

Village halls run by parish councils as sole trustee

Parish councils in the position of sole trustee have the difficult task of separating their role as trustee of the village hall from that of their statutory, public duties and this can give rise to confusion. This information sheet aims to clarify the situation and assist parish councils to work out how best to manage charity affairs.



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Introduction

A small proportion of village halls are charitable trusts which are run by a parish or town council (a community council in Wales), as sole managing or charity trustee of the charity. For ease of reference, the term 'parish council' is used for this information sheet.

Parish councils in the position of sole charity trustee have the difficult task of separating their role as charity trustee of the village hall from that of their statutory, public duties and this can give rise to confusion. This information sheet aims to clarify the situation and assist parish councils to work out how best to manage charity affairs.

This information sheet is not relevant:

- Where the parish council runs a village hall on a non-charitable basis in its capacity as a local authority, i.e. where no charitable trusts have been declared. In such cases village halls will be managed by the parish council according to local government law.
- Where a parish council is acting as custodian trustee



1 What makes a parish council the sole charity trustee?

There are two principal sets of circumstances which give rise to a parish council running a village hall as sole charity trustee:

- 1.1 Where a local benefactor has given or sold land (including any building on it) to a parish council to be used as a village hall and has set out charitable trusts in the conveyance/transfer. In this case, the governing document might contain no provision to appoint a separate management committee or, where there is to be a separate management committee, give it responsibility only for the day to day running of the charity.
- 1.2 Where the management committee of a charitable village hall has found it can no longer run the hall and has decided to appoint the parish council as charity trustee in place of the management committee. This could arise, for instance, if it has not been possible to recruit sufficient volunteers to form a management committee. The parish council would have to give its consent to the arrangement. It is not under a duty to accept. **See Information Sheets 2: Parish Council help for village halls and Information and 40: Village halls, governing documents and title deeds.**

The parish council is not under a duty to accept the role of sole trustee.

2 When is the parish council a custodian trustee and not the sole charity trustee?

The majority of village halls are charitable and are managed by an independent management committee. The governing document may give the parish council the right to appoint a member of that committee. Many also have the parish council acting as custodian trustee on behalf of the charity. It is the custodian trustee's role to hold the title to the property on behalf of the management committee and to act on the lawful directions of the management committee in transactions relating to the property. The custodian trustee has no role in the day to day managing of the property and its finances.

See Charity Commission Operational Guidance (OG39)

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How charity business should be conducted by the parish council?

3.1 The 'wearing of two hats'

It is important that the parish council and its councillors are aware of which 'hat' they are wearing when conducting the business of a charitable village hall of which the parish council is the sole charity trustee.

The Charity Commission advises (OG 56 A1):

“The charity needs to be independent of the local authority in the sense that decisions about the administration and operation of the charity need to be taken solely in the interests of the charity, with a view to furthering its charitable purposes, and for no other purpose”.

This means that the parish council needs to be careful to distinguish between when it is acting as a local authority and when it is acting as a charity trustee. It is important to understand the following points:

- The parish council must always bear in mind that the property and funds of the charity are not part of the corporate property and funds of the local authority and, if the village hall land is included in the parish council's asset register, it should be listed without any value and clearly described as 'held on trust for [name of charity] per governing document dated...'. The property and funds of the charity are not available for the council's corporate purposes.
- The parish council is not bound to provide any financial support to the charity; the charity has no automatic call on the property, personnel or funds of the parish council.
- The interests of the charity should never be over-ridden by or confused with the interests of the parish council as a local authority.
- A parish council acting as sole charity trustee acts as a corporate body: individual councillors are not themselves charity trustees, it is the parish council which is the charity trustee.
- Individual councillors do not act in a personal capacity as they would if they were a parish council appointee to an independent village hall charity. This may be seen as an advantage. However, it

should be noted that individuals must act in a responsible way so as to ensure that the parish council acts properly as a charity trustee.

- The parish council could be held liable for breach of trust (in the same way as an individual trustee of other charities) and be sued for breach of trust, in which case it would have to compensate the charity out of its corporate assets. Individual councillors could then be liable to the parish council under local government law for any losses it bears as charity trustee. See Charity Commission OG 56 A1.
- Conflicts of interest can arise between the role of a parish council as charity trustee and its duty to the charity's beneficiaries and its role as a local authority and duty to local council tax payers. In such situations councillors must be particularly careful to ensure that they 'wear the right hat' at meetings of the charity and act then only in the interests of the charity.
- The interests of council tax payers, party political or personal interests must not come into play.

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3.2 Code of Conduct

The Model Code of Conduct 2007 was swept away by the Localism Act 2011. This states that a parish council must promote and maintain high standards of conduct by its members and co-opted members. In discharging this duty a parish council must, in particular, adopt a code dealing with the conduct that is expected of its members and co-opted members when they are acting in that capacity (section 27).

The National Association of Local Councils has published a template code of conduct for local councils. The code of conduct for local councils must be based on the seven Nolan principles of public life: selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

The Localism Act lists the prejudicial interests relating to a parish councillor, now known as 'disclosable pecuniary interests'. Pecuniary interests for this purpose cover employment, sponsorship, contracts, licences, securities and land. A parish councillor must not participate in any parish council meeting or take part in any vote on any matter if

he or she has a disclosable pecuniary interest.

The parish council may, if it wishes, grant a dispensation to any parish councillor who has a disclosable pecuniary interest (s.33).

Where a parish council is sole trustee, none of the parish councillors has disclosable pecuniary interest to declare. However, in certain circumstances a parish councillor may still have an interest to declare, for example, if he or she lives next (or close) to the village hall, and the parish council is planning some activities or works at the hall which may affect his/her home.

See Information Sheet 2: Parish Council help for village halls for further guidance.

3.3 Accounts

It is essential that separate accounts are kept, in the charity's name, for the charity's income and expenditure, as required by the Charities Act 2011. Any reserves must be accounted for separately from parish council reserves. The charity's accounts should form part of the parish council's accounts only in the sense that they might be annexed to the council's accounts.

The Annual Return (including accounts) for parish councils includes a requirement to disclose by yes/no whether the parish council is acting as sole charity trustee in respect of land or other assets. There is no value to disclose, merely the presence of a trust for which the parish council is sole parish trustee.

The parish council must comply with the charity reporting and accounting requirements of the Charities Act 2011, including preparation of an annual report by the trustees in the required form. The Charity Commission have a range of free guidance booklets on the subject of charity accounting. See section 6.

If the parish council uses money from the precept (or from other income or reserves held as a local authority) in order to help meet expenditure by the charity, this should be shown in both the parish council and charity's accounts as a grant to the charity.

3.4 Audit

Requirements for the independent examination or auditing of charity accounts are laid down by the

Charities Act 2011 and are dependent on the annual income/expenditure of the charity. See Charity Commission publication CC63. The charity's accounts do not need to be audited as part of the council's accounts.

3.5 Insurance

There is no need for the parish council to insure charity property under a separate policy, so long as the parish council's insurance policy provides suitable and adequate cover. The parish council has an insurable interest in the property. The premium, or a proportion of the parish council's premium, can be charged to the charity's accounts.

3.6 Meetings

Meetings of the parish council as charity trustee should take place separately from those when it is acting as a local authority and separate minutes must be kept. In order to avoid confusion, charity business items should be minuted separately and separate notices and agendas for the meetings should be issued. The normal rules relating to the notice to be given for parish council meetings and the signing of minutes should also be followed.

It might be helpful for the minutes of meeting of the parish council as sole trustee to be headed along the following lines:

“Minutes of a meeting of [] Parish Council as sole trustee of [] Village Hall, registered charity number [] held on []”

It is advisable that when a meeting of the parish council as charity trustee takes place, before or after a meeting of the parish council as a local authority, there is a clear distinction between them. One meeting should be formally closed before the other commences.

Why? Because parish council meetings, when acting as sole trustee of a charity are private, not public. The public have no right to attend (although a parish council may allow them to attend) and the minutes of the meeting are

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not public documents.

Where the trust deed of the charity is silent on matters of procedure, the parish council should conduct charity business in accordance with standing orders, where they are applicable, or make standing orders for this purpose. Parish councillors will not have a pecuniary interest in the village hall in these circumstances. Any parish councillor having a pecuniary interest in the village hall must disclose his or her interest and only take part in discussions and decision-making if the parish council grants dispensation under s.33 of the Localism Act.

A parish council may appoint a parish council committee to manage the day to day affairs of the hall, reporting to the parish council in accordance with local authority rules and the terms of reference set by the parish council. Such committee may comprise parish councillors and non-councillors: there is no limit on numbers but it would be advisable for parish councillors to be the majority of the committee members. Subject to the terms of reference set by the parish council, the committee members may vote on matters under discussion but, as the parish council is the sole trustee of the village hall and is responsible for the committee's actions, no vote would bind the parish council.

If the village hall's governing document requires public annual general meetings to be held, the parish council might wish to hold the AGM on the same day as the parish council's annual meeting. If the governing document specifies a particular month the parish council should amend it. In these circumstances, there must be a clear distinction between the AGM of the village hall and parish council's annual meeting. One meeting should be formally closed before the other commences.

In order to avoid confusion, charity business items should be minuted separately and separate notices and agendas for the meetings should be issued. Separate minutes must be kept.

3.7 Officers and staff

The chair of the parish council would also be the trustee chair. If the parish council appoints a committee to manage the property, that committee may appoint a different chair, but this person would not be the trustee chair. The

councillors can appoint such other officers as they deem necessary, including a treasurer and secretary. Any officers appointed who are not councillors would not become trustees of the charity, unless otherwise prescribed in the charity’s governing document.

The parish council can appoint such staff as it deems necessary for the running of the hall providing they are suitably qualified. The services of the parish council clerk and other employees may be used, but this is not essential. It is, however, important to avoid a situation in which the employee’s duty to the local authority conflicts with his or her duty to the charity. Remuneration out of charity funds may not cover more than the reasonable cost of providing the service and may only be at the “going rate for the job”.

Councillors may not be paid for their services unless there is clear authority in the governing document or from the Charity Commission or Courts.

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3.8 Correspondence

It would be sensible to keep correspondence relating to the charity separate from other parish council correspondence.

Letters sent by the parish council in connection with charity business should ideally have a separate letterhead bearing the charity’s name and registration number and can be signed:

‘.....Parish Council, Trustee of
....Charity.’

3.9 Declaration of acceptance of office

Many village hall deeds require trustees to sign a declaration of willingness to act in the best interests of the charity before they take office. There is, however, no need for councillors to make a separate declaration for the office of charity trustee. Individual councillors are not trustees: it is the parish council as a corporate body which is the sole charity trustee.

Having said that, individual councillors are nevertheless under a duty not to place themselves in a position where there is a conflict between their duty as councillors of a parish council acting as sole charity trustee and their own personal interests. Individual members of the council might be held personally liable if they knowingly acted to the detriment of the charity. See section 3.2 concerning the Code of Conduct.

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Parish council making changes to the management arrangements

A parish council which is sole charity trustee may be perfectly happy to carry on running the hall as sole charity trustee and there may be no good reason to alter the situation. However, a change of circumstances (such as the need to raise grant aid for a major refurbishment project) may prompt a review of the management arrangements.

If the parish council wishes to transfer responsibility for management to an independent committee it will need to utilise any power of amendment contained in the charity's governing document in order to provide for an independent management committee. If the governing document contains no such power of amendment the parish council will need to amend the governing document to include such provisions using the statutory power of amendment set out in s.280 of the Charities Act 2011. This would normally establish a separate management committee composed of members elected at an AGM and members nominated by organisations using the hall, including the parish council, with power to co-opt a small number of individuals. This committee would become fully responsible for the management and finances of the charity and its property. Transitional arrangements would need careful thought. For example: the question of how the first committee members will be appointed to run the hall until the first AGM? These might, for instance, be named volunteers appointed by the parish council.

However, where the property has been purchased from precept income for statutory purposes and management responsibility is to be passed to a charitable trust it will be necessary for a charitable village hall trust to be established, which then acquires a secure interest in the premises. A secure interest is achieved by-

- (a) the parish council granting a lease of the property to the trust. ACRE's Lease of land and trust deed for leasehold property is the recommended model legal document for this purpose. A parish council has power to grant a long lease to a village hall charity at a peppercorn rent. This may enable VAT recovery by the parish council on goods and ser-

vices supplied to the hall, providing certain rules are followed. See ACRE's Information Sheet 18, VAT on building work and other purchases.

or

- (b) the parish council selling the property to the trust. The parish council might wish to gift the property or sell it at less than market value but it may have to seek consent from the Secretary of State for the Department of Communities and Local Government.

The acquisition of the premises by an unincorporated trust (the usual model for a village hall) under either (a) or (b) will require the appointment by the trust of either individuals to hold the legal title as holding trustees for the trust, or of a corporate body to act as custodian trustee. In either case, the trust may not use the par-

Where a parish council is sole charity trustee of a charitable village hall, the parish council is entitled to reclaim VAT on any purchases made for the charity.

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Other issues

5.1 VAT

Where a parish council is sole charity trustee of a charitable village hall, the parish council is entitled to reclaim VAT on any purchases made for the charity, in the same way as it can in its capacity as a local authority. The effect of this is that grant funding or donations, given to the parish council for expenditure on the hall, may be attributed to the parish council's non-business activities if the parish council uses this funding to purchase equipment or carry out work for the charity. The parish council may reclaim VAT, whether or not it is registered for VAT or charging VAT on hall hire. See ACRE's Information Sheet 18, VAT on building work and other purchases for further information.

5.2 Rates

Charitable village halls run by parish councils as sole charity trustees are eligible for 80% mandatory rate relief and a further 20% rate relief at the discretion of the rating authority (unlike halls run by parish councils in their statutory capacity).

ish council to act as custodian trustee – otherwise the parish council would be leasing/selling property to itself. It is recommended that following the initial appointment of individual holding trustees, the property be vested in the Official Custodian for Charities, to avoid problems occurring. See ACRE’s Information Sheet 40: Village halls, governing documents and title deeds.

5.3 Property issues

- (a) Can a parish council, acting a sole charity trustee, lease part of the charity property for its own purposes, e.g. an office for the clerk, or to build an office on land belonging to the charity?

Yes, with the Charity Commission’s consent. However, this is fraught with problems-

- it is not good practice for a land owner cannot grant a lease to itself: a lease grants an interest in land and the separate rights of the landlord and of the tenant are such that it would be impossible for the landlord to enforce its rights properly, and vice versa. If such lease must be granted, provided the Charity Commission has consented, it would have to be granted to a nominee for the parish council.
- the parish council (and the Charity Commission) must consider whether such lease would be in the best interests of the charity.

- (b) Can a parish council grant a lease of property which it owns in its statutory capacity to itself as trustee of a charity?

Yes. However the problems discussed in (a) above apply. The lease would have to be granted to a nominee for the parish council: as mentioned before, the legal position is complicated but the use of a nominee overcomes the difficulties.

5.4 Eligibility for grant aid

A parish council running a hall as sole charity trustee of a charity may be eligible for grant aid from sources which are not open to a parish council running a hall in its statutory capacity, such as charitable trusts and some lottery programmes provided by the Big Lottery Fund and Awards for All. However, grant officers dealing with the application may not be familiar with the fact that a parish council can be sole charity trustee of a village hall charity. The legal position and separate financial arrangements will need to be clearly explained and, if possible, it would be advisable to speak with a grant officer before making the application. Funders may otherwise assume that because the parish council has access to precept income the project should have a lower priority in the face of competition from other applications.

Sources of further information and advice

ACRE and its Network provides an information and advice service for village hall management committees through its network of village hall advisers. A link to the village hall advisers is available on the ACRE website www.acre.org.uk

ACRE produces a range of village hall publications and information sheets to support this service which are available from your local ACRE member.

ACRE publications that may be of interest to readers of this information sheet are listed below:

Information Sheet 2: Parish council help for village halls

The principle source of published advice on this subject is the Charity Commission's Operational Guidance, which can be downloaded from its website. Sections OG 56 A1 to D1 cover local authorities and trustees.

Useful contacts

NALC

109 Great Russell Street
London
WC1B 3LD
Telephone: 020 7637 1865

Email: nalc@nalc.gov.uk

www.nalc.gov.uk

Charity Commission Offices

Harmsworth House
13-15 Bouverie Street
London
EC4Y 8DP

20 Kings Parade
Queens Dock
Liverpool
L3 4DQ

South West Regional Office
Woodfield House
Castle Street Taunton
TA1 4BL 0870 333 0218

www.charitycommission.gov.uk

Charity Commission Leaflets

Available from Charity Commission or online:

- CC3 The Essential Trustee: What you need to know
- CC15b Charity Reporting and Accounting: the essentials