



## Being a Trustee – Make it Rewarding

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# Know and Understand Your Charity

- What is the legal structure?
  - An unincorporated charity
    - Governed by a deed of trust or more likely a Scheme of the Charity Commission
  - A company limited by guarantee (“CLG”)
    - Governed by a memorandum and articles of association. Registered at Companies House as well as the Charity Commission
  - A charitable incorporated organisation (“CIO”)
    - Governed by a constitution and registered only with the Charity Commission

# Know and Understand Your Charity

- Unincorporated Charity

- Trustees enter into all contracts personally and entitled to an indemnity.
- Who holds the title to the charity's property?

- CLG and CIO

The CLG and CIO enter into any contracts and it is the company or CIO that is liable, not the trustees.

NB. the duties and responsibilities of the trustees as charity trustees are the same whatever the structure. The trustees of a CLG are also directors in company law and must comply with the Companies Act 2006.

# Incorporation?

- Why incorporate?
  - Reduce risk
  - Modernise structure
  - More attractive to new trustees
  - Resolve any issues of title of change of trustees.
  - Trustee indemnity insurance does not cover contractual risks or claims in tort.
- CLG or CIO?

CIO is only registered with Charity Commission and now recognised by the Regulator of Social Housing. Can hold permanent endowment.

CLG – best considered as a corporate trustee

# Know the Governing Document

- Does every Trustee have a copy of the governing document?
- Is the governing document clear?
- Is it up to date?
  - Have changing circumstances made the objects out of date?
  - Are the directions to the trustees still relevant? e.g. provisions about a maintenance fund
  - Do the trustees have the powers that are required?
  - Are the administrative provisions relevant? e.g. a right of appeal over decision of the trustees to a body that no longer exists.
  - Are the administrative provisions adequate? e.g. Zoom meetings, email decisions.

# Know What is Happening

- Trustees can delegate to a sub-committee or to an employee
- Terms of reference must be clear
- Trustees have adequate reports
- Trustees must ensure that their policies are being implemented
- How often do the trustees meet?
- What papers are provided?
- When are minutes circulated?

# Know What is Happening

- The Kids Company – reported on 12th February 2021

Mrs Justice Falk:

- *“Directors have, both collectively and individually, a continuing duty to acquire and maintain a sufficient knowledge and understanding of the company’s business to enable them properly to discharge their duties as directors. (ii) Whilst directors are entitled (subject to the articles of association of the company) to delegate particular functions to those below them in the management chain, and to trust their competence and integrity to a reasonable extent, the exercise of the power of delegation does not absolve a director from the duty to supervise the discharge of the delegated functions.”*



# Duties of the Trustees (1)

- To act within the objects and in the best interests of the charity
  - Approach decisions in an objective and dispassionate manner
  - Beware the gradual extension of the activities of the charity
- To act within their powers
  - e.g. is there a power to borrow or to sell land?
- To identify conflicts of interests and conflicts of loyalty and to manage them properly
- To manage resources responsibly – as an “ordinary prudent man (sic) of business” but beware of a higher standard for trustees with a particular expertise

# Duties of the Trustees (2)

- Trustee must not benefit from their trust
  - Trustees must not be paid for acting as a trustee
  - Trustees must not be paid for any service to the charity and the charity must not buy anything from a trustee unless:
    - It is permitted in the governing document
    - It is not prohibited in the governing document and the trustees comply with Section 185 Charities Act 2011
- Question of a trustee as a beneficiary?

# Duties of the Trustees (3)

- Decision Making
  - act within the objects
  - act within the powers
  - act in good faith and only in the interests of the charity
  - make sure the trustees are sufficiently informed
  - take account of all relevant factors
  - ignore any irrelevant factors
  - manage conflicts of interest
  - make decisions that are within the range of decisions that a reasonable trustee body could make

Record the decision and the reasons for it.

# Appointment of Beneficiaries

- What are the qualifications in the objects?
- Do vacancies have to be advertised?
- Can appointments be made by a Committee?
- When was the letter of appointment and the Residents' Handbook last reviewed? – if there are difficulties with a resident, the trustees will have to reply on them.

# Termination of an Appointment

- Must be handled correctly from the outset – difficult to rectify initial mistakes.
- Follow the Almshouse Association Handbook, the letter of appointment and the Residents' Handbook.
- Record complaints and investigate.
- Record the steps taken to address problems.
- Minute Trustees' Meetings on the subject carefully and in the knowledge that they may be made public.
- Send a letter setting out what problems are and how the resident should address them. Make it clear that the appointment may be in jeopardy
- If there is no improvement, second letter stating that the appointment is now in jeopardy
- Termination of appointment.

# Sale of Land

- Is it specie land or designated land? – check the governing document
- Compliance with Sections 117 – 122 Charities Act 2011
  - Applies to any disposition of land – sale, lease, grant of easement
  - Requires an order of the Commission or compliance with the procedure in Section 119
  - Charity must obtain a qualified surveyor's report
  - Advertise the property as recommended and be able to conclude that the terms of the sale are the best that can reasonably be obtained for the charity
  - Timing
  - Lease for seven years or less

# Borrowing and Mortgages

- Section 124 prohibits a mortgage without the consent of the Charity Commission unless the charity has obtained written advice from someone who
  - is reasonable believed to be sufficiently qualified and experienced to give the advice; and
  - has no financial interest in the matter.
- Advice must cover
  - Whether the loan is necessary;
  - Whether the terms are reasonable having regard to the status of the borrower as a charity
  - The ability of the charity to repay the loan.

Consider a similar report for any other borrowing.

# Get Involved

- Know the structure of the Charity and be comfortable with it
- Understand the governing document and follow it
- Don't just kick the tyres – look under bonnet and make sure you know what is going on
- Make sure you recognise the alarm signals and take advice on significant projects



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# Thank you

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