and your co-trustees are responsible



for deciding how your charity will obtain funds. You should think about:

- how much money the charity needs
- the costs, benefits and risks of different methods of generating income
- any legal requirements that the charity must comply with, including fundraising regulations, and restrictions on commercial trading
- any potential reputational issues
- whether you need advice

If your charity is already bringing in funds, you and your co-trustees should ensure that its income generation is on target, complies with the law and is not exposing the charity to undue risk.

Find out more:

### **Fundraising legally and responsibly**

#### **Institute of Fundraising code of fundraising practice and good practice guides**

#### **Charity trading: selling goods and services**

#### **How to invest charity money**

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## **7.4 Charities and their trading subsidiaries**

Charities need to use a trading subsidiary if they carry out commercial (non-charitable) trading which exceeds the threshold for paying income or corporation tax, or involves significant risk.

A trading subsidiary is a separate company controlled by the charity. The charity can raise money from trade without exposing its assets to risk or being liable for income or corporation tax.

There are, however, risks which trustees need to be aware of and manage:

- the charity exists for charitable purposes, but the trading subsidiary exists to generate income; their aims and interests are different; you need to distinguish between them
- if the trading subsidiary starts to fail, the charity must not bail it out; this would be putting the charity's funds at risk
- charity trustees who are also directors of the subsidiary have a conflict of interest
- if a charity trustee is also a director of the trading subsidiary, the restrictions on payments and benefits to trustees also apply to any payments or benefits as a director

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## **7.5 Managing funds and keeping them safe**

You and your co-trustees are responsible for your charity's money. Your charity should have effective processes for handling money, to help avoid poor decisions and accidental errors, as well as theft and fraud. Failure to do so is likely to result in a breach of your duty. You should:

- set a budget and keep track of it
- put in place clear policies and procedures to deal with income and expenditure
- ensure the charity keeps accurate records of income and expenditure
- have robust and effective **financial controls** in place

- protect the charity from **financial crime such as theft or fraud**
- put appropriate safeguards in place for money, assets and staff if **the charity operates outside of the UK**
- have an appropriate **reserves policy**
- ensure the charity receives **tax reliefs** to which it is entitled

If something does go wrong, you should inform the Commission and (if appropriate) the police. See the section on what to do if something goes wrong in section 8 of this guidance.

Find out more:

**Charity money: how to keep it safe**

**Charities: due diligence checks and monitoring end use of funds**

## 7.6 Managing property (land and buildings)

If the charity owns or rents land or buildings, you and your co-trustees should:

- make sure the property is recorded as belonging to the charity - see section 11 of this guidance
- know on what terms it's held
- ensure it's properly maintained and being correctly used
- make sure the charity has sufficient insurance

You should regularly review whether the property is suitable for the charity's purposes, and whether any property the charity lets to generate income is still a good investment.

Decisions about property are important, so think about the advice and information you may need in order to make decisions in the charity's interests.

Most charities can buy, sell or lease land when they need to. When selling or leasing land, trustees must try to get the best deal for the charity (unless they are making the disposal to further the charity's purposes). So all charities should, and registered charities must:

- obtain written advice, including a valuation, from a qualified surveyor before agreeing a sale or granting a lease for more than 7 years
- advertise the sale or lease, unless the surveyor advises otherwise

Otherwise, you are likely to need permission from the Commission for the sale or lease.

A charity's governing document may specify that land or buildings must be used for a particular purpose. This is called designated land (or 'specie land'). Special conditions apply to leasing or selling designated land.

Land belonging to a charity (particularly designated land) might be permanent endowment. This restricts how you can use the proceeds of sale.

You must get permission from the Commission to sell or lease property to or from a trustee, someone closely connected to a trustee, or an employee of the charity.

Before taking out a mortgage or loan secured against your charity's land you must get written financial advice and ensure that:

- the loan is needed and used for an activity that fits with your charity's purposes
- the terms of the loan are reasonable
- the charity will be able to repay the loan

Otherwise you will need permission from the Commission to proceed.

Find out more about **buying, selling, leasing or mortgaging charity property**, including designated land and **permanent endowment**.

## 7.7 Staff and volunteers

As part of your overall responsibility for the charity, you and your co-trustees have responsibilities towards any volunteers or staff.

You must ensure that:

- the charity complies with relevant law including employment, pension, equality and health and safety law
- volunteers are clearly distinct from employees in terms of responsibilities and rights; for example by not requiring volunteers to work set hours, nor paying them more than expenses they actually incur

You should ensure that:

- people are clear about what they are supposed to do, through appropriate job descriptions for staff or role descriptions for volunteers
- people are aware of the rules and boundaries within which they must work, for example, when representing or speaking on behalf of the charity
- people work safely
- people know what to do if there's a problem
- people know what they need to report and who they report to
- senior managers are not disqualified (see below)

You and your co-trustees should ensure that the charity has appropriate procedures and policies in place, staff and volunteers get appropriate training, and people know they must comply with policies and procedures. You also have an important role in promoting effective working relationships between trustees, senior staff (if any), staff and volunteers.

If your charity has senior managers – typically carrying out chief executive or finance director roles – you and your co-trustees should ensure that you have procedures in place to check if they will be disqualified by law from acting in that role. The reasons for disqualification are the same as for trustees – see section 3.1.2.

You can read the automatic disqualification guidance for charities which explains the disqualification rules in more detail.

Find out more:

**How to manage your charity's volunteers**

**Charity staff: how to employ paid workers**

**Pension rules for charities**

**Pensions** (Charity Finance Group guidance)

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### Avoid mistakes - don't rely too much on individuals

Things can go wrong when trustees place too much reliance on individuals, and don't implement sufficient safeguards to ensure accountability. This can result in the charity falling victim to fraud or theft, or beneficiaries suffering abuse. These kinds of occurrences could cause the charity serious reputational and other damage.

All charities should have appropriate financial controls which ensure that more than one person is involved in receiving income and authorising expenditure. These should cover all payment methods that the charity uses - cheque, cash, credit card, charge card, debit card, prepaid card, telephone or internet banking or other electronic means. Handling cash brings increased risk, so try to avoid cash payments wherever possible.

When other people raise funds on behalf of the charity, whether they are volunteers or paid professionals, you should ensure there are proper controls over the funds raised. This is to make sure that the charity receives the full amount due to it.

Read more about **financial controls**.

If something does go seriously wrong, you should take prompt action to deal with it and report it to the Commission. Find out more in section 8.3 of this guidance.

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## 8. Act with reasonable care and skill

As someone responsible for governing a charity, you:

- must use reasonable care and skill, making use of your skills and experience and taking advice when necessary
- should give enough time, thought and energy to your role, for example by preparing for, attending and actively participating in all trustees' meetings

This is sometimes called the duty of care.

### 8.1 Using your skills and experience

As a trustee, you must use your skills and experience to inform decision making and benefit your charity. For example, the Trustee Act 2000 says that trustees must “exercise such care and skill as is reasonable in the circumstances”. What is reasonable in the circumstances will depend on any special knowledge or experience that the trustee has or claims to have. It also depends on whether a trustee is acting in a professional or paid capacity, and what it would be reasonable to expect such a person to know.

The Trustee Act 2000 applies to trustees of unincorporated charities. Company law and the Charities Act impose similar duties on directors of charitable companies and trustees of CIOs (see section 11 of this guidance). In addition, all trustees have a general duty of care which they must apply to all aspects of their role.

### 8.2 Taking advice when you need to

Trustees should recognise and acknowledge when they need advice. This is particularly important if the charity (or its property) may be at risk, or if they could act in breach of their duties, for example, when:

- buying or selling land (most charities must take advice from a surveyor or other qualified person when selling charity land)
- investing charity funds
- entering into novel, long-term, complex or high-value contracts
- considering legal action

Some larger charities employ their own professional advisers; most charities are more likely to obtain advice externally.

Find out more:

**It's your decision: charity trustees and decision making**

**How to invest charity money**

**Other sources of help and advice**

## 8.3 What to do if something does go wrong

Most problems in charities can be resolved by the trustees themselves, sometimes with some advice. However, in serious cases the Commission may need to advise the trustees or take action to protect the charity.

If something does go wrong, you should take prompt and appropriate action to:

- prevent or minimise any further loss or damage
- if appropriate, report it to the Commission, the police if a crime has been committed, and any other regulators that the charity is accountable to
- plan what you will say to your staff, volunteers, members, the public or the media
- take reasonable steps to prevent it from happening again - review controls and procedures, take appropriate advice

The Commission requires charities to report serious incidents. A serious incident is an adverse event, whether actual or alleged, which results in or risks significant:

- loss of your charity's money or assets
- damage to your charity's property
- harm to your charity's work, beneficiaries or reputation

The most common type of incidents are frauds, thefts, significant financial losses, criminal breaches, terrorism or extremism allegations, and safeguarding issues.

If a serious incident takes place, you need to report what happened and explain how you are dealing with it, even if you have reported it to the police, donors or another regulator.

The Commission can then decide what action, if any, is appropriate. Trustees must avoid exposing their charity to undue risk and should take reasonable steps to assess and manage risks to its activities, beneficiaries, property and reputation. Reporting serious incidents to the Commission demonstrates that you have identified a risk to the charity and that its trustees are taking appropriate action to deal with it. It also means the Commission can respond positively to any enquiries from the public or media.

If trustees fail to report a serious incident that subsequently comes to light, the Commission may consider this to be mismanagement and take regulatory action, particularly if further abuse or damage has arisen following the initial incident.

Find out more:

### **How to report a serious incident in your charity**

## 8.4 When the Commission would become involved

The Commission will get involved if it is concerned that trustees are not fulfilling their duties towards their charity, either because they don't understand them or are unwilling or unable to fulfil them.

In some cases, the Commission may decide that it's sufficient to advise the trustees about their duties. In more serious cases, when charities' assets, reputation, services or beneficiaries have been harmed or are at significant risk, the Commission may open a statutory inquiry, which will allow it to:

- obtain and assess evidence
- use enforcement powers to protect the charity's assets or secure their proper application

Opening an inquiry does not always mean the Commission suspects wrongdoing. The Commission's aim in such cases is to stop abuse or damage and put charities back on a proper footing for the future.

Read about the Commission's work to prevent, detect and tackle abuse and mismanagement in charities and promote charity law: **Tackling abuse and mismanagement in charities**.

## 9. Ensure your charity is accountable

You and your co-trustees must comply with statutory accounting and reporting requirements. You should also:

- be able to demonstrate that your charity is complying with the law, well run and effective
- ensure appropriate accountability to members, if your charity has a membership separate from the trustees
- ensure accountability within the charity, particularly where you delegate responsibility for particular tasks or decisions to staff or volunteers

### 9.1 Complying with accounting requirements

All charities must produce accounts and provide a copy of the most recent to anyone who asks. (You can charge to cover your costs.) The Commission will take regulatory action against charities that persistently fail to provide copies of accounts when asked by members of the public or a regulator.

Exactly what accounts your charity must produce depends on whether the charity is a company and how much income it receives. Different rules apply to exempt charities. Find out more about **accounting and reporting requirements for charities**.

Charities whose income is over £250,000, and all charitable companies, must prepare their accounts and trustees' annual report in accordance with the Statement of Recommended Practice - Accounting and Reporting by Charities (Charities SORP).

Find out more about the **Charities SORP**.

All registered charities must also provide information annually to the Commission. The rules vary according to your charity's size and structure. Registered charities with:

- income up to £10,000 should complete the relevant sections of the annual return, which include updates to trustees
- income above £10,000, and all CIOs, must prepare and file an annual return form
- income above £25,000, and all CIOs, must also file copies of their trustees' annual report and accounts

Failure to submit accounts and accompanying documents to the Commission is a criminal offence. The Commission also regards it as mismanagement or misconduct in the administration of the charity. Providing timely, accurate and informative financial information that will help funders, donors, beneficiaries and others to understand your charity and its work will encourage trust and confidence in it.

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Remember, those trustees who sign the trustees' annual report and accounts are signing on behalf of the whole trustee body so all of the trustees are responsible for the accounts.

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Find out more about **annual returns**.

Your charity may also have to report to other regulators, for example, if its activities include providing social housing, education or social care. Companies must also submit accounts and annual returns to Companies House annually.



## 9.2 Being accountable to people with an interest in the charity

It's important to take account of what your members, beneficiaries, supporters and funders say. Use this information to inform decisions and improve the charity's services. If your charity has a wider voting membership in addition to the trustees, your governing document may contain specific provisions about when to involve members in decisions, for example through general meetings.

Charities should consider the benefits of having appropriate **procedures for dealing with complaints**, and ensuring they are easy to find and easy to follow.

You and your co-trustees must ensure that your charity complies with the law, and should be able to demonstrate that it is legally compliant, well run and effective in carrying out its purposes. If you can't demonstrate these things, you should be able to explain what steps you are taking to address any difficulties.

You may find it helpful to review your charity's compliance and good practice using:

- a governance code, such as **Good Governance: a Code for the Voluntary and Community Sector**
- a quality standard, such as **PQASSO**, or another standard that is suitable for your charity
- benchmarking (comparing and learning) with another organisation
- an independent review by a suitably qualified adviser

Read about **public trust and confidence in charities**.

## 9.3 Trustees and delegation

Trustees often delegate day to day activities to particular trustees (such as the chair), volunteers or staff. Many charities also have power to delegate decision making to sub-committees or senior staff. Delegation can help trustees to govern more effectively, but they cannot delegate their overall responsibility. Trustees always remain collectively responsible for all decisions that are made and actions that are taken with their authority.

You and your co-trustees should set out in writing the limits of any delegated authority. You should also put clear reporting procedures in place, so you can ensure the delegated authority is exercised properly. This could include staff job descriptions, volunteers' role descriptions and committees' terms of reference. A periodic review of any delegated authorities can help to ensure that those authorities are properly managed.

The trustees should consider and decide what decisions they will not delegate. High risk and unusual decisions should not be delegated. You should agree appropriate guidelines to help assess what is likely to be high risk or unusual. Staff, particularly senior staff, can have an important role in informing trustee decision making by providing information and advice.

Trustees might be told that they should not interfere in day to day operations. You should allow staff and volunteers to carry out any functions that have been delegated to them. But you and your co-trustees must be able to ensure that delegated authority is being properly exercised, through appropriate monitoring and reporting procedures (and, where appropriate and possible, independent checking).

It's important to have clear and appropriate channels of communication between staff and trustees and ensure these are followed.

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### **Avoid mistakes - ask questions (even ones that seem 'awkward' or 'stupid')**

Part of your role is to hold people (including staff, volunteers and fellow trustees) to account for how they carry out their role or use the charity's resources. This can mean asking probing or challenging questions about information at trustee meetings, or being prepared to say 'I don't understand what this means'. You should receive timely information in a format that you can understand and use, and if necessary ask for explanations, training or a different presentation. For example, all trustees, not just the treasurer, are responsible for the charity's finances and should be able to understand, consider and comment on financial information.

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## 10. Reduce the risk of liability

It's extremely rare, but not impossible, for charity trustees to be held personally liable:

- to their charity, for a financial loss caused by them acting improperly
- to a third party that has a legal claim against the charity that the charity can't meet

Understanding potential liabilities will help you to protect yourself and your charity by taking action to reduce the risk. This includes complying with duties covered in this guidance. It also includes deciding whether your charity should become incorporated.

### 10.1 Personal liability to the charity

Trustees can be held liable to their charity for any financial loss they cause or help to cause. This applies to any type of charity whatever its legal form.

The law generally protects trustees who have acted honestly and reasonably from personal liability to their charity. The Commission and the courts:

- can relieve trustees from liability if they have acted honestly and reasonably and have not benefited from their actions
- rarely enforce liability on an unpaid trustee who has made an honest mistake
- expect higher standards from trustees who act in a professional capacity or are paid for being trustees

Trustees who receive an unauthorised payment or benefit from their charity have a duty to account for (ie repay) it. The Commission can't relieve trustees from this duty.

There is no legal protection for trustees who have acted dishonestly, negligently or recklessly. However, there may be financial protection for those trustees who have made an honest mistake and can rely on the indemnity provisions in the charity's governing document, insurance cover or relief from the Commission or the court.

Find out more:

**Charity Commission policy on restitution and the recovery of charitable funds misappropriated or lost to charity in breach of trust**

### 10.2 Liability to third parties

Charities or their trustees can become liable to a third party who has a claim against the charity such as:

- breaches of an employee's terms, conditions or rights
- failing to pay for goods or services, or to fulfil the terms of a contract
- a member of the public being injured on the charity's premises
- liability to any staff pension scheme

If the charity is incorporated, the charity itself will be liable for the claim. Some types of incorporated body (companies, CIOs and Community Benefit Societies) can specifically limit the liability of their trustees and members.

If the charity is unincorporated, the trustees have to sign contracts and other agreements personally, and will have to meet any claim. The charity can normally meet any liabilities that you incur as a trustee provided you have acted honestly and reasonably. (Some charities also have power to indemnify trustees against liability arising from an honest mistake.) But if you incur liabilities that exceed the value of the charity's assets, you could be liable for any amount that the charity can't cover.

Find out more about your charity's legal structure – see section 11 of this guidance.

Find out more:

### **Vicarious liability of a charity or its trustees**

## **10.3 Criminal liability**

In some cases, the charity or its trustees can become liable for offences committed by the charity's staff (for example, under the Bribery Act or corporate manslaughter law).

Find out more about the **Bribery Act** (Transparency International guidance).

## **10.4 Reduce the risk of personal liability**

To reduce the risk of becoming personally liable, you should:

- ensure trustees understand their responsibilities
- ensure the charity can meet its financial obligations, particularly before agreeing to any contract or substantial borrowing
- ensure the charity can meet any obligations to staff pension schemes
- hold regular trustee meetings and keep proper records of decisions made and the reasons for those decisions
- ensure you prevent conflicts of interest from affecting decisions
- ensure any transactions with and benefits to trustees or connected persons are properly authorised
- take appropriate advice from a suitably qualified person when you need to
- if you delegate any powers, give clear written instructions and make sure the instructions are being followed
- ensure the charity has effective management and financial controls including:
  - keep receipts and records of income and expenditure
  - receive regular financial reports
  - file accounts on time
- ensure the charity is complying with other laws that apply to it
- consider whether the charity needs additional insurance or needs to become incorporated

If your charity is unincorporated and employs staff or enters into other contracts, the trustees should seriously consider changing the charity into an incorporated form. You may need to take professional advice about this, particularly in relation to any pension liabilities which could be triggered by incorporation.

Read more about:

**How to manage risks in your charity**

**Charities and insurance**

**Changing your charity into a company or CIO**

**Pension rules for charities**

**Pensions** (Charity Finance Group guidance)

# 11. Your charity’s legal structure and what it means

It’s important to know your charity’s legal structure (eg trust, association, CIO, company) because it affects whether:

- the charity itself can enter into contracts or employ staff, or the trustees must do these things personally
- land is held by the charity itself or by the trustees (or someone the trustees appoint for that purpose)
- trustees’ liability is limited
- trustees have specific legal duties that go with that legal structure

## 11.1 Different legal structures for charities

An ‘incorporated charity’ is one that’s set up in a legal form which makes the charity itself a legal entity. This is called ‘legal personality’, and means the charity can own property or enter into contracts in its own name. Incorporation gives trustees more protection from personal liability. Some incorporated forms can limit trustees’ liability to third parties. The law places duties on board members to prevent the abuse of limited liability.

An ‘unincorporated charity’ doesn’t have legal personality, so can’t hold property or enter into contracts in its own name. Trustees’ personal liability is unlimited.

This table summarises the characteristics of different legal forms and what they mean for trustees.

Legal form or structure	Incorporated (legal personality)	Title to land held by	Contracts/ employment in the name of	Liability to third parties limited	Additional duties on trustees
Trust	No	Trustees for the charity	Trustees personally (for the charity)	No	No
Association	No	Trustees for the charity	Trustees personally (for the charity)	No	No
Company	Yes	The charity	The charity	Yes	Company law
Charitable Incorporated Organisation (CIO)	Yes	The charity	The charity	Yes	Charities Act and CIO regulations
Corporation created by Act of Parliament	Yes	The charity	The charity	Yes unless excluded by the Act	No
Royal charter body	Yes	The charity	The charity	Incorporation gives some protection	No
Community Benefit Society	Yes	The charity	The charity	Yes	Co-operative and Community Benefit Societies Act

Find out more:

**Charity types: how to choose a structure**

**Running a limited company: Directors' responsibilities**

**Royal Charter charities**

## **11.2 Unincorporated charities (trusts and unincorporated associations) - holding land**

Charities set up by a trust deed, constitution or similar governing document are unincorporated. This means they are not legal bodies in their own right and can't hold property in their own name; it must be held for the charity by trustees.

If the charity trustees don't want to hold legal title for any land or other property themselves, they can appoint a nominee, holding trustees (other individuals) or a custodian trustee (a company or other corporate body that has power to hold property for the charity). The governing document may explain how to do this.

Holding and custodian trustees aren't charity trustees; they can't make decisions about the management of the charity or its property, and must follow the lawful directions of the charity trustees.

You may find it simplest to vest the land in the Official Custodian for Charities. Read about **The Official Custodian for Charities' land holding service**.

**Apply to transfer land or property to the Official Custodian.**

## 12. Charity officers - the chair and treasurer

Some trustees have special roles, such as the chair and the treasurer. They are known as officers. You must comply with any specific provisions for officers in your governing document. Trustees can also nominate a trustee to take the lead on a particular matter.

Charity officers don't automatically have any extra powers or legal duties than their co-trustees, but may carry out specific roles or have specific responsibilities delegated to them. However, all trustees remain jointly responsible for the charity. For example, all trustees share responsibility for finances (not just the treasurer). A chair can only make decisions in accordance with any provision in the governing document or delegated authority agreed by the trustees, and should notify the other trustees of any decisions made.

### 12.1 The treasurer

The treasurer usually takes the lead at board level on:

- making sure the charity keeps proper accounts
- reviewing the charity's financial performance
- drawing up or reviewing policies for finance and investment
- ensuring that the charity has robust and effective financial controls in place
- liaising with finance staff and with the charity's independent examiner or auditor
- reporting on financial matters to the members, in a membership charity

In larger charities the treasurer may share these responsibilities with a finance committee, and staff may carry out day to day finance functions.

Find out more:

#### **The Honorary Treasurer's Forum**

### 12.2 The chair

The role of the chair may vary depending on the charity's circumstances. The chair usually:

- helps plan and run trustee meetings (and in a membership charity, members' meetings)
- takes the lead on ensuring that meetings are properly run and recorded
- takes the lead on ensuring that trustees comply with their duties and the charity is well governed
- might have a second or casting vote if a vote on a trustees' decision is tied, but only if this is specified in the charity's governing document
- may act as a spokesperson for the charity
- acts as a link between trustees and staff
- line manages the chief executive on behalf of the trustees

**A Chair's Compass - A guide for chairs of charities and non-profit organisations.**



## 13. Technical terms used in this guidance

This section explains some legal and technical terms used in this guidance.

'Beneficiary' or 'beneficiaries' means a person or group of people eligible to benefit from a charity. A charity's beneficiary group is usually defined in its governing document. Some charities call their beneficiaries clients or service users.

The 'Charities Act' is the Charities Act 2011. This guidance occasionally refers to specific powers under this Act.

A 'charitable incorporated organisation', or 'CIO', is an incorporated legal form designed specifically for charities. See section 11 of this guidance for more detail.

A 'charity' is any organisation set up under the law of England and Wales for solely charitable purposes.

The 'Commission' means the Charity Commission, the regulator for charities in England and Wales.

A 'community benefit society' is an incorporated legal form in which charities can be set up. It is similar to a limited company. Community benefit societies are registered by the Financial Conduct Authority. Charitable community benefit societies are currently exempt charities.

'Excepted charities' don't have to register with the Commission or submit annual returns. Apart from that, the Commission regulates them and can use any of its powers if it needs to. This only applies to specified churches, Scout and Guide groups and armed forces charities whose income is below £100,000. Read more about **excepted charities**.

An 'exempt charity' is exempt from registration and direct regulation by the Commission. Most exempt charities have a different charity regulator (or 'principal regulator'). Trustees of exempt charities have the same basic duties as other charity trustees. Read more about **exempt charities**.

The 'governing document' is the legal document that sets out the rules that govern a charity. These include the charity's objects and, usually, how it must be administered. It's usually a trust deed, constitution, CIO constitution or articles of association. Some charities have a different type of document such as a conveyance, will, royal charter or Commission scheme. **Find out more about governing documents**.

'Have regard to' does not have a strict legal definition, but generally means 'take into account' or 'consider', rather than 'comply with'.

'In the charity's best interests' means what the trustees believe will best enable the charity to carry out its purposes for the public benefit. See section 6 of this guidance for more detail.

An 'incorporated charity' means a charity formed as a company, CIO, royal charter body, community benefit society or a corporation created by Act of Parliament. Being incorporated means the charity itself is a legal body. It can own property or enter into contracts in its own name. Incorporation gives trustees more protection from personal liability. See section 11 of this guidance for more detail.

Misconduct includes any act (or failure to act) that the person committing it knew (or ought to have known) was criminal, unlawful or improper.

Mismanagement includes any act (or failure to act) that may cause charitable resources to be misused or the people who benefit from the charity to be put at risk.

A charity's 'purpose' is what it is set up to achieve (for example, relieving poverty or promoting health).

A charitable purpose is one that:

- falls within one or more of 13 'descriptions of purposes' listed in the Charities Act
- is for the public benefit (the 'public benefit requirement')

A charity's 'objects' are a written statement of its purposes - they must be exclusively charitable.

A 'registered charity' is a charity registered with the Commission.

A 'suitably qualified person or adviser' is someone who the trustees could reasonably expect to be competent to advise them about a particular matter. This includes professional advisers (such as solicitors, accountants and surveyors). It could also include (for example) a member of the charity's staff, a suitably qualified trustee or an adviser from another organisation.

'Trustee' means a charity trustee. Charity trustees are the people responsible for governing a charity and directing how it is managed and run. The charity's governing document may call them trustees, the board, the management committee, governors, directors, or something else. The Charities Act defines the people who have ultimate control of a charity as the charity trustees, whatever they are called in the charity's governing document:

- a 'custodian trustee' is a corporation appointed to hold property for a charity; it isn't a charity trustee and must act on the lawful instructions of the charity trustees
- 'holding trustees' are individuals appointed to hold property for a charity; they aren't charity trustees, they must act on the lawful instructions of the charity trustees and in accordance with any provisions in the governing document

An 'unincorporated charity' is a charity set up as a trust or association. Being unincorporated means the charity isn't a legal body (so it can't hold property or enter into contracts) in its own right. Trustees' personal liability isn't limited. See section 11 of this guidance for more detail.