

Village halls, governing documents and title deeds

The majority of village halls and similar rural community buildings in England are unincorporated charitable trusts originally registered under the Recreational Charities Act 1958



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Introduction

The majority of village halls and similar rural community buildings in England are unincorporated charitable trusts originally registered under the Recreational Charities Act 1958. They remain charitable under the Charities Act 2011. The assets of the village hall charity, the building and land, are held on trust for the use of the community.

All village hall charities will have some form of documentation, a governing document, that sets out the village hall trusts and the constitutional structure, i.e. the basis on which the land and property is to be held and managed. These are legally binding documents and must be kept safe and secure.

Many governing documents are comprised within the document by which the village hall acquired the land in the first place, many years ago in some cases. Until the last 10 years or so, it was common practice for the conveyance or transfer of land (freehold) and a lease of land (leasehold) to include a schedule setting out the trusts on which the land was to be held. If the village hall concerned is registered with the Charity Commission then it would have been that conveyance or lease that was registered as the village hall's governing document. Very old documents, certainly ones before the 1930's, are often called 'Indentures' which is a legal term encompassing both a conveyance and a lease. It is no longer used.

A village hall which wants to make changes to its governing document must follow the correct procedures in order to make the changes. It is rare to find two situations exactly the same and therefore important to obtain independent legal advice.

This information sheet will help you identify your own governing document, what to do if you cannot locate the governing document, and explain how you can make changes. It will also advise you about a village hall's title deeds and what to do if you are uncertain as to who actually holds the title to the land. However it is not a substitute for legal advice from a Solicitor experienced in dealing with charity law and community buildings.



1 Documentation

The governing document for your village hall charity sets out the charitable objects and rules for the organisation; it states what the organisation is for (the aims and objectives) and describes how the organisation is run (the election of officers and rules for meetings). It is important that all the charity trustees of the village hall charity are familiar with the governing document and fully understand its implications. Your village hall charity's governing document should:

- explain what can and cannot be done (powers)
- provide a way to make decisions and resolve differences
- ensure accountability
- clarify liability and lines of responsibility
- enable the organisation to register as a charity

If you do not think that your document does all or any of these things then ACRE suggests you contact your local ACRE Network member, who will be able to advise you on what steps, if any, you need to take.

There are many different types of governing documents (listed below) and you may have one, a combination of any or something completely different.

1.1 Trust

Most village halls are charitable trusts and the trusts will be declared in one of the following:

Trust Deed

This will either be:

- a stand-alone document, i.e. called 'Trust Deed' or 'Declaration of Trust' or in very old documents 'Indenture', or
- comprised within (usually as a schedule) an Indenture, Conveyance, Transfer or Lease or other document relating to the village hall land and building

It normally incorporates all the information that would be found in a constitution (see below), so if you are asked for a copy of the constitution then the Trust Deed, or one of the above, is what you will need to supply. ACRE produces a Model Trust Deed that is approved by the Charity Commission.

Charity Commission Scheme

A Charity Commission Scheme prescribes changes to terms and conditions in original documentation or replaces old and out of date governing documents.

1.2 Association

An association which adopts a constitution is not, technically, a trust. It is an unincorporated association governed by a constitution.

A Constitution is a set of rules and procedures adopted by a group of people to govern their organisation. This is not a common feature of village halls: it is the model used by community associations.

1.3 Corporate charity

The Trust and the Association are both unincorporated charities. A village hall can be a corporate body if it wishes. See Information Sheet 39 Village halls and incorporation.

Other documents which might impact on the governing document:

- A Deed of Appointment sets out changes of holding/custodian trustees either new or replacement and their roles and responsibilities
- A Deed of Variation - an original Trust Deed, Indenture or Conveyance which includes a power of amendment may be amended by a Deed of Variation
- A Lease gives exclusive rights to occupy land and property. Some leases contain the trust deed within them (usually in a Schedule to the lease)
- A Conveyance transfers land and property to the trustees. Sometimes it will include the trust terms and set out details of the management of the land and property but it may simply convey the land and property to a group of individuals or the parish council
- An Indenture is a legal document (often handwritten) usually found where the hall is long established. It can transfer land, grant a lease or establish a trust.

The original documentation for your hall should be kept in a safe place; all trustees should have a copy and be familiar with its content. There are often instances where governing documentation has not been clearly understood and over subsequent years hybrid organisations develop; holding and managing trustee relationships become blurred and charity trustees inadvertently adopt practices that could potentially be a breach of trust.

2 Common constitutional structures

The traditional village hall charity is an unincorporated trust, i.e. it has no legal identity separate from its charity trustees. Accordingly, it will have two sets of trustees: charity or managing trustees and holding or custodian trustees. Charity trustees have the legal responsibility for the day-to-day management and financial control of the charity and its land and property.

Holding trustees are appointed to hold the land and property on behalf of the charity; they have no legal responsibility for managing the charity. They can be individuals (holding trustees), or a corporate body (custodian trustees) such as the parish council or the Official Custodian for Charities (a corporation created by statute to hold land on behalf of charities managed by the Charity Commission). The role of custodian and holding trustees is the same.

In some cases there will only be one trustee known as a sole trustee. The sole trustee could be the parish council or, as in some older deeds, a local landowner, the parish priest and a local farmer.

The governing document should give the power of appointing holding/custodian trustees to the management committee. Unfortunately, the governing documents of many village hall trusts failed to include such power: this may not be critical provided one or more holding trustees is still alive and is willing to appoint additional or replacement holding trustees under the statutory power of s.36 of the Trustee Act 1925.

If there is no such holding trustee the village hall will have no power to appoint new holding trustees and will not be able easily or quickly to establish who actually holds the title to the village hall land. This can be critical where a village hall is seeking grant monies and is unable to prove to the grant maker that the land it occupies is actually held on trust for the village hall. See sections 3 and 5 of this publication.

If the governing document does not give the power of appointing holding/custodian trustees to the management committee, the village hall management committee should consider amending the governing document to include such power. See section 7 of this publication.

There is further information about the different roles of holding and charity trustees in Appendix C.

If the original deed constitutes the building as a Reading Room, WI Hall (see Appendix A), Miners Welfare Institute, Parish Council (see section 10) or church hall (see section 8) or is a school hall it cannot just be changed to a village hall charity: it will be necessary to seek advice in addition to that provided in this information sheet.

3 Vesting in the Official Custodian

In many governing documents there is a clause requiring the land and property to be vested in the Official Custodian for Charities. This is usually provided where land and property is vested in a number of individuals as holding trustees. Where stated, this process must be carried out. In any event it is a good idea to vest the land and property in the Official Custodian for Charities as it (a) avoids issues of conflict between the holding trustees and the charity trustees and (b) removes holding trustees from the village hall altogether so the problems of succession are no longer an issue for the village hall (as discussed in section 6 of this publication).

See section 5 for further advice on vesting land in the Official Custodian where title deeds have been lost.

See section 6 for further advice on vesting land in the Official Custodian where the holding trustees are deceased or cannot be found.

Further information can be found in the useful Charity Commission publication CC13, The Official Custodian for Charities Land Holding Service.

4 Other structures

Some village hall charities may be constituted as a company limited by guarantee or as a charitable incorporated organisation (CIO). See Information Sheet 39, Village halls and incorporation.

A community interest company (CIC) is not suitable for village halls as a CIC cannot be a charity.

The terms 'community association' and 'village hall' are often interchanged, however there is a distinct difference between a village hall's charitable purposes and constitutional structure and that of a community association. The main differences are by reference to the objects (community associations usually include education as a charitable purpose) and the fact that most community associations are membership bodies.

Further information can be found in Appendix B.

5 What to do if you can't find any governing documents or title deeds

Sometimes governing documents and title deeds go missing and there is not anyone on the committee or alive and living locally who can recall how the charity was set up or who owns the building. It may be an old school building which has been used for many years by the community; it may be a church hall or it may be a hall erected as a memorial. Whatever form it takes it will be necessary to track down any documents or other paperwork that establishes ownership. ACRE's suggestions are:

- 5.1 do a thorough search through any minutes or old boxes of documentation that are held by members or past members of the village hall committee. If a previous chairperson or secretary lives locally ask if they recall anything. If the building is a church hall the local rector might be able to provide some historical context
- 5.2 check the Charity Commission website. This lists all charities and the dates of the governing document under which they were registered. The Charity Commission may also hold a copy of the governing document although it is unlikely that they will hold copies of title deeds
- 5.3 contact your local ACRE Network member as many keep records of halls in their county; they may have a copy or even the original. Failing that they may have paperwork on file that indicates where documents can be found
- 5.4 your parish council might also have records and hold the governing document or title deeds or have a reference to them, especially if it is the custodian trustee or has had close involvement with the hall over the years

If you can't find anything using the above methods we suggest:

- 5.5 asking elderly people in the community either personally or in village newsletters what they remember about the hall
- 5.6 contacting the Land Registry
- 5.7 contacting the local Diocesan Property Office
- 5.8 contacting the local Education Authority if the building was once a school
- 5.9 contacting all old established law firms within a chosen radius or in the nearest town as they may have records in their archives

No governing document

If the governing document listed on the Charity Commission's website cannot be found you must contact the Charity Commission to ask its advice. The Commission may be prepared to make a Scheme which would regulate the village hall and, if the title deeds also cannot be found, vest the land in the Official Custodian.

If the village hall is not registered with the Charity Commission and a governing document cannot be found, the easiest and simplest solution is for the village hall management committee to create a new governing document. The ACRE model trust deed may be used although the paragraph on the first page marked 'Introduction' will have to be altered to explain the circumstances.

No title deeds

If a search of the Land Registry does not yield a positive result, you should speak to the Land Registry who will advise on the procedure to register the land. They will probably require an affidavit signed before a Commissioner for Oaths or Solicitor by someone who has been resident in the village for a long time, saying that the land has always been used as a village hall. This should at least result in the granting of possessory title. Legal advice from a solicitor with knowledge of community buildings should be sought.

6 What to do if the holding trustees are deceased or cannot be found

Sadly it is often the case that the management committees of village halls, which used holding trustees when the village halls acquired their premises, failed to ensure that the holding trustees were replaced as time passed or failed to arrange for their premises to be vested in the Official Custodian. If the village hall's governing document gives a power of appointment of holding trustees to its management committee then the problem is easily solved. Unfortunately, such power is rarely found especially in old governing documents.

The consequences of such failure only arise when a village hall management committee needs to dispose of the premises (by transfer or lease) or to provide evidence to a third party, usually a funding body, that it owns the title to its premises. The management committee can supply the title deed (if this is available) but if the original holding trustees, or replacement holding trustees through the intervening years, are deceased or cannot be found the third party is unlikely to accept that the village hall has title to the premises. This will certainly be the case where a funding body requires a legal charge over the property.

Strictly speaking, in these circumstances the management committee should contact the families of the deceased holding trustees to see if it possible to identify the persons who benefitted from the deceased's estate with a view to asking them to agree to appoint new holding trustees using the statutory power contained in s.36 of the Trustee Act 1925. In truth, this is not a realistic solution to the problem.

Circumstances also arise where one or more of the holding trustees are believed to be alive but cannot be found. The village hall is in the same position as in the case of deceased holding trustees.

Provided the village hall is a registered charity and is not in breach of its filing requirements with the Charity Commission, the best solution is to apply online to the Commission to have the premises vested in the Official

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Custodian. At a stroke, the management committee will have avoided all the work and expense of tracking down relatives of deceased holding trustees. Note that the granting of a vesting order requires that the land be registered with the Land Registry if it is not already registered. Legal advice must be taken.

7 Making changes to governing documents of village hall charities

How a village hall changes its governing document depends on which type of governing document it has (see section 1). It is recommended that a village hall management committee study the Charity Commission document 'Changing Your Charity's Governing Document' before embarking on this change process.

Village hall as an unincorporated trust

It is not possible for a village hall management committee to adopt a new trust deed. If the village hall is a charitable trust the management committee may only seek to amend the trusts.

Some governing documents give the charity power to amend the governing document so, if the management committee wish to make changes, they should use such power and comply with any conditions specified in the power. If the governing document is a trust deed based on the ACRE model trust deed it may only be amended by a resolution passed by an annual general meeting or special general meeting. Legal advice should be sought

If a charity's governing document did not give the charity power to amend the governing document then, prior to the Charities Act 2006 coming into effect, charitable trusts had to ask the Charity Commission to make a Scheme to amend their governing documents.

Since the Charities Act 2006 came into force (now consolidated in the 2011 Act) it has been possible for a charity whose governing document does not contain a power of amendment to make certain changes to governing documents without recourse to the Charity Commission. The Charity Commission will only consider a request for a Scheme where the charity wishes to make changes that are not allowed by the Act.

Section 280 of the Charities Act 2011 gives unincorporated charities the power to change the provisions of their governing document:

- relating to any of the powers exercisable by the charity trustees in the administration of the charity, or
- regulating the procedure to be followed in any respect in connection with its administration

Any change is made by resolution of the management committee. If the organisation has a membership distinct from the trustees, i.e. a membership list, any such resolution must be endorsed at a general meeting by a majority of at least two thirds or members who attend and vote. Most village hall charities do not have a separate membership so the resolution of the

committee is sufficient.

However there are limits on what the statutory power can be used for. It cannot be used to amend provisions in the governing document that include:

- the charitable purposes of the charity (Charity Commission consent is always needed)
- the charitable purposes that the charity's property will be used for when it dissolves
- changing a power of amendment to include power to change parts of a governing document that the statutory power itself cannot be used to change, for example the purposes/objects or the application of the charity's property on dissolution
- the right of third parties to appoint trustees unless the third party has ceased to exist or has given consent
- a power, e.g. a power of investment, the exercise of which by the trustees requires the consent of a third party may not be amended so as to remove the requirement for that consent unless the agreement of the third party is obtained (preferably in writing) or the third party has ceased to exist
- the payment of the trustees, other than out of pocket expenses
- to make property of the charity permanent endowment or to make it cease to be permanent
- to include a power to make ex gratia payments

It also cannot be used to insert a dissolution clause if the governing document does not include one.

The wording of the resolution to be passed by the management committee using this statutory power of amendment will usually not be easy to prepare. The management committee will have to decide which parts of the existing governing document are no longer fit for purpose and then decide how it wants to include changed or new provisions so that the end product is coherent. Most village halls will want to insert parts of the ACRE model trust deed and this is acceptable. However, in doing so, the management committee must ensure that they are to be worded so as to fit in with the existing governing document that remain after this exercise. The revised governing document will govern the village hall for many years to come and it is important to get it right.

The charity must notify the Commission of any changes and when they made them and send a copy of the resolution and of the revised governing document. There is an online form for this to be done.

This statutory power is available to all unincorporated charities not just those registered with the Charity Commission. However, only registered charities need to notify the Charity Commission.

There is a power for 'small' unincorporated charities (those whose gross income in its last financial year did not exceed £10,000) to change their charitable objects subject to certain conditions (s.275 of the Charities Act 2011). However, as this power is only available to charities who do not hold any designated land, it will rarely be of use to village halls. Most village halls own designated land, i.e. land which must be used in accordance with the village hall's trusts.

Where one or more changes are made over a period of years by resolution the difficulty is how to maintain a cohesive, permanent record. Good practice would be to keep a written record of each change as it is made and store with the original governing document, a bit like having Codicils to a Will. It would be sensible to re-type the governing document each time it is amended (with footnotes recording the change and the date it was made) so that future committees of the hall charity would have one document to which they could refer.

Problems could arise particularly where a village hall management committee is applying for funding and have to submit their trust deed plus half a dozen pieces of paper detailing subsequent changes to the deed!

Village hall which is an association

Any charity which is an association governed by a constitution may amend their constitution or adopt a completely new constitution provided they do not change the charity's objects or the charitable purposes that the charity's property is to be used for when it dissolves.

Any change is made by resolution of the village hall members.

Corporate village halls

A company limited by guarantee has power to amend its Articles of Association within the limits specified by company law. However, no change may be made which alters the charity's objects or the charitable purposes that the charity's property is to be used for when it winds itself up.

Any change is made by resolution of the company's members.

A CIO may change its constitution within the limits specified by charity law. The power of a CIO to amend its constitution is not exercisable in any way which would result in the CIO's ceasing to be a charity.

A CIO must obtain the Charity Commission's prior approval to:

- (a) any alteration of the CIO's purposes
- (b) any alteration of any provision of the CIO's constitution directing the application of property of the CIO on its dissolution, and
- (c) any alteration of any provision of the CIO's constitution where the alteration would provide authorisation for any benefit to be obtained by charity trustees or members of the CIO or persons connected with them

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Church halls

Some villages have a church hall that perhaps is not used very frequently by the church. In this context reference to the use of a church hall means exclusively use for the advancement of religion, including use by organisations connected with the Church. This is known as an ecclesiastical trust, an example being use of the premises for:

- evangelistic activities
- celebration of divine service
- confirmation classes
- religious festivals
- Sunday Schools
- meetings of the clergy; and
- activities associated with religious services (e.g. wedding receptions).

It may also include meetings of:

- the brownies, cubs, guides and scouts; and
- church clubs and societies (e.g. Mothers Union)

Sometimes the trustees of a church hall (often the vicar and churchwardens) may find that:

- the hall is not needed all the time for Church purposes, although it is needed on an occasional and regular basis
- they have insufficient funds available to maintain the hall or to improve it to acceptable standards and
- the hall is needed by the community for additional charitable use, which does not qualify as a church purpose, such as for a village hall or youth centre

In these circumstances, the church hall trustees may want to talk to local people about alternative uses for the church hall, or perhaps local people unconnected with the church ask if they may use the church hall for their own purposes, e.g. as a village hall.

Where this is the case, the governing document of the church charity may permit the use of the hall for non-church purposes, and this should be investigated but, unfortunately, the governing document will usually deny such use. In this case, the use of a church for secular purposes, such as a village hall, will be a breach of trust.

In these circumstances, the church charity will have to contact the Charity Commission with a view to obtaining an Albemarle Scheme. This Scheme will, if granted, permit the charity to lease the land to a village hall and set out the principle terms and conditions to such lease.

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It is essential that the church charity trustees and the village hall steering committee work together in this regard. The village hall steering committee will want the longest lease possible on the least onerous terms and conditions available: the church charity trustees may be willing to accept the village hall steering committee's proposal but they must, of course, act in the best interests of the charity. The Charity Commission will advise only with regard to the church charity's interests, not those of the proposed village hall.

What this means in practice is that the Charity Commission may influence the terms of the lease unless the church charity trustees and the village hall steering committee present a united front. This is of particular concern if the two sides agree on only a peppercorn rent.

The Charity Commission will only make an Albemarle Scheme where the conditions set out above apply and it is in the best interest of the church charity to do so. One important factor in convincing the Charity Commission that an Albemarle Scheme is in the interests of the church charity is where the village hall steering committee agrees to spend significant funds on improving the hall to meet current standards. The other important issue here is that the Church must retain, and the lease must provide for, regular free use of the hall by the Church: if the Church has no intention of making regular use of the hall then the Charity Commission may tell the Church trustees to sell land on open market terms instead.

If the Church indicates that it has no use for the hall then the village hall committee must convince the Church to set the regular days and times it would use the hall if it wanted to and to confirm this to the Charity Commission. Without this, the Albemarle Scheme may not be made. Of course, the Church must not tell the Commission that it does not intend to make such use of the hall!

See ACRE Model B for further information and advice.

9 Is Charity Commission consent needed to dispose of village hall land?

The answer is probably not, provided the village hall intends to replace the land for village hall purposes. Charity Commission consent will not be needed:

- (a) for the replacement of freehold land with other freehold land, or
- (b) for the replacement of freehold land with leasehold land provided that the lease term is long, e.g. 99 or 125 years. If a shorter lease is in question, ACRE recommends that the village hall seek Charity Commission advice.

If the village hall management committee is uncertain on this question, it must seek the Charity Commission's advice.

Older governing documents may specify that any disposal (which includes the granting of a lease) must have the Charity Commission's consent. Such provision is no longer valid because, since 1993, charities have been empowered to dispose of their land subject to certain conditions and legal requirements being satisfied (s.117 to 123 Charities Act 2011).

Sections 117 to 123 Charities Act 2011 state that where a charity wishes to sell or to grant a lease for a term of 7 years or longer of its land it must first:

- (a) obtain and consider a written report on the proposed disposition from a qualified chartered surveyor instructed by the trustees and acting exclusively for the charity
- (b) advertise the proposed disposition for such period and in such manner as is advised in the surveyor's report (unless it advises that it would not be in the best interests of the charity to advertise the proposed disposition), and
- (c) decide that they are satisfied, having considered the surveyor's report, that the terms on which the disposition is proposed to be made are the best that can reasonably be obtained for the charity

If the proposed lease term is less than seven years the trustees must:

- (a) obtain and consider the advice on the proposed disposition of a person who is reasonably believed by the trustees to have the requisite ability and practical experience to provide them with competent advice on the proposed disposition, and
- (b) decide that they are satisfied, having considered that person's advice, that the terms on which the disposition is proposed to be made are the best that can reasonably be obtained for the charity

It is likely that the village hall's governing document will include specific provisions for the disposal of land which must be followed, usually the calling of a public meeting to approve the disposal. In addition, charities holding designated land, which would include the majority of village halls, must give public notice of the proposed disposition, inviting representations to be made to them within a time specified in the notice (not less than one month from the date of the notice) and take into consideration any representations made to them within that time about the proposed disposition (s.121 Charities Act 2011).

ACRE strongly recommends that legal advice is obtained as well as guidance from the Charity Commission (CC28).

10 From parish council hall to village hall

In some communities the village hall is owned and run by the parish council in its statutory capacity, not as a charity. Circumstances may arise where the parish council is prepared to hand over full responsibility for the hall to a group of local people to run the hall as a charity.

The advantages of doing this is to empower local people to run the village hall and to benefit from the entitlement to 80% mandatory rate relief and 20% discretionary rate relief; the disadvantage is that village hall management committees are not able to reclaim VAT in the same way as parish councils. The parish council will often also hand a village hall to the community where they have managed the building of a new hall using Section 106 funds.

Where the parish council decide that they wish to hand the village hall to the community to be run as a charitable trust it will be necessary to take the following steps:

- the parish council need to decide whether they wish to transfer or lease the property to holding trustees for the village hall. It will not be appropriate for the parish council to be the holding trustee as it would be transferring or leasing the property to itself and this is unworkable
- the parish council could gift the property to the village hall but few parish councils would be prepared to do. A sale of the property would be at a price negotiated with the village hall management committee by reference to its market value as a village hall. Leasing the property is the easier option as local authorities like a parish council have the power to charge less than the market rent where the property is to be used for community purposes. It may even charge only a peppercorn rent. Following the initial appointment of individual holding trustees the property should be vested in the Official Custodian for Charities
- a charitable trust (or other model for a village hall) will have to be set up by the first charity trustees drawn from the community along the lines of ACRE's Model documents with holding and charity trustees

The parish council and the village hall management committee need to be aware that once the property is held under a charity it is bound by charity law and that the parish council will have no powers of management or financial control other than its right (if provided in the village hall's governing document) to be represented on the management committee along with representatives of other local groups.

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From village hall to parish council hall

Where a village hall management committee decides it can no longer manage the village hall then it may be appropriate for the parish council to take over the management. The management committee may use the statutory power of amendment in s.280 of the Charities Act 2011 to appoint the parish council as managing trustee to run the charity.

It is important to note that committee members cannot all just resign without there being other trustees to take over. It is their responsibility to safeguard the assets of the charity by:

- holding a public meeting to make another attempt to appoint a new committee of trustees
- handing over the running of the hall to the parish council. In this case they must pass a resolution using the statutory power of amendment in s.280 of the Charities Act 2011
- winding up the charity in accordance with their governing document if it is not possible to hand over the running of the hall to the parish council

This is not the same situation as the parish council being sole trustee of a charitable village hall. For more information see ACRE's Village Hall Information Sheet 36, Village halls run by parish councils as a sole trustee.

12 Registration of land and property with the Land Registry

The Land Registry maintains and develops the register of title to freehold and leasehold land in England and Wales. Registration of unregistered land which is not being transferred or vested in the Official Custodian, is voluntary and is worthwhile as a registered title is proof of ownership without recourse to myriad documents some of which may be difficult to read or understand. Registration will also give the village hall a better chance of preventing a third party from claiming a right over the property.

Registration is compulsory where:

- (a) land is being acquired, by lease (of more than 7 years) or by purchase or gift
- (b) existing village hall land is:
 - transferred to new holding trustees
 - transferred to a new corporate village hall
 - vested in the Official Custodian

Land held on a lease of seven years or less may not be registered. Legal advice must be taken.

Where the holding trustees are individuals then it will be important to ensure that necessary changes are made to the register when trustees are replaced. If the land and property is vested in the Official Custodian this will avoid the bureaucracy and cost of making changes on each change of trustee.

The registration should clearly state:

..... as holding (or custodian as appropriate) trustee(s) of village hall.

Under vesting order no:(if it is vested in the Official Custodian)

This will dispel any doubt in the future, as to who owns the hall and will ensure a permanent record of the vesting order if the property is vested in the Official Custodian.

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 publication are listed below:

- **Information Sheet 11:**
The Charities Acts 1992, 1993 and 2006
- **Information Sheet 17:**
Trustees – roles and responsibilities
- **Model Trust Deed for Freehold Properties**
- **Model Lease and Trust Deed for Leasehold Properties**
- **Constitution for a village hall as a Charitable Incorporated Organisation**
- **Articles of Association for a village hall**
- **Your Village Hall Management Committee**
contains a suggested induction pack for village hall management committees

Grateful thanks to Jonathan Dawson, Solicitor and ACRE's Honorary Legal Adviser.

Useful contacts

Charity Commission Offices

Harmsworth House
13-15 Bouverie Street
London
EC4Y 8DP

0870 333 0218

www.charitycommission.gov.uk

20 Kings Parade
Queens Dock
Liverpool
L3 4DQ

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

Appendix A - WI Halls

A number of WIs own their own halls. This note outlines the main points to be considered when the time comes to make a decision about the future of a hall. It may be advisable to take legal advice on any particular circumstances.

Relevant documents

Many WI halls are governed by a deed which is separate from the WI constitution. This deed will have been executed when the hall was first acquired.

It may be described as a Declaration of Trust or a conveyance. The deed is likely to state:

- what the hall may be used for
- whether there are any special conditions which must be followed if the hall is to be sold or otherwise disposed of
- what is to happen to any proceeds of sale

If any decision is to be taken about the future of the hall, the first step is to discover whether there is a separate deed. If there is none, the relevant document will be the WI constitution.

All constitutional documents must be studied in order to determine whether the WI is free to decide whether or not to dispose of its land. It is possible that either the separate deed or the constitution restricts the power of disposal or specify that the consent of the local WI Federation or of the National Federation of Women's Institutes is required.

Selling a WI hall

A WI may want to sell its hall. Charity trustees have a statutory power to sell the land and buildings belonging to their charity provided they follow the procedure set out in the Charities Act 2011. This is designed to ensure that the management committee seek appropriate professional advice and advertise the sale where they are advised to do so (legal advice should be taken as well). However, the deed governing the WI hall may impose additional conditions: for example requiring a sale to be approved by a resolution of the WI members passed by a special majority, or require the consent of the local WI Federation or of the National Federation of Women's Institutes. Any special procedure or conditions imposed by the deed must be followed. If there is no separate deed, only the conditions in the Charities Act 2011 need be observed.

Giving away a WI hall

The WI hall may in practice be used very much like a village hall. It may be a valuable community resource. Sometimes a question is asked whether the hall can be given to a village hall charity. This may arise as a result of the WI becoming moribund or the cost of keeping the WI hall has become unsustainable: a village hall charity may qualify for grant aid which is not available to a WI.

It may be possible for the WI to gift the hall to a village hall charity. Subject to any restriction in the WI's governing document and/or constitution, provided the WI management committee complies with the restrictions on disposing of charity land of the Charities Act 2011. If it decides that a gift of the hall to a village hall charity is in the best interests of its members then there is no reason in law why the hall should not be gifted to the village hall charity. The WI must take legal advice before doing so.

As mentioned above, the WI's governing document and/or constitution may reserve to the local WI Federation or the National Federation of Women's Institutes the right to determine how a WI is to dispose of its hall.

It used to be possible to seek the approval of the Charity Commission to a disposal but the Charity Commission will no longer consider this.

If the WI no longer has use for the hall then, subject to any restriction in WI's governing document and/or constitution, the WI might wish to consider granting a long lease of the hall to a village hall charity with a right reserved to the WI to use the hall free of charge (legal advice should be sought). If such an arrangement is agreed, a desirable condition is that the village hall charity should undertake to pay the WI's costs involved in arranging the transaction.

Alternatively, if the objects of the WI's governing document and/or constitution are wide enough to include a village hall, then the WI can by a resolution made under s.280 of the Charities Act 2011 appoint village hall committee members as new trustees. This is, of course, subject to any restriction in the WI's governing document and/or constitution.

Proceeds of sale

If a WI sells its hall, what can it do with the net proceeds of sale?

This may be dictated by the WI's governing document and/or constitution. The WI may not be the beneficiary. In one case the proceeds of sale had to be handed to the parish council to be used for charitable purposes for the benefit of the local community! Even if the WI is the beneficiary, the governing document and/or constitution may impose restrictions on how the proceeds of sale may be used. For example, it may require the WI to use the proceeds of sale to acquire a new hall. (An application would need to be made to the Charity Commission to alter this requirement). Alternatively, the governing document and/or constitution might require the WI to invest the proceeds of sale, using the income, but not the capital for WI purposes.

Appendix B - Community association or village hall?

There is a distinct difference between a village hall and a community association. The main differences are by reference to the objects, governance and the requirement to occupy a community building in order to obtain a charity registration.

1. Community association

A community association is essentially a body set up to work in association with other local bodies, particularly the local authority, to promote the education of people living within a defined area. It exists as the mouthpiece of local people and for this reason has a membership structure of individuals and organisations to enable full democratic involvement in its governance. A second object is to operate a community building and nearly all community associations in England and Wales have a community building for which they are responsible.

2. Village hall

A village hall is a body that occupies a community building with the intention of making facilities available for local people and voluntary groups to use the community building for their own purposes. Local voluntary groups are identified within its constitution and they have rights to nominate one of their number to sit on the village hall's management committee. Additionally, the village hall's constitutional arrangements usually provide that local persons may be elected to sit on the management by popular vote at a meeting of people who live within the area of benefit. However, there is no formal membership structure. Village halls are not under any obligation to undertake other activities apart from hiring out space and rooms within the village hall, although there is nothing to stop a village hall from organising other activities provided they have the power to do so.

3. Governance

The model legal documents for a community association and village hall have different roots and are managed by different organisations. A model constitution for a community association is published by Community Matters. Community Matters also has a model lease for use by a community association where this is appropriate. The model documents for a village hall are contained in one publication, which is available either for freehold property (Model A) or leasehold property (Model B). Model A includes the form of transfer of freehold land and Model B includes the ACRE model lease.

4. Management structure

The management structure of a community association usually differs from that of a village hall. The model community association constitution provides for a management committee elected by individual members and affiliated members (user groups) with a small number of trustees co-opted by the management committee. Originally user groups and other member organisations each had the right to appoint a representative

to sit on the management committee; this is no longer the case. A community association constitution now provides for a forum comprising representatives of all groups, organisations and agencies which use the community association building or are active in the area of benefit (including non-member organisations). In contrast a village hall usually has a simpler structure: a management committee, whose members are the charity trustees, which consists of nominees of user organisations with a smaller number of members elected at the AGM and power to co-opt. Both community associations and village halls may appoint sub-committees within this structure.

5. Incorporation

Incorporation is possible using a community association structure and may be suitable for those that run larger community centres with substantial staffing, bar, café and/or training enterprises where liabilities and risks are significant. An existing village hall can become incorporated but this is a complex and costly exercise and in the majority of cases incorporation would not be worthwhile. One of the disadvantages of incorporation has been that the company would have two regulators, the Registrar of Companies and the Charity Commission, and have to comply with both company law and charity law. With the new Charitable Incorporated Organisation structure both a community association and a village hall will be able to incorporate and benefit from having only one regulator, the Charity Commission. The question of whether incorporation is advisable will continue to depend on the circumstances of each individual organisation. See Village Hall Information Sheet 39.

6. Making a Decision

The issues which face both community associations and village halls are similar, perhaps with a different emphasis reflecting the larger scale of operation of some large urban Community Centres: employment of staff, licensing, covering costs, financing improvement works, the need to market and develop community use and activity. Issues around charity trading, for example, can arise where there is a bar, whether at a community association or village hall, but more commonly for community associations. While the objects of a community association include a specific object to promote education and community development an active village hall committee will also do this to better serve the community.

Listed below are some of the factors to be taken into account when deciding which structure to use:

1. The size of the population is a relevant factor. Structure may be more appropriate than a community association. However there are 'villages' of 8,000, which have a 'village hall', and 'villages' of 500 which have a 'community centre'. (see 3 below)
2. If there are existing facilities, what is their structure? If a parish already has a village hall, confusion could be caused by setting up another, even if serving a new housing development in a different area. If there were already a community association, another membership organisation could cause competition.
3. A membership structure, such as a community association, can create a sense of belonging particularly where there is a substantial new housing development, which negates the need to take into account 1 and 2 above. In a village, membership structure could be divisive, creating a 'them and us' situation.
4. If the community is long established with pre-existing user organisations which will use the new building, a simple management structure of a village hall committee will be all that is needed.
5. The nature of the community and the volunteers who come forward need to be taken into account. For example will a community association be more than the volunteers who are willing or able to take on particularly if they work full time. Retired people may have more time and benefit from the involvement.
6. Prejudices in one way or another in respect of grants from parish, district or county councils may influence the decision.
7. There is no reason why a 'community centre' cannot be run by a village hall style trust or a 'village hall' under a community association structure. Some community buildings have different titles such as community arts association or recreation association where there is a strong arts or sports angle. The problem with adopting a different title is that it can make it more difficult to win zero rating of VAT if building a new hall.

Appendix C - Responsibilities of custodian/holding trustees

The main duty of a custodian/holding trustee is to hold the property of the charity and to have custody of all securities and documents relating to the property owned by the charity (the Official Custodian leaves the documents with the Charity Trustees).

- they cannot manage the charity
- cannot act for the charity trustees even when there are none
- must carry out the charity trustees instructions (unless it would involve a breach of trust or some personal liability)
- should always be appointed by a Deed of Appointment

In the past it was quite common for the title to be held by individuals and sometimes today this still happens. However, it can create problems and expense for the charity as time goes by. It is not unknown that over a period of time the number of individual Holding Trustees reduce in number and the charity is involved in legal costs to appoint new Holding Trustees. In some cases the reduction in the number of Holding Trustees goes unnoticed with the result there is no one living who holds the title to the land/property. See section 6 of this publication.

It is because the above situation could arise and the on going costs to the charity, that it is recommended that either the Parish Council or the Official Custodian is used to hold the title on behalf of the charity. However, again over a period of time confusion can arise over the role of the Parish Council as the Custodian Trustee.

Our Trust Deed states that the Parish Council is the Custodian Trustee Does that mean they own the hall?

The Parish Council in the role of Custodian Trustee is holding the title on behalf of the hall charity; this does not make it the beneficial owner of the hall; the members of the village hall management committee are the beneficial owners. As Custodian Trustee the Parish Council has no management role, it must not interfere in the management of the hall. Should the hall get into financial difficulties the Parish Council as Custodian Trustee are not there to pick up the tab. The Parish Council must not include the charity's land in its asset register: it is not their land.

Our Trust Deed states that the property is to be vested in the Official Custodian for Charities. Should we have done something about it?

The charity trustees must apply to the Charity Commission for a vesting order; there is no charge for this service. If previous trustees have gone through the vesting process there should be a vesting order with the charity's legal documents. If a Scheme (to update the trusts) has been made by the Charity Commission which includes the vesting of the title in the Official Custodian there will be no need to apply separately for a vesting order. If you are not sure if the vesting took place you are advised to contact the Charity Commission who will know the position. If the land has not been so vested, you can apply to the Charity Commission online.

We would like to change from the Parish Council to the Official Custodian. Can we do so?

Yes, you can change the Custodian/Holding Trustee. The consent of the current Custodian/Holding Trustee is not required in order to make the change, as they have to act on the instructions of the Charity Trustees (the committee). If the village hall's Trust Deed states who is to be the Custodian Trustee within it the committee will have to change that provision using the statutory power of amendment of s.280 of the Charities Act 2011.